

IMPLEMENTATION OF PATIENTS' RIGHTS

Dr. habil. Marzena Furtak-Niczyporuk, University Professor

Medical University of Lublin, Poland
e-mail: marzena.furtak-niczyporuk@umlub.pl; <https://orcid.org/0000-0003-2444-6456>

Aneta Mela-Kalicka, MA*

Medical University of Warsaw, Poland
e-mail: aneta.mela@gmail.com; <https://orcid.org/0000-0002-3134-7563>

Marcin Wójcicki, MA*

Independent Researcher, Poland
e-mail: mwojcicki@o2.pl; <https://orcid.org/0009-0008-2136-1768>

Dr. Janusz Jaroszyński

Maria Curie-Skłodowska University of Lublin, Poland
e-mail: janusz_jaroszynski@tlen.pl; <https://orcid.org/0000-0002-6888-1233>

Abstract. The institution of the Ombudsman appeared in Poland as late as in 2008 as a result of the enactment of the Act of 6 November 2008 on Patients' Rights and Patients' Ombudsman. This was the result of conducting many studies and recommendations, which recognised the need to institutionalize patients' rights and thus appoint a patients' representative that will uphold their rights. It should be noted that the Act on Patients' Rights and Patients' Ombudsman was part of the so-called health bill package, aimed at reforming the health care system and supporting patients in enforcing their rights. The Patients' Ombudsman was established to effectively protect the rights of patients in the health care system. This follows directly from the basic duties of public authorities to protect the health of citizens. In general, the duties of public authorities to protect health and act in the health care system derive from Article 68 of the Polish Constitution. This provision is fundamental to determining the scope of the obligations of public authorities, but also of those required to interpret and apply the provisions of patients' rights. On this basis, the Ombudsman for Patients' Rights, as the central body of government administration in Poland, is competent for the protection of patients' rights (Act of 6 November 2008 on Patients' Rights and Patients' Ombudsman). His activities are focused on respecting patients' rights concerning the individual patient, as well as the collective rights of patients.

* Update of processed data.

Keywords: Ombudsman; patients' rights; Polish Constitution; protection of citizens' health.

1. INTRODUCTORY REMARKS

The institution of the Ombudsman only appeared in Poland in 2008 as a result of the enactment of the Act of 6 November 2008 on Patients' Rights and Patients' Ombudsman.¹ This was the result of conducting many studies and recommendations, which gave rise to the need to institutionalize patients' rights and thus appoint a patients' representative that will uphold his rights. It should be noted that the Act on Patients' Rights and Patients' Ombudsman belonged to the so-called health bill package, aimed at reforming the health care system and supporting patients in enforcing their rights.

The Patients' Ombudsman was established to take efficient and effective action to protect the rights owed to patients in the health care system. This follows directly from the basic duties of public authorities to protect the health of citizens. In general, the duties of public authorities to protect health and act in the health care system derive from Article 68 of the Polish Constitution.² This provision is fundamental to determining the scope of the obligations of public authorities, but also of those required to interpret and apply the provisions of patients' rights. On this basis, the Ombudsman for Patients' Rights, as the central body of government administration in Poland, is competent for the protection of patients' rights. Its activities are focused on respecting patients' rights concerning the individual patient, as well as the collective rights of patients.

"Patients' rights" is a phrase that has been accepted both in the Polish legal language and in other European Union countries. There is no legal definition of the term "patients' rights". However, it belongs to the category of human rights and has a straightforward legal regulation that indicates the rights shown here (PRPO). Nevertheless, it is possible to demonstrate the main purpose and goal of "patients' rights", which is both to protect the patient from interference by others in his freedom, as well as a guarantee to demand respect for various rights granted to him by law [Bach-Golecka and Stankiewicz 2020, 780].

Because of this, the term "patients' rights" refers to the dedicated Act on Patients' Rights and the Patients' Ombudsman, defining "patients' rights and freedoms" [Banaszczyk 2018, 788]. The Patients' Ombudsman takes up cases of observance of patients' rights, reported directly by patients to the Office of the Patients' Ombudsman, but also to the Minister of Health, the President of the National Health Fund, as well as analyzes administrative data collected by health care institutions and information appearing in the public space

¹ Act of 6 November 2008 on Patients' Rights and Patients' Ombudsman, Journal of Laws of 2024, item 581.

² Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

and media reports. On several occasions, the Patients' Ombudsman conducts investigations into irregularities in the operation of medical entities that require further monitoring for compliance with patients' rights.³ The Patients' Ombudsman takes the position that patients' rights should be the subject of ongoing education and dissemination among medical personnel and other participants in the health care system.

From the annual activities of the Patients' Ombudsman, the level of compliance with patients' rights can be assessed. The Patients' Ombudsman received 124,861 total signals and reports coming in from patients in 2022.⁴ Included in this figure are all contacts made with the Office through various communication channels. The number of signals to the Ombudsman decreased compared to 2020-2021, the period of the COVID-19 epidemic, but was still more than 43% higher than in 2019. In 2022, of the signals received by the Ombudsman, 101,154 notifications and cases were recognized. This figure includes written submissions from patients, including those sent electronically, cases received via Patients' Telephone Information, or chat, and cases reported to Psychiatric Hospital Patients' Ombudsmen. Of all reports to the Ombudsman, 80% were directly related to patients' rights. Other submissions include inquiries about cases already in progress, as well as submissions and inquiries about institutions indirectly related to the health care system. The Office's staff directs callers to the right place, provides guidance on methods to solve a specific problem, or supports them through information and education activities.

Summary of highlights of the Patients' Ombudsman's activities in 2022.

Data from the Ombudsman's activities	2019	2020	2021	2022
Number of reports sent to the Ombudsman	86,114	135,625	163,910	124,861
Number of calls answered at the Patients' Telephone Information Service	66,650	110,025	133,212	98,910
Number of investigations conducted in individual cases	1,683	1,861	2,705	2,870
Number of completed investigations in individual cases	979	1,345	1,512	1,332
Number of initiated proceedings for practices violating the collective rights of patients	78	138	181	279
Number of decisions issued in proceedings on practices that violate the collective rights of patients	48	136	191	281
Number of pending civil proceedings involving the Ombudsman	48	74	93	99
The number of cases handled by the Department of Health and Human Services. Mental Health	12 123	10 188	9 610	7 276
Number of systemic measures taken	162	191	148	110

Source: <https://www.gov.pl/web/rpp/sprawozdanie-za-2022-rok> [accessed: 15.07.2024], p. 14.

³ See www.gov.pl/web/rpp/raport--postepowania-wyjasniajace-prowadzone-przez-rzeczniaka-praw-pacjenta-w-sprawach-indywidualnych-w-latach-2019-2021 [accessed: 15.07.2024].

⁴ See <https://www.gov.pl/web/rpp/sprawozdanie-za-2022-rok> [accessed: 15.07.2024], p. 7-14.

The Patients' Ombudsman received 79,157 reports, signals, and requests regarding patients' rights in 2022,⁵ including those concerning the right to health services – 53,631; the right to information – 8,947; the right to medical records – 5,220; the right to mental health protection – 4,647; the right to respect for intimacy and dignity – 2,949; the right to respect for private and family life – 1,651; the right to consent – 777; the right to object to a doctor's opinion or ruling – 576; the right to report adverse reactions to medical products – 291; the right to confidentiality of information – 227; the right to keep things in escrow – 195; the right to pastoral care – 48. An analysis of the execution of patients' rights in 2022 can be conducted.⁶ Among the very often violated patients' rights is the right to health services. The right to information, the right to consent to health services, and the right to medical records were frequently violated. The right to respect for the patient's intimacy and dignity and the right to respect for private and family life were sometimes violated. In contrast, the right to report adverse drug reactions, the right to pastoral care, and the right to keep valuables on deposit were very rarely violated. The patient's right that was not violated is the right to object to a doctor's opinion.

More than two-thirds of all reports to the Patients' Ombudsman concerned the right to health care services. This law was very often violated in 2022. At this point, it should be emphasized that the right to health care services is the most important right patients have. The right to health care services includes the provision of services with due diligence, corresponding to current medical knowledge, while observing the principles of professional ethics by medical personnel in premises that meet professional and sanitary requirements. It is worth emphasizing that a patient's right to health services is directly related to three aspects of it, such as the availability of health services, the quality of health services, and the safety of health services. Ensuring proper accessibility to health care services is certainly the main problem of ensuring compliance with the right to health care services. It is also one of the main problems of the healthcare system. This right includes the provision of immediate health services due to a threat to the patient's health or life. However, it should be underlined that despite the removal of limits on the provision of health care services in outpatient care, this has not significantly improved access to health care services. When analyzing 2022, it is worth remembering that the limited availability of health services was caused by the COVID-19 pandemic. It, therefore, seems crucial to increase the number of medical staff to ensure proper accessibility to health services. It also seems important to ensure equal access to health services. This is especially true for quick access to admission directly through the GP.

