

Information and confidentiality: the example of Greek medical law

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1. basic view



the 20th as century of the information

- before 19th century journal,
- 19th century telegraph,
- 20th century telephone,
 - radio,
 - television,
 - internet
- 21st century social media

the easy approach to information

- created other ideological concept
 - of citizens rights



information

- consist the citizens demand
 - within the public and private space
- especially in the health sector regards
- interventions concerning their body and health

Confidentiality

- emerges primarily requirement
- in personal relations with regard to privacy



the dissemination of information

- through the internet and any kind of media
- allows the citizens to have access to
- all knowledge, true or false, legal or illegal



- the treatment
- of the data propagation
- can
- at times
- be checked
- sometimes not
- and
- But
 - dissemination
 - of information itself
 - may have
 - an economic impact
 - on profit or loss
 - and
 - in this sense
 - deserves protection

confidentiality of information

- citizens demand the respect of
 - their personal life
 - contacts with others,
 - identity
 - state of health

Consequently

- the right to information of
 - parenthood,
 - health status,
 - economic status, etc.
- is currently regulated in some fields

- Both
 - information and privacy rights
 - are regulated
- either by international treaties
 - or domestic laws

2. legal approach



After the Second World War

- on the level of health and medical experiments
- showed concern about human dignity
- the Universal Declaration of Human Rights of UNO
(1945)
- the European Convention for the protection of
human rights and fundamental freedoms of the
Council of Europe (1950)

Information

-
- constitutes
- a right
- in almost
- all European countries
- in recent decades

The European Convention for the Human Rights and the Biomedicine

The Convention was approved in Oviedo Asturias
on April 4, 1997

- was elaborated by the Member States of the Council of Europe including
 - the European Union (Community)and third countries, which could sign it as
 - Australia,
 - Canada,
 - Japan,
 - the Holy See [the Vatican] and
 - the USA
- Greece signed and ratified that convention by Law 2619/1998

- The European Convention on Human Rights and Biomedicine
- - devotes its
- first chapter to the obligation of States to provide health services on the basis of the interest of man on a professional level
 - in its the second chapter defines
- the provision of information and consent as a basic requirement of the provision of any medical intervention

in Greek law the person is entitled

- to know the state of his health
- and respectively is entitled
 - to the confidentiality of
 - correspondence,
 - identity or origin
 - bank deposits
 - the state of his health
- Both rights the information and the privacy
- are regulated
- either by international treaties or domestic laws

I. Information and consent



- Information
- in health level
- may relate
- to the medical practice
 - or research

1. HUMAN DIGNITY AND IDENTITY AS A PROTECTED RIGHT



European Convention on human rights and biomedicine

- “Parties to this Convention shall protect
 - the dignity and identity of all human beings
 - and guarantee everyone,
 - without discrimination,
 - respect for their integrity and other rights and
 - fundamental freedoms with regard to the
application of biology and medicine”
- 1st Article

2. The information as respect of human dignity and integrity



*As respect for the dignity and identity
of a human being*

is to be understood the respect

- for the integrity

as well as

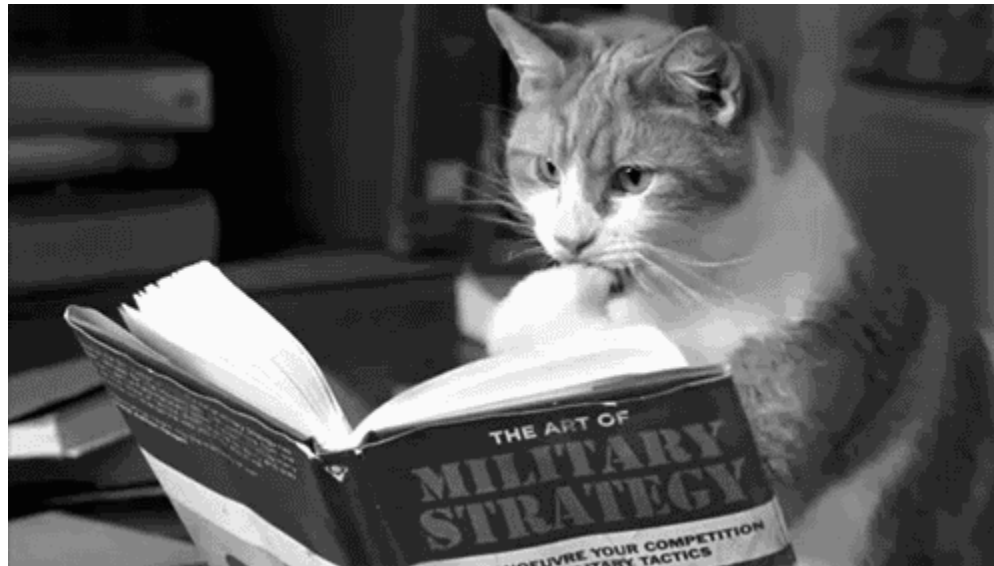
- for *other rights and fundamental freedoms,*

