

Patient's rights in the bioethical context Los derechos del paciente en el contexto bioético

Alejandro Pacheco Gómez ^a

Abstract:

The doctor-patient relationship is equal. However, the patient, due to his illness and ignorance of medical science, can be placed in a vulnerable situation that requires specific protection for the protection of his legal rights. Therefore, in different legal and ethical standards, the rights of patients are recognized to limit the actions of health personnel, to avoid transgressing their dignity in an unjustified affectation of their autonomy.

Keywords:

Patient rights. Bioethics. Law

Resumen:

La relación médico-paciente es de carácter igualitario. Sin embargo, el paciente, por su padecimiento y desconocimiento de la ciencia médica, se puede ubicar en una situación vulnerable que requiere de una protección específica para la protección de sus bienes jurídicos. Por ello, en diferentes normas jurídicas y éticas, se reconocen los derechos de los pacientes para, limitando la actuación del personal de salud, evitar se transgreda su dignidad en una afectación injustificada de su autonomía.

Palabras Clave:

Derechos del paciente. Bioética. Legislación

INTRODUCTION

The so-called relationship between doctor-patient(nowadays called service provider-user) has constituted a legal relationship that imposes obligations and grants rights reciprocally.

Nonetheless, there is an equality level set, due to the status of each person owns, the user of the health services, in many cases the patient is at a position of a disadvantage since he does not expertise in medical science and entrust completely to the service provider to receive the service of medical attention.

Because of this, the legal system must recognize the rights that the user has to be able to demand them from the health professional. Otherwise, they would only remain statements without generating the obligation to respect and guarantee them.

Being a right of the user, it becomes an obligation for the health personnel.

These rights have bioethical and medical ethics components since the norms that regulate medical care are based on these two disciplines which, like legal science, seek to protect dignity, life, and personal integrity.

PATIENT RIGHTS AND HUMAN RIGHTS

Human rights are inherent to the individual and are recognized by legal standards. In the case of medical care, the starting point is the right to life, dignity, integrity, and health protection.

The right to life consists of the right to one's existence. Medical-surgical procedures, due to their inherent risk, may have collateral effects that would affect this legal right; therefore, it is imperative to establish limits in medical action to respect this right. As an example, we can cite the cases of the application of anesthesia; the medical personnel must previously evaluate the patient to identify the factors that could affect life, to make a weighing in the light of the risk-benefit binomial and avoid or, at least, diminish the harm to life. This right is recognized, among other norms, in article 4 of the American Convention on Human Rights; in the Mexican constitutional order, it is adopted in article 1 of the Constitution by recognizing the human rights expressed in the international treaties and conventions of which Mexico is a part.

As for dignity, it is an intrinsic value of the person that places him on a higher plane than any other living being, because it derives from the capacity to reason and to guide his will. In

^a Corresponding author, Universidad Autónoma del Estado de Hidalgo, <https://orcid.org/0000-0002-5591-602X>, Email: alejandro_pacheco@uaeh.edu.mx

medical practice, dignity could be at risk by not treating the person with respect and lowering him/her to the level of a thing, leaving aside the value that human nature grants him/her.

Personal integrity refers to the set of conditions that allow a person to enjoy life, with the fullness of organic and psychic functions that are proper to him/her, according to the Supreme Court of Justice of the Nation (2013). Medical interventions have an impact on personal integrity, both in the physical, psychological and moral spheres.

In the first case, a frequent example is the amputation of a limb; in the second, the behaviors that could affect the person are those of intimidation or those that cause feelings of insecurity, frustration, or helplessness; in the case of moral integrity, the Supreme Court of Justice of the Nation (2013), mentions that it refers to the capacity and autonomy of the individual to maintain, change and develop his values and that any type of attack that humiliates and morally assaults a person. This dimension of integrity could be violated with behaviors such as aggression to his honor and reputation, to be forced to behave against his convictions of conscience or beliefs.

Regarding the protection of health, for effective protection, the person will have access to public health services, medical care, and social assistance, according to the provisions of Article 24 of the General Health Law.

Thus, it is evident that the rights of patients fall within the framework of human rights.

PATIENTS' RIGHTS IN THE LEGAL SYSTEM.

Currently, several legal systems contain patients' rights.

