

DEPÓSITO LEGAL ZU2020000153

ISSN 0041-8811

E-ISSN 2665-0428

# Revista de la Universidad del Zulia

Fundada en 1947  
por el Dr. Jesús Enrique Lossada



**Ciencias**  
**Exactas,**  
**Naturales**  
**y de la Salud**

**Año 14 N° 40**

**Mayo - Agosto 2023**

**Tercera Época**

**Maracaibo-Venezuela**

## Responsibility in the Field of Providing Medical Services: The Experience of Slovakia

Liudmyla Golovko \*

Olena Yara \*\*

Olena Uliutina \*\*\*

Tetiana Kondratiuk \*\*\*\*

Halaidiuk Lidiia \*\*\*\*\*

### ABSTRACT

The purpose of the article is to identify the positive experience of Slovakia in the field of legal liability of medical workers, which has been successful in practice and therefore worth following, both in Ukraine and in other states. To achieve this purpose, general and special scientific research methods were used, in particular dialectical, historical-legal, systematic, and comparative legal methods. The legal regulation of liability for the provision of medical services constantly generates debate in scientific circles and in practical implementation. The legislation of Ukraine does not regulate concepts such as medical mistakes and medical crimes. The lack of regulatory criteria for medical mistakes and crimes, the difficulty in determining the cause and effect relationship, as well as the need for professional supervision in the provision of medical services, encourages the study of foreign experience, mainly the experience of the European Union Member States in this field.

KEY WORDS: Medical Law, medical services, responsibility, forensic characteristics.

\*Comenius University in Bratislava, Slovak Republic. ORCID ID: <https://orcid.org/0000-0002-3742-2827>. E-mail: [golovko\\_l@nubip.edu.ua](mailto:golovko_l@nubip.edu.ua)

\*\*National University of Life and Environmental Sciences of Ukraine, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-7245-9158>. E-mail: [yara\\_o@nubip.edu.ua](mailto:yara_o@nubip.edu.ua)

\*\*\*National University of Life and Environmental Sciences of Ukraine, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0003-1982-9911>. E-mail: [ulutina@nubip.edu.ua](mailto:ulutina@nubip.edu.ua)

\*\*\*\* National University of Life and Environmental Sciences of Ukraine, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0001-9413-1383>. E-mail: [tkondratiuk@nubip.edu.ua](mailto:tkondratiuk@nubip.edu.ua)

\*\*\*\*\* National University of Life and Environmental Sciences of Ukraine, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-5517-5313>. E-mail: [galaydiuk\\_l@nubip.edu.ua](mailto:galaydiuk_l@nubip.edu.ua)

Recibido: 30/11/2022

Aceptado: 01/02/2023

## Responsabilidad en el ámbito de la prestación de servicios médicos: la experiencia de Eslovaquia

### RESUMEN

El propósito del artículo es identificar la experiencia positiva de Eslovaquia en el ámbito de la responsabilidad legal de los trabajadores médicos, la cual ha sido exitosa en la práctica y por eso vale la pena seguir, tanto en Ucrania como en otros Estados. Para lograr este propósito se utilizaron métodos de investigación científica generales y especiales, en particular métodos dialécticos, histórico-jurídicos, sistemáticos, jurídicos comparados. La regulación legal de la responsabilidad por la prestación de servicios médicos genera constantemente debate en los círculos científicos y en la implementación práctica. La legislación de Ucrania no regula conceptos tales como errores médicos y delitos médicos. La falta de criterios normativos para los errores y delitos médicos, la dificultad para determinar la relación de causa y efecto, así como la necesidad de supervisión profesional en la prestación de servicios médicos, incentiva el estudio de la experiencia extranjera, principalmente la experiencia de los Estados miembros de la Unión Europea en este campo.

