Journal of Nursing, Social Studies, Public Health and Rehabilitation 1–2, 2014, pp. 90–97

CASE REPORT

THE RESULT OF CRIMINAL LAW ACTIONS ON PHYSICIANS – A DEFENSIVE MEDICINE?

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Submitted: 2014-05-05 **Accepted:** 2014-06-24 **Published online:** 2014-07-15

Abstract

In recent years there is an increasing number of complaints and criminal information on health care provided by physicians. The driving force behind the increased number of complaints and criminal information leading towards physicians is usually not a rational basis – poor quality of work, but a targeted campaign directed towards the negative side of legal awareness raising of patients comprising in encouraging of patients to submit complaints and criminal information on physicians with the aim to reach the financial profit for the alleged injury.

The state which does not provide such legislation, which would be responsible for errors clearly defined and limited the possibilities of how to create from the lawsuits against health care workers a profitable business or the means of revenge, has been leading to an effort to choose by physicians such procedures that are expensive and not very beneficial. Medicine has to work always with certain assumptions and the complete exclusion of errors or complications at medical procedures is never possible.

Defensive medicine is a method of protecting physicians against possible legal action by unnecessary examinations, unnecessary hospitalizations, omitting certain medical procedures that could "jeopardize" the physician, or vice versa, suggesting some steps that are legally "clean" for the doctor, but could be inappropriate for the patient... and possibly dangerous.

Key words: *physician; criminal act; investigator; prosecutor*

"Woe to the patient if the doctor stops to be confidently courageous and start being legally careful."
Prof. Jirásek (Mach 2010)

In connection with the performance of the profession of physician and paramedic there is coming to serious harm to the physical integrity of individuals, which may result in causing injury or even death. In the case of medical procedures, however, the interference to bodily integrity is considered to be approved and legal if performed lege artis. It is a state certificated practicing of the profession pursuing therapeutic target in which there is the absence of illegality (Novotný et al. 2003, Křepelka 2004, Čentéš et al. 2006, Barancová et al. 2008, Císařová 2010, Human rights and freedoms... 2013).

Recently, the health care workers become targets of complaints administered by patients and their relatives in particular to the Office for Health Care Supervision, as well as to the local authorities or to the Medical Chamber.

The phenomenon was highlighted by the letter of Slovak Medical Chamber

to members of the Medical chamber (the information on fees and allowances) from 13 October 2008:

"In 2007, the Chamber reported a growing number of complaints of health care provided members of the chamber. Authorities of the chamber were fully aware that the driving force that increased number of complaints and criminal information leading up to the physicians was not the poor quality of work, but a targeted campaign directed towards the negative side raising legal awareness of patients consisting of patients encouraged to submit complaints and criminal information on physicians with the target of the financial profit for the alleged health impairment."

Nowadays, it is not rare when there is criminal prosecution to a physician in connection with the performance of his profession, and eventually there are civil and legal proceedings for damages caused by physician in health care. In such cases, the physician must defend against the claims of the other persons, or must seek to enforce his rights. Legal recourse is the only way doctors can protect their professional and personal interests.

To what kind of accusations can be the health care worker exposed (Act no. 220/1991 Coll., Mitlöhner 2000, Solnař et al. 2003, Šámal et al. 2003, Act no. 300/2005 Coll., Čentéš et al. 2006, Barancová et al. 2008, Act. 40/2009 Coll., Císařová 2010):

I. ***Intentional offenses*** – if the offender wanted in the law that way violate or undermine the protected interest (direct intent), or knew that his actions may also cause the violation or threat, and in the case it causes, he has been agreed with it (indirect intention). The fault in both given forms of intention is composed of the combination of the knowledge component (the perpetrator knew that he may cause the result) and the volition component (he wanted to cause the effect, or he was agreed with the result, respectively). In the case of the physician the most frequent is the offense of bodily harm according to the § 155 (intentional infliction of grievous bodily harm) and the § 156 of the Criminal Code (intentional bodily harm).

II. Bodily harm is mutilation, loss or significant reduction of working ability, limb paralysis, loss or substantial weakening of the sensory organs function, major organ damage, disfigurement, inducing abortion or death of the fetus, agonizing suffering and disruption of health for longer time. Bodily harm is harm to the others, which require objective medical examination, treatment or therapy, during which the normal way of life of the damaged person was more difficult not only for a short time (§ 123 of the Criminal Code).

