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Principles of Fulfilment of Patient Duties in Medical Treatment

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Abstract

Nowadays contract law tends to be applied to the medical treatment contract. This causes the normative value of patient duties to grow, which is also consolidated in the legal system.

However, the medical treatment relationship is special, and absolute transfer of the principles of contract law to the medical treatment contract is problematic. Uncertainties and clashes are observed when evaluating the interpretation of the principles of fulfilment of patient duties and the criteria for their application. The *pacta sunt servanda* principle which dominates in contractual law governing the fulfilment of patient duties is to be adapted, considering the specific features of the medical treatment relationship.

The research aim is to analyse the principles of fulfilment of patient duties in medical treatment, find deficiencies in interpretation and application in respect of these principles and propose specific solutions for the improvement of the principles of fulfilment of patient duties. The following primary research methods were used in the study: analytical, systemic, teleological.

The result of the study provides evaluation of the principles of fulfilment of patient duties, specifying the circle of persons related to patient duties when these duties are established and terminated, as well as the limits for the fulfilment of patient duties. Based on this evaluation, a proposal is put forward for the improvement of normative regulations.

Keywords: duty, health condition, medical treatment, patient, principles of fulfilment.

Introduction

In the evaluation of the legal relationship in medical treatment, nowadays more and more attention is given to patient duties. This is explained by re-evaluation of the legal statuses of the parties in medical treatment with the objective to bring these legal statuses to a balance. It is argued that predominance of one party does not promote and may even hinder the reaching of the goal of medical treatment, i.e. restoring or preserving health. Thus, the orientation is observed that the idea of patient duties needs to be specified and strengthened together with patient rights.

Considering that the legal relationship in medical treatment is nowadays interpreted as contractual, where each contractual party has its own rights and duties, a tendency is observed where the principles of contractual law are also applied to the medical treatment contract. This causes the normative value of patient duties to grow, which is also consolidated in the legal system.

However, the medical treatment relationship is special, and absolute transfer of the principles of contract law to the medical treatment contract is problematic. Uncertainties and clashes are observed when evaluating the interpretation of the principles of fulfilment of patient duties and the criteria for their application. The *pacta sunt servanda* principle which dominates in contractual law governing the fulfilment of patient duties is to be adapted, considering the specific features of the medical treatment relationship.

The research aim is to analyse the principles of fulfilment of patient duties in medical treatment, to find deficiencies in the interpretation and application in respect of these principles and to propose specific solutions for the improvement of the principles of fulfilment of patient duties. The following primary research methods were used in the study: analytical, systemic, teleological.

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1 Persons Related to Patient Duties

The question that needs to be answered is on which persons patient duties are binding. First, any person has the duty to take care of their health (See: Satversme, 1993, Preambula), considering that health is the highest intangible good every person is entitled to. Moreover, a person's health, directly or indirectly, affects the person's opportunities for self-realisation, as well as the legal relationships in which the person is involved (e.g., family, employment, education legal relationship). Thus, the person has to take responsibility for their health, taking measures for its preservation and improvement.

Second, when a person obtains the legal status of a patient, i.e. when the person requests or receives a medical treatment service (Ārstniecības likums, 1997, *1. p. 11. pk.*), patient duties are established on the basis of law with legal consequences that follow these duties. Third, normative regulations provide for an exhaustive number of exceptions where patient duties are also provided for specific persons who do not have the legal status of a patient, for the benefit of public safety.[1] Although patient duties are mainly attributed to persons with a special status, i.e. a patient, still, considering the features of health as a public good (Müller, Ganten & Larisch, 2014, *A1901*; Büchs & Koch, 2019, *162*; Australian Institute of Health and Welfare, 2014, *1*; Aginam, 2002, *949*), some patient duties are also provided for other groups of persons in certain cases. It is worth noting that this article analyses the principles of fulfilment of patient duties that only apply to a special subject of rights, i.e. the patient.

2 Establishment and Termination of Patient Duties in Medical Treatment

An opinion has been expressed that patients with the capacity to act have duties (Evans, 2007, *690*). However, this idea needs to be clarified. First, all patients have patient duties within their ability (e.g., the duty to be involved in medical treatment, the duty to provide information about changes in their health (Pacientu tiesību likums, 2009, *15. p. otrā d.*), and capacity to act is not an obligatory precondition for the fulfilment of patient duties. Still, one has to agree that only patients with the capacity to act may face negative consequences for failure to fulfil patient duties. Thus, a patient's capacity to act is the criterion for occurrence of negative consequences if patient duties are not fulfilled rather than for the establishment of duties.

