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# ASPECTS CONCERNING DAMAGES IN THE MEDICAL FIELD

*Calina JUGASTRU*

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# ASPECTS CONCERNING DAMAGES IN THE MEDICAL FIELD

**Calina JUGASTRU**[1]

**Abstract:**

*Law No. 95/2006 regulates the civil liability of the medical staff, providers of services, materials and medical devices. As for injuries, the reference law remains the civil law. The inviolability and unavailability of the human body are the two principles governing the reparation of damages and are found in the regulations covering the field of health.*

*The classification of damages resulted from injuries inflicted upon the physical integrity of a person distinguishes between bodily injuries (injuries caused to victims directly) and indirect damages, suffered by the persons close to the victim (in case of the victim's death or even survival). This study focuses solely on the damages suffered by the patient, as direct victim. The principles of damage reparation within the medical field are the full reparation and the in natura reparation. The medical acts that cause damages bring about the economic reparation (for example medical expenses) and also moral damages – such as pretium doloris, pretium juventutis, pretium pulchritudinis, prix de la beaute etc.*

*The first cause of direct bodily injuries (cause mentioned in the healthcare reform law) is the medical error or malpractice, in the shape of negligence, imprudence or incompetence of the medical staff. Damage can also ensue from revealing medical secrets, the violation of the obligation to inform and the failure to provide the compulsory medical care.*

**Keywords:**

*damage, medical field, civil liability, unavailability of the human body.*

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## I. Introduction

The captivating and wide range of legal issues associated with the medical field has drawn the attention of specialists and has matured into what came to be known nowadays as *medical law*. More to the point, medical law refers to a common set of rules and principles (stemming from the civil Code), completed by the provisions of special laws. There are several normative acts (all of which had been adopted and had entered into force after 1990) that contain fragments connected to *medical liability*. Various laws offering contradictory or downright opposing solutions had been passed and then repealed, all attempting to regulate the health insurance system, providers of medical services and the scope of medical procedures subject to liability. The law in force currently is Law no. 95/2006 concerning healthcare reform and a new regulation governing the medical field is expected in the future. The lack of normative stability is both obvious and regrettable, while its consequences are major.

Tome XV of Law no. 95/2006 details *the civil liability of medical personnel* and of providers of medical services, medical supplies, medical devices and machinery and medicine. The persons liable to be held accountable for damages are – according to the legal text – the doctor, the dentist, the pharmacist, the nurse and the midwife who offers medical services. Liability for *bodily damages* is regulated by the provisions of Law no. 95/2006 and by those of common law. The inviolability and unavailability of the human body[2] are two principles naturally present in a regulation dealing with the medical field. In this context, we will only focus on damage inflicted directly on the patient. In general, damage ensuing from injuring a person's bodily integrity falls into two categories: bodily damage – inflicted directly upon the patient and *damage by bounce back*[3] – inflicted upon the persons near to the victim, both in case of survival or death.

[2] Regarding the aspect of physical integrity according to the new civil Code, see, *I. Reghini, Ş. Diaconescu*, Drepturile subiective *[Subjective Rights]*, in *I. Reghini, Ş. Diaconescu, P. Vasilescu*, Introducere în dreptul civil *[Introduction to Civil Law]*, Hamangiu publishing house, Bucharest, 2013, p. 350-351.

[3] The expression "damage by bounce back" was coined in French law. The action seeking reparation for this type of damage goes a long way, it being admitted by the French Court of Cassation as early as 1863. The difficulty, however, lies – as it had already been stated – in determining the persons entitled to reparations, depending on the emotional ties with the victim and, if applicable, the degree of kinship with the victim (*Y. Chartier*, La réparation du préjudice, Collection Connaissance du droit, Dalloz, Paris, 1996, p. 71).



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The procedures specific to the medical profession may lead to bodily damages[4]. Reparation is aimed at both the material side (medical expenses, lost earnings etc.) and at the moral side[5] – in the shape of *pretium doloris*[6]*, pretium juventutis, pretium pulchritudinis, prix de la beauté* etc. The first cause for bodily damage, pursuant from the Romanian law concerning healthcare reform – the main regulation in the medical field – is *professional error* or *malpractice,* which includes negligence, imprudence or insufficient medical knowledge in exercising the medical profession. Next, following the legal order, come revealing a professional secret, the breach of the obligation to inform the patient and the failure to provide mandatory medical assistance[7].

## II. The principles of compensating bodily damages in cases of medical liability

### *General aspects of medical liability*

Dating from the dawn of our civilization, medical liability is the prime expression of his or her duty to save lives. Spanning from the Hippocratic Oath to the rules of modern medical practice, the legal terms of the issue remain unchanged[8]. Ethical rules overlap with legal norms

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[4] Regarding bodily damages, see, *O. Ungureanu*, Persoana fizică *[The Natural Person]*, in *O. Ungureanu, C. Jugastru*, Drept civil. Persoanele *[Civil Law. The Persons]*, Hamangiu publishing house, Bucharest, 2007, p. 35.

[5] Moral damages cannot be monetized, but in case of infliction of moral damages, the author may be ordered by the court to pay a certain amount of money as compensation (see *M. Mureşan,* Dicţionar de drept civil *[Dictionary of Civil Law]*, Cordial Lex publishing house, Cluj-Napoca, 2009, p. 518, coordinator *P. Vasilescu*; *I. Albu, V. Ursa*, Răspunderea civilă pentru daunele morale *[Civil Liability for Moral Damages]*, Dacia publishing house, Cluj-Napoca, 1979, 100-164).

[6] The French equivalent is *le prix de la douleur*, expression through which the French minister of justice portrayed, in a circular of 15 September 1977, "compensation for the suffering" caused to the victim of wrongdoing. *Pretium doloris* or *le prix de la douleur* corresponds to compensation granted by courts as reparation for physical or moral damages endured by the victim of an accident or wrongdoing, or by persons close to the victim [*S. Guinchard* (coordonator), Lexique des termes juridiques, Dalloz, Paris, 2007, p. 512].

[7] Regarding the nature of obligations assumed by medics (obligations to deliver results or obligations related to the means at their disposal), see *L. Pop*, Tratat de drept civil. Obligaţiile, Volumul I. Regimul juridic general sau Fiinţa obligaţiilor civile *[Treatise on Civil Law. Obligations. Volume I. General Judicial Regime or the Existence of Civil Obligations]*, C.H. Beck publishing house, Bucharest, 2006, p. 64-65.

