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**The Relevance of the Medical Standards for private law liability
in Comparative Perspective**

(Abstract)

The medical standard is defined in the comparative perspective as the current state of medical knowledge and skills. Its purpose is not only to facilitate the performance of the medical profession but also to improve its quality and facilitate the performance of the ex-post evaluation.

The medical standards of conduct are specified in announcements or regulations by public bodies or entities. Such legally adopted standards, for example in the form of guidelines of the Ministry of Health, create binding norms for medical professionals. However, due to the dynamic nature of the state of medical knowledge, there is a risk of noncompliance of legally adopted standards with the current knowledge. Hence, even rigid adherence to such standards will not always mean that a medical professional's actions or omissions cannot be improper.

Therefore, in principle, medical standards are codified in various informal guidelines, primarily resembling standards or ethical codes, and are equivalent to 'customs' in other spheres of social relations. The codes are created mainly by different medical organisations or private medical societies chiefly for their members; however, sometimes they are binding even for non-members of those organisations (performing a certain medical profession). Guidelines developed within the medical profession may subsequently be raised to a normative status or at least inspire regulations by competent authorities; however, this is not always the case.

From a comparative perspective it is disputable if norms created by different medical organisations or private medical societies can create norms that are legally binding for every individual. It is both controversial and interesting, because every European legal system approves the need to refer to those guidelines of medical organisations when setting standards of care which influence the private law liability. Moreover, it is commonly

accepted that failure to comply with the guidelines may determine the existence of wrongfulness or fault even though those medical standards cannot be formally classified as part of a legal system.

The paper aims to describe the medical standards as sources of binding norms influencing the private law liability in medicine and its relationship to such notions as wrongfulness and fault. This is one of the main topics of the scientific project titled “The role of codes of medical ethics and professional standards in biomedicine and their relevance for private law liability”, conducted at the University of Warsaw, Faculty of Law and Administration.