Rüdiger Zuck

The Right of Anthroposophic Medicine

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<https://doi.org/10.5771/9783845243788-1>

Generiert durch IP '172.22.53.54' am 26.04.2023, 13:07:44.

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Prof. Dr. Rüdiger Zuck

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Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

Die Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data is available in the Internet at <http://dnb.d-nb.de>.

ISBN 978-3-8329-7902-7

1. Edition 2012

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Foreword

The first edition of this book on the rights of anthroposophic medicine appeared, in German, in 2007. Its aim was to flank my “Homöopathie und Verfassungsrecht [Homeopathy and Constitutional Law]”, published in 2004, with a counterpart in another central area of recognized specific therapeutic approaches. While the associated constitutional-law approach narrows the focus, it brings the advantage that amid the medical difference of opinions it can show a secure legal foundation, which with a national Constitution is of course the case. The second edition presented here, in English translation too, derives its importance from the Declaration of Rights of Anthroposophic Medicine developed by anthroposophic medicine in 2011. It is to this that the particularly important twelfth chapter of this book is devoted. The human-rights foundation of this Declaration, and thus its international roots, has made a separate text on the importance of human rights in the health sector necessary (Chapter 5).

The English-speaking reader of this book on the right of anthroposophic medicine should not overlook the point that the law presented is first and foremost German law, and therefore a foreign area for readers from other countries. Though the presentation does not stop at German law but goes in detail into the relevant European Community law and the international human-rights guarantees, the basic reference to German law remains. However, the reader need not balk at this. Nowhere else is the content of the right of anthroposophic medicine so highly developed and so differentiated as in Germany. Bearing in mind that the German word in the title, *Recht*, has a double meaning corresponding to the English words “law” and “right” and thus refers not only to claims but also to the justified self-perception of anthroposophic medicine, it will become clear that the recourse to German law is not intended to be a sort of self-presentation but is instead an endeavour to put forward the exemplary nature of the German provisions for the international recognition of anthroposophic medicine. Obviously, the reference to German law as the starting-point has not been left at that. As already mentioned, German law – along with others – is embedded in European Community law. To that extent, there is a legal view independent of German law. This is even more so when universal human rights are brought into this study. Nonetheless, while a whole number of specifically German questions from the first edition have not been taken over into the English version of this second edition, there is still quite a lot of German law left. The reader will accordingly even in purely formal terms have to struggle with the German abbreviations for laws and technical literature that have been used. There would

have been no sense in converting these into English, since the result would be sequences that simply do not exist in German legal usage. The reader is accordingly referred to the list of abbreviations, where an English translation is given for the German abbreviations. While publications in German have been translated into English in the footnotes, so that the reader will know whether the topic might be of interest to him at all, you should not fall into the error of assuming that these are English original texts. Accordingly, texts translated into English are followed by a (g) to indicate that the original is in German.

I must particularly thank Christa Hebisch of IKAM (the International Co-ordination of the Movement for Anthroposophic Medicine). Christa Hebisch was of indispensable assistance to me, thanks to her worldwide experience with legal regulations for medicinal products and the political situation surrounding them but particularly also because of her years of wide-ranging legal work for anthroposophic medicine in various international organizations, in checking what I had written. Her unfailing commitment in an honorary capacity to the rights of anthroposophic medicine was both a model and an inspiration for me. I also have to thank Iain Fraser for the translation into English. He has translated the often not simple anthroposophic terminology into English in outstanding fashion. And finally, I wish to thank Stefan Simonis, who has very generously included the English text in the publications of the NOMOS-Verlag publishing house.

