

SUMMARY

LEGAL LIABILITY OF A DOCTOR

The purpose of my thesis is to analyse briefly the issue of legal liability of a doctor for his professional duties. Stemming from relevant legislation, the doctor owes many duties and responsibilities and his failure to obey them properly could lead to various liabilities.

The aim of the paper is not to consider in a detail all the questions concerning the liability of the doctor. On the contrary, I try to outline particular kinds of the doctor's liability in a systematic way and furthermore to scrutinize some partial issues relating thereto.

The reason that led me to my research is the fact that the more human rights are recognized the more prudent and diligent the doctor must be while treating his patients. Legal approach towards medical treatment has changed over past few decades but is the society and especially affected professionals ready for this change?

This thesis is divided into two parts having eight chapters altogether. Each of chapters deals with different aspects of the subject matter. The introductory chapter points out basics of the medical law and gives a brief look at the evolution of a legal approach towards the liability of the doctor during ages. The rest of the first part briefly characterizes common premises of the legal liability in general and its different sorts in respect of a doctor under Czech law system. Considering types of liability, we recognize criminal, civil, labour, administrative, and disciplinary kind.

In the second part, I pay attention to some of the actual questions regarding provision of medical treatment. Particularly, I focus on necessary conditions to be met that a medical intervention be legal, then causal relation between malpractice and damages, and damages payable to patients.

Conclusions are drawn in Chapter Eight. Nowadays it is clear that the doctor is subject to many requirements. The purpose is to protect not only a patient's physical or psychological integrity but also (and mainly) his autonomy in decision making on his health. Although the doctor is not obliged to guarantee the success of the medical treatment, he must provide a medical treatment in compliance with the reasonable knowledge of medical science, i.e. *lege artis*. Nevertheless it should be noted that this notion is rather medical than legal and therefore the doctor cannot be liable for not acting *lege artis* but only for violating his legal duties.

When considering the type of a claim to be raised against the doctor for his malpractice, it seems to be common for patients to prefer a criminal proceeding. Irrespective of advantages of a 'criminal'

option in proportion to the civil one, it is necessary to bear in mind that the criminal liability as a solution to medical claims must be always the last option.

In conclusion, when summarising today's stage of the medical law in Czech republic, I suggest that new legislation or at least some amendments thereto should be passed; solutions adopted in some foreign countries can serve as a good example.

KLÍČOVÁ SLOVA (*KEY WORDS*)

Lékař (*a doctor*)

Právní odpovědnost (*legal liability*)

Zdravotní péče (*health care*)