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Urednice:
Suzana Kraljić
Jelka Reberšek Gorišek
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Mladinska ulica 9, 2000 Maribor, SI - Slovenija
tel. +386 (0)2 250 4242, fax +386(2) 252 3245
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Patients' Duties in the Legal and Ethical Relationship between Patient and a Physician

MARTA SJENIČIĆ

Abstract Person requiring medical treatment is obliged to do everything possible to enable it. European legal theory considers patients' duty to comply, as subsidiary contractual obligation, comparing to obligation of fee payment. Patients' compliance isn't real legal obligation, but duty in his own interest. It is owed, but not actionable, nor can it be forced in other way. Duties to comply are, in European legal theory, divided into two basic groups. First encompasses duties which serve to successful treatment. Other group encompasses duties of patient to reduce or remove damage that has already occurred. Anglo-Saxon theory considers patients' duties, very often, as duties towards other patients, medical personnel and society. By using public funds, legally capable patients have the obligation to act in appropriate manner. Patients' duties towards others, society and himself are, very often, in these systems, observed through prism of the profitability of patients' treatment.

Keywords: • patients' duties • European and Anglo-Saxon system • compliance • cost-effectiveness • negligence

CORRESPONDENCE ADDRESS: Marta Sjeničić, Ph.D., Research Associate, Institute of Social Sciences, Kraljice Natalije 45, 11000 Beograd, Serbia, email: marta.sjenicic@gmail.com.

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1 Introduction

The relationship between physician and a patient is considered as the relationship between reasonable persons, in which the person with medical knowledge helps the ill one. When patient asks for medical service and physician agrees to provide it, this is already the initiation of contractual relationship between two of them. So, basically, this relationship has, in most of the cases, contractual nature. Of course, one should be realistic to see that the relationship between physician and a patient is, in its relevant points, asymmetric, since the physician's role is dominant in it. This asymmetry can be reduced by legal guidelines and rules of behavior, but it cannot be completely nullified. Theories about physician-patient relationship go from „paternalistic" to „partner" one, with the spectrum of differentiations in between. Having in mind the abovementioned asymmetry between two parties, the author cannot consider this relationship as „partner"one, but rather as contractual, where each party has its own rights and duties. Beside and before being „partner", it should, of course, be ethical relationship, based on confidence above all.

Being the party in the contractual relationship, the patient cannot just require from the other side to enter a partner relationship, but has to realize it himself. A patient requiring treatment from a physician is obliged to do everything necessary to enable successful treatment (Conti, 2000: 83). When asking for physician's help, patients is, at the same time, acquiring duties in his own interest. Owing to the autonomy acknowledged by the legislator, patient overtakes the responsibility for his own health. By giving the rights to patients, the duties are also assigned to them, as in every contractual relationship. Patient's participation in decision-making is especially explicit in the context of the personalised, or, so-called, P4 medicine. Within P4 medicine it is envisaged that every person familiar with the health risks shall undertake responsibility for his own health and conform to preventive care measures.

Patients' duties are considered slightly different in the European and Anglo-Saxon theory and jurisprudence.

2 Patient's Duties in European Legal Theory and Jurisprudence

Readiness of the patient to harmonise his behaviour with the treatment measures or (even wider) any form of patients cooperation necessary for the succesful treatment, is reffered as »compliance« in the comparative law (Conti, 2000: 84). Patient which requires from doctor to treat him is also obliged to do everything necessary to enable the succesful treatment. If he breaches this duty and does not participate in his own teatment in the way expected from him, he can contribute to the damage on his own health. In this case, we can talk about patients' negligence (Conti: 2000, 84). If patient does not comply in the treatment process, he can be considered negligent in the case of damage that occured on his own health and body. It his case, it might be that he contributed to the pathogenesis or enlargement of the damage on his health (Sjeničić, 2013: 126).

