

Available online at www.sciencedirect.com
SciVerse ScienceDirect
journal homepage: www.elsevier.com/locate/poamed

Review

Organization and functioning of Regional Commission for Evaluation of Medical Events after a year of operation


 Leszek Frąckowiak^{a,*}, Hanna Frąckowiak^b
^aDepartment of Public Health, Hygiene and Epidemiology, Faculty of Medical Sciences, University of Warmia and Mazury in Olsztyn, Poland

^bDepartment of Civil Procedure, Faculty of Law and Administration, University of Warmia and Mazury in Olsztyn, Poland

ARTICLE INFO

Article history:

Received 8 February 2013

Accepted 8 July 2013

Available online 9 July 2013

Keywords:

Compensation

Patient

Regional Commissions for Evaluation of Medical Events

Alternative to court mode of obtaining damage claims

Medical events

ABSTRACT

Introduction: The Act of 28 April 2011 amending the Act on Patient's Rights and Ombudsman of Patient's Rights introduced section 13a, entitled "Rules and procedures for determining compensatory damages in case of medical events." Amended act introduces an alternative to court mode of obtaining redress from hospitals for the damages caused. Since the Act entered into force, one can assert a claim for medical damages either in civil cases in courts (according to the principles in force) or in the proceedings carried out by Regional Commissions for Evaluation of Medical Events (Commissions). The choice of procedure belongs only to the victim (or their legal representatives or heirs). The purpose of the proceedings of Commission is to determine whether the event, as a consequence of which material or non-material damage has occurred, was a medical event.

Amended act describes in detail organization of Commissions and their functioning. It also includes the specific procedure used by Commissions in determination of medical events as an alternative to, by definition, long-term and complex proceedings of civil courts.

Aim: The aim of this work was to present circumstances which gave rise to the appointment of Commission. The authors' intention was also to clarify the rules for their functioning and organization. The authors also provide statistical data on the work of Commission on 30 November 2012.

Material and methods: Legal-dogmatic interpretation of the law in force in Poland was provided with particular reference to justification of draft amendment to the Act on Patient's Rights and Ombudsman of Patient's Rights, and analysis of the opinions expressed by the environment and associations of patients and their families was presented.

Discussion: The authors describe organization and functioning of Commissions appointed under the amended Act on Patient's Rights and Ombudsman of Patient's Rights, which identify issues relating to medical events. The Commission consists of 16 members, including 8 members who have at least university degree and master's degree or the

*Correspondence to: Department of Public Health, Hygiene and Epidemiology, Faculty of Medical Sciences, University of Warmia and Mazury in Olsztyn, Żołnierska 14 C, 10-561 Olsztyn, Poland. Tel.: +48 89 524 61 01, +48 601 611 435; fax: +48 89 524 61 14.

E-mail address: lesf@esculap.pl (L. Frąckowiak).

equivalent in the field of medical sciences. The remaining 8 members have at least university degree and master's degree in the field of science of law or Ph.D. in the science of law. All members of the Commission also have the knowledge on patient's rights and enjoy full civil rights. The purpose of the proceedings of Commission is to determine whether the event, as a consequence of which material or non-material damage has occurred, was a medical event. In case of positive decision of the Commission, the applicant may request claim from damages incurred (material) and pain and suffering compensation (non-material). The maximum value of the benefit (compensation and redress) due to one medical event for one patient is (a) in case of infection, bodily harm or health disorder of the patient – 100,000 zloty, and (b) in case of death of a patient – 300,000 zloty.

The authors draw attention to the manner of proceeding of Commissions, including the position of the insurer in the analyzed proceedings, entities permitted to submit a claim and methods and deadlines for appeals against decisions of the Commission.

Conclusions:

1. The Polish legislator has finally noticed the need to ensure patients injured in the treatment process with a rapid and possibly easy way to claim damages.
2. Appointment of the Commission did not increase the number of damage claims against hospitals.
3. Commissions were appointed as a quasi-judicial body, mediation and conciliation, although their status is not entirely clear.
4. The proceedings before Commission is not as simple as the legislator had assumed; in many ways it is unreadable and complicated for the potential applicants.
5. Amendments to the Act on Patient's Rights and Ombudsman of Patient's Rights on the appointment of the Commission should be assessed positively; however, further work on the proposed changes is still required.

© 2013 Warmińsko-Mazurska Izba Lekarska w Olsztynie. Published by Elsevier Urban & Partner Sp. z o.o. All rights reserved.

1. Introduction

The increasing level of education of Polish society implies a growing awareness of citizens to assert their rights as patients. Hence, there was also a need to work on legislation that enables each patient to investigate claims of malpractice, without taking the legal action, which is frequently long and expensive.

It should be noted that with the increasing awareness of the patients themselves, there is also a growing awareness of courts in respect to medical errors, since the amount of damages awarded in proceedings conducted before courts also increases. It is estimated that these are several times higher than over a decade ago: in 1996–1998 the amount of compensation for hepatitis B infection oscillated within 5000–8000 zloty (which is equivalent to approximately \$1500–\$2500, while the average monthly wage in the national economy in the fourth quarter of 2012 in Poland was \$1166.12). Currently, in case of extremely serious condition following a faulty conduct of labor recoverable amounts of compensation are not less than 500,000 zloty. A few years ago, compensation paid to a child for such malpractice did not exceed 150,000 zloty. In judicial practice there are also no further payment claims of 20,000–50,000 zloty in case of hepatitis C infection.¹⁴

As stated in the explanatory memorandum to draft amendment to the Act of 28 April 2011 on Patient's rights and Ombudsman of Patient's Rights and the Act on

Compulsory Insurance, Insurance Guarantee Fund and Polish Motor Insurers Bureau, introducing possibility of asserting claims for medical errors, without taking legal action, may increase the number of claims requested.¹⁴

Association of Patients "Primum Non Nocere" reports that in Poland every year at least 20,000 malpractices take place. Seeing no chance of winning the case, only about 10% of victims bring lawsuits, notify Prosecutor's Office or assert complaint to the Medical Chamber.

In accordance with data of the above mentioned association, patients claims related to medical errors usually include

- labor (37%),
- hospital infections (24%),
- undiagnosed myocardial infarction (9%),
- injury during thyroid surgery (8%),
- leaving a foreign body after a surgery (5%), and
- damage of temporomandibular joints during dental prosthetics (4%).⁸

Global patient organizations have already recognized the problem faced by patients injured in the treatment process and prepared a document called the European Chart of Patient's Rights.³ This is an informal non-governmental document prepared by Active Citizenship Network organization in cooperation with 12 organizations from different countries of the European Union, including 14 patient's rights² that would guarantee a high level of human health protection (guaranteed also by Art. 35 of

Download English Version:

<https://daneshyari.com/en/article/2678741>

Download Persian Version:

<https://daneshyari.com/article/2678741>

[Daneshyari.com](https://daneshyari.com)