

DOI: <https://doi.org/10.17816/nb623306>



A casuistic case of ignoring an expert opinion by the court conclusions about the absence of drug use disorder diagnosis

Vladimir D. Mendelevich

Kazan State Medical University, Kazan, Russia

ABSTRACT

The article cites the case of Dmitry A., who was detained by the police on the street on suspicion of using cannabinoids and sent for a medical examination for intoxication, which he refused. The judge found Dmitry guilty and ordered him to be examined at a drug treatment clinic. Based on the results of an inpatient examination, despite the absence of mental disorders, somatic consequences of episodic cannabinoid use and the absence of pathological changes according to laboratory tests, he was diagnosed with "harmful use of cannabinoids". Dmitry was placed under preventive observation. During the court-ordered forensic psychiatric examination at the Serbsky Center (Moscow), the drug diagnosis was not confirmed. However, the expert opinion was ignored at the court hearing. The author analyzes the frequency and validity of the diagnosis of "harmful use of psychoactive substances" and concludes that the case of Dmitry A. may become a precedent.

Keywords: diagnosis of drug (addiction) disorders; harmful use of psychoactive substances; forensic psychiatric examination.

To cite this article:

Mendelevich VD. A casuistic case of ignoring an expert opinion by the court conclusions about the absence of drug use disorder diagnosis. *Neurology Bulletin*. 2024;56(1):15–21. DOI: <https://doi.org/10.17816/nb623306>

Received: 14.11.2023

Accepted: 18.11.2023

Published online: 18.03.2024

DOI: <https://doi.org/10.17816/nb623306>

Казуистический случай игнорирования судом экспертного заключения об отсутствии наркологического диагноза

В.Д. Менделевич

Казанский государственный медицинский университет, Казань, Россия

АННОТАЦИЯ

В статье приведён случай Дмитрия А., который был задержан на улице полицией по подозрению в употреблении каннабиноидов и направлен на медицинское освидетельствование на состояние опьянения, от которого отказался. Мировым судьёй Дмитрий был признан виновным, и ему вменили в обязанность пройти обследование в наркологическом диспансере. По результатам стационарного обследования, несмотря на отсутствие психических расстройств, соматических последствий эпизодического употребления каннабиноидов и отсутствие патологических изменений по данным лабораторных исследований, ему был выставлен диагноз «Пагубное употребление каннабиноидов с вредными последствиями». Дмитрий был взят под профилактическое наблюдение. В процессе назначенной судом судебно-психиатрической экспертизы в Центре Сербского наркологический диагноз не был подтверждён. Однако в судебном заседании заключение экспертов было проигнорировано. Автор анализирует частоту и обоснованность выставления диагноза «пагубное употребление психоактивных веществ с вредными последствиями» и делает вывод о том, что случай Дмитрия А. может стать прецедентным.

Ключевые слова: диагностика наркологических (аддиктивных) расстройств; пагубное употребление психоактивных веществ с вредными последствиями; судебно-психиатрическая экспертиза.

Как цитировать:

Менделевич В.Д. Казуистический случай игнорирования судом экспертного заключения об отсутствии наркологического диагноза // Неврологический вестник. 2024. Т. 56. Вып. 1. С. 15–21. DOI: <https://doi.org/10.17816/nb623306>

DOI: <https://doi.org/10.17816/nb623306>

Суд тарафыннан наркологик диагноз булмау турында эксперт нәтижәсен санга сукмауның казуистик очрагы

В.Д. Менделевич

Казан дәүләт медицина университеты, Казан, Рәсәй

Аннотация

Мәкаләдә Дмитрий А. очрагы китерелә, ул урамда полиция тарафыннан каннабиноидлар куллануда шикләнеләп тоткарлана, исерек хәлдә медицина тикшерүенә жибәрелә, эмма ул анда барудан баш тарта. Мировой судья тарафыннан Дмитрий гаепле дип таныла, аңа наркология диспансерында тикшеренү узуну мәжбүри итеп куялар. Стационар тикшерү нәтижәләре буенча, психик тайпылышлар, каннабиноидларны эпизодик куллануның соматик нәтижәләре һәм лаборатория тикшеренүләре мәгълүматлары буенча патологик үзгәрешләр булмавына карамастан, аңа «каннабиноидларны зарарлы нәтижәләр белән зарарлы куллану» диагнозы куела. Дмитрий профилактик күзәтү астына алына. Сербский Үзәгендә суд билгеләгән суд-психиатрия экспертизасы барышында наркологик диагноз расланмый. Эмма суд утырышында экспертларның нәтижәсе игътибарга алынмый. Автор «зыянлы нәтижәләр белән психоактив матдәләрне зарарлы куллану» диагнозы куюның ешлыгын һәм нигезлеген анализлап, Дмитрий А. очрагы прецедентлы булырга мөмкин дигән нәтижә ясый.

