



BRIEF ARTICLE

Is 5 kg enough to win a medical forensic case? Phony vs. real complaints

Artur Drzewiecki

Introduction

Usually when it comes to medical lawsuits, the suing party is the patient. In Poland one cannot talk of over-exaggeration of the use of the legal system for medical cases as in some other Western countries, e.g. the USA, where exiting the clinic one is greeted by billboards asking patients whether they were for sure completely satisfied with their medical care and listing some legal corporation's telephone numbers or while driving and listening to the radio – ads pointing to some group suing efforts against pharmaceutical companies, but it's also becoming more and more popular among patients. Over the years of being the court expert in clinical microbiology and hospital infections, I would like to make a division and differentiate cases into: real complaint compensation lawsuits vs. phony complaints meant to bring money to the suing party.

Materials, Methods and Results

The Polish legal system nowadays is largely based on hardcopies, but from time to time, there may also be electronic recordings, which are becoming standard in modern courtrooms. The court expert may receive the necessary, original documentation by post, which often is in the range of 5-10 kg parcels, with special, personal confirmation of delivery, as to keep

the mail registered and allow the court to precisely track its route.

When evaluating the accuracy or regularity of medical procedures as an expert in Poland, the most important aspect is played by the medical documentation. It still remains an open issue whether broader access to medical documentation in electronic form vs. paper only hardcopies, is to the benefit of the medical centre, in case of any court or legal proceedings. There is no mention in the literature of any sort of benefit acquired with change to electronic documentation in such situations [1, 2].

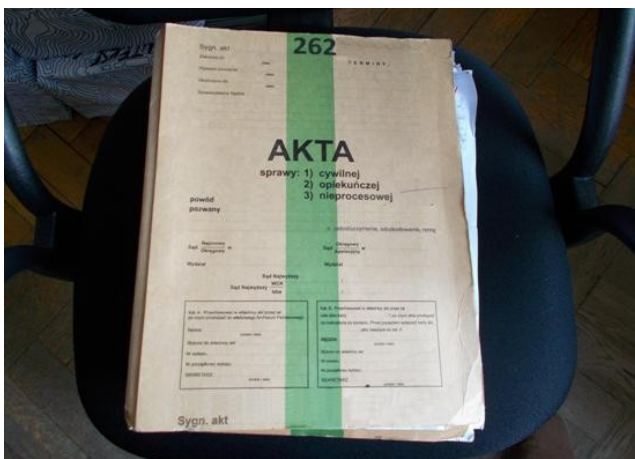
In practice, during legal proceedings the nominated court expert receives not only the case files, but also the full medical history in form of original documents, photocopies and sometimes printouts (if the medical history is stored electronically). Very often, it is the most voluminous part of the case files, especially considering the fact that with any official correspondence between the expert and the court, more copies of medical documents are enclosed. The quality of such documentation is very low — which I pointed out in my earlier publications [3, 4, 5]. With many hours spent reading the documentation, it places a lot of unnecessary load on the expert.



(a)



(b)



(c)

Figure 1. Typical documentation for forensic expert analysis received from a Polish court of law:
(a) typical parcel delivered to the expert by registered mail;
(b) case files now unpacked - here showing a relatively short documentation;
(c) files in civil cases have green markings - there may be many such files sent for a single expert opinion.



The first problem that the court expert may encounter is the fact that in many cases the medical documentation is missing. In Poland, quite commonly a lot of medical file content is considered as unnecessary and not written down by the doctors. As a result, many times it's impossible to answer questions posed by the judge and the court, because there is no text to refer to. The local medical personnel quite commonly perceive that "if the information is not in the medical history, it will be to our favour in the court of law". This is a wrongful impression. In reality, already in 1997 the Supreme Court of the Republic of Poland has passed an official statement that missing medical history cannot be ruled in favour of the medical staff, centre or hospital.

Other problems encountered are:

- (i) lacking documents;
- (ii) very low quality of photocopied documents;
- (iii) illegible handwritten documents or signatures.

These problems usually result from very little involvement in professional duties (or even personnel laziness), with no efforts whatsoever for any kind of improvement, e.g. enclosing computer printouts to accompany the badly handwritten documents. Usually in such cases, when I'm asked to prepare expert opinions, I explicitly state that the information is missing or is illegible and inform about the consequences. Unfortunately, many times in such cases, the medical centres or hospitals start a long-term, ongoing bureaucratic correspondence and discussions, arguing that the documentation is complete or that the

details requested are irrelevant. Very often, in such instances, the sued party loses the case owing to some deficiencies which could be easily rectified upon receiving a letter of formal notice.

Other forms of evidentiary material are witness testimony protocols — currently these may be copies of electronic recordings from the trial, which on one hand facilitate familiarization with the case but are time-consuming for the expert, who needs to watch the whole recording session (previously, the long printed protocols allowed for a quicker establishment of facts, ignoring the irrelevant contents).

A big part of the case files is made up of various correspondence, letters etc. between the conflicting parties, which serve no purpose to the expert.

Conclusions

The 5 kg mentioned in the title will not let the party win the case if it provides and submits irrelevant letters and many copies of the same documents. But on the other hand, if it delivers the appropriate requested documentation, even 0.5 kg will be enough to win.

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