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Exemption from medical confidentiality rule in criminal cases under Article 180 § 2 of the Polish Code of Criminal Procedure - reflections in the context of caring for the patient's welfare and the ethos of the doctor's profession

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ABSTRACT**Introduction and purpose**

The regulations of the amended Polish Code of Medical Ethics, which entered into force at the beginning of 2025, upheld the doctor's obligation to maintain medical confidentiality. This obligation is so entrenched not only in law but also in social awareness, that it is unimaginable to omit it in any act regulating the principles of medical ethics. Both at the international and national level, the duty to maintain medical confidentiality is strongly established culturally, historically and normatively. The purpose of this article is to draw attention to the art. 180 § 2 of the Polish Code of Criminal Procedure, as a regulation stipulating that the rule of medical confidentiality is not absolute. The following goal is to analyze the circumstances and grounds for exemption from this rule in accordance with the provisions of the discussed article. This

will allow us to achieve the general purpose of the present statement, i.e. to make doctors aware of the circumstances that may result in releasing the from the obligation to maintain medical confidentiality.

Materials and methods

During the preparation of this article, reference was made to a wide range of scientific sources. First of all, we are talking here about international and national normative acts. Next, we should refer to the case law of Polish courts. The last group of sources are scientific publications in the form of articles, monographs and online publications. The authors mainly used the methods of inductive analysis, critical analysis of sources and systematic review.

Description of the state of knowledge

Nowadays, knowledge about the obligation to maintain medical confidentiality is common and well-established, not only among doctors but also among their patients. However, when it comes to possible exemptions from respecting this duty the situation looks different. Knowledge of the existence of the provisions of article 180 § 2 of the Polish Code of Criminal Procedure is not common even among medical professionals. Hence the need for popularization and explanation of this regulation.

Summary

Presented article consists of three parts. Each of them is responsible for a clearly defined research task which justified by the objectives of this statement. The first part analyzes the historical sources of the obligation to maintain medical confidentiality. In particular, the aspect of creating a modern understanding of this duty in Poland was taken into account. The second part analyzes the contemporary normative basis of the obligation to maintain medical confidentiality. For this purpose, reference was made to the relevant regulations of international and Polish law. The third part discusses the situation of exemption from the obligation to maintain medical confidentiality indicated in art. 180 § 2 of the Polish Code of Criminal

Procedure. The grounds for this dismissal were thoroughly discussed basing on comments and statements of the Polish judiciary's case law.

Keywords:

Medical confidentiality, criminal proceedings, sake of justice, exemption

INTRODUCTION

By taking the "Hippocratic oath", a medical doctors commits to keep in secret all information about the patient that he or she received in the course of practicing medical profession. We talk here about one of the oldest and most important professional duties of a doctor. This obligation is by all means confirmed by the rules of Polish medical ethics regulations as well as both acts of international and Polish law. Respecting this duty should ensure that the patient trusts the doctor and is not afraid to inform him or her with his or her most intimate problems. Therefore, it may seem that this obligation should be an absolute one. However, that is not the case. Both international and Polish law provide for situations in which a doctor may be released from the obligation to maintain medical confidentiality. This article discusses the regulation of art. 180 § 2 of the Polish Code of Criminal Procedure. It assumes that a doctor may be released from an obligation to keep medical confidentiality during criminal procedure. Present statements discusses the circumstances under which such a release is possible.

I. Deontological and normative background of the special status of the doctor's profession in retrospect.

Reflection on the particular importance of the ethos and public image of doctor's profession has accompanied mankind since ancient times. Thus, as early as in Antiquity, the characteristics and directives of action that should accompany the practising as a doctor began to be formulated. One of the most important of these, was to always be guided by the highest good of the patient. For example, respect for life, reliability, compassion and diligence, as well as responsibility and, in particular, discretion, form the universal basis for the contemporary perception of the doctor as a medical profession [1].

The most emblematic example, and one that has not lost its relevance, are the views of Hippocrates, considered the ‘philosophical’ patron of European medicine. In his thought, one can perceive a conviction of the patient's right to protection of privacy, in particular of the most intimate matters, concerning, in this case, health:

‘Whatever, in the course of my practice, I may see or hear (even when not invited), whatever I may happen to obtain knowledge of, if it be not proper to repeat it, I will keep sacred and secret within my own breast.’[2]

