



Recent Developments in Health Law in Greece

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Abstract

This article mainly analyzes the new Code of Ethics which is in place since 2005.

The most important change in medical law in Greece, during the last five years, is the promulgation of our new Code of Ethics. This new Code was ratified by statute and therefore, is now L. 3418/2005, FEK A-287. The older Code of Ethics, replaced by L. 3418/2005, was fifty years younger: a royal decree, coming from a time when Greece was still a kingdom, in 1955. Physicians and lawyers alike complained for a long time that these old rules should be replaced by more detailed and up-to-date legislation, although for fifty years, the rules had served their purposes well. The new Code of Ethics replaced the royal decree, in 8/11/2005. A 1939 Code of Practice of the medical profession (Compulsory Law 1565/1939) remains valid.

The purposes of the new Code of Ethics were: to offer an ideological foundation for the exercise of the medical professions (covering: guidelines for new physicians, professional liability, the proper image of a professional doctor), to focus on the protection of patient self-determination and to support the amelioration of the quality of medical services in Greece.

Under Article 1 section 1 of the Code, an act, which has as its purpose to prevent disease, diagnose an ailment, to treat and restore a patient's health is a medical act. As such are also considered: research towards the promotion of science, drug prescription, issue of certificates and patient counseling. Article 2 provides that a physician is obliged to observe the Hippocratic oath, to offer her services without discrimination, as ordered by the (Greek) Constitution. A physician is bound to respect human life even under duress and shall not use her knowledge

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against the humanitarian principles. A physician may not take part in torture or any other degrading and inhuman act, irrespective of the nature of the act the victim of such behavior is accused of, in times of peace and of war.

A physician is free to abstain from a legal medical procedure for conscience reasons, unless an intervention is an emergency (Article 2 section 5). This last section could refer, for example, to abortion, but Article 31 of this Code repeats the same provision in relation specifically with abortion. A parallel section in an older Ministerial Decision enacted the same freedom, but now this is also codified as a statutory provision. Greece always had a liberal attitude towards abortion, but there had been cases where doctors were sued, because they had refused to perform an abortion in a state hospital. The new provisions support the doctors' freedom of choice and conscience. Section 2 of Article 31 complete the rules, stating that a physician is obliged to offer counseling to a woman seeking abortion, before he performs an abortion.

If a physician's judgment may be impaired due to a health problem and if he suffers from a contagious disease (or is a carrier of a contagious virus), she must seek advice from a work doctor or other, properly trained doctor, on the necessity or the way of his provision of medical services (Article 2 section 6). In these cases, the doctor may not rely on his personal estimate of the risk he poses for his patients. This paragraph obviously refers to the sick doctor (or carrier of a virus such as, for example, AIDS). The number of AIDS patients or carriers in Greece is quite limited, although rising steadily in time; the exact number for the health workers is unknown. The legislator though, chose to offer a guideline in these cases.

Article 3 enacts the ethical and scientific independence for physicians. A doctor may act on the basis of his training and continuing education, his experience and skill he has acquired during the exercise of medicine and the rules of evidence-based and indications-founded medical science (Article 3 sec 1). His freedom to act is full, as far as the generally-accepted rules and methods of medicine are observed, as these rules and methods are formed by the results of modern applied scientific research (Article 3 section 2). He has the right to choose the method of treatment, which he judges as materially better than another method for the particular patient, according to the current rules of medicine and he may ignore a method, which has no satisfactory scientific foundation (Article 3 section 3). A diagnostic or treatment method not applied by the international scientific community is experimental and its application is allowed only under the legal and ethical set of rules governing this research (Article 3, section 4).

Article 4 deals with quality of medical services, patient safety and effectiveness. The physician shall promote the equal access to medical services and equal allocation of resources. He shall also abstain from discrimination due to educatory, legal, economic, social and geographic differentiations (Art 4 section 1). He must col-



laborate harmoniously with his colleagues and the health care personnel and engage in any action necessary to avoid medical mistakes and to secure patient safety, also to minimize the waste of resources and to maximize the effects of medical care (Article 4 section 2). He must prescribe drugs and proceed with only these medical acts, which are necessary to the quality and the safety and the effectiveness of medical care of treatment, but this result must not limit his ethical and scientific independence nor ignore the interest of the particular patient (Article 4 section 3).

Article 5 deals with medical certificates. A major change is enacted in section 1, which provides that the power of medical certificates is the same, regardless of whether they have been issued by a doctor serving a legal person of public or private law or a doctor who is a private professional. In the past, for various reasons, only certificates, which came from a public hospital, were accepted as valid before Greek Authorities. This meant, in a way, that a private doctor was bound to sign whatever a patient needed to be signed, which certainly was an offending interpretation. Section 3 clarifies which persons are entitled to receive the medical certificates (mainly, the patient or a third party, proving legal interest to receive the document).

