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## Legal aspects of physical examination in nursing

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### 1. Introduction

Nursing is a profession that deals with patient care and aims to help people achieve optimal health. It is a profession with clearly defined roles responding to specific social needs, and it is also an evolving scientific discipline with practical applications. In recent decades, the position of the profession has been strengthened and the degree of professional autonomy of nurses and midwives has increased. They have ceased to be mere executors of medical orders and, within the limits of their professional competence,

take decisions independently and on their own initiative regarding the planning and implementation of health care services for different categories of recipients, in different health conditions, in inpatient, outpatient, and residential settings.

The range of activities carried out independently by nurses and midwives without a doctor's order is relatively broad and includes health services present at every stage of the patient care process.<sup>1</sup> However, the planning of the treatment, care or rehabilitation process must be preceded by an assessment of the patient's state of health. Only when the patient's health problem has been identified can action be taken to maintain or restore his or her health. The basic diagnostic procedure for assessing a patient's health is the physical examination, which includes a discussion with the patient and a physical examination using methods such as visual inspection, percussion, auscultation, and palpation. Until recently, only doctors were allowed to carry out this examination. Currently, nurses and midwives acquire knowledge and skills in physical examination as part of their professional training. At the same time, this increases the competence of these professionals in terms of diagnostic procedures and allows for a more efficient implementation of the therapeutic process for the patient.

Therefore, the main objective of the study is to try to demonstrate that nurses and midwives are entitled to perform the physical examination themselves without a doctor's order and to determine what their obligations are in relation to the performance of this medical procedure.

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<sup>1</sup> Regulation of the Minister of Health of 28 February 2017 on the type and scope of preventive, diagnostic, therapeutic, and rehabilitation services provided by a nurse or midwife without a doctor's order (Journal of Laws of 2017, item 497), hereinafter: the Regulation.

## 2. Legal regulations for a nurse to perform a physical examination alone without a doctor's order

The provision of diagnostic services by a nurse or midwife independently, without a doctor's order, including the performance of a physical examination, is subject to the requirements set out in the previously mentioned Regulation of the Minister of Health of 28 February 2017 on the nature and scope of preventive, diagnostic, therapeutic, and rehabilitative services provided by a nurse or midwife without a doctor's order. Pursuant to § 3(2)(a) of the Regulation (for nurses) or § 7(1)(a) (for midwives), a nurse or midwife is entitled to perform a physical examination on her own without a doctor's order if she has completed a specialist course or holds a specialist degree in nursing obtained after 2001, or has completed a bachelor's degree in nursing (or midwifery in the case of midwives) that began in the academic year 2012/2013, or holds a certificate of completion of a course in advanced physical examination. This means that the ability of a nurse or midwife to perform a physical examination independently without a doctor's order depends on the level of formal education and the qualifications and skills acquired during postgraduate training. The analysis of the cited regulations shows that graduates of bachelor's degree programmes in nursing/obstetrics that started in the academic year 2012/2013 are trained to provide diagnostic services, including physical examination. This is related to the transformation of nursing/midwifery education and the introduction of the National Qualifications Framework from the 2012/2013 academic year in nursing and midwifery faculties, as well as changes in the educational standards of these faculties, which enabled the introduction of classes preparing graduates for physical examination.<sup>2</sup> In the case of persons who have graduated from a medical school or from a higher or secondary school

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<sup>2</sup> Annexes 4 and 5 to the Regulation of the Minister of Science and Higher Education of 9 May 2012 on educational standards for the fields of study of medicine, medicine-dentistry, pharmacy, nursing, and midwifery (consolidated text Journal of Laws of 2018, item 345).

of nursing and midwifery, the possibility of carrying out a physical examination independently without a doctor's order is subject to the acquisition of additional qualifications through postgraduate training. The rationale for such a requirement is that nurses and midwives are not trained to provide services involving the performance of a physical examination as part of their professional preparation.

