

## DOCTRINAL APPROCHES IN THE MATTER OF THE RIGHTS OF THE BENEFICIARIES OF MEDICAL SERVICES

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**Abstract.** *The relevance of the subject of the given research lies in the exceptional social importance of the legal, emergent relations in the field of public health and the need to protect the rights of consumers in the provision of medical services. One of the most important indicators of the socio-economic development level of any country, and an indicator of the quality of life of its citizens is the average life expectancy. Problems encountered in the application of the legislation governing consumer protection in the provision of medical services, as well as the need to improve the legal regulation of the protection of consumers of medical services, require a detailed study and in order to make effective decisions to improve the protection of the rights of consumers of services thereafter. medical.*

*However, the main problem in the legal regulation of the relationship that results from the provision of medical services (beneficiary - medical service provider) is the lack of a unified legislative system that regulates these legal relationships, which leads to serious difficulties in law enforcement and makes difficult*

*implementation of a comprehensive monitoring of the mode and degree of protection of the rights of the beneficiaries of medical services on our market.*

*Determining the place and role of the beneficiaries of medical services in the provision of these services, of a major imminence, in evolutionary aspect, will give us a heavenly answer to what stage of human development this intercalation of the notions of consumer and patient took place, based on the conceptions different specialists in the field.*

**Key-words:** *doctrine, rights, beneficiaries, services, medical, consumer*

*JEL Classification:K15, D18*

### INTRODUCTION

The reasoning regarding the application of the consumer status in relation to the health services derives from two totally opposite views. First of all from a protectionist perspective, which refers to the use of consumer law to protect patients, beneficiaries of health services, a legal guarantee instrument, a set of rules of public order that allows the weakest part of the a contractual relationship to be regulated by the normative provisions. On the other hand, from the perspective aimed at introducing the health sector in a market logic, by the same conception. The logic that so far has no point in common with the objectives of the state, because its objectives are openly different, so that the latter approach can be extremely difficult from a practical point of view.

Analyzing the historical way of forming the concept of patient, one can say without a doubt that we are currently witnessing a radical transformation of the model that governs the relationships between the healthcare provider and their recipient. From a traditionally passive subject and largely a recipient of clinical practices, contemporary social movements (the "patient revolution"[12]) have brought to light a new model of medical care presided over by the principle of autonomy, understood as patient participation in decision making. The principle of autonomy, whose most obvious, but not unique, characteristic is the informed consent that requires rethinking the notion of beneficiary of the health service in order to construct an adequate concept that will allow the

articulation of the new situation of positive parity in front of which the provider of these is services. The support relationship is asymmetrical in nature, so if we want to promote a new horizontal link with a catalog of rights, the first decision to be made in this regard is to determine which legal instruments are appropriate for this purpose.

## **MATERIAL AND METHOD**

The methodological framework of the study is the theory of knowledge and the dialectical one, the fundamental and applicative investigations of the contemporary science of private law, especially of the law of consumer protection. In the elucidation of the subject proposed for research, other scientific research methods were used, such as: the logical method, which represents the application of the analysis and synthesis procedures, the deductive argumentation; the juridical-comparative method, which consists in highlighting the common features and the particularities of the regulation of consumer protection generally as well as applied in the field of medical services, in different states and periods of historical evolution; the historical method, based on relaying the meaning of past events in order to improve the current mechanisms, which would contribute to the adoption of an efficient legislation in the field of consumer protection of medical services, as well as the study of the national and foreign doctrine; the quantitative method, which facilitates the systematization and recording of legislation and legal-scientific information with reference to the rights of consumers of medical services; the prospective method, used to identify the most effective ways of optimizing the legislation and improving its mechanism for the protection of the rights of consumers of health services.

## **RESULTS AND DISCUSSIONS**

The process of emancipation of the common trunk was found in the sphere of relations between the businessmen and the recipients of goods and services, thus taking the form of the Law on consumer protection, beyond the fact that its scientific autonomy does not prove to be peaceful in the doctrine[6]. Undoubtedly, the configuration of modern consumer law as a tool for the protection of the weakest part of the legal relationship and its extension in the different sectors of social and economic activity makes the legal debate regarding its transfer in the field of relations between the healthcare provider and the beneficiary be a necessary and urgent one, to evaluate its applicability as a tool for rebalancing the public position.

From this point of view, an advanced doctrinal sector emphasized how, compared to the traditional consideration of the patient as a simple recipient of health products and services in a doctor-supervised relationship and inspired by the principles of goodwill and trust, the modern directions of legal research place the patient as the beneficiary of the services and a consumer of products, which is why the legislation on consumer protection would be applicable by extension[19]. Therefore, it is appropriate to start by differentiating the concept of consumer in the economic and legal sense, so that, once the latter has been defined and its basic characteristics highlighted, it is begun to evaluate its translational adjustment on the consumer of health services.

