

**"NICOLAE TITULESCU" UNIVERSITY**

**FACULTY OF LAW**

**DOCTORAL SCHOOL**

**PhD THESIS**

**PHYSICIANS' CRIMINAL LIABILITY FOR  
PROFESSIONAL MISCONDUCT – THEORY AND JUDICIAL  
PRACTICE**

**- SUMMARY -**

**RESEARCH COORDINATOR**

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ABBREVIATIONS ..... **Error! Bookmark not defined.**

CHAPTER I. The active subjects of medical professional misconduct (malpractice) and the legislation applicable in the field ..... **Error! Bookmark not defined.**

**Section I.** Healthcare staff, professional misconduct and the legislation applicable in the field ..... **Error! Bookmark not defined.**

**SubsectionI.** Practice of the medical profession and the legislation applicable in the field ..... **Error! Bookmark not defined.**

    §1. The physician, the active subject of professional misconduct**Error! Bookmark not defined.**

    §2. Authorizing the practice of the medical profession**Error! Bookmark not defined.**

    §3. Organization and functioning of the Romanian College of Physicians**Error! Bookmark not defined.**

    §4. Physicians' disciplinary liability ..... **Error! Bookmark not defined.**

**Subsection II.** The administrative procedure of establishing a physician's liability for professional misconduct..... **Error! Bookmark not defined.**

    §1. Theoretical aspects ..... **Error! Bookmark not defined.**

    §2. Judicial practice exam ..... **Error! Bookmark not defined.**

**Section II** The Medical Code of Ethics of the Romanian College of Physicians**Error! Bookmark not defined.**

    §1. Basic principles governing the practice of the medical profession.....**Error! Bookmark not defined.**

    §2. Patient's consent..... **Error! Bookmark not defined.**

    §3. Professional secrecy and access to the patient's health data**Error! Bookmark not defined.**

    §4. A physician's professional and ethical behavior**Error! Bookmark not defined.**

§5. Unethical deeds and actions ..... **Error! Bookmark not defined.**

§6. Prejudice to professional independence ..... **Error! Bookmark not defined.**

§7. Limits of professional commitment ..... **Error! Bookmark not defined.**

§8. Clarity diligence and collaboration with other specialists **Error! Bookmark not defined.**

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§9. Consulting within the team, decision making and decision communicating..  
..... **Error! Bookmark not defined.**

§10. Remote medical act ..... **Error! Bookmark not defined.**

§11. Complete performance of the obligation undertaken by a doctor and the refusal to provide healthcare services ..... **Error! Bookmark not defined.**

§12. Activities related to the medical act ..... **Error! Bookmark not defined.**

§13. Judgement of deontology cases ..... **Error! Bookmark not defined.**

**Section III.** Other regulations related to the practice of the medical profession **Error! Bookmark not defined.**

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Patients’ rights law ..... **Error! Bookmark not defined.**

§1. Patient’s rights ..... **Error! Bookmark not defined.**

§2. Patient’s right to consent to medical intervention **Error! Bookmark not defined.**

§3. Right to information confidentiality and patient’s privacy **Error! Bookmark not defined.**

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§4. Patient’s reproductive rights ..... **Error! Bookmark not defined.**

§5. Patient’s right to treatment and medical care **Error! Bookmark not defined.**

CHAPTER II. Medical legal relationship ..... **Error! Bookmark not defined.**

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§2. Structure of the medical legal relationship. **Error! Bookmark not defined.**

§3. Characteristics of the medical legal relationship **Error! Bookmark not defined.**

**Section II. Medical legal relationship and risk of the medical act** **Error! Bookmark not defined.**

§1. Obligation to inform and risk of the medical act **Error! Bookmark not defined.**

§2. Medical risks. Classification ..... **Error! Bookmark not defined.**

§3. Medical risks and EHCR case law ..... **Error! Bookmark not defined.**

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§2. Obligation of security ..... **Error! Bookmark not defined.**

§3. Case study ..... **Error! Bookmark not defined.**

**Section IV. The medical legal relationship in the case of people serving prison sentences** ..... **Error! Bookmark not defined.**

§1. Standard healthcare provided to people serving prison sentences ..... **Error! Bookmark not defined.**

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§4. Provisions regarding the healthcare provided to imprisoned convicted people ..... **Error! Bookmark not defined.**

§5. Respect for the right to health and healthcare of convicted people serving custodial sentences in Romanian prisons. EHCR case law **Error! Bookmark not defined.**

**CHAPTER III Misconduct as a form of guilt** ..... **Error! Bookmark not defined.**

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**Subsection I.** Wilful misconduct (easiness) ..... **Error! Bookmark not defined.**

