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The legal basis for the functioning of teaching hospitals in Poland: selected issues

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ABSTRACT

The teaching hospitals occupy a unique position in the health care system. The specific nature of teaching hospitals calls for a different legal regime from that governing other hospitals. Their activity includes not only the provision of health care, but also teaching, under- and postgraduate training, and conducting research and clinical trials. Teaching hospitals operate as autonomous public health care units endowed with legal personality, founded by institutions of higher education. This fact is not reflected in the provisions of generally applicable law, which lack regulations relating to the particular nature of the activity carried out by this type of health care entity.

Keywords: teaching hospitals, health care system, institution of higher education, right to health.

Preliminary remarks

Teaching hospitals occupy a unique position in the health care system. Due to their activity, which includes not only the provision of health care, but also teaching, under- and postgraduate training, and conducting research and clinical trials, they play a special role vis-a-vis general hospitals. This role, however, is not reflected in legal reality. Enacting a new piece of legislation on teaching hospitals with the exclusive aim of addressing the functioning of these facilities in the health care system has been at the centre of debate for many years. The question of teaching hospitals' functioning concerns, in particular, the funding of their additional tasks, which are distinct from the tasks performed by other health care entities. Teaching hospitals—just like other health care entities—participate in tenders organised by the National Health Fund on the same terms as other facilities, despite providing highly specialised services, in addition to carrying out the aforementioned research and clinical trials, and training medical staff.

Teaching hospitals operate as autonomous public health care units (*samodzielne publiczne zakłady*

opieki zdrowotnej) endowed with legal personality, founded by institutions of higher education. Sometimes the autonomy these entities enjoy is merely illusory, because it is limited by the decisions made by the founder, i.e. an institution of higher education, which in reality determines the teaching hospital's structure. A very important aspect of the hospitals' operation is the existence of academic teachers within the structure of teaching hospitals, whose primary place of employment are institutions of higher education rather than teaching hospitals themselves. The purpose of this article is to present the legal basis for the functioning of teaching hospitals in the organisational structure of the health care system.

It should be emphasised that due to their multifunctionality, teaching hospitals fulfil a very important role in the health care system: they jointly perform the abovementioned therapeutic, research, and academic tasks. In addition, these hospitals train students and offer adequate scientific and diagnostic support. Furthermore, teaching hospitals are required to organise medical internships and expert consultations. They are

often the hospitals of last resort, treating complicated cases whose treatment frequently generates higher costs. For teaching and research purposes, these hospitals often use enhanced diagnosis for their patients. They are a key component in any health care system, because they affect the quality of education new graduates receive and, indirectly, shape the whole system of health care [1].

Currently, there are forty-two teaching hospitals functioning in Poland. These entities, alongside municipal-, district-, and province-level hospitals, medical institutes, hospitals established by the Minister of Health, the Minister of the Interior and Administration, or the Minister of National Defence, non-public local self-government owned hospitals, and other non-public hospitals, make up the health care system, which provides health care services in the hospital sector. Hospitals—as basic elements in the health care system—render a triad of services: provision of health care, supply of so-called benefits in kind (*świadczenia rzeczowe*), and supply of so-called hotel services (*świadczenia hotelarskie*) [2].

The legal basis for the functioning of teaching hospitals

The adoption of the Act of 15 April 2011 on *Therapeutic Activity* [3] brought about a significant shift in the functioning of health care entities. First of all, the statute replaced the Act of 20 August 1991 on *Health Care Units*, which had been in operation for nearly 20 years, introducing a number of changes to the process of organising and financing health care services in Poland. One of the main goals of the new piece of legislation was to “organise and unify the forms of providing health care services.” The drafters intended the new law to ensure the consistency and comprehensiveness of the health care system. In addition, the lawmakers abandoned the concept of a health care unit, which was previously considered the dominant form of carrying out the provision of health care services.

Currently, Article 1(1) of the Therapeutic Activity Act (TAA) sets forth the principles for conducting therapeutic activity. Therapeutic activity is defined as providing health care services. It may also include:

1. promoting health, or
2. performing educational and research tasks in connection with providing health care services and promoting health, including but not limited to implementing new technologies and methods of treatment.