**PALABRAS CLAVE:** Derecho médico, servicios médicos, responsabilidad, características forenses.

### Introduction

Legal responsibility of medical workers may be the result of the medical worker's violation of his/her duties both under the contract with the patient (contractual liability) and regulatory legal acts in the field of health care. In the vast majority of countries, the legislation provides for civil, administrative, criminal and labor liability of medical workers. Among scientists, there are discussions about the types of punishments that should be used, as well as about the effectiveness of this or that type of responsibility (Ladychenko, 2018; Nikitenko, 2022).

At the same time, in many states, a significant number of issues in the medical field remained unsettled by legislation. This especially applies to the issues of control over the provision of medical services by medical institutions. This encourages comparative research in this area.

The purpose of this scientific article is to reveal the types of responsibility for the provision of medical services in Slovakia and the powers of the bodies exercising control over the provision of medical services with the goal to make suggestions for improving the relevant legislation in Ukraine.

## 1. Materials and methods

To achieve the goals and solve the tasks set in the scholarly work, general scientific and special research methods were used. With the help of dialectical method the conceptual and categorical apparatus was determined, in particular, the concept of medical services. Systematic method was used to reveal types of legal responsibility for the provision of medical services provided for by Slovak legislation.

The comparative legal method was used for identification of positive experiences and weaknesses in the sphere of legal regulation of responsibility for the provision of medical services; institutional method - to study the functioning of various institutions which function in the field of supervision over the provision of medical services; analysis and synthesis - to study the basic principles of legal regulation of protection of patients receiving medical services; system method - to generalize and systematize the source base of research. Predictive method was used to make propositions on the improvement of the legislation of Ukraine in the field of supervision of the provision of medical services by medical institutions.

## 2. Results and Discussion

The problem of responsibility in the field of providing medical services has been studied by many scientists (Dubchak, 2022; Golovko, 2021; Gulac, 2019) emphasizing that responsibility must be effective and serve to prevent the commission of offenses. Dynaevska L. studies crimes investigation accomplished in the medical sphere and draws attention to the fact that during the investigation of the medical crimes, the use of special knowledge can be carried out in a procedural and non-procedural form. Procedural forms of using special knowledge are as follows: engaging a specialist for participation in investigative actions; conducting forensic examinations; obtaining explanations by the investigator from the persons who conducted the examination. Non-procedural forms include: departmental inspection; obtaining consultation from a specialist outside of investigative actions; direct familiarization of the investigator with special literature, regulatory acts and medical documents related to the circumstances under investigation (Dynaevska, 2006).

However, the realization of supervision in the field of providing medical services still remains relevant and urgent and requires deep scientific analysis.

Health care providers are under § 4 of the Law of Slovakia “On health care providers, health workers, professional organizations in the health sector and on amendments to certain laws” are as follows: physical or legal entity that provides health care based on a) authorizations (§ 11) or authorizations for handling drugs and medical devices according to special regulations, or b) business license; a physical person who provides health care on the basis of a license to perform independent health care (§ 10), or physical person – an entrepreneur or a legal person who provides health care on the basis of a permit to operate a natural spa or a permit to operate a spa (Law on health care providers, 2004).

According to the Law of Slovakia “On health care, services related to the provision of health care and on the amendment of certain laws”, the provider of medical services is obliged to provide health care correctly. Health care is provided correctly if all medical procedures are performed properly in order to correctly determine the disease with the provision of timely and effective treatment with the aim of healing the person or improving the person's condition, taking into account the current knowledge of medical science and in accordance with standard procedures for performing prevention, standard diagnostic procedures and standard therapeutic procedures taking into account the individual condition of the patient (§ 4(3)) (Law on health care, 2004).

