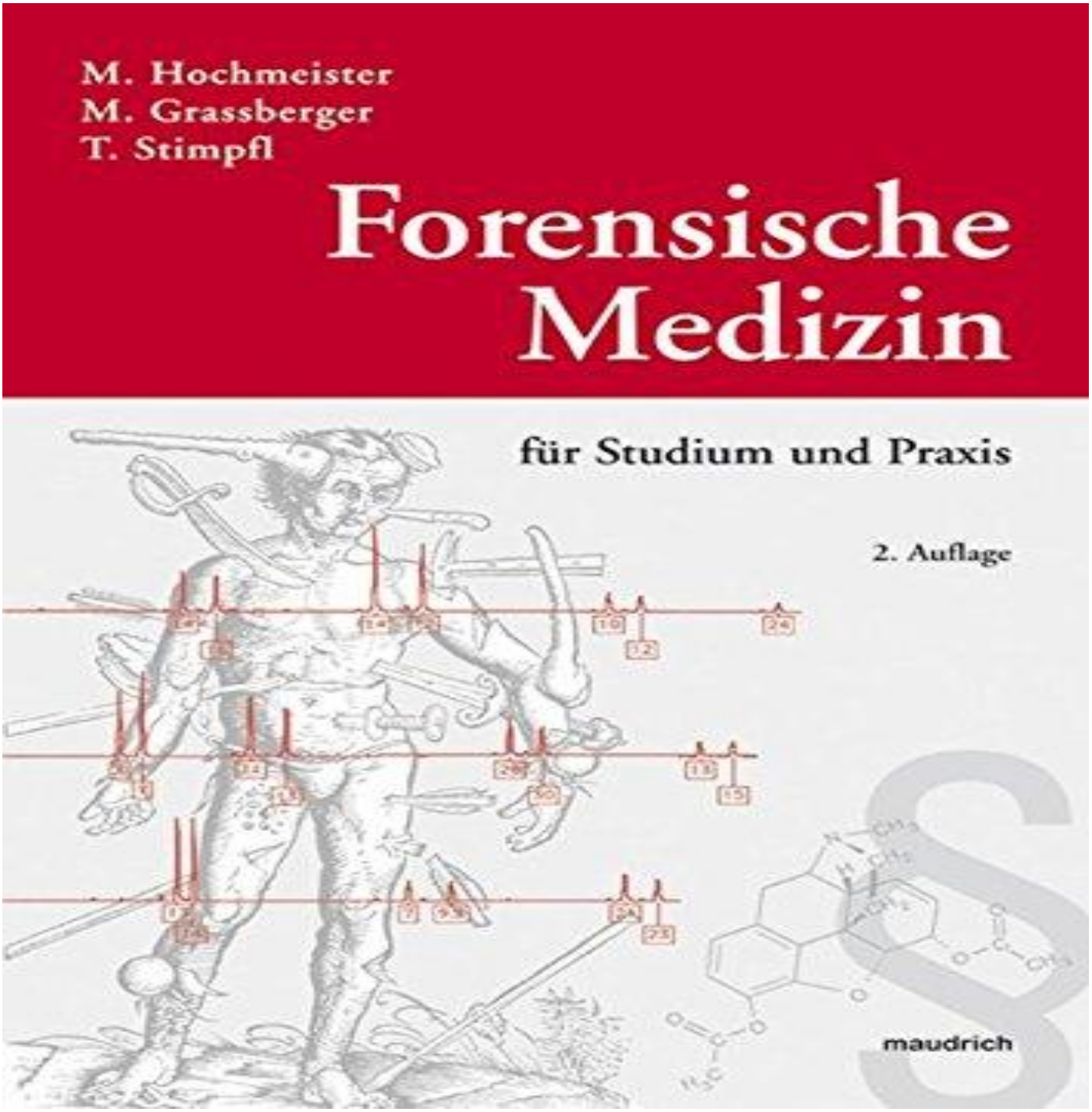

Translated to English by DR. Ahmed Shihab Ahmed Aldosary

This section which has been translated is important for the Validation of foreign studies and degrees.

3 Clinical-forensic medicine

3.1 Concept of assault

The Criminal Code speaks of personal injury "or health damage" (83 SGB) and "serious personal injury or damage to health (S 84 SiGB), the Code of criminal procedure of" light "," heavy "and" life-threatening injuries health impairment, or health disorders (132 StPO),

Since the law thus distinguishes certain categories, medical assistance is required to assess an injury or disorder not only from a purely medical point of view, but in the sense of the legal distinction.

Mayhem

83 StGB

(1) Anyone who injures another person with regard to his body or his health shall be punished with imprisonment of up to one year or a fine of up to 360 days.

(2) It is also punishable, who abuses another person on the body and thereby injured in negligence or damage to health.

Serious bodily injury

84 StGB

(1) If the offense results in damage to health or occupational disability for more than twenty-four days, or if the injury or damage to health is in itself guilty, the perpetrator shall be punished with imprisonment of up to three years.

(2) Likewise, the offender shall be punished if the offense has been committed

1. By such means and in such a way, which is usually associated with danger to life,

2. of at least three people on appointment

3. Under special agony or

4. to an official, witness or expert during or due to the completion of his duties or the performance of his duties.