These include, but are not limited to, the following:

- Political Constitution of the United Mexican States: Article 4 establishes the right to health protection and access to comprehensive and free care for people who lack social security.
- International Covenant on Economic, Social, and Cultural Rights: Article 12 mandates that States shall take measures to reduce stillbirths and infant mortality.
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights: In numeral 10, obligations are imposed to provide services based on primary health care, immunization against the main infectious diseases, and the prevention and treatment of endemic diseases.
- General Health Law: Different articles recognize the rights of the users of health services, such as dignified, respectful, and ethically responsible treatment; the right to grant informed consent; access to information on their state of health; the rights of terminally ill

patients and of those who dispose of their human body for transplant purposes, to mention a few.

- Other administrative legal provisions such as the Regulations of the General Health Law on the provision of health care services and various official Mexican standards.

The recognition of these rights in normative texts allows them to be enforceable and effective in protecting the patient's legal assets. Otherwise, they would remain only as postulates without coerciveness.

In terms of Article 9 of the Regulations of the General Health Law on the provision of medical care services, ethical principles are mandatory in medical practice. Therefore, some declarations based on medical ethics also impose duties on healthcare personnel to safeguard the inherent rights of patients; due to their importance, some of those of the World Medical Association is mentioned:

- **Lisbon Declaration on the Rights of Patients:** It was adopted at the 34th World Medical Assembly in Lisbon, Portugal in 1981; it was last reaffirmed at the 200th Council Session of the Association itself in Oslo, Norway in 2015. It lists the following rights:

- o The right to good quality health care.
- o Right to freedom of choice.
- o Right to self-determination.
- o Rights of the unconscious patient.
- o Rights of the legally incapacitated patient.
- o Procedures against the patient's will.
- o Right to information.
- o Right to confidentiality.
- o Right to health education.
- o Right to dignity.
- o Right to religious assistance.

It is important to mention procedures against the patient's will, as this is an exceptional measure of the principle of autonomy. Thus, diagnosis and treatment against the patient's will might only be admissible in cases authorized by law and under the principles of medical ethics.

- Statement on Patient Advocacy, adopted by the 45th World Medical Assembly based in Budapest, Hungary in 1993 and last reaffirmed at the 203rd Council Session of the Association in Buenos Aires Argentina in 2016: On the premise that medical personnel has an ethical duty to look after the interests of patients, they should be protected, both individually and collectively; however, occasionally the doctor's duty may conflict with other legal duties, generating ethical dilemmas.

The various contexts in which such potential conflicts may arise are:

- Conflict between the duty to defend and confidentiality: The duty to keep the patient's information secret may collide with the duty to protect him/her when his/her incapacity prevents him/her from fending for him/herself and, therefore, the need to share it with a family member for the corresponding assistance. The duty to maintain confidentiality may only be waived when there is a legal or ethical obligation to disclose the information.
- Conflict between the patient's interests and what is imposed by the employer or the insurer: Conflicts may arise between the physician's freedom to prescribe and the limitations imposed by the insurer, e.g., the indication of the ideal drug and the insurance company allows only one that is less effective for the patient. In such a scenario, the doctor will try to change the employer's decision, since his primary obligation is to the patient.
- Conflict between the interests of the patient and society: This occurs in cases in which the doctor's duty to protect the patient may collide with the interests of the family or society. For instance, patients with incapacity due to minority. In this case, the physician must take into account economic factors when indicating therapeutic measures, which may transcend the interests of the family, but the patient's rights will always take precedence.
- Conflict between the patient's wishes and the professional opinion or moral values of the doctor: The most exemplary case is a conscientious objection on the part of the doctor since the professional is also recognized the principle of autonomy as he is not obliged to act against his ethical, conscientious or religious convictions. The limit set for conscientious objection is the situation of medical urgency; if this is not the case, the duty lies in explaining by the objector, who may refer the patient to another professional who does not have such a conflict.

To disseminate and compile patients' rights in a document that facilitates their reading, the National Medical Arbitration Commission, after an exhaustive review and analysis of

international antecedents and bibliography, elaborated the General Charter of Patients' Rights.

From this Decalogue, each one of the rights will be mentioned, referring to its legal and bioethical support in the light of its mainstream.

1. Receive adequate medical care.

The patient has the right to have medical care provided by personnel trained according to the needs of his or her state of health and the circumstances in which the care is provided; as well as to be informed when referral to another doctor is required.

