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DECLARATION OF DEATH – DOCTOR’S AND SELECTED MEDICAL PROFESSIONAL’S AUTHORITY AND DUTIES

Summary

The procedure for determining death and issuing a death certificate is undoubtedly a broad issue. In this study, the author draws attention to the problems of primary care physicians, who are constantly at the disposal of patients and are often required to exceed their capabilities as well as the rights to perform activities outside the medical facility and hours of providing medical services for determining deaths, filling in and issuing death certificates. Moreover, due to the lack of unified interpretation of current legislation, such assistance is often not funded. Considering the current legal status, the selected issues included in the draft law on the determination, documentation and registration of deaths, issued by the Supreme Medical Council, were presented. The last part of the article discusses the issue of appointing the coroners.

Keywords: coroner, declaration of death, death certificate, burial during the state of epidemic threat

Introduction

The World Health Organization (WHO) in August 2021 sounded the alarm about a severe decline in the number of vaccinations, resulting in a poor epidemiological situation with an increase in the number of cases of the new, then highly dangerous, delta variant. As of the end of August 2021, there was an 11% increase in mortality due to the SARS-CoV-2 virus, which was associated with the prediction that by December 1, 2021, the number of confirmed deaths due to COVID-19 disease in Europe would account for 236,000¹. Currently, according to an analysis of data reported to the WHO, by August 21, 2022, the number of all vaccinations in Poland was 54,886,654.

¹ <https://www.euro.who.int/en/media-centre/sections/statements/2021/statement-who-europe-stagnating-covid-19-vaccination-uptake-requires-urgent-action> (accessed 30.08.2021).
<https://www.politykazdrowotna.com/75999,who-szacuje-ile-osob-umrze-z-powodu-covid-19> (accessed 03.09.2022).

On the other hand, a total of 6,183,676 COVID-19 cases were reported between January 3, 2020, and September 1, 2022, with 117,130² deaths.

With reference to studies by the World Health Organization, the existing state of affairs calls for an analysis of the prevailing legal issue of death determination against the background of the pandemic. It can be predicted that the number of diseases will increase, and thus the number of deaths will increase. The issue of identifying the entities responsible for their determination and issuing death certificates in the current legal regime is unclear and requires urgent legislative changes adapted to modern sanitary-epidemiological security services.

The procedure for declaring death and issuing a death certificate is undoubtedly a broad issue. The article is mainly concerned with those employed in the public health service – doctors and medical professionals who are sometimes required to exceed their capabilities and sometimes their authority in favour of performing activities outside the medical facility and outside the hours of providing medical services to determine deaths, fill out and issue death certificates. This paper also addresses the issues of statutory forms of financing for the procedures in question (post-mortem). Current legislation and selected issues provided for in the draft law on ascertaining, documenting and registering deaths, reviewed by the Supreme Medical Council, were also presented, along with an analysis of the issue of appointing so-called coroners.

Regulations on the procedure for ascertaining and issuing death certificates prior to the SARS-CoV-2 pandemic

First of all, it is necessary to briefly outline the legal status existing until the spread of the SARS-CoV-2 virus. The reason for consideration is Article 43 of the Law on the Profession of Physician and Dentist³, which stipulates that the competence to determine death is vested in the physician (§ 2(1)⁴) and dentist on the basis of personally performed examinations and made findings. Failure to fulfil together the prerequisites of both personally performing the tests and making findings in this regard before the death is pronounced is subject to criminal liability⁵.

In interpreting the aforementioned mandatory tests, it should be pointed out that none of the legal acts specifies when specific actions should be taken or when they should be carried out. Knowledge can only be gained in the course of carrying out the obligation to determine the death and its cause of death as a result of a visual

² <https://covid19.who.int/region/euro/country/pl> (accessed 03.09.2022).

³ Law of December 5, 1996 on the professions of physician and dentist, Dz. U. of 2022, item 1731 (hereinafter: u.z.l.).

⁴ See § 2 (1) of the Regulation of the Minister of Health of April 10, 2012 on the procedure of a medical entity performing inpatient and round-the-clock health care services with a patient's remains in the event of a patient's death, Dz. U. of 2012, item 420.

⁵ Certification of falsity by a physician as to death without inspecting the corpse under Article 271 of the Penal Code, Judgment of March 16, 2004, II K 757/03 (unpublished), own research material, per: R. Kędziora, *Odpowiedzialność karna lekarza w związku z wykonywaniem czynności medycznych*, Wolters Kluwer Polska, Warsaw 2009, p. 34.

inspection, pursuant to Article 11(2) of the Law on Cemeteries and Burial of the Dead of January 31, 1959⁶, and the doctor’s obligation to determine the identity of the corpse, interview persons from the environment of the deceased to determine the circumstances of the death that occurred, as well as review the medical records of the deceased preceding his death (according to Section 6 (1) of the Decree of the Minister of Health and Welfare dated August 3, 1961, on the determination of death and its cause⁷).

The essential, extending guidelines for the activities of ascertaining death are regulated by the provisions of the u.c.ch.z. and in detail in the 1961 Ordinance. According to the content of the u.c.ch.z., the duty with regard to the activities of ascertaining death and its cause (of a person outside the treatment facility) is within the competence of the doctor who treated the patient’s last illness. The rules on the basis of which doctors are appointed to determine death and its cause are indicated by the Minister of Health and Welfare by means of a decree of 1961. According to this decree, a doctor providing medical services to a patient within 30 days before the date of death is obliged to determine the patient’s death, except in circumstances of reasonable suspicion of causing the patient’s death as a result of a crime. It can be problematic if the deceased person did not receive health care during the 30-day period or received health care from several treatment facilities and, therefore, medical services from several doctors (e.g., a dentist, a dermatologist and a psychiatrist, or for example, two internal medicine doctors).

