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Notion of Patient Duties

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Abstract

A trend is emerging in the Latvian legal system to refer to patient duties more and more, thus consolidating the idea of patient duties. Deficiencies are found, however, in the interpretation of the idea of patient duties, which lacks consistent distinction from related notions.

Nowadays, not only is the attention to patient duties in the medical treatment relationship growing, but changes are also taking place which are directed at expanding the interpretation of patient duties, creating groundwork for new patient duties in medical treatment.

The aim of the research is to analyse the notion of patient duties, find deficiencies in its interpretation and propose specific solutions to improve the definition of patient duties. The following primary research methods have been used in the study: analytical, systemic, teleological.

The research results include an interpretation of the definition of patient duties, distinguishing it from related notions and analysing the trend of expanding the interpretation of patient duties. Based on this interpretation, a proposal is made for improvement of the laws and regulations.

Keywords: adherence, duty, expansion, notion, patient.

Introduction

There are two participants in the legal relationship in medical treatment, i.e., the medical professional or the medical institution and the patient, where each has a specific legal status. However, in legal discussions, emphasis is more often given to patient rights. On the one hand, there are justified significant arguments for actualisation of patient rights in the modern day – these include: the course of historical

development of the medical treatment relationship, where a natural increase of patient rights is observed in modern history; historical events related to medical treatment relationships (for example, medical experiments during WWII and the Nurnberg trials), setting a requirement for enhanced enforcement of patient rights; necessity to protect the patient as the weakest party in the legal system, already considering modern threats to the patient. However, effective treatment is in the interests of the patient's health, where proper cooperation of the participants of the legal relationship in medical treatment requires an equilibrium of their legal statuses – rights and duties for both participants of the treatment process, including the patient.

A trend is emerging in the Latvian legal system to refer to patient duties more frequently, thus consolidating the idea of patient duties. Deficiencies are found, however, in the interpretation of the idea of patient duties, which lacks consistent distinction from related notions. It is noteworthy that the idea of patient duties is currently at the initial stage of consolidation where its implementation is an issue that concerns the entire legal system – laws and regulations, legal practice, and legal science.

Society is dynamic rather than frozen, and social relationships are constantly developing. With the legal relationships in medical treatment becoming more complex, legal statuses of the participants of legal relationships in medical treatment are interpreted in more detail. This also results in changes in the interpretation of patient duties, including appearance of new and disputable sprouts of patient duties.

The research aim is to analyse definition of patient duties, find deficiencies in its interpretation and propose specific solutions to improve the definition of patient duties. The following primary research methods have been used in the study: analytical, systemic, teleological.

1 Distinction of Definition of Patient Duties from Related Notions

Three notions are used to denote patient duties – *duties* (Engst, 2008; Evans, 2007; Resnik, 2005; Löschke, 2017; Judicial Council of California, 2020), *responsibility* (Olsen, 2000; Kelley, 2005; Draper & Sorell, 2002; Buetow, 1998; Wilson, 1998; Smith Iltis & Rasmussen, 2005; Patient Rights Act, 2011; Health Charter of Rights and Responsibilities Act, Bill 60, 2003; Florida Patient's Bill of Rights and Responsibilities, Chapter 381, Section 381.026, 2020), and *obligations* (Gauthier, 2005; Waterbury, 2001; Sider & Clements, 1984; English, 2005; The Patient's Charter of Rights and Obligations, 2007). This raises the question whether the meaning of these notions is identical when these are equally attributed to patient duties.

First, a duty is a requirement for a person's action in relation to something or someone (Prabhat, 2018; Duty, 2021). Thus, a duty is a specific task where active personal action is emphasised. Second, responsibility is the ability to act in a justified and socially responsible manner, bringing such action to a successful result (Surbhi, 2019;

Prabhat, 2018; *Atbildība*, 2020; Williams, n.d.). By nature, responsibility is divided into legal and moral responsibility, which partially overlap (Williams, n.d.) although they have different determining factors – legal norm or morality, and different approach to their enforcement, where no universal enforcement of moral duty (Johnson & Cureton, 2019) exists. Nevertheless, responsibility, according to its direction, is divided into prospective and retrospective responsibility with different aims – everybody's future interests or satisfaction regarding past violation, and different measures applied – providing for a duty or imposing a punishment (Williams, n.d.). Thus, interpretation of responsibility has a wider scope than that of duty where emphasis is put on the result achievable through responsibility. Prospective responsibility, which is part of all responsibility, is related to interpretation of duty.