such as

- the respect of the *personality and*
- *the private life*

- (art. 1., European Convention 1997)

3. Information in medical practice



The Greek Code of medical ethics

The Medical Ethics Code (L. 3418/2005)
provides extensively regulates the information
as an obligation of the physician
for any medical practice

This obligation existed before, into the L.
2071/1992 for the National Health System
as a requirement for hospital patients

The same requirement exists
in all laws for transplantation.

Greek L. 3418 of 2005 about medical ethics

describes the kind of realizing medical practice in general

Article 4, *provides* for the necessity of quality, security and effectiveness of health services.

Article 10, *recognizes* the necessity of the information of the physicians during their entire life.

Articles 11-12, *concern* the information and the consent of the patient.

Article 16, *emphasizes* the social character of medical practice and the obligation of the physician not to discriminate and to offer his medical practice with the same interest to non-privileged social groups.

4. The information

must explain all about

- the nature and
 - the potential consequences
of the alternatives
to the planned intervention
- must be
- sufficiently clear for the person
who is undergoing the intervention

4.1. Content of the information

- The physician must
- inform the patient
 - fully and explicitly
- about the real situation of his health,
- of the content and effects of the proposed medical act,
- the consequences and potential risks or complications from its execution,
- the alternatives and the potential recovery time.

4.2. Aims of the information

- So
- that the patient can
- form a complete picture
- of the medical, social and economic factors and consequences
 - of the situation and
- proceed in decision-making accordingly.

5 . The purpose of the information is the consent

- Every medical intervention
 - requires the prior consent of the patient,
- who has, in the meantime,
 - been informed by law
- by the competent person
 - (art. 12 §1, MedEthC).

«intervention»

- «no one may be forced to undergo an intervention without his or her consent»
- covers all medical acts,
 - diagnosis
 - treatment
 - rehabilitation
 - or
 - research
- Art. 5, European Convention on ..Biomedicine

- The consent is valid,
- when the information was
 - complete, clear and understandable
- to the patient
- and
- the patient has capacity to consent
 - (art. 12 §2, MedEthcC)

The free and informed consent

the valid consent must
be given

by a

- major
- free
- capable and
- informed person



Valid consent

result of

- complete and objective information
- about the relevant facts
- regarding the intervention
- by the responsible health care professional

- The consent is revocable at any time

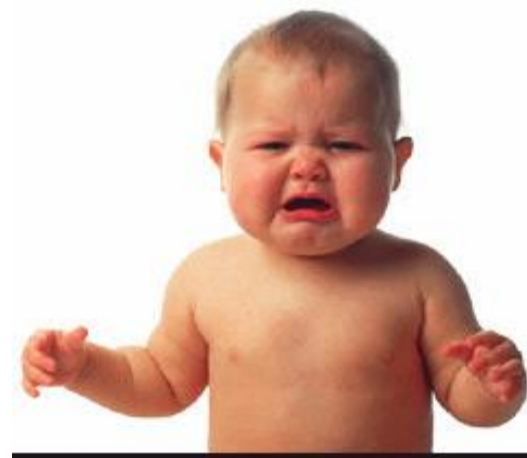
6. Persons for whom information is appropriate or mandatory

- The information relates to the person concerned and not third persons.
- The legal representative
 - of not capable persons
 - is the appropriate to receive information
 - and not a third person



