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Insurance for Medical Malpractice in the Republic of Moldova - Perspectives, Challenges, Solutions

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Abstract: *Medical malpractice insurance constitutes a new and challenging area for the insurance field in the Republic of Moldova. It is imperative to recognize the importance of insurance against medical malpractice in the Republic of Moldova. Crucial reforms, successfully implemented in the health system to improve and adapt standards to the European level, have initiated a development process in this direction. It is evident that there have been global criticisms and concerns regarding the quality of health services provided to the population. This situation has also increased interest in the quality of medical services and included this objective in health policy and remuneration mechanisms. This has led to an increase in the number of claims for medical damage compensation and forensic examinations related to the activity of doctors.The adoption of a malpractice law could remedy existing legal gaps by clearly defining and thoroughly detailing the responsibility of medical personnel in the health system. The Republic of Moldova, having a technical basis, can transpose legislation concerning medical malpractice insurance. The legislator must be aware of the urgent and inevitable need to implement a regulatory framework applicable to responsibility for professional negligence of doctors in the health system.*

Keywords: *insurance, malpractice, patient, medical worker, compensation, responsibility, damage.*

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Motto: „Health is not everything, but everything without health is nothing"
Arthur Schopenhauer German philosopher (1788-1860)

Introductory considerations on the legal nature of medical malpractice

In medical practice, knowledge of legal norms is essential, as compliance ensures the protection of medical professionals in exercising their duties, especially in today's context where patients are increasingly demanding about their rights.

The regulation of medical personnel's rights and obligations, as well as their responsibility for negligent or faulty practices, dates back to ancient times and is closely tied to the emergence of organized states.

The issue of medical malpractice originates in antiquity, with the responsibility of physicians evolving according to the social structures of each era. Various civilizations addressed this issue differently, often surpassing the moral constraints of their respective periods.

The connection between medical activities and justice has deep roots, documented since ancient times. One of the earliest records is the **Code of Hammurabi**, a set of laws created during the reign of the Babylonian King Hammurabi (1728–1686 BCE). This code includes provisions regarding medical liability and sanctions for errors committed during medical practice.

Similar regulations to those found in the Code of Hammurabi existed in other ancient cultures, such as Ancient Greece, the Roman Empire, Egypt, and China. In the Romanian territories, medical regulations first appeared in Moldova in **Vasile Lupu's Code**, published in Iaşi in 1646. These provisions represented a significant step in establishing medical norms and responsibilities of that period (Gugulan & Kurilo, 2024).

The same compendium, known as the **Romanian book of learning** (from imperial laws and other jurisdictions), marked Moldova's transition from unwritten customary law (oral—"the customs of the land") to written law. It included specific sanctions against physicians who failed to fulfill their professional obligations or participated in criminal acts (Carte românească de învăţătură, 1961).

According to the provisions of the **framework code of ethics for medical and pharmaceutical workers** (The framework code of ethics of the medical and pharmaceutical worker) (Codul cadru de etică al lucrătorului medical şi farmaceutic, n.d.): *"Human health is considered the ultimate goal of medical practice.*" This code emphasizes the obligation of medical and pharmaceutical personnel to protect individuals' physical and mental health,

promote a healthy lifestyle, prevent illness, and alleviate suffering, while respecting human life and dignity. These obligations must be fulfilled without discrimination based on age, gender, race, ethnicity, religion, nationality, social status, ideology, political beliefs, or other factors, both in peacetime and during wartime. Medical and pharmaceutical workers must also exercise maximum vigilance in providing professional services, ensuring they prevent potential complications for patients under their care. Respect for human dignity must be upheld even after a person's death.

Under the **law on patients' rights and responsibilities** (LP263/2005)(Parlamentul Republicii Moldova, 2005), responsibility for violating patients' social rights regarding access to healthcare lies with central and local public authorities and institutions within the healthcare system at all levels. For breaches of individual rights stipulated by this law, liability falls on healthcare service providers. Those found guilty of violating patients' rights are subject to penalties under current legislation.

