

## **The internment of patients undergoing treatment for alcohol addiction as a result of a specific interpretation of legal provisions by some judicial authorities**

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### **Summary**

In the Polish legal system, each medical procedure requires patient's consent. Exemptions from the obligation to obtain such a consent are limited by the legislator to exceptional situations, i.e., when the delay caused by the procedure for obtaining consent would pose a threat to patient's life, serious injury, or serious health impairment. Undergoing addiction treatment is also voluntary. Exceptions to this principle are stipulated by a legal act. People who abuse alcohol and therefore break down family life, demoralize minors, avoid the obligation to meet the needs of their families, or systematically disturb peace or public order, may be obliged to undergo addiction treatment in an inpatient or outpatient treatment centre on condition that they are addicted to alcohol. A patient who fails to report to the medical entity designated by the court to execute the decision on the obligation to undertake addiction treatment may be brought to this entity by the police.

In the context of the obligation to obtain a consent for treatment by a person against whom a court decision containing an obligation in this respect has been issued, there are discrepancies in the application of law provisions. In some medical entities, this results in the forced continuation of addiction treatment by a given patient in hospital, as discharge from the hospital depends on a court order issued in this regard, not on the consent of the patient himself/herself. In other medical entities, patients are not admitted for treatment due to the lack of such a consent, despite the court's obligation in this respect. The article confirms that a specific practice of applying the law, which downgrades the role of the patient's consent in the therapeutic process, has negative consequences for the effectiveness of the therapy.

**Key words:** addiction treatment, coercive treatment, alcoholism, patient's consent, therapy or motivation

## Introduction

The imposition of an obligation by the court to undergo treatment is an exception to the principle of voluntary treatment in this respect [1]. A person who is legally obliged to undergo addiction treatment in an inpatient treatment center may not leave the premises of this center without its manager's consent [2]. Arbitrary leaving the center by such a person, which the center's manager is obliged to report to the court, results in bringing this person back to the center by the police.

However, as indicated in the legal doctrine, the patient may only be forced to appear and be present in the treatment center, and not in active addiction treatment [3]. A decision on compulsory addiction treatment clearly applies to the individual and his/her rights related to health protection, as well as the freedom to choose to undergo or refrain from treatment, imposing significant restrictions on personal rights such as health and freedom [4].

According to one view, the legal institution of the court obligation to undergo addiction treatment is based on the basis of limiting the voluntariness of treatment, while the court-ordered treatment does not abolish the general principle of obtaining patient's consent to provide him/her other health services [5]. If a person brought to the treatment center by the police does not agree to addiction treatment, the medical entity is not entitled to apply any form of compulsion to treatment [5]. The jurisprudence emphasizes the need to interpret these provisions strictly [6], as the person addicted to alcohol should decide for himself/herself whether he/she wants to be treated [7].

According to another view [8], a court order obliging to begin addiction treatment replaces patient's consent to treatment. Thus, the patient is admitted to the addiction treatment center and remains there until a decision is issued to change the form of treatment or give a consent to leave the addiction treatment center. It should be emphasized that the court decision, as referred to in the previous sentence, stipulates that a given person must undertake addiction treatment. Therefore, it is not an obligation imposed on the addiction treatment center which admits a patient to the therapy. People who are obliged by the court to undergo addiction treatment are not able to decide on this matter on their own, mainly due to a disturbance of criticism, manifested by the denial of a problem with drinking alcohol.

## Methodology

Based on the data for the years 2010–2020, obtained from a medical entity specialized in psychiatric care and addiction treatment, an analysis of cases of alcohol addiction treatment regimes applied to patients of this entity was performed. Information on the number of patients receiving alcohol addiction treatment in this entity in this period was assessed, comparing the number of patients treated based on their own consent and referred to treatment pursuant to a court decision. The subject of the analysis were data on the total number of alcohol addicts in the above-mentioned period, divided into two categories of patients: those who received treatment on the

basis of their own consent and those for whom the decision on compulsory treatment was issued by the court.