Articles 51 and 89 of the General Health Law provide for the right to receive timely health services of suitable quality and the duty to establish norms and criteria for the training and updating of human resources for health, respectively.

This right materializes the principle of beneficence with which health personnel must act.

2. Receive dignified and respectful treatment.

The patient has the right to be identified and treated with dignity by the doctor, the nurse, and the personnel providing medical care, with respect for his or her personal and moral convictions, mainly those related to his or her socio-cultural conditions, gender, modesty, and privacy, regardless of the condition he or she presents, and extended to family members or companions.

The same numeral 51 mandates that the provision of services received by the user will be ethically responsible and with dignified and respectful treatment; Article 83 of the aforementioned General Law stipulates that healthcare service providers will accredit their professional training.

This right respects the principle of beneficence since health personnel will act in the patient's best interest.

3. Receive sufficient, clear, timely, and truthful information.

The patient, or in his/her case the person in charge, has the right to receive from the treating doctor complete information about the diagnosis, prognosis, and treatment; it must always be expressed clearly and understandably. Moreover, it must be provided promptly to favor the full knowledge of the patient's state of health and it must always be truthful and adjusted to reality.

Article 51 Bis 1 of the General Health Law establishes that the users will have the right to receive information in these terms, as well as orientation on their state of health; if the users belong to indigenous peoples or communities, the information will be provided in their language.

4. This information will contain diagnosis, prognosis, treatment, and evolution, and may be included in a clinical summary if so requested by the user, in compliance with Articles 29 and 30 of the Regulations of the General Health Law on the provision of health care services.

5. With this right, the principle of autonomy is guaranteed, since the patient will be able to make his/her decisions, with the information provided by the health personnel.

The patient or, if applicable, the person in charge, has the right to decide freely, personally, and without any form of pressure, to accept or reject each diagnostic or therapeutic procedure offered, as well as the use of extraordinary survival measures in terminal patients.

Article 51 Bis 2 of the General Health Law recognizes that users have the right to decide freely on the application of the diagnostic and therapeutic procedures offered.

Concerning this, Article 80 of the Regulations of the General Health Law regarding the provision of medical care services, provides that upon admission to the hospital, the user must give his/her authorization for the procedures to be performed.

The right to decide on his care is a manifestation of the principle of autonomy.

6. To give or not to give validly informed consent.

The patient, or in his case the person responsible, in the cases indicated in the regulations, has the right to express his consent, always in writing, when he agrees to undergo, for diagnostic or therapeutic purposes, procedures that imply a risk, for which he must be fully and completely informed of what they consist of, of the expected benefits, as well as of the complications or negative events that may arise as a consequence of the medical act.

This includes situations in which the patient decides to participate in research studies or the case of organ donation.

Article 51 Bis 2 of the General Health Law establishes that informed consent is the express agreement of a person, expressed in writing, for the performance of a health diagnosis or treatment. Furthermore, that truthful and complete information will be provided in an accessible, timely manner and understandable language, on the objectives, possible benefits, and expected risks, and treatment alternatives, as a basis for informed consent.

Regarding research procedures on human beings, article 100, section IV, mandates that to carry out these procedures, the informed consent of the person who will participate as the subject of the research must be obtained. Regarding the disposition of the human body for transplantation purposes, article 321 defines the donation of organs, tissues, and cells as the tacit or express consent for the use of the body for such purpose during life or after death.

Undoubtedly, this right ensures respect for the principle of autonomy of the user of health services.

7. To be treated with confidentiality.

The patient has the right to have all the information he or she expresses to his or her doctor handled with strict confidentiality and not to be disclosed except with his or her express authorization, including information derived from a research study to which he or she has voluntarily submitted; this does not limit the doctor's obligation to inform the authority in the cases provided for by law.

Article 77 bis 37, section X, of the General Health Law states that the beneficiaries of health services have the right to be treated with confidentiality. Similarly, Articles 74 Ter, section VIII, 103 Bis 3, 321 Bis, and 327 refer to confidentiality in the areas of the user of mental health services, genetic data obtained for the study of the human genome, placental blood donation, and as a principle in the donation of organs, tissues and cells for therapeutic purposes.

The laws for the protection of personal data in possession of obligated subjects or individuals, provide that data on the state of health and constitute sensitive personal data that must be treated with confidentiality.

