

# Legal minimum of a doctor

Seminary Course of  
Health and medical law

# State examinations questions

1. The state's role in health care, state administration and local government in health care, Estates chambers obligations of members of ČLK (Czech Medical Association)
2. Healthcare provider, obligations and conditions for the operation of health care services; (Accreditation of health services, system of health care providers, types and forms of health care)
3. The system of medical professions, basic assumptions to practice medicine; specialized education of a physician, lifelong education of a doctor
4. The rights and obligations of citizens in health care (citizens' rights, patient's rights, patient's right to information)
5. Basic obligations of healthcare professionals
6. Informed consent with medical performance; denial of medical care by a patient, form and essentials of the negative reverse
7. Legal liability in health care (civil liability of healthcare providers; criminal liability of doctors; disciplinary responsibility of a doctor; offenses and administrative delicts in health care.
8. Medical documentation, privacy of a patient and rights of a close person

# You know from lectures

1. The state's role in health care, state administration and local government in health care, Estates chambers obligations of members of ČLK (Czech Medical Association)
2. Healthcare provider, obligations and conditions for the operation of health care services; (Accreditation of health services, system of health care providers, types and forms of health care)
3. The system of medical professions, basic assumptions to practice medicine; specialized education of a physician, lifelong education of a doctor
4. (partly) medical documentation

# What you will know from today's seminar

1. The rights and obligations of citizens in health care (citizens' rights, patient's rights, patient's right to information)
2. Basic obligations of healthcare professionals
3. Informed consent with medical performance; denial of medical care by a patient, form and essentials of the negative reverse
4. Legal liability in health care (civil liability of healthcare providers; criminal liability of doctors; disciplinary responsibility of a doctor; offenses and administrative delicts in health care.
5. (part of question 8), privacy of a patient and rights of a close person

# Before we begin...

## Healthcare Services Act (HCA)

- Generally regulates health services and conditions for their provision
- the rights and obligations of patients, persons close to patients, health providers and healthcare professionals

## Act on Specific Healthcare Services (ASHS)

- Everything that deviates from the "standard"
- A set of exceptions from the ASHS without much of consistency
- Assisted reproduction, Sterilization, Psychosurgical interventions, Blood Collection, Reports, occupational medicine, protective treatment

## Civil Code (CC)

- The basic framework for social relationships between people
- Regulates among other things Contract law and liability

# Before we begin...

## Healthcare professional

- According to the Healthcare Services Act Physicians and „other Healthcare professionals"
- Some regulations use „health professional“ in the strict sense (non-doctor professions)

## Other specialist

- Person providing activities that are directly related to the provision of health care under professional supervision or direct guidance of qualified medical staff
  - Psychologist, social worker, occupational therapist

# Group of issues No.1

The rights and obligations of citizens in health care (citizens' rights, patient's rights, patient's right to information)

# Patient has rights:

## As a citizen

- to health protection.
- to free health care
- right to medical aids under conditions provided by law.

## As a policyholder

- to choose the health insurance company
- to time and the local accessibility and availability of paid services
- On medicinal product and foods for special medical purposes

## As a patient

- "Patients means a natural person, which are provided by the health services"
- His rights correspond with obligations of healthcare provider and medical staff



# Rights of the patient (§28 HCA)

Right on the provision of health services at the appropriate professional level

- according to the rules of science and accepted medical practices,
- while respecting the individuality of the patient,
- with regard to the specific conditions and objective options.

to esteem, treated with dignity, to be treated with courtesy in accordance with the nature of health services,

respect for privacy during the provision of healthcare services

- in accordance with the nature of healthcare services,
- Related rules for the close persons, medical documentation, etc.