Stuttgart, July 2012

Rüdiger Zuck

Contents

List of Abbreviations	17
Chapter One: Introduction	25
I. Preliminary	25
II. Course of this Study	27
1. Self-perception of anthroposophic medicine	27
2. The legal framework	27
3. The hybrid position of this study	28
Chapter Two: The Self-Perception of Anthroposophic Medicine	29
I. Fundamentals	29
II. Specific Understanding of Illness	30
1. Specific Mode of Observation	30
2. Anthroposophy's Medical Standards	30
3. Structure of the Elements of the Human Being	32
a) The Four Elements of the Human Being	32
b) The physical Body	32
c) The etheric Body	32
d) Astral Body	33
e) I-Organization	33
4. Summary	33
Chapter Three: Methodology	35
I. Methodological Dispute	35
1. Proof of Effectiveness	35
a) Evidence-based medicine	35
b) Experience-based medicine	36
c) No legal checks on the general methodological debate	37
d) G-BA [German Federal Joint Committee] guidelines	38
aa) Normative power	38
bb) The G-BA's procedural rules	39
(1) Function of the VerfO-G-BA	40
(2) Evidence-based Medicine	40
(3) Evaluation Rules	41
cc) Consequences	42

e) Exceptions	43
aa) Starting-point	43
bb) The approach of the Supreme Social Insurance Tribunal (BSG)	44
cc) The substantive prerequisites for presuming a flaw in the system	45
dd) Formal prerequisites	45
(1) Unlawful failure by the G-BA to act	45
(2) Unappealable court decisions	46
ee) Structure of a flaw in the system	46
(1) Acceptance requirement	46
(2) The response requirement	49
(3) Relation between acceptance and response	49
(4) Restriction to outpatient care	50
2. Has the question of method been solved?	51
a) Two levels	51
b) Medical level	51
c) Legal level	51
aa) The G-BA rules of procedure [VerfO-G-BA]	51
bb) System deficiencies	52
cc) BVerfG 115, 25	53
(1) General	53
(2) Special prerequisites	54
II. Conclusions	59
1. Orthodox medicine	59
a) General rules	59
aa) Explicit refusal of recognition	59
bb) Non-decision or faulty decision	60
b) The special rules	60
2. Anthroposophic Medicine	60
a) General rules	60
b) Special provisions	61
Chapter Four: Anthroposophic medicine as a specific therapeutic approach and its relation to orthodox medicine	63
I. Anthroposophic medicine as a specific therapeutic approach	63
1. Treatment methods in the narrower sense	63
2. Medical Services	64
3. The Concept of the Specific Therapeutic Approach	64
a) Concept	64

b) Elements of the Concept	64
aa) Comprehensive concept	64
bb) Departure from orthodox medicine	65
cc) Qualitative weighting	65
c) Differentiations	66
II. Anthroposophic medicine and orthodox medicine	66
1. Orthodox medicine	66
2. Anthroposophic Medicine as Complementary Medicine	66
a) Steiner/Wegman	66
b) Significance	67
aa) Self-perception of anthroposophic medicine	67
bb) Legal significance	69
c) Conclusions	69
Chapter Five: Legal Framework: Human Rights	71
I. Preliminary	71
II. Human Rights	71
1. Concepts	71
2. Legal Sources for Human Rights	72
a) The Universal Declaration of Human Rights	72
b) The Later Declarations and Conventions	77
c) The European Convention on Human Rights (ECHR)	80
aa) Genesis	80
bb) Function	80
cc) Content	81
dd) Legal protection	81
d) Ranking	81
Chapter Six: Legal Framework: European Community Law	83
I. European Fundamental-Rights Protection	83
1. General	83
2. ECHR	84
a) Human dignity	84
b) Right to life	84
c) Basic irrelevance of the ECHR in healthcare	85
3. The ECJ and the EU Fundamental Rights Charter	86
a) Human dignity	86
b) Right to life	86
c) The right to integrity	87
d) Health protection	87

