

PROFESSIONAL LIABILITY IN SELECTED MEDICAL PROFESSIONS

*Anna Jacek**
*Katarzyna Ożóg**

ABSTRACT

To sum up, professional liability is an additional mode of responsibility, not included in the common law. Professional liability occurs when medical personnel violate provisions on the practice of the profession or act against the rules of professional ethics.

Professional responsibility is borne for a breach of the principles of medical ethics or provisions relating to the practice of medical profession. Medical personnel may be punished for professional misconduct by: admonition, reprimand, prohibition on holding managerial positions in organizational health care entities for a period from one to five years, prohibition on holding a position of one's choice in the bodies of self-government for the period from one to five years, limitation on activities within the profession for a period from six months to two years, suspension of the right to practice the profession for a period from one to five years, deprivation of the right to practice the profession. A doctor and dentist have the right to appeal against the decision of the Medical Court at II instance in any case, regardless of the imposed punishment. A nurse and midwife may appeal against the decision of the Supreme Court of Nurses and Midwives only in the case the penalty of suspension or deprivation of the right to practice the profession. There is a widespread opinion that it is very difficult for a victim to get a positive outcome in the medical courts, even in the cases of obvious medical errors or negligence.

Key words: law, patient, liability, medical profession

* lecturer, Institute of Nursing and Health Sciences, Medical Faculty, University of Rzeszow, Economic Law Firm Steczkowska and Associates Ltd. Warsaw.

** M.Sc. in Public Health, Medical Faculty, University of Rzeszow.

INTRODUCTION

Professional liability is a legal and moral obligation to bear the consequences for negligence, omission of actions and no progress in one's occupation. Professional liability in health care is borne by e.g. physicians, dentists, nurses, midwives, laboratory diagnosticians and pharmacists. The aim of professional liability is to ensure that medical staff, who demonstrated professional misconduct, is forced to improve their actions, and in repeated and serious cases, is temporarily or permanently deprived of the right to practice medical profession. Professional liability is one of the mechanisms to ensure a satisfactory level of health services.

GENERAL RULES OF PROFESSIONAL LIABILITY

Professional liability is a moral and legal obligation to bear consequences for personally performed professional activities or for their negligence or omission. Professional liability is associated with being a member of a particular professional group. Medical professionals can be held accountable to professional liability before specially appointed bodies of professional self-government.

Issues of professional liability of medical staff are regulated by e.g.:

- 1) the Act of December 2, 2009 on the Chambers of Physicians and Dentists¹;
- 2) the Act of 1 July 2011 on Self-governments of Nurses and Midwives²;
- 3) the Act of 19 April 1991 on the Chambers of Pharmacists³;
- 4) the Act of 27 July 2001 on Laboratory Diagnostics⁴;
- 5) the Act of 25 September 2015 on a Profession of Physiotherapists⁵.

¹ LJ 2015, item 651 as amended.

² LJ 2011 No. 174, item 1038 as amended.

³ LJ 2014, item 1429 as amended.

⁴ LJ 2014, item 1384 as amended.

⁵ LJ 2015, item 1994.

The above professional groups bear liability for the violation of provisions relating to their professions and for the breach of professional ethics. Professional liability is not applicable in case of paramedics, nutritionists or electro-radiologists, which causes significant reservations due to the scope of powers and nature of these professions.

Medical staff represent the professions of public trust. In the light of art. 17 par. 1 of the Constitution of the Republic of Poland of April 2, 1997 they can create professional self-governments, supervising the proper performance of these professions within the frames of the public interest and for its protection⁶. The legislature does not define the professions of public trust, nonetheless, we can distinguish many of their characteristics. Firstly, the professions of public trust are characterized by high level of autonomy and professionalism in the services they provide. A person using the services of the person performing such profession is not able to constantly verify the correctness of his actions, and learns about any negligence after the damage is inflicted. These occupations also have the codified rules of professional conduct adopted by their representatives and professional self-governments, established under the laws. Candidates for practicing any profession of public trust must have the proper education and high ethical and moral qualifications. They also have an obligation imposed by the legislature to constantly upgrade their professional qualifications, required to ensure an appropriate level of provided services.