# Rights of the patient (§28 HCA)

to choose a provider authorized to provide healthcare services,

to seek consulting services from another provider or healthcare professional, other than that who provides health services;

to be informed about the internal rules of the healthcare facility inpatient or day care

# Rights of the patient (§28 HCA)

to be informed in advance about the cost of health services not covered by public health insurance,

to know the names and surnames of healthcare professionals directly involved in the provision of healthcare services

to reject the presence of persons who are not directly involved in the providing of healthcare services

- Including those preparing for the profession of healthcare professional,

# Rights of the patient (§28 HCA)

to receive visitors in a medical facility of inpatient or day care,

- with regard to their health
- in accordance with the internal rules
- in a manner which does not infringe the rights of other patients, unless HCA or another law provides otherwise

to receive the pastoral care and spiritual support from spiritual churches and religious communities

on provision of health services in the least restrictive environment while ensuring the quality and safety of healthcare services.

# Obligations of the patient (!)

- a) to follow a designed individualized treatment procedure
- b) to follow the internal rules,
- c) to pay the provider cost of health services provided to him with his consent
- d) truthfully inform healthcare professional about the development of health condition, including information on infectious diseases
- e) not to drink alcohol or use other addictive substances during hospitalization and undergo in justified cases examination in order to establish whether or not is the patient under the influence of alcohol or other addictive substances at the discretion of the attending physician

Refusal to provide  
healthcare services

# It is necessary to distinguish

## Rejecting by a Healthcare Professional

- Retention of conscience
- refusal to provide healthcare services to the patient if the disclosure would be contrary to conscience or religious beliefs of a healthcare professional

## Rejecting by a Healthcare Provider

- rejection of proof of identity
- exceeding the workload
- operational reasons
- not insured
  - Foreigners from the EU have a special regulation

# Termination of the healthcare (provider)

- transfer the patient to another healthcare provider
- There are no longer reasons for the provision of healthcare services; does not apply in the case of the registering provider
- patient refuse the provision of all healthcare services,
- patient severely restricts the rights of other patients
- deliberately and systematically fails to comply with the proposed individual medical procedure, if he gave his consent to the provision of health services,
- Does not follow internal rules
- does not cooperate;



Informed consent with medical performance; denial of medical care

Group of issues No.2

# Distinguish

## **Informed consent**

- **Free of will**
- **Informed**

## **Information about health condition**

- notified upon admission to healthcare
- Always if it is purposeful
- The patient may waive

# Information about health condition

- about the disease,
- the purpose, nature, expected benefits, potential consequences and risks of the proposed health services
- other possibilities, their suitability and risks
- another needed treatment,
- restrictions and recommendations in the way of life with regard to health conditions
- options
  - To waive the right to be informed about health condition
  - identify the persons to whom the information may be given or to impose a ban on reporting on health condition according to § 33.

## Retention of health information,

- The information would cause serious injury to the patient.

## Does not apply if:

- **a)** there is a need for early treatment,
- **b)** risk for the surroundings,
- **c)** patient specifically asks for accurate and truthful information.

# Written form of a consent

- **Consent with hospitalization** must be in writing.
- Written form of a consent must be where it is required by law or a provider.
- Remember HCA, transplantation Act,

# Disagreement

Revers

Withdrawal of  
consent

Previously  
expressed  
wishes

- REVERS
  - the patient is informed about his health condition and still refuses treatment
  - makes a written declaration of refusal
- Withdrawal of consent
  - Patient may withdraw his consent to the provision of healthcare services unless the medical procedure has already started and its termination may cause a serious injury to the patient.
- Record
  - Written consent and written withdrawal of a consent or its record is a part of medical documentation
  - It is signed by a patient and healthcare professional
  - Patient may refuse to sign - healthcare professional and witness

# Previously expressed wishes

- Patient may express agreement / disagreement in advance in certain cases
- Provider takes into account the previously expressed wishes if
  - it is available
  - there was a predictable situation which previously expressed wish covers
  - patient is unable to pronounce a new agreement or disagreement
- Previously Expressed wishes will be respected
  - If it was based on a written notice about the consequences of his decision.
  - It must be in writing and shall bear an officially verified signature of the patient.
  - If a written notice of the attending physician is a part of previously expressed wishes.