2.1 Patient's Duty to Comply

European legal theory makes division of patients' duties into two basic groups. The first group encompasses all duties which are, in a wide sense, oriented towards the treatment success and are called ***"duties of patient's compliance"*** *(duties of a patient in avoiding his own damage).* In general, patient must contribute to the successful treatment through his cooperative behavior, and, particularly, he has to avoid everything that could jeopardize the success of the treatment. Patient has two reasons for compliance: one is, of course, to contribute to the successfullness of the treatment; the other reason: if the patient does not behave in line with the physicians' recommendation, his chances to get the compensation for damage caused on his health might be decreased in the legal process (Sjeničić, 2013: 129). The supporting legal provisions could be found in the Civil Codes of different European countries: Article 326, para. 1 of the Serbian Law on Obligations; also Article 300, para. 1 of the German Civil Code. Both prescribe that in the case of obligees' delay, debtor shall be held liable only for the malice and gross negligence. These are, obviously, general provisions, but applicable to the patient-physician relationship, as well.

Legal basis of the first group of duties, duties of patients' compliance, is usually the contract. *Legal nature* of these duties is interesting, since they are not the obligations in the usual sense. European legal theory considers patients' duties to compliance as patients' subsidiary contractual obligations, compared to the obligation to pay the physicians' fee (Laufs and Uhlenbruck, 2002: 598). Listed duties are of secondary importance when compared to the fee payment (which is the main duty), but that does not diminish their importance, having in mind the whole course of physician's actions and the nature of physician-patient relationship. "Secondary" duties of the patient do not have the character of legal obligation and that, therefore, they are not actionable. This is solely about the duties in one's own interest. If the patient does not participate in a proper way, does not cooperate in decision-making, is not compliant, the patient himself can suffer damage. Breach of these duties can point to the negligence of the damaged party and can have different consequences (which will be elaborated in the following text), but the fullfillment of these duties cannot be forced (Radišić, 1996: 344).

Specific duties of compliance are the following: duty to give the data on the history of illness (anamnesis); duty to cooperate in conducting of diagnostic measures; duty to cooperate in selection of treatment measures; duty to cooperate in conducting of treatment and to comply with the physicians recommendations and instructions; general duty of the patient to take care about his health; and, keeping in line with the contracted deadlines (Sjenicic, 2013: 132). Of course, all these duties are limited by the patients' authonomy, i.e. with the patients right to self-determination. Also all the duties are, in a way, preconditioned with the physicians obligation to ask, to try to make clear the circumstances related to illness. This relation of the duties of both sides is the consequence of the, always and forever, unbalanced physician-patient relationship, where physician is a proffesional, while patient is a lay-person.

2.1.1 Duty to provide the data on the history of illness

The first duty is to give the data on the history of illness. It is, chronologically, the first in the line of patients' duties. Patient has to inform the physician about his characteristics and features, as previous illnesses, genetically harmful characteristics, allergies, etc. By withholding the anamnestically relevant information, patient contributes to causing of damage (Geiβ and Greiner, 1999: 32). However, physician should point out which data are relevant for anamnesis and should pose the questions to the patient, which is the lay person and might not be aware of this relevance. When the patient is not able to describe needed data precisely or at not all, physician should come to these data through precisely formulated questions (Conti, 2000: 92).

The good example of the patients' negligence in the phase of anamnesis is given in the case when the German patient underwent the surgery in order to lose the weight. Surgery consisted of implanting of silicon balloon filled with salt, into his stomach. Three months later balloon detached spontaneously and caused the closure of small intestine, followed with pain. When the patient asked for help in the other hospital, he did not mentioned implantation. He underwent the surgery, which could be avoided if he had mentioned implantation. Since the patient considered that he suffered the damage, he approached the court. Appeal court in Köln decided that the first physician was negligent by not informing the patient about the possible risk of closuring of small intestine. However, Appeal court also decided that patient is also negligent because he did not go to the scheduled controls after the implantation of balloon and because he did not mention the implantation to the second physician to whom he referred to, related to pains (Göben, 1998: 50).

2.1.2 Duty to cooperate in diagnostic measures

The other duty from this group is the duty to cooperate in conducting of diagnostic measures. Optimal therapy is possible only when patient understands the sense of the proposed diagnostic measures and when he accepts even the invasive examinations which are necessary. Of course, this duty is always limited with his right to self-determination and right to reject even the medical measure which could save his life.

