

# THE ROLE OF LEGAL INSTRUMENTS AND MARKETING EFFORTS IN ENSURING A HIGH DEGREE OF SATISFACTION FOR BENEFICIARIES OF MEDICAL SERVICES

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## Abstract

*The right to health is part of the second generation of rights, outlined after the Second World War, based on its features and socio-economic and cultural nature. Respect for human rights with regard to health care providers is a growing and ongoing concern aimed at increasing the satisfaction of the beneficiaries of the services provided by them. The protection of human rights in the field of health and the prevention of their violation can be done by establishing legal protection mechanisms and marketing actions available to the beneficiaries of health services, in the context of medical care. Legal instruments and marketing efforts for ensuring a high level of satisfaction for the patients is scientifically viable and can be implemented in the health market. The economy of medical services addresses three fundamental questions: what health care services are needed, in which manner must the medical units provide those services and to whom the services must be delivered. In terms of managerial implications, the conclusions support the importance of providing health care by deeply focusing on the patient. The activity of medical units, both public and private owned, can be continuously improved by adapting to the needs and desires of consumers.*

**Keywords:** *fundamental rights, quality standards, patient satisfaction, marketing, adaptation to patient requirements.*

## 1. Introduction

Referring to the well-known categorization into three generations of human rights, rights presented by the Czech law professor Karel Vasak at the International Institute of Human Rights in Strasbourg in 1977, the right to health is found in the second generation of rights<sup>1</sup>. Outlined after the Second World War, based on their economic, social and cultural nature, it includes: the right to work in fair and favorable conditions, the right to social security and unemployment benefits, the right to housing, care and health care, at school, etc.

Human rights publications in general are numerous, but few study the observance of human rights by health care providers to protect their legitimate interests. The protection of human rights in the field of health<sup>2</sup> and the prevention of their violation can be done by establishing protection mechanisms and legal actions available to the beneficiaries of health services, in the context of medical care.

Participants in the medical act, both health care providers and patients, by knowing the rights and responsibilities, contribute directly to improving the health of the population and medical services, with direct implications on protecting the legitimate interests of patients.

The improvement of health care is truly achieved when the consumers drive it, becoming both better and cheaper<sup>3</sup>. Under the modern conception of providing quality medical services, the allocation of resources and all the efforts are inevitably focused on the patient's best interest, as the ultimate purpose of all the medical enterprises, both public and private. In that context, medical unit's management must routinely evaluate the level of patient's satisfaction because having satisfied consumers demonstrates that the achieved quality of services is higher<sup>4</sup>. The European Union, as some authors<sup>5</sup> point out, has adopted a leading position on the international stage regarding the subject of consumers' rights, health care included.

The convergent approach involving legal instruments and marketing efforts for ensuring a high level of satisfaction for the patients is scientifically

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<sup>1</sup> Corresponding to art. 22-28 of the Universal Declaration of Human Rights and art. 12 of the International Covenant of 16 December 1966 on economic, social and cultural rights.

<sup>2</sup> Human rights specialists draw attention to the shortcomings encountered in the field of the right to informed consent for medical treatment, violations of the right in the context of medical care, inequalities in the doctor-patient relationship exacerbated by differences in knowledge and experience and gender differences, ethnicity, social class, economic and social factors, or other vulnerabilities. To be seen Ludo Veny, *Patients Rights : the Right to Give Informed Consent to Medical Treatments from European and Belgian Perspectives*, In *Health Law*, Ed. Pro Universitaria, 2018, p. 348–367.

<sup>3</sup> Regina Herzlinger, *Why We Need Consumer-Driven Health Care* in Herzlinger edition, *Consumer-Driven Health Care: Implications for Providers, Payers, and Policymakers*, San Francisco, 2004.

<sup>4</sup> Irwin Press, *Patient Satisfaction: Understanding and Managing the Experience of Care*, 2nd Ed. Chicago, 2006.

