

#### d. Providers' Codes of Ethics

Regarding the obligation of the medical examination, the **Code of Professional Ethics of the Medical Chamber of Serbia**<sup>125</sup> (Article 44), states that it is anticipated that the physician is obliged to act rationally and economically with the patient, avoiding unnecessary examinations and treatment, regardless of who bears the cost of treatment.

#### e. Practice examples

##### Example(s) of Compliance

With the introduction of the payment system based on provided health care services (capitation) at the level of primary health care, preventive examinations are regularly provided to all users, according to the calendar of preventive examinations, which is published by the National Health Insurance Fund.

##### Example(s) of Violation

There are examples of distortion or violation in terms of demands by doctors and other health care professionals for payment for those services covered by compulsory health insurance funds, also in the case of providing „out of turn“ examinations for patients in line or on the list for specialist medical examination and/or performing some diagnostic services disrespectful on waiting lists, etc.

##### Actual Case(s)

According to the first instance verdict of the court, the defendant doctor was found guilty of having committed the criminal offense of accepting a bribe since, as a physician, he demanded money from father, the damaged/injured party, whose son needed medical treatment to perform a service that should be his obligation; after the examination of the son, the doctor said that the person's son needed knee ligaments surgery, that he would make a referral, and that after that he would perform the operation „out of turn“. After receiving the son to the hospital, in a telephone conversation, the defendant doctor requested the sum of 1,250 euros for the surgery, explaining that otherwise „if he does not get the money, he would release the patient/son from the hospital. The father, after the son's surgery, came to the cabinet of the defendant and handed him the money. The penalty was imprisonment.

#### f. Practice Notes for Lawyers

Administrative, civil and criminal procedure may be opened in response to violations of this right; all procedures are described in details in Chapter 8 of this Guide.

#### 7.2.3. RESPONSIBILITY TO PROVIDE EMERGENCY MEDICAL ASSISTANCE AND WORKING IN EXCEPTIONAL CONDITIONS

##### a. A health care provider has an obligation to provide emergency medical assistance in case of patients vital threat, within means and expertise whether on duty or not.

#### b. Right as Stated in the Country Constitution / Legislation

##### Criminal Code of The Republic Of Serbia

**Article 253 of the Criminal Code**<sup>126</sup> is entitled *The refusal of medical assistance*. It states the following:

- (1) A physician who, contrary to his/her duty, refuses to provide medical assistance to a person in need of such assistance, who is in immediate danger to his/her life, risk of serious bodily injury, or serious damage to health, shall be punished by a fine or imprisonment up to two years;
- (2) If in the course of the offense referred to in paragraph 1 of this Article, a person who does not receive medical help is physically injured or his health is severely damaged because of the failure or refusal of a physician to provide medical assistance, the perpetrator shall be punished by imprisonment from three months up to four years;
- (3) If the offense referred to in paragraph 1 of this Article, results in the death of the person who did not receive medical help, the perpetrator shall be punished by imprisonment from one up to eight years.

The physician is in all circumstances obliged to examine the person, to be sure about the person's current health status, and if the examination establishes the existence of an immediate threat to life or a risk of serious bodily injury or serious damage to health, the physician is obligated to provide medical assistance in accordance with the opportunities which are currently available in the particular situation. In practice, the physician may be in a situation where at the same time he/she should take care of a number of injured or diseased persons, then the threat to life is the basic criteria by which the physician should diagnose in order to provide the assistance. In other words, a physician may leave the patient only if the life of the patient is not in danger and that the treatment of the patient's illness or injury may be delayed.

In the framework of this criminal offenses we cannot include those cases when the doctor examined the patient in the best way possible, but due to certain circumstances (atypical clinical presentation, diagnostic inaccessibility of the necessary technical resources), the examination did not reveal the existence of danger to life. By their nature, these situations can be classified into the framework of medical errors (in the medical sense of the term).

The Criminal Code does not specify physicians concerning this criminal offense, which theoretically means that it punishes every doctor regardless of what type of activities he/she performs, or to his current qualifications to provide adequate medical care. The practical question is whether a doctor who has been working in research laboratories, completely out of medical practice, would be able to provide such assistance as required in this section of the Criminal Code. Therefore, in the legal literature and practice, an opinion prevails that this offense should refer only to doctors who perform medical practice in health care organizations, because aid should be realistically feasible in relation to a specific case.

The existence of the basic form of this criminal offense (referred to in Article 253, paragraph 1) it is not needed to occur in patients' deaths or deterioration of health because of denying medical help. So, unlike a criminal offense of medical malpractice, in this case it is not necessary to have a harmful consequence. In other words, the perpetrator shall be punished by Law even if a person who has been denied medical help survives without any adverse health effect. In paragraph 2 and 3 of Article

<sup>125</sup> Official Gazette RS 121/2007.

<sup>126</sup> Official Gazette RS 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014.