Moreover, patient representation is allowed in the fulfilment of certain patient duties. Considering that representation is provided for the performance of legal tasks in legal transactions or in operations similar to a transaction (Civillikums. Ceturtā daļa: Saistību tiesības, 1937, *1410. p.*; Balodis, 2007, *278*), the representative may also fulfil the patient's duties which have the nature of a legal operation (e.g., the duty to identify oneself (Pacientu tiesību likums, 2009, *15. p. ceturtā d.*), the duty to pay (Pacientu tiesību likums, 2009, *15. p. piektā d.*)), with the exception of patient duties which are directly related to the patient's involvement in the actual medical treatment process (e.g., the duty

[1] E.g.: a person having signs of infection or if infection is suspected; contact persons under medical observation; a person who has got infected with an infectious disease or if infection is reasonably suspected (Epidemioloģiskās drošības likums, 1997, 18. p. trešā d., 19. p. otrā d., 20. p. pirmā d.); a person diagnosed with infection or if infection is reasonably suspected (Kārtība, kādā veicama personu obligātā medicīniskā un laboratoriskā pārbaude, obligātā un piespiedu izolēšana un ārstē-šana infekcijas slimību gadījumos, 2005, 3. pk., 4. pk.); a person employed at a certain workplace (Noteikumi par darbiem, kas saistīti ar iespējamu risku citu cilvēku veselībai, un obligāto veselības pārbaužu veikšanas kārtība, 2018, 9. pk.).

to comply with the orders of a medical practitioner (Pacientu tiesību likums, 2009, *15. p. trešā d.*)).

Second, patient duties acquire legal effect for a person when the person has become a patient. According to the general principle, a person can acquire the legal status of a patient with the appearance of legal capacity, i.e. at birth (Civillikums. Ceturtā daļa: Saistību tiesības, 1937, *1406. p.*; Torgāns u.c., 1998, *20*). However, there is a clash in the legal system because normative regulations also provide for medical treatment of a conceived person (Mātes un bērna veselības uzlabošanas plāns 2018.–2020. gadam, 2018; Simič, 2018, *256*, *257*), which is objectively possible and is performed at the modern stage of development of the medical science.

As a result, a conceived person is the patient in medical treatment; however, legally it cannot currently acquire the legal status of a patient until it is born. If a conceived person is given medical treatment, the mother of this conceived person is considered the patient because currently a conceived person, in the legal interpretation, is a part of the mother's body (Kennedy & Grubb, 1998, *189*, *193*). However, in the legal science, an ever-stronger opinion is expressed that a conceived person is not to be viewed as a part of the pregnant woman's body.

Two main arguments are proposed: (1) a conceived person is genetically unique (McHale, Fox & Murphy, 1997, *705*; Liholaja, 2004, *28*) and thus different from the genetic characteristics of the pregnant woman; (2) unlike a pregnant woman's body part, an embryo develops into a being which is able to exist independently (Liholaja, 2004, *28*), or "the potentiality argument" (by J. Harris; see Sīlis, 2006, *106*). Thus, the conceived person and the pregnant woman are two distinct organisms living in symbiosis (Kennedy & Grubb, 1998, *189*). Considering that a conceived person is not recognised as a subject of rights, an expansion of the legal characteristics of a conceived person is expected in the future in medical treatment as well. Thus, there are grounds to believe that the acquisition of the legal status of a patient is the only criterion required for the establishment of patient duties for a special subject of rights, i.e. the patient, where the patient's representation in their duties also acquires the legal effect.

