

Law in healthcare

Seminary Course of
Health and medical law

Timetable

4 Lectures:

26.9; 10.10.; 24. 10; 7. 11;

2. Seminars:

15. 11; 21. 11;

Before we begin...

- Convention on Human Rights and Biomedicine (European Treaty)
 - Consent
 - Private life and right to information
 - Human genome
 - Scientific research
 - Organ and tissue removal from living donors for transplantation purposes
 - Prohibition of financial gain and disposal of a part of the human body

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

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.
- (Charter of Fundamental Rights and Freedoms)

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 important 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

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.

Based on a court decision

- such as protective measures imposed in criminal proceedings

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

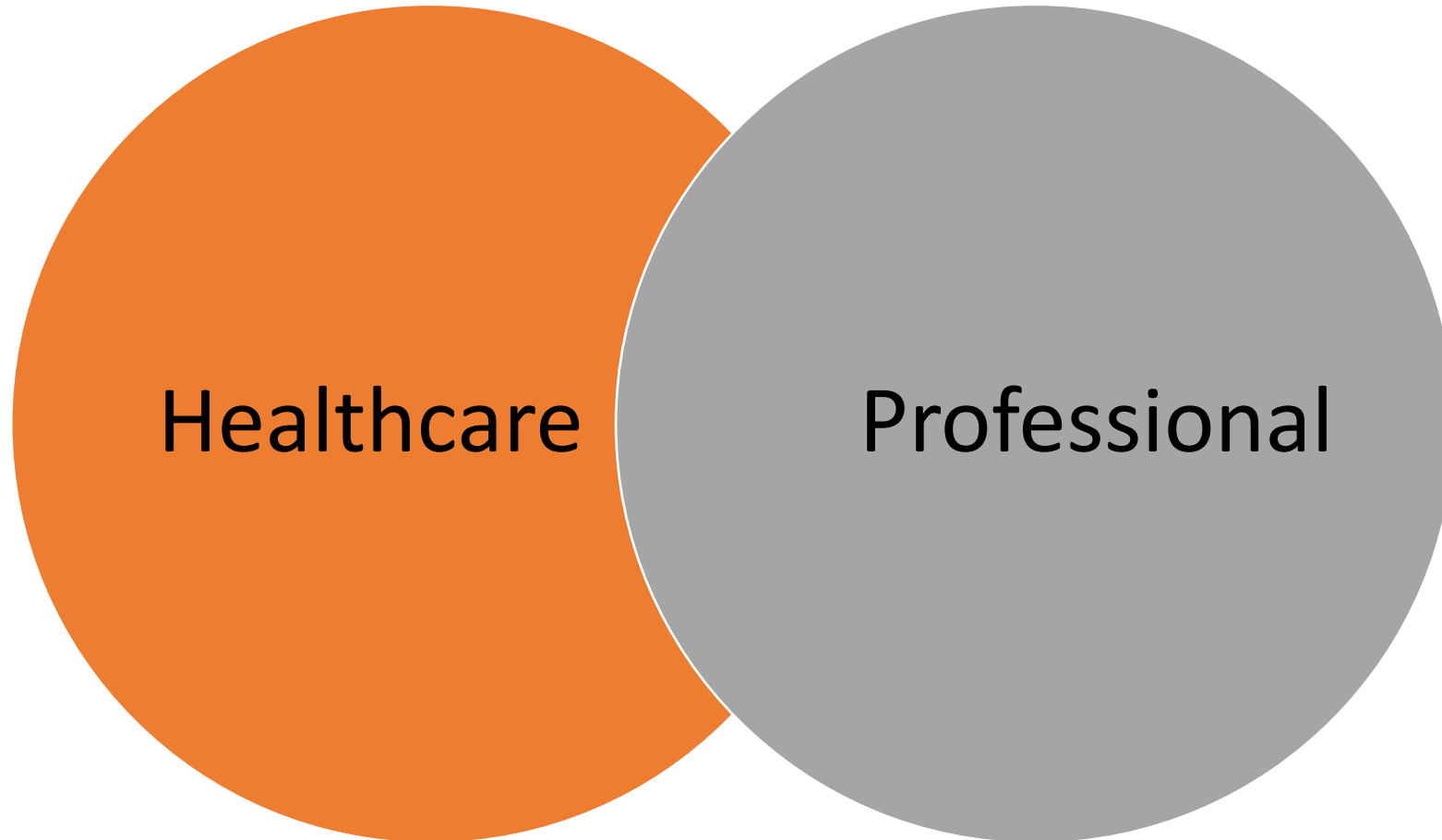
parents

consent of other legally competent close person

Basic rights and obligations of healthcare professionals

Basic rights and obligations of healthcare professionals

Rights and obligations of healthcare professional



Healthcare professional is...

- a person performing the medical profession as defined by law

Obligations of healthcare professional according to HCA

(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,

b) immediately provide first aid to everyone

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.

