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## **Definition of medical error and physicians' interest in changes in the law**

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### **Summary**

The main purpose of the paper is to discuss the definition of medical error. Moreover, the statistical analysis was aimed at demonstrating, at which level is the legal knowledge of the professional group of doctors, in relation to the performed profession.

The research group consisted of doctors of different specializations, of different ages, with diverse work experiences, performing their profession in the Lubelskie voivodeship. These were people working on the basis of contract of employment, civil law contracts or individual medical practice, employed in provincial hospitals, clinics, district hospitals, outpatient's clinics, ambulances or medical centers. The author's questionnaire survey consisted of questions and answers for 298 doctors.

Damage resulting from a widely understood medical error can be caused not only by the physician but by all medical staff or due to the organizational failure of the medical establishment.

It must be stated with all conviction that the formulation of the concept of medical error is still ongoing and will evolve with the development of medicine as well as the law, which will strive to delineate the framework of its occurrence.

The majority of doubts, which results from the obtained research, raises the issue of provision of medical help without the consent of the patient and the right to refuse treatment, but above all, what is quite surprising is the question of accepting gifts from pharmaceutical companies.

The most frequently cited reasons influencing the lack of updating legal knowledge in the field of the performed profession were lack of time and a large number of duties, whereas the research group, in order to deepen their knowledge on that matter, most frequently used the Internet resources, industry articles, and on the third place was the training related to the subject matter of the medical law.

**Key words:** medical error, knowledge of law, changes in the law

### **Error in medicine**

It should be clearly emphasized that the notions “error in physician’s art”, “error in medical art”, “physician’s error” and “physician’s knowledge error” are used in various reports (both in legal literature as well as in colloquial speech) interchangeably and such practice is very common. [1] It is significant that the concept of medical error is broader than the concept of physician’s error. First concept comprises the latter as it is assumed that medical error concerns an employee of health care of any category, including physicians. What is more an element of “art” in the execution of physician’s occupation, otherwise known as *lege artis*, is fairly broadly analysed in the literature. Namely, in a decree from 18 December 1953 the Supreme Court explicitly stated that medicine, belonging to exact sciences, does not vary from other scientific domains studying the material reality, therefore it should not be recognised in terms of art, and the physician should not be recognised as an artist. Since execution of physician’s occupation does not require specific skills and talents, but only “artisanal” abilities. A physician learns his occupation during studies and afterwards broadens knowledge while conducting his practice and experience (file ref. no. II K 811/53). [2]

„Professional literature is not complete, comprehensive codification of caution rules and sometimes we need to look for their content in other sources. The sources however are only of supplementary character. Therefore the content of caution rules may be sometimes read based on the analysis of commonly accepted practice, however attempting it with great caution as practice, even mass-conducted, may obviously be incorrect. [...] In case of conflict between what arises from professional literature and accepted practice, the first one is of conclusive character.” [3]

In the more recent literature one may read fairly elaborate definitions of an error. According to A. Liszewska [4]: “error in medical art means physician’s (aware of undertaking medical activity) breach of occupational conduct rules, binding in particular case and developed within science and practice, towards legal goods in the form of human life and health which in terms of the law constitutes a basis for statement of violation of obligation of caution.” While studying such definitions of medical error one may notice that they are based on twofold criterion, on the one hand – objective criterion as well as subjective criterion, referring to the specific or “average physician” [5]. The Supreme Court also advocated its considerations on medical error just with subjective criterion [6]. This judgement is deemed breakthrough in doctrine due to the adjudication panel accepting the fact that the physician’s error is a physician’s activity (or his abandonment) in the area of diagnosis and therapy which is incompatible with medicine in such an extent in which it was available to the physician. Analogical judgements were also made within criminal law [7]. It should be confidently stated that the number of professionals on the frontier of medicine and law equals the number of definitions of medical error, what as a matter of fact, does not reflect in an assessment whether such an error was made.

