

# Coronavirus – some legal aspects concerning physician's dilemmas

Koronawirus – wybrane aspekty prawne dotyczące rozterek lekarzy



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## Abstract

In the age of pandemic, health services face even more often tragic and irreconcilable dilemmas. A physician is obliged to provide medical procedure whenever a delay in providing it could cause a risk of loss of life, serious injury or health disorder, and in every other urgent case. However, each medical intervention, although necessary and urgent, may be risky for a patient in the age of pandemic, as a doctor may be potentially infected by SARS-CoV-2 (severe acute respiratory syndrome corona virus 2). While it is widely known medical staff is more likely to be exposed to become a source of infection, the risk related to each medical procedure becomes inevitable. The physicians face a serious dilemma as they are aware they might be infected, not having any symptoms or pending the test results while at the same time the necessity to perform medical procedure might occur live-saving. It seems a physician cannot prematurely resign from medical assistance with reference to a potential infection risk. However, the risk has to be reasonably estimated and responsibly reduced. If the risk of SARS-CoV-2 infection is high enough to exceed potential advantages of the medical intervention, this intervention might occur unjustified. It might not apply to super urgent lifesaving situations in which failure to provide treatment may lead to patient's death. It is necessary to minimize the risk to achievable level in order to avoid infection.

Key words: coronavirus, law, health services.

Folia Cardiologica 2019; 15, 3: 269–271

## Introduction

In the age of pandemic, health services face even more often tragic and irreconcilable dilemmas. Common deficits of the healthcare system, such as the lack of medical staff, become more important when there are hundreds of patients who require immediate intervention.

Many of the physicians' choices which they have to make in everyday practice encompass choice of the lesser evil, as none of the solutions is cost-free [1]. Nevertheless, under conditions of common battle, such medical quandaries may have huge medical consequences and include legal motifs.

## To risk medical treatment

Under the provisions of Polish law, a physician may bear liability both for action and abandonment [2]. The necessary conditions of a physician's liability include failure to act with due diligence or current medical knowledge [3]. Due diligence requires certain level of precision and precaution during medical activities [4]. A doctor acts with due diligence when he or she makes sufficient effort while medical process; however, no matter the result, as he, as a rule, is he or she, as a rule is not responsible for a certain result [5]. Current medical knowledge is a dynamic category which obliges physicians to perform medical practice with

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obligatory medical standards, in according to healthcare level which is legal and available for a certain physician [6].

A physician is obliged to provide medical procedure whenever a delay in providing it could cause a risk of loss of life, serious injury or health disorder, and in every other urgent case [7]. While performing medical activities on a legal basis, a physician is a guarantor who ensures the non-occurrence of a certain effect. Thus, he or she may bear criminal liability for abandonment of medical activities which are necessary for a patient in an urgent state [8].

However, each medical intervention, although necessary and urgent, may be risky for a patient in the age of pandemic, as a doctor may be potentially infected by COVID-19 (coronavirus disease 2019).

### Medical services in the face of pandemic

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In December 2019, rapidly spreading outbreaks of unspecified severe viral pneumonia appeared in Wuhan, China. The new etiological factor was the new Betacoronavirus, which transmission has not been reported in the human population. The World Health Organization has described the newly sequenced virus as SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), and the disease it causes as COVID-19 [9]. On March 11, 2020, the World Health Organization announced the COVID-19 pandemic. Epidemiological reports indicate that the epicenter of the pandemic is currently in Europe.

While it is widely known medical staff is more likely to be exposed to become a source of infection, the risk related to each medical procedure becomes inevitable. The physicians face a serious dilemma as they are aware they might be infected, not having any symptoms or pending the test results while at the same time the necessity to perform medical procedure might occur live-saving. The lack of medical staff in Poland is commonly known and constitutes a serious obstacle in peacetime. All the more becomes it a huge problem at the time when we face a pandemic crisis. Not only is it caused by the fact more patients need medical assistance, but apparently because the medical staff is more likely to infect themselves while providing health services.

