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EMERGENCY MEDICAL SERVICES INTERVENTION IN A SPECIALISED HOSPITAL

INTRODUCTION

Everyone's right to life is guaranteed by Article 38 of the Constitution². It is undeniably a fundamental value, which is rooted in the idea of human dignity³ and at the same time it is the genesis of all other rights a person is entitled to. It is obvious that life once lost cannot be restored or regenerated in any way⁴. Therefore, more effort should be made both by the state as well as a single unit to protect this value in a comprehensive manner. Protection of life refers to the full and complete human life period and each of its stage and phase⁵. In that

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² Constitution of the Republic of Poland of 2 April 1997 ("Journal of Laws" 1997, No. 78 Item 483).

³ M. Syska, *Medyczne oświadczenia pro futuro na tle prawnooporównawczym*, LEX 2013, No. 170015.

⁴ P. Kuczma, *Prawa człowieka w zarysie*, Polkowice 2012, p. 73.

⁵ P. Kardas, T. Sroka, W. Wróbel, *Państwo prawa i prawo karne. Księga jubileuszowa Profesora Andrzeja Zolla*, vol. III, WKP 2012, LEX no. 156000.

regard, the article 38 of the Constitution includes a standard oriented towards taking an action, including any legislative action aimed at providing the protection of life⁶, regardless of social status, wealth, family situation or even health condition of the unit⁷.

Every human being's right to life is inextricably linked with the right to protection of health covered by the constitutional guarantee in article 68 of the Constitution. The general principle of protection of health applies to every human being and is based on equal access to healthcare financed from public funds⁸. This right is not only of a social nature – the regulation of article 68 raises the role of health to the one of constitutional value, requiring at the same time that it is obliged by a public authority to ensure the possibility of its execution for every person⁹. The entity has the right to require the state to create conditions so that the institutionally guaranteed right to healthcare was covered by comprehensive safeguards, in particular through the establishment of an efficient system, which would aim to provide assistance in case a threat to life and health arises¹⁰.

Therefore, in order to meet the need to implement the constitutional guarantees, the legislature established the formation aimed at providing assistance for people who require an urgent medical attention under the Emergency Medical Services Act¹¹ in 2001 – the Emergency Medical Service System¹². This Act introduced the organisational and systemic solutions, and its rise contributed to the development and improvement of the quality of modern emergency medical services¹³.

Innovative emergency medical services have a relatively short history in the world, dating back several decades, and the creation of the system in Polish conditions has been a long, complicated and labour-intensive process, requiring a collaboration of many institutions and communities¹⁴.

Currently, based on the mentioned and many times amended Act a number of concerns has appeared in terms of its interpretation as well as a conflict of the Act's provisions with regulations of the other Acts, particularly in case when a person who is in a state of urgent health threat is in a specialised hospital, where the intervention of the system's unit seems to be impossible by virtue of the law.

⁶ B. Banaszak, M. Jabłoński, Teza 2 do art. 38, [in:] *Konstytucje Rzeczypospolitej Polskiej oraz komentarz do Konstytucji RP z 1997 roku*, ed. J. Boć, Wrocław 1998, p. 78.

⁷ P. Kuczma, *Prawna ochrona życia*, [in:] *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński, Wrocław 2014, p. 34.

⁸ W. Skrzydło, *Komentarz do art. 68 Konstytucji Rzeczypospolitej Polskiej*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. W. Skrzydło, vol. VII, LEX 2013, no. 428321.

⁹ Z. Duniewska, M. Stahl, *Odpowiedzialność administracji i w administracji*, LEX 2013, no. 184153.

¹⁰ Ibidem.

¹¹ The Act of 25 July 2001 on Emergency Medical Services ("Journal of Laws" 113 No. 113 Item 1207).

¹² The Act of 25 July 2001 on Emergency Medical Services was not fully applied in practice, due to the limited financial capacity to implement its provisions and system solutions. Therefore, in 2002 the legislator passed "bridging act" – the act of 6 December 2002 on the provision of emergency medical services (Journal of Laws 2002 No. 241 Item. 2073 as amended.), whose main objective was to identify the method and rules for financing activities of medical rescue teams. Additionally, the task of the act was also to guarantee funding for the activities of non-wage costs of emergency centers (Z. Gałązkowski, *Ratownictwo medyczne w Polsce. Komentarz do ustawy z dnia 8 września 2006 roku o Państwowym Ratownictwie Medycznym*, Warszawa 2007, p. 9).

¹³ Z. Gałązkowski, *Ratownictwo...*, p. 8.

¹⁴ J. Kosydar-Bochenek, D. Ozga, J. Szymańska, B. Lewandowski, *Systemy ratownictwa medycznego na świecie a system polski*, Zdr. Publ. 2012, 122 (1): 70-74, p.70.

ENTITIES DESIGNATED FOR PROVIDING INSTANTANEOUS ASSISTANCE

On the basis of article 33 paragraph 1 of the Act of 8 September 2006 on Emergency Medical Services (hereinafter referred to as the EMS Act)¹⁵ the following entities have been statutorily appointed to provide instantaneous assistance by providing an essential healthcare to trauma patients (including pediatric trauma patients) or individuals who are in a state of urgent health threat: an emergency department (ED), a trauma centre, a trauma centre for children and a hospital's organisational unit specialised in the field of providing health benefits essential for emergency medical services (article 33 paragraph 1 of the EMS Act). At the same time, it should be emphasised that in accordance with the content of article 3 point 4 of the EMS Act in order to save a person who is in a state of urgent health threat in out-of-hospital conditions entities obliged to perform tasks of medical assistance, in other words providing a healthcare under the regulations of the Act of 27 August 2004 on healthcare financed from public funds (hereinafter Healthcare Act)¹⁶, are the system's units – i.e. emergency medical service units (including emergency medical service air units).