(3) Likewise, the offender shall be punished if e has committed at least three independent acts without a reasonable cause and with the application of considerable force.

Comments: Paragraph 2 expressly states that serious bodily injury has occurred following the way in which the person has been treated (paragraphs 1, 2, 3) or the person who has lost his or her name (paragraph 4)

The heavy Mayhem (S 84 SiGB) makes certain achievements under higher punitive threat.

A physical injury is considered to be difficult if the death lasts longer than twenty-one days.

Damage to health or occupational disability, or if the injury or damage to health itself is serious. "In the event of serious injury or damage to health, the duration of damage to health or occupational disability is of no significance.

Whether in a particular case a serious injury or. Damage to health is a purely legal issue, the decision of which lies with the court. The answer to this question in most cases, however, taking into account an opinion, which is commissioned by the judge.

Consideration is given to the importance of the affected organ or part of the body, the severity of the illnesses, the danger of the injury, the inability to heal, the severity and possibility of further consequences, and the duration and extent of the physical impairment.

In practice, the following distinction has emerged from a medical point of view:

- Minor injuries
- Just a few minor injuries (already at the border to the serious injury) and
- Severe injury.

The majority of all assessed injuries are minor injuries. Some injuries are at the limit of serious injury, but you can just call it a minor injury. A firm limit to when an injury from the medical point of view ceases to be an easy "and under what conditions it is a serious in itself", the medicine is intrinsically alien. Secondary complications, such as B. wound infections, bad healing and the like. May not be considered. These consequences only affect the duration of damage to health or occupational disability.

A comprehensive, multi-page listing of minor injuries, just minor injuries and severe injuries can be found in Stradal W (2003) Handbook of Road Accident, Part 5, Manz Verlag. Vienna.

Minor injuries

From a medical point of view slight injuries are e.g. B Skin abrasions, abrasions. Scratches. Rissquetschwunden, superficial cuts, glass plunger injuries. Bruises, bruises. Sprains, muscle and ligament strains, uneven burns and burns, brain shedding and the like. a

Several slight injuries could. Their co-operation "may also be regarded as a serious injury (S 132 StPO), causing severe bleeding wounds with considerable blood loss.

Grade still slight injuries

From a medical point of view "just slight injuries are, for example, a simple rupture of the nasal bone without substantial displacement of the fragment, fracture of one or two ribs without complications, rupture of the end member of the 2nd-5th fins or the 2nd 5 toe, the partial groin of a tendon, a tear of the eardrum without complications and others

Serious injuries

The following injuries were considered "serious injuries" from a medical point of view, regardless of the duration of the injury or disability:

- Injuries of large vessels with significant blood loss
- Injuries of nerves with significant radio failure
- wounds with opening of the thoracic or abdominal cavity
- Injuries to internal organs
- injuries to the brain (exception: the brain vibration is a slight injury)
- Injury to the inside of the eye
- broken bones (with exceptions)
- Distortions of joints (with exceptions), transection of ligaments or tendons opening of a joint
- Certain dental injuries
- (more detailed list in Sradal W (2003) Handbeh of the traffic accident, 5th part, Manz Verlag, Vienna)
- The "serious" health damages mentioned in the law are for example certain infections or poisonings.

Dental injuries

The evaluation of dental injuries is difficult to understand. The overall condition of the teeth and the number and condition of the injured teeth must be taken into account.

Health damage

Health damage is a sensitive disorder of the general condition with disease value.

From a health damage one can assume, for example, if persistent pain exist or in sleep disorders because of pain, obstruction of food intake (dental injuries, lower jaw fracture). Necessary bed rest, wearing plaster casts (with exceptions), walking with crutches, heavier dizziness, frequent vomiting and the like. a

The duration of damage to health is not, as sometimes historically, to equate with the duration of healing.

Examples: For example, uncomplicated arm fracture after initial pain without a sensitive disturbance of the general condition with impairment. Likewise, bruising, which requires more than 24 tubes to disappear completely, does not cause any sensible disturbance of the general condition and thus does not result in damage to health lasting longer than twenty-four days.

In practice, it often results that a minor injury to the condition of the serious injury is given only by a longer than twenty-four-day occupational disability. It is often made the mistake that the duration of disability is simply accepted as a result of injury simply because of the statement of the injured and as a result of the duration of occupational disability and the duration of damage to health is measured. A health impairment lasting more than twenty-four days is not confused with the duration of healing but much less frequently. It is therefore important to know that the duration of damage to health and the duration of occupational disability, when correctly interpreted, are usually different.

Disability

Occupational disability is the inability to work as usual or as required. Occupational disability is not the inability to work at all, but to a certain type of work. The same injury can therefore, depending on the profession, none at all. Cause a short-term or a long-lasting occupational disability.

For the duration of a legitimate hospital stay, you will always have to accept complete disability. The duration of a sick leave may not be set with the duration of the occupational disability without further ado, as sick leave is sometimes confirmed more generously than absolutely necessary and concluded with weekends.

