



NEWSLETTER | HEALTH LAW

CONTENTS

HEALTH LAW NEWSLETTER | JANUARY-MAY 2016

I REFERRAL SYSTEM FOR THE FIRST SPECIALITY CONSULTATION IN THE HOSPITALS OF NATIONAL HEALTH SERVICE (SNS)	2
<hr/>	
II LEGISLATION	3
<hr/>	
III CASE LAW	8
<hr/>	

HEALTH LAW NEWSLETTER

I REFERRAL SYSTEM FOR THE FIRST SPECIALITY CONSULTATION IN THE HOSPITALS OF NATIONAL HEALTH SERVICE (SNS)

The patient's right of choice regarding the healthcare provision, as established under article 2 of the Law no. 15/2014, of 21st March, is a determinant aspect in order to ensure the equity access to the healthcare services.

The principle was considered by the Report prepared by the Technical Group for the Hospital Reform (created in November 2011, through the approval of the Dispatch from the Ministry of Health No. 1060/2011, of 16th August) as structural, in order to place the citizen in the center of the Health National Services.

The extent of the effectiveness of the patient's right of choice is dependent on the measure of the available resources, requiring an adaptation of the healthcare services system's organization.

Within this context, the Dispatch of the Ministry of Health No. 6170-A/2016, of 9th may, was approved, implementing a new system regarding the referral procedure of the patient for the first specialty hospital consultant, in the light of the Free Access and Movement principle.

This system establishes that the patient's referral for the first specialty consultant shall meet firstly his interest, advised by his family's doctor.

Previously, the availability of the hospital units for the schedule of the first specialty consultant was limited and predefined, according to logistic and practical criteria, such as the location of the hospital. Primarily, the schedule of the specialty consultant was made automatically, and the patient could not choose a different hospital unit from the one generated by the system.

In this sense, the measure described has changed the paradigm established by the date of its effectiveness, through the implementation of a system organized around the citizen, around his needs and expectations, which values his opinion in the distribution process and schedule of the specialty consultation.

In the first appointment with the family doctor, it is intended that the patient is assisted by the health professionals regarding the decision about the hospital, according to a number of factors.

Among the factors to be considered by the family doctor, in the advice of his patient, shall be:

- the geographical proximity of the available hospitals with that specialty service;
- information about the average response times in each specialty, the different existing hospitals.

Unlike in the past, now the patient can choose a specialty consultant in a hospital that has a shorter waiting time, regardless of its geographical location.

In this way, the principle of Free Choice and Movement of the patients is guaranteed, allowing the patient to choose the specialty consultant of any hospital of the Portuguese territory.

II NATIONAL LEGISLATION

Law No. 3/2016. D.R. No. 41/2016, Serie I of 2016-02-29

Revokes Law no. 134/2015, 7th September, regarding the payment of user fees on voluntary interruption of pregnancy, and Law no. 136/2015, 7th September (which established the first amendment to Law No. 16/2007, 17th April, on the exclusion of unlawfulness in cases of voluntary interruption of pregnancy)

Law No. 4/2016. D.R. No. 41/2016, Serie I of 2016-02-29

National Plan for the Prevention and Control of Diseases Transmitted by Vectors.

Decree-Law No. 6/2016. D.R. No. 36/2016, Serie I of 2016-02-22

Establishes the legal regime on combined health warnings for products of rolling tobacco sold in bags, implementing Executive Decision (EU) 2015/1735 of the Commission, of 24th of September of 2015, and Executive Decision (EU) 2015/1842 of the Commission, of 9th of October of 2015.

Regional Legislative Decree No. 7/2016/A. D.R. No. 69, Serie I of 2016-04-08

Legislative Assembly of Azores Autonomous Region

Establishes the regime that frames the financial responsibility of the Autonomous Region of Azores in the healthcare provision to the users of National Health Service (SNS) and of the Regional Health Services, implementing in this field a reciprocity principle.

Regional Legislative Decree-Law No. 22/2016/M. D.R. No. 98/2016, Serie I of 2016-05-20

Legislative Assembly of Madeira Autonomous Region

First Amendment to Regional Legislative Decree No. 11/2016/M, of 9th March, which determines the structure of the organization for the primary healthcare services of Madeira Autonomous Region.