⁵ *Ibid.*, p. 6-7, 30.

⁶ *Ibid.*, p. 9-10.

Primary health care should provide comprehensive and coordinated health care for patients close to home. Transparent procedures establishing the order of access to health services based on medical criteria are also becoming important. Undoubtedly, an important element here is the waiting time for an appointment, surgery, or diagnostic test. Equally important is the removal of purely technical, organizational, financial, and personnel constraints in ensuring equal access to health services. It is worth remembering to ensure the quality and safety of health services, which play a key role in an effective healthcare system. Of course, ensuring the quality of healthcare services requires improving medical staff and healthcare delivery procedures. An important element here is the insufficient number of organizational standards and the lack of definition of the therapeutic activities that are required for a specific condition. The issues of hospital infections, post-operative deaths, the quality of diagnostic tests, as well as pharmacological problems in hospitals should also be recognized here.⁷ It is therefore necessary to introduce regulations that will directly contribute to significant changes in the way medical entities operate and focus on safety and quality of services.

Another patients' right often violated was the right to information. This is a rather broad patients' right that refers to information about a patient's health condition, information about a patient's condition for an authorized person, consent to medical treatment, information about a doctor's withdrawal of treatment, information about rights owed to the patient, and information about other benefits owed to patients, especially during hospitalization. The most frequently violated was the right to information about the patient's condition directed to the patient himself and an authorized person about the patient. This was especially true of the difficulty or lack of information about the patient's condition, especially during hospitalization was the most important element of the violation. And yet, information about the patient's health condition and the treatment methods proposed to him is the basis further for the patient's informed consent to the provision of health services, consent to surgery, treatment methods, or diagnostics that pose an increased risk of complications. It is worth noting that the patient's consent to a medical procedure is a condition for the legality of the doctor's action [Banaszczyk 2018, 786]. Consenting to the provision of health services, it should be pointed out, constitutes respect for patients' autonomy. Undoubtedly, the patient's knowledge of the state of health and the proposed therapeutic measures is the basis of and links directly to the right to provide health care. At the same time, respecting the right to information serves better cooperation and mutual relations between patients and medical staff, based on respect and trust, as well as better therapy results [Cianciara 2017,

⁷ See <https://www.nik.gov.pl/plik/id,20223,vp,22913.pdf> [accessed: 15.07.2024].

123]. The most common reports to the Patients' Ombudsman concerned errors in the use of the consent form, the inclusion of content that was not understood by the patient, the lack of a defined scope of the procedure, the failure to specify possible typical complications after the procedure, or the use of blank forms.⁸

Another frequently violated patients' right was the right to medical records. This right includes, in particular, access to medical records, which are the basis for depicting the treatment process, as well as being a source of evidence in legal proceedings and further the basis for claiming various types of benefits from the social security system. The obligation to keep medical records and the patients' right to access these records perform many functions. First, knowledge of the history of treatment is an important guide for the doctor, allowing him to select the right method of treatment, especially in the event of a change of doctor; second, the obligation to disclose in the records the treatment procedures used is a guarantee of the doctor's use of procedures consistent with current medical knowledge and accepted standards; third, medical records can be used in a possible trial as a means of evidence [Boratyńska and Konieczniak 2001, 361]. The most common violations were refusal to release medical records, erroneous record keeping, and lost medical records.⁹

The right to respect for the patient's intimacy and dignity, which refers to the patient's ability to talk to medical personnel and the presence of only the necessary medical personnel during the provision of health care, was sometimes violated. At the same time, it is worth noting here the patient's right to have a person close to the patient present during the provision of health care. Often, this right is related to a sense of security by the patient, who participates in the treatment process with someone close to him. The right to respect for a patient's intimacy and dignity is also extended to dying in peace and dignity and alleviating the patient's pain. There have been situations of disrespectful behavior by medical staff in conversations with patients, as well as inappropriate behavior by staff toward patients and restrictions on family births. One element of such a situation was the COVID-19 pandemic.