The legislature also provided a solution for such a situation, namely, under Section 3 of the 1961 Ordinance, when, in the absence of a doctor of last resort or the doctor’s inability to arrive at the location of the corpse due to a distance of more than 4 kilometres from his residence, or due to his illness or other legitimate reasons, he cannot perform an inspection within 12 hours of being summoned to the location, then the obligation to declare death shall pass to another doctor. In addition, Article 11 (1) and (2) of the u.c.ch.z. provides for the impossibility of determining the doctor of last resort and specifies the manner of inspection and the proper qualifications of those who, in place of the doctor, may perform it in such a situation. The acts of ascertaining death and its cause shall be performed in the course of an inspection by a doctor, and when it is also impossible for a doctor to perform them, the competent district governor should appoint another person to perform the act without charging the cost of the inspection and the issuance of the certificate to the family of the deceased.

Eligible, and thus obligated to declare death, is any doctor licensed to practice, regardless of his speciality, qualifications or length of service. It is also irrelevant whether the eligible entity conducts: its own individual medical practice, individual

⁶ Law of January 31, 1959 on cemeteries and burial of the dead, Dz. U. of 2020, item 1947 (hereinafter: u.c.ch.z.).

⁷ Ordinance of the Minister of Health and Welfare dated August 3, 1961 on the determination of death and its cause, Dz. U. of 1961, No. 39, item 202 (hereinafter: 1961 Ordinance).

specialized medical practice, practice in the form of a general partnership, civil partnership, partnership or is an employee, volunteer, etc.⁸

Also included in the circle of authorized persons are a physician-in-training (Article 15b, paragraph 3, item 10 of the u.s.l.), a senior feldsher and a feldsher (§ 3, item 2 of the 1961 Ordinance), a village midwife (in the situation of death before the seventh day of life of a newborn who was under the care of the midwife, when the nearest medical facility is more than 4 km away), and a nurse employed at a village health post (due to special transportation conditions or other legitimate reasons) (§ 3 item 3 and § 5 item 1 of the 1961 Ordinance).

It should be taken into account that the present regulations are outdated and unadapted to the constantly developing advances in medicine and the organizational principles of the operation of medical institutions since, for many years in Poland, there has been a cessation of training aimed at preparing for the profession of feldsher, i.e., persons with secondary education, who (in addition to ascertaining death) are authorized to issue certificates of health, temporary inability to work, as well as to perform vaccinations⁹. In Poland, as of April 30, 2018, there were 532 non-practitioners and 211 actively practising feldshers practising¹⁰. Similarly, today the profession of rural midwifery is not widely practised¹¹.

Currently, nurse health centres or district health centres do not function in practice as treatment entities. The last have been replaced by family doctor clinics¹². The beneficiary, according to Article 9 of the Law of October 27, 2017, on primary health care¹³, has the right to freely choose the provider who provides primary health care services from among those entities that have entered into a contract with the National Health Fund (NFZ) for the provision of primary health care services. The choice of provider is not limited by regionalization under the health care reform introduced on January 1, 1999, which repealed the burden on the recipient to be assigned to

⁸ M. Boratyńska, M. Malczewska, 8.3. *Uprawniony podmiot*, in: M. Boratyńska, P. Konieczniak, E. Zielińska (eds.), *Medical Law System, vol. II, part. 2: Regulacja prawna czynności medycznych*, Wolters Kluwer Polska, Warsaw 2019, pp. 765–766.

⁹ S. Turkowski, *Zakres i skuteczne ograniczenie odpowiedzialności karnej*, E-bookowo Internet Publishing House, Warsaw 2012, pp. 27–28.

¹⁰ K. Nowosielska, *Feldshers will be able to care for patients on COVID-19*, <https://www.prawo.pl/zdrowie/felczerzy-beda-mogli-sie-opiekowac-chorym-na-covid-19,504015.html> (accessed 03.09.2022).

¹¹ T. Huber, *Certification of death - duties of the physician*, <https://oilkrakow.pl/wystawianie-kart-zgonu-obowiazki-lekarza/> (accessed 03.09.2022).

¹² A. Kania, *Interrogatory No. 20763 to the Minister of Health on analyzing the current provisions of the law on the determination of death and its cause and making changes to them*, <https://www.sejm.gov.pl/sejm7.nsf/InterpelacjaTresc.xsp?key=0CC3B16B> (accessed 03.09.2022).

¹³ Law of October 27, 2017 on primary health care, Dz. U. of 2021, item 1050.

a specific provider¹⁴. The choice is made by submitting the appropriate declaration, indicating a specific primary care physician, nurse and midwife¹⁵.

From a practical point of view, the only limitation for the recipient, i.e. the patient, may be the time availability of medical services provided by the selected treatment provider. Relevant information can be obtained by the patient directly from the selected medical facility or drawn from the websites of the National Health Fund¹⁶.