# When it is not necessary to respect the previously expressed wishes?

- a) From the expression occurred such developments on which basis it can be reasonably assumed that the patient would give his consent;
- b) Patient encourages to cause his death,
- c) Its fulfillment could threaten others,
- d) If the provider started a healthcare procedures at the time he did not know previously expressed wishes and interruption of such procedures would lead to an active cause of death.

# Underage patient

- it is necessary to know his opinion on the planned provision of health services if it is appropriate to his age and maturity.
- the importance of his opinion increases in proportion to age and degree of maturity.
- The intended health services can be provided to an underage patient on the basis of his consent if the execution of such procedure is appropriate to his mental and moral maturity and corresponds with his age.

# Hospitalization and provision of health services without consent

## Hospitalization

- condition of the patient requires the provision of urgent care and he is unable to give his consent at the same time

## Urgent care

- case of health services essential to saving lives or preventing serious damage to health.

# The patient can not give his consent

consent of the person designated by the patient

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graph TD; A[consent of the person designated by the patient] --> B[spouse or registered partner]; B --> C[parents]; C --> D[consent of other legally competent close person];
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spouse or registered partner

parents

consent of other legally competent close person

# Basic rights and obligations of healthcare professionals

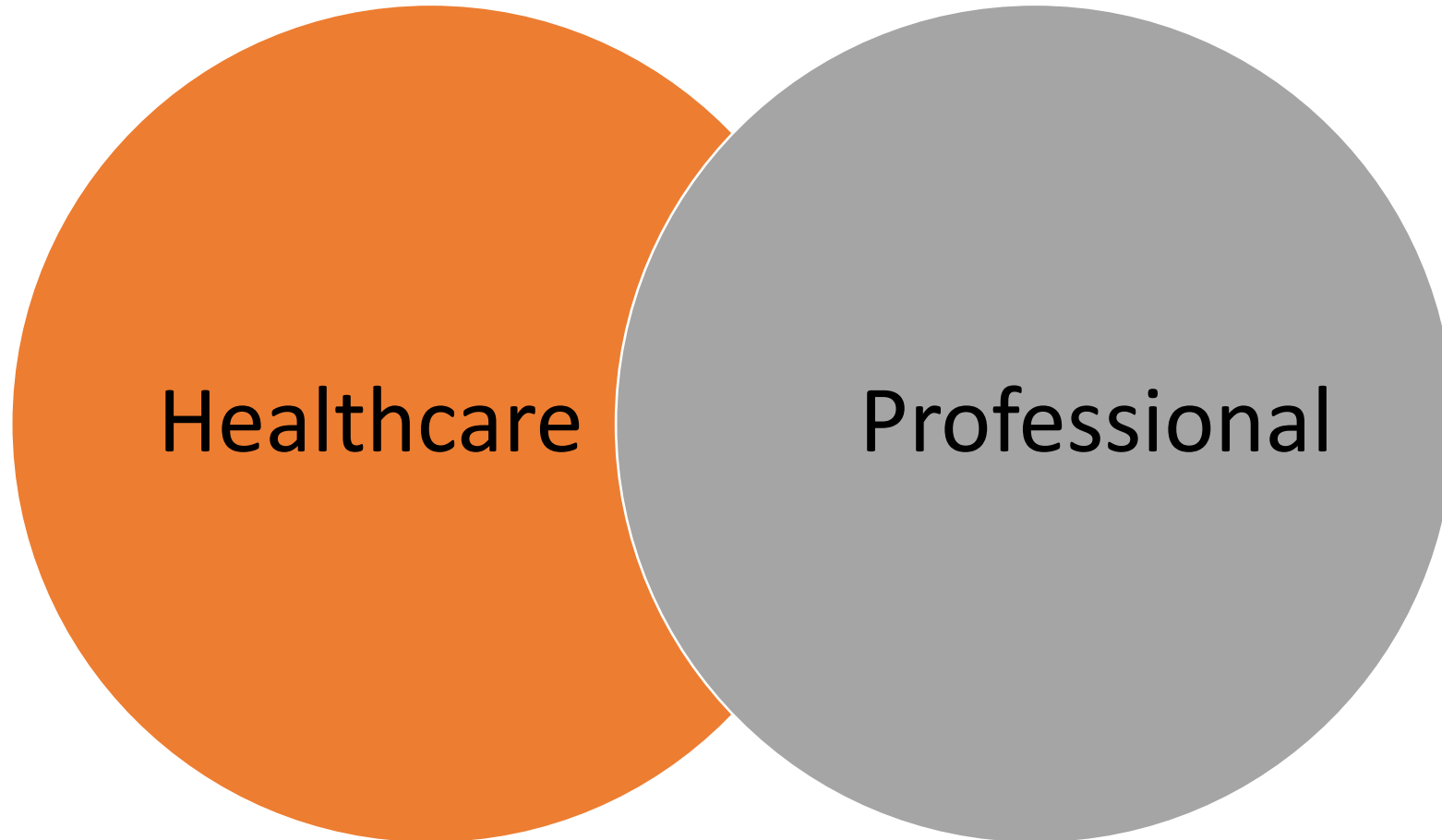
Basic rights and obligations of healthcare professionals

