

**PROTECTION OF PATIENT RIGHTS  
BY THE PATIENT RIGHTS OMBUDSMAN**

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ABSTRACT

The Patient Rights Ombudsman has become another body for the investigation of patients' claims. For independence from the State bodies, the Ombudsman should be a single, term-limited body appointed and dismissed by the Sejm. He can pass the case to the public prosecutor's office, appoint experts and request for expertise.

To sum up, the Ombudsman is one of the mechanisms to ensure respect for patient rights. However, the act on PR does not limit the scope of the constitutional powers of ombudsmen, who may also take action in the area of health protection. The ombudsman can ask them to take action within their competence. The analysis of the reports of the Office of the Patient Rights Ombudsman and the views of the representatives of the doctrine of patient rights, allows to draw some conclusions concerning the violations of the rights of patients. A particularly widespread phenomenon was violation of the right to consent to the provision of health benefits, as well as restricting access to health services. Medical personnel do not respect the rights of the patient to the respect for their intimacy and dignity, and the right to information. Patients are not aware of the process and way of treatment and do not know the refund policy. Most cases of violations in Poland was due to ignorance of the applicable laws. Patients' claims relating to their rights will improve the quality of provided health benefits and determine the

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position of the patient as an equal participant in the health system. Patients have unparalleled access to medical knowledge via modern means of communication, they have never had such possibilities for controlling the regularity of medical actions. The effect of these changes is an increase in the number of claims against the medical staff the entities providing medical services. To sum up, the execution of patient rights requires continuous education among medical personnel, which should be carried out on the initiative of the heads of the entities and professional authorities. We should also improve awareness of patients by conducting national information and communication actions.

**Key words :** Ombudsman, patient, law, rights, activity

## INTRODUCTION

The Patient Rights Ombudsman is a central government body, who monitors the situation of patients in the health system, representing patients before public authorities, as well as common to Government and local governments in matters relating to the solutions improving protection and execution of patient rights.

## ROLE AND DUTIES OF THE PATIENT RIGHTS OMBUDSMAN

In the beginning, it should be noted that for many years in some of the legal systems of there is a special ombudsman for patients, for example in Sweden and France. While in Great Britain the authority entitled to supervise the observance of patients rights is the Ombudsman for Public Services. The most important task of the Ombudsman for Public services is the handling of complaints relating to e.g. social benefits, tax matters and medical personnel providing health benefits under the health insurance system (NHS)<sup>1</sup>.

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<sup>1</sup> <http://www.ombudsman.org.uk/make-a-complaint/information-for-mps>, seen on 31.01.2016.

The Patient Rights Ombudsman was appointed under the Act of November 6, 2008 on patient rights and the Patient Rights Ombudsman. It is the central body of the Government. The basic duty of the Ombudsman is most of all the protection of the statutory rights of the patient. The Ombudsman shall be appointed by the President of the Council of Ministers by way of an open and competitive recruitment<sup>2</sup>. The same authority may also appeal against the Ombudsman. The Ombudsman deals with matters relating to respect for patient rights defined in the Constitution of the Republic of Poland, the Act on patient rights and other normative acts relating to the responsibilities of medical professionals related to the observance of patient rights. The duties are performed with the assistance of the Office of the Patient Rights Ombudsman, and no more than two deputies. The Ombudsman is committed to developing mechanisms ensuring respecting patient rights to the highest level. He makes sure that: medicinal entities, medical personnel, public authority responsible for the protection of health, the NHF, and others involved in the provision of health services do not violate patient rights.

