The responsibility of the medical profession in Finland

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INTRODUCTION

By virtue of their profession doctors, dentists and other medical personnel are responsible for people's lives and health to a far greater extent than other professional groups. It is thus only natural that they are personally responsible for their professional activities and that there exists a system of sanctions in the case of faults and negligence.

A more extensive system of supervision and sanction for the medical profession than for other professions is another consequence of the importance of the activities in which the medical profession is involved.

In this paper I will give some information about the situation in Finland in this respect.

THE ORGANIZATION OF THE HEALTH CARE

The public administration must function well. Public money is involved in govemmental activites. The public sector is in many respects subject to quite an extensive control.

The public health care is in Finland administered by the municipalities. The state plays a very limited part in this field (medical care for military personnel and prison inmates).

The municipalities run health centers and general hospitals. Specialized hospitals are administered by federations of municipalities.

The municipal health care is also financed by the municipalities, but with important state subsidies. The municipal (and state) tax-payers thus finance the health care, whether they are using it or not. The patients' fees cover only a small proportion of the actual costs and the compulsory health insurance compensates only partly the patient's costs for health care.

There are very few private hospitals in Finland, because the average patient cannot afford to pay the high costs such activities entail. The patient's boarding costs in the hospital are thus not even partly compensated by the compulsory health insurance.

There is, on the other hand, a great deal of other forms of private health care than hospital care. Especially in the cities there are enough patients preferring private health services to make such activities profitable. These patients are treated by privately practicing physicians. Most of the privately practicing doctors are however working full time for the municipal health services and see their private patients in their spartime. Many of them are working in privately run medical reception centers. The bigger centers are equipped with their own laboratories and offer terapeutic services. The medical reception centers employ their own nurses and other medical personnel such as terapists and laboratory assistants.

The dentists usually have private practice or are attached to municipal health centers (mainly, but not only, for school dentistry). The terapists of various kinds are either working privately or for the municipality.

THE LEGAL SITUATION OF THE MEDICAL PROFESSION

All persons working in the medical profession must have received a proper schooling and training after wich they are licenced by the government. The govemment keeps records of the entire medical profession.

In Finland there exists a separation between public and private law. The rules concerning governmental activities belong for the most part to the public law area. The control regarding such activities is exercised by public authorities and administrative courts.

Private activities, even when exercised by the government, are normally less strictly controled. Ordinary courts handle legal disputes regarding private law matters.

Even the employees are divided into two categories depending on whether they work for the government or for private firms. They are either public servants or private employees. The legal situation of a public servant, employed by the state or a municipality, differs in many respects from that

of a person privately employed or working on his own.

It is obvious that a civil servant, particularly one authorized to exercise public power, must be subject to a more extensive governmental control and to more severe sanctions in the case of breaking against the regulations than a person acting under private law. The public servant's responsibility is thus larger than that of a private employee. This rule applies to the entire public service.

As has been already mentioned, not only the state but also the municipalities (and the federations of municipalities) employ public servants. There is a great number of administrative statutes and regulations concerning the state and the municipal civil service. This report is mainly focused on the municipal civil service.

The legal situation of a member of the medical profession thus depends on whether he is a public servant or not. If he is a public servant his situation is regulated by administrative law. Is he, on the other hand, practicing privately or employed by a private practitioner or a private clinic, his legal situation is based mainly on private law, although not exclusively.

There are certain administrative regulations which concern the entire medical profession. The administrative sanction system thus functions very much in the same way for all medical personnel, irrespective of their legal status.

THE EXERCISE OF PUBLIC AUTHORITY. A PATIENT'S RIGHTS UNDER PUBLIC LAW

Medical care given by the state or the municipalities means exercise of public authority, even when it appears very similar to private health care. The public health care is not based on contracts concluded between a patient and his doctor, as is the case in private health care. It is based on unilateral decisions made by civil servants acting with the authority entrusted to them by the government.

According to the Patients' Rights Act (1992:785) a sick person has the right to receive medical care given by a public health center or a hospital. This right is regarded as a part of the social security system which covers all inhabitants of the state (Constitution Act 1999:731, art.19.2). When asking for medical care, the citizen depends of his own municipality. The legal situation of a patient receiving care from a municipal health center is regulated by public law. The doctor in charge is entitled to decide whether a person is actually needing medical care and, if so, what kind of care, and if he needs hospital care, in which hospital and for how long. The patient must accept this decision and follow the doctor's orders and that of other medical personnel, if he wants to get public health care. The patient must of course be informed about all medical mesures concerning him and give his consent to surgery and other more radical actions. The patient must pay the fees for the care according to the rules decided by the municipality.