III. ***Unintentional offenses*** – the offense of negligence will be if the offender knew that he may undermine or jeopardize the interest referred in the Act, but without the adequate reasons relied that such violation or hazard will not cause (conscious negligence), or did not know that their conduct may result in the violation or threat, although he could know this, given the circumstances or the personal circumstances (unconscious negligence). For the acting shall be regarded also the neglect of such acting, to which the offender and the circumstances of his situation obliged, therefore, it is considered as violation of the essential obligations arising from the offender's employment, position or function imposed on him by law. *I*n the case of the physician the most frequent is the offense of bodily harm according to the § 157 (causing grievous bodily harm by negligence) and the § 158 of the Criminal Code (causing injury by negligence).

In our case, the term protected interest means "the interest in the protection of human health" (Haškovcová 2002, Solnař et al. 2003, Šámal et al. 2003, Čentéš et al. 2006, Post et al. 2006, Barancová et al. 2008, Císařová 2010).

The current practice is that judicial proceedings for the entry of the decision into force takes several years, during that time the physician is under tremendous pressure. For small teams it is not the negligible fact the ambient pressure of surrounding and doubting about the truth of a physician. Stress associated with the procedure. Insomnia,

psychological trauma, financial penalties and defensive medicine – these are all common consequences of the proceedings against physicians (even if unsuccessfully led).

JUDr. Jan Mach (2010) in his publication recommended in the case of legal problems to behave as follows:

1. If there is a legal issue (a criminal complaint, action, complaint), do not react chaotically. Always clear the professional side of things first – was there or was not there the legal or professional misconduct? Is it given a causal relationship with the result? What is the evidential situation? Select whichever way forward.
2. If there is criminal prosecution initiated against you and you do not acknowledge your guilt, always immediately give complaint against the order (in the Czech Republic the so called "banquet" one is enough), the resistance to the enforcement order or an appeal against conviction. If an action is brought for damages and an order for payment, immediately give resistance.
3. Prepare the testimony to the police in advance and dictate and submit to the policeman. Do NOT let him formulate it chaotically in the "police language".
4. Against the attacks on your professional honour you have the right to defend first, according to the media law, as well as the actions for personal protection and criminal complaint for defamation.
5. If you are a physician and the member of the CMC (Czech Medical Chamber), benefit from the law firm of the Czech Medical Chamber and the possibility to request the expertise of the Scientific Council of the CMC (in SR the entry of SMC into legal troubles is not that large).

Case reports

The present case studies are intended to draw attention to the seriousness of the issue of criminal liability of the various branches especially in medicine. Let serve them as a memento. Case reports are ordered by allegations or statements pursuant to legal action.

1. Allegation of negligence in the Medical Emergency – Peracute virosis

Course of the disease

According to the data in the Medical Emergency issued by MUDr. Záchranka the report of the trip to 33 year old patient was taken on 8.42 p.m., the trip was performed on 8.42 p.m., with the arrival to the patient on 8.46 p.m.

The reason of the trip were the high body temperatures and the disorientation of the named person.

In Present Complaint the patient stated weakness since lunch, cough and elevated body temperature. Paralen was administered but without the effect. According to the data of the staff the patient was disorientated, that was the reason to call the Emergency.

At the examination the physician MUDr. Záchranka observed the objective finding – the patient is conscious (GSC 15), communicates, oriented, febrile, has chills, skin pink. Calm breathing, regular (12 breaths per minute), auscultation bilaterally bronchitic phenomena. Pulse regular, full, regular heart rate, blood pressure 100/70, heart rate 113, abdomen free, palpable, painless.

Neurological finding normal. Body temperature 40.7 °C and 39.9 °C.

Therapy: Saline solution 500 ml + Novalgin 2.5 g. i.v., Diazepam 10 mg rectally.

The state concluded as virosis, febrile state.

The patient due to stabilized state did not require medical treatment, he was secured by the lay supervision (in the function of the office nurse). The patient and supervision were advised to call Medical Emergency in the case of condition aggravation.

The patient was then left in an isolated room – ward of the inpatient medical facility of the Institute for imprisonment. At night, around 1.30 a.m. the patient vomited again, he had a temperature of 37.3 degrees Celsius, then lay down to sleep. According to witness statements he indicated that he was feeling better. About 5.45 a.m. he was found unconscious by a nurse in the hospital and the office nurse, the nurse in the hospital immediately started the external heart massage + oxygen inhalation, after the

arrival of the Medical Emergency the patient was without signs of life, the resuscitation was continued and at 6.45 a.m. exitus lethalis was determined.

