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Respect for Human Dignity. Ethical and Legal Reflections Regarding the Breach of the Obligation to Inform the Patient

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**Respect for Human Dignity. Ethical and Legal
Reflections Regarding the Breach of the Obligation to
Inform the Patient**

Lacrima Rodica BOILĂ¹

Summary

The starting point of our analysis is to present the grounds of a jurisprudential solution issued by the French Court of Cassation, in the Decision no. 573 of June the 3rd 2010, considered in doctrine as a true “reversal” in the light of the new interpretation of the ethical foundation and of the legal consequences regarding the lack of information towards the patient. If until now, it was considered that only those situations where lack of information resulted in a “loss of a chance” entitles the patient to claim compensation, these compensations being only in proportion to his loss, this time it moved forward, stating that in case the doctor is guilty only of failing to inform his patient he may be responsible for the moral damage caused to the patient, on the basis of tort liability. For the first time, the solution of the Court brings into question the ethical and legal foundation of responsibility the lack of respect for human dignity, by disregarding the individual as patient. Thus, the lack of information acquires new dimensions, of ethical nature, much deeper and with complex meanings.

Following these coordinates, the paper proposes a new approach to the doctor’s obligation to inform his patient, this time from an ethical perspective, related to the respect owed to human beings, especially those in need – the suffering. Respecting dignity is an inherent right of every human being, free to decide his own destiny. The patient, a person so vulnerable to his inevitable fate, is entitled to know his illness diagnosis, the intervention and treatment options, the risks that the patient could be exposed to, when expressing freely and in full knowledge the “assent on basis of information”. The failure of its information on certain aspects which, if they were known, would be likely to offer the possibility to choose a particular solution, is not only a breach of a professional duty, which involves not only tort liability, but also an ethical misconduct by ignoring his dignity as a human being.

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Information is closely linked to the trust that the patient offers to a specialist, in order to apply the method of prevention or treatment that is best suited for his health condition, displaying the lowest risk. If, however, the doctor acts without correctly and fully informing the patient, he betrays his patient's trust, the patient being unable to choose the best solution, according to his own will.

Keywords: *human dignity, informing the patient, tort liability for lack of information, loss of a chance.*

I. Preliminary viewpoints.

The Law no 95 of April the 14th 2006[1] has been consecrated to the public health reform, considered “*an objective of major interest*”. The protection and promotion of the Romanian population's health were raised on the level of political legislative objectives, as a part of the broad step of our integration process into the European Union. For the first time, the legislator comprised in a single regulatory document a uniform regulation of the entire health system problems in our country, according to the norms of the European Community Law, vastly repealing the previous regulations.

The relationship between physician and patient was standardized on the specific activities of diagnosis, treatment, healing or just improvement of the patient's health status. Generic named in the legal literature as “health reports”, these legal relationships have an interdisciplinary feature, given the complexity and diversity of the rights and obligations of the parties. The doctor's obligations are those duties based on the choosing of a professional and moral conduct appropriate for the diagnosis, treatment or patient care, in compliance with the patient's rights, for curing or relieving his patient's suffering. Qualifying the medical liability as being a “professional liability” implies competence, diligence, prudence and caution in the field of medical practice.

The ethical-legal reflections regarding the *relationship between the doctor and his patient* carry as a central element the obtaining of the *informed consent*, the way it was governed by the provisions of the Articles 649-651 of the Law no. 95/2006. Civil liability for the *medical malpractice* may be

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engaged along with other *professional faults* committed while practicing the activities of prevention, diagnosis and treatment and for non-compliance with the legal regulations regarding *the obtaining of the informed consent of the patient*.

The primary ethical duty of the physician, provided by the Code of medical ethics is to inform the patient. Thus, according to the Articles 58 and 59 of this code, *the informed consent of the patient is necessary as he expresses according to the law regarding every diagnosed, medical or therapeutic intervention*. The patient must be informed on *the diagnosis, prognosis, treatment options, the risks and benefits of the treatment*. In the case of vulnerable persons, minors or adults with lack of judgment, the consent will be expressed by their representatives, after receiving complete and accurate information. In exceptional, urgent circumstances, when these persons cannot be consulted, *their consent is considered as being implicit*, meaning that the physician is primarily obliged to do everything that's possible to save the patient, and secondly to inform the legal guardians.