e) Consequences	88
II. Other European Law	89
1. Primary Community Law	89
a) Free movement of goods	90
b) Freedom of establishment and freedom to provide services (Arts. 49, 56, 57 TFEU)	90
c) Antitrust law	91
d) Results	92
2. Secondary Community Law	92
a) Object	92
b) Principles	93
c) The law of regulations and directives	93
3. Conclusions	94
Chapter Seven: Legal Framework: German Law	97
I. Preliminary	97
II. Constitutional Law	97
1. General framework conditions	97
2. Specific framework conditions	97
a) Insured persons	98
aa) The right to inviolability of the person (Art. 2(2), first sentence, Basic Law)	98
bb) Free development of the personality and the social-state principle (Art. 2(1), taken together with Article 20(3), of the Basic Law)	100
cc) Protection of patient autonomy	101
b) Providers of services	102
aa) Occupational freedom (Art. 12(1) GG)	102
(1) General	102
(2) Therapeutic freedom	104
(3) Protective function	105
bb) Scientific Freedom (Art. 5(3) of the Basic Law)	105
c) Health insurance	107
Ordinary Law (on this see preliminary remark to Section 137 above)	107
1. The patient or insured person's entitlements to benefit and to reimbursement of costs	107
a) Bipolar Insurance System	107
b) Entitlements to Benefit and to Reimbursement of Costs	108

2. Providers of Services in the Specific Therapeutic Approaches	109
a) Services in the specific therapeutic approaches	109
aa) SGB V	109
bb) AMG	111
cc) Other	112
b) Recognized Specific Therapeutic Approaches	112
Chapter Eight: Legal Framework: European and German Law and Their Interaction	115
I. Effect of European Law on German Law	115
1. Starting point: Multilevel system	115
2. The European Convention and Court of Human Rights	115
“a) Legal principles of the European Convention of Human Rights	116
b) Case law of the European Court of Human Rights	116
c) The German legislature	116
d) No binding of the European Court of Human Rights	116
2. European Law and the ECJ	116
a) Primacy in application and interpretation in conformity with European law	116
b) Relationship between the ECJ and the Federal Constitutional Court	117
II. Effect of German Law on European Law	118
1. Interactions	118
a) TEU	118
b) The German Basic Law	120
aa) The theory of interaction	120
bb) Constitutional determination of the substance through living circumstances and the ordinary law: example: Art. 6(1) of the Basic Law (Marriage and Family)	121
c) Osmotic ranking	121
2. European fundamental-rights protection and German constitutional law	122
a) Requirements in European law	122
b) Implementation mechanisms for the German catalogue of fundamental rights	123
3. Potential influence of the German fundamental-rights catalogue	123
a) Objective	123
b) The service-provider level	124
aa) Freedom of establishment and freedom to provide services	124
bb) Therapeutic freedom	126

c) The Patient	126
aa) National health systems	126
bb) Patient autonomy	126
Chapter Nine: Legal Applicability in Anthroposophic Medicine: Medical Service Providers	129
I. Preliminary	129
II. Recognized Physician	129
1. Terminology	129
2. International Certification Regulation	129
3. Specializations/Additional Designations	130
a) Internal recognition (Section 40)	130
b) The MBO	132
III. Medical Services	132
IV. Guidelines	133
a) Concept of guideline	133
b) Significance	134
Chapter Ten: Legal Applicability in Anthroposophic Medicine: Medical Therapies	135
I. Preliminary	135
1. The concept of a medical therapy	135
2. Important areas of application	135
II. Therapeutic eurythmy	136
1. Definition and demarcation	136
2. Service providers	137
a) Medical prescription	137
b) Therapeutic eurythmist	137
aa) Standards	137
bb) Curriculum	137
“2. Extent and content of training	138
cc) National training and testing provisions	139
c) Legal forms of professional certification	139
aa) Eurythmy as a pedagogical measure	139
bb) Hygienic Eurythmy	140
cc) Therapeutic eurythmy as a therapeutic measure	140
3. Provision of Service	141
a) Approach	141

