https://doi.org/10.25143/socr.15.2019.3.059-067

Characteristics of the Rights of Medical Practitioners in Treatment Process of Minor Patients

Karina Palkova, *Ph.D.*
ORCID: 0000-0002-6909-571X
Rīga Stradiņš University, Latvia
karina.palkova@rsu.lv

Evita Libanskiate
Vilnius, Lithuania
Evita.li@gmail.com

Abstract

Nowadays the rights of medical practitioners are not so widely developed as the rights of minor patients. Protection of the rights of medical practitioners is directly subject to implementation of the rights of minor patients. Interaction or legal cooperation of medical practitioners and minor patients has been studied rather little from the scientific perspective. Despite several aspects – introduction of new Internet era in relations of doctors and patients, establishment of judicial practice in the sphere of protection of the rights of patients, the institute of the protection of the rights of medical practitioners in Latvia has not been sufficiently developed yet. Main conditions of interaction of medical practitioners and minor patients are defined both in the Medical Treatment Law and the Law on the Rights of Patients. However, the main feature of these relations is that within such framework, medical practitioners mostly have prohibitions and restrictions, whereas minor patients mostly have their rights stipulated.

The aim of the article is to define the characteristics of the rights of medical practitioners in treatment process of minor patients. Descriptive, analytical, systematic and grammatical methods were used in compiling of the article.

Keywords: medical practitioner, treatment process, minor patients, rights.

Medical practitioners are a specific group of professionals, characterised by different qualifications (in relation to other persons working in healthcare) and teleological differences (in relation to representatives of other professions). Activities of medical practitioners are related to high mental and physical load, social responsibility, high scope of knowledge and application thereof, and assuming of risks. Medical practitioners perform their obligations and professional functions regardless of the place and time, and the work results entail social effect which not only the lives of people depend on, but also the stability of the society in general. This indicates the special value of this profession under the social context not only today, but also in ancient history. Activities of doctors at scientific level started to appear in the 5th century BC when first medical terminology was developed [1].

Analysis of legal acts allowed establishing that the rights and obligations of minor patients, as well as the rights and obligations of their lawful representatives regarding medical practitioners, have been assigned a much greater significance than the rights of medical practitioners in relations with minor patients and the rights in general. For instance, in the main law of medical practitioners – the Medical Treatment Law on the rights of medical practitioners considering patients (without defining minor patients individually) are clearly mentioned in four legal norms. The Medical Treatment Law [9] does not stipulate the rights of a medical practitioner to defend their honour. The rights to honour and dignity have been established both in the Constitution of the Republic of Latvia [2] and the international law, for example, the Universal Declaration of Human Rights [3].

These are not stipulated in the Medical Treatment Law, although disclaimer thereof would serve as legally informative support for the protection of the rights of medical practitioners [9].

Regarding the rights of minor patients, the obligations of medical practitioners have been stipulated in more than eight legal norms in the Law on the Rights of Patients.

Rights and obligations of medical practitioners are not specified in the Law on the Rights of Patients in a clear and unambiguous manner; they mostly stem from the rights and obligations of patients. Such form of providing information in the legal enactment is intransparent and inefficient, as it is oriented toward only one group of people – patients. At the same time, identifying the rights and obligations of medical practitioners raises a lot of questions regarding their feasibility, for example, the mechanism of determining the maturity degree, receiving of informed consent in writing from a minor person, etc.

Considering the EU practice, rights of medical practitioners are represented by professional associations and unions. Pursuant to Article 2 of the Statutes of the Latvian Medical Association, the aim of the Association is to defend professional, economic and legal interests of doctors [4]. Therefore, on the one hand, the rights of medical practitioners are protected at the level of associations, but this mechanism of protection is incomplete, since, for example, conclusions of these organisations are not legally binding,

upon adjudication of cases at court, and they have a consultative nature in development of policy planning documents, etc. This also indicates the social status of medical practitioners in Latvia.

Reviewing the institute of rights and obligations of medical practitioners in relation to compliance with the rights and obligations of minor patients allows concluding that the rights of minor patients are superior to the rights and obligations of medical practitioners. It is necessary to strengthen the legal status of medical practitioners in relations with minor patients by improving the existing laws and supplementing these with a wider range of rights of medical practitioners. The rights of medical practitioners are not defined specifically and unambiguously within the framework of currently applicable laws and regulations.