Two binding principles can be noted, which are applicable from responsibility to duties. First, nowadays, with the growing value of responsibility, responsibility promotes cooperation in people (Gauthier, 2005, 163; Williams, n.d.), and thus performance of duties. Second, personal autonomy also means personal responsibility, which also means being responsible for performance of duties. Thus, the idea of patient duties is consolidated by the growing value of responsibility where patient duties are derived from patient autonomy. It can be concluded that responsibility differs from duties in its scope, nature and direction, whereas duties are part of the notion of responsibility.

Furthermore, obligation is a legal relationship where one person (the debtor) has to perform some action for the benefit of another person (the creditor) (in Roman law, the object of obligation is to give, perform or answer), which has material value; whereas the other person has the right to demand the performance (*Civillikums*, 1937, 1401. p.; Torgāns, 2018, 19; *Latvijas Republikas Civillikuma komentāri*, 1998, 16; Čakste, 2011, 130; *Obligation*, 2020). From the definition of obligation it follows that it cannot be equated with patient duties for the following reasons: a) patient duties are not performed only for the benefit of the medical professional; b) patient duties are difficult to evaluate in a material equivalent; c) in the legal relationship in medical treatment, the patient is the creditor rather than the debtor, considering their legal status in medical treatment; d) the scope of obligation is wider than the meaning of duty. Thus, duty, responsibility, and obligation are, on the one hand, different and separate notions according to scope and essential features; on the other hand, these are related and mutually dependent notions which include each other. Only the notion of duty is appropriate to the patient.

2 Limits of Notion of Patient Duty and Patient Adherence

The term *adherence* (Latvian: *līdzestība*) has been introduced in the Latvian legal terminology. An opinion has been expressed in the legal practice that a patient lacks adherence if they are not fulfilling patient duties (*Administratīvā rajona tiesa*, 2019, 12. pk.). This raises the question whether the meaning of patient adherence is identical to patient duties. Thus, its meaning and limits need to be clarified.

Adherence is defined as a long-term, dynamic, complex, and coordinated process, which is directed at cooperation between medical treatment participants with equal rights where the patient is informed, determined, and persistent (Bortaščenoks, Millere & Mārtinsone, 2018, 139). Three terms with different meanings are used in the English language to denote adherence – *compliance* (*complire* (Latin) – to fulfil a promise) – action according to advice; *concordance* – the patient and the adviser agree on the regimen to be fulfilled by the patient where the patient has to take greater responsibility; *adherence* (*adhaerere* (Latin) – keep close to) – the patient is an active participant in their treatment together with the medical professional (Aronson, 2007, 383; World Health Organization, 2003, 3, 4). It is stated that adherence is revealed in the Latvian system of laws and regulations primarily with the meaning of *compliance* (Bortaščenoks, Millere & Mārtinsone, 2018, 139), which cannot be agreed to. Although laws and regulations have their faults, still adherence is more appropriately described using the meaning of adherence, where medical treatment is performed with the consent of the patient as an active and equal participant.

Adherence is explained as existence close to illness (Stüre, 2019), which is arguable for the following reasons. First, existence does not mean that the person is taking active action (*Latvijas Zinātņu akadēmija*, 2003), where adherence is more appropriately described as patient participation which is characteristic of an equal participant. Moreover, participation means fulfilment of duties as well as exercising of rights. Second, there is no ground to describe adherence in a narrow sense, only applying it to *close to illness*, i.e., the treatment period where the goal of adherence is the patient's health – *close to health*, i.e., beyond treatment as well, for example, correcting a lifestyle and keeping to it (Mārtinsone, 2020; Valdmāne, 2018). Thus, patient duties are only a part of patient adherence, which is directed at participation *in cooperation to health*.