Thus, in accordance with the content of the stated provision the scope of entities obliged to act in the above situation includes the four types of entities: an emergency department (ED), a trauma centre, a trauma centre for children and a hospital's organisational unit specialised in the field of providing health benefits essential for emergency medical services.

Emergency department¹⁷ is an organisational unit of the hospital which is a system's unit, as referred to in the article 32 paragraph 1 point 1 of the EMS Act, whose task is to provide healthcare for individuals who are in a state of urgent health threat (article 3 point 9 of the EMS Act). Those units, as the specialised units of hospitals, are appointed to provide the necessary assistance to patients in hospital conditions¹⁸. According to S. Poździoch, the idea of establishment of ED was meant to provide instantaneous assistance only to those patients whose lives are in danger and those patients should be provided with further health benefits and medical procedures by other specialised and organisational units of the entity¹⁹. However, according to the Information about the Audit Results of the Supreme Audit Office from 2012 on the Functioning of Emergency Medical Service System²⁰ ED also provides assistance to people who are not eligible to that form of aid, which undoubtedly poses a threat to individuals who are in a state of urgent health threat.

¹⁵ The Act of 8 September 2006 on Emergency Medical Services (Consolidated text – “Journal of Laws” 2013.757. as amended).

¹⁶ The Act of 27 August 2007 on healthcare financed from public funds (Consolidated text – “Journal of Laws” 2015.581. as amended).

¹⁷ Legal regulations for emergency department includes the Regulation of the Minister of Health of 2 November 2011 on Emergency Department (Consolidated text – “Journal of Laws” 2 015.758).

¹⁸ S. Poździoch, *Ustawa o Państwowym Ratownictwie Medycznym. Komentarz*, Warszawa 2013, 2nd edition, p. 86.

¹⁹ *Ibidem*.

²⁰ Information about results of inspection of The Supreme Chamber of Control on the Emergency Medical Services of 2012 (pub. 06.11.2012, No. 149/2012/P11094/K, p. 8) (<https://www.nik.gov.pl/kontrola/P/11/094/>).

In addition, the emergency department along with emergency medical service units (including emergency medical service air units) form the enumerative list of units of the Emergency Medical Service system (article 32 of the EMS Act). ED is an organisational hospital's unit whose task is to provide healthcare to people who are in a state of urgent health threat (article 3 point 9 of the EMS Act).

As it is indicated by T. Filarski and E. Fryźlewicz-Chrapisińska, the legislature requires from the above mentioned entities to conclude an agreement for the provision of healthcare in the field of hospital treatment in the hospital emergency department or by emergency medical services (usually the contract is concluded with the regional department of the National Health Fund)²¹.

Consequently, the legislature determines a functionally separate part of the hospital as a trauma centre (...), in which part the specialised departments are linked together not only organisationally, but also based on the range of their activities in a way that allows for a quick diagnosis and treatment of a trauma patient (article 3 paragraphs 11 and 12 of the EMS Act). Centres have been operating in Poland since 2010²², and the principal objective of their functioning is admission and thorough diagnosis, and then a treatment of the patient²³.

The last type of entity that is legally obliged to instantaneously assist is the organisational hospital's unit specialised in the field of providing health benefits essential for emergency medical services, whose legal definition the legislature has not provided in the EMS Act (it is for instance intensive care ward, general surgery ward etc.).

CATEGORIES OF PATIENTS, WHO ARE PROVIDED WITH ASSISTANCE

The subjective scope of article 33 section 1 of the EMS Act has been defined exhaustively. It includes the following: a trauma patient (child trauma patient) and a person in a state of urgent health threat.

Trauma patient is a person in a state of urgent health threat caused by an action of an external factor, a consequence of which are severe, multiple or multi-organ body injuries²⁴ (article 3 point 12 of the EMS Act), while on the basis of delegacy of legislative power included in article 39d of the EMS Act, the Regulation of the Minister of Health of 18 June 2010 on the Trauma Centre²⁵ was issued, which clarifies the legal definition included in the Act and specifies, among others, detailed organisational requirements of a trauma centre, minimal human resources of a trauma centre unit and finally the way of treatment of a trauma patient.

²¹ T. Filarski, E. Fryźlewicz-Chrapisińska, *Komentarz do art. 32 ustawy o Państwowym Ratownictwie Medycznym*, [in:] *Ustawa o Państwowym Ratownictwie Medycznym. Komentarz*, ed. S. Poździejch, LEX, 2013, No. 157739.

²² C. Kijonka, M. Nowicka, M. Kidzińska, *Centrum urazowe – planowanie, organizacja i funkcjonowanie*, „Ogólnopolski Przegląd Medyczny” 2015, no. 1-2, (<http://opm.elamed.pl/uploads/opm/articles/23142/13-21.pdf>)

²³ *Ibidem*.

²⁴ Accordingly – child trauma patient – under 18 years of age (Article 3 Item 12b, The Act on on Emergency Medical Services).

²⁵ Minister of Health regulation on the injury center of 18 June 2010 (“Journal of Laws” 2010.118.803).

Therefore, as it is clear from the literal wording of the mentioned regulation, the key term of that provision is the phrase “*in a state of urgent health threat*”. According to the statutory definition included in article 3 point 8 of the Act, this term should be defined as a state involving a sudden or anticipated within a short amount of time appearance of symptoms of health deterioration, which may lead to a severe damage of body functions, body injury or even a loss of life, which requires providing an immediate medical assistance and treatment²⁶.

Furthermore, according to article 1 of the EMS Act it was the Emergency Medical Services system that was established to ensure and provide an assistance to any person in this condition.