## Research

Table 1. Statistics of patients treated for alcohol addiction by two categories

No.	Year	Number of decisions	Decisions not implemented due to date expiry	Decision implemented by compulsory bringing to hospital	Total number of patients being treated for addictions in one year	Number of patients being treated in one year, based on their own consent
1	2010	695	n/d	n/d	1735	1040
2	2011	698	n/d	n/d	1687	989
3	2012	701	n/d	n/d	1601	900
4	2013	686	n/d	n/d	1846	1160
5	2014	697	n/d	n/d	1895	1198
6	2015	681	n/d	n/d	1944	1263
7	2016	698	n/d	407	1886	1479
8	2017	705	n/d	416	1870	1454
9	2018	767	84	379	1853	1474
10	2019	769	65	412	1771	1359
11	2020	797	89	364	1188	824

n/d – no data

## Analysis

Until 2016, hospitals did not keep data on the number of court orders which had not been implemented in such a way that the patients were brought to a psychiatric hospital for addiction treatment by the police. Starting from 2016, this type of statistics, kept in hospitals for their own needs, made it possible to obtain information on the number of patients forcibly brought to hospital for alcohol addiction treatment in relation to the total number of alcohol addicts, also those treated based on their own consent. Importantly, starting from 2016, those patients who were brought for treatment by law enforcement authorities, did not then leave the addiction treatment center without a court decision. Based on the adopted practice direction, which is a derivative of the interpretation of the provisions of the Act by local courts, it was considered that a person who was legally obliged to undergo alcohol addiction treatment, and then brought to hospital forcibly, could not be released from the hospital after the period of alcohol addiction treatment, because it was necessary to obtain a decision discharging

such a person from the hospital made by the court which previously decided on the treatment obligation.

In all cases marked as “implemented by forced hospitalization”, the number of which in each year is as follows: 2016 – 407; 2017 – 416; 2018 – 379; 2019 – 412; and in 2020 – 364, the patient was discharged from the hospital after the addiction treatment was completed only on the basis of a court decision and not on the basis of his/her consent (a discharge upon request). Therefore, the above analysis indicates that over 5 years, 1,978 patients could not leave the hospital until the court issued a relevant decision on this matter. In practice, therefore, in the cases referred to, the hospital filed a motion to the court, informing about the termination of patient’s treatment and requesting the court to grant consent to his/her discharge, i.e., to allow him/her to leave the psychiatric hospital where he/she was undergoing addiction treatment ordered by the court.

According to the position of the Supreme Court and institutions established to counteract alcohol-related problems, a psychiatric hospital to which a given patient was admitted under the obligation should not be a place of compulsory “detention”, because only that treatment which is a manifestation of a freely made decision may bring some real results [9]. The therapeutic perspective suggests a different approach. The Minnesota Model [10] for treating alcohol dependence assumes that initial treatment motivation is not a prerequisite for positive outcomes, almost all patients are somehow “coercive”, and that patients’ denial of disease is a symptom of disease; thus, patients who deny its existence may undergo treatment and it should also be an important indication for their immediate surroundings.

The court obligation for a person addicted to alcohol to undergo treatment in an inpatient alcohol addiction treatment center expires after 2 years from the date of the decision becoming final, unless the court changed the decision regarding the type of alcohol addiction treatment center or decided on the cessation of this obligation before the expiry of this period [11]. A court decision imposing an obligation on a person addicted to alcohol to undergo treatment in an inpatient alcohol treatment center entails the obligation to remain in such an institution for a period not longer than three months [11].

It is assumed in the jurisprudence of the courts in one of the provinces that a legally valid court decision replaces the consent to admission to hospital and treatment [12]. After the patient is admitted to the hospital on the basis of the obligation to undergo alcohol addiction treatment imposed on him/her, he/she may not leave the addiction treatment center by his/her own, and his/her discharge is possible only on the basis of a decision made by a head of the medical entity, based on a decision of the competent court [13]. The provisions of the Act do not apply to a person addicted to alcohol, who is aware of the problem and wants to overcome it by undertaking voluntary treatment. On the other hand, the provisions of the Act, which provide for the possibility of obliging patients to treatment and enforcing this obligation during the period of validity of the court decision, apply precisely to people who deny the need for treatment, while it was found that they were obliged to undergo alcohol addiction treatment [14].