In addition, only a doctor is among those authorized to declare death on the emergency medical team. In accordance with the provisions of Article 3(10) of the Law on State Emergency Medical Services¹⁷, medical rescue teams undertake out-of-hospital medical rescue activities, which, on the basis of Article 3(4) of the A.P.R.M., are aimed at saving a person in a state of emergency. Thus, this law prevents the arrival of an ambulance to a deceased person in order to determine the signs of death of that person, with the exception of the situation of determining death upon arrival, against which a doctor from the emergency medical team has previously taken emergency medical measures. On the other hand, if the patient’s death occurred during medical transport to a treatment facility in a medical emergency, and there is no doctor on the ambulance team, then the paramedic may, on the basis of Article 11(10) of the A.P.M., abandon resuscitation after assessing the patient’s condition. This circumstance does not authorize the paramedic to formally declare death; in this situation, death can only be declared by a doctor at the hospital under Article 28(1)(2) of the Medical Activities Law¹⁸. And when the death of a patient occurs in a hospital facility, then according to § 1 and § 2 (1), this duty is incumbent on the doctor treating the patient or the doctor on duty¹⁹.

In a situation of suspicion of a crime, death is confirmed by a doctor, if possible, by a forensic expert appointed by the court or prosecutor to conduct an inspection or autopsy of the body and issue an opinion in accordance with the provisions of Article 209 § 2 together with Article 209 § 5 of the Code of Criminal Procedure²⁰. In a situation to the contrary, i.e., when the doctor concludes that death was due to natural causes, he is entitled to limit the scope of activities to an external inspection of the corpse, noting whether there are traces on the body of the deceased indicating bodily injuries or signs of the use of corrosive poison (Section 8 (1) of the 1961

¹⁴ D. Karkowska, 2.10. *Prawo wyboru świadczeniodawcy*, in: *eadem*, *Prawa pacjenta*, Wolters Kluwer Polska, Warsaw 2009, p. 328.

¹⁵ <http://www.nfz-warszawa.pl/dla-pacjenta/co-kazdy-pacjent-wiedziec-powinien/podstawowa-opieka-zdrowotna/> (accessed: 03.09.2022).

¹⁶ M. Dercz, H. Izdebski, T. Rek, 5.6.5. *Prawo wyboru a ambulatoryjne świadczenia specjalistyczne*, in: M. Dercz, H. Izdebski, T. Rek, *Dziecko – pacjent i świadczeniobiorca: poradnik prawny*, Wolters Kluwer, Warsaw 2015, p. 90.

¹⁷ Law of September 8, 2006 on State Emergency Medical Services, Dz. U. of 2021, item 159, 1559 (cited as: u.p.r.m.).

¹⁸ Law of April 15, 2011 on medical activity, Dz. U. of 2021, item 711.

¹⁹ OJ. U. of 2012, item 420.

²⁰ Law of June 6, 1997 Code of Criminal Procedure, Dz. U. of 2021, item 534, 1023 (hereinafter: the Code of Criminal Procedure).

Ordinance). The doctor is obliged to inspect the corpse within 12 hours of the call; if a non-physician is otherwise obliged to do so as part of the next steps, i.e. to issue a death certificate, then the inspection of the corpse must not be carried out before 12 hours of the call.

Eligibility to issue a death certificate

In discussing the present activities, it should be emphasized that the authority to declare death is not equivalent to the authority to issue a death certificate. Based on the confirmed death, a death certificate is issued. This is an administrative action governed by the provisions of Articles 92–95 of the Law – Law on Civil Status Records²¹ to prepare a death certificate. The treating physician in the last illness, i.e., within 30 days (under Sections 1 and 2 of the 1961 Ordinance), as well as other entities that are appointed to do so by the relevant district governor (under Article 11(4) of the u.c.ch.z.), are authorized to fill out the death certificate with annotation of its cause. The provisions of the 1961 decree regulate the above issues.: in the situations provided for in Section 3 of this act, the death certificate may be issued by another doctor who established the death, being called to an accident or sudden illness, by a doctor or feldsher who is in an employment relationship with a clinic or health centre or its facility and who exercises health care over the region where the corpse is located, or by a village midwife when the death of a newborn baby under her care occurred before the end of the 7th day of life, with the nearest clinic or health centre located above 4 km. At the same time, it should be pointed out that in a situation of reasonable suspicion that the patient died as a consequence of criminal actions, the doctor performing the examination or autopsy on the order of the court or prosecutor is obliged to prepare and issue a death certificate (§ 2 (3) of the 1961 Ordinance).

The doctor, under Article 43(2) of the U.S.L., in justified cases, has the authority not to issue a death certificate without first ordering or personally conducting an autopsy. Thus, when a corpse has previously undergone an autopsy, the doctor is required to review the autopsy report before issuing a death certificate (Section 2(2) of the 1961 Ordinance).

In addition, according to Article 43(3) of the A.L., a doctor may issue a death certificate on the basis of documentation of a post-mortem examination performed by another doctor or other authorized person, such as a feldsher, without re-examination or examination²², as well as on the basis of documentation indicating a finding of permanent, irreversible cessation of brain function (brain death) or stating irreversible cardiac arrest preceding organ procurement. Equally, it is an exception to the rule of personal performance of examinations and findings by the doctor who issues the death certificate,

²¹ Law of November 28, 2014 – Law on Civil Status Records, Dz. U. of 2021, item 709.

²² A. Plichta, in: M. Kopeć (ed.), *Ustawa o zawodach lekarza i lekarza dentystry. Komentarz*, Wolters Kluwer, Warsaw 2016, Article 43.

but the obligatory nature of the direct determination of the cause of death – although in a different scheme – is still preserved²³.

If a doctor is unable to determine the cause of death, he may order laboratory tests, but this circumstance cannot be grounds for refusing or delaying the issuance of a death certificate (Section 4 of the 1961 Ordinance).