As it was pointed out by the Supreme Administrative Court in Warsaw (SAC) in its judgment of 3 October 2012, the statutory definition of a “*state of urgency*” indicates that it applies to the situation of impossibility (contraindication) of postponement (deferral) of medical assistance, which according to medical knowledge and experience could prevent the occurrence of adverse effects or risks to life and health of the patient²⁷. In addition, the Supreme Administrative Court stated that the concept of “*state of urgency*” includes within its scope a medical assistance, which is intended to prevent the severe (serious) consequences²⁸. Accordingly, in case the above-mentioned state occurs and applies to the patient, it is necessary to provide an instantaneous assistance in the form of providing a health benefit.

On the other hand, the Supreme Court in its judgment of 25 February 2015 stated that implementation of the necessary steps, which is performed within planned and previously agreed with the patient dates, does not fulfil the statutory prerequisites of article 3 point 8 of the EMS Act²⁹. Acting in emergency conditions by its very nature is basically a one-off thing, even in case it consists of a number of other activities, but it is not a continuous healthcare with an unspecified date of its completion³⁰. Therefore, based on the judicial verdict it is clear that an inherent feature of the “*state of urgent health threat*” is its unexpected occurrence and, thus, a high degree of impossibility of its prediction.

Simultaneously, it is necessary to point out an extremely important regulation, under which in accordance with article 3 point 4 of the EMS Act in out-of-hospital conditions in order to save a person who is in a state of urgent health threat entities obliged to perform tasks of medical assistance, in other words providing healthcare within the meaning of regulations on healthcare financed from public funds, are the system’s units – i.e. emergency medical service units (including emergency medical service air units).

²⁶ With reference to the Act of 2001 on Emergency Medical Services (“Journal of Laws” 113 No. 113, Item 1207), there was a change in the legal definition. Based on the Act of 2001, there were the concept of “state of urgency” defined as a condition, in which the postponement of the medical help can result in personal injury or loss of life.

²⁷ Judgment of the Supreme Administrative Court in Warsaw of 3 October 2012, II GSK 1369/11, LEX no. 1233974.

²⁸ Ibidem.

²⁹ Judgment of the Supreme Court of 25 February 2015, IV CSK 343/14, LEX no. 1663417.

³⁰ Ibidem.

TASKS OF MEDICAL ASSISTANCE

The legislature in article 3 point 4 of the mentioned Act included a legal definition of the term “*tasks of medical assistance*” using a reference to Healthcare Act, which is a change compared to the original content of this Act of 2001³¹, where “*tasks of medical assistance*” are defined explicitly as medical activities, including the provision of health benefits undertaken by the system’s unit aimed at saving a person who is in a life- or health-threatening condition (article 3 point 4 of the Act of EMS of 2001). On the basis of the Act of 2001, the system’s units are to be defined as both hospital emergency departments as well as emergency medical service units (article 3 point 4 in conjunction with paragraph 10 of the EMS Act of 2001). The legislature, by applying a reference to the Healthcare Act financed from public funds in the content of Emergency Medical Services Act, limited the circle of entities authorized to perform medical assistance tasks to a situation in which healthcare is provided in out-of-hospital conditions for those who find themselves in a state of urgent health threat only by emergency medical service units³². As indicated by S. Poździejch, during the legislative process which deals with the enactment of the Emergency Medical Services Act, at the stage of public consultations both Supreme Medical Council and the Supreme Chamber of Nurses and Midwives reported comments on the wording of Article. 3 of the Act with regard to the legal definition of the term “*tasks of medical assistance*”³³. According to the proposal of the Supreme Medical Council, health benefits adopted by a system’s unit in the out-of-hospital conditions aimed at saving a person who is in a life- or health-threatening condition should be considered as “*tasks of medical assistance*”³⁴. Meanwhile, the Supreme Chamber of Nurses and Midwives defined those tasks as all activities undertaken by a doctor, a nurse or a paramedic in order to save life and health of the injured³⁵. Suggestions that were addressed at legislatures even before the enactment of the law were eventually rejected, which is reflected in the current wording of article 3 point 4 of the EMS Act.

Currently, as it has already been mentioned earlier the legislature in defining the notion of “*tasks of medical assistance*” refers to the Healthcare Act financed from public funds, whose article 5 specifies the definition of providing healthcare³⁶, while in article 15 of that Act it is indicated that based on the set out principles beneficiaries are entitled to

³¹ The Act of 25 July 2001 on Emergency Medical Services (“Journal of Laws” 113 No. 113, Item 1207) – the Act of 25 July 2001 was the first in Poland act regulating the provisions on the Emergency Medical Service System – a system that was established to ensure and provide an assistance to any person in threat of health. In 1999 the Ministry of Health began the implementation of complex system solutions, program called “Integrated Emergency Medical Services 1999-2003”.

³² P. Poździejch, *Ustawa o Państwowym Ratownictwie Medycznym. Komentarz*, Warszawa 2013, 2nd edition, p. 74.

³³ *Ibidem*.

³⁴ *Ibidem*.

³⁵ *Ibidem*.

³⁶ In accordance with the content of Art. 5 points. 34, 37, 38 i 40 of the Act on Healthcare financed from public funds (Consolidated text - Journal of Laws 2015.581. as amended) the Healthcare services are services that are preventing, preserving, saving, restoring or improving the health and other medical actions resulting from the treatment process or the rules that regulate the terms of assistance. They are also a services that are related to the process of drug treatment, special foodstuffs and medical products. They are also an ‘associated medical services’ that consists on accommodation and adequate health nutrition in hospital or other company which provide medical services in the view of the medical activity, transport services, medical transport and accommodation outside the company providing the service regulations.

healthcare (...), including guaranteed benefits³⁷, including the ones in the scope of emergency medical services (article 15 paragraphs 1 and 2 point 10 of the Healthcare Act).

