

PATIENTS' RIGHTS CORRELATIVE OBLIGATIONS – POINTS OF VIEW

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Abstract: *This paper analyzes the main regulatory documents regarding doctor-patient relationship, by using a new approach, centered on the patients' obligations. The range of these correlative obligations is vast, including the ethical rules observable by health care providers, social-type obligations that must be assumed by the state, but also obligations to be observed by the patients themselves. Although current legislation lays emphasis on patients' rights and the ways in which they should be protected, a careful reading shows that some patients' obligations are legally established and these obligations are to be observed by the patients in order to be able to benefit from their rights.*

Cuvinte cheie: *deontologie, drepturile pacienților, obligații correlative*

Rezumat: *Lucrarea analizează principalele acte normative incidente în domeniul relației medic-pacient, utilizând o inedită abordare centrată pe obligațiile pacienților. Sfera obligațiilor correlative drepturilor pacienților este vastă, incluzând regulile deontologice pe care trebuie să le respecte furnizorii de servicii de sănătate, obligațiile de tip social care trebuie să și le asume statul, dar și cele care trebuie respectate de către înșiși pacienții. Deși legislația actuală pune accentul pe drepturile pacienților și pe modalitățile prin care acestea trebuie protejate, o lectură atentă ne arată că există o consacrare legală și a obligațiilor care trebuie respectate de către pacienți pentru a putea beneficia de aceste drepturi.*

The doctor-patient relationship has known a continuous transformation during recent times, from a relationship of “subordination”, of dependency on the doctor, on behalf of the patient (a *paternalistic type of relationship*), to one of *equality, collaboration, to a partnership kind of relationship*. In light of this new form of rapport, it was *necessary that a statement of the patients' rights (and their definition within the appropriate legislative documents) be created*. A first step in this direction was the development of the “Declaration for the promotion of patient rights in Europe” (in 1994 in Amsterdam - Holland) under aegis of Regional European Office of the World Health Organization. A number of 36 European countries, including Romania, adhered to the principles of this declaration. The main topics this document refers to were: human rights and values in health care, the right to information, the informed consent (as a mandatory prerequisite for any medical intervention), the right to confidentiality and the right to quality care and treatment, without any discrimination. At a later time (in Bali, September of 1995), The World Health Organization adopted a “Declaration on the patients' rights”, bearing a global, universal character. The policy to promote patient rights has been accomplished in Romania, by the development of the Law concerning patients' rights (Law no. 46/21st of January 2003).⁽¹⁾ Subsequently this law was supplemented with specific rules concerning their putting into practice, by an Order of the Ministry of Health (no. 386/2004), which provides specific obligations for health institutes regarding the need to respect the patient rights provided by law. The Patients' Rights Law no. 46/2003 stipulates the right to *medical information* and contains provisions referring to the *patient's consent regarding medical intervention*. It also considers the right to *confidentiality of information and personal life*, the patient's rights concerning *reproduction*, as well as the *patient's rights to treatment and medical care*. The importance of recognizing these rights (especially concerning the necessity of gaining an informed

consent) is highlighted by the case presented below, which actually occurred:^(2,3)

A 72-year-old male farmer with three children had been suffering from colon cancer. He described his illness as a “mass in the intestine”, but he did not know what kind of treatment modality would be used. The day after the surgery, the assistant surgeon on duty visited the patient for routine inspection and treatment of the surgical wound. The patient, expecting to see a closed wound, was scared when he saw the opening of his colostomy. He asked the surgeon about “the hole in his abdomen”. The surgeon, in a serious manner, replied: “The end of the intestine that was operated on was sutured to your abdomen. You are now to defecate through this hole and into the bag that I will place at the end of it.” Surprised and angered by the response, the patient asked: “Whom did you asked before opening that hole?” The surgeon told the patient that they had informed his son about the procedure. The patient shouted in anger: “Who was to be operated on and have a hole in his abdomen? Is it me or my son? How dare you perform that without asking me? I will sue all of you!” The surgeon, unprepared for such a reaction, slowly started to explain the reason why colostomy had been performed and referred to the patient's disease as a “bad” one. After the explanation, the patient said: “If you had told me this earlier, I would not have shouted at you. I am not that illiterate, you know! I could understand.” Conf. Dr. Nermin Ersoy, Turkey.

It should be noted that these rights also hold *correlative obligations*. The implementation of these rights requires on the one hand a *well defined ethical attitude on behalf of the medical staff*; these rules of professional ethics can be found in the *deontological codes* of physicians, dentists and nurses. On the other hand, however, the existence of these patient rights correlates (or should correlate) to *certain responsibilities borne by the patients*, as for example the self care obligation (to maintain hygiene), the therapeutic

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compliance obligation, compliance with medical recommendations, submission to regular checkups, the requirement to have a decent attitude towards the medical staff etc. The patients also have *rights in their quality of policyholders* within the national health and social care system (Law no. 95/2006, title VIII):(4)

Article no. 217

The policyholders are entitled to a *basic services package* established under the annually elaborated *frame-contract*.

