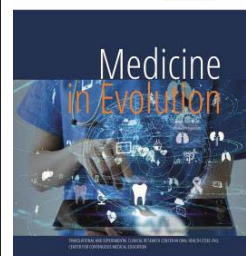


Legal Considerations Regarding the Importance of Complying with the Obligation in Providing Medical Care



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Abstract

The knowledge and compliance of dentist's professional obligations related to the relationship with patients is a theoretical and a practical current topic.

Knowing the consequences that may arise from a legal perspective and the violation of the legislation, determines of a preventive attitude of the dentists. Regarding the dentist's knowledge and information related to their profession, the number of malpractice allegations can considerably decrease. To carry out this study, a questionnaire consisting of 10 closed choice or selection questions had the aim to highlight the degree of dentist's awareness regarding the importance of respecting their professional obligations in the relationship with patients. After completing the questionnaires, the results assess through statistical analysis.

The main conclusion resulting from this study demonstrate that compliance with professional obligations in medical practice in the relationship with patient's needs, first of all, detailed knowledge of the legislation, which requires continuous documentation and participation in professional training courses and conferences dedicated to legislation in the medical domain.

Keywords: obligation, provide medical care, preserve professional confidence, dentist, patient, personal data

INTRODUCTION

Medical care is provided in the public or private health care system and the relationship between the patient and the dentist is based on the dentist's compliance with numerous professional obligations, including the obligation to provide medical care and to keep professional secrecy [1]. The importance of respecting these two professional obligations is evident in the provisions of Law no. 95/2006 regarding health reform [2], of Law no. 46/2003 regarding patient rights [3], but also of the Code of Ethics [4]. The dentist has the obligation to provide medical assistance to a person only if the doctor has previously accepted that person as a patient and the medical assistance to be provided must be part of the specialty or competence of the medical framework for which the doctor has the official recognition [5].

The obligation to provide medical care is an obligation in a strictly professional content, and in this sense, professional competence is one of the main factors in assessing the proper execution or non-execution of this obligation [6].

The dentist who causes harm to the patient as a result of insufficient medical knowledge will be legally responsible. Insufficient medical knowledge can be the expression of the dentist's lack of competence in the field [7]. As for exceeding the limits of professional competence, this is justified only in emergency cases where medical professionals with the needed competence are not available. Such a situation exempts from civil liability the medical personnel who acted beyond their professional competence in an emergency medical situation and who, only in this way, caused damage to the patients.

The obligation to provide medical care involves two limits, one related to the personal level of dentist's competency and knowledge and is represented by the scientific and medical clinical situation. The result of the medical act cannot be guaranteed to the patient [8].

The second obligation imposed by the legislation is the one related to the preservation of professional secrecy. Confidentiality constitutes one of the most important values of the medical act and is the basis of the relationship between doctor and patient. The obligation of confidentiality is a professional obligation for all professional healthcare [9]. This obligation is actually the patient's right to the security of personal life, physical, mental and moral integrity, and guaranteeing discretion during the provision of medical care, also ensuring the confidentiality of medical secret information [10].

According to art. 21, Law no. 46/2003, all information regarding the patient's condition, investigation results, diagnosis, prognosis, treatment, personal data are confidential even after his death. In the same sense, and art. 17 of the Dentist's Code of Ethics, according to which the preservation of professional secrecy is mandatory for the dentist, under the conditions established by law.

Aim and objectives

The aim and objectives of this study is to analyse the level of dentist's awareness from Timiș County regarding the importance of respecting professional obligations in the relationship with patients, in order to prevent the engagement of their legal liability as a result of causing various damages to those who request medical assistance.

MATERIAL AND METHODS

For this study, were designed 10 closed selection questions focused on analysing the opinion of dentists regarding the importance of respecting the obligation to provide medical care and the maintaining of professional secrecy in the relationship with patients. Each of the

10 questions contained three answer options. The questionnaire was addressed to a group of 50 dentists.

Before answering the questions, dentists signed the consent in order to participate in the conducted study. The aim of this study was explained to the dentists and before completing the questionnaire, the dentists were invited to ask any question they considered necessary regarding this study. The questionnaires were distributed to different dental practices rural and urban cities from Timiș County. The questionnaire also included general information regarding the group of dentists: dentists' gender (M/F), age, and the environment origin (Urban/Rural).