Pursuant to Article 54(1) of the TAA, teaching hospitals acting as autonomous public health care units (APHCU) manage the property they hold. That said, the fixed assets of an APHCU may be disposed of, leased, rented out, let for holding in usufruct, and lent for use only in accordance with the conditions laid down by the APHCU's founding body (Art. 54(2) of the TAA). These conditions include, in particular, the requirement to obtain consent from the founder for disposing of, leasing, renting out, letting for holding in usufruct, and lending for use of fixed assets. First and foremost, it should be noted that teaching hospitals view the funds allocated for their operation, including, especially, for the execution of highly specialised procedures, as inadequate to actual needs. Furthermore, teaching hospitals witness a constant rise in prices for materials, attributed primarily to providing cost-intensive services (i.a.: drug therapy programmes, chemotherapy, organ transplantation, and selected invasive procedures, in which the biggest expenses are implants), which are rarely rendered by other hospitals, e.g. district-owned hospitals [4].

Institution of higher education for medical studies as a founder of a teaching hospital

It bears pointing out that teaching hospitals operate under two legal instruments of equal status, namely the Therapeutic Activity Act and the Law on Higher Education [5]. This duality causes many practical problems regarding, *inter alia*, the position and tasks of the founders, the particular nature of issues concerning the founders' property, with which teaching hospitals typically operate, as well as the matter of co-financing training activities through the teaching hospitals' funds.

It is important to mention that 1948 is considered the year institutions of higher education for medical studies established teaching hospitals. Pursuant to Article 3 of the Act on *Social Health Care Units and Planned Economy in Health Service* [6], the state set up and maintained specialised treatment units that serviced the area of at least one province, including, *inter alia*, teaching hospitals. Under Article 5 of the same statute, teaching hospitals were defined as hospitals whose wards, either all or most, were used for the purposes of training and research by higher education institutions. In addition, the law provided that in cities with state-run teaching hospitals, the Minister of Health and the Minister of Education had the authority to incorporate into

these hospitals, as wards, autonomous medical teaching and research facilities. At present, Poland lacks regulations comprehensively covering the functioning of teaching hospitals in the health care system. Although the need to adopt a separate statute on teaching hospitals has long been recognised, legislative work on the bill has not yet been completed.

In accordance with the provisions of Article 13(3) of the Law on Higher Education (LHE), an institution of higher education for medical studies or a basic organisational unit of an institution of higher education operating in the field of medical sciences may be involved, as part of its tasks, in providing medical care in the scope and forms set forth in the legislation on therapeutic activity. Pursuant to Article 18 of the LHE, a public institution of higher education is established, liquidated, and merged with another public institution of higher education by means of statutory law. Moreover, Article 106 of the LHE provides that the undertaking by institutions of higher education of teaching, academic, research, experimentation, artistic, sporting, rehabilitation, and diagnostic activity does not constitute economic activity for the purposes of the provisions of the Act of 2 July 2004 on the Freedom of Economic Activity [7]. Legal literature on the subject emphasises the need for implementing so-called control tools that allow for separating teaching hospitals' activity of rendering health care services from teaching and scientific research, which could boost the efficiency of teaching hospitals' financial management [8].

In compliance with Article 6(6) of the TAA, institutions of higher education may run health care entities in the form of capital companies: a limited liability company or a joint-stock company. Furthermore, Article 6(7) of the TAA stipulates that in a capital company conducting therapeutic activity related to the performance of teaching and research tasks in connection with the provision of health care services and the promotion of health, the face value of shares or stocks held jointly by institutions of higher education for medical studies may not exceed fifty-one percent of the company's share capital. Aside from the institutions of higher education for medical studies, shares or stocks in these companies may be held only by the State Treasury, local self-government units, and State Treasury companies of particular importance to the state economy. What is more, institutions of higher education may also continue carrying out therapeutic activity as autonomous public health care units founded by the institutions of higher education for medical studies or establish new autonomous public health care units by way

of merging at least two already existing autonomous public health care units in the manner provided for in Article 66(1)(2) of the TAA. Pursuant to Article 201(1) of the TTA, they may not, however, establish new autonomous public health care units, with the exception of APHCUs formed upon a merger. In conclusion, operating a health care entity as a joint-stock company is the only legally permitted form of engaging in the provision of health care services available to institutions of higher education. The institutions themselves may not carry out therapeutic activity.