In the report of the Department of Forensic Medicine the condition was closed as a peracute viral disease of the respiratory tract. In the opinion of experts in forensic medicine and toxicology they give the blame to the physician who did not provide transportation to the hospital, where the antibiotic therapy could be administered!

Expert opinion of the expert on anaesthesiology and resuscitation: There is no real basis to conclude that the transport of the patient to inpatient facility with antibiotic and supportive therapy could save the life of the patient with certainty. Acute viral disease had the dramatic and acute course in the patient, which could not be foreseen.

***Rating of courts:** District and Regional Court decided for the opinion of an expert of defense and the accused acquitted.*

2. Accusation of negligence in the service of the surgical ward – a head injury of a child with epidural hemorrhage

11 year old patient suffered while walking at pedestrian crossings when crashed by a car right eyebrow laceration, graze over the right zygomatic arch, contusions of the right shoulder, left wrist contusions, pelvic contusions and a concussion. Brought to the surgical emergency.

At admission (4.00 p.m.) the patient was conscious, when scoring consciousness she had the highest score (GCS-15).

Injuries can be considered as light. The most serious injury was to the head. She was hospitalized, performed X-ray of the head and limbs, all negative!!!

In the therapy she has been receiving pain medication, fluid therapy.

The condition started to deteriorate clinically about 3 hours after admission, around 9.00 p.m. when headache escalated: administered Dolsin, after the administration there was a massive vomiting.

The severe clinical deterioration occurred shortly after midnight, the worsening state of consciousness dominated, as well as extinct photoreaction with dilated pupils. The patient was immediately transferred to the CT scan by the Medical Emergency Service ambulance with a physician.

The Transportation by Emergency Medical Service (EMS).

According to the documentation the patient was transported spon-taneously breathing despite the Glasgow Coma Scale (GCS) according to the clinical description there was significantly below the 8 (convulsions, decerebration rigidity)!

After the CT scan the neurosurgeon at University Hospital was consulted, who recommended to operate in the local hospital due to the extensive finding, whereas the transport would delay the surgery and could harm the patient. The patient was operated, the bleeding stopped and the precipitate was removed.

The accused was MUDr. Chirurg. The expert opinion has not demonstrated the procedure non lege artis.

***Rating of courts:** Exempt from indictment.*

3. Allegation of negligence in the First aid service – the life threatening acute illness

MUDr. Všeobecný was performing the First aid service, during which was reported at 6.25 a.m. and performed at 6.38 a.m. the visit to the patient. Based on the documentation submitted it is not possible to verify the nature of the call, thus the signs that stated the wife of the patient.

MUDr. Všeobecný indicates that the dominant symptoms were diarrhea and pain in the upper limbs.

According to the Record of the treatment, which has a simplistic box to document the trip, the overall condition of the patient has not been assessed, the data on the physical examination of the cardiovascular system or even breathing, are not documented. The patient had not even measured blood pressure.

The attending physician only focused on the diarrhoea and pain in shoulders.

Based on these data the patient was given MgSO4, Tramadol, Reasec, Paralen. After the departure of physician the wife of the

patient went to take medicaments from the pharmacy and upon her arrival, the patient was unconscious, she called the Emergency Medical Service. MUDr. Záchranár concluded exitus lethalis at 11.15 a.m.

The expert points out that MUDr. Všeobecný just focusing on symptoms therapy without an overall clinical examination assumed that this was not a systemic serious disease. Based on his long time experience and function he could provide the adequate care, which essential pillar is an overall examination of the patient.

***Investigator assessment:** The public prosecutor stopped the criminal prosecution.*

4. Allegation of negligence – an unrecognized inadequate intubation at S.C. – the complications of anaesthesia during *Cesarean section*

26 years old patient was admitted to the Department of Obstetrics and Gynaecology of the Ist type Hospital and Policlinic in the Xth month of the pregnancy at risk (already hospitalized in the IIIrd and VIth month of pregnancy) due to developing birth activity.

At 9.35 a.m. there was vomiting stated in the documentation of the patient.

At 12.40 p.m. there was pathology detected in the fetus (a decrease in heart rate at 60–80/min), which approved after the administration of Syntophyllin. The current sonographic examination, however, showed the abnormal fetal rotation heading with bolts of umbilical cord around the neck.