In recent years the question about legal awareness of medical practitioners has become more topical [4]. The information at disposal of rights of medical practitioners is a precondition for provision of quality service. As it was mentioned before, the concept of information is rather wide. Acquiring legal information or legal awareness of medical practitioners is an important aspect within the framework of the study.

Legal awareness is acquisition of information, stipulated in legal enactments in the compliance with requirements specified therein and mastering of relevant knowledge, as well as application and forwarding thereof. Essence of legal awareness is not only the obligation to know and comply with requirements specified in the laws and regulations, but also to apply the acquired information to improve activities of the specific field. Namely, legal awareness of medical practitioners means obligation of medical practitioners to constantly encourage their continued education as professionals with the purpose of improving knowledge in the field of law. Cooperation of medical practitioners and minor patients is based not only on the body of medical documents and regulatory enactments, but also regulatory enactments, which determine the rights and obligations of parties, including those which protect the fundamental rights of minor patients, for example, rights to health and life. Not only the treatment process itself but also the quality and compliance of the rights of persons involved in this process depend on the level of legal awareness of medical practitioners.

Pursuant to the Cabinet Regulations No. 268 "Regulations on the competence of medical practitioners and students who acquire the first or second level professional higher medical education programmes in medical treatment and their theoretical and practical knowledge" of March 24, 2009 in order to perform treatment activities, among other things, a medical practitioner or a doctor must acquire theoretical information on such matters as, for example, legal grounds of professional activity [5].

It follows from above that any medical practitioner is informed of the legal aspects of treatment regarding the treatment of minor patients. The role of legal awareness in relations of medical practitioners and minor patients is an important precondition for the purpose of not only providing quality service for treatment, but also a matter of ensuring fundamental rights and basic principles of a minor patient.

Cabinet Regulations No. 268 stipulate mandatory requirement for a medical practitioner to acquire theoretical knowledge on such matters as, for instance, legal bases of professional activities [5].

Accordingly, it may be resumed that, for example, students of medical professions are given the opportunity to acquire information on legal enactments that regulate their professional activity. Yet, it is not clear from the Cabinet Regulations No. 268 whether the rights of minor patients, including the rights of the patient shall be included in this programme. By analysing the content of the mentioned Cabinet Regulations, it can be concluded that they stipulate that medical practitioners and students who are studying in first or second level professional higher medical education programmes should acquire legal bases of the professional activity. At the same time these regulations do not specify what is meant by "legal bases of the professional activity", and what is included in the scope of knowledge to be acquired. It is essential that the reference to the necessity to ensure rights and confidentiality of patients, included in the Cabinet Regulations, is only attributed to masseurs [5].

Whereas in other Cabinet Regulations, the competence of medical practitioners includes only and solely theoretical knowledge and practical skills in matters related to legal bases of professional activities. It clearly follows from this that a medical practitioner has to have knowledge on the matters of rights of patients.

Upon acquiring rights of patients under the context of these regulations, the programme should also include the rights of minor patients, which would be an integral part of the content of rights of patients.

Information on the rights of minor patients should be acquired in depth upon acquiring professions of such specialities and sub-specialities which require mandatory contact with children, for example, paediatricians, neonatologists, child surgeons, etc.

What happens after acquiring qualification of a doctor is important too. Pursuant to Article 52 of the Cabinet Regulations No. 943 "Procedures for Certification of Medical Practitioners" a medical practitioner shall obtain further education points in the primary speciality, of which at least 60 % are acquired for professional and scientific activity and further education activities, which refer to the professional activity in the primary speciality, sub-speciality, additional speciality, or medical treatment or diagnostic method (for professional and scientific activity and further education activity) [6].

The relevant legal norm also includes reference to Annex 5 of these regulations, which stipulates mandatory formal and informal further education activities of professional qualification. If a medical practitioner has participated in professional and scientific activity and further education activity, which is not included in Annex 5 of these regulations, the rights to count these shall be delegated to a certification commission. This commission evaluates the significance of the given activity and quantity of further education points shall be determined, based on the principle of aligning the listed activities [6].