Moreover, the legislature in article 32a of the EMS Act³⁸ explicitly determined that medical assistance activities are carried out by an emergency medical service team as a part of medical treatment in compliance with a type of activity performed by a disposer unit (i.e. medical entity within the meaning of the Act of 15 April 2011 on medical activity (hereinafter MA Act)³⁹, which includes the system's unit – hospital's emergency department – article 3 point 1 of the EMS Act), which consists of the emergency medical service team. The regulation refers to a situation in which medical assistance activities are undertaken in the out-of-hospital conditions by emergency medical service units (article 3 point 10 of the EMS Act). According to E. Fryźlewicz-Chrapisińska, those activities are undertaken in order to save a person who is in the state of urgent health threat⁴⁰.

In addition, according to article 33 paragraph 2 of the EMS Act in case of the need to provide instantaneous medical transport of a trauma patient (child trauma patient) or a person in a state of urgent health threat to the nearest medical entity providing healthcare to an appropriate extent, entities obliged by law to make such a transport are a hospital which has an emergency department, a trauma centre, a trauma centre for children or an organisational hospital's unit specialising in the provision of health benefits. On the other hand, in case there is a need to provide a transport for patients in health-threatening condition from the scene directly to the above mentioned facilities, the responsibility under the law falls to a hospital which has an ED⁴¹.

STATE OF URGENT HEALTH THREAT OF PATIENTS STAYING IN SPECIALISED ENTITIES AND A POSSIBILITY OF PROVIDING A MEDICAL ASSISTANCE

According to the regulation of article 32 of the EMS Act (as it has been already mentioned), hospital's emergency departments and emergency medical service units (including emergency medical service air teams) are the system's units and in compliance with article 3 point 4 of the EMS Act those entities are obliged to provide healthcare financed from public funds provided, however, that the prerequisites of performing such medical assistance activities are as follows: firstly – a person is in a state of urgent health threat, secondly - assistance only in out-of-hospital conditions⁴².

³⁷ According to the article 5 item 35 of the Act on Healthcare financed from public funds, guaranteed service is a medical service financed in whole or co-financed with public funds on the Act terms.

³⁸ This provision was added to the Act on Emergency Medical Services with Amendments to the Act of 14 June 2012 on amendment of the Act on medical activity and other acts ("Journal of Laws" 2012, Item 742).

³⁹ The act of 15 April 2011 on medical services (Consolidated text – "Journal of Laws" 2015.618).

⁴⁰ E. Fryźlewicz-Chrapisińska, *Komentarz do art. 32(a) ustawy o Państwowym Ratownictwie Medycznym*, [in:] *Ustawa o Państwowym Ratownictwie Medycznym. Komentarz*, red. S. Poździuch, LEX 2013, no. 157740.

⁴¹ T. Filarski, E. Fryźlewicz-Chrapisińska, *Komentarz do art. 33 ustawy o Państwowym Ratownictwie Medycznym*, in: *Ustawa o Państwowym Ratownictwie Medycznym. Komentarz*, ed. S. Poździuch, LEX, 2013, no. 157741.

⁴² Assisting the patient in the emergency by the unit specified in Article 32 Paragraph 1 Item 2 of the Act on Emergency Medical Services only in case of non-hospital treatment determined the legal definition of the Article 3 Item 10 of the Act on Emergency Medical Services.

Therefore, these teams are not in any way authorized to provide health benefits resulting from the completion of agreements in other types of benefits, in this case the need for a life- or health-saving medical intervention when a patient is in a hospital, particularly in a so-called specialised hospital, which is dedicated to provide health benefits in one area of medicine (e.g. in a psychiatric hospital, pulmonological hospital, trauma centre, rehabilitation centre or health resort).

MEDICAL DUTY TO PROVIDE AN ASSISTANCE AND DISPOSITION OF THE EMS ACT'S REGULATIONS

While considering the possibility of medical intervention of appropriate medical services in the event of an urgent health threat to patients in specialised hospitals, an empirical research refers to the specified in article 30 of the Act of 5 December 1996 on the professions of doctor and dentist (hereinafter PDD Act) doctor's obligation to provide medical assistance in any circumstance when a delay in providing such an assistance could lead to the danger of loss of life, serious body injury or serious health disorder and in other urgent cases⁴³. As is indicated by E. Zielińska, first two situations specified in the regulation relate directly to the case of threat to a patient's life or health resulting from not providing any medical assistance, so that while interpreting this regulation it is possible to refer to the definition of a state of urgent health threat of the EMS Act⁴⁴.

Medical, legal obligation to provide an assistance is a responsibility of a very broad nature which is determined not only by the way of resolving a situation wherein it undergoes an update, but also an inability to release a physician from it⁴⁵.

The extensive nature of the disposition of article 30 of the PDD Act is also emphasised by E. Zatyka, arguing that by the phrase "*duty to provide an assistance*" included in the afore-said regulation the legislature means "*not only a duty to provide a health benefit or any other obligation arising from the fact of practicing medicine or dentistry, but also an obligation to provide an assistance of another nature, provided that in specific situations such assistance is legally required*"⁴⁶. The author indicates to, among others, the cases when actions performed by a physician are not typical actions which directly save life or health, but indirect actions such as alerting the Ambulance Service or the other departments about the occurred incident⁴⁷.

The PDD Act does not include a legal definition of the term "*medical assistance*" but its placement in the Act's section relating to the rules on practicing medicine, which includes providing health benefits (...) (by a qualified person [...]), may lead to the con-

⁴³ The Art of 5 December 1996 on the professions of doctor and dentist ("Journal of Laws" 2015.464 as amended.

⁴⁴ E. Zielińska, *Komentarz do art. 30 ustawy o zawodach lekarza i lekarza dentysty*, [in:] *Ustawa o zawodach lekarza i lekarza dentysty. Komentarz*, ed. E. Zielińska, LEX 2014 no. 164085.

⁴⁵ Ibidem.

⁴⁶ As cited in: E. Zatyka, *Lekarski obowiązek udzielenia pomocy w świetle prawa karnego*, Oficyna 2011, LEX no. 124051.

