Since January 2020 Elsevier has created a COVID-19 resource centre with free information in English and Mandarin on the novel coronavirus COVID-19. The COVID-19 resource centre is hosted on Elsevier Connect, the company's public news and information website.

Elsevier hereby grants permission to make all its COVID-19-related research that is available on the COVID-19 resource centre - including this research content - immediately available in PubMed Central and other publicly funded repositories, such as the WHO COVID database with rights for unrestricted research re-use and analyses in any form or by any means with acknowledgement of the original source. These permissions are granted for free by Elsevier for as long as the COVID-19 resource centre remains active.
Forensic Psychiatry

COVID-19 in forensic psychiatric hospitals in Bavaria: Finding a balance between infection prevention, collective security and patient rights

Dorothea Gaudernack a, Manuela Dudeck b, *

a Head of the Supervisory Authority of Forensic Psychiatric Hospitals in Bavaria, Nördlingen, Germany
b Head of the Department of Forensic Psychiatry and Psychotherapy, Ulm University, Ulm, Germany

ARTICLE INFO

Keywords:
Forensic psychiatry
COVID-19
Mental health services

ABSTRACT

The corona pandemic represents an enormous challenge for the entire health care system in Germany. Besides treating patients and protecting the general population, forensic psychiatric hospitals are now required to adhere to pandemic guidelines. The various levels of freedom of the patients must thereby be observed and may not be restricted, but at the same time closed facilities must do their best to avoid a COVID-19 outbreak. For this reason, the supervisory authority of the federal state of Bavaria, together with the heads of the forensic psychiatric hospitals, has developed recommendations for action that have significantly facilitated the implementation of the pandemic guidelines and that can serve as an example for other federal states, even across state borders.

The following recommendations for action were developed by the supervisory authority (AfMRV) for all 14 forensic psychiatric hospitals in Bavaria together with the respective head psychiatrists. In Germany, admission to a forensic psychiatric hospital follows a court decision according to Section 63 or 64 of the German criminal code. If a person has committed a serious offence as a result of a severe mental disorder and if there is a high risk of reoffending, the court orders that person’s placement in a forensic psychiatric hospital according to section 63. The length of the hospital stay is not limited by law, however, the longer the hospitalization lasts, the more relevant the consideration of proportionality, i.e., the risk of severe reoffending against the right of freedom, become. Hospitalization according to Section 64 requires a diagnosis of a substance use disorder, a high risk of reoffending, and a favorable treatment prognosis, it has a standard duration of two years.

In Bavaria, the seven regional districts have the task to detain offenders according to Sections 63 and 64 of the German criminal code. Thirteen of these 14 forensic psychiatric hospitals are part of larger psychiatric hospitals, which are governed completely differently, both economically and legally. Because Bavaria continues to remain the region in Germany most affected by COVID-19, several regulations have been adopted for the general public and specifically for all hospitals that have had a huge effect on forensic psychiatric units but often have not taken into consideration the specific needs of mentally ill people in detention and the realities of forensic psychiatry. Therefore, the supervisory authority recognized the necessity to draw up recommendations for action that outline the guidelines and principles to be respected and acted upon in forensic psychiatric hospitals. In some cases the recommendations try to provide specific answers to situations that arose during or right after the “lockdown phase”, but their significance lies primarily in emphasising the specific needs of forensic psychiatry and people in detention as compared with the needs of patients in other hospitals, who are free to leave if they do not agree with the rules.

All decisions in the continuously and rapidly changing pandemic situation should take these recommendations into account to harmonise in the best possible manner the goals of infection control and high quality forensic treatment while respecting patients’ rights.

Recommendations for action

The COVID-19 pandemic is also posing major challenges specifically for forensic psychiatric hospitals in Bavaria. The associated infection control and health protection measures have been added as a third element that forensic psychiatric hospitals need to consider in addition to the conflicting priorities of the safety of society and the basic rights of people in detention. At the same time, the goal of infection control is not a valid reason for nullifying these other two goals in everyday forensic care, especially because restrictions to prevent the further spread of the pandemic may not only severely limit patients’ rights but also endanger safety in detention facilities (Liebrenz, Bhugra, Buadze, & Schleifer, 2020; Steinböck, 2020; Tomlin, 2020). Therefore, all necessary decisions

* Corresponding author.
E-mail address: manuela.dudeck@bkh-guenzburg.de (M. Dudeck).

https://doi.org/10.1016/j.fsiml.2020.100035
Received 16 October 2020; Received in revised form 21 October 2020; Accepted 23 October 2020
2666-3538/© 2020 The Authors. Published by Elsevier B.V. This is an open access article under the CC BY-NC-ND license (http://creativecommons.org/licenses/by-nc-nd/4.0/).
regarding involuntary commitment conditions must consider all three components and achieve as reasonable and considerate a balance as possible.

