

Limitation of patients' rights during the COVID-19 pandemic in Poland

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Abstract

Background: The COVID-19 pandemic has had an impact on the observance and limitation of patients' rights all over the world, including Poland. **Material and methods:** We analysed in detail the Polish legal acts relevant to healthcare in terms of their impact on the patients' rights. Our analysis is based on the Bill of Patients' Rights that was in force in Poland before the announcement of the state of epidemic (March 20th 2020). The legal acts were analysed by use of the exegesis of legal texts and comparative legal literature rules. **Results:** The patients' right to family life and presence of relatives during the performance of healthcare services and to additional nursing care has been directly limited. Rights that have been limited indirectly include the right to healthcare services (limited by the use of telemedicine) and the right to dignified death and pastoral care (patients often die alone). The limitations also have an indirect impact on the right to confidentiality and respect for privacy and dignity. **Conclusions:** Our analysis identified limited patients' rights in Poland without entitlement to pursue claims thereunder.

Keywords: legislation · patients' rights · COVID-19 · compassionate use

Citation

Piątkowska K, Zimmermann A, Pilarska A. Limitation of patients' rights during the COVID-19 pandemic in Poland. Eur J Transl Clin Med. 2021;4(1):79-85.
DOI: [10.31373/ejtc/130441](https://doi.org/10.31373/ejtc/130441)

Introduction

The COVID-19 pandemic has contributed to significant changes in social and economic life all over the world. However, the direct impact of the pandemic

refers to human life and the functioning of the healthcare system, hospitals, outpatient clinics. The Patients' Rights and the Patients Ombudsman Act of 6 November 2008 [1] introduces the term of fundamental rights of patients and guarantees the observance of

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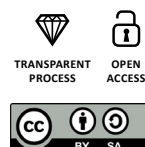
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No external funds.

Available online: www.ejtc.gumed.edu.pl

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those rights. In accordance with applicable regulations, patients have, among others, the right to obtain healthcare services immediately, to obtain full and sufficient information about their health, to give their definite and well-informed consent to medical treatment, to preserve their privacy and dignity (including their family life) and to access their medical documentation. The regulations interpret the patient as a subject and order to treat the patient, like each human being, with due respect. Nevertheless, the legislator stipulated possible limitations to the observance of the patients' rights due to a threat of epidemic, as referred to in Art. 5 of the Act. That regulation was already incorporated in the original text of the Act, however it has never been as up-to-date as nowadays. The *ratio legis* of the regulation was to protect the functioning of a healthcare institution if there is a risk of a state of epidemic within the institution's operating area.

At present, we observe an unprecedented scale of limitations to the freedom of human beings. On March 11th 2020 the World Health Organisation announced the worldwide pandemic and on March 20th 2020 the state of epidemic was announced in Poland. In the light of the spreading epidemic of the SARS-Cov-2 virus, which we still know very little about, it is obvious that restrictions aimed at limiting the infection are introduced. These actions are taken to protect human life and health on a nation-wide basis and to warrant the capacity of the healthcare system in order to prevent the dramatic events which took place in Italy or Spain. Therefore, it is very important to balance interests of the entire society with respect for rights of a human being. In the case of the SARS-Cov-2 virus pandemic, public authorities have to face the problem of uncertainty and insufficient medical knowledge, as a result of which legal regulations are also developed based on incomplete and fast-changing data, as well. The safety of medical personnel in comparison with the safety of patients is also an important aspect. These are difficult issues both in terms of organisation and ethics. That is why the literature describes this dilemma as "pandethics" [2-3]. There are many doubts regarding how to avoid infecting other people, social distance, the distribution of personal protection equipment, the obligation to treat or the right to waive treatment [2]. The moment the state of epidemic threat was enforced in Poland, the statutory right to limit patients' rights at all healthcare centres all around Poland came in force. Those limitations have very wide implications and influence everyday life of patients in the healthcare system. In this article we analyse legal acts and infection control authorities' guidelines which apply in Poland in terms of the enforcement of limitations to the bill of

patients' rights, which was in force before the announcement of the epidemic in Poland.

Material and methods

This work was prepared through the exegesis of a legal text in order to analyse the present status of regulations on patients' rights in Poland. We conducted a systematic review of the Bill of Patients' Rights guaranteed in various legal acts in terms of limitations thereto connected with the state of epidemic announced in Poland on March 20th 2020. At the same time we took into consideration the lawfulness of such limitations. The source of the analysis was the Patients' Rights Act, which was compared to official guidelines published by the state infection control inspectorate and the Supreme Medical Council, as well as legal acts amending the scope of the bill of patients' rights in Poland. This allowed us to compare using legal comparative literature rules. The rights that have been limited or even blocked are identified and discussed. We identified the rights to: healthcare services, respect for family life, dignified death, respect for dignity and privacy, additional nursing care, secrecy, and pastoral care. Those specific seven rights were analysed in detail.

