

April 2014

Poster on

**German Legal Rules on the Decision-Making Process involving Incompetent Patients**

Presented at the conference

“Ethics and evidence in end-of-life decision making. Interdisciplinary perspectives”  
(3rd and 4th of April 2014) in Bochum

**Abstract**

In 2009, after decades of discussion, the German legislator passed an act regulating living wills and the decision-making process for patients who are unable to give consent. An important difference to other countries is that - according to the wording of the aforementioned act - the involvement of a surrogate decision-maker is compulsory even when the living will seems to be unequivocal (sec. 1901a, 1901b BGB). However, shortly after the act turned into force, some relevant institutions and organizations took a different view on this issue and considered a living will to be directly binding for a physician even without a legal representative, if it applies to the situation at hand. Even more than that: the Federal Ministry of Justice, that published a brochure on living wills, as well as the German Medical Association (BÄK) and its Central Ethics Committee (ZEKO), that proclaimed their recommendations on the use of living wills, have given the privilege of interpreting a living will solely to the physicians, thus derogating the wording of the law. The same happened with the Patients' Rights Act from February 2013. According to sec. 630d subsec. 1 sentence 2 BGB, informed consent must be obtained from the legal representative, “unless” there is a living will pursuant to sec. 1901a subsec. 1 sentence 1 BGB that is permitting or prohibiting this measure. This means that even the wordings of sec. 630d BGB and 1901a BGB are conflicting each other.

The poster focuses on this important issue, containing a diagram on how to conduct the decision-making process in accordance to current legal rules when the patient is unable to give consent.

For more information, please contact:

Amina Salkić, LL.M.

Geschäftsführerin / general manager

Institut für Deutsches, Europäisches und Internationales Medizinrecht,  
Gesundheitsrecht und Bioethik der Universitäten Heidelberg und Mannheim

Postanschrift: Institut für Medizinrecht, Schloss, D-68131 Mannheim

Tel. +49 (0621) 181-1946

Fax +49 (0621) 181-3555

Email: [amina.salkic@imgb.de](mailto:amina.salkic@imgb.de)

Internet: [www.imgb.de](http://www.imgb.de)