<sup>5</sup> Fabrizio Esposito, Anne-Lise Sibony, In Search of the Theory of Harm in EU Consumer Law: Lessons from the Consumer Fitness Check, in Springer, *Consumer Law and Economics*, 2020.

viable and can be implemented in the health market. Based on the findings of another authors<sup>6</sup>, the introduction of elements from expert domains like law and marketing is able to determine changes within a practical domain like health care and subsequently its desired framework becomes progressively updated.

## 2. The rights of Romanian patients to high quality medical services

The protection of human rights with regard to patient care is guaranteed by a series of international treaties<sup>7</sup>, to which Romania is a party, ratified, having binding legal force, to which is added the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948. Contrary to the fact that the declaration does not have the character and legal force of a treaty, scholars of international law argue that it has attained the status of customary international law, and its provisions are accepted as obligations by all states, becoming universal standards<sup>8</sup> over time.

Respect for the rights deriving from the relevant international treaties rests with the UN bodies, which issue documents interpreting the content of the treaties for the guidance of states in order to implement their content.

Ensuring the rights of persons who have the quality of patient or benefit from medical services is a continuous concern of both the legislator and the public administration designated with the organization and concrete execution of public health. The economy of medical services addresses three fundamental questions: what health care services are needed, in which manner must the medical units provide those services and to whom must the services be delivered<sup>9</sup>.

Individuals, either patients undergoing medical treatment or persons who are about to enter into legal relations with a medical entity, have the right to a series of concrete actions and measures by the state, which ensures a high degree of satisfaction of the beneficiaries of medical services in general, in conjunction with the fulfillment of obligations by providers of this type of public service. As demonstrated in 2008 by

international specialists<sup>10</sup>, there might occur specific situations when, despite the fact that a medical unit provides an excellent core medical performance, the patients report a low satisfaction because they evaluate the services mainly based on non-medical elements.

The European Charter of Patients' Rights, hereinafter referred to as the Charter, drawn up in 2002 by the European network of consumer and patient civil organizations - Active Citizenship<sup>11</sup>, although not a legally binding legal instrument, is the most comprehensive statement of patients' rights. The cornerstone for the realization of the European Charter of Patients' Rights is art. 35 of the Charter of Fundamental Rights of the European Union, called health protection, according to which "*everyone has the right of access to preventive health care and the right to receive medical care under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities*"<sup>12</sup>.

The charter begins in the second part with the definition and explanation of the 14 rights of patients<sup>13</sup>, first referring **to the patient's right to preventive measures** entitled, "*every individual has the right to adequate services to prevent the occurrence of diseases.*" As referred on art. 1 of the Charter rests with the public and private network health services a number of obligations: firstly to raise the level of information of the public on preventive procedures that are carried out at regular intervals free of charge; secondly, the obligation to carry out those procedures with priority for those high-risk population groups; thirdly, it is the responsibility of the health services to ensure that everyone has access to the results of scientific research and technological innovations in the field of health.

With the inclusion in the constitution of most countries, the right to health has become a fundamental right, in our country **the right to health care** being guaranteed by art. 34 of the 2003 Romanian Constitution. From the corroboration of the provisions of art. 34 and art. 35 which stipulates with the title of fundamental right that citizens have the right to a

<sup>6</sup> Katy Mason, Luis Araujo, Implementing Marketization in Public Healthcare Systems: Performing Reform in the English National Health Service, British Journal of Management, 2020.

<sup>7</sup> International Covenant on Civil and Political Rights - ICCPR, 1966; International Covenant on Economic, Social and Cultural Rights - ICESCR, 1966; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - CAT, 1981; Convention on the Elimination of All Forms of Discrimination against Women CEDAW; CRC Convention on the Rights of the Child; International Convention on the Rights of Persons with Disabilities ICRPD; International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families ICMW.

<sup>8</sup> Louis Henkin, The Age of Rights, New York, Columbia Press, 1990, p. 19. Christina Cerna, Universality of human rights and cultural diversity: implementation of human rights in different socio-cultural contexts, Human rights quarterly, no. 16 (4), 1994, p. 745.

