

Economically limited health care benefits and the breach of precautionary measures by a doctor

SUMMARY

Criminal liability of a physician is commonly connected with the issue of medical error. However, precisely speaking a doctor is not liable for the medical error itself since the criminal law does not provide for that type of criminal offence, but for its potential consequences which may be qualified as manslaughter, unintentional causing of serious, average or light detriment to the health or unintentional exposure to danger of loss of life or grievous bodily harm. One cannot exclude the occurrence of situations when a doctor by his behaviour fulfils the features of intentional crime, however for the purposes of this paper, it is reasonable to assume that generally a physician intends to protect personal interests, such as life and health of a patient, and does not act with the intention to infringe them or expose them to danger, and any plausible negative consequences for life and health of a patient which arise from or as a result of a given situation are not deliberate. A key condition indicating that the act has been committed unintentionally is the fact that the perpetrator infringed the precautionary measures required under particular circumstances. With respect to the physician the requirement to act in accordance with the actual medical knowledge seems to play a key role. The author contrasts this obligation with the system of health protection and discusses how the economically limited health care benefits influence the failure to comply with it, as well as how the shortage of financial resources may impact on the breach by a doctor of the precautionary measures stipulated in art. 9 § 2 of the Criminal Code.

KEYWORDS: medical error, health services, prudential rules, current medical knowledge, crime committed without intent