At 1.10 p.m. there was another examination by obstetrician, finding depletion of cervix uteri, the persistence of fetal heart rate decrease and thus a threat to fetal asphyxia – lack of oxygen. These reasons have led to the indication of the termination of pregnancy by surgery – Cesarean section.

Conducting of total anaesthesia

According to the documentation the beginning of anaesthesia can be regarded at 1.50 p.m. as the inhalation of pure oxygen, which aimed to increase the supply of oxygen in the body, due to its projected deficiency in the induction of anaesthesia.

At about 2.00 p.m. the administering of anaesthetics according to Dr. Neatestovaná started. The selected combination of anaesthetic Thiopental (barbiturate with a rapid onset) and relaxants with the short effect (succinylcholiniodide – a substance that disposes the neuromuscular transmission and will ensure airways intubation) is the gold standard.

At the introduction of the laryngoscope into the oral cavity Dr. Neatestovaná observed the fluid under the raised pharyngeal flap (epiglottis) and the entrance to the esophagus and suggested to evacuate it. At this point the anaesthesia has been taken by Dr. Atestovaná, she intubated and then evacuated the contents from the oral cavity.

At auscultation Dr. Atestovaná reported spastic respiration (phenomena caused by altered airway diameter), ordered to administer hydrocortisone, disconnected the device and evacuated the contents from the cannula. According to her testimony the bronchospasm was very massive and consequently there were problems with breathing. The saturation of red color by oxygen on periphery decreased, as well as the blood pressure and heart rate. Dr. Atestovaná prescribed drugs for circulatory support (catecholamines), as well as the administration of Saline solution with Mesocian – the local anaesthetic into the respiratory tract. Nevertheless the Cardiopulmonary resuscitation was needed including defibrillation and noninvasive transthoracic cardiostimulation.

The operating team continued in the surgery-delivery, the healthy individual was born with Apgar score 9–10!

As a result of properly conducted therapy, the circulation and oxygenation gradually improved. The patient transferred to the Department of Anaesthesiology and Intensive Medicine in the regional capital, where they concluded the brain death, thus the death of an individual.

At autopsy the signs of aspiration of gastric juices in the form of damage to the airways by gastric juices with a brownish discoloration of mucous membranes of the respiratory tract were clearly detected. The microscopic examination confirmed chemical damage of pulmonary alveoli of a small scale.

The cause of death of the patient was therefore severe brain damage caused by insufficient blood oxygenation, which was done on the basis of a significant failure in gas exchange in the lungs. The cause of this condition can be considered as the development of Mendelson's syndrome resulting from aspiration of acidic stomach contents into the respiratory tract. Bronchospasm, swelling and the damage of the respiratory tract mucous membrane, a massive leakage of protein-rich protein into the lungs has resulted in a significant limitation of oxygen transfer into the circulation so that the brain damage became irreversible.

Rating of courts: *The district and regional court did not accept the arguments of the defense expert and condemned MUDr. Atestovaná to suspended sentence and to the automatic disqualification. According to the court she did not recognize the intubation into the esophagus and did not carry out the appropriate actions to remove this error (child score 9–10)! The case was well publicized, action, and experts in law previously identified the physician guilty.*

5. Beware of appeal against the criminal order

T*he three-year patient indicated by a surgeon to foreskin surgery was admitted to the children's department, from where transported to the operating room.*

After introduction to anaesthesia the worsening of respiration and the decrease in oxygen saturation below 80% occurred, the anaesthesiologist described wheezing and squeaks in the lungs – thus the signs of airways narrowing. The reddening of the skin on the neck and right upper limb was described as well.

Anaesthesiologist accesses the intubation – securing airways by introducing a plastic tube into the trachea (this is a child cannula, without a balloon, which helps in fixation). Intubation is performed without the delay, the anaesthesiologist auscultates the lungs (listening by a stethoscope) and verifies correct cannula placement. The lungs are auscultated by a colleague who is in the training. The substances to relieve muscle tension were not administered to the intubation.

In the patient the slowing of the heart rate, followed by cardiac arrest started. Extended cardiopulmonary resuscitation (CPR) was initiated, which consisted in breathing of pure oxygen in intubated child through the one-way system, indirect heart massage and pharmacotherapy administration – Atropine 0.5 mg, Adrenaline 1 mg. Medication was prescribed by anaesthesiologist and administered by anaesthetist nurse-specialist. After about 10 seconds (approximately) the renewal of the heart rate occurs. According to the nurse-specialist there was a frothy fluid with the presence of blood aspirated from the cannula, however; the cannula was not fixed.