When assessing the professional capacity of a person, the type of professional work and the necessary members and organs should be considered. It must be considered whether the injury completely hinders or complicates the use of the limbs and organs necessary for the specific occupation, that the work cannot be performed with the necessary force and endurance, or only with great self-control, pain or only in part. There is a complete and partial occupational disability. It is the responsibility of the verifier to assess to what degree and for how long the injunction has existed or will exist.

In doing so, there is the occupation practiced at the time of the incident. A constantly exercised sideline. Which serves the acquisition, is to be considered. The profession does not have to be related to the acquisition, even a student a student.

a housewife is a profession. A student who cannot attend school because of an injury. Is incapacitated for work, as is a housewife who cannot look after the household because of an injury. There is no occupational disability for a pupil,

student or teacher during the holidays. An unemployed, a pensioner. A private person or a preschooler does not have a job.

Incapacity for work and ability to work

Total disability is the inability to work at all. A person who is not disabled or incapacitated for employment (defined by the Unemployment Insurance Act and the ASVG) is able to work. Invalid or occupational a person whose ability to work, as a result of his physical or mental condition, has been reduced to less than half that of a corpulent and sane person of similar education and skills and abilities.

Concept of mortal danger

On the question whether bodily injuries or health disorders are to be regarded as life-threatening (see S 84 StGB and 132 StPO), the act must have been committed by such a means and in such a way, which is usually associated with danger to life " It is not enough to use an abstract life-threatening device, such as a pistol, since the law has used the connective and the use of the remedy must be added in a form that is associated with the danger to life The term, usually "means ..After the experience".

Example: An attacker who has a pistol in his hand shoots. The victim suffers a slight injury, namely a head strike. Danger to life was given. If the perpetrator, however, uses the pistol as a percussion instrument, this is not enough to realize the image. Under a means associated with the use of life danger, not only weapons within the meaning of the weapons law, but also objects that are used in daily life, such. As chop kitchen knives, screwdrivers, hammer, etc., but also toxic substance and acids understood. Each means, a weapon, acquires the quality of life only through the means of handling and means of application must therefore be considered together. Danger to life is only to be assumed if the near possibility of death is given (this naturally depends on the means and the mode of application). It does not matter whether z. For example, a puncture against the head, neck or chest could theoretically result in a fatal injury, but whether, as a rule, d. H. after the experience ", mortal danger was given.

Examples: A stab with a knife into the buttocks will not result in any danger to life in the overwhelming number of cases: on the other hand, a deliberate stab in the chest means "danger to life due to the risk of heart or lung injury".

From the seat of an injury may not necessarily be concluded on the intention of the perpetrator. Just to injure this body part, since a distraction may have taken place by evasive or defensive movements the victim.

The experience of the practical assessment of puncture injuries and most injuries from blunt tools shows that the majority of these injuries are only slight. Which, apart from loss of blood and several days of incapacity for work, cause no further consequences.

In the opinion, these facts can be represented by the following wording. It cannot be inferred from the infringement that the act was committed by such a means and in such a manner, which as a rule leads to danger to life such means and in such a way connected with which danger of life is usually connected, us the type and localization of the injuries cannot be opened.

Physical injury with severe permanent consequences

85 StGB

Does the act forever or for a long time

- The loss or serious damage to the language. vision, hearing or reproductive ability
- a significant mutilation or striking disfigurement or

- 3. A serious suffering, infirmity or occupational disability of the injured party results in the offender being punished with imprisonment of six months to five years.

Whether a deformity is present, is judged not by medical considerations, but by the judge according to the general life experience. Defacement must be able to prevent better progress, but also career advancement or marriage. Recognized were: leg shortening with limping gait. Amputation of limbs, facial scars, etc.

Bodily injury with fatal outcome

86 StGB

- Does the act result in the death of the injured party. so the offender is punishable by imprisonment of one to ten Jabren u.

Carelessly induced bodily injury

S88 StGB

- A negligent injured another on the body or damage to the health, punishable by imprisonment up to three months or a fine up to 180 daily seats.
- Does the offender not a serious fault and is either
    1. To treat or injure the wounded person with the perpetrator in an up or down line, or to treat his spouse, brother, or sister or $ 100 as a member of the titer.
    2. The perpetrator is a doctor who has been wounded or harmed by health in the practice of medicine and who in fact does not suffer any damage to his health or disability for more than fourteen days.
    3. the perpetrator has been a nurse, medical-technical or sanitary-auxiliaries who have been injured or injured in Exercise of one of these professions and who is in fact not in a state of health or disability for more than fourteen days;
    4. If, in fact, no damage to health or occupational disability occurs to another person for more than three days, the perpetrator according to paragraph 1 shall not be punished. (3) In the cases specified in 81 Z. 1 and 2, the offender shall be punished with imprisonment of up to six months or a fine of up to 360 daily sentences. (4) If the offense results in severe bodily injury (S 84 (1)), for example, the perpetrator is punished with imprisonment for up to six months or with a fine of up to 360 daily sentences, but in the cases described in the 81 Z. 1 und 2 cases with imprisonment up to two years.

