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Admission of a minor to a psychiatric hospital under Polish law. Part I.*

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Summary

Within the scope of mental health protection, numerous practical problems arise concerning the issue of providing health services to a minor. Admission of a minor to a psychiatric hospital is associated in practice with numerous doubts. This part of the article describes the conditions of admission to hospital with the consent of the patient. It distinguishes and accurately describes situations where a minor is under or over 16 years of age. In addition, it explains situations where there is a contradiction of declarations of will by legal guardians in relation to admission, their inability to perform legal acts, or a contradiction of the statements of the minor and guardian. It also addresses the aspect of receiving written consent during the COVID-19 epidemic.

Key words: minors, admission to a psychiatric hospital, Mental Health Protection Act

Written consent

In accordance with Article 22 paragraph 1 of the Act of 19 August 1994 on mental health protection (Journal of Laws of 2018, item 1878, consolidated text of 2018.10.02, hereinafter referred to as Mental Health Protection Act m.h.p.a.), admission of persons with mental disorders to psychiatric hospitals takes place with his/her written consent based on a valid referral to hospitals if the doctor designated for this activity, after personally examining the person, finds indications for admission. The provision of Article 22 paragraph 1 of the m.h.p.a. requires that consent to admission to hospital be expressed in writing. Because such consent constitutes a declaration of intent, it will be a written legal act regulated in Article 78 paragraph 1 of the Civil Code (Journal of

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Laws of 1964, No. 16, item 93, consolidated text of 1964.04.23, hereinafter referred to as c.c.) (ordinary written form), in which signature is obligatory. However, it is not required that the declaration of will expressing consent to be admitted to a psychiatric hospital be submitted in the medical documentation. It is allowed (especially during the period of epidemic threat) to make a statement by an authorized person in a separate document, which will then be attached to medical records. The so-called document form referred to in Article 77 of the Civil Code [2], i.e., one in which it is sufficient to make a declaration of intent in the form of a document in a way that makes it possible to identify the person making the declaration (e.g., by e-mail), is not enough. However, if technical conditions allow, it is permissible for a person who consents to be admitted to a psychiatric hospital to submit a declaration of will in electronic form, as referred to in Article 78 paragraph 1 of the c.c. [1]. To preserve this form of legal action, it is enough to submit a declaration of intent in electronic form and to provide it with a qualified electronic signature. A declaration of will submitted in electronic form is tantamount to a declaration of will made in writing (Article 78 paragraph 2 of the c.c. [1]). The written form of consent as referred to in Article 22 paragraph 1 of the m.h.p.a. is required for evidentiary purposes, e.g., in the event of a personal rights violation and compensation against the hospital in connection with the unlawful admission of a patient to a psychiatric hospital, or against a doctor or disciplinary proceedings against a doctor [1, 2].

It may happen that a person, who is to agree to be admitted to a psychiatric hospital, cannot sign it. If the inability to sign concerns a mentally ill person[1] or a handicapped person unable to consent, then the procedure set out in Article 22 paragraph 2 of the m.h.p.a. shall be used. In a situation where the inability to sign is due to illiteracy or physical restrictions such as, e.g., disability, contracture, paresis, the norm of Article 79 of the Civil Code is to be used. Pursuant to this provision, a person who is unable to write may submit a written declaration of intent in such a way that he/she will make a fingerprint on the document, and next to the fingerprint, the person authorized by him/her shall enter his/her name and own signature, or in this way that instead of a person making the declaration, a person authorized by him/her will sign it and his/her signature will be certified by a notary public, commune head (mayor, city president), district head or voivodship marshal, indicating that it was made at the request of a person who could not write. With both methods of signing, authorization may be given orally in the presence of a doctor and the person who is to sign next to the ink fingerprint or instead of the patient. The presented method of signing also applies if the person who cannot sign due to illiteracy or physical limitations is the patient's legal representative.

