
Abstracts of Session 4c

Medicolegal implications

4c1

Principles of civil liability as regards knowledgeable consent

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A surgeon's work is liable to the principles of civil law stating the duties of brainwork employees and of criminal law as regards a culpable behaviour. Various stages of professionale responsibility originate from a breach of the rules in the relationship between a physician and his/her patient. Assumption of this contract relationship is the capacity to engage so as to make the contract valid and lawful. Consequently, a basic condition to a contract-relationship regarding medical matters is a knowledgeable consent, e.g. the declaration 'by which a patient intends to bring about a relationship

generating on the other side an obligation to treat and on his/her side the obligation to be treated.

In order to be aware of it, a patient must know the content of possible consequences to be expected; it means that for a contract to be valid it requires basically the suitable and consistent information about the disease, its treatment and possible consequences both of the disease and of its treatment. Lack of information can make the contract null and void causing a physician to act against the law.

For the consent to be valid, it has to be given by a subject in full possession of his/her faculties or aged to be as such.

The surgeon's obligation so established in the contract is the obligation of means or diligence in his/her performance and not an obligation of results. A surgeon, therefore, acts within the limits of a behaviour obligation and not an obligation of results. Nevertheless, this is an apparent distinction, as a fact, considered as a mean in respect of a subsequent aim, will be a result when assessed as such, and as the final stage of a limited sequence of facts.