Likewise, numeral 5.5.1 of the Mexican Official Standard NOM-004-SSA3-2012. On the clinical file, states that health data obtained from the patient, or third parties are subject to confidentiality in terms of professional secrecy.

The safeguarding of this information, which corresponds to the intimate sphere of the person, consolidates the principle of autonomy.

8. To have facilities for obtaining second information.

The patient has the right to receive in writing the necessary information to obtain a second opinion on the diagnosis, prognosis, or treatment related to his or her health condition.

Article 51 Bis 2 of the General Health Law establishes that the users of public health services will have facilities to access a second opinion.

Both the Regulations of the General Health Law on the provision of health care services and the Mexican Official Standard NOM-004-SSA3-2012. On the clinical record, recognize the right of users to obtain a clinical summary which, on many occasions, will be used to obtain a second opinion.

The principles of autonomy and beneficence are guaranteed since the right to self-determination is respected and good for the patient is allowed.

9. Receive medical care in case of emergency.

On one hand, when life, an organ, or a function is in danger, the patient has the right to receive emergency care from a doctor, in the health facility, whether public or private, to stabilize his or her condition.

Article 55 of the General Health Law provides that if a person requires emergency health services, public and private persons

and institutions shall ensure, with the means at their disposal, that they are transferred to the nearest health facilities to receive immediate care.

On the other hand, Article 71 of the Regulations of the General Health Law on the provision of medical care services states that health establishments that admit patients must provide emergency services. Article 73 states that the person in charge of the emergency area must take measures for the assessment and treatment or stabilization of the patient. An emergency is defined as a medical-surgical problem that endangers life, organ, or function and requires immediate attention.

This right ensures the principles of beneficence and non-maleficence, since it seeks the good, avoiding, minimizing, or limiting the potential harm.

10. To have a clinical record.

The patient has the right to have all the data related to the medical care he/she receives, recorded in a true, clear, precise, legible, and complete manner in a file that shall comply with the applicable regulations and, upon request, to obtain in writing a true clinical summary per the required purpose.

When requested by the patient, obtain in writing a truthful clinical summary following the required purpose.

Article 77 bis 37, section VII of the General Health Law recognizes the right of the user to have a clinical record.

In addition to ordering the preservation of clinical records for a period of no less than 5 years, various provisions of the Regulations of the General Health Law on the provision of health care services establish the obligation to record the diagnostic and therapeutic interventions performed by health care personnel.

Article 5.1 of the Official Mexican Standard NOM-004-SSA3-2012, regarding the clinical record, states that service providers shall integrate and keep the clinical record.

The principles of autonomy and beneficence are respected with this right since it assures the availability of a document containing data and interventions on the patient's state of health so that the patient has a source of information. In the same way, for health personnel, it constitutes a bank of information for decision-making.

11. To be attended to when dissatisfied with the medical care received.

To be attended to when dissatisfied with the medical care received.

The patient has the right to be heard and to receive a response from the corresponding instance when he/she does not agree with the medical care received from public or private servants. Similarly, he/she has the right to have alternative means to the judicial ones to try to resolve a conflict with health personnel.

Article 54 of the General Health Law provides that health institutions shall establish orientation and counseling procedures and mechanisms for users to present their complaints, claims, and suggestions concerning the provision of services and, if applicable, the lack of probity of public servants.

On one side, the Regulations of the General Health Law regarding the provision of health care services, Article 19, Section III, orders the person in charge of the facility to directly attend to complaints made due to irregularities in the provision of services. Article 51 replicates the provisions of Article 54 of the General Health Law. Likewise, Article 52 grants the popular action to denounce before the health authority any irregularity in the provision of medical care.

On the other side, the National and State Commissions of Medical Arbitration have been created as an alternative mechanism for the solution of controversies arising from medical care and will promote good practice and raise the quality of services.

CONCLUSION

To conclude, the recognition of patients' rights is found both in legal systems and in declarations of ethical principles. The latter are of obligatory observance since they constitute a framework to delimit the activity of healthcare personnel with the purpose of protecting the patient's dignity, as well as other legal assets that could be affected by the medical-surgical activity.

Their compilation in a Charter of General Rights will facilitate their knowledge and promotion, with the purpose of achieving compliance and reaching the effectiveness for which they have been recognized.

The evolution of medical science will undoubtedly generate new scenarios in which the rights of users in the face of innovative interventions will have to be specified.

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