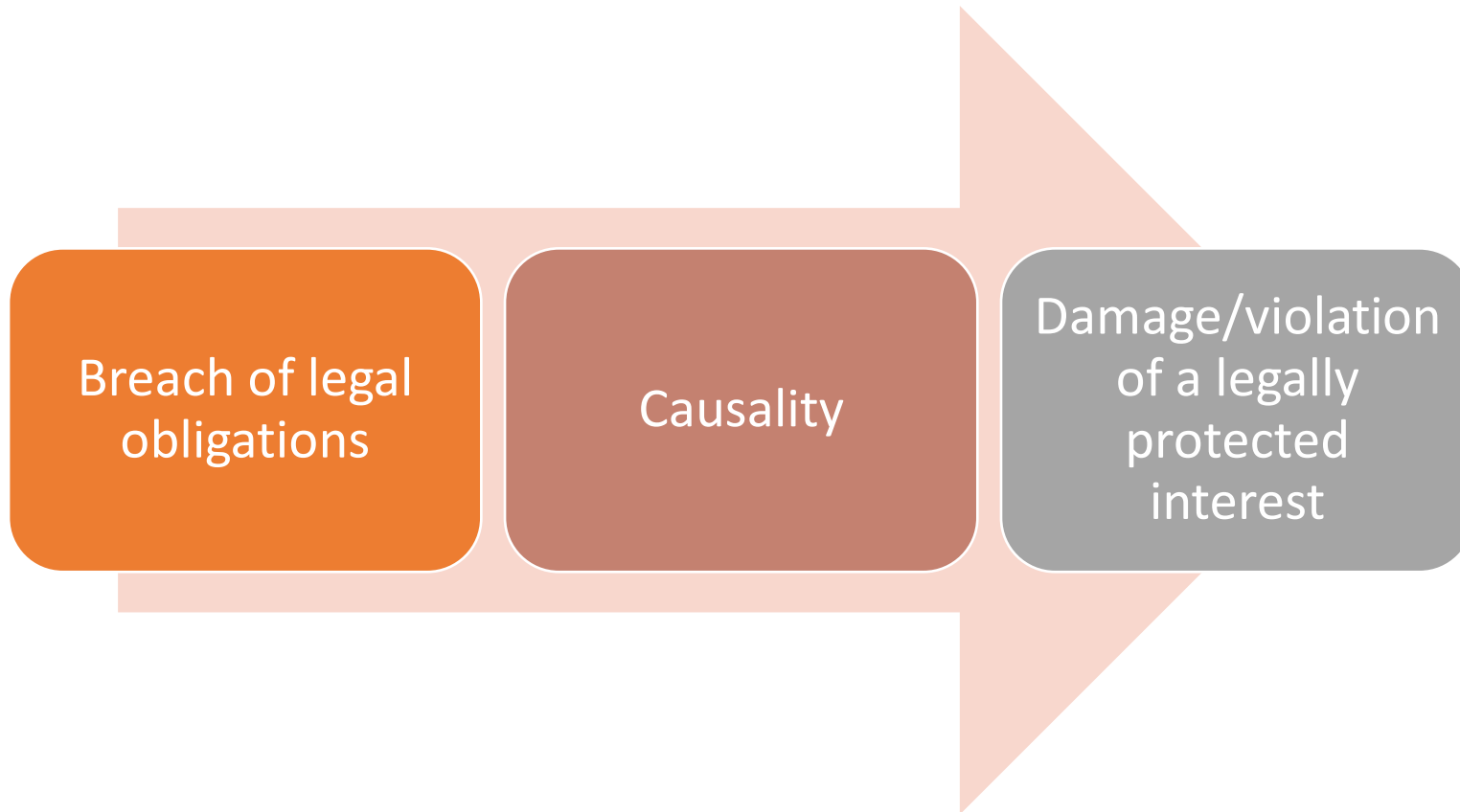
Rights of a healthcare professional

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)

