

Law in healthcare

Course of
Health and medical law

Important international regulations

- **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

National regulations (Czech Republic)



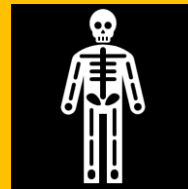
Healthcare Services Act (HCA)

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

Question no. 1

What is the purpose of the law in healthcare?

Social role?

Create trust

Level of organisation in society

Achieve „justice“

Achieve „equality“

Protect the weak

Serve as tool for economic transactions

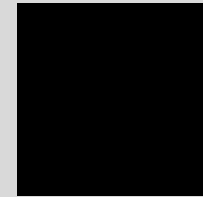
Protect investment

Two main masses of Law

- PUBLIC LAW
 - Constitution
 - Hierarchy
 - Enforcement
 - Formal process

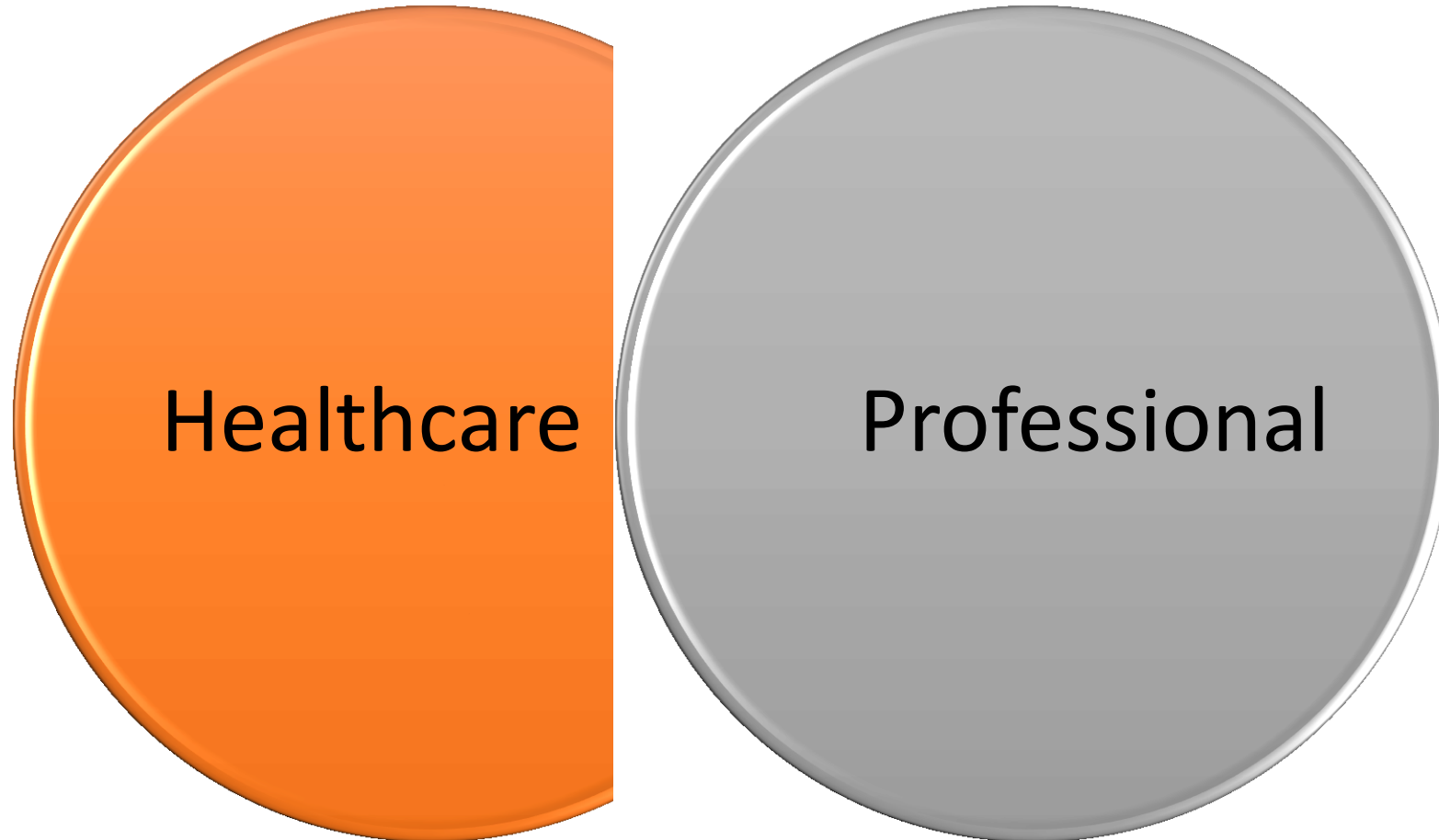


- PRIVATE LAW
 - Individual
 - Equality
 - Authonomy
 - Freedom



Basic rights and obligations of healthcare professionals

Rights and obligations of healthcare professional



Healthcare professional is...