As for a minor, pursuant to Article 22 paragraph 3 of the m.h.p.a., admission to the psychiatric hospital of such a person requires the written consent of their legal representative. As a rule, the guardianship court's consent is not required here. Parental

[1] Legal codes usually use historical names for mental states. For the sake of clarity of the content of the article, the authors decided to leave it as it is.

responsibility includes the obligation and right of parents to take care of the child, his/her spiritual and physical development, and parental authority itself should be exercised as required by the best interests of the child and social interest (Article 95 paragraph 1 and 2 of the Family and Guardianship Code, Journal of Laws of 1964, No. 9, item 59, consolidated text of 1964.04.25, hereinafter referred to as f.g.c.). Custody of a child undoubtedly includes efforts to improve the child's health and decisions about the treatment method [3–13]. When making such a decision, parents should be guided by the best interests of the child and listen to the child, if his/her mental development, state of health and degree of maturity allow it (Article 95 paragraph 4 of the f.g.c.).

Consent when a minor is over 16 years of age

Certain doubts as to the need to obtain the consent of the guardianship court for admission of a minor to a psychiatric hospital may be caused by the situation normed in Article 22 paragraph 4 of the m.h.p.a., which is discussed later on.

There is doubt as to whether in the event when both parents have parental responsibility, consent to admission to a psychiatric hospital may be expressed by one of them, or whether both parents should make an appropriate statement. According to the general norm resulting from Article 97 paragraph 1 of the f.g.c., if both parents have parental responsibility, each of them is obliged and entitled to exercise it. However, parents decide on important matters of the child together; in the absence of agreement between them, the family court decides. Undoubtedly, placing a child in a psychiatric hospital is one of the child's important matters. It interferes with human freedom and also has certain consequences in the form of success or failure of a given therapy, stress related to separation from the family, etc. Therefore, parents should reach agreement as to whether a minor should be placed in a psychiatric hospital. In the absence of such an agreement, consent to admit the minor to a psychiatric hospital shall be replaced by the decision of the guardianship court. Each parent, usually the one who agrees for the child to be hospitalized, may apply for consent to admit a child to a psychiatric hospital. In the event that both parents do not agree to the admission of the child to a psychiatric hospital and this is contrary to the best interests of the child, the guardianship court may institute *ex officio* or at the request of the prosecutor (Article 7 of the Code of Civil Procedure, Journal of Laws of 1964, No. 43, item 296, consolidated text of 1964.11.17, hereinafter referred to as the c.c.p) proceedings aimed at limiting parental authority by issuing, pursuant to Article 109 paragraph 1 and 2 subparagraph 1 of the f.g.c., an ordinance obliging parents to place a child in a psychiatric hospital. The hospital is not a participant in such proceedings even when the proceedings before the guardianship court were initiated on the hospital's initiative (on notice) [14–18]. It should be emphasized, however, that pursuant to Article 17 of the m.h.p.a., in the event that the legal representative of a mentally ill or mentally handicapped person does not properly perform his/her duties towards that person, the head of the medical entity providing mental health care shall notify the guardianship court competent for the place

of residence of the person concerned. According to the above provision, the head of the healthcare entity must provide updated information whenever there is a suspicion that the proceedings of a legal representative making a decision regarding the stay of a minor in a psychiatric hospital is contrary to the good of the child – the patient.

Problems with obtaining written consent of both parents

However, the above does not mean that a doctor who admits a child to hospital should obtain the written consent of both parents. The issue of agreeing on a common position regarding the admission of a child to a psychiatric hospital is an internal matter of parents. However, according to Article 98 paragraph 1 of the f.g.c., parents are the legal representatives of a child remaining under their parental authority. If the child is under the parental authority of both parents, each of them may act independently as the child's legal representative. Restrictions in this respect are specified in paragraph 2 and 3 of the aforementioned provision and they do not concern consent to be admitted to a psychiatric hospital. Restrictions on the free and independent representation of a minor by the parents also apply to property matters because, pursuant to Article 101 paragraph 3 of the f.g.c., parents may not, without the permission of the guardianship court, perform activities that exceed the scope of ordinary management or give consent to such activities by the child. Two important conclusions follow from the above. First of all, if the minor's parents have full parental authority, they can decide to admit the child to the hospital without the consent of the guardianship court (except for the situation specified in Article 22 paragraph 4 of the m.h.p.a., i.e., the lack of consent of a minor over 16 years of age). Secondly, each of the parents, as the child's legal representative, is entitled to express their written consent to admit the minor to a psychiatric hospital. A doctor admitting a minor to a psychiatric hospital is not obliged or authorized to require a declaration of consent of the other parent [19, 20]. This also applies if both parents are present on admission to the hospital and they make contradictory statements in the presence of a doctor as to consent to the placement of a child in hospital. Doctor, pursuant to Article 22 paragraph 3 of the m.h.p.a., is required to obtain the written consent of the legal representative upon admission to the hospital but is not obliged to take into account the written or oral objection of the other representative. If consent is given, admission may take place, while the dispute as to whether the parent's decision to consent to hospital stay is proper, is the internal affair of the parents and is not subject to medical review. The wording of Article 22 paragraph 3 of the m.h.p.a., which does not require consent to the placement of a minor in the hospital by both parents, differently than it is done, e.g., by Article 13 paragraph 1 subparagraph 1 of the Act of 13 July 2006 on passport documents (Journal of Laws of 2018, item 1919, consolidated text) [21, 22]. This provision stipulates that an application for a passport to a minor is submitted by parents or guardians appointed by the court or one of the parents or guardians appointed by the court together with the written consent of the other parent or guardian appointed by the court, with confirmed