Narrowing the scope of the present considerations to Polish issues, it should be pointed out that the beginnings of the modern shaping of the deontological ethos of practising a doctor’s profession can be traced back to the 19th and 20th centuries. Even under the partitions of Poland, concepts relating to this issue were formulated. During this period, the doctor’s profession began to be perceived as a special one, described as a ‘profession of public trust’[3]. Back in the 19th century (1876), a resolution of the ‘Society of Galician Physicians’ was passed in the Austrian Partition of Poland: *On the duties of doctors towards their colleagues and the medical profession in general* (Polish: *W przedmiocie obowiązków lekarzy względem swoich kolegów i zawodu lekarskiego w ogóle*). The code of the ‘Warsaw Medical Association’ of 1884 can also be mentioned. It’s title was *Principles of doctors' duties and rights* (Polish: *Zasady obowiązków i praw lekarzy*). One shouldn’t also forget the 1895 work of Emanuel Sonnenberg: *Medical discretion from a legal and ethical position*, (Polish: *Dyskrecja lekarska ze stanowiska prawnego i etycznego*). The most important, from the point of view of the sources of the principles of medical ethics, seems to be the first common for Polish doctors of all three partitions *Code of Polish Deontology* (Polish: *Kodeks Deontologii Polskiej*) promulgated at the 10th ‘Congress of Polish Physicians and Surgeons’ in Lviv in 1907. It formed the basis for the formulation of regulations of medical ethics after the restoration of Poland’s independence in 1918 [4, 5]. In the context of the obligation to maintain medical secrecy, in the 20th century on the basis of the already independent Polish State, one should point to the regulations of three normative acts. Firstly, we refer to Article 11 of the Act of 2 December 1921 ‘On the practice of medicine in the Polish State’ (Polish: *Ustawa z dnia 2 grudnia 1921 r. w przedmiocie wykonywania praktyki lekarskiej w Państwie Polskiem*). Then we refer to Article 15 of the Regulation of the President of the Republic of Poland of 15 September 1932 ‘On the practice of doctor’s profession’ (Polish: *Rozporządzenie Prezydenta Rzeczypospolitej z dnia 25 września 1932 r. o wykonywaniu praktyki lekarskiej. Dz.U. 1932 nr 81 poz. 712*). Finally, we refer to Article 14, paragraph 1 of the Act of 28 October 1950 ‘On the doctor’s profession’

(Polish: *Ustawa z dnia 28 października 1950 r. o zawodzie lekarza. Dz.U. 1950 nr 50 poz. 458*)[6].

Nowadays, there is no doubt that the doctor's profession is a special one. According to M. Świącki:

'the doctor's profession is a independent profession (of public trust), which consists in the personal performance, with due diligence and independence, of activities to protect human health and life, in accordance with current medical knowledge, available methods and means, as well as legal provisions and principles of professional ethics, by a person with the required qualifications confirmed by a licence and other documents authorising the commercial provision of health services of a specific type (in the form of an individual or group medical practice or on the basis of an employment contract or a civil law contract)'[7]

The exercise of a profession of public trust entails both certain privileges and obligations. In a number of judgments, the Polish Constitutional Tribunal (Polish: *Trybunał Konstytucyjny* hereinafter: TK) has interpreted what features and circumstances should characterise the exercise of a profession of public trust. There is no doubt that one of the circumstances characterising the practice of a profession of public trust is the acquisition by its practitioners of information of a personal and confidential nature, to which the obligation to maintain professional secrecy applies. In the context of maintaining the obligation of medical secrecy, it should be pointed out, that the TK emphasised the duty of care and diligence of representatives of public trust professions to safeguard the interests of persons using their services. The doctor, as a person exercising a profession of public trust, should therefore express concern for the personal needs of these persons and take care to ensure the protection of the subjective rights guaranteed by the Polish Constitution, which is also expressed in the obligation to maintain medical confidentiality[8, 9].

II Legal concept of medical confidentiality and its scope

The first normative sources to be referred to when analysing the issue of the basis of medical confidentiality are acts of international law. We are referring here to the Universal Declaration of Human Rights of 10.12.1948, the International Covenant on Civil and Political Rights of 16.12.1966 and the European Convention on Human Rights of 4.11.1950. All these acts have been adopted by the Republic of Poland. Patients' rights can therefore be considered as belonging to a very broad contemporary range of human rights. These include the protection

of information provided by the patient to the doctor in connection with the treatment process[10].

Thus, according to Article 12 of the Universal Declaration of Human Rights, every individual has the right to protection against ‘arbitrary interference with his privacy’ and against ‘attacks upon his honour and reputation’[11]. A very similar regulation is contained in the International Covenant on Civil and Political Rights. Article 17(1) also refers here to the prohibition of exposing the individual to ‘arbitrary or unlawful interference with his privacy’ and to ‘unlawful attacks on his honour and reputation’[12]. Somewhat more specific and relevant to this article are the provisions of the European Convention on Human Rights. Article 8(1), as mentioned above, guarantees the individual the right to privacy. However, it can already be observed in paragraph 2 that this right is not absolute. A public authority may therefore not interfere with the exercise of the right referred to in paragraph 1. However, the further part of this regulation stating that such interference may not take place cannot be overlooked here

‘except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others’[13].