In order to be able to derive legal responsibility towards a certain person (in the case of liability in the field of health care, it will mainly be a health care provider, doctor, or other health care worker), the prerequisites established by applicable law for its creation must be met. Specifically, these are the following: illegal act – action or negligence must be contrary to the duties of a healthcare worker; harmful consequence, damage – violation or endangerment of values protected by law or other legal regulations; causal connection (causal nexus) – there must be a cause and effect relationship between the illegal act and the harmful consequence; culpability – the action or negligence must be caused by culpability, whether it is intentional (direct, indirect action) or the act committed out of negligence (conscious, unconscious) (Zaujecová, 2009).

Criminal responsibility is regulated by the Penal code № 300/2005. In the performance of the medical profession, various criminal acts may be committed, such as causing damage to health, murder, participation in suicide, failure to provide assistance, illegal abortion, endangering health with unauthorized drugs, fraud, etc.

When analyzing the crime of bodily harm, it can be clearly assessed that it is the most frequent crime against health occurring in medical facilities, which is committed in connection with the performance of the medical profession. In the event that this crime is committed by healthcare workers while providing healthcare and performing a healthcare profession, the physical object of the attack is a patient. Four forms of bodily harm are distinguished, namely intentional infliction of grievous bodily harm, intentional infliction of bodily harm, culpable infliction of grievous bodily harm, and culpable bodily harm. The primary object is human health, which means the normal bodily and mental functions of the organism. Pursuant to the provisions of § 158 of the Criminal Code, the objective aspect of the criminal offense of bodily harm consists in the action in which the perpetrator causes bodily harm to another person through negligence by violating an important obligation resulting from his/her employment, profession, position or function or imposed on him by law. The subject of this criminal offense of bodily harm is special (e.g. a health worker). A breach of an important duty should only be considered as a breach of such duty, which as a rule results in danger to human life or human health. Violation of an important duty can cause such a harmful consequence. To fulfill the subjective side culpable guilt is required. When analyzing criminal act, it is necessary to examine the harmful consequences of the action manifested in the deterioration of the patient's health. The starting point for the factual nature of this criminal offense is the state before the health damage itself, not the state of absolute health (absence of any physical or mental disease). What is decisive is how much the patient's state of health has deteriorated compared to the previous state of health (Rádek, 2007).

We can demonstrate some of the examples. On March 5, 2013, the District Court in Trenčín imposed an unconditional prison sentence of 2.5 years and a 6-year ban on activities to medical worker. According to the court's verdict, the doctor inadvertently caused the death of a 4-year-old boy with an incorrect diagnosis. After examining the patient, the doctor concluded that the boy had angina and sent him home. The mother and the child visited the emergency room once more during the night, as her son's condition deteriorated rapidly. Later the boy died. An autopsy and forensic experts confirmed that the death was caused by the acute pneumonia, which the doctor did not notice. According to the court, the doctor grossly neglected the care of the patient by not sending the patient for all the necessary

examinations in order to determine the correct diagnosis and by not ordering his hospitalization (Kasinec, 2022).

According to § 65 of the of the Law of Slovakia Law “On health care providers, health workers, professional organizations in the health sector and on amendments to certain laws” some of the following disciplinary measures may be imposed on members of medical professional chambers for a disciplinary offense: 1) a written warning for the first violation of any of the obligations since membership in the chamber or a fine of up to 331 euros for repeated violations of any of the obligations; 2) for breach of duties in the performance of a profession according to § 52 par. 2 letters a) and b) - a fine of up to 1,659 euros for the first violation of any of these obligations since becoming a member of the chamber; conditional exclusion from the chamber for up to two years for repeated violation of one of these obligations, exclusion from the chamber, if a member of the chamber violated an obligation for which a disciplinary measure was imposed on him/her in the past (Law on health care providers, 2004). Disciplinary proceedings are initiated: a) at the proposal of the control committee of the chamber or b) at the proposal of the supervisory authority, which is the Health Care Supervision Office, which activity we will also consider in this article.

The law also provides for the administrative responsibility of medical workers. Administrative responsibility is applied by public administration bodies in case of violation of administrative law and violation of decisions issued by public administration bodies.