Төп сүзләр: наркологик (аддиктив) бозылуларны диагностикалау, зарарлы нәтижәләр китереп чыгаручы психоактив матдәләр куллану, суд-психиатрия экспертизасы.

Өземтәләр ясау өчен:

Менделевич В.Д. Суд тарафыннан наркологик диагноз булмау турында эксперт нәтижәсен санга сукмауның казуистик очрагы // Неврология хәбәрләре. 2024 Т. 56. Чыг. 1. С. 15–21. DOI: <https://doi.org/10.17816/nb623306>

Overdiagnosis in psychiatry is a common phenomenon leading to negative consequences for the patient and discrediting the scientific diagnostic process [1, 2]. Despite the fact that patients and their relatives often raise the question of revising a psychiatric diagnosis with doctors, for example, schizophrenia spectrum disorders to another non-schizophrenic pathology, this procedure is extremely rare in real practice [3], and the diagnosis of schizophrenia is usually not recognized as erroneous.

The medical and legal literature does not describe cases of successful litigation on the issue of cancellation or revision of psychiatric diagnoses, with the exception of repeated forensic psychiatric examinations and assessment of the validity of involuntary hospitalization, mental insanity, or the need for compulsory treatment. In comparison, issues of canceling narcological diagnoses and substance abuse registration (dispensary or preventive monitoring) are occasionally resolved in court. In most cases, decisions are not in favor of the plaintiff, and the diagnosis and registration are not canceled.

A precedent case of Dmitry, who was diagnosed with drug addiction and placed under preventive observation, is presented below. Subsequently, a court-ordered forensic psychiatric examination at the Serbsky Center rejected the diagnosis; however, the court ignored expert opinion.

Dmitry, 40 years old, filed a lawsuit against a drug abuse clinic to declare illegal the actions of registering with a narcologist with a diagnosis of "harmful use of cannabinoids".

Anamnesis vitae. Heredity is not psychopathologically aggravated. The patient was born into a couple family, being the eldest of two children. He grew and developed normally according to age standards. He attended preschool institutions. He began studying at school at age 6, achieved "good" and "excellent" grades, and had an interest in the STEM disciplines and English language. He graduated from 11 years of secondary school and art school. He played the guitar and was interested in singing. He graduated from the university with a degree in cybernetics and computer science. He did not serve in the army as he studied at the military department at the university. He is a reserve officer. After graduating from the university, he worked as a laboratory assistant at the department and then as an IT engineer for 3 years in a bank and in private companies. He had a second higher education with a degree in English translator. He is married and has no children. He studies singing, composes music, and performs in a musical band.

In September 2022, early in the morning, he was detained by police officers on the street for "signs of drug intoxication". He refused to undergo a medical examination, citing the fact that he was "scared". He explained that he and his wife were walking around the city, waiting for a fast-food restaurant to open. At this time, police officers approached him and asked him to undergo a medical examination.

He was brought to administrative responsibility under Art. 6.9, part 1, of the Code of the Russian Federation on

Administrative Violations [failure to comply with the legal requirement of an authorized official to undergo a medical examination for intoxication by a citizen in respect of whom there are reasonable grounds to believe that he used narcotic drugs or psychotropic substances without a doctor's prescription or new potentially dangerous psychoactive substances (PAS)].

The magistrate judge found him guilty. Dmitry was subject to a fine of 4,000 rubles and was required to undergo diagnostics, preventive measures, drug addiction treatment, and/or medical and/or social rehabilitation at the drug abuse clinic at the region of registration within one calendar month after the decision entered into legal force, in connection with the use of narcotic drugs or psychotropic substances without a doctor's prescription.