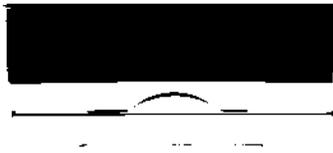
Chapter three of the Code is concerned with the doctor/patient relationship. This relationship is characterized in Article 8 section 1 as a fiduciary relationship, one of trust and respect. Section 2 expressly provides that a physician is obliged to listen to his patients, to treat them with respect and understanding and to respect their views, their privacy and their dignity. The doctor may not intervene in a patient's private life, unless up to the degree necessary for the effective provision of medical care, if this has been allowed to him by the patient. The doctor respects the patient's religious, philosophical, ethical and political views of the patient. His views on the way of life, the beliefs and the social/economic condition of a patient shall not influence the care offered to the patient. The doctor may not take advantage of the patient's trust or use his status so as to form illicit personal relationships with the patient or his relatives, exercise economic or other pressure, reveal confidential information and recommend treatments or remand the patients for tests which do not serve their interests (section 5). The patient's health is paramount (Article 9 section 1). The doctor may not refuse his services for reasons irrelevant to his training, unless serious reasons exist to support such refusal. He is also obliged to offer emergency services, irrespective of his specialization and even if the necessary means of treatment do not exist. This obligation remains until the patient is transferred to the doctor who is the special physician to treat him or to a health care facility. A doctor may terminate the provision of services to a patient for personal or scientific reasons, if the patient's life is not endangered by this termination; in such case, he is obliged, if asked, to recommend another physician to replace him (Article 9 section 4).



Article 11 deals with patient information and Art. 12 with consent. This is a very important step towards the promotion of patient self-determination. The articles are drafted so as to separate entirely the matter of informing a patient (Article 11) and securing his consent to a medical intervention (Article 12); moreover, information comes before consent and is not 'tied' with consent, in, for example an article on consent, which adds 'information' somewhere in its lines. Article 11 is detailed: a physician bears a duty of candor towards the patient and he shall inform, fully and comprehensibly, his patient on the true status of his health, the content and the results of the medical act proposed, the consequences and the possible risks from its performance, the side-effects, the alternatives and the possible time of cure, so that the patient may shape a complete picture of the medical, social, economic factors and consequences of his condition and proceed with his decisions. This is a wide kind of information which, under the statute, must, as a matter of law, be given to a patient, certainly wider than what the Convention of Oviedo dictates. The specific addition of social and economic factors, as crucial to patient decisions is also an impressive acknowledgment. The Article on information continues with the right not to know, which a doctor is obliged to respect (section 2). In these cases, the patient is entitled to ask the doctor to inform exclusively other persons, suggested by him. These persons shall receive information in lieu of the patient. The content of the information does not change, because the recipient is not the patient himself.

Article 12 deals with the consent of the informed patient. The physician shall not proceed with the execution of any medical act, unless consent has been secured. The conditions of a valid consent are: a. the patient is fully informed, under Article 11 b. the patient is competent to consent c. consent is not a result of mistake, fraud or duress and is not contrary to good morals d. consent covers fully the medical act at the time of its performance. No consent is necessary in emergency situations, in suicide attempts and in the case of a minor patient in need of an immediate medical intervention, to avoid danger for the life or the health of the minor, even if the parents or third parties who have custody of the minor refuse to consent. This last provision openly declares that in Greece, for example, a Jehovah's witness parent who deprives his child of a life-saving blood transfusion, shall be legally surpassed and the doctors may engage in the necessary transfusion.

Article 13 regulates medical confidentiality matters. The obligation to keep medical information confidential is, under the Article and as a rule, absolute (section 1). The physician is mandated to properly supervise his assistants or other persons who support the provision of medical services by him and take every necessary measure to safeguard confidentiality even after the termination of his medical practice. Confidentiality as a principle may be breached only if: a. the physician aims at the execution of his legal duty (example: a special statute mandates disclosure or a felony is planned) b. the physician seeks to preserve a