Moreover, when a doctor cannot determine the identity of a corpse and suspects that the death bears the hallmarks of a crime or is the result of suicide, he or she is obliged to refrain from issuing a death certificate and notify the police or the prosecutor’s office (§ 7 of the 1961 Ordinance and 240 § 1 of the Criminal Code²⁴, in conjunction with Article 40(2)(1) of the u.s.l.). By the power of the 1961 decree, failure to notify the relevant authorities of the fact of suicide is a misdemeanour (under Article 18 of the u.c.ch.z.), punishable by arrest or a fine. T. Dukiet-Nagórska²⁵ cites the position that although a doctor, in the performance of his official duties, is obliged to report the commission of murder (under Article 148 of the Penal Code), apart from this exception in the face of other criminal acts committed, he has only the power to report, but not the obligation, and this with the prior consent (or implied consent) of the patient, since only the patient as “master of secrecy”²⁶ and thus the beneficiary and respondent of such a right can override the doctor’s obligation to maintain professional secrecy. Currently, a doctor has no obligation or authority to report a suicide²⁷. The obligation of the family doctor to notify the family doctor of a criminal act disclosed in the course of his professional activities and the provision of medical services thus exempts him from medical confidentiality²⁸.

To sum up, in the event that the doctor who provided medical services to the patient during the last 30 days of life, for legitimate reasons, can not issue a death certificate, the document is issued by the entities appointed for this activity by the competent district governor or the persons indicated respectively in § 3 of the 1961 decree. Incidentally, on the canvass of Article 11, paragraph 9 of the Act, in a situation of suspicion of a criminal cause of death, in addition to the death certificate, the consent of the public prosecutor is required for burial.

Remuneration for the act of ascertaining and documenting death

In practice, a primary care physician is regularly called upon to declare death and issue a death certificate, creating a heavy burden and difficulty in providing regular medical services to patients waiting in line. In addition, there are clear loopholes in

²³ R. Kędziora, 1.3. *Pojęcie i rodzaje czynności medycznych w świetle obowiązującego ustawodawstwa medycznego. Ustawa z dnia 5 grudnia 1996 r. o zawodach lekarza i lekarza dentystry*, in: idem, *Odpowiedzialność karna lekarza...*, op. cit, pp. 34–35.

²⁴ Law of June 6, 1997 – Criminal Code, OJ. U. of 2021, item 1023 (hereinafter: k.k.).

²⁵ T. Dukiet-Nagórska, *Lekarski obowiązek współdziałania z organami ścigania a tajemnica lekarska*, “Law and Medicine” 2002, no. 12, p. 4.

²⁶ M. Filar, *Lekarskie prawo karne*, Zakamycze, Kraków 2000, p. 351.

²⁷ T. Dukiet-Nagórska, op. cit.

²⁸ M. Prusik, *Zachowanie tajemnicy lekarskiej a obowiązek zawiadomienia o podejrzeniu popełnienia przestępstwa*, “Kortowski Przegląd Prawniczy” 2014, no. 2, p. 6.

the law relating to the remuneration of doctors for the act of determining deaths. The essence of further problems are the legal definitions of the health care benefit regulated by Article 2(1)(10) of the A.L. and the health care benefit introduced by the Act of August 27, 2004, on health care services financed from public funds²⁹. According to the u.dz.l*., health benefits are: “activities aimed at preserving, saving, restoring or improving health, as well as other medical activities resulting from the treatment process or separate regulations governing their performance,” while health care services are: health care benefits, health care benefits in kind (e.g., medical devices) and accompanying benefits (e.g., sanitary transport service). In light of the cited regulations, the declaration of death and issuance of a death certificate do not fall within the limits of a health benefit. Regardless of the above, the act of confirming death does not fall within the scope of guaranteed financed health care services of the National Health Fund under Article 97(3) of the SLE.

In the context of the provisions of Article 11(2) of the A.C.C., the cost of the determination of death may not be borne by the family of the deceased either. The manner in which such costs are to be covered is set forth in Paragraphs 9 (1–2) and (4) of the 1961 Ordinance, indicating that the relevant county government has an obligation to fund a lump sum fee for an activity related to the issuance of a death certificate, as well as reimbursement for travel expenses when the corpse is located more than 1 km from the doctor’s place of employment or residence, excluding the cost of activities that are performed during the doctor’s hours of employment at a public health care facility. In addition, remuneration from the employer is not due to a doctor who performed an inspection or autopsy of a corpse on the order of a court or prosecutor (Section 9(3) of the 1961 Ordinance), since the State Treasury is obliged to pay for these activities under Article 618(1)(9) of the Code of Criminal Procedure³⁰. Against the background of the reference as to lump-sum remuneration in § 9 to the obsolete provisions of § 7(2) of the Ordinance of the Council of Ministers of December 12, 1958, on the emoluments of physicians, dentists and other employees with higher education employed in social health care institutions³¹ or § 18(2)(3) of the Ordinance of the Council of Ministers of December 12, 1958, on the emoluments of certain health care employees³², I. Radziewicz-Winnicki, Undersecretary of State at the Ministry of Health, in his response to interpellation No. 11564 of January 7, 2013, regarding the appointment of physicians appointed for the determination of

²⁹ Act of August 27, 2004 on health care services financed from public funds, Dz. U. 2021, item 1258, 1292, 1559 (hereinafter: u.ś.o.z.).

³⁰ M. Boratyńska, M. Malczewska, 8.7. *Koszty oględzin zwłok i stwierdzenia zgonu*, in: M. Boratyńska, P. Konieczniak, E. Zielińska (eds.), *System Prawa Medycznego*, vol. II, part. 2, op. cit., p. 775.