From the legal point of view, *informing a patient is a professional duty of the physician* within the legal relationship set with his patient for his treatment. Within this relationship the patient is advised about the methods of prevention, diagnosis and treatment of potential risk. The patient, in full knowledge of the case, will be able to express his written consent regarding the treatment, assuming implicitly in a conscious, deliberate way the consequences of a possible danger regarding his worsening condition of health or even death. Besides the physician's *duty to inform the patient*, there's *the right of the patient to be informed*, as one of his fundamental right, both of them comprised in the legal relationship.

The patient's confidence in the *professional skill* of the specialist is directly and spontaneous conditioned by his correct, complete information on all data related to his health condition, respectively diagnosis, the nature and purpose of the treatment, the risks and their consequences, possible alternative treatments, as well as the danger or consequences that the patient could expose to, in case he refused to submit to the treatment. On these coordinates, the caring for the patient is based on trust, on reliable information and on confidentiality – *fundamental principles designed to humanize a scientific, professional activity but with profound ethical, altruist significance*.

II. The current position of the Romanian doctrine and jurisprudence regarding the legal nature of the relationship between physician and patient.

The doctrinal analysis of the relationship between physician and patient, especially of the provisions set by the Article 642(1) letter b of the Law no. 95/2006 referring to the condition of engaging civil liability for malpractice, led some of the authors to the conclusion that the legal relationship between physician and patient is one of contractual nature and only exceptionally of tort (Mangu, 2010).

Thus, the provisions of Chapter IV Title V of the Law no. 95/2006 appreciates that the duty of care for the patient is legally imposed to the physician and the moment of accepting the sick as a patient brings that will agreement that traditionally characterizes a contractual relationship. Based on the concluded contract, the physician provides medical assistance that includes care, security, information, advice and confidentiality. However, analyzing the medical malpractice, the proponents of this view take into consideration the institution of tort liability, appreciating that the legal text states on the four essential conditions that must be met in order to engage this kind of liability, the way they were provided by the Articles 998, 999 of the old Civil Code: the illicit act, the injury, the causal link between act and prejudice respectively the guilt. The duty of care, considered to be *the cornerstone of the dome under which all the services of the practitioner and the system where he exercises his profession are offered to achieve this objective, our metabolic balance, is a strictly professional duty* whereas *the professional skill is one of the main factors of appreciation for the proper execution or non-execution of this duty* (Mangu, 2010).

In a study devoted to the liability of the medical staff for noncompliance to the duty regarding the informed consent of the patient, the author Emese Florian appeals to the “rigors of the civil liability” and expresses some reservations about the self-sufficiency of this assumption of liability towards the so-called malpractice, which implies “*professional guilt, in exercising the medical act, generating harm to the patient*” (Florian, 2011) In these conditions, the author believes that informing the patient concerns the activity of medical assistance so that the obligation is not considered a self-sufficient duty only *incidental to the main duty* – that of care and treatment.

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In our assessment, in the field of medical malpractice, the strict framing of the tort liability for the damages in the classic patterns of the contractual or tort liability is impossible. Thus it is imperative to accept this responsibility as being distinct from the two forms traditionally consecrated. We discuss here about the *professional liability* (Boilă & Boilă, 2009), applicable whenever the debtor performs a specific activity, with strict rules, that require more attention, honesty and competence. The activity of the medical staff regarding investigation, diagnosis, care and patient treatment is a professional activity which exceeds the limits of simply fulfilling certain contractual obligations, thus being singularized in relation with other harmful activities. In relationship with his patient, the physician exercises *his own skill*, being obliged to make all efforts to heal or to improve his patient's health condition. It is important to highlight the fact that the professional liability in the medical field, and, generally in all other fields, assumes more exigencies in assessing the service. This usually requires increased attention to avoid harmful consequences (Boilă, 2009).