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§2. Wilful misconduct conditions ..... **Error! Bookmark not defined.**

**Subsection II.** Unintentional misconduct or negligence (error) **Error! Bookmark not defined.**

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§1.2. Administrative liability ..... **Error! Bookmark not defined.**

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GENERAL REFERENCES ..... **Error! Bookmark not defined.**

I. Legislation ..... **Error! Bookmark not defined.**

II. Treaties, Courses, Monographs ..... **Error! Bookmark not defined.**

Monographs ..... **Error! Bookmark not defined.**

Medical literature ..... **Error! Bookmark not defined.**

Foreign authors ..... **Error! Bookmark not defined.**

Papers containing the judicial practice referenced in the thesis**Error! Bookmark not defined.**

Articles, studies and case law..... **Error! Bookmark not defined.**

The Supreme Tribunal..... **Error! Bookmark not defined.**

The Supreme Court of Justice ..... **Error! Bookmark not defined.**

Courts of Appeal ..... **Error! Bookmark not defined.**

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Judges ..... **Error! Bookmark not defined.**

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Crimes set out in Law no. 95/2006 on healthcare reform, as republished**Error!**  
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This scientific task was initiated at a time when there was a massive increase in the amount of negative information on the deviations perpetrated by physicians in the practice of the medical act, which might trigger both their civil and criminal liability.

A physician's civil liability for professional misconduct might trigger an obligation on the physician's side (and not only) to pay compensation for the damage caused, while a physician's criminal liability entails totally different consequences. Therefore, we found it necessary to analyse the conditions when a physician's criminal liability might be triggered for professional misconduct.

The paper is structured into seven chapters.

Chapter I is entitled "The active subjects of medical professional misconduct (malpractice) and the legislation applicable in the field". Therefore, the starting point of our research was the identification of the active subjects which are legally or criminally accountable under the law for medical professional misconduct. Indeed, criminal judicial practice most often deals with physicians as active subjects of professional misconduct, however, the scope of such subjects is much wider.

A thorough review of the medical law enabled us to identify the legal space where the physician carries out its professional activity. Our finding after studying physicians' professional duties was that such duties cannot be fulfilled randomly, but within a legal framework, generated by the medical legal relationship existing between a patient and their doctor. This is the reason why we analysed such relationship which generates a physician's legal, civil or criminal liability.

Such analysis is included in the second chapter of the thesis, "Medical legal relationship" that reveals the myriad obligations and diverse situations which might occur within this relationship when a professional medical act is performed. Besides the legal medical relationship's structure and characteristics, this chapter examines how such legal relationship actually works in the case of people serving prison sentences.

Chapter III entitled "Misconduct as a form of guilt" examines the issues raised by misconduct in the regulation of the new Criminal Code, while also taking into consideration certain important changes which the lawmaker made to this institution. The thorough analysis of misconduct as a general matter included in this chapter helped in better understanding a physician's professional misconduct which has certain specificities as compared to other professional cases of misconduct.

Therefore, Chapter IV entitled "A physician's criminal liability for malpractice" is an analysis, in terms of criminal law, of the specific nature of the medical professional misconduct and the time evolution of a physician's liability for professional misconduct.

The analysis of the institution of misconduct as a form of guilt in the light of the new Criminal Code, in terms of a physician's criminal liability for malpractice, enabled us to see certain faults of such institution. Seeing that the psychological procedures which the law maker provided for criminal liability are not actually appropriate in the case of physicians, which triggered some confusion in the judicial practice when differentiating indirect intention from wilful misconduct, we proceeded to initiating some *de lege ferenda* proposals. The analysis included in chapters III and IV with regard to the issues discussed is supported by an abundant specialized judicial practice and ECHR case law.

Chapter V entitled "Criminal liability for medical professional misconduct and certain institutions of criminal law" looks at the possible links between a physician's professional criminal liability and other institutions such as justifying cause and the injured person's consent, additional sanctions, protection measures, individualization of penalties, waiver of punishment or postponement of punishment, all such analyses of a physician's criminal professional misconduct as related to the abovementioned institutions being a novelty.

Chapter VI describes the medical professional misconduct in comparative law, analysing how a physician's liability is regulated in some European and other countries.

Chapter VII is a case study, *i.e.* an indictment under which two physicians were sued for manslaughter, where it was maintained that the conditions of misconduct as a form of guilt are not met both in the reasons given by the first court which decided the physicians' conviction for professional misconduct, and in the decision of the court of appeal ordering one of the two physicians' acquittal.

Our scientific task is completed with conclusions and *de lege ferenda* proposals.