signature by the passport authority or notary public. The different wording used in both the above-mentioned provisions means that the legislator has not formalized the requirement to obtain the consent of parents to place a minor in a psychiatric hospital as far as he did in the case of obtaining a passport for a child and did not make the admission of a minor to hospital dependent on formal cooperation of parents. The hospital should, if the child's best interests are at risk, inform the guardianship court about the situation, which may initiate appropriate proceedings *ex officio*.

The above-mentioned problems do not occur, of course, when a child for various reasons is under the parental authority of only one parent. This can happen when one of the parents is dead or does not have full legal capacity (i.e., when he/she is totally or partially incapacitated), when one of the parents has been deprived of parental authority or when this authority has been suspended (Article 94 paragraph 1 of the f.g.c.). It may also happen that the authority of one of the parents has been limited to certain obligations and rights in relation to the child's person, which do not include the possibility of deciding on health matters (e.g., in a divorce decree pursuant to Article 58 paragraph 1 of the f.g.c. [1] or Article 107 paragraph 2 of the f.g.c.). It should be emphasized that in the ordinary course of activities a psychiatrist is not required to verify documents that result in deprivation or limitation of parental responsibility. However, because the provision of Article 22 paragraph 3 of the m.h.p.a. requires that a legal representative consents to admit a minor to a psychiatric hospital, the physician should make sure that he/she is actually dealing with a legal representative (usually it is sufficient to show his/her identity card and make a statement by a parent), and to ask whether the parent is entitled to consent to the admission of a child to a psychiatric hospital, i.e., to settle important matters of the child. If the legal representative reveals that he/she is deprived of parental authority, that parental authority has been suspended or limited in such a way that the parent is deprived of the right to independently decide on important matters of the child, he/she cannot submit a declaration of consent to admit the minor to a psychiatric hospital. In the case that the exercise of parental authority is restricted due to the fact that parents live in separation, this happens extremely rarely as usually courts use the formula in their judgments that exercising this authority is limited to co-deciding on important matters of the child, and thus also deciding on treatment method. However, if a parent who showed up to the hospital with the minor was deprived of parental authority or his/her parental authority was suspended or limited to such an extent that he/she would not be able to decide on the important matters of the child, consent to admit the child to hospital must be expressed by the other parent. However, a psychiatrist is neither obliged nor authorized to request the presentation or assessment of documents that imply a restriction on the exercise of parental authority. It is sufficient to settle for the statement made by the parent. If this statement is not truthful, the parent who made such statement is liable for this state of affairs.