<sup>9</sup> Paul Radu, Introduction to Health Economics in Hospital Management. National School of Public Health and Sanitary Management, Ed. Public H Press, Bucharest, 2006, p. 57.

<sup>10</sup> Imad Baalbaki, Zafar Ahmed, Valentin Pashtenko, Suzanne Makarem, Patient satisfaction with healthcare delivery systems in International Journal of Pharmaceutical and Healthcare Marketing, 2008, p. 48.

<sup>11</sup> [www.activecitizenship.net/patients-rights.html](http://www.activecitizenship.net/patients-rights.html).

<sup>12</sup> <https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:ro:PDF>.

<sup>13</sup> The right to preventive measures, the right to access, the right to information, the right to consent, the right to free choice, the right to privacy and confidentiality, the right to respect patients' time, the right to respect the quality standards of medical services, the right to safety, the right to innovation, the right to avoid unnecessary suffering and pain, the right to personalized treatment, the right to file a complaint, the right to compensation, other patients' rights. Generically called other patients' rights and being derived from European legislation, they are divided into: the right to dignity, the right to non-discrimination.

healthy environment, outlines measures to prevent diseases.

National legislation<sup>14</sup>, by Law no. 95/2006 on the reform in the field, republished, stipulates that among the main functions of public health, there are also preventive measures: "*epidemiological surveillance, disease prevention and control*" - at art. 5, lit. c; "*Prevention, surveillance and control of communicable and non-communicable diseases*" in art. 48, para. 1, lit. a; „*The provision of preventive medical services is an objective of the ambulatory medical assistance*” regulated by art. 134, etc.

Achieving a high degree of satisfaction of patients and beneficiaries of medical services can be done by informing the public of their fundamental rights under the law and their responsibilities in the legal relationship with the entities responsible for ensuring public health.

The provision of medical services at quality standards is a fundamental right, provided by the Charter but also by art. 2 of Law no. 46 of January 21, 2003 on patient rights. The quality level indicated by the legislator refers to the highest standard available to the company, taking into account the human, financial and material resources available.

Based on the **right of access to high quality standards of medical services**, insured patients have the right to travel to a third country to benefit from medical services covered by CNAS based on the tariffs provided by law. The expenses occasioned by the cross-border medical assistance are made based on the Government Decision no. 304 of 2014.

According to law no. 554/2004 on the Law on Administrative Litigation, the insured may address the court of administrative litigation in the following situations found in art. 913 of Law no. 95 of 2006 on health care reform:

- *The unjustified refusal of the health insurance companies regarding the reimbursement of the expenses occasioned by the cross-border medical assistance;*
- *The level of health care equivalent is not in line with the rates covered by the insured;*
- *Failure to approve the insured's claims regarding the reimbursement of the cross-border healthcare value.*

Individuals are recognized the right to access high quality medical services based on concrete standards and criteria established by public authorities. It is

appreciated that the level of technical performance, comfort and interpersonal relationships must be at least satisfactory.

The notion of **quality standard** is not properly defined in Law 95/2006 on health care reform, although it often refers to the quality of medical services in general. Art. 5, lit. g), m) of the mentioned law are detailed that among the main functions of the public health care are targeted: *ensuring the quality of public health services; evaluating the quality, efficiency, effectiveness and access to medical services*. The ambiguity and inaccuracy of establishing a level of appreciation of the quality standards of medical services generate both practical problems and litigious or health situations for cases of malpractice<sup>15</sup>, related to the liability of health units.

Malpractice occurs as a result of an individual act that takes place during the process of prevention, diagnosis and treatment or as a result of exceeding the limits of legal and professional competences. The reasons behind medical malpractice, malpractice, are recklessness, negligence, error and insufficient training and preparation, generating harm to the patient. The Code of Medical Deontology of the Romanian College of Physicians provides in art. 9 and art. 53-55 the obligation of the doctor to show maximum diligence "*in establishing the diagnosis, the appropriate treatment and avoiding the foreseeable complications in the patient in his care.*" In regard, as demonstrated in a specific research<sup>16</sup>, the medical services are certainly generating an essential contribution to the wellbeing of the population, but the risks of errors and complications cannot be completely eliminated. The modern diagnostics and therapies are complex and the treatments might involve delivery by specialists from different medical units, requiring a high degree of collaboration and a quick transfer of the relevant information.