³¹ Ordinance of the Council of Ministers of December 12, 1958 on the emoluments of physicians, dentists and other employees with higher education employed in social health care institutions, Dz. U. 1958, no. 74, item 376.

³² Ordinance of the Council of Ministers of December 12, 1958 on the emoluments of certain health care workers, Journal of Laws. No. 74, item 379.

death and its cause by the competent district governor, assured that active work was underway to develop new legal solutions in line with current needs, “corresponding to social, economic and administrative reality”³³.

Who is to declare death? Need to amend the law and establish the institution of a coroner

To meet the numerous demands, particularly from the medical community raising heavy burdens, as well as the problem of lack of funding for additional activities of primary care physicians not contracted with the National Health Fund, a draft law on the determination, documentation and registration of deaths was prepared, dated March 25, 2019. At the outset, it is worth noting that the draft was stuck in a legislative vacuum at the public consultation stage. The last annotation appearing in the Public Information Bulletin of the Government Legislation Center is dated November 25, 2019. Nonetheless, it is worth tracing this draft, and the author’s chosen envisaged changes to the previous “archaic, inadequate regulations and terminology that do not meet the requirements of today’s realities, including the state of the law”³⁴.

The bill provides for a harmonized procedure for ascertaining and confirming death, determining the cause of death and conducting a post-mortem examination, rules for drawing up a death certificate and registering death, and issues of financing the tasks of ascertaining, confirming and documenting death. A particularly highlighted issue is the establishment of the coroner’s institution with appropriate regulations for its operation.

Legitimation of death pursuant to Article 3(2) of the draft law is provided for, among others: a primary care physician providing care to a person whose death is to be determined during working hours, a physician providing medical care in an entity providing outpatient health care services, a physician providing night and holiday health care services, a physician providing medical care in an entity other than a medical entity. Opinions submitted as part of the project’s consultations call for supplementing the resolution of the regulation of the order of eligible persons to declare death. The Supreme Medical Council, in its opinion of the draft, signals the possibility of conflicting situations in connection with the determination of the physician competent to declare death, illustrating this thesis with a situation where the death of a patient under the care of a primary care physician, who is a provider of services in the area of the municipality where the physician was located and where the patient resided, occurred in an entity other than a treatment centre. In reference to the above,

³³ I. Radziewicz-Winnicki, *Response of the Undersecretary of State in the Ministry of Health – under the authority of the Minister – to Interrogatory No. 11564 on the appointment of physicians for the determination of death and its cause, appointed for this activity by the competent district governor*, <https://www.sejm.gov.pl/sejm7.nsf/InterpelacjaTresc.xsp?key=68705F55> (accessed 03.09.2022).

³⁴ *Explanatory Memorandum of the bill on ascertaining, documenting and registering deaths dated 25.11.2019*, <https://legislacja.rcl.gov.pl/projekt/12327506/katalog/12643146> (accessed 03.09.2022).

the legislative proposal still does not solve the problem of mandatory, as the bill says, the performance of activities of determination of death as part of the obligation to provide health services contracted with the National Health Fund, the failure of which is associated with contractual penalties from the National Health Fund³⁵. This is because it is argued that it is unacceptable to force doctors³⁶ or attempt to hold a family doctor professionally liable³⁷ who refuses to come to the scene where a body is found and perform the act of determining death and issuing a death certificate during working hours instead of providing medical services to sick people and saving lives.

The expansion of the catalogue of persons authorized to declare death to include the head of the emergency medical team has been greeted with disapproval by the medical community. The NRL's main objection to the draft in this regard is that the function of the head of the basic emergency medical services team may be performed by a paramedic or a system nurse, i.e. a non-physician who has no experience and will not be able to conduct the relevant tests.

A death outside the hospital will also be able to be determined by a qualified doctor – a coroner appointed by the governor. According to the bill, official coroners should be on standby 24 hours a day, given the circumstance that a coroner is required to perform an examination within four hours of receiving a call from an emergency dispatcher or the Police. The governor is required to maintain a list of coroners in written or electronic form. The bill also indicates what kind of education the person holding the office of coroner is to have, i.e. it is to be a doctor with a speciality in forensic medicine, pathomorphology, anesthesiology and intensive care or emergency medicine. A coroner can also be a doctor with at least 3 years of experience who has received training at a medical school's forensic department. The bill also provides for the possibility for a doctor who is in the process of specializing in forensic medicine or pathomorphology to serve as a coroner after completing the second year of specialization training and obtaining approval from the head of the specialization. The NRL raises doubts about the last prerequisite for being able to perform the tasks of a coroner since a doctor's seniority of fewer than three years in the face of not having completed specialized training in an incomplete field and at the same time having little professional experience indicates insufficient preparation for the activities of determining death.

The bill, in Article 3(3), stipulates that the determination of death by a physician or emergency medical team leader requires confirmation by a coroner. Here, too, there is a great deal of doubt, first and foremost, about the desirability of this provision.

³⁵ § 30(1)(2) of the Regulation of the Minister of Health of September 8, 2015 on the general terms and conditions of contracts for the provision of health care services, Dz. U. of 2020, item 320.

³⁶ *It's time to clean up death certification*, <https://www.mp.pl/medycynarodzinnna/aktualnosci/159795,twardowski-uporzadkowac-stwierdzanie-zgonow> (accessed 11.09.2021).