253 of the same Criminal Code it is stipulated, however, that if due to denying medical aid adverse effects result in the form of serious bodily injury, severe deterioration of health or death of the person who did not receive any help, the doctor will be punished more seriously. It is interesting to compare Article 253 to Article 127.

#### Article 127 and Article 253 of the Criminal Code: Comparison

Whoever fails to provide medical aid to a person who is in immediate danger, although he could have done it without any danger to himself or another, shall be punished by a fine or imprisonment up to one year. The **Article 127** defines the criminal liability of other persons who are not doctors, for failure to assist a person who is in imminent danger of death. For these persons („non doctors“), the Law stipulates the obligation to provide assistance only if it could be done without danger to themselves or others. In contrast, in **Article 253**, which refers to the doctors, there is no limit, resulting in the conclusion that the doctor is legally obliged to provide assistance to a person who is in imminent danger, even when putting himself in danger. In practice, the criminal judicial review of such situations usually refers to cases where the doctor refuses to help a person suffering from serious infectious diseases (AIDS, hepatitis B and C) because of the fear that while performing these interventions alone the doctor could become infected.

#### Law on Public Health

The obligation to provide emergency medical assistance and work in extraordinary circumstances is mentioned in the **Law on Public Health**<sup>127</sup> that was published in the „Official Gazette of RS“, No. 72/2009 September 3, 2009.

#### c. Supporting Regulations/Bylaws/Orders

In the **Special collective agreement for health care institutions founded by the Republic of Serbia**<sup>128</sup>, the term **readiness** is described as a special form of overtime for which the employed health care provider does not have to be present in a medical institution, but must be constantly available to provide emergency medical assistance in health care institutions.

**Regulation on minimum work process during a strike in health care institutions**<sup>129</sup>, **Article 1, Paragraph 1-3** determines the minimum work process during a strike in health care institutions founded by the Government of the Republic of Serbia comprises:

1. providing emergency medical services, including ambulance transportation to the nearest adequate medical institution;
2. providing health care and receiving emergency patients and those with urgent diseases, conditions and injuries into the hospital;
3. providing complete health care for children, youth and pregnant women, as well as diagnostics (clinical, laboratory, X-ray and other) and therapy (prescribed medications, surgical and other) for acute diseases, conditions and injuries in other population groups and persons, in outpatient and hospital setting.

<sup>127</sup> Official Gazette RS 72/2009.

<sup>128</sup> Official Gazette RS 36/2010, 46/2013 - Agreement, 74/2013 - Agreement and 97/2013 - Agreement

<sup>129</sup> Official Gazette RS 25/1997.

The obligation to provide emergency medical assistance and work in extraordinary circumstances is also mentioned in the **Regulation on the scope and content of health care**<sup>130</sup>, as well as in the **Regulation on health care providers**<sup>131</sup>.

#### d. Providers' Codes of Ethics

The most detailed act is the **Code of Professional Ethics of the Medical Chamber of Serbia**.<sup>132</sup> **Article 6** provides that, in the case of a patient's life-threatening situation, the physician will, within the limits of his/her capabilities and expertise, without delay, provide emergency medical assistance. A physician cannot refuse to provide emergency medical assistance that corresponds to his/her professional qualifications, regardless of whether on duty or not and regardless of whether he/she is explicitly asked for help.

In accordance with the principles of cooperation and solidarity, regardless of their workplace and work competence, physicians must be prepared to work in extraordinary circumstances, aware of their moral and human responsibility. Working in exceptional circumstances further obliges physicians: the physician must know contemporary doctrinal principles to work in exceptional circumstances, where medical staff have special position and responsibility.

**Article 9** describes restrictions in an emergency situation. The physician has no right to start the application of procedures for which he/she has no adequate experience. Exceptions are only for emergency interventions when injuries and illnesses directly threaten the patient's life.

But new diagnostic procedures and therapeutic interventions that could cause reduced physical or psychological resilience of a patient are allowed only in cases of emergency measures during treatment, and solely in the interest of healing or to mitigate the suffering of a patient (**Article 25**).

In the cases of hunger strike or when the patient is unconscious and this may threaten his/her life, a physician must intervene without seeking patient consent. Also, the physician may refuse to perform abortions or sterilization which are not in accordance with his belief and conscience, except when it comes to the need for emergency medical assistance. In that case (if a non-emergency), the physician is obliged to refer a patient to another qualified physician, or to ensure the execution of these operations in accordance with the Law.

**The Code of Ethics of the Serbian Chamber of Nurses and Medical Technicians** describes some obligations<sup>133</sup>.

#### e. Practice examples

##### Example(s) of Compliance

1. A large number of health care providers reported and volunteered in providing health care services to vulnerable population during floods in May 2014, which is recognized by the World Health Organisation praising their motivation and work.

<sup>130</sup> Official Gazette RS 43/1993.

<sup>131</sup> Official Gazette RS 4/2000.

