



**ASSOCIATION EUROPÉENNE DES MÉDECINS DES HÔPITAUX
EUROPEAN ASSOCIATION OF SENIOR HOSPITAL PHYSICIANS
EUROPÄISCHE VEREINIGUNG DER LEITENDEN KRANKENHAUSÄRZTE
EUROPESE VERENIGING VAN STAFARTSEN
DEN EUROPÆISKE OVERLÆGEFORENING
ΕΥΡΩΠΑΪΚΟΣ ΣΥΛΛΟΓΟΣ ΝΟΣΟΚΟΜΕΙΑΚΩΝ ΙΑΤΡΩΝ ΔΙΕΥΘΥΝΤΩΝ
ASSOCIAZIONE EUROPEA DEI MEDICI OSPEDALIERI
DEN EUROPEISKE OVERLEGEFORENING
ASSOCIAÇÃO EUROPEIA DOS MÉDICOS HOSPITALARES
ASOCIACIÓN EUROPEA DE MÉDICOS DE HOSPITALES
EUROPEISKA ÖVERLÄKARFÖRENINGEN
EVROPSKO ZDRŽENJE BOLNIŠNIČNIH ZDRAVINIKOV
EUROPSKA ASOCIACIA NEMOCNICNÝCH LEKAROV
EUROPSKA UDRUGA BOLNIČKI LIJEČNIKA
ΕΒΡΟΠΕΪΣΚΑ ΑΣΟΪΑΪΑΪΑ ΝΑ ΣΤΑΡΣΗΤΕ ΒΟΛΝΗΪΝΗ ΛΕΚΑΡΗ
ASOCIATIA EUROPEANA A MEDICILOR DIN SPITALE**

Document :	AEMH 13-027
Title:	National Report Germany
Author :	V L K
Purpose :	Information
Distribution :	AEMH Member Delegations
Date :	21 April 2013

**66th AEMH Plenary Session on 24-25 May 2013 in Paris
German Delegation Report**

The current German delegation report for the period from June 2012 to May 2013 will discuss two pieces of legislation, as well as the conceptual reorientation of VLK, which celebrated its 100th anniversary in September of 2012.

1 Patients' Rights Act

The German Patients' Rights Act has been in effect since late February of 2013. In essence the law adds to the German Civil Code a supplementary article that codifies the principal tenets of physician liability and treatment law. Thus patients can now read about their most important rights in Sec. 630a – 630h of the German Civil Code, i.e. specifically about their rights to proper information and disclosure, the duties of physicians to document the course of care, the right to review records and an outline of burden of proof regulation in case of treatment errors.

As far as the content is concerned, the regulations in the Patients' Rights Act are, in large parts, a codification of existing valid law as it has developed through prior court decisions. Thus in many areas the Act does not change the prevailing legal situation. As far as several issues are concerned, the legislature merely put in writing the principles that have already for decades formed the basis for court decisions in physician liability trials. The same is true for burden of proof judgments, which are often critically decisive in liability trials. The burden of proof has specifically not been shifted further into the direction of physicians. The Act still contains a certain degree of vagueness, resulting in some uncertainty in the implementation of the law, particularly in regard to physicians' duty to provide and disclose medical and commercial information. In this respect, when compared to existing valid law, the Act does lean in the direction of tightening or accentuating physicians' responsibilities.

From the perspective of VLK, the duty of physicians to provide information about treatment errors, now enshrined in the law, is seen as particularly problematic. From now on, physicians must furnish information to patients whenever the latter explicitly ask about a possible treatment error. This obligation applies not only in cases when patients ask about treatment errors by the caregiving physician herself, but also when they inquire about errors by other physicians who may have provided prior treatments or follow-up care. Therefore, despite vehement protests, the legislature has in effect created a statutory obligation to incriminate oneself and others, which otherwise does not exist in the German legal system.

It will remain to be seen to what extent this Patients' Rights Act will lead to a – potentially significant – increase in patient lawsuits, which in turn could result in further increases of already high insurance premiums. A related concern is the further amplification of the trend toward defensive medicine, which would be an undesirable outcome for patients.

2. Target objectives in head physicians' contracts

The organ donor scandal uncovered in some German hospitals in the summer of 2012 added plenty of fuel to the health policy debate about the independence of medical facilities. Target objectives in agreements between hospitals and senior hospital physicians based on type and quantity of individually rendered services were a particular focus of the debate. These so-called “bonus provisions” can – according to almost unanimous political opinion – threaten the independence of medical decisions regarding these services.

As a consequence, the legislature has obligated the German Hospital Federation to issue recommendations – in agreement with the German Medical Association – that ensure that target objectives offering financial incentives for individual services will be eliminated.

This Act was passed by the lower house of the German parliament – the *Bundestag* – in late February and by the upper house – the *Bundesrat* – on 1 March 2013. The law is now in force.

VLK has welcomed the general approach of this legal initiative, but nevertheless criticised that the regulations now provided by the law are not sufficient to achieve the desired goal because its specifications lack the precision necessary for successful implementation.

Independent thereof, VLK has set up a central point of contact together with the German Medical Association. Any target objectives including bonus provisions that become known shall be recorded, evaluated, documented and published at this contact point – anonymously, of course.

VLK expects that such “unethical” target objectives in head physicians' contracts will become a thing of the past due to the new legislation on one hand and the activities of the contact centre on the other. This should also relieve senior hospital physicians of some of the economic pressures they face when providing their services.

3. VLK

On 16 September 2012, VLK, the German Association of Senior Hospital Physicians, celebrated its 100th anniversary. A small ceremony in Berlin was held to mark this “birthday.”

VLK has repositioned itself as it enters the second century of its existence. Going forward, it has prescribed itself an even greater focus on its membership. The strategic goal of this new concept is a more successful positioning of individual VLK members in their professional environment. To that end, VLK offers nine services to its members, all based on its core competencies. They are:

- Contractual and legal advice
- Communications and knowledge transfer
- Organisational consulting
- Professional support and continuing education

- Conflict management
- Placement of (senior) hospital physicians
- Representation of health policy interests
- Special advocacy for female physicians
- Establishment of a council of senior members

This repositioning is intended to provide any support possible to VLK members as they practice their profession each and every day. This support aims to make VLK members more successful in their professional environment and to turn them into VLK “ambassadors” simply due to their own satisfaction with provided services. Hopefully this will attract many new members to VLK in future so that VLK may speak with an even more powerful voice in health policy arguments with ministries and other advocacy groups.