COVERT ADMINISTRATION OF MEDICINE IN EMERGENCY CASES: PSYCHOLOGY AND LAW

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Introduction

"We must of course do no harm, but we must also dare to care".

Covert medication is a practice, in medical terms, in which medicines are given to the patients in hidden form in foods or beverages. Such medication is given when patients do not adhere to the treatment. To solve this problem of non-adherence, physicians resort to hidden medicines in foods or beverages either in liquid or in crushed forms. This leads to improvement in patient and thus improvement in the care of patient.

The practice of covert administration of medicine in food and beverages is a known concept in the medical treatment of mentally ill world-wide but there exist no proof. It might look like a pity matter but it is surrounded by clinical, legal, ethics-related, and cultural controversy.

Ethically, covert medication can be seen as a breach of trust by the doctor or by family members who administer the medication. Legally, treatment without consent is permissible only where appropriate statute provides such authority. In a 2002 study of patients attending an urban outpatient care center in India, it was noted that when the patients were acutely ill and refused to take medication, the families administered it to them without the patients' knowledge, under the supervision of the psychiatrist. Families in half the cases of patient noncompliance had practiced this method. Many families felt that there was no viable alternative under the circumstances.

This leads to the dilemmas in this area of medical ethics and the law - the increasing importance accorded to respect for autonomy and loss of the parens patriae jurisdiction of the courts.

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1 Covert medication; the last option: A case for taking it out of the closet and using it selectively, available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3512364/ (Last Updated June 13, 2014).
2 Srinivasan TN, Thara R; At issue: management of medication noncompliance in schizophrenia by families in India. Schizophrenia Bull 28:531–5, 2002 (Last Updated June 13, 2014).
Although to medicate a patient without his knowledge and against his likely wishes appears intuitively improper, we wish to play the devil’s advocate and discuss why there may be merits in covert medication as an approach by a troubled family to re-establish homeostasis in the household.

**Scope of the Research**

This research has been geographically restricted to India and for the treatment of psychiatrically ill patients, who are either incapable of taking decisions or have refused to take decisions which are in the best interest of theirs.

**Definition:**

Covert medication is a practice, in medical terms, in which medicines are given to the patients in hidden form in foods or beverages. Such medication is given when patients do not adhere to the treatment. To solve this problem of non-adherence, physicians resort to hidden medicines in foods or beverages either in liquid or in crushed forms.

The intention behind this type of medication is to provide effective medical treatment to those patients who are not capable of giving consent for the treatment because of their illness. The practice raises some very fundamental ethical as well as legal questions.

‘Surreptitious prescribing’ should not be used synonymously with ‘covert medication’. Surreptitious prescribing is a practice of giving a prescription to a family member or a health care professional of the patient and also knowing that such medication will be administered to the unknowing patient in hidden form. But it should not be used synonymously as it is used where there is a malafide intention.
Prevalence of Covert Medication: The Status Quo and The Concern

Covert Medication is a practice of hiding medication by the way of crushing it or giving it in a liquid form or any other form so that it may e used by the patients not in a position to give consent or refuse consent because of lack of insight. Covert medication is considered to be intrinsically bad and wrong legally, ethically and culturally.

One of psychiatry’s greatest challenges today is the non adherence to treatment. The practice of hiding medication in food and beverages (covert medication) is well known in the treatment of psychiatrically ill world-wide but they are legally negligible or not prevalent.

Covert medication may appear like a minor matter, but it taps on legal, ethical and cultural issues of a patient’s competence, autonomy, and insight.

Ethically, covert medication can be viewed as a breach of trust to the medicating patient by the family members or doctors who direct the drugs. It cannot be justified as a method by doctor or family members wishing to calm a troublesome patient and thus alleviate some of the burdens of care giving and that the paramount interest is ensuring the well-being of a patient who lacks the competence to give informed consent.

Ethical issues find their way into the treatment by the way of doctrine of informed consent i.e. every patient has a right to be informed before giving medication and there is a presumption that all patients have capacity unless demonstrated otherwise. The finding of incompetence does not preclude an individual’s right to know that he is being administered a medication that has the potential to cause adverse effects.

A competent adult has the right to refuse treatment, even if that refusal may adversely affect them. An unwise decision must be respected if the patient has capacity. However, if a person is incapable of giving his consent to the medication there is a provision of substitute decision-maker (SDM), who is interested in the welfare of the patient, will make a treatment decision on his behalf, provided he had been authorized by the way of advanced directives i.e. at the time of his competence.

Let us take a case of proxy consent where a practitioner proceeds with the consent of the relative of the patient when the patient himself lacks the capacity of giving consent. In this case, the wife expressed her consent to the hospital authorities that she had no objection to her husband undergoing bypass surgery. Here, her consent was deemed sufficient for any formalities related to the operation of her husband.