The performance of a physical examination by a nurse or midwife practising independently within a health-care establishment without a doctor's order implies an obligation to inform the doctor in whose charge the patient is without delay of the performance of the physical examination. On the other hand, in the case of a nurse or midwife practising outside a health establishment, the obligation to inform the doctor of the performance of a physical examination arises if the patient is receiving medical care in the nurse's presence (Section 8(1) and (2) of the Regulation). There should be no doubt about the need to inform the doctor immediately about the physical examination. Indeed, communication within the therapeutic team is essential for the proper provision of health care. It promotes the creation of a friendly, welcoming atmosphere and ensures that the patient continues to receive the right level of care. However, this must be accompanied by an appropriate flow of information about the ongoing changes in the patient's condition and about the interventions planned and carried out by each member of the therapeutic team.<sup>3</sup> Therefore, the obligation to inform the physician of the self-assessment of the physical examination should be understood broadly as an obligation to immediately communicate the necessary information on the patient's condition obtained as a result of the examination to provide the patient with appropriate health care. A nurse or midwife who has independently carried out a physical examination of a patient without an order from a medical practitioner is obliged to communicate information about the conduct of that examina-

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<sup>3</sup> D. Nalepa, D. Weber, E. Guz, V. Mianowana, M. Czekirda, *Komunikacja i współpraca w zespole terapeutycznym podstawą wysokiej jakości usług medycznych*, "Journal of Education, Health and Sport" 2017, No. 7, p. 150.

tion only to the medical practitioner under whose care the patient is receiving such care or in whose presence the patient is receiving such care. This means that the information about the patient is provided only to the person involved in the provision of health care to the patient.

The need to provide the physician with the necessary information about the patient in connection with the performance of the physical examination is also a circumstance that excludes the obligation of the nurse and midwife to maintain the confidentiality of information about the patient. In the context of the provision of health services, and during a physical examination, the patient discloses information relating to his or her condition, often of an intimate nature, which makes the nature of the relationship between the nurse and the patient confidential.<sup>4</sup> For this reason, legislation requires nurses and midwives to maintain professional confidentiality.<sup>5</sup> Circumstances exempting a nurse or midwife from the obligation of professional secrecy derive from Article 17(2)(4) of the APNM and Article 14(2)(4) of the Act on Patients' Rights and the Ombudsman for Patients' Rights.<sup>6</sup> It follows from the content of these provisions that a nurse and midwife may disclose information relating to a patient's health status, not only to a doctor, but also to other health professionals involved in the provision of a health service to the patient, if only because of the complex nature of the service.

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<sup>4</sup> M. Sadowska, *Komentarz do art. 17, in: Ustawa o zawodach pielęgniarzy i położnej. Komentarz*, eds. M. Sadowska, W. Lis, Warszawa 2019, p. 135.

<sup>5</sup> Pursuant to Article 17(1) of the Act of 15 July 2011 on the professions of nurse and midwife, "a nurse and midwife are obliged to keep patient-related information obtained in connection with the practice of their profession confidential"(consolidated text, Journal of Laws of 2022, item 2702, as amended), hereinafter: APNM.

<sup>6</sup> Act of 6 November 2008 on Patients' Rights and Patients' Ombudsman (consolidated text, Journal of Laws of 2023 item 1545 as amended) hereinafter: APR.

### 3. Patient's consent for physical examination

Patients have the right to give or withhold their consent to any health service provided to them (Article 16 of the APR). Consent to the provision of a health service is therefore of a specific nature, since it refers to a strictly defined action by a doctor or a person practising another medical profession, to whom the patient gives his or her consent to carry out a specific medical action, while at the same time interfering with the sphere of his or her personal property. In other words, no health service can be imposed on anyone without their consent, including the performance of a physical examination which, although it may appear to be a quick and simple examination, nevertheless involves an intrusion into the patient's sphere of privacy. Obtaining the patient's consent means that the actions taken by health professionals are not the result of their arbitrariness or even their conviction that they are right to proceed, but must always be in accordance with the will of the person concerned.