2.1.3 Duty to cooperate in selection of the treatment measures and in treatment

Third and fourth duties are the duty to cooperate in the selection of the treatment measures and in conducting of treatment and to comply with the physicians recommendations and instructions. Duty to cooperate in the selection of treatment measures is preconditioned with the obligation of the physician to list all alternative measures which could lead to the succesful treatment. In order to have succesful treatment, patient must also cooperate. He is important part of the treatment concept. It is easier to conduct the therapy in hospital. Out of hospital, patient himself must take care about taking of medicines, diet, excercises, etc. Of course, it is necessary that physician motivate the patient to cooperation and to explain him that the treatment succes depends on his life attitude and on following of medical recommendations and

instructions. Duty of the patient to cooperate in medical treatment is preconditioned with the physicians' obligation to take into consideration the circumstances of the concrete case, i.e. profile of the individual patient (Sjenicic, 2013: 141). Duty of the patient to comply with physicians recommendations and agreed therapy is also compliance in handling with orthopedic devices, their maintenance, also regularity in taking of medicaments, etc. These duties are preconiditoned with the obligation of the thorough explanation of physician to the patient on the way of necessary behaviour and its consequences. This explanation should come from the physician.

2.1.4 General duty of the patient to take care about his health

Further duty of compliance is general duty of the patient to take care about his health. In some cases, ommision of the patient to notice unusual symptoms can be treated as negligence related to, for example, general post-surgery care.

2.1.5 Duty to comply with the contracted treatment terms

And finally, the duty of the patient is to comply with the conctracted treatment terms, i.e. visits to the physician. This duty matches to the obligation of the physician to finish the uncomplete treatment or to conduct the control examination or additional care. Contracting of treatment terms usually serves to the provision of regular treatment dynamics, but sometimes it is scheduled because specific treatment requires some preparations followed with considerable financial expenditures which have to be planned (Sjenicic, 2013: 146). In this case, if the patient doesn't show up at scheduled time, physician or the hospital can suffer a damage and ask for damage compensation. However, in most of the cases scheduling of terms is relevant for the purpose of regular medical treatment dynamics. The consequence of ommission of agreed terms is that patient can be considered negligent if this ommission causes some damage. In this case, he cannot get compensation or full compensation of the dammage occured on his health. For example, in the case Chodson v. Ratra, patient sued her gynecologist because he did not diagnosed and treated her breast carcinom in time. Patient did not have succes in the law suit: court explained that patient reffered to the doctor too late (Chodson v. Ratra, see Deutsch, 2003: 228).

2.2 Patient's Duty ro Remove or Reduce the Existing Damage

The other group encompasses the duties of the patient to remove or reduce already existing damage. These duties should, in accordance with their function, protect the contractual partner from the negative effects to his rights. The patient is obliged to undertake all expected measures to remove or limit further expansion of the damage, after it has been incurred, in order to reduce the scope of the damage. This group encompasses: a duty of the patient to ask for medical help if the injury occured by physicians' negligence; duty of the patient to undergo corrective surgery; duty to go for additional education or to accept the adequate job (in case of work ability reduction);

duty to use appropriate legal mechanisms and to particpate in the court process related to physicians' liability (Sjenicic, 2013: 161).

2.2.1 Duty of the patient to ask for medical help if the injury occured by physicians negligence

First is the duty of the patient to ask for medical help if the injury occured by physicians negligence. In general, patients has no the obligation to undergo the therapy. However, if he wants to request the damage compensation, he should ask for the physicians help in order to diminish the damage occured by the actions of the previous physician. Jurisprudence is cautious with this duty, since paitent has authonomy towards his own body and health, and the right to self-determination. Patient is not obliged to undergo the corrective treatment to the same physician that treated him for the first time. According to European jurisprudence, he is not obliged to undergo the corrective treatment financed by the mandatory health insurance, but he can also go to the private practitioner. His behaviour in this case is assessed in accordance with the standard: how would reasonable person act in this situation (Lange and Schiemann, 2003: 579). Also, treatment abroad must not be considered as breaching of duty to diminish the damage. This depends on all circumstances, the sort and the severity of injury (Lange and Schiemann, 2003: 579).