Note s88 Abs, SIG punishes the negligent slight assault. 88 (2) SGB standardizes four grounds of impunity for negligent minor bodily injury. For all, it is true that the offender is not at fault for serious negligence "denotes a particularly high degree of negligence, namely a conspicuous and unusual negligence". Paragraph 4 provides for stricter penalties for serious negligence. In the case of negligent bodily injury, impunity (within the meaning of paragraph 2) is not possible.

Negligent slight body misplacement are therefore punishable if they are committed on the condition that the offender is not at fault.

1) to close relatives and persons to be treated like relatives if the act results in damage to health or occupational disability that does not exceed 24 days (note: onset it would be a serious bodily harm)
    - ❖ Example: In the event of a traffic accident, the co-driving daughter of the driver suffers a crack at the head. The injury is mild. If health damage or occupational disability does not exceed 24 days, the driver remains unpunished.

2) In the practice of medicine (doctor), provided that the damage or occupational disability does not exceed 14 days.
    - ❖ Example: A doctor causes a minor injury as a result of lack of attention, but is healed without consequences after a watch
3) To carry out a profession in the nursing, medical or technical services or health service, provided that the damage or disability does not exceed 14 days.

❖ For example, during the process of transferring a patient, a patient falls out of bed and suffers minor injuries, resulting in a health delay of a few days.

4) To other (strangers), provided that the health damage or occupational disability resulting from the act does not exceed 3 days. However, the so-called 3-day limit also applies only if the offender is not seriously at fault and there is no intentional violation.

Example: In the event of a traffic accident, a driving friend of the driver suffers a minor injury. Health damage or occupational disability does not exceed 3 days. The driver remains unpunished.

If, on the other hand, there is serious fault (i.e. a striking and unusual negligence, the offender can also be punished in the event of a trivial offense (e.g. in the case of drunkenness, entering the crossing at red light).

Doctor privilege

In the case of physicians, the specialist nursing service or medical aid services, the so-called "risk-averseness" of these activities is taken into account, and criminal liability generally only arises if the result is at least damage to health or professional inactivity exceeding 14 days (ie 14 days instead of 3 days) Criminal law practice is not very important to the physician's privilege, as most medical malpractices are only tried in a criminal court if there is a serious injury or death to the patient.

3.2 Medical reports for bodily injuries

The investigation and examination of bodily injuries, has always been an integral part of the forensic practice. The expert has in his opinion in the process of answering certain questions that are either in the concrete case or in the Criminal Procedure Code (S 132 StPO) set are.

132 StPO

In the event of bodily injuries, the person responsible for the damage must describe the injuries in detail and, in particular, decide which of the existing injuries or impairments of health in themselves or in their interaction are to be considered as light, scary or life-threatening due to the particular circumstances of the case of this kind usually cause and what effects it produces in the individual case, as well as by what means or tools and in what way the injuries have been inflicted.

Remarks:

Difficulties in interpreting the interpretation given in S 132 StPO are unconditional or, under the particular circumstances of the individual case, "slight, serious or lethal injury.

As "slight, serious or life-threatening injury" are to be attached those which "are already of their general nature (129StOli a).

As, in the particular circumstances of the individual case, light, serious or life-threatening injuries, those which have attained this quality only because of a special circumstance (quoted in 129 StPO lit.

- Because of the peculiar personal nature or special condition of the injured person.
- Due to the circumstances in which it was committed.
- Because of accidentally added. However, causes or intermediate causes caused by them.

From this comes, as already detailed in Eduard von Hofmann's textbook, two possibilities:

The act was such that it necessarily, for its very nature, had to cause this injury or its outcome or the act was such that under the particular circumstances of the case it had to cause this injury or its outcome. The latter is the case when relatively insignificant and generally known as innocuous powers. Like slaps, blows with the fist and the like. Severe or even fatal injuries, because of special circumstances that were unknown to the offender and cause of the unusual and unexpected outcome. Such circumstances are as peculiar personal quality or special condition of the injured in the sense of the 129 StPO and to discuss.

A peculiar personal condition or particular condition of the injured person "may be present, for example, if an injured person is a hemophiliac and therefore shivering, if aneurysm is shattered by a minor shock, if there is an abnormal fragility of the bones (osteoporosis) and the like Although in these cases there is a causal connection between the action and the injury or the outcome, the hand-ling is not due to its general nature only because of the peculiar nature of the person or the particular condition of the injured person These cases, in which the cause of the unfavorable course of an injury, especially a long duration of a health disorder or occupational disability, is to be sought at individual or other moments, are not uncommon.

The concept of the "special condition of the injured", in contrast to the peculiar personal condition, only refers to temporary states, e.g., B. Alcohol. In which the drunk can keep his balance in a heavy and a fall about after a stroke with greater force than usual: also a pregnancy would be a so-called special condition. Under the, accidental circumstances, within the meaning of the 129 StpO are to be understood external contingencies. Through which the success was brought about. For instance, the fall of a person who has been knocked down by impact or impact on a sharp object or an edge, but also the impossibility of the injured person being given rapid medical help.

For example, wound infections are among the "incidental causes that have been accidentally caused by them or caused by them." If such an occurrence occurs or leads to death, this is to be reckoned with under letter d of the 129 StPO.

