

The profession of psycho-oncologist in Poland as an example of inadequate legal regulation in the area of health care

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Summary

The profession of psycho-oncologist in Poland is not sufficiently regulated by law. The issue is further complicated by the fact that this profession has not been classified by the legislature in the group of medical professions, but only in the group of allied health professions. Currently, according to the Regulation of the Minister of Health on guaranteed services in the field of hospital treatment, a psycho-oncologist is a person with higher medical education, i.e. a graduate of a medical university, for example a doctor or a nurse, who has fulfilled the additional condition of completing postgraduate studies in psycho-oncology. It is thus clear that the legal definition of the profession of a psycho-oncologist remaining in force is inconsistent with the regulation of this profession in force since 2018, resulting from the announcement of the same minister in the Polish Qualifications Framework (PQF – *Polska Rama Kwalifikacji*, abbrev. PRK). This is because the PQF limits the group of persons who may obtain a qualification in the area of psycho-oncological diagnosis and treatment to psychologists and psychiatrists only, thus limiting the group of persons authorised to practise the profession of a psycho-oncologist. An additional legal problem results from significant differences in the nature of the professions of a medical doctor and psychologist, due to the fact that the Act on the Profession of a Psychologist does not apply in practice, despite remaining in force formally. Thus, a psychologist who practises the profession of a psycho-oncologist, might additionally be a subject to the lack of legal regulation of their “foundation profession”, for example due to the fact that it is impossible for a psychologist to obtain a licence to practise their profession, as there is no body to grant them such a licence. Finally, it should not be overlooked that, in addition to the two contradictory regulations of the profession of a psycho-oncologist mentioned above (Regulation of the Minister of Health and the PQF), there also exists a third path to obtain the so-called psycho-oncologist certificate, awarded by the Polish Psycho-oncology Society (*Polskie Towarzystwo Psychoonkologiczne* – PTPO). At present, persons certified via this path, who include, apart from psychologists and doctors, also representatives of other professions, such as nurses or clergy employed in hospices, will in the majority of cases not be able to formally practise the profession, because the legislature has not provided for the

recognition of certificates issued by the PTPO as equivalent to obtaining a psycho-oncological qualification in the context of the above-mentioned regulations.

Key words: psycho-oncologist, legal regulations, medical profession, health care profession, law and medicine

Objectives

The study aims to present a detailed analysis of the current legal status of the profession of a psycho-oncologist in Poland. The example of the profession of a psycho-oncologist will be used to discuss the negative effects of the lack of or insufficient legal regulation of issues in health care, of which negligence constitutes a specific legislative tort.

Legal framework for the practice of the profession of a psycho-oncologist

The profession of a psycho-oncologist, which has been developing in Poland for nearly three decades, originally emerged from among other medical fields in the United States on the initiative of Dr. Jimmie Holland, the Chair of the Department of Psychiatry and Behavioural Sciences at Memorial Sloan Kettering Cancer Center in New York. It responds to the societal need for diagnosis and psycho-social help for people with cancer diagnosis, their families and other people in their close environment. From the academic perspective, psycho-oncology is treated as a young, interdisciplinary area of medicine, which deals with the psychological aspects of cancer, constituting a subspeciality of clinical oncology, psychiatry, clinical psychology, as well as health psychology [1, 2]. Through the efforts of the Polish Psycho-oncological Society (*Polskie Towarzystwo Psychoonkologiczne* – PTPO), the profession of a psycho-oncologist was included in the Minister of Labour and Social Policy’s classification of professions under No. 229909 in the group “other professions in health care” [3]. Due to the lack of legislative coordination, a certain form of “organisational and legal trinitarianism” occurs in the area of psycho-oncologists’ training, practising and obtaining professional identification. It covers three categories of persons practising the profession:

- (1) psycho-oncologists certified by the PTPO, not included in any of the regulations provided by legislature; this group includes representatives of various professions involved in working with cancer patients, who have obtained a certificate confirming specific skills and qualifications defined by the professional community as required to practise the profession;
- (2) psycho-oncologists who completed postgraduate studies in psycho-oncology, which might include people with medical or psychological degrees; this group is de facto not defined in terms of the scope of their rights and responsibilities and is diverse on a fundamental level, depending on the educational background;
- (3) psycho-oncologists who will obtain qualifications under the currently implemented market qualification “Diagnosis and psycho-oncological help for

cancer patients, cancer survivors, their families and other persons in their close environment”. This professional path established in 2018 is not yet operational in practice due to the lack of a certifying authority. It is intended for another group of foundation professions, i.e. psychologists and psychiatry specialists.

