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This is a contribution to the function of an ‘ombudsman ’within the Belgian healthcare sector.

**Legal framework:**

The ombudsfunction in the healthcare has obtained its legal character on August 2012 in Belgium, when the law “Rights of a Patient” found entrance into the healthcare sector. By this legislation the patient gets the explicit right of complaint regarding any possible breach he patients’ rights. The patient, his family, a trust person or a representative have the possibility to file a complaint with the competent ombudsman, this complaint can be made written or orally.

Before the legalisation on “patients’ rights” there were already different types of handling complaints in healthcare institutions. However, the mediation point of view in handling complaints was not explicit.

The “Patient rights” act is applicable on all individual healthcare practitioners within a specific legal framework (namely the Royal Decree no. 78: for doctors, specialist doctors, dentists, pharmacists, midwives, nurses, paramedical professions (physiotherapists, occupational therapists ...)

The following patients' rights were recorded in this legislation:

* The right of high-quality service
* The right of free choice of health care provider
* Entitled to all information about your health condition
* The right to consent in a free and informed manner in each intervention
* The right to a carefully maintained and safe kept patient record
* The right of protection of privacy
* The right to complaint mediation
* The right on pain treatment

The healthcare facilities were also given the statutory mandate to ensure the application of patients' rights, also the creation and existence of an ombudsman is a requirement for any healthcare facility to obtain Its recognition.

The ombudsman was given following legislative assignments:

* Prevention of questions and complaints by facilitating communication between the patient and the healthcare practitioner
* The mediation on complaints with the objective of reaching a solution
* Informing the patient regarding the options for settling his complaint in the absence of reaching a solution (Pointing out alternatives)
* Providing information on the organization, functioning and the procedural rules of the Ombudsman
* Formulating recommendations to prevent recurrence of deficiencies that may give rise to a complaint
* The ombudsman makes an annual report that needs to be transferred to various organs in the organisation (the CEO, the chief physician, the management and the medical advice) and externally to the Federal Commission "patient rights"

This annual report has no public character at this moment.

The ombudsman should function independently, neutral and unbiased while respecting the confidentiality.

Within the Belgian healthcare three major areas can be found in which the "ombudsman in health care" relates:

* Legislation states that each general hospital needs to have a (local) ombudsman available.
* Legislation states that each psychiatric hospital needs to have a (local) ombudsman available.
* At the national level there is a Federal Ombudsperson organized in relation to all the other health care practitioners (eg general practitioners, home practice of the various health professionals belonging to the Royal Decree No. 78 ....).

In most general hospitals internally appointed ombudspersons work (these are designated by their employer).

Within the mental healthcare there are mostly external ombudspersons employed, appointed by a mental health consultation (this is a platform of various healthcare institutions within the mental health care). In a number of institutions within the mental health care there is just an internal ombudsman, in others there is both an internal and external ombudspersons.

The Federal Ombudsman operates from the capital city Brussels and is largely reachable by phone or the usual written channels. Contrary to the local ombudspersons who operate with a very low threshold. Federal mediation treated in **2013**: **718** complaint files, local mediation services in **2013**: **19337** complaint files.

The internal ombudspersons formed a point for discussion since the design of the legislation., Most opposition came from other patient organizations and certain political groupings. These parties still doubt if an internally appointed ombudsman can indeed be impartial, neutral and can act independently. This perception is an important consideration in the preparation and communication of internal ombudsperson in defending the complaint.

On the level of education which the ombudsman must meet, the legislature is fairly vague. An ombudsperson only needs to have a bachelor degree (or non-university higher education). There are no specific requirements to be met on the “mediating” aspect from the legal framework.

**The concrete interpretation of the ombudsman: conditions imposed :**

The ombudsman works from a mediation-oriented attitude. The ombudsperson listens to all parties and attempts where possible to bring them together and organize a mediation. This is often done true shuttle mediation. The mediate-preparing of the parties is also an important part in the daily operation.

From the association VVOVAZ we find a basic mediation course is an essential prerequisite to take up this function.

**Bottlenecks in 2015 (more than 10 years after the law "patient rights")**

A first concern relates to "the jurisdiction of the ombudsperson", can the ombudsperson handle complaints that are broader than the subject matter within the “Patients’ rights” act ? A dissatisfaction or complaint usually contains aspects that are broader than the subject patient rights. Ex. As a patient I experience my treatment as not qualitatively (this is an infringement of the right to quality care) and therefore I do not want to pay my bill ...

Interventions concerning an invoice (eg. The placing on hold of the bill while treating the complaint) require a far more effective mandate of the local healthcare organization / institution ...