In October 2022, in accordance with the decision of the magistrate judge, Dmitry visited a narcologist, did not complain, and categorically denied using drugs, including on the day he was imposed of administrative sanctions. During an examination by narcologists, Dmitry was given a preliminary narcological diagnosis and was referred for an inpatient examination to a narcological clinic, where he stayed for 1 week and a half.

Dmitry made no complaints. He said that he tried alcoholic drinks at age 15, drank strong alcohol and preferred tequila, and tried marijuana several times in his youth. In recent years, he had been using it occasionally (once every 3 months) without behavioral or mental state changes. He denied the use of other PASs. He drank alcohol a week before hospitalization (about 1 liter of beer).

In the department, his consciousness was clear, and orientation of all types was preserved. He was calm and stable in the Romberg position. He did not violate the rules of the department and did not communicate with drug addicts. *During the medical commission, he denied the use of PASs, which the doctors considered a "concealment of drug history". Based on the experimental psychological examination results, "a hyperthymic personality type, decreased social adaptation, and an attitude toward concealing socially unacceptable forms of behavior" were identified; however, the risk of using PASs appeared low.*

He was consulted by a neurologist and a therapist; no pathology was identified. Chemical-toxicological study revealed no narcotic or psychotropic substances, liver function tests showed no pathology, and CDT protein marker level (analysis of the quantitative determination of carbohydrate-deficient transferrin isoforms) was within the physiological norm. Despite this, the medical board stated that *"based on the medical history, the conclusion of a psychologist, and the materials of the decision, a diagnosis of harmful use of cannabinoids with detrimental consequences for health was established"*.

Dmitry was discharged from the department and, based on the conclusion of the medical board, was taken under preventive followup at a narcological clinic with the

requirement of a monthly visit to a narcologist. For 6 months, he visited a narcologist monthly and took tests for the presence of drugs in biological fluids. The test results were negative, and no psychopathological symptoms were detected.

Six months later, Dmitry filed an administrative claim with the district court to declare the substance abuse registration illegal, indicating that he did not agree with either the diagnosis or “substance abuse registration”.

At the request of the lawyer, we conducted a clinical, psychopathological, and narcological examination of Dmitry and analyzed the medical documentation, based on which he was diagnosed with harmful cannabinoid use with detrimental consequences.

The examination and analysis indicated that Dmitry showed no signs of dependence on PASs, including cannabinoids, and that his use of PASs was episodic in nature and not accompanied by harmful consequences in either the somatic or mental aspect.

We regarded the conclusion of the medical board from the narcological clinic that the mental consequences were confirmed by the psychologist’s conclusion that the subject, based on the results of an experimental psychological examination, “concealed socially unacceptable forms of behavior and deceit” as erroneous. Notably, this could not justify the presence of harmful mental consequences in Dmitry. Additionally, the conclusion had no data on harmful somatic consequences of episodic use of PASs; in particular, he had no confirmation of diseases of the liver, heart, and other organs. In the trial, representatives of the narcological clinic defended the validity of the diagnosis and appointment of preventive registration.

Owing to the ambiguity of the testimony and diametrically opposed conclusions about the drug addiction diagnosis of Dmitry made by a medical board, the lawyer filed a petition with the court to order a forensic psychiatric examination at the V.P. Serbsky National Medical Research Center for Psychiatry and Narcology. The following questions were posed to the experts.

1. Have the diagnostic criteria for the diagnosis of harmful use of cannabinoids with detrimental consequences for health (F12.1) been identified in the examinee [4]?

2. Did he show signs of physical and mental detrimental consequences associated with single use of PASs?

3. Did the psychological examination data meet the diagnostic criteria according to the International Classification of Diseases, 10th Revision (ICD-10), for the diagnosis of detrimental consequences, or did this require the detection of clinical psychopathological syndromes?

Based on the results of the examination at the Serbsky Center, it was concluded that the examinee did not have clinical signs that corresponded to the diagnostic criteria for the diagnosis of harmful use of cannabinoids with detrimental consequences, no mental or somatic consequences associated with a single use of PASs was detected in him, and

the diagnosis of harmful use of cannabinoids with detrimental consequences should be made using medical rather than psychological criteria.

During the next court hearing, a specialist (a psychiatrist professor) invited by the defendant did not agree with the opinion of experts from the Serbsky Center and expressed the opinion that Dmitry had diagnostic criteria for the detrimental consequences of using PASs. He reported that “*the fact that Dmitry A. and his wife wanted to eat [spelling unedited] at 4 in the morning is diagnosed as a symptom of jet lag and eating behavior, which is a symptom of the harmful consequences of using PASs*”. Based on the results of a survey by a specialist, the judge refused Dmitry’s claim.