⁴⁷ E. Zatyka, *Lekarski...*

clusion that any provision of health benefits is also a provision of medical assistance in accordance with article 2 paragraph 1 of the PDD Act⁴⁸.

The issue of doctor's obligation to provide medical assistance is also inextricably linked to the issue of doctor's responsibility, both civil and criminal, when such an action is stopped or when it is not performed at all. This topic, however, is so vast, complex and multi-dimensional that it warrants a separate discussion.

PRINCIPLE OF INSTANTANEOUS PROVISION OF HEALTH BENEFITS DUE TO A THREAT TO LIFE OR HEALTH

The principle of instantaneous provision of health benefits due to a threat to patient's life or health has been expressed by the legislature in several acts.

First of all, such a regulation is comprised in article 7 paragraph 1 of the Act of 6 November 2008 on patients' rights and the Health Service Ombudsman (hereinafter referred to as PP Act)⁴⁹, where the legislature introduced an absolute rule that provides a patient with a right to obtain health benefits in case of an instantaneous threat to his/her life or health.

In accordance with a similar regulation, which was presented in article 15 of the Act on medical activity (MM Act), a medical entity cannot refuse to guarantee a provision of health benefits to a person who needs an instantaneous provision of such a health benefit due to a threat to life or health, which is undoubtedly an execution of the patient's right to be provided with a medical assistance, as guaranteed in the above-mentioned article 68 of the Constitution⁵⁰. Similarly in the case of article 7 of the PP Act, this provision refers to the abrupt, violent situation, which clearly poses a threat to life or health of the patient and any delay in providing medical assistance might cause irreversible effects⁵¹. As discussed by T. Rek, the content of article 15 of the MM Act including the concept of state of urgency coincides with the state of urgent health threat contained in article 3 section 8 of the EMS Act, and a person requiring an instantaneous provision of health benefits is not only a beneficiary under the MM Act, but also every human being who found himself/herself in such a situation⁵². Therefore, as the author emphasises, circumstances under which there would be a permission to refuse the provision of health benefits ^{do not exist}⁵³.

In addition, it should also be pointed out that the Act on medical activity does not envisage any sanctions in case of failure to comply with an obligation to provide an assistance by a medical entity in the above-specified cases. The only consequence for the entity may be penalties that result from the legislation on civil liability for the caused damage⁵⁴

⁴⁸ Ibidem.

⁴⁹ The Act of 6 November 2008 on patients' rights and the Health Service Ombudsman ("Journal of Laws" 2012.159).

⁵⁰ T. Rek, *Komentarz do art. 15 ustawy o działalności leczniczej*, [in:] *Ustawa o działalności leczniczej*, ed. M. Dercz, T. Rek, Lex 2014, No. 464425.

⁵¹ Ibidem.

⁵² Ibidem.

⁵³ Ibidem.

⁵⁴ M. Nesterowicz, *Odpowiedzialność cywilna za ograniczenie dostępności do leczenia i niezyskanie świadczenia zdrowotnego w nowym systemie opieki zdrowotnej*, PiM 2000, no. 6-7, p. 5, Arg. 2.

and, accordingly, the judicial verdict based on criminal law⁵⁵. Also, the regulation regarding an instantaneous assistance was included in article 19 paragraph 1 of the Healthcare Act. Accordingly with the will of the legislature, healthcare is immediately provided to the beneficiary in states of urgency. However in this case, the legislature mentioned only a beneficiary, but not everyone who needs provision of such a healthcare.

In addition, as indicated by A. Pietraszewska-Macheta the premises resulting from the above regulations “*basically correspond to the definition of a state of urgency (in actuality, to a state of urgent health threat) and, thus, it must be recognized that in such situations article 19 of the Healthcare Act will also apply in relation to the individuals entitled to healthcare*”⁵⁶.

RIGHT TO INSTANTANEOUS MEDICAL INTERVENTION AND PROVIDING A PATIENT WITH TRANSPORT - THE POSITION OF THE MINISTRY OF HEALTH AND THE HEALTH SERVICE OMBUDSMAN

The issue of providing a person in need with medical transport undoubtedly corresponds with the patient’s right to instantaneous medical intervention and the matter discussed above. This issue was a subject of speeches of the Health Service Ombudsman and the Minister of Health, in particular with regard to situations when a life- or health-threatening incident occurs during the patient’s stay in specialised hospital.

As it is indicated in the letter of the Minister of Health dated on 24 April 2012, the medical transport of a patient should constitute and constitutes „an integral part of performing tasks of medical assistance and is carried out in compliance with the regulations of the EMS Act⁵⁷ – article 33 paragraph 2 of the Act indicates that, if necessary, the hospital where there is either an emergency department, a trauma centre, a trauma centre for children or an organisational hospital unit specialised in the field of providing the necessary for emergency medical services health benefits provides an immediate medical transport of a trauma patient, a trauma child patient or a person in a state of urgent health threat to the nearest medical entity providing healthcare to an appropriate extent. On the other hand, the obligation to provide a medical transport, as well as a manner of its financing was set in the Act on healthcare financed from public funds. According to the regulation of article 5 paragraph 38 of the Healthcare Act, the medical transport was classified into so-called associated health benefits, while in article 161c of the Act the legislature established the National Health Fund and a medical entity as parties of the contract for providing a medical transport, both of which should conclude a contract for the provision of such services with eligible entities, which confirms

⁵⁵ T. Rek, *Komentarz...*

⁵⁶ As cited in: A. Pietraszewska-Macheta, *Komentarz do art. 19 ustawy o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych*, [in:] *Ustawa o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych. Komentarz*, ed. A. Pietraszewska-Macheta, Lex 2015, no. 438417.

⁵⁷ The letter of the Minister of Health of 24 April 2012, MZ-OKR-RM-450-2628-25/SZ/11.

that the medical transport in principle is not a subject of a separate agreement between a healthcare provider and the NHF⁵⁸.