The Patient Rights Ombudsman adjudicates on individual cases of patients concerning violations of their rights<sup>3</sup>. These cases are brought to the Office directly by patients or through a free, nationwide hotline or correspondence. Article 48 of the act of November 6, 2008 on patient rights the Patient Rights Ombudsman states that the Patient Rights Ombudsman has a duty to cooperate with the Civil Rights Ombudsman and the Ombudsman for Children. In the opinion of K. Skotnicki this provision is too general and the relationship is not specified in a sufficiently precise way<sup>4</sup>. The following is a comparison of the qualifying requirements and the way of the appointment of individual Ombudsmen in the light of:

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<sup>2</sup> Art. 44 par. 1 of the act of November 6, 2008 on patient rights and the Patient Rights Ombudsman [u.t. Law Journal of 2016, item 186 with amendments]

<sup>3</sup> M. Paszkowska, *Rzecznik Praw Pacjenta jako nowa instytucja systemu ochrony zdrowia*, „Przegląd Medyczny Uniwersytetu Rzeszowskiego i Narodowego Instytutu Leków w Warszawie”, 2010, 4 pp. 473-476.

<sup>4</sup> K. Skotnicki, *Ocena konstytucyjno-prawna rozdziałów IX-XI poselskiego projektu ustawy o ochronie indywidualnych i zbiorowych praw pacjenta oraz o Rzeczniku Praw Pacjenta*, Biuro Analiz Sejmowych, seria : „Przed pierwszym czytaniem”, Warsaw, 2008, p.19.

1. The Act of July 15, 1987 on the Ombudsman (u.t. Law Journal of 2014, item 1648) with amendmends.
2. The Act of January 6, 2000 on the Ombudsman for Children (u.t. Law Journal of 2015, item 2086),
3. The Act of November 6, 2008 on patient rights and the Patient Rights Ombudsman (u.t. Law Journal of 2016, item 186 with amendments, hereinafter called as the act on patient rights).

Qualifying requirements and way of appointment	Patient Rights Ombudsman	Civil Rights Ombudsman	Ombudsman for Children
Education	at least higher education and the professional title of master or another equivalent, knowledge guarantying the proper performance of the functions of the Ombudsman.	at least higher education and the professional title of master or another equivalent, legal knowledge	at least higher education and the professional title of master or another equivalent
Nationality	Polish	Polish	Polish
Experience	Experience guarantying the proper performance of the functions of the Ombudsman.	Occupational experience	At least five years' experience of working with children or on their behalf
Characteristics	The high authority for the sake of moral values and social sensitivity	The high authority for the sake of moral values and social sensitivity	The high authority for the sake of moral values and social sensitivity
Appointment	Appointed by the President of the Council of Ministers from among the people chosen in an open and competitive recruitment	Appointed by the Sejm with the consent of the Senate, at the request of the Marshal of the Sejm or a group of 35 members	Appointed by the Sejm, with the consent of the Senate, at the request of the Marshal of the Sejm, the Marshal of the Senate, a group of at least 35 members or at least 15 senators
Term	Without time limit	5 years	5 years

Tab. 1. the qualifying requirements and the way of the appointment of Ombudsmen

The Patient Rights Ombudsman, unlike the Civil Rights Ombudsman or the Ombudsman for children that are appointed by the Sejm, is appointed by the President of the Council of Ministers by means of an open and competitive recruitment. He also does not have the constitutional position or constitutional authority, compared to the aforesaid ombudsmen. This weakens the position of the Patient Rights Ombudsman and does not favour his independence. Formal requirements for the candidate to the position of the Patient Rights Ombudsman are too vague and easy to meet, they do not differ from the criteria for selecting the other Ombudsmen. Requirements with regard to education, criminal record, the knowledge and experience are standard. In the opinion of D. Karkowska, they do not include: “at least the condition of knowledge on human rights and freedoms, in particular, patient rights”<sup>5</sup>.

Range of activities of the Patient Rights Ombudsman can be divided into four main functions:

1. control:
  - a. conducting proceedings in matters of practices breaching the collective rights of patients
  - b. conducting investigations, if there is a message that makes the breach of patient rights at least probable
  - c. in civil cases, by the rights the prosecutor has ex officio or at the request of a party, request for the initiation of proceedings or taking part in the proceedings.
1. creation:
  - a. the development and submission to the Council of Ministers of draft legislation relating to the protection of patient rights
  - b. application to the competent authorities for the legislative initiative or the issue or amendment of legal acts in the field of the protection of patient rights.
3. prevention:
  - a. the development and production of publications and educational programs popularizing the knowledge on the protection of patient rights

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<sup>5</sup> D. Karkowska, *Ustawa o prawach pacjenta i rzeczniku praw pacjenta: Komentarz*, Wolters Kluwer Business, Warsaw 2012, p. 168.

