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Complaints against Medical Rescue Teams and their members submitted to District and Regional Courts within the area of District Court in Kielce and Katowice in the years 2014-2019

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Summary

Today's medical rescue in pre-hospital care is a series of ongoing legal and administrative changes and regulations, increasing the scope of competence of medical rescuers working in - basic Medical Rescue Teams. The decreasing number of specialist Emergency Medical Teams, in the continuous process of system changes, makes paramedics face even greater responsibility in terms of performing medical rescue operations and possible errors that hang over paramedics in their everyday work. Demanding patients and their families, the growing number of many private insurance claim law firms dealing with the medical cases is another piece of the puzzle that today sets a bruising path in the search for property benefits and compensation in the form of lawsuits brought to Medical Rescue Teams and their members.

Keywords: emergency medical services, lawsuit, medical rescue operations

Introduction

In medicine, there is the concept of a medical error, so called iatrogenic error. The iatrogenesis is defined as the behaviour of medical personnel: a doctor or a veterinarian, paramedics, nurses, medical caregivers or orderlies. They can have a harmful effects on the patient's mental (iatropsychogenia) or physical (jatosomatopathy) condition. Such behaviours can induce anxiety, depression and disorders etc.in a patient and cause additional illnesses or discomforts caused by the suggestion or incorrect treatment. Most of the iatrogenic errors are related to the failure to provide the necessary information, incorrect delivery of it, incorrect attitude towards the patient, lack of knowledge, empathy or psychological skills in contact with the patient. The result of iatrogenic errors is almost always fear and a sense of threat [1]. According to the author, a paramedic during medical rescue operations, working in the Emergency Medical Rescue Team (EMRT) or in the Hospital Emergency Department (HED) is also burdened by the iatrogenic error.

At this point, it is worth mentioning the provisions of the law, which in the Civil Code include, inter alia, the scope of an iatrogenic error and the consequences that may result from committing it. In EMRT of the S type, medical rescue operations are performed by paramedics at the request of the team leader, i.e. a doctor. Obviously, there is a right to refuse orally or in the form of a memorandum, the so-called Report on the order of intervention and the situation that has come up, if according to the paramedic it is inconsistent with his knowledge, competences and incorrect in relation to generally accepted and applicable regulations, algorithms, schemes or procedures.

The Civil Code states that, pursuant to Article 430, *Whoever, on his own account, entrusts the performance of an activity to a person who, while performing this activity, is under his management and is obliged to follow his instructions, is responsible for the damage caused by that person's fault in the performance of the activity entrusted to him.* [2].

Patient's rights

Each patient has their own rights, which are established by generally accepted regulations in the so-called Patient's Rights Charter. The body supervising compliance with patient's rights is the Patient Ombudsman. The patient's rights entitle them to:

- health services;
- information;
- to report side effects of medicinal products;
- the confidentiality of information;
- to express consent to be provided with health services;
- the respect of the patient's intimacy and dignity;
- to view the medical records;
- to object to a doctor's opinion or decision;
- the respect of private and family life;
- pastoral care;
- to store his/her valuables in a safe place [3].

Unfortunately, currently there quite often arise situations when patients or their families, demanding a compensation or a redress for a damage or loss, or a detriment to their health, which in their opinion have occurred, file lawsuits against the EMR crews. It is not a comfortable state, although it should be considered an occupational risk. After all, medics provide help, they are members of health service system, which is to serve the needy in health or life-threatening situations. However, situations can be perverse. While providing help, we also commit mistakes that may result in damage to health or loss of life. Such conduct is defined as unintentional causing the above-mentioned events.

However, bad intentions cannot be looked for only on one side. The human factor can be unreliable. The author of the publication acts as a legal expert at District Courts, for the needs of courts, prosecutor's offices or police headquarters or police stations in which cases against EMR crews are conducted, he prepares numerous opinions in the field of emergency medical services and emergency medicine. He knows from his own experience that there are well-founded claims of injured patients and their families against EMR teams, related to errors or omissions during medical rescue operations. This is confirmed by the analysis of medical documents relating to the work of paramedics or doctors who were on duty in an ambulance on a given day. Due to professional secrecy, the author cannot provide explicit examples involving details.