Results

The patients' rights in wide terms are inseparably connected with human rights and constitutional rights stemming from the Constitution of the Republic of Poland. That is why Article 5 of the Patients' Rights Act is interpreted restrictively, which means that the doctrine does not allow for the limitation of all, but solely a part of, the patients' rights, e.g. the right to respect for family life, including personal contact. Based on Article 5 of the Act, the limitation of the patients' rights to services and consent is considered unacceptable. It is necessary to note that the Act only allows for the limitation, and not complete elimination, of the patients' rights. Nevertheless, given the pandemic and the limitations connected with restricting or preventing personal contacts, there are no doubts that widely understood patients' rights and the exercise of such rights have been indirectly, but effectively, blocked in practice [4].

During the epidemic state, the Polish legislature introduced new competences to the state infection control inspectorate whose recommendations have become new sources of law, which is unprecedented. This act is not foreseen by the Polish Constitution. Such recommendations may concern entities providing he-

althcare services and each person residing in Poland must obey. Such recommendations were made, inter alia, in the area of primary healthcare, including: telemedicine, rules of carrying out COVID-19 tests, rules for practicing family medicine [5].

Our comparative analysis indicates that the right to healthcare services has been formally limited. In particular, rehabilitation services have been limited temporarily by suspending the operation of rehabilitation centres and closing treatment facilities at health resorts. That is based on new provisions of the Act on Preventing and Counteracting Human Communicable Diseases, as well as regulations of the Minister of Health and the Government. The permission to limit the patients' rights to healthcare services also results from the existing standards and guidelines published by the state infection control inspectorate and the Supreme Medical Council, which point out that in-person appointments with specialist doctors must be limited and replaced with telephone consultation.

Based on the Resolution No. 89/20/P-VIII of the Presidium of the Supreme Medical Council on the adoption of guidelines for the provision of telephone medical services, "telephone consultations" are recommended during the COVID-19 pandemic and specific guidelines for doctors and dentists to be applied during such consultations have been passed. The standards explicitly underline that the doctor must respect the patients' rights without change. Given the patients' right to information, the doctor should inform the patient in detail about worrying symptoms, in the case of which diagnostic tests and further examination might be necessary. In addition, the doctor must also inform the patient that they have the right to an in-person appointment/service if the telephone consultation does not meet their expectations or their problem cannot be solved by phone. The resolution also clearly stipulates that: "The telephone consultation must not be overused if it does not allow for the reliable examination of symptoms and health of the patients and the patient's health problems cannot be solved in such a way". The resolution also points out that the principles of doctors' civil and professional liability for healthcare services do not change [6]. According to data obtained by the Patient Ombudsman, there were 22144 telephone calls received from patients regarding limitations of their right to primary healthcare services in the period of January – September 2020 [7]. Comparing with data from previous years, we can observe a significant growth. In 2019, there were 9743 such telephone calls regarding this particular area, while in 2018, there were 7306. During the SARS-CoV-2 pandemic patients mostly reported the refusal to provide healthcare services on the given day or the

refusal to be registered as an emergency. There were also reports concerning the refusal to provide personal visits or objections regarding the quality of telephone consultations provided during this pandemic [7].

Moreover, patients who used to be treated with chemotherapy or drug programmes in specialist hospitals are no longer able to receive such treatment. This issue arises from the increased number of hospital beds for patients with COVID-19 or even from the transformation of hospitals or hospital departments to provide care solely for patients with COVID-19. When patients suffering from chronic diseases are not able to receive treatment due to the lack of ability of hospitals to provide such care, the situation translates into a limitation of the patients' right to healthcare services in the area of outpatient specialist care [7]. However, according to new recommendations of National Health Fund, it is recommended to suspend or postpone most of planned surgeries to avoid potential spread of Sars-CoV-2 virus. The recommendation specifically excludes only cancer treatment and diagnosis [8].

