

MALPRAXIS IN MEDICAL PROFESSION – SETTLEMENT AND CONTROVERSY

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Abstract: *The malpraxis is defined as “the professional error committed while medical or medical – pharmaceutical practicing, causing prejudices to the patient, implying the civil liability of both the medical staff and the provider of medical, sanitary and pharmaceutical products and services”. Commissions of monitoring and professional competence have been created by the public health authority in order to investigate the malpraxis cases that can be reported by the patients who consider themselves as being victims of such events, that can be imputed to an activity of prevention, diagnosis and treatment. Unfortunately, the duties and competencies of the Malpraxis Commission are not clearly stated, superposing the attributions of other institutions that are sanctioning the professional infringement. Since the occurrence of the legislative regulation regarding the medical malpraxis, there have been multiple attempts of systemizing those regulations, nonetheless due to the numerous dysfunctions occurring during the development of not always very clear procedures, neither for the patient, nor for the medical doctor.*

Keywords: *Malpraxis, professional medical liability, professional medical civil liability insurance*

Rezumat: *Malpraxisul este definit ca fiind „eroarea profesională săvârșită în exercitarea actului medical sau medico – farmaceutic, generatoare de prejudicii asupra pacientului, implicând răspunderea civilă a personalului medical și a furnizorului de produse și servicii medicale, sanitare și farmaceutice”. La nivelul direcțiilor de sănătate publică au fost constituite comisii de monitorizare și competență profesională pentru cazurile de malpraxis care pot fi sesizate de către persoanele care se consideră victime ale unui asemenea act, imputabil unei activități de prevenție, diagnostic și tratament. Aceste comisii stabilesc dacă în cauză a fost sau nu o situație de malpraxis, procedura neîmpiedicând liberul acces la justiție. Din păcate atribuțiile și competențele Comisiei de malpraxis nu sunt foarte clar specificate, suprapunându-se peste atribuțiile altor organisme implicate în gestionarea abaterilor profesionale. De la data apariției reglementărilor legislative privind malpraxisul medical, s-a încercat, în mai multe rânduri, să se realizeze o sistematizare a acestora, nu în ultimul rând, datorită numeroaselor*

disfuncționalități apărute în derularea procedurilor nu întotdeauna clare, nici pentru pacient, nici pentru medic.

Cuvinte cheie: *malpraxis, răspundere profesională medicală, asigurare pentru răspundere civilă profesională medicală*

INTRODUCTION

The Constitution of Romania states “the right to life and the right to physical and mental health” as fundamental rights of the human being.

According to the ethical codes of the Romanian College of Physicians, during the professional medical practicing, the physician is demanded to have regard for the fundamental rights of the human being and for ethical principles, granting “priority to the patient’s benefit, which has to be more important than anything else.” The medical profession, due to its nature is a noble act, that can not be conducted in an impersonal manner, and it inherently asks for establishing human relations with the patient, so that when needed, the compassion shown by the physician will not be formal.

The medical staff contributes to the preservation of the patient’s fundamental rights, on one hand due the nobles of the profession, and on the other hand, due to the need of complying with the deontological and legal rules.

The professional medical liability can be found in the following forms:

- Legal liability (penal and / or civil);
- Disciplinary liability;
- Administrative liability.

These types of liability can sometimes co-exist in a single case. In this way, infringement of the ethical principles and deontological norms stated in the professional codes, without causing prejudice to the patient, can draw the disciplinary liability, but, if the values defended by law are endangered through the infringement of deontological norms, the situation will be governed by the legal rules, being applicable the malpraxis misdemeanor civil liability. If the case is that penal laws have been violated due to a potentially guilty conduct, than we can discuss about the penal liability of the one involved.

Law no. 95/2006 regarding the reformation of the health system has established the legal framework of malpraxis in Romania. Title no. XV regarding “the civil

liability of both the medical staff and the provider of medical, sanitary and pharmaceutical products and services” in the above mentioned law has determined since its beginning multiple controversies, offering the premises of powerful debates between the Romanian College of Physicians, the professionals in the medical field and also between the insurance institutions and the patients.