However, the aim of professional liability is to draw professional consequences for the accused medical personnel. The aim of the professional self-government is to adjudicate on professional liability and determine the conditions for incurring and proceedings on the case in subject. The proceedings relating to professional liability can be held independently of the criminal or disciplinary proceedings for the same action. If it is likely that the result of these proceedings has a significant impact on the outcome of proceedings on professional liability of medical staff, the proceedings may be suspended. In this case, the decision is taken by professional self-governments, and matters concerning professional liability shall be heard by representatives of the same profession as the accused.

⁶ LJ 1997 No. 78, item 483 as amended.

Parties to the proceedings for professional liability may be:

- the Supreme Screener for Professional Liability,
- medical staff, to whom the proceedings apply, or the accused staff,
- victim.

The legislature defines a victim as a natural person, legal person or organizational unit without legal liability, whose well-being has been directly affected or threatened by an action or omission, particularly, of a doctor,.

A victim has the right to establish no more than two representatives from among doctors or lawyers. In case of the victim's death, his rights in the proceedings concerning professional liability can be extended to a spouse, ascendant or descendant, sibling, relative in the same line or degree, a person adopted by the victim and his/her spouse, and a person remaining in cohabitation.

Whereas, the accused is e.g. a doctor in relation to whom in the course of the investigation the Supreme Screener for Professional Liability issued the statement of objections or appealed to the Medical Court for his punishment. The accused doctor shall have the right to establish no more than two defenders from among doctors, lawyers or legal advisers. The Supreme Screener for Professional Liability acts as a prosecutor. His task is to collect information on suspicion of committing professional misconduct, consider the case, hear witnesses, determine and refer the cases to the Court with a request for punishment. The Supreme Screener for Professional Liability is a representative of the given profession chosen for this position in the process of election⁷. The accused may also be a nurse or midwife, in relation to which, in the course of the investigation, the Screener pressed the charges or appealed for punishment before the Court of Nurses and Midwives. The nurse or midwife has the right to defence and the assistance of a defender. The Screener or his Deputy can also be a party in the proceedings before the Court of Nurses and Midwives⁸. The same rules apply for professional liability proceedings in the case of pharmacists, laboratory diagnosticians and physiotherapists.

⁷ Art. 32 of the Act of 2 December 2009 on the Chambers of Physicians and Dentists (LJ 2015, item 651 as amended).

⁸ Art. 41 of the Act of 1 July 2011 on the Self-Government of Nurses and Midwives (LJ 2011, No. 174, item 1038 as amended).

In matters of professional liability of medical personnel, a series of rules of the criminal procedure apply. These are the rules on the basis of which the proceedings shall be conducted. Their goal is to punish the offender. These are:

1. the principle of material truth - the courts investigate to determine the actual provisions were true, being the basis for all decisions, and rulings issued during the trial were based on all the disclosed circumstances,
2. the principle of objectivity - the investigating authorities are required to investigate the circumstances both for the benefit and detriment of the accused person,
3. the principle of the presumption of innocence of an accused person until the fault is proven and validated by the final judgment,
4. the principle of the right to defence – the accused can choose a defender, provide or deny to provide explanations. He also has the right to request the taking of certain evidence and prosecute a judgment issued against him,
5. the principle of free evaluation of evidence - the Court adjudicating on the guilt of medical professionals must take into account the principles of valid reasoning, indications of knowledge and professional experience,
6. the principle of providing participants of the proceedings with the information about their duties and rights⁹.

The Court does not initiate the proceedings on professional liability in the following situations:

1. the offence was not committed or there is no data that would sufficiently substantiate the suspicion of its commission
2. the offence is not a professional misconduct or the provisions of the Act provide that the offender did not commit professional misconduct,
3. the accused died,
4. there has been a limitation of punishability,

⁹ See Marta Figuła (ed.), *Odpowiedzialność prawna pracowników medycznych*: C.H. Beck, Warsaw 2013, p. 25-28.

