Legal aspects of intoxications

Intoxicaties en juridische aspecten

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Disclosure belangen sprekers

Heylens

(potentiële) belangenverstrengeling	Geen

Jacobs

(potentiële) belangenverstrengeling	Geen

Case history 1:

- Male, 29 y

- 1st admission ED after loss of consciousness: Epileptic insult? (GCS: 3/15; R/ Dormicum IV)
- Positive on methadon and morfine (urine): R/ Naloxone

- 2nd admission ED (8h later), again loss of consciousness
- Pt denies intake of opiates!
- Psychiatrist: no psychosis, not suicidal, mentally competent
- Pt leaves the hospital against medical advice

- 3th admission ED (the next day), asystolia >> reanimation
- Intubation, ICU where pt deceases after 3 days

Case history 2:

- Female, 42y
- Admission ED after ingestion of 25mg paracetamol (2 h interval) combined with 5 glasses of wine
- Borderline personality disorder, multiple admissions psychiatric hospitals
- Denies death wish, TS was impulsive reaction
- Wishes to leave the hospital immediately!
- Psychiatrist: no psychosis, not acutely suicidal, understands possible consequences of intoxication
- Involuntary admission? Treatment for paracetamol intoxication?

Case history 3:

- male 67 yo,
- unknown previous psychiatric history,

- auto-intoxication with unknown amount metoprolol after which jump from 3rd storey,
- farewell letter, no partner or family members present,

- PE: hypovolemic, hepatic and splenic lesion, abdominal free fluid, instable pelvic fracture, femur fracture left

- MS: “I have problems, I was in panic”

- initially stable vital parameters
- intubation necessary before providing ICF

Case history 4:

- male 40 yo,
- diagnosed with disorganized schizophrenia,
- abuse of alcohol, benzo’s and cocaïne,

- currently admitted involuntarily to psychiatric ward due to depressive episode
- presented on casualty ward due to suicide attempt:
  - self-inflicted cuts in neck with razor blade
  - followed by aborted attempt to jump from 2nd floor

- PE:
  - superficial skin laceration from ear to ear, no active blood loss, no damage to vital neck structures
  - urine tox screening postive for cocaine and benzo’s
  - autonomic hyperactivatioin

- MS: clear consciousness, ”I will have to burn", ”the end of life manifests itself in eternal choking“

- refuses medical treatment of laceration

Relevant Dutch laws:

1. Wet op de geneeskundige behandelovereenkomst (WGBO):
   - all medical treatments
   - both physical/somatic and psychiatric

2. Wet bijzondere opneming in psychiatrische ziekenhuizen (Wet BOPZ):
   - involuntary admission to psychiatric hospital
   - treatment of involuntary admitted patients in psychiatric hospital

Laws applicable in Belgium

1. *"Wet betreffende de rechten van de patiënt (WRP) (22/8/2002)"*
   - *Relationship between (any) patient and professional caregiver*
   - *Focus on self-determination*
   - *Rights: free choice caregiver, information, free and informed consent, patient file,…*

2. *"Wet betreffende de bescherming van de persoon van de geesteszieke (WBPG) (26/6/1990)"*
   - *Describes the criteria and procedures for involuntary admission*
   - *Does not regulate involuntary treatment!*

Dutch WGBO and Belgian WRP

- “Informed consent” stands central:
  - guarantees the right to sellf determination (“zelfbeschikkingsrecht”)
  - recquires adequate information regarding pro’s and con’s of diagnostics/treatment
  - in principle no medical treatment without consent
- strengthening the legal position of the patient (“rechtspositie”)
- requires mental competence:
  - “in staat tot een redelijke waardering van de belangen ter zake” (“wilsbekwaamheid ter zake”)
- assessed by any registered medical doctor (“BIG geregistreerde arts in NL”)
- specific to the context of a medical treatment
- patient is mentally competent until proven otherwise

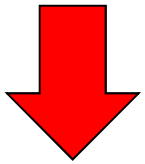
How can WRP be “used” to rectify involuntary treatment/seclusion-restraint?