# Rights and obligations .....

Provider

Healthcare  
professional

# Rights and obligations of healthcare professional



# Healthcare professional is...

- a person performing the medical profession



# Obligations of healthcare professional according to HCA

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**(a)** provide healthcare services to which they have a professional or specialist qualification,,  
to the extent corresponding to their competence, patient's medical condition  
on appropriate professional level  
and to act in accordance with ethical principles,

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**b)** immediately provide first aid to everyone

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**c)** fulfill other obligations imposed by HCA or other legislation.

# Rights and obligations under the Labour Code

## The employee is required:

- Follow the instructions of the employer
- held work personally
- according to a employment contract
- in apportioned working time and
- to comply with obligations that arise from the employment relationship.

# Rights of a healthcare professional

## Healthcare worker has the right

- a) to obtain information from the patient that the patient is the carrier of infectious diseases and on other relevant matters relating to the patient's health status,
- b) do not provide healthcare services in the case that there would be a direct threat to life of healthcare worker or a serious threat to his health during their provision.
- c) do not provide healthcare services in a case of retention of conscience (there are some restrictions on this right)

# Medical documentation and the confidentiality obligation

Group of issues No.4

Patient privacy

Medical documentation

# Medical documentation HCA

- The provider is obliged to keep and store medical records
- Medical documentation is a collection of information related to a specific patient.

# Form

Physical

Electronic

Parallel

# Access to a medical documentation



# Healthcare professional

- persons with competence for the medical profession
- in direct connection with the provision of health services
- to the extent necessary for the profession
- due to completion of tasks under HCA or any other legislation
- when evaluating the correct procedure for the provision of health services

# Patient

- in the presence of personnel authorized by a provider
- The right to make copies or extracts

# Family, relatives, mourners

- legal representative or custodian of the patient
- the person designated by the patient, legal representative or custodian of the patient
- people close to the deceased patient
  - information about the health condition of a patient who died, information on the outcome of the autopsy, including the right to inspect medical documentation and take extracts from it or make copies.
  - The deceased could prohibit such access in advance

# Students

- Persons studying towards qualifications for the profession of a healthcare professional may inspect medical documentation to the extent necessary to ensure the teaching, this does not apply if the patient clearly forbade it
- NO ! extracts or copies

# Making copies

Provider

A person entitled by law

Make a record about every copy ( excluding healthcare professional)

The provider is obliged to maintain confidentiality about all facts of which he learned in connection with the provision of health services

## Breach of confidentiality is not

- transmission of information necessary to ensure the continuity of health services,
- transferring the data or other evidence if the provider is relieved of confidentiality by a patient
- for the purpose of criminal proceedings
- to the extent necessary to protect own rights