b) Statutory healthcare	141
aa) Outpatient sector	141
(1) List of medical therapies	141
(4) Therapeutic eurythmy as standard	143
bb) Inpatient treatment	143
c) Private health insurance	144
III. Anthroposophic Art Therapy	145
1. Fields of Operation	145
a) Description	145
b) Mode of operation	147
aa) Anthroposophic Art Therapy (BVAKT)® - painting sector	147
bb) Anthroposophic Art Therapy (BVAKT)®, music sector	147
cc) Anthroposophic Art Therapy (BVAKT)® - sculpture sector	148
dd) Anthroposophic Art Therapy (BVAKT)® - speech-therapy sector	148
2. Service Providers	149
a) Occupational designation	149
b) Guideline	152
IV. Rhythmic Massage	152
V. Reimbursement of Costs for Therapies of Anthroposophic Medicine	153
1. Consequences of the Securvita Decision	153
2. Integration agreements	154
Chapter Eleven: Legal Applicability in Anthroposophic Medicine: Provision of Medicinal Products	155
I. Object of Discussion	155
II. Simplified Registration of Anthroposophic Medicinal Products at European/national level	157
1. Initial Position	157
a) European law	157
b) German Law	158
aa) Homeopathic medicinal products	158
bb) Traditional herbal medicinal products	159
2. The Significance of the Community Code	159
a) Rules of interpretation	160
b) The Community Code as a regulation on definitive harmonization?	160

3. Legal and Factual Position of Anthroposophic Medicinal Products in the EU and in Germany	161
a) EU	161
aa) Legal and factual position	161
bb) Political activities	162
(1) Commission report	162
(2) European Pharmacopoeia	164
(3) Initiatives at EU level	164
cc) Outside of Europe	165
b) Germany	165
4. Reimbursement by nationally regulated insurance systems	166
5. Considerations of Legal Policy	167
a) Argument from tradition	167
b) Approaches in Community Law	167
c) National Law	168
III. Inadmissible Restrictions on Anthroposophic Medicinal Products by the Community Code	169
1. Legal Provisions	169
2. The Rule on Parenteral Medicinal Products in Art. 14(1) of the Community Code	170
a) Simplified Registration	170
b) Conclusions	170
c) Legal Questions	171
aa) Proportionality principle	171
bb) Non-proportionate regulations	171
cc) Legal consequences	171
Chapter Twelve: Declaration of Rights of Anthroposophic Medicine	173
I. Introduction	173
II. Declaration of Rights of Anthroposophic Medicine	174
Preamble	174
Commentary	176
Comments on the Authentic Interpretation	177
Commentary	178
Article 1	178
Comments on the Authentic Interpretation	179
Commentary	180
Article 2	180
Comments on the Authentic Interpretation	181
Commentary	185

Article 3	185
Comments on the authentic interpretation	186
Commentary	188
Article 4	188
Comments on the authentic interpretation	188
Commentary	190
Article 5	190
Comments on the Authentic Interpretation	191
Commentary	193
Article 6	193
Comments on the Authentic Interpretation	194
Commentary	196
Article 7	196
Comments on the Authentic Interpretation	196
Commentary	198
Article 8	198
Comments on the Authentic Interpretation	198
Commentary	200
Article 9	200
Comments on the Authentic Interpretation	200
Commentary	202
Article 10	202
Comments on the Authentic Interpretation	202
Commentary	203
Article 11	203
Comments on the Authentic Interpretation	204
Commentary	205
Article 12	205
Comments on the Authentic Interpretation	206

