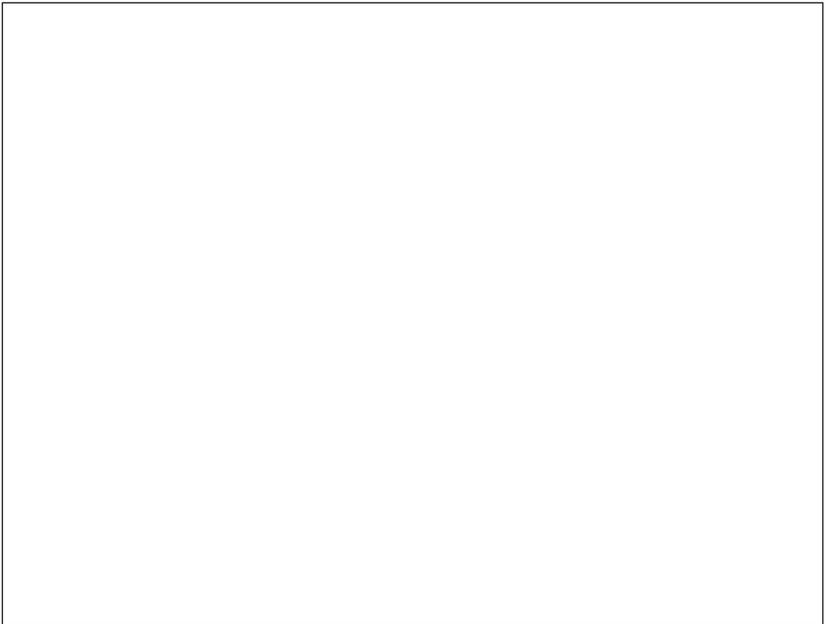


Rüdiger Zuck

# The Right of Anthroposophic Medicine



Nomos



Prof. Dr. Rüdiger Zuck

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**Nomos**

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 unflinching 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

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# 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)
AEUU	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 Thermo-therapy
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/B)
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 Impfkommission (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)