According to the position of the courts in one of the provinces, a head of an inpatient addiction treatment center may not independently make decisions on changing the type of alcohol addiction treatment or on stopping treatment and discharging the patient from the hospital. As a result, any addicted person who reports himself/herself or is led to alcohol addiction treatment in connection with the decision on obliging him/her to undertake treatment, is admitted to the hospital for treatment, and may leave it only upon delivery of a court decision on the cessation of the treatment obligation or change the treatment method to an outpatient procedure. According to those who apply this type of interpretation, it finds its justification in the purpose of the Act or social expectations as to its effects. There is no doubt in this respect for the purpose for which the measure in question, in the form of the obligation to undertake addiction treatment, was introduced. It is, above all, the protection of the health of a person addicted to alcohol and the protection of the rights and freedoms of other people (in particular his/her relatives), and the protection of public order. Thus, the *ratio legis* of the act, as well as the legal measures applied in it, for example, those in the form of a ban on leaving the medical entity or forced access to the medical entity, incline to accept the position that the court decision replaces patient's consent to undertake addiction treatment. It is worth paying attention to the fact that even when adopting the position that a court decision replaces consent to treatment, the specificity of this treatment requires cooperation between the patient and the medical staff. In the absence of such cooperation, it is difficult to talk about starting treatment and executing the court decision. Hence, it is important that the number of patients treated on the basis of court decisions does not exceed 20% of the total number of patients treated in a given ward, due to the fact that their attitude to treatment could potentially make treatment difficult for people who come voluntarily for treatment.

### Discussion

The consent to undergo treatment confirms the individual's autonomy in the management of his/her personal interests [15]. The right to consent does not only apply to persons with full legal capacity, but also to persons whose capacity is limited or even disabled. The patient's consent should therefore be understood as an expression of an act of will to undergo addiction treatment [16]. To be legal, and therefore legally effective, the patient's consent must be expressed by the person authorized to dispose of the goods in which the treatment interferes, consciously and voluntarily, before or at the latest during the treatment and in an appropriate form. With regard to a patient who is under the influence of alcohol, if he/she is capable of informed consent, the provision of the service without the required consent is unacceptable. The mere fact of consuming alcohol does not result in the loss of the capability to express consent or object to medical intervention. Qualification of patients for appropriate groups (i.e., those who are capable or incapable of expressing consent) belongs to physicians who provide patients with help. In the event of a dispute, a conflict should be resolved by a guardianship court. In a situation where a patient, due to intoxication, is incapable of expressing informed consent, he/she will be treated in the same way as a minor

or incapacitated patient. The above applies to the state of exclusion or limitation of consciousness, e.g., due to the use of intoxicants [17].

It is assumed in the jurisprudence that it is not permissible to exonerate a physician from liability for acting without patient's consent, as this would mean disregarding the limitations imposed by this provision as constitutional guarantees [18]. It should be clarified here that the aforementioned action without patient's consent by the physician means only a situation in which there is no articulated declaration of will of the authorized parties, and not a situation in which they express their objection.

In principle, undergoing alcohol addiction treatment is voluntary. People who abuse alcohol and therefore break down family life, demoralize minors, avoid the obligation to meet the needs of their families, or systematically disturb peace or public order, are subject to an expert examination in order to issue an opinion on alcohol addiction and to indicate the type of addiction treatment center. The examination is imposed by a commune committee for solving alcohol-related problems, competent according to the place of residence or stay of the person concerned, at his/her request or on its own initiative. At this stage, it is verified whether the person concerned is abusing alcohol and is addicted to it. The lack of a medical premise for alcohol addiction treatment already at the application stage makes it unfounded and unacceptable [19]. The activities undertaken within these competences do not spontaneously cause any changes in the sphere of rights and obligations towards their addressee. Referral for examination by an expert is not binding on the person concerned and may not be enforced in any way, because there are no legal remedies in this regard [20].

Failure to perform examination at the pre-trial stage at the court, however, does not mean that a person who meets the medical and social premises for alcohol addiction treatment will not be subject to court proceedings. The persons in question, if they are addicted to alcohol, may be obliged to undergo treatment in an inpatient or outpatient addiction treatment center. The application of this obligation is decided in non-contentious proceedings by a district court having jurisdiction over the place of residence or stay of the person concerned. The court initiates proceedings at the request of commune committee for solving alcohol-related problems or a public prosecutor. The collected documentation is attached to the application, together with an expert opinion, if the examination by the expert was carried out. The expert opinion shall remain valid for the entire duration of the obligation to undertake addiction treatment, unless there is a change in the facts on which it was issued.

There are no legal grounds for placing a person abusing alcohol in an alcohol addiction treatment institution solely for his/her own interest, if his/her behavior does not disrupt family life, demoralize minors, cause absence at work, or systematically disturb peace and public order [21]. In order to apply compulsory alcohol addiction treatment, it is not enough to state alcohol addiction (medical premise), but it is also necessary to prove that it is the cause of negative phenomena (social premise) which must occur in order to make the court decide on the obligation of a person addicted to alcohol to undergo addiction treatment [22].