5. the proceedings concerning the same act and the same person has been terminated by a final judgment or are is in progress,
6. social harm of the act is negligible.

It shall be emphasized that professional liability also applies to doctors, nurses and midwives practicing in countries of the European Union. In France, the matters relating to the liability of doctors are divided into breaches of medical ethics and violation of rules of social/health insurance system functioning. They are initially dealt with at the regional level, the former by a regional medical council, the latter by committees appointed within the system of social/health insurance. The regional commissions consist of 9 elected doctors, 9 deputies and 4 or 5 advisers nominated by the courts and the relevant ministers. The Committees of the insurance system are managed by a chairman from outside the profession, and four members - doctors, 2 of which are nominated by the chamber, and the other two - by the insurance organizations. Appeals against decisions of the Regional Chamber of Physicians and Dentists are dealt with by the disciplinary committee of the Chamber at the national level. The chairman of the committee and his 4 deputies are counsellors (*conseiller d'Etat*) appointed by the Ministry of Justice. The Commission also includes 8 members and 8 deputies nominated by the Chamber. There is also a mode of appeal at the national level against the decision of the insurance committees. Doctors appointed by the Chamber constitute the minority. Decisions of both commissions can be challenged in court on the basis of both procedural and substantive charges. Deprivation or suspension of license to practice may be ordered by the Chamber at the regional and national level. The Chamber may also admonish or reprimand the doctor. The Insurance Commissions may impose fines or deprive a doctor of the right to reimbursement in the insurance system for a specified time. In addition, doctors working in public hospitals can be punished financially or otherwise by their employers¹⁰.

However, in Ireland, nurses and midwives can bear responsibility e.g. for negligence, improper performance of activities, failure to comply with a code of professional ethics, as well as improper ordination of drugs. Mat-

¹⁰ http://www.oil.org.pl/xml/nil/wladze/str_sad/dysc_zagran/euro, date of seeing the site 02.04.2016.

ters concerning the liability of nurses and midwives in Ireland are adjudicated on by the Preliminary Proceedings Committee, which conduct preliminary hearing of the case, and the Fitness to Practise Committee, which adjudicates on complaints. Penalties relating to professional liability of nurses or midwives are e.g.:

1. a written reprimand and a fine not exceeding € 2,000,
2. limitations in the practice of nursing or midwifery,
3. transfer of a registered nurse or midwife to another district,
4. suspension of a nurse or midwife for a specified period,
5. removal of a nurse or midwife from the register of nurses and midwives¹¹

THE ROLE OF THE MEDICAL COURTS

The Medical Court is mainly engaged in the processing of cases in the field of professional liability of doctors. The reasons for professional liability proceedings of doctors is the violation of:

- the rules of professional ethics defined by the Code of Medical Ethics,
- provisions relating to the practice of the profession.

The parties to the proceedings for professional liability of a medical professional are the Screener for Professional Liability, the doctor concerned or accused and the victim.

The proceedings on professional liability include:

- verification activities,
- investigation before the District Screener for Professional Liability,
- court proceedings before the medical court after submitting an application to punish a doctor or dentist,
- enforcement proceedings.

First, the District Screener for Professional Liability undertakes the verification activities. The Screener initially investigates the circumstances necessary to determine whether there are grounds to initiate the investiga-

¹¹ Nurses and midwives act 2011, *Number 41 of 2011*, <http://www.irishstatutebook.ie/eli/2011/act/41/enacted/en/html>, date of seeing the site 02.04.2016.

tion relating to professional liability of doctors. The reasons for determining cases of professional liability of doctor may be:

- failure to fulfil professional duty,
- violation of medical ethics,
- breach of regulations related to the profession,
- failure to comply with resolutions of the authorities and bodies of local self-governments of doctors. In such cases there is no taking of evidence of the expert opinion and no activities that require a protocol. One can only hear the person lodging a complaint against the doctor as a witness.

