

THE INFLUENCE OF HUMAN RIGHTS ON ACCESS TO PUBLIC HEALTHCARE SERVICES

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Abstract: The cases regarding the violation of humans' rights by medical personnel haven't been approached and evaluated too incisively in the past years. The cases are sporadically presented and the various situations can be considered serious violations of human rights that make for negative publicity and can affect professional image.

Cuvinte cheie: drepturile omului, serviciu public de sănătate

Rezumat: Cazurile de încălcare a drepturilor omului de către personalul medico-sanitar nu sunt abordate și evaluate prea incisive în ultimii ani. Cazurile sunt prezentate sporadic, situațiile putând fi descrise ca violări serioase ale drepturilor omului care provoacă o publicitate negativă și aduce atingeri imaginii profesiei.

The cases regarding the violation of humans' rights by medical personnel haven't been approached and evaluated too incisively in the past years. The cases are sporadically presented and the various situations can be considered serious violations of human rights that make for negative publicity and can affect professional image.

In these situations, stakeholders' reactions usually are limited to consequences on the image of the respective profession, rather than those on the patients' health. The case of a surgeon mutilating his patient on the operating table will be treated accordingly. But it is unlikely that professional organizations and stakeholders in the field of healthcare sanction a doctor who, regardless of medical reasons, treats patients in similar situations differently, although this behavior is a clear form of discrimination and a blatant violation of patients' rights.

This is an abnormal situation where professional organizations and public health authorities ignore certain principles that are stated both in the international and internal legislation. The principles refer to:

1. Respect for the patient
2. Confidentiality and special concern for specific conditions of certain patient categories
3. The patient's right to be informed
4. The patient's consent regarding medical procedures

1. Respect for the patient
Medical personnel need to treat the patient with respect regardless of his race, ethnicity, social statute, age, sex, religion, etc. The patient's health needs to be the main preoccupation for medical/social personnel and personal convictions must have no influence on the medical act itself if they come against the patient's rights.

2. Confidentiality and special concern for specific conditions of certain patient categories

The information obtained from a patient during the course of consults or home visits is strictly confidential and medical personnel

The information obtained from patients in the course of consults or home visits is strictly confidential and medical personnel need to consider the special conditions in the case of various patient categories i.e. children, adolescents, people belonging to certain ethnic minorities, etc.

It is useful to know that young Roma girls are married by the time they are teenagers. Girls need to give up school and learn to become wives and mothers - an example of gender discrimination. Medical personnel need to learn to gain the trust of young Roma women; it is also important to know that teenagers in general are reticent in offering information regarding their sexual health. A critical attitude should be avoided; it is useless and may determine the patients to withhold key pieces of information fearing that their right to doctor-patient confidentiality will be violated. Judging a patient means discouraging him from coming to see a doctor in the future.

3. A patient's right to be informed

Patients have the right to receive all the information regarding their state of health, diagnosis, and treatment. Patients need to receive this information whether they request it or not, in an accessible manner to facilitate a better understanding. Only in special cases when the doctor has reason to believe that receiving certain information may affect the patient's state of health, he can withhold it and look for another solution. The information can be withheld indefinitely or can be disclosed only when the context permits it. Medical personnel need to inform the patient with regards to the various side effects of a treatment and any error made in the course of the investigations or treatment.

4. The patient's consent for medical procedures

The treatment, as any other type of medical intervention, requires the free consent of an informed patient.

The medical personnel need to provide all the information that could help the patient decide whether to accept a treatment option, or to express his right to choose between several options, if they exist.

The patient needs to be informed regarding the

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expected results of the treatment and the eventual risks it may imply. The patient can opt to renounce the treatment at any time and the medical personnel must respect his decision to do so. The physician can try to convince the patient as to the benefits of continuing the treatment but mustn't, under any circumstances, exceedingly pressure the patient to make him accept a certain treatment or medical intervention.

Medical personnel need to take into account the fact that the patient's decision can be influenced by others' opinion, such as family or members of his community. In these situations, the patient needs to be encouraged to make the decision for himself. For example, in the case of young, married Roma women, the male head of the family or relatives often make decisions regarding the treatment.

Medical personnel need to consider the fact that the refusal to accept a certain treatment option, especially if it implies hospitalization, is often because patients don't want to be away from their families and deal with the not-so-satisfactory conditions in Romanian hospitals. That is why it is often necessary to have a more flexible approach and let the family members take turns in spending time with the hospitalized patient.

When, for various reasons, the patient is incapable of understanding the nature of the treatment and its consequences, medical personnel need to make a decision taking into account the patient's best interests concerning his health.

Parents or legal tutors generally decide for minors. If, for various religious or conscience-related reasons, they refuse to allow certain medical procedures that can save the child's life, medical personnel need to act in the patient's best interest.