Thus, during the recertification a medical practitioner shall not be obligated to participate in such further education activities, where one would have the opportunity to acquire theoretical knowledge on such matters as legal bases of professional activity.

In order to encourage improvement of legal awareness of medical practitioners, a series of practical measures should be undertaken, including solving problems at state, municipal and non-governmental organisation (for example, Latvian Medical Association, etc.) level, paying special attention to education system, further education mechanism and including relevant topics on the rights of minor patients in the agenda of non-governmental organisations, trainings, conferences, seminars, etc..

Communication plays a significant role in relations between a medical practitioner and a minor patient, as well as listening to the opinion of the minor patient in the process of adopting decision, related to health of this patient, which, no doubt, results from legal awareness of medical practitioners.

Uncertainties in application of relevant legal norms, encountered in practice, cause doubts of their quality and conformity to the actual situation. The obligation of a medical practitioner to act, specified in Section 13 and 14 of the Law on the Rights of Patients may be assessed from the aspect of doctor's professional freedom. Professional freedom of medical practitioner in Latvia has been directly embedded in the Medical Treatment Law [9]; therefore, a medical practitioner should feel free upon performance of their obligations and imposed functions in relations with minor patients. However, upon reviewing the expression of the mentioned freedom under the context of Section 13 of the Law on the Rights of Patients, it should be noted that a medical practitioner is not entitled to act freely in regard to the treatment of a minor patient below the age of 14 years and starting from the age of 14 years. Even though a medical practitioner has been granted ethic, moral and professional rights to perform activities related to improvement of health condition for minor patient, these are not absolute. The expression of professional freedom of medical practitioners regarding the treatment of a minor patient coexists with the human rights of this patient as well as the rights of the lawful representatives to decide, for example, on the treatment of a patient below the age of 14 years. Simultaneously, considering the general legal norm of the Law on the Rights of Patients regarding the rights of patients, including minor patients, to refuse the treatment method proposed by a medical practitioner, it indicates poor existence of the mechanism of professional freedom of a medical practitioner at national level [8].

In addition, professional freedom of a medical practitioner is restricted regarding one's obligation to protect health of a minor patient. The regulations of the Law on the Rights of Patients entitle the lawful representatives or the Orphan's Court to decide on the treatment of this patient [8].

The law does not grant a medical practitioner absolute rights to decide on commencement of treatment of the minor patient, but rather offers to extend the procedure of relevant decision making by involving third parties. In this regard, it is essential to

note the role of the World Medical Association. The Latvian Medical Association is one of the members of the mentioned association [7].

Reasonable development of the institute of professional freedom of medical practitioners would strengthen the protection of the rights of minor patients in accordance with the principles of rights of these patients. At the same time cases should be noted, when the lawful representatives of a minor patient refuse from treatment of this patient, acting in interests of the child, and such refusal has lethal consequences. Vaccination of minor patients and refusal of their lawful representatives to have this vaccination done should be noted by analogy as well. In such case, health interests of society are opposed to the interests of a minor patient and the lawful representatives. A solution could be found by developing the professional activity freedom of doctors and reducing the range of rights of the lawful representatives of minor patients. Unequal level of knowledge of medical practitioners and minor patients, as well as special protection of the rights of minor patients reduces theory of duty of trust, thus reducing also the implementation of professional freedom of medical practitioners between the rights of minor patients and medical practitioners.

Conclusion

Nowadays relationship between medical practitioners and minor patients are complicated from legal point of view. The autonomy of medical practitioners refers to freedom of will and freedom of action. In addition, this is connected to the aim of preventing potential risks that may arise from the freedom of medical practitioner's activities.

The balance of development of the professional freedom of medical practitioners would strengthen the protection of minor patients' rights in accordance with the principles of minor patients' rights. The solution of the problematic relations between minor patients and legal practitioners can be found by developing the professional freedom of the medical practitioners as well as narrowing the range of rights of legal representatives of minor patients.

Basic principles of medical practitioners' ethics, loyalty and patient loyalty are important preconditions for the development of professional freedom.