For a patient's consent to a medical examination to be valid, it must not be defective, i.e. certain conditions must be met cumulatively and simultaneously: 1) consent must be informed, voluntary, and prior to the act, in this case a physical examination; 2) it must be given by an authorized person; 3) consent should be given in the form prescribed by law. Consent to a physical examination is legally valid if it is given by the patient in an informed manner, i.e. before giving consent, the patient is fully informed – in a way that he or she understands – of all the aspects and risks involved in carrying out the physical examination. In other words, the patient gives informed consent to a physical examination only if, having received the information, he or she understands it and, after reflection, freely and voluntarily consents to the proposed medical intervention.<sup>7</sup> It is the duty of the nurse or midwife carrying out the physical examination to provide the patient with the necessary

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<sup>7</sup> D. Karkowska, B. Kmiecik, *Komentarz do art. 16*, in: *Prawa pacjenta i Rzecznik Praw Pacjenta. Komentarz*, ed. D. Karkowska, Warszawa 2021, p. 572.

information about his or her state of health and the nature of the examination to be carried out. This is an expression of interaction with the patient and the establishment of a relationship of mutual trust, conducive to frank discussion and openness on the part of the patient. According to Article 16 of the APNM, the nurse and the midwife are obliged to provide the patient, or the patient's legal representative or a person designated by the patient, with information about the patient's state of health, insofar as this is necessary for the provision of nursing care or care during pregnancy and the management of labour and the puerperium. At the same time, the obligation to inform the patient about his or her state of health is linked to the patient's fundamental right to information (Article 9(1) of the APR), which includes the right to obtain from the nurse or midwife accessible information on the state of health, the nursing diagnosis, the proposed and possible diagnostic, therapeutic, and other measures to be taken, the treatment to be given and the reasons for the treatment, the proposed and possible diagnostic, therapeutic, and nursing methods, the foreseeable consequences of their application or abandonment, the results of treatment and the prognosis, within the framework of the health services provided by the nurse and midwife and in accordance with the powers conferred on her (Article 9(2) of the APR).

The information given to the patient must include the nature and extent of the planned physical examination, how it will be carried out (so that the patient knows what to expect) and the consequences of not carrying out such an examination. The burden of proof that the patient has been fully informed prior to consenting to a physical examination rests with the nurse or midwife undertaking such an examination. It should be emphasised that the nurse should obtain the patient's consent to a medical act, such as a physical examination, before carrying it out. If, during the examination, it becomes necessary to extend it, the patient should be given the necessary information to enable him or her to give informed consent to additional measures not previously covered by the consent.

Persons entitled to consent to an examination or the provision of other health care services include adult patients, minors under the age of 16, persons who are incapable of giving informed consent or who are incapable of giving informed consent, for whom the decision is normally made by their legal representatives, and minors over the age of 16 who make the decision jointly with their legal representative (Article 17 of the APR). In the absence of a legal representative, the right to consent to the examination may be exercised by the legal guardian.

Therefore, a minor under the age of 16, or a person who is incapacitated or incapable of giving informed consent, has no independent right to consent or to object to the performance of a medical examination or the provision of another health service. The degree of individual development of the minor or other factors affecting his or her capacity to give informed consent are not relevant. This is because the child is considered to be less mature, less rational, and less resourceful in life and, therefore, “for obvious reasons” cannot make rational health decisions. Parents (more broadly, legal representatives), who are in a unique position to determine what is in the child’s legitimate interest, have the right to decide on the extent and nature of medical care provided to the child. In such a case, the nurse or midwife must first obtain the consent of the minor patient’s legal representative, known as substitute consent. A minor patient under 16 years of age, although not competent to give his or her own consent to a physical examination, has the right to be informed prior to the examination to the extent necessary for the proper conduct of the diagnostic process, to be heard and to express his or her own opinion, which will be considered (Article 9(7) of the APR). Obviously, the extent and nature of the information provided should consider his or her level of psychophysical development. This means that the nurse or midwife must make every effort to explain to the child, in a manner appropriate to his or her development, age, capacity to understand, and capacity to judge, what the examination will consist of and how it will be carried out. If the minor is not able to understand the meaning



of the information given to him or her, the nurse or midwife must inform his or her legal representative.<sup>8</sup>