# Civil code (apply in parallel HCA)

- the right to protection of life and health
- No person shall interfere with the privacy of another, unless lawful reasons.
- It is forbidden to disrupt private space of a man, pursue his private life or make an audio or video recording and distribute this record without a permission



# Criminal liability

- Who even negligently breached the duty of confidentiality in connection with the exercise of his profession by unlawfully disclosure or by giving access to personal data to a third party will be punished
- **Up to three years or prohibition of activities**

# Protection of personal data

- Specific regulations
- It also applies to databases outside medical documentation
- It also applies to samples and biometric data

# Detour: Definition of Close persons

# Close persons

a direct relative, sibling



# Close persons

spouse / partner



# Close persons

- another person in a family or similar connection are considered as close persons, if the harm suffered by one of them, other considers as his own injury
- persons who permanently live together.\*
- brother-in-law / sister-in-law\*

\* rebuttable presumption

# Close persons



# Close persons



The world's biggest family: The man with 39 wives, 94 children, 14-daughters-in-law and 33 grandchildren. The Ziona family in its entirety with all 181 members.



# (some) The rights of close persons

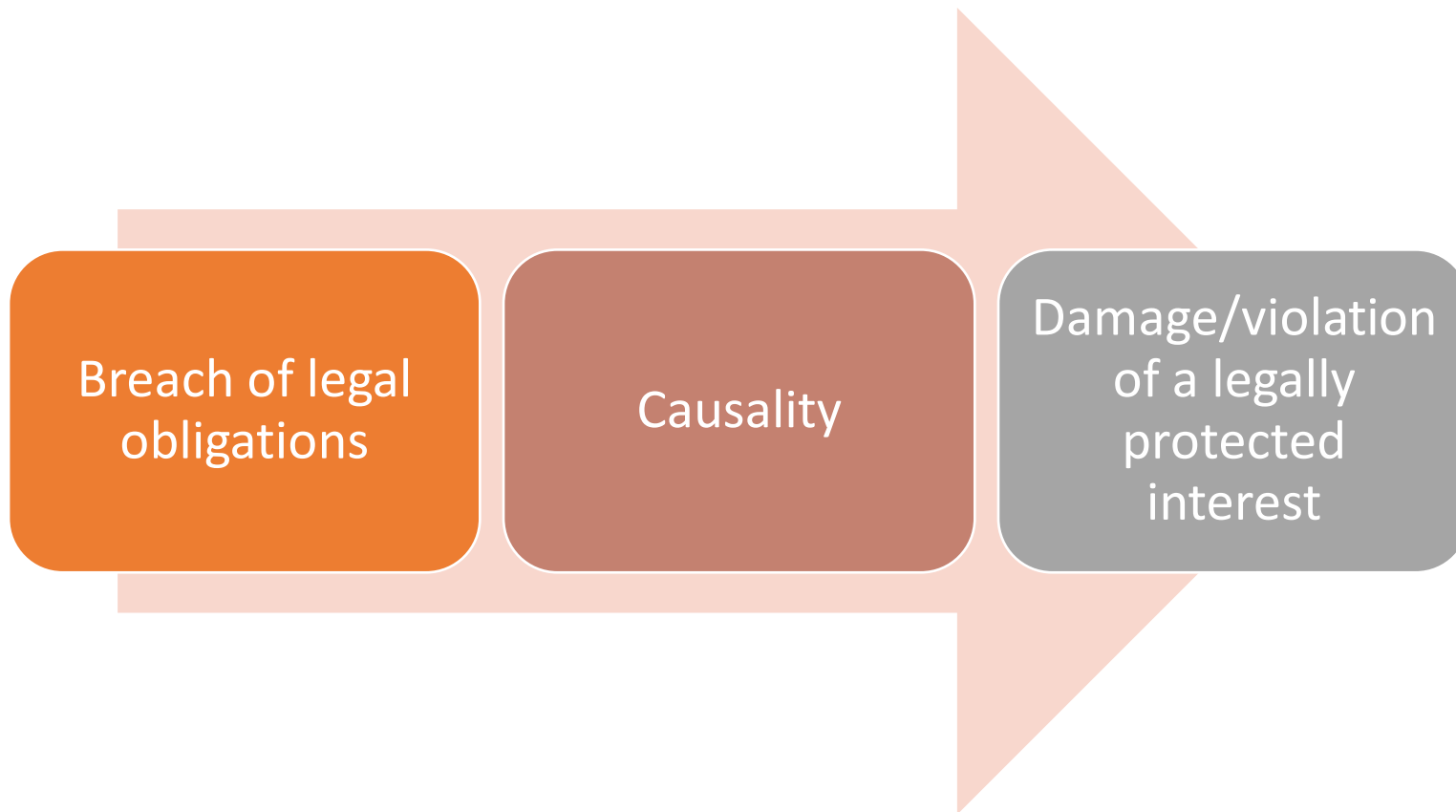
- Patient's right to a permanent presence of CP
- The right to information about the current state of health
- The right to give a consent to the provision of health care
- Lodge a complaint

