

**ЗАБЕЗПЕЧЕННЯ ПРАВ ЛЮДИНИ ЧЕТВЕРТОГО
ПОКОЛІННЯ У СИСТЕМІ ОХОРОНИ ЗДОРОВ'Я:
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ENSURING THE HUMAN RIGHTS OF THE FOURTH
GENERATION IN THE HEALTH CARE SYSTEM:

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МАТЕРІАЛИ НАДАННЯ СЛУЖБИ ДОДАТКОВОЇ МЕДИЦИНСЬКОЇ ДОПОМОГИ

RIGHTS OF PATIENTS AND POSSIBILITIES OF LEGAL PROTECTION IN THE AREA OF HEALTHCARE SERVICES IN HUNGARY^{1,2}

I. Introduction

The aim of the first part of my paper is to demonstrate a comprehensive, focused review on the rights of the patients in connection with healthcare services. The knowledge of these is fundamentally important for the citizens and the people who work in healthcare too. The CLIV Act of 1997 regulates the following rights and obligations, this is the second Health Act, which has refused the paternal rights and ancestor from 1972 and has handled the patients as equals with the healers through the comprehensive catalogue of the rights of the patients.³

The second part of the research is strictly connected to the information to the patient. The main aim is to demonstrate the most important possibilities in Hungary – in the area of legal protection and in the area of enforcing claims – in case of breaching the rights of the patients to examine the problems or to claim material compensation. Unlike the rights of the patients – the regulation is in one act – the possibilities of legal protection have a fragmented regulation, many laws of many legal areas regulate them, their system is complicated, so collecting them is necessary.

II. Rights of patients

1. Right to healthcare

One of the main contents of this right is the appropriate healthcare justified by the patient's health condition. Healthcare shall be considered proper if delivered in compliance with the professional and ethical rules, and practice guidelines relating to the specific healthcare service.⁴ Important requirement in connection with healthcare is to be continuously accessible (24 hours a day), and shall be free from discrimination.

Each patient has a right to receive emergency, life saving care to prevent impairment to health, as well as to have his pain controlled and his suffering relieved.

The right to healthcare affords patient the possibility of choosing his attending physician (with some restriction of legal rules), and if put on a waiting list, the patient shall be informed of the reason and the expected duration of waiting.⁵

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³ Jobbágyi Gábor, Orvosi jog- Hippokratésztől a klónozásig, Szent István Társulat, Budapest, 2014, 52.

⁴ Health Act 6. §

⁵ Dósa Ágnes- Hanti Péter- Kovácsy Zsombor, Kommentár az egészségügyi törvényhez, Wolters Kluwer, Budapest, 2016, 30.

2. Right to human dignity

The patient's human dignity shall be respected in the course of healthcare.⁶ In order to prove this, it is necessary that the patient may be restricted in exercising his rights and personal freedom in case of emergency, or in the interest of protecting the life, physical safety and health of the patient and others. Torture, and other cruel, inhuman or degrading prohibitive methods or punishments are forbidden. Restriction may only last as long as the cause for which it was ordered still exists.⁷ An important content of this right is that the patient only can be made to wait on grounds and for a duration which are reasonable. For protection of patient's modesty, his clothing may only be removed for necessary time and to the professionally justified extent.

3. Right to have a contact

Right to have a contact is very important for the comfort of the patient. He can keep contact with other persons, either in writing or verbally (included the representative of the church), and to receive visitors, furthermore he can exclude certain persons from visiting.⁸ The patient has the opportunity to forbid that the fact of his treatment or any other information related to his treatment to be disclosed to other persons. Moreover, some patients have extra rights because of their age, or special state. So a minor patient has a right to have his parent, legal representative, or a person designated by him or by his legal representative stay with him, and a patient in severe condition has the possibility to have the person designated by him stay with him. A woman in childbirth shall have a right to designate a person of age to stay with her continuously during labour and delivery, and after delivery, to have her new-born baby placed in the same room with her.⁹ The limit of keeping contact with other persons is respecting the fellow-patient's rights and ensuring the undisturbed and smooth delivery of patient care.

4. Right to leave the healthcare institution

The patient is entitled to leave the healthcare facility, unless he threatens the physical safety or health of others by doing so.¹⁰ If the patient wants to go home, he has to inform his attending physician of his intention to leave. If the patient has left the healthcare institution without notification, the attending physician has to enter this fact in the patient's medical record, furthermore he shall notify the legal representative of a legally incapable patient or a patient with restricted disposing capacity, that the patient has left the healthcare facility. If the attending physician decided to discharge the patient, he has to inform the patient and his next of kin in advance, possibly at least 24 hours prior to such planned discharge.¹¹

⁶ Health Act 10. § (1) Subsection

⁷ Pogány Magdolna, A betegjogok szabályozása és gyakorlata, Szegedi Egyetemi Kiadó, Szeged, 2007, 45.