[8] Apparently, Ancient Egyptians used treatment books blessed by the god Thot himself. The medic applying the prescriptions listed in the books was exonerated from any liability; however, a medic working on his own, without following the books, was sentenced to death in case of failure. Aside from this data provided by Diodor, historical documents attest that healed patients were obliged to declare, at the temple of Canope or Mamphis, the ailment



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regulating the scope of liability. Nowadays, we speak of deontology and bioethics.

Medical deontology brings together the rules governing the "conduct, rights and obligations of a medic towards other doctors, medical personnel and patients. These relationships are carried out in accordance with normative acts based on legal principles and represented by regulations and articles of laws, as well as rules, principles, unwritten rules, all stemming from the medic's conscience as a particular form of social conscience"[9].

Unlawful conduct, contrary to the principles of therapeutical procedures or biomedical research is sanctioned according to the provisions of common law and in compliance with the provisions of Law no. 95/2006. Any errors that might occur in the exercise of the medical profession are subject to civil, criminal or disciplinary liability, depending on the case. It has been claimed that civil liability is the genre, while medical liability is one of its variants. In general terms, civil medical liability is the legal institution containing all the rules of medical law that regulate the judicial regime of civil liability in the medical field (with emphasis on medical personnel, providers of medical services, medical supplies, medical devices and machinery and medicine). A second vector is represented by the obligational relationship in accordance to which a natural or legal person activating as a professional in the medical field is obliged to offer reparations for damages caused to either the patient or his next in kin, through his wrongdoing or the wrongdoing of a person for whom he is accountable[10].

### *The principles governing compensation for damages caused*[11]

The two principles established in matters of civil liability in the medical field are: *full compensation* and *compensation in kind*.

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which plagued them and the treatment which led to recovery. Their declarations were grouped into a genuine official code called the "Sacred Book" (see, *Z. Ander*, Curs de deontologie medicală *[Course of Medical Deontology]*, Medicală publishing house, Târgu Mureş, 1974, p. 39-40, quote after *A.T. Moldovan*, Tratat de drept medical *[Treatise on Medical Law]*, All Beck publishing house, Bucharest, 2002, p. 344, footnote number 1).

[9] *E. Poenaru, R. Ozun*, Medic, societate, răspundere (responsabilitatea profesională şi socială a medicului) *[Medic, Society, Liability (Professional and Social Responsibility of Medics)]*, Medicală publishing house, 2nd edition, Bucharest, 1977, p. 75, work quoted after *A.T. Moldovan,* op. cit., p. 343-344.

[10] See, *F.I. Mangu*, Malpraxisul medical. Răspunderea civilă medicală *[Medical Malpractice. Medical Civil Liability]*, Wolters Kluver publishing house, Bucharest, 2010, p. 51-52.

[11] See, *L. Pop, I.-F. Popa, S.I. Vidu,* Tratat elementar de drept civil. Obligaţiile *[Elementary Treatise on Civil Law. Obligations]*, Universul Juridic publishing house, Bucharest, 2012, p. 562-568.



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The full compensation refers to removing all prejudicial consequences[12], while the special provisions governing them are added to those of common law. The methodological norms of application of Law no. 95/2006[13] are very explicit: the aggrieved party is entitled to full compensation for the damage caused, having the possibility to take legal action against the wrongdoer, seeking payment for the difference between the value of the damage incurred and the amount already paid to the victim by the insurance company. The in-kind compensation represents a material or legal operation that is concluded with the return to the situation previous to that of the tort[14].

## III. Malpractice

### *Conceptual aspects*

The professional error or malpractice is manifested by prejudicial or damaging medical procedures, performed negligently, imprudently or with insufficient specialized knowledge. Additionally, the lack of abilities necessary to the profession can and do lead to patient injuries and damages.

### § 1. Sources of malpractice

### 1.1. Surgical procedures

Complex in their nature, surgical procedures are the most common cause of bodily damages. It is possible that, occasionally, surgeons might risk a procedure for which they lack the material conditions (especially the adequate equipment) or the adequate degree of specialization. A surgeon must meet very high and specific requirements and correctly-performed surgery implies vast knowledge in the field, coupled with skills and abilities specific to therapeutical acts. The duties assigned to surgeons are not confined to the operating room, but they extend well within post-surgery and recovery.

When it comes to performing surgery, there are many factors which can lead to medical accidents. If causality between surgery and damage can

[12] Re-establishing the situation previous to the tort implies the principle of full compensation for the damage, as a fundamental principle of civil liability (*I. Dogaru, P. Drăghici*, Bazele dreptului civil, volumul III, Teoria generală a obligaţiilor *[The Foundations of Civil Law, volume III, The General Theory of Obligations]*, C.H. Beck publishing house, Bucharest, 2009, p. 258).

[13] The methodological norms are included in Directive no. 482/2007 issued by the Ministry of Public Health (Official Gazette no. 237 of 4 April 2007).

[14] For more details regarding these two principles, see *F.I. Mangu*, Malpraxisul medical. Răspunderea civilă medicală *[Medical Malpractice. Civil Medical Liability],* p. 53-64.



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be established via a forensic report, that (while maintaining the other liability conditions) justifies *the payment of damages*[15] in favor of the victim. Jurisprudence has noted the granting of compensation to a patient who, subsequent to undergoing surgery, had suffered temporary crural paralysis. Neither the anesthesia, nor the patient's previous health condition had had any adverse influence on the outcome of surgery and the amount of compensation paid to the victim – plaintiff included temporary traumatic incapacitation, suffering endured and bodily damage. A brief look at the list of damages for which compensation is payable shows that not only material damages are covered, but moral damages[16] as well.

Once a cause and effect connection between the conduct of the surgeon and the damaging result of the operation had been establishes, the issue falls under the incidence of civil liability. In what follows we are listing several cases where the surgeon had been ordered to pay compensation for damage caused: severing an artery (the French Court of Cassation, first civil division, judgments issued on 7 January 1997 and on 28 September 2004), sectioning an organ or a nerve (sectioning of the tibial nerve while performing surgery on a broken tendon (the French Court of Cassation, first civil division, 18 September 2008), perforation of intestine while undergoing colonoscopy (the French Court of Cassation, first civil division, 18 September 2008 and 28 May 2009); causing jawbone fracture (the French Court of Cassation, first civil division, decision issued on 3 February 1998); lesioning a lingual nerve while pulling out a tooth (the French Court of Cassation, first civil division, 23 May 2000)[17]. In none of the situations listed above can the doctor cite the risk inherent to medical procedures, in order to be exonerated of any civil liability. Any medical procedure implies a risk, but the risk of medical accidents does not overlap on the notion of wrongful execution of the medical procedure in question. Lack of expertise in

[15] For aspects of judicial practice in matters of medical accidents, see, *G. Viney*, *P. Jourdain*, L'indemnisation des accidents médicaux: que peut faire la Cour de Cassation?, in S. Carval, La construction de la responsabilité civile, Presses Universitaires de France, Paris, 2001, p. 394-398. Regarding the methods of compensation, see, *Ch. Larroumet*, L'indemnisation de l'aléa thérapeutique, in S. Carval, La construction de la responsabilité civile, Presses Universitaires de France, Paris, 2001, p. 399-405.