Viewing this from a legal perspective, treatment without consent is allowed only where the statute provides such authority. However, the performance of covert medication is not covered in the mental health act.

Covert medication constitutes grounds for claims of "criminal battery." The psychiatrist and the hospital may be exposed to liability, based on a claim of civil trespass, especially if there is an adverse outcome.

Consent to medical treatment is almost certainly the most significant belief originating the law relating to treatment of psychiatric patients. To force medical treatment upon a patient is likely to contravene the prohibition against inhuman and degrading treatment under the Protection of Human Rights Act 1993, which was enacted in India in the year 1994. Thus a nurse was suspended by the hospital administration for giving haloperidol mixed in tea, on the orders of a consultant, to an elderly excited patient who actually improved and when he was told about it the next day, he thanked the nurse. Similarly, an emergency physician in California was officially reprimanded and warned for injecting haloperidol into a sealed orange juice can which was given to a highly excited patient, who was violent and refused medication. The official version was that he should have been detained under relevant sections of mental health act and given an injection forcibly without any subterfuge.

4 C A Muthu Krishnan v M. Rajyalakshmi. AIR 1999 AP 311.
5 Covert medication: ever ethically justifiable?, http://pb.rcpsych.org/content/26/4/123.full (Last Updated June 13, 2014)
6 James T Antony, On the need to have "rules" to regulate covert medication, available at: http://www.indianjpsychiatry.org/article.asp?issn=0019-5545;year=2012;volume=54;issue=3;spage=266;epage=268;aulast=Antony; (Last Updated June 13, 2014).
8 A K Kala, Covert medication; the last option: A case for taking it out of the closet and using it selectively, available at: http://www.indianjpsychiatry.org/article.asp?issn=0019-5545;year=2012;volume=54;issue=3;spage=257;epage=265;aulast=Kala; (Last Updated June 13, 2014).
Now, since covert medication is questionable both ethically and legally, psychiatrists who privately admit that they have no qualms using it, do not enter it in case notes of patients. Ethics committees of psychiatric societies have no guide-lines about it, as if it does not exist. The situation is that everybody does it and whispers about it privately, but nobody is willing to discuss it publicly.

This present status has posed some serious questions that need to be dispassionately addressed and some perspectives that have to be looked upon, in deciding the legality of covert medication and that whether it is ethically and culturally justified keeping in mind the individual’s autonomy and right to refuse treatment.

1. What should be the priority, the individual’s autonomy or the family member’s decision?
2. Is it ethical to hide medication in the food of someone with a dementia such as Alzheimer’s disease, or of an acutely psychotic patient?
3. Whether psychiatrists have a "professional right" to intervene in a "paternalistic" manner and treat patients, against their explicitly expressed unwillingness for it?

Khurshid in his, "A Tale of Two Cities" published in the American Journal of Psychiatry, mentioned about a dilemma faced by an Indian Psychiatrist in USA who had earlier worked in India. The case goes as follows, A young boy in USA with systemetised paranoid delusion, refused to take medication even after counseling. His desperate mother requests the psychiatrist to prescribe something that she could mix in his food. However he denied prescribing any medication for the young boy.

The psychiatrist recalls a like case of a young girl whom he had treated years back in Delhi with some covert medicine which the family had added in his food. The girl had improved regained insight, started taking medication on her own and went back to her studies and subsequently became a school professor. The author conveys that he does not recall having had any worries about not having an informed consent, as the only goal was to make patient better.

The author thinks by putting the young boys autonomy at such a high and letting him deteriorate, he had taken a step backward.
There are certain situations that we need to look upon to find the answers to these questions in true sense. We will look to these situations as the paper unfolds by answering these questions and then laying down the need for covert medication, how can we prevent the misuse which would be of great concern and thereby conclude why there is a need to bring a change in the legislation.

1. **What should be the priority, the individual’s autonomy or the family member’s decision?**

Tim Salmon, an author and father of a patient of schizophrenia in an article, "My Son Has Schizophrenia, Why Can’t the System Cope?"\(^{10}\), wonders the Western societies, which have stretched the notion of individual autonomy in persons with severe mental illness so far that it is paradoxically violating their right to timely treatment.

The mental illness of the patient does not occur in a vacuum and it does not affect the patient alone; the illness occurs inside the family unit and affects the living environment of the patient. As a result, the living environment i.e. the family is an integral stakeholder in the patient's recovery.

It is an inevitable realization that the patient is not the only one who undergoes the treatment, it is also the family. The rights of the family in which the patient lives may therefore override the rights of the patient in the matter of mental health, behavior, and risks. In Western countries, families fragment easily and therefore emphasis is laid on the rights of the individual but in contrast, in countries like India, the family is a strong unit and the rights of the family should be above an individual. The family has a right to want the member so affected, whom they care for, to recover. The family has the right to want a restoration of their social, emotional, financial, and legal security when an individual member suffers a serious mental illness. The family may even consider this to be its duty to resort to covert medication, if necessity occurs, to prevent the patient and the family from being driven off a cliff. Therefore, ethical principles that are applied in the western countries need not essentially be suitable in Indian life because what is best for an individual may not be best for the family with which he lives.