The investigation of members of the Chamber of Physicians and Dentists before regional courts is conducted by the District Screeners for Professional Liability. The procedure is initiated after receiving reliable information about a doctor's offence, usually on the basis of a complaint lodged by a victim.

Whereas, the Supreme Screener for Professional Liability conducts proceedings in the cases of professional liability of the members of the Supreme Medical Council, the Supreme Audit Commission, the Supreme Medical Court, the Supreme Screener of Professional Liability, the District Screeners of Professional Liability and their deputies. Such a procedure is initiated ex officio, if the Screener received reliable information about an offence committed in the frameworks of medical professional liability.

Immediately after receiving the information indicating a possibility of committing professional misconduct by a doctor, the Screener examines the circumstances of the proceedings. The proceedings must not be initiated, if the act was committed more than three years ago.

The Screener tries to achieve the objectives of the proceedings on professional liability, namely:

- determines whether the committed an act was a professional misconduct,
- explains in detail the circumstances of the case, including the circumstances both in favour of and against a doctor that the proceedings concern,
- gathers and secures the evidence for the medical court.

The Screener conducts hearings of witnesses and a victim. He may also hear the experts or professionals, and take other evidence. He has the right to request a patient's medical records and take the expert evidence.

If the collected evidence points to the fact of committing professional misconduct, the Screener shall prepare the relevant statement of objections for the doctor concerned. In order to place charges it is necessary to meet the objective and subjective reasons. The objective reason is the violation of the rules of ethics and regulations relating to the practice of medical professions. The charges are presented personally to a doctor or delivered in writing along with the information about his rights. Upon being presented with the charges, the doctor becomes the accused.

After the investigation is finished, a decision on its closure is given. The doctor, against whom the proceedings are conducted, has 14 days from the date of delivery of the decision to provide the evidence or submit additional explanations and applications of evidence. The Screener issues a decision on discontinuance of the proceedings if:

- the collected material is insufficient and does not provide grounds for filing a motion for punishment,
- the result of the investigation confirms the validity of the charges against a doctor.

The Screener also informs the victim, the accused doctor and the appropriate regional medical council about the motion.

The investigation shall be completed within 6 months from the date of obtaining the information about committing the professional misconduct¹².

The main aim of the trial before the medical court is not to satisfy claims of a victim, but to draw consequences for non-compliance with corporate norms, gaps in knowledge and medical art, or unethical conduct of the accused doctor.

A court trial is attended by: the accused doctor, his lawyer, the Screener for Professional Liability and the victim. The hearing in the medical court shall be public. It shall be noted that the provisions of the Act of December 2, 2009 on the Chambers of Physicians and Dentists do not regulate in detail the powers of the parties or the proceedings before the medical courts. To January 1, 2010, the mode and manner of proceedings before the courts for professional liability was regulated by the Decree of

¹² The Act of 2 December 2009 on the Chambers of Physicians and Dentists (LJ 2015, item 651).

the Minister of Health and Social Welfare of September 26, 1990 on the proceedings on professional liability of doctors¹³. The provisions of this Decree did not provide for e.g. opportunity for a victim's participation in the proceedings before the court for professional responsibility, which was criticized in the legal literature. The medical courts - making it difficult for victims to take part in the proceedings - strengthen the popular opinion about the collusion of silence about medical errors binding the medical environment¹⁴.

As previously mentioned, the proceedings before the medical court shall be public, however, the medical court may change it, if that could: violate medical confidentiality, cause disruption of public peace, offend good manners, violate valid legal interest, or disclose the circumstances that - due to the important interests of the state - should be kept secret.

After the hearing of evidence and the hearing of the parties, the presiding judge closes the trial. Then, the medical court deliberates and issues its ruling on the basis of all the evidence disclosed at the hearing. The adjudicating panel consists of three people¹⁵. It includes doctors and dentists, not professional judges. The court determines whether the accused is guilty of professional misconduct and specifies the circumstances affecting the punishment. The ruling may be an acquittal or declaring the doctor guilty of the alleged offense. The medical court may also adjourn the proceedings in case of:

1. minor offenses;
2. or if the decision to sentence the accused would obviously be pointless because of the nature and fine amount of the penalty legitimately imposed for the same offense in other proceedings under different Acts, and is not contrary to the interests of the victim.