[16] Tribunal de Grande Instance de Paris, 5 May 1997, in Recueil Dalloz, no. 39/5.11.1998, Jurisprudence, p. 558-559, footnote *L. Boy*.

[17] For these decisions, see, *S. Hocquet-Berg*, Maladresse fautive du chirurgien ayant perforé l'intestin d'une patiente au cours d'une lipo-aspiration, in R.G.D. (http://www.revuegeneraledudroit.eu/blog/2013/05/05/maladresse-fautive-du-chirurgien-ayant-perfore-lintestin-dune-patiente-au-cours-dune-lipo-aspiration/, web page visited on 14 October 2013).



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performing surgery which leads to bodily damages is subject to payment of *compensation* (the French Court of Cassation, first civil division, 20 January 2011).

### 1.2. Esthetic surgery

#### 1.2.1. Medical accidents

Esthetic surgery is a current topic, bearing many resemblances to classical surgery. Terminologically, however, there are differences between esthetic surgery and plastic surgery. The latter is reconstructive surgery, focused on correcting congenital anatomical defects or imperfections occurring accidentally[18]. Esthetic surgery, on the other hand, is aimed at remodeling one's physical look. It is a separate medical specialty and the conditions of its exercise are restrictively regulated. First and foremost, qualification needs to be adequate, the surgeon being required to master competences specific to the particularities of this field. Additionally, the *obligation to inform* needs to be duly fulfilled, in order to avoid any unwanted consequences. Lastly, *the patient's consent* is confined in written form, according to the annexes of Law no. 95/2006.

Any medical accidents that may occur in the field of esthetic surgery represent a specific kind of damage – *esthetic damage*. Itself a form of bodily damage, the esthetic damage consists of the non-patrimonial result manifested by the alteration of a person's physical look, consequence that is susceptible to cause suffering and to have social repercussions for the victim. Generally, the issue of esthetic damage brings together two aspects: one objective and the other subjective. The objective element refers to mutilations, disfigurements, disabilities, scars – lesions which have a negative influence on an individual's look. From a subjective point of view, the issue concerns the individual's perception of the disfigurements, which is cause for psychological suffering. The victim is acutely aware of his physical disabilities and, at the same time, their consequences in his social life – compassion or disgust provoked in others, possible changes to lifestyle, professional status or the suppression of chances for professional success. All these factors play an important negative role in the victim's life, both physically and especially emotionally[19]. In an extreme form of esthetic

[18] Mic dicţionar enciclopedic *[Small Encyclopedic Dictionary]*, The Romanian Encyclopedic Publishing House, Bucharest, 1972, p. 720.

[19] For more information on terminology and the elements of esthetic damage, see *C. Jugastru*, Prejudiciul estetic – formă a prejudiciului corporal *[Esthetic Damage – Form of Bodily Damage]*, in the Annual of the "George Bariţiu" Institute of History Cluj-Napoca,



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damage, disfigurement is the expression of irreversible alteration of a person's look through mutilation, deformation or disfigurement. Inesthetic physical looks may lead the aggrieved party to a complex of inferiority compared to his peers and as such entitles him to compensation.

### 1.2.2. Esthetic surgery and the therapeutical objective

Jurisprudence has not always looked favorably on applications of reparation of unsuccessful esthetic interventions. The issue of the legitimacy of esthetic surgery has been raised before many courts, in actions involving serious damages, caused by failed cosmetic surgery. For instance, an operation performed on a healthy foot solely for correcting its line had been deemed to be an illicit medical act, lacking any therapeutical objective. The case law, settled by French courts in 1929, had brought esthetic surgery to the foreground, in this case the operation being performed by D., a respected specialist (and member of the French Academy of Surgery), on a female patient, well-known in that period, as the manager of a fashion house. She had asked the surgeon to correct the esthetic line of her feet, touched by a diffuse hyperplasia due to the layer of lipids. The operation had been performed on the right foot, but the consequences had been extreme: the septic gangrene had to be amputated, as the only solution to avoid the patient's death. The civil court of the Seine ruled that the doctor had performed an operation with a high degree of risk, on a healthy foot, given that the intervention was neither therapeutically necessary, nor useful – for the patient's health. The doctor had been convicted, while his medical act had been deemed to be illicit[20]. The Paris Court of Appeal had maintained the decision to convict issued by the inferior court, but for another reason. The judgment issued by the Court states that, according to the law (articles 1382-1383 of the French civil Code), it is impossible to distinguish based on the therapeutical or non-therapeutical objective of the medical intervention, so that the motivation of the first court had not been sufficient to order the doctor to pay compensation.

Without considering the medical intervention of esthetic surgery to be illicit, the judges of the Court of Appeal accused the doctor of unfulfilling his *duty to inform*. He had omitted to inform the patient fully of the serious

Humanistica Series, Tome I, The Publishing House of the Romanian Academy, Bucharest, 2003, p. 411-412.

[20] Judgment issued on 25 February 1929 (for comments, see*, P. Sargos*, Le centenaire jurisprudentiel de la chirurgie esthétique: permanences de fond, dissonances factuelles et prospective, in Recueil Dalloz, no. 43/13 December 2012, Chronique, p. 2904).



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risks and of the dangers posed by the operation, so that she might consent with full knowledge. A doctor's obligation to inform must be duly fulfilled, including cases where the objective of the operation is not a therapeutical one, but to attenuate certain physical imperfections. From this perspective, doctor D. was sufficiently to blame that he was ordered to *compensate the damage* caused[21].