The patient receiving medical care from the municipality cannot chose his physician, even if the medical unit must take into consideration the patient's desire to be treated by a certain doctor working in the unit.

There are hospitals for mentally ill patients or those suffering from contagious diseases. These patients may even against their will be forced to undergo treatment.

It is obvious that the physicians deciding in the above mentioned matters and even the nursing personnel must be public officers, i.e. civil servants, as no private person can be authorized to exercise powers on other people, if the law does not explicitly allow this.

Does this difference between public and private health care reflect on the situation of the patient? Does a patient receive a better care in public than in private health care, because of the more extensive control a civil servant is subject to?

To answer this question falls outside my paper. I have mentioned this only because it has been neglegted in all studies made about medical care. It is obvous that it is very sensitive for the parties concerned.

THE RESPONSIBILITY UNDER CRIMINAL LAW. CAUSING OF DEATH, BODILY INJURY OR ILNESS

There are no specific stipulations in the Criminal Code or elsewere concerning crimes committed in medical care. The general provisions of the Criminal Code concerning crimes against the life and the health of persons also apply to situations where a patient has died, suffered bodily injury or illness as a result of faulty medical care.

The law makes a difference between intentional and non-intentional acts. It is obvious that no physician nor any other member of the medical profession ever intend to cause death, bodily injury or illness. On the contrary, they are doing their best to save lives and to help a sick person to recover. Causing of death, bodily injury or illness is the opposite of the purpose of medical care. Thus there is no cause of getting into other aspects of the law than those concerning non-intentional acts.

There are three stipulations in the Penal Code concerning causing of death or bodily harm by negligence: (21:8: death), (21:10: personal injury or illness casued by normal negligence), (21:11: the same caused by gross negligence). For causing death the penalty is either a fine or imprisonment during not more than two years. For causing gross bodily injury or illness the same penalties apply. For causing (normal) bodily injury or illness the guilty person is sentenced either to pay a fine or to be held in prison during not more than six months.

If the person who has suffered bodily injury or illness does not wish to have the guilty person prosecuted, the public prosecutor may decide not to bring charges against him, but only on the condition that the general interest does not require an indictment.

Gross negligence happens very rarely in health care. But even normal negligence on the part of the medical personnell can cause death, bodily injury or illness.

In most situations no negligence is suspected, even if the patient dies. All human beings are mortal and many people die in hospitals of incurable diseases. It happens, however, that the family of a diseased patient suspects negligence to be the cause of the death and asks the police and the general prosecutor to look into the case. If the prosecutor finds that there is probable cause for action, he will prosecute the doctor or other medical personnel in charge of the deceased patient for death caused by negligence. And, if the court finds the accused person or persons guilty, the sentence will normally be fines. Only in very exceptional situations, in cases of more than slight negligence, a physician or a nurse will be sentenced to imprisonment and then always on probation.

It very seldom happens that bodily injury or illness caused by negligence be subject of court proceedings. The patient normally contents himself with asking for compensation for his damages. And the public prosecutor very seldom sees a reason the press charges, when the patient does not demand action.

The public prosecutors and the judges are well informed about the huge amount of work required of the medical personnel and that faults may happen in health care, not necessarily as a result of negligence, but more because of stress and fatigue.

PUBLIC AGENTS' RESPONSIBILITY UNDER THE PENAL CODE

As has already been mentioned the medical personnel employed by the municipalities, the intermunicipal hospitals and the state normally enjoy the status of civil servants. That means that chapter 40 of the Penal Code regulating the specific criminal responsibility of civil servants (and employees under private law working for the govemment) will be applied. Specific penalties for civil servants are:discharge from the office and, in minor cases, warning (2:1.2).

There are no stipulations in chapter 40 concerning medical service. The crimes mentioned there apply on all kinds of civil servants. Accepting of bribes, revelation of secret data and abuse of office are punishable under these provisions. The chapter also mentions a non-specified crime: breach of the duty of a civil servant, either on purpose or by negligence.

The last mentioned provision (40:11) is also regularly referred to in connection with penalties given to civil sevant members of the medical profession. For instance if a doctor or a nurse employed by a municipality has caused death, bodily injury or illness by punishable negligence, he will (normally) be sentenced to pay a fine with reference not only to one of the articles mentioned in chapter 22 of the Penal Code but also to 40:11. The last reference will lead to a harsher penalty than if the same crime had been committed by a person working in private health care.