One of the main difficulties that the conception of the beneficiary of health services as a consumer faces and, correlatively, the additional application of his own rights, was undoubtedly the conceptual polysemy of the term "consumer" in different disciplines. In fact, the concept of consumer is extremely broad. "Consumer" is a term that comes from economic science, which defined it as the last link in the production process. In this sense, consumerist theory, as a branch of microeconomics, studies the consumer's behavior from the point of view of an economic agent, the consumer analyzing the supply and demand of different goods and services, thus reaching the concept of marginal utility. For this, this

theory refers to different concepts, such as preferences, indifference curves, demand curves or budget constraints. Thus, the ultimate goal is to anticipate consumer choice, modeling their behavior, so that part of the individual preferences with the range of products and services that are offered and those that can choose according to the available resources.

Nor is it to be neglected that, from an economical point of view, the consideration of the patient as a consumer has been the subject of criticism. Thus, relevant economists like Krugman have come to regard the inadmissibility of qualifying the patient as a consumer under the forced and slightly nuanced title of "patients are not consumers". The author sees the relationship between the patient and the doctor as "something special, almost sacred", so that doctors are considered simple "providers" selling services for "consumers" is, in his opinion, "a sick idea"[11]. Similarly, Meil and Ericson, less radical, present disadvantages of this consideration based on a threefold reasoning: the involuntary nature of the benefit, the alleged lack of patient preparation for decision making and the plurality of people involved in the care process. Meil and Ericson explains this inconvenience in 3 ways:

1. *Patients don't want to be there:* People don't seek healthcare for no reason. Something is wrong and patients want to resolve it and return to normal. When patients need to be proactive decision makers, the health system often casts a very reluctant hero in this role.

2. *Patients are not equipped to be there:* Even when patients are willing to be decision makers, they may not have the necessary tools. In a period of unusual stress, the system requires it to absorb technical information and make difficult decisions that require specialized expertise.

3. *Patients are not alone.* To design only for patients, you have to forget that they are part of a complex system and are often not independent decision makers. The decisions are made by other stakeholders: friends and family who support the patient, the insurance company, practitioners and specialists who provide care, hospital administrators and so on[11].

Other authors have argued that the term "consumer" would come to introduce market logic in healthcare, which is not appropriate for the designation of patients. This is the case of Annas[1], who criticizes the term "consumer" to refer to the patient, noting that the transformation of patients 'rights into consumers' rights is inadequate. The patients, according to the author, would not be consumers because they do not choose the medical providers based on the quality and the price, because they are "sick and vulnerable people, who cannot get the best treatment". Also, from a bioethical point of view, this consideration of the patient as a consumer has been criticized under different arguments, such as the alleged reductionism of the doctor-patient relationship[9], the elimination of the principle of trust in the clinical relationship[3] or the alleged commercialization of the patient's health services[4]. In addition, for George Annas, language matters: "*Language matters. Thus, when the market is imposed on the health system, it seems natural to turn patients into consumers, and patients' rights into consumers' rights. But patients are not the ones who choose the doctors and treatments. the basis of price and quality. Patients are sick and vulnerable people who are not really sincere and are not able to shop to get the best deal.* [1]"

The positions indicated are well-intentioned, but they are scientifically reductionist and bioethically paternalistic. In fact, they are not aware of the different meaning of the legal concept and the economic concept of the consumer, limiting themselves only to the consideration of the latter and ignoring the tuitive dimension of the category in the legal system. Also in Spain, there were authors who - wrongly - reduced the concept of consumer to its economic dimension, forgetting the legal-normative significance and linking it with the cost of the service. It is significant, in this wrong direction, the reflection of Manuel Beato in his paper "The rights of users of the health system ten years after the adoption of the General Health Law", who, after asking what is the most appropriate title in the current legal reality in health, states that "*if measured in clinical*

*terms, it will be that of the sick person or patient; if it is in economic terms, performance and cost , it will be the user or the consumer; if it is a public, universal and free service, the title will be that of the citizen or the taxpayer; if it is measured from the position integrated in a social security system, the title will be that of the insured person or the beneficiary"*[2]. Secondly, there is a kind of paternalism hidden in the sacred consideration given to the optional function, inspired by the old principles of well-being, trust and altruism, which seem to evoke in earlier eras[7]. On the other hand, the appeals to the lack of patient preparation, the alleged involuntariness in receiving the benefit or the plurality of the persons participating in the care process are, of course, are little compatible with the principle of autonomy which, if it is to be remembered, is a manifestation of dignity human rights and the free development of personality, recognized in Article 10 of the European Convention on Human Rights[5].

Therefore, we insist that we do not use an economic or behavioral notion of the consumer[16] but a normative concept. In this way, it is intended to examine the field of tutorial techniques of consumer law in clinical relationships, exceeding the traditional conception of the right to health of consumers as a law of a purely preventive nature and community dimension - a traditional approach to first generation consumption laws - to apply and the dimension of assistance and prevention, individualized by the autonomy of the beneficiary and by the professionalism of the supplier, thus abandoning the anachronistic systems of trust relationships based on trust. In fact, whether we want it or not, the extra-mercantilist and altruistic qualification of the provision of professional medical services, as a Greco-Roman heritage, is as anachronistic, being far from reality. The beneficiary of health services is a consumer who chooses and asks. Nothing abnormal should be seen in this paradigm shift, common, on the other hand, to other situations of legal asymmetry.

