

Confusion Of Consent In Incapacitated Patients

Lavina Choie

PGDipBHL, PGCertHealSci, BOH,
BCApSci, BA and DipDentTher.

Overview:

- Moral justification
- Impaired agency
- Limitations to legislation
- Confusion of consent
- Therapeutic studies

Moral Justification

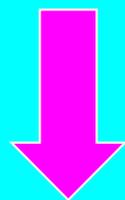
Kantian theories



Bodily rights



Normative power



Right to receive therapeutic
treatment

Impaired Agency

There needs to be fluidity for situations where it maybe ethically acceptable for research to be carried out such as on incapacitated patients comatose patients.

- Moral justification
 - Kant's theory on ones' bodily rights
 - Normative power
 - Health and Disability
- Commission say to 'Do No Harm'.

Limitations to Legislation

- ➔ ‘Research should never be carried out on those who cannot consent’.
- ‘Do no harm’

Right 7 from the Health and Disability Commission highlights the importance of a patients' autonomy.

Confusion of Consent

We need to prioritise the welfare of the consumer as well as 'what is best for them'.

➡ By not trying a therapeutic treatment on a patient it maybe seen by others as ‘discriminatory’ and it may make the patient feel oppressed.

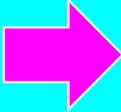
Therapeutic Studies

➡ It is morally right to allow a comatose patient the 'chance' to try a new treatment.

In some instances it is imperative to conduct clinical research on a patient to improve understanding and management of their condition.

Examples of Therapeutic Studies

- ➔ Acute onset of shortness of breath and weakness of the legs no space in intensive care.

 Therapeutic Hypothermia (TH) used to improve outcomes in comatose survivors after cardiac arrest.

References:

Bhutta, Z.A. (2004). Beyond informed consent. *Bulletin of the World Health Organization*, 82, 771-777.

Chandrikasing, R., Ramnarain, S., Bansie, R (2021). Case report: “an unexpected origin of coma in a young adult”. *Int J Emerg Med* 14, 70
<https://doi.org/10.1186/s12245-021-00390-5>

Fahmy, M.S. (2023). Never merely as a means: rethinking the role and relevance of consent, *Kantian Review*, 28(1), 41-62.

Health and Disability Code of Rights

<https://www.hdc.org.nz/disability/the-code-and-your-rights/HDC2023>.

Jia, Y., Han, N., Guo, H., Li, H., Du, Y., Li, C., & Li, J (2025).

Hyperbaric oxygen therapy for acute carbon monoxide poisoning patients with coma onset. *European Journal of Medical Research*, *30(1)*, 125.

Laurijssen, S. J., van der Graaf, R., van Dijk, W. B., Schuit, E., Groenwold, R. H., Grobbee, D. E., & de Vries, M. C. (2022). When is it impractical to ask informed consent? A systemic review. *Clinical Trials*, *19(5)*, 545-560.

Lazaridis, C., Goldenberg, F.D., Mansour, A., Kramer, C., & A. (2022). What does coma mean? Implications for shared decision making in acute brain injury. *World Neurosurgery*, 158, 377-e385.

Passman, J., Bellow, E., Singh, H., Lubin, N., Flescher, A., Mikell, C., & Mofakham, S. (2025). Ethical and Practical Considerations for Research in the Comatose Patient. *Available at SSRN 5101306*.

Pietrzykowski, T., & Smilowska, K. (2021). The reality of informed consent: empirical studies on patient comprehension- systematic review. *Trials*, 22, 1-8.

Resnik, D. B. (2021) Informed Consent, understanding, and trust. *The American Journal of Bioethics*, 21(5), 61-63.

Rittenberger, J, C., Guyette, F.X., Tisherman, S.A., De Vita, M.A., Alvarez, R. J., & Callaway, C.W.(2008). Outcomes of a hospital-wide plan to improve care of comatose survivors of cardiac arrest. *Resuscitation*, 79(2), 198-204.

Rosenfeld, J.V., Mathiesen, T.I. The clinical and ethical challenges of treating comatose patients following severe brain injury. *Acta Neurochir* **165**, 829-831 (2023). <https://doi.org/10.1007/s00701-022-05376-7>

Taquette, S. R., & Borges da Matta Souza, L. M (2022). Ethical dilemmas in qualitative research: A critical literature review. *International Journal of Qualitative Methods*, 21, 16094069221078731.

Passman, J., Bellow, E., Singh, H., Lubin, N., Flescher, A., Mikell, C., & Mofakham, S. (2025). Ethical and Practical Considerations for Research in the Comatose Patient. *Available at SSRN 5101306*.

Van Dijk, R. J., & Bernstein, J. S. (2025). Kantian political philosophy, coercion, and public health. *Monash Bioethics Review*, 1-21.