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In this circumstance, psychiatrists should realize that they themselves violate no ethical guidelines if the family chooses to bring delusions, hallucinations, and abnormal behavior under control through the covert administration of antipsychotic medication in situations of crisis.

2. **Is it ethical to hide medication in the food of someone with a chronic mental disorder or of an acutely psychotic patient?**

Ethics-related issues in the covert medication dispute rotate around patient’s autonomy, beneficence, non malfeasance, and duty to protect.\(^\text{11}\) This poses a dilemma that does the ends justify the means?

If a person who lacks the capacity to take decision is being covertly medicated and the treatment given is in the best interest of the patient, then it ethically justifies the conduct of the psychiatrist, doctor or family member. In this situation, where he lacks the capacity to take decision the autonomy of the patient is also not violated as when a patient lacks mental capacity and is thus unable to refuse or consent to treatment, covert administration of medication may be lawful, provided-

a. It would be in the view of a reasonable body of medical opinion necessary to use this means to save the patient’s life or prevent deterioration in his health; and

b. Accords with the best interests of the patient. Provided the best interests’ clause is clearly intended to uphold the principle of beneficence and non malfeasance.\(^\text{12}\)

As earlier discussed, in countries like India the families decision plays a major role than individuals autonomy as it is not only the individual who suffers but also the family and therefore if covert medication is given for the best interest of the individual, to protect his health from further deterioration which in turn would help the family to restore their emotional, social, financial, and legal security, would be justified.

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\(^\text{11}\) K.S. Latha, Supra note 7.

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3. Whether psychiatrists have a "professional right" to intervene in a "paternalistic" manner and treat patients, against their explicitly expressed un-willingness for it?

To answer this question, we need to look at a situation i.e. a young man barges into the Casualty saying he has some psychotic disorder. He has been informed and being prescribed medications but has not been taking since last two weeks and complains of homicidal and suicidal ideations. Hospital records show that, the patients and staff were bashed badly during application of physical restraints. When the patient becomes increasingly restless, refusing treatment or admission, the physician offers him a sealed orange juice container into which antipsychotic medications have been administered. Is the psychiatrists’ action justified or ethical? OR should he have acted in a usual manner of forcefully administrating the drug?

There are three parts to this focused question. The first part concerns the intervention, which is the use of concealed medications in food or drink. The second part is the comparison of this intervention with the alternative of prescribing in the usual manner, i.e. explicitly with the patient’s consent, or forcibly provided that a court order can be obtained. Forcible medication involves the physical restraint of the patient and then injection intramuscularly, without the patient’s consent and against the patient’s objections. The third part concerns the best interests of the patient, which here concerns whether there is an ethical justification for concealed medication. Could the benefit outweigh the harm that the patient's liberty and dignity is being violated? It is legitimate to argue that for patients who require medication on a regular basis, covert administration would be more ethically justifiable than recurring restraint and forced injection of medications as it may be more harmful clinically to patients and less humane if done frequently.

There are numerous instances in which the state's duty to protect its citizens overrides an individual's autonomy. With laws making the use of seatbelts compulsory, to laws against talking on cell phones while driving, to making it compulsory for a motorcyclist to wear a helmet. Why force somebody to protect against an accident that has not occurred and that might never occur, and yet allow another, who has a major mental illness, to make his own choices when a wrong decision can irreversibly harm not only his own health and security but also that of the family in which he lives?
The state clearly has identified a small but important number of circumstances in which public safety and an individual's best interests are valued over individual autonomy. This shows us that Autonomy is a loose concept and that it is situational invoked or applied.

As ethically it is the primary responsibility of the doctor to make sure that the patient is being provided with adequate and timely medication necessary for its betterment and which is best interest of the patient, even if the patient does not consent as to save the life of the patient and to secure the interest of the family i.e. to restore the lifestyle of the people who have been affected due to the illness and to make sure that the family get the patient back in a healthy condition. Therefore Owing to this the psychiatrists, takes this risk, to covertly administer the medicine to a paranoid patient even with the risk that if he finds out that he has been covertly medicated might become more aggressive toward and suspicious of future clinicians.

This leads us to one conclusion i.e. in cases of emergencies or where the patient is incapable to make its own decision, psychiatrists have a "professional right" to intervene in a "paternalistic" manner and treat patients, against their explicitly expressed un-willingness for it, for the best interest of the patient, the best interest for the family, to restore the position of the family as it was before the illness and for the betterment of the society.