The first question analysed the dentist's knowledge regarding those situations in which the legislation allows them to exceed their professional competence when, at the time of the request for medical assistance by the patient, it is not available any competent medical personnel for that specific medical case. This exceptional situation supports the interests of the patients, and dentists must know from a legal perspective the possibilities and limits in which they can practice and provide medical assistance, without endangering the lives of patients.

The second question aimed to analyse the degree of knowledge regarding those situations in medical practice in which the legislation allows them to provide medical assistance without the patient's consent. We also considered the identification of those sources of information for dentists regarding the regulated legislation for expressing informed consent by patients.

The third question analysed one of the most important rights that not only dentists have to respect, but the entire medical staff, the right to decide for themselves about performing or refusing the medical act, the right to enjoy the professional independence. All medical personnel recognize this professional independence, and through this question, it was aimed to analyse to what extent dentists know in detail the normative acts that protect this right during the exercise of the profession.

Fourth question aimed to analyse to what extent dentists currently feel protected by the legislation in their professional relationship with patients. The aim was to analyse whether the dentist's interests are protected by the legislation or whether there are certain gaps and deficiencies noticed by them that make their medical practice difficult in their relationship with patients.

The fifth question is related to one of the most important obligations namely the obligation of professional secrecy and non-disclosure. Given that there is currently extensive national and international legislation that regulates the obligation of all medical staff to protect professional secrecy, it was aimed to analyse to what extent dentists are familiar with this normative and applies them in their profession. This question is related to the many complaints from patients that have existed over time, generally in medical practice, regarding the violation by medical personnel of the obligation of professional secrecy. It is necessary for dentists to know and apply the legislation that requires them to respect the professional secrecy, precisely so that they do not have to answer legally.

The sixth question is assessing if dentist are familiar with the regulated legislation that dentists cannot transmit information related to the health status of patients to their relatives or friends, without the prior consent expressed. The purpose of this question is to evaluate the degree of awareness of dentists regarding the importance of protecting the information by not disclosing it to third parties. Considering that all the information regarding the health status of patients is part of personal data, the dentist has no right to communicate even to relatives or friends aspects related to the patient's private life. Consequently, it was analyse to what extent dentists know the legal provisions regarding this subject.

The seventh question aimed to analyse to what extent dentists had to call on legal specialists to represent their interests and protect them in court against accusations brought by patients because of infringement of the obligation to preserve professional secrecy. This question aimed a statistical evaluation of the cases in Timiș County in which dentists were accused of violating professional secrecy and need to be defended by a lawyer in a trial.

Question number eight is related to the legal consequences to which dentists may be exposed when violating the obligation of professional secrecy. A series of measures can be taken against the medical staff along with the violation of the obligation to professional secrecy disciplinary sanctions, payment of damages to patients or even criminal sanctions. It is consider appropriate to analyse to what extent the dentists know the legal consequences according to Romanian legislation about not being exposed to the accusations that could be brought against them. It was also aimed which is the information source regarding this topic.

Question number nine, analysed the extent to which dentists know the applicable Romanian legislation in the medical field. It aimed to analyse the interest of dentists in deepening the legislation in Romania regarding their main obligations in the relationship with patients. We set out to analyse the interest of dentists in knowing and understanding the legislation in the field, in order to be correctly inform and to be able to perform the medical act safely, both for them and for the patients. The last question aims to assess the importance of knowing the legislation in the medical field already during the faculty, by studying it within a legal discipline. It is important to assess to what extent dentists find this aspect an opportunity, considering that once they start practicing they encounter a series of situations that require them to know the legislation in the field and its application.

RESULTS

The collected data were analyzed according to the background of the dentists.

Question 1: Are you aware that in the case of a medical emergency, is possible to exceed the limits of professional competence when competent medical personnel for treating a patient with a specific medical condition is not available? Four from the rural area and thirteen from the urban area do not know that in the case of emergency medical is possible to exceed the limits of professional competence when there is no available medical staff. Seven dentists from the rural and twentythree from the urban area have information on this subject after participating in scientific events organized on this topic. Only three dentists working in the urban are have documented themselves on this subject through family members, who work in the legal field (Figure 1a).

Question 2: Related to the obligation to provide medical care, are you aware of the fact that in the case of emergency dental interventions, the informed consent of the patient is not necessary, as the doctor can perform the intervention in his absence? One doctor who practices in rural areas knows the possibility established by law that in the case of urgent dental medical interventions the patient's consent is not mandatory. Nine dentists from the rural and twenty three from the urban area documented themselves regarding the existing normative acts in the matter that regulate this exceptional situation. One dentist from the rural and sixteen from the urban area do not have any information on this subject (Figure 1b).