In general, the problem of compensating damage arisen from the sphere esthetic surgery is founded on the common law and on the special legislation. The legitimacy of actions generated by esthetic surgery interventions cannot be questioned nowadays. The current law of healthcare reform lists in a general way the range of activities which the doctor is allowed to perform: "the main objective of the medical profession is to ensure heath by preventing disease and by promoting, maintaining and recovering the health of an individual and that of the community" [article 374(1)] of the New Romanian medical deontological Code, adopted in 2012. Therefore, it becomes apparent that preventive and curative medical interventions represent the core of medical activities. Aside them, however, there are other medical interventions which do not have a therapeutical objective, nor are they aimed at preventing disease. One example is, for instance, the actions specific to esthetic surgery, destined exclusively to improving one's physical aspect. They are neither therapeutical interventions, nor are they performed in order to reconstruct someone's damaged physical aspect (in an accident, for example). Esthetic surgery is a field apart, with its own issues which may prove difficult to solve.

The law makes the patient's information explicit only for acts of prevention, diagnosis and treatment which run a potential risk. However, we are of the opinion that the patient ought to be informed of any medical action out of respect for individual and human life. The first argument is that the patient does not have the specialized information regarding his ailment and thorough self-information is impossible in this field. Moreover, the decision he would make is directly influenced by the full knowledge mentioned above. Conversely, lack of adequate knowledge leads to decisions that may prove to be seriously detrimental to the patient. To that end, there are voices advocating for the introduction of a general obligation to inform,

[21] C.A. Paris, judgment issued on 12 March 1931, in Gazette du Palais, 1931.1.590, quoted after *P. Sargos*, op. cit., p. 2904, p. 2907.



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regarding any and all medical interventions – and of a special information obligation for certain risky medical interventions[22].

### 1.3. Anesthesia

Indispensable and preceding most surgeries, anesthesia may cause bodily damage if it is not performed correctly. The anesthetist is responsible for performing the preliminary clinical tests (meant to reveal any anesthetic contraindications), for the adequate positioning of perfusions, for the precise dosage of medication and for the right connection of the patient to the reanimation unit. The existence of a causality relation between incorrectly performed anesthesia and harm or death of the patient paves the way to compensating any resulting damage. For instance, we mention the situation where the parents of a minor undergoing circumcision (on religious grounds) had obtained bounce-back compensation of damage because it had been established that the general anesthesia had been the cause of cardiac arrest which later gave way to deep coma and, ultimately, death[23].

### 1.4. Blood transfusions. Specific infection damage

#### 1.4.1. Blood transfusions – the source of specific damage

Blood transfusions with contaminated products are susceptible of the patient's infection with the human immunodeficiency virus[24], which is the origin of AIDS. Once courts were faced with applications for compensation of persons infected with HIV, jurisprudence (especially in France[25]) began to contemplate the notion of *contamination damage* or personal contamination damage[26]. This is a mainly non-patrimonial category of

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[22] *E. Florian*, Discuţii în legătură cu răspunderea civilă a personalului medical pentru neîndeplinirea obligaţiei privitoare la consimţământul informat al pacientului *[Discussions Concerning Civil Liability of Medical Personnel for Failure to fulfill the Obligation to Ensure the Patient's Informed Consent]*, in Dreptul magazine, no. 9/2008, p. 30.

[23] *P. Bon, D. de Béchillon*, Responsabilité de la puissance publique, in Recueil Dalloz, no. 6/11.02.1999, Sommaires commentés, p. 45.

[24] Until now, there are three known possibilities of getting infected with HIV: sexual transmission (the most frequent), transmission from mother to child and blood transmission. Despite the seriousness of the disease, it has been claimed that AIDS is not a fatality and that it can be defeated (*E. Hirsch*, Responsabilités humaines pour temps de SIDA, Collection Les empêcheurs de penser en rond, Synthélabo Groupe, 1994, p. 197-198).

[25] For a general view of the "contaminate blood business" in Franţa, see, *M.-A. Hermitte*, Le sang et le droit, Editions du Seuil, Paris, 1996, p. 346-360.

[26] For definitions of this new type of damage, see, *Y. Lambert-Faivre*, Droit du dommage corporel. Systèmes d'indemnisation, Dalloz, Paris, 1996, p. 210-211; *E. Savatier*, Le principe indemnitaire à l'épreuve des jurisprudences civiles et administratives. À propos de



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damage, since it implies physical and psychic suffering (originating from the reduction of life expectancy, perturbation of family and social life), recreational damage and esthetic damage. Additionally, the material aspect of contamination damage is not to be forgotten, as medical expenses are relatively high, while at the same time clinical symptoms lead to partial or total inability to work. The specificity of contamination damage lies with the moral component, inherent to the incurable nature of the disease. Reduction of life expectancy and the certainty of looming death grant this type of damage exceptional seriousness. Also, regarding interactions with other members of society, isolation and exclusion seem to be, unfortunately, the norm; as for family, conjugal ties, the desire to procreate is virtually to be abandoned. The social relationships of an HIV positive individual are governed by the others' fear not to be infected and, consequently, by avoidance. Social marginalization or exclusion only adds to the infected person's desperation, making him prone to depressions. In extreme situations, an infected individual may be the victim of verbal or physical abuse, loss of employment etc. *The moral damage* worsens as the disease progresses and it may extend to recreational damage and/or esthetic damage – depending on the particularities of the disease. Furthermore, the feeling of impending doom and death is becoming stronger[27].

All things considered, we hold the view that the contamination damage is a complex of both patrimonial and non-patrimonial damages.

### 1.4.2. Compensation for specific infection damage

French lawmakers have put forward the idea the particularity of infection damage justifies special compensation. To that end, they have created a special fund for compensating persons infected with the HIV virus[28] by blood transfusions. In Romania, such a fund does not exist and the only path open to victims is that of taking legal action, in accordance with common law, in order to receive compensation for the damage they claim.

Proven claims of personal infection damage have been awarded, in court, significant amounts of money. For instance, the court of Strasbourg

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l'indemnisation des victimes de transfusions sanguines, in La Semaine Juridique, Edition Générale, nr. 13/31.03.1999, p. 620.

[27] *Y. Chartier*, La réparation du préjudice…, p. 63.

[28] The Fund had been established as a natural person by Law no. 91-1406 of 1991. Its main steering body is the Compensation Commission, which plays a double role: fund management and settlement of claims of compensation lodged by victims.



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had ordered the defendants to pay 300.000 euros as material damage and 78.000 euros as moral damage, stating that in this manner both the moral damage and the lifelong costs of medical care for the victim were covered. For instance, Y.T.O., born prematurely, had undertaken surgery for inguinal and umbilical hernia and thus received blood transfusions with HIV infected blood. Subsequently, his parents were told that this virus may degenerate into AIDS. Civil and administrative courts have qualified the conduct of the manager of the Red Cross branch in Izmir, Turkey as serious misconduct (supplying infected blood) and ruled that the Turkish Ministry of Health bore full responsibility for the negligence of its employees in carrying out their work duties.

