

REVIEW / PRACA POGLĄDOWA

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**“THE ISSUE OF CIVIL – LEGAL RESPONSIBILITY OF MEDICAL
AND THERAPEUTIC ENTITY ASSOCIATED
WITH HOSPITAL INFECTIONS”.**

**PROBLEMATYKA ODPOWIEDZIALNOŚCI CYWILNOPRAWNEJ PERSONELU
MEDYCZNEGO I PODMIOTU LECZNICZEGO ZWIĄZANA
Z ZAKAŻENIEM SZPITALNYM.**

INTRODUCTION

The healing process from the perspective of human law is a multi-faceted and multi-threaded set of inter-dependence and symptoms which are participating in this process. They are just the starting point for determining sources of the type and nature of liability in case of injury activities related to the granting of health benefits.

The purpose of this paper is to present the issues through the explanation of basic concepts and regulations, applicable in terms of the law and the position of the doctrine.

We have discussed here the definitions of hospital infections and normative surveillance of the infection, the concept of civil liability and its sources (*ex contractu* and *ex delicto*). The paper describes the legal nature of performance and medical consequences following.

We showed here the principles of responsibility of medical staff. We also showed the extent of the protection resulting from insurance contacts.

I. The definition of the hospital infection and the regulatory supervision:

The concept of hospital infection was determined by the law of December 5, 2008 on Prevention and Control of infections and infection diseases in humans which occurred in connection with the granting of health benefit in the event of a disease:

- a) when it was during the time of providing health care services during incubation or
- b) when it appeared after giving health benefits for a period not longer than the longest incubation lasts.

The legislature presents definitions of these developments as closely related to the provision of health services.

Consequently, the circle of entities obliged to take action to prevent the spread of infections and infectious diseases emerged.

The following belong to them:

- steering hospital or health care facilities bands;
- other people than providing health services by taking steps during which there will be the continuity of human tissues;
- people providing health services.

Statutory responsibilities can be divided into:

- * general – maintain a managed property in proper sanitary condition, leading to proper management of waste and its effluents.
- * organizational and functional alarm – monitoring factors, vocation committee and the hospital infection control team, development, implementation and control procedures and prevention of nosocomial infections, able to perform the laboratory tests through the day, isolation of patients with infections or contagions disease and people particularly susceptible to infecting
- * record – reporting – reporting of the state sanitary inspector reports on the current epidemiological situation, the hospital reporter within 24 hours sanitary inspector confirmed the growth of endemic nosocomial infections, documenting how to perform the duties of organizational and functional recording of hospital infections and factors alarm.
- * real – provision of personal protective equipment to medical staff and patients, perform procedures in place decontamination of the skin, mucous membranes and other tissues of patients and medical staff, not allowing to work with a patient people referred to in the Minister of Health dates July 10th of the 2006 year, limiting the rise of drug resistance of pathogens.

The surveillance of the infections is the duty of each hospital,

whose projects entrusted to teams focusing on control of skilled workers in high – ranking hospital hierarchy.

The effectiveness of these actions is based on team works focus on these forms of infection which are the most frequent and the most important threat to patients and hospital staff, or, in the case of participation, in common programs to those that predominate in the region or the whole country [].

II. The concept of civil liability – and its types:

Civil liability – is the negative consequences borne by the people in connection with the occurrence of adverse events when execution estates can be used. The provisions of the Civil Code regulate the means of responsibility, and therefore the conditions that must exist to the liability for damages.

The concept of harms is not a single motion and concept covers damage to property and pecuniary harm:

Contractual liability – (ex contractu) – civil – legal responsibility arising from non-performance or poor performance of the obligation, which was developed on the basis of the legal action, and which includes an obligation to repair the damage. Polish law contractual liability is based on Article 471 of the Civil Code – The debtor is obliged to repair any damage resulting from non-performance or improper performance of obligations unless the failure or improper performance is the result of circumstances for which the debtor does not accept responsibility.

The burden of proof lies with the creditor failure. He has no obligation to prove quilt debtor. The debtor can break free from liability if he can prove the feasibility of non-commitment or commitments was no fault of his own.

Wine debtor's intent not to honour its commitment as well as unintentionally failure to observe due diligence in implementation thereof.

Liability in tort – (ex delicto). It is defined due to the source of liabilities, which allow an act of unlawful. This event creates between the perpetrator and the victim (between the offender and any other person) against liability under the civil law. In the Polish civil law govern civil liability provisions of Articles from 415 to 449 of the Civil Code []. The fundamental rule for this regime is the Article 415. Between the injury and the fact there must be a causal relationship. It can have a form of liability for one's own or someone else's actions [].