In order to assess the quality of medical services, aspects related to the endowment of medical service providers with the necessary equipment and medicines, the existence of specialist doctors and legal qualifications or accreditations, etc. must be taken into account.

<sup>14</sup> With regard to the right to prevention, the National Legislation includes, together with Law 95/2006 on health care reform and other normative acts intended for certain sectors of activity or socio-professional categories, including: Law 319/2006 on safety and health at work aimed at preventing illness and accidents by introducing measures to eliminate risk factors at work; Law no. 138/2008 for a healthy diet in pre-university education units aiming at the prevention of diseases caused by unhealthy nutrition, with applicability in the communities of children and schoolchildren; Law 104/2011 on ambient air quality; Law no. 487/2002 on mental health and the protection of persons with mental disorders.

<sup>15</sup> Decision 337 / R of 29.09.2016 of the Court of Appeal of Târgu Mureș, Malpractice, Compensation under the conditions of art. 998-999 Civil Code, art. 653 of Law 95/2006. Compensation for non-pecuniary damage. Decision of the Oradea Court of Appeal no. 777 in 29.10.2019, Delinquent civil liability for bodily injury through fault - Medical malpractice. The damage suffered by the patient is often a permanent disability, with consequences for quality of life and a radical change in lifestyle, so the doctor is required to take all necessary steps to ensure a high degree of patient satisfaction.

<sup>16</sup> Luke Sławomirski, Ane Auraen, Nicolaas Klazinga, *The economics of patient safety: Strengthening a value-based approach to reducing patient harm at national level*. Organisation for Economic Cooperation and Development, Paris, 2017.

### 3. Patients' requirements for satisfactory medical services

As part of the marketing efforts to provide scientific support for the higher adaptation of health care providers in Romania to the demands and expectations of the patients, a direct study was employed, based on the quantitative approach. The survey sought to provide relevant data about the mechanisms of satisfaction formation among the patients, as well as the factors that influence it and the practical implications. The study was conducted on a number of 385 patients above the age of 18 that had voluntarily used health care services at least once within a timeframe of 12 months, provided by medical units located in Bucharest and the surrounding district of Ilfov, with a sampling error within the margin of  $\pm 5\%$ . In terms of sample structure, the gender and age distribution of frequencies were similar to those officially provided by the National Statistics Institute regarding the general population and therefore the collected data did not require additional measures of ponderation for representativity. The collection of data took place in the field using three waves of distribution of self-administered questionnaires to patients and that instrument was built on the funnel-approach paradigm in terms of required effort from the participants, while the sampling technique's nature was proportional.

In line with the fulfilment of the objectives of the present paper, the following results represent a proportion of the content of the mentioned survey, whose scope was broader in terms of marketing implications regarding the creation and the consumption of health care services. In that regard, two relevant objectives of the quantitative research were determining the ranks of some relevant aspects that are having an impact on satisfaction, as conferred by the patients, and also the ranks of the central reasons for trusting that a medical unit can best serve patients' best interest.

The survey results are indicating that the leading factors for satisfaction in terms of importance granted by the patients are the attention that they are receiving from the medical unit (its score averaging at 8.35 out of a maximum of 10), closely followed by the performance of the medical staff (with a score of 8.30). Also, a high position in terms of importance was conferred to the respectfully behaviour of the health care provider (placed at 8.14). The middle group in term of importance could be built from the patients' request to be informed about the benefits as well as the risks of every possible option regarding the treatment (averaging at 7.67 on the scale from 1 to 10), the logistics base (with a level of 7.54) and the waiting time (its score being 7.26). The group of factors with lower relative importance was comprised of the amiability of the staff (placed at the level 6.78), the thorough information regarding the medical procedures (scoring 6.43 points) and finally the price and the auxiliary staff's performance (with average scores of 6.21 and 6.04 respectively). It is also relevant that all the ten

proposed criteria for satisfaction received absolute ratings of importance above 6 on a scale from 1 to 10, indicating that the choice of items for researching was relevant for the participants regarding the evaluation of satisfaction for the medical services.