This specific trinitarianism has led to a mass-scale self-limitation of the participation of psycho-oncologists in the guaranteed benefits system. This is an obvious consequence of the lack of legislative coordination, linearity and compatibility in the creation of subsequent legislation. We will demonstrate in the following sections how the current situation sanctions three parallel modes of obtaining professional qualifications but does not define their mutual interdependencies and does not coordinate their working together. How is it possible that for the payer of guaranteed benefits (National Health Fund) “psycho-oncologist” still means only a person who completed postgraduate studies in psycho-oncology, with the systemic omission of professionals previously certified by the PTPO, and this actual state of affairs has also acquired an additional layer of the PQF system, which still, four years on from its implementation, has no certification procedures?

Despite the above preliminary reservations, in legal terms, the most up-to-date legal regulation of the profession operates at the level of market qualifications (Polish Qualifications Framework – PQF) within the meaning of the Integrated Qualifications System, where a degree in psychology or completing medical studies and obtaining a specialty in the field of psychiatry is required to begin the validation process leading to obtaining a certificate entitling one to practise as a psycho-oncologist. At the same time, in the Regulation on guaranteed services in hospital treatment of 22 November 2013 [4], the legislature defines a psycho-oncologist as a person who has completed postgraduate studies in psycho-oncology and has, therefore, undergone the process of education under the provisions of the Act on Higher Education and Science.

It is surprising that both those paths to professional recognition completely omit a group of psycho-oncologists certified by an expert body, the Polish Psycho-oncological Society, the body which formally created this profession and advocated for its legal regulation before it began to be regulated by the legislature. From a formal point of view, the profession of a psycho-oncologist is classified as a health care profession, but it is not a medical profession. The possibility of employing a psycho-oncologist is indicated in several areas of benefits guaranteed under the universal health insurance by the payer of these benefits. However, the scope is far from the actual need, and it is based on the original definition by the Minister of Health and not on the PQF [5].

The profession of a psycho-oncologist in the Integrated Qualifications System

The latest legal regulations on practising the profession of a psycho-oncologist in Poland are included in the provisions on the Integrated Qualifications System. In a situation where specific skills are not acquired in the process of standard forms of education in the education system or higher education, e.g. as long-cycle (uniform)

Master's degree programmes, it is possible to determine the conditions for obtaining those skills within the Integrated Qualifications System, under the Act of 22 December 2015 on the Integrated Qualifications System (i.e. Journal of Laws 2020, item 226). Certification that is completed on the basis of the provisions of this Act is a process, as a result of which a person applying for a specific qualification, once validated with a positive result, receives a document confirming the certification from an authorised certifying authority. The certifying authority is an entity that has obtained the right to grant certification, while the validation consists in verifying the achievement of learning outcomes relevant for a given qualification.

As part of the Announcement of the Minister of Health of 19 December 2018, the Integrated Qualifications System included the market qualification "Diagnosis and psycho-oncological help for cancer patients, cancer survivors, their families and other persons in their close social environment – Psycho-oncologist" [6]. The market qualification of a "psycho-oncologist" is granted based on a certificate defined by the legislature as valid indefinitely. In order to begin the validation, the candidate must meet one of the formal conditions, namely have the status of a psychologist after long-cycle (uniform) Master's degree programmes or a first-cycle programme degree in psychology (Bachelor's degree) and a second-cycle programme degree in psychology (Master's degree), or complete medical studies and obtain a specialisation in psychiatry. This means that the possibility to obtain the market qualification of "psycho-oncologist" is currently limited exclusively to two categories of professions: psychologists and psychiatrists. However, since 2018, no entity that would be entitled to certify this market qualification has been defined. Thus, at the time of writing (2022), i.e. four years after the Announcement of the Minister of Health of 19 December 2018, the option of obtaining the qualifications of a psycho-oncologist via the PQF route cannot be implemented in practice.