III. Sources of liability of the drug and medical staff:

Defining the different regimes of responsibility for the damage when the result is a hospital infection is based on the organization of the Polish health care system. The essence of its operation shows the situations in which there is a contract of service or liability arises ex contractu.

The health care in Poland is implemented by public and private health care establishment [].

The first one is financed by the state financed by the National

Health Fund and implements the constitutional duty of the state to provide citizens with the right to health care.

In this case there is no agreement between the patient and the expected therapeutic because the obligation to provide medical performance is a direct result of the Act. The existence of that obligation precludes mandatory condition required for sites to voluntarily conclude an agreement. In this situation we have the medical services testifies public medical facility, regardless of whether the services are free of charge to the patient or partially charge. There is a will result as a liability based solely on the principle of tort.

The private health care facilities should only be considered in terms of the conduct of their economic activity. Medical services will be carried out in the context of a relationship of the nascent bond liability for defective performance of contract (ex-contracto).

In the case the liability is based on the Article 471 of the Civil Code in conjunction with Article 354 paragraph 1 of the Civil Code and applies to the situation where the patient signs an agreement an provision of medical services even if the agreement fell through (per facta concludenta).

The contract is entered when you use the services of non – public medical institution that does not have a signed contract with the National Health Fund if such an agreement is signed but does not include the performance from which the patient uses.

In this case there is a contract similar to the part – time work (article 370 of the Civil Code). Patient treatment order is not the result but the careful arrangement of action; however, the patient who has such an agreement with a physician reasonably believes in the treatment of the infection.

IV. The responsibility of the medical staff and establishing of medical care:

1. Careful operation and a model of a good doctor.

While analysing the legal aspects of civil – legal responsibility of medical staff are, should pay attention to the level of legal advice in that performed activities connected with the process of treating people. Health services, no matter what the nature of regulations between the patients and the doctor are involved the necessity of careful action, rather than having to achieve a specific result. Literature defines reasonable care by the model of conduct or performance of work or professional activities in an objective way of respect for and adherence to certain strict rules and rules of conduct that are involved in the execution of the activity that is emotional and rational approach to its implementation.

For the purposes of medical law it can be indicated the activity or conduct of due diligence requires compliance with rule specified medical deriving from the current state of expertise and rational science [].

Act of the doctor and dentist profession:

In article 4, the doctor is required to carry out their profession

in accordance with the indication of the current medical knowledge available to him and the methods and means of prevention and diagnosed according to the rules of professional ethics and with due to diligence[]. Doctor should perform conduct diagnostic, curative and preventive sacrificing them significant time. Line with the Supreme Court a doctor should perform procedures according to the medical and scientific art and required the highest care from a specialist (SN dated 29.X.2003 year III CK 34/02, OSP 2005/4, position 54).

In the judgment of the 3rd of March 1998 year a court in Warsaw decided that require high diligence expected from doctors may not be reflected in assigning duties to perform incredible work duties. Some kind of medical activities increase risk of injury. If the doctor takes out the, his behavior will be evaluated according to the pattern adopted for the specialist. It has got a changeable character depending on the medical specialty which concerns for instance a good surgeon, psychiatrist or orthopaedist. If the doctor takes out the activities and he/she is qualified as a specialist, his behavior will be evaluated by following a pattern for a specialist. The deviation from the required diligence will always be classified as fault doctor. A good, model doctor would avoid causing patient harm. The fault is an awkwardness and distraction and forgetfulness doctor or omission that leads to the creation of patient harm. The doctor is responsible for every civil fault. The character and a degree of fault are irrelevant and there is no greater importance from the point of view of the existence of liability for damages.

2. Proving fault

Proving fault may occur on the basis of Article 231 through the application of the presumption of actual.[] Then in the defendant enters exculpation weight, (which it demonstrates the absence of quit).

The hospital to avoid liability must rebut the presumption by showing the damage is not a fault, but other circumstances led to the creation of injury (you can see this judgment Court of Appeal in Wroclaw dated from 28.IV.1998 year, I ACa 308/98, PiM 2002/12, judgment Court of Appeal in Warsaw dated from 21.III.1997 year, I ACa 107/97, The case list 1998/7, and a judgment Court of Appeal in Krakow 9.II.2000 year, I ACa 69/00).

In some cases, the process is the possibility of establishing liability surrogate. There is a chance of anonymous quilt, there the negligence was committed by the member of the team of the Department present at the time of causing damage.

