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THE APPLICABILITY AND USEFULNESS OF KNOWING THE TYPES OF MEDICAL LIABILITY

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Abstract. The present paper aims to structure in an organized way the legal information incident to medical practice and the mandatory moral and professional norms, considering the lack of such a complete support. At this moment, these legal aspects are described separately in some laws, more or less known and accessible to the entire population. Thus, we will approach the topic of medical responsibility through theoretical notions, which concern criminal, civil, administrative and professional responsibility.

Keywords: forensic doctors, jurisprudence.

INTRODUCTION

The correctness of exercising the medical profession has been mentioned since the 18th century BC. through the writings of the Code of Hammurabi, in which the failure of the medical act attracted the direct responsibility of the attending physician, of a criminal nature (e.g.: cutting off the hands as a sanction for an unsuccessful intervention resulting in the patient's blindness) or civil (compensation in money or slaves) .

The history of medical liability law has closely followed the evolution of medical science, progressing and developing in parallel with it.

METHODS AND INSTRUMENTS

The Administrative Code provides for the determination of legal liability in general [2]. Thus, medical personnel who, in the exercise of their profession, cause damage to the patient are likely to be the subject of a case of medical malpractice, if, along with the damage that is certain in terms of its existence and the act committed due to an error in the norm, negligence or imprudence, it is also demonstrated the causal link that constitutes the link between the deed and the damage.

The damage includes "the actual loss suffered by the creditor and the benefit of which he is deprived". The certain nature of the damage, mentioned above, has applicability in that when determining the damage caused, future damage will also be taken into account. An article in the field of malpractice, alongside the provisions of the Civil Code, based on existing jurisprudence, shows the description of the material, patrimonial damage, stating that it consists of:

1. Damnum emergens – the actual harm suffered by the patient both now and in the future;
2. Lucrum cessans – the unrealized benefit that refers to the gain that the injured party was deprived of;
3. The monetary costs to which the injured party was subjected to avoid or limit the injury;
4. The equivalent of the chance of obtaining an advantage or avoiding a loss.

It is necessary to take into account the existence and impact of non-patrimonial damage, i.e. that damage that has no economic value, being a moral component of the bodily damage suffered by the patient (physical suffering, mental disorders, aesthetic damage, etc.) or as a result of violation of the fundamental right to private life.

The illegal act is a conduct by which actions or inactions are carried out contrary to the laws in force

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of positive law and good morals, being disapproved by society and contrary to the social order.

The illegal act can be presented in the form of commission, that is, there is an action that the medical staff executed defectively, in a wrong way; or in an omitted form, when the medical staff was obliged by law to undertake it and did not do it. For example, the lack of administration of antibiotic therapy in the presence of a diagnosis of sepsis is an unlawful act of omission, and the prescription of a drug with a teratogenic effect to a pregnant patient, in the absence of a need motivated by the threat to her life, is a commission crime.

In light of the fact that malpractice represents a professional error committed during the conduct of the scientific medical act in accordance with the subjects to whom the legal liability is addressed, we chose to address in more detail the notion of error, its forms and the difference between it and mistake. Professional error takes two forms classified according to the generating cause and the consequences of production:

1. Factual error – occurs due to the nature of the medical act itself, being unpredictable and unimputable, attributed to a shortcoming of medical science or an individual reactivity on the part of the patient's body; in the doctrine it is appreciated: "any doctor is in error, who, under the same conditions, would have been the victim of the same trap";

The standard error - is committed in the presence of gaps in the field of professional knowledge, being imputable to its author and having a predictable character, considered to be harmful; it is admitted that, as regards the normative error, "another doctor in the same conditions would not have fallen victim to the same trap".

Norm error can take the form of factual error generated by the inconsistency of a diagnosis with reality in varying degrees, or logical error arising from irrational medical attitude. These errors are assimilated to a mistake, because they meet its defining conditions, namely: they presuppose the existence of an obligation of a professional nature, which is not fulfilled under the aspect of a form of guilt, as a result of which a damage occurs and between which there is a causal link tested (Table 1).

The causal link is a sine qua non condition for the engagement of liability, which must be demonstrated despite the difficulty of carrying out this action due to the complexity, the subtlety that sometimes characterizes it and the superimposition of other disruptive factors. Causation is based on the assumption that the same result would have occurred anyway, without the patient's participation and in the circumstance where the action or inaction was under the sole control of the medical staff.

The assumption of legal liability has its foundation in the objective establishment of the existence of guilt. As far as the perpetrator of the illegal conduct is concerned, it manifests itself through a subjective state translated by a negative attitude towards the committed act and its consequences.