⁸ Health Act 11. § (2) Subsection

⁹ Kőszegfalvi Edit, Egészségügyi és betegjogi kézikönyv, KJK KERSZÖV, Budapest, 2001, 41.

¹⁰ Health Act 12. § (1) Subsection

¹¹ Hídvéginé Adorján Livia- Sáriné Simkó Ágnes, A betegek jogairól I., Medicina, Budapest, 2012, 46.

5. Right to information

The right to information has an accentuated importance in respect of making the decisions about the therapy and forming a proper lifestyle. The patient has a right to be informed an individualized form in a way which is comprehensible for him, with regard to his age, education, knowledge, state of mind and his wish expressed on the matter. Nevertheless it is an important requirement to inform the patient completely.¹² A patient with full disposing capacity may waive the right of being informed, except in cases when he must be aware of the nature of his illness in order not to endanger the health of others.¹³

The goal of the first step of informing that the patient has enough information to decide to consent to medical treatment. He has a right to receive detailed information about his state of health, including its medical evaluation, the recommended examinations and interventions, the possible benefits and risks of performing or not performing the recommended examinations and interventions, and the the possible alternative procedures and methods.¹⁴ After the informed consent during the therapy patient has the opportunity to get information about the course of care and the expected outcome, additional services, and the recommended lifestyle.

6. Right to self determination

Right to self determination and right to information are closely related patient's right, because adequate information is indispensable for self determination. Within the framework of exercising the right of self-determination, the patient is free to decide whether he wishes to use health care services, and which procedures to consent to or to refuse in the course of using such services.¹⁵ Invasive procedures shall be subject to the patient's written consent. A patient may, at any time, withdraw his consent given to the performance of a procedure. A person with full disposing capacity may have the right to name the person with full disposing capacity who shall be entitled to exercise the right to consent. If a patient has no, or limited disposing capacity, and there is no person entitled to make a statement, people set out by the Health Act can exercise the right to consent.¹⁶ The opinion of a patient with no disposing capacity or with limited disposing capacity shall be taken into account to the extent professionally possible also in cases where the right of consent and is exercised by others. The patient's consent shall not be required if failure to carry out the given intervention or action would seriously endanger the health or physical safety of others, furthermore if the patient's life is in direct danger.

¹² Health Act 13. § (1) Subsection

¹³ Sággy Mária, A megfelelő tájékoztatáshoz való jog megsértése, *Med et Jur*, 2017/4., 25.

¹⁴ Jobbágyi Gábor, Orvosi jog- Hippokratésztől a klónozásig, Szent István Társulat, Budapest, 2014, 56.

¹⁵ Health Act 15. § (2) Subsection

¹⁶ Kovácsy Zsombor (editor), *Az egészségügyi jog nagy kézikönyve*, Complex, Budapest, 2009, 441.

7. Right to refuse healthcare

Right to refuse healthcare is tightly related to self determination. Generally a patient with full disposing capacity shall have the right to refuse healthcare, unless its lack would endanger the lives or physical safety of others. Patient shall be required to refuse the provision of any care, the absence of which would be likely to result in serious or permanent impairment of his health, in a public deed or in a fully conclusive private deed, or in the case of inability to write, in the joint presence of two witnesses.¹⁷ There are special rules for refusing life-supporting and life-saving interventions. This is only possible in the case of the patient suffers from a serious illness which, according to the current state of medical science, will lead to death within a short period of time even with adequate health care, and is incurable. Refusal shall only be valid if a committee composed of three physicians has examined the patient and made an unanimous, written statement to the effect that the patient took his decision in full cognizance of its consequences, and the conditions have been satisfied. Furthermore, three days after the statement of the medical committee the patient has to declare repeatedly the intention of refusal in the presence of two witnesses.¹⁸

8. Right to become acquainted with the medical record

A patient has the right to become acquainted with the data contained in the medical record prepared on him, and has the right to request information on his health care data.¹⁹ He has the possibility of gaining access to the medical record and receiving copies thereof at his own expense, and initiating completion or correction of the medical record relating to him, that he deems to be inaccurate or incomplete. The patient has also the right to be given a discharge summary upon discharge from the healthcare institution.²⁰

9. Right to professional secrecy

The patients have the right to professional secrecy. Under this persons involved in his healthcare disclose his health care and personal data which they might learn in the course of delivering such care (medical secret) to those entitled thereto and to have them handle such data confidentially.²¹ The patient has the opportunity to make a statement as to who are to receive information on his illness and the expected outcome thereof and who are to be excluded from becoming partially or fully acquainted with his health care data. A patient shall have the right to have only those persons present during the course of his examination and medical treatment whose involvement is necessary in delivering such care, furthermore those persons

¹⁷ Health Act 20. § (2) Subsection

¹⁸ Dósa Ágnes- Hanti Péter- Kovácsy Zsombor, *Kommentár az egészségügyi törvényhez*, Wolters Kluwer, Budapest, 2016, 60.