legal or otherwise justified interest, material public interest, or his personal or another's interest, in cases where these interests cannot be differently protected c. when the situation is one of necessity or defense (these terms are taken from the Civil Code's part of general principles of law on grounds of justification of an otherwise illegal act and their interpretation here is the same as in this text). The obligation of confidentiality ceases when the person to whom the data refer consents, unless his statement is invalid (for example, it is a result of fraud, duress, mistake). Also, when the breach of the obligation injures human dignity, the obligation remains intact. Doctors, who exercise a public control duty or act as expert witnesses, are relieved from the obligation of secrecy only towards their mandators and only in the context of the object of their mandate. Death of a patient has no consequences as to the obligation of confidentiality. The breach of the obligation of secrecy by a doctor (or a midwife, a nurse etc) is a criminal offense, under our Criminal Code (Article 371). The Code of Civil Procedure, also, provides for an exception to this duty, when the doctor testifies in court (Article 212). A relatively new statute, L. 278/2002, provides the right of the Health Supervisors to access files of the authorities they investigate. Also, L. 2472/1997 provides that the collection and the processing of sensitive personal data (health data are sensitive data) is legal only if it is necessary to the prevention, diagnosis, care and management of health services and is conducted by a health professional under the obligation of confidentiality; data processed must be adequate, relevant and not more than necessary to the fulfillment of the purpose of processing. It follows that a bundle of rules safeguard medical confidentiality in Greece and the new Code of Ethics consists, as a statutory instrument, an excellent safety net.

Article 14 is an original provision, obliging every doctor to keep his medical archive; the archive may be electronic or not. The preservation and function of this medical archive follows the rule of L. 2472/1997 for the legal processing of personal data. Article 14 section 2 contains the minimum data that this archive shall include (name, disease etc). Section 3 obliges the clinics and the hospitals to keep in their archives all the results of patient's tests. Private doctor's offices shall keep their archives for at least ten years after the last visit of their patients and public health care facilities for twenty years (section 4). In the case of scientific publications, special care shall be taken so that the identity of a patient is not disclosed therein; if this disclosure is necessary, it shall take place only after a written consent by the patient. No notes on any other matter than a patient's disease shall be recorded in medical archives. The patient has access to the medical archive and has the right to obtain a copy of his file. If the patient has died, the patient's heirs shall exercise this access right, if they are close relatives to the deceased patient. A third party enjoys no right to access the patient's file unless: judicial or prosecutorial authorities ask for access during the execution of their duty, or other organs of the Greek State ask for access, having this right under



their constitutions. A Greek patient has the right to access national or international archives, in which his data have been entered.

Article 15 states that a physician who finds himself in conflict of duties shall face this conflict on the basis of his scientific knowledge, the comparison of legal interests in danger and the absolute respect for human life and dignity.

Chapter four deals extensively with the relationship between a physician and society; matters such as advertisement, the presence of doctors in mass media and the internet, fees etc are regulated in detail. Chapter five regulates relationships with colleagues, chapter sixth with medical training and chapter seventh with research (laying down the conditions of legal medical research, such as consent etc).

Decisions at the end of life, in vitro fertilization/cloning, abortion, transplantation, blood donation, protection of genetic identity are all regulated in articles 29, 30, 31, 32, 33 and 34 respectively, in a chapter called "special matters" (eighth chapter). Article 29 states that the physician is obliged to know that the desire of a patient to die, when he is at the last stage of an incurable disease, does not function as a justification of acts committed so that death is accelerated; section 2 states that the physician shall take into account wishes expressed by the patient, while competent to express them, even if at the time in question the patient cannot repeat these last wishes. Section 1 provides that the physician must relieve a terminally ill person from pain and take care so that the patient's dignity is not compromised. The set of rules on decisions at the end of life does not offer clear guidance on, for example, whether the administration of medication to relieve pain has also the known effect of accelerating death and the Criminal Code provisions on the matter still stand unchanged (euthanasia is a criminal offense).

These are briefly the main provisions of the new Code of Ethics in Greece, of 2005. What should also be mentioned in a report of medical law evolutions in Greece in the last five years is that more medical malpractice suits are filed and the amounts of compensation for medical mistakes, especially of moral damage (pain and suffering awards) are augmented in values. Almost all physicians are now insured against medical malpractice. Wrongful birth/life are not recognized as a legal grounds of compensation, because (inter alia) of the indirect moral loss caused to parents, for the birth of their genetically impaired child. Indirect loss (B asks for compensation because A was injured) is not recognized in Greece as compensable: only if a party dies because of another's negligence, his relatives may ask for moral damages. However, in a different context, when the mother of a child was injured during labor, because of a medical mistake in anesthesia causing severe brain injury, the born child's claim for moral loss was upheld, as the Thessaloniki Court of Appeals recognized in 2003 that this injury to the child's right to parental care was a direct, and not indirect, loss. This is a novel interpreta-