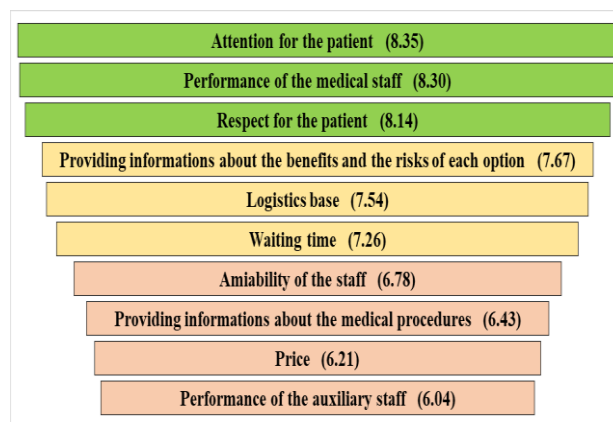


Figure 1: Patients' ratings on the importance of some relevant items for satisfaction

Source: Author statistical survey

Regarding the topic of patients' trust about the best defending of their interest, the most appreciated approach from the health care services providers is to provide the medical practice at the highest level of quality, regardless of costs, with 36.4% of the respondents indicating it as the most important reason for trusting a medical unit. The second option in terms of preference was the one focusing on making the health care as accessible as possible, while fulfilling the promises stated in the offer, with 33.2% of the participants favouring it. A possible middle way, in terms of expecting the medical units to provide a decent quality of service while adapting to the needs, with translates in neither top performance nor highest accessibility but on the overall average, was placed on the third position, gathering 30.4% of the patient's options.

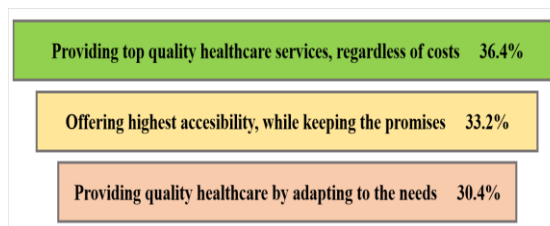


Figure 2: The main reason for patient's trust in a medical unit

Source: Author statistical survey

The patients, as revealed by the study, have manifested a tendency for considering their interest best served by the health care providers that build their management orientation either on providing the top quality of services, or on providing the highest accessibility, while the middle option seemed to have been less favoured.

#### 4. Conclusions

This research paper's aim was to explore the convergence of the roles of legal instruments and marketing efforts to support the achievement of higher patients' satisfaction.

In order to assess the quality of medical services, aspects related to the endowment of medical service providers with the necessary equipment and medicines, the existence of specialist doctors and legal qualifications or accreditations, which are the responsibility of the competent public institutions, must be taken into account.

The most important attributes for the patients regarding the quality of medical services were the attention that they are receiving from the medical unit, the performance of the medical staff and the respectfully behaviour of the health care provider. A high proportion of the study participants also indicated that in order to gain their trust, health care providers must provide at the highest level of quality for the medical practice, even if that would imply higher costs.

Individuals are recognized the right to access high quality medical services based on concrete standards and criteria established by public authorities. It is appreciated that the level of technical performance, comfort and interpersonal relationships must be at least satisfactory. Among the main functions of public health care are: *ensuring the quality of public health services; evaluating the quality, efficiency, effectiveness and access to medical services.*

In terms of managerial implications, the conclusions support the importance of providing health care by deeply focusing on the patient. The activity of medical units, both public and private owned, can be continuously improved by adapting to the needs and desires of consumers. In that regard, the legal instruments are effective and their implementation in convergence with the marketing efforts based on consumer research will also increase the efficiency of the allocation of resources, resulting in a higher and durable level of satisfaction for the patients and further supporting wellbeing of the society.

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