We must thereby consider that infection rates in a large state like Bavaria can differ greatly between the regions where the various hospitals are located and, in addition, that the structures of the individual forensic psychiatric hospitals also vary considerably. Furthermore, infection rates and generally applicable legal regulations can change over time, both across Bavaria and regionally, even at short notice. The following recommendations for action should therefore establish certain maxims that can serve as guiding principles for action without having to enact regulations for individual cases and without interfering with the ability of forensic psychiatric hospitals to react to possibly dynamic occurrences of infection.

- The primary goal is to protect the health of patients and employees while maintaining the best possible “normal” forensic treatment and conditions and to prevent a spread of the pandemic. Therefore, all forensic psychiatric hospitals (which may be part of larger hospitals) must have current pandemic plans available and update them when needed. Pandemic plans for large hospitals must appropriately consider the specific characteristics of forensic treatment.

- The heads of forensic psychiatric hospitals are responsible for deciding themselves, on the basis of medical principles, which coronavirus tests, antibody tests and other screenings they will perform. Extensive tests enable knowledge to be gained early on and are suitable for preventing a further spread of the virus and perhaps for minimising restrictions. In addition, the supervisory authority can initiate ad hoc serial tests.

- Involuntary commitment hospitals are bound by the laws, ordinances and general rulings issued in the context of infection control and are obliged to comply with them in addition to the provisions of the Bavarian Law on Forensic Detention (BayMVfG). The supervisory authority will inform the forensic psychiatric hospitals about new regulations that are specifically relevant for the involuntary commitment system and, if needed, will support the forensic psychiatric hospitals in case of legal questions, in particular regarding the interpretation of vague legal terms. If regulations are established for all hospitals as part of general legislation, they will usually also apply to forensic psychiatric hospitals. Deviations require prior consultation with the supervisory authority, who will consult with the Bavarian Ministry for Family, Labour and Social Affairs (StMAS) and the Bavarian Ministry for Health and Care Services (StMGP). If the general laws result in restrictions for all citizens, the principle of harmonisation of living conditions means that they will also apply to patients in any kind of detention and must be accepted by them and, if possible, addressed appropriately in the therapeutic context.

- The special regulations and recommendations for action issued for correctional facilities do not apply to forensic psychiatric hospitals. Even though both these types of institutions deprive people of freedom in accordance with state orders, they differ fundamentally in terms of their goals and the people they detain. This principle applies to all patients in forensic detention, but in particular to those who are committed in accordance with Section 63 of the German criminal code, some of whom are severely mentally ill. These patients cannot be compared to inmates of correctional facilities and require special attention with regard to the obligations imposed on them for reasons of infection control. Furthermore, they have specific (additional) needs because of their illness.

- Regulations issued by operators of large hospitals apply to the forensic units in these hospitals as long as they do not contradict the Bavarian Law on Involuntary Commitment, the objectives of forensic detention and the specifications of the supervisory authority. Forensic psychiatric hospitals make up only part of the overall structure of large hospitals so the regulations and concepts of the large hospitals are primarily shaped by the standards and guidelines of the Bavarian State Ministry of Health and Care, aspects of hospital hygiene and, not infrequently, also by provisions of the hospital operators or occupancy considerations. Forensic settings are not always sufficiently considered by hospital operators, and forensic psychiatric hospitals are not always represented in pandemic crisis committees in all hospitals. In some cases, the regulations that apply to large hospitals, as long as they do not already have legal bases that are binding for everyone, are not applicable to involuntary commitment hospitals because they contradict the Bavarian Law on Forensic Detention, which provides no legal basis for additional restrictions of patient rights (e.g. prohibition of all visitors). Such a legal basis is necessary because, unlike most other patients in large hospitals, people in forensic psychiatric hospitals are not there voluntarily.

- The additional pandemic-related restrictions of patient rights, especially with regard to external contacts, can worsen the ward atmosphere and, as a consequence, the safety situation in the hospital. Forensic psychiatric hospitals must give high priority to safety within the facility, even during a pandemic. Patients should always be clearly informed in a suitable manner (e.g. through discussions during morning rounds, in patient forums, etc.) about the occurrence of infection and the measures taken, as well as any changes to the regulations that apply to them. It goes without saying that suitable therapeutic offerings must be maintained even during a pandemic. If previously available cross-ward therapy offerings are suspended for reasons of infection control, alternatives (such as work and occupational therapy opportunities on the ward, ward-related physical activity opportunities, etc.) are to be offered.

- It may also be beneficial to improve the ward atmosphere and the patients’ situation by expanding the use of electronic media and providing other communication options (video calls, etc.). Abuse must thereby be prevented through suitable control measures. If extensive visiting restrictions should come into force by legislation for all of Bavaria, patients must be given the opportunity to contact their relatives or other people close to them more often by telephone. In this case, it may be appropriate to use the hospital budget to purchase cheap telephones with prepaid cards, for example for poor patients, and to offer them to patients.