In the case of a minor patient over 16 years of age and a patient who is totally incapacitated, but who is still capable of expressing his or her opinion on the physical examination and capable of giving consent, the consent of the patient himself or herself is required in addition to the consent of the legal representative/guardian. The consent of both these actors (the patient and his or her legal representative/guardian), referred to as concurrent (cumulative, additional, double, or joint) consent,<sup>9</sup> is an expression of the desire to realise the autonomy of the patient who is unable to give consent on his or her own, but is nevertheless competent enough to participate in the decision-making process.<sup>10</sup> Moreover, the child often needs the assistance and active support of the parents in the decision-making process, which often leads to a consensual agreement. However, it is the nurse or midwife, and not the parents, who are responsible for informing the child, so that exempting them from informing the minor does not prejudice the fulfilment of their professional duty.<sup>11</sup> The minor patient has the same right to be informed about the physical examination as his or her legal representative. These rights are independent.<sup>12</sup> Therefore, the obligation to provide information on each of these topics should be fulfilled, considering the right of the minor patient and his or her legal representative to give or withhold consent to a physical examination.

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<sup>8</sup> M. Sadowska, *Zapobieganie błędom medycznym w praktyce*, Warszawa 2019, p. 115–151 and the literature therein.

<sup>9</sup> See M. Sadowska, *Zapobieganie błędom*, p. 151 and the literature therein.

<sup>10</sup> For a more extensive discussion, see A. Dudzińska, *Zgoda na działanie medyczne*, “Państwo i Prawo” 2009, No. 11, pp. 69–79.

<sup>11</sup> M. Boratyńska, *The Dysfunctionality of the Protection of the Rights of a Minor Patient. Part 1: Representation of Interests and the Right to Information*, “Annales Universitatis Mariae Curie-Skłodowska Lublin-Polonia” 2023, Vol. 70, No. 1, p. 54.

<sup>12</sup> K. Golusińska, O. Biernacka, *Obowiązek informowania przez lekarza o stanie zdrowia pacjenta i konsekwencje jego niedochowania*, “Medical Maestro Magazine” 2016, No. 2, p. 40.

The form of consent given by the legal representative should be the same as that given by the patient.<sup>13</sup> However, each statement is subject to an independent assessment as to whether the form is maintained and the conditions for legal effectiveness are met.<sup>14</sup> In the case of a physical examination that does not pose a major risk to the person being examined, the patient's consent may be given verbally or by behaviour that clearly indicates a willingness to submit to the medical act proposed by the nurse or midwife. The patient's consent may therefore take the form of a verbal statement – "I agree" – or it may be implicit (consent *per facta concludentia*). Examples of such unambiguous behaviour include nodding one's head or preparing for an examination by undressing.

A minor patient over the age of 16, an incapacitated person, and a patient who is mentally ill or has a mental disability, but has sufficient capacity to understand, has the right to object to the provision of a health service, including a physical examination, despite the consent of the legal representative or guardian. In such a situation, the nurse or midwife may carry out the examination after obtaining authorization from the guardianship court (Article 17(3) APR). A physical examination may be carried out despite the lack of consent or in the face of an objection, only if the patient needs immediate assistance and is unable to give consent because of his or her state of health or age, or if it is not possible to communicate with his or her legal representative or guardian (Article 12a of the APNM).

#### 4. Respecting the patient's right to privacy and dignity during a physical examination

According to Article 20(1) of the APR, patients have the right to respect for their privacy and dignity, particularly during the pro-

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<sup>13</sup> D. Karkowska, *Prawo medyczne dla pielęgniarek*, Warszawa 2013, p. 171.

<sup>14</sup> More extensively: J. Kosonoga-Zygmunt, *Zgoda rodziców na udzielenie świadczenia zdrowotnego małoletniemu pacjentowi*, "Prokuratura i Prawo" 2018, No. 5, pp. 62–94.

vision of health services. This means that any person providing health services has a legal duty to respect the intimacy and dignity of the patient. For nurses and midwives, this is also an ethical imperative. In fact, the Code of Ethics of Professional Nurses and Midwives of the Republic of Poland, in the specific part in Article 8, has established that “a nurse and midwife shall ensure the patient’s privacy, protect his or her personal dignity and intimacy, violating them only to the extent necessary for the proper therapeutic procedure and performance of health services”.<sup>15</sup>