Psycho-oncologists in the system of guaranteed benefits under universal health insurance

A psycho-oncologist as a personal resource required in the process of providing health services occurs in several areas of these services, including within the framework of the Regulation of the Minister of Health on guaranteed services in the field of palliative and hospice care [7]. In the annex concerning the conditions for the provision of inpatient services, the payer requires that a psychologist or a psychologist with a specialist title in clinical psychology or a psycho-oncologist participates in the process of providing health care services at 1/2 FTE per 20 beds. For the purposes of providing health services in the field of hospital treatment, the NFZ (National Health Fund) defines a psycho-oncologist as a person with an education in psychology or medicine who has a higher education degree and obtained a Master's degree or its equivalent, and has completed postgraduate studies in psycho-oncology. As already pointed out earlier, the condition of completing postgraduate studies in psycho-oncology does not result from the requirements applicable to psycho-oncologist as a market qualification (PQF).

In the light of the Regulation on guaranteed services in the field of hospital treatment, any graduate of medical or psychology studies may become a professional psycho-oncologist after postgraduate studies, while under the Integrated Qualifications System it is necessary to acquire a market qualification via the validation process and obtain an appropriate certificate (only a psychiatrist or a psychologist is eligible for such validation).

The profession of a psycho-oncologist as a specialty of a psychologist or psychiatrist

According to the provision of Article 2 (1) (2) of the Act of 15 April 2011 on Medical Activity (Journal of Laws of 2022, item 633, as amended), a person practising a medical profession is a person authorised on the basis of separate regulations to provide health services who has professional qualifications entitling to the provision of health services in a specific scope or in a specific area of medicine. In the Regulation of 7 August 2014 (i.e. Journal of Laws 2018, item 227, as amended) of the Minister of Labour and Social Policy on the Classification of Occupations and Specialisations for Labour Market Needs and the scope of its application, in group No. 22 the legislature specifies specialists in the field of health care including: doctors, nurses, midwives, medical rescue specialists, veterinarians, dentists, laboratory diagnosticians and pharmacists. Subsequently a group of “other health care specialists” is created, in which psychotherapists and psycho-oncologists are included.

The legal definition of the practice of a medical profession is introduced by the proposed Act on Certain Medical Professions [8], which specifies that the practice of a medical profession consists in the completing of tasks specific to a given profession in service of the prevention, preservation, rescue, restoration and improvement of health as well as other tasks related to the treatment process and the provision of health services in cooperation with representatives of other medical professions. The legislature, somewhat exacerbating the problem of the lack of regulation of the profession of a psycho-oncologist, did not include it in the proposed regulation, leaving it in the category of “health care professionals not classified elsewhere”, in the Regulation of 7 August 2014 of the Minister of Labour and Social Policy on the Classification of Occupations and Specialisations for Labour Market Needs and the scope of its application, which is descriptive and aims to introduce order to the labour market. Both as part of the education pathway in the Integrated Qualifications System and in the so-called basket of guaranteed services in the field of hospital treatment, the legislature describes a psycho-oncologist as a person with psychological or medical education.

Practice of the profession of a psycho-oncologist by a psychologist

Inconsistent regulation of the paths leading to obtaining the professional title of a psycho-oncologist is even more complicated in relation to one of the two groups of people dedicated to practising this profession, i.e. psychologists, because legal regula-

tion of that profession is also incomplete. As Gardocka [9] points out, in the relationship between a psychologist and a person using their services, it is quite difficult to determine specific characteristics and duties of a psychologist, applicable ethical standards, and, consequently, the scope of responsibility for the course of therapy, which allows only for using the doctor-patient relationship as an analogy. The Act on the Profession of a Psychologist and the Professional Self-governance of Psychologists (adopted in 2001, in force only since 2006 – dated 8 June 2001, i.e. Journal of Laws 2019, item 1026), due to its numerous legal and legislative defects, does not function, and its amendment is not possible, because a change of the entirety of the Act would be required [10]. Professional self-governing bodies have never been established for psychologists, as a result of the failure of the minister responsible for labour to execute a statutory provision in this regard, which provided for the appointment, within 3 months of the entry into force of the Act, of the Organising Committee of the Chambers of Psychologists, which was to initiate the process of building the structures of self-governance. Consequently, in the light of the Act currently in force, in the current legal situation there exist no persons formally entitled to practise the profession of a psychologist [11]. The profession of a psychologist was also not included by the legislature among the medical professions, nor in the health care professions, but only in the category of specialists in social and religious fields, together with economists, archaeologists, sociologists and philosophers.

