



ACT DATED 22 AUGUST 2002 CONCERNING THE RIGHTS OF THE PATIENT

Door Herman Naeyaert, Belgian Board member Peopil

The Belgian Act of 22 August 2002 which defines in detail the rights of the patient, has recently come into effect.

This new act constitutes an important step towards the protection of victims against medical errors.

Before this act the attending doctor regularly refused to provide any information on the evolution of a surgical operation or medical treatment. He often adopted a defensive attitude, which was among others the consequence of a poorly understood interpretation of the clause in the liability insurance which forbids the doctor to acknowledge his liability.

The new act offers victims and their lawyers extensive rights to defend their interests in the best circumstances in case of medical errors;

1. The new act is applicable to the relations between the patient and the attending doctor on the one hand, and those between the patient and the hospital where the patient is being treated, on the other hand.
2. The general prevailing principle is that the patient is entitled to a quality service that meets his needs.

Moreover, the patient is entitled to the free choice of his doctor. He is moreover entitled to change his choice in the course of the treatment.

3. With regard to the doctor and the hospital the patient is entitled to all the information necessary to obtain an insight in his/her health condition and its probable evolution.

This means that the patient can ask that this information is confirmed to him/her in writing. As such the law has decided for an explicit pre-informative obligation to inform.

At the written request of the patient the information can be communicated to a person of confidence appointed by him/her e.g. his/her general practitioner.

The doctor or the hospital can exceptionally abstain from communicating the information to the patient if its communication would clearly result in serious harm to the patient's health and provided the attending doctor has contacted a colleague on this subject.

4. Duty to informed consent
The patient is entitled to be informed and to freely approve every intervention of the doctor. In principle this approval is given explicitly. If so requested, the approval is established in writing and added to the patient file.



The information given to the patient within the framework of this approval is related to the purpose, the nature, the degree of emergency, the duration, the frequency, the counter-indications for the patient, the side-effects and risks related to the intervention, the after-care, the possible alternatives and financial consequences. They are moreover related to the possible consequences in case of refusal or withdrawal of the approval. This information must be provided in advance and in due time.

In any case the patient has the right to withdraw the approval for an intervention at all times. Obviously an exception is made in emergency situations.

5. Every doctor and every hospital must draw up a patient file.

The patient has a right of perusal of his/her patient file, at all times. Within 15 days after having received the request the attending doctor and/or the hospital must allow perusal of the patient file. Moreover, the patient is also entitled to a copy of this document at cost price.

The patient can have his/her right of perusal also be performed through a person of confidence appointed by him (spouse, general practitioner). After the death of the patient his/her heirs are also entitled to the right of perusal and a copy of the patient file.

Only in view of the protection of the patient's privacy, the related doctor/hospital can totally or partially refuse the request for perusal or copy of the patient file. In that case the right of perusal or copy is performed by a doctor to be appointed by the patient.

This can be the case when e.g. the patient is incurably ill and the attending doctor does not consider it suitable to make the clinical picture known to the patient.

6. The law provides the institution of an ombuds service, which negotiates between the patient and the doctor/hospital in case of complaints by the patient.

In my view this new act has struck a good balance between the patient's rights on the one hand and those of the attending doctor and hospital, on the other hand.

In any case victims of medical errors will be able to lay hands on the patient file more swiftly and more easily which until now was only possible with the approval of the attending doctor and hospital, or, worse, via a Court order.

We must now wait for the first implementation of this act in the form of a judicial decision.