The duties of the physician towards his patient may be assessed by taking into consideration two criteria: *the professional competence of the practitioner* implying a vast professional training, experience and, last but not least, moral probity on the one hand and on the other hand the *random risks* that may aggravate the patient's health condition either because of the illness or because of the peculiar condition in which he finds himself. If the main duty of the physician to nurse the patient, in the majority of cases was appreciated as being *obligation of means*, then the security, information, counseling and keeping medical secrecy obligations were appreciated as being *obligations of results*.

The lack of complete information or the lack of a guidance regarding the treatment, provided at the right moment, brought into discussion the possibility of harming the patient by *losing the chance of taking a decision that should avoid a tragedy*. Although the direct and spontaneous cause of the situation created is of biological nature, the question is whether it could have been avoided if the physician had fulfilled his duty. The solutions were differentiated in relation to the qualification given to the professional's obligations towards his patient. If we accept the idea that informing the patient is an obligation of result, without proof of its fulfillment, we can establish a causal link between

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the physician's action and the loss of chance that the patient could have had. If, on the contrary, informing the patient is appreciated just as an incidental duty of care with no autonomy and is just an obligation of means, we cannot establish a direct causality link with the loss of chance.

In our assessment, undeniably, the duty of the physician to inform his patient regarding the content and the conditions of the medical act is an autonomous obligation, distinct from the care or guidance, the way it was established by law. According to Article 649 of the Law 95/2006, the physician must provide the correct, complete and understandable information to the patient or to his family members if he requires, to inform the family members or another designated person upon his health condition, the diagnosis, investigations, prognostics and in particular, upon the risks that could occur when applying a certain treatment or surgical procedure with the recommendation of the care considered necessary.

The essential element in the physician-patient relationship is *the respect for the patient's right to take a right decision* concerning the way his treatment and care will continue. In the light of these provisions, the physician's duty to inform his patient is an essential element. On this element will be based all the decisions the patient will take for his life and health. By the informed consent that he gives, the patient must assume in a conscious way all the predictable, useful and controlled risks of the intervention or the treatment presented by the physician. Without this informed consent, the physician has no right to intervene so that the entire responsibility for the harmful consequences will be taken by the patient. He is the only one who can decide regarding his health condition except for the situations when he is not conscious. The information offered to the patient by the specialized staff must be correct, complete, prompt and competent as this is the primary obligation based on which all the other duties like care and treatment, guarantee of safety and counseling will be achieved. In this regard, we appreciate that the duty to inform the patient must be considered as being a distinct duty from the other duties that fall on the medical staff.

The duty to inform the patient may be interpreted as being a moral duty related to the patient's nursing. In the absence of proving a fault regarding the care for a patient, we cannot discuss about breaching the duty to inform. The interpretation was determined by the practice

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orientation of the judges, where the issue of civil liability for breaching the duty to inform the patient was invoked only tangentially, considering that this duty has no autonomy, being only attached to the obligation of care which is the main duty of the physician. Currently, our courts weren't confronted with situations where the patients reclaimed for damages because of lack of information but only because of those situations regarding the professional faults that led to the death or injury of patients. In these circumstances, in the analyzed litigations regarding the medical malpractice, most of them of criminal nature, were invoked professional faults as those of surgical technique, the application of a treatment, supervising the patient etc. in order to obtain apart from the offender's punishment also the payment for civil damages.

However, in other juridical systems, as the French one, the issue of informing the patient was debated more carefully, appreciating that this is an independent obligation which engages the civil liability even if other obligations weren't violated. This is the reason why we propose to present a jurisprudential solution of the French Court of Cassation which provides debates on juridical issues of great interest referring to the interpretation and justification of this duty.

