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Patient consent to a medical treatment and liability for treatment without a proper approval

Original scientific work

SUMMARY

Valid patient consent must cover each medical measure over a patient. Should there be no such consent, that measure is unlawful, regardless if regulated or non-regulated, successful or unsuccessful, with a harmful consequence or without it. From the civil law point of view, this represents bodily injury and injury of a person right, raising liability.

Patient consent to a certain medical measure is not a pure formality, it is not a form without a content, because a patient must know what he / she is approving. Medical doctor has duty to tell him / her about it, because he / she, as a rule of thumb, does not know. This advice must contain, for a patient all necessary information, for freely deciding if he / she accepts or does not accept proposed medical treatment. Because legal authorities have built relevant standard, advice scope today is mostly known. However, our lawmaker has listed what an advice to patient should embrace. It has not been mentioned in this list that a patient must

familiar on a medical doctor person who is to undertake medical measure on him / her. Therefore, it is clear that a patient consent is valid even without such advice, as is the case in other jurisdictions.

On the other hand, patient autonomy means also a possibility to limit his / her consent to a medical treatment to a designated medical doctor, who enjoys his/ her trust. Patient may have necessity for such a consent especially when he / she should undergo some serious surgery, because it is not all the same who will operate him / her. Should a chosen medical doctor, from some reason, cannot do the surgery, patient must be timely advised and asked if he / she agrees with replacement of the surgeon or does he / she want surgery delay. Surgeon replacement without patient consent makes surgery illicit. Medical organization and private practice whose medical doctor performs such a surgery, undertakes operation consequences and owe indemnity of material and intangible losses to a patient, without right to reward.