List of Abbreviations

A&R	Arzneimittel & Recht (Journal)
Abl EG	Official Journal of the European Union – OJ
AEMR	Allgemeine Erklärung der Menschenrechte (Universal Declaration of Human Rights – UDHR)
AEUV	Vertrag über die Arbeitsweise der Europäischen Union (Treaty on the Functioning of the European Union - TFEU)
a.F.	alte Fassung [old version]
Alt.	Alternative
AMG	Arzneimittelgesetz (Medicinal Products Act)
AMNOG	Arzneimittelneuordnungsgesetz (Act amending AMG)
AMOS	Anthroposophic Medicine Outcomes Study
AM-RL	Arzneimittelrichtlinie(n) (Medicinal Products Directive(s))
ÄndG	Änderungsgesetz (Amending Act)
Anh.	Anhang (Annex)
Anl.	Anlage (Annex)
Anm.	Anmerkung(en) (Note(s))
AnwBl.	Anwaltsblatt (Journal)
AOK	Allgemeine Ortskrankenkasse(n) (statutory health insurance company)
AöR	Archiv des öffentlichen Rechts (Journal)
APC	Anthroposophic Pharmaceutical Codex
ASI	Active specific immunotherapy
AT	Allgemeiner Teil (General Section)
Aufl.	Auflage (edition)
Az.	Aktenzeichen (reference number)
B.Hom.P.	British Homeopathic Pharmacopoeia
BÄK	Bundesärztekammer (Federal Chamber of Physicians)
BÄO	Bundesärzteordnung (Federal Medical Regulations)
BAnZ	Bundesanzeiger (Federal Gazette)
BB	Der Betriebsberater (Journal)
BBhV	Bundesbeihilfeverordnung (Federal Aid Regulation)
Bd.	Band (volume)
BfArM	Bundesinstitut für Arzneimittel und Medizinprodukte (Federal Institute for Medical Products and Devices)
BFH	Bundesfinanzhof (Federal Fiscal Court)
BFHE	Entscheidungen des Bundesfinanzhofs (Decisions of the Federal Fiscal Court)
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BGBI I, II	Bundesgesetzblatt Teil I, II (Federal Law Gazette Part I, II)
BGH	Bundesgerichtshof (Federal Court of Justice)

BGHSt	Entscheidungen des Bundesgerichtshofs in Strafsachen (Decisions of the Federal Court of Justice in criminal cases)
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen (Decisions of the Federal Court of Justice in civil cases)
BK	Bonner Kommentar (Bonn Commentary)
BKK	Betriebskrankenkasse (company health insurance fund)
Bl.	Blatt (sheet)
BMÄ	Bewertungsmaßstab für kassenärztliche Leistungen (Rating Scale for Statutory Healthcare Services)
BMG	Bundesminister(ium) für Gesundheit und Soziales (Federal Minister/-try of Health and Welfare)
BMV	Bundesmantelvertrag-Ärzte (Federal Framework Agreement for Physicians)
BMJ	Bundesminister(ium) der Justiz (Federal Minister/-try of Justice)
BO	Berufsordnung für Ärzte (Professional Regulations for Physicians)
BRAO	Bundesrechtsanwaltsordnung (Rules and Regulations for the German Bar)
BR-Drs.	Bundesratsdrucksache (Bundesrat document)
BSG	Bundessozialgericht (Federal Social Court)
BSGE	Entscheidungen des Bundessozialgerichts (Decisions of the Federal Social Court)
BT	Bundestag, Besonderer Teil (Bundestag, Special Section)
BT-Drs.	Bundestagsdrucksache (Bundestag document)
BUB-Richtlinie	Richtlinien über neue Untersuchungs- und Behandlungsmethoden (Guidelines on new methods of examination and treatment)
BVAKT	Berufsverband für Anthroposophische Kunsttherapie e.V. (Professional Association for Anthroposophical Art Therapy, regd.)
BVerfG	Bundesverfassungsgericht (Federal Constitutional Court)
BVerfGE	Entscheidungen des Bundesverfassungsgerichts (Decisions of the Federal Constitutional Court)
BVerfG(K)	Kammerentscheidung des Bundesverfassungsgerichts (Chamber decision of the Federal Constitutional Court)
BVerwG	Bundesverwaltungsgericht (Federal Administrative Court)
BverwGE	Entscheidungen des Bundesverwaltungsgerichts (Decisions of the Federal Administrative Court)
BVHE	Berufsverband Heileurythmie e.V. (Professional Association for Therapeutic Eurythmy, regd.)
BVRM	Berufsverband Rhythmische Massage e.V. (Professional Association for Rhythmic Massage, regd.)
CAM	Complementary and Alternative Medicine
CBM	Cognition-Based Medicine
CC	Community Code
CCPR	Covenant on Civil and Political Rights

