Psychiatric advance directives and the role of autonomy

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ENJEUX ÉTHIQUES EN SANTE MENTALE
– UN TEMPS DE RÉFLEXION
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Reflections on Ethical Treatment

In diseases of the mind, as well as in other ailments, it is an art of no little importance to administer medications properly but, it is an art of much greater and more difficult acquisition to know when to suspend or altogether omit them.

Dr. Philippe Pinel – Treatise on Insanity
A wise man has said: if you cannot cure an insane patient, the next best thing is to make him as happy as possible. Broadly speaking the foundations of recovery in the insane and, failing recovery, happiness, are in pleasant surroundings, attention to physical comfort, *freedom as far as it is compatible*...

*Dr. T.J.W. Burgess, Douglas Hospital*

There is a duty toward the patients, belonging to everyone employed in the Institution, and no one should be here for any purpose except to perform that duty well. Personal interests or affairs must not be allowed to conflict with duty to the Institution and to its inmates. The helpless position of the patients should appeal strongly to our kindness of heart. The Institution and all its resources belong to the patients; yet *by reason of disordered minds they are largely without power to assert their rights*, and are dependent, therefore, upon our sense of honor and self-respect.

*Rules and Regulations at the Protestant Hospital for the Insane*  
Written by Dr. Burgess in 1893 (60 pg. booklet)
Douglas Hospital Ethics – 32 years ago

Patients have the right to prompt and medical attention, and care and treatment provided by qualified staff; **to be given all relevant information regarding treatment**; to decent living conditions, nutritious food, adequate clothing; to participate or to refuse to participate in any research or education project. Patients are subject to the same legal procedures as any one else; they are expected to look after their own belongings in a reasonably orderly fashion.

_Statement of Patients’ Rights and Responsibilities (1977)_

Douglas Hospital Code of Ethics - Today

**CLIENT RIGHTS**
- Right to choose treatment options from all Douglas Institute professionals (art. 1.1.1)
- Right to choose professional and/or institution (art. 1.1.3)
- Right to participate in every decision in IIP, or to refuse interventions (art. 1.1.4)

**CLIENT RESPONSIBILITIES**
- To cooperate in your treatment and participate in development of IIP (art. 1.2.1)
- To assume responsibility for your own actions (art. 1.2.6)
- To take care of your person as much as possible to maintain as much autonomy as possible (art. 1.2.7)
Advance Directives in Mental Health

- Values, beliefs, preferences
- Psychiatric wills and civil liberties
- 10% of Canadians have a living will (Singer, 1995)
- Psychiatric advance directives (US)
- Mandates in case of incapacity (Quebec)
- Types of advance directives in mental health

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Type of advance directive provided for in legislation</th>
<th>Instructional directive</th>
<th>Proxy directive</th>
<th>Proxy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newfoundland and Labrador</td>
<td>Instructional and proxy</td>
<td>Advance Health Care Directive</td>
<td>Advance health Care Directive</td>
<td>Substitute decision maker</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>Proxy directive</td>
<td>Authorization</td>
<td>Guardian</td>
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<tr>
<td>New Brunswick</td>
<td>Proxy directive</td>
<td>Power of Attorney for Personal Care</td>
<td>Attorney for personal care</td>
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<tr>
<td>Quebec</td>
<td>Proxy directive</td>
<td>Mandatory</td>
<td>[The maker of a Mandate is called the Mandator]</td>
<td></td>
</tr>
<tr>
<td>Ontario</td>
<td>Proxy directive</td>
<td>Power of Attorney for Personal Care</td>
<td>Attorney for personal care</td>
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</tr>
<tr>
<td>Manitoba</td>
<td>Instructional and proxy</td>
<td>Health Care Directive</td>
<td>Health Care Directive</td>
<td>Proxy</td>
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<tr>
<td>Saskatchewan</td>
<td>Instructional and proxy</td>
<td>Health Care Directive</td>
<td>Health Care Directive</td>
<td>Proxy</td>
</tr>
<tr>
<td>Alberta</td>
<td>Instructional and proxy</td>
<td>Personal Directive</td>
<td>Personal Directive</td>
<td>Agent</td>
</tr>
<tr>
<td>British Columbia</td>
<td>Proxy directive</td>
<td>Representation Agreement</td>
<td>Representative</td>
<td></td>
</tr>
<tr>
<td>Yukon</td>
<td>Proxy directive</td>
<td>Advance Directive</td>
<td>Proxy</td>
<td></td>
</tr>
<tr>
<td>Northwest Territories</td>
<td>Instructional and proxy</td>
<td>Personal Directive</td>
<td>Personal Directive</td>
<td>Agent</td>
</tr>
</tbody>
</table>
Ethics of autonomy and advance directives

- Myth of autonomy (“all or none” or “degrees”)
- Right to non-intervention (negative freedom)
- Kantian (will as law to itself) or Foucauldian (transformation from within)
- Relational autonomy
- Evidence-based ethics:
  - “Psychiatry does not need another intervention in the name of increasing patient’s autonomy with no verifiable measures that the intervention actually accomplishes its end.” (Geller, 2000)

