

2nd study Commission
September 2000, Recife (Brazil)

Questionnaire

Subject:

The law relating to any duty on a medical practitioner to inform a patient of the nature and consequences of an operation or treatment before obtaining the patient's consent

I

- 1) How is the duty of a medical practitioner to inform a patient before an operation or treatment in your law (i.e. by statute, case law or in a different manner)?
- 2) To which extent has a medical practitioner to inform the patient before operation or treatment?
- 3) Under what circumstances can an operation or treatment be performed without prior information or consent of the patient?
- 4) Who has to be informed and whose consent has to be obtained before an operation of treatment if the patient is not competent due to physical or mental reasons? Under what circumstances is a prior information and consent of these persons not necessary?
- 5) Does your law provide for a (statutory) duty of medical practitioners to document the scope and nature of the information of the patient before an operation or treatment? What is the evidentiary value of such documentation?
- 6) Who has the burden of proof for an alleged violation of a medical practitioner's duty of information? Are there differences as to whether the claims raised are of a contractual or tortious nature?
- 7) Does your legal system alleviate the burden of proof or standard for the patient in a proceeding?
- 8) What consequences does your legal system attach to a (contractual or tortious) violation of a medical practitioner's duty of information?
- 9) Does your legal system also recognise a duty of the patient to provide information? If not, would such a duty be advisable?
- 10) Is the duty of a medical practitioner to provide information to patients regulated in a satisfactory way in your legal system? Are there any plans of a reform?

II

What issues do you want to discuss in detail?

III

For preparation of the conclusions:

What changes or improvements of the law relating to the subject discussed would you recommend to the legislature? Is it recommended to regulate this subject by law (if this has not already been done)? What should be the minimum requirements of such a statutory provision?

IV

What subject do you suggest for next year?