

THE LIABILITY FORMS OF THE MEDICAL PERSONNEL

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Abstract

Current legislation, namely Law no. 95/ 2006 on healthcare reform in the medical malpractice domain stipulates that medical staff can be held accountable in the following forms: disciplinary liability, administrative liability, civil liability and criminal liability.

Each form of legal liability presents its features, aspects that are found mainly in the procedural rules. However, the differences between the various legal forms of liability are not met only in the procedural rules but also in their effects and consequences.

It is necessary to know what the procedure for disciplinary responsibility, administrative liability, civil liability, or criminal liability is. In addition to the differentiation determined by the consequences that may arise from the different forms of legal liability, it is important to know the competent authorities to investigate a case further and the solutions which various public institutions can take regarding the medical staff.

Depending on the type of legal liability, authorities have a specialized authority. If the Disciplinary Committee is encountered at the College of Physicians, it may not intervene in cases before the monitoring and competence for malpractice cases Committee. The latter two committees cannot intervene directly in the legal assessment of civil or criminal cases, as no criminal investigation authorities cannot intervene in strictly civilian cases. Therefore, the importance of knowing the competent institutions is imperative.

Keywords: legal liability of medical staff, the legal liability forms of the medical staff, liability procedures of the medical staff

The current legislation, respectively Law no. 95/ 2006 regarding the healthcare reform, governs in the medical malpractice domain that the medical personnel can be held liable in the following forms:

- Disciplinary - procedure that takes place before the College of Physicians and that involves the analysis of a complaint regarding a medical malpractice by the special committees set up for this by the College;
- Administrative - procedure that is conducted by analyzing a medical malpractice complaint by the Monitoring and Professional Committee for malpractice cases, established in the public health authorities of each county and in Bucharest;
- Civil - a procedure that involves advancing a civil action based on the principles of misdemeanor liability to a court;

- Criminal - a procedure that involves lodging a criminal complaint against the standards governed by the Criminal Code offenses relating to the person concerned or in connection with the service.

Every form of liability has its specific effects, as we are going to show below.

1. Relative to disciplinary form, the law stipulates that the doctor is liable for a disciplinary action for non-compliance with laws and regulations of the medical profession, medical deontology Code, the rules of good professional practice and for any acts committed in connection with the profession, that are likely to harm the honor and prestige of the profession (medical malpractice too since the medical malpractice is a professional error committed in the exercise of the medical or medical-pharmaceutical domain that produced damages to a patient) [1].

The complaint against a doctor is forwarded to the college he is part of, and if the doctor is conational of a Member State of the European Union, the European Economic Area State, or the Swiss Confederation, the complaint is filed with the college within the doctor carries out his activity.

A Disciplinary Board is organized and functions within each territorial college, being independent from the college leadership, and is composed of three members who analyze the offenses committed by doctors enrolled in that territorial college. The Superior Commission of Discipline is organized and operates at the point of the College of Physicians in Romania, being independent from the college leadership, composed of five members and analyzes the appeals against the decisions of territorial disciplinary commissions.

After the investigation of the case, the Disciplinary Commission issues a decision that is communicated to the sanctioned doctor, the person who made the complaint, the Ministry of Health, the Executive and the person whom the sanctioned doctor has an employment contract with. Within 15 days from the communication of the decision, the sanctioned person, the person who made the complaint, the Ministry of Health, the president of the territorial college, or the president of the Medical College of Romania may challenge the decision of the disciplinary

commission. Within 15 days from notification, the sanctioned doctor may appeal against the decision of the Superior Commission in cassation to the administrative department of the court in whose jurisdiction he operates, against the decision that the doctor was not sanctioned being no form to appeal.

Note that the disciplinary action can be initiated within 6 months from the date of the deed or from the date of knowledge of harmful consequences were suffered, and the disciplinary procedure does not preclude civil, criminal, or administrative procedures.

Regarding the sanctions against the doctor, they may be: a) reprimand; b) warning; c) censure; d) a fine from 100 lei to 1.500 lei; e) prohibition to practice certain medical activities or medicine for a period of one month to one year; f) withdrawal of membership of the College of Physicians in Romania.

Withdrawal of the membership of the College of Physicians in Romania is determined by the final judgment of the courts when judging the prohibition of the profession, and regarding the other sanctions, the sanctioned doctor may be ordered in conducting training courses or medical education, other forms of training.

Also, the sanctions from letters a) -d) shall be radiated within 6 months from the date of their execution, and the one referred to letter e), within one year after the expiration of the ban. In the case of the sanction provided in letter f), the doctor can make a new application to regain membership after the expiration established by the final judgment or after two years from the date of sanction by the disciplinary committees.

It should be noted that these disciplinary commissions could not order about the indemnification, which means that their jurisdiction is limited and specialized.

2. Monitoring and Professional Committee for malpractice cases is a commission in the public health authorities of every county and in Bucharest, and the main activity is the determination of malpractice case in situations that were addressed before it [2].

The committee may be notified by the person or, where appropriate, legal representative, who is considered a victim of an act of malpractice committed in the exercise of an activity of prevention, diagnosis and

treatment, or the successors of the deceased person as a result of an act of malpractice attributable to activities of prevention, diagnosis and treatment.

Subsequent to the person's application, the Monitoring Commission shall appoint, by drawing lots from the national list of experts, a group of experts or an expert who has at least the same degree of professional and teaching skill as the person claimed, according to the complexity of the case, who will make a report on the case. Within 30 days, the experts drawn will compile a report on the case and submit it to the Commission, and the Committee shall take a decision on the case within three months from the date of the person's application.

