

DOCTOR-PATIENT LEGAL RELATIONS: NORMATIVE AND MORAL-ETHICAL ASPECTS

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Abstract: *In contemporary medical science and practice, the issue concerning the choice of communication approach by medical professionals in the course of performing their professional duties is becoming increasingly dialogical. The diversity of healthcare institutions, the implementation of electronic healthcare systems, and the introduction of telemedicine have altered the theoretical concepts regarding the existing models of doctor-patient legal relations.*

The present overview aims to examine the development of doctor-patient legal relations in the 21st century, both from a legal perspective and from a moral-ethical standpoint. It seeks to emphasize the good practices established in contemporary settings, as well as to identify deviations from legally prescribed conduct.

Key words: *legal framework, ethical standards, communication in healthcare, telemedicine, electronic health systems, medical professionals*

1. Classification of the Established Theoretical Models of Doctor-Patient Relations

In global medical law scholarship, three models of the doctor-patient legal relationship have been established¹:

A) Paternalistic Model – This model is based on the idea that the physician understands the needs of the patient much better than the patient himself. Traditionally, the patient is perceived as suffering and in need of assistance. The patient's emotional state, combined with the pain and suffering experienced during illness, impairs his objective judgment. In paternalism, the physician's will is dominant. A distinctive feature of this model of legal relationship is the physician's authoritarian attitude towards the patient.

In this context, the opinion of Gerald Dworkin, widely cited in the English-language literature, is noteworthy. He states that "the paternalistic model essentially represents an intervention in an individual's freedom of action, justified exclusively by reasons directed at the well-being, good, needs, interests, or values of the individual being coerced."² The authoritarianism inherent in paternalism is increasingly challenged by the modern patient. This model has been largely abandoned in contemporary medical practice.

Currently, when selecting a treatment algorithm for the patient, the patient is required to give informed consent regarding the interventions and the potential complications that may arise

¹ Zinovieva, D. *Medical Law*, Ciela Norma AD, 2016, p. 138.

² Kaneva, V., Thompson, D., et al., *Autonomy and Bioethics*. Publishing House "Critique and Humanism," 2011, p. 76.

as a result of their application. Even this single regulatory requirement, established in the Health Act, constitutes a barrier to the full application of the paternalistic model.

Access to information is also of considerable importance for modern patient care. The diversity of sources from which the patient obtains information about his condition creates a necessity for the physician to also make a choice between various treatment approaches and procedures. In this sense, patient care today involves not only selecting the most appropriate and effective therapeutic approach but also providing the necessary attention and support to the patient by the healthcare professional.

By its very nature, the paternalistic model lacks respect and understanding toward the patient, which renders it archaic in light of contemporary approaches and trends in the provision of medical care.

B) The Engineering Model – In this model, the participation of the patient in the decision-making process regarding the proposed treatment approach is of major significance. The physician is obliged to inform the patient about their illness and the methods of treatment. Here, the patient's will is of key importance in choosing the course of treatment to be undertaken. The physician presents the available treatment options, but it is the patient alone who makes the decision and bears responsibility for its consequences.

In this context, it should be noted that respect for the individual and the patient's autonomy in decision-making is at the foundation of this model. The impression is that the weight of responsibility in this type of relationship is evenly distributed between the parties, without any formal dominance. On the one hand, the physician must fully and comprehensively present information about the patient's condition and propose treatment options; on the other hand, the patient must responsibly make a choice and be prepared to bear the consequences of that choice. The physician may only encourage the patient to choose the treatment option deemed medically most justified, but the patient may refuse or reject it.

From a contemporary perspective, the liberal approach of this model, in our opinion, does not entirely meet the needs of modern society in the provision of medical care. It must not be overlooked that patients, by definition, do not possess the necessary specialized medical knowledge and experience to make an autonomous and well-reasoned decision regarding the most favorable treatment option. Furthermore, any complications that might arise during the treatment should not be considered solely as an unfavorable consequence of the patient's choice. It is important to account for the specific emotional and psychosomatic state a patient was in when making the treatment decision.

All these circumstances render the engineering model, to some extent, inadequate for addressing the contemporary needs of both physicians and patients in the context of their relationship. Attention should also be drawn to the fact that the medical profession is inherently a high-risk professional activity, which is why modern legislation has established a number of mechanisms and protocols that medical professionals must follow to justify their decisions when necessary.

