

The burden of proof on the unlawful conduct of the health service provider

Abstract

This thesis describes a burden of proof and the distribution of the burden of proof on the unlawful conduct of the health service provider between the parties to the dispute. Particular emphasis is put on cases in which patient as party burdened by the burden of proof is unable to prove unlawful conduct of the health service provider or other elements of the obligation to pay damages because the health service provider violated his obligation to properly maintain medical records.

This thesis is composed of eight chapters. Chapter One is introductory and describes the civil liability which can arise out of the provision of health services. It presents cases of strict liability and also liability for fault. Chapter Two deals with the unlawful conduct of the health care service provider. Besides the general introduction, attention is paid to medical malpractice and other typical cases of unlawful conduct related to the provision of health services. Chapter Three examines other elements of the obligation to pay damages in cases of medical malpractice. Chapter Four deals with the procedural obligations of the parties to the dispute, especially with the duty of assertion and evidence and the burden of assertion. Chapter Five is devoted to the burden of proof and related phenomena. This chapter describes the burden of proof, rules on the distribution of the burden of proof and the assumptions of the application of these rules. Chapter Six illustrates the access of Czech courts to the burden of proof in cases where medical records are not complete. It contains especially analysis of the significant decision of the Czech Constitutional Court in this area and evaluation of further possible development of the decision-making practice of Czech courts. Chapter Eight contains a comparison of the solutions of similar cases that have been adopted in the states of European continental legal culture and Anglo-American legal culture.

The result of this thesis is the finding that the Czech court's decision-making practice is directed towards a fairer distribution of the burden of proof between the patient and the health service provider. In particular, the courts have created a rule whereby the burden of proof can be reversed on healthcare providers

if the obligation to keep proper medical records was violated. However, the reversal of the burden of proof has its limits. It can be assumed that these limits will also be specified in the future by judicial practice.

Key words

burden of proof, unlawful conduct, health service provider