Therefore, the Minister of Health has confirmed his view expressed in the letter of 29 December 2011, where he clearly stated that it is a medical entity that is responsible for providing a patient, who is currently undergoing hospitalisation, with medical transport (including air medical transport)⁵⁹.

In addition, he emphasised that a specialised structure of hospital does not justify the possibility of not providing patients with a medical transport⁶⁰. He stated once again that the emergency medical service teams in Polish legal system are entitled to perform tasks of medical assistance only in out-of-hospital conditions and may only be sent in the event of urgent health threat, and at the same time the healthcare providers, regardless of whether they are single- or multi-profile entities, who operate on the basis of contracts concluded with the NHF have a statutory duty to provide medical transport as a part of provided healthcare and the *"cost of this transport is included in the price of services contracted by the Fund"*⁶¹.

Moreover, as is emphasised by the Minister doctors working in specialised hospitals (e.g. psychiatrists) should have an elementary, basic medical knowledge and practical skills to enable them to intervene during emergency situations and a head of the medical entity is obliged to provide mentioned services in unexpected, life- or health-threatening cases applying to hospitalised patients⁶².

Furthermore, what is clear from the mentioned letter of the Minister of Health is that as long as the content of the Act points to the inability of assigning emergency medical service teams to the patients staying in hospitals, assigning such a team to the patient who is in a state of urgent health threat and is treated in ambulatory conditions is permitted⁶³. As is pointed out by the Minister of Health (hereinafter the Minister), the duties of an emergency medical service team performing a statutory intervention also include providing a medical transport of a person in a state of urgent health threat to the ED, a trauma centre or an organisational hospital unit specialised in provision of healthcare necessary for emergency medical services⁶⁴. Simultaneously, in accordance with the view of the Ministry of Health it is healthcare providers - that is, among others, hospitals (including specialised hospitals) - who operate on the ba-

⁵⁸ A. Pietraszewska-Macheta indicates that the solution is clear from the § 8 ust. 2, the Minister of Health regulation of 6 May 2008 on the general terms for the provision of health care ("Journal of Laws" 2008 No. 81, Item. 484) *"provider within the financial resources is obligated to provide medical transport services in the cases specified at the Act on the Healthcare services with exception the Healthcare providers serves basic medical services, if they haven't entered into a separate agreement in this regard."* A. Pietraszewska-Macheta, *Komentarz do art. 161(c) ustawy o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych*, [in:] *Ustawa o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych. Komentarz*, ed. A. Pietraszewska-Macheta, LEX 2015, no. 483600.

⁵⁹ The letter of the Minister of Health of 29 December 2011, MZ-OKR-RM-450-2605-18/MS/11.

⁶⁰ The letter of the Minister of Health of 24 April 2012...

⁶¹ *Ibidem*.

⁶² *Ibidem*.

⁶³ The letter of the Minister of Health of 4 November 2011, MZ-OKR-RM-450-2628-25/SZ/11, https://www.nfz-rzeszow.pl/files/ratownictwo/13_02_2012.pdf

⁶⁴ *Ibidem*.

sis of contracts concluded with the National Health Fund under the Healthcare Act on services financed from public funds are obliged to provide a medical transport as a part of providing healthcare, the cost of which includes the value of contracted services⁶⁵. Such a transport can be arranged both in planned and emergency cases, when there is a need to transport a patient in order to provide an immediate treatment in a medical entity.

Thus, the Minister, by stating that in case of an urgent health threat, which applies to a patient obtaining health benefits - for instance, rehabilitative services, nursing care, palliative care, mental health services or health resort services - but not using the hospital health benefits, takes the view that assigning the emergency medical service team in those circumstances is most reasonable and feasible⁶⁶. Simultaneously, he definitely rejects such a possibility with regard to individuals who are granted the hospital health benefits within the meaning of the Act on medical activity⁶⁷, and the healthcare provider is obliged to provide the associated health benefits in the form of medical transport⁶⁸.

A similar view was expressed by the Health Service Ombudsman in a letter dated on 23 July 2014⁶⁹ based on the problems and doubts repeatedly reported by the medical environment in terms of providing the specialised (psychiatric) hospital's patients, who are in a state of urgent health threat, with necessary medical assistance in the form of emergency medical tasks. The Ombudsman stressed that the medical transport is not a subject of separate service, but a part of health benefit contracted by the NHF. Therefore, accordingly with the opinion of the Minister of Health, it is the service provider who is a statutorily obliged to provide this type of transport in order to maintain a continuity of treatment⁷⁰. On the other hand, if the specialised hospital (or any other hospital) is incapable of providing the medical transport, it should outsource this service to another medical entity who is offering a service of this kind⁷¹.

In addition, the Ombudsman drew attention to a very important issue, namely, the relationship between exercising the patient's right to obtain an immediate medical assistance resulting from article 7 of the PP Act and its communication with the patient's stay in a specialised (psychiatric) hospital and any legal constraints, as referred to above, rationing the possibility of providing such assistance by appropriate, specialized and established for this purpose services⁷².

The Health Service Ombudsman (hereafter the Ombudsman) reported issues concerning the possibility of providing medical assistance by the system's units in a specialised hospital conditions. In a letter dated on 23 July 2014, he asked the National Consult-

⁶⁵ Ibidem.

⁶⁶ The letter of the Minister of Health of 4 November 2011...

⁶⁷ In accordance with the Art on Medical Activity the hospital health benefits that are provided around the clock, involving the diagnosis, treatment, care and rehabilitation that can not be implemented within other stationary and 24-hour ambulatory health services or health services; hospital health benefits are also benefits granted with the intention of terminating their award in a period not exceeding 24 hours (Article 2 Paragraph 1 Item 11), and the type of medical activity are stationary and 24-hour hospital health benefits, among others (Article. 8 Item 1 a).

