ABSTRACT OF THE DOCTORAL DISSERTATION ENTITLED THE CONTRACT FOR A HEALTH CARE SERVICE

Author:	**Grzegorz Glanowski, MSc**
Dissertation supervisor:	**Associated Professor Leszek Bosek, PhD, DSc**
Auxiliary supervisor:	**Tomasz Sroka, PhD**
Affiliation:	**Department of Bioethics and Medical Law, Faculty of Law and Administration of the Jagiellonian University**

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The dissertation constitutes an interdisciplinary work. The subject under investigation in this doctoral dissertation is the contract as a source of private law relationship in medical law. The author posited a thesis that it is advisable to undertake a legislative initiative purporting to regulate the contract for a health care service in the specific part of the Civil Code, as a type of a nominate contract being the primary source of the private law relationship in medical law. The legitimacy of this thesis is demonstrated by way of historical analysis (Introduction), comparative legal analysis (Section I), system analysis (Section II), dogmatic analysis of current law regulations (Section III) and the resulting principles and limits of liability (Section IV), enriched with the views of the doctrine and judicature.

In terms of construction, the dissertation comprises introduction, four sections and final conclusions. Each section is divided into chapters devoted to more detailed issues, further subdivided into smaller units to introduce order to argumentation. Each section contains partial conclusions that became the basis for the final conclusions of the dissertation.

The introduction includes definitions of the terms necessary to determine and to understand this doctoral thesis. The author presents the concept and subject of medical law, demonstrating why it must be deemed a scientific discipline necessitating scientific research. In the following part of the dissertation, the author explains the concept of the medical law relationship and characterizes it shortly. Subsequently, using the historical method, the author argues why in his opinion a contract is the primary source of such a relationship, under what name it should exist in legal transactions and what circumstances call for its regulation in the Civil Code by way of legislation.

Section I provides a comparative legal analysis of European regulations in the field of the medical law relationship. In the introduction, the author presents methods of regulation of the abovementioned relationship in chosen EU countries, i.e. public law and private law methods. Due to the scope of the dissertation, the emphasis is put on the regulatory model in which the medical law relation is deemed to be of private, civil and obligation character and contractual in nature. A detailed analysis covers the legislation of those states which introduced the content of such a

relation into their current legislation as a nominate contract. The author examines the content of the Dutch, Lithuanian, German and Czech regulations as well as an academic project contained in the DCFR , and compares them.

Section II is devoted to a system analysis. The Constitution of Poland, in particular Article 68 thereof, is the starting point to determine the position of the contract (as a source of the medical law relationship) in the Polish legal system. The author analyses the constitutional assumptions behind the health care system, outlining the limits of the legislator's freedom in determining the system's model, including the nature of legal relations existing among its participants. A further part of the section presents the adopted system solution so as to show its essence, highlight the function and consequently its indirect influence on the massive creation of medical law relations. Section II concludes with an analysis of the Civil Code as a normative act whose provisions, by virtue of the legislator's decisions, constitute the basis to determine the content of the medical law relationship. In the system of private law contracts, the author considers the contract for health care service as a variant of the contract for the provision of services. The author also explains how in this case the stipulations of the contract for the provision of services should be applied.

Section III is the most extensive part of the dissertation. It contains a dogmatic analysis of the provisions applicable to the contract for a health care service. The purpose of the analysis is to comprehensively characterize the contract, define parties thereto, its subject matter, content, limits of the freedom of contracting, the manner, form and place of its conclusion and expiry.

Section IV is devoted to the issue of liability resulting from the contract for a health care service. Due to the fact that the abovementioned problem is part of an extensive issue of contractual liability in general, Section IV highlights only the most important problems from the perspective of the contract for a health care service. Therefore, regarding the premise of breach of the obligation, the author presents the problem when under the contract in question improper performance of the obligation is identical with non-performance. Regarding the damage, the significance of non-pecuniary damage (pain and suffering) and the possibility to redress it by way of contractual liability are emphasised. As regards the premise of causation, the author focuses on the refusal to undergo treatment as a way of contributory behaviour by the injured party and the possibility of defence by means of a plea of hypothetical consent *(causa superveniens)*. Section IV includes also the analysis of the creditor's rights in the event of the debtor's qualified delay and the analysis of the burden of proof, enriched with *de lege ferenda* postulates.

In the final conclusions, the author attempts to argue against his own position presented in the dissertation and then to counter such argumentation by arguments derived from his earlier analysis, emphasising the legitimacy and correctness of the thesis initially put forward. The final conclusions contain the author's proposal of the wording of the proposed Civil Code provisions regulating the contract for a health care service as a type of a nominate contract.

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Grzegorz Glanowski