This is the answer to the answer given in lit. e of the 129 StlO ask question. "Whether death could have been averted by timely and appropriate help." With regard to medical experience, it can be argued that if the injuries had been treated in a timely and appropriate manner, the consequences would most likely not have materialized, but must add that even a treatment carried out artis sometimes cannot prevent the onset of the consequences.

Causal relationship between injury and illness

Especially in civil matters, the trauma is assessed as the cause of various surgical and internal diseases. Often a variety of diseases with more or more cause due to a shortly before or even long ago suffered injury or an accident. While in the criminal proceedings, the causal link between injury and the alleged consequential illness has to be proven with almost certainty. In the civil case, a high degree of likelihood of connection is sufficient.

The question is not solely about causing a disease from an injury or an accident. But also after the aggravating effect or an accelerating effect (so-called exacerbation damage and / or premature damage.) The likelihood that a morbid condition results from an injury is less, the longer

Time between this and the first symptoms disappeared the less immediate consequences the abuse had and could explain the more indications are given from the anamnesis. Which the disease even without assessment is therefore to consider whether a disease was caused by the Veletzung.

Creation and construction of a medical injury report

1. Questions and problems

The questions of the client are to be reproduced in advance, as it is expressed that the reviewer has dealt with the issue. If the questions are inappropriate or incomplete (errors or omissions in the questions), the client must be made aware of them.

Example: The fabricated expert reimbursed in the criminal case. At the request of. an assessment of the nature, cause and severity of injuries to the NN, as well as the duration of occupational disability and damage to health, together with the duration and intensity of the pain periods caused by the injury

2. Files extract

The expert must keep an eye on the questions asked by the court when filing the file and draw up a short excerpt of the file with reference to the relevant file (AS). All documents (e.g. injury report, statements of the injured party to the police, findings of the police medical examination and medical examination, medical history, X-ray findings, medical reports) must also be mentioned. Missing findings are to be obtained.

It is critical to examine whether there was certainly an infringement at all and whether this was objectified (see: Objectification and Documentation of Injuries, p. 42).

Example: N.N., b. on ... was according to his information (AS ...) at about ... o'clock in ... victim of an attack. He claimed to have been beaten with his hands and feet and had received a powerful blow to the back of his head and on his back from one of the culprits from behind with a hard object. An unconsciousness was not according to the injured, he was just fogged. Ambulance protocol (AS ...) Police medical findings and expertise (AS ...)

3. Own investigation

Medical survey

The injured person must be asked questions about the victimization, the nature of the injury and the consequences of the injury, as well as treatment, pain, complications, previous illnesses, accidents or injuries. Type of employment,

duration of sick leave etc. A questionnaire can be used. For pain, ask how long were severe, moderate, or mild pain. All subjective information must be checked critically, discrepancies are clear.

Example: N.N. born on .... job, whft. in ... appears on the. About charge in ... and gives rise to questioning: I am in no relation to the accused. I was the victim of a robbery .. I was beaten and kicked with my fists etc. I went to the next police station and was taken to the hospital with a bleeding head round. The wound was sewn, then the sutures removed. I was a porter at the time and now unemployed. I had headache after the fact and the head round hurt badly. I was not bedridden. The impact on the right shoulder caused me about 14 days of pain, now I feel no more pain, the Wundeam head was very bad for about 3 weeks, now I have some days two to six times a day headache, some days no pain , When pressed, the scar hurts a lot. I've never suffered a head injury or a shoulder injury before.

4. Findings

The exactly collected and correctly documented findings are the basis of any expert report. In the findings, the expert determines facts on behalf of the court, which he can only recognize on the basis of his particular expertise. As part of the physical examination, objective findings (including necessary additional examinations, such as laboratory examinations, ECG, EEG) must be collected. Dabi is said to be the entire body surface systematic mentation of major injury findings. In particular, residual conditions or consequences of injuries are to be mentioned, such as scars, restraint restrictions, functional failures, mutilations and the like. It may also be important to constrict Absence, for example in deceptive acts. Likewise, mental disorders are to be recorded.

Example: 183 cm tall, 76 kg heavy man in an inclusively nourishing condition. The head shaped morally, the head, about 4 cm above the upper shell and about 3cm dabinter behind a vertical frame, 4.5 cm long and 3 mm wide irritable scar. In the area of the scar and in the area around the nostril, a slight pain is indicated already on slight pressure. The skull roof otherwise neither pressure nor sensitive to klouf.Am head no other abnormalities. In the area of the right shoulder and neck area no abnormalities, no pressure marks, also no other reported soreness, no weakening. The thoracic spine straight landing, not pressure or knock sensitive etc.

Report

In the report, the subject matter expert draws conclusions from those facts which have either been established on the basis of his expertise or which have been communicated to him by the court or which he has taken from the files. The language of examinations must also be understandable for non-medical practitioners. The expert will be given a "interpreter function" for Latin or Greek technical terms, which is why such an acronym should be avoided or translated in the report The information provided by the deceased and the findings of the investigation, including any supplementary findings, may be briefly summarized in the expert opinion and the questions asked will then be answered

The report must contain at least the following information.