Additionally, they pointed out the fault of the medical personnel, who failed to test the blood on grounds that, at that time, such tests were too expensive. At a national level, prior to Y.T.O.'s infection, no legal provision obliging blood donors to supply information regarding their sexual activities existed, although such a norm would have greatly improved their assessment as suitable donors. Consequently, civil and administrative courts have awarded the plaintiffs (the child and his parents) compensation as *moral damages*. At the same time, they were forced to surrender the "green cards" issued by the Ministry of Health to persons with low income and thus their access to free healthcare and medicine had been blocked. In turn, this led to the plaintiffs being unable to absorb the high costs of treatment (amounting to 6,800 euros per month). Although national courts have displayed a rational and positive attitude in prosecuting the manager of the Red Cross branch in Izmir and the Turkish Ministry of Health, balance had been struck by awarding the aforementioned amounts in compensation.

Established for a while in judicial practice (judgment *Courtellemont*, 1989, issued by the Paris Court of Appeal; decisions of 1996 and 2003 of the French Court of Cassation), infection damage seemed to have reached the limit of aspects regarding compensation. Thad made it all the more surprising when an issue was brought before the French Court of Cassation in 2012 regarding the correlation between the application for compensation and the fact that the victim had been unaware of her being infected with HIV. She had undergone heart surgery and as such she received a transfusion of blood infected with both HIV and Hepatitis C viruses (1984). The subsequent 146 hospitalizations occurred between 1984 and 2009, period during which the patient had been unaware of her infection; she passed away in 2009 due to pulmonary fibrosis. After the decease, the husband and four children have appealed before the French National Office



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requesting compensation for medical accidents and for the specific infection damage. The Office and, afterwards, the Court of Appeal have both rejected the plaintiffs' claims, ruling that infection damage has an exceptional character; it is intrinsically associated with the patient's awareness of the effects specific to infection. In appeal, the plaintiffs argued that all the aspects such damage implies (fears regarding strong suffering – physical and psychological, reduction of life expectancy, disruption of social and family life) are borne by the victim, regardless it she is aware or not of the exact name of the disease plaguing her. The Court of Cassation ruled that the patient, who at no point in her life was aware of her being infected with HIV and Hepatitis C, had not been the victim of specific infection damage[29]. It follows that the aspects (specific elements) of infection damage are physical and psychological suffering implied by AIDS, as well as the fear, anguish and the sum of psychological emotions scarring the victim, in the context of impending demise[30].

It is absolutely true that the psychological suffering caused by one's looming death due to AIDS is what grants the personal infection damage its specificity. The origin of physical and especially psychological suffering – which is also more predominant – is the fact of being infected. Its consequences manifest in anguish, embarrassment during treatment, social and familial marginalization, as well as any other reactions brought about by the patient's state. In our case, the patient had ignored completely the cause of the disease, the pathology specific to infection damage and, consequently, had been unaware of its intense and destructive effects.

On the other hand, the successors, who had been at the patient's side throughout her suffering, were entitled to claiming compensation for their own damage – material and/or moral – , given that the trajectories of their lives had suffered tremendous modifications: interruption of their own personal and family lives, psychological suffering caused by the virtual death sentence received by a family member, pain generated by living daily with your spouse/parent permanently ill, the trauma of the 146 hospitalizations etc. All of these aspects, proven in accordance to the law, build up the image

[29] http://actu.dalloz-etudiant.fr/a-la-une/article/pas-de-prejudice-specifique-de-contamination-dans-lignorance-de-la-contamination//h/4c7b108797e38c08a517f1387cbbebe7.html (web site visited on 5 September 2013). The final judgment had been issued by the second division of the French Court of Cassation on 22 November 2012. The case-law is resumed in Recueil Dalloz, no. 42/6 December 2012, p. 2801.

[30] *O.-L. Bouvier, H. Adida-Canac*, Deuxième chambre civile, Études et commentaires, Cour de Cassation, p. 604-605.



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of damage worthy of compensation (emotional damage – bounce-back damage).

### 4. Breach of professional secrecy

#### *Regulation*

Entailing civil accountability, breach of professional secrecy stands out among other grounds for claiming damage because it greatly undermines the doctor-patient relation. Courts have not remained indifferent to cases where medical secrets had been revealed by the very person to whom the patient had entrusted intimate, personal aspects.

Medical secrecy is one of the forms of professional secrecy and is founded on two aspects: public (general) interest to ensure the trust necessary in order to exercise the medical profession and private interest, that of the individual to be guaranteed the security of confidential information concerning his health. Thus, the doctor becomes a necessary bearer of his patient's secrets[31] and their presence together is grounded solely on the former attempting to cure the latter, regardless of position, origin or material condition. Revealing information learnt by medical personnel while exercising their profession signifies not only ignoring medical secrecy, but also breaching the intimacy of the patient's private life[32].

Most national legislations regulate professional secrecy and, by implication, medical secrecy, as a means of protecting private life. Unauthorized revealing of details of one's disease without the patient's consent leads to compensations for moral and/or material damage. Law no. 95/2006 concerning healthcare reform states, in article 642(3), that all medical personnel are civilly liable for any damage ensuing from breaching the provisions regarding confidentiality. The aforementioned law includes the Hippocratic Oath, in its modern form, adopted by the World Medical Association as part of the Geneva Declaration of 1975: "Once admitted among the members of the medical profession [...], I shall keep the secrets entrusted to me by patients, even after their deaths [...]".

[31] Apart from doctors, other professionals are held to respect professional secrecy; lawyers, notaries, bankers, accountants – they all have insight into their client's financial situations and are expected to keep the secret. Otherwise, their indiscretions would lead to lack of trust, business lost and the serious disruption of services and activities and of social relationships in general.

[32] For a doctor's civil accountability, see, *A Corhan*, Repararea prejudiciului prin echivalent bănesc *[Damage Compensation by Monetary Means]*, Lumina Lex publishing house, Bucharest, 1999, p. 118-134.



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Medical units, public or private, are held accountable, together with their medical personnel, for breaches of professional secrecy. To that end, both Law no. 95/2006 and the Health Ministry Order no. 386/2004 contain special provisions. The latter normative act states that, in situations where confidential information is requested, health institutions have the obligation to comply with the legal frame–work governing their availability. Those provisions include the necessity to obtain the patient's content for filming or photography when images are crucial in establishing a diagnosis or treatment or in order to avoid any suspicion of medical malpractice; these provisions are taken for the Law regarding the rights of patients.

