

2. „HEALTH LAW” UNIVERSITY COURSE - BOOK REVIEW

*Irina (MOROIANU) ZLĂTESCU**

Coordinators: Assoc. Prof. PhD. Rodica-Diana Apan & Assoc. Prof. PhD. Elena-Mihaela Fodor
Pro Universitaria Publishing House, Bucharest, 2018, 370 pages

University course “Health Law“, published in Romanian and English, coordinated by PhD. Associate Professor Rodica-Diana Apan and PhD. Associate Professor Elena-Mihaela Fodor, is part of those works whose title is too modest to highlight their true importance. The book which has scientific value both through the subject-matter and the way of dealing with the subjects under analysis – often implying comparative law, is written by consecrated authors and could easily be entitled “Treatise” on health law.

The book contains six chapters, elaborated by different authors. The first chapter, written by PhD Associate Professor Rodica Diana Apan, from the Faculty of Law from Cluj-Napoca of “Dimitrie Cantemir” Christian University, is dedicated to advertising medical services. From the beginning of the article, the author draws attention to the fact that the theme has multiple social and, of course, economic implications. The rules in question are obviously intended to protect consumers and competitors, those being persons who may be harmed by the consequences of incorrect advertising. Mrs. Rodica Diana Apan then highlights the purpose of advertising in the field, emphasizing the importance of ensuring the protection of human rights. In this chapter, the concepts of “medical services”, “healthcare providers” and “patient” are presented in the light of the doctrine of comparative law. The classification of medical services that are considered by referring to the typology of packages that appear based on the definitions given is interesting. In this context, medical service providers appear as natural or legal persons, organizational typologies including the hospital and the medical cabinet (doctor’s office). As mentioned above, one of the concepts on which the author focuses is that of the “patient”, considered a species of the consumer concept: the healthcare consumer. The definition is based on the text of Law number 46/2003 regarding the patient's rights.

* Titular Member of the International Academy of Comparative Law, Titular member of the Romanian Academy of Legal Sciences.

The same study presents the concept of “advertising” and analyses the applicable principles in accordance with the provisions contained in the regulations of the European Union. Next, the concepts of “misleading advertising”, “comparative advertising” are illustrated as well as the advertising responsibility. A special point in Mrs. Apan's study is the publicity of medical services covered by Romanian regulations.

A sub-section demonstrating the outstanding qualities of the author is the one dedicated to the case-law of the European Court of Justice in the field of medical services. The cases chosen as an example are, we hope, particularly useful to those who are dealing with poor healthcare. The chapter ends with useful conclusions both for health care providers and patients, and not least for the legislator and, of course, those working in the administration of the health public service. It is worth noting the bibliography that includes the latest papers in the national and international doctrine.

The next chapter is elaborated by PhD. Assistant Professor Maria Aluaş from “Iuliu Hațieganu” University of Medicine and Pharmacy and the Bioethics Center at “Babeş-Bolyai” University Cluj-Napoca and Ana Dulău, legal adviser at the College of Physicians of Alba County. It refers to the “The relationship between medical professional secrecy and malpractice”. After looking into the definition of professional secrecy in its evolution, the medical secret is presented as an expression of the special relationship between physician and patient. Then, the fundamentals of medical secrecy are illustrated, starting with the historical foundations and continuing with the legal foundations - the contractual one, the one considering public order and the one considering private life. Further on, the authors refer to the importance of keeping medical secrecy and ensuring its protection within certain limits. We appreciate the importance given in the chapter to deontological provisions and the presentation of both criminal and civil legislation that sanctions the disclosure of professional secrecy. The authors were also preoccupied about the presentation of the exceptions from the requirement of professional secrecy. Last but not least, the study also includes ethical considerations relating to the conflict between the individual's right to private life and the duty of the state to protect public health and the common good. The authors emphasize the fact that confidentiality about the patient's state of health and the privacy of the patient are two different things. The conclusions reached by the authors are of great interest, both for the legislator and law practitioners, medical staff, those working in the public administration ensuring the health care public service and, last but not least, for each of us.

