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Medical standard and doctors' liability according German theory and court practice

UDC: 347.56:614.25
Systematic scientific work

SUMMARY

Medical standard is a general rule of the proper conduct of prevention, setting up diagnosis, healing and rehabilitation, which is applicable at the time. That is, indeed, those what average, mindful and cautious doctor can and must know and how to proceed. Therefore, it is a quality treatment what matters. Establishing standard in dispute before the court is, in the first place, a legal issue, while its proper application depends on the circumstances of the given case.

A medical doctor is not responsible to guarantee treatment success fullness, but must warrant to have the knowledge and skill required to work in line with the medical standard. Abilities, knowledge and diligence that may be expected from the average member of the same profession on a given occasion matter. Briefly said, medical doctor will have to act with diligence required by the medical standard. From the legal point of view, there are no other requirements except those established from the medical point of view. The law does not order doctors what and how they should perform, instead, the law only verifies if they discharge their duty in a manner required by their profession.

A negative departure from the medical standard represents, generally, doctor error that attracts liability. Doctors' civil liability is tied to the failure to act with objectively due diligence, which is typical of the members of the medical profession. The basis for such liability is not fault due to an erroneous formation of the will, instead it is conduct contrary to the expectation of the profession circles. Medical doctor's duty of treating in accordance with the standard should protect the patient from known and avoidable risks inherent to the treatment itself (the so-called "iatrogenic risks"). Unavoidable risks are not embraced by the liability for the wrong treatment or conduct contrary to the medical standard.

Key words: medical standard, diligence, doctors' liability

LITERATURA (REFERENCES)

Buchborn, E. (1993). Aertzlicher Standard: Begriff-Entwicklung-Anwendung, *Medizinrecht*.

Carstensen, G. (1989). Vom Heilversuch zum medizinischen Standard, *Deutsches Arzteblatt*.

Deutsch, E., Spickoff, A. (2003). *Medizinrecht*, Berlin.

Deutsch, E. (1997). Haftungserhebliche Standards, *Juristenzeitung*, 2.

Franzki, H. (1994). Von der Verantwortung des Richters für die Medizin – Entwicklungen und Fehlentwicklungen der Rechtsprechung zur Arzthaftung, *Medizinrecht*, 5.

Giesen, D. (1995). *Arzthaftungsrecht*, Tübingen.

Hart, D. (1998). Aertzliche Leitlinien – Definitionen, Funktionen, rechtliche Bewertungen, *Medizinrecht*, 1.

Kresse, B. (2007). Aertzliche Behandlungsfehler durch wirtschaftlich motiviertes Unterlassen, *Medizinrecht*, 7.

Kullmann, J. (1997). Ubereinstimmungen und Unterschiede im medizinischen, haftungsrechtlichen und sozialversicherungsrechtlichen Begriff des medizinischen Standards, *Versicherungsrecht*, 13.

Laufs, A. (2002). Laufs, Uhlenbruch (Hrsg): *Handbuch des Arztrecht*, München.

Laufs, A. (1999). Zur Freiheit des Arztberufs, *Festschrift für Erwin Deutsch zum 70. Geburtstag*, Köln.

Peltz, F. J. (1997). Verschulden – Realität oder Fiktion. Die arztliche Haftung in der Rechtsprechung, Laufs, Dierks, Wienke Baumann; Hirsch (Hrsg). Die Entwicklung der Arzthaftung, Berlin.

Rumler-Detzel, P. (1989). Therapiefreiheit und Berufshaftpflicht des Arztes, *Versicherungsrecht*.

Schreiber, H.L. (1995). Der Standard der erforderlichen Sorgfalt als Haftungsinstrument, *Versicherungsrecht*, 1.

Seifert. (1998). Wienkel, Lippert, Eisenmenger (Hrsg): *Die Arztliche Berufsausübung, in den Grenzen der Qualitätssicherung*, Berlin.

Steffen, E., Pauge, B. (2006). *Arzthaftungsrecht*, Köln.

Ulsenheimer, K. (2003). *Arztstrafrecht in der Praxis*, Heidelberg

Velten, W. (2000). *Der medizinische Standard im Arzthaftungsprozess*, Baden-Baden.

Vujaklija, M. (1961). *Leksikon stranih reči i izraza*, Beograd.

Zakon o zdravstvenoj zaštiti, *Službeni glasnik RS*. br. 107/2005, 72/2009 - dr. zakon, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013 - dr. zakon, 93/2014, 96/2015 i 106/2015.

Zakon o zdravstvenom osiguranju, *Službeni glasnik RS*. br. 107/2005, 109/2005 - ispr., 57/2011, 110/2012 - odluka US, 119/2012, 99/2014, 123/2014, 126/2014 - odluka US, 106/2015 i 10/2016 - dr. zakon.