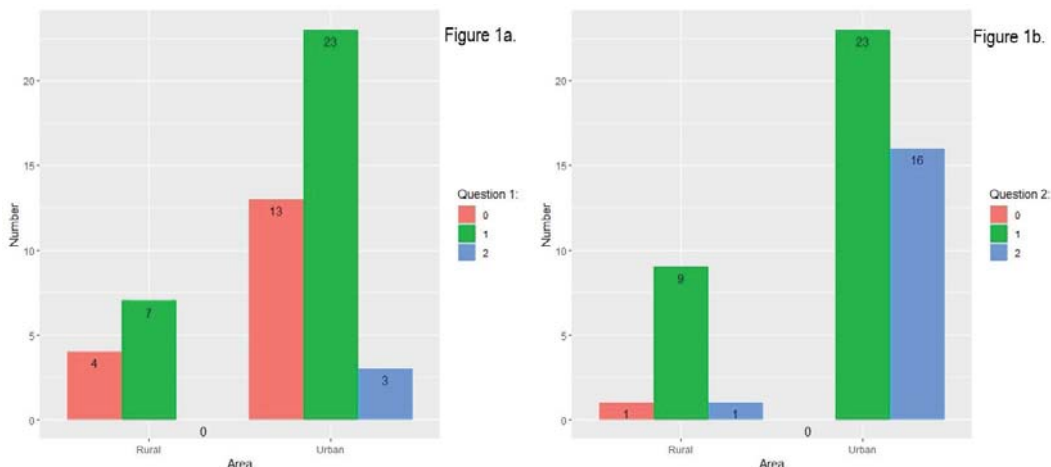


Figure 1. Statistical results for question 1-Figure 1a and for question 1-Figure 1b

Question 3: Regarding the obligation to provide medical care, are you aware that according to Law no. 95/2006 do the dentist and the entire medical staff enjoy professional independence and the right to decide on the medical act? Three from the rural area and fourteen from the urban area know that the professional independence of the medical staff is recognised according to the legal provisions. Six dentists from the rural and nineteen from the urban area know that the professional independence of the medical staff is recognised regarding the provision of the medical act, but they do not have information about the concrete legislation. Two dentists from the rural environment and six from the urban environment did not know that the medical staff enjoys professional independence and the right to decide on the medical act (Figure 2a)

Question 4: Do you currently feel protected by the legislation in the relationship with patients? Six from the rural and fourteen from the urban area believe that the legislation in Romania currently does not offer real protection for the medical staff in the relationship with the patients, being laconic and ambiguous in various aspects. Three dentists from the rural and fifteen from urban area do not know the Romanian legislation in the medical field well enough, to be able to issue a relevant opinion in this regard. Two dentists from the rural and ten from the urban area currently feels protected by the legislation in the field regarding professional relations with patients (Figure 2b).

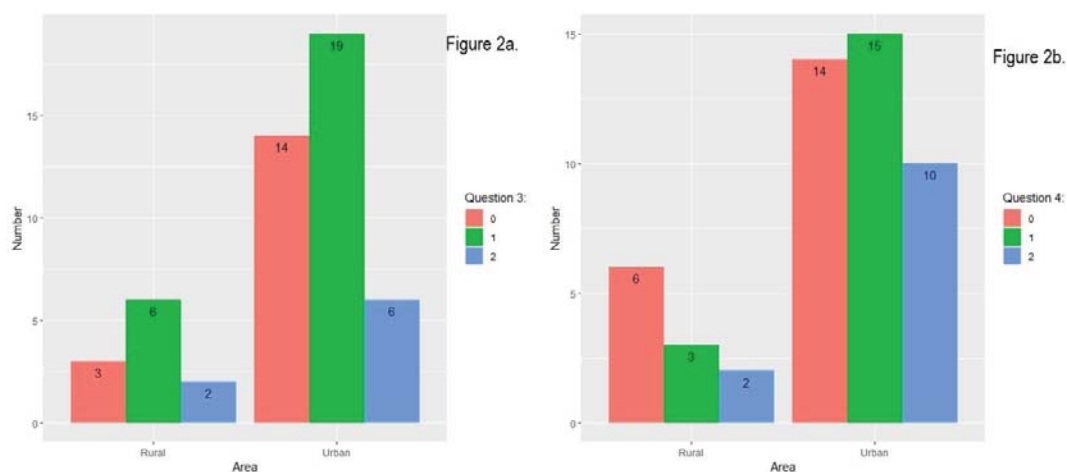


Figure 2. Statistical results for question 3-Figure 2a and for question 4-Figure 2b