³⁷ M. Danielewicz, <https://poznan.wyborcza.pl/poznan/7,36001,26942987,lekarka-nie-przyjechala-do-zmarlego-pacjenta-by-potwierdzic.html> (accessed 03.09.2022).

“What is incomprehensible is the need for the coroner to confirm the determination of death made by a doctor of night and holiday health care, as well as a doctor providing medical care in an entity other than a medical entity, and the exclusion in these cases, based on Article 9 (1) of the draft law, of the possibility of issuing a death certificate by the doctor who determines the death”³⁸.

The proposed regulations appear to violate the principle of “presumption of innocence” derived from Article 42(3) of the Constitution of the Republic of Poland³⁹ and internationally recognized as a guarantee of a fair trial (Article 6(2) of the European Convention on Human Rights) until guilt is established by a final court judgment, the essence of which implies “the so-called absolute rule, in other words, recognizing no exceptions”⁴⁰. In turn, the regulation contained in the draft law prohibits the performance of coroner’s activities by a doctor who is under investigation: for an intentional crime prosecuted by public indictment or a fiscal crime; related to insufficient professional preparation.

Analyzing the most important issues, i.e. the financing of activities related to the determination and documentation of deaths, it should be signalled that they are still not clearly resolved in the draft under discussion. The remuneration for doctors’ activities is to be included in the amount of funds that are allocated for the purpose of financing medical activities, according to Article 24 of the draft law. There is a possible presumption that funding will be paid from the health premium. The bill stipulates that the coroner’s remuneration for the activities of ascertaining death and drawing up the death certificate will be 15% of the amount of average salary in the national economy, while 10% of the amount of the average salary when the death certificate is waived. Compared to, among other things, the fees of general practitioners for taking the steps of ascertaining and confirming death and issuing a death certificate, these amounts are incomparably lower. In addition, reimbursement for travel expenses to the location of the corpse was not included.

Summing up this part of the argument, it should be pointed out that the draft law on ascertaining, documenting and registering deaths of March 25, 2019, should be carefully analyzed and changes made to many of the blatant proposals in the amendment, and even propose to reject the draft in its entirety and start work from scratch, as demanded by the Federation of Healthcare Employers’ Associations of the Zielonogórski Alliance, alleging a lack of solutions in the current crisis of the system of ascertaining deaths and their causes due to “financing, accessibility to persons obliged to ascertain deaths, conflicts between institutions, etc.” At the same time,

³⁸ Position No. 122/19/P-VIII of the Presidium of the Supreme Medical Council of December 19, 2019 on the draft law on ascertaining, documenting and registering deaths, https://nil.org.pl/uploaded_files/documents/doc_1578052226_ps122-19-viii.pdf (accessed 03.09.2022).

³⁹ Constitution of the Republic of Poland of April 2, 1997, Dz. U. No. 78, item 483.

⁴⁰ S. Waltoś, *Konstytucyjna zasada domniemania niewinności a środki masowego przekazu*, “Nauka” 2009, no. 1, p. 1.

the critics add that the current bill “creates a large number of additional problems hitherto absent”⁴¹.

Based on the draft law on so-called coroners, the Regional Medical Chamber in Gdansk is looking for willing doctors to perform such a function. Interested parties should send in their statements; based on these statements, a list of doctors who can serve as coroners will be created, which the OIL says will be forwarded to the governor once the law on ascertaining, documenting and registering deaths comes into effect. Subsequently, the provincial governor, after consultation with the provincial consultant in forensic medicine, will conclude contracts to act as a coroner with selected doctors⁴². According to the OIL, each time a death is confirmed or confirmed and a death report and death certificate are prepared, there will be a remuneration of about PLN 775, and if the death certificate is waived, the amount will be about PLN 516. In addition, reimbursement is provided for the coroner’s travel expenses to the location of the corpse⁴³.

According to an annotation appearing in the Public Information Bulletin of the Government Legislation Center, a draft law on cemeteries and burial of the dead and a draft law – Introductory Provisions to the Law on Cemeteries and Burial of the Dead, dated September 29, 2021, were sent for comment on September 28, 2021. The aforementioned draft provides for solutions that concern the regulation of, among other things, the rules of international transportation of corpses, the introduction of regulated activities in relation to the funeral industry, the electronic death certificate and the electronic birth certificate with a stillbirth annotation, as well as some regulations selected by the author for discussion in this paper that introduce the institution of the coroner⁴⁴. The Presidium of the Supreme Medical Council, on October 21, 2021, expressed comments on the reform of the regulation of “posthumous law” issues in its position No. 109/21/P-VIII⁴⁵.

According to Article 27 of the draft under discussion, a coroner may be a doctor with the right to practice medicine in the territory of the Republic of Poland, who has legal capacity and who has not been convicted of an intentional crime prosecuted by public indictment or a fiscal crime. Such a person should also either have a speciality in forensic medicine, pathomorphology, anesthesiology and intensive care, or emergency medicine or demonstrate a minimum of three years of experience as a physician

⁴¹ *Doctors: The so-called coroners bill should be rejected in its entirety*, <https://www.medexpress.pl/lekarze-projekt-tzw-ustawy-o-koronerach-nalezny-odrzucony-w-calosci/76069> (accessed 03.09.2022).

⁴² *List of coroners*, “Gazeta Lekarska. Journal of Medical Chambers” 2021, No. 09, p. 12.

⁴³ *Looking for doctors willing to serve as coroner*, <https://oilgdansk.pl/bez-kategorii/szukamy-lekarzy-chetnych-do-pelnienia-funkcji-koronera/> (accessed 03.09.2022).