Upon the appearance of heart rhythm disorders the doctor with qualifications A+R was called, who arrives almost immediately (located in the operating tract). After his arrival, the child is intubated again, the cannula at CPR is released, breathing with the mask is not possible for a severe narrowing of airways.

The intubation in both cases was evaluated by participated persons as simple and prompt. The head physician evaluated visually the conditions of the airways, such as laryngeal edema without not allowing the intubation. The respiration of the patient was described as strenuous, the exhaustion of the pink fluid from the airways was described even in this state.

The head physician of the Department of Anaesthesiology and Intensive Medicine was called, the colleague referred about the state of the patient and the complications of anaesthesia. Subsequently, MUDr. Obvinená left to document the course and to prepare the transfer to the Department.

In about half an hour there was a similar pattern as at the introduction to cardiac arrest (in the absence of MUDr. Obvinená), after about 5 minutes, there was the restoration of the heart rate. According to the documentation there was succinylcholineiodide (SCHI) administered just before the second cardiac arrest in the dose of 30 mg.

At resuscitation there was also physician from the Pediatric Department present. These medicaments were administered

intravenously – adrenaline at a dose of 0.2 mg + 0.2 mg + 0.4 mg, corticosteroids (Dexon, Hydrocortisone), Manitol, Ecob, Atrovent aerosol to airways.

After restoring the patient's heart rate the patient was relatively weak, bicarbonate administered to correct acidosis (laboratory verified).

The patient on artificial pulmonary ventilation with blood pressure of 90/40, heart rate 167 forwarded to the physician of the Emergency Medical Service for transport to the Department of Pediatric Anaesthesiology and Resuscitation in the Faculty Hospital.

According to the documentation the patient was without heart rate at the transmission on the heliport of the Faculty Hospital from the helicopter of the Emergency Medical Service during the transportation to the Department. At the Department he was resuscitated 120 minutes, occasionally the ventricular fibrillation and ventricular tachycardia have been documented. The electrical discharge was used – the electrical defibrillation and cardioversion to repeal the rapid action of the heart. Temporarily the normal heart rhythm appeared, but then it started to slow down, bradycardia and cardiac arrest, which failed to resuscitate and the death concluded on 7 October 2008 at 1.00 p.m. and 58 minutes.

Rating of courts: *The judge on the basis of the professional judgment from Faculty Hospital condemned MUDr. Obvinená by the criminal warrant for half a year and with the 2 year suspensive procedure and disqualification to work as the anaesthesiologist for 3 years. The main complaint was the dose of adrenaline, inadequate weight, nurse specialist dose did not warn about the dose, however, the physician is responsible for administering.*

MUDr. Obvinená on the basis of the facility management recommendation appealed the judgment and the same District Court required further opinion and subsequently sentenced the physician to three years! To the prison with security and disqualification for six years as physician... (fault, anaesthesia not contacted, adrenalin).

The attorney of MUDr. Obvinená accused appealed and the regional court decided on suspended sentence...

CONCLUSION

The common criminalization of the medical practice may result that they get to the boundaries of the legal order and the fear of legal consequences. The current legislation on the one hand creates undue pressure on the physician if he is threatened with various types of sanctions, on the other hand, there is limited opportunity of defense in the case of brought actions or instituted criminal or administrative proceedings. The complicated position of physicians conduct of physicians and the imbalanced relationships that current legislation creates, the absence of institution that would have stood up for them is giving more and more space to media looking mostly for attraction and not searching the truth. Their aim is to create a product that sells well. If they request the view of an expert from the desk, who does not know the work and conditions, they could make a criminal element from you.

If a citizen submits a criminal complaint, the citizen is exempt from paying fees. He carries only a very questionable risk of prosecution for the crime of false accusation under the provisions of § 345 of the Criminal Code (successful action on personality protection is our illusion). The impact on our behaviour will show just the following years.

It is therefore important that the result of these pressures has been a qualitative change in the scope of teaching medical law in medical schools to such an extent that it is not a priority for the exercise of their profession to avoid criminalizing and punishing the formal compliance of administrative process, but to have a natural tendency to cure the patient.

Physicians should be able to adequately face the charges, without being psychologically destroyed. Otherwise, the Hippocratic Oath has received the serious cracks.

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