- Experience so far shows that this procedure has proven its worth. Some forensic psychiatric hospitals have asked to be allowed to continue the expanded use of telephones, which is contrary to the current administrative regulations. The Supervisory Authority of Forensic Psychiatric Hospitals takes a similar view and has therefore recently proposed a corresponding amendment to the administrative regulations (of course with clearly defined control mechanisms to prevent misuse).

- The pandemic hit the Bavarian forensic psychiatric hospitals at a time of massive overcrowding throughout the state. This situation makes it more difficult to maintain spare capacities for any isolation, quarantine etc. that may be required. However, because infections can also be expected to occur at any time in the forensic psychiatric hospitals, precautions must be taken to enable both the quarantining of suspected cases and the isolation of infected cases if necessary. Such an infection-related, temporary decrease in occupancy has no negative effects on the budget of the forensic psychiatric hospitals. Cross-hospital mergers within a district are possible.

- Nevertheless, the basic obligation to immediately accept patients detained by the justice system still applies; admissions may not be completely stopped for reasons of infection control. In particular, detention of forensic patients in correctional facilities is to be avoided as far as possible.

- However, the obligation to accept patients must not endanger patients or employees or result in a foreseeable overburdening of resources in the event of an outbreak of infection.
We must therefore accept that the pandemic may lead to delays in admission, especially for people to be admitted according to Section 64 of the German criminal code. Therefore, if law enforcement authorities have not already done so, occupancy is to be controlled by prioritising patient admission. Patients with short sentences who are at risk of being detained in a correctional facility or are already detained in such a facility are to be prioritised. In cooperation with local law enforcement authorities, efforts should continue to be made to ensure that forensic psychiatric hospitals are informed as soon as possible about patients who are completing the first part of their sentence in correctional facilities and will then need to be transferred to the involuntary commitment facility. People who turn themselves in should be of lower priority.

If no space is available for new admissions, the general procedure applies (requesting admission in two other forensic psychiatric hospitals, supervisory support in case of failure to defer a patient). This procedure requires a close exchange between the various forensic psychiatric hospitals, an exchange that is characterised by mutual solidarity and awareness of the “one Bavaria” nature of the task of forensic detention.

Because of the limited options available for controlling occupancy, the “outward flow” of patients is to be accelerated to the extent that easing measures, such as living outside the hospital on a trial basis, are to be enabled as quickly as possible and as quickly as legal prognoses and good risk management allow. Similarly, patients who discontinue therapy should be sent back to correctional facilities as quickly as possible. If necessary, the supervisory authority will support these institutions in contacting the judicial authorities and courts.

When controlling occupancy, facilities must take into account that newly admitted patients should generally be quarantined for 14 days, provided that local and spatial conditions allow. As far as possible and if deemed useful by the forensic hospital, COVID-19 tests and other screening procedures can be integrated into the admission process. Quarantine is not necessary if an infection can be largely ruled out in a newly admitted patient (e.g. through previous testing in a correctional facility).

As a matter of principle, wards in forensic psychiatric hospitals are to be viewed as households. Compliance with minimum distances is also recommended on the wards and should be enabled as far as possible through suitable measures (e.g. different mealtimes etc.) and patients should be encouraged to keep socially distanced. However, the ability of the hospital to accept new patients cannot be made dependent on compliance with minimum distances on the wards or in patient rooms because the operativeness of the forensic detention system must also be guaranteed during the pandemic.

As far as possible, minimum distances and other generally applicable hygiene rules must be observed during everyday forensic treatment, and patients must be continuously made aware of these measures. Hospitals can make participation in certain activities or offerings outside the inpatient setting dependent on the wearing of facial masks. In this case, care must be taken to ensure that patients are provided with suitable masks. A “mask requirement” can also be useful if – for example in certain common areas – minimum distances cannot be maintained outside the ward for logistical reasons. Exceptions must be made for people who cannot reasonably be expected to wear a mask for medical (and possibly also psychiatric) reasons. Patients should not be required to constantly wear a mask on the wards.

The individual, legally enforceable right of patients to be granted gradual easing of restrictions remains unchanged by the pandemic for constitutional reasons that minimise the deprivation of liberty. This means that corresponding conferences on step-by-step easing of restrictions may not be suspended even during the pandemic and that decisions about the degree of easing must be based purely on the therapeutic and legal prognosis, regardless of the pandemic. As a general rule, aspects of infection control only play a role in the subsequent concrete implementation of the easing of restrictions, whereby compliance with hygiene and distancing rules can be taken into account when discussing the patient’s ability to adhere to agreements. On the other hand, patients are not entitled to a specific method of easing restrictions (e.g. personal key, duration of trips outside the hospital, etc.). Therefore, hospitals can specify requirements for individuals, in particular regarding infection control measures (e.g. compliance with distancing rules, perhaps wearing a mask, avoiding forming groups, no cross-ward gatherings, no unannounced visits to the premises, etc.), and sanction them if necessary.