# Group of issues No.5

## Liability

# Právní odpovědnost ve zdravotnictví

# Assumptions of Liability



# Breach of legal obligations

The  
obligation  
given:

- By the Agreement
- By the law

Types of  
culpability

- Intention
- Negligence

# Lex artis

- Procedure according to "normal" levels
  - Compliance with professional standards
- The patient has the right to health services on appropriate professional level.
- Lex artis is a concept that applies to providers as well as healthcare professional

# Parts of lege artis

- Professional qualifications healthcare professional
- Providing medical care to the best and at the moment the available options
- Providing medical care without negligence

# List of procedures lege artis

- Does not exist
- Recommendation of Czech medical societies ...
- Ultimately, the choice is on doctors



# Problems

- Retention of conscience
- Rejection of healthcare by a patient
- Lack of resources for treatment lege artis

# Obligation of prevention

Obligation to prevent unjustified harm to freedom, life, health or property of another.

The duty of everyone who has control over dangerous situations to take action to protect the rights of another.

# Types of liability

Civil

Labor

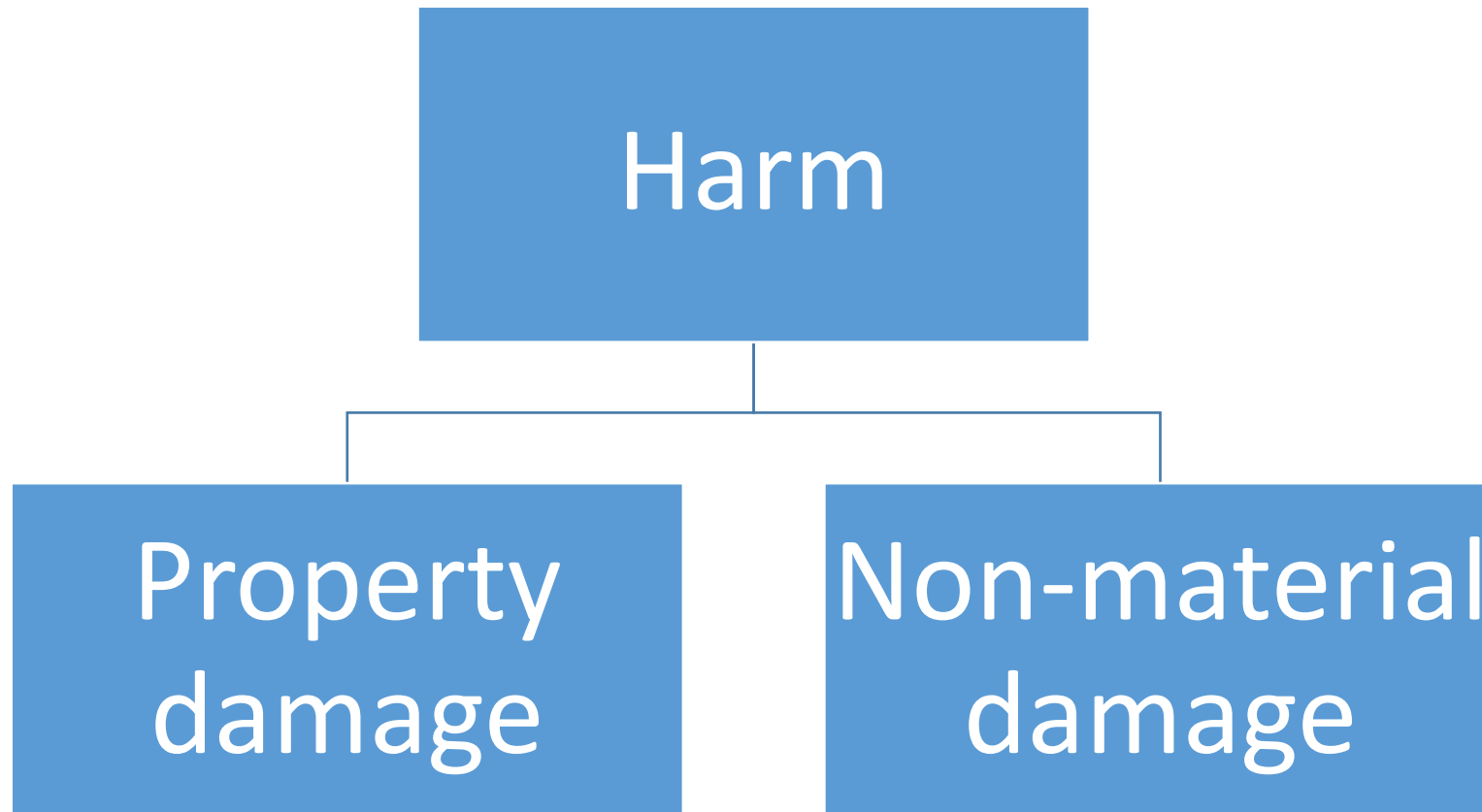
Administrative

Penal

Disciplinary

Liability under civil law

# Damages



# Coincidence

- The obligation to pay compensation has the one who caused the circumstances leading to coincidence.

# Exclusion of unlawfulness

## Necessary defense

- Before the attack

## Extreme distress

- Before the threat of injury

## Excusable excitement

- The excitement of the mind is taken into account when assessing whether someone acted in self-defense, or in extreme distress

# Waiver of compensation

If the fulfillment of obligations under the contract was temporarily or permanently prevented by:

- exceptional
- unpredictable
- unsurpassable
- obstacle arising independently of the will.



# Damage caused by information or advice

- Who reports himself as a member of a particular state or profession to professional performance or otherwise act as an expert,
- Is responsible for Damages, if the harm is caused by an incomplete or incorrect information or harmful advice
- if he received the reward for this counsel