In general, these are situations related to leaving the patient in a state dangerous to his health or life at home or at the site of an event by handing him over to the Police or Municipal Police, not providing him with adequate help in terms of the applied pharmacotherapy or not implementing it at all.

Most often these cases are referred to civil and criminal departments. In the case of criminal cases, Article 155 of the Criminal Code of Unintentional Causation of Death and Article 160 § 1 of the Penal Code of Exposing a patient to the risk of loss of life or serious damage to health are applied.

In all of these undertakings, the difficulties for the members of EMR teams begin when the victim's family or the victim himself involves a lawyer, law enforcement agencies appoint court experts from appropriate disciplines necessary for the needs of the case. Consultations with specialists in the field of emergency medicine and medical rescue are also very frequent. Patients or their families at this stage absolutely demand respect for their rights and responsibility for their violation, and expect compensation or redress from the defendant, i.e. a member or the entire EMR team.

Most paramedics in the country today work as the self-employed, therefore all costs related to hiring a lawyer have to be borne individually, which unfortunately often affects their budget.

Data analysis

The publication presents the data from the District Court in Kielce and the District Court in Katowice. The analysis period covered the years 2014 - 2019. After obtaining the consent of the President of the Regional Court in Kielce and the President of the Regional Court in Katowice, data was compiled by analysing the registered cases in individual Departments of the above-mentioned District Courts.

The Currenda System and the SAWA System were used to analyse the necessary data.

▪ District Court in Kielce

According to the information obtained from the Chairman of the First Civil Department of the District Court in Kielce, in the years 2014-2019, only one case was registered in the department, file number I C 2609/18, in which the defendant is the Świętokrzyskie Emergency Rescue Centre and Sanitary Transport in Kielce. Currently, the case is pending, at the stage of drawing up an opinion by an expert in the field of anaesthesia and emergency medicine. The case in question concerns a payment of PLN 500,000 by the way of compensation, and the claim is based on the content of Art. 430 of the Civil Code. (Journal of Laws 2019.0.1145.j. Act of 23 April 1964 - Civil Code. Art. 430):

Whoever, on his own account, entrusts the performance of activities to a person who, when performing this activity, is subject to his management and is obliged to follow his instructions, this person is responsible for damage caused through the fault of that person in the performance of the activity entrusted to him [4].

The chairman of the 5th Labour and Social Insurance Department of the District Court in Kielce announced that in the years 2014 - 2019 three cases were registered, where the defendant was the Świętokrzyskie Emergency Rescue Centre and Sanitary Transport in Kielce. Due to the fact that the files in question have been returned to the District Court in Kielce after examining the appeal, it is not possible to provide the legal basis for the claim.

There were no cases against paramedics or doctors who are members of the Medical Rescue Teams in the above-mentioned time period in this department . As for the parties bringing the claims in the above-mentioned cases, they were natural persons.

The chairman of the 9th Criminal Department of the District Court in Kielce informed that it was not possible to provide information as no information was included in the records of the Currenda System.

The Vice-President of the District Court in Kielce informed that 9 proceedings were pending before the District Court in Kielce, 4th Department of Labour and Social Security, in which the defendant was the Świętokrzyskie Medical Rescue Centre and Sanitary Transport in Kielce, i.e. :

- IV P 6/18 (IV P 7/18 and IV 8/18) the judgment recognized the plaintiffs' claims (judgment is final);
- IV P 14/18 the judgment recognized the plaintiffs' claims (judgment not final);
- IV P 48/18 the judgment recognized the plaintiffs' claims (judgment is final);
- IV P 157/17 the judgment recognized the plaintiffs' claims (judgment is final);
- IV P 177/17 court settlement (final judgment);
- IV P 393/15 the judgment recognized the plaintiffs' claims (judgment is final).

The vice president of the District Court in Kielce also informed that the above-mentioned cases were not pending in the 1st and 8th Civic Departments and the 5th Commercial Department. On the other hand, no information is included in the 2nd and 9th Criminal Departments based on the Currenda System records.

The President of the District Court in Ostrowiec Świętokrzyski informed that in the years 2014-2019 one case was brought to the 2nd Criminal Department against a doctor who was a member of the EMRT. The indictment was brought by the public prosecutor. The proceedings have not been legally terminated.