LEGAL ASPECTS REGARDING FUNDAMENTAL HUMAN AND PATIENT RIGHTS - PRESENTATION, PRINCIPLES, DEFINITIONS, APPLICATIONS

1. The law for patient rights no.46/2003

The law defines the concept of a patient, it states his/her general rights in the relationship with medical personnel for protecting these rights and the sanctions that are to be given should the medical personnel violate these rights.

Principles: the patients have a right to receive medical care; the patients have the right to be respected as human beings, with no discrimination.

The law defines the concepts of: patient, discrimination, healthcare, medical intervention, terminal care.

This law applies for anybody who benefits from medical services, and who should benefit from healthcare, interventions or terminal care regardless of race, ethnicity, sex, age, social statute, religion, or political ideas.

The law offers the patient the following rights:

- The right to receive medical information (state of health, procedures, potential risks, alternative options, diagnosis)
- The right to refuse or interrupt any medical procedure and take responsibility for the decision
- The right to confidentiality regarding information about the patient's state of health, the result of investigations, the diagnosis, treatment, and also personal data
- Rights in the field of reproductive health: the right to receive information, education and services necessary for developing a normal, healthy sexual life, with no discrimination; a woman's right to decide whether to give birth or not, except cases where pregnancy is a major and immediate risk threatening the mother's life; the right to choose the safest methods regarding reproductive health; the right to benefit from safe, risk-free family planning methods.
- The right to treatment and medical care: the right to emergency medical and dental care and continuous

pharmaceutical services; the right to choose between different treatment options based on medical criteria; the right to receive medical care from an accredited physician outside the hospital; the right to continuous healthcare until the improvement of the condition or healing; the right to community services following discharge from the hospital.

The law reiterates general principles found in the international UN conventions (the international pact regarding economic, social and cultural rights; the international convention concerning the elimination of all forms of racial discrimination, the international convention regarding eliminating all forms of discrimination against women), but also European instruments: The Social European Act of the Council of Europe or the EU Act for Fundamental Rights.

The law is applied by medical personnel on a national level, in all public and private health units, including hospitals. Not respecting the law draws disciplinary or even legal action. Healthcare providers are required to clearly display their standards in conformity with the present regulations. Authorities are required to publish annual reports about how the patients' rights are being respected and compare the situations in different regions of the country.

Professional medical associations (The Medical College, The Order of Nurses and Midwives in Romania) are attributed the responsibility of ensuring that the law is applied and that medical personnel fulfill their obligation towards the patients. These professional associations control and supervise how medical personnel carry out their job, regardless of the nature of the service or unit where it is provided, and also ensures that various specific regulations are respected. They judge all cases in which rules referring to professional ethics, medical deontology and professional activity are broken, as a professional jurisdiction authority.

For the law to be applied effectively, the medical personnel must first become familiar with patients' rights. Adequate equipment and accredited personnel must be ensured. Upon the patient's request, the care/treatment environment must be moved as close as possible to the family environment. Community nurses and health mediators have an important role in facilitating communication between disadvantaged categories of the population (such as Roma ethnics) and medical personnel. Family doctors also play a key part in establishing contact with the community and providing necessary information. Public health authorities establish contacts between healthcare units and the community being assisted by the community nurse/health mediator.

2. The European Convention on Human Rights

The ECHR is an international and regional instrument that establishes an international system for protecting human rights; it offers individuals the possibility to stand up for their rights and, if all else fails on an internal level, address the European Court for Human Rights in Strasbourg. The convention states the following:

- the right to life (article 2)
- the right to freedom (article 5)
- the right to a fair trial (article 6)
- the right to respect for one's private and family life (article 8)
- the right to freedom of expression (article 10)
- the ability to benefit from these rights without discrimination (article 14)

Here, the convention refers to discrimination regarding "sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." This list of criteria is not, however, complete. For the time being, article no.14 is

limited to the rights protected by the convention. Any individual who has had any of the rights in the convention violated can address the European Court for Human Rights.

3. The European Social Act

The act is an instrument that guarantees a series of social and economic rights (the right to healthcare, education, work and the right to not be discriminated), and also establishes an instrument to oversee and apply its provisions. It is based on the following principles:

- the protection of minors and mothers
- the right to protect one's health
- the right to social security
- the right to social and medical assistance
- prohibition of discrimination

4. The European Union Act for Fundamental Rights - 2000

The act speaks of civil, political, economic and social rights for European citizens. The main principles of this European instrument are:

- prohibition of discrimination
- the right to social security and social assistance
- the right to medical services

This act has no legal power at this time, but may obtain it in the near future if the European Constitution will be applied.

The act is based on community treaties, international conventions, The European Convention on Human Rights of 1950, the European Social Act of 1989, the constitutions of member states and various declarations of the European Parliament.

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