The unequal level of knowledge between the medical practitioner and the minor patients, as well as the special legal protection of minor patients' rights, undermines the duty of trust.

Law on the Rights of Patients and Medical Treatment Law prescribe the basic rules regarding the legal relations between medical practitioners and minor patients. However, that the main problem of this relationship is that the medical practitioners is mostly subject to prohibitions and restrictions. While minor patients have mostly the rights.

For example, difficult issue is related to characterization of the rights of medical practitioners with regard to minor patient's vaccination. Pursuant to Section 13, paragraph one of the Law on the Rights of Patients, the decision the parents of the child make.

Hence, medical practitioners do not have an exclusive right to take the decision, priority has been granted to the child's parents. However, it should be noted that if a child refuses to vaccinate himself after the age of 14, the medical practitioner would have the right to make an application to the Orphan's Court if the doctor considers that vaccination is in the patient's best interest. However, this mechanism of exercising the rights of medical practitioners is ineffective from a practical point of view. The rights of medical practitioners are also restricted and unclear in the case's authorization. The question of medical practitioner's unclear rights also applies when a person who does not have clear documentation brings a minor patient to the hospital. For example, the Law on the Rights imposes an obligation on medical practitioners to provide treatment services to a minor patient (up to 14 years of age) with the consent of their legal representative. Pursuant to Articles 177 and 223 of the Civil Code, the child's legal representatives are parents – father and mother. In practice, there are situations when a child is brought to the hospital by a third party who has not been authorized by the parents of the minor patient. As a result, the medical practitioner is faced with the choice of whether or not to provide medical treatment to a child who has undergone an examination with an unauthorized third party. In this case, key issue is the lack of lack of authorization and the circumstances of not provided medical services versus minor patients' right fundamental rights to health.

There is luck of definition of the rights of medical practitioners in the national legislation in the context of minor patients' rights. The rights of medical practitioners do not cover the fundamental rights to which they is entitled as any citizen.

Changes in the system of specific knowledge are needed to ensure the quality and success of relationship between medical practitioners and minor patients in treatment process.

Ārstniecības personu tiesību raksturojums nepilngadīgo pacientu ārstēšanas procesā

Kopsavilkums

Mūsdienās ārstniecības personu tiesības nav tik plaši attīstītas kā pacientu tiesības. Īpašs jautājums ir par ārstniecības personu un nepilngadīgo pacientu tiesiskajām attiecībām. Praksē eksistē virkne jautājumu, kas liecina par attiecīgā rakstura problemātiku. Piemēram, aktuāls ir jautājums par ārstniecības personu tiesību raksturojumu gadījumos, kad jāveic nepilngadīgā pacienta vakcinācija. Saskaņā ar Pacientu tiesību likuma 13. panta pirmo daļu, veicot vakcinācijas, lēmumu par vakcinācijas veikšanu vai neveikšanu nepilngadīgam (līdz 14 gadu vecumam) pacientam pieņem šā bērna vecāki. Līdz ar to ārstniecības personu tiesībām ir sekundāra loma attiecībā pret bērna vecāku tiesībām. Taču jāatzīmē – ja bērns pats pēc 14 gadu vecuma atsakās no vakcinācijas, bet

ārsts uzskata, ka vakcinācija konkrētajā gadījumā ir pacienta interesēs, tad ārstniecības personai ir tiesības vērsties ar iesniegumu bāriņtiesā. Taču minētais ārstniecības personu tiesību realizācijas mehānisms nav efektīvs no praktiskā viedokļa, jo, iesaistoties papildu institūcijai, pastāv vairāki šķēršļi ātra lēmuma pieņemšanai. Ārstniecības personu tiesības tiek ierobežotas arī jautājumā par pilnvarojuma nepieciešamību. Arī jautājums par ārstniecību gadījumā, ja nepilngadīgu pacientu uz izmeklējumu atved persona, kurai nav sakārtota pilnvarojuma dokumentācija, ir neskaidrs un komplicēts no ārstniecības personu tiesību viedokļa. Piemēram, Pacientu tiesību likumā ārstniecības personām noteikts pienākums sniegt ārstniecības pakalpojumus nepilngadīgām personām, ja tam savu piekrišanu devis likumiskais pārstāvis. Saskaņā ar Civillikuma 177. un 223. pantu bērna likumīgie pārstāvji ir vecāki. Tomēr praksē ir situācijas, kad bērnu uz izmeklējumu atved trešā persona. Tādējādi ārstniecības persona ir lēmuma izvēles priekšā – sniegt vai nesniegt ārstniecības pakalpojumu bērnam, kurš ir ieradies uz izmeklējumu ar personu, kurai nav sniegts pilnvarojums. Šajā gadījumā būtu vērtējami ne tikai riski, kas saistīti ar pakalpojuma nesniegšanu, bet arī ar nepilngadīgo pacientu tiesībām uz veselību.