This right is also enshrined in the **Constitution** (Constituţia RM, 2016), where Article 36 guarantees the right to health protection. When this right is violated, the physician in question may be accused of malpractice—a professional error causing harm to the patient. However, it is not sufficient for a medical act to result in an unfavorable outcome; it must also be demonstrated that the physician failed to exercise due diligence, was unprepared, or, in some cases, failed to act when action was required.

According to a group of authors: *"In today's world, medicine is no longer an art. It has become a profession governed by guidelines of good practice, clinical protocols, and laws. The first half of the 20th century saw the introduction of numerous laws, regulations, and codes that established standards for admission to the profession, specific medical practices, professional ethics, and applicable norms for all healthcare service providers." (*Eţco et al., 2011).

In recent years, the global community has faced a significant increase in criticism and objections related to the quality of healthcare provided to populations. At the same time, public interest in the standards of these services (whether obtained through insurance policies or paid out-of-pocket) has grown considerably, leading to an increase in complaints against medical personnel and more frequent medico-legal investigations into their professional activities.

This trend is influenced by the ongoing digitalization of society, including its legal aspects. It is further accentuated by legislative interventions, such as the adoption of laws in the Republic of Moldova in recent years aimed at regulating the physician-patient relationship based on jurisprudential principles.

Today, the patient is no longer merely a consumer and beneficiary of medical services but has become an active participant in decision-making processes regarding diagnosis and treatment. Informed consent regarding medical procedures has transformed into a fundamental and mandatory ethical element.

Issues and deficiencies in medical professional activities are now of interest not only to forensic or legal medicine but also to clinical medicine. Literature reviews demonstrate a continuous numerical and proportional increase in investigations related to the quality of healthcare (Baciu, 1997). Research and analyses conducted by Ethics Committees reveal that, in most cases, objections against medical personnel were unfounded (Eţco et al., 2010).

In this context, the need for clear and effective legislative regulation of relationships in medical services becomes increasingly evident. Every individual in an organized society is exposed to risks in one form or another. Risk is defined as a future and uncertain event that, if it occurs, can lead to losses. All activities involve risks, and insurance provides a mechanism to protect against them.

Medical malpractice is defined as a professional error committed during the exercise of medical or pharmaceutical activities that causes harm to the patient and results in the civil liability of medical personnel and providers of medical, sanitary, or pharmaceutical products and services. **"Medical personnel"** refers to physicians, dentists, pharmacists, nurses, and midwives who provide such services.

Comparative aspects of medical malpractice insurance

In the context of healthcare services, malpractice insurance addresses the financial needs associated with compensating patients harmed by professional errors of medical personnel or damages caused by healthcare providers. This protection is regulated through a contract established between the physician, the medical institution, and the insurance company, clearly specifying the professional errors for which the policy guarantees compensation.

Malpractice insurance represents a form of legal protection for both the physician and the patient. The insured physician benefits from financial protection, while the injured patient is guaranteed adequate compensation. In many countries, malpractice disputes are resolved through mediation, facilitating cost-effective settlements outside the courts. For instance, in Austria, it is recommended that every doctor secures medical liability insurance. This is not a legal obligation but rather a rational requirement. A damages lawsuit can affect not only a doctor's reputation but also their financial situation (Moldovan, 2002).

There are multiple extrajudicial alternatives for resolving complaints, such as:

– **Amicable agreements** (e.g., arbitration committees in Germany or ONIAM in France);

– **Mediation** (e.g., specialized mediators in Germany, the Chamber of Mediators in Slovakia, or compensation systems in Scandinavian countries);

– **Conciliation centers** (e.g., Austria, where disputes are resolved at the regional medical associations).

In Germany, mediation and arbitration committees or expert commissions analyze malpractice cases, offering quick and cost-effective solutions. Their conclusions are voluntary and non-binding but may influence subsequent judicial decisions. Similarly, the Netherlands, Spain, and the United Kingdom have implemented arbitration and mediation mechanisms to resolve malpractice cases. France has a system that allows compensation without establishing fault, based on the principle of solidarity.

In Scandinavian countries, the approach focuses on improving the system without blaming physicians. Complaints are reviewed by commissions to determine whether the damages could have been avoided by an experienced specialist, and 99% of cases are resolved administratively.