¹⁹ Health Act 24. § (1) Subsection

²⁰ Dósa Ágnes- Hanti Péter- Kovácsy Zsombor, *Kommentár az egészségügyi törvényhez*, Wolters Kluwer, Budapest, 2016, 72.

²¹ Health Act 25. § (1) Subsection

to whose presence he has consented, unless otherwise provided by law. A patient has possibility to have his examination and treatment take place under circumstances whereby it cannot be seen or heard by others without his consent, unless this is unavoidable due to an emergency or critical situation.²²

III. Possibilities of legal protection and enforcing claims in the case of violation of the rights of the patients

1. Representatives of rights of patients

The representatives of rights of patients have begun to work in healthcare institutions after entry into force of the CLIV Act of 1997 (Health Act), in favour of following the observing of the rights from the act, and to help emerging the information to the patients and to help the claims.²³ There is a legal obligation for healthcare institutions to insert the name, the availability (phone number, e-mail address) and the time of the consulting hours of the representative.²⁴ The base of the activity of the representatives is that the patients visit them with their problems. The consultation and the connection are essential parts of their process.²⁵ There are many goals and effects of the consultation with the representative. In some cases, people ask for information in connection with their rights and possibilities of due process, or they make observations in connection with the services, or they complain. If the patient does not want to ask only for information, but he wants to complain or report a problem, the representative helps to access to the healthcare documents and to ask questions and make perceptions.²⁶ He gives a helping hand to handle the complaints in many ways, he listens to the claims, and offers the most competent forum to the patient.

Currently there are 23 representatives of rights of patients in Hungary and the following website gives us information about their availability:

<http://www.ijesz.hu/jogvedelmi-kepviselok-elerhetosegei.html>

2. Complaints towards the healthcare institution and the conservator

The Health Act gives the patients the opportunity to complain to the healthcare supplier in connection with the healthcare service. The institutional complaints settlements – as the name suggests – do not give a chance for examining irrespectively of the hospital, this works within the hospital, as the first and general opportunity for the injured patients.²⁷ The law orders the healthcare institutions to create the regulation on the procedural order of handling complaints. The healthcare service provider and its operator must examine the complaints in connection with the

²² Dósa Ágnes- Hanti Péter- Kovácsy Zsombor, *Kommentár az egészségügyi törvényhez*, Wolters Kluwer, Budapest, 2016, 87.

²³ Polecsák Mária (editor), *A betegek jogai*, Vince Kiadó, Budapest, 1999, 55.

²⁴ 381/2016 (XII. 2.) Korm. rendelet 8. § (1) Subsection a) Point

²⁵ Nagy András László, *Egy éves a jogvédelmi központ*, IME, 2013/9., 10.

²⁶ Health Act 30. § (2) Subsection

²⁷ Lukács József – Fónyad László, *Az intézményi kármegelőzés (risk management) és a minőségbiztosítás*, *Egészségügyi Gazdasági Szemle*, 1998/6., 590.

services and they must inform the patient at least in 30 workdays.²⁸ Each healthcare supplier has his own regulation of examining the complaints, so these rules are different in every case. The regulation is free to request from the institution and it is available on the website of the healthcare supplier in many cases. The Health Act ensures the opportunity for the patient to complain to the conservator of the healthcare supplier in connection with the healthcare service. The examination of the complaints by the conservator is based mostly on the information from the institution.