<table>
<thead>
<tr>
<th>FORMS OF AUTONOMY</th>
<th>DESCRIPTION</th>
<th>TEMPORALITY</th>
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<tbody>
<tr>
<td>Decisional</td>
<td>Ability to make one’s own choices</td>
<td>Present</td>
</tr>
<tr>
<td>Dispositional</td>
<td>Focus on person’s life as a whole at the time</td>
<td>Present</td>
</tr>
<tr>
<td>Emotional</td>
<td>Grounded in human feelings</td>
<td>Present</td>
</tr>
<tr>
<td>Executorial</td>
<td>Implementation of one’s decisions</td>
<td>Present</td>
</tr>
<tr>
<td>Functional</td>
<td>Engagement in activities of daily living and mobility</td>
<td>Present</td>
</tr>
<tr>
<td>Precedent</td>
<td>Precedence over competing interests</td>
<td>Past</td>
</tr>
<tr>
<td>Prospective</td>
<td>Looking forward from perspective of individual</td>
<td>Future</td>
</tr>
<tr>
<td>Rational</td>
<td>Grounded in logic and reason (subjective or objective)</td>
<td>Present</td>
</tr>
<tr>
<td>Relational</td>
<td>Reliance on others in decision-making</td>
<td>Present</td>
</tr>
<tr>
<td>Value</td>
<td>Independent views that align with personal value system</td>
<td>Present</td>
</tr>
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</table>
Law of autonomy

- Civil Code of Quebec
  - Respecting rights and safeguarding autonomy (art. 257)
  - Courts to examine person’s degree of autonomy (art. 276)
- Act Respecting Health Services and Social Services (Quebec)
  - “The plan shall focus mainly on reducing the impact of problems which threaten the stability, fulfillment or autonomy of users” (s. 1)
- Ontario law
  - “to enhance the autonomy of persons” (HCCA, s. 1(c))
- Supreme Court of Canada
  - “Ordinarily at law, the value of autonomy prevails over the value of effective medical treatment...” (Starson v. Swazy, 2003)
- International law
  - “if the patient’s capacity to decide is unimpaired, autonomy weighs heavier, but the further capacity is reduced, the lighter autonomy weighs” (Re C, 1994 England)
  - Legal brief on PADs based on autonomy (Hargrave v. Vermont, 2004, 2nd Circuit Vermont)
Law of autonomy

- Increased role of treatment plans (Mazzei, SCC, 2006)
- US research reveals 47% of psychiatrists report they would override a PAD (Swanson, 2007)
- Jurisdictional disparities in mental health legislation
  - (i) Instructional v. proxy directives
  - (ii) Age: (Alberta – 18; Quebec – 18; Ontario 16; BC – 19)
  - (iii) Capacity criteria: understand and appreciate consequences
  - (iv) Override provisions: judicial factors considered

Competency to consent

- End of life decision-making v. mental illness (fluctuating capacity)
- Was there a meeting of the minds (consensus ad idem)?
- Akrasia – weakness of the will
- Relationship between autonomy and mental capacity
- Ulysses contracts: the nature of self-binding
Perceptions of autonomy: MSW students

Perceptions of autonomy: BSW students
Prior competent wishes or best interests: MSW students

Prior competent wishes or best interests: BSW students
Imagine that you are a crew member sailing home after a long voyage. The captain of the ship informs the crew that you will be sailing through an area where there are Sirens, half-human and half-bird creatures that use the irresistible charm of their songs to lure sailors to their destruction on the rocks by the island. The Sirens cannot be seen, only heard. The captain wants to listen to the music, but to prevent the boat from going astray he commands his crew to tie him firmly to the mast of the ship. In this way he can listen to the music of the Sirens. He tells the crew, however, to stuff wax into their ears. As you sail past the Sirens, the captain yells out to you and the rest of the crew to immediately release him from the mast. Of course, you cannot hear what he is saying because you have wax in your ear, but you can tell by his facial gestures that he clearly wants to be released. You also do not know whether he is making this order because of the Sirens or due to his own volition. You have an important choice to make.

**TWO QUESTIONS TO FOLLOW**

Would you release the captain from the mast?

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<tr>
<th></th>
<th>MSW Students</th>
<th>BSW Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>57%</td>
<td>35%</td>
</tr>
<tr>
<td>No</td>
<td>43%</td>
<td>65%</td>
</tr>
</tbody>
</table>
How confident are you that the captain’s wishes to be released from the mast reflect his true wishes?

Current research

- Mixed methods study on advance directives
- Preferences for instructional and proxy directives
- Does autonomy predict preference for type of advance directive?
Lehmann’s Historical Phases of Mental Health Care

Future aims

- Assist individuals to assume greater control through advance treatment planning
- Provide toolkits, access points for delivery, training of facilitators
- Create national awareness through educational programs
- Implementation of advance directives among hospitals
- Nationally uniform legislation on advance directives
A degree of liberty, sufficient to maintain order, dictated not by weak but enlightened humanity, and calculated to spread a few charms ever the unhappy existence of maniacs, contributes, in most instances, to diminish the violence of the symptoms, and in some, to remove the complaint altogether.

Philippe Pinel, *A Treatise on Insanity* (1806)