The patients' right to healthcare services also applies to treatment consistent with the existing medical knowledge. The case of COVID-19 pandemic shows that the latest pharmacotherapy and the use of new procedures can be considered a medical experiment. Some of the therapies are recommended officially. In accordance with the information published by the President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products on April 3rd 2020, Remdesivir may be used in the COVID-19 therapy on a compassionate use basis. The Committee for Medicinal Products for Human Use at the European Medicine Agency issued a recommendation concerning the use of an active substance of Remdesivir in the treatment of COVID-19 under the compassionate use programmes in the European Union [9]. The Regulation (EC) No 726/2004, specifically Article 83, provides the legal basis for the management of a compassionate use programme at the European level [10]. The purpose of these programmes is to provide an access to therapies and medicines for which a marketing authorisation has not been obtained yet, but which are to help patients suffering from long-lasting diseases which pose a threat to life, cause serious disabilities or for which there are no treatment options. The results of laboratory tests indicate that Remdesivir counteracts SARS-CoV-2 and other coronavirus types. Nevertheless, the data concerning its use for patients with COVID-19 are limited [11].

The limitation of the patients' rights to respect for family life stems directly from Article 5 of the Patients' Rights Act and comes into force as a result of the occurrence of a premise for an epidemic threat. The de-

cision is made on a case-by-case basis by the head of a healthcare institution. Given the existing situation, such a decision is also authorised by guidelines published by the state infection control inspectorate and the Supreme Medical Council.

There is not, however, any basis for the limitation of the patients' right to respect for privacy and dignity. This right is strictly connected with the inherent dignity of each human being, therefore it cannot be undermined. This right includes the right to dignified death, which, as a result of the recommendations and guidelines issued by the state sanitary supervision office and the Supreme Medical Council, has been actually limited. The presence of family members and clergymen in the rooms of COVID-19 patients has been forbidden. Dying persons have been also deprived of additional nursing care.

The patients' right to secrecy and confidentiality, which are correlated in the context of COVID-19, are

limited because it is necessary to identify a source of infection and persons the patients had contact with. When information about people having contact with the infected person is provided by the infected person and then when the sanitary office contacts those people, the relationship and source of infection are disclosed, which violates the patient's right to secrecy with regard to the disease. This limitation stems from the guidelines of the state infection control inspectorate.

The patients' right to pastoral care was effectively limited. This right is subject to limitation on the basis of Art. 5 of the Patients' Rights Act, because it is connected with the right to contact stemming from the right to respect for family life. In addition, in accordance with the guidelines of the state sanitary supervision office and the Supreme Medical Council, as well as an order to limit interpersonal contacts and visits, pastoral visits at hospital wards are limited in order to minimise the risk of COVID-19 infection.

Table 1. List of patients' rights that have been limited in Poland

Patients' right to	Source of regulation	The source of regulation permits limitation of this right	Source of limitation	Standards and guidelines published by the state infection control inspectorate permit limitation of this right
Access healthcare services	Act	No	Regulation	Yes
Respect for family life	Act	Yes	Act	Yes
Dignified death	Act	No	None	Yes
Respect for dignity and privacy	Act	No	None	Yes
Secrecy	Act	No	Regulation	Yes
Additional nursing care	Act	No	Regulation	Yes
Pastoral care	Act	Yes	Act	Yes

Discussion

Given the interpretation in the doctrine, the patients' right to healthcare services is strictly connected with the provision of such services in accordance with medical standards and existing medical knowledge. This underlines the quality of services that the patient is entitled to. Therefore, doctors must study, improve and expand their medical knowledge and knowledge connected with new techniques and technologies all the time. In the light of the low level of knowledge about the SARS-COV-2 virus, it is not possible to provide the patient with healthcare services in the same manner that the patient is used to. The personal contact with a doctor was replaced with a telephone consultation.

The World Health Organisation defines "telemedicine" as the delivery of healthcare services, where distance is a critical factor, by all healthcare professionals using information and communication technologies for the exchange of valid information for diagnosis, treatment and prevention of disease and injuries, research and evaluation, and for the continuing education of healthcare providers [12]. A detailed history taken by an experienced doctor via telephone may solve a medical problem, particularly if it is possible to send photographs which can help make the correct diagnosis. However, the problem of the limitation of the patients' right to healthcare services will also exist if the telephone consultation is insufficient or if the patient is a small child or an elderly person. Elderly patients often do not have an access modern technologies or are not proficient in their use (e.g. are not able to send a photo to their doctor), which means that they are not provided with a healthcare service they are entitled to by law. The situation is also difficult in the case of small children if a parent is not able to define the problem because he or she is not able to identify the source of pain due to the lack of a relevant level of communication with the child. Moreover, according to a recent Ministry of Health Regulation, it is now forbidden to consult via telephone a patient who is < 2 years old [13].

