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Medical doctor duty to advise patient about risks of medical treatment proposed and his liability – special review of the German and Austrian authorities

Original scientific work

SUMMARY

Patient decision to accept or decline the suggested medical measure depends on multiple different circumstances about which he needs to inform the doctor. Law on medical protection of Serbia provided for explicit details that the advice must embrace in order that the patient consent is valid. Besides, doctor duty to inform patient on possible risks of the medical measure is especially outlined. That duty represents fundamental and very important novelty for medical doctors in Serbia because they cherished, predominantly, paternalistic relation towards patient. Therefore, author believes that domestic medical doctors will face hard time to find right measure for meeting their duty, and courts will have the difficulty in controlling them. Experience of their colleagues from other countries, such as Germany and Austria, could help both parties.

From the very beginning of the past century, their courts came to conclusion that only informed patient

could approve (“informed consent”) medical treatment. During past decades, this view has proved in practice and gained great forensic importance. However, situation in Serbia is completely different, because disputes between doctors and patients for errors in advising about risks almost do not exist.

Having in mind this, author has analysed entire legal issues from the field of informing about hazards not only in light of the national legislation, but also from the view of the German and Austrian authorities. The main parts of his work are designated by these titles: Medical measures risk and their group classification, risk information scope, risks informing, legal consequences for the breach or illegal risks informing. Because rules in Serbia do not address certain concrete issues, author believes that relevant legal views of the German and Austrian authorities should be used. He thinks that those views are very thoughtful and right-minded, and therefore they are appropriate for each civilised society.