

# ABSTRACT

## **Criminal liability of a physician and its evidence**

This master's thesis focuses on the concept of criminal liability regarding the performance of medical activities and its evidence. The aim of the thesis is to introduce the reader to the current issues of medical law from the perspective of criminal liability and to provide insight into other key aspects of its determination. The thesis offers answers to the questions of who and on what basis assess whether the doctor's actions were (*non*) *lege artis*, what consequences from such actions for the doctors may arise and under which circumstances the doctor will not be criminally liable. The thesis itself is divided into six chapters, which are then divided into other subchapters.

The first chapter introduces medical law within the system of law of the Czech Republic and provides the basic framework of the sources of this area of law, which is regulated by both international conventions as well as national laws. The second chapter is devoted to the concept of (*non*) *lege artis*, this concept is a key criterion in deciding on the application of legal liability. The third chapter provides definitions of the conditions of criminal liability of (not only) doctors and its manifestation in the provision of health care. An important precondition for criminal liability is the existence of culpability, which is why the difference between wilful and simple negligence in real actions is shown here. The fourth chapter deals with cases where the doctor is not criminally liable, when his actions were influenced by the circumstances that cancels out any illegality. At the same time, this chapter discusses the complex issue of informed consent, which now except for justifying conditions represents the patient's consent to the provision of health services. In the fifth chapter the author approaches the procedural level of criminal liability, sets out the basic means of evidence by which doctor's guilt is proved. It focuses on an expert opinion, which sheds light on medical proceedings from professional points of view, since the judge does not have the professional knowledge for such an analysis. It also discusses the issue of medical records, including the right to inspect it and consideration of the appropriate extent of medical records detail and follow-up consequences. The last – sixth chapter is devoted to the harm inflicted on the patient or surviving relative because of the provision of health care. It presents the possibilities of obtaining its compensation either by *partie civile* proceedings joined to criminal proceedings, or by civil action before a court. Because of the civil claims for

damages, the author transfers into the area of private law, which was predetermined by the interdisciplinarity of medical law as stated in the introductory chapter.

The aim of the thesis is not to define and answer all the questions related to the criminal liability of doctors in an exhaustive way, but to offer a basic framework with an in-depth analysis of certain aspects of criminal liability of doctors in health care, including controversial issues that had to be ruled by higher judicial body.