Serbian Basic and Appeal Court decided recently in the case where the patient was in 2003 implanted the artificial hip. According to the profesional expertise, the prothesis was too big for the patients' body structure, which caused the skin and muscule necrosis and the inujury of the left ishiatic nerv. This led to the infection of proghesis and to two procedures of wund cleaning, necroctomy of femoral region, amputation of left leg. In its defense, hospital stated that the patient refused the third wund cleaning, which brought to the necrosis development. However, the court rejected this complaint, with the explanation that the cause of damage was exactly in the physician negligence which consisted in the selection of the wrong size of artifical hip (Decision of Appeal Belgrade court, Gz.4698/2012). Patient was not obliged to expose herself to the same physician for the third time, after his two unsuccesful trials to diminish the damage caused by himself.

2.2.2 Duty of the patient to undergo surgery

When we talk about the second duty – duty of the patient to undergo surgery, the conditions are more precise and more strict than in previous duty, since the surgery is invasive medical measure. Damage caused by physicians negligence can sometimes be reduced or removed by the corrective surgery. However, it is always disputable whether the patient has to undergo such surgery. In the past, German Reichsgericht applied the general rule that patient had to comply with such a surgery if it, according to the valid medical standard: 1) seems harmless, 2) is not related to the considerable pain, and 3) offers curement or, at least, considerable improvement of patients health (Deutsch, 2003: 229). The same attitutde had the Austrian jurisprudence (Austrian Supreme Court, Decision no. 8 Ob 34/63, 12.3.1963, Entscheidungen des österreichischen

Obersten Gerichtshofes in Zivilsachen 36/37). Even according to the jurisprudence of SFRY from 1986, patient can refuse without further consequences (in the sense of request for damage compensation) the surgery followed with considerable risk, which would lead only to the pain and suffer facilitation, which requires inpatient weeks-long treatment (Conclusion of the civil and civil-commercial departments of the Federal court, Supreme courts and Supreme military court, from October, 15th and 16th, 1986). The same courts attitutde is represented in the contemporary jurisprudence: In the Decision from 2005. District Valjevo court (Serbian court) also gave the opinion that the Article 192 of the Serbian Law on obligations should be applied. This Article regulates the potential negligence of the damaged person and divided responsibility. The fact that should have been assessed was whether the patient refused the surgery that could reduce the health damage, although the surgery was not followed by the considerable risk (Decision of the District Valjevo court, Gz.no.1799/05, from 21.11.20015).

2.2.3 Duty to go for additional education or to accept the adequate job

If the patients is in the risk to loose the job because of his unability to work caused by the injury, he should minimise the damage by using the remaining working ability. He should, therefore, either accept different job adequate to his working ability, or should additionaly train and upgrade his knowledge and education for the puprose of performing different job than before the injury. If he wouldn't do so, the damage that should be compensated by the physician which is liable for it, would be increased. Physician would have to pay the whole damage for the patients' lost income. Of course, in order to prevent that damage, patient does not have to go into considerable health or economic risks (Lange and Schiemann, 2003: 580). While deciding, courts should take into consideration the circumstances of every single case: age, education, social status of damaged, jobs that would come into consideration, if the person has small children, etc (Göben, 1998: 91). Therefore, the duty to accept the adequate job does not exist for the young widow (whose husband died due to malpractice) with six year old child (Lange and Schiemann, 2003: 583, attitude of the German Federal supreme court). Also, 46-years old widow with the 70% working capability is not obliged to work (Versicherungsrecht, 1971: 914 – Decision of the Appeal court in Hamm).

2.2.4 Duty to use appropriate legal mechanisms and to particpate in the court process related to physicians' liability

Patient can exceptionally be obliged to use appropriate legal mechanisms in the cases where the barrister would have difficulties to proove some facts in the later legal procedure, or where he would have obstacles to obtain the prooves later on. It is not expected from the patient to initiate legal mechanisms in the cases with no considerable chances for succes. So, this duty of the paitent depends on the concrete chances for succes.

Also, when patient initiates legal proceedure against the physician, he is obliged to participate in this legal proceeding, to allow to be examined, to proove some facts he is pointing out during the proceeding. If the patient does not participate, his law suit can be rejected, and that would be the consequence of the breach of his duty to participate.