The physical examination often concerns intimate areas and problems of the patient’s life, which the patient must talk about, often referring to events from his or her personal life, exposing his or her body, allowing it to be touched so that the nurse or midwife can carry out a physical examination. All these activities, to a greater or lesser extent, invade the patient’s sense of intimacy, affecting the most personal part of a person’s life, which remains hidden or is only revealed to those closest to them.<sup>16</sup> A poorly conducted physical examination can be the cause of much inhibition, embarrassment, reluctance, lack of honesty, and even concealment or misrepresentation of facts relevant to the examination of the patient’s health. It is therefore important to conduct the physical examination in a room that is adequately protected from access by third parties and, if this is not possible, to use screens to maximise the intimacy of the patients sharing the room. It is also necessary to have a separate room (or part of it) where the patient can undress or change clothes. Protecting intimacy and dignity also means providing an atmosphere that ensures respect for these values. A patient who needs to be examined is not just a “diseased organ”. He or she is still a “whole person” with his or her own system of values and knowledge, who has certain expectations of those providing health care. By assuming the role of

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<sup>15</sup> Code of Ethics of the Professional Nurse and Midwife of the Republic of Poland. Annex to Resolution No. 18 of the National Congress of Nurses and Midwives of 17 May 2023, [https://nipip.pl/wp-content/uploads/2023/06/20230517\\_U18Z.pdf](https://nipip.pl/wp-content/uploads/2023/06/20230517_U18Z.pdf) (access: 15.12.2023).

<sup>16</sup> Judgment of the Supreme Court of 15 April 2005, I CK 753/04, Lex No. 603406.

the patient, no one can be forced into absolute compliance with predetermined rules that undermine his or her sense of dignity.<sup>17</sup> The patient has the right to expect that medical personnel will respect his or her personal dignity by considering him or her as an equal participant in the therapeutic process, i.e. by respecting his or her subjectivity. The nurse or midwife carrying out a physical examination is obliged to treat the patient with tact, kindness, understanding, and patience, regardless of age or state of health. The patient's right to respect for intimacy and dignity knows no limits or restrictions regarding age, sex, state of health, economic situation, origin, race, etc. Nor can it be linked to the possession of insurance or citizenship.<sup>18</sup>

Intimacy is a very sensitive, confidential, and personal area of life, and the content of the right to information correlates with the obligation to isolate patients from outsiders and to reduce contacts with the staff of the treatment facility to the minimum necessary.<sup>19</sup> The only way to invade the sphere of human intimacy is with the consent of the person concerned. This means that the physical examination of the patient should be carried out without the presence of third parties. This also applies to the presence of members of the medical staff, which should be limited to those persons who are objectively necessary owing to the nature of the service or the performance of control activities based on the provisions on medical activity (Article 22(2) of the APR). In fact, the participation of another member of the medical staff may sometimes be necessary during a physical examination because of the need to assist or give advice. Their participation does not then require the patient's consent. Similarly, the participation of students in medical procedures in units training medical students, doctors, and other medical staff, to the extent necessary for teaching purposes, does not

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<sup>17</sup> D. Karkowska, *Komentarz do art. 20*, in: *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, Lex 2016.

<sup>18</sup> T. Rek, D. Hajdukiewicz, *Lekarz a prawa pacjenta – poradnik prawny*, Warszawa 2016, p. 167.

<sup>19</sup> P. Grzesiewski, *Komentarz do art. 20*, in: *Prawa pacjenta i Rzecznik Praw Pacjenta*, ed. D. Karkowska, Warszawa 2021, p. 641.

require the patient's consent (Article 36(4) of the APPD<sup>20</sup>), although the patient should be informed in advance by the medical institution of the exclusion of the right to consent to the participation of other persons, including students.<sup>21</sup> The patient's consent is not required only when students of medicine are present during the examination. However, this does not entitle students to violate the physical integrity of the patient by performing the examination in person.<sup>22</sup> The presence of persons not belonging to the medical profession is permitted during a physical examination. However, the presence of such persons is strictly subject to the consent of the patient or, in the case of a minor patient, or a patient who is incapable of giving informed consent, the consent of the patient's legal representative. This consent may not be implied or presumed, but must be given explicitly. In addition to the consent of the patient (or other authorised person), the consent of the health professional providing the healthcare is also required.