CFREU	Charter of Fundamental Rights of the European Union – also EUCFR
ComplementMed	Journal of Alternative and Complementary Medicine
DÄBl	Deutsches Ärzteblatt (Journal)
DÄT	Deutscher Ärztetag (German Medical Assembly)
DAMID	Dachverband Anthroposophische Medizin in Deutschland e.V. (Federation of Anthroposophic Medicine in Germany, regd.)
DAZ	Deutsche Apotheker Zeitung (Journal)
DB	Der Betrieb (Journal)
DÖV	Die öffentliche Verwaltung (Journal)
DRG	Diagnosis Related Group
DVBl	Deutsches Verwaltungsblatt (Journal)
dt.	Deutsch (German version)
E	Entwurf (draft)
ECHAMP	European Coalition on Homeopathic and Anthroposophic Medicinal Products
EbM	Evidence-based medicine
EBM	Einheitlicher Bewertungsmaßstab für ärztliche Leistungen (Uniform valuation standard for medical services)
EC	European Community
ECHR	European Convention on Human Rights; (sometimes, European Court of Human Rights)
EctHR	European Court of Human Rights
ECHRB	European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine
ECJ	European Court of Justice
ECR	(European Court Reports (ECJ case law)
EEC	European Economic Community
EFG	Entscheidungssammlung der Finanzgerichte (Collection of decisions of the fiscal courts)
EG	Europäische Gemeinschaft (European Community – EC), Einführungsgesetz (Introductory Act)
EGMR	European Court of Human Rights – EctHR
EGV	Vertrag über die Europäische Gemeinschaft (Treaty establishing the European Community – TEC)
Einl.	Einleitung (Introduction)
EMRK	Europäische Menschenrechtskonvention (European Convention on Human Rights – ECHR)
ESWT	Extracorporeal Shockwave Therapy
EU	European Union
EUCFR	Charter of Fundamental Rights of the European Union – also CFREU
EuGH	Europäischer Gerichtshof (European Court of Justice – ECJ)
EuGRZ	Europäische Grundrechte Zeitschrift (Journal)

EUV	Vertrag über die Europäische Union (Treaty on European Union – TEU)
EuZW	Europäische Zeitschrift für Wirtschaftsrecht (Journal)
EWG	Europäische Wirtschaftsgemeinschaft (European Economic Community – EEC)
EXPLORE	A Peer-Reviewed Journal for the Integrative Medical Professional
FB	Fachbereich (Faculty, Department)
FG	Finanzgericht (Fiscal Court)
Fn.	Footnote
ForschKomplementärmed	Forschende Komplementärmedizin (Journal)
FS	Festschrift
G	Gesetz (Law, Act, statute)
GAÄD	Gesellschaft Anthroposophischer Ärzte in Deutschland e.V. (Society of Anthroposophic Physicians in Germany, regd.)
GAPiD	Gesellschaft Anthroposophischer Apotheker in Deutschland (Society of Anthroposophic Pharmacists in Germany,)
G-BA	Gemeinsamer Bundesausschuss (Federal Joint Committee)
GBL	Gesetzblatt (Law Gazette)
GCP	Good Clinical Practice
GesR	Gesundheitsrecht (Journal)
GG	Grundgesetz (the Basic Law, the German Constitution)
GK	Gemeinschaftskodex (Community Code – CC)
GKV	Gesetzliche Krankenversicherung (Statutory Health Insurance)
GKV-NOG	GKV-Neuordnungsgesetz (GKV Restructuring Act)
GKV-OrgWK	Gesetz zur Weiterentwicklung der Organisationsstrukturen in der gesetzlichen Krankenversicherung (Act for the further development of organizational structures in the GKV)
GKV-WSG	Gesetz zur Stärkung des Wettbewerbs in der Gesetzlichen Krankenversicherung (Act to strengthen competition in the GKV)
GMG	Gesundheitssystem-Modernisierungsgesetz (Health System Modernization Act)
GMP	Good Manufacturing Practice
GOÄ	Gebührenordnung für Ärzte (Fee scale for physicians)
GRCh	Grundrechtscharta (Charter of Fundamental Rights [of the European Union] – EUCFR, CFREU)
GVBl.	Gesetz- und Verordnungsblatt (Law and Ordinance Gazette)
GWB	Gesetz gegen Wettbewerbsbeschränkungen (Act against Restraints of Competition)
HAB	Homöopathisches Arzneibuch (Homeopathic Pharmacopoeia)
HeilbkG	Heilberufe-Kammergesetz (Act on Health Professionals' Occupational Associations)
HGR	Handbuch der Grundrechte (Handbook of Fundamental Rights)