As a founding body of a teaching hospital, an institution of higher education may decide to liquidate it in accordance with the rules laid down in Article 60 of the TAA. The liquidation takes place by means of an ordinance, an instruction, or a resolution of the competent founding body. It also requires passing a resolution by the founder's faculty senate.

Teaching hospital personnel

Institutions of higher education for medical studies are public institutions of higher education supervised by the Minister of Health (Article 2(1)(27) of the LHE). Article 13 of the LHE enumerates the principal objectives of an institution of higher education, which include:

1. providing education that enables the students to acquire and advance their knowledge, as well as gain skills necessary in professional life;
2. fostering through education a spirit of responsibility for the Polish State, the consolidation of democratic principles and a respect for human rights;
3. conducting research and development activities, providing research services and transferring technology into the economy;
4. training and development of academic faculty;
5. popularising and disseminating advances in science, national culture, and technology, including by collecting and making available library and information resources;
6. providing postgraduate programmes, courses, and training in order to develop essential new skills to satisfy the labour market's demands through a system of life-long learning;
7. creating conditions for the physical development of students;
8. actively supporting local and regional communities;
9. creating conditions for disabled persons to fully participate in:
 - the processes of learning,
 - the research.

Article 87 of the LHE stipulates that hospitals serve as teaching and research facilities for institutions of higher education for medical studies (or other institutions of higher education providing teaching and conducting research in the field of medical sciences). The functioning of hospitals is governed by the regulation of the Therapeutic Activity Act. Pursuant to Article 92(1) of the TAA, academic teachers and individuals enrolled as doctoral students at institutions of higher education for medical studies are employed at the health care entities established or run by the institutions of higher education for medical studies, i.e. by teaching hospitals, and at the organisational units made available to the institution of higher education in compliance with Article 89(2) or (3) of the TAA. The wording of this provision precludes academic teachers in institutions of higher education for medical studies from pursuing self-employment, which would allow them to enter into civil-law contracts acting as entrepreneurs, i.e. operate under contracts concluded in the course of their individual medical practice (individual specialist medical practice) [9]. Employment referred to in Article 92 of the TAA stands for salaried employment, not self-employment [10].

The obligation of academic teachers employed in institutions of higher education for medical studies or other institutions of higher education operating in the field of medical sciences are set forth in Article 112 of the LHE. Academic teachers are engaged in the provision of health care by performing teaching and research tasks in connection with medical services delivered in organisational units dedicated to carrying out teaching and research activity, which were made available for such institutions of higher education in accordance with the provisions of the TAA. Furthermore, the law stipulates that health care services are delivered by academic teachers under separate contracts concluded with entities conducting therapeutic activity and providing the organisational units. In practice, what transpires from the application of this provision is that academic teachers remain in two employment relationships and perform work for two separate employers: an institution of higher education and a teaching hospital. Zdzisław Kubot argues that hiring an academic teacher employed by an institution of higher education for medical studies in a teaching hospital constitutes additional and secondary employment in relation to employment at the institution of higher education for medical studies, meeting the criteria for so-called elite employment. The elite of academic teachers of medicine perform

specialised work for the benefit and under the direction of both employing entities, while the nature of their employment involves performing work in the conditions set down by those in management positions at the institutions of higher education for medical studies and at the teaching hospitals [11]. In its judgement of 14 May 2012 [12], the Supreme Court confirmed that with regard to training future physicians, the practice of the profession of an academic teacher combines both theoretical and practical aspects; hence, teachers have to both run theoretical courses and carry out practical research, and teaching has to include presenting the practical side of the theoretical issues taught.

In compliance with Article 107 of the LHE, employees of an institution of higher education include both academic and non-academic staff. The same legal instrument lists academic staff as:

- research and teaching staff,
- teaching staff,
- research staff,
- qualified librarians, and qualified archive and information system staff.