### To cure or not to cure

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A physician, experienced in premature radiology, is the only specialist within a radius of hundreds of kilometers who is able to properly diagnose a patient for whom it can be considered as a lifesaving procedure. A physician is employed in a medical entity in which the risk of SARS-CoV-2 infection is statistically high while premature consultations take place on a contractual basis in a different medical unit.

A patient with heart attack is transported to a hospital in which SARS-CoV-2 has been just detected. He is in super urgent state of health which obligates to receive immediately as his transport to another medical unit may cause his imminent death. His admission to such a medical entity is necessary; however, the risk of SARS infection is at the same time inevitable. Many medical procedures are commonly being provided on an outpatient basis but at the same time they cannot be easily postponed, *i.e.* in the field of gynecologist or urgent stomatology cases. In Poland majority of the physicians practice their medical activity in many units, as the medical entities have to share medical staff to meet National Health Fund organizational requirements.

Some of the fields of their practice can be easily or cost-free reduced, while other guarantee consistency of essential health services. Employers in public medical sector have no legal means to prevent physicians from different forms of medical activity. At the same time, in the light of current legal order, medical staff is not restricted in other ways, thus a visit in a post office, gas station or a grocery may potentially expose one to an infection, even though the possibility of it is at the time less likely. Is it alternative to choose between protection not to infect but at the same time to deprive of necessary medical intervention which is urgent and life-saving?

### Findings

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It seems a physician cannot prematurely resign from medical assistance with reference to a potential infection risk. However, the risk has to be reasonably estimated and responsibly reduced. If the risk of SARS-CoV-2 infection is high enough to exceed potential advantages of the medical intervention, this intervention might occur unjustified. It might not apply to super urgent lifesaving situations in which failure to provide treatment may lead to patient's death. On one hand, it is necessary to minimize the risk to achievable level in order to avoid infection, and on the other hand, medical entities have to seek for available alternative in medical staff, provided that it is feasible. It therefore seems this situation basically does not differ from typical medical obligations discussed earlier. Namely, as for the SARS-CoV-2 infection prevention, it obliges to act in due diligence according to current epidemiological standards (medical knowledge) in order to provide necessary medical assistance for every patient who requires urgent help.

### Conflict of interest

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The authors declare no conflict of interest.

## Streszczenie

W dobie pandemii lekarze częściej stają przed trudnymi dylematami, będąc zobowiązanymi do udzielania świadczeń zdrowotnych w stanach nagłych. Każda interwencja medyczna, choć uzasadniona i pilna, może być dla pacjenta o tyle dodatkowo ryzykowna, o ile lekarz może się okazać potencjalnie zakażony SARS-CoV-2 (*severe acute respiratory syndrome corona virus 2*). Ponieważ powszechnie wiadomo, że personel medyczny jest bardziej narażony na zakażenie, to ryzyko związane z każdą procedurą medyczną staje się wyższe i nieuniknione. Lekarze stają wówczas przed poważnym dylematem, ponieważ zdają sobie sprawę, że mogą zostać zarażeni, nie mając żadnych objawów ani nie otrzymując wyników badań, a jednocześnie może wystąpić konieczność wykonania pilnego zabiegu ratującego życie. Wydaje się, że lekarz nie może pochopnie zrezygnować z pomocy medycznej w związku z potencjalnym ryzykiem infekcji. Jednak ryzyko to należy rozsądnie oszacować i odpowiedzialnie obniżyć. Jeśli niebezpieczeństwo zakażenia SARS-CoV-2 jest na tyle wysokie, że może przekroczyć potencjalne korzyści z interwencji medycznej, to interwencja może się okazać nieuzasadniona. Powyższe wydaje się nie mieć jednak zastosowania w bardzo pilnych przypadkach ratujących życie, w których bierność lekarza jest dla pacjenta równoznaczna z wyrokiem, a pomocy medycznej nie można inaczej zapewnić.

Słowa kluczowe: koronawirus, prawo, świadczenie zdrowotne

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