Parliament Resolution No. 28/2016. D.R. No. 29/2016, Serie I of 2016-02-11

Recommends the Government to identify the consequences of the budget cuts on the National Healthcare System.

Parliament Resolution No. 29/2016. D.R. No. 29/2016, Serie I of 2016-02-11

Assessment of the National Healthcare System (SNS), regarding the services that require an urgent intervention, given the existence of serious flaws or potential disruption situation.

Resolution of the Council of Ministers No. 20/2016. D.R. No. 70, Serie I of 2016-04-11

Creates a working group for the study and proposal of measures for the promotion of clinical and translation research, and biomedical innovation in Portugal.

Order No. 22/2016. D.R. No. 28/2016, Serie I of 2016-02-10

First amendment to Ordinance no. 248/2013, 5th of August, that approves the Regulation of Mandatory Notification of Transmissible Diseases and Other Public Health Risks.

Order No. 35/2016. D.R. No. 42, Serie I of 2016-03-01

Establishes the State's co-payment system regarding the maximum price of the chemical reagents (test-strips) for the determination of glucose, ketonemia and needles, syringes, lancets and other medical devices for the purpose of self-monitoring of persons with diabetes, as well as the beneficiary users of National Health Services (SNS).

Order No. 48/2016. D.R. No. 57, Serie I of 2016-03-22

Establishes that the medicines for the treatment of patients with rheumatoid arthritis, ankylosing spondylitis, psoriatic arthritis, polyarticular juvenile idiopathic arthritis and plaque psoriasis, are subject to an exceptional system of reimbursement.

Order No. 83/2016. D.R. No. 71, Serie I of 2016-04-12

Fourth amendment to Ordinance No. 142-B / 2012 of 15th May, which defines the conditions under which the National Health Service (SNS) ensure the burden of the costs related with the non-emergency transport of patients.

Order no. 103/2016. D.R. No. 79, Serie I of 2016-04-22

Creates the professional area and approves the specialization programme of Intensive Care Medicine.

Order No. 121/2016. D.R. 86, Serie I of 2016-05-04

Revokes Order No. 112/2014, of 23th May, which regulates the provision of primary healthcare work through the Groups of Health Centers (ACES).

Order No. 135/2016. D.R. No. 92, Serie I of 2016-05-12

Establishes the technical rules for the filling mechanism of the electronic cigarettes and recharges.

Order No. 146/-B/2016. D.R. No. 92, 1st Supplement, Serie I of 2016-05-12

Updates the Annex to Order No. 158/2014, of 13st February, published in D.R., 2nd Serie, No. 37, which foresees the special regime for the State's co-payment system of medicines prescribed for the treatment of Hepatitis C disease.

Order No. 138/2016. D.R. No. 93, Serie I of 2016-05-13

Second amendment to Order No. 224/2015, of 27th July, which establishes the legal regime applicable to rules of prescription and dispensing of medicines and health products, as well as the reporting obligations to disclose to the patients.

Dispatch No. 115/2016. D.R. No. 3/2016, Serie II of 2016-01-06

Determines the amount available to support programs in the area of HIV/AIDS infection for 2016.

Dispatch No. 725/2016. D.R. No. 10/2016, Serie II of 2016-01-15

Establishes the compensation value of the medical act practiced within the Incapacity Verification System (SVI).

Dispatch No. 987/2016. D.R. No. 13/2016, Serie II of 2016-01-20

Establishes rules on the publicity of complete and updated information, regarding the compliance of the maximum time of guaranteed response (TMGR), including the response time for emergency services in hospitals within the National Healthcare System (SNS) scope.

Dispatch No. 1571-B/2016. D.R. No. 21/2016, 1st Supplement, Serie II of 2016-02-01

Establishes the obligation to centralize the purchase of goods and services related to the health area, for all services and institutions of the National Healthcare System (SNS) and agencies and departments of the Ministry of Health.

Dispatch No. 2830/2016. D.R. No. 38/2016, Serie II of 2016-02-24

Establishes the dispositions regarding the Shared Services of the Ministry of Health, E. P. E., concerning the public supply contracts (CPA), that determine the supply conditions for Antiseptics, Disinfectants and others.

Dispatch No. 2935-B/2016. D.R. No. 39/2016, 1º Supplement, Serie II of 2016-02-25

Establishes the dispositions for the implementation of the unmaterialized electronic receipt (Paperless Receipt), in the National Healthcare System, creating concrete goals for its effectiveness.