Following the report of the experts appointed by the Commission, a decision regarding whether or not it was an incident of medical malpractice will be emitted. The decision shall be communicated to all concerned, including the insurer, within 5 working days. If the insurer or any party disagrees with the Commission's decision, they can appeal it to the competent court within 15 days from the notification of the decision.

It should be noted that the entire procedure for the determination of malpractice cases, until the court is seized, is confidential. Therefore, all the data related to the parties, the medical experts called, the examination stage, are covered by the confidentiality principle; hence, the impossibility of communicating the information about the case to third parties appears.

If the Commission determines that it is a situation of malpractice, the court may order the person responsible to pay damages, which means that the Commission cannot rule on the demand side, but only on the existence or otherwise of a malpractice case. Therefore, there is a special limited competence as in the case of disciplinary committees. However, compensation may be determined amicably if there is a clear civil liability of the insured one (medical personnel). But, if the insured one (medical personnel), the insurer and the injured person do not agree on the fault of the insured, the amount and method of payment of the damages caused by the act of malpractice, compensation shall be determined by the court.

3. The civil liability form, whose essentials are based on the principles of misdemeanor liability, requires proof about the next mandatory elements: guilt, fault, injury, and causal link between the fault and the injury [3]. If there is one element missing, then there is no possibility of issuing a decree. On the way to prove the existence of the four elements, the court has to analyze the proofs (documents, witnesses, questioning, and expertise) to issue if there is or there is not a medical malpractice case.

Currently, there is no special procedure regulated for judging the cases regarding medical malpractice. Therefore, the proceedings before the court, which can be the judicature (if the application has a value of up to 200,000 lei), or the High Court (if the application has a value of over 200,000 lei) found in the area of the respondent residence, or the judicature or High Court from where the act was committed or the damage occurred, is the common one.

The misdemeanor liability is based on the rules governed by the Civil Code, providing in art. 1357 that the one who causes injury to another by an unlawful act committed with guilt is obliged to repair the author responding to the slightest injury fault.

Regarding the guilt, it states that in assessing guilt will take account of the circumstances in which the damage was done, and, where appropriate, that the injury was caused by a professional in a business operation the person being responsible only for his deeds committed intentionally or negligently.

Relative to the wrongful act or fault, legal norms consider such a deed the situation that violates public orders, morals or laws, and the damage born when it affects the rights or interests of another.

In these types of civil causes, the court will issue a decree. The court decision ruling may be appealed to the superior court, and the court can order regarding the payment of damages and additional penalties such as withdrawal of membership of the College of Physicians in Romania.

4. Regarding the criminal liability, the conditions laid down by the Penal Code relating to one offense or more have to be regarded [4]. Regarding the physical injury for example, it is

necessary to have an act that caused disability, injuries or damaged the health of a person who needed for curing more than 90 days of medical treatment, aesthetic and permanent injury, abortion or endangering a person's life. Each offense presents specific elements that must be followed exactly as they are regulated. Just as in the case of civil liability, when an element of the offense is missing, then the presumed guilty cannot be held legally accountable. Although the proofs are in principle similar in civil and criminal proceedings (documents, witnesses, hearings, expertise) there is a difference regarding the steps that must be followed in dealing with proofs.

The procedure for criminal responsibility of the medical staff requires filing a criminal complaint that will be submitted to the agencies usually investigating or prosecuting. Following the criminal complaint filed, the investigation and prosecution stage will begin; a stage that virtually requires gathering evidence to establish the existence or nonexistence of an offense. Therefore, the parties are heard, all the necessary documents are gathered, an expertise is provided, or other evidence necessary or useful for the research. This stage ends with the issuance of an order by the competent prosecutor for the prosecution of the medical personnel in view of committing a criminal offense or for not continuing the prosecution against the medical personnel. Whatever the solution, it can be attacked in front of the prim prosecutor and subsequently to the competent court. If the court maintains the resolution not to continue the prosecution, the court decision will cannot be appealed to a higher court. If the court considers that the medical staff is guilty of a criminal offense, then its decision can be appealed to the superior court following the latter to give a decision that cannot be appealed.

In conclusion, it should be noted that the choice of following a process of administrative, civil or criminal form, each with its specific

effects, does not block the possibility to simultaneously start one or more procedures. For example, if an application is initiated for the disciplinary liability in front of the College of Physicians, it does not mean that a civil court action or a criminal complaint cannot be started against the medical personnel considered guilty. Moreover, starting civil or administrative proceedings shall not preclude the pursuit of a criminal liability by lodging a criminal complaint. However, there are exceptions to this rule due to the criminal offense research that can hold back a civil action, in the sense that a civil action would be suspended until the trial regarding a criminal investigation is judged, and if a court has already ruled on some aspect of the malpractice case, another court cannot judge the same issues. For example, we can specify that if a court issues a judgment that establishes certain damages, and then another court cannot ignore the issue already held by the previous court (speaking of *res judicata*). However, the civil court is not bound by the provisions of criminal law or by the final judgment of acquittal or termination of a criminal proceeding regarding the damage or the guilt of the fault perpetrator.

The damage will be covered by the insurer in the limit of the insured amount, and if the damage exceeds the insured sum, the injured party (or the one who has made the application) can claim damages from the fault perpetrator (medical personnel) and/ or from the civilly liable party (e.g. the hospital that employed the medical personnel found guilty) regarding the difference to their full recovery.

References

1. art. 442 and the following from Law no. 95/ 2006 on healthcare reform.
2. art. 642-681 from Law no. 95/ 2006 on healthcare reform.
3. art. 1349 and the following from the Civil Code.
4. art. 194 and the following from the Penal Code.