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Review article

Informed dissent “Reverse negative”

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ABSTRACT

Legislation in the Czech Republic allows a patient to decide, based on their own free will, to agree to the provision of health services, to designate a person which may be given information about their health condition, who can regulate situations in which the health service can be provided without the consent of a patient. Legislation also regulates situations in which the patient can waive the information and situations in which the patient refuses to consent to the provision of health services. This text deals particularly with the “Informed dissent”, a so-called Reverse negative, as it is known in a standard communication between a medical worker and patient. They are also informed on requirements and conditions that must be fulfilled so that the dissent can be confirmed and effectively expressed by the patient, in accordance with the legislation governing the informed dissent, particularly the Health Service Act and the Civil Code. The author focuses primarily on the comparison of legal regulations effective in the Czech Republic, however, she gives a brief inspection of some countries of the European Union as well.

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Introduction

During the admission to care, the patient may designate a person or persons who may be informed of the patient's health and can also determine whether those persons may inspect the medical documentation kept on the patient or other documents relating to their health condition and may acquire printouts or copies of those documents. Patients may designate an individual or express prohibition on providing health information to any person at any time during, as well as after, their admission, and they may also withdraw the designation of a person and the expression of prohibition to provide health

information at any time. The patient also has the right to express consent to or dissent from the intended health services and thus make use of the opportunity to reject the planned health service.

To ensure the best decision, the patient needs enough professional and sufficient information acquired on the basis of communication with the doctor [1]. Doctor's ability to empathize with and understand the patient is the basis for communication between the patient and the doctor. Information which the patient receives is crucial to their psychological well-being and satisfaction, but also determines the duration of the treatment. A key means of communication is a conversation that is in medical practice subject to a wide

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range of research from various aspects. For example, the longer the doctor waits until they interrupt the patient and start to lead the conversation, the more likely they discover the full breadth of the issues the patient wants to discuss, and it is less likely that at the end of the interview there will arise problems that will need to be resolved [2]. Patient's satisfaction directly relates to the amount of information that the doctor receives [3]. Doctors very often do not provide sufficient information and the lack of information is a source of complaints from patients and their next of kin about the health care (in 2013 there were registered 1403 complaints, by October 31, 2014 there were registered 1215 complaints) [4]. On that basis, we can state that the way the doctor communicates is as essential as what they say [5]. Patients who are being regularly informed, their treatment has been justified and the doctor has been helping them to understand their illness, often agree with the proposed treatment. This eliminates a number of patients who reject the recommended treatment. Moreover, those patients adhere to the treatment and doctors' advice better than those who are not being given similar attention [6].

Health service providers are acquainted with the general rule for the case that the patient rejects the health care recommended by them as it is not an emergency care which can be provided without consent. In that case, the written informed dissent is required. However, in many particular situations, the decisions of health service providers, or more precisely medical workers, do not match the above-mentioned rule required by law and they are exposed, in terms of liability, to dangerous situations. This paper deals mainly with the patient's right to dissent from the health service and with the fulfilment of the conditions required by law of its proper use in practice in accordance with effective legislation of the Czech Republic. Yet, the regulation of the informed dissent in some countries of the European Union is also worth mentioning.

Patient's right to dissent from the health service

If the patient receives health information and then decides not to make use of the health service, not to undergo it, i.e. refuses to consent to the provision of health service, the patient as well as the medical worker must fulfil other obligations required by legislation (provision of section 31 et seq. of the Health Service Act) [7]. It is unsatisfactory to accept a mere expression of the dissent, although it regards the patient's free will, as they may freely do what is not prohibited by law and must not be forced to do what the law does not impose upon them (Art. No. 2(4) of the Constitution of the Czech Republic) [8]. The provision of section 34 of the Health Service Act, suggests that if the attending medical worker receives information about the dissent, they are obliged to repeat to the patient the information about their health condition to such an extent and in such a manner to be clear that the absence of the health service might lead to the patient's impairment of health, serious impairment of health or threat to their life. This repeated information cannot be given in general terms, but via a very concrete description of the threat to health or life. Only after an exhaustive list of possible threats to health or life, it then becomes necessary to ask the patient once again whether they are aware of the consequences of their opposition to the

offered health service and despite all the risks and consequences, thereof, they still maintain their dissent. If the patient still refuses to consent, despite adequate explanations, they shall make a written statement (provision of section 34(3) of the Health Service Act). Wording of the law indicates that the written statement ought to be made by the patient himself. The patient declares in writing that they dissent the offered health service, provide the statement with their signature and submit to the medical worker, who also confirms the statement by their signature and adds it to the medical documentation (i.e. the written statement made by the patient is not subject to that strict formal requirements as it is in the case of the written "Reverse negative" made by the medical worker, which is mostly seen in general practice). There has been a written form required by law for the written statement, while other forms are not permitted. In practice, the written statement is being produced by the provider of health services or medical worker as "Reverse negative", "Reverse", "Informed dissent", etc. Then it is necessary that the written statement follows the same requirements as a Record which will be discussed below.

Form of expression of the informed dissent

The Health Service Act accepts two possibilities of expressing the dissent, namely: a written statement of dissent from the provision of health services, or a record of the dissent in case that the patient refuses to make a written statement. Both of these forms are included in the medical documentation of the patient. The signatures of the patient and the medical worker are essential formalities required by law. If the patient refuses to sign the record, it is the responsibility of the medical worker to supplement the record with this fact and to appeal to a witness to sign the record to validate the veracity of the decision of the person concerned, or more precisely the patient. The Act does not specify the witness, however, it must be a person who should be present at the provision of the health services, most often it will be a medical worker, but it can also be a person accompanying the patient. In the case that within a repetitive providing with information we expect the dissent, we request the witness to help in advance. The witness should be present at least during the actual manifestation of rejection. A person who was not present at least during the patient's expression of rejection of the planned health services cannot be a witness. If the patient refused both to be provided the medical services and the signing of the record of the rejection and then the medical worker searched the workplace for "a" person in the role of a witness, who had not been present during the delivery of health services or the conversation between the medical worker and the patient, that person would not be obliged to sign the record. Although that condition appears problematic in practice, we can rationally come to the conclusion that no one can certify a situation which has not been witnessed present in person.

Minimum requirements of the informed dissent

Minimum content of the record of the rejection of provision of the health services (reverse) is stated in Annex no. 1, item 6 of the Health Records Act [9]. The content is the following: data of

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