An indictment can also exclusive rely on this article, when the court has found a civil servant guilty of breaking his duties. In such cases he is sentenced to pay a fine or to receive a warning. All faults in the health care do not necessarily result in death, bodily injury or illness for the patient. To mention an example, a hospital employee is found

guilty of not keeping properly the hospital records. Normally, however, such faults would result only in disciplinary measures decided by a superior without bringing the case before a court of justice.

TWO CASES

A patient died during a surgical operation as a result of poisoning caused by faulty use of intravenous drip. The surgeon and the nurses in charge were sentenced for having caused death by negligence as civil servants to pay fines and damages (Decision of the Court of Appeal of Helsinki-Helsingfors, May 7, 1964).

Several mental patients died as a result of wrong injections. The hospital pharmacist and the nurses involved were sentenced for causing death by negligence as civil servants to pay fines (Decision of the Court of Appel of Turku-Åbo January 27, 1954).

THE SUPERVISION EXERCISED BY THE PARLIAMENTARY OMBUDSMAN AND THE CHANCELLOR OF JUSTICE

All public servants must obey to the law. The legal control of the government and the administration of justice is directed against the civil servants and judges. A very important surveillor of the legality in governmental and judicial activities is the Parliamentary Ombudsman, an independent authority appointed by Parliament for a period of four years.

The cirtizens adress complaints regarding illegal actions committed by the civil servants and the judges to the Ombudsman's office. The Ombudsman also acts on his own initiative. If he suspects an agent of having acted illegally, he will either bring a criminal charge against the civil servants for having broken the law in his capacity of a public prosecutor. Or the Ombudsman contends himself to report the civil servant to a disciplinary board. In minor cases of negligence the Ombudsman will limit his action to a reprimand given the faulty civil servant or only to state the facts of the incident.

The Chancellor of Justice – another high independent authority appointed by the president of the Republic - is serving as the legal expert of the government. But he also surveys the public servants and the judges in the same way as the Ombudsman, although his surveillance is not strictly limited to the public service. He may intervene also in private relations if he finds a citizen has suffered injustice.

The medical personnel is subject of the control of both "watchdogs". But the greater part of the complaints go the Ombudsman.

When a case of negligence in the health care is brought to the attention of one of the high surveillors, the matter will be closely looked into. The person subject to the complaint will be heard about the charges brought against him. In most medical cases the National Authority for Medical Legal Affairs will be consulted and will give its expert opinion. The decision of the Ombudsman or the Chancellor will be given without much delay. The citizens can thus rely on competent and efficient work done by both the suerveillors.

A great number of cases involving the health care have been subject to examination by the Ombudsman. The more important cases are published in his yearly report submitted to Parliament. The Ombudsman's reports thus provide valuable information regarding, among other fields, also the health care administration.

It is obvious that the Ombudsman cannot give the citizen any form of compensation for having been subject to faults commited by the govemmental. He can only examine the legal aspects of government and react against a faulty civil servant.

For a patient and his family it is, however, of great importance to have access to an eminent expert of the law, such as the Ombudsman or the Chancellor of Justice. The patient can bring his case to them and be sure that the matter will be looked into, if there is probable cause to suspect irregularities on the part of the health care service.

It might bring some satisfaction to the patient if his physician or nurse be reprimanded, if they have been found guilty of faulty care. The critic remarks pronounced by a high authority will also certainly have some bearing on the future functioning of the health care service in question.

THREE CASES

A patient falled on the hospital floor and broke his arm. The medical personnel had not taken into account the patient's bad heart condition which

led to his fall. A ECG test was made only three months after the accident. After having consulted the National Authority for Medical Legal Affairs the Deputy Ombudsman found the physisican in charge of the patient guilty of negligence and gave him a reprimand (The Ombudsman's Report for 1999, p.276)

A person suffering from slime in his respiratory organs was examined, but no tumor was found in in his nose cavity. In spite of that the cavity was operated. The mucous membrane of the left cavity was removed. A nerve was damaged during the operation and the patient had hence suffered from continous pain in the mouth and nose area. The National Authority for Medical Legal Affairs and other expert bodies were of the opinion that the surgeon had acted unprofessionaly: there had been no need for surgery. The Deputy Ombudsman gave him a reprimand for faulty care. (The Ombudsman's Report for 1999, p.285f).

A hospital had failed to record informations about a patient's care data. The hospital was reminded of its obligation to keep records of all patients and to store these records carefully (The Chancellor's Report for 1998, p.113.)