If the patient wishes, a companion may be present during the physical examination. In many cases, this gives the patient a sense of security and reassurance. The situation is slightly different in the case of a minor patient who is not able to receive health care services independently. Decisions regarding the child's health care are left to the parents (the child's legal representatives). In exercising parental authority, they have the right and duty to exercise custody over the person of the child, including care for the child's health, which is manifested, *inter alia*, by active participation in the process of diagnosis and treatment of the minor.

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<sup>20</sup> Pursuant to Article 36(4) of the Act of 5 December 1996 on the professions of physician and dentist (consolidated text, Journal of Laws of 2023 item 1516), hereinafter: APPD. "Article 22(2) of the Act of 6 November 2008 on Patients' Rights and Patients' Ombudsman shall not apply to clinics and hospitals of medical academies, medical research and development units and other units authorized to train students of medical sciences, doctors and other medical personnel to the extent necessary for teaching purposes".

<sup>21</sup> More extensively: J. Haberko, *Prawna dopuszczalność obecności innych osób, w tym studentów medycyny, przy udzielaniu pacjentowi świadczeń zdrowotnych*, "Themis Polska Nova" 2013, No. 1(4), p. 45.

<sup>22</sup> A. Wołoszyn-Cichocka, *Ochrona praw pacjenta: studium publicznoprawne*, Lublin 2017, pp. 273–274.

The participation of parents in the examination of the child is not only an expression of legitimate concern, but also has a practical value, namely the parents are simply a source of information on the presented complaints and symptoms of the disease, which the child is not able to provide. However, there may be a situation in which a young patient requests that his or her parents do not accompany him or her during the physical examination. This is understandable, especially if the examination involves showing intimate parts of the body. For any person of average sensitivity, such an examination is a difficult situation, causing feelings of shame and embarrassment. Bearing in mind that the aim of the regulation introduced by Article 21(1) of the Act is to guarantee the rights of the patient and not the needs of a person close to him or her, we should be in favour of respecting the request of such a patient to refuse the presence of a person close to them during the examination. Moreover, in more important matters concerning the child's person or property, the parents should listen to the child, only if the child's mental development, state of health and degree of maturity allow it, and consider, as far as possible, the child's reasonable wishes (Article 95 § 4 of the Act of 25 February 1964 on the Family and Guardianship Code). Thus, if they consider that an examination in their presence could be embarrassing for the child, they should consider the child's reasonable wishes regarding his or her refusal to participate in the medical procedure. It should be borne in mind that the examination may be carried out on a minor with the informed consent of his or her legal representative, as mentioned above. In addition, the nurse or midwife who has carried out the examination on a minor patient is obliged to inform the minor's legal representative of the outcome of the examination.

## 5. Informing the patient of the results of the physical examination

The physical examination is the basic diagnostic service performed to assess a patient's state of health. It can be assumed from life experience that when a patient consents to an examination and is convinced of its validity, he or she is curious about the results, which will be relevant to his or her future health situation. This is, after all, the natural reaction of any person who is interested in the state of his or her health. In this context, the patient has a knowledge deficit that should be filled by the nurse or midwife carrying out the examination as someone who has a certain amount of medical information that the patient does not have. After all, they are entitled to know and understand what is happening to them. The information they are given puts them in a position where they are aware of their own situation. Among other things, this reduces the level of anxiety they feel.<sup>23</sup> The legislator respects the patient's right to information by obliging the nurse and midwife to provide the patient, or the patient's legal representative, or a person designated by the patient, with information on the patient's state of health to the extent necessary for nursing care or care during pregnancy and the management of delivery and the puerperium (Article 16(2) of the a.s.p.). The cited provision, which regulates the scope of the information obligation of nurses and midwives, is too narrow and clearly goes beyond nursing care and procedures.<sup>24</sup> Such standardisation restricts the right to information, particularly in the context of the extension of the professional competence of nurses and midwives with regard to the independent prescription of medicinal products, foods for special nutritional purposes, and medical devices (Article 15a(1) of the APNM), including decisions on the continuation

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<sup>23</sup> A. Ostrowska, *Rozprawa z czasem w chorobie przewlekłej*, in: *Antropologia medycyny i farmacji w kontekście kulturowym, społecznym i historycznym*, ed. B. Płonka-Syroka, Wrocław 2008, pp. 22–23.