LESSON 2: Liability

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

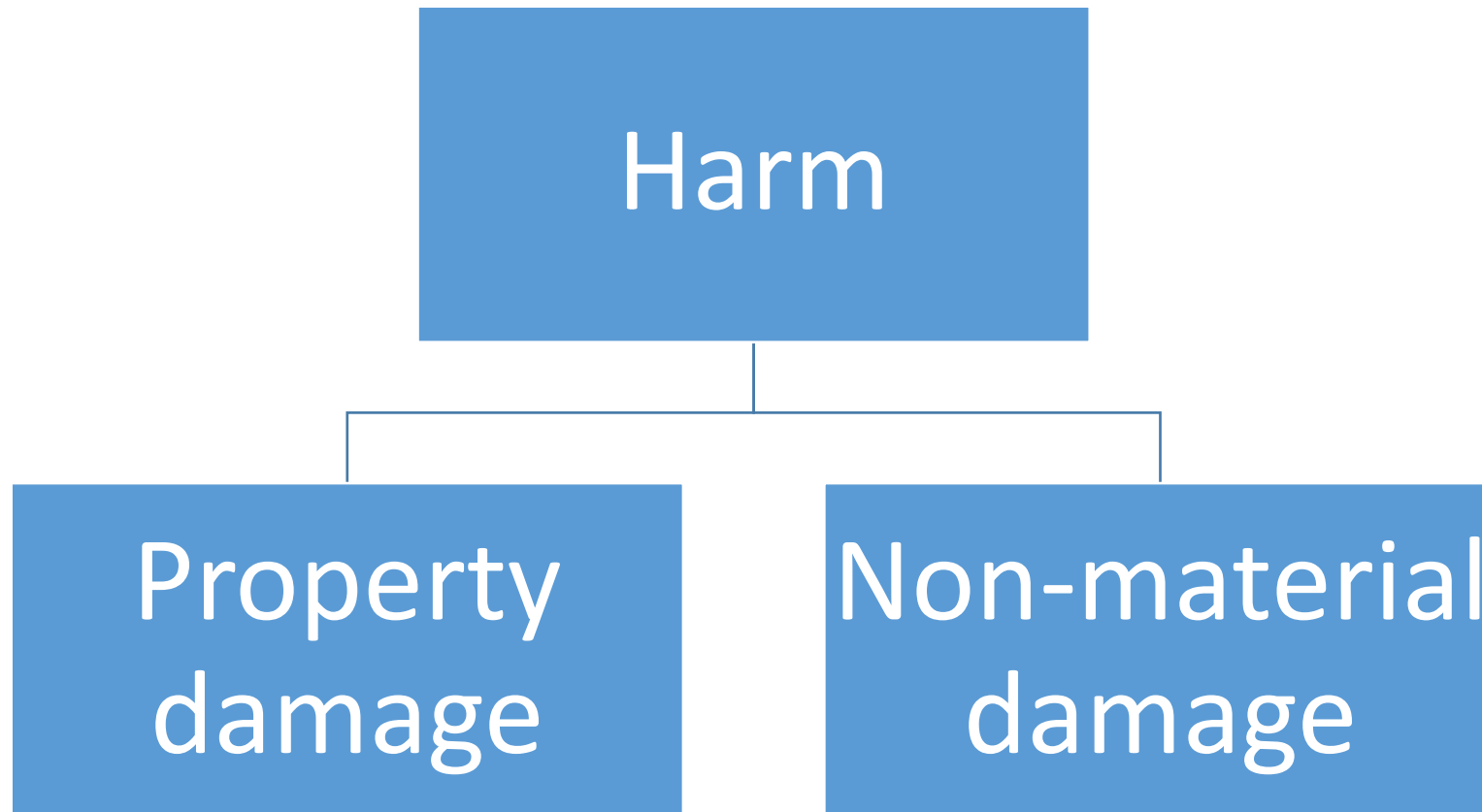
Administrative

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