⁶⁸ The letter of the Minister of Health of 4 November 2011...

⁶⁹ The letter of the Health Service Ombudsman of 4 July 2014, RzPP-RRzPP-41.16.2014.BW

⁷⁰ Ibidem.

⁷¹ Ibidem.

⁷² Ibidem.

ant of Psychiatry to comment on the alleged problem⁷³. The Ombudsman pointed out that specialised entities do not usually have separated department or unit focused on providing instantaneous assistance in emergency, life- or health- threatening for a patient cases, therefore, similarly as the Minister of Health, he pointed out that the provider is responsible for guaranteeing healthcare services to a person in a state of urgent health threat, including the provision of medical transport to another medical entity⁷⁴. The Ombudsman emphasised a very important factor in the case of a threat to human life, which is the speed of response and time in which a person receives the necessary medical assistance, while highlighting the fact that specialised hospitals (such as psychiatric hospitals) are often located many kilometres from the place where specialized medical entities operate who under the contract with National Health Fund provide the necessary life- and health- saving service⁷⁵. Based on the view of the Ombudsman, the representatives of the medical environment often addressed him about this issue, signalling the need to regulate and allowing for the intervention of the system's units in hospital conditions⁷⁶.

RIGHT TO INSTANTANEOUS MEDICAL INTERVENTION AND PROVIDING A PATIENT WITH TRANSPORT

The issue of providing a person in need with medical transport undoubtedly corresponds with the patient's right to instantaneous medical intervention and the matter discussed above. This issue was a subject of the speeches of the Health Service Ombudsman and the Minister of Health, in particular with regard to situations when a life- or health-threatening incident occurs during the patient's stay in specialised hospital.

As it is indicated in the letter of the Minister of Health dated on 24 April 2012, the medical transport of a patient should constitute and constitutes "an integral part of performing tasks of medical assistance and is carried out in compliance with the regulations of the EMS Act⁷⁷ – article 33 paragraph 2 of the Act indicates that, if necessary, the hospital where there is either an emergency department, a trauma centre, a trauma centre for children or an organisational hospital unit specialised in the field of providing the necessary for emergency medical services health benefits provides an immediate medical transport of a trauma patient, a trauma child patient or a person in a state of urgent health threat to the nearest medical entity providing healthcare to an appropriate extent. On the other hand, the obligation to provide a medical transport, as well as a manner of its financing was set in the Act on healthcare financed from public funds. According to the regulation of article 5 paragraph 38 of the Healthcare Act, the medical transport was classified into so-called associated health benefits, while in article 161c of the Act the legislature established the National Health Fund and a medical entity as parties of the contract for provid-

⁷³ The letter of the Health Service Ombudsman of 23 July 2014, RzPP-RRzPP-41.16.2014.BW.

⁷⁴ Ibidem.

⁷⁵ Ibidem.

⁷⁶ Ibidem.

⁷⁷ The letter of the Minister of Health of 24 April 2014, MZ-OKR-RM-450-2628-25/SZ/11.

ing a medical transport, both of which should conclude a contract for the provision of such services with eligible entities, which confirms that the medical transport in principle is not a subject of a separate agreement between a healthcare provider and the NHF⁷⁸.

Therefore, the Minister of Health has confirmed his view expressed in the letter of 29 December 2011, where he clearly stated that it is a medical entity that is responsible for providing a patient, who is currently undergoing hospitalization, with medical transport (including air medical transport)⁷⁹.

In addition, he emphasised that a specialised structure of hospital does not justify the possibility of not providing patients with a medical transport⁸⁰. He stated once again that the emergency medical service teams in Polish legal system are entitled to perform tasks of medical assistance only in out-of-hospital conditions and may only be sent in the event of urgent health threat, and at the same time the healthcare providers, regardless of whether they are single- or multi-profile entities, who operate on the basis of contracts concluded with the NHF have a statutory duty to provide medical transport as a part of provided healthcare and the *“cost of this transport is included in the price of services contracted by the Fund”*⁸¹.

Moreover, as is emphasised by the Minister, doctors working in specialised hospitals (e.g. psychiatrists) should have an elementary, basic medical knowledge and practical skills to enable them to intervene during emergency situations and a head of the medical entity is obliged to provide mentioned services in unexpected, life- or health-threatening cases applying to hospitalised patients⁸². A similar view was expressed by the Health Service Ombudsman in a letter dated on 23 July 2014⁸³ based on the problems and doubts repeatedly reported by the medical environment in terms of providing the specialised (psychiatric) hospital's patients, who are in a state of urgent health threat, with necessary medical assistance in the form of emergency medical tasks. The Ombudsman stressed that the medical transport is not a subject of separate service, but a part of health benefit contracted by the NHF. Therefore, accordingly with the opinion of the Minister of Health, it is the service provider who is a statutorily obliged to provide this type of transport in order to maintain a continuity of treatment⁸⁴. On the other hand, if the specialised hospital (or any other hospital) is incapable of providing the medical transport, it should

⁷⁸ A. Pietraszewska-Macheta indicates that the solution is clear from the § 8 ust. 2, the Minister of Health regulation of 6 May 2008 on the general terms for the provision of health care (“Journal of Laws” 2008 No. 81, Item 484) *“provider within the financial resources is obligated to provide medical transport services in the cases specified at the Act on the Healthcare services with exception the Healthcare providers serves basic medical services, if they haven't entered into a separate agreement in this regard.”* A. Pietraszewska-Macheta, *Komentarz do art. 161(c) ustawy o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych*, in: *Ustawa o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych. Komentarz*, ed. A. Pietraszewska-Macheta, LEX 2015, no. 483600.

⁷⁹ The letter of the Minister of Health of 29 December 2011, MZ-OKR-RM-450-2605-18/MS/11.

⁸⁰ The letter of the Minister of Health of 24 April 2012...

⁸¹ Ibidem.