If there is no expert opinion on alcohol addiction in relation to the person concerned by the court proceedings, the court orders that the person should be subjected to ap-

appropriate examination. The court may, if it deems it necessary, order that the examined person be placed under observation in an addiction treatment center for a period not longer than 2 weeks. In exceptional cases, at the request of the addiction treatment center, the court may extend this period to 6 weeks. Before issuing a decision, the court hears the person concerned. The decision ordering the observation at the addiction treatment center may be appealed. The above is an exception to the principle of voluntary submission to examination, for which, as a rule, patient's consent is required each time.

At this point, the legislator introduces a clear exception to the principle of voluntary consent to the examination, assuming that it is to determine the validity of the medical condition for imposing an obligation on a patient to undergo addiction treatment. This exception to the principle of voluntary treatment is justified in this case by the need to verify whether the social premise of a specific procedure, justifying the interference in the sphere of patient's rights and freedoms, is related to the medical premise, and thus whether they will jointly result in patient's obligation to undergo alcohol addiction treatment.

If the court orders an examination by an expert or observation in an addiction treatment center, the person concerned is obliged to undergo psychological and psychiatric examinations and treatments necessary to perform basic laboratory tests, provided that they are performed by persons with appropriate professional qualifications, according to the medical knowledge and in a way which does not pose a threat to the health of this person. In the event of evasion of the ordered examination by an expert or observation in an addiction treatment center, the court may order compulsory bringing in by the police.

Denying the need for treatment is a characteristic of this disease. People who come to addiction treatment centers and declare their willingness to be treated, the so-called voluntary patients, most often make decisions under the influence of serious life events and it is not necessarily related to their motivation for treatment. In a study on a group of 435 addicts maintaining abstinence [23], a question was asked about the circumstances of applying for therapy. The most frequently mentioned answers were: the threat of family breakdown or family breakdown, the threat of job loss or job loss, serious life and legal problems, life-threatening condition, poor health, pressure from the environment, or lack of self-acceptance. From a therapeutic point of view, a stay in an addiction treatment center makes it possible to initiate the process of change. Patients addicted to alcohol or drugs are often described as being resistant or unmotivated. According to the Transtheoretical Model of Change by Prochaski and DiClemente (TMC), they do not consider changes in the area of "self and alcohol". Therefore, they remain in the 5-step model of patient's readiness for change in the Pre-Contemplation phase: "I do not see a problem so I do not have any. I have no need to change anything." Staying in an addiction treatment center gives the opportunity to move on to the second phase, i.e., the Contemplation phase: "Maybe I have a problem? Maybe I should change something? Maybe it would be good to change something?". Such consideration may open the way to the transition to the next phases of change: Preparation, Operation and Sustaining [24].

## Conclusions

The conducted research shows that approximately 10% of the provisions on the obligation to undergo addiction treatment are not implemented due to the expiry of the two-year period of existence of the obligation. On the other hand, each year, more than half of those obliged to begin addiction treatment were compulsorily led to the treatment. The above indicates that the majority of people who have been issued an obligation to undertake treatment are not willing to undertake it voluntarily. Thus, in the event of accepting the view that regardless of the court decision, the obligated person would have to express his/her consent to treatment, most of the decisions would be unenforceable, without the possibility of applying sanctions or implementing enforcement. Therefore, the objective of the Act, i.e., the protection of the health of a person addicted to alcohol and the protection of the rights and freedoms of other people (in particular his/her relatives), and the protection of public order, would not be finally achieved.

In the European Union, alcohol is responsible for approx. 195,000 deaths annually [25]. It is also the cause of 9.2% of DALY (disability-adjusted life year – the sum of years lost due to premature death and disability years, taking into account the degree of disability) – one DALY equals the loss of one healthy year of life [26]. Therefore, it seems particularly important to create opportunities for people addicted to alcohol to initiate addiction treatment process, also based on the procedure of commitment to addiction treatment. In the aforementioned research on a group of 435 addicts maintaining abstinence [23], a question was also asked about the sources of motivation to start alcohol addiction treatment. The respondents had the opportunity to provide several answers to the question about the circumstances of starting the therapy. The calculations are presented in the figure below.

The data presented in the figure shows that 46.7% of the respondents decided to undergo alcohol addiction treatment themselves, and 40% were persuaded by their families. Thus, the highest percentage of respondents believe that they have undertaken therapy with a motivation that could be described as intrinsic. At a similar level, among the motivators for undertaking treatment (about 10%) were: referral with patient's approval, pressure from the Commune Committee for Solving Alcohol Problems, and court obligation.

It should be emphasized that taking alcohol addiction treatment is not tantamount to a desire to live without alcohol. The person addicted to alcohol is fed up with the consequences of drinking alcohol, but does not want to give up alcohol. The consequences of drinking usually necessitate the need, and even the necessity for parting with alcohol. However, the plan for a sober life is most often created during alcohol addiction treatment, without which the vision of living without drinking alcohol seems impossible to implement. It is related to deep beliefs based on own observations and a false image of the reality in which all people drink. Living without drinking alcohol in a world where everyone drinks seems impossible.

The decision on the obligation to undertake treatment of a person addicted to alcohol is a special case of compulsory treatment provided for in the provisions of law. In a situation where the court finds that there is an exceptional situation, i.e., the addicted



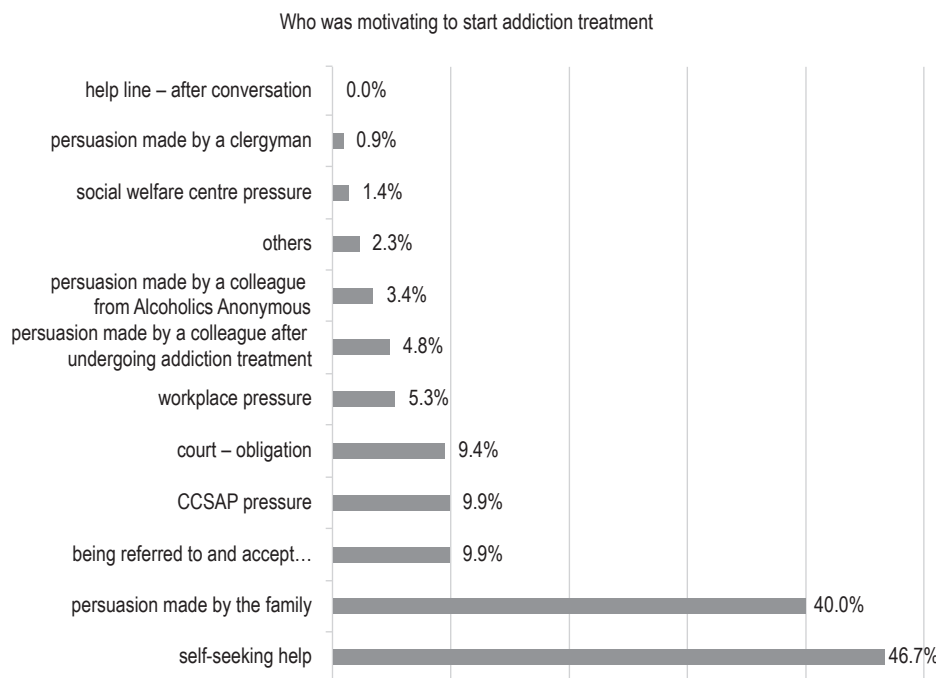


Figure. Sources of motivation for alcohol addiction treatment

person should be subjected to compulsory alcohol addiction treatment, it should prove it, in particular by providing, apart from the lack of voluntary treatment, important social reasons, including causing the family life to break down by the addicted person, demoralization of minors, avoidance of work, systematic disturbance of peace or public order, etc. [6]. The premises for the obligation to undergo compulsory treatment in a stationary or outpatient alcohol addiction treatment center, consisting in the breakdown of family life in connection with alcohol abuse, must appear on the day of the decision. The “judgement day” applies to both the court of first and second instance [27].

Taking into account the results of a literal and systemic interpretation of the provisions that regulate the principles of consenting to medical activities, it should be assumed that the legal possibility of enforcing the obligation of alcohol addiction treatment imposed by the court after it has been established in the prescribed manner that there are medical and social premises for its decision, is able to legally and actually only refer to the stage of admission to an inpatient or outpatient addiction treatment center. Undoubtedly, undertaking treatment on one’s own promises much better results than compulsory treatment, the need of which is denied by the participant.

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