- Mental incompetence (cfr next slide)
- Legal representative: a priori authorization, spouse, parent, child, brother/sister
- In case of emergency (artikel 8 § 5) or if decision of the representative is in conflict with the interests of the patient : professional acts on behalf of the legal representative

>>multidisciplinary decision, report in patient file and limited in time

Assessment of mental (in)competence

provide relevant and adequate medical information including treatment options; pro's and con's



assess decision making capability ("beslisvaardigheid")

ability express a preference

ability to appreciate and evaluate the provided information given the current situation

ability to understand the provided information and to apply that in the decision for/against treatment

ability to argue logically and apply provided information in considering treatment options

Van wet naar praktijk. Implementatie van de WGBO.
Deel 2 Informatie en toestemming
Uitgave van het Samenwerkingsverband Implementatieprogramma WGBO.

Eindredactie: J.M. Witmer en R.P. de Roode

Involuntary treatment (“dwang”) under WGBO

- in principle no medical treatment without informed consent

Exceptions are allowed under certain circumstances provided that:

1. presence of **mental incompetence** (“wilsonbekwaamheid ter zake”)

2. **resistence** to medical treatment (“verzet tegen behandeling”)

3. **substantial treatment** (“ingrijpende behandeling”) necessary to prevent **serious disadvantage or permanent injury** (“kennelijk ernstig nadeel/blijvend letsel”)

4. **legal representative** consents to treatment (in order):
   - person authorized in writing
   - spouse or partner
   - parent, child, sibling

- exception to self-determination (“zelfbeschikkingsrecht”)
- danger is independent of a psychiatric illness (BOPZ)

Involuntary treatment (“dwang”) under WGBO

- no legal representation or no consent by dubious legal representation:
  - “good care provider” (“goed hulpverlener”)
  - health care professional acts according to professional standards defined by professional association and/or guidelines

- good medical practice:
  - inform patient why treatment is undertaken against his/her will, before or immediately afterwards
  - document considerations and outcome of interdisciplinary consultations!

Involuntary treatment under WGBO: important considerations

- the more drastic infringement on self-determination (physical or psychological integrity), the stronger the argumentation needed

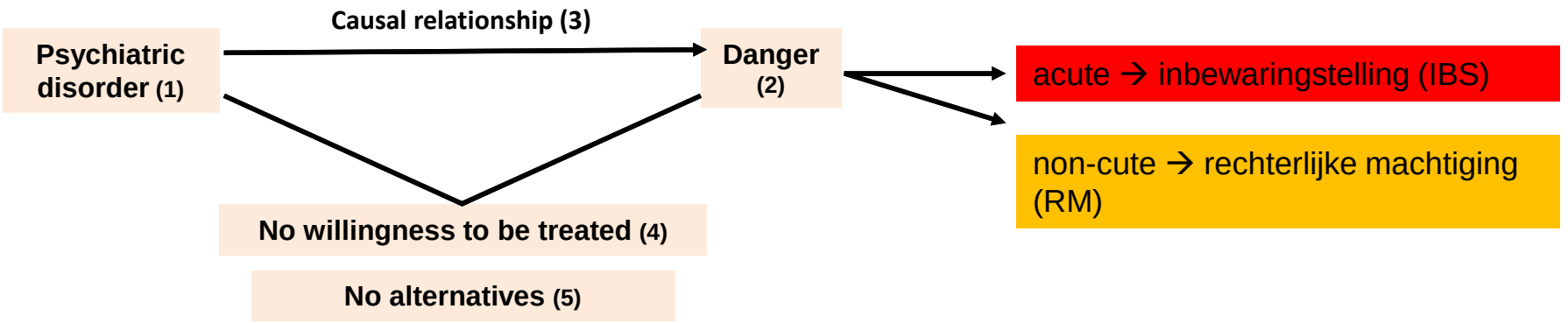
- general legal principles:
  - subsidiarity (“subsidiariteit”): *an intervention is only acceptable if a less drastic one is not expected to be effective*
  - proportionality (“proportionaliteit”): *an intervention should be in proportion to the danger to be averted*
  - effectiveness (“doelmatigheid”): *an intervention should be effective to avert danger*

- patient factors:
  - recovery mental incompetence (permanent/temporary)

- factors related to intervention:
  - intervention should be strictly necessary to prevent death or permanent injury
  - benefits of intervention should outway potential adverse effects
  - chance of success, danger and burden of intervention

Dutch mental health act (BOPZ)

- involuntary admission to psychiatric ward/hospital
- provided that 5 conditions are met:



- BOPZ does not automatically permit involuntary treatment:
  - neither medical nor psychiatric

Criteria for involuntary admission (WBPG)
(all should be fulfilled!)