The patient may appeal against the decision of the District Medical Court to the Supreme Medical Court and against the final judgment to the

¹³ LJ 1990, No. 69, item 406 as amended.

¹⁴ Kazimierz Szewczyk, *Bioetyka. Pacjent w systemie opieki zdrowotnej*, PWN, Warsaw 2009, p. 228- 230.

¹⁵ Art. 80 of the Act of December 2, 2009 on the Chambers of Physicians and Dentists (LJ 2015, item 651 as amended).

Supreme Court in the case of gross violation of the law and because of the imbalance of punishment to the offence of the doctor¹⁶.

As in the provisions of the Criminal Code, penalties for professional misconducts are strictly defined. Art.83 of the Act of December 2, 2009 on the Chambers of Physicians and Dentists provides for the following sanctions:

1. warning - does not limit a doctor's right to practice his profession, the doctor may provide health care services in the full range of his skills, he reserves the right to issue prescriptions for drugs covered by the refund, he can also provide services both in the private medical practice and in a medical entity having an agreement with the National Health Fund,
2. reprimand - does not legally affect the right to provide health care services to patients and does not limit the doctor's right to practice his profession. The effect of this punishment reveals in the field of the rights in a medical self-government – he must not apply for a position in the body of the Chamber,
3. fine – it was added to the list of penalties in January 2010, the money is given to the social cause related to the protection of health. Its height is statutorily limited in the amount from one-third to four times an average monthly salary in the corporate sector without profit-sharing announced by the President of the Central Statistical Office, in force at the time of the judgment at I instance. However, the Act of December 2, 2009 on the Chambers of Physicians and Dentists does not specify the way of administering the punishment, as there is no enforcement order for cash benefit provision,
4. prohibition on performing managerial functions in organizational units of health care for a period from one to five years - the Medical Court can dismiss a person from a managerial position, if the person abused managerial powers by misconduct,
5. limitation on the scope of activities in the practice of medical profession for a period from six months to two years - the Court may impose the penalty for breach of ethics or rules of practicing the

¹⁶ Miroslaw Nesterowicz, *Prawo medyczne*, Dom Organizatora, TNOIK, Toruń 2010, p. 33.

medical profession. In such situation the Medical Court deprives the doctor of the ability to perform certain activities of his profession, it may also impose a general prohibition on performing medical procedures, certain types of treatment, or specific type of treatment,

6. suspension of the right to practice a profession for a period of one to five years – a doctor is deprived of the right to practice his profession for a specific period, he cannot provide any health benefits in any form, he is not allowed to have a private practice or be employed in any medical entity. This penalty also affects his rights in the field of medical self-government, as a penalized doctor must not run for any position in the Chamber. The period of the punishment is specified by the President of the Regional Medical Council after receiving a final decision of the Court at I instance,
7. deprivation of the right to practice - it is the most severe penalty that may be imposed by the Medical Court. It is meted out for the most serious violations of medical ethics and provisions relating to the practice of medical professions. From the date of its validation a doctor is deprived of his right to practice in any form, both private practice or in medical entities¹⁷. The doctor is removed from the list of members of the Chamber without the right to apply for re-entry.

A catalogue of these penalties is closed. Both reprimand and suspension of the right to practice entail the loss of the right to be elected to bodies of medical chambers. If the doctor is deprived of the right to practice, he is removed from the list of the Regional Chamber of Physicians and Dentists.

A doctor may incur professional liability, regardless of the criminal proceedings. The fact of being punished by the criminal court is not the basis for the refusal to initiate the proceedings by the Screener for Professional Liability, in fact, it may lead to double responsibility of the doctor for the same act. Professional liability, as well as the provisions of the Civil

¹⁷ The Act of December 2, 2009 on the Chambers of Physicians and Dentists (LJ 2015 item 651).