- b. cooperation with public authorities in order to ensure compliance with patient rights, in particular with the Minister responsible for Health Affairs
  - c. present evaluations and proposals to ensure the effective protection of patient rights to the competent public authorities, organizations and institutions, and the medical profession authorities
4. diagnostics:
- a. cooperation with non-governmental organizations and unions, whose statutory objectives shall include the protection of patient rights
  - b. the analysis of the complaints of patients in order to determine the risks and areas of health system requiring repair,
  - c. performance of other tasks defined by law or ordered by the President of the Council of Ministers<sup>6</sup>

On the basis of the legislation in force, it can be concluded that the Ombudsmen in the Polish legal system have many similar duties. The Civil Rights Ombudsman shall take the steps provided for in the Act, when it comes to the message indicating the violation of freedoms and rights of human and citizen. In the case of minor patients the proceedings may also be initiated by the Ombudsman for Children. It should be noted that the Act on PR does not limit the range of competences of any of the two Ombudsmen in the sphere of health protection. The Patient Rights Ombudsman may participate in the civilian proceedings. However, he must not ask for the initiation of the administrative procedure, lodge complaints to the Administrative Court or participate in these proceedings – based on rights of the Prosecutor, as well as apply for punishment, the waiver of a final decision in the proceedings in cases of misconduct or require the initiation of the pre-trial investigation in cases of criminal offences prosecuted ex officio by a prosecutor.

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<sup>6</sup> Art. 44 par. 1, art. 47, art. 50, art. 51, art. 53 par.5 of the act of November 6, 2008 on patient rights and the Patient Rights Ombudsman (u.t. Law Journal of 2016 item 186 with amendments).

## THE ACTIVITY OF THE PATIENT RIGHTS OMBUDSMAN

The Patient Rights Ombudsman shall examine whether there has been violation of the law due to an act or omission of medicinal entities. He performs his duties with the assistance of a maximum of two deputies. The initiation of an investigation can take place either on request or on the Ombudsman's own initiative. The application can be submitted by patients, their legal representatives and other subjects. It is free of charge, it also does not require any specific form. The application is not a formal letter, it can be submitted orally or electronically. The Act on PR does not require signing the application. According to art. 50 paragraph 1 of the Act on PR, the application must include:

- details of the applicant
- details of the patient whose rights are involved in the case
- indication which of the patient's right has been violated
- a brief description of the facts<sup>7</sup>.

The application is free of charge. It should include the arguments leading to the probability of the evidence that there was a violation of the rights of the patient. It shall include the claims and indicate the circumstances justifying the belief in the veracity of the information of the party. The Patient Rights Ombudsman may not in fact initiate the investigation in the case of receipt of anonymous information, or the information, which does not suggest that it could be a violation of patient rights<sup>8</sup>.

In accordance with article 51 of the Act on PR after examining the application the Ombudsman:

- takes the case, if it is in his competence
- only indicates legal remedies that he or a patient is entitled to
- refers the matter according to jurisdiction, or does not take the case
- asks the competent authorities for the examination of the case or its part, in particular the supervisory authorities, the public prosecutor's

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<sup>7</sup> Art. 50 of the act of November 6, 2008 on patient rights and the Patient Rights Ombudsman (u.t. Law Journal, of 2016, item 186 with amendments).

<sup>8</sup> A. Augustynowicz, A. Budziszewska-Makulska, *Ustawa o prawach pacjenta i Rzeczniku Praw pacjenta. Komentarz*, Wydawnictwo CeDeWu, Warsaw 2010, p. 211.