Table 1. Essential differences of error of fact from mistake

Notions of differentiation	Error of fact	Mistake
Prediction	Unavoidable	Avoidable
Attraction of legal liability	Non-imputable	Attributable
Origin	It arises from the nature of facts	It is born from a lack of knowledge or medical correctness
Reproduction under identical conditions by other individuals	Committed by any person under identical conditions	Another person, under the same conditions, does not commit the act
Impact of technical progress	Increased risk due to technical progress	Independent of technical progress

Table 2. Forms of guilt according to Art. 16 Paragraphs (3) and (4) of the updated Criminal Code

Parameters	Intention		Guilt	
	Direct	Indirect	With foresight/ Ease/ Imprudence	Without provision/ Mere/ Negligence/ Carelessness
The offender foresees the harmful result	Provides	Provides	Provides	He does not foresee it although he could and was obliged to foresee it
The offender pursues to produce the harmful result	Follows	It does not follow it but accepts the possibility of its production	It does not follow or accept it	

With regard to attracting legal liability and establishing its extent, the forms through which guilt is manifested from the point of view of positive law are outlined. Guilt can be constituted in the form of intention or in the form of fault. Intention, also known as intent, is defined as a mental attitude of foreseeing and following the production of the antisocial act and its consequences. Guilt also represents a mental attitude through which an illegal act is committed, but whose harmful result or consequence was not foreseen or pursued. Each of the two forms of guilt is embodied in two ways of unfolding in legal practice (Table 2).

- The medical staff, like any other subject of law, is susceptible to the commission of an illegal act outside the generally accepted principles regarding professional conduct, which will generate concrete legal consequences in the form of medical legal liability. In accordance with the specifics of the illegal act committed, under the laws of positive law, the medical staff can fall under one of the following forms of legal liability, regulated by the relevant normative acts:

- Disciplinary liability, provided for by the Romanian College of Physicians;

- Civil liability (tortious and contractual), provided by the Civil Code and the Labor Code;

- Administrative contravention liability ;

- Criminal liability, provided by the Criminal Code.

A detailed aspect is outlined in the existing doctrine in the form of the patient's medical responsibility. When analyzing a medical case from a legal point of view, the behaviors and intentions of the person who considers himself prejudiced in his right must also be studied. The patient can harm the dignity, honor or personal or professional image of the medical staff, for which he can be held to repair the moral or material damage with the bearing of court costs. The patient's liability can be incurred through his bad faith or following the abuse of rights he commits following the legal ways against the medical staff, with the consequence of the rejection of the respective approaches; thus in this case the patient can be held liable from a civil or criminal point of view. (Art. 268 of the Criminal Code – the crime of misleading the judicial bodies). In the sense of the present topic addressed, in addition to the provisions of the Criminal Code, Law no. 95/2006 regarding the reform in the field of health, includes provisions that contain specific crimes that the patient can commit in the situation in which he is placed, i.e. that of a legal subject in a legal relationship of a medical nature.

In conclusion, medical practice is currently carried out in a defensive manner, due to a tendency to dichotomize society, into two camps, one of which is dedicated to the purpose of defending and supporting the rights of the patient, blaming the competence of the medical profession, and the other, less numerically , supports trust in healthcare professionals and wants to demonstrate their expertise.

This black-and-white perspective does not encourage the justice and fairness that we want as a society, but perpetuates an ambiguity in the medical field, which results in rigidity and reluctance to call for a vital service in times of dire need. A vicious circle of suspicion and mistrust is thus formed that leads to late diagnoses and treatments, poor prognosis and eventually death, which in turn echoes in a distorted public opinion of general incompetence and insecurity.

What is true in a malpractice casuistry, established as a state of fact, cannot be denied or distorted and requires a corrective approach according to the specificity and gravity of the act and the damage. At the same time, we retain the commitment to a responsible practice, like the one declared in the Hippocratic Oath. But essentially, we must accept the existence of shades of gray, of situations that lie beyond the understanding of a person without medical capacity or that lie outside the details of a case, and aim to re-establish the doctor-patient relationship based on trust mutual.

Malpractice cases are resolved by involving forensic doctors at the request of the competent bodies.

It is appreciated that the forensic doctor is in possession of advanced notions of legal and medical interest with the help of which he can pronounce in a precise and prompt manner on the existence of a medical fault, in accordance with the revealing character in the service of the truth that the specialization holds, as well as by the legal power with which it is invested to arm or disarm the arm of justice.

Conflict of interest

The authors declare no conflict of interest.

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