In order to clarify the international dimension of the duty to respect medical confidentiality, it is necessary to point to the so-called ‘Geneva Declaration’ of the World Medical Association (WMA) of 1948. With regard to medical confidentiality, one can find the statement:

‘I WILL RESPECT the secrets that are confided in me, even after the patient has died;

I WILL PRACTISE my profession with conscience and dignity and in accordance with good medical practice;

I WILL FOSTER the honour and noble traditions of the medical profession;’[14]

On the basis of the Polish legal order, the obligation to maintain medical confidentiality has strong normative roots. When analysing it, one should start with constitutional regulations. We are speaking here first of all of Articles 47 and 51 of the Constitution of the Republic of Poland of 2.04.1997 (hereinafter: “Polish Constitution”)[15]. The first of the indicated articles contains regulations similar to the provisions of international law discussed above. Thus, in it, the Polish legislator guarantees the right to legal protection of, inter alia, private life and honour and good name. Already the Constitutional Tribunal in its ruling of 24.06.1997, K 21/96, OTK 1997/2, item 23, stated that the right of an individual to privacy constitutes an indispensable element of a democratic state of law[16,17]. He thus referred here to one of the basic

constitutional regulations, Article 2, which states, inter alia, that ‘The Republic of Poland shall be a democratic state ruled by law’. The ruling of the Supreme Court of 10.07.2019, III UK 189/18, also corresponds with the regulation of Article 47. It states that the protection of medical data is crucial for the individual's exercise of the right to respect for family and private life[18]:

‘The sphere of individual privacy, protected under Article 47 of the Constitution, also includes information on a person's state of health, because the protection of medical data is fundamental to an individual's ability to exercise the right to respect for private and family life.’[19]

It should be therefore recognised that the individual's right to privacy constitutes an essential element of a democratic state governed by the rule of law[20, 21].

Article 51 is a clarification, obviously at a constitutional level, of the release of ‘sensitive’ information concerning an individual in the broader public space. In paragraph 1, therefore, it can be seen, first of all, that the normative obligation to disclose data concerning a person must be based on an act of law. In other words, any regulation on this issue must derive from the act of law. This state of affairs should be regarded as empowering the individual vis-à-vis the state. After all, the acts of law are passed by the democratically elected Sejm and Senate (Polish Parliament). Since these are democratically elected bodies, the individual in principle has a say in their functioning and the composition of their membership (through elections and various civil society institutions). Paragraph 2, on the other hand, prohibits to ‘acquire, collect or make accessible’ of such information about citizens that would not be ‘necessary in a democratic state ruled by law’. Thus, as can be seen, the exemption from medical confidentiality has a constitutional basis[22,23].

The detailed regulations concerning the obligation of medical secrecy are primarily found in the Act of 5 December 1996 ‘On the professions of doctor and dentist’ (Journal of Laws of 2024, item 1287, as amended). Article 40 of this Act, in paragraph 1, introduces a general obligation on the part of the doctor to ‘keep confidential information related to the patient and obtained in connection with the practice of the profession’. Paragraph 2 of this article is also of key importance for the issues analysed here. It provides for exemptions to the application of the obligation of medical secrecy when ‘so provided by an act of law’. Furthermore, according to paragraph 2a of the mentioned article, disclosure of medical confidentiality may only take place to the ‘necessary extent’[24,25,26].

The analysis of the regulations concerning doctors and their duty of secrecy cannot fail to include a reference to the recently amended regulations of the ‘Code of Medical Ethics’ (Polish: *Kodeks Etyki Lekarskiej*, hereinafter: KEL). Thus, in accordance with Article 24 of the KEL, (annexed to Resolution No. 5 of the Extraordinary XVI Congress of Physicians of 18 May 2024):

‘A doctor has a duty of medical confidentiality. Confidentiality covers information relating to the patient obtained by the doctor in connection with his professional activities. The death of the patient does not exempt him/her from the obligation of medical confidentiality’.

In the KEL regulations, however, there is again a provision giving the obligation to maintain medical secrecy a relative character. Indeed, Article 26 of the KEL states that it is permissible to ‘dispense with medical secrecy’ if ‘obliged to do so by the provisions of law’[27,28,29].