If the Court determines that a doctor commit the fault civil court without the necessity of proving the quilt is committed or in tort and limited its finding to verify the existence and extend of the damage or injury, and shall decide on the amount of compensation and atonement.

3. The Causation

In the cause of liability for damage caused during the

treatment, the patient sustained injury must constitute a normal consequence of the operation of the hospital or medical staff. In accordance with the article 361 paragraph 1 Civil Code a causal relationship between the event and the nature of the injury should have been adequate. Supreme Court expressed the view that in the process of health and human life is not required to establish a causal in a way absolutely sure. There specificity allows you to declare a high degree of probability of the fact that the damage resulted from a specific event.

To determine the conditions responsible for the damage caused to the treatment may also result from the plane defined in criminal proceedings.

As demonstrated by the Highest Court the doctor to assign blame and cause a direct threat to the life and health of the patient could have been treated in terms of the presumption of a casual. It is also allowed to establish a casual character a condition is that the effect of the damage remained within the limits of normality.

4. The medical liability depending on how you work:

If the doctor provides health benefits as the subject of employment under a contract of employment in the public health care is not a party any relationship between him bond with the patient, so it does not take personal responsibility for causing injury to civilians. Such situations governed by the Labor Code (article 120, paragraph 1) in the event constituting the cause of injury by an employee to a third party, is obliged to repair the damage exclusively employer[]. This applies to contact employment law and civil law introduced solely responsible employer to a third party, when the employee causing it damage the performance of the employee's duties. This provision builds the concept of the so – called staff – immunity that protects the employee in this case your doctor before personal responsibility for damages caused to patients with negligence in the performance of the profession. Onus of responsibility lies with the medical establishment who, once the damage is due in relation to the doctor right of recourse to a maximum weight of three month's salary. Sole responsibility of the employer's rule is not absolute. Supreme Court allows the direct responsibility of the employee, if the reasons actual victim cannot claim damages from the employer. This view was expressed in the judgment of the day 11.04.2008 year, II CSK 618/07, OSNCP-ZD 2009, no 2, position 41, in which Supreme Court appealed to the justification of the resolution of 7 judges of the day 7.VI.1975 year, III CZP 19/75, OSNCP 1976, no 2, position 20. The victim can claim compensation also directly from an employee, if an employee inadvertently hurt the wronged him tertian course of their employment, and if the plant operation due to bankruptcy can not withdraw compensation. The doctor is responsible for causing injury to, along with the Department of healing. The essence is that the patient may claim against the debtors, then debtors may claim so recourse claims of those debtors who have not met the claim.

5. Liability of the medicinal – public and non-public may have another or organization nature:

The first of them concerns commit damage by employed doctors and medical staff (article 430 Civil Code, article 474 Civil Code).

The second concerns the fault of their own bad organization relying on badly functioning (article 415 Civil Code, eventually article 416 Civil Code).

Organizational fault will be in particular for the use bad medical equipment, patient identification evil, refused to hospital, failure to provide terms of treatment, bad distribution of patients in the room, bad technical condition of the building (lifts, stairs, unsecured windows and slippery floor).

V. Object of protection resulting from liability insurance policy:

In case when the conditions justifying the responsibility – has the effect of a civil action by a count to a patient or other authorized person of financial resources. These may be atonement, compensation or pension.

Incurring personal liability does not preclude the incurring criminal responsibility and professional for the same act.

Polish private lodgings base is a contract entered into between the insurer and the insured.

The basis of concluding a contract of insurance are:

- a) Insurance Act[]
- b) Law – Civil Code
- c) General Conditions of Insurance

Policyholder does not have, in principle, the possibility to negotiate terms. The doctor can proceed to the insurance contract on the terms specified by the insurer (adhesion contract).

Mandatory liability insurance – Minister of Finance dated on compulsory insurance entity engaged in drug activity took place mandatory insurance dated from 01.01.2012y. AU forms of the practice of medicine are subject to one new compulsory insurance.

It was also pointed to an exemption in accordance with whom OC does not harm if:

1. caused by the therapeutic activity after deprivation or during the existence of the right to medical activities
2. involving the damage, destruction or loss of job
3. involving the payment of liquidated damages
4. arise as a result of hostilities, martial law, riots and unrest as well as acts of terror

Liability insurance does not cover losses resulting from plastic surgery or cosmetic treatments, if they are not granted in the case of congenital defect, injury or illness.