2.3 Consequences of non-compliance

If the patient does not act in accordance with the compliance duty, as expected from him, he is in breach of this duty and has to suffer certain consequences. Different penals could be taken into consideration: reduction of the physician's obligation to damage compensation in accordance with the patient's share in the damage; physician's right to cancel the contract with the patient; request to the patient to fulfill the compliance duty; and, rarely, obligation to damage compensation. Reduction of the physician's obligation to damage compensation, i.e. share of damage/compensation between the person who has incurred damage and the damaged party is the most often consequence of "wrongful" acting of the patient who has suffered damage. In the case physican would fail to lodge a complaint for "divided responsibility", i.e. "patient's complicity", he would be forced to bear the compensation alone. Division of compensation should be harmonised with the assessed participation in damage caused. While assessing the participation in damage and its compensation, court has to take into consideration the specificities of the concrete case (Article 192 of the Serbian Law on Obligations).

Second most usual consequence is the possibility of physician to break the contract with the patient and to stop the medical treatment (Laufs and Uhlenbruck, 2002: 599-600). Usually, patient can terminate the contract any time, without taking into account the interests of the other side – physician. However, the oposite situaton is not that simple: if the patient is not cooperative, physician can terminate the contract, bowever, this right is limited with the physicians obligation of conscientious acting. He cannot terminate the contract in the moment which is unfavorable for patient, without adequate explanation. Even in the case of patients' non-compliance, physician is obliged to be ready for providing the tratment futher on, for the case that patient decides to comply. Namely, by entering contractual relationship with the patient, physician is obliged to protect the interests of the paitent in any case. In practice, physican has profesional and ethical obligation to protect the interests of the patient – ill person (Conti, 2000: 171). Although legal regulation sometimes provide this possibility (Serbian Law on patients' rights, Art. 36), rarely will the physician decide to terminate the contract.

Sometimes, but very rarely, physician has the right to compensation of damage caused to him by patients' breach of duty. This was the case when, for example, patient was infected with the disease hard to diagnose, he was aware of it and did not inform the physician which became infected as well. In this case, physician could request: compensation for treatment expences, transport expences and further expences for unability (Conti, 2002:165). However, there is also an opposite attitude: physician must always take the precaution measures (protective gloves, etc.), as if every patient is pottentially infective and thus cannot claim damage compensation if becomes infected since this is the risk of his proffesion.

Other case in which physician can request damage compensation is, for example, when patient does appear in agreed treatment terms and physician then loose the oportunity to treat other patient and loose the fee. Or, when the physician makes financially demanding preparation for treatment, and the patient does not show up in agreed term.

3 Anglo-Saxon Attitude towards Patient's Duties

Anglo-Saxon theory and practice consider the duties of the patient, very often, as the duties towards other patients, medical personnel and society that provides free health care. By using the public funds (of health insurance, budget or other public resources), legally capable patients have the obligation towards society to act in an appropriate manner. Patients' duties towards others, society and himself are, very often, in these systems, observed through the prism of the profitability of the patients' treatment.

The basis of the patients duties is, generally, the same in both systems, European and Anglosaxon. Patient and the physician are bounded with the contract which requires that both sides take active role in the treatment process. Such a relationship does not mean that both sides have the same responsibilities and possibilites. On one side, physician has the responsibility to treat the patient in line with medical standard. On the other side, patient is obliged to communicate with the physician, to take part in decision making related to diagnosis and treatment and to act in accordance with the treatment plan which was commonly made (American Medical Association, Opinion 10.02 – Patient Responsibilities). Patients' rights, as well as his obligations, arrised from the principle of authonomy. This principle is implemented thorugh the right to self determination and selection of one option between alternatives. Legally capable patient has the freedom to overtake the control over the decisions related to his health. However, the right to self-determination and free choice is followed by certain number of duties (American Medical Association, Opinion 10.02 – Patient Responsibilities). American Medical Association lists the following duties of the patient: 1) good communication with the physician and obligation to express his considerations truthfully and clearly; 2) provision of complete medical history, including the data on illnesses, medication, hospitalisation, family history of illnesses and other data relevant for current health status; 3) obligation to request information or explanation of his health status or treatment when he doesent understand it completely; 4) when the patient and the physician agree on the purposes of therapy and treatment plan, patient has the obligation to act in accordance with the treatment plan and to keep to the scheduled treatment terms; 5) obligation of setting of the debts related to treatment or discussion of financial obstacles with the physician; 6) discussing the end of life decisions and exposing the wishes to the physician; 7) commitment to the maintainance of own health through healthy life styles; 8) abstinence from behavour which causes health risk for other persons, without any reason.