It is also necessary to clarify when patient duties are terminated and when the patient is released from the legal consequences of such duties. On the one hand, patient duties are important during the patient's medical treatment, and this also largely affects the result of medical treatment. On the other hand, patient duties do not lose their effect during the patient's life after the completion of medical treatment if the patient's health disorders or the risk of their occurrence continue, creating the requirement for certain behaviour on the part of the patient for the benefit of their health in accordance with the orders of a medical practitioner. After death of the patient, patient duties of legal nature remain (e.g., the duty to identify oneself (Pacientu tiesību likums, 2009, *15. p. ceturtā d.*), the duty to pay (Pacientu tiesību likums, 2009, *15. p. piektā d.*)) where it is possible to transfer their fulfilment to the patient's representatives (See: Čakste, 1937, *13*; Civillikums. Pirmā daļa: Ģimenes tiesības, 1937, *377. p., 378. p.*; Civilprocesa likums, 1998, *286. p. otrā, trešā d.*;

Torgāns, 2008, *202*; Civillikums. Ceturtā daļa: Saistību tiesības, 1937, *2316. p. trešā d.*). Considering that a person's dignity does not end with death, and it needs to be protected after the person's death (Eiropas Ekonomikas un sociālo lietu komiteja, 2007, *3.4.1.7. pk.*; Vācijas Federālās Konstitucionālās tiesas 1971. gada spried. lietā Nr. BVerfGE 30, 173. Mephisto; Baumgarten, 2000, *66*, *68*, *87*; Osipova, 2020, *133*; Satversmes tiesas 2019. gada 5. marta spriedums lietā Nr. 2018-08-03), due performance of duties is expected and encouraged, which is one of the elements that form a person's dignity. Thus, validity of patient duties is not limited to the medical treatment period of the patient, and groundwork is observed for expansion of the period of validity of patient duties.

3 The Moment Patient Duties are Fulfilled and Scope of Duties to Be Fulfilled

Considering the legal nature of patient duties, a question remains when these duties are considered fulfilled. There are four types of patient duties depending on the time of their fulfilment. First, there are certain duties that need to be fulfilled immediately after acquiring the status of a patient (e.g., the duty to identify oneself). Second, there are duties that need to be fulfilled during medical treatment (e.g., the duty to comply with the orders of a medical practitioner). Third, there are duties that need to be fulfilled after receiving treatment (e.g., the duty to pay). Fourth, there are duties that need to be fulfilled after the patient's death where it is possible to transfer their fulfilment to the patient's representative (e.g., the duty to identify oneself, the duty to pay). Thus, patient duties are established for the patient when the legal status of a patient is acquired, with the duties being different in terms of the time of their fulfilment.

When evaluating the legal consequences of patient duties, it is important to establish the scope of patient duties and the expected degree of performance of them. First, the scope of patient duties when the patient enters a medical treatment relationship is determined by normative regulations where, according to the general principle, it is the same for patients with a similar health condition. However, it is worth noting that there may be special patient groups with different scopes of duties, i.e. narrower (for example, the duty to provide information is narrowed down for military personnel and incarcerated persons (Moskop, 1998, *78*)) or wider (for example, additional duties for the control of health are established for organ recipients (Kelley, 2005, *195*)).

Second, the patient is expected to get involved in the performance of the scope of their duties where such a degree of performance of patient duties is established which does not create negative consequences for the patient. The patient has the duty to get actively involved in medical treatment if their health so allows (Pacientu tiesību likums, 2009, *15. p. otrā d.*), and this duty is a criterion for establishing the degree of performance of patient duties. Thus, if the patient's health is appropriate, the patient is expected to actively fulfil all patient duties, which is supported by the idea that almost any medical treatment will be effective if the patient is involved in it (Lūse, 2007, *60*).

Considering that patient duties are established for a person with health disorders, i.e. for a patient, the impact of the disorders on the fulfilment of patient duties needs to be considered when determining the principles of fulfilment of such duties. On the one hand, a limit for the fulfilment of duties is established at which the fulfilment of duties becomes objectively difficult, and thus it is justified without negative consequences. This limit is the patient's health condition (Pacientu tiesību likums, 2009, *15. p. otrā d.*; Charter of patient's rights and obligations of Trinidad and Tobago, 2007, *a. 2.2.*) because it is important to protect the patient as the weakest party in the legal relationship in medical treatment in the fulfilment of duties (Löschke*, 2017, 10*). However, normative regulations do not provide a specific explanation as to which criteria are to be used to assess whether the patient's health allows the fulfilment of their duties.