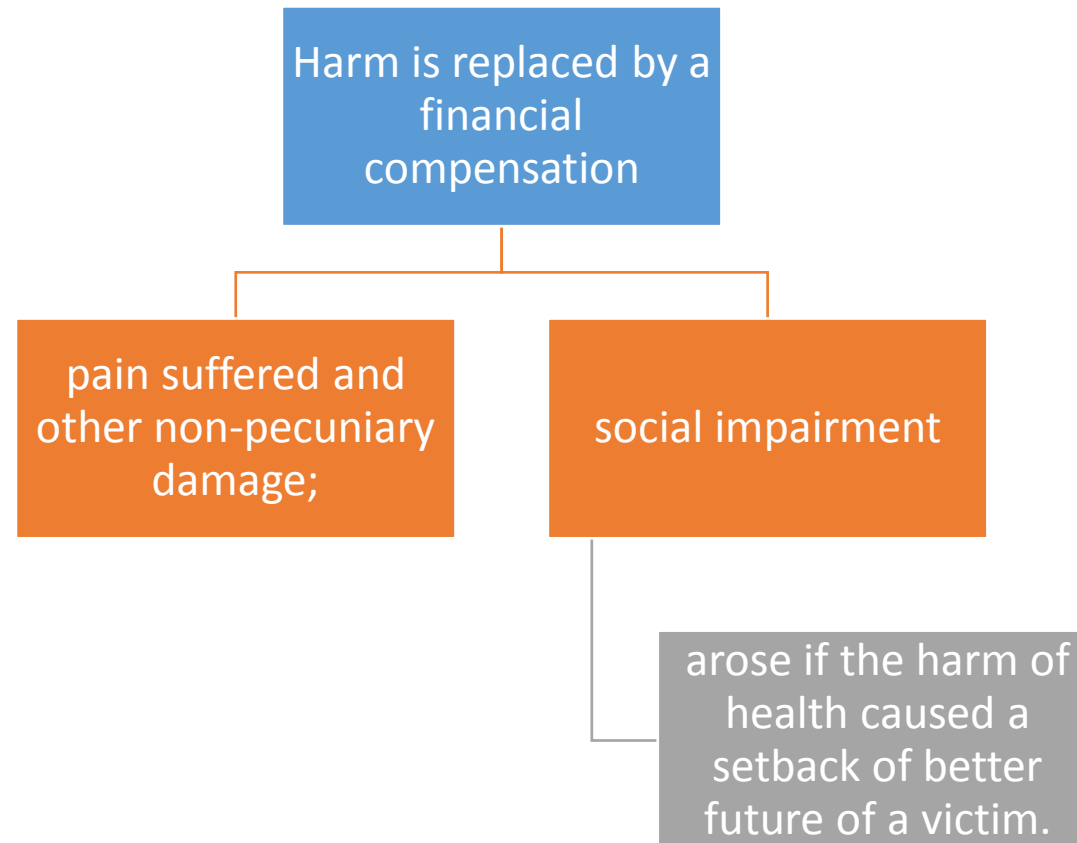
General provisions

- (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 residuaries

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