Office, State control, professional or social control, in accordance with their competence.

The Ombudsman has a duty to inform the applicant and the patient about the way of the proceedings. If he decides to conduct the proceedings independently, he may examine, even without prior notice, any case on the spot, request to be heard, request the presentation of documents of each case conducted by the Supreme and Central State administration organs, Government administration authorities, non-governmental organizations organs, social and professional organs and organizational units with legal personality, as well as the bodies of local government entities, local government organizational entities and local governments of medical professions. In addition, he may request the submission of information on the state of the case conducted by the courts, and the public prosecutor's Office and other law enforcement authorities; or request the inspection of the records of court and prosecutor and other law enforcement bodies, after the end of the proceedings and giving the decision; he may also commission to prepare reports and opinions. When patient rights have been violated, the Ombudsman directs of the instance containing the opinions and proposals of handling the case to the competent authority, or may request the initiation of disciplinary proceedings or sanctions. When the Ombudsman does not share the opinion of the authorities to which it was addressed, he may apply to the competent supreme authority with the application for taking the measures provided for by law<sup>9</sup>.

The Ombudsman also participates in the proceedings in the cases of practice breaching the collective rights of patients. The legislature provides that, within a term of practice breaching patients' rights it is the result of violation of patient rights that is important, not their threat<sup>10</sup>. These practices include: organized illegal acts or omissions of entities providing health care services and protest action or strike organized against provisions for resolving disputes by the organizer of the strike, aimed at depriving patients of rights or the restriction of these rights, especially in order to achieve the benefits of the assets. To talk about the practice of violation

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<sup>9</sup> A. Augustynowicz, *Ustawa o prawach pacjenta i Rzeczniku Praw pacjenta – próba oceny*, „Prawo i Medycyna”, 2009/ 4, pp. 42-45.

<sup>10</sup> A. Augustynowicz, *Ustawa o prawach pacjenta i Rzeczniku Praw pacjenta – próba oceny*, „Prawo i Medycyna”, 2009/ 4, pp. 42-45.



of patient rights, one shall focus on the repetition of certain behaviors that infringe the collective interests of patients<sup>11</sup>. The doctrine of the Polish medical law rightly points out that this concept refers to the terminology of the known commerce law and competition protection law, i.e. the collective rights of consumers<sup>12</sup>. In order to assess whether we deal with the practice referred to in article 59 pt. 1 of the act on patient rights, one shall consider the complete fulfillment of four conditions:

1. having the character of illegality in organizing the act or omission (conflict of law in general);
2. an act or omission of the entity providing the health benefits that are to be organized;
3. violation of the collective patient rights (conflict with norms providing for patient rights
4. goal: to deprive or limit the rights of patients, especially, with the view of achieving the benefits<sup>13</sup>.

Examples of practices which infringe the collective interests of patients include:

- charging for issuing of certificates and medical decisions
- practices involving patients of a hospital in cleaning activities
- restrictions on patient rights to a personal contact, by telephone or correspondence with other people in a hospital.

The Ombudsman initiates the proceedings on his own initiative or at the request of anyone who asks for a decision on the practice that violates the collective rights of patients or to which the proceedings on the application of this practice were initiated.

Proceedings before the Ombudsman can be divided into three phases:

- analysis of an application
- case
- decision.

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<sup>11</sup> Ibidem.

<sup>12</sup> E. Bagińska [w:] *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta, Komentarz* M. Nesterowicz (ed.), Warszawa 2009, p. 280, cyt. za U. Drozdowska, M. Śliwka, *Analiza statusu Prawnego Rzecznika Praw Pacjenta, Zeszyty Prawnicze Biura Analiz Sejmowych*, Warszawa 2015, No 3, p. 27.

<sup>13</sup> M. Śliwka, *Prawa pacjenta w prawie polskim na tle prawnoporównawczym*, Wydawnictwo TNO i K, Toruń 2010, pp. 65-68.