Code, also refers to the concept of due diligence. This term is used in art. 4 of the Act of December 5, 1996 on professions of doctors and dentists: a doctor is obliged to practice his profession in accordance with the current medical knowledge, all available methods and means of prevention, diagnosis and treatment of diseases, according to the rules of professional ethics and with due diligence¹⁸.

Parties to the proceedings may appeal to the Supreme Court of Physicians and Dentists within 14 days from the date of receiving a copy of the decision. The complaint is lodged by means of the competent regional medical court, which issued the contested ruling; and if the decision was given by the Supreme Screener for Professional Liability, the complaint shall be submitted to the Supreme Court of Physicians and Dentists. Persons entitled to appeal have the right to review the case files. The parties to the proceedings, the minister responsible for health affairs and president of the Chamber of Physicians and Dentists is entitled to appeal against the final court decision on professional liability to the Supreme Court. The appellation is possible within two months from the date of receiving the decision. The most common cases relate to issuing certificates and medical recommendations without an examination of a patient, issuing certificates of incapacity to appear before the court by an unauthorized doctor improper conduct of medical records, issuing false medical certificates. However, there is a common opinion that it is very difficult for a victim to get a positive outcome in the medical courts. Even in cases of obvious negligence or fault of medical personnel the result is an acquittal, as it is a collegiate judgement. Personal data of the punished doctors is placed in the Register of Punished Doctors, kept by the Supreme Medical Chamber.

THE ROLE OF NURSING COURTS

Professional responsibility of nurses and midwives is regulated in chapter VI of the Act of July 1, 2011 on self-government of nurses and

¹⁸ Art. 4 of the act of December 5, 1996 on professions of physicians and dentists (LJ 2015, item 464 as amended).

midwives¹⁹. On the basis of art. 36 par. 1 of this Act, members of self-government and citizens of Member States of the European Union, temporarily and occasionally practicing as nurses or midwives on the territory of the Republic of Poland are subject to liability.

A member of self-government is every nurse and midwife licensed to practise the profession, who is entered in the register kept by the District Council competent for the place of occupation²⁰. Reasons for professional liability include the violation of:

- professional ethics (the Code of Professional Ethics for Nurses and Midwives),
- provisions relating to the practice of their profession.

It shall be added that the International Council of Nurses has developed a code of conduct for this professional group. It contains rules, which should be followed by every nurse, legal consequences of their violation, as well as their rights and obligations. It mentions 4 fundamental responsibilities of professional nurses. These include:

- health promotion,
- disease prevention,
- health restoration
- reducing suffering²¹.

It is also expected that nurses and midwives will provide services in terms of care of an individual, family and community. Nurses and midwives are also obliged to coordinate their services with other health professionals, in particular, doctors. Professional liability of nurses and midwives, however, is not the same for each of them.

The proceedings take place within the framework of the organizational structures of the Chamber of Nurses and Midwives, as units of self-government. As in court proceedings, we can distinguish the following stages of the proceedings:

- screening,

¹⁹ LJ 2011, No. 174, item 1038 as amended.

²⁰ Art. 5, par. 1 of the act of July 1, 2011 on self-government of nurses and midwives (LJ 2011, No. 174, item, 1038 as amended).

²¹ Agnieszka Fiutak, *Odpowiedzialność pielęgniarek i położnych*, Implus 2006, No. 9, p.10- 11.

- investigation before the District Screener for Professional Liability,
- legal proceedings before the Court of Nurses and Midwives upon the Screener's application for punishment of the accused nurse and midwife.

Applications for the initiation of proceedings against a nurse or midwife may be submitted by a victim (natural or legal person) or his legal representative to the Screener for professional liability of nurses and midwives, acting at the District Chamber of Nurses and Midwives. The investigation may also be initiated *ex officio* as a result of receiving the information on a suspicion of committing professional misconduct from another source. The aim of the investigation is to determine whether the committed act is professional misconduct, explain the circumstances of the case, determine the accused, victims, and collect, protect and secure the evidence for the Court of Nurses and Midwives. The Screener shall also examine whether there are any circumstances exempting the accused from punishment, e.g. statute of limitations. Moreover, the Screener may hear witnesses and victims, demand the release of medical records from a medical entity and order taking the evidence from the opinion of the expert or experts. The proceedings end with the Screener's decision on termination of the proceedings or application to the Court of Nurses and Midwives for punishment. Upon the presentation of the charges, a nurse or midwife receives the status of the accused person. The Screener shall inform the accused and her defender about the date of the final review of the investigation materials and instructs about the possibility of prior review. Then the Screener gives the order to close the investigation and applies to the Court for punishment of the accused person.