C) The Contractual Model – In this model, a certain balance is observed in the legal relationship. The physician informs the patient about their condition and proposes treatment options, while the patient, with the assistance of the physician, chooses among the proposed options. The interactions between the parties are regulated by normative acts, thus ensuring that each party acts within the framework of legally prescribed behavior.

This model is, in practice, the most widespread in contemporary medical care. The equilibrium observed in this approach corresponds most closely to the desires and needs of modern society. It allows for the discussion of all possible prerequisites throughout the course of treatment, ensures that the required volume of information regarding possible complications is provided, and enables a reasoned choice to be made based on the legally stipulated treatment options, with equal participation of both parties³.

In the context presented, it should be noted that, considering the current state of the patient – whether in an emergency situation, for preventive care and health monitoring, consultation, etc. – it is permissible to combine more than one of the established models of the doctor-patient relationship. The conduct should align with the moral and ethical principles applied in the medical profession, respect for the constitutional rights of the individual, and the norms of health legislation. The dynamics of the doctor-patient relationship should not be limited autonomously to a specific model but should be adapted according to the circumstances and the goal of achieving a favorable outcome for the patient's condition.

2. General Overview of the Legal Regulation of Medical Activities in the Republic of Bulgaria

Medical activity in the Republic of Bulgaria is regulated by a number of normative acts – the Health Act, the Healthcare Institutions Act, the Act on Professional Organizations of Physicians and Dentists, the Code of Professional Ethics for Physicians, and the Rules of Good Medical Practice.

In the normative framework of the Republic of Bulgaria, the main issues related to the methodology of providing medical assistance are regulated in Chapter Three, Section One – Article 79 of the Health Act, which states that: “Medical assistance in the Republic of Bulgaria is provided through the application of methods and technologies established by medical science and practice.” Furthermore, in relation to the provision of medical assistance, treatment algorithms are largely contained in medical standards. These are secondary legal acts that serve as specific measures of the quality of medical services. In terms of their content, they are focused on the quality of the work of medical professionals as well as the conditions under which it is carried out.

The Health Act provides the definition of “patient,” clearly formalizing which individuals are subjects of the doctor-patient relationship. Article 84 further stipulates that, except in cases outlined by the law, the registration of an individual as a patient occurs with their informed consent. This normative requirement is reasonable, considering the application of patient rights regulated by the Health Act in Section Two – “Rights and Obligations of the Patient.” In essence, patients' rights are of a positive nature. They represent a legal opportunity to protect specific claims of the patient against other legal entities explicitly provided for in a law or secondary legislation.

Given the increasing number of medical torts observed in recent years, it is deemed reasonable to revive the dialogue on creating a special law that would comprehensively regulate the scope of rights and obligations of patients in our country. The normative regulation of a broader range of rights and obligations, along with their detailed clarification, will greatly facilitate contemporary doctor-patient relationships. Considering that patients are individuals in a vulnerable position from the per-

³ Goleva, P. The Treatment Contract. In: „Legal Thought” 2004, No. 1, p. 5–22

spective of their health, mental, or emotional status at the time they enter into these relationships, this factor directly influences the decisions they must make. The impact of patient companions on the decision making process are also not without significance in the doctor-patient relationship⁴.

At present, good practices have been established in our country in the direction of protecting the rights of patients. The legislator formulates them in the Health Act, and since 2009, the Public Council on Patient Rights has been established under the Minister of Health⁵. It is a consultative body with listed functions in the norm of Article 86a of the Health Act.

In the structure of healthcare in our country, the legislator has provided for a number of institutions directly engaged in the protection of patient rights, including the Executive Agency "Medical Supervision", Regional Health Inspection, Bulgarian Medical Association, and Bulgarian Dental Association (Ethics Committees), the National Health Insurance Fund (NHIF) and the National Health Insurance Fund (NHIF), the Executive Agency for Medicines, and the Executive Agency for Transplantation.

Regarding medical specialists, the law has set clear and precise criteria they must meet to practice in our country. The Law on the Professional Organizations of Doctors and Dentists provides that "All doctors and dentists who practice their profession must be members of the Bulgarian Medical Association (BMA) or the Bulgarian Dental Association (BDA)." This requirement for the effective exercise of the profession is functionally related to responsibility for violating professional ethics. It is further elaborated in Article 1 of the Code of Professional Ethics for Doctors, where it is stated that "the medical profession can only be performed by an individual with higher medical education and recognized professional qualifications in the Republic of Bulgaria"⁶.