Law no. 46/2003[33] dedicates an entire chapter to the right to confidentiality and to the patient's private. Under the incidence of medical secrecy falls all information regarding the patient's state, results of investigations, diagnosis, prognosis, treatment, and personal data. They all remain secret, even after the person's decease.

In certain situations, revealing certain aspects entrusted to the doctor in confidence is legal and they are explicitly regulated by the law. In other circumstances, the patient's consent makes revealing secret information legal. However, if the action fulfills the constitutive elements of breach, it falls under the incidence of the Criminal Code; the subject actively prosecuted being the medical employee.

The French Code of medical deontology stipulates *in terminis:* professional secrecy is imposed in the patient's interest and is imposed onto all doctors in accordance with the conditions stipulated by the law. The sphere of medical secrecy includes not only information entrusted to the doctor by the nature of his/her profession, but also everything the doctor has "seen, heard or understood"[34].

***Aspects related to judicial practice***

Romanian jurisprudence has not had to deal with many cases invoking breaches of medical secrecy. However, such cases are abundant in foreign judicial practice.

One of the cases most intensely covered by the media refers to the breach of medical secrecy by the ex-French President François Mitterand's personal doctor. His book, entitled *Le grand secret*, had been published a short while after Mitterand's death and it described the disease plaguing the

[33] O.J. no. 70 of 3 February 2003.

[34] The Code had entered into force by Decree no. 95-1000 of 6 September 1995.



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former president, together with aspects of the deceased's family life[35]. The defendant had obtained neither the consent of the family, nor that of the person directly in question (consent which Mitterand could have given while he was still alive) before publishing such a work. The family members of the deceased were pleased that both the civil and criminal litigation ruled in their favor[36]. Additionally, the court ordered that no further copies of the book were to be sold (40,000 copies were sold in the first few days), as a means of compensation for moral damages. The president's successors had suffered a grave non-patrimonial damage, materialized by prejudices to the mourning family and to the memory of the departed.

In an attempt to settle the conflict between the right to a private life[37] and the public's right to be informed, French courts adopted the opinion that medical secrecy has a general and absolute character. It serves a dual interest: that of the patient, to be able to confess fully before his doctor, but also a general interest[38]. The asserted intention of the president's doctor to re-establish historical truth does not constitute grounds for breach of medical secrecy. The law neither allows the doctor to become the guarantor of the adequate functioning of state institutions, nor does it permit him to become a witness of history. In turn, the doctor predicated his defense on the freedom of speech and communication, according to which a practice of transparence has been established when dealing with health matters concerning statesmen. The decision to stay the selling of the book was not contrary to the principle of free speech, so long as the passages revealing medical secrets could not be divorced from the other parts of the book.

The proliferation of AIDS had brought on the rolls of courts cases where the issue of medical secrecy was raised. After hearing the case *A.Z. vs. Finland*, the European Court of Human Rights ordered the Finnish state to award moral damage, subsequent to violating article 8 of the European

35 La Semaine Juridique, Édition Générale, no. 5/2.02.2000, p. 201-203; Gazette du Palais, 19-20 March 1999, no. 78-79, p. 12; Recueil Dalloz, no. 5/3.02.2000, Informations rapides, p. 40.

36 Regarding solutions offered to civil and criminal actions, see Recueil Dalloz, no. 9/5.03.1998, Sommaires commentés, p. 85-86 şi p. 86-87; Recueil Dalloz, no. 27/17.07.1998, Informations rapides, p. 164.

37 Romanian doctrine has shown that, *de facto,* the right to medical secrecy is nothing but a face of the right to an intimate family and private life, with special applicability for legal relationships in the medical field (*F. Mangu*, op. cit., p. 589).

38 For other judgments issued by French courts regarding breaches of medical secrecy, see Médecin et Droit, no. 40/2000, p. 13-15; Le Dalloz, no. 42/1999, p. 469-471; Recueil Dalloz, no. 43/1999, p. 381-382.



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Convention on Human Rights[39]. In this case, Z., convicted for rape and attempted manslaughter, had divorced the plaintiff in 1995. During trial, the court had determined that he had been seropositive since 1990 and, on purpose, had accepted to maintain intimate relationships with several women (one of them being the plaintiff), without informing them of the risk of infection. National courts had ordered that the file be kept secret for a period of 10 years. The plaintiff had evoked, before the Court, *the breach of private life* in several ways: first, the Finnish authorities had forced the doctors who treated her to testify in her ex-husband's criminal trial; then, they ordered that the medical files be annexed to the case file; lastly, the court decision to keep the file secret for 10 years had remained definitive and the judgment issued by the national court had revealed the identity of the plaintiff and the state of her health.

In motivating its decision, the Court shows that the first two measures had had a legitimate purpose, being aimed at preventing further crimes, while the testimonies given by the witnesses had not had grave consequences for the plaintiff's private and family life. The medical files had been attached to the case file for solid reasons, which surpassed her interest not to have the information in question revealed. As for the term of 10 years, it was considered to be a disproportionate measure in relation to the conflicting interests, since the plaintiff's vested interest implied a longer period of confidentiality. Divulging the identity of the plaintiff and of the state of her health in the decision issued by the court of appeal (information circulated by the media afterwards) had not been justified because of the interest to uphold the secrecy of private life. These latter illegal facts have caused moral damages to the plaintiff, si the state had been ordered to pay compensation[40].

### 5. Failure or unsatisfactory performing of the obligation to inform

#### *Medical information – premise of the patient's consent*

Informing the patient is the expressly regulated duty of all medical personnel. The Romanian medical deontological Code stipulates (following the model of its French counterpart), that the doctor shall inform the patient and his family (on certain occasions only the latter) of the state of health, necessary treatment and the chances for recovery. The current law cites as

[39] Regarding this case, see R.D.P. no 2/1998, p. 142-144.

[40] See *C. Jugastru*, Repararea prejudiciilor nepatrimoniale *[Compensation of Non-Patrimonial Damage]*, Lumina Lex publishing house, Bucharest, 2001, p. 142-143.



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imperative the patient's informed consent before undergoing potentially life-threatening operations.

The obligation to inform refers to the medical personnel's duty to communicate to the patient all the information necessary before he can give an educated consent for preventive, diagnosis or treatment acts and to indicate the most adequate solutions in order to recover from the current ailment.

