



**WYDZIAŁ PRAWA
i ADMINISTRACJI**
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**„Criminal liability for negative effects on the patient's life and health
resulting from cooperation in the treatment process”**

SUMMARY

***(Odpowiedzialność karna za negatywne skutki dla życia i zdrowia pacjenta
powstałe w warunkach współdziałania w procesie leczenia)***

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The dynamic development of science and technology – and the necessarily accompanying process of ever-increasing specialization, related to the deepening isolation of specific areas of knowledge – make the division of labour, and therefore entrusting its individual sections to different professionals, inevitable. Whereas among the factors determining the achievement of high-quality effects in a given area of social activity – including the effective minimization of the risks naturally generated by it for legally protected goods – a special role is played by the proper organization, generally understood as the process of combining various elements of the work system on the basis of the co-contribution of parts to the success of the whole. The critical point of contact, where the highly problematic determinants focus as indicated in the lens, is the process of criminal law evaluation of behaviours undertaken as part of collectively provided health services, the consequence of which is the penalized effect on the patient's life and health; which is the subject area around which the deliberations presented in this dissertation focus.

The main argument for focusing attention within its framework on the issue of criminal liability cooperating in the treatment process is, first of all, the importance of the problem resulting from its multidimensionality in theoretical, dogmatic and pragmatic aspect in view of the high complexity of the potential cases that can occur on the outlined ground, induced by the complexity of modern medical activities, often performed in constellations of at least two people, simultaneously or sequentially, in multiple stages, in a shift system, in complex organizational structures such as medical entities. After all, this – updating numerous difficulties and hence determining the importance of the problem – the complexity of potential cases inevitably contributes to the complexity of the criminal law assessment of the behaviours of persons participating in a criminal act, as it makes it difficult to identify responsible entities or even candidates for perpetrators, set the limits of their liability, decoding of all precautionary rules applicable to individual participants of the assessed event, and ultimately objective attribution of the cooperative perpetration of a prohibited act. In addition – which is even more important from the point of view of the choice of the subject of scientific research – in the outlined subject area, one can note the convergence of issues that have not been discussed so far, either in general or in exhaustive study, taking into account the specificity of criminal liability of medical professionals in the circumstances of collective action, in including in the case of an effect occurring as a consequence of an error conditioned by a defective organization of the process of providing health services (the so-called "organizational error"). This specificity, which – as mentioned – is currently not sufficiently

reflected in the criminal literature, is very clearly manifested in the area of precautionary rules, criminal cooperation and objective attribution of an effect resulting from a specific accumulation of risks generated by the behaviour of at least two people. What is more, the buckle – bringing all the indicated problematic issues together – are the cases of collective health services, the consequence of which is a penalized effect on the patient's life and health.

From the above perspective, one cannot lose sight of the fact that, in the discussed sphere of professional activity, there is a gradual – corresponding to the current realities – development of additional precautionary rules, specific to teamwork, especially intensively drawing on such areas as health care organization, risk, human resources or knowledge and information management, ergonomics and organizational psychology. In order to adequately highlight the essence of these rules and their distinctiveness from the rules of current medical knowledge, typically taken into account in this type of cases, and at the same time to show their importance – and as a consequence of the risk of distorting the final result of criminal law evaluation of a criminal act, if the assessment of the act from their perspective was omitted – it became necessary to approximate them. Admittedly, showing their specificity often meant leaving the plane of criminal law and entering the circle of issues relevant to other branches and areas of law (e.g. road traffic law – in the case of the "principle of limited trust"; administrative law – in relation to the control and supervision institutions explained for the purposes of presenting the "principle of proper supervision"; medical law – when it comes to the conditions for providing health services and training medical staff, referred to in the context of the "principle of collective decision-making" and the "principle of proper organization"); and even belonging to other scientific disciplines (e.g. health sciences, praxeology, ergonomics, health care organization, risk management, human resources or knowledge and information). This procedure, however, was deliberate, and at the same time necessary for a broader look at the problem and to indicate to practitioners the directions of seeking solutions adequate to the specifics of teamwork. In the discussed context, it was necessary to at least indicate alternative (non-repressive) methods of solving a social conflict resulting from a defectively provided health service – in a broader sense than an individual case – showing in particular the impact of organizational conditions on the probability of a penalized effect, and raising the need to introduce systemic solutions of the nature of preventive, especially in the form of a system of reporting adverse events, which is a manifestation of the implementation of the guidelines resulting from the principle of proper organization; which also required

considering the legitimacy of abandoning criminal repression in order to achieve a satisfactory level of their reporting in the form of self-denunciation.

