

Abstract

Informed consent of a patient is currently one of the fastest developing subjects of medical law. Its fundamental principles are based on human anatomy and one's freedom of choice with respect to decisions concerning his or her well-being. The aim of this thesis is to present informed consent in light of the newly enacted legislation concerning medical services, to highlight some of the consequences of the new legislation, as well as to discuss certain aspects of criminal liability of medical personnel in connection with informed consent.

The thesis consists of six chapters, which are further divided into subchapters. The respective chapters outline informed consent of a patient with respect to its basic elements, associated consequences and selected aspects of potential criminal liability.

Following the introduction, the first chapter describes the relationship between a doctor and a patient and identifies the upcoming trend of the transformation of the historical paternalistic relationship into a partnership.

The second chapter features an overview of both the national and the international legal sources, which govern informed consent.

The third chapter represents the main focus of the thesis and describes the respective elements of an informed consent – disclosure and consent. The subchapter focused on the disclosure demonstrates the extent of information that must be disclosed to the patient based on the nature of the medical procedure at hand. Furthermore, this subchapter stresses the importance of keeping the patient involved in a mutual dialog between him or her and the medical personnel. Finally, this subchapter explores the concept of a therapeutic privilege; used in situations, in which the medical personnel may be excused from disclosing information related to the patient's unfavorable medical state, if such information would pose a serious threat to the patient .

The fourth chapter is aimed at an informed consent of underage patients and patients with restricted capacity to perform legal acts. The chapter illustrates how the existing legislation transfers the capacity to give informed consent by parents, legal guardians, or conservators on behalf of those who are unable to do so. Additionally, the

chapter also discusses the planned legal amendment, which should bring back the original regulations concerning the informed consent of underage patients.

The fifth chapter identifies consequences of the previously expressed wishes of a patient. The respective subchapters discuss the potential criminal liability of medical personnel in cases, where medical assistance is given on the basis on an invalid or missing informed consent. Moreover, this chapter explores the potential criminal liability of medical personnel connected with cases, where the previously expressed wishes of the patient are not followed.

The final chapter summarizes some of the findings of this research, and highlights the main benefits of the current legislation concerning medical services, which governs the concept of an informed consent. Finally, this chapter proposes several suggestions for improving the current limitations of the existing legislation, which have been exposed throughout the recent years of medical practice.