It is necessary to point out that the decision to replace in-person appointments with telephone consultations was not a personal decision of a doctor, but the supervisor of the healthcare facility. The purpose of such a decision is not only to protect the medical staff but also the patients. When appointments at the outpatient clinics are reduced, people will not gather in the small waiting rooms and can avoid potential infection. Although reliable telephone consultations can be obtained and the permanent implementation of such a solution in the healthcare system can form a remedy for medical treatment acceleration, they

must not constitute the only method for healthcare service provision. A physician is obliged firstly to provide a telephone consultation, according to the decision of the head of the entity providing healthcare services. However, when it is not possible to solve a medical problem via telephone, the doctor is obligated to examine the patient in-person. In addition, it is the physician's personal obligation as a medical professional to remember that telephone consultations must not be overused. Due to data obtained by the Patient Ombudsman, there are reports from patients regarding limitations of personal appointments regardless of the medical requirements. Another problem concerns home visits, such as those provided by midwives following labour, which should take place 48 hours after discharge from hospital. The Patient Ombudsman explicitly indicates that an outpatient clinic should ensure that its schedule considers time required for telephone consultations, personal visits, home visits and healthcare for healthy children, such as vaccinations or routine health checks. There is also a recommendation for the careful use of telephone consultations, especially in situations with patients who have their first appointment or have a worsening condition [7].

The right to healthcare services and the limitation of that right in the times of COVID-19 give rise to ethical dilemmas. Should an access to such services be prioritised by age or health condition? Should the provision of such services to medical staff, who is very prone to infections, form a priority? Who provides such services and rescues the life of other patients at the same time [14]?

Certainly, the patients' right to dignity and privacy has been restricted as relatives are not able to be present during the provision of healthcare services. The same applies to the right to additional nursing care. It is strictly connected with the limitation of the patients' right to respect for private and family life, as set out in Art. 33 of the Patients' Rights Act, which was restricted directly on the basis of Art. 5 of the Act. At present, patients cannot be visited during hospitalisation and relatives cannot be present during the provision of healthcare services. The exception is family births, which were suspended during the first period of the pandemic and which depend on the decisions of the healthcare institution supervisor.

It is necessary to perform a more detailed analysis of the degree to which the patients' right to dignified and peaceful death in the times of COVID-19 is respected, which results from the specific situation we are amidst. Those rights are limited, however not directly on the basis of a specific regulation, but as a result of the enforcement of the infection control regulations and the equipment of healthcare institutions. Digni-

fied death is understood very broadly, starting from relevant nursing care, psychological support, through access to analgesia, to the presence of relatives. During the pandemic, the presence of relatives at the patient's bed is not possible for sure. However, in the case of the COVID-19 patient, the problem may also include a relevant nursing care, given the increased sanitary regime and HR shortages. There is also an ethical dilemma which orders to consider the right to dignified death and the obligation to prevent the epidemic through the application of dignified, but safe, procedures during the burial of people infected with COVID-19 or suspected of such an infection [15-16].

The relevant observation of the patients' right to secrecy and confidentiality is also a problem. On the one hand, to prevent the virus spread, people having contact with the infected person must be isolated. That is why infection control services perform a thorough interview and the infected person discloses information concerning people they have had contact with. Then, the infection control office contacts those people and informs them about the identity of the infected person: here the patient's right to secrecy is violated. What is more, as the society, we obtain information about the number of the infected people in the country, voivodships, towns and municipalities everyday. The information is given, however, in the most anonymised way possible in order to balance the interest of the public with the interest of an individual [17-18]. However, as a result of such a situation members of the society may be stigmatised or even subject to social ostracism or hostility towards the ill people or those in quarantine.

The limitation of the patients' right to pastoral care means the restriction of the presence of clergymen at hospital wards. This is a difficult issue, in particular to elder, chronically ill or continually hospitalised patients. To meet their needs, mobile communication devices (e.g. tablets and telephones) are used. Such solutions must be considered innovative and very necessary because they enable pastoral care for patients [19].

Conclusions

The limitation of the patients' rights during the COVID-19 pandemic is the fact. The legal basis for such a situation partially stems from Article 5 of the Patients' Rights Act, which allows for the limitation of the patients' rights during the epidemic threat, as well as partially from regulations of the Minister of Health and the Government and guidelines of the state infection control inspectorate. Some of the patients' rights have been limited, but not eliminated. The patients' right to family life and presence of relatives during the performance of healthcare and to additional nursing care has been limited directly. Rights that have been limited indirectly include the right to healthcare services which is limited by the use of telemedicine and the provision of remote medical aid. Similarly, as a result of the above, the patients' rights to dignified death and pastoral care were limited when the patient must die alone without family, loved ones or a member of the clergy. The rights to confidentiality, privacy and dignity were limited indirectly. The limitations are set out by law or in official guidelines, which means that any claims against such limitations are doubtful.

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