The restrictions in the past weeks of lockdown may lead to delays in therapy as part of fixed step-by-step plans for easing of restrictions. Therefore, the further course of therapy may have to be individually adjusted to avoid unjustified deprivation of liberty for reasons that are not related to the patient. In any case, fixed rules on the required duration of a certain stage are incompatible with the individual right to freedom on the basis of the individual legal prognosis.

Patients in Stage C (see Table 1) who leave the hospital for work pose particular challenges to the hospital in that they leave it for a relatively long period of time and thus increase the risk of infection on the ward when they return. It makes sense to subject this group of patients to specific rules (such as screenings, tests and wearing masks) and to only allow patients to work outside the hospital if they can be expected to responsibly adhere to the relevant hygiene and distancing rules. The organisation of wards may need to be changed to ensure that these patients are distributed over only a few wards and in particular that they do not come into contact with patients in a risk group.

Applicable prohibition of visits for reasons of infection control exist, visits must be allowed – the Bavarian Law on Forensic Detention expressly emphasises their importance. In contrast to other hospitals, the involuntary commitment system already has various options to enable visits while minimising the risk of infection (e.g. separation panes). However, visitors carry a particularly high risk of introducing infection so forensic psychiatric hospitals can make visits dependent on certain conditions (e.g. completion of a COVID-19 symptom sheet, recording personal data, wearing a mask, etc.). The directors of forensic psychiatric hospitals are permitted to monitor compliance with the established rules within the framework of the hospital’s rules, also in privileged groups of people such as carers, lawyers, etc.

As part of the harmonisation of living conditions, in addition to visits other external contacts must still be enabled, as long as allowing them appears justifiable with respect to infection control. Medically necessary care and other useful services provided by external parties (e.g. hairdresser, foot care) should be regulated within the hygiene concepts. In this context, attention should be paid to the special importance of the fundamental right to religious freedom, for example as it relates to prayers or pastoral care.

If patients have to be taken to other locations (e.g. court, other hospitals, office-based doctors), the hygiene regulations applicable there must also be observed.

| Stage | Level of movement allowed |
|-------|--------------------------|
| 0     | Not permitted to leave the forensic psychiatric hospital |
| A     | Permitted to leave with nursing staff |
| B     | Permitted to leave without nursing staff but only within a restricted area |
| C     | Permitted to leave without nursing staff |
| D     | Permitted to remain outside the forensic psychiatric hospital for more than 12 h a day and to stay away for several days to try out new housing situations |

Table 1
Stages of restriction of movement in forensic psychiatric hospitals.
The recommendations for action described above have been in effect since May 2020, and so far the overall experience has been extremely positive. According to the forensic psychiatric hospitals, the recommendations represent dependable guidelines that allow forensic units to find a “new forensic normality”, which in many cases is not that different from pre-pandemic times. Furthermore, in situations where aspects of forensic psychiatry are prone to be neglected when deciding how to deal with the pandemic situation the recommendations seem to help forensic psychiatric hospitals argue their case for specific rules that differ from those in regular, non-detention hospitals. Sharing and distributing these recommendations between hospitals or with authorities may ease harmonisation and simplify necessary adaptions.

From an administrative point of view, the recommendations for action have furthered statewide standards in dealing with the pandemic in a forensic context and have helped many patients and employees understand and accept the additional restrictions being imposed on them.

Declaration of competing interest

DG is a lawyer and the head of the supervisory authority for forensic psychiatric hospitals in Bavaria, Germany. MD is head of the department of forensic psychiatry and psychotherapy, Ulm University, Ulm, Germany.

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Acknowledgements

The authors thank Jacquie Klesing, Board-certified Editor in the Life Sciences (ELS), for editing assistance with the manuscript and Judith Streb for her support in submitting the manuscript.

References

Liebrenz, M., Bhugra, D., Buadze, A., & Schleifer, R. (2020). Caring for persons in detention suffering with mental illness during the Covid-19 outbreak. Forensic Science International: Mind and Law, 1. https://doi.org/10.1016/j.fsim.2020.100013

Steinböck, H. (2020). Maßregelvollzug in den zeiten der Corona-pandemie. Recht & Psychiatrie, 38(3), 131–134.

Tomlin, J. (2020). What does social distancing mean for patients in forensic mental health settings? Forensic Science International: Mind and Law, 1. https://doi.org/10.1016/j.fsim.2020.100018