A description of the location, appearance and immediate consequences of the injury including a diagnosis.

Example: N.N. .. has sustained a bleeding rupture that is about 4 cm long, otherwise no external signs of injury were found. Bone injuries were absent. Wound care was performed by sutures, the healing was uncomplicated. The diagnosis on the ambulance card "Breast Spinal Contraindication" was based solely on subjective data provided by the patient, and there was no evidence of any lesions on the back, muscle tension, deep hardening (such as bruising) or restriction of abdominal injuries it is assumed that NN suffered a bruising of the thoracic spine in the subject incident due to an impact with an object or an impact on the ground, then it was an injury that would be graded as light in grade.

- , The qualification of the injury (whether the injury is to be regarded as slight or serious injury) with brief justification. If there are several injuries, the qualification for each injury must be stated individually and for all injuries as a whole (several minor injuries may be considered to be a serious injury in their interaction)

Examples: "The velvet is to be regarded as easy in degree." Or. The injury is to be regarded as intrinsically difficult in itself. "

- , By what means or tools and in what way the injury was inflicted (accident self-supply or third-party supply).

Example: The head injury sustained would be caused by the impact of a blunt or blunt object on the head of Manes. "

- , An indication of whether the act was committed by such means and in such a way, which is usually associated with danger to life.

Example: It cannot be deduced from the injury finding that the act is associated with a lifetime risk.

- , The duration of damage or disability (separate information) with regard to the limits set by law (3, 14 and 24 days).

Examples: "A health damage and disability was due to the minor injury (s) not given." According to the described healing process and symptoms have health damage and occupational disability, the duration of three days not exceeded. “The velvets have a damage to their health and occupational disability lasting more than three days. But not more than 24 days endangered. The injuries cause damage to health and occupational disability lasting more than 24 days. "

- , The duration and intensity of the pain periods caused by the injuries (see Pain Money, p. 112).
- , Whether lasting consequences have occurred as a result of the injuries and, if so, whether or which possible consequences are to be expected.

Example: .. With lasting consequences is not to be Rheum”

- .Ob evl. a factual impairment by alcohol, addictive substances or medicines was present
- , Evl. Suggestion of additional assessments

Example: "As there is no imaging examination (eg computed tomography) and the injured person indicates that there is still a temporary headache, it is recommended to have an additional expert examination to rule out late damage."

- **, References:** If it makes sense and necessary, a list of the specialized literature used can be attached.

These points should be added if necessary.

In case of ambiguity of the findings, the differential diagnostic considerations of the expert are to be cited. Basically, the report should always clearly express any doubts or uncertainties. Upon receipt of the written opinion, the parties have the right to oral explanation by the expert and may comment on it at the hearing.

Further and more useful literature:

Haberda A (1927) Edward v. Hofmann's Textbook of Forensic Medicine. Urban & Schwarzenberg, Berlin-Vienna. Mueller B (1975) Surrender and consideration of the living, including the obligation to tolerate examinations and medical interventions. In: Mueller B (ed.) Judicial Medicine, Vol. 1, 2nd ed. 243-247, and Springer

Medical professions

Physician or dentist can either do freelance work in a practice or group practice or a service relationship, e.g. as a hospital physician, while providing medical practice (under the guidance and supervision of the responsible for the training physicians or self-employed as a general practitioner the doctor numerous different fields of activity.

Physicians or contract physicians are entitled to perform services on behalf of the social security institutions. You have a contract with the health insurance and calculate directly with the health insurance. The system of statutory health insurance in the form of a so-called compulsory insurance covers more than 90% of the population (the insurance provider results from the gainful employment of the insured, family members are usually insured). Other persons can be insured voluntarily. The statutory health insurance ensures that normal medical services are provided. The legal basis is mainly the General Social Insurance Act (ASVG). A cashier's contract means to the self-employed doctor that he is entitled to provide health care for the account of the social security institutions. The legal relationships between the doctor and the social health insurance institution are private law contracts (individual contract). The agreements on the remuneration of contracted services are summarized in fee ordinances.

Dialect doctors are freelance doctors who have not signed a contract with the health insurance. For the time being, the patient pays the doctor himself, receives a bill from the doctor and submits it to the health insurance. If the patient is entitled to a cash contract doctor, but wishes to use a medical doctor, he will normally be reimbursed 80% of the standard costs Cash contract physician be used would have been. The difference must be paid by the patient himself. However, there are also benefits that are not paid by the health insurance, the patient should be informed about this.

Emergency physicians are general practitioners or specialist physicians who perform emergency medical services. You have to do a special apprenticeship ("emergency course").

Primary physicians are doctors who are in charge of a division or outpatient clinic in a hospital.

Consultants are doctors who are consulted by another doctor for diagnosis or therapy. If this happens only informally, the attending physician is liable. If this is done formally, the consultant is liable. If a patient referred to a specialist, it comes with the specialist to a new independent contract, the specialist is therefore liable.

Attending physicians

These are doctors who have the right to treat patients in so-called patient hospitals (usually in private hospitals).