The extent of compensation

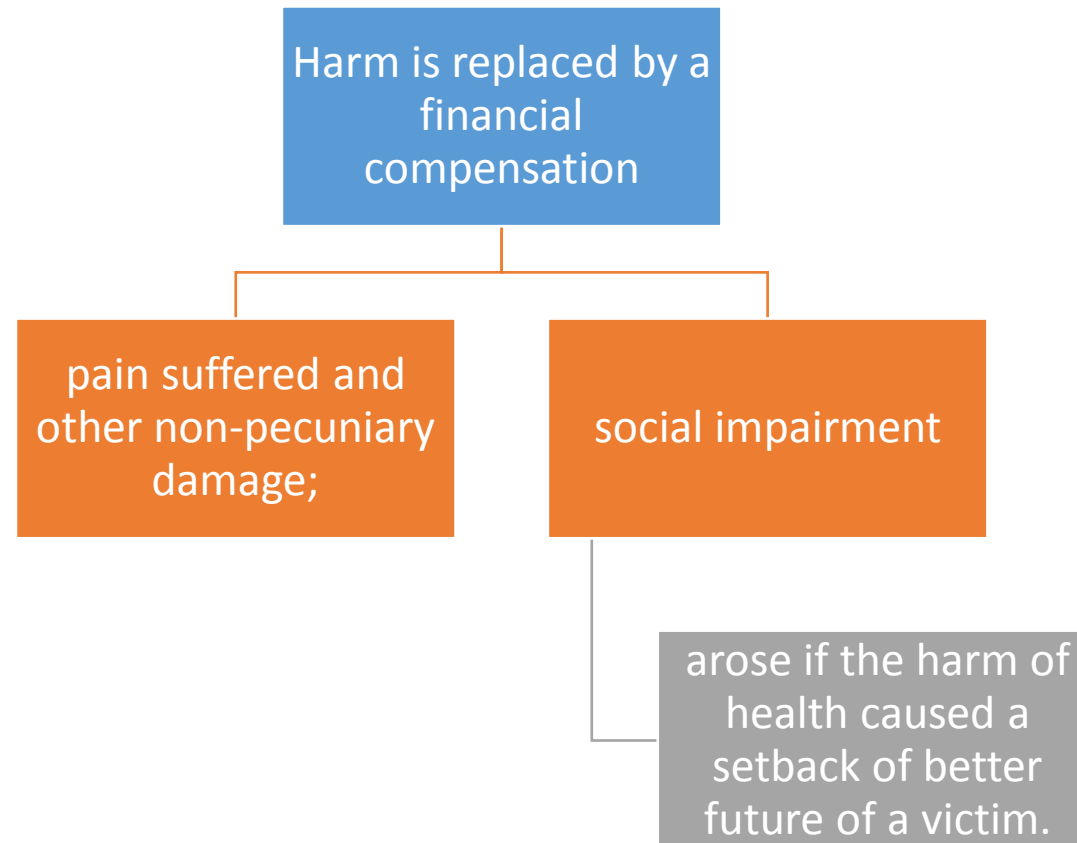
# General provisions

- (1) Damage should be replaced by indicating to the previous status. If it is not possible, or is asked by the damaged, the damage is payable in cash.
- (2) Non-pecuniary damage is redresses by adequate satisfaction.

# Range



# Reimbursement of harm of health



# The killing

- In case of death or extremely serious injury, the one who caused it is responsible to compensate for damage caused by mental suffering of a spouse, parents, children or other close persons.
- Funeral expenses
- Costs for maintenance of the survivors

# The costs associated with health care

- reasonably incurred costs associated with health care of the damaged, with the care of his person or his household to anyone who's spent them
- Compensation for loss of earnings
- Compensation for loss of a pension

A crime



# A crime

- A criminal offense is an unlawful act that criminal law identifies as a crime, and that has the characteristics specified therein.
- The criminal liability for the offense is intentional culpability unless the Criminal Code expressly states that culpable negligence suffices.
- Intentionally committed crime
- Negligence

# The principle of subsidiarity

- Criminal liability and criminal consequences associated with it can be applied only in socially harmful cases in which it is not sufficient to establish the liability under other legislation.

# Medical Authority

Disciplinary liability

# Each member of the Chamber has the obligation

- **a)** exercise their profession in accordance with its ethics and manner specified by law,
- **b)** observe the organization, rules, election and Disciplinary Rules of the chamber,
- **c)** properly fulfill defined contributions
- **d)** notify the competent authorities of the chamber changes related to the exercise of medical or pharmaceutical profession,
- **e)** conclude liability insurance in cases specified by the Chamber

# Disciplinary liability

- Every citizen has the opportunity to submit complaints free of charge to authorities of CLK about the conduct of doctors, if he considers that the doctor acted unprofessionally or behaved unethically.

- fine up to 30.000 Kč

- Exclusion from Czech Medical Chamber

- de facto prohibition of activities for up to 5 years