The scope of medical services, partially or fully paid for, which the patient can use under the conditions defined by law, is negotiated in the National Framework Agreement. The parties to the contract are representatives of doctors/dentists and the National Health Insurance Fund (NHIF). The National Framework Agreement provides conditions for negotiations between the doctor and the patient, as well as between the doctor and the Health Insurance Fund. Based on the conditions regulated in these agreements, individual contracts are concluded between healthcare providers and the Health Insurance Fund.

3. Moral and Ethical Aspects of the Doctor-Patient Relationship

As mentioned in this review, the medical profession is a high-risk professional activity that combines a set of moral, ethical, and regulatory rules that must be observed during its practice. Ethical norms are behavioral rules that embody the ideals toward which an individual should strive. Unethical behavior is unacceptable and undesirable in society. Violating ethical rules has negative consequences related to how a person perceives their own actions and the judgment they receive from society. On the other hand, the law defines the boundaries of individual behavior, established by society, and crossing these boundaries is associated with the imposition of

⁴ van Poppel, L. Pilgram, R. Patient Education and Counseling 133, Elsevier, 2025

⁵ Zinovieva, D. Medical Law, Siela Norma AD, 2016, p. 141.

⁶ Ilieva, A. "Legal and Moral-Ethical Aspects of Medical Activity in the Republic of Bulgaria" – Scientific Readings on the Topic: "Law and Boundaries", University Publishing House "St. Kliment Ohridski", pp. 493-503.

external sanctions such as condemnation in a civil or criminal context, the revocation of the right to practice the profession, administrative and penal liability, and so on.⁷

Historically, the perception of the individual figure of the doctor has undergone dynamic transformation through different eras. In certain periods, the doctor was viewed as a “God.” Their decisions and treatment methods were not questioned by society or the patient. The level of public trust in the treatment approach for the individual patient was absolute and was not subject to discussion. Gradually, this divine personalization was replaced by the human figure of an individual possessing specialized knowledge related to human health and meeting the minimum regulatory requirements for exercising professional activity⁸.

In their daily activities, medical professionals often find themselves at a crossroads when making decisions, specifically whether to align their behavior with moral and ethical principles or to adhere to normative requirements. In this sense, the Code of Professional Ethics defines the boundaries of moral and ethical responsibility, but by its legal nature, it falls under the category of “soft law.” It is complemented by the rules of good medical practice, which are also established by the Minister of Health. Normatively, moral and ethical responsibility is supplemented by the Law on Professional Organizations of Doctors and Dentists.

It would be reasonable for both acts issued by the Minister of Health to move beyond the scope of “soft law” and acquire the normative force of a law or a subordinate legislative act. This necessity is driven by the need to guarantee the proper development of the doctor-patient relationship on the one hand, and to substantiate the basic boundaries of legally permissible behavior for the participants in the relationship. Key to public trust in the healthcare system is reducing the registered number of medical torts related to medical cases, adequate oversight by competent institutions, and clearly defined rights and obligations of patients. All these elements influencing the relationship make an individual contribution to the smooth development of the doctor-patient relationship.

Conclusion

The proper assessment of the moral and ethical responsibility owed by medical professionals during the exercise of their specialized activities hinges on the clear regulation of the legal status of the Codes of Professional Ethics in Bulgarian law. Questioning the legal value of these acts complicates decisions in cases involving moral and ethical issues. The primary focus of healthcare should be providing medical assistance to those in need – patients – and developing strategies aimed at enhancing preventive care in primary healthcare, with the goal of disease prevention. The overall health status of the population plays a key role in other sectors of public life as well. It has both economic and social implications. Therefore, the stable functioning of the healthcare system in our country depends on stable normative regulation, control within the system, funding, and trust in the communication between doctor and patient.

⁷ Radeva, M. – “Ethical and Legal Norms in Medicine”, “Scientific Works of the University of Ruse”, 2011, Vol. 50, Series 8.1, pp. 14–15.

⁸ Georgieva, Zh., Al. Zdravkova, “Dependence Between the Ability to Communicate with Patients and Empathetic Attitude Toward Them,” XXIII Scientific and Technological Session, Contact 2014, Sofia, Tempo, 2014, pp. 151–154.