3. Complaint to the healthcare administrative agency

According to the CLXV Act of 2013 (Complaint Act), anyone can complain²⁹ or tender a public announcement³⁰ to the state or the local government agency. This possibility lives in connection with the healthcare services too. Thus, the complaints and the public announcement can be tendered to the healthcare administrative agency which is authorised to give the operating permit for the healthcare suppliers.³¹ The complaint can be tendered to the National Public Health and Medical Officer Service or the public health institution of the districts, it depends on that which institution is the subject of the complaint/public announcement. Deciding the dispute, the competent supervisory system – which operates in favour of the professional supervision of the healthcare suppliers – has an important role. The supervisor is in the register of the healthcare employees, has a professional qualification, knowledge and practice, and the Chief Medical Officer registers him and names his speciality.³² The supervisors examine that the services have been – or have not – implemented according to the healthcare rules, directives, methodology letters and professional protocols. The examination does not end with an order, but with a notification, so remedy is not possible.³³

4. Complain to the ethical committee

If the legal prejudice of the healthcare service is also an ethical misdemeanour, we can turn to the territorial organization of the Hungarian Medical Chamber. The ethical committee of the territorial organization can inquire not only ex officio, but because of complain too.³⁴ The ethical procedure is not against the healthcare institution, but against the concrete employee, and the result can be his/her

²⁸ Health Act 29. §

²⁹ The complaint is a petition, which aims the cessation of the breach of an individual right or interest and its settling does not belong to the scope of other – specifically judicial or administrative – process. (Complaint Act 1. § (2) Subsection.)

³⁰ The public announcement draws attention to a circumstance, in connection with it its remedy, or its cessation serves the interest of the society. (Complaint Act 1. § (3) Section).

³¹ 96/2003 (VII. 15.) Korm. rendelet 7. § (2) Subsection

³² 33/2013. (V. 10.) EMMI rendelet 4. § (1) Subsection.

³³ Kovácsy Zsombor – Dósa Ágnes (editors): *A vállalkozó orvosok nagy kézikönyve*, Complex, Budapest, 2011, 708.

³⁴ Act XCVII of 2006 22. § (1) Subsection

condemnation. If the reason of the procedure was a complain, the ethical committee will give its decree to the complainant.

5. *The Office of the Commissioner for Fundamental Rights*

If the activity or the negligence of the health services provider breaches a main right of the petitioner or causes a direct danger to the breach patient has the right to make a complaint to the commissioner for fundamental rights. The competence of the commissioner to examine the complaints in connection with the infringement of patients rights is based generally on the fact that these rights come from the right of dignity, which is written in the Fundamental Law, and it is a basic right.³⁵ The Ombudsman has very narrow competence in healthcare questions because he cannot examine medical-professional questions, and cannot suggest paying compensation, that is why the high rejection rate of the complaints.³⁶ During the investigation, the Ombudsman has different rights. For example, he can ask for an explanation from the examined institution, ask for the copy of the documents, ask the supervisory agency of the examined authority to investigate and perform field-monitoring.³⁷ If the infringement of a fundamental right, or a direct danger to the infringement is ascertainable than the commissioner for fundamental rights has several options. He does not have regulatory powers, he does not make compulsorily decision, he cannot determine a fine but he has the power to make commendation to the concerned authority or its supervisor to solve the problem.³⁸

We can get information about the availability of the Commissioner of Fundamntal Rights on the following website:

<https://www.ajbh.hu/elerhetosegeink>

6. *Process of the mediator*

Mediation is based on cooperation, it is peaceful, and a mediator helps the parties to create a settlement. His task is to control the process of handling problems, so he does not judge, does not evaluate, does not decide the dispute. His role is to approach the sides and to revise the relationship between the parties.³⁹ In Hungary there is a mediator system on the healthcare according to the CXVI Act of 2000 on the mediator's process. The healthcare supplier and the representative inform the patient of the possibility and the terms of the mediation. The petition must be reported to the competent chamber of judicial experts. The chamber sends the petition to the other party who must declare if he contributes to the mediation. If every party agrees, after covering the costs, they must decide the content of the

³⁵ Borza Beáta (editor), *AJB Projektfüzetek, Beteg jogaink-egészség és méltóság, Betegjogi Projekt* 2012, 14.

³⁶ *Beszámoló az állampolgári jogok országgyűlési biztosának 2010. évi tevékenységéről, Országgyűlési Biztos Hivatala* 2011, 81.

³⁷ Act CXI of 2011 21-22. §

³⁸ Act CXI of 2011 31. § (1) Subsection

³⁹ Nádházy Zsolt, *Alternatív vitafeloldás Európában – különös tekintettel a munkaügyi vitákra*, *Jogtudományi Közlöny*, 2007/7-8, 315.

health mediation council.⁴⁰ They appoint the members of the council from the register of the Hungarian Judicial Professional Chamber (MISZK). The first hearing of the healthcare mediation council must be made at the very latest on the 30th day after the agreement on the mediators. If the parties cannot agree, in 4 months after the first meeting, the process will be terminated.⁴¹ If the mediation is successful and the agreement was settled, then it becomes written, and the parties and the members of the council will sign it. If the party does not perform the agreement during the period of performance, the other party can ask the court to put an enforcement clause to the agreement.

