

# MEDICAL ERROR AND THE CIVIL LIABILITY OF PHYSIOTHERAPISTS

## BŁĄD MEDYCZNY A ODPOWIEDZIALNOŚĆ CYWILNOPRAWNA FIZJOTERAPEUTÓW

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**A** – przygotowanie projektu badania | study design, **B** – zbieranie danych | data collection, **C** – analiza statystyczna | statistical analysis, **D** – interpretacja danych | interpretation of data, **E** – przygotowanie maszynopisu | manuscript preparation, **F** – opracowanie piśmiennictwa | literature review, **G** – pozyskanie funduszy | sourcing of funding

### SUMMARY

**Background:** Nowadays, we observe a disturbing number of people injured as a result of improper actions of service providers. The problem concerns a number of medical professions, including, inter alia, physiotherapists.

**Aim of the study:** The aim of the study was to define the term 'medical error' and indicate the sanctions making a medical error carries.

**Material and methods:** Medical error is an unintentional action, omission or negligence of of a medical professional, which causes the patient harm. Civil liability of a physiotherapist stems mainly from the agreement between the therapist and the patient. According to the agreement, the physiotherapist is obligated to perform a number of actions for the patient.

**Results:** Civil liability as a result of medical error is the most dangerous sanction, which is often combined with the payment of a certain sum by way of compensation or redress. Physiotherapists are partly protected from civil liability by professional indemnity insurance. Medical errors are a part of the medical professions, therefore they should be discussed openly, not hidden from the public eye.

**Conclusions:** A physiotherapist should perform their professional duties with care and in accordance with existing guidelines. This will help reduce the risk of medical errors.

**KEYWORDS:** medical error, civil liability, physiotherapists

### STRESZCZENIE

**Wstęp:** W dzisiejszych czasach można zaobserwować znaczny wzrost liczby osób poszkodowanych w wyniku nieprawidłowego działania podmiotów świadczących usługi zdrowotne na rzecz innych. Problem dotyczy wielu zawodów medycznych, wśród których znajduje się zawód fizjoterapeuty.

**Cel pracy:** Celem pracy było zdefiniowanie błędu medycznego oraz wskazanie sankcji, jakie grożą za jego popełnienie.

**Materiał i metody:** Błąd medyczny to nieumyślne działanie, zaniechanie lub zaniedbanie osoby wykonującej zawód medyczny, które powoduje powstanie szkody u pacjenta. Odpowiedzialność cywilna fizjoterapeuty wynika przede wszystkim z zawarcia umowy pomiędzy nim a pacjentem. Na skutek jej zawarcia fizjoterapeuta zobowiązany jest do wykonywania określonych działań względem leczonej jednostki.

**Wyniki:** Odpowiedzialność cywilna wynikająca z popełnionego błędu medycznego jest najgroźniejszą sankcją, która łączy się często z wypłatą określonej kwoty tytułem odszkodowania lub zadośćuczynienia. W znacznym stopniu ochronę przed tym niebezpieczeństwem zapewnia ubezpieczenie od odpowiedzialności cywilnej. Błędy lekarskie są wpisane w charakter zawodów medycznych, dlatego też należy o nich mówić, a nie ukrywać ich zaistnienia.

**Wnioski:** Fizjoterapeuta powinien przede wszystkim wykonywać swój zawód z należytą starannością i zgodnie z zasadami deontologii. W efekcie pozwoli to na zredukowanie ryzyka wystąpienia błędów medycznych.

**SŁOWA KLUCZOWE:** błąd medyczny, odpowiedzialność cywilnoprawna, fizjoterapeuta

## BACKGROUND

Currently physiotherapists are one of the largest groups of medical professionals. They have been waiting 28 years for the legal regulation of their profession. On 31<sup>st</sup> May 2016 the Act of 25<sup>th</sup> September 2015, which regulates the legal issues associated with the physiotherapist's profession, entered into force. Pursuant to its provisions, the physiotherapist's profession became an independent medical profession. Furthermore, the Act regulates the requirement of those who practice the profession to obtain a license to practice, it regulates the education requirements, and the professional liability of physiotherapists. In addition, it sets out specific requirements to be met by a person to pursue that profession and introduces the National Register of Physiotherapists [1–2].

Nowadays, we observe a disturbing number of people injured as a result of improper actions of service providers. Such providers include professions which, according to the general population, should be infallible, as their concern are such precious things as health and life. These infallible professions include medical professions, *inter alia* physiotherapists. Medical errors affect the life and health of patients, and, as a result, the doctor's and patient's surroundings [3].

The aim of this paper was to present the basic definitions and types of medical errors, and presenting the sanctions resulting from civil liability of such an error. The paper is based on the most recent available sources, *i.e.* paper, digital and own experiences of the authors, based on the analysis of existing laws concerning the analysed issue.