7.1. The consent of a minor or incapable person

- has to be expressed
- by the person having
the right to decide
- the legal
representative



a. the legal guardian

- is
- in most European legislation,
- in the case of minors,
 - their parents or custodians
- in the case of mentally incapable majors
 - a person entitle by a Court's decision

the information to the incapable person

- is carried out to his judicial guardian,
 - when the guardianship is deprivation
- when the judicial guardian is adjuvant
- the information should be given
- to the person and
 - also to his judicial guardian

b. person appropriate to inform

- The information should be
 - by the physician himself.
- In some cases it is desirable
- that information
- be provided in the presence of a psychologist.

8. The information of seropositive patient

- The information of seropositive or
 - a patient with an incurable disease,
 - takes place always in the presence of a psychologist,
- mainly for communicating results and
 - for the commencement or continuation of treatment,
- especially if the doctor has no previous contact with this patient

a. the information of an incapable person

- is addressed to their legal representative.
- If the child is a teenager
- he or she should be informed personally
- about the infection and
 - the precautions to be taken,
- and about the transmission of HIV.

b. related person

- Information relates
 - to the person itself and
 - not a third person,
 - even family members or their sexual partners.
- A third is not
 - the legal representative
 - of the minor or incapable.

c. the denial of information

- constitutes a legal right
- However the seropositive patient
 - has the obligation to be informed
- about the state of his health,
- and for the means of precaution,
 - especially because the latter concerns public health

- The patient can refuse both
- the examination and treatment of any disease
 - even contagious
- The imposition of forced treatment
 - is not permitted,
- nor the invocation of the protection of public health,
- except for airborne diseases
 - or HIV positive persons
- since the disease spreads by unprotected sexual contact

- Refusal is legitimate
 - even when it is certain
- that without treatment the patient will die,
- although euthanasia is not yet permitted

9. Information on medically assisted procreation



- in medically assisted procreation
 - information is a key element.
- any action for assisted reproduction
 - requires consensus preceded by briefing
- the information relates to more than one person

a. receivers of information

- **Both** the *wife and her husband*,
- or the *woman and her companion*,

- who will undergo assisted reproduction to have a child
 - and
- the *woman*
- who will gestate for itself or for third parties
 - ***should be informed***

court authorization

- Information is not the only condition
- for surrogacy and post mortem procreation
- need
- a court authorization

surrogacy

- the legal surrogacy
- creates
- a presumption of parenthood
- for the social mother and the child

b. post mortem procreation



mortis causa

- Moreover,
- the husband or companion,
- who will give his consent
 - for *posthumous fertilization*,
- if suffering from incurable illness or
 - facing infertility problem,
- as well the spouse or partner,
- who will have to gestate after the death of that

c. surplus genetic material

- anyone who gives any genetic material,
 - sperm or ovum,
 - receive information about its fate,
- in case the owner will not use it.
- the reasons why this material
 - is not used is immaterial.

options

- the surplus genetic material
 - can
- be used by other infertile couples,
 - who do not have their own eggs or sperm,
- be used for research or
 - or be destroyed
 - (article 1459 AK)

10. Information for transplantation

- The transplantation requires also information
- This information relates to both,
 - the recipient and the donor
- The recipient is informed, when ill whether to proceed immediately to a transplantation or not
- The donor is informed when the time comes for the donation of organ or tissue.
- In case of *cadaveric transplantation* the information concerns the family of the deceased

minor recipient

- the *information is also given to him*
- The minor cannot be a donor,
- except in cases of bone marrow donation
- and
 - this only for a sibling
- In these cases, information receive
- the parents or the legal representative of the child

II. confidentiality



1. medical confidentiality

- Any act of medical services
- and
- any other health service
- on any patient
- is covered by medical confidentiality
 - (article 13, Med.Ethi.C.).

- Confidentiality concerns
- besides the doctor and nurses,
- anyone
- in contact with the information,
- even administrators
- who register data or the cleaning staff
- if they are aware of the information,
- even the spouses of such persons.

"Protection of personal data."