The regulation of generally applicable law as well as the rules of corporate ethics should also be supplemented by reference to ‘law in action’ in the form of an analysis of the case law of the Constitutional Tribunal. In its judgment of 30 July 2024, the TK confirmed not only the statutory but also the constitutional legitimacy of medical secrecy, recognising it as a constitutionally protected value. In the opinion of the TK, the significance of medical secrecy is also confirmed by the fact that the doctors profession falls into the category of professions of public trust. Each exemption from the obligation to observe secrecy should therefore be subject to specific requirements, which, in the opinion of the Constitutional Tribunal, are materialised in the regulations of Article 180(2) of the Code of Criminal Procedure, which are discussed in the next part of this statement[30,31].

III. Exemption from medical confidentiality

As already noted, practising medicine is associated with a particular ethos. As a person who is in touch with the most intimate area of an individual's existence - his or her health - a doctor often accompanies a person in suffering. He or she sees a person who is weak, who succumbs to illness, who is often afflicted with embarrassing ailments, also unfortunately badly perceived by society. In his work, the doctor gains knowledge which, used in an inappropriate way, can become a dangerous weapon, leading, for example, to discrediting or stigmatising the individual in the community in which he functions. It will not be wrong to say that practising medicine has an element of service towards people, expressed in concern for their general well-being[32]. Hence, the duty of medical confidentiality must be considered the basis of mutual

trust between doctor and patient[33]. The patient must be convinced of at least a very high probability that what he or she discloses during the therapeutic process will not be made available to wider third parties.

Given the above, it should come as no surprise that the disclosure of medical confidentiality is subject to a criminal law sanction[34]. With regard to the Polish Criminal Code, the normative basis for punishing the disclosure of medical confidentiality is Article 266. In § 1, it states that:

‘Whoever, against the statutory provisions or an accepted obligation, discloses or makes use of information he has learned in relation to a function or work he has performed, or a public, social, business or scientific activity he has conducted, is subject to a fine, the penalty of limitation of liberty or the penalty of deprivation of liberty for up to 2 years.’[35]

Despite the importance of the duty of medical confidentiality, its international legal, constitutional, statutory and corporate legitimacy, this duty is not absolute. Societies in liberal democracies as well as the broader political establishment are aware of the collision of legally protected goods. In the case at hand, there will be the need for medical confidentiality on the one hand and the need for a fair judgment in criminal cases on the other.

One must start here with an analysis of Article 45 of the Polish Constitution. In paragraph 1, it introduces the guarantee of the so-called ‘right to a court’:

‘Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.’

This right cannot be excluded, it is absolute in nature. Hence, it can be concluded that the obligation to maintain medical confidentiality, as shown above, which is relative in nature, must give way in collision with the citizen's constitutional right to a ‘fair hearing’ and the realisation of the principle of truth in trial, so that the trial decision is based on true findings of fact[36].

With regard to criminal cases (conducted on the basis of the provisions of the Polish Code of Criminal Procedure, hereinafter: KPK), the regulations of Article 180(2) of KPK are crucial in this respect.

‘Persons bound by the obligation of professional secrecy: notaries, solicitors, legal counsels, tax advisers, physicians, journalists, or statisticians, and persons obliged to protect the secrets of Prokuratoria Generalna Rzeczypospolitej Polskiej [the Solicitors’ Office of the Republic of Poland] may be questioned about facts covered by such secrecy only where this is necessary for the sake of justice and the circumstances cannot be determined on the basis of other evidence. In an investigation, the decision as to questioning or permitting questioning shall

be taken by the court, at a session without the participation of the parties, within a period not longer than 7 days as of the date of service of the motion of the public prosecutor. The court's decision may be contested..'[37,38]

It can thus be seen that the legislator provides for facts in which, in a criminal trial, exemption from the obligation of medical secrecy may occur. The decision on such exemption has in no way the characteristics of procedural 'automatism'. The principle of protection of the individual's right to privacy is realised by accepting the necessity of certain conditions. The court in the course of judicial proceedings acting *ex officio* or at the request of the parties (and in pre-trial proceedings only at the reasoned request of the public prosecutor), therefore, examines each time whether the premises discussed hereinafter are present and makes a kind of 'weighing', which good in a given situation should be given priority[39, 40]. The waiver of medical secrecy is subject to a cumulative (combined) finding by the court of merit of two conditions. The waiver of the prohibition to question a doctor about circumstances covered by medical confidentiality must be necessary for the sake of justice and the circumstance in question cannot be established by other evidence[41,42]. It should be borne in mind that it is the adjudicating court which, after all, upholds the rule of law in a democratic state under the rule of law, and is the guardian of the fact that any exemption from the obligation of medical secrecy is carried out in accordance with the adopted procedure and has a substantive basis.[43].