Dispatch No. 2979/2016. D.R. No. 40/2016, Serie II of 2016-02-26

Amends the composition of the National Committee on Trauma.

Dispatch No. 3177-A/2016. D.R. No. 42, 1st Supplement, Serie II of 2016-03-01

Creates, under the supervision of the State Secretary of Health, the Reform Commission for the Assistance Model in the Disease State Servers (ADSE).

Dispatch No. 3206/2016. D.R. No. 43, Serie II of 2016-03-02

Establishes the set of rules applicable to the referral procedure for people with reactive tests, people affected with Hepatitis B and C or people infected with any type of sexually transmitted disease, under the National Health Service (SNS) or authorized entities for the provision of healthcare benefits.

Dispatch No. 3207/2016. D.R. No. 43, Serie II of 2016-03-02

Appoints the experts from the Portuguese Pharmacopeia Commission.

Dispatch No. 3586/2016. D.R. No. 49, Serie II of 2016-03-10

Establishes the set of rules applicable to the hiring process for healthcare professionals by the National Health Service's institutions of the public sector service (SNS/SPE), under the provision of a services agreement's scheme.

Dispatch No. 4771-A/2016. D.R. No. 68, 1st Supplement Serie II of 2016-04-07

Establishes a set of rules applicable for the implementation of population surveys for the breast cancer, cervical cancer, colon and rectum cancer and diabetic retinopathy.

Dispatch No. 4835-A/2016. D.R. No. 69, 1st Supplement, Serie II of 2016-04-08

CUATRECASAS. GONÇALVES PEREIRA

Establishes that the hospitals integrated under the National Health Service (SNS), regardless of their legal nature, must give priority to the attendance of the users who are referenced through the Primary Health Center or the Service Center of the National Health Service.

Dispatch No. 5058-D/2016. D.R. No. 72, 2nd Supplement, Serie II of 2016-04-13

Establishes provisions on the integrated transport of critically ill patients.

Dispatch No. 5344-A/2016. D.R. No. 76, 1st Supplement, Serie II de 2016-04-19

Establishes the set of necessary measures and procedures in order to admit the presence of the father on the operating room, or any other significant person, to watch the birth of a child through caesarean.

Dispatch No 5767-B/2016. D.R. No. 82, 2nd Supplement, Serie II of 2016-04-28

Identifies the needy health services and establishments, in the professional and hospital areas for the public health, for the recruitment of doctors who completed the specialized medical training in the second season of 2015.

Dispatch No 5868-B/2016. D.R. No. 84, 1st Supplement, Serie II of 2016-05-02

Implements under the National Programme for the Health Vision (PNSV), the population-child survey (RSVI) and the opportunistic survey for the macular degeneration of the age (DMI), in the primary healthcare provisions, in a phased manner experience.

Dispatch No.6170-A/2016. D.R. No. 89, 1st Supplement, Serie II of 2016-05-09

Establishes that the Center Administration of the Health System (ACSS), in coordination with the Shared Services of the Ministry of Health (SPMS), ensure that the support system of information allows the referral to the first specialty consultant at all one of the hospitals in the National Health Service (SNS) where there is the specialty concerned.

Dispatch No. 6300/2016. D.R. No. 92, Serie II of 2016-05-12

Establishes that the Regional Health Administrations shall ensure, by the end of the year of 2017, in all the Groups of Health Centers (ACES), the existence of intensive supporting consultants for the tobacco cessation and the access to the spirometry and rehabilitation respiratory treatments.

Dispatch No. 6301/2016. D.R. No. 92, Serie II of 2016-05-12

Amends number 3 of the Dispatch (extract) No. 7216/2015, published at D.R. No. 126, 2nd Serie, of 1st of July, which establishes a set of rules applicable on the integration of the Research Services, the Clinical Epidemiology and the Public Health Hospital in the hospitals, hospital centers and local health units.

Dispatch No. 6401/2016. D.R. No. 94, Serie II of 2016-05-16

Establishes the development, under the National Health Plan, of the primary health programmes in the following areas: Prevention and Tobacco Control, Healthy Eating Promotion, Promotion of Physical Activity, Diabetes, Diseases Brain Cardiovascular, Cancer Diseases, Respiratory Diseases, Hepatitis viral Infection HIV/AIDS and Tuberculosis, Prevention and Control Infections and Antimicrobial Resistance and Mental Health.