- a person performing the medical profession

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)



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 (AKA students)

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 (by a 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,
 - 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;

I'M AFRAID DOCTOR-PATIENT CONFIDENTIALITY PREVENTS ME FROM SAYING IF YOUR BROTHER CRIED LIKE A BABY DURING HIS FLU SHOT.



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Importance of information and privacy today

- Our society as a society of information, more and more people are engaged in processing of information in their profession
- Information as a commodity
- Some information touches the personal spheres of individuals
- Privacy becomes one of the most discussed aspects of human life

The requirement of ethics

Part of the Hippocratic oath

- I will respect the privacy of my patients, for their problems are not disclosed to me that the world shall know.

Privacy is part of accentuated patient autonomy in modern bioethics.

Special sensitivity of health information

Many health information are sensitive (sexual life, mental state, alcohol and drug addiction, career and career goals)

Some other information are generally less sensitive, especially if they can not be easily kept secret

They may be sensitive to specific patients (with regard to employment, family, religion, etc.)

The legal concept of privacy

Charter of Fundamental Rights and Freedoms (Art. 10)

- Everyone has the right to preserve his dignity, honor, reputation and protect his name.
- Everyone has the right to protection against unauthorized intrusion into private and family life.
- Everyone has the right to protection against unauthorized gathering, publication or other misuse of his personal data

Privacy

The right not to be part of the public

- The right to "personal area"
- The right to withhold information about yourselves
- The right to decide if and how should be facts from personal privacy revealed to others
- United States: Right to be let alone

The right to privacy extends to every individual, regardless of age or legal capacity

Personal rights

Life

Expressions of a personal nature

Dignity

Privacy

Honor

The right to live in a favorable environment

Health

Specific regulations in healthcare

The patient has the right during the provision of healthcare services to:

- esteem, decent treatment, courtesy and respect for privacy during the provision of health services,
- reject the presence of persons who are not directly involved in providing of health services,
- know the names of healthcare professionals and students

The rules of the Civil Code

No person shall intervene into the privacy of another, unless...

- Legal reason,
- Permission

Without permission you cannot:

- disrupt Private Spaces of a man,
- watch his private life,
- capture audio or video recording,
- use the images recorded about the private life of a person by a third party,
- spread such records of his private life.

Protection of human appearance

Capture a human appearance by any way, so that it is possible to determine his identity, is possible only with his permission.

Spread human appearance is possible only with his permission.



How to obtain a consent

In Writing

Orally

Tacitly

Confidentiality of a healthcare professional

(Medical secret)

Privacy contra Confidentiality

Privacy

- Protection from identifying and collecting personal data
- Protection against unauthorized access to information
- Protection from capturing photographs, recordings and records

Confidentiality

- Preventing the spread of information to which the medic gained access
- Even if you obtained that information legally

Law on Healthcare Services

The Provider is obliged to maintain confidentiality about all the facts that he has learned in connection with the provision of health services

Who is bound by the obligation of confidentiality?

- Health workers and other professionals in connection with the exercise of their profession, including those who are no longer in employment, and information obtained in connection with the former exercise of the profession of healthcare professional
- Persons acquiring competence to pursue the profession of healthcare professional (aka students)

“Medical secret”

From the perspective of the law :

- Confidentiality of a healthcare professional
- Confidentiality of a healthcare provider

Much, **MUCH(!)** higher standards of confidentiality than other professions

Break only in cases precisely defined by the Law

Confidentiality conceived in very broad terms

- All facts with which healthcare professionals meets
 - Diagnosis
 - Medical procedure
 - Information about relatives (family history)
 - Any information regarding patient

DON'T WORRY, EVERYTHING
IN YOUR MEDICAL FILE
IS STRICTLY
CONFIDENTIAL!



Medical documentation

- What do you imagine under it?
- Writing doctor into papers?
- Is it really just a paperwork?
- It would be impossible to cure anyone rationally in practice without medical documentation!
- Medical documentation contains a lot of confidential data and therefore deserve special protection and treatment!