The minimum amount of cover (MSG) – It is the determination of the maximum amount of cover liability of the insurer and the total height from the basis of calculation of premiums. The contribution rate grows in direct proportion to the amount of

the guarantee or the maximum amount for which the insurer is responsible.

Definite entity in the article 4 (law) 1, dated from 15. of April 2011 year the therapeutic activity called the Act which distinguishes:

- entrepreneurs (2.07.2004 year about the freedom and economic activity)
- independent public health
- budget units created by the Defense Minister of the Interior, Minister of Justice, or the head of the Internal Security Agency
- research institutes referred in the Article 3 of the Law of the research institutions
- foundations and associations whose aim is to carry out tasks in the field of health
- agencies
- legal entities and business units operating under the provisions of your relationship to the Catholic Church in Poland.

The insurance period no longer than 12 months the minimum amount of cover can accept any:

- a) 100.000 euro for one event and 500.000 euro for all events whose consequences are covered by the insurance contract liability entity medicinal
- b) 75.000 euro for one event and 350.000 euro for all events whose effects are covered by the insurance contract liability
 - a. therapeutic entity conducting business in the form of stationary therapeutic and health – clock performance than other hospitals and health performance ambulatory
 - b. doctor or dentist conducting business in the form of a therapeutic one – personal activities as individual medical practice, individual medical practice exclusively at the request, individual and specialistic medical practice, individual and specialistic medical practice exclusively at the request, individual medical practice enterprise solely for the therapeutic entity under contract with the entity, individual, specialistic medical practice enterprise solely for the therapeutic entity under contract with the entity,
 - c. doctor or dentist performers of therapeutic activity in the form of partnerships, general partnerships or joint partnerships as a group medical practice
- c) 30.000 euro for one event and 150.000 euro for all events whose effects are covered by liability:
 - a. nurse or midwife performing medical activities as a 1 – person business activities, individual nurse or midwife practice exclusively at the request, individual specialistic nurse or midwife practice, individual specialistic nurse or midwife practice exclusively at the request, individual nurse or midwife practice exclusively in the company of a medicinal entity under contract with the entity or individual specialistic nurse or midwife practice exclusively in the company of a medicinal entity under contract with the entity,
 - b. nurse or midwife performing medical activities in the form

of partnership, express or partner companies as a medical group practice or nurses and midwives

Duties of insurer:

In the OC insurer is obliged to:

- pay due compensation for damage to property, compensation for damage to the victim
- cover the necessary costs of judicial and extrajudicial defense against third party claims
- pay costly expert witnesses appointed with the consent of the insurer.

In a case, where to insured in connection with the event which causes the obligation to refund prosecuted insurer shall bear the costs of defense. OC insurance also applies the liability which might arise in connection with the ownership of equipment and medical equipment with the exception of those which may be included to insure only under an additional agreement, an account of the use of the premises to carry out activities.

Exclusion of liability insurance:

In which case it is excluded provide a general liability, insurance policy conditions that an insurance policyholder is required to provide the doctor's insurance. According to the opinion of the Supreme Court case of doubt, we must interpret everything to the advantage of the insured.

As a rule, the insurer is not liable for damages arising as a result of:

- willful doctor or person for which he is responsible for this situation
- activities performed by a doctor, who in the day of the injury did not have a license to practice or has been suspended
- medical action under the influence of psychoactive
- treatments or cosmetic surgery
- experimental treatments unless an additional agreement concluded
- perform the duties of an administrative nature in connection with duties of his office in the administration or in medical council[].

In the event of a claim the insured shall promptly notify the insurer.

Final conclusions:

The complexity of the issue of civil – legal liability, medical and therapeutic entity associated with hospital infection causes of work highlighted the important parts. Steady progress, which is observed in medicine has benefits for people, also brings some threats of which we should protect patients from them. Threats include hospital infection.

The role of legal norms to protect the patient, if the doctor can put allegation of misconduct, but should also protect the doctor from liability for activities detrimental to the medical patient's. The, so-called “medical law” both in the worldwide and in Poland subject to constant evolution tries to keep up with changes in medicine. The same legal standards

inherently not exhaustive protecting the patient and the doctor. We can observe a constant process of development of their interpretation of doctrine and judicial. We can talk about the evolution of views on the responsibility of medical staff generally the once now rather civilian. Concluding liability insurance is a prerequisite for the protection but not sufficient. The protection of medical staff requires the elimination of the causes of infections permanent tracking of changes in law doctrine and case law in this area.

It is difficult to imagine that the medical staff had time to deepen knowledge of the law and expected interest in cooperating with law firms involved in this of law, as is the case in other European countries and in North America.

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