Question 5: Do you know what are the main applicable laws in the medical field that regulate the dentist's obligation of professional secrecy in relation to patients. One dentist from the rural and three from the urban area have knowledge of the main applicable laws in the medical field that regulate the dentist's obligation of professional secrecy in the relationship with patients. Eight dentists from the rural and twenty-eight in urban areas are aware that they have the obligation to maintain professional secrecy regarding the data provided by patients when providing the medical certificate, but they do not know precisely which the laws that regulates this at national level. Two dentists from the rural area and eight from the urban area do not have any information regarding the obligation to maintain professional secrecy in the relationship with patients (Figure 3a).

Question 6: Are you aware that, according to the current legislation, you do not have the right to transmit to patient's relatives or friend's information about their state of health, diagnosis, treatment or the results of investigations without their prior consent? Six from rural and thirty from urban areas know that they do not have the right to transmit information about health status, diagnosis, and treatment or investigation results to patient's relatives or friends without their consent expressed by them beforehand. Two dentists from the rural area and two from the urban area found out about the existence of this ban following a lawsuit filed against another dentist. Three dentists from the rural and seven from the urban area did not know that, according to the current legislation, they do not have the right to transmit information about their health status, diagnosis, treatment or the results of investigations to the patients' relatives or friends without their consent expressed by them beforehand (Figure 3b).

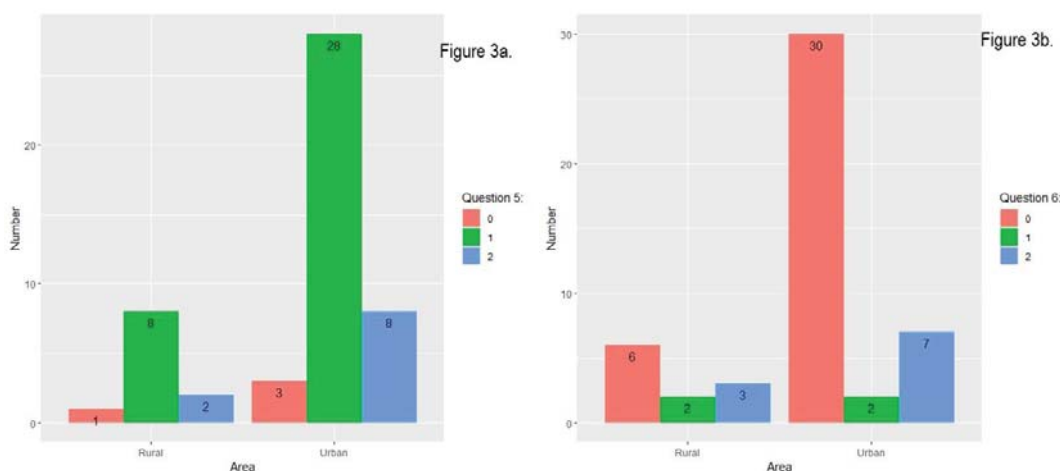


Figure 3. Statistical results for question 5-Figure 3a and for question 6-Figure 3b

Question 7: Have you used medical law attorneys to defend yourself against allegations made by patients regarding your breach of professional confidentiality? The statistics show that out of fifty dentists, only one dentist from urban area has once called medical law lawyers to defend against patient allegations of breach of confidentiality professional. Eleven doctors from the rural area and thirty from the urban area never called on lawyers to defend themselves against the accusations from the patients regarding the violation of professional secrecy, not being accused in this sense (Figure 4a).

Question 8: Do you know what are the forms of legal liability that can be imposed on dentists following the finding of a violation of the obligation of professional secrecy in the relationship with patients? Five dentists from the rural and four from the urban area have detailed information about the legal provisions that regulate the legal liability that can be

imposed on them following the finding of the violation of the obligation of professional secrecy in the relationship with patients. They have repeatedly participated in a series of scientific events on this topic. Two dentists from the rural and twenty-four in the urban area do not know the forms of legal liability that can be imposed on them as result of the violation of the obligation of professional secrecy in the relationship with the patients. They all intend to document themselves as they have observed that have been a number of cases in which various dentists have been found guilty. Only four dentists from rural and eleven from urban areas do not have any information on this subject (Figure 4b).

