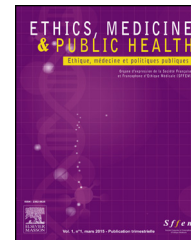




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DOSSIER ‘‘FORENSIC ETHICS’’ / *Philosophical considerations*

The medical ethics of hospitalizing inmates with severe mental illness



L'éthique médicale de l'hospitalisation de détenus avec une maladie mentale grave

A.R. Felthous (Professor, MD)

Department of Neurology and Psychiatry, Forensic Psychiatry, Saint Louis University School of Medicine, 1438, South Grand Boulevard, St. Louis, MO 63104, USA

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Summary Medical ethics principles of beneficence towards patients, including primacy of patient welfare and promoting access to medical care, favor the hospitalization of severely mentally ill inmates whose condition would require such level and quality of treatment were they not incarcerated. Today, more for fiscal concerns than for liberty interests of patients, hospitalization is removed from the spectrum of mental health services afforded to mentally ill persons behind bars. The most serious ethical challenge for correctional psychiatrists in the United States today is providing hospital care for inmates in need of this level of services. Hospitalization of the most severely psychotic inmate whose condition is deteriorating is frustrated by four barriers: the need for an adversarial hearing for legal approval to transfer the inmate; a shortage of hospital beds creating inhumanely long delays even for legally approved transfers; administrative decisions to categorically deny hospital admission for inmates regardless how psychotic who are not first adjudicated incompetent to stand trial or not guilty by reason of insanity, and mental health professionals relinquishing the effort to hospitalize inmates in need of intensive psychiatric care and turning to partial solutions which ultimately provide policy makers and administrators with excuses for denial of proper care. It is this last barrier, the indifference and acquiescence of mental health professionals themselves to the withdrawal of hospital services, that should be of greatest ethical concern. This creates a challenge for correctional medical and mental health providers who must make a difficult choice regarding the clinically and ethically proper treatment of the most severely disturbed inmates. Options include: redirect efforts towards inmates who can be treated properly without hospital transfer,

E-mail address: felthous@slu.edu

resign from employment in correctional health care, incorporate hospital methods, specifically enforced medication, into the non-medical correctional facility, and with creativity and determination strive to effect changes that will provide hospital care for the few but most seriously disturbed inmates who are in need of this level of treatment. This article examines the merits of each of these four approaches within a framework of medical ethics, and concludes that the fourth option is the most ethically defensible.

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MOTS CLÉS

Hospitalisation des détenus atteints de maladie mentale ;
Accès aux soins en correctionnelle ;
Éthique médicale

Résumé Le principe hippocratique de bienfaisance médicale, qui implique le respect du droit d'accès aux soins et la primauté du bien-être du patient, devrait conduire à une hospitalisation des personnes incarcérées atteintes de maladie mentale dès lors que la sévérité de celle-ci le justifierait si elle n'était pas incarcérée. Pourtant aujourd'hui, l'hospitalisation ne fait plus partie de la gamme des services de santé mentale offerts aux personnes détenues, pour des motifs plus économiques que relevant du respect du droit à la liberté. Le plus grand défi éthique pour les psychiatres de correctionnelle aux États-Unis est donc aujourd'hui d'offrir une prise en charge hospitalière aux détenus qui en ont besoin. Les quatre principaux obstacles à l'hospitalisation des détenus psychotiques dont l'état psychiatrique s'aggrave sont les suivants : la nécessité d'une audience contradictoire avant l'approbation légale de transférer le détenu ; une pénurie de lits hospitaliers, responsable de retard, supplémentaires humainement inacceptables ; les décisions administratives refusant catégoriquement les admissions de détenus à l'hôpital, sans prendre en compte le fait que le malade psychotique ait été jugé comme incapable de comparaître au tribunal ou non coupable du fait de sa maladie psychiatrique, et le renoncement des professionnels de la santé mentale qui se tournent plus volontiers vers des solutions partielles qui cautionnent les refus administratifs. C'est cette dernière barrière, l'indifférence, qui pose le plus de question d'ordre éthique. Le défi pour les fournisseurs de soins médicaux et psychiatriques en correctionnelle est donc le devoir de procéder à des choix difficiles pour les modalités de traitement qui doivent être cliniquement et éthiquement adaptés pour les détenus les plus gravement perturbés. Les options comprennent : la réorientation des efforts vers les détenus qui peuvent être traités correctement sans transfert de l'hôpital, la démission des professionnels de soins de santé mentale en milieu correctionnel, la mise en œuvre au sein des établissements pénitentiaires non médicalisés des méthodes hospitalières et le changement de pratiques destinés à apporter les soins hospitaliers pour les malades les plus graves, au prix du déploiement de beaucoup de créativité et de détermination. Cet article examine le bien-fondé de chacune de ces quatre approches dans un cadre d'éthique médicale, et conclut que la quatrième option est la plus éthiquement défendable.

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Hospitalizing mentally disordered jail and prison inmates and the ethical principles of primacy of patient welfare and access to medical care

Perhaps in other countries, but certainly in the United States, mental hospital services have become increasingly less available to mentally disturbed inmates in jails and prisons who require this level of services [1]. For psychiatrists and other mental health professionals who consult to or are employed by correctional systems this is most relevant to the ethical principles of primacy of patient welfare and access to medical care in serving mentally ill inmates. Thus, today the meaning of these ethical principles is critical with regard to providing the appropriate level of mental health services to the most severely disturbed inmates who are in

need of such services. After arguing that these two principles create an ethical responsibility upon psychiatrists to support hospitalization when needed, suggestions are made for accomplishing this in the face of a disinterested, resistant system.

Most inmates who are psychotic but accepting of antipsychotic medication are treated in non-medical correctional facilities and not transferred for hospital care. Where a psychologically disturbed inmate refuses antipsychotic medication the US Supreme Court has found one of two procedures acceptable for overriding the inmates medication refusal. The first is referred to as *Harper* procedure, an administrative procedure that can be applied within the facility without resorting to the court. In *Washington v. Harper* (1990), the US Supreme Court found that such a policy for a special prison treatment unit to be constitutional, holding, "the Due Process Clause [of the US Constitution]

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