Based on the methodology employed, malpractice systems can be classified into two categories:

1. **Fault-based systems**;
2. **No-fault systems**.

Fault-based systems, typical of many European countries, are considered less efficient because they focus on individual culpability rather than identifying systemic deficiencies. In contrast, no-fault systems promote the administrative resolution of conflicts.

Insurers frequently refuse to cover moral damages, citing the difficulty of quantifying them and the arbitrary nature of judicial decisions. However, the European Union has established a guiding framework for assessing non-material damages, providing a more objective and predictable approach.

One of the main forms of liability insurance *in Romania*, detailed in its legal landscape, is medical malpractice insurance, regulated by Law no. 95/2006 on health reform (Law no. 95/2006, 2015).

According to the provisions of Article 668, paragraph 3 of Law no. 95/2006, mandatory medical liability insurance is classified under category B, class 13 of liability insurance. It covers all types of medical treatments carried out within the insured's specialty and professional competence, as well as the range of medical services offered by the respective healthcare unit.

In the broader class of liability insurance, only mandatory insurance for medical personnel and vehicle owners is extensively regulated in the Romanian insurance system (Nemeş & Fierbinţeanu, 2022).

Article 667, paragraph 1 of Law no. 95/2006 stipulates that medical personnel providing healthcare, whether in the public or private system, within a location designated for medical assistance or outside such a location upon express request, must secure malpractice insurance for professional liability in cases of damages caused by medical acts.

In the conception of Law no. 95/2006, Article 653 defines medical malpractice as a professional error committed during a medical or pharmaceutical act, causing damages to the patient and entailing the civil liability of medical personnel and providers of medical, sanitary, and pharmaceutical products and services.

According to the provisions of Article 669 of Law no. 95/2006, compensation is granted for amounts the insured is obliged to pay as damages and legal costs to the injured party due to inappropriate medical assistance, as well as damages resulting from the failure to provide medical assistance when the requesting person's condition required medical intervention.

Based on the above-mentioned legal provisions, medical liability insurance can be defined as a contract whereby, in exchange for paying the insurance premium, the insurer undertakes to cover damages caused by medical malpractice, the provision of inadequate medical assistance, and damages resulting from the refusal to provide medical assistance, even when such assistance was requested, or the patient's condition demanded it (Toader, 2005).

We also note the specific characteristics of medical liability insurance in Romania. From the legal regulations and definitions, it follows that medical malpractice insurance is mandatory and professional in nature (Groutel, 2006, 302), being closely tied to the exercise of medical activity.

The perspective of establishing medical malpractice insurance in the Republic of Moldova

"*It is a truism that in medicine, truth has emerged through hypotheses and even errors, that the journey from hypothetical to theoretical has not been free of twists and uncertainties, that applying new approaches in medicine has sometimes opened the door to errors which have, in turn, led to major discoveries, and that error has been the inevitable toll paid by medical progress over time. It is said that if a driver makes one mistake every three kilometers, a doctor makes at least one error daily, as scientific progress multiplies the risks of errors, confirming that, in medicine, without accepting certain risks, there is often no therapeutic success or medical advancement.*" (Scripcaru & Terbancea M., 1989).

No one is perfect, not even doctors. As citizens operating within an organized professional body, they are accountable for their actions or inactions. Errors committed in the exercise of the medical profession invoke liability on the part of the guilty party. Among the various forms of liability borne by medical practitioners regarding their activities, civil liability occupies a distinct and multifaceted position.

This form of liability has sparked, and continues to provoke, doctrinal debates. These debates arise from differing opinions in legal literature regarding medical liability, with some advocating for tort-based liability and others arguing that a doctor's liability is contractual in nature.

One opinion holds that medical liability is always contractual because the harm caused is a consequence of the improper performance of obligations arising from the contract concluded with the patient. Only when the harm is caused to a third party or arises from emergency intervention would tortious or quasi-tortious liability be relevant (Moldovan, 2002, 398).