1. Mental illness (“geestesziekte”)
2. Danger for oneself’s or others health/integrity
3. Causal relationship between 1. and 2.
4. The situation requires an admission
5. There is no appropriate alternative (e.g. voluntary admission)

1 procedure (civil judge), in case of urgency quicker procedure initiated by the prosecutor

Restraint and/or seclusion under WGBO (NL)/WRP(B)

NL:

- vrijheidsbeperkende interventies (VBI's):
  - inventarization of vital functions and diagnostics/physical interventions to prevent death or permanent injury under WGBO
  - no relation to BOPZ
  - general legal principles for involuntary treatment under WGBO apply

B:

- dwangmaatregelen: same general legal principles (WRP) apply as for involuntary treatment!
- Quid mentally competent patient and danger/treats towards others? >> "wettige verdediging" en "noodtoestand" ("bijzondere en algemene rechtvaardigheidsgrond")

Intoxications and Dutch WGBO/BOPZ

- mental incompetence due to CNS derangement and/or underlying psychopathology:
  - "good care provider" according to WGBO after having sought consent by legal representative if time permits
  - "good care provider" without consent according to WGBO if time does not permit
- IBS does not legitimize involuntary medical treatment for physical disease!
- even if a patient presents with a BOPZ legal measure:
  - treatment of physical disease under WGBO
  - informed stands central
  - involuntary treatment/restraint governed by WGBO
- refusal of a non-life threatening but potentially dangerous condition can occur in the absence of mental incompetence

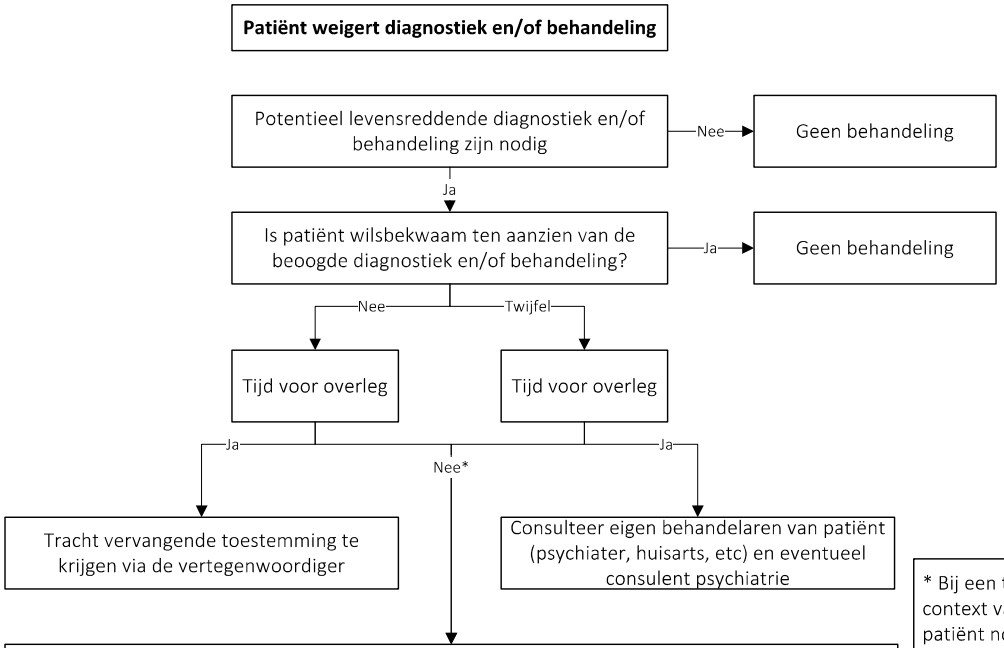
when in doubt:

- act if time doesn't permit
- consultation with colleagues (psych or otherwise) if time permits