In accordance with Article 118 of the LHE, the employment relationship of academic staff is established on the basis of an appointment or an employment contract. Only academic staff who hold the academic title of *profesor* (professor) may be employed by appointment. Employment by appointment is on a full-time basis. Other staff members are employed pursuant to the provisions of the Labour Code.

Section II chapter IV of the TAA is devoted to issues of therapeutic activity of special character, namely involving the performance of educational and research tasks connected with providing health care services and promoting health. Article 89 of the TAA provides that teaching hospitals are obligated to:

- 1) carry out therapeutic activity consisting in the provision of health care services and the performance of educational and research tasks in connection with providing health care services and promoting health, including but not limited to implementing new technologies and methods of treatment;
- 2) perform tasks consisting in providing undergraduate and postgraduate training in medical professions in connection with providing healthcare services and promoting health;
3. make organisational units dedicated to providing undergraduate and postgraduate training in medical professions available to institutions of higher education for medical studies.

The effect of the aforementioned regulations is that a health care entity that has been established or is operated by an institution of higher education for medical studies is required to make available organisational units dedicated to providing under- and post-graduate education in medical professions to the institution of higher education for medical studies. Such an entity (a teaching hospital) is tasked with participating in the preparation of students for practicing the medical profession, as well as with educating them. For the purposes of identification, its name should contain the word *uniwersytecki* (teaching) [2].

Article 89 (4)(1) of the TAA stipulates that the provision of organisational units is subject to civil-law contracts concluded between institutions of higher education for medical studies and entities carrying out therapeutic activity. The law sets forth the essential elements of such contracts, providing in 89(5) of the TAA that, at minimum, they should include:

1. duration of the contract and terms for early termination;
2. funds due to the provider on account of executing the contract, manner of transferring the funds, and rules governing settlement;
3. list of movable and immovable property made available for purposes of executing the contract, manner of property provision, and terms and conditions for property use;
4. indication of number and professional qualifications of academic teachers designated to perform tasks referred to in section 1 at the provider;
5. circumstances constituting grounds for change in contractual terms;
6. rules on civil law liability for damage caused by students, participants in doctoral studies, or academic teachers and rules of procedure on breaches of terms laid down by the provider;
7. rules for carrying out supervision by the institution of higher education for medical studies over performance of teaching and research tasks in the organisational unit provided;
8. rules for resolving disputes arising out of executing the contract.

It should be noted that according to the provisions of Article 89(6)(1) of the TAA, the designations: *klinika*, *kliniczny*, and *uniwersytecki* may be used solely by the providers and organisational units made available under contracts for providing organisational units to institutions of higher education for medical studies. From a practical point of view, these contracts to a great extent determine the mutual functioning of

the two entities: teaching hospitals and institutions of higher education for medical studies.

Conclusion

To sum up the foregoing reflections, teaching hospitals play a crucial role in the health care system. The specific nature of teaching hospitals calls for a different legal regime from that governing other hospitals. Unfortunately, this fact is not reflected in the provisions of generally applicable law, which lack regulations relating to the particular nature of the activity carried out by this type of health care entity. Specifically, it is worth noting that the National Health Fund has failed to take into account teaching hospitals' special role as hospitals of the highest referral level. One possible solution is to introduce—via an amendment to the Act on Health Care Services Financed from Public Funds—a network of hospitals comprised of hospitals that meet statutorily defined criteria. Teaching hospitals would be included in the network as part of national hospitals—functioning as highly specialised hospitals assigned with treating patients suffering from rare diseases and with complicated health conditions. The special role teaching hospitals occupy in the health care system has long been emphasised; thus, it is necessary to regulate their position through a detailed specification of the tasks performed by institutions of higher education for medical studies supervising research and teaching activity. Attention should also be directed to the profound significance these entities have in the process of educating and training physicians, dentists, and other medical personnel. Leaving the supervision of the operations of teaching hospitals in the hands of institutions of higher education for medical studies guarantees better fulfilment of teaching tasks.

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Conflict of interest statement

The authors declare no conflict of interest.

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