Another perspective suggests that medical liability may be either extracontractual or contractual, depending on the circumstances in which the victim suffered harm. Thus, it is considered that doctors serving in public healthcare have extracontractual liability, as they are not chosen by patients. Conversely, doctors practicing within private medical institutions or associations generally bear contractual liability, even when providing free care (Puşcariu, 1959, 23-40)

Given the dynamics of the doctor-patient relationship, it is natural for the doctor's professional activity to be closely monitored, especially when a patient's life is at stake. Despite advancements in medical technology, medical practice still involves unforeseen aspects that may evolve into risks, thus attracting the doctor's liability. Ideal medical knowledge does not eliminate the unpredictable, but rather makes risks foreseeable through understanding. There remains an element of unpredictability in even the most accurate diagnosis or perfect surgical intervention, which is why doctors must continuously reconcile technical expertise with the ethics of medical practice. They must be aware of their own limitations, the risks, mistakes, and errors that may arise from insufficient preparation, personal shortcomings, patient reactions, or the particularities of diseases (Moldovan, 2002, 416).

Medical and legal mechanisms must be characterized by flexibility and adaptability, as both medicine and law derive their significance from how well they address social needs (Tănase, 2024, 309).

As noted in specialized doctrine, insurance can be seen as an organized form of mutual aid designed to alleviate the plight of those who

suffer losses. Indeed, based on the principle of mutuality underlying insurance, individuals' risks are significantly reduced compared to scenarios without insurance (Penneau, 2006, 422).

Considering risk as an essential element of insurance, it is worth noting that in the medical field, perhaps more than in others, the very nature of medical practice makes risks frequent. This fact necessitates insurance as a practical requirement (Mangu, 2010, 518). However, while risk cannot be entirely eliminated from medical practice, it should not become an insurmountable or absolute obstacle in medical care.

Nonetheless, it should be emphasized that no liability insurance covers intentional harm. Such coverage, in addition to its illicit nature, would transform the purpose of insurance into a tool incompatible with the law, effectively turning it into a premium encouraging wrongful actions (Tăbăraş, 2006, 70).

Insurance has significantly transformed the concept of civil liability. However, in the Republic of Moldova, compared to other countries, there is a lack of specialized legal framework governing medical malpractice insurance (Gîrla, 2011).

The Civil Code of the Republic of Moldova (Civil Code of the Republic of Moldova 2002), Article 1884, provides only general regulations concerning health insurance. Under these provisions, the insurer undertakes to cover expenses incurred upon the occurrence of the insured event. Health insurance primarily concerns the insured party's financial interests related to life and health, focusing on reimbursing costs associated with medical services and related expenses.

From this, it is easy to deduce that civil law establishes the patient's right to claim compensation as provided in the medical insurance contract or through the provision of medical services. However, claims for moral damages are excluded. As previously mentioned, insurance companies often avoid or outright refuse to cover moral damages, as these are not easily quantifiable or predictable.

This study examines the issue of providing legal insurance mechanisms for professional medical personnel, enabling them to compensate patients effectively in cases of unforeseen medical errors.

At the same time, it is essential to recognize that when concluding a medical malpractice insurance contract, the guilty doctor is only exempt from paying pecuniary compensation to the patient. Disciplinary, administrative, or criminal liability remains unaffected (Pădure, 2010).

Conclusions

Healthcare personnel inevitably face numerous problems and unprecedented challenges. There is a life axiom that no one can know everything. A doctor is not always a panacea, and therefore, alongside the moral law that must guide them universally, civil law often needs to intervene as well.

In this context, it can be concluded that in developed countries, medical malpractice insurance has become an essential part of the healthcare system.

The Republic of Moldova could adopt principles and methods for implementing mandatory medical malpractice insurance, drawing from the experiences of these countries and adapting them to local realities.

It is reasonable to assert that the Republic of Moldova has an adequate technical foundation for developing national legislation on mandatory medical malpractice insurance.

The adoption of a regulatory framework on malpractice would address gaps in the current legislative base, precisely defining the scope of liability for individuals and legal entities operating in the healthcare sector. A law on the civil liability of medical personnel would regulate the accountability of doctors for harm caused by errors, including those resulting from negligence, carelessness, or insufficient medical knowledge in the practice of their profession.

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