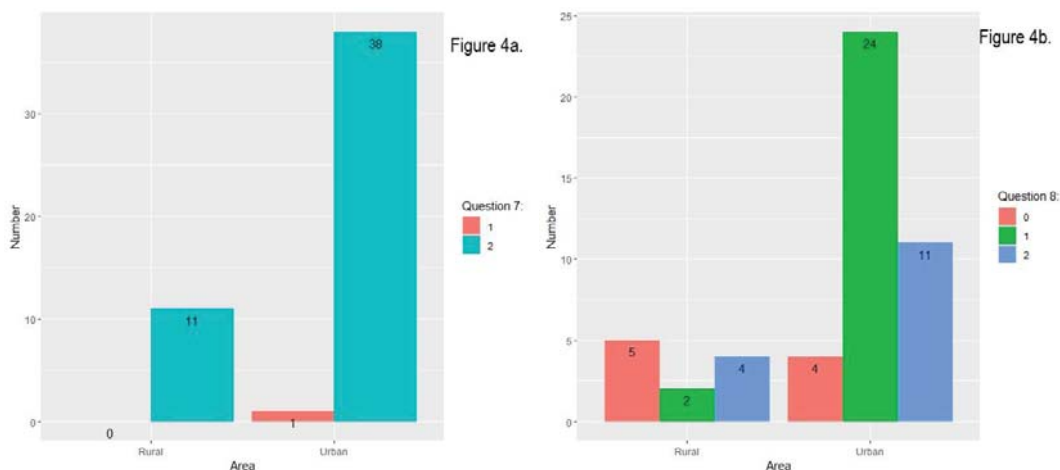


Figure 4. Statistical results for question 7-Figure 4a and for question 8-Figure 4b

Question 9: Are you aware that the legislation in the medical field regulates a series of cases in which the dentist and entire medical staff is exempt from the obligation to maintain professional secrecy in the relationship with patients? Four dentists from the rural and six from the urban area have information regarding the fact that the legislation in the medical field regulates a series of hypotheses in which the dentist and medical staff are exempt from the obligation to maintain professional secrecy in the relationship with patients. They studied a series of legal disciplines applicable in the medical field during the faculty. Five dentists from rural and nine from urban areas documented themselves when they started to practice, and two dentists from rural and twenty-four from urban areas are not aware of the existence of these situations that the law in the medical field regulates (Figure 5a).

Question 10: Do you think that studying a legal discipline applicable to the medical field during the bachelor studies would have contributed to a better knowledge of the legislation and to a greater protection in the relationship with patients? Six dentists practicing in the rural and thirty from the urban believe that studying a legal discipline applicable to the medical field during the faculty contributes to a better knowledge of the legislation and to greater protection in the relationship with patients. Five dentists from the rural and eight from the urban area consider that not in all situations studying during the faculty a discipline about applicable legislation contributes to a better knowledge of the legislation and to a greater protection of dentists in their professional relation with their patients. Only one dentist practicing in an urban area did not answer this question affirmatively (Figure 5b).

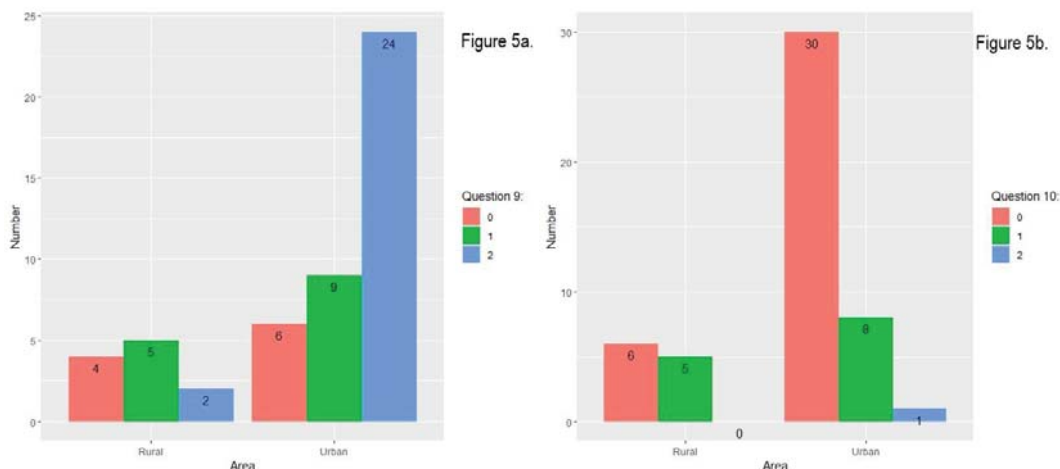


Figure 5. Statistical results for question 9-Figure 5a and for question 10-Figure 5b