The Provider is obliged to keep and store medical records and dispose of them according to this Act and other legal regulations. Health documentation is a set of information:

- Patient's identification data
- the sex of the patient
- identification data of the healthcare provider
- information on the patient's state of health
- data from the family, personal and occupational history of the patient, and (if justified) also from social history
- data relating to the death of the patient

Remember!

**Medical documentation always contains
sensitive personal data!!!**

Example of a data in a medical documentation

- Mrs Hancock was treated in her teens with anorexia, she underwent two abortions by her request and is HBsAg positive and has been diagnosed with cervical cancer; she lives with her mother, who is on a disability pension due to schizophrenia and a sister who is a prostitute. Her father shot himself when she was little.

Maintenance of a medical records

Conditions for maintenance of a medical records are set by the law

Medical documentation can be kept

- In a paper form
- In an electronic form
- In a combined paper and electronic form

Medical documentation

- The law imposes to keep medical records conclusively truthfully and legibly! The information in it must be continuously and promptly updated
 - Correction of an erroneous entry in the documentation is done by striking out with one line (the entry, even the erroneous one, must remain legible)
 - It always must be clear who carried which notation!
-



"HELLO, IS THIS THE DOCTOR'S OFFICE?... THANK YOU FOR SENDING ME ALL THAT INFORMATION, BUT MY NAME ISN'T AMBER AND I'M PRETTY SURE I'M NOT PREGNANT!"

Access to a medical documentation

Healthcare professionals

Patient

Family, relatives, survivors

Students

Healthcare professionals

- persons with the legal capacity to practice the medical profession
- in direct connection with the provision of health services
- to the extent strictly necessary for the pursuit of the profession
- to perform tasks under HcAct or other legal regulations
- when assessing the correct procedure for providing health services

Patient

In the presence of an employee authorized by the provider

The right to make copies or extracts

- The Provider may charge the cost of making copies of the documentation (but cannot make any profit)

Family, relatives, survivors of the deceased

legal representative or guardian (minors)

person specified by the patient, legal representative or guardian

persons close to the deceased patient:

- information on the state of health of the patient who died and information on the outcome of the autopsy if done, including the right to inspect the medical records kept about the deceased or other medical records relating to his / her state of health and to obtain extracts or copies thereof.
- **the deceased could forbid this access in advance**

Students and a medical documentation

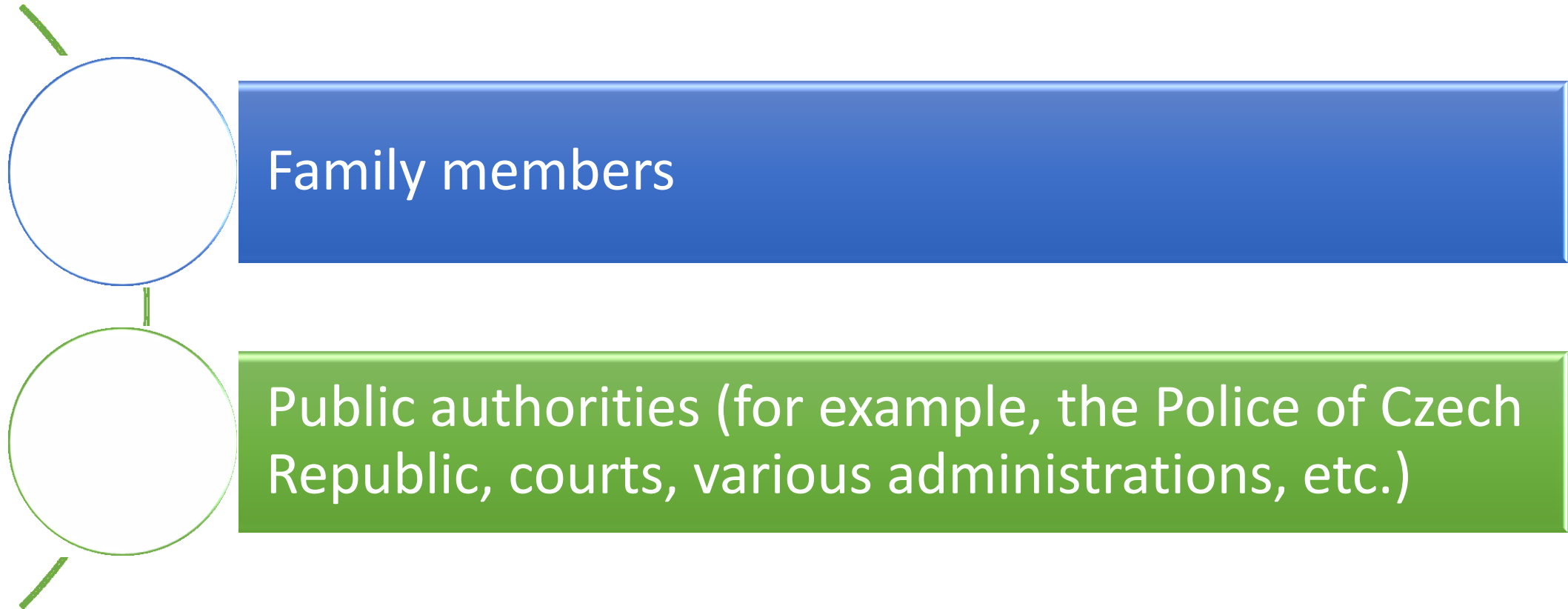
- Persons preparing for the profession of a medical professional may inspect the medical documentation to the extent strictly necessary for teaching.
- The patient may prohibit access to his medical documentation to students.
- **NO COPIES AND EXTRACTS** (possible only with the express consent of the patient)