III. A short presentation of the Decision no. 573 of June the 3rd 2010 of the French Court of Cassation

On April the 20th 2001, the plaintiff M.X. underwent a surgical intervention for prostatic adenomectomy, this intervention leaving him with erectile disorders. He sued the urologist M.Y. accusing him, on the one hand for failing to supervise him during the postoperative period but also because the urologist failed to inform him on the risk this intervention could have upon his functional condition. If he had this information he would have abandoned the intervention continuing to use the vesical probe even with the risk of infection. In other words, between the two risks he was exposed due to his aggravating health condition, the patient could have decided to choose the least serious risk that would have created a discomfort though with an attenuated suffering than the suffering he was exposed to, the moment he accepted to have the surgery.

The French Supreme Court appreciated that, according to the provisions of the Article 16 and 16-3 from the Civil Code, all the persons

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have the right to be informed in advance on the investigation, treatment or prevention actions, inherent risks that the procedure implies for only then to express their consent. No therapeutic procedure can be done without the consent of the patient. Breaching the duty to inform the patient by the one who legally had to do it, if he caused a prejudice, is likely to be responsible for the prejudice. Consequently, the judge cannot leave without repair such damage. In this case study, if the patient M.X. was correctly informed in the sense that the intervention of adenomectomy bears the risk of causing erectile disorders, he would have been able to quit the intervention, preferring to be exposed to the risk of serious infection caused by wearing the vesical probe than to reach the bad situation he found himself after the intervention.

In order to engage the medical liability, the court invoked the provisions of the Article 1382 – French Civil Code, dedicated to the tort liability, something that represents an innovative element, given that both doctrine and French jurisprudence appreciated, up to this moment, almost unanimously, that the relationship between the physician and patient is of contractual kind.

IV. Undeniably, the Decision marks *a new direction of the jurisprudence regarding the civil liability of the physician for breaching the duty to inform his patient*, bringing ethical and legal arguments on his behalf. Although the layout exposed in this case may be considered a *classical layout*, as it can be met frequently in the practical activity, in any field of the medicine, the reasoning of the solution surprises through the appeal to the tort liability for breaching the right of the patient to dignity and by omitting to inform him properly about the predictable risks of the surgical intervention. Thus, if by this time, it was considered that the only compensated damage in case of breaching the duty to inform is justified by the *loss of chance of the patient to choose a variant that should help his health condition*, risk that finally materialized (Cour de Cassation, 1996) by the decision presented, it was admitted the fact that *compensation is to be given even for the lack of information*, case where *the judge cannot leave the situation without remedy*.

In the following part we propose to analyze these issues, trying to outline the theoretical significance, but also the impact such an approach could have upon jurisprudence.

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1. *Underlying the information towards the patient on the constitutional principle of protecting the human dignity is, in or appreciation, the proof of the respect owed to a human being especially when it is sick, vulnerable and in the need for support and care.*

The right to dignity is part of the category of the personality rights, considered inherent to every human being. According to Article 72 of the New Romanian Civil Code (1) any person has the right to respect for his dignity. (2) It is forbidden any damage to his honor or reputation of a person without his consent or without the limits stipulated in Article 75.

The notion of *dignity* cannot be comprised in a precise definition, exactly by its general feature of the terms used. The honor and reputation of a person found in the text of law are appreciated as being *two sides of the right to dignity*, rather than distinct elements composing this right [Eugen Chelaru, 2010]. The moral integrity of a person represents an aspect of the private and family life being protected and guaranteed through the provisions of Article 8 from the European Convention on Human Rights (Cour de cassation), according to which: *Everyone has the right to respect for private and family life...*

The honor of a person is innate, being related to its very existence as a human being. Instead, a person's reputation in society is acquired during his lifetime and depends on his conduct in relations with others and on the training and education he accomplished.

The legal text forbids anything that affects the honor and reputation of a person without his consent or without compliance with the limits set by the Article 75. Violating these provisions constitutes an offense, which in some situations, expressly defined by law, may constitute offenses punishable by criminal law.