⁴⁴ *There will be the institution of a coroner in Poland. There is a bill*, <https://www.rynekzdrowia.pl/Polityka-zdrowotna/Bedzie-instytucja-koronera-w-Polsce-Jest-projekt-ustawy,225498,14.html> (accessed 03.09.2022).

⁴⁵ <https://legislacja.gov.pl/docs//2/12351755/12819378/12819381/dokument528556.pdf> (accessed 03.09.2022).

and training at a medical school’s forensic medicine department. In addition, a doctor may apply for the position as early as after completing the second year of specialization in forensic medicine or pathomorphology and obtaining approval from the head of the specialization.

In connection with Article 29(3) of the draft law, which imposes an obligation on the district medical council to inform the governor, among other things, of restrictions on the performance of certain medical activities, the Presidium of the Supreme Medical Council included in its position paper comment on clarifying the content of Article 27(1) by adding an additional point a condition under which a coroner may not be a doctor “a) suspended in the right to practice the profession or restricted in the performance of certain medical activities under regulations on the professions of physician and dentist or the regulations on medical chambers, b) punished with the penalty of suspension of the right to practice the profession, c) deprived of the possibility to practice the profession by a valid sentence of a criminal measure of prohibition of practising the profession or suspended from practising the profession by a preventive measure.”

Also questionable is the provision of Article 27 (5) and (6) of the draft charging the district medical board – at the request of the governor – with the obligation to establish and transmit within 90 days a list of candidates for coroners who meet the conditions of Article 27 (1) and (2), along with confirmation by the interested party of his candidacy. Since it is the responsibility of the provincial governor to maintain a list of coroners and make it available in the Public Information Bulletin, it should be mandatory for this body to conduct the recruitment of candidates for coroners, along with an assessment of the fulfilment of the statutory prerequisites for applying for the position and, in the event of termination, to identify a new candidate for coroner with confirmation of the application. According to the NRL, district medical boards are only allowed to provide the governor with information on the right to practice medicine in the territory of the Republic of Poland and specializations in forensic medicine, pathomorphology, anesthesiology and intensive care or emergency medicine by coroner candidates selected by the governor.

Attention should also be drawn to the glaring error of the draft, which, in Article 29(3), provides for the responsibility of the district medical board to provide the governor with information on, among other things, pending judgments of the disciplinary courts regarding deprivation of the right to practice the profession or on criminal proceedings that have been validly concluded, since “proceedings on the professional responsibility of physicians take place independently of criminal proceedings or disciplinary proceedings concerning the same act”⁴⁶.

Regarding the issue of financing activities related to the determination of death and its documentation, it is sufficient to mention that they were repeated from the draft law on the determination, documentation and registration of death dated March 25, 2019, so they will be omitted here.

⁴⁶ Article 54 (1) of the Law of December 2, 2009 on medical chambers, Dz. U. 2021.1342.

What is surprising is that Article 30 grants the coroner, while performing his duties or in connection with them, the protection provided for public officials in the Criminal Code. Due to the lack of parallel regulations for all physicians during the performance of the duty to determine death or in connection with it, such protection will not be available in the situation of providing medical services in the unit. A doctor is entitled to the special protection belonging to a public official, but it is nevertheless subject to certain conditions, i.e. performing activities in the framework of emergency services or in the case of providing medical assistance in a situation of urgent danger of loss of life, grievous bodily injury or grave disorder of health, as well as when the doctor performs his profession in a health care entity that has signed a contract for the provision of health care services financed from public funds, in connection with the provision of health care services in this entity⁴⁷. Thus, for example, the provision of treatment at an outpatient healthcare facility that has not signed a contract with the National Health Fund precludes such protection for the doctor.

What is incomprehensible is the indication in the draft law – the Law Introducing the Law on Cemeteries and Burial of the Dead – that during the period until June 30, 2023, a doctor will not be required to meet the condition of 3 years of seniority in the medical profession and training in a forensic medicine department of a medical university. In other words, the coroner’s function will be able to be performed by a doctor who has no experience in the medical profession (Article 20)⁴⁸.

To summarize, it should be noted that the draft Law on Cemeteries and Burial of the Dead and the draft Law – Introductory Provisions of the Law on Cemeteries and Burial of the Dead of September 28, 2021, deserve approval, as this is the first attempt to organize in a single document of statutory rank the regulations related to ascertaining and documenting deaths, as well as to introduce the institution of a coroner, systemically relieving the burden on primary care physicians. However, the Presidium of the Supreme Medical Council notes that the draft raises many objections and doubts and therefore calls for technically appropriate amendments⁴⁹.

Problems of determining death in a pandemic

In light of the hitherto existing Article 11(8) of the u.c.ch.z., physician (or, in the absence thereof, another person appointed by the competent district governor to determine the death), if he or she is certain or has a reasonable suspicion that the death occurred due to one of the infectious diseases (among which the SARS-CoV-2 virus is not included) listed in Appendix No. 1 “infections and infectious diseases for which infection, infectious disease or death due to them is suspected or diagnosed” to the Decree of the Minister of Health of December 10, 2019 on reporting suspicions

⁴⁷ Article 44, OJ. U. of 2021, item 790.

⁴⁸ <https://legislacja.gov.pl/docs//2/12351755/12819378/12819381/dokument528556.pdf> (accessed 03.09.2022).

⁴⁹ *Ibid.*

and diagnoses of infections, infectious diseases and deaths due to them⁵⁰ is obliged to report this circumstance to the state sanitary inspector.