GENERAL RULES REGARDING THE DISCIPLINE

An aspect of the responsibility of the medical profession is that regulated by the disciplinary rules. As has been mentioned, most medical personnel is employed as civil servants by the municipalities. They are thus concerned by the general rules regarding the discipline in the municipal civil service. According to these rules every civil servant must follow the regulations concerning, among other things, the working hours. They must behave correctly towards clients and other members of the staff and wear correct clothing, in some cases a special uniform. No private acitivities are allowed on working hours. If an employee is found guilty of breaking these rules he may be subject to disciplinary measures such as a written warning or, in serious cases, the loss of his job. The decision of the municipal authorities can be appealed against to the Regional Administrative Courts and, in the last resort, to the Supreme Administrative Court.

Private physisicans and other private medical personnel obviously fall outside the municipal civil service and its disciplinary system. These members of the medical profession are in no way concerned by municipal law or municipal regulations. They are employed under the Contract of Employment Act (1970:320). This act, other private law statutes and contracts regulate the relations between the employer and the employee.

In reality however, the personnel of a private hospital or a private medical reception center must observe somewhat similar rules of conduct and behaviour as their colleagues working for the government. A consequence of a employee's breaking the disciplinary rules of the private medical institution and of faulty handling of his duties in general may be his discharge, but also his liability for damages caused. The ordinary courts of justice handle disputes concerning these matters.

SPECIFIC RULES CONCERNING THE MEDICAL PROFESSION

The Medical Profession Act (1994:559) and Decree (1994:564) concern all members of this profession, whether employed under public or private law. The state body surveying the medical profession is the National Authority for Medical Legal Affairs (Act 1992:1074, Decree 1992:1121).

Whereas the above mentioned municipal regulations concerning the discipline of municipal employees apply to situations unrelated to the care functions, the specific provisions in Medical Profession Act and Decree particularly concern the health care functions of the municipal personnel.

Under this statute, a person working in the medical profession must observe certain specific requirements. If in charge of materny or terminal care, he must report to the authorities about births and deaths. He is obliged in certain cases to inform governmental authorities about observations regarding his patients. The general rule is, on the other hand, that he must observe secrecy. He must always act in a professionaly correct way. He must follow the development of medical science and care science. A private practitioner must have an insurance policy as required by law. A physician must observe certain regulations concerning the diagnose of illnesses and the issue of medical certificates about a person's health condition.

In case of non-observance of these rules, the National Authority for Medical Legal Affairs may issue a written warning to a member of the medical profession. In more serious cases this authority

has to inform the public prosecutor about the fault. A person unfitted to work in the medical profession may loose his licence by a decision of the National Authority. The decisions of the National Authority may be reviewed by the Supreme Administrative Court.

Having observed irregularities in health care, the National Authority in reality very seldom makes use of its power to handle over the case to the public prosecutor. Normally the authorioty refrains from taking any other action than reporting the case. Only a few warnings are annually issued.

But even when the supervising authority does not make use of its disciplinary powers such a mild reaction as the statement of a fault often will produce the desired effect, i.e. lead to higher consciousness on the part of the physician or the other member of the medical profession concerned.

Under the Patient's Rights Act (1992:785) any person may address complaints pertaining to health care to the chief of the medical unit in question or to the supervising authorities. The provincial board (Act 1997:22, Decree 1997:120) is the appropriate authority examening such complaints.

The Patient's Ombudsman (an employee working in a municipal or private health unit charged with this special task) as well as any other employee must inform the patient about his rights, regarding also his possibilities to get compensation for damages suffered.

THE EFFECT OF THE CRIMINAL AND DISCIPLINARY RESPONSIBILITY OF THE MEDICAL PROFESSION

It is obvious that a court decision conceming faulty medical care will have consequences not only for the punished person but also for the entire establishment, the health center or the hospital. If decided by the Supreme Court the case will be registered in a public data bank. If regarded as a 'leading case' it will be published in detail in the court's reports. If the case has been examined by the Parliamentary Ombudsman or the Chancellor of Justice it may be published even more extensively in these authorities' annual reports. A court decision or a decision of the Ombudsman or the Chancellor is a public document which may be referred to in the press and other news media.

The name of the critized or punished member of the medical profession does not appear any more in these reports. But the identity of the institution, the hospital or the health center, where the fault has been committed, will be given. In a small country as Finland a punished or critized member of the medical profession can easely be identified by his colleagues and in some cases also by the public. The fact having been subject to sanctions or criticism by the authorities will undoubtedly influence his future professional career.