On a local level the ombudsperson in the local organisation (the hospital) is given a broader mandate, this is also recorded into the internal regulations of the ombudsman.

The ombudspersons with this broad arrangement covers approximately 50% of complaints which are in relation to the patients' rights act, the rest has to do with organizational, administrative financial, infrastructural issues / complaints ....

This arrangement provides the ombudsperson with a larger perspective and working area. From this position the ombudsperson detects these complaints that can be attributed or linked as a shortcoming on the respect of patients' rights; ex. The patient does not know the cost of an implant, he was not informed sufficiently in advance. The patient right "informed consent" was violated - as it is made known to the ombudsman. If this complaint is uttered within the administrative services this will merely be seen as the patient was malcontent with the price of the implant ...

Within the sector this wide arrangement of the ombuds function is seen as essential, we also experienced the need that this is legally safeguarded instead of a mandate from the local organization. Given such assurance now belongs to the competence of the regions in our country (Belgium has three regions), progress here depends on the willingness to dialogue between the federal government and several regional governments. It is not inconceivable fact that the regions also have a different view.

Also a second bottleneck is the "flawed statute the ombudsman"

The protection of this function was defined rather vague in the current legislation.

“With the eye on safeguarding the independent practice of his mandate, an ombudsperson can’t be sanctioned for acts he commits in the correct exercise of that mandate!”

Numerous ombudspersons combine two functions within the organization, this compromises the safeguard on protection.

A third bottleneck is the “lack of confidentiality between exchanged information and the professional secrecy”.

Here too we *experienced the need in the field for more explicit - legal -* protection both to the "ombuds dossier" as to the "mediation agreements / arrangements."

The legislator has neglected to safeguard the confidentiality of the ombuds dossier itself.

The legislator merely recorded in the legislation that the personal information of the dossier can only be kept for the handling of the complaint and until the creation of the annual report (so maximum 1 year).

In addition the professional secrecy of the ombudsperson within the healthcare organizations is increasingly under pressure. On one hand because of the introduction of the patient safety systems and external accreditation bodies of healthcare organizations (such as Joint Commission International). The latter sees complaints regarding healthcare providers as an important input during the evaluation/quality of practice of healthcare providers. But providing this information is not allowed due to professional secrecy that ombudspersons should handle. On the other hand the organization has the obligation to present quality improving measures regarding patient safety elements. When the ombudsperson in this matter formulates recommendations, there is in many cases the need for additional detailed information which could jeopardize the confidentiality/ professional secrecy.

A forth bottleneck is the “lack of funding and resources of the ombudsfunction”

The healthcare institutions receive limited financial support from the government to fund the ombudsfunction. This only amounts up to € 24500 for a hospital of more than 400 beds, with this amount of funding, the institution can barely appoint a half-time ombudsperson.

A greater presence, where present, is only achieved by resources of the healthcare institution itself. And even these resources are nowadays more and more under pressure within the healthcare institutions. After all over **40%** of the healthcare institutions in Belgium are unprofitable.

To maintain the easy access to the ombudsperson, more funding will be needed (from the government?). If not the credibility and surely the one of the “internal ombudsperson” will be more and more undermined.

The accessibility is consequently also a funding problem.

**The Future:**

The introduction of a standard practice like the one off the **International Ombudsman Association** could in some areas address the stated bottlenecks.

The *standard* practice would be an added value to the further professionalization in which the neutrality, the independence and the ethics are secured.

The accreditation path to achieve this standard is closely related to the accreditation process which the Belgian healthcare Institutions are currently going through.

As stated, the current mediation function in the Belgian Healthcare is linked to the implementation of the law on patient rights. Besides this there is since 2005 a federal law in Belgium regarding “the mediation”.

“The mediation relating to the law on patient rights” does not belong to this.

At present only three forms of mediation are defined in this legislation and for this purpose a “Federal mediation commission” was founded. The following three forms of mediation resort under

the “Federal mediation commission” : *the familial mediation* , *social mediation* and the *mediation in civil- and commercial matters.*

One of the tasks of this commission is defining to which accreditation requirements an recognized intermediary should meet. In this aspect concerning professionalism, the confidential character, the education (and continuous schooling), the professional secrecy and ethics legally assured.

The intermediary is also formally recognized by this commission, in addition to this, the permanent education requirements have to be demonstrated every two years.

These forms of mediation can come forth from a court order, but can also rely on voluntary mediation, that can possibly be judicial ratified afterwards.

In a matter of fact the question from our sector is precisely to have a fourth form of legal mediation, and to have this “mediation in healthcare” established under the Federal mediation commission.

In my contribution I took you into the "delicate work field" where ombudspersons in healthcare in Belgium daily attempt to add value to the notifiers and caregivers involved ..

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