Invoking in the motivation of the sentence the harm done to the patient regarding his dignity is worthy as it highlights the great importance of the duty to inform the patient, offering new meanings – ethical and moral meanings. The legal content is ennobled by more profound, emotional and educational meanings, capable of sensitizing the medical staff, warning it about the consequences. From this perspective, information is an essential condition for respecting a fundamental principle of the bioethics – the autonomy of the patient (Beauchamp, Childress). The patient, after being completely and

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correctly informed, has the right to accept or refuse to submit to the medical treatment or intervention, which involves taking the inherent risks of this kind of decision. Violating this obligation represents, first of all, an ethical offense by ignoring the patient's quality as a human being, an attitude of contempt and passivity that reduces the body of the patient to the mere level of a commodity that can be used in any situation.

If we accept the idea according to which the information corresponds to a subjective right of the patient expressly provided by law, the right regarding the dignity of the human being, we will be able to bring new arguments in underlying the *professional liability* of the medical staff, directly involved in saving the lives and health of other persons. The patient, as a holder of this right, has the possibility to vindicate for any injury and in case of prejudice, he may claim civil liability.

2. *The tort feature of the civil liability engaged by the physician for the damages caused by the lack of information* comes from the substantiation of the jurisprudential solutions based on the Article 1382 from the French Civil Code, Article 998, 999 from our old Civil Code, respectively the Article 1349 from the current Romanian Civil Code. Traditionally, the French doctrine and jurisprudence appreciated that the physician's liability for missing to inform the patient is a contractual liability, based on accepting the patient in order to grant him medical care.

Lately, however, new tendencies of engaging a *non-contractual* liability appeared, considered, in the first place, a *legal obligation* according to the health legislation. Thus, it was appreciated, according to the legal relationship set for his medical care, that the patient participates in his quality as a *human being* with constant needs and aspirations of life, health and body integrity, regardless of the quality of the service provider, to the form of organization and the specific of his activity domain – a natural or legal person, a health institution, a research institution subject to the regulations of the private or public law. The patient's rights concerns his own existence, being invariable and referring to the harmonious biological function of his body, his mental health, his metabolism biorhythm etc. In such circumstances, it is stogy to strictly invoke the violation of certain contractual obligations for engaging the

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liability of the medical staff, as we bring into discussion the exercise of a profession, with scientific, ethical and moral special rules.

Moreover, by examining the ethical rules of the medical profession, one can say the fact that the activity of the physician exceeds the limits of a mere contractual service, being a liberal profession where the scientific competence blends with the skill, ability and devotion owed to the patient, a real art devoted to humanity. In these circumstances, it would be unfair to differentiate the legal nature in relationship with the health condition of the patient: if he is conscious – a contractual liability, and in case of emergency, if he is unconscious – a tort liability.

Regardless of the situation, the patient needs the same care and attention, according to the medical problems he has. That is why, the professionals' liability in the medical field and in the health institutions must be based on uniform, homogenous rules that should ensure the compliance with the rights of all patients, without differences related to the content of the *medical contract*. (Pierre, 2011).

3. Innovative aspects regarding the interpretation of the duty to inform the patient

The motivation of the sentence pronounced on June the 3rd 2010 by the French Court of Cassation shows that the obligation of the physician to inform his patient is an independent, autonomous professional duty that would engage his liability for the produced damage. Though it is found in a tight relationship with the other professional duties, as that of care, counseling or confidentiality, the information has a precisely determined content, engaging the liability independently from other faults imputable to the physician. In other words, it is sufficient to ascertain the lack of information for the patient in order to initiate the civil liability once the prejudice is proven.

By substantiating the patient's right to claim for compensation, for the prejudice suffered due to the lack of information and according to his right to dignity as a human being, we highlight a distinct category of moral harms, distinct from those produced by losing a chance. In this respect, we could accept the idea that the victim is entitled to claim for compensation, both for the *lack of information* and *the loss of chance* to avoid a certain risk which would possibly lead to worsening the situation of the liable person. On the other hand, such a claim would be an

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efficient way of ensuring an integral *repair of the damages produced*, which means more efficient protection of the legitimate rights and interests of the patients.

