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PhD dissertation summary

***The Civil Law Consequences in Polish Law of Providing Healthcare Services by a
Physician via ICT or Communication Systems***

written under the supervision of prof. dr hab. Piotr Machnikowski

The modern development of science and technological progress have created new prospects for the provision of health services, which has significantly influenced the way a physician performs his profession. This is manifested, among other things, by the possibility of providing health services through ICT or communication systems. The application of these solutions requires defining both their legal framework and the consequences of their functioning.

This PhD dissertation is devoted to determining the civil law consequences of providing health services by a doctor via ICT or communication systems. The choice of the subject matter is a consequence of the recognition of the legal relationship between medical practitioners and their patients as a civil-law relationship of an obligation type. The validity and usefulness of the subject matter is confirmed by the fact that the legal background in this respect has changed significantly over the last few years. Therefore, the discussed issue is a relatively new one within Polish law, and thus not fully and comprehensively researched. It has not yet been fully studied. This in-depth analysis was aimed at solving a number of research problems. The first discussed aspect refers to the resolution of issues linked to the definitions that determine the framework of the doctoral dissertation. The next aspect involves a discussion of the legal environment for providing health services via ICT or communication systems, and an assessment of the need to introduce legislative amendments to the Polish legal order. Another examined issue refers to the autonomy of the parties in a legal relationship between medical practitioners and their patients and the influence that the use of telemedical tools in the provision of health services has on this relationship. Due to these connotations, it was necessary to address such specific aspects of the problem as a patient's consent and the obligation to be provided with medical information, as well as issues concerning medical data. Despite the

introduction of such generally defined competences, the legislator has not created a group of special provisions in relation to existing regulations which would have been dedicated only to this form of service provision. This leads to the conclusion that the rules of practising the medical profession are not dependent on how such services are provided. These requirements apply to any type of service, regardless of its subject or form. Thus, there are also no grounds for creating a separate regime concerning a doctor's responsibility and constructing specific principles, bases or premises for such responsibility. Therefore, the criteria for assessing the correctness of a doctor's conduct remain essentially the same regardless of the form of provided health services. On the basis of this conclusion, standards of practice have been adopted as the axis of the analysis, as they constitute the basic directives which should be followed by a doctor when providing health services. However, the analysis took into account the necessary modifications resulting from such an approach to the applied criteria.

The proposed subject matter requires the use of several research methods. The leading among them is the legal-dogmatic method, as the considerations essentially involve the analysis of the legislative solutions adopted by the legislator. For a comprehensive discussion of the issue within the necessary scope, it was also important to use elements of the approach involving historical analysis of law, making it possible to refer to previously binding regulations and to trace the legislative amendments introduced in this area. Moreover, for some issues raised in the course of the doctoral dissertation, it was also justified to refer to certain economic aspects.

The dissertation consists of four interrelated parts, each of which is divided into chapters.

The first introductory part is entitled *Preliminary issues*. It includes a presentation of the research objectives, the rationale for the choice of this particular subject matter and the applied methods, as well as a discussion of issues linked to the applied definitions.

Part Two, *Legal environment for the provision of health services by a physician via ICT or communication systems*, includes a detailed analysis of both the previous and current legal situation. Individual legislative amendments are also presented taking into account certain economic aspects.

In the third part, *Professional standards as criteria for the assessment of a physician providing health services via ICT and communication systems*, the discussion focuses on establishing and characterizing the criteria for assessing the conduct of a physician providing health services via ICT and communication systems primarily in the context of the legal basis for a doctor's civil liability. In establishing the catalogue of directives defining the main approach of the analysis within this dissertation, the following criteria should be indicated:

compliance with current medical knowledge and professional ethics, due care, as well as taking into account the methods and means available to the doctor for the prevention, diagnosis and treatment of diseases. Moreover, the basic principles related to the provision of health services are important components of the assessment of a doctor's conduct. Such principles identified in the dissertation include elements referring to respect for the autonomy of each of the parties in the legal relationship between medical practitioners and their patients. Some of the catalogue of existing rights and obligations of these entities will remain the same, while the content of others requires certain modifications due to the form of service provision. In addition, the provision of services via ICT or communication systems is conditional on the updating of specific rights or obligations that are characteristic for this model of services. Therefore, the impact of the manner of providing services on a patient's consent, on the obligation of providing a patient with information, on a patient's image or medical confidentiality and on medical data protection has been taken into account. This part also includes a discussion of deontological regulations which are the basis for the provision of health services in this form, as well as containing the results of my own research on its application in the judicial decisions of regional medical courts.

Partial conclusions were presented in the course of the dissertation, addressing specific issues. Therefore, the last fourth part, the *Conclusions*, provides a summary. It systematises the final conclusions from the conducted analysis and is accompanied by commentaries and an attempt to formulate *de lege ferenda* postulates.

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