One cannot initiate proceedings on application of the practices infringing the collective rights of patients, if the end of the year in which their use has been discontinued, ended an annual period. In proceedings, the Ombudsman has the right to demand documents and any information about the circumstances of the application of practices for which there is a reasonable suspicion of violation of collective rights of patients. Such a request should include:

- an indication of the scope of information
- an indication of the purpose of the request
- an indication of the deadline for giving information,
- the letter of the sanctions for failure to provide information or for providing false or misleading information. In addition, everyone has the right to submit in writing - on his own initiative or at the request of the MPC – clarification relating to the relevant circumstances of the case concerning violation of patient rights.

Collective practices that threaten patient rights are recognized on the basis of the Ombudsman's decision. The decision instructs to stop them or indicates the action necessary to remove the effects of the violation of the collective rights of patients, setting deadlines for taking these actions. The decision has the rigor of immediate enforceability. The Ombudsman may also, in addition, impose on the medical entity or strike organizer an obligation to submit, within the indicated period, the information on the extent of implementation of the measures necessary to stop the practice that violates the collective rights of patients or remove the effects of the breach. The Ombudsman's decision has an immediate feasibility, and includes the dates to take these actions. In the case of inaction within a prescribed period, he imposes, the penalty to the amount of PLN 500 000 on the entity providing the health benefits or strike organizer<sup>14</sup>. When the existence of a practice that violates the collective rights of the patient is not confirmed, the Ombudsman discontinues the proceedings. The Ombudsman's decisions are final, however, a medical entity may appeal by lodging a complaint to the Administrative Court, which the Court considers immediately. In 2014, the Ombudsman conducted 26 investigations on matters

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<sup>14</sup> M. Grego-Hoffman, *Odpowiedzialność podmiotów leczniczych i personelu medycznego*, Wrocław 2013, pp. 270-282.

affecting the practice of collective rights of patients. As a result of these investigations, the Ombudsman has issued 2 decisions of recognition of practices infringing the collective rights of the patient. The first case concerned restricting the rights of patients to have access to the original version of the medical records. The second case concerned the violation of patient right to respect for their privacy and dignity, by placing in the doctor's office cameras enabling and recording the reception of image and sound.

In 2014 the Ombudsman received 65,339 reports concerning violations of patient rights. There were recorded 37,868 phone calls via nationwide free hotline and 420 personal visits to the Office of the interested parties. The total number of applications addressed to the Office of the Ombudsman remains on a similar level in recent years. In 2014, there was 896 investigations either on the Ombudsman's own initiative, or at the request of the patients. The Ombudsman stated violation of patient rights in 309 proceedings<sup>15</sup>.

Most cases concern the violation of the right of access to health benefits. The main problem raised by the patients was too long a period to wait for service, including obtaining a prescription for a medication or order for orthopedic equipment. There were also many complaints in cases of problems with registering by telephone, as well as getting referrals for specialized examination<sup>16</sup>. There were also objections to the waiting queue, refusal to provide in an emergency mode, charging with the costs of benefits in the absence of insurance document, refusal to change family doctor, refusal to provide the service due to no proof of health insurance, as well as not respecting the statutory possibility of obliging the patient to provide evidence of the right to health benefits within 7 days in the case of ambulatory services and within 30 days in the case of hospital services. Patients were also sent to the GP for a referral for diagnostic tests, or a certificate of temporary incapacity to work, as well as a certificate of health state<sup>17</sup>.

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<sup>15</sup> Sprawozdanie Biura Rzecznika Praw Pacjenta [http://www.bpp.gov.pl/gfx/bpp/userfiles/\\_public/bip/sprawozdania\\_roczne/sprawozdanie\\_2014\\_r.pdf](http://www.bpp.gov.pl/gfx/bpp/userfiles/_public/bip/sprawozdania_roczne/sprawozdanie_2014_r.pdf), seen on 31.01.2016.

<sup>16</sup> R. Golański, L. Krysiak, *Pacjent przede wszystkim*, „Gazeta Lekarska”, 2011, 9 pp. 12-13.