<sup>24</sup> D. Karkowska, B. Kmiecik, *Komentarz do art. 9*, in: *Prawa pacjenta i Rzecznik Praw Pacjenta. Komentarz*, ed. D. Karkowska, Warszawa 2021, p. 463.

of treatment ordered by a doctor (Articles 15 and 15a(2) of the APNM) and the independent referral of a patient for diagnostic tests (Article 15a(6) of the APNM). It is important, however, that the scope of the above actions requires that the nurse or midwife first examines the patient and assesses his or her state of health and, consequently, informs him or her of the result of the examination. Informing the patient of the result of the physical examination carried out falls within the scope of the exercise of the patient's right to information on the state of health, including the diagnosis, which falls within the scope of Article 9(2) of the APR.<sup>25</sup>

The right to be fully informed of the results of the physical examination applies to the adult patient and to the minor patient over the age of 16 (Article 9(2) APR). In the case of a patient who has reached the age of 16, the right to information also applies to the patient's legal representative. From a formal point of view, nothing can be withheld from the parents, even if the information concerns the intimate life of the minor patient.

In the case of children under the age of 16, the law obliges medical professionals to provide the minor patient with information to the extent and in the form necessary for the proper conduct of the diagnostic or therapeutic process. This means that the child should not be overlooked when it comes to providing information on the results of the physical examination, which are the basis for further interventions in the diagnostic and therapeutic process. Of course, the child's intellectual and cognitive capacity to absorb and understand the information provided is crucial. Thus, care must be taken to explain to the child, in a manner appropriate to his or her age, the causes of his or her complaints and his or her ability to perceive them, and to satisfy his or her legitimate need to know about the state of his or her health and the condition of his or her body. Around the age of 13, a child can understand what illness is, what is happening to his or her body.<sup>26</sup> It will cer-

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<sup>25</sup> Judgment of the Court of Appeal in Szczecin of 11 August 2016, I ACa 300/16, Lex No. 2137090.

<sup>26</sup> B. Gulla, B. Izydorczyk, R. Kubiak, *Poszanowanie godności i intymności nastolatka w sytuacji leczenia*, in: *Godność i intymność pacjenta. Aspekty psychologiczne i prawne*, Kraków 2019, p. 110.



tainly be easier to communicate with a 13–15-year-old than with a pre-school child, where verbal communication will often need to be supported by pictograms.<sup>27</sup> A legal representative should be consulted when informing a child under the age of 16 about his or her health. Parents need information to make medical decisions on behalf of their child, to exercise parental authority properly, and to represent the child's rights and interests properly. Therefore, parents expect the examiner to provide all the information about the child without withholding anything. Although there are considerations in the doctrine regarding the respect of the child's medical confidentiality in relation to his or her parents, and there are arguments that could support the possibility of not disclosing to the parents the information that the child has entrusted in confidence to the person providing the health care,<sup>28</sup> according to the current law, the parents of a minor patient are entitled to medical information without any restrictions, together with full access to the medical records.

A patient, including a minor who has reached the age of 16, has the right to ask the nurse or midwife not to provide him or her with any information about his or her state of health obtained after a physical examination (Article 9(4) of the APR). The patient's wish not to be informed must be made explicit, i.e. it should be externalised and unambiguous. It is unacceptable for a nurse or midwife to waive their duty to provide information based on the patient's implied behaviour. The patient's waiver of the right to information does not exempt the nurse from providing information about the physical examination.<sup>29</sup>

The right to withhold health information cannot be exercised by the legal representative of a minor patient, but can be exercised by the minor patient.<sup>30</sup> This is because the legal representatives

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<sup>27</sup> More extensively: Z. Gryszka-Mędrek, *Wprowadzenie alternatywnych i wspomagających metod komunikacji u dziecka z mózgowym porażeniem dziecięcym*, "Logopedia Silesiana" 2012, No. 1, pp. 140–158.