- "The doctor
- keeps his professional books
- in such a way
- as to ensure the confidentiality and
- protection of personal data"
- article 14 §6 KΙΔ, 14 §1 L. 2472/1997
"Protection of personal data."

2. trans



- When the person has a sex change,
 - he or she also changes
 - the name and photograph of identity.
-
- the original files remain confidential
 - for anyone else
 - except the person concerned himself

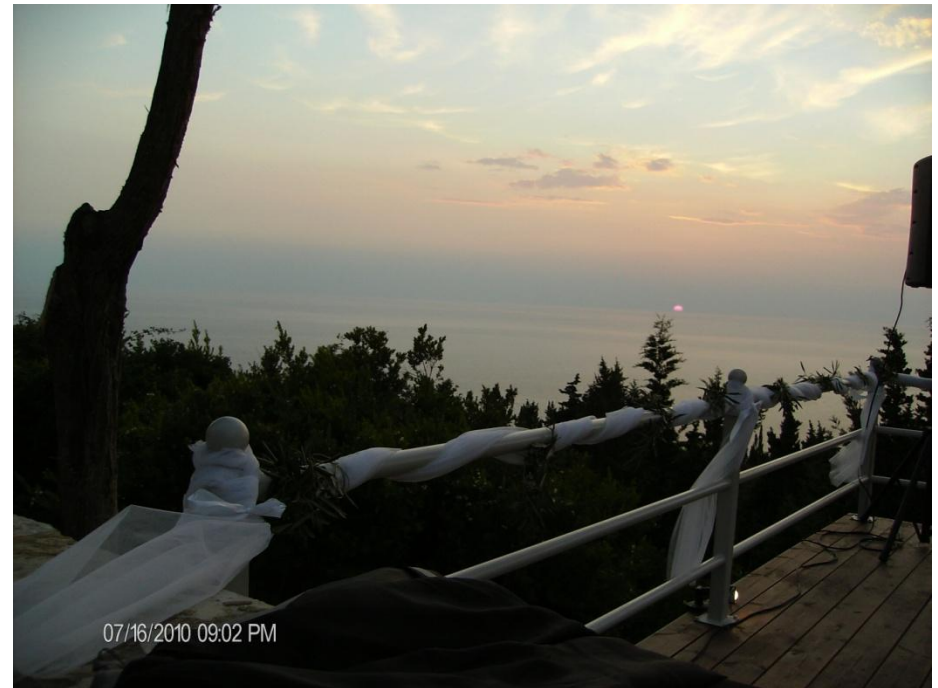
3. Sperm donor



- assisted reproduction can be done
 - with a donor sperm
- when the child is born in wedlock
 - it is considered the child of the husband
- when born of a single woman the question is
 - the paternity of the child

- In Greek law
- the sperm donor is not entitled
 - to bring proceedings against the mother to recognize the child
-
- Neither the mother
- can sue him to have this man
 - recognized as the, father of the child.

- The voluntary recognition of the child
 - is possible,
- if there is
- a statement of the father before a notary
 - and
 - the consent of the mother



The identity of the donor is confidential

- The disclosure
 - is permitted
- only to the child
 - and for reasons related to health

4. Adoptions Archives

- Adoptions are governed by secrecy
 - (1559 §1 AK)
- the child after the age of majority
- has the right to be informed
- by his or her adoptive parents or any competent authority of the identity of their natural parents.



- this disposition provides for
- a possible reunion of the adopted child
 - with the natural parents.
- it would be appropriate for this knowledge
 - to be provided combined with psychological support
- both for the children and the natural parents, in order to avoid trauma and disillusionment

5. Right to privacy, in marriage



- The spouses
 - have the right and obligation to live together
(article 1386 AK)
- The law stipulates for the obligation of spouses
- to take joint decisions concerning their marital life
 - (article 1387 AK)

- However joint decisions must
 - not prevent professional or
 - other activities of either spouse
- Each spouse has the right to decide alone
 - on issues of personal life and
 - protect his or her personal sphere.
- The right to one's personality allows him
 - to keep secrets from the other spouse,
 - such as electronic mail or other



last question

- is the information a right
- unlimited ?
- could the right to privacy
- be a limite?

Ευχαριστώ, merci, thank you



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