Sanctions

- The Health Services Act imposes penalties for improper management of medical documentation.
- The unauthorized disclosure of the information contained in the medical documentation is always a violation of the mandatory confidentiality

Communication with family
members and public
authorities

Information requests about the health status of a patient by persons other than the patient



Family of a patient

Caution! Fully competent patient decides on the disclosure of information about his health condition by himself, even towards the family members of the patient (persons close).

A patient may designate any person (even unrelated) who may receive information about his health and vice versa, without his consent it is not possible to disclose confidential information even to persons close to the patient.

The exception is if the patient's condition requires that these people have to care about the patient, or it is necessary to protect their health.

In a case of a patient who is not fully sui juris, the right to decide on disclosure of information about the health of this patient to third parties has fundamentally his legal representative or guardian (determined by a court).

Disclosure of health information

- Information about health of a patient are being given by the attending medical personnel!
- Students of medical faculties do not give any information about health of patients to anyone, even family members of the patient!

When is it possible to breach a confidentiality?

- Consent of a patient
- Providing follow-up services
- Protection of your rights
- Communication of data for the purpose of criminal proceedings
- Fulfilling the duty to thwart or report the offense

How to obtain a consent

Explicit

- Oral
- In writing

Tacitly

Information on patients' health requested by public authorities

Compulsory confidentiality of healthcare professionals is required by law and has great social significance

- Remember the right to privacy

Public authorities, including the police and the courts, can require information about health of a patient only in cases determined by a law.

- For an example it is not enough that a policeman comes to the hospital and asks about the patient's health condition (typically at injuries caused by the other person).

Obligation to notify

In certain cases there is the so-called notification obligation when everybody (not only a healthcare professional) has to notify the Police of the Czech Republic upon the fact that a crime of cruelty or wilful grievous bodily harm (a serious injury) was committed.

In certain cases of children patients it is necessary to inform the authority of social and legal protection of children.

- Such as underage drinking, abuse of addictive substances, or when there is suspicion that a crime endangering health or life, human dignity or moral development was committed on them.

At the hospital, however, this reporting obligation should be primarily met by the attending healthcare professionals, not students.

Remember!

Not everyone who cares about the health of the patient is entitled to this information!

This also applies to family members of the patient and public authorities.

Conclusion

Students should not be providing information about the health status both to the patient and third parties (family members, public authorities and others).

**Sanctions for unauthorized
breach of confidentiality**

Criminal penalties

Penalties shall be given to who, even if negligently, violates the obligation of secrecy by unlawfully disclosing, communicating or making available to a third party personal data obtained in connection with the exercise of his profession, occupation or function, thereby causing serious harm to the rights or legitimate interests of the person

- Up to three years or a ban on activity
- If deliberately – up to 8 years

Administrative sanctions

Breach of the Provider's Obligations arising from HcAct

- A fine of up to CZK 1,000,000

Breach of the Provider's Obligations under the Personal Data Protection Act

- According to GDPR - up to 4% of yearly turnover of a healthcare provider

Private Law Penalties

Labor-law sanctions

- Even the immediate termination of employment

Exposure to the risk of bringing a lawsuit

- Compensation for non-material damage

Disciplinary sanctions

Every citizen has the possibility to submit complaints to doctors at no cost to the CMC organs, at all times, **if he thinks that the physician was acting improperly or acting unethically.**

Fine up to CZK 30.000

Exclusion from the Czech Medical Chamber

- Actual ban on activity up to 5 years

Thank you for your
attention