

Chapter 58

Patients' Rights and Medical Personnel Duties in the Field of Hospital Care

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ABSTRACT

The aim of this chapter is to describe selected universal rights of the patient. The authors specify the seven types of patient rights: the right to appropriate organization of treatment on equal terms, the right to respect patient's dignity and privacy, the right to full and comprehensible information on the state of health, the right of access to medical documentation, the right to self-determination - to agree to provide health care services, the right to respect for private and family life and religion and the right to seek compensation and other benefits in the event of damage to the result of medical malpractice. This classification is the basis to discuss the specifics of each of them with reference to specific examples of their implementation or violations. The chapter specifically addresses the issues such as the obligation to inform the patient of the medical procedure, the legal conditions for the effectiveness of consent to treatment and the principle of access to medical documentation. Presentation of patients' rights is made from the perspective of fulfilling the duties of medical personnel working in hospitals. The authors make extensive use of current case law of the European Court of Human Rights. The undeniable advantage of the publication is to present selected theses of Polish court rulings issued in cases of violation of patient rights.

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INTRODUCTION

The Concept and the Source of the Patient's Rights

In the literature we can find the statement that patients' rights are an integral part and concretization of wider human rights and are a consequence of the evolution that took place in the twentieth century in the field of these rights. This fundamental rights increase from a common sense of threat subjective rights and the dignity of the human person (G. Iwanowicz-Palus, 2000).

In the 70s there were opinions criticizing the privileged position of the medical community in making most of the decisions affecting the way of organizing health care. It was thought that it is necessary to change the situation by weakening the position of the doctors and strengthening the position of the patient. Then also began to appear the concept of patient rights. Sometimes the transition to patient rights was seen as an attack on the power providers, leading to resistance and protests. With time, however, all interested parties have started to realize that this way of shaping the relationship is the only possible (D. Karkowska, 2012).

As a source of patients' rights generally the Universal Declaration of Human Rights is indicated. It is noted that the patient's rights were at "the inherent dignity" and the "equal and unalienable rights of all members of the human family". World Health Organization indicates that patients' rights vary in different countries and in different jurisdictions, often depending on the prevailing cultural and social norms. Different models of the patient-physician relationship—which can also represent the citizen-state relationship—have been developed, and these have informed the particular rights to which patients are entitled. In North America and Europe, for instance, there are at least four models which depict this relationship: the paternalistic model, the informative model, the interpretive model, and the deliberative model. Each of these suggests different professional obligations of the physician towards the patient. For instance, in the paternalistic model, the best interests of the patient, as judged by the clinical expert, are valued above the provision of comprehensive medical information and decision-making power to the patient. The informative model, by contrast, sees the patient as a consumer who is in the best position to judge what is in their own interest, and thus views the doctor chiefly as a provider of information. There continues to be an enormous debate about how to conceive of this relationship best, but there is also a growing international consensus that all patients have a fundamental right to privacy, to the confidentiality of their medical information, to consent to or to refuse treatment, and to be informed about the relevant risk to them of medical procedures (see <http://www.who.int/genomics/public/patientrights/en/>).

The literature emphasizes that the modern concept of patient's rights is based on the values that presented in 1994 by WHO in the document called *Declaration on the Promotion of Patients' Rights in Europe* and prepared in 2002 by the organization Active Citizenship Network (European non-governmental civic organizations) document called *the European Charter of Patients' Right*. These acts refer to the laws dedicated to the protection of basic human and civil rights. In the field of international and European law sources of patients' rights are especially the International Covenant on Civil and Political Rights, the European Convention on the Protection of Human Rights and Fundamental Freedoms and the European Social Charter. This thesis is confirmed by extensive case law of the European Court of Human Rights given in cases of human rights violations in terms of treatment. At national level, one of the first European countries that have adopted the regulation of the issue, was France. Currently, the EU Member States that regulate the patient's rights issues in an act include: Finland (1992), The Netherlands (1994), Greece, Hungary, Lithuania, Latvia and Portugal (1997), Denmark (1998), Belgium and

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