<sup>17</sup> Sprawozdanie Biura Rzecznika Praw Pacjenta, [https://www.bpp.gov.pl/gfx/bpp/userfiles/\\_public/bip/sprawozdania\\_roczne/sprawozdanie2011.pdf](https://www.bpp.gov.pl/gfx/bpp/userfiles/_public/bip/sprawozdania_roczne/sprawozdanie2011.pdf), seen on 31.01.2016.

Very often patients do not receive from their doctor the information about their health state, which is why they are not aware of the process and treatment, proposed diagnostic and therapeutic methods, as well as the prognosis. Doctors also do not inform about the expected effects of the application of certain medical procedures and side effects of the medicines they take. In medical entities, patients often do not know what drugs they are given, what they are for and what is their effectiveness. Some patients may find out the disease name only after they leave the hospital. When the doctor discusses with the patient, it is often done in a hurry in a grumpy and incomprehensible for the patient way. This right especially relates to the right of the patient to consent to provide health benefits. In the event of a breach of the right to consent to the provision of health benefits, patients pointed out not giving by their doctor the correct information about the planned surgery, which resulted in the deterioration of the health status after its completion, as well as the unexplained admission to a psychiatric hospital without the consent of the patient<sup>18</sup>.

Among the complaints regarding violations of the right to the dignity of the patient there were cases of jerking and disrespectful approach to patients by medical personnel, the use of excessive physical force against them. In addition, the violation of patients' rights to respect for intimacy and dignity of patients was also pointed out on the denial of the presence of a close relative when providing health services. There were common cases of a physician doing other things like discussing cases totally not related to the patient with other employees, or receiving private phone calls during the examination of the patient. According to the authors of the article, these situations are unacceptable during the provision of health services to a patient. A doctor should take care of his personal matters in the absence of the patient in the doctor's office. Signals of infringement of the intimacy of patients also included taking their clothes after admission to the hospital and the obligation to stay in pyjamas, entering for toilets and bathrooms without notice or knocking, without any clear indications for health, lack of curtains in sanitary areas and in the rooms of patients. It was very common that the examination room, in which the patient was

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<sup>18</sup> J. Boś, K. Trzpieł, *Prawa pacjenta*, „Magazyn Pielęgniarki i Położnej”, 2011, 10 pp. 22-23.

examined, was entered by bystanders, employees of an establishment or other patients<sup>19</sup>. Patients also pointed out the violation of patients' rights to confidentiality e.g. by disclosure to unauthorized person the results of histopathological examination.

The right to medical records was also often violated. Medical entities often denied patients access to their own medical records. In complaints to the Ombudsman, there was also mentioned illegal charging for documentation<sup>20</sup>, as well as the way of keeping documentation and refusal to correct an error in the medical records. The experience of the Office of the Patient Rights Ombudsman shows that service providers do not retain the obligation to provide documentation in the relevant period.

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<sup>19</sup> Sprawozdanie Biura Rzecznika Praw Pacjenta [https://www.bpp.gov.pl/gfx/bpp/user-files/\\_public/bip/sprawozdania\\_roczne/cjenta\\_na\\_terytoryum\\_rzeczypospolitej\\_polskiej\\_obejmuje\\_okres\\_od\\_dnia\\_1\\_stycznia\\_2013\\_r\\_do\\_dnia\\_31\\_grudnia\\_2013\\_r.1.pdf](https://www.bpp.gov.pl/gfx/bpp/user-files/_public/bip/sprawozdania_roczne/cjenta_na_terytoryum_rzeczypospolitej_polskiej_obejmuje_okres_od_dnia_1_stycznia_2013_r_do_dnia_31_grudnia_2013_r.1.pdf), seen on 31.01.2016.

<sup>20</sup> R. Golański, L. Krysiak, *Pacjent przede wszystkim*, „Gazeta Lekarska”, 2011, 9 pp.12-13.

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