Medical officers are full-time doctors working at medical service. To carry out the official tasks. As a public health physicians are also the labor inspection physicians. Police doctors are medical officers who work for a federal police department, a security directorate or the Federal Ministry of the Interior. Doctors who wish to work as medical officers must be entitled to work independently and have special training. The so-called Physics exam (Physikatsprüfung) filed as official doctors work sovereign and are equipped with command and coercive power. Public health physicians are not subject to the medical profession for medical officers. A. no commitment to medical professional secrecy. The reason for this is that medical officers have to make medical reports to the authority or reimburse medical reports. However, civil servants are subject to official secrecy.

District, county, county and field physicians are physicians who perform paramedical police tasks assigned to the communities. But you have no official position.

Military doctors are doctors working for the army.

Occupational physicians and school doctors are fundamentally subject to confidentiality vis-à-vis an entrepreneur (e.g. if he or she requires information about the illness of an employee) or the school board.

Resident physicians are physicians who are entitled to practice their own profession, but only perform activities that do not require either a place of ordination or an employment relationship (e.g. pure appraisal activities). They have to

announce their residence to the medical association (however, no doctor's sign may be placed there and no treatment can be carried out).

Certified doctors are nationals of the EU or the European Economic Area (EEA), who are entitled to provide proof of independent professional practice in Austria. Approval means the state's permission to pursue an academic health profession.

A nostrification procedure takes place for the recognition of a study course taken at a recognized foreign university (S90 UG 2002).

Self-employed physicians can work in a practice or work together in ordination rooms (ordination community) or apparatus (apparatus community). Every doctor concludes a treatment contract with his patients and is personally responsible.

, In a group practice, the cooperation of physicians in legal form of an open acquisitive society. The treatment contract is concluded between the patient and the group practice

Professional duties and professional rights of the doctor

Rights and peculiarities of the physician arise u. a. from the Professional right (ÄrzteG), the Hospitals area is legally u.a. governed by the Health and Nursing Act (KAKuG) and state hospital law.

The following are the most important professional duties and professional rights of the doctor listed (detailed versions in the respective chapters)

- , Eeäzche activity may be become only after entry in the doctor list and issuance of a medical card.
- , The doctor is obliged to protect the welfare of the sick and the protection of the healthy. He is obliged to diligently and faithfully administer any healthy person or patient whom he has taken over without distinction from the person. He must act in accordance with the rigorous science and experience and in compliance with existing regulations.
- .The doctor may not refuse the first aid in case of imminent danger to life. Regardless of whether he is serving or not.
- , The doctor is (exceptionally) not obliged to conclude a treatment contract. He can also resign from a treatment contract.
- , Doctors in public hospitals are legally obliged to treat only the methods recognized by medical science. When using so-called alternative methods (traditional Chinese medicine, outsider methods, etc.), the attending physician bears an increased liability risk, which must be countered by providing accurate information. The use of methods designated as unsuitable by the Supreme Council of Santas is inadmissible.
- The doctor has to practice his profession personally and directly, possibly in cooperation with other doctors, in cooperation with other doctors. He may use assistants when acting on his own instructions and under his permanent supervision.
- .In individual cases (not generally) the doctor may delegate medical work to members of other health professionals. The doctor carries the so-called arrangement responsibility. The member of the other health profession bears the so-called executive responsibility for actions on the basis of a medical order. The principle of trust applies here. In order to avoid any liability problems, the medical order must be made in writing and the execution confirmed by signature. The principle of trust applies to both horizontal and vertical division of labor. It states that everyone involved in the treatment of patients may rely on the other person to perform their duties with due diligence. There is thus no need for a mutual surveillance specialist (eg surgeon and anesthetist), and the principle of individual responsibility of every specialist applies to all assigned tasks and activities.
- In the case of the doctor there is a so-called guarantor assignment. This is the duty to avert a certain "success." A guarantor position has someone who is obligated for example because of the legal order, a contract or with

regard to a previous action to the "aftertaste." The doctor guarantees that everything for the Life's proper and necessary happens.

Inspection by omission

S2 StGB

If the law threatens to bring about success with punishment, it is also punishable to anyone who avoids turning it away, even though he is subject to an obligation which he meets in particular by the rule of law, and the omission of the successful avoidance of a realization of the legal image through action is to be held equal.

- , The doctor and his assistants are required to maintain secrecy about all the secrets entrusted or disclosed to them in the exercise of their profession (confidentiality).
- , Every doctor is obliged to report to the safety authority under certain conditions (duty to report).
- .Erist obliged to refund reports under certain conditions (obligation to register).
- , He is obliged to keep a documentation about each patient (documentation required). This includes records of the condition of the patient upon receiving treatment or counseling. History, diagnosis, course of the disease and type and extent of medical services. Medicines with attached adhesive labels must be included in the documentation.
- , The doctor is obliged to provide the patient or his legal representative with all information (obligation to provide information) such as to allow access to the documentation and to hand out copies for reimbursement.
- The doctor is required to exercise due care when issuing medical certificates.
- , The doctor is obliged to adhere to advertising restrictions and provision prohibitions (remuneration for the allocation of patients) (guidelines of the Austrian Medical Association).
- The doctor is obliged to keep his place of ordination in order, to keep certain medicines in stock and to mark the place of treatment accordingly.
- The doctor is obliged to undergo continuous training (lifelong learning). This can be done by visiting recognized advanced training events of the regional medical associations, the Austrian Medical Association, the respective medical societies or foreign events and congresses.
- .Doctors and group practices are committed to regularly carry out an evaluation of quality

In addition, private organizations provide ambulance flights, such as the recovery of sick people, covered by rewlige insurance.