HK-AKM	Heidelberger Kommentar Arztrecht Krankenhausrecht Medizinrecht (Heidelberg Commentary on Medical Law, Healthcare Law, Hospital Law)
HMPWG	Homeopathic Medicinal Products Working Group
HPV	Human Papilloma Virus
HStR	Handbuch des Staatsrechts (Handbook of Constitutional Law)
HTA	Health Technology Assessment
IAAP	International Association of Anthroposophic Pharmacists
ICCPR	International Covenant on Civil and Political Rights
ICD	International Classification of Diseases
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICH	International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Hu- man Use
I.C.L.Q.	International and Comparative Law Quarterly
ICSI	Intracytoplasmic Sperm Injection
IfSG	Infektionsschutzgesetz (Infection Protection Act)
IKK	Innungskrankenkasse (Trade Guild health insurance fund)
ILO	International Labour Office
IPBürgR	International Covenant on Civil and Political Rights – IC- CPR
IPWSKR	International Covenant on Economic, Social and Cultural Rights – ICESCR
IQWiG	Institut für Qualität und Wirtschaftlichkeit im Gesund- heitswesen (Institute for Quality and Efficiency in Health- care)
IVAA	Internationale Vereinigung Anthroposophischer Ärztege- sellschaften (International Federation of Anthroposophic Medical Associations)
JZ	Juristenzeitung (Journal)
KassKomm	Kasseler Kommentar zum Sozialversicherungsrecht (Kas- sel Commentary on social security law)
KBV	Kassenärztliche Bundesvereinigung (National Association of Statutory Health Insurance Physicians)
KK	Krankenkasse(n) (sickness fund(s))
Komm.	Kommentar (Commentary)
KV	Kassenärztliche Vereinigung (Statutory Health Insurance Physicians' Association)
lit.	Buchstabe (Letter)
LITT	Laser-induced Interstitial Thermotherapy
LPK	Lehr- und Praxiskommentar (Teaching and Practice Com- mentary)
LSG	Landessozialgericht (State Social Court)

MB/KK	Allgemeine Versicherungsbedingungen für die Krankheitskosten und Krankenhaustagegeldversicherung/Teil I – Musterbedingungen des Verbandes der privaten Krankenversicherung (General Conditions of Insurance for medical expenses and daily hospital allowance insurance / Part I – model terms and conditions of the Private Health Insurance Association)
MBO	Musterberufsordnung für die deutschen Ärztinnen und Ärzte (Model Code of Conduct of the German Medical Association)
MDR	Monatsschrift für deutsches Recht (Journal)
MedR	Medizinrecht (Journal)
MRB	Übereinkommen zum Schutz der Menschenrechte und der Menschenwürde von Biologie und Medizin (European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine – ECHR)
MWBO	Muster-Weiterbildungsordnung (Model further education regulations)
NJW	Neue Juristische Wochenschrift (Journal)
NJW-RR	NJW-Rechtsprechungsreport (NJW case reports)
NUB-Richtlinie	Richtlinie über neue Untersuchungs- und Behandlungsmethoden (Directive on new diagnostic and therapeutic methods)
NVwZ	Neue Zeitschrift für Verwaltungsrecht (Journal)
NZS	Neue Zeitschrift für Sozialrecht (Journal)
OJ	Official Journal of the European Union
	C series (Information, notices and preparatory EU legislation)
	L series (Legislation)
OLG	Oberlandesgericht (Higher Regional Court)
OPS	Operationenschlüssel (surgical fee scale)
OTC	Over-the-counter
OVG	Oberverwaltungsgericht (Higher Administrative Court)
PharmR	Pharmarecht (Journal)
Ph.Euro.	Pharmacopoeia Europaea
Ph.Fr.	French Pharmacopoeia
PKV	Private Krankenversicherung (private health insurance)
RCT	randomized clinical trial
RL	Richtlinie(n) (Directive(s))
Rn.	Randnummer(n) (section(s), paragraph(s))
Rs.	Rechtssache (Case)
Rspr.	Rechtsprechung (case law)
RVO	Reichsversicherungsordnung (Reich Insurance Code)
S.	Satz, Seite (sentence, page)
SG	Sozialgericht (Social Court)