The first condition that must occur is the 'necessity' of questioning a doctor about circumstances covered by medical confidentiality for the sake of justice. This is a general clause (undefined phrase) with a very broad meaning. Both the jurisprudence and representatives of the doctrine emphasise that it confers a great deal of discretion on the dismissing authority to decide[44]. As the Supreme Court has stated:

'Necessity for the administration of justice, as referred to in Article 180(2) of the Code of Criminal Procedure, as a necessary prerequisite for the release of professional secrecy, requires not only a determination that the evidence carried out as a result of the release of secrecy is essential for the resolution of the case, but also an assessment of whether, from the point of view of the importance of the case and the type and function of professional secrecy of a particular type, it is permissible to release secrecy.'[45]

The 'sake of justice' rationale is also very capacious and gives the adjudicating authority considerable discretion. The Supreme Court, in attempting to define the 'sake of justice' clause, firstly considered that the accuracy of the adjudication of possible criminal liability should be based on a solid evidentiary basis taking into account all the circumstances relevant to the case. This refers to the circumstances relating to possible guilt, perpetration and possible punishment[46,47,48]. The interests of justice imply the need to establish the material truth

(objective truth)[49]. However, in each case, when acting under the medical confidentiality exemption procedure, the adjudicating court should consider whether the circumstance covered by medical confidentiality is relevant to the determination of the case in question[50].

Another prerequisite that must be present in order for a doctor to be released from the obligation of maintaining medical secrecy pursuant to Article 180 § 2 of KPK is the fact that it is impossible to establish a circumstance significant for the decision on the basis of other evidence[51]. This is another regulation that constitutes the exceptional character of the regulation in question, limiting its application to extraordinary situations. In order for this condition to be satisfied, all objectively possible measures and procedures must be taken to obtain evidence from other sources (implicitly, those not covered by secrecy)[52,53,54]. Moreover, the impossibility in question must be objective in nature. The evidentiary source must not actually exist. The existence of obstacles, but surmountable, to reaching the evidentiary source does not fulfil the condition of impossibility. All objectively possible ‘detection steps’ must therefore be taken[55,56].

In the case of establishing the existence of grounds justifying the exemption of a doctor from the obligation of secrecy, the court in its ruling must in each case specify the scope of the exemption in question, i.e. the circumstances about which the doctor may testify. The exemption from secrecy must not be of a blanket, general nature.[57,58,59]

Approaching slowly to the end of this part of this article, it is also necessary to point out the special conditions of the procedure for questioning a doctor about circumstances covered by medical confidentiality. The interrogation process itself takes place in a different way than is standard. As a general rule, openness of proceedings is a principle indicated in a number of normative acts. It should be pointed out here, to Article 42 par. 2 of the Act of 27 July 2001 ‘Law on the system of common courts’ (i.e. Journal of Laws of 2024, item 334, as amended), stating that ‘Courts shall hear and decide cases in open proceedings’. The openness of the trial is also guaranteed by Article 355 of the KPK. Importantly, this principle is not absolute. However, the legislator tries to provide for a situation in which the constitutionally guaranteed openness of court proceedings should be excluded. Thus, in paragraph 2 of Article 45 of the Constitution one can read: ‘Exceptions to the public nature of hearings may be made for reasons of morality, State security, public order or protection of the private life of a party, or other important private interest. Judgments shall be announced publicly.’. Also para. 3 of Art. 42 of the ‘Law on the Common Court System’ as well as the second sentence of Art. 355 of the KPK

provide for the possibility to exclude the openness of the trial, importantly, however, on the basis of statutory regulations[60,61]. This is the situation with regard to questioning on circumstances covered by professional (medical) secrecy. Pursuant to Article 181 of the KPK, as a rule, in the case of questioning a doctor released from medical secrecy on circumstances covered by it, the openness of the trial (constitutional principle) is excluded. This regulation also applies to fragments of documents read out at the trial[62].

CONCLUSIONS

Maintaining medical confidentiality is one of the most important obligations accompanying the practice of the medical profession. This obligation has a strong deontological basis, and its sources can be traced back to ancient times. Also in the Polish theory and practice of medical ethics, the need to maintain medical confidentiality is strongly established. This is confirmed both by the acts adopted during the partitions, regulating internal rules of conduct in the medical profession, and by the normative acts adopted after regaining independence by Poland. Nowadays, the obligation to maintain medical confidentiality in Poland has its sources in international law regulations, such as the Universal Declaration of Human Rights. However, the most important sources of the obligation to maintain medical confidentiality are the Constitution of the Republic of Poland, the Act ‘On the professions of doctor and dentist’ as well as the recently amended Code of Medical Ethics. It should be noted, that despite the absolutely undeniable importance of the obligation to maintain medical confidentiality, it has not the absolute character. The Polish legislative, in line with the norms of international law, indicates that in certain situations a doctor may be exempted from this obligation. An example here is art. 180 § 2 of the Polish Code of Criminal Procedure. On its basis, a doctor may be released from the obligation to maintain secrecy, but only if certain circumstances cannot be established in any other way and the sake of justice requires it. In conclusion, it should be noted that the procedure exempting a doctor from the obligation to keep confidentiality should be exceptional. The court, as the body issuing this exemption, should each time, within the framework of judicial independence, assess the importance of the interests of medical confidentiality on the one hand and the sake of justice on the other.