Intoxications and Dutch WGBO/BOPZ

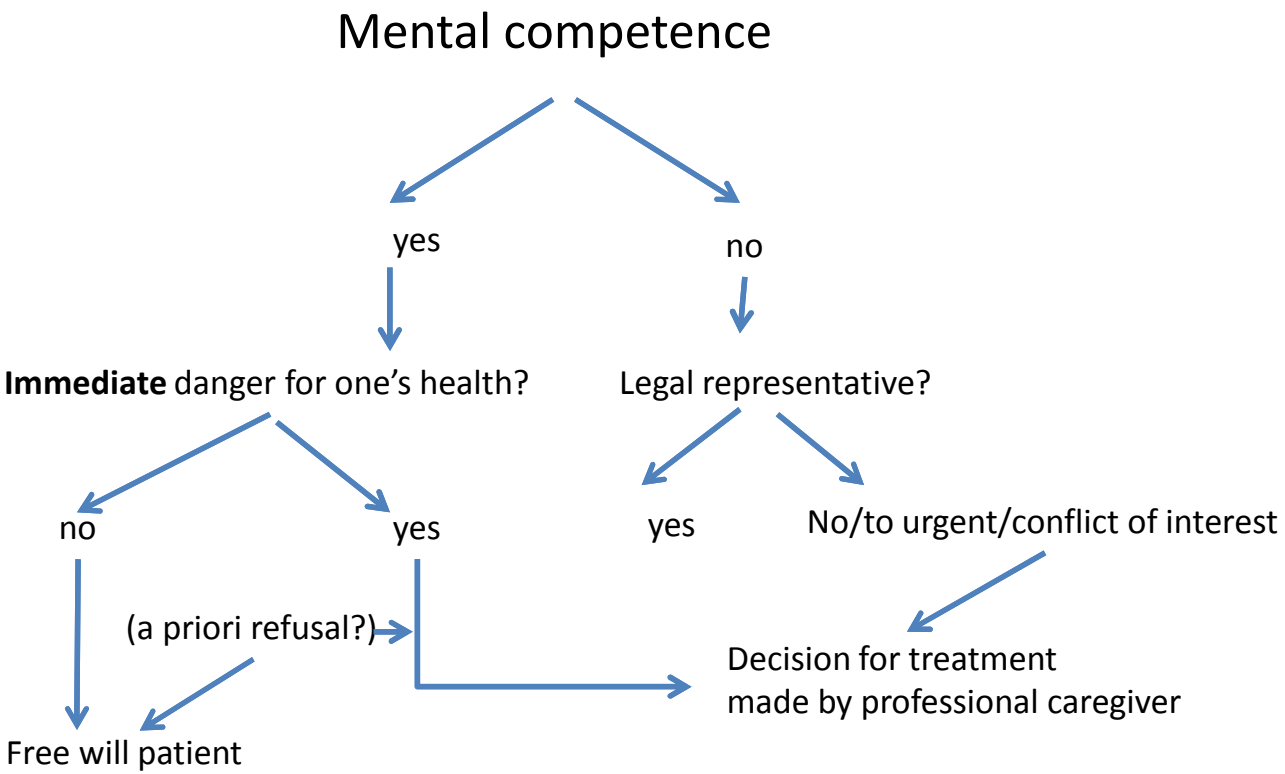
Richtlijn Intoxicaties: eerste opvang in het ziekenhuis

Status: concept, 27 maart 2017 – versie voor commentaarronde NVA



* Bij een tentamen suïcide is de kans op een actieve psychiatrische ziekte ongeveer 90%. Zeker in de context van een tentamen suïcide is de kans op wilsonbekwaamheid derhalve groot. Wanneer een patiënt noodzakelijke diagnostiek of een behandeling weigert en uitstel daarvan in verband met dreigend ernstig nadeel niet mogelijk is, dient bij twijfel dan ook te worden gehandeld als bij een wilsonbekwame patiënt.

In case of intoxication and refusal?



Intoxications and Dutch WGBO/BOPZ and Belgian WRP/WBPG

- assessment of mental competence stands central when performing somatic treatments under WGBO/WRP in intoxicated individuals
- registered emergency physicians are aso trained to assess mental competence in intoxicated individuals
- somatic danger is almost never the direct result of a psychiatric disorder in intoxicated individuals
- BOPZ/WBPG is not necessary for involuntary somatic treatment under WGBO/WRP provided that all legal conditions are met
- danger as a direct result of a psychiatric disorder stands central in BOPZ/WBPG
- psychiatric consultation to assess danger in context of BOPZ/WBPG should be considered in intoxicated individuals who refuse a necessary treatment in the absence of mental incompetence