## MEDICAL ERROR DEFINITION

First of all, it is necessary to define the term 'medical error' and provide legal background for it. According to the judgement of the Supreme Court of April 1<sup>st</sup> 1955, medical error constitutes an action (omission) during diagnosis or treatment, which is not in compliance with the scope of medical science available to the doctor. Therefore, we can surmise that a medical error is an unintentional action, omission or negligence of a medical professional, which causes the patient harm. The act of November 6<sup>th</sup> 2008 on the Rights of the Patient and Patients' Ombudsman (uniform text, Journal of Laws of 2012, item 159 as amended) defines the term 'medical incident,' which clearly and specifically points to the events that need to happen for an incident to be considered to have occurred and thus a medical error to have occurred. According to this act, a medical incident is an instance when a patient was infected with a biological pathogen, incurred bodily damage, their health was negatively affected or they died as a result of actions not in compliance with the available medical knowledge. Medical errors can occur during diagnosis, when they lead to wrong treatment or delay proper treatment and as a result promote the development of the disease. Furthermore, they can occur during treat-

ment, when they mainly constitute an improperly carried out operation and using a medicinal product or medical equipment, which negatively affects the patient [4].

## CIVIL LIABILITY OF THE PHYSIOTHERAPIST

Civil liability of a physiotherapist stems mainly from the agreement between the therapist and the patient. According to the agreement, the physiotherapist is obligated to perform a number of actions for the patient. We can talk about the civil liability of the physiotherapist, when three indications occur. The first is the improper carrying out of the undertaken obligation or not carrying out the obligation at all. The second is the occurrence of damage, which can constitute both the patient's loss and impairment. The third is, pursuant to article 361 of the Civil Code, the proximate cause between the improper performance of the obligation and the occurred damage. However, the subject, for us the physiotherapist, is required to compensate only for the normal results of action or omission, which caused damage. Therefore, the physiotherapist is not responsible for the results of actions that can be considered extraordinary. The claimant is responsible for providing proof of the abovementioned indications [5].

The most severe sanction for medical errors is civil liability, which frequently means paying compensation or damages. Moreover, medical personnel can be subject to criminal proceedings, if a crime has occurred, or professional consequences, *i.e.* disciplinary action. Physiotherapists are partly protected from civil liability by professional indemnity insurance, which is mandatory for medical professionals working under contracts with the NFZ (National Health Fund). However, this type of insurance covers only subjects providing services while operating as a business. At the time of its entry into force, the Act on the Physiotherapist's Profession has become the overriding document regulating the legal issues related to professional liability in respect of all physiotherapists in Poland. In addition, the employer for whom the therapist performs his professional activities under an agreement is still accountable. Relevant provisions of the Labour Code concern only those physiotherapists who have an employment relationship, as they can be subject to consequences of breach of rules of professional conduct, *e.g.* not complying with safety at work rules and regulations. The consequences depend on the type of professional misconduct, the degree of guilt and prior attitude towards work. The employer is obligated to inform the employee in writing of the disciplinary sanctions, indicating the type and date of misconduct and informing the employee they can protest the decision, indicating the time period to do so. Pursuant to the Labour Code, disciplinary sanctions can constitute a warning, a reprimand or a fine. The latter cannot be higher than a tenth of the salary, after deductions [6–7].

## DISCUSSION

It is difficult to define medical error, because the available, limited as they are, sources offer different interpretations of this issue. According to Kozela, medical error should be considered a prerequisite condition for an adverse event in the medical care system [8]. According to this definition, medical error determines the occurrence of an adverse medical event. On the other hand according Cranovsky [9], "medical error is an event, which could have been avoided, but was not". Such a different interpretation of the same term determines the existence of more differences, e.g. the subject who committed the error. According to Kozela, it is important to point to a specific person who committed the error. Therefore, a group of court experts has to be formed to determine whether a given person has made the medical error. According to Cranovsky, only the fact the error has occurred is significant, not the culprit. The occurrence of the incident is determined by a special provincial commission. If it determined an error has occurred, the entire hospital is liable, if the incident happened on the premises.

The question of the medical error and the sanctions arising from civil liability of physiotherapists is regulated mainly by the provisions of the Criminal Code (in case of a crime) and the provisions of the Medical and Nursing Code of Ethics [10–11].

## CONCLUSIONS

Medical errors are a part of the medical profession, therefore they should be discussed openly, not hidden from the public eye. They need to be eliminated, so that the quality of medical services can be improved. Sadly, nowadays medical professionals often meet with scorn and aggression. The number of complaints of medical errors grows exponentially. The highest rise was noted in 2012, when a special hotline for reporting complaints was opened for patients. That year saw 63,900

complaints, while the previous year only saw 38,200. This was not caused by worsening quality of services, rather than by higher expectations of patients. A physiotherapist should perform their professional duties with care and in accordance with existing guidelines. This will help reduce the risk of medical errors and prevent sanctions [12].

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Word count: 1950

• Tables: –

• Figures: –

• References: 12

### Sources of funding

The review was funded by the authors.

### Conflicts of interests

The authors report that there were no conflicts of interest.

**Cite this article as:** Bidzińska G, Kołodyński P. Medical error and the civil liability of physiotherapists. PU-HSP 2016; 10, 3: 38–40.

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Received: 19.06.2015

Reviewed: 06.09.2015

Accepted: 31.03.2016