<sup>132</sup> Official Gazette RS 121/2007.

<sup>133</sup> Official Gazette RS 67/2007.

- Health care providers in Serbia are providing timely and free health care services during situations of the increased entry of migrants from Syria, Afghanistan, Pakistan and other countries in 2015 (the average is at least 1000 migrants per day).

#### Examples of Violation

- The physician on the street sees that a person has been injured in a car accident but leaves the scene without trying to assist the injured. The perpetrator (subject) of this crime is solely **the physician**, the one who **refuses** to provide medical help, either by directly refusing to do so, or by concealing his/her identity as a physician.
- The physician refuses to examine and receive a person in a health care institution with the explanation that this institution is not on duty or competent to receive patients. The press echoed the case where a lower leg injury of blood vessels led to instances of patients bleeding to death because in several Belgrade health care institutions medical staff refused to examine and receive the patient and at the end, the surgical procedure was performed too late.

#### Actual Case(s)

AA from Vlasotince filed a complaint to the Protector of Citizens because in the primary health care institution in Vlasotince, in the Department of dental care, his 11 year old daughter was denied the right to provide with health care services. The daughter had severe pain in the tooth, but the father did not have a health insurance card with him at the moment. Health care provider had refused to examine the girl without prior assessment of the emergency situation to provide her with suitable health care service. After the examination, the Protector of Citizens has recommended the primary health care institution in Vlasotince that, in the future, their work and actions must comply with regulations that guarantee the right of citizens to health care and special protection of children.<sup>134</sup>

#### f. Practice Notes for Lawyers

Administrative, civil and criminal procedure may be opened in response to violations of this right; all procedures are described in details in Chapter 8 of this Guide.

#### 7.2.4. RESPONSIBILITY FOR EQUAL TREATMENT AND NON-DISCRIMINATION

**a. Health care providers have the responsibility to provide equal access to patients regardless of their race, gender, age, nationality, social background, religion, political belief, economic status, culture, language, type of illness, mental or physical disability.**

#### b. Right as Stated in the Country Constitution / Legislation

In respecting patients' rights to equal access to health care and treatment in the provision of medical services, all health care providers must participate actively. This commitment is achieved in several ways as a general principle defined in national legislation.

<sup>134</sup> Protector of Citizens, Subject 17-2277/11, 12.09.2011. <http://www.ombudsman.rs> (accessed August 28, 2015)

The Constitution of the Republic of Serbia<sup>135</sup> (Article 68) stipulates that everyone has the right to the protection of his/her physical and mental health.

#### Law on Health Care

This principle is clearly stated in the Law on Health Care<sup>136</sup> in Article 20, which regulates the principle of equity in health care. In order to exercise this right to its full capacity, it must be ensured that health care providers are in charge of providing health care services. This means that respect for equal treatment in the first place is the responsibility of doctors, nurses and other health care providers who organize the work process. The second level is represented by doctors, nurses and other health care providers who have direct contact with patients, or who directly provide health care services. They must respect the patient regardless of race, gender, age, ethnicity, social background, religion, political belief, economic status, culture, language, type of illness, mental or physical disability.

#### Law on Protection of Patients' Rights

In accordance with the Constitution and the Law on Health Care, the Law on Protection of Patients' Rights<sup>137</sup> (Article 9) requires that the right to health care access without discrimination must be guaranteed.

#### Law on Prohibition of Discrimination

As a *lex specialis*, the Law on the Prohibition of Discrimination<sup>138</sup> prohibits discrimination on multiple grounds, but in accordance with the Constitution, the Law on Health Care and the Law on Protection of Patients' Rights. The Law divides discrimination on the basis of personal characteristics into direct and indirect discrimination. Both forms of discrimination can be made by health care providers. They must respect the prohibition of discrimination; and under Article 60, if they violate this, they will be held liable. Both forms of discrimination can be made by health care workers and health care institutions established for the legal entity, the responsible person, and the health care worker.

#### c. Practice examples

##### Example(s) of Compliance

- In recent years, a number of health care institutions improved their infrastructures and services to be more accessible to people with disabilities. They also improved therapeutic services for people with different forms of disability.
- In order to improve access to health care for persons belonging to the Roma population, the initial contact of the Roma population with health care institutions, including the introduction of „Roma mediators“ was introduced. Mediators originate from the same population as the Roma population with health care institutions, including health cards.

##### Example(s) of Violation

Although the authorized persons of the Protector of Citizens received the requested information from the doctors and health care workers in Gynecology and Obstetrics about the potential discrimination, they obtained it in a tense and unpleasant conversation in which:

<sup>135</sup> Official Gazette RS 98/2006.

<sup>136</sup> Official Gazette RS 107/2005, 72/2009 – State Law, 68/2010, 99/2010, 57/2011, 119/2012, 45/2013 – State Law

<sup>137</sup> Official Gazette RS 45/2013.

<sup>138</sup> Official Gazette RS 22/2009.s