This is caused by the ambiguities that can be found in the Romanian Law system and the lack of compatibility between the specific and general legal regulation.

Defining malpraxis

These controversies are issued by the definition itself: the malpraxis is defined in the article 642 from the title XV of the Law 95/2006 regarding the reformation of the health system as “the professional error committed while medical or medical – pharmaceutical practicing, causing prejudices to the patient, implying the civil liability of both the medical staff and the provider of medical, sanitary and pharmaceutical products and services.” Further on, it is stated that in the process of providing medical care / health treatment, the medical staff has the obligation to apply the therapeutic standards, established or not by the good-practice guides, standards that are acknowledged by the medical community. At this moment, in Romania, the therapeutic guides and protocols are to be found only under the form of the project, so that without a precise law, the accuses could only be, at most, of ethical nature.

Attributions and competences. In-charged institutions. Opinion disagreements.

Another ambiguity is related to the institution that has the power to establish the malpraxis guiltiness, and to the moment when the insured ones (physicians and other medical staff that can benefit from the insurance policy) are entitled to compensations provided by their insurance company.

Commissions of monitoring and professional competence have been created by the public health authority in order to investigate the malpraxis cases that can be reported by the patients who consider themselves as being victims of such event, that can be imputed to an activity of prevention, diagnosis and treatment.

These commissions are entitled to establish if in a given case a malpraxis event happened or not, the procedure not being obstructive to the freedom of addressing the court.

Unfortunately, the duties and competencies of the Malpraxis Commission are not clearly stated, superposing in an unacceptable way the attributions of other institutions that are sanctioning the professional infringement.

In this situation, the accused physicians consider that the decisions taken by the public health authority’s commissions could be sufficient, offering the right to reimbursement from the insurance companies where they have the policies of professional civil liability, for the

compensations that they are to pay to the injured patients. Nowadays, though, the insurance companies refuse to pay until the justice regulates through final and irrevocable decision the malpraxis situation. Unfortunately, a medical malpraxis trial can last for many years.

From the existing information, at this moment, at the Public Health Authority of Sibiu County, the claimants, patients, hesitate to address themselves to the malpraxis monitoring commission, probably because of the lack of information, but nonetheless, because of the expertise charges of about 3000 – 4000 RON, according to the Health Minister’s Order. These expertise taxes have to be paid in advance.

Besides, no insurance policy for professional medical civil liability can cover risks that, if they occur, generate overwhelming and hard to quantify obligations even by the law courts, like moral prejudices. Because of this reason, the insurance companies in Romania are generally refusing to cover the moral prejudices produced by a medical malpraxis, due to the arbitrary nature of the law courts decisions, in the absence of guiding evaluation standards of the resulted damage value generated by altering the physical and psychical integrity of a patient.

Such guiding standards have been developed in the European Union, standards that are able to measure the moral compensation owed in a more precisely and predictable manner, even in the malpraxis situations. Those standards are not mandatory in the European system, although they have already been adopted and used in many countries.

CONCLUSIONS

Since the date of medical malpraxis legal regulations coming into force, the systematization of such regulations has already been tried for several times, nonetheless due to the numerous dysfunctionalities occurring during the development of not always very clear procedures, neither for the patient, nor for the medical doctor.

The possibility of solving the malpraxis cases by mean of negotiation and the need for developing the legal framework for solving the cases in a friendly manner, by reconciliation, as it is already happening in many of the European countries had already been taken into account. Until the necessary modifications of the law needed for the proper functioning of the system will appear, the Romanian physicians are still insuring themselves within the minimal acceptable level, out of sheer demand, ignoring the showing up signs. Obviously, in this case, they do not benefit of an optimal covering of professional risk that they are exposed to during their medical activity. At this moment, Romanian physicians are not protected against the pressure and aggression being exerted by mass-media in some situations targeting not only them, but also the law courts.

In the same time, even though the patients are better and better informed, they are not discharged from the complications currently presumed in the event of addressing and solving a malpraxis complaint.

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