Ārstniecības personu tiesību aizsardzība tiešā veidā ir atkarīga no nepilngadīgo pacientu tiesību attīstības un šo tiesību īstenošanas. Ārstniecības personu un nepilngadīgo pacientu mijiedarbība vai tiesiskā sadarbība no zinātniskā viedokļa ir pētīta diezgan maz. Neskatoties uz vairākiem aspektiem – interneta laikmeta iespēju ieviešanas ārstniecības personu un pacientu attiecībās, jaunas tiesu prakses pacientu tiesību aizsardzības jomā utt., ārstniecības personu tiesību aizsardzība Latvijā joprojām nav pietiekami attīstīta. Galvenie ārstniecības personu un nepilngadīgo pacientu mijiedarbības nosacījumi ir definēti gan Ārstniecības likumā, gan Pacientu likumā, gan citos tiesību aktos. Tomēr ārstniecības personu un nepilngadīgo pacientu tiesiskās attiecības raksturo galvenokārt ārstniecības personu tiesību ierobežojošs faktors attiecībā pret nepilngadīgo pacientu un viņu likumisko pārstāvju tiesībām. Tas rada problēmas savstarpējo attiecību pilnveidošanā. Neskatoties uz ārstniecības personu tiesībām izvēlēties vienu vai otru ārstēšanas metodi, medikamentus utt., tomēr gala lēmumu par nepilngadīgā pacienta ārstniecību lielākoties pieņem vecāki.

Atslēgvārdi: ārstniecības personu tiesības, nepilngadīgo pacientu tiesības.

References

1. Hippocratic articles. Selection. Translation by Agnese Gaile and Aija van Hofa from from ancient Greek, introduction and comments. Riga: Liepnieks & Rītups, 2003.
2. 01.07.1993. Constitution of the Republic of Latvia: Law of the Republic of Latvia: adopted at the Constitutional Assembly on February 15, 1992 and comes into force on November 7, 1992. *Latvijas Vēstnesis*, No 43, Section 95.
3. United Nations Universal Declaration of Human Rights. Article 12. Available: http://www.tiesibsargs.lv/lv/pages/tiesibu-akti/ano-dokumenti/ano-vispareja-cilvektiesibu-deklaracija [accessed on 16.12. 2018].

4. Statutes of the Latvian Medical Association. Website of Latvian Medical Association, 12.03.1993. Available: http://www.arstubiedriba.lv/statuti/ [accessed on 21.11.2018].
5. 16.04.2009. Regulations on the competence of medical practitioners and students who acquire the first or second level professional higher medical education programmes in medical treatment and their theoretical and practical knowledge. Cabinet Regulations No. 268 of March 24, 2009. *Latvijas Vēstnesis*, No 58, Subclause 10.58.,
6. 02.01.2013. Procedures for Certification of Medical Practitioners. Cabinet Regulations No 943 of December 18, 2012. *Latvijas Vēstnesis*, No. 1 (4807), Article 52,.
7. 30.12.2009. Law on the Rights of Patients. Law of the Republic of Latvia. *Latvijas Vēstnesis*, No 205 (4191), Section 6.
8. World Medical Association. Members. Available: https://www.wma.net/who-we-are/members/members-list-printable/ [accessed on 09.12.2018].
9. 01.07.1997. Medical Treatment Law. *Latvijas Vēstnesis*, No 167/168 (882/883).