The jurisprudence notes that although the provisions of the applicable law regulate the participation of persons performing the non-medical profession of a psychologist in medical activities, the profession, however, consists in the provision of psychological services whose examples are listed in this provision [12]. Legal regulation is also incomplete in regards to ethics and professional confidentiality. The relationship between a psychologist and their client is based on trust, and practising the profession entails having access to information about private life, often of the most confidential nature, and yet the statutory regulation of professional confidentiality does not apply, because it applies only to persons entered on the lists of psychologists, which leads to the conclusion that persons currently providing psychological services are not bound by law to maintain confidentiality, and the obligation of maintaining confidentiality has ethical character only and results from the professional code containing deontological standards. In other words, in the absence of provisions on the professional confidentiality of a psychologist, there is no legal standard for its maintenance, which does not provide sufficient guarantees for people using the services of a psycho-oncologist who is a psychologist. Due to the passivity of the legislature, the psychologists' community itself took care to develop its ethical canon, aiming to link certain standards of practising the profession with belonging to a professional body bringing together its members nationally. The Code of Professional Ethics of the Polish Psychological Association was approved by the General Assembly of Delegates of the Polish Psychological Association in 2018. As the overarching document, it provides the basic interpretation of ethical principles governing the professional conduct of the members of the Polish Psychological Association and other persons who have declared their adherence to the Code. In addition to the Code, these persons are also obliged to comply with other

ethical regulations of the Polish Psychological Association, in terms of the specifics of the actions taken [13].

Another important aspect of the provision of *de facto* medical services by psychologists, and in the case of psychologist psycho-oncologists, services addressed to a specific group of patients with cancer diagnoses, concerns the definition of the service provider – beneficiary relationship. The doctrine assumes that there is a professional-client relationship between the psychologist and the recipient of their services, regardless of whether this relationship functions inside or outside the state health care system [14]. The legal definition of the client is not specified in Polish law; often the client is identified with the consumer, although the former is a broader concept. The question thus arises about the awareness of patients (clients?) of the risks that this legal and organisational chaos poses for their treatment, integrity and protection of personal data, professional confidentiality, the quality of the therapeutic relationship, and the chance to obtain compensation for possible claims against psychologists providing *de facto* medical services.

Another area of risk includes personal data protection. The authorisation to process personal data for the benefit of medical professionals stems directly from the Act, while with regard to persons performing ancillary activities, and this group currently includes psychologists, it is necessary to have an appropriate authorisation from the controller of these data [15]. In the aforementioned regulation, the legislature has clearly separated two categories of entities authorised to process the patients' medical data, without defining, however, the category of persons other than those practising a medical profession, namely those performing ancillary activities. In the absence of a legal definition in this regard, determining the circle of persons authorised to process medical data may give rise to difficulties; however, even assuming that a psycho-oncologist who is not a medical doctor and therefore not practising a medical profession, belongs to this category, they must apply for access to medical records, which significantly differentiates their position from that of a psycho-oncologist who is a psychiatrist and is authorised to do so by law. Regardless of the negative consequences associated with the lack of formal guarantees of security of the processing of sensitive data, a problem with the scope of access to data required in the practice of the profession of psycho-oncologist may arise, because this activity is associated with the treatment process, and consequently also with medical records, access to which is legally restricted, and in the case of the profession of a psycho-oncologist completely unregulated in the event that the psycho-oncologist is a psychologist by professional background.

Practice of the profession of a psycho-oncologist by a medical doctor

Practising medicine in Poland is definitely better regulated than practising psychology. It takes place on the basis of the Act of 5 December 1996 on the Professions of a Medical Doctor and Dentist (Journal of Laws 2021.0.790, as amended) as well as related secondary legislation and ministerial regulations. The practice of the profession of a medical doctor consists in the provision of health services by a person with the required qualifications, confirmed by appropriate documents, in particular:

examination of the state of health, diagnosis and prevention of diseases, treatment and rehabilitation of patients, providing medical advice, as well as issuing medical opinions and certificates. A doctor is obliged to practise their profession in accordance with the recommendations provided by current medical knowledge, the methods and means available to them for the prevention, diagnosis and treatment of diseases, in accordance with the principles of professional ethics and with due diligence, which constitutes the directive for their conduct, defining the limits of their professional responsibilities as well as the criteria for assessing whether they have been fulfilled. The area of medical activity in relation to professional confidentiality and the administration of sensitive personal data in the case of medical doctors is also well codified. A doctor is obliged to keep patient-related information obtained in the course of their professional activity confidential. The professional practice of psycho-oncology in the context of confidentiality will therefore differ significantly depending on the medical or psychological qualifications of the psycho-oncologist concerned. A psycho-oncologist who is a medical doctor or a person with higher medical education will be obliged to maintain professional confidentiality, the obligation and framework for which are strictly regulated by law, whereas a psycho-oncologist who is a psychologist by profession, as noted above, will to a large degree maintain confidentiality thanks to the regulation binding them on the basis of their own sense of responsibility and within the framework of the ethical codes of the relevant scientific association. The act on the profession of psychologist and the professional self-government of psychologists includes an obligation to observe professional secrecy by psychologists; however, in the light of art. 7 of this Act, according to which the right to practice the profession of a psychologist arises upon entry into the list of psychologists of the Regional Chamber of Psychologists, it is problematic when this obligation becomes valid due to the failure of the legislator to establish a professional self-government of psychologists. Unlike the unregulated profession of psychology, doctors and patients are connected through a relationship that results in a series of duties and corresponding rights precisely regulated by law. Also, professional ethics in the medical profession is an important area of interest for the medical self-governance, which guards the high quality of the profession's practice by providing axiological justification for the moral norms that characterise medical doctors' legal obligations [16]. The Code of Medical Ethics (Announcement No. 1/04/IV of the President of the Supreme Medical Council of 2 January 2004 on the announcement of a uniform text of the resolution on the Code of Medical Ethics) is a set of principles of a professional nature, determining the nature of the relations of a physician not only with other members of the corporation, but also with the patients, as well as their role and position in society, as it is closely related to the practice of a public trust profession [17].

In the light of the comments made about the regulation of the psychological profession and the medical profession in the current legal order, it is important to point out the significant differences that will characterise the way in which psycho-oncologists practise their profession, depending on what their "foundation profession" is, and in particular to emphasise a number of legal and organisational risks in the context of the psycho-oncological profession being treated as another psychological speciality

or qualification. With respect to medical doctors, the most puzzling aspect is the limitation in the PQF of the entitlement to obtain a psycho-oncological qualification only to psychiatrists, with the omission of other specialists, e.g. oncologists, haematologists, palliative medicine specialists, medical rehabilitation specialists, public health specialists, or family medicine specialists, i.e. those specialities whose representatives come into contact with the problems of cancer patients in their everyday professional practice much more frequently than psychiatrists, and the complete exclusion of the right to obtain this speciality by nurses, including those with an oncological speciality.

Discussion

The legal situation described above is the cause of a formal paradox, as a consequence of which the legal regulations of the profession of psycho-oncology, which were intended to increase the accessibility of the newly created profession, in fact limit this accessibility. In other words, in the organisational and legal sense, these regulations turn out to be systemically counter-productive. In addition, it is incomprehensible and similarly counter-productive to restrict access to the profession of psycho-oncology in the PQF for medical doctors of specialities other than psychiatry and nurses (including oncology nurses). There are opinions in the specialist community that the recognition of psycho-oncology as a market qualification (on a par with, for example, preparing and baking pizza – the announcement of the Minister of Development of 25 May 2020 on the inclusion of the market qualification “Preparing and baking pizza” in the Integrated Qualification System (“Monitor Polski”, (Official Gazette of the Government of the Republic of Poland) of 2020, item 480)) not only diminishes its importance and devalues it as a path of professional development for specialists, but, more importantly, it can be conducive to omitting in the training or certification system the essential goods which it concerns, namely human life and health.