A chapter of particular interest is the one elaborated by Phd. Elena-Mihaela Fodor, Associate Professor of the Faculty of Law from Cluj-Napoca, of the “Dimitrie Cantemir” Christian University. It concerns “Contracts concluded

between health insurance houses and medical services providers.” This contract is presented as belonging to a group of contracts linking the health insurance company, the health care providers and the beneficiary of the health service, through which the public health service is ensured. We note how the main specific legal provisions in the field are outlined, highlighting that the contract between the health insurance house and the medical service supplier is a civil contract and drawing attention to the relevant issues in this respect. In the chapter regarding the conclusion of contracts particular attention is paid by Mrs. Fodor to the eligibility conditions for medical services suppliers. Also, the key obligations and contractual rights of health care providers and health insurance houses are analysed. Eligibility, rights and obligations are mentioned separately for different categories of healthcare providers, as mentioned in the frame-contract adopted by Government Decision in accordance with Law. No. 95/2006 reforming the public health-care system. A separate sub-chapter concerns the sanctions that may be applied for noncomplying with contractual provisions, the terms of suspension of contracts, amendments and termination of contracts. In particular, we note the concern of the author that each statement should be accompanied by case-law, mostly of the High Court of Cassation and Justice and Appeal Courts, as well as of the European Court of Human Rights and the Court of Justice of the European Union. As many aspects of the law proved debatable, the excellent and extensive selection of case-law comes to strengthen the statements made in the chapter.

A special study is devoted to the physician-patient legal relationship. It is elaborated by PhD. Assistant Professor Adrian-Gabriel Năsui also from the Faculty of Law Cluj-Napoca of the “Dimitrie Cantemir” Christian University. It refers to national legislation regarding medical care, the characteristics of the doctor-patient legal relationship, the obligations of the medical staff according to the national law and the grounds for medical civil liability in Romania.

The study guides us and helps us to find some answers to delicate questions that search to establish the conditions for malpractice. The author concludes that medical responsibility is subjected to the particular characteristics of the medical practice and type of medical acts performed. In the closure of the chapter the author is dealing with the security obligation towards the patient, the safety requirement and the basis of medical civil liability. The legal nature of these obligations is debated. The author uses a large bibliography, both national and international for sustaining his comments and manages to fix landmarks that may be extremely useful for practitioners in medicine and law.

The following chapter concerns the legal bases of medical practice and is realized by PhD. Professor Dan Perju-Dumbravă from the “Iuliu Hațieganu” University of Medicine and Pharmacy from Cluj-Napoca. After the

introductory notions referring to health law, its sources and the object of regulations, the author presents the specific medical legislation in our country. Thus, he analyses Law no. 95/2006 on health reform in all aspects. We note the attention paid to patients' rights, informed consent, medical responsibility and medical malpractice, according to the Romanian legislation in force.

The last chapter in the volume refers to patients' rights - the right to give informed consent to medical treatments from European and Belgian perspectives. It is elaborated by PhD. Professor Ludo M. Veny of the University of Ghent, Belgium and the Free University of Brussels, Belgium. Since the beginning of the chapter, the author points out that patients' rights vary from one state to another and in different jurisdictions, often according to the social and cultural norms existing in the respective areas. The legislative framework, both international and national in some Western European countries, is presented, highlighting the fact that some provisions on patient rights and informed consent are connected to the issue of fundamental rights such as the right to self-determination or the right to physical and mental integrity. International instruments such as the European Convention on Human Rights, the Convention on Human Rights and Biomedicine, the European Charter on Patients' Rights, as well as national legal instruments are considered. We find the approach to the legal relationship between the patient and the doctor to be presented in a very interesting manner. One remarkable aspect is the presentation of the right to information and the right to informed consent from a Belgian perspective.

We also note the conclusions reached by the author in the sense that, in spite of international regulations, national legislations are different in respect with the recognition of patients' rights in general and the right to information and informed consent in particular.

Closing the book, we find that it remains a benchmark of the legal-medical literature in our country. Overall, the work, with the help of elements of philosophical, legal, sociological, economic and, last but not least, medical considerations, addresses particularly acute problems for both medical staff and patients, each of us being a potential patient.

We appreciate the way the authors approached the theme, often from the perspective of human rights, reflecting the fact that a suffering person can decide for himself with great difficulty and that his or her rights must prevail over those around him. Each individual has the right, given by society as a whole, to the respect of the dignity inherent to human beings and to equal and inalienable rights according to the Universal Declaration of Human Rights, adopted 70 years previous to the publication of the volume presented above.