DISCUSSIONS

In the context of our society and legislation of human rights, the issue of fulfilling professional obligations in the relationship with patients is more current than ever considering the fact that medical profession is dedicated to the human being. The medical treatment carried out directly on the patient's body, which requires a greater attention of the dentist in providing the medical act. The medical care of the patient has to be done with maximum diligence and caution, so that the risks of medical accidents are minimized, even completely avoided.

The dentist's medical care involve the protection of the patient's life while respecting his rights. The main objective of the relationship between the dentist and the patient is to provide medical care, perform the intervention or treatment corresponding to the established diagnosis, a high level of professional and scientific training, trust, patience, discretion, but also the observance of professional obligations, among which also includes the obligation to provide medical care and to maintain professional secrecy.

Considering all these aspects, dentists must be aware of the importance of complying with the legislation in the field that regulates their professional obligations in medical practice, so that can be guarantee the patients' right to health protection. Awareness of the risks to which they expose themselves, but also the risks to which they expose the patients, together with the non-respect of their professional obligations, determines the increase of doctor's responsibility regarding the medical care, thus avoiding the occurrence of various damages on the health status of the patients.

CONCLUSIONS

Following the statistical analysis, a small number of dentists from rural areas have knowledge of the existing legislation in force in the medical field regarding the observance of professional obligations in the relationship with patients. In this context, we believe that a series of campaigns must be carried out to familiarize dentists working in rural areas with the content of medical legislation.

Another aspect that came across with the assessment of the questionnaires addressed to dentists had is their awareness of the importance of studying and knowing the applicable legislation in the medical field before they end their studies. The majority of dentists who were included in the study were of the opinion that they feel much more protected in their relationship with patients when they have knowledge of the applicable legal provisions in the

field regarding both the way of practicing the profession and the obligations they return to medical practice.

REFERENCES

1. Năsui G.A: Malpraxisul medical. Particularitățile răspunderii civile medicale. Jurisprudența internă. Malpraxisul profesiilor liberale, Editura Universul Juridic, București, 2016: 160-161
2. Legea nr. 95/2006 privind reforma în domeniul sănătății, republicată în M.Of. al României, nr. 652/28.08.2015
3. Legea nr. 46/2003 privind drepturile pacientului, publicată în M.Of. al României, Partea I, nr. 51 din 29 ianuarie 2003
4. Codul deontologic al medicului stomatolog aprobat prin Decizia nr. 6/1AGN din 9 iulie 2021, publicat în M.Of. al României Partea I, nr. 833 din 31 august 2021
5. Ordinul Ministerului Sănătății Publice nr. 482/2007 privind aprobarea Normelor metodologice de aplicare a titlului XV "Răspunderea civilă a personalului medical și a furnizorului de produse și servicii medicale, sanitare și farmaceutice" din Legea nr. 95/2006 privind reforma în domeniul sănătății, publicat în Monitorul Oficial al României, nr. 237 din 5 aprilie 2007
6. Adam I: Răspunderea civilă medicală, Dreptul, 2021; 5: 41
7. Călin R.M: Malpraxis. Răspunderea medicului și a furnizorilor de servicii medicale. Practică judiciară, Ed. Hamangiu, București, 2014: 50
8. Simiti I.V: Răspunderea pentru malpraxis în serviciul public de sănătate, Dreptul, 2011; 9
9. Dumitru I: Considerații juridice asupra secretului profesional medical - între obligația de păstrare și obligația de divulgare a lui, Ed. Universul Juridic, 2016; 9: 85-99
10. Coca G, Lazăr O: Despre confidențialitatea informațiilor și viața privată a pacienților, articol publicat în Volumul Sesiunii științifice a Institutului de Cercetări Juridice „Acad. Andrei Rădulescu”, Simplificarea - imperativ al modernizării și ameliorării calității dreptului, Ed. Universul Juridic, București, 2015: 645-657