

## **ABSTRACT**

### **UNDUE INFLUENCE INSIDE THERAPEUTIC TRANSACTIONS IN HOSPITALS**

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Transaction therapeutic as its object medical services agreement between doctor and patient. In therapeutic transaction legal relationship doctors and patients alike position as legal subjects who have rights and obligations. Although legally the doctor and the patient has a position that is balanced or equal, but in general the relationship between doctor and patient practice still paternalistic and asymmetrical. On the other hand in a therapeutic transaction should be tied to the general provisions in the law of treaties, namely the existence of an agreement, skills, certain things and lawful authority. Concretely there can be no defect whim of one party. In the development of the relationship between doctor and patient practice of defects will appear named with the term undue influence or known as *van omstandigheden*. The aim of this study, the first to know and understand the legal relationship between doctors and patients in therapeutic transaction. Second, to know and understand about the forms of undue influence in therapeutic transaction. Third, to know and understand the legal consequences of a transaction therapeutic influenced the undue influence. The approach used in this research is normative juridical approach (doctrinary approach) because this research is focused on the study of literature and documents. A literature study of the literature or reading material related to the problems, while the document study done by studying various laws and regulations relating to medical services.

The results show: first, the legal relationship between doctors and patients in therapeutic transaction, according to the provisions of civil law can be qualified in this type of agreement to perform certain services as set forth in Article 1601 of the Civil Code which has the following characteristics: the existence of an agreement between the two ie the physician and the patient; the patient because the situation is indirectly enlist the services of a doctor, while the doctor is willing to help improve the health status of patients through medical interventions; physicians who requested his help services is a qualified and authorized to perform medical procedures on patients; in return, the patient is willing to pay or give honorarium rates that have been determined by the parties who perform the services which the hospital; ways in which to achieve the therapeutic objectives of the transaction is fully submitted to the doctors and hospitals. Second, in general, undue influence in medical services is in the form of defensive medicine. Defensive medicine is a form of medical care is growing deviation. Even in the practice of defensive medicine often is a mechanical defense of physicians to avoid malpractice claims. Form of defensive medicine may supplement care in the

form of (a test or excessive therapy) and abuse of the most vulnerable in the state of medical services is when conducted investigation and treatment (therapy). Third, the undue influence is a flaw in the will of a treaty. Thus, therapeutic transactions influenced the abuse of one party state, the result of the transaction can be canceled. In general form of undue influence in the therapeutic transaction is psychological abuse of excellence (the patient in a position to suffer because of the burden of disease, are inexperienced and have little or no knowledge). To transactions that influenced their therapeutic misuse operationally circumstances of the transaction is still running, but in principle can be canceled. In general, undue influence in many therapeutic transactions conducted when the relationship between doctor and patient is still in the asymmetric paternalistic.

**Keywords:** therapeutic transactions, undue influence, defensive medicine.