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- [3] Rudolf E. I., On guard of rationalism. The figure of a doctor in selected works by Stefan Grabiński, „Litteraria Copernicana”, 1(11)/2013, p. 129.
- [4] Rudolf E. I., On guard of rationalism. The figure of a doctor in selected works by Stefan Grabiński, „Litteraria Copernicana”, 1(11)/2013, p. 131-132
- [5] Sikora A., The concept, development and structure of Polish codes of medical ethics against the background of professional ethics, „Poznańskie Studia Teologiczne”, T. 13 (2002), p.100-101.
- [6] M. Burdzik, A doctor in a criminal trial as a guarantor of medical confidentiality, Warszawa 2001, p. 77-78. The first normative act indicated in Article 11 that, ‘A doctor is obliged to keep secret everything he observes, hears or learns during and as a result of practising his profession’. In turn, the second one stated in article 15(1): ‘The doctor is obliged to keep secret everything he learns during and as a result of the practice of his profession’. Finally, the third one indicated in Article 14(1): ‘The doctor shall be obliged to keep secret everything of which he or she shall have knowledge in connection with the practice of his or her profession’. It is worth pointing out that all these normative acts provided for exceptions, the maintenance of secrecy was not absolute.
- [7] As quoted in Kosiński E., Legal status of the doctor’s profession. Selected issues, „Studia Prawa Publicznego”, 3(15) 2016, p. 18.
- [8] Kosiński E., Legal status of the doctor’s profession. Selected issues, „Studia Prawa Publicznego”, 3(15) 2016, p. 19-20
- [9] Judgement of TK of 24.03.2015, K 19/14, OTK-A 2015, nr 3, poz. 32. All judgements and ruling commented in this article come from the following source: ...
- [10] Wiśniewska-Śliwińska H., Marcinkowski J. T., The problem of disclosing medical data covered by medical confidentiality during court hearings, „Orzecznictwo Lekarskie” 2011, 8(1): 40-46, p. 43-44
- [11] <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (access: 7.01.2025).
- [12] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (access: 07.01.2025).
- [13] https://www.echr.coe.int/documents/d/echr/convention_eng (access: 07.01.2025).
- [14] <https://www.wma.net/policies-post/wma-declaration-of-geneva/> (access: 07.01.2025).
- [15] THE CONSTITUTION OF THE REPUBLIC OF POLAND OF 2nd APRIL, 1997 As published in *Dziennik Ustaw* No. 78, item 483

<https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> (access: 07.01.2025), all references to the Polish Constitution come from this source.

[16] M. Burdzik, A doctor in a criminal trial as a guarantor of medical confidentiality, Warszawa 2001, p. 79.

[17] Ruling of TK z 24.06.1997 r., K 21/96, OTK 1997, nr 2, poz. 23.

[18] M. Burdzik, A doctor in a criminal trial as a guarantor of medical confidentiality, Warszawa 2001, p. 79.

[19] Judgement of SN z 10.07.2019 r., III UK 189/18, LEX nr 2692778.

[20] M. Burdzik, A doctor in a criminal trial as a guarantor of medical confidentiality, Warszawa 2001, p. 79.

[21] Ruling of TK z 24.06.1997 r., K 21/96, OTK 1997, nr 2, poz. 23.

[22] Wroński K., Observing medical confidentiality, „Współczesna Onkologia” (2007) vol. 11; 9 (455–457), p. 455.

[23] Similarly: Wiśniewska-Śliwińska H., Marcinkowski J. T., The problem of disclosing medical data covered by medical confidentiality during court hearings, „Orzecznictwo Lekarskie” 2011, 8(1): 40-46, p. 43-44 Paragraph 5 also introduces a statutory requirement to set out rules for the ‘collection and provision of information’.