The situation when both parents are deprived of parental authority

It may also happen that both parents will be deprived of parental authority, their authority will be suspended or limited pursuant to Article 109 paragraph 2 subparagraph 2 of the f.g.c. in such a way that parents will not be able to decide about their admission to a psychiatric hospital without the court's consent. In the first two cases, the guardianship court appoints a guardian for the minor and then the consent for admission to the psychiatric hospital is made according to the procedure indicated in Article 22 paragraph 3 in connection with paragraph 5 of the m.h.p.a., i.e., consent to admission to a psychiatric hospital is expressed by the guardian with the consent of the guardianship court. On the other hand, if the parental authority has been limited, the procedure for admitting a child to a psychiatric hospital depends on what the restriction concerns. Limitation of parental responsibility by issuing specific ordinances pursuant to Article 109 subparagraph 2 of the f.g.c. may consist in indicating which activities cannot be performed by parents without the permission of the guardianship court, taking into account the choice of treatment method, or subjecting parents to such restrictions as has the guardian [23, 24]. In the first case, these activities must be described in detail in the decision of the guardianship court and may relate, for example, to the choice of treatment. In the second case, there will be a situation in which the parent, like the guardian, must obtain the permission of the guardianship court in all major matters that concern the person or property of the minor (Article 156 of the f.g.c.). In both of the above cases, the procedure regarding admission of a minor to a psychiatric hospital will require the consent of the guardianship court, and more specifically the parent will have to obtain the consent of the guardianship court to consent to the admission of the child to the psychiatric hospital.

One of the orders limiting the parental authority of parents may be placing a child in foster care, as referred to in Article 109 paragraph 2 subparagraph 5 of the f.g.c. However, placing a child in foster care does not in itself cause the child to be completely separated from his/her parents. Parents do not lose parental responsibility then, they retain the right to make decisions on important matters of the child [25]. Therefore, if the parent has not been additionally subjected to other restrictions by the guardianship court, he/she is entitled to consent to the child's admission to a psychiatric hospital, in accordance with the procedure specified in Article 22 paragraph 3 of the m.h.p.a.

Consent when a minor is under 16 years of age

The above covers the issue of the consent of the legal representative for admission to the psychiatric hospital of a minor who is under 16 years of age. In the case of such a minor, it is also irrelevant whether the patient himself/herself is able to consent to admission to hospital (Article 20 paragraph 2 and 2a and paragraph 5 of the m.h.p.a.). Admission to hospital requires only the consent of the legal representative of the minor. The situation is different in the case of a minor over 16 years of age, where double

consent is required. According to Article 22 paragraph 4 of the m.h.p.a., if admission to the hospital concerns a minor over 16 years of age or a fully incapacitated adult, able to consent, it is also required to obtain the consent of that person. In the event of contradictory statements regarding the admission to the psychiatric hospital of that person and their legal representative, consent to admission to the hospital is expressed by the guardianship court competent for their place of residence. It should be added, however, that in the event that both the legal representative and a minor over 16 years of age express 'unanimous refusal' to admit a minor to a psychiatric hospital, such a situation, in itself, does not cause the obligation to refer to a guardianship court [1]. However, if the doctor claims that such conduct is contrary to the best interests of the child, and there is no need for so-called urgent, and therefore without the patient's consent, admission to hospital, he/she should inform the guardianship court about the child's situation. This obligation results from Article 17 of the m.h.p.a. [1, 26, 27].

Form of expressing consent of a minor over 16 years of age

There is no doubt that the consent of a minor over 16 years of age should be expressed in writing. The cited provision is a more detailed specification of the requirement of consent referred to in Article 22 paragraph 1 of the m.h.p.a. The wording 'also' means that, as regards the form of consent, the same requirements apply to the consent of the minor as for the consent of any other patient. This is a more formalistic requirement than that provided for in the Act on the profession of doctor and dentist, where Article 32 paragraph 6 indicated that a minor who is at least 16 years old may object to medical activities. This means that the consent of a minor to medical activities may be silent, while on admission to a psychiatric hospital it is necessary to express his/her will in an active manner. If the minor is able to consent to admission to a psychiatric hospital but refuses to make a written statement in this regard, it should be considered that there is a contradiction of the statements referred to in Article 22 paragraph 4 second sentence of the m.h.p.a., which requires a resolution by a guardianship court. The provision of Article 22 paragraph of the 1 m.h.p.a. provides for the patient's written consent without introducing any requirements as to the form of refusal to consent. The same should be done if a minor over 16 years of age consents to admission to a psychiatric hospital and his/her legal representative refuses to give written consent but expresses his/her objection verbally by stating, for example, that "he/she will not sign anything" [1]. The minor's consent to be admitted to a psychiatric hospital is a statement supplementing the consent of his/her legal representative, so in itself it is not enough. Because the provision of Article 22 paragraph 4 second sentence strongly requires, in the event of contradictions between the positions of a minor over 16 years of age and his/her legal representative, a decision by a guardianship court, in such a case the hospital should notify the guardianship court of the situation. This notification is obligatory. It is worth noting, however, that it will be extremely rare for a minor to agree to be admitted to a psychiatric hospital, and a legal representative