Article no. 218

(1) The policyholders benefit from *the basic services package in case of illness or accident, starting with the first day of illness or with the date of the accident, up until their recovery*, under the conditions laid down by current law.

(2) The policyholders have the following *rights*:

- a. *to choose their healthcare provider*, as well as their health insurance, under the conditions laid down by current law and provided in the frame-contract;
- b. *to be registered with a family doctor* on their demand, should they meet all requirements under current law, assuming the incurring transportation costs, if the doctor they chose resides in another city;
- c. *to change their chosen family doctor* only after the passing of at least 6 months from the date of their registration on the doctor's lists;
- d. *to benefit without discrimination from medical services, medicine, medical supplies and medical devices*, under the law;
- e. *to carry out preventive checkups*, under the conditions of the frame-contract;
- f. *to benefit from preventive healthcare and health promotions*, including for the purpose of early disease detection;
- g. *to benefit from the ambulatory and hospital medical services*, having a contractual agreement with the health insurance funds;
- h. *to receive emergency medical services*;
- i. *to receive some dental care services*;
- j. *to receive physiotherapy and recovery therapy*;
- k. *to benefit from medical devices*;
- l. *to receive health care services at home*;
- m. *to have the confidentiality regarding personal information ensured*, especially with regards to diagnosis and treatment;
- n. *to have the right to information* regarding medical treatment;
- o. *to benefit from the vacations and health insurance benefits*, under law.

Article no. 220

The persons who *are unable to prove their insurance* benefit from medical services only in case of *medical-surgical emergencies* and in the case of *potentially endemic-epidemic diseases*, as well as in those cases under *The national immunization program, pregnancy and child birth monitoring and family planning services* as stipulated under art. 223, within a *minimal medical services package*, established by the frame-contract. But patients also have *correlative obligations* in their quality of policyholders (4):

Article no. 219

The obligations of the policyholders to be able to benefit from the rights under article 218 are as follows:

- a. *to register under a family doctor*;
- b. *to notify the general practitioner* any time they experience *changes in their health*;
- c. *to submit to the periodic and preventive checkups* set in the frame-contract;

- d. *to notify the doctor and the health insurance fund* within 15 days about any changes occurring in their personal ID data and about changes regarding their enrollment in a certain class of policyholders;
- e. *to strictly comply with the doctor's indications and treatment*;
- f. *to have a civilized conduct towards healthcare personnel*;
- g. *to pay the due fund contribution and the co-payment amount*, under the terms of the frame-contract;
- h. *to submit to the healthcare providers the documents attesting their quality of policyholders*.

We insist on the *mutual respect conduct* owed on the one hand by the doctor – the healthcare providers in general (stipulated under the provisions of the specific ethics) and on the respect owed by the patient, on the other. A *civilized patient conduct* allows for optimum collaboration with the medical staff in order to achieve the common goal: the patient's health. Conversely, *if the patient does not meet this minimum requirement*, which (we think) is common sense, *the doctor is granted the legal right to discontinue the professional relationship with the patient*:(4)

Article no. 653 (Law no. 95/2006, title XV)

(1) If the doctor, dentist, nurse, midwife accepted the patient, the professional relationship may be discontinued:

- a) if the disease is cured;
- b) by the patient;
- c) by the doctor, in the following situations:
 - (i) *when the patient is sent to another doctor*, provided he/she communicates all medical data and by justifying the assistance of another doctor with enhanced skills;
 - (ii) *the patient manifests a hostile/ irreverent attitude towards the doctor*.

Moreover, failure to comply with their obligations, on behalf of the patient, may attract other legal consequences. The most significant example would be *the sanctioning of therapeutic noncompliance* as stipulated under Law no. 95/2006 title XII (4):

Article no. 376

1. Except in cases of force majeure, cases of emergency or when the patient's family, legal or appointed representatives are unable to express their will and consent, the doctor will act according to the will of the patient and according to the patient's right to refuse or to stop any medical intervention.
2. *Medical responsibility ceases when the patient does not comply with the prescription or medical advice*.

Though many obligations are not explicitly found within the legislation, *compliance on behalf of the patients* (and obviously on behalf of the doctors themselves) *with a minimal set of moral rules and rules of conduct represents an essential factor in creating a healthy relationship, based on mutual trust, between the patients and the medical staff*.

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