

Undertaking a trial in a criminal criminal trial, taking evidence for your participation in media rights

Keywords: medical secret, medical secret, release from secrecy, witness, accused, doctor.

Summary (Streszczenie)

In the doctoral dissertation, the legal provisions regulating the protection of medical confidentiality and the possibility of using the information covered by it in criminal proceedings were analyzed. To introduce and understand the institution of medical secrets, its evolution from antiquity to today was presented, indicating the changes that took place not only in ethics, emerging medical law, but also in criminal procedural law.

Then, the essence, functions, and sources of medical secrets in Polish law are presented. The issue of medical secrecy and medical secrecy were analyzed in the context of identity, as a cursory analysis of legal acts may indicate their dissimilarity. The subjective scope of medical secrecy was also discussed, because in Art. 2 clause 1 point 2 of the Act of April 15, 2011 on medical activities (consolidated text Journal of Laws 2022, item 633 as amended), the legislator introduced a legal definition of a person practicing a medical profession, which may raise interpretation problems, and in accordance with Art. 13 of the Act of November 6, 2008 on the rights of the patient and the Patient's Rights Ombudsman (consolidated text Journal of Laws 2022, item 1876), medical professionals are required to maintain medical secrecy. There were also presented issues aimed at introducing the topic of the doctoral dissertation, such as: the obligation to denounce persons obliged to maintain medical secrecy, disclosure of medical documentation and dispensation from medical secrecy.

The issue of evidence in the Polish criminal trial was also discussed, which allowed for the transition to the subject of the doctoral dissertation, i.e., the use of in a criminal trial, evidence based on circumstances covered by medical secrecy.

The next chapter presents the appropriate handling of the evidence obtained from a medical practitioner or a non-medical practitioner. It should be remembered that medical professionals are, in certain situations, exempt from medical secrecy only towards the authorities conducting criminal proceedings, and not towards all persons. Thus, it is on the part of these authorities to adequately secure documents and interrogation reports containing secret

content against unauthorized reading by third parties, and to ensure that the hearing is kept secret when such content is disclosed. The obligation to protect the patient's privacy also applies to the information contained therein in medical records, and the data contained therein are directly covered by the obligation of confidentiality, also after the patient's death (Article 24 (3) and (6) of the Act on Patient Rights and the Patient Rights Ombudsman). Moreover, the right to access documentation is also an explicitly mentioned right of the patient (Article 23 (1) of the Act on Patient Rights and the Patient's Rights Ombudsman) and only he is entitled to indicate other persons authorized to inspect in its documentation (Article 26 (1) of the Act on Patients' Rights).

The last element discussed was the possibility for the accused to disclose circumstances covered by medical confidentiality. On the one hand, he is a person obliged to maintain medical secrecy (e.g. a doctor), on the other, there is a directive in the criminal trial under which the accused has the right to protect his own interests, as well as the right to use a defense lawyer (right to defense). Unable to use information covered by medical confidentiality in the criminal proceedings, he would not be able to fully exercise his rights of defense. The possibilities of disclosing circumstances covered by medical secrecy by the accused were presented, which at the same time would give the possibility of respecting the patient's right, as well as not disseminating this information to a wider group of recipients.

In the conclusion, summary and conclusions, the subject of the doctoral dissertation is briefly presented and the directions of changes in the conclusions concerning the legal regulations relating to the protection of medical confidentiality in criminal proceedings are formulated.