Traditionally, patient adherence is related to the relationship between the patient and the medical professional. However, such a participant as the pharmacist is also involved in medical treatment, and their importance in medical treatment has already been emphasised as early as the Middle Ages (Baltiņš, 1999, 5, 6). Some groundwork has been found for inclusion of the pharmacist in the meaning of patient adherence. Considering that patient adherence is related to patient health, rather than only medical treatment in its narrow sense, patient adherence needs to be evaluated in the legal relationship of the patient, medical professional, and pharmacist.

Thus, patient adherence means actions of the patient when performing their duties and exercising their rights, with the primary goal of these actions being to preserve and improve the patient's health and which the patient performs both during treatment in the legal relationship of the patient, medical professional or medical institution, and the pharmacist, as well as beyond patient treatment.

3 Future Prospects of Interpretation of Patient Duties

Nowadays, changes are taking place which are directed at expanding the interpretation of patient duties. Ever-growing attention in the medical treatment relationship is given to patient duties in order to find in this relationship a more appropriate balance of legal statuses of the parties, whereas former centring of the medical treatment relationship put more emphasis on patient rights. Changes are also taking place in the medical treatment relationship itself, which is becoming more nuanced, resulting in the necessity to review legal statuses of the parties, including patient duties. Emphasis is changing in the legal system too where its interacting principles are wavering, also affecting patient duties in the medical treatment relationship. Thus, the following directions are emerging for the expansion of the interpretation of patient duties.

First, with the eternal discussion in the legal system on the priority of public or private interests where the solution to the situation does not support either constant preponderance of altruism over egoism or its uniform solution (Petman, 2008, 121, 131); thus, the idea of collective responsibility in society is emphasised again (Williams, n.d.; Martin, Williams, Haskard & DiMatteo, 2005, 193) while also discussing new patient duties. For example, if the patient receives healthcare services funded by the State or mandatory health insurance, for the benefit of the future generation it is suggested to introduce the duty to participate in clinical trials and the duty to participate in the clinical training process (Evans, 2004, 198, 202; Veatch, 1984, 48; Waterbury, 2001, 286–294; World Health Organization, 1994, *Introduction*). This suggestion currently lacks critical evaluation of arguments. For example, it is stated that by participating in a clinical trial, the patient is going to receive some treatment anyway (Evans, 2004, 201). However, a clinical trial can have a placebo group which does not receive treatment, which is important if a patient with health disorders requiring treatment is participating in the trial. It is also stated that participation in a clinical trial is a good opportunity for patients with a limited ability to pay (Waterbury, 2001). However, without proper legal protection of the patient, there is always a risk that a patient in such a financial situation is actually influenced to choose to participate in the training where there is a historical experience with a system being intentionally created, providing for the requirement in the education of doctors in the Middle Ages for additional one-year practical training outside the city (Zudgof, 1999, 58, 59) where representatives of the lowest social strata prevailed. Thus, by introducing patient duties for the benefit of public interests, appropriate legal protection for the patient during the fulfilment of such duties has to be considered.

Second, expanding compulsory patient treatment for social purposes is being discussed (Kennedy, 1994, 234; Kennedy, Grubb, 1998, 118), providing for an additional case when the patient must receive treatment. Currently such groundwork for expansion of patient duty is found for the benefit of a conceived person. This suggestion is explained by the growth of the value of a person in the modern legal system since their conception regardless of their stage of development or life (Vebers, 1964; Bērnū tiesību konvencija,

1989, Preambula; Schulman, 2013, 11, 12), as well as by wellbeing and safety interests of society for reproduction and existence.

Third, emphasis is now wavering in the establishment of the medical treatment relationship, specifying the principles for expression of the patient's will, which show the necessity of patient duty. On the one hand, patients currently have the right to receive information, as well as the right to refuse to receive it (*Pacientu tiesību likums*, 4. p. 1. d., 6. p. 1. d.; 4. p. 8. d.) regardless of the form of the expression of will, with no duty for the patient to receive information. Groundwork is found for such a patient duty in case of a significant threat to or invasion of public interests.