The Law of Slovakia of October 21, 2004 “On health insurance companies, supervision of health care and amendments to certain laws” created the Office for Health Care Supervision, which is a special state institution that supervises the provision of medical services. The activities of this organization help to bring to responsibility medical institutions that have violated the law.

Office for Health Care Supervision supervises the provision of health care by overseeing the correct provision of health care and keeping health documentation; imposes sanctions, submits proposals for the imposition of sanctions, imposes measures for elimination of identified deficiencies or imposes the obligation to take measures to eliminate identified deficiencies, supervises the provision of health care by overseeing the correct provision of health care and keeping health documentation; imposes sanctions, submits proposals for the imposition of sanctions, imposes measures to eliminate identified

deficiencies or imposes the obligation to take measures to eliminate identified deficiencies (Law health insurance companies, supervision of health care and amendments to certain laws, 2004).

Citizens can contact the Office for Health Care Supervision with a request to exercise control over the activities of a medical institution if they believe that they have not been provided with professional medical care correctly. The existence of such a body increases control over the activities of medical institutions.

|At the end of 2022, a major amendment to the Act on Health Insurance Companies, Health Care Supervision was adopted, which significantly affected the performance of health care supervision. The amended legislation entered into force on 01.01.2023 and brought several important changes. The changes in the law were conceived in such a way as to eliminate existing deficiencies, and at the same time to make the legal regulation meet the needs of application practice. The most significant change is the doubling of the number of reasons for which the Office for Health Care Supervision is authorized to reject a submitted initiative. Before the adoption of the amendment, the legislation contained only two such reasons. After the change, two more were added to them, which improve the protection of providers of medical services against excessive misapplications. According to the Law, a) the Office for Health Care Supervision will reject the application if it is clear from it that it is a repeated and apparently unjustified exercise of the right to investigate the correctness of the health care provided. The Office for Health Care Supervision is therefore obliged to reject applications that lack relevant content, or it is obvious that they are irrational. These can be, for example, applications which main reason is the resolution of disputes between spouses during divorce proceedings, during proceedings for the custody of a minor, or other mutual disputes, irrational applications of patients suffering from a psychiatric illness, or suggestions that contain obviously illogical statements; b) Office for Health Care Supervision rejects applications that were submitted 5 years after a possible violation of the law. Both reasons also lead to the introduction of a filter, which has the task of ensuring the regulation of the number of applications that the Office for Health Care Supervision will deal with. A decrease in the number of submitted applications is expected (Performance of health care, 2023).

A new provision was introduced on the basis of which a person close to the patient, if he/her believes that the patient was not provided with health care properly, with patient consent can ask the health care provider for correction, if possible, or for an explanation. It means that the legislator gave priority to the prevention of conflict.

The amendment also significantly strengthened the legal protection of the provider of medical services. The Office for Health Care Supervision has the obligation to allow access to the documents of the case to the provider of medical services (based on the request), and when exercising supervision over the provision of health care, the Office for Health Care Supervision has the obligation to invite the provider of medical services to explain its position regarding the documents before drawing up the protocol containing the results of health care supervision (Performance of health care, 2023).

Any compensation for damages for improperly provided health care can be claimed by the injured party in civil proceedings. The Office for Health Care Supervision does not deal with compensation for damage.

## Conclusions

An interesting approach for the improvement of the level of medical services in Slovakia and for holding medical institutions accountable for not providing services correctly was in the form of creation of the Office for Health Care Supervision. In our opinion, the creation of a special state body for control of the provision of medical services in Slovakia is the right decision, worth following in another states, including Ukraine. For patients, this creates an opportunity to learn a separate independent opinion about the provided medical services. For medical institutions, inspections by such a body provide an opportunity to identify gaps in their activities, for example, regarding progress in the provision of certain medical services, and to eliminate shortcomings in order to avoid mistakes in the future. Also, an alternative option for dispute resolution reduces the burden on the court system.

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