These are likely to be the following three criteria: (1) the patient's capacity to act (Civillikums. Ceturtā daļa: Saistību tiesības, 1937, *1405. p.*); (2) the effect of objective circumstances on a patient with capacity to act which take away the legal effect of their actions (Civillikums. Ceturtā daļa: Saistību tiesības, 1937, *1409. p.*; Torgāns u.c., 1998, *24*; Hartkamp & Tillema, 1995, *74*); (3) other circumstances which have a significant effect on the patient's fulfilment of duties for health reasons (e.g., infection (English, 2005, *149*), special needs (The Australian Commission on Safety and Quality in Health Care, 2008, *s. 3.5.*), capacity for work for financial security).

On the other hand, there are still patient duties that must be fulfilled regardless of the effect of the patient's health condition on the fulfilment of the duties (e.g., the duty to pay). Here one could speak of the duties which follow from general civil rights and also apply to medical treatment as one of the types of civil relationships where the principle of civil stability prevails over the principle of patient protection in medical treatment. It is not advisable that such an absolute principle of fulfilment has an effect on the patient duties which follow directly and exclusively from the legal relationship in medical treatment. It is being concluded that a specific objectively necessary limit to the degree of fulfilment of patient duties exists which, under the influence of the legal system, still cannot be evaluated unequivocally, even allowing for deviation from it.

Conclusions

1. Patient duties are binding on the special subject of rights, i.e. the patient, with the goal to protect health as a private good, as well as on the wider circle of persons with the objective to protect health as a public good. The expansion of the circle of persons related to patient duties outlines two directions. First, patient duties are applied to all society for continuous maintenance and improvement of health. Second, in case of a threat to public health, these duties are established for a specific circle of persons, initially without the legal status of a patient. This provides ground for belief that patient duties are more related to health as intangible good rather than to a specific subject of rights. If protection of health is required, , on the basis of the law, patient duties are established for the subject of rights related to this particular intangible good.

2. The validity of patient duties is not limited to the medical treatment period of the patient with legal capacity while the person has the legal status of a patient. When evaluating the time when patient duties are established and terminated, three possible directions of expansion are found for the period of existence of these duties. First, patient duties continue to apply to a person during their life after medical treatment is completed if such duties are objectively required for the person's health. Second, it is possible to transfer a deceased person's duties of legal nature to the patient's representatives in order to protect the dignity of the deceased patient, meaning that patient duties exist even when the patient's legal capacity ends. Third, preconditions for the understanding of the validity of patient duties are formed before the patient's legal capacity appears, thus expanding the legal principles concerning the actual medical treatment of a conceived person.

3. Normative regulations provide for an objectively required limit for the fulfilment of patient duties, i.e. the patient's health which justifies non-fulfilment of patient duties without negative consequences for the patient. Still, two significant principles of the fulfilment of patient duties need to be clarified in relation to such a limit. First, normative regulations do not provide a specific explanation as to which criteria are to be used to assess whether the patient's health allows the fulfilment of their duties. These are likely to be the following three criteria: (1) the patient's capacity to act; (2) the effect of objective circumstances on a patient with capacity to act which take away the legal effect of their actions; (3) other circumstances which have a significant effect on the patient's fulfilment of patient duties for health reasons. Second, there are still patient duties that absolutely have to be fulfilled regardless of the effect of the patient's health on the fulfilment of the duties.

Recommendations

Amend the Law on the Rights of Patients to add Section 14^1 as follows:

"Section 14^1. Establishment and Fulfilment of Patient Duties

(1) Patient duties are established for a person in the cases specified in the normative regulations if this is objectively required in the interests of the patient's health or public health.

(2) If the patient's health so allows, the patient has the duty to get actively involved in medical treatment within their ability, including the fulfilment of patient duties, with the exception of patient duties which absolutely have to be fulfilled.

(3) When assessing the effect of the patient's health on the fulfilment of their duties, the following three criteria shall be considered:

1) the patient's capacity to act;
2) the effect of objective circumstances on a patient with capacity to act which take away the legal effect of their actions;
3) other circumstances which have a significant effect on the patient's fulfilment of patient duties for health reasons.

(4) Patient duties that absolutely have to be fulfilled are patient duties that follow from general civil rights.
(5) The patient still has patient duties during their life after medical treatment is completed in accordance with the orders of a medical practitioner if the patient still has health disorders or the risk of their occurrence.
(6) Those patient duties are binding on the patient's representative where the transfer of their fulfilment is possible.
(7) The duties of a deceased patient shall be fulfilled, or their fulfilment shall be completed by the patient's representative."

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