SGb	Die Sozialgerichtsbarkeit (Journal)
SGB	Sozialgesetzbuch (Social Code)
SGB IV	Sozialgesetzbuch – Gemeinsame Vorschriften für die Sozialversicherung (Social Code- Common Provisions on social security)
SGB V	Sozialgesetzbuch – Gesetzliche Krankenversicherung (Social Code - Statutory Health Insurance)
SGG	Sozialgerichtsgesetz (Social Courts Act)
Slg.	Allgemeine Sammlung der Entscheidungen des Europäischen Gerichtshofs (European Court Reports - ECR)
SozR	Sozialrecht – Entscheidungssammlung, bearbeitet von den Richtern des BSG (Social Justice - Collection of decisions, edited by the judges of the BSG)
st. Rspr.	ständige Rechtsprechung (consistent/established/settled case law)
StGB	Strafgesetzbuch (Criminal Code)
STIKO	Ständige Impfkommision (Standing Committee on Vaccination)
StPO	Strafprozessordnung (Code of Criminal Procedure)
StVollzG	Strafvollzugsgesetz (Prison Act)
TCM	Traditional Chinese Medicine
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UAW	Unerwünschte Nebenwirkungen (unwanted side effects)
UDHR	Universal Declaration of Human Rights
Urt.	Urteil (Judgment)
UStG	Umsatzsteuergesetz (VAT Act)
VAG	Versicherungsaufsichtsgesetz (Insurance Supervision Act)
VerfO	Verfahrensordnung (Rules of Procedure)
VersR	Versicherungsrecht (Journal)
VG	Verwaltungsgericht (Administrative Court)
VGH	Verwaltungsgerichtshof (Higher Administrative Court)
VO	Verordnung (Regulation)
VO (EWG) Nr.	Verordnung der EWG, Nummer (Regulation (EEC) No.)
VSSR	Vierteljahresschrift für Sozialrecht (Journal)
VVDStRL	Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer (Publications of the Association of German Constitutional Law Teachers)
VVG	Versicherungsvertragsgesetz (Insurance Contracts Act)
VwGO	Verwaltungsgerichtsordnung (Code of Administrative Procedure)
VwV	Verwaltungsvorschrift (Administrative Regulation)
VwVfG	Verwaltungsverfahrensgesetz (Administrative Procedure Act)
VwVG	Verwaltungsvollstreckungsgesetz (Administrative Enforcement Act)
WHO	Weltgesundheitsorganisation (World Health Organization)

WRV	Weimarer Reichsverfassung (Weimar Constitution)
ZaefQ	Zeitschrift für ärztliche Fortbildung und Qualität im Gesundheitswesen (Journal)
ZDN	Zentrum zur Dokumentation von Naturheilverfahren (Centre for Documentation of Natural Remedies)
ZE	Zusatzentgelt (Additional Charge)
ZESAR	Zeitschrift für europäisches Sozial- und Arbeitsrecht (Journal)
ZPO	Zivilprozessordnung (Code of Civil Procedure)
ZRP	Zeitschrift für Rechtspolitik (Journal)