The case of Dmitry can be considered a precedent and reflects a widespread trend of overdiagnosis of some drug addiction diagnoses. According to the official statistics of Russia for 2020 [5], 43,900 patients diagnosed with alcohol addiction were taken under followup, and 26,700 patients (almost 2 times less) were diagnosed with harmful alcohol use. Moreover, 12,600 patients with drug addiction were placed under preventive registration (observation) in the same year, which was 2 times less than with harmful use of narcotic drugs (24,600). A similar trend was reported in Germany [6].

Thus, most of the patients under the followup of narcologists had substance dependence disorder that was prenosological in nature. Furthermore, in Russia, these patients are required to be monitored in drug addiction institutions and undergo treatment under the dynamic control of the use of PASs. Such patients have lost their rights; their rights to drive, study, and work are limited. Thus, it can be assumed that overdiagnosis of harmful use of psychoactive substances with detrimental consequences is widespread [7].

An analysis of the grounds used to make this diagnosis reveals that diagnostic algorithms are violated and incorrect interpretations are used as diagnostic criteria. In accordance with the ICD-10 criteria, what is considered significant is not the fact that “the use of a substance is criticized by others”, but the fact that it actually leads to negative consequences, namely, harm to health. In this case, a person must not only have any somatic or mental disorders registered, but also the relationship between their occurrence and PAS use should be proven [7].

The clinical recommendations of the Russian Society of Psychiatrists for diagnostics and treatment of “harmful use of PASs with detrimental consequences”, approved by the Ministry of Health of Russia, state that this diagnosis can be established if the following diagnostic criteria are detected [4]:

1. PAS use has caused (or significantly aggravated) physical or mental harm to the patient, including impaired judgment or dysfunctional behavior.

2. PAS use may cause disability or have adverse effects on interpersonal relationships.

3. The cause of harm must be the use of PASs.

4. The pattern of PAS use persisted for at least 1 month or repeated periodically for 12 months.

5. The disorder does not meet the criteria for any other mental or behavioral disorder associated with the use of the same PAS during the same time period (except acute intoxication).

Notably, the diagnostic criteria do not mention any eating disorder in the form of the appearance of appetite in the early morning hours.

It is especially noted that when diagnosing physical and mental damage to health, it should be considered that acute intoxication is not sufficient evidence of harm to health, which is crucial to establish such a diagnosis. In cases of harmful

use of cannabinoids, cardiovascular, neurological, or other clinical consequences should be recorded [4].

ICD-10 states that the use of PASs causes disapproval from another person or society as a whole or can lead to socially negative consequences, such as arrest or divorce, is not yet evidence of harmful use of PASs with detrimental consequences [8–10].

An analysis of the case of Dmitry demonstrated that narcologists ignored strict diagnostic criteria when making this diagnosis, which should be recognized as a gross violation of the psychiatric (narcological) diagnostic procedure. Moreover, it should be recognized as paradoxical that the judge ignored the expert opinion.

ADDITIONAL INFORMATION

Funding source. This article was not supported by any external sources of funding.

Competing interests. The author declares that they have no competing interests.

ДОПОЛНИТЕЛЬНАЯ ИНФОРМАЦИЯ

Источник финансирования. Автор заявляет об отсутствии внешнего финансирования при написании статьи.

Конфликт интересов. Автор декларирует отсутствие явных и потенциальных конфликтов интересов, связанных с публикацией настоящей статьи.

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AUTHOR INFORMATION

Vladimir D. Mendelevich, MD, Dr. Sci. (Med.), Professor,
Head of the Depart.;
address: 49 Butlerova street, 420012, Kazan, Russia;
ORCID: 0000-0002-8476-6083;
eLibrary SPIN: 2302-2590;
e-mail: mendelevich_vl@mail.ru

ОБ АВТОРЕ

Менделевич Владимир Давыдович, д-р мед. наук,
профессор, зав. каф.;
адрес: Россия, 420012, Казань, Бутлерова, 49;
ORCID: 0000-0002-8476-6083;
eLibrary SPIN: 2302-2590;
e-mail: mendelevich_vl@mail.ru