Although the motivation of the decision doesn't indicate the nature of this prejudice, we consider it to be a non-property prejudice as *it represents the patient's mental suffering at the moment he finds out he was submitted to an unnecessary risk or a risk that proves to be more serious than the one at the moment of the intervention*. In other words, the lack of information must be linked to the health problems of the sick person, who sees himself unnecessary exposed to a tough, painful, embarrassing situation that he wouldn't have been exposed to if he was completely informed. In order to obtain reparation, the victim must prove the fact that he suffered a body injury that he could have avoided if he was informed and that this situation caused him a mental suffering, determined by the state of uncertainty, fear and discomfort he had to go through. However, if the intervention was beneficial for the patient, he wouldn't be able to claim the fact that he suffered a prejudice only due to the lack of information.

In justifying this prejudice, the feeling of anxiety and disappointment was invoked, a feeling that the patient has the moment he learns about his real situation and the unnecessary risks he had been exposed to. This feeling is characterized by permanent *anxiety towards the danger of finding out about a new disease or about the aggravating illness he suffers from*, consequences related to the illness the patient had in the past but also the need to submit to further periodical investigations, medical examinations designed to evaluate his health condition [Cour de cassation, 2010]. In this context we speak about a moral prejudice suffered for the *lack of preparation*, reason why the patient was unable to prepare psychologically to a risk for the illness hidden by mistake or by deceit. The patient may reclaim a prejudice due to the impossible state he was found in, when taking the necessary precaution measures regarding his *future, professional, family, and social activities* and then confronted with a risk he wasn't warned about. Even those close to the patient could invoke such a prejudice, indirectly caused, as it would modify their program or disturb their existence.

4. Qualifying the legal feature regarding the obligation to inform the patient

The jurisprudential solution approaches to the obligation to inform the patient as being an obligation “*of result*”, the proof of its fulfillment being the physician’s duty, as a debtor of the service. Thus, in order to obtain the “informed consent” of the patient, the physician must inform the patient on the main information related to the risks he exposes to. In this way, one can verify if the physician fulfilled his professional duty, in the sense that he offered the patient the essential, necessary and useful information that could help the patient give his consent regarding the intervention or treatment proposed. Informing the patient is an important duty, its fulfillment may be verified through the signature given by the patient in his medical file. The proof of fulfilling the obligation of information lies in the duty of the physician who will present the document signed by the patient with all the necessary information. The written form of the document offers the possibility of proving the conditions and content of information, in case of a dispute, aspects that can be administered as evidences.

In case of producing a harming event, the patient may prove the causality link between the lack of information and the harming consequences produced, in order to force the physician to pay for the damages. The impossibility of taking a decision that should improve the situation or that should offer the hope for his healing, means the loss of a chance that could be a retrievable claim. At the same time, the patient’s refusal to follow the recommended treatment implies the risk of aggravating the illness. This refusal must be recorded in writing, as a proof, in case of his aggravating illness, considering that the patient is fully responsible for this damage. The physician’s duty to inform his patient concerns the serious or frequent risks but also the exceptional risks, which are acknowledged and predictable (Rouge-Maillart, Sousset, Penneau, 2006).

Conclusions

Eventually, we appreciate the pronounced solution as being fair, in full compliance with the need of ensuring *the repair of all the damages caused to the victims of illicit acts from the medical field*. Although at that moment, in our jurisprudence, the issue of engaging the medical liability

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is conditioned by the proof of violating the obligation of care and treatment, being presented especially in criminal cases where the civil enforcement action is settled along the criminal enforcement action, the patient's information was not analyzed distinctly only with a few exceptions. That is why we considered useful the presentation of the French Court of Cassation, as a possible marker in the direction of our courts of law.