Paramedical services

The Plumbing auxiliary services include the job titles operation assistant. Laboratory assistant. Prosecutor's assistant, surgery assistant, occupational therapy assistant and disinfection assistant. The action takes place only on medical order.

The training takes place in courses between 130-210 hours of non-exam.

Masseurs

The legal basis is the Medical Masseur and Home Health Act. The masseur's profession includes the performance of classical massage according to the doctor's instructions. Packing applications thermo-therapy. Ultrasound therapy and special massages.

The training period is 1690 hours, the job title is Medical Masseur.

The massage therapist office includes additional training and can be exercised on his own responsibility for medical treatment by medical order. The job title loud massage therapist. The additional insurance lasts 800 hours. Special qualifications can be acquired through additional training.

Commercial professions in health care

Certain activities in the medical field are assessed as handicraft and require apprenticeship training. These include dental technicians, bandages, orthopedic technicians, opticians, hearing care professionals and pest controllers. Commercial professions are a druggist commercial masseur. Beauticians, chiropodists, undertakers and others. Tattooing and Piercing by traders are precisely regulated (in the SS 18 and 109 GewO md VO BGBI II 2003/141).

6.5 The medical education

In principle, any medical treatment requires the patient's effective consent. Violation of the duty to inform, above all the clarification of the risk, constitutes a behavioral error and can lead to criminal and civil-legal liability. In the past few years, the secondary disclosure violation has developed into a so-called "catching-up situation" (see p. 202), so that the correct and legally correct information and its exact documentation represent important protection for physicians.

Function of the Enlightenment

The most important function of education is to enable the patient to legally consent to a medical procedure.

Legally, this consent must be "free of defects", which can only be if the patient has been fully informed.

Without appropriate education, the consent of the patient is ineffective, there is an arbitrary treatment (110 StGB) before.

If a patient with insight and judgment refuses treatment, it must be refrained from doing so, even if it results in severe damage to health or death. The Enlightenment is subdivided into the so-called Self-Determination-Enlightenment and the so-called security education.

Self-determination Enlightenment

The goal is to provide the patient with knowledge so that he or she can determine whether or not he or she is to be treated, and what the consequences of this are.

- .Diagnosis reconnaissance
- .Therapy education (therapeutic options and alternatives)
- .Risk reconnaissance

Diagnostic education (explanation of the disease)

If the patient visits a doctor to obtain information about his or her state of health, the doctor has an obligation to diagnose. It must be truthful and comprehensive: however, it should take into account the psychic situation of the patient, especially in the case of an outrageous (hopeless) prognosis. The patient should not be plunged into hopelessness. The doctor must find out in the conversation what degree of truth the patient tolerates.

According to the Hippocratic principle, salus aegroti suprema lex, there is no legal obligation to immediately open the diagnosis. For a dying person, however, it may be valuable to experience fullness. The last stage of life offers the possibility of regulating economic affairs (estate), finding meaning, farewell or reconciliation. This must be weighed in individual cases.

Seriously ill people go through different stages when they realize the hopeless situation: first repression, then fight against the disease, later depression with acute suicidal tendencies and finally acceptance of death. Intense listening is required in the doctor's talk to find out what is most useful to the patient at the moment. If the notification of the severity of the illness or the possible consequences of an operation has serious negative consequences for the

patient's well-being, the education can be restricted or omitted in exceptional cases. This so-called therapeutic privilege is recognized, but there is no clear legal basis.

Therapy education (explanation of the therapeutic possibilities and alternatives)

This should inform the patient about the type, extent, severity, urgency, chances of success or failure rate of the possible treatment as well as about alternative treatment options (e.g. surgical intervention versus conservative treatment: natural birth versus cut birth etc.). It is also necessary to clarify the dangers of omission of treatment. The patient must also be informed if a newer, promising method of treatment is available in another hospital or another doctor that cannot currently be offered by the practitioner for personal or technical reasons.

Risk education (explanation of possible dangers and consequences)

Risk education is the most important aspect of enlightenment in medical liability procedures

- .It should enable the patient to decide whether he or she wishes to undergo the planned measure with possibly serious consequences or even death (for example in the case of a high-risk heart surgery) or continue to tolerate his illness. As for the rarity of a risk, the physician is under no obligation to educate the patient about all sorts of risks unless it is obvious to the physician that knowledge of a particular rare risk to the patient is important.
- There are intervention-specific risks and patient-specific risks.
- .Device-specific risks are risks that are likely to occur frequently in the proposed treatment (there is no% or% to be elucidated or clarified) or that are typically associated specifically with the proposed treatment are, even if they occur extremely rarely (i.e. also independent of a% or % o value) and which are unavoidable even with the utmