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I38 Capacity to Consent to Psychiatric Treatment in Ontario, Canada: Perspectives From a Forensic Psychiatry Program

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After attending this presentation, attendees will: (1) understand the legal concepts of the capacity to consent to treatment in Ontario, Canada; (2) understand the challenges that clinicians have when someone is refusing psychiatric treatment (including risk of violence); and, (3) be able to discuss ethical aspects of forcing someone to receive psychiatric treatment.

This presentation will impact the forensic science community by increasing awareness of a different legal framework and what the impact is on both the patients and the community.

Introduction: Pharmacological treatment can be one of the major components of the mental stability of individuals suffering from a psychotic disorder or a bipolar disorder; however, as per the nature of their psychotic or mood symptoms, these patients may lack insight into their condition and refuse to take psychiatric medication. In that situation, these persons may remain acutely psychotic or manic for months and even years if no action is taken to force medication. Most of the legislation authorize but limit the use of forced treatment. The most common method in place is when a Substitute Decision Maker (SDM) is named; in that case, the SDM will make the decision on behalf of the patient as he has the capacity to understand the nature of the mental disorder and the consequences of taking or not taking psychiatric medication. Also, many legislations allow the patient to appeal the decision of the physician who found his/her patient incapable of consenting to treatment.

In Canada, each province and territory has developed its own legal framework for consenting to treatment. In Ontario, the legal process is deemed under the Consent and Capacity Act. It appears that the Ontario process has the particularity of not allowing any treatment until the appeal process is extinguished, either because of the patient not having appealed the decision within the allowed time or because no further appeal is possible (the last decision from the Supreme Court of Canada). Some legal procedures may be quick (a few weeks) and some may be extremely long (one or more years), during which time the patient remains acutely unwell. The individuals in favor of such a procedure often argue that each patient should be allowed a freedom of choice.

Methods: In the St. Joseph's Healthcare Forensic Psychiatry Program, patients who have gone the route of appealing the decision of capacity to consent to treatment were identified. Several factors were reviewed, such as how long the process took place, how far the patient appealed the decision, and the change of their mental status before and after receiving treatment (including their risk factor, their aggressive incident, and their access to privileges)

Results: Ten patients were identified who appealed their treatment capacity. Only three of them went to the Supreme Court of Canada. The longest appeal was 1.5 years. All had a significant decrease of their aggressive incidents after receiving treatment and were allowed to use off-unit, unaccompanied privileges shortly thereafter.

Discussion: The data related to the significant behavioral improvement after receiving treatment was expected; however, obtaining these data may help provide some guidance to enhancing a different legal process and help these patients recover more quickly. It also raises ethical questions and legal issues, notably when these patients are part of the forensic system and their main psychiatric disorder is associated with an offense. All of these points will be detailed in the presentation.

Capacity to Consent, Psychiatric Treatment, Forensic Psychiatry