Cases on professional liability are considered by the district courts of nurses and midwives, and at the second instance – the Supreme Court of Nurses and Midwives. These are the only authorities entitled to impose penalties for professional misconduct relating to breach of the rules of ethics and regulations on practicing the profession of a nurse and midwife. After receiving an application for punishment the Chairman of the Court of Nurses and Midwives refers the case for investigation and issues appropriate orders, preparing for a trial.

The task of the investigating authority in relation to liability is: a comprehensive examination of all the relevant circumstances of the case in

the taking of the evidence, and hearing witnesses and experts. The Court initially examines the charges raised in the application for punishment of a nurse or midwife. Then carry out taking of the evidence proposed by the parties or allowed by the Court *ex officio*. If the Court finds the circumstances important for the settlement of a matter, it shall consult experts or specialists. If there is a need to deliver an opinion on the state of mental health of the accused person, two expert psychiatrists are called. On the basis of the evidence, the 3-person panel of the Court issues a ruling. Imposing a penalty, the Court shall take into account: the degree of guilt, breach of professional ethics and rules of the practice of the profession of a nurse or midwife, the effects of the misconduct and the behaviour of the accused nurse or midwife before committing professional misconduct and after its commission.

The goal of the enforcement proceedings is to execute the decisions given in the course of the proceedings before the Court of Nurses and Midwives. In accordance with art. 60 of the Act of July 1, 2011 on self-government of nurses and midwives, a nurse or midwife can be punished for professional misconduct by:

1. admonition,
2. reprimand,
3. fine,
4. prohibition on holding managerial positions in organizational health care entities for a period from one to five years,
5. prohibition on holding a position of one's choice in the bodies of self-government for the period from one to five years.
6. limitation on activities within the profession for a period from six months to two years,
7. suspension of the right to practice the profession for a period from one to five years,
8. deprivation of the right to practice the profession²².

A nurse or midwife, on whom the prohibition on managerial duties, the penalty of suspension or deprivation of the right to practice her profession was imposed, may temporarily be suspended in professional activities.

²² The Act of July 1, 2011 on self-government of nurses and midwives (LJ 2011, No. 174, item 1038 as amended).

The decision on the temporary suspension is issued ex officio by the Court or at the request of the Screener at the hearing. It is immediately executed. In the case where the penalty was to suspend the right to practice the profession or to temporarily suspend professional activities, a nurse or midwife must not practice their profession in any form during this time. The Court's decision on the deprivation of the right to practice the profession results in the removal from the list of members of the District Chamber of Nurses and Midwives without the possibility of re-registration. The register of the penalized nurses and midwives is kept by the Superior Council for Nurses and Midwives²³. The parties may lodge an appeal against the decision of the Court to the Supreme Court of Nurses and Midwives.

REFERENCES

- Figuła, Marta (ed.), 2013, *Odpowiedzialność prawna pracowników medycznych*, Warszawa, C.H. Beck;
- Fiutak, Agnieszka, 2006, *Odpowiedzialność pielęgniarek i położnych*, Implus 2006, No. 9;
- Nesterowicz, Mirosław, 2010, *Prawo medyczne*, Toruń: Wyd. Dom Organizatora TNOIK;
- Szewczyk, Kazimierz, 2009, *Bioetyka. Pacjent w systemie opieki zdrowotnej*, Warszawa: Wydawnictwo PWN.

²³ Marta Figuła (ed.), *Odpowiedzialność prawna pracowników medycznych*, op.cit., pp. 56- 80.