**Benefits arising out of Covert medication**

i. Covert medication has a number of potential advantages in treating patients suffering from severe mental illness. Delay in treating psychiatrically ill patients because of financial restrain or substantial cost associated (admission in the hospital, doctors’ fee, and equipments required etc) would be prevented. This would lead to timely and cost effective treatment to the patient.

ii. The harmful effects of untreated psychosis are well known. Delaying psychiatric treatment among such patients is associated with increased morbidity and poorer outcomes in terms of prolonged individual suffering, increased risk of self-harming

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13Erick K. Hung, MD, Dale E. McNiel, PhD and Renée L. Binder, MD, Covert Medication in Psychiatric Emergencies: Is It Ever Ethically Permissible?, Available at: http://www.jaapl.org/content/40/2/239.full (Last Updated June 13, 2014).
nature, deterioration of the therapeutic effect, redirection of limited clinical resources to non therapeutic activities and increased physical assaults by the patient.

iii. Serious delays in medical care may occur if the patient does not give the consent or fails to co operate during negotiation or even use of force fails to persuade the patient, which in turn leads to increase in the patients suffering, reduction in the options to treat the patient and deterioration in the health of the patient on the other hand Covert medication raises the possibility of intervening at an earlier stage before relapse and the need for certification and admission to the hospital.

iv. Withholding medication for getting the consent or getting the patient ready for force administration might be considered a deprivation of the patient’s right to prompt medical and psychiatric stabilization.

v. Covert administration of drugs can also prevent the need to repeatedly restrain and forcibly administer injections to patients. Family and caregivers often find this form of prescribing more satisfying, because it may also reduce the need for certification and the use of seclusion and restraint.

vi. Covert medication could be viewed as willingness of the family to be more involved in a patient’s care. This would help in restoring the family’s social, emotional, financial condition quickly and get back the loved individual back.

Measures to prevent misuse

Advance directives of the patient may become instruments of power and control in the hands of mental health professionals. But, there could be some solutions to this problem.

i. It is essential that the person in question had gone through a number of psychotic episodes in the past.

ii. Contracts would be made only when initiated by the patient so as to reduce the scope of any influence by the health care professionals.

iii. Legal competence of the individual would have to be established at the time of the formation of the contract.

iv. The contract should be valid for a limited period of time
v. The agreement can be renegotiated or revoked by the patient at any time other than during a relapse as defined in the contract.

vi. Such contract-sanctioned treatment would be allowed only for a small period of time.

vii. Such covert treatment should be permitted only when there is a recurrent signs of an individual’s illness, placed at intervals with periods of behavior free from any symptoms.

viii. Contracts would be valid only if there is a positive sign shown by the treatment in the patient, i.e., the person suffering from disorder responded to the treatment.

ix. To ensure the patient’s best interest, which is the main objective of the treatment, one should be cautious of the malafied intent of any third party.

x. Rights of the patient should involve the Court participation.

These are some of the solutions which could help in solving the problem related to the misuse of covert medication. There could be a possibility of misusing such medication at various levels such as by the doctors, the relatives of the patient, etc. directly or indirectly. Because of such reasons, rights of the patient are often violated. Therefore, it is necessary to resort to such solutions to tackle these problems arising out of such misuse.

**Conclusion**

After undergoing various cases, hearing the arguments of families, psychiatrists etc and speculating on the laws that govern covert administration of medicine, I at times undergo with a thought that some people want to be politically and legally right at the cost of overlooking the plea of the families who suffer.

I wonder how many of us have actually had the experience of treating our loved ones with such psychotic disorder such as Alzheimer’s or Schizophrenia, at close encounter, playing a double role i.e. of the doctor and a care giver simultaneously.
One thing that I can assure you is, it is not at all easy and our theories and wise suggestion fly out of the window, in moments of crisis, which are unpredictable. There occurs occasions when there is a need to resort to "covert" medication and one should have no qualms about it. The cases occurred pointed out that the family’s desire was to see their loved kith and kin get better and not get entangled with the ‘correctness’ of our action. Living in India, we all agree there are responsibilities that we have to our elders in the family and also to our young growing children and one of the most important one is to do anything to see that they improve and suffer less.

As for the ethical role of psychiatrist or doctors, there are certain moments in our life when we need to sit back and ask ourselves as to what is our role as doctors? Isn’t it to cure/ heal / reduce distress and if not possible at least reduce suffering to the person as well as their family members or follow the individual’s autonomic decision? As we are aware that the individual with psychiatric illness does not suffer alone, the entire family has to suffer along with the individual in one way or the other.

The improvement in their symptoms and their level of functioning, the relief and satisfaction in the families, validates the actions and convinces me that it’s worth helping them in any way possible. If we need to get a legal sanction for it so be it. I am sure the legal pundits amongst us will strive to achieve that.