Dispatch No. 6468/2016. D.R. No. 95, Serie II of 2016-05-17

Determines that hospitals integrated in the National Health Service (SNS) shall ensure internal marking specialty consultation, or reference to another institution the patient whose needs for consultation is identified within the Hospital Healthcare Services.

Dispatch No. 6499-A/2016. D.R. No. 95/2016, 1st Supplement, Serie II of 2016-05-17

Determines that the opinions, studies, reports and other similar nature work must be performed by professionals bound to the organs and services of the Ministry of Health, except when clearly there are no resources (human or technical) available for that purpose.

Resolution No. 661/2016. D.R. No. 72, Serie II of 2016-04-13

INFARMED – National Authority for the Medicines and Health Products

Establishes the Medicines List whose exportation and distribution to other Member States of the European Union depends of a prior notification to INFARMED.

III NATIONAL CASE LAW

Decision by the administrative central court of Oporto, January 1, 2016

The above mentioned judgment was delivered in an appeal of the sentence of Administrative and Fiscal Court of Oporto, where the court sentenced Hospital de São João to pay compensation for personal injury to family members of patient Filomena.

Filomena had been admitted in the urgency of Hospital de São João, 32 weeks pregnant, on July 4, 2001. Because of an alleged medical error, Filomena fell into a coma with no possibility of recover, and finally died eight years later, in 2009.

Hospital de São João sustained its defense on the fact that the assumptions of contractual liability have not been sufficiently proven, namely the unlawfulness and guilty in the alleged medical error.

However, the Administrative Central Court of Oporto did not consider such argument, based on the fact that, in the field of liability for medical act, the unlawfulness consists also in the violation of *legis artis*, i.e., the set of rules and principles of good medical practice which must be observed by the medical science, in a given period of history.

Regarding the assessment of the guilt assumption, the court ruled that it shall be appreciated taking into account the diligence of a *bonus pater familias* (a good family father), which in this area shall correspond to a “*medical doctor usually prudent, diligent, clever, careful, with knowledge and physically, intellectually and emotionally prepared for the functions of his profession*”.

Thus, in the case of a liability for medical act, such assessment consists in the “*deviation of the doctor’s action, by comparison with a model of competence, prudence and attention, that he could and should have followed, but did not.*”

Regarding the appreciation of this type of deviation, the court classified it under three forms: (i) the total omission by the doctor of healthcare provision; (ii) the adoption of any type of action that may be deemed as risky or not reasonable or; the absence of technical knowledge and capacity, as well as practical skills, required for the practice of medicine.

In this case, the anesthesia was not induced in the appropriate place, given that the tube was found in the esophageal (and not endotracheal) position. Because this erroneous situation was only reverted too late, the court considered for the violation of the *legis artis*.

CUATRECASAS, GONÇALVES PEREIRA

CONTACT

CUATRECASAS, GONÇALVES PEREIRA & ASSOCIADOS, RL
Sociedade de Advogados de Responsabilidade Limitada

LISBOA

Praça Marquês de Pombal, 2 (e 1-8º) | 1250-160 Lisboa | Portugal
Tel. (351) 21 355 3800 | Fax (351) 21 353 2362
cuatrecasasportugal@cuatrecasas.com | www.cuatrecasas.com

PORTO

Avenida da Boavista, 3265 - 5.1 | 4100-137 Porto | Portugal
Tel. (351) 22 616 6920 | Fax (351) 22 616 6949
cuatrecasasporto@cuatrecasas.com | www.cuatrecasas.com

This Newsletter was prepared by Cuatrecasas, Gonçalves Pereira & Associados, RL for information purposes only and should not be understood as a form of advertising. The information provided and the opinions expressed herein are of a general nature and should not, under any circumstances, be a replacement for adequate legal advice for the resolution of specific cases. Therefore, Cuatrecasas, Gonçalves Pereira & Associados, RL is not liable for any possible damages caused by its use. Access to the information provided in this Newsletter does not imply the formation of a lawyer-client relationship or of any other sort of legal relationship. This Newsletter is published free of charge and may not be copied or distributed without formal prior consent. If you do not wish to continue receiving this Newsletter, please send an e-mail to cuatrecasasportugal@cuatrecasas.com.