In our assessment, the substantiation of civil liability due to the lack of information, on the provisions regarding *the right to human dignity*, offers more profundity to this obligation which could be approached from a new perspective. The invoked arguments have a profound ethical and moral burden, warning upon the consequences of violating the right to autonomy of the patient.

We believe that the decision examined is illuminating for our approach to reassess the physician's duty to inform his patient as being an autonomous professional obligation, an obligation of result. The human being has within its nature the right to be respected, consulted and informed upon all the matters related to it, especially those referring to life, health and body integrity. Especially in danger, the sufferer must know all the details, results and information regarding the medication, treatment or intervention proposed so that he could freely express his consent. In these conditions, the breaching of the duty to inform the patient by the one that had the obligation to do it, in case he causes harm, he is bound to take responsibility for that damage.

Bibliography

- Beauchamp, T.L. & Childress, J.F. *Les principes de l'éthique biomédicale*, The French Edition, *Les belles lettres* Publishing House, Paris, 2008, p. 90-100.
- Boilă, L.R. & Boilă, A.C. „*The Legal Nature of Medical Staff's Liability in Romanian Law*”, in the Review *Dreptul*, no. 5/2009, p. 88.
- Boilă, L.R. *Răspunderea civilă delictuală subiectivă*, C.H. Beck Publishing House, Bucharest, 2009, 2nd edition, p.320.
- Chelaru, E. *Personality's Rights in the Regulation of the New Civil Code*, in the Review *Dreptul*, no. 10/2011, p. 54-55.

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- Florian, E. *Discuții în legătură cu răspunderea civilă a personalului medical pentru neîndeplinirea obligației privitoare la consimțământul informat al pacientului*, article in the Review „Dreptul” no. 9/2008, p.40.
- Mangu, Fl. *Malpraxisul medical. Răspunderea civilă medicală*, Wolters Kluwer Publishing House, Bucharest, 2010, p. 251/260.
- Pierre, P. *La réparation du manquement a l'information médicale: d'une indemnisation corporalisée à la mise en oeuvre d'un droit créance*, *Médecine & Droit*, no. 107-113/2011, p. 110.
- Rouge-Maillart C., & Sousset, N. & Penneau M., „*Influence de la loi du 4 mars 2002 sur la jurisprudence récente en matière d'information du patient*” in the Review „Médecine & Droit” no.12/2006, p. 64-70.
- Cour de Cassation, chambre sociale, *The Decision of May the 11th 2010*, published in *Responsabilité civile et assurance*, no. 4/2010 apud. Pierre, P. *the cited article* p.112.
- Cour de Cassation, 1-er chambre civile, the Decision of June the 3rd 2010, no. 09/13591, published in *Revue trimestrielle de droit civil* no. 3/2010, p. 571.
- Cour de cassation, 1-èr chambre civile, the Decision of November the 5th 1996, published in *Jurris Classeur Periodique* 1997, p. 633 and the Decision of June 27th 2006, published in *Jurris Classeur Periodique* 1999, II, no. 10138.
- The Law no. 95 from 2006 was published in the Official Gazette of Romania no. 372, Part I, of April the 28th 2006 and later was modified by several normative acts. Throughout this study, we will refer to this act invoking “the Law”. Normative Act of great width, with 17 titles comprising 863 articles, the law regulates the organization of the national system of public health, the exercise of medical professions, the medical liability, and the social and public insurance, respectively the production, prescription and distribution of medicines. Each title comprises in the final part, provisions referring to the transposition of the EU Directives in the vast process of harmonization of the national legislation with the public legislation. The international sources regarding the regulation of the legal relationships from the medical field include the Universal Declaration of Human Rights, proclaimed on the December the 10th 1948 by the General Assembly of United States, the Constitution of the World Health Organization and the International Covenant regarding the economic, social and

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cultural rights. Among the community act we invoke the Convention for the Protection of Human Rights and Human Dignity in what concerns the application of biology and medicine, concluded on November the 19th 1996 by the Committee of Ministers of the European Council, adopted at Oviedo, on April the 4th 1997 and ratified by forty signatory states.