[24] Por. Wroński K., Observing medical confidentiality, „Współczesna Onkologia” (2007) vol. 11; 9 (455–457), p. 455-456. I

[25] It should be pointed out that the commented provision also contains provisions relating to civil or administrative proceedings, but in view of the scope of the present article, which concerns criminal proceedings, their analysis is omitted. M. Burdzik, A doctor in a criminal trial as a guarantor of medical confidentiality, Warszawa 2001, p. 78.

[26] One can also mention the Act on Rights of the Patient and Patient Ombudsman of 6.11.2008 (Polish: Ustawa z dnia 6 listopada 2008 r. o prawach pacjenta i Rzeczniku Praw Pacjenta, Dz.U. 2009 nr 52 poz. 417. We are referring to Articles 13 and 14(1) of this law. According to these regulations, the patient's right to privacy and the duty of medical professionals to keep patient information confidential is confirmed.

[27] https://nil.org.pl/uploaded_images/1723037323_kel-2305.pdf (access: 7.01.2025).

[28] See Wroński K., Observing medical confidentiality, „Współczesna Onkologia” (2007) vol. 11; 9 (455–457), p. 455.

[29] Wiśniewska-Śliwińska H., Marcinkowski J. T., The problem of disclosing medical data covered by medical confidentiality during court hearings, „Orzecznictwo Lekarskie” 2011, 8(1): 40-46, p. 43.

[30]M. Zygier, *W ślad za wyrokiem Trybunału Konstytucyjnego w sprawie obowiązku zachowania tajemnicy lekarskiej*, „Forum Medycyny Rodzinnej” 2015, tom 9, nr 1, 45–49, s.48-49.

[31]Judgement TK z 30.07.2014 r., K 23/11, OTK-A 2014, nr 7, poz. 80.

[32] E. Anczyk, A. Anczyk, *Lekarski etos w relacjach z pacjentem*, „Medycyna Środowiskowa / Environmental Medicine” 2010; 13 (1), s.124.

[33] Ruling of SA in Wrocław of 4.11.2010 r., II AKz 588/10, LEX nr 621274.

[34] It is worth pointing out that the disclosure of medical confidentiality can also be the subject of civil proceedings - a case of infringement of personal rights - Article 23 of the Polish Civil Code (Polish: Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny (t.j. Dz. U. z 2024 r. poz. 1061 z późn. zm.).

[35] <https://sip.lex.pl/#/act-translation/1459620518> (access: 7.01.2025., Polish: Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (t.j. Dz. U. z 2024 r. poz. 17 z późn. zm.).

[36] M. Burdzik, *A doctor in a criminal trial as a guarantor of medical confidentiality*, Warszawa 2001, p. 156

[37]<https://sip.lex.pl/#/act-translation/1459620602> (access: 7.01.2025. Ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego (t.j. Dz. U. z 2024 r. poz. 37 z późn. zm.).

[38] See: K. Wroński, *Przestrzeganie tajemnicy lekarskiej*, „Współczesna Onkologia” (2007) vol. 11; 9 (455–457), s. 456.

[39] Stefański R. A., Zabłocki S. [w:] Stefański R. A., Zabłocki S., *Code of Criminal Procedure. Volume II. Commentary on art. 167-296*, Warszawa 2019, art. 180. <https://sip.lex.pl/#/commentary/587781684/579124/stefanski-ryszard-a-red-zablocki-stanislaw-red-kodeks-postepowania-karnego-tom-ii-komentarz-do...?cm=URELATIONS> (access: 2025-01-13 13:10).

[40] Ruling SN of 3.09.2008 r., WZ 52/08, OSNwSK 2008/1, poz. 1750.

[41]Ruling SA in Cracow z 21.04.2010 r., II AKz 129/10, KZS 2010, nr 5, poz. 36.