One of medical denotations for an error is: „an event, which could have been prevented, resulting in unfavourable outcome due to the activity (doing something bad) or abandonment of the activity (doing something good) which leads to adverse outcome or has considerable potential for such outcome” [8]. The crucial judgement in this area is the judgement of the Supreme Court settling that “while assessing a physician’s conduct one should consider justified anticipation of non-exposure of a patient on deterioration of health state, also a test based on a question whether unfavourable outcome could have been avoided and whether a physician should have and could have done more (better) in particular case may be helpful [9]”. Another vivid example is a judgement of the Court of Appeal in Łódź: “Since a plaintiff’s damage compensated in this proceeding is not related to experienced health disturbance or body damage, alternatively to necessity to undergo multiple surgeries, but results from infringement of moral rights protected by the law in the article 6 section 1, the article 7 section 1 and the

article 8 of the Patients' Rights and Patients' Rights Ombudsman Act. Based on the established provisions of the Patients' Rights and Patients' Rights Ombudsman Act plaintiff's non-pecuniary damage expresses in prolongation of medical condition diagnosis process itself and thereby in treatment prolongation and by this in patient's health and life endangerment. Since such understanding of damage is a result of infringement of entitlement to medical services (including diagnostic services), guaranteed in article 6 section 1 of the established act, reflecting requirements of current medical knowledge, entitlement to immediate health service (article 7 section 1 of the Act) and entitlement to health services provided with due care." [10] The responsibilities of physicians and medical personnel include performing such proceeding (treatment) that should guarantee, while maintaining current state of knowledge and rules of care, predicted effect in a form of healing and, above all, not putting patients on risk of health state deterioration." [11]

### **Material and methodology**

In this article quantitative study entitled: "Assessment of level of physicians' interest in the law in health care and knowledge of primary notions related to physician's error and responsibility with regard to performed profession" was performed. The analysis was performed among the physicians of various specializations, both men and women of various ages and diversified length of professional experience. Information on the conducted studies was obtained by the physicians during the meetings organised by the management of particular institution, by the phone or electronically.

The surveys were filled by the physicians practicing in hospitals: powiat, voivodeship, clinical, in outpatient clinics, at emergency medical service units, in medical centres and other facilities. The management of all facilities where the study was performed agreed on its conduct.

The object of the study were issues concerning legal self-awareness of the physicians in Lublin voivodeship (practising their profession within various specializations, of different ages, length of professional experience and place of work), level of interest in this subject, most commonly used sources in terms of legal issues.

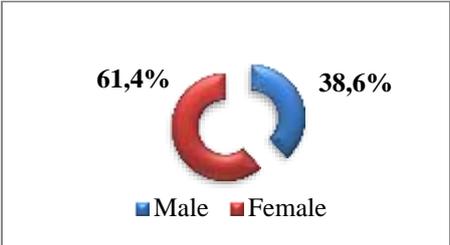
During the study the following elements were under on-going control: correctness of interviews conduct, completeness of the interviews and level of the sample realisation. After the study completion, an evaluation of complete realisation of the sample as well as correctness and completeness of data in the base of responses was performed. After evaluation process the study results were quantitatively analysed.

The studies were performed using research tool in a form of original survey consisting of closed questions (both single and multiple choice) and so called demographics questions, questions for self-assessment of legal knowledge.

Statistical analysis of the results was performed with use of STATISTICA programme. Statistics performed with chi-square test (called Pearson test,\*) is significant on the level of  $p < 0.05$ . The test was used to compare observations with their theoretical occurrence and significance level which, stands for maximum acceptable probability of error was calculated. The data was presented using basic descriptive statistics and mean. The results are based on non-blank rows and columns in each most inner subtable.

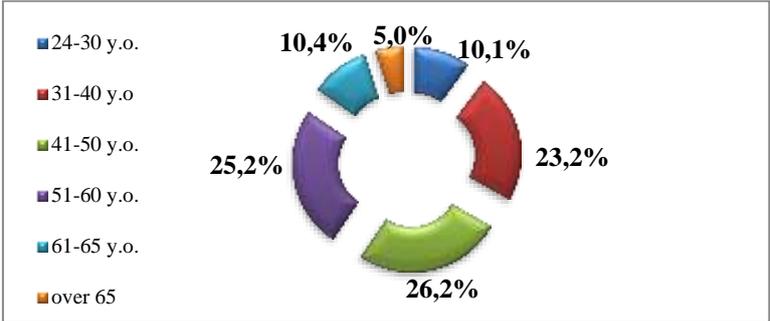
**1. Characteristics of the studied group**

The study was conducted among 298 respondents, 61.4% of them were women (183), whereas 115 were men what constitutes 38.6%.