who is not a parent will refuse this consent. In accordance with Article 22 paragraph 5 of the m.h.p.a., the statement of such a legal representative must be preceded by the consent of the guardianship court, and the legal representative applies for a decision. Therefore, if the legal representative obtains, at his/her request, the consent of the guardianship court to consent to admission of a minor to a psychiatric hospital, he/she will rather not refuse to give consent, unless there is a change in the facts in the period between the decision of the guardianship court and admission to the hospital. More often, this type of situation may occur in the case of a legal representative who is a parent who has parental authority.

If a minor over 16 years of age is admitted to a psychiatric hospital, it may sometimes be necessary for the guardianship court to issue a decision twice. The first time the guardianship court should give consent for consent by a legal representative (who is not a parent) to admit a minor over 16 years of age to a psychiatric hospital (Article 22 paragraph 5 of the m.h.p.a.). In the event of a conflict between the statements of a minor over 16 years of age and his/her legal representative, it will be necessary for the guardianship court to decide again under Article 22 paragraph 4 second sentence of the m.h.p.a. [1].

Obstacle in the form of the inability to express consent

Before taking consent to admission to a psychiatric hospital from a minor over 16 years of age, the physician should make sure that there is no obstacle in the form of the inability to express consent. There is doubt as to whether Article 22 paragraph 2 of the m.h.p.a. will apply to a minor patient or the requirement for such a person to be able to consent to being admitted to a psychiatric hospital results from Article 22 paragraph 4 of the m.h.p.a. The first of the provisions is limited to the situation when the patient is a person with already diagnosed mental illness or mental retardation, while Article 22 paragraph 4 of the m.h.p.a. does not contain such a limitation (hence there may be a lack of the ability to consent also for another reason, e.g., temporarily being under the influence of drugs). First of all, the doubt whether the requirement contained in Article 22 paragraph 4 of the m.h.p.a. (requiring the ability to consent) applies only to an adult incapacitated person, or also to a incapacitated or not incapacitated minor over 16 years of age [1, 28–31]. These doubts result from the unclear formulation of Article 22 paragraph 4 of the m.h.p.a. in which the singular case was used ("is capable" and not "are capable" of giving consent), despite the fact that this provision characterizes two separate groups of entities (minors over 16 years of age – incapacitated or not incapacitated and incapacitated adults). It seems obvious that before receiving a statement from a minor regarding consent for placement in a psychiatric hospital, the physician should always ensure that the minor is capable of giving such consent. Such an obligation can be derived both from the wording of Article 22 paragraph 2 of the m.h.p.a. (in the field of mental illness and mental retardation) as well as from the wording of Article 22 paragraph 4 of the