The President of the District Court in Włoszczowa informed that in the period from 2014 to October 22, 2019, one case was filed, in which the defendant was the Świętokrzyskie Center for Medical Rescue and Sanitary Transport in Kielce and one doctor - on duty as a doctor of the above-mentioned ambulance service. The suit was brought pursuant to Art. 446 § 4 and 448 of the Civil Code in connection with art. 24 of the Civil Code. The plaintiffs were natural persons.

The content of the Art. 446 of the Civil Code (Journal of Laws 2019.0.1145, i.e. the Act of 23 April 1964 - Civil Code. Art. 446):

Liability for property damage resulting from the victim's death

§ 1.

If the victim died as a result of bodily injury or health disorder, the person obliged to repair the damage should reimburse the costs of treatment and funeral to the person who covered the costs. .

§ 2.

The person to whom the deceased had a statutory maintenance obligation may claim from the person liable to compensate for the damage an annuity calculated according to the needs of the injured party and the economic and financial capacity of the deceased for the duration of the probable duration of the maintenance obligation. The same pension may be requested by other relatives to whom the deceased voluntarily and constantly provided subsistence, if the circumstances indicate that it is required by the rules of social coexistence.

§ 3.

The court may also award an appropriate compensation to the closest members of the deceased's family if their life situation deteriorated significantly as a result of his death.

§ 4.

The court may also award an appropriate sum as pecuniary compensation for the harm to the closest members of the deceased's family [5].

However, the content of Art. 448 of the Civil Code reads as follows:

In the event of a violation of a personal interest, the court may award to the person whose personal interest has been violated an appropriate amount as pecuniary compensation for the harm suffered or, upon his request, order an appropriate amount of money for the social purpose indicated by him, regardless of other measures needed to remove the effects of the violation.

Art. 24. § 1. Anyone whose personal interest has been threatened by someone else's action may demand that this action be abandoned, unless it is not unlawful. In the event of an infringement, he may also require the person who committed the infringement to perform the actions necessary to remove its effects, in particular to submit a declaration of appropriate content and form. On the principles provided for in the code, he may also demand monetary compensation or payment of an appropriate sum of money for a given social purpose.

There were no cases in which the accused or the defendant were EMRT, paramedics and doctors belonging to the Świętokrzyskie Center of Medical Rescue and Sanitary Transport in Kielce in the remaining Departments of the District Court in Kielce and in the regional courts of the Kielce district, or other EMRT administrators in the country.

- District Court in Katowice

In the period 2014 - 2019, 3 cases were submitted to the 2nd Civil Department, where the Provincial Ambulance Service in Katowice is the defendant. These cases have reference numbers II C 917/14, II C 411/14 and II C 248/18.

In the I Civil Department in the period 2014-2019 there were no cases where the defendant is or was the Provincial Ambulance Service.

Regarding the 1st and 2nd Departments, the Vice President of Regional Court in Katowice, informed that he was not able to state whether cases had been registered due to the lack of filtering of the symbols of these cases in the SAWA system.

In the 5th Criminal, 15th Criminal and 21st Criminal Departments there were no cases in which the defendants were paramedics or doctors of the Provincial Ambulance Service.

Conclusions

After the analysis of the material provided for the years 2014-2019 by the District Court in Kielce and the District Court in Katowice, the author of the publication puts forward the following conclusions:

- members of EMRT and administrators of Medical Rescue Teams in Kielce and Katowice were defendants in the proceedings before the courts;

- the defendants were paramedics and doctors on duty in EMRT;
- more cases were registered in the years 2014 - 2019 in the District Court in Kielce for the Świętokrzyskie Voivodeship than in the District Court in Katowice;
- most often the parties lodging the lawsuits in the cases were natural persons;
- most often cases were referred to civil and criminal departments;
- pecuniary compensation was the most common form of compensation.

Summary

The profession of a Paramedic is not easy. However, it enjoys great public trust. A 3-year period of education at a university and a positive passing of the final vocational exam in the field of Medical Rescue gives the graduate the title of a Medical Rescuer [Paramedic].

In the Act of September 8, 2006 on the State Emergency Medical Services, there is a detailed provision of who can practice the profession of a paramedic.