Some Anglo-Saxon theorists do not list patients' duties, but discuss in a general way if the health is general human obligation, if it is obligation towards oneself or obligation toward other people (Sider and Clements, 1984: 138-142). These are discussions from

early eightees and the attitudes have changed since then towards cost-effective rationing. The relative attitude from this period is that health is the basic human good and its main point is balancing the ethical obligation towards ourselves and other persons. Patients are allowed to refuse physicians advice, and there is no obligation to choose necessarily good health and life. There are, namely, the number of cases where people do not choose that (smoking, obesity, anorexy, undisciplined diabetic) (Sider and Clements, 1984: 138-142). By acting in this way, they risk to breach the basic moral duties and to cause justifiable disaproval (Sider and Clements, 1984: 138-142).

While previous opinions tend to define duties related to patients' interests, many Anglo-Saxon teorists, consider duties of the patient as duties towards other patients, medical personell and society which provides free health care. By using public funds (health insurance, budget or other public resources), legally capable patients have the obligation towards society to act in an adequate manner. Patient has several »prophylactic« duties. One of them is duty to be »the member of institutional or societal form of provision of health services«, which means that he cannot live on the societal margines, and expect to enter into »health jurisdiction«, only in order to get free health care. Patient has the duty to protect the health of other people by not exposing them to himself, as the source of infection. He is obliged to take care on his own health preventively, but also after the medical treatment (Evans, 2007). Patient should not require home care if he can go to clinic by himself. If he is in hospital, he must behave responsible: he should not make the noise and disturb other patients, complain with no reason, etc. If certain conditions are met, he should accept participation in the clinical trial relevant for his treatment. It is very interesting that patients' duty is also to promote »health authority« to which he belongs, i.e. to pay needed taxes, contributions, or support to the political parties asserting this authority (Evans, 2007). Most of these duties have not patients' health as the basis, but relation with the surrounding, and above all, responsible attitude towards scarce financial resources, which are also considered as common good. These resources should be treated with care, not only in patients' own interest, but also in the interest of other patients and medical personnel. Some teorist consider that »duties of the patient would be unnecesary, when financial resources wouldnt be so scarce«. It is not the dominant opinion, but shows that delivery of health services is observed through financial prism. Such point of view is practical and rational, but is not completely acceptable. Usefullness of the health service delivery cannot be assessed only through its cost-effectivness. Rational and responsible attitude towards other patients and health care providers is required from the patients, but only as much as they are capable to provide it. Patients come from different social, intellectual, family surrounding, they are mostly lay persons, so it cannot be expected that each of them provides the same level of compliance and understanding of situation. Physician should alwyas act first – he is medical proffesional which should assess what should be told to the patient and expected from him. Therefore, criterium implemented when assessing the compliance of physicians acting in line with his obligations is not the same as the criterium applied on the patient.

American hospitals has their internal rules, which prescribe rights and duties of the patient. Duties towards own health for the purpose of setting the right diagnosis are in

the same line with the duties towards health profesionals, health institution and other patients. Duties are all collected into written rules according to which patients are obliged to behave. Usually these rules contain, as duties: 1) undestanding of own rights and their responsible and rational application (Memorandum of Agreement on the Rights and Obligations of Patient); 2) duty of providing as accurate and complete informations, as possible and maintaining the authenticity and integrity of own health data (Patients' Responsibilities, Mercy Medical Center); 3) duty of thrutfullness and streightforwardness regarding everything happening to the paitent; 4) duty to inform physician on his doubts related to treatment; 5) duty to take care about own health and to inform medical personnel on changes in his health; 6) duty to inform the physician or nurse if there are problems in delivery of health services in the hospital; 7) duty to have adequate health information and to participate actively in the own treatment, and to act in line with the physicians' advices; 8) duty to participate in the education of young health professionals; 9) duty to request urgent explanation, if he doesent understand what is asked from him; 10) duty to act carefully towards other patients (ban of noise and smoking); 11) duty to accept the consequences of his consent on the basis of the given information; 12) using of hospital property and equipment only for the allowed purposes; 13) understanding of purpose and expenses of the treatment and paying of the hospital bill; 14) duty to respect the rights of the health service providers and health institutions; 15) duty to respect the privacy of health professionals and institutions, in the sense of refering to the health authorities, and avoiding the media; 16) (really extreme) duty to respect the right of the physician to select the patient whom he will treat;17) duty to respect physicians right to have objection of consciousness; 18) duty to ask physician what should be expected related to pain and symptom control treatment, to inform them if the pain is persistant, etc.; 19) duty to inform health professional on the right injury, in order to try to protect the rights instantly, and to keep confidence between physican and the patient; 20) duty to apply all measures, before going to the court.