m.h.p.a. It would be illogical, which cannot be assumed by a rational legislator, that an adult patient who is incapacitated may consent to admission to a psychiatric hospital only if he/she is able to make such a declaration, and this requirement does not apply to a minor who is totally incapacitated between 16 and 18 year of life. Finally, it should also be borne in mind that consent to admission to a psychiatric hospital is a declaration of will and – as such – must be made in a conscious and free manner. According to Article 82 of the c.c., the declaration of will made by a person who for any reason was in a state excluding the conscious or free decision and expression of will is invalid. This applies in particular to mental illness, mental retardation or other, even temporary, mental disorders. This rule will apply not only to the minor, but also to his/her legal representative because it is hard to imagine that a doctor would accept a declaration of will to consent to admission of a minor to a psychiatric hospital from his/her legal representative who is in a state excluding conscious or free decision and expression of will (e.g., intoxication). However, the consequences and procedures are different if the defect of the declaration of intent occurs on the side of the legal representative, and different when such obstacle occurs on the side of a minor patient over 16 years of age. In the case of a legal representative, such a situation will lead to a state of disagreement, which justifies asking the guardianship court and notifying about the situation of the child or using one of the procedures for admitting a patient to the hospital without his/her consent, as specified in Article 23 or 24 of the m.h.p.a. However, if the patient is not able to express consent, the admission to a psychiatric hospital, as a rule, takes place with the consent of the guardianship court (Article 22 paragraph 2 of the m.h.p.a.), but taking into account the specifics of the procedure of admitting a minor to a psychiatric hospital, which will be discussed later. In the case of a minor under 16 years of age, it does not matter because – pursuant to Article 22 paragraph 3 in connection with Article 22 paragraph 4 of the m.h.p.a. – consent of a minor patient to be admitted to a psychiatric hospital is not needed. The consent of his/her legal representative is sufficient. It does not matter, therefore, whether the minor patient himself/herself is capable or unable to consent. However, doubts arise when it comes to placing in a psychiatric hospital a minor over 16 years of age who is not able to consent to this placement. Is the consent (as a second element supplementing the consent of the legal representative) then replaced by the guardianship court's decision or is the consent of the legal representative sufficient? The legislator explicitly regulated in Article 22 paragraph 4 second sentence of the m.h.p.a. how to proceed only in the event of a contradiction between the declarations of will of the minor and his/her legal representative. This solution is dictated by the contradiction of the positions of the persons authorized to consent, which requires a decision which of the statements made is not in accordance with the interests of the minor patient. This is not necessary when the minor patient is unable to make a declaration of consent to admission to a psychiatric hospital. It could be assumed that since the consent of a minor over 16 years of age is a parallel consent in relation to the consent of the legal representative, the lack of this statement can be removed only

by an appropriate decision of the guardianship court. Seemingly arguments for such a position are also provided by the wording of Article 2 paragraph 2 of the m.h.p.a. Since the consent to admission to a psychiatric hospital of a patient who cannot give such consent have to be replaced by a guardianship court decision, this should also apply to a minor patient over 16 years of age. However, this is not the case. As rightly pointed out in the literature, in a situation in which a minor aged 16–18 has been completely incapacitated and remains under parental authority, the procedure of Article 2 paragraph 2 of the m.h.p.a. is not applied, and in turn from Article 2 paragraph 5 of the m.h.p.a. read *a contrario* it follows that admission to a psychiatric hospital is decided by the legal representative who is the parent [1, 31, 32]. The same should apply to situations where minors over 16 years of age are not completely incapacitated, but when due to mental illness or mental retardation or for other reasons they are not able to make a statement regarding consent to admission to a psychiatric hospital. we should consider the wording of Article 22 paragraph 4 of the m.h.p.a., which clearly requires a decision of the guardianship court only when the statements of the minor under parental authority and his/her legal representative are contradictory. If the legislator was aware of the need to obtain the consent of the family court also when the minor is not able to make a statement of consent, it would express it in the discussed provision. Secondly, the legislator introduced a clear distinction between the legal representative – a parent and other legal representatives, as evidenced by the wording of Article 22 paragraph 5 of the m.h.p.a., in which the legal representative of a person who is not under parental authority is required to obtain the consent of the guardianship court to consent to admission of the patient to a psychiatric hospital. This is a special provision supplementing the regulation of Article 22 paragraph 3 of the m.h.p.a. Therefore, in the case of a parent, obtaining the consent of the guardianship court is not required. At the same time, it should be emphasized that the special regulation of Article 22 paragraph 5 of the m.h.p.a., which clearly excludes a parent from the scope of this norm, at the same time excludes the parent's restriction under Article 108 of the f.g.c. Unless parental authority has been limited in such a way that the parent is obliged to obtain the consent of the guardianship court to place the child in a psychiatric hospital. However, this provision states that parents who exercise parental responsibility over a totally incapacitated child are subject to such restrictions as the guardian. Thirdly, the systematics of Article 22 of the m.h.p.a., in which paragraph 3 regarding the situation of a minor and a totally incapacitated person (in the latter case supplemented by the regulation under paragraph 5) is placed under paragraph 2, which regulates the situation of a mentally ill person or mentally retarded person. This means that in the event that the patient remaining under parental authority is not able (for any reason) to submit a statement regarding consent to admission to a psychiatric hospital, the decision on admission is made by the legal representative – the parent, regardless of whether the minor is over 16 years of age or not. No special restrictions for the parent in the above respect, as well as exclusion under Article 22 of the m.h.p.a. of the norm of Article 108 of the f.g.c. makes full

application of Article 97 and 98 paragraph 1 of the f.g.c., i.e., the independent representation of a child by a parent.