Failure to comply with this obligation to inform, or its unsatisfactory completion may lead to bodily damage. The moment when the doctor and patient interact for information and counseling differ depending on the disease in question and on the patient's personal situation. Prior to performing medical acts, it is necessary to inform the patient about the diagnosis, treatment, viable alternatives and the prognosis of the evolution of the disease absent all treatment. During the curing process, the patient must be informed about the evolution of the disease, effectiveness of treatment, the consequences and side effects of certain medicine etc.

As pointed out by the doctrine[41], the content of the information is that stipulated by the law, while the form of conveying the information is, normally, verbal. In concrete, the taking of evidence attesting the existence and content of the information shall be performed by any means sanctioned by the law.

Informed consent serves a double purpose: it suppresses the validity of the behavior of medical staff (in relation to the patient's body and psyche) and it validates the doctor's intervention from a legal point of view. From an ethical standpoint, the balance of forces is achieved, in the sense that the patient is encouraged to make educated decisions, exclusively in his own best therapeutical interest[42].

French judicial practice had ruled that the medic's failure to carry out the obligation to inform justified the payment of compensation to a couple who became the parents of a trisomic child. Clinical tests performed by the plaintiff during pregnancy had shown the elevated risk of the disease for the baby, so that the couple should have been informed and the pregnant mother had had to undergo amniocentesis[43]. In turn, amniocentesis would

41 *I. Turcu*, Dreptul sănătăţii. Frontul comun al medicului şi al juristului *[Health Law. The Common Front of the Doctor and the Lawyer]*, Wolters Kluver publishing house, Bucharest, 2010, p. 190.

42 Regarding all these aspects, see *F.I. Mangu*, op. cit., p. 366.

43 Procedure consisting of the extraction of amniotic fluid in order to determine early the existence of hereditary diseases of the fetus or to establish its gender (The Encyclopedic Dictionary, vol. I, A-C, The Encyclopedical Publishing House, Bucharest, 1993, p. 64).



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have prompted termination of pregnancy for therapeutical reasons. Recognizing the failure to conduct the obligation to inform, the Court of Appeal of Versailles[44] had admitted the *claim for compensation* lodged by the couple, establishing the birth of a handicapped baby.

Additionally, the information supplied to the patient must be presented in accordance with his/her personality. For instance, this obligation is not considered carried out when the patient has been informed of the results of radiological investigation using terms a person lacking specialized knowledge would not have understood. The information given to the patient shall be clear and adapted to the personality of the addressee; so that he can make an informed decision regarding the variant of treatment he elects (judgment of 21 February 1961 issued by the first civil division of the French Court of Cassation)[45]. The doctor is obliged to supply, throughout the recovery process, information adapted to the patient's level of understanding. In the case-law discussed, this obligation had not been fulfilled, since neither of the two doctors conducting radiological tests had informed the patient that the osteosynthetis material, installed several years previously, as fractured. Also, the conclusion of medical check-ups, in the sense that they require a continuity solution concerning the interior rod of the right hand, fails to enlighten the patient as to what solution to choose[46].

Indeed, the doctor is deontologically obliged to respect the will of the patient – but only after a complete and thorough information regarding all the consequences of all different alternatives possible.

***An in-depth look at informing in the field of esthetic surgery***

Major source of esthetic damage, the complete lack of or insufficient informing has caused enough judicial practice to justify the inclusion of this obligation in future regulations. In general, information is a factor of doctor-patient communication.

We are mentioning a few particularities of the duty to inform bore by the esthetician. Thus, his obligation to inform is not confined to serious

[44] C.A. Versailles, 8 July 1993, in Recueil Dalloz, no. 12/23.03.1995, Sommaires commentés, première espèce, p. 98-99.

[45] *S. Hocquet-Berg*, Le radiologue doit délivrer une information sur les résultats de l'examen adaptée à la personnalité et l'état du patient, în R.G.D. (http://www.revuegeneraledudroit.eu/blog/2013/02/14/le-radiologue-doit-delivrer-une-information-sur-les-resultats-de-lexamen-adaptee-la-personnalite-et-letat-du-patient/, site consultat la 14 octombrie 2013).

[46] *Ibidem.*



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risks, but it includes the sum of shortcomings that may ensue from the contemplated intervention[47].

One of the constants of jurisprudence is that informing, in esthetic medicine, be as *complete* as possible, otherwise the incumbent obligation of the medical staff is not fulfilled. Therefore, the scope of the obligation to inform spans from life-threatening risks posed by the intervention to all inconveniences that may result from the operation[48]. For instance, informing before the first operation does not cover the duty to inform before a second one. According to the case-law, the first silicone gel breast implant had been followed by a second, saline breast implant. The second intervention caused implant retraction and the patient took legal action on grounds of lack of information. The action had been rejected at first instance, the reason being that the obligation to inform had been complied with before the first operation. The court of appeal repealed the judgment issued by the first court and ruled that the obligation to inform needs to be fulfilled before any intervention. Consequently, the patient should have been informed about the risks inherent to the second operation (*Gulinska* case-law*,* French Court of Cassation, first civil division, 16 January 1999).

Case *Polo* had also emphasized the need for exhaustive information for interventions performed under general anesthesia. The patient, a young woman, remained in vegetative coma after general anesthesia – risk that the doctor did not communicate before surgery (French Court of Cassation, first civil division, 10 December 2002). In much the same way, French courts ruled that a surgeon performing laser treatment in order to eliminate an angioma (a benign tumor produced by the dilatation or new formation of blood vessels) has the obligation to supply thorough information about the risks involved, although they are small and totally exceptional[49].

Abdomen remodeling surgery (abdominoplasty) requires exhaustive information. The risks, additional care and inconveniences subsequent to the intervention must be listed in a brochure made available to the patient prior to surgery. In the case before us, the document through which the patient consented to the intervention had been drafted in very general terms: "I hereby accept the surgery proposed by doctor E.M.Y. [...], being aware that

[47] Cass., 17 februarie 1998, în Revue trimestrielle de droit civil nr. 3/1998, p. 680-682; *F. Chabas*, L'information médicale en danger, în La Semaine Juridique, Édition Générale, nr. 11/15.03.2000, p. 461.

[48] *P. Sargos*, op. cit., p. 2908.

[49] C.A. Bordeaux, 17 November 1998, judgment quoted after *S. Welsch*, Responsabilité du médecin. Risques et réalités judiciares, Litec, Paris, 2000, p. 65.