Similarly, the right to respect for private and family life, which includes the right to contact in person, by telephone, or by correspondence, was rarely violated. The most common proceedings for violations of this right involved preventing patients from contacting their families, separating the newborn from the mother, preventing the implementation of additional

⁸ See <https://www.gov.pl/web/rpp/sprawozdanie-za-2022-rok> [accessed: 15.07.2024], p. 51.

⁹ *Ibid.*, p. 52-53.

nursing care for the patient, contact with relatives only in the presence of staff, time restrictions, and limiting contact to phone calls only.

A rarely violated right was the right to medical confidentiality, which covers all information related to the patient. Of course, doctors here are covered by medical confidentiality. However, there are situations in which medical confidentiality may be broken, and these situations involve the transfer of necessary information about the patient to other medical professionals at the time of the patient's transfer or consultation, and when maintaining confidentiality could pose a danger to the life or health of the patient or another person. Irregularities here included the transfer of patient information to unauthorized persons, information about a patient's health in the presence of other patients, and the transfer of medical records to persons or institutions not authorized to do so.

Among the very rarely violated patients' rights, the Patients' Ombudsman included the right to report adverse reactions to medicinal products, the right to pastoral care, and the right to keep valuables on deposit. Directly, the patient has the right to report adverse effects of a medicinal product to medical professionals, the President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products, or the entity responsible for placing the drug on the market. Reports of adverse reactions to medicinal products particularly concerned adverse vaccine reactions carried out in the COVID-19 pandemic. Other violations of these rights were related to lack of access to pastoral care, or restriction or denial of use of the depository.

2. THE PATIENT'S RIGHT THAT WAS NOT VIOLATED IS THE RIGHT TO OBJECT TO A DOCTOR'S OPINION

It is worth noting that violations of patients' rights are only disclosed or reported when the patient suffers the consequences, such as in the case of a medical error. Simultaneous violations of several patients' rights were also often found. Taking into account that the rights owed to patients are an important issue, but also require adaptation to a new legal and institutional reality that considers the emergence of new challenges throughout their validity and evolution as a consequence of epidemiological, technological, institutional, and social changes, the Polish Academy of Sciences issued recommendations for the period 2023-2027, identifying four directions of intervention that seem particularly significant for more effective functioning of the health system that guarantees the fullest possible observance of patients' rights, which concern expanding the catalog of patients' rights and clarifying terminological issues; introducing an out-of-court model for the compensation of medical damages based on the absence of fault (i.e., no-fault);

changing the mode of appointment to the position of Ombudsman; processing and security of personal data sharing in the medical sector.¹⁰

CONCLUSIONS

Summarizing the considerations, the Patients' Ombudsman plays a very important role. It is the Ombudsman who makes sure that patients' rights, guaranteed by the Constitution and other legal acts, are duly respected by clinics, hospitals, doctors, and all facilities that carry out tasks in the field of patient treatment. Patients are expected to be as safe and comfortable as possible during treatment.

As the above discussion shows, every year there are more and more reports of violations of patients' healthcare rights. The task of the Patients' Ombudsman is therefore, to take effective measures to protect patients' rights to sustainably increase the degree of respect for patients' rights in Poland. It's also about raising awareness of patients' rights and continuous development to ensure that patient satisfaction is achieved.

REFERENCES

- Bach-Golecka, Dobrochna, and Rafał Stankiewicz. 2020. "Pragmatyki lekarskie." In *System Prawa Medycznego*. Vol. 3: *Organizacja systemu ochrony zdrowia*, edited by Dobrochna Bach-Golecka, and Rafał Stankiewicz. Warszawa: Wydawnictwo C.H. Beck. Instytut Nauk Prawnych PAN.
- Banaszczyk, Zbigniew. 2018. "Treść stosunku prawnomedycznego." In *System Prawa Medycznego*. Vol. 1: *Instytucje prawa medycznego*, edited by Marek Safjan, and Leszek Bosek. Warszawa: Wydawnictwo C.H. Beck, Instytut Nauk Prawnych PAN.
- Boratyńska, Maria, and Przemysław Konieczniak. 2001. *Prawa pacjenta*. Ed. 1. Warszawa: Wydawnictwo Diffin S.A.
- Cianciara, Dorota. 2010. *Zarys współczesnej promocji zdrowia*. Warszawa: PZWL Wydawnictwo Lekarskie.

¹⁰ See https://pan.pl/wp-content/uploads/2023/06/Rekomedacje_I_6.pdf [accessed: 15.07.2024].