The first duty – duty to provide as accurate information if possible, is interesting. It is not expected the same level of completeness and accurace from all patients. Not every patient originates from the same social and family, nor has he the same possibilites and capabilites. Interesting duty is also the duty to inform physician or nurse on changes in health. This duty is established in the interest of the patient, but also in the interest of medical personnel. The duty to ask physician what to expect related to pain and symptom control, to inform him if the pain persists, is also very interesting. Emphasizing of this duty shows the attention that Anglo-Saxon states give to the pain and symptom control, which is positive in the context of palliative care of terminally ill patients. Author considers also duty to respect privacy of health professionals and institutions, as positive duty. In the last few years media have paid a lot attention to the medical faults and liability in medicine, which is not bad *per se*, since many relevant questions, which were, so far, neglected, have been raised. On the other side, way to raise these questions might be unadequate. Media usuually make decisions on the medical negligence too early, before the courts decision. It is not usefull for medical professionals, nor for patients. Putting things back into the legal frame would be useful,

especially if state manages to strenghten legal mechanisms for the efficient deciding and implementation of legal regulation.

On the other hand, there are duties which directly tackle right of patient to his physical and mental integrity, and his right to self determination, which are guaranteed by most of the Consitutions. For example, duty to participate in the education of young health professionals, refers to the duty of patient to allow specialisation of young generations on their health and body. This is useful, but still cannot be defined as duty, but only as recommendation. Basis for such an attitude is the right to physical integrity, but also the right of the paitent to select the physician (Sjenicic and Marcetic, 2014: 305).

The duty to respect the right of physician to select the patient is really unusual. Patient is forced by the health necessity to ask for medical service. He approaches health system as to the system which provides health services. Patient can, usually, select health institution and medical professional which would provide the service (Article 42 of the Codex of proffesional ethics of the Serbian Medical Chamber). Physician, however, approaches to medical education as to his future job. If he would make a selection between patients, it would be bad for the profession and for patients, as well. Generally accepted principles of medical ethics and medical law, expressed through the codexes of medical ethics, emphasise that physician has the right to reject the patients only in exceptional cases: objection of consciousness or when patient does not cooperate (Article 36 of the Law on Patients' Rights).

4 Conclusion

Duties of the patient in European and Anglosaxon legal system match to some limit, speically related to the duties of patients' compliance during treatment, i.e. duties towards himself. These patients' duties are in the focus of European legal systems. Beside payment of physicians fee, which is considered as the main obligation, duties to comply during treatment are also considered relevant. Without patients' compliance, the treatment cannot be succuesful. Duties of the patient to comply are not actionable, nor followed with the legal sanction. They are duties in patients' own interest. By not complying, patient can damage his own health. Also, afterwards, in the potential lawsuit he cannot ask for damage compensation, or compensation can be reduced because of the existance of patients' negligence. Patients' duty to comply is „subsidiary" duty, after the duty to pay the fee, but is very important for the purpose of succesful treatment.

Anglosaxon law is, in the last decades, close to the attitutde that patients' duties should be observed thorugh the cost-effectiveness of treatment. Some of these duties tackle patients' rights to self-determination and self-deciding. In this sense, requsts posed to patients in Anglosaxon systems are considerable, comparing to the requests posed through the duties in the European legal systems, and very often turned to the society, other patients and health professionals, and less to the patients' health and support to his treatment.

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