7. Process of the conciliator body

The conciliator bodies have been formed to solve the consumers' disputes out of court, operating as independent institutions next to the county and the capital Commercial and Trade Chambers.⁴² The competence of the conciliator bodies covers the disputes between the consumer and the enterprises, in connection with the quality and the safe of the goods and services, product liability, signing a contract, and performing the contract. The data of the reports of the conciliator bodies show that the process in connection with the healthcare services is sporadic, because the patient is a consumer if he has paid directly for the healthcare service.

So, if he has had resort to private healthcare service, has had resort to comfort services upon payment of consideration at state healthcare supplier, has resort to dental service which is not financed by the insurer, or buys health-presever or therapeutical products. The process can be started only by one of the parties: the consumer, and the social organisation, which represent the consumer, and it can be initiated with a written petition to the president of the body. The conciliator body works as a council with three members.⁴³ The first aim of the process of the conciliator body is to make an agreement which suits the rules. In this case the council ratifies it, and the decision is compulsory. The process ends with a decision even if the parties cannot agree, in such case conciliator body makes decision.⁴⁴ We can get information about the availability and process of the conciliation body on the following website: <https://bekeltetes.hu/>

8. Initiate civil legal proceeding, settlement at law and out of court

If the miscarriage of the healthcare supplier has caused financial damage or violation of the personality rights in relation of the cause, the patient can claim compensation or injury fee.⁴⁵ The proceeding must be entered with a statement of

⁴⁰ Eörsi Mátyás-Ábrahám Zita (editors), *Pereskedni rossz!*, Minerva Kiadó, Budapest, 2003, 164.

⁴¹ Act CXVI of 2000 11. § (4) Subsection

⁴² Kaszainé Mezey Katalin, *Fogyasztói jogok. Kézikönyv kereskedőknek, szolgáltatóknak, vállalkozóknak és vásárlóknak*, HVG-ORAC, Budapest, 1998, 55.

⁴³ If the consumer's dispute is uncomplicated, a member with legal qualification can perform it. (4th Subsection of the 25th Section of CLV. Act of 1997).

⁴⁴ Act CLV of 1997 18. § (1) Subsection

⁴⁵ Act V of 2013 6:519. § and 2:52. § (1) Subsection

claim and usually legal representative is needed too. Unlike the other possibilities, legal proceedings take much longer time. There is the chance for the parties to make a settlement and end their dispute. If their settlement suits to the rules, the court ratifies it and it has the same legal force as a judgement from the court.⁴⁶ In Hungary there is the citation to trial of arrangement, the parties can go to the court without a pending legal proceeding in favour of that the court can ratify a settlement – which has been made in a prior mediation procedure – as an accord, or if there is not a settlement in favour of to make one at court.⁴⁷

9. The possibility to make a settlement at notary public

In case of civil dispute, before the commencement of action a citation to trial of arrangement can be solicited from the notary public. If the parties make a settlement and it suits to the rules, the notary public signs an approving order. It has the same legal force as a judgement from the court. The condition of this procedure is that neither legal process, nor settlement process at another notary public can be pending.⁴⁸

10. Prosecution because of felony

If the violation of the law realizes a felony (usually malpractice), prosecution can be made. It can be made at the prosecution or the investigative authority. Other authorities and courts must accept the prosecution and then they must send it to the prosecution or the investigative authority.⁴⁹ Just like the ethical process, criminal procedure is not against the healthcare institution, but against the concrete employee. On the basis of the prosecution, investigation can be ordered, and the result can be indictment, and – at the end – condemnation of the absconder, or punishment.

IV. Final thoughts

To sum up, it can be stated that the Health Act provides the patients extensive rights and grants a high level of legal protection. The requirements are achievable labouriously in several cases, so there are some patients' right which are breached frequently (e. g. right to information, right to human dignity, right to professional secrecy). We can draw the conclusion that patients can choose from various options in the case of infringement of a patients' right. It is favourable because it is necessary to provide different legal protection, enforcement of claims, compensation operating at different levels to treat different type of and differently serious infringement of a right. However, the excessively fragmentation of the system is highly difficult to be overviewed. Because of this and as a result of the problems of practical operation of claims enforcement routes, the conclusion is that several possibilities of legal protection, which are especially advantageous in the perspective of maintaining a peaceful relationship between the parties in the future, are slightly used.

⁴⁶ Act CXXX of 2016 238-239. §

⁴⁷ Act CXXX of 2016 167-168. §

⁴⁸ Act XLV of 2008 27/H. §

⁴⁹ Act XC of 2017 377. §