

Chapter 25

Medical and Nursing Civil Liability and Ethics in the Provision of Health Services: Forensic Pathologists as Experts

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ABSTRACT

After 2000, specific legislation on civil liability and ethics of nurses and doctors was introduced, as well as specific acts. For nurses and the nursing profession, since 2001, the Code of Nursing Ethics (NCSD, Presidential Decree 216/2001) has been in force. In 2005, the current Code of Medical Ethics (KID, Law 3418/2005) was passed. Special Law 3305/2005 on the application of assisted reproduction methods was introduced to specify how the methods introduced in the Civil Code were applied as methods of generating kinship among persons under Law 2089/2002 (MAP). The chapter summarizes the main points regarding civil liability of medical and nursing activity with a special focus on oncological patients.

INTRODUCTION

The Law 1565/1939 was the first Greek law on the fields of the medical legislation and concerned the conditions for practicing the medical profession. Later at 1955, the Royal decree on the medical ethics concerned mainly rules about the way of practicing medicine in a relationship doctor's-patient.

The first rule to the patient-doctor relationship concerning the obligation to inform the patient, as we mean it today, which however involved hospitalized patients, existed in the law for the National Health System (NHS) in 1998.

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In 1997, a European Convention on Human Rights and Biomedicine was signed in Oviedo, Spain, at the initiative of the European Council. The first chapter is devoted to the obligation of States to provide health services based on human interest and on a professional level. The second chapter defines the basic requirement of providing any medical intervention to inform the person concerned and his / her consent. This Convention was ratified in Greece by Law 2619/1998.

After 2000, specific legislation on civil liability and ethics of nurses and doctors was introduced, as well as specific acts. For nurses and the nursing profession, since 2001, the Code of Nursing Ethics (Code of Nursing Ethics, 2001) has been in force. In 2005, the current Code of Medical Ethics (Code of Medical Ethics, 2005) was passed. Special Law 3305/2005 on the application of assisted reproduction methods was introduced to specify how the methods introduced in the Civil Code were applied as methods of producing parentage among persons under. The law L.2737/1999 concerning the organs transplantations replaced the previous one and itself has already been replaced by L.3984/2001 on the scope of its harmonization of national legislation with the European one.

MEDICAL LIABILITY

Liability Concept

Liability in law is divided into civil, criminal and disciplinary. Individuals (doctors, nursing staff) and legal entities of public law (as the public hospitals) or private law (as the private clinics) and the State are responsible. This responsibility concerns the real facts of their employers or members of their managing boards.

The civil liability creates a claim either for performance or for compensation. The one or the other case depends by the real facts. The legal responsibility concerns to individuals for their own liabilities, as doctors, nursing staff etc., or for liabilities concerning actions of other persons depending of them or third parties in his service or authority, who serves to perform their duties. Legal responsibility may also have the State (art. 104, 105 LIntrAK) also the public legal persons, as the public hospitals, for the acts of the members of their managing boards. The private legal persons are also responsible for the acts of their bodies during the execution of their duties (art. 71 AK), also for the real facts of their employers.

The criminal liability entails the conviction of the person to a custodial sentence or financial consequence.

The disciplinary liability draws mainly administrative penalties.

The doctor-patient relationship and the quality of the services provided, and the responsibility of the doctors are based on the general provisions of the Code of Medical Ethics (L. 3418/2005). The Code of Nursing Ethics (presidential degree No 216/2006) precise the nurse's duties, responsibility and relationships to the patients. Specific Rules of Ethics are also introduced by L. 3305/2005 on the application of medically assisted reproduction methods.

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