Art. 10. 1. The profession of paramedic may be performed by a person who:

- 1) has full legal capacity;
- 2) has a health condition that allows to practice this profession;
- 3) demonstrates knowledge of the Polish language sufficient to practice this profession and made a declaration of the following content: "I declare that I have a good command of Polish, spoken and written, to the extent necessary to practice the profession of a paramedic", subject to section 2;
- 4) meets the following requirements:
 - a) before October 1, 2019, commenced higher education in the field of (specialization) medical rescue and obtained the professional title of bachelor or master in this field (specialization) or
 - b) commenced higher education studies after the 2018/2019 academic year, preparing to practice as a paramedic, conducted in accordance with the provisions issued under Art. 68 section 3 point 1 of the Act of 20 July 2018 - Law on Higher Education and Science (Journal of Laws, item 1668, as amended 2), and obtained a bachelor's degree and passed the State Medical Rescue Examination with a positive result, hereinafter referred to as "PERM", or
 - c) before 1 March 2013, started education in a public post-secondary school or a non-public post-secondary school with the rights of a public school and obtained a diploma confirming obtaining the professional title of paramedic or a diploma confirming professional qualifications in the profession of paramedic, or
 - d) has a diploma issued in a country other than a Member State of the European Union, the Swiss Confederation or a Member State of the European Free Trade Association (EFTA) - a party to the agreement on the European Economic Area, recognized in the Republic of Poland as equivalent to the diploma obtained in the Republic of Poland, confirming the title a professional paramedic, and obtained the right to stay in the territory of the Republic of Poland in accordance with separate regulations, or
 - e) has qualifications to practice as a paramedic acquired in a member state of the European Union, the Swiss Confederation or a member state of the European Free Trade Association (EFTA) - party to the Agreement on the European Economic Area, recognized in the Republic of Poland in accordance with the provisions of the Act of December 22, 2015 on the principles of recognition of professional qualifications acquired in the Member States of the European Union (Journal of Laws of 2018, item 2272 and of 2019, items 534 and 577) [6].

At the time of starting professional work in the State Medical Rescue system in EMRT of type P or S, in the Emergency Room, Admission Room or other hospital wards, a paramedic is subject to the Act on State Medical Rescue in the field of emergency medical activities, which he/she will perform independently and under the supervision or on the orders of a doctor. The act also lists the range of medications that a paramedic can administer on their own.

In view of the above, the responsibility for the activities performed is large, the more so as numerous regulations of the Ministry of Health impose a greater range of competences and additional medical rescue activities on paramedics.

A novelty is the right for a paramedic, after assessing the patient's condition, not to undertake or withdraw from medical rescue operations or from providing health services, if this does not result in a risk of loss of life, serious injury or serious health impairment. The paramedic is obliged to justify and record the reasons for not taking or withdrawing from medical rescue activities or providing health services in the medical documentation. Paramedics in the Basic Medical Rescue Team also have the obligation to provide the patient or his statutory representative or a person indicated by the patient with information about the patient's health condition, in the scope related to undertaking medical rescue activities [7].

The above presented changes entitle paramedics to a wider range of actions with the patient, but it requires even greater accuracy in their performance, sometimes also caution and correct knowledge of legal acts governing medics and also patient's rights.

It is also worth mentioning here that there is a protection provided by law for paramedics. Namely, while performing medical rescue operations, a paramedic is under the protection that is granted to a public officer. The above provision is defined in Art. 115 § 13 of the Criminal Code. According to Art. 222 § 1 of the CC *Whoever violates the physical integrity of a public official or a person to assist him during or in connection with the performance of official duties, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 3 years* [8].

Taking into account the current situations that paramedics face when it comes to violating legal provisions, statistically medics are victims in more events reported by the media.

The publication presented above shows, on the example of the material analysed from the District Courts of Kielce and Katowice, the number of lawsuits in the years 2014-2019 against paramedics and doctors who make up the EMR staff. Thus, it is an important information material for medics, paying particular attention to the careful performance of medical rescue operations during emergencies that are danger to health and life of the injured, the correctness of communication with patients, their families and relatives, and periodic refreshment of knowledge about legal acts that will protect medics against possible malpractice that occur during medical procedures and may be committed by them.

Constant improvement of practical skills, increasing the knowledge of applicable legal regulations and systematized substantive knowledge constitute the basis for being a professional and avoiding medical negligence and errors.

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