Moreover, the PQF completely ignores a group of professionals who have been in the psycho-oncology service market for many years and who, after fulfilling a number of formal and practical requirements, have obtained a certificate as psycho-oncologists and/or psycho-oncology supervisors from the Polish Psycho-oncological Society and/or have acquired the qualification of a psycho-oncologist according to the Society’s definition as qualified by postgraduate studies in psycho-oncology. Many of these highly qualified and active professionals will not, for obvious reasons, take up another path to legitimise their qualifications, which have long been recognised by the professional and patient community. The inevitable exodus of these specialists from public health services in the field of psycho-oncology will be an unjustifiable waste of personnel potential and, from a legal and organisational perspective, another paradox of the removal of top-class specialists, supervisors, practitioners and researchers involved in the field of psycho-oncology for years from the group of formally qualified psycho-oncologists, forced by inconsistent legislation. This will also certainly result in a reduction in the availability of these specialists under the guaranteed benefits scheme.

In our opinion, the systemic failure to coordinate successive regulations organising the psycho-oncological profession and the complete failure to take into account

the previous effective and substantive procedures for certification of specialists by an expert body, such as the Polish Psycho-oncological Society, is also a serious legal and organisational tort. In addition, with regard to the latest regulations, i.e. the PQF, the question must be asked whether, once a certifying body has been established, a person who obtains the market qualification “Diagnosis and psycho-oncological help for cancer patients, cancer survivors, their families and other persons in their close environment” will be formally entitled to participate in the process of providing health services under the guaranteed benefits system of public health insurance. As of today, without adapting the regulations in this respect, there is no such formal possibility. This results from the fact that the legislature, while introducing a system of education within the framework of the Integrated Qualification System, did not at the same time change the legal definition of a psycho-oncologist as a psychologist or a medical doctor with postgraduate studies in psycho-oncology in the (guaranteed benefits) basket regulation on hospital services. We consider it a *sine qua non* condition for the unification of the education and work system of psycho-oncologists to carry out an immediate legislative correction in this area.

Another crucial issue is the adoption of legal regulations regarding the profession of a psychologist by the legislature. The shortcomings in this area are both glaring and long-standing and, in the matter under discussion, hinder the safe and legitimate provision of psycho-oncological services by psychologists, who formally constitute the largest professional group interested in acquiring psycho-oncological qualifications. At the moment, from the legal perspective, it is clear that the services provided by a psychologist psycho-oncologist cannot be considered to be health services in the legal sense, and their recipient currently has no formal patient status. This creates a number of legal risks for both the patient and the service provider, and for some incomprehensible reason is tolerated by psychologists themselves, their scientific associations and, most reprehensibly, by the legislative authorities. This observation takes on an outright ironic dimension if one considers the simultaneous, precise legal regulation of such market qualifications as the preparation of grilled and barbecued foods (Official Gazette of the Government of the Republic of Poland of 2020, item 482), washing dishes (Official Gazette of the Government of the Republic of Poland of 2020, item 1017), or conducting kiteboarding classes (Official Gazette of the Government of the Republic of Poland of 2020, item 159).

We are convinced that the right of the patient-recipient to receive health services in accordance with the current knowledge and of a defined standard of quality, in view of three decades of psycho-oncology functioning in Poland, seems undeniable. The aim of our study was to identify legal loopholes and threats in this area, and to signal the first legislative steps needed to introduce order in this area in the future.

Conclusion

1. The regulation of the profession of a psycho-oncologist in Poland in the current legal situation is insufficient. The current legal status of the profession of a psycho-oncologist requires urgent and comprehensive intervention of the legislature.

2. Immediate legal steps are needed to unify the current “trinitarian” system of training in psycho-oncology, with an emphasis on productivity rather than counter-productivity of the system, translating into increased availability of psycho-oncological services while maintaining the highest quality of training and guaranteeing the accrued rights of psycho-oncologists already trained.
3. An urgent legislative initiative is expected in relation to the profession of a psychologist in order to prevent potentially negative effects of the lack of regulation on the professional activities of psychologist psycho-oncologists.
4. The PQF should be opened up to a wider group of specialist doctors and nurses, not limiting it only to psychologists and psychiatrists, and guarantee supervision of the procedures by non-accidental, non-commercial certification centres, with particular emphasis on the Polish Psycho-oncological Society.
5. It is reasonable to seek a formal solution for the integration into the PQF system (on an exceptional basis) of professionals who have already been certified as psycho-oncologists/supervisors by the Polish Psycho-oncological Society or have completed qualifying postgraduate studies in psycho-oncology.

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