<sup>28</sup> M. Boratyńska, op.cit., p. 57.

<sup>29</sup> More extensively: M. Sadowska, *Zapobieganie błędom*, pp. 123–124 and the literature therein.

<sup>30</sup> D. Karkowska, *Prawo medyczne*, p. 164.

exercise parental authority, including custody and representation of the child's person, which entails obtaining information about the child's state of health and taking decisions concerning the child's health. In view of this fact, the participation of the legal representative must be subject to the principle of the best interests of the child, understood as taking all measures in the best interests of the child, including the child's health.

## 6. Conclusions

The performance of a physical examination by nurses and midwives on their own initiative, without a doctor's order, depends on the level of formal education and the qualifications and skills acquired during postgraduate training. In the case of a nurse or midwife practising in a health-care establishment, this implies an obligation to inform without delay the doctor under whose care the patient is placed that a physical examination has been carried out. On the other hand, in the case of a nurse or midwife practising outside a health care establishment, the obligation to inform the doctor of the performance of the physical examination arises when the patient is under the care of the doctor and in his or her presence.

The performance of a physical examination by a nurse or midwife entails the obligation to obtain informed consent prior to the provision of a health service. The person entitled to consent to a physical examination is, of course, the patient or his or her legal representative, who takes the decision in the case of a minor under 16 years of age, or of a person who is incapable of giving informed consent, or together with a minor if the latter is over 16 years of age.

The nurse and midwife have a legal duty to respect the intimacy and dignity of the patient in relation to the physical examination, irrespective of the patient's age, sex, health status, economic situation, origin, nationality, or insurance cover. Respect for intimacy and dignity in relation to the conduct of a physical examination also includes respecting the request of a minor patient to refuse the presence of a relative during the examination, which may

be embarrassing and disconcerting. The legislation respects the patient's right to information by requiring the nurse or midwife to provide the patient or the patient's legal representative with information about the patient's state of health, including the results of the physical examination.

## **SUMMARY**

### **Legal aspects of physical examination in nursing**

The performance by nurses and midwives of a physical examination without a doctor's order depends on the level of formal education and qualifications acquired during postgraduate training. Conducting an examination entails the obligation to obtain prior consent from the subject authorized to give consent, respecting the patient's right to privacy and dignity, provide the patient or the patient's legal representative with information about the results of the examination, and document them accurately. A nurse or midwife who, on her own without a doctor's order, has performed a physical examination, is obliged to provide information about the performance of this examination to the doctor under whose care the patient is, or will be, provided with such care. The purpose of this obligation is to inform the doctor of ongoing changes in the patient's condition in order to ensure that the patient is cared for at the appropriate level.

**Keywords:** nursing; physical examination; patient rights; duty of information

## **STRESZCZENIE**

### **Prawne aspekty badania fizykalnego w pielęgniarstwie**

Wykonywanie przez pielęgniarki i położne badania fizykalnego bez zlecenia lekarskiego jest zależne od poziomu formalnego wykształcenia oraz kwalifikacji nabytych w trakcie kształcenia podyplomowego. Przeprowadzenie badania wiąże się z obowiązkiem uprzedniego uzyskania zgody od podmiotu uprawnionego do jej wyrażenia, respektowania prawa pacjenta do poszanowania intymności i godności, udzielenia pacjentowi lub jego przedstawicielowi ustawowemu informacji o wynikach badania oraz rzetelnego ich udokumentowania. Pielęgniarka lub położna, które

samodzielnie bez zlecenia lekarskiego wykonały badanie fizykalne, zobowiązane są przekazać informację o wykonaniu tego badania lekarzowi, pod opieką którego znajduje się pacjent lub w jej obecności zostanie taką opieką objęty. Obowiązek ten ma służyć poinformowaniu lekarza w zakresie bieżących zmian, jakie zachodzą w stanie zdrowia pacjenta po to, by zapewnić mu opiekę na właściwym poziomie.

**Słowa kluczowe:** pielęgniarstwo; badanie fizykalne; prawa pacjenta; obowiązek informacyjny

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