From this perspective, it is essential to mention Hall's opinion that explains how there are two fundamental positions in relation to the debate on the rules applicable to the provision of health services[8]. A traditional position, which qualifies as "essentialism"[7], argues that the legal relationship is regulated by its own special rules, taking into account the fiduciary attributes of the doctor-patient relationship, such as medical secrecy. Faced with this position, the author argues for a consumerist thesis in which, in our opinion it is a correct vision, the consumer status would appeal to the contractual aspects of a standard professional service, as opposed to the patient status that would constitute dependence, suffering and need for care[7]. On the other hand, the author reminds us that the legal system has always considered those who receive health care more from their patient status than consumers, noting that, as with family law, medical law gives priority to the status and not of the contract[7], without this causing us to forget the contractual dimension of the medical relationship in which the bilateral obligations are forged in a context in which one of the parties is a sick and vulnerable person. Thus, he stresses that the tension between patient status and consumer status has a long history of social nature[18].

The potential role of patients as consumers began to grow in the thirties of the twentieth century, in response to rising healthcare costs in the United States. In fact, since the 60s of the last century, the patients' rights have been recognized due to the pressure of the consumer associations that have caused the prevalent medical paternalism. The consumerist vision gained additional power even in the 1980s, when public policies embraced market dynamics to reduce and rationalize medical spending. Since then, talking about consumer rights in the United States has a connotation of autonomy, as opposed to the term "patient" more related to classical paternalism [7].

This current of consumption, if we are allowed to use the Anglicanism given, of health services, which led to a rich doctrinal debate [17], began in the United States for reasons that were exactly contrary to the assumptions. In fact, the legal consideration of the patient as a consumer is

used as a tuitive tool that allows the correction of the extraordinary inequalities existing in the benefit relations in the respective country. In this way, consumer law is understood as an avant-garde instrument of autonomy and patient rights. In the same sense, Kapp directly links the state of the consumer with the patient's autonomy through the main manifestations: informed consent and informed choice, both institutions belonging to the category of individual non-interference rights that inspire, from the founding fathers, the American constitutionalism [10]. Kapp concludes that "however, the consumer-driven health care paradigm should not be undercut, certainly not at this early stage, by arguments predicated on the incompetence of Americans to fend for themselves adequately in terms of choosing among various health plans offered within a competitive marketplace environment. Autonomy is a privileged moral value in our society, as reflected in the health care context by the informed consent doctrine pertaining to individual medical decisions. This moral value and its legal embodiment should be fully respected and applied in the realm of decisions about the details and permutations of one's health plan. To honor autonomous informed consent in one context but not the other would be both inconsistent and foolish" [10].

Indeed, the patient can rely, in addition to the specific rights provided in the legislation in the field of health, those established generically in the legislation on consumer protection. This approach was particularly welcomed in countries where, paradoxically, it proved to be the power of the private healthcare system that forced the patient's status as a legal consumer to be forgotten.

## CONCLUSIONS

The doctor-patient relationship is of fundamental importance in the process of initiating, following and completing the treatment of a patient. In order to obtain the patient's informed consent, the doctor, without forgetting his role, will have to explain to the patient the illness he suffers, adapting his language to the patient's meaning. The physician's knowledge should be used rationally to find the appropriate solution to the patient's condition and condition. The relationship models in which patients are involved in decision making aim to lead to better clinical outcomes. The training of future doctors must take these aspects into account in order to be prepared for the delicate challenges and situations in which they may find themselves in the future.

There are theorists in medicine and thinkers without clinical activity that defend radical autonomy as the only option for adults in a democratic society. But in the daily practice of clinics and hospitals there are many factors involved in the clinical relationship (cultural level, attitude and character of the patient, more rigid personality or more doctor's dialogue, increasing intervention of other health professionals, conditions imposed by "third parties": family, judge, administration, insurance companies, availability of resources and time).

Every day, the doctor and the patient dialogue, conditioned by all these factors. During this dialogue, the doctor, with his qualities and weaknesses (professional and personal), moves between the intention to help the patient and the conviction to respect the patient as an adult subject with full rights. Achieving a balance between the two poles, in each case depends on their degree of training and their criteria (for a rigorous management of biological facts, of course, but also for the recognition of personal values). Sometimes, the doctor secretly wants to spend those times when the patient could be guided as a child; then things were definitely simpler. But the patient's childhood is over, after many centuries. It ended abruptly just a few decades ago. And sometimes it is not easy for the sick person to assume the new power. It is often difficult for the doctor to accept this recent loss of power. But it is never easy or comfortable to be an adult. In any case, it must be emphasized that this conception of the patient's status as a consumer opens up in the different legal systems, not as a synonym for the economic privatization of the care relationship, but rather as a legal instrument

of empowerment in the service of the patient. This, logically, implies a radical change in the ancestral way of understanding the clinical relationship, once it has been affected by the medical, fiduciary and beneficiary paternalism.

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