- [42] Sychta K. [w:] Code of Criminal Procedure. Commentary, red. J. Zagrodnik, Warszawa 2024, art. 180. <https://sip.lex.pl/#/commentary/587945285/777176/zagrodnik-jaroslaw-red-kodeks-postepowania-karnego-komentarz?cm=URELATIONS> (dostęp: 2025-01-09 14:14)
- [43] Ruling SA w Łodzi z 5.04.2018 r., II AKz 155/18, OSAŁ 2018, nr 1, poz. 81.
- [44] Stefański R. A., Zabłocki S. [w:] Stefański R. A., Zabłocki S., Code of Criminal Procedure. Volume II. Commentary on art. 167-296, Warszawa 2019, art. 180. <https://sip.lex.pl/#/commentary/587781684/579124/stefanski-ryszard-a-red-zablocki-stanislaw-red-kodeks-postepowania-karnego-tom-ii-komentarz-do...?cm=URELATIONS> (access: 2025-01-13 13:10).
- [45] Ruling SN z 19.05.2020 r., I KZ 8/20, OSNKW 2020, nr 8, poz. 31.
- [46] Kulesza C. [w:] Code of Criminal Procedure. Commentary, wyd. III, red. K. Dudka, Warszawa 2023, art. 180.
- [47] Judgement of SN of 11.01.2017 r., IV KK 277/16, LEX nr 2216092; see
- [48] Stefański R. A., Zabłocki S. [w:] Stefański R. A., Zabłocki S., Code of Criminal Procedure. Volume II. Commentary on art. 167-296, Warszawa 2019, art. 180. <https://sip.lex.pl/#/commentary/587781684/579124/stefanski-ryszard-a-red-zablocki-stanislaw-red-kodeks-postepowania-karnego-tom-ii-komentarz-do...?cm=URELATIONS> (access: 2025-01-13 13:10).
- [49] Stefański R. A., Zabłocki S. [w:] Stefański R. A., Zabłocki S., Code of Criminal Procedure. Volume II. Commentary on art. 167-296, Warszawa 2019, art. 180. <https://sip.lex.pl/#/commentary/587781684/579124/stefanski-ryszard-a-red-zablocki-stanislaw-red-kodeks-postepowania-karnego-tom-ii-komentarz-do...?cm=URELATIONS> (access: 2025-01-13 13:10)..
- [50] Ruling SA w Łodzi z 5.04.2018 r., II AKz 155/18, OSAŁ 2018, nr 1, poz. 81.
- [51] Ruling SA w Gdańsku z 11.09.2019 r., II AKz 789/19, KSAG 2019, nr 3-4, poz. 210-215.
- [52] Stefański R. A., Zabłocki S. [w:] Stefański R. A., Zabłocki S., Code of Criminal Procedure. Volume II. Commentary on art. 167-296, Warszawa 2019, art. 180. <https://sip.lex.pl/#/commentary/587781684/579124/stefanski-ryszard-a-red-zablocki-stanislaw-red-kodeks-postepowania-karnego-tom-ii-komentarz-do...?cm=URELATIONS> (access: 2025-01-13 13:10).
- [53] The Resolution of SN (7) z 19.01.1995 r., I KZP 15/94, OSNKW 1995/1–2, poz. 1).

- [54] Mrowicki M., The permissibility of the prosecutor to use documents that may contain medical confidentiality under Art. 226 of the Code of Criminal Procedure in the light of the Constitution of the Republic of Poland and the European Convention on Human Rights, PS 2020, nr 10, s. 57-73. <https://sip.lex.pl/#/publication/151371326/mrowicki-marcin-dopuszczalnosc-wykorzystania-przez-prokuratora-dokumentow-mogacych->
- [55] Sychta K. [w:] Code of Criminal Procedure. Commentary, red. J. Zagrodnik, Warszawa 2024, art. 180. <https://sip.lex.pl/#/commentary/587945285/777176/zagrodnik-jaroslaw-red-kodeks-postepowania-karnego-komentarz?cm=URELATIONS> (dostęp: 2025-01-09 14:14)
- [56] Ruling SA w Katowicach z 12.10.2011 r., II AKz 664/11, LEX nr 1102940)
- [57] Burdzik M., A doctor in a criminal trial as a guarantor of medical confidentiality, Warszawa 2001, p. 159-161 A doctor who is a witness in a case, irrespective of the fact that he or she is exempted from professional secrecy, is also entitled to exercise the right to refuse to testify under Article 182(1) of the Code of Criminal Procedure if the accused is the person closest to him or her¹⁹.
- [58] Ruling SA w Krakowie z 16.06.2010 r., II AKz 198/10, LEX nr 663634).”
- [59] Sychta K. [w:] Code of Criminal Procedure. Commentary, red. J. Zagrodnik, Warszawa 2024, art. 180. <https://sip.lex.pl/#/commentary/587945285/777176/zagrodnik-jaroslaw-red-kodeks-postepowania-karnego-komentarz?cm=URELATIONS> (dostęp: 2025-01-09 14:14)
- [60] Wiśniewska-Śliwińska H., Marcinkowski J. T., The problem of disclosing medical data covered by medical confidentiality during court hearings, „Orzecznictwo Lekarskie” 2011, 8(1): 40-46, p.
- [61] Wiśniewska-Śliwińska H., Marcinkowski J. T., The problem of disclosing medical data covered by medical confidentiality during court hearings, „Orzecznictwo Lekarskie” 2011, 8(1): 40-46, p 41.
- [62] Burdzik M., A doctor in a criminal trial as a guarantor of medical confidentiality, Warszawa 2001, p. 161 Istnieją wyjątki od tej zasady zob. w art. 181a kpk