The consent of a minor to admission to a psychiatric hospital has been widely discussed both from medical as well as legal perspective since the moment of the adoption of the m.h.p.a. Subjects of trauma associated with hospitalization in psychiatric wards and parent and legal guardian's influence on therapy have been discussed [33–36].

Recapitulation

In the case when parents are entitled to full parental responsibility, or one of the parents is entitled to full parental responsibility and the other is not known or is deprived of this power:

1. Parents decide on the admission of a minor under 16 years of age to a psychiatric hospital, regardless of whether the child would be able to independently make a statement regarding consent. This circumstance is irrelevant to the parent's statement. The guardianship court interferes when parents are unable to agree on a position regarding admission of a minor to a psychiatric hospital.
2. Parents decide on the admission to a psychiatric hospital of a minor over 16 years of age who, due to total incapacitation, mental illness or mental retardation or for other reasons, is not able to make a statement regarding consent. The guardianship court interferes when parents are unable to agree on a position regarding admission of a minor to a psychiatric hospital.
3. Parents together with a minor who is at least 16 years old decide to place the minor in a psychiatric hospital, provided that the minor is able to make a statement regarding consent. The guardianship court interferes when the statements of the minor and the legal representative are contradictory, as well as when the parents are unable to agree on the admission of the minor to the psychiatric hospital. A conflict of positions should also be considered a situation where the minor or his/her legal representative in any form refuses to consent. The above also applies to situations in which a child has been placed in foster care, but the parents have not been subjected to such a method of limiting parental authority that prevents them from making independent decisions about the child's important matters.

In the case of a parent whose parental authority has been limited in a way that prevents him or her from making decisions on relevant matters of the child, while the other parent has full parental authority:

1. Such a parent may not independently decide to admit a minor child under 16 years of age to a psychiatric hospital. Such consent should be given by the other parent. If the consent is refused, the other parent or the medical entity should apply to the guardianship court (the medical entity pursuant to Article 17 of the m.h.p.a.).

2. In the matter of consent to admit a child over 16 years of age to a psychiatric hospital, subparagraph I.2 and 3 shall be applied accordingly, except that the decision is made by the parent whose parental authority has not been restricted.

In the case of a guardian appointed for a child when the parents are not entitled to parental responsibility (e.g., they have been deprived of this authority or it has been suspended):

1. The guardian cannot independently decide on the admission of a minor under 16 years of age to a psychiatric hospital. The guardianship court must consent to authorize it. If necessary, the healthcare entity should notify the guardianship court of the child's situation pursuant to Article 17 of the m.h.p.a.
2. The guardian cannot independently consent to admission to a psychiatric hospital of a minor over 16 years of age who is able to give consent. The guardianship court must agree to the legal representative's consent to admission. The consent should also be given by minors. In the event of a contradiction of declarations, the guardianship court decides, while the contradiction of the declarations should be considered a refusal to consent in any form. In the event of a double refusal, the healthcare provider should notify the guardianship court pursuant to Article 17 of the m.h.p.a.
3. The guardian cannot independently consent to admission to a psychiatric hospital of a minor over 16 years of age who, due to total incapacitation, mental illness or mental retardation, or for other reasons is not able to make a statement regarding consent. The guardianship court does not have to issue a decision expressing additional consent to admission to a psychiatric hospital, replacing the consent of a minor patient over 16 years of age unable to give such consent. In this respect, the rule of Article 22 paragraph 2 of the m.h.p.a. does not apply, as the *ratio legis* of this provision is to close the control system over admission to a psychiatric hospital. Since the patient himself/herself cannot give this consent and there is no other entity authorized to give it, it is necessary to issue an appropriate decision by the guardianship court. In the case of a minor who is at least 16 years old, this is not the case. Since his/her legal guardian has already obtained permission from the guardianship court to consent to the admission of a minor to hospital, the guardian can effectively give such consent for a minor who is not able to express it himself/herself. As a result of the consent of the guardianship court, the legal guardian obtains the same rights as the parent (in the scope of admission to a psychiatric hospital).

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