⁸² Ibidem.

⁸³ The letter of the Health Service Ombudsman of 23 July 2014, RzPP-RRzPP-41.16.2014.BW.

⁸⁴ Ibidem.

outsource this service to another medical entity who is offering a service of this kind⁸⁵.

In addition, the Ombudsman drew attention to a very important issue, namely, the relationship between exercising the patient's right to obtain an immediate medical assistance resulting from article 7 of the PP Act and its communication with the patient's stay in a specialised (psychiatric) hospital and any legal constraints, as referred to above, rationing the possibility of providing such assistance by appropriate, specialized and established for this purpose services⁸⁶.

CONCLUSION

In summary, the original Emergency Medical Service System established in 2001 in Poland, despite multiple modifications, amendments and continuously undertaken measures to improve its performance, still does not meet all the expectations. Emergency Medical Services System should be and is assumed to be devoted to saving life and health of every person who needs help due to a condition in which he found himself in - "*a state of urgent health threat*". The statutory systemic and organisational solutions of the System ought to, however, guarantee the actual terms of implementation of those legislative policies so that the undertaken tasks of medical assistance are quick, many times even instantaneous, rational and most importantly effective. Today, more and more often there are calls for the removal of the National Health Fund, whose function would be to take over the Ministry of Finance imparting adequate amounts for health care to the Provincial Offices. Offices would be responsible for contracts with medical institutions, among other things, provide an appropriate way of financing health care services and the allocation of resources. The Ministry of Health is also working on the creation of the so-called 'map of health needs', which would determine the most important, priorities are the needs of each region. There are also concepts related to the decommissioning of health contributions and to ensure universal access to benefits.

Extremely broad recognition of the statutory term "*state of urgent health threat*" creates many theoretical and interpretative problems which lead to subsequent difficulties occurring in hospital reality. What is also concerning is dilemmas relating to appropriate classification of health benefits undertaken at the level of primary healthcare and their relationship with tasks of emergency medical service, reserved only for Emergency Medical Service system's units by legislature⁸⁷.

Implementation of the principle of instantaneous provision of health benefits due to a threat to patient's life or health in its current state is not fully executed, for instance in case when an urgent situation occurs, threatening the most important human values such as health and life, in the specialised facility and its employees, often high-class specialists in

⁸⁵ Ibidem.

⁸⁶ Ibidem.

⁸⁷ S. Poździoch, *Komentarz do art. 3 ust. o Państwowym Ratownictwie Medycznym*, [in:] *Ustawa o Państwowym Ratownictwie Medycznym. Komentarz*, ed. S. Poździoch, LEX 2013, No. 157710.

their field, are not able to provide assistance in the form of emergency medical service tasks at such a high level as the system's units and doctors or other staff trained over the years and specialised in saving life and health in unforeseen circumstances. The problem is also related to the lack of proper medical equipment and other equipment and devices necessary to provide a professional medical assistance in a specialised hospital. Therefore, an essential component of the entire organisational structure aimed at saving every human being is the necessity to provide a medical transport from the specialised facility, which often has no emergency department or emergency medical service unit, to another appropriate medical entity providing assistance in cases of emergency. The medical environment in its dialogue with, among others, the Health Service Ombudsman has repeatedly stressed that the broad interpretation of the duty to provide medical assistance applies to all situations when human life or health is not fully safe in medical terms and also refers to any form of its saving⁸⁸.

Due to a long-term operating of the Emergency Medical Service System, it should be remarked that the solutions adopted by the legislature do not fully meet the assumed targets and objectives. The system, due to the above-mentioned statutory restrictions, does not operate in a way that it provides every person in a state of urgent health threat with an access to professional medical assistance when it is needed.

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⁸⁸ The letter of the Health Service Ombudsman of 23 July 2014...

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Summary: The text concentrates on a human right to life and health defined in the Constitution of the Republic of Poland with regard to the issue of legal admissibility of the Emergency Medical Service units' intervention in a specialised facility in a situation when a hospitalised patient is in a state of urgent health threat. This paper also addresses the subject of shaping and organising the Emergency Medical Service System, as well as a medical transport of a patient and financing of health benefits. Furthermore, it points to the necessity of clarifying and regulating the solutions relating to the possibility of providing medical assistance by the system's units in specialised hospitals, so that the undertaken tasks of medical assistance are quick, many times even instantaneous, rational and most importantly effective.

Keywords: Emergency Medical Services System, tasks of medical assistance, specialised hospital, emergency medical service unit, state of urgent health threat, healthcare

INTERWENCJA ZESPOŁU WYJAZDOWEGO RATOWNICTWA MEDYCZNEGO W SZPITALU JEDNOPROFILOWYM

Streszczenie: Tekst poświęcony jest prawu człowieka do życia i zdrowia określonego w Konstytucji RP w odniesieniu do problematyki prawnej dopuszczalności interwencji jednostek Systemu Państwowe Ratownictwo Medyczne w placówce jednoprofilowej w sytuacji, gdy przebywający tam, hospitalizowany pacjent, znajduje się w stanie nagłego zagrożenia zdrowotnego. Poniższe opracowanie podejmuje również tematykę kształtowania i organizacji Systemu Państwowe Ratownictwo Medyczne, a także transportu sanitarnego pacjenta oraz finansowania świadczeń zdrowotnych. Wskazuje również na konieczność doprecyzowania i uregulowania rozwiązań dotyczących możliwości niesienia pomocy przez jednostki systemu w szpitalach jednoprofilowych, by podejmowane działania ratownicze były szybkie, niejednokrotnie nawet natychmiastowe, racjonalne, a przede wszystkim efektywne.

Słowa kluczowe: System Ratownictwa Medycznego, medyczne czynności ratunkowe, szpital jednoprofilowy, Pogotowie Ratunkowe, stan nagłego zagrożenia zdrowotnego, ochrona zdrowia