Secondly, as requiring more in-depth attention, it is worth highlighting the issue of co-operation in unintentional acts, which are generally behaviours undertaken by medical professionals, with particular emphasis on considering the admissibility of the formula – proposed on the basis of this paper – of inadvertently directing a prohibited act or inadvertently ordering a prohibited act, which are then performed unintentionally as well. Assumption to examine the usefulness of the structure of criminal cooperation in the case of offenses committed in medical teams are reports of the medical community raising the incompatibility of the mechanism for determining criminal liability (i.e. focused on individual perpetration) used so far – in practice – with the conditions of the contemporary health care system, an integral feature of which is the provision of medical services in complex situational systems, including team management and issuing medical orders. As expert doctors signal, in judicial practice, unfortunately, there are still cases of team medical errors in which charges are brought against one, not always the right person, remaining somewhat next to the basic decision-making process or not having a significant impact on the patient's fate, possibly being only a link in an extended and multi-stage diagnostic and therapeutic process. For the indicated reasons, the research carried out as part of the preparation of the dissertation is not only dogmatic, but also practical. They can shed some light on the possibility of applying the structure of extended perpetration to an unintentional act and contribute to the choice – as part of resolving specific cases – of a form of perpetration more adequate to the specificity of providing health services than a single perpetration. Especially that the belief that it is possible to use the construction of extended perpetration in relation to unintentional acts has not yet become established in the science and doctrine of criminal law. Although in the studies of the subject it is mentioned that their use is not ruled out, usually supplementing such a thesis with a few sentences of commentary, nevertheless this issue has not been fully discussed so far. Such a state of affairs – namely the need to review, organize and clarify the views presented in the outlined thematic area – was the reason to fill the indicated gap with an appropriate study of the topic presented in this paper. A perfect background for dogmatic problems, but also the usefulness of the proposed formula – are medical matters.

Thirdly, it should be noted – as a contribution to the continuation of research on the criteria of objective attribution of the effect – that in interpersonal constellations, in which it is customary to provide health services today, especially sequential services, apart

from updating the premises of criminal cooperation within the meaning of Art. 18 of the Criminal Code, there may be various types of coincidences and collisions of responsibility for the negative result of an improperly performed medical procedure, determining the consideration of the usefulness of the so-called negative premises for assigning an effect to deciding on whose account the final change with the outside world should be recorded.

Consequently, the priority directions of scientific research are: firstly – considering the impact of the current trends in the provision of medical services on the shaping of the rules of careful handling of legal goods in the form of a patient's life and health; secondly – examining the possibility of applying the institution of criminal cooperation in relation to unintentional acts, such as behaviours undertaken by medical workers; third – to conduct studies of normative interpretative mechanisms useful for the resolution of fugitives and conflicts of responsibility for a criminal result caused by at least two people. In order to present their results, the dissertation has been divided into four chapters, the content of which is as follows:

Chapter I includes – constituting a foreground for further considerations – a terminological study devoted to the evolution of the understanding of the concept of medical error, showing the specificity of the relationship between the mentioned term, developed in literature and jurisprudence, and the normative formulation, which is "failure to observe the caution required in given circumstances", crowned with assessment of the usefulness of handling the term "medical error" and related phrases on the basis of assigning criminal liability, especially in the circumstances of teamwork.

Chapter II presents a detailed study of the precautionary rules for medical professionals working as a team, including the principle of limited trust, proper supervision, collective decision-making and proper organization of the process of providing health services, including the so-called "organizational error", which is a manifestation of the violation of the latter principle, as well as the registry of adverse events as the implementation of the guidelines resulting from it.

Chapter III contains the results of research on the admissibility of reference of the institution of criminal cooperation to unintentional acts, as well as on the possibility of using it in the process of examining medical cases, including the usefulness of the construction of the extended perpetration on the basis of criminal acts typically committed by the staff providing health services.

Chapter IV is essentially devoted to the so-called negative premises of objective attribution of an effect, which are assessed on the occasion of their practical significance from the perspective of the current state of research on this type of interpretation criteria, in order to conclude with instructive comments on the chronology of the process of criminal law evaluation with their use.

The study conducted for the purposes of preparing the doctoral dissertation revealed its considerable breadth and multifaceted nature, requiring focusing research efforts on an interdisciplinary approach. Hence, the main research assumption adopted for the preparation of this work is the interdisciplinary approach to the topic in question, which enables the link – necessary for a holistic view of the problem – to such issues from the borderline of legal sciences, medical sciences and health sciences, such as: standards of medical procedure, including procedures assuming the necessity to transfer the patient to other organizational units in order to implement the next stages of diagnosis and therapy; organization of health care, including the organization and conditions for providing health services; health care management, including the organization and management of hospital departments; medical staff education system, including supervision of trainees; patient safety and quality in health care, including accreditation process in health care and adverse event reporting system. The natural consequence of the above is the exposition within its framework of a number of border problems, especially at the junction of criminal law and medical law, but also considering the incorporation of solutions in the area of road traffic law (the principle of limited trust), as well as a review of institutions competent for administrative law (control and supervision) and labour law (the specificity of individual forms of employment possible in the case of medical professionals and their related position in the team). In addition, the research in the indicated scope is carried out from the perspective of the issue of criminal cooperation, which is reflected in the way of presenting the content and distribution of thematic accents presented in the dissertation. For both the fragments of the work devoted to the precautionary rules applicable to medical workers and the problem of assigning an effect – it relates to the central issue of cooperation.

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