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there is no surgical intervention that does not imply risks and that certain complications are possible, although the intervention takes place normally; I acknowledge that the operation implies both advantages and risks, which were explained to me in terms I understood; doctor E.M.Y. had answered all of my questions in a satisfactory manner. I understand that any intervention may prompt difficulties that would force the surgeon to alter the course of the operation, in the interest of my health – present and future"[50]. The French Court of Cassation repealed the judgment issued by the Court of Appeal of Reims, ruling that the terms authorizing the operation had been extremely imprecise with regards to the risks taken by the patient and also concerning the constraints imposed by the Code of public health. This code stipulates, in article L. 1111-2, introduced by Law no. 2002-303/4.03.2002, that explicit medical information must be made available for all investigations, treatments and preventive measures proposed, for their usefulness or possible urgency, for consequences, frequent or serious risks normally foreseeable, as well as other possible solutions and foreseeable consequences, in case of refusal. Therefore, the surgeon was obliged to supply the plaintiff with exhaustive written information, which would list and explain absolutely all risks associated with abdominoplasty (French Court of Cassation, first civil division, judgment on 26 January 1999)[51].

The information supplied must be *thorough and clear*, especially with regards to the category of inconveniences, such as lasting scars, the need for two or more incisions instead of just one, the use of complementary treatment for lymphatic drainage etc.[52]

The object of information is awareness of risks, inconveniences and possible alternatives – for instance, the kind of implant (saline, silicone gel etc.), the advantages of certain solutions that make up the implants (silicone breast implants are not obvious to touch because they are positioned behind mammary glands, while saline implants make the breasts feel rigid), the disadvantages (saline implants are considered safer), the durability of the implant, the need for recurrent clinical and radiological tests. The duration and intensity of pain and the details of post-surgery care have a special

[50] *S. Hoquet-Berg*, Le geste de chirurgie réparatrice et l'information sur les risques liés aux suites opératoires, in R.G.D. (comment available on the web page http://www.revuegeneraledudroit.eu/blog/2013/02/22/le-geste-de-chirurgie-reparatrice-et-linformation-sur-les-risques-lies-aux-suites-operatoires/, valid on 14 October2013).
[51] *Ibidem.*
[52] C.A. Paris, 21 October 1998, case-law *Dabos v. Kergaravat* (S. Welsch, *Responsabilité du médecin. Risques et réalités judiciares,* Litec, Paris, 2000, p. 65.); C.A. Bordeaux, 17 November 1998, in Médecin et Droit, no. 40/2000, p. 21.



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character in the case of liposuction (procedure that contributes to silhouette correction by removing excess fat from under the skin by suction, with special instruments, under local or general anesthesia). Aside from the fact that any region of the body may be treated this way, the patient needs to be aware that a permanently satisfying result implies a series of conditions: keeping one's weight constant, a balanced diet, treatment of hormonal or circulatory dysfunctions and a hospitalization time of a few days. Pain cannot be avoided, as are relatively small scars, ecchymosis etc.

Aside from risks of scars, the category of inconveniences if esthetic surgery also includes the risk of the body not tolerating the proposed method. Thus, any doctor who omits to inform his patient that intradermal treatment to remove wrinkles may generate intolerance due to the intense heat the instruments give off is at fault for failure to inform. Additionally, the claim that the surgeon himself had not been aware of this detail is irrelevant, since he, as a specialist, was expected to know it[53].

However, if the method is deemed by the specialist to be too risky or dangerous, he must refrain from performing the intervention – as long as the sole purpose is esthetic, not therapeutical. The use of radiotherapy was considered, at the beginning, a dangerous procedure for both the medical personnel using it and the patient. The doctor was expected to refuse to operate unless the purpose of the operation was therapeutical, since he was aware of the risk of causing radiodermatitis[54].

### 6. Failure to provide mandatory healthcare

Failure to provide mandatory healthcare is one of the causes for damage claims lodged by patients, given that medical personnel is, in accordance to the law, obliged to provide it. Mandatory healthcare is synonymous to the medical staff providing care to persons accepted previously as patients, depending on the confines set by law. By way of exception, healthcare cannot be refused to a person who, although not a patient of the doctor in question, is facing an emergency situation or, more precisely, when his life or health are seriously and irreversibly endangered [article 652(3) of Law no. 95/2006].

The situations when medical assistance may be refused by a doctor are expressly mentioned: the patient requires the assistance of another

[53] C.A. Versailles, 17 ianuarie 1991, judgment quoted after *D. Malicier, P. Feuglet, P. Faivre*, La responsabilité médicale. Données actuelles, 2e éd., Éditions Eska, Paris, 1999, p. 188.
[54] Cass., decision of 29 November 1920 (commented in *P. Sargos*, op. cit., p. 2907).



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doctor with increased competences or the patient had displayed hostile or irreverent behavior towards the doctor. In the latter case, the doctor shall inform the patient of his intention to interrupt their medical relation, so that he has enough time to look for an alternative solution. Thus, no person may be denied care on grounds of ethnicity, religion, social orientation or other criteria of discrimination forbidden by law.

In reference to the quality of care provided, the law stipulates that the therapeutical standards specific to each specialty shall be complied with, in accordance with the practical guides issued by the Romanian College of Doctors[55] and subject to approval by the Romanian Ministry of Public Health[56].

**7. Conclusions**

"The art of maintaining health and, ultimately, of curing the disease" or "the skill that alleviates the suffering of the sick and tames the most savage diseases"[57] – this is medicine – a complex interdisciplinary science of knowledge and action[58]. Art and science combine into an alchemy of abilities, thorough knowledge, passion and dedication on the part of those who practice it. It was rightfully said that "In the clockwork mechanism that is the human body, the risk of the doctor making a mistake is a certainty, as no two bodies are alike. For this reason, the doctor makes mistakes and is, in turn, misled in a profession riddled with traps [...]. A medic's commandment had been outstandingly coined by Hippocrates 25 centuries ago: «I devise and order for them the best diet, according to my judgment and means; and I will take care that they suffer no hurt or damage»"[59].

[55] The Romanian College of Doctors is the professional body, apolitical, devoid of a patrimonial objective, public, endowed with responsabilities assigned by the state authority in the field of control and oversight of the medical profession as a liberal, authorized profession. The College exercises its duties without outside interference and enjoys institutional authonomy in its field of expretise, both normatively and from a jurisdictional point of view.

[56] Absent those guides, the established standards accepted throughout the medical community shall be used, according to each speciality.

[57] *I. Turcu*, Dreptul sănătăţii *[Healthcare Law]*,(...), p. 46.

[58] *Ibidem,* p. 47.

[59] I. Turcu, op. cit., p. 48.



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