LIABILITY FOR DAMAGES

Up to the 1970s every member of the medical profession could be held personnally, and in the case of public servants, also primarily liable for damages caused by him. The following step was to put the primary liability upon the employer (Tort Act 1974:412). The employer may, under this act, ask for compensation for paid damages (for instance by the municipality to a patient) from the negligent employee only in cases of more than slight negligence.

The Tort Act concerns all extra contractual situations, and thus also the public health care, although this activity is not mentioned in the act. In reality the same rules will be applied by analogy also to private health care, although it is based on contracts. Public and private health care function equally. The same requirements of accuracy on the part of the medical profession are valid in either situation.

The Tort Act is still in force, but it is seldom applied any more in health care situations, whether public or private, since a specific system of compensation of damages was introduced by the Patient's Damages Act 1986:585.

According to the Patient's Damages Act any public or private medical care institution or privately practicing doctor, terapist or nurse must be insured against the risk of damages caused to a patient. This insurance covers the compensation of the damages. There need not be a proof of negligence for the paying of compensation. It is enough that the damage appears not be a normal consequence of the care.

The member of the medical profession who has caused the damage does not have to compensate the insurance firm. The firm thus bears the final responsibility. Only if the damages have been

caused intentionally or by gross negligence the guilty person can be held personnally liable. But such situations seem never to happen. The result is that the personal liability for damages caused a patient by the medical profession is extremely limited, practically non-existent.

Under the Patient's Damages Act a person who has suffered damages will receive a satisfactory compensation. This was not always the case before the new system was introduced, although the municipalities and the intermunicipal unions had funds available for compensating patients for damages caused in health care. But it is obvious that the compensation level in Finland is far below that of the practice in the United States

There are stipulations in the Tort Act concerning the liablity of an employee or a civil servant for all damages caused by him. A provision regarding an employee's liability towards his employer under private law can be found in the Contract of Employment Act 1970:320.

A member of the medical profession as well as any other employee is thus liable towards his employer if he has intentionally or by negligence caused the employer damage. As an example can be mentioned a case when the employee has damaged valuable technical equipment by negligent handling. The medical institutions nor the personnel are not necessarily insured against such damages. But if they are, the insurance will normally cover the damage.

THE EFFECTS OF THE LIABILITY SYSTEM

One may ask how the reform of the liability system has affected to medical profession. When not personnaly liable any more, have the doctors, terapists and nurses become less accurate and conscious in their work?

There is no proof of such a development. There are, on the other hand, still many provisions concerning the medical profession which require competency and accuracy and prescribe sanctions for conseqences of faults committed by negligence.

It was not regarded as meaningful to maintain the old rigid system of personal responsibility for damages caused to a patient in order to secure good medical care. The old system was also partly ineffective, since the personnel could lack the means to pay for such damages. The liability could amount to huge sums of money, for instance when permanent invalidity was the conseqence of faulty care.

Private risk policies are still offered by the insurance companies. All members of the Physicians' Union are insured by the union for risks involved with their work. But for other medical personnel no similar common policy exists. Everybody has to decide for himself whether he will take an insurance.

The burden of the insurance costs caused by the Patient's Damages Act does not seem to have raised any political opposition, even when the insurance costs mostly will lay on the municipal tax payers as a consequence of the local government administering must of the health care and thus being obliged to pay must of the insurance costs.

ETHICAL RESPONSIBILITY

The Physicians Union has published an ethical code of conduct for its members. According to the rules a member may be expelled if he has been guilty of unethical behavior. The union's board may also issue a oral or a written warning to a member found to have committed unethical acts.

An unethical act may be negligent care but also lack of solidarity shown towards colleagues.

SOURCES

For more detailled information, see following publications by Tore Modeen:

- Government ands Public Servants' Liability in Finland. Jubileumsskrift (ed. Hans-Erik Krokfors) Skriftserie utgiven av Handelshögskolan vid Åbo Akademi A:16. Åbo 1977, p.133-144.
- The System of Sanctions in Medical Care Relationships. Scandinavian Studies in Law 1984, p.105-122.
- Le médecin et le droit. Journées de la Société de droit comparé 1987. Paris 1988, p. 299-303
- Legal Aspects of Citizens'Access and Equality within the Finnish Health Care System. Patients' Rights (ed.Lotta Westerhäll & Charles Phillips). Stockholm 1994, p.223-233.
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