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BOOK REVIEW

## **PATIENT AS A CLAIMANT IN CIVIL LAW AND HIS CONTRIBUTORY NEGLIGENCE**

*Author: **Marta Ž. Sjeničić, PhD***

*Publisher: Centre for Legal Research of the Institute of Social Sciences in Belgrade, 2013.*

*Pages: 227 pages*

**1.** Faster development of the science of medical law began in Serbia in the last decades of the 20<sup>th</sup> century. The leading place has belonged, and still belongs, to the Centre for Legal Research of the Institute of Social Sciences in Belgrade. That centre became the epicentre of development of Serbian science of medical law. It should be noted that legal doctrine in Serbia has flourished in a number of areas precisely thanks to institutes. In addition to or with the head of that centre, a number of representatives of the science of medical law emerged. Among them is the author of this monograph. After publishing about twenty articles in the field of national and comparative medical law, the author presented the professional public with a book under the above title.

**2.** Monograph is divided into three parts. The first part deals with the civil liability and the claimant's fault. In the first forty pages of the first part, the author introduces the issue of civil law and civil liability. It begins with the chapter on the concept of fault, then follows the chapter on forms and cases of a claimant's fault, and ends with the chapter on legal consequences of a claimant's fault. Medical law is not mentioned in the first part of the monograph. Focus is on the civil law method known and accepted in everyday life. In that manner, a reader learned about the relationship between a physician and a patient, i.e. about the relationship between a tortfeasor and a claimant, or the fault of both parties in that relationship.

**3.** The second part of the monograph is more extensive and more elaborate than the first. The second part deals with civil liability of physicians and healthcare

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institutions because of damage caused to a patient. In the second part of the monograph, the author presents the achieved level of development of medical law in Serbia. The author’s personal mark is obvious, her taking into account the solutions from the Law of Contracts and Torts, but also with the consultation of comparative (primarily German) medical law. First, the chapter presents legal sources of liability of physicians and healthcare institutions, and then the second chapter presents the reasons (or grounds) for the liability of physicians and healthcare institutions. The third chapter discusses the legal institutes that can exclude the liability of physicians.

4. The third part of the monograph is the most extensive. It begins with the first chapter on a patient’s participation in decision-making. The second chapter deals with a patient’s duties to cooperate. For understanding the subject and methods of presentation in this monograph, this second chapter is important because it explains the meaning of a patient’s duties to cooperate. Namely, duty to cooperate, according to the comparative law and the author, is another title or a synonym for the term *contributory negligence*, which is stated in the title of the book. The third chapter discusses non-compliance with obligations related to health insurance – which will be discussed in the next point. The fourth chapter of the third part of the monograph discusses the conditions of legally relevant violations of the patient’s duties and legal consequences of such violations. After the third part of the monograph, the author wrote an interesting summary, then a list of quoted literature (books are separated from articles), and then legal regulations, case law and internet sources were stated. Finally, a register of terms is given at the end of the book.

5. From the point of view of the journal where this monograph is presented, the third chapter of the third part of the monograph, entitled Non-compliance with obligations related to health insurance, is interesting. Investigating a patient’s obligations stipulated by the compulsory health (social) insurance in Serbia, i.e. contractual health insurance in Germany (health insurance), the author pointed out the great similarity in non-compliance of insured patients with the obligations under such insurances. The author noticed the same phenomenon in voluntary health insurance, which was introduced in Serbia by the Regulation on Voluntary Health Insurance from 2008. The analysis included general and special insurance terms and conditions in Germany and Serbia, so the monograph is relevant for those working in the field of voluntary health insurance in Serbia.

6. The monograph is reviewed and excerpts from reviews are printed on the covers, which points to the originality of certain chapters in the monograph, therefore, I recommend this monograph. For employees in insurance industry and in health insurance (state and private healthcare institutions), this monograph is interesting because it deals with these topics. This monograph is useful for attorneys and judges, for legal practitioners employed in healthcare because it is supported by 75 court decisions, which is otherwise lacking in this matter. The monograph is printed in Latin script.

Translated by: **Jelena Rajković**