However, considering that the patient has to be informed in the expression of their will (*Pacientu tiesību likums*, 6. p. 1. d, 6. p. 5. d.), there are doubts whether it is possible to make a decision if there is no information. This is why the patient duty to receive information before making a medical treatment decision needs to be considered. On the other hand, a collision of circumstances is observed when, based on objective information, the patient has the right to take a subjective decision, which is not always for the benefit of the patient's health (McLean, 2009, 24, 27, 33–35). More appropriate for the medical treatment relationship in the near future is the requirement for the patient duty to make a decision which is objectively justified by health interests of the patient. Establishing such patient duties encourages in the patient the duty to be responsible in the medical treatment relationship and to take responsibility for their health.

Fourth, there are discussions about the expansion of the legal basis for disclosing confidential patient information in a reasonable amount for the benefit of significant private interests of third parties, providing for a new patient duty. Information about a person's genes belongs to the private sphere; however, it is not individual by nature; this is why it is debatable whether patients must disclose information to relatives who are reasonably, often even vitally interested in knowing it (Mežinsk, 2006, 155; Pattinson, 2006, 390), for example, to prevent a severe congenital disorder.

Fifth, new and unprecedented situations in society help discover deficiencies in social relationships and find the most appropriate solutions, which can also manifest as a development of a new patient duty. The challenges caused by the spread of the pandemic actualise the evaluation of communication quality between the patient and the medical professional, revealing that under the influence of these circumstances 81 % of patients lie or hide information from medical professionals, creating the requirement for the patient to be honest (Soraya & Kid, 2020). The duty of the patient to provide information (*Pacientu tiesību likums*, 15. p. 2. d, 15. p. 4. d.) presumes that this information must be true and as complete as possible, thus also including the duty of the patient to be honest in providing information. Providing for a separate duty for patients to be honest would duplicate the existing normative regulation, which is not supportable. However, it needs to be evaluated whether honesty as a separate criterion needs to be emphasised in the patient duty to provide information, which would improve the medical treatment relationship.

Conclusions

1. Three notions are used in normative regulations, in the legal practice and in the legal science to denote patient duties – duties, responsibility, and obligations. However, the meaning of these notions is not identical. On the one hand, duty, responsibility, and obligations are different and separate notions according to scope and essential features. On the other hand, however, these are related and mutually dependent notions, which include each other. Moreover, only the notion of duty corresponds to the specific task of a patient.
2. The term *adherence* (Latvian: *līdzestība*) has been introduced in the Latvian legal terminology. However, its usage and interpretation in the legal system and in the medical practice does not really correspond to the idea of the notion of adherence. This can be explained as follows. First, patient adherence in its meaning is equated with patient duties. And second, the notion of patient adherence is used in a narrow sense and does not cover significant features of adherence. Thus, adherence is definable as the patient's actions when fulfilling their duties and exercising their rights, with the primary goal of these actions being to preserve and improve the patient's health and which the patient performs both during treatment in the legal relationship of the patient, medical professional or medical institution, and the pharmacist, as well as beyond patient treatment. It has been proposed to add Section 14¹ to the Law on the Rights of Patients and formulate it as follows:
“Section 14¹. Patient adherence
Patient adherence means the patient's actions when fulfilling their duties and exercising their rights with the goal to preserve and improve the patient's health, which the patient performs both during treatment in the legal relationship of the patient, medical professional or medical institution, and the pharmacist, as well as beyond patient treatment.”
3. Nowadays, not only is ever-growing attention in the medical treatment relationship given to patient duties, but changes are also taking place which are directed at expanding the interpretation of patient duties, creating groundwork for new patient duties in medical treatment. This direction of change can be explained as follows. First, a desire is observed to find in the legal relationship in medical treatment a more appropriate balance of legal statuses of the parties, whereas former centring of the medical treatment relationship put more emphasis on patient rights. Second, changes are also taking place in the medical treatment relationship itself, which is becoming more nuanced, resulting in the necessity to review the legal statuses of the parties, including patient duties. And third, emphasis is changing in the legal system too where its interacting principles are wavering, also affecting the understanding of patient duties in the medical treatment relationship. Thus, regular reviewing of patient duties and its actualisation is encouraged with the purpose of improving the medical treatment relationship.

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