Graph 1. Sex of the respondents.

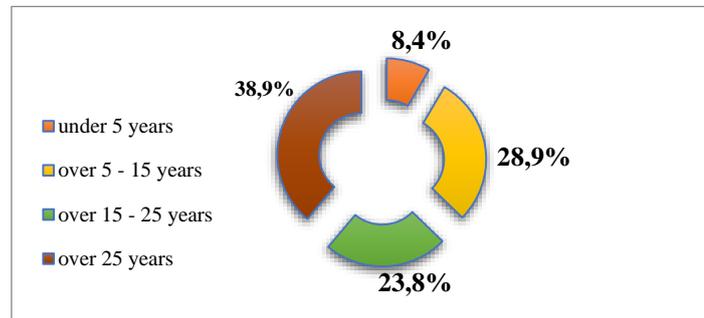
In terms of age the dominance of people aged 41-50 is observed, followed by people in age interval of 51-60.



Graph 2. Age of the respondents.

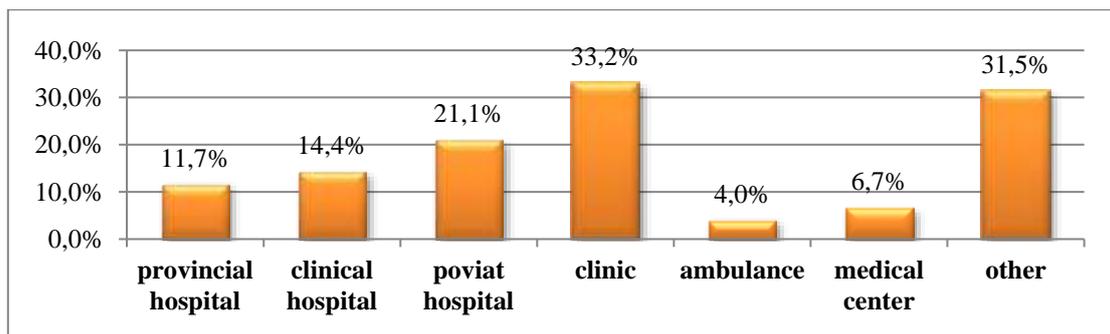
In terms of length of professional experience the dominance of physicians practising in their profession since more than 25 years is observed. The group constitutes 38.9% of the respondents. Consecutive group are the respondents with professional experience of 5-15 years

followed by the physicians with 15-25 years of professional experience. The smallest group are the physicians with less than 5 years of professional experience – only 8.4%.



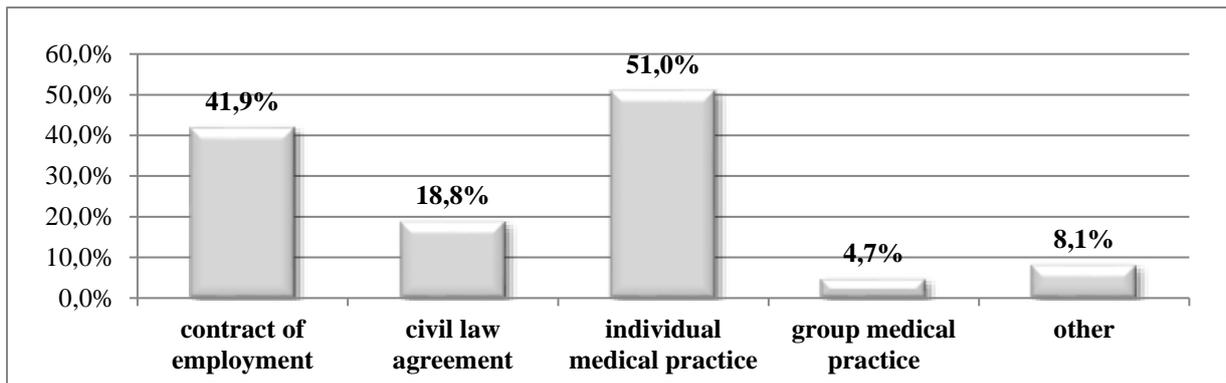
Graph 3. Length of professional experience of the respondents.

The highest number of the respondents works in outpatient clinics (33.2%), poviats hospital (21.1%) and clinical hospital (14.4%). The lowest number of the physicians participating in the study work at emergency medical service units (4%) and medical centre (6.7%). Nearly every third respondent chose answer “other place”.



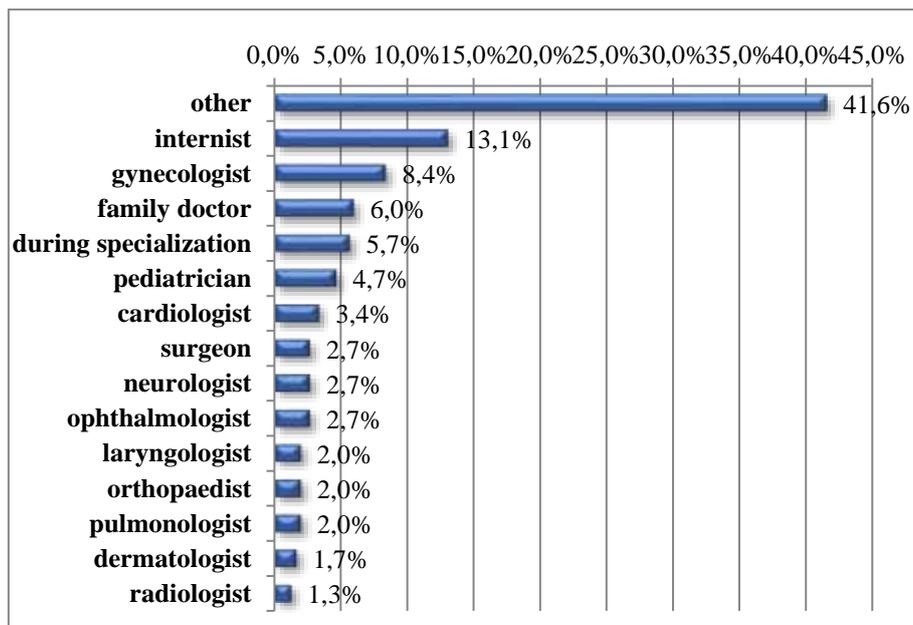
Graph 4. Place of work of the respondents. Multiple choice question.

More than a half of the respondents run individual medical practice. Large group (41.9%) is employed based on employment contract, smaller (18.8%) – civil law contract. The smallest number of the respondents runs group medical practice (4.7%). Other respondents chose answer “other”.



Graph 5. Form of employment. Multiple choice question.

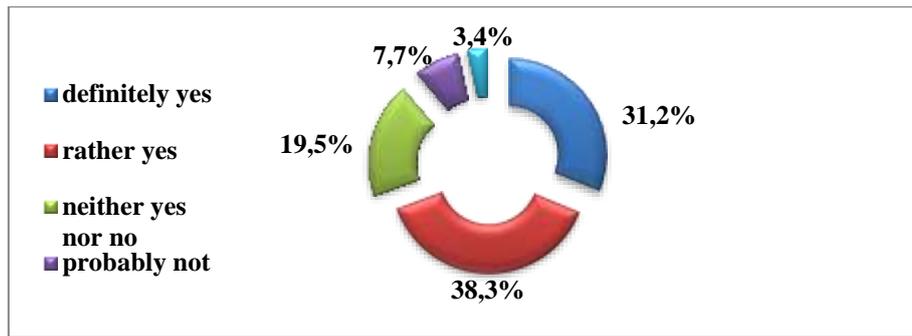
Among the enumerated medical specializations the highest number of the respondents chose internist (13.1%), gynaecologist (8.4%) and general practitioner (6%). However the largest number of the respondents (41.6%) chose answer “other”.



Graph 6. Medical specialisation.

## 2. Physicians interest in changes in the law

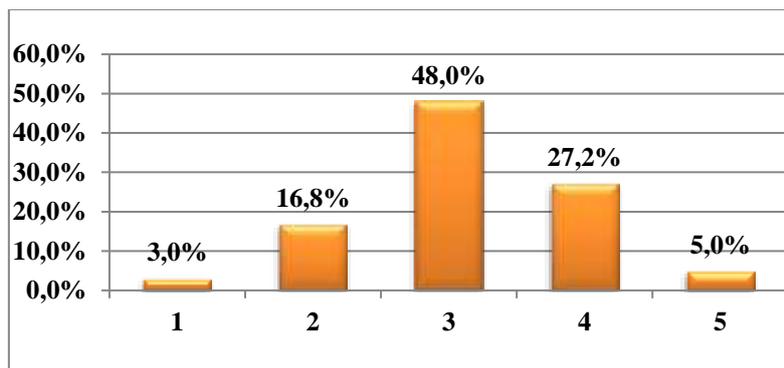
First part of questions in the questionnaire considered legal provisions in health care. The question about interest in changes in the law in a range concerning health care the positive answer was given by nearly 70% of the respondents (a sum of answers “definitely yes” and “rather yes”). 11.1% of the respondents admitted that they are not interested in this range (a sum of answers “rather no” and “definitely no”) and 19.5% could not state the answer unambiguously.



Graph 7. Are you interested in changes in the law in terms of health care?

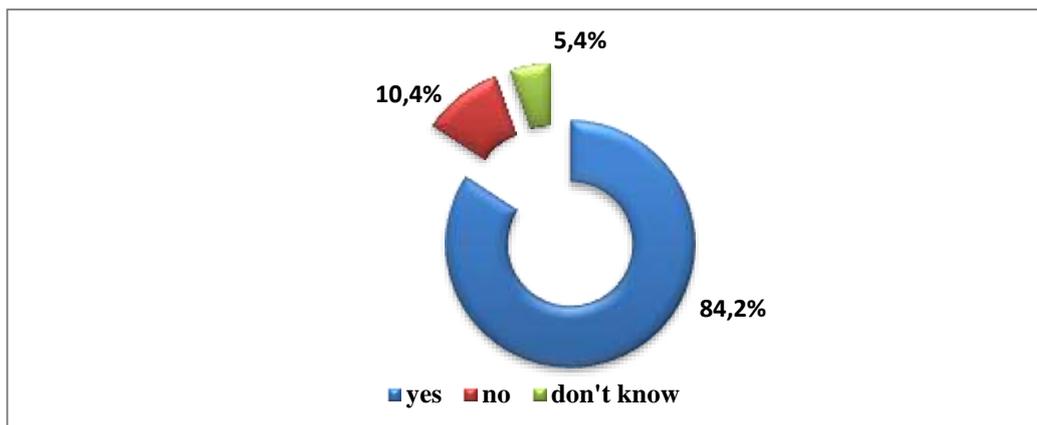
The respondents rated their knowledge of the law in terms of performed occupation on a scale from 1 to 5, where 1 meant very little knowledge and 5 – very good knowledge. Nearly half of the respondents (48%) chose mark 3 meaning average knowledge of the law in terms of physician’s occupation.

### 3. Self-assessment of study group in terms of knowledge of the law



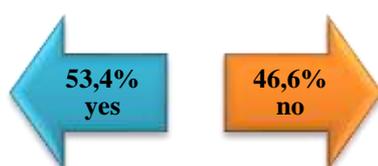
Graph 8. Please rate your knowledge of the law in terms of performed occupation.

Vast majority (84.2%) of the respondents shares opinion that a physician should follow changes in the law on a regular basis. Every tenth respondent does not agree with this point and 5.4% has no opinion on the subject.



Graph 9. Do you think that a physician should follow changes in the law on a regular basis?

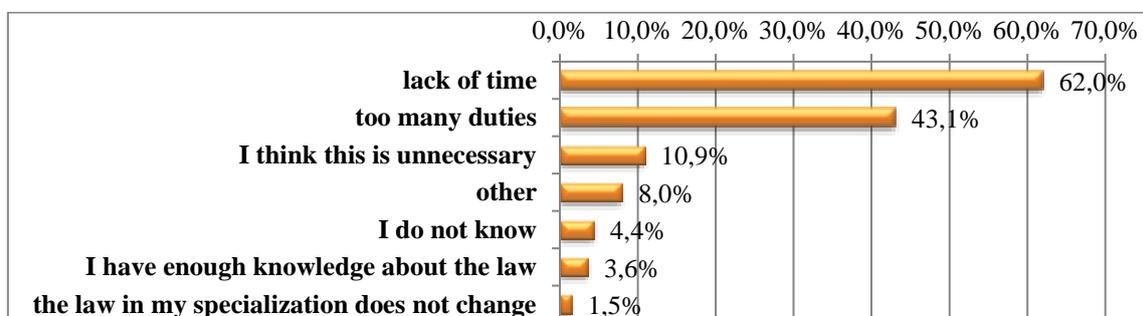
#### 4. Monitoring changes by the physicians



Graph 10. Do you follow changes in the law in health care on a regular basis?

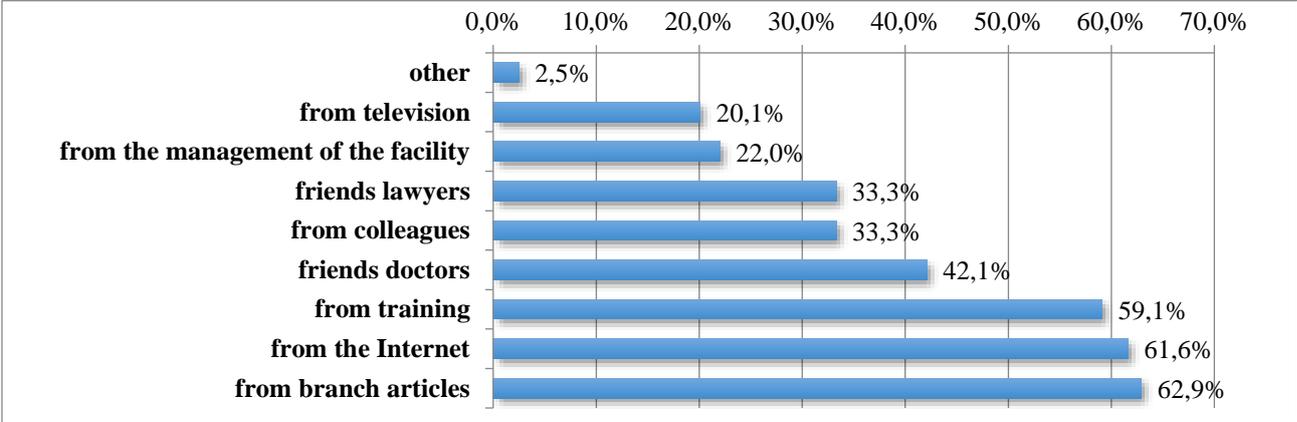
53.4% of the respondents declared that they follow changes in the law in health care on a regular basis.

The respondents who answered that they do not follow changes in the law in health care on a regular basis were asked to indicate main reasons. It appears that the most common reason for not following changes in the law is lack of time. Such answer was given by 62% of the respondents. Another reason is too many duties (43.1%). Every tenth respondent considers this activity as unnecessary.



Graph 11. What are the reasons due to which you do not follow changes in the law in health care on a regular basis? Multiple choice question.

The respondents who are interested in changes in the law in health care indicated sources most commonly used by them in this area. Most frequently these were official articles (62.9%), the Internet (61.6%) and trainings (59.1%).



Graph 12. From what sources do you derive knowledge on changes in the law in health care? Multiple choice question.

**Summary:**

- The physicians who took part in the survey evaluated level of their interest in changes in the medical law as satisfactory whereas range of their legal knowledge was assessed as average. Most of the respondents clearly deemed that a physician should definitely follow changes in the medical law on a regular basis.
- Regardless of the above, only slightly more than a half of the respondents admitted to observe legal updates. The most common justification for this situation was lack of time and high number of duties.
- Among the sources regularly used there was the Internet, official articles, and on the third place trainings related to the subject of the medical law for the physicians.

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