

Deprivation of liberty and involuntary medical treatment

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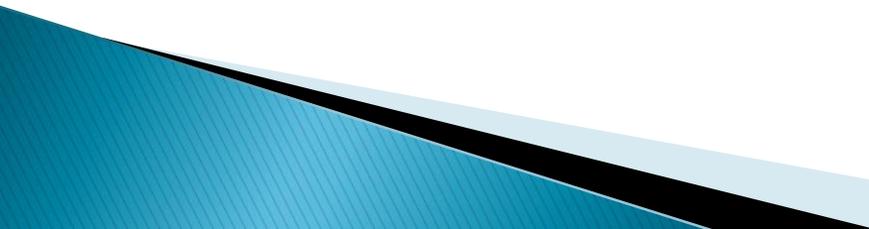
Content of presentation

- ▶ Two relevant laws in the Netherlands:
 1. Medical treatment act in Dutch Civil Code
 2. Law on involuntary admission in psychiatric hospitals (soon to be replaced by 2 new laws)
 - ▶ Respecting the will and preferences of the person that is to be treated or admitted
 - ▶ Powers of the representative
 - ▶ CRPD Guidelines and ECHR jurisprudence
 - ▶ The triangle to visualize positions and legal reality and to help finding solutions
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Medical treatment act (in Dutch Wgbo; forced treatment art.7:465 BW)

- ▶ This law is part of the 7^e book of the Dutch Civil Code. The 7th book is on contracts formulating general rights and duties in case of working, buying, hiring and the contract between a patient and a medical doctor
- ▶ Informed consent is a key patient's right, but forced treatment is allowed if the patient is resisting but de facto unable to make a decision, the representative agrees with the treatment and the treatment is necessary to avoid great (health) damage for the patient

Forced treatment, assessment of incapacity and representatives

- ▶ The assessment of actual incapacity is not regulated; proposed is that the doctor has to document the assessment of incapacity explicitly in the patient's file
 - ▶ There are four groups of representatives:
 1. Children, parents, brothers and sisters, or
 2. Partner of the de facto incapable patient or
 3. Representative by power of attorney or
 4. Representative appointed by the judge (this can be a personal guardian or a full guardian)
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Involuntary admission to psychiatric hospitals (in Dutch Bopz)

- ▶ The Bopz historically was intended to remove from society and the streets persons who because of their mental illness were causing danger to themselves or others. Registered Bopz-accommodations were huge buildings in the forest with fences and closed wards
- ▶ A few decennia ago nursing homes and institutions for persons with an intellectual disability were included in the Bopz and the Bopz got a second part dealing with (forced) treatment after involuntary admission

Applying the Bopz; admission

- ▶ Involuntary admission is decided by the mayor in emergency cases, or by the judge and the regular period is six months. Carers and family members can ask the public prosecutor to request the court for an order
- ▶ In the admission procedure the patient is provided with legal aid
- ▶ A report from an independent psychiatrist is **required** (or a medical specialist regarding the care for the elderly or the care for persons with an intellectual disability)

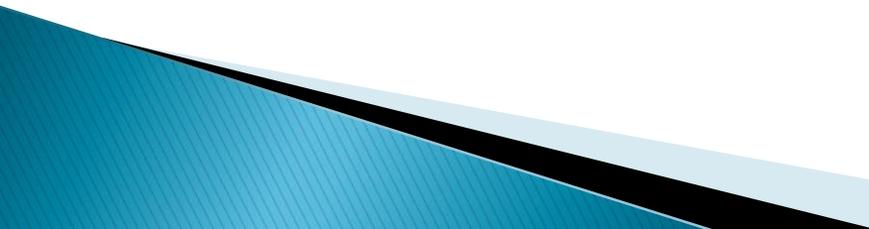
Applying the Bopz; treatment

- ▶ Involuntary admission is not a permit for all kinds of (forced) treatment. The patient is not allowed to leave, but agreement has to be sought between the patient and the staff of the bopz-accommodation like in the Wgbo
- ▶ Forced treatment of the patient is allowed in case treatment is absolutely necessary to take away the danger caused by a mental illness or if not treating would result in a very long stay

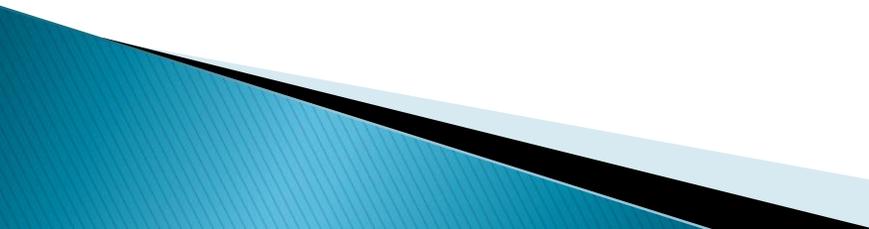
Applying the Bopz; representative

- ▶ The Bopz has the same four levels of representatives as the Wgbo
- ▶ In the admission procedure the representative has hardly any influence on the decision
- ▶ He cannot order the (involuntary) admission of his client into a Bopz–accommodation; he can represent his de facto incapable client in an contract with a non–Bopz accommodation
- ▶ He can on behalf of his de facto incapable client sign the treatmentplan but this only justifies treatment to which the client doesnot resist

Replacing the Bopz, change of focus and two separate laws

- ▶ New legislation in preparation focussing upon (forced/involuntary) treatment perhaps inside an accommodation instead of a focus upon admission followed by treatment
 - ▶ In new legislation professional carers are obliged to request for personal guardianship in case of forced treatment of a de facto incapable adult without a representative
 - ▶ One new act for the regular psychiatry (cure) and one for the two other fields (care)
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CRPD requirements; will patients benefit from these high standards?

- ▶ Guidelines on article 14 CRPD on the right to liberty and security of persons with disabilities were adopted in September 2015
 - ▶ Detention on the ground of mental illness leading to danger for themselves or others is incompatible with article 14 (Guidelines § 6)
 - ▶ The free and informed consent of the person with a disability is required before any (mental health) treatment. Substitute decision-making cannot be permitted (§ 11)
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ECHR jurisprudence; involuntary admission with safeguards

- ▶ Deprivation of liberty (the applicability of art. 5 ECHR) depends upon the type, duration, effects and manner of implementation of the measure
- ▶ Minimum conditions for deprivation of liberty: ‘the patient must reliably be shown to be of unsound mind, the mental disorder must be of a kind or degree warranting compulsory confinement and the validity of such a confinement depends upon the persistence of such a disorder’ (Stanev v. Bulgaria §§ 115 + 145)
- ▶ Referring to art. 12 and 14 CRPD in Stanev § 72

The three positions in a model