A continuation of attempts to make the institution of the coroner permanent has become the reality of providing medical services during an epidemic emergency. As part of the amendment and streamlining of procedures for the determination of death due to COVID-19, the provisions of the Law of March 2, 2020, on Special Arrangements for the Prevention, Prevention and Control of COVID-19, Other Communicable Diseases and Emergencies Caused by Them⁵¹ were introduced. Article 7g includes a stipulation that doctors and dentists be appointed to determine the deaths of SARS-CoV-2 suspects that occurred outside the hospital. The competent provincial governors have the authority to appoint by agreement with the listed entities. This provision also stipulates that the financing from the state budget (in part administered by the governors) will also cover the personal protective equipment necessary for the activities (coveralls or long protective aprons and head caps; disposable masks with filters covering the breathing holes; protective goggles or visors; disposable nitrile gloves⁵²). In each case, the PCP can review and evaluate whether the special provision of Article 7g of the so-called “anti-covid law” or the general regulations on the determination of death from other causes of Article 11 of the u.c.ch.z. should be applied in the case at hand. The right thing to do is to check whether the deceased person’s data is in the official records of quarantined persons.

However, this simple regulation does not clarify a number of concerns raised by doctors. As indicated by past practice, only in a small number of cases has the institution of a coroner been introduced despite the absence of a law, and instead of a coroner – in violation of the law – primary care physicians continue to be called in to determine deaths with suspected SARS-CoV-2 infection. It is significant in this regard that GPs have neither the authority nor the appropriate training to determine such deaths⁵³. It also signals the question of whether the appointment of doctors (due to the urgency of the procedure) to determine death in the case at hand should not be made by administrative decision with immediate enforceability, which would greatly simplify procedures. In addition, the rate of remuneration to doctors for the work performed in connection with the determination of death was not specified⁵⁴.

⁵⁰ Ordinance of the Minister of Health of December 10, 2019 on the reporting of suspected and diagnosed infections, infectious diseases and deaths due to them, Journal of Laws. 2019, item 2430.

⁵¹ Law of March 2, 2020 on special solutions related to the prevention, prevention and control of COVID-19, other infectious diseases and emergencies caused by them, OJ. U. of 2021, item 11, 159, 180, 694, 981, 1023, 1090, 1162, 1163, 1192, 1510, 1535.

⁵² § 5c of the Decree of the Minister of Health of December 7, 2001, on the handling of human remains and remains, Dz. U. No. 153, item 1783.

⁵³ *PPOZ: Doctors are forced to break the law!*, <https://www.medexpress.pl/ppoz-lekarze-zmuszani-sa-do-lamania-prawa/78429> (accessed 03.09.2022).

⁵⁴ H. Hendrysiak, *County chiefs held responsible for lack of coroners, and no rules*, <https://www.prawo.pl/samorzad/stwierdzenie-zgonu-w-pandemii-i-problem-czy-starosta-moze,500026.html> (accessed 03.09.2022).

The Ombudsman also appealed to the Health Ministry to speed up work on enacting a law on ascertaining, documenting and registering deaths. The urgency sent cited one of the cases handled at the Ombudsman's office, in which a victim of a traffic accident died in an ambulance, as a result of which the sanitation transport, along with the corpse, returned to the scene of the accident and left the body there. The action taken was due to the lack of authority to declare death on the part of the emergency medical team, which did not include a doctor. The Ombudsman also cited the case of determining death and issuing a death certificate when a person dies at home on the grounds that the hospital is not authorized to send an ambulance to determine death, and there are numerous legitimate difficulties in accessing a general practitioner. The Ombudsman signals that the present problem is growing especially during the existing coronavirus pandemic, as current regulations strictly indicate that governors can appoint doctors only to determine deaths from coronavirus causes, but the new regulations are insufficient and still inadequate to determine deaths from other causes⁵⁵.

Summary

The introduction of the coroner's institution, which is essential to the overall organization of the state health service, has continued to be announced for several years and remains, for the time being, in the realm of public discussion. The lack of statutory arrangements can result in poor work organization, especially in primary care. The incomprehensible 1959 legislative provisions are not adapted to the functions of modern healthcare and are not conducive to proper healthcare operations. As the law stands so far, doctors randomly selected to declare deaths and issue death certificates may mostly lack the training and reservoir of knowledge to do so. The coroner, on the other hand, should by law be provided with medical equipment to help unequivocally determine the death of vital organs, such as the heart (electrocardiographic apparatus) or brain (electroencephalographic apparatus), particularly in unclear situations. Doctors determining death still use tests that are not based on modern technology, so they may misjudge the difference between a lethargic state and death. Other doubts about natural death and death by the criminal act should always be resolved by autopsy. On the other hand, the lack of sources of funding for the labour costs of such doctors has aroused the reluctance of the medical community to work without gratification. A coroner's function or office, with its statutory duties, would elevate healthcare activities for patients at risk of loss of health or death. Making statutory changes to create the coroner's function is, therefore, necessary and eagerly awaited by the social and medical communities in particular. Rapid and accurate assessment of the causes of natural deaths or as a consequence of criminal acts can also greatly speed up and improve the detection and evidence activities of the police and prosecutors, thereby improving the feeling of social security in our country.

⁵⁵ *Why is there still no "coroner" function in Poland? Another Ombudsman intervention with the Minister of Health*, <https://bip.brpo.gov.pl/pl/content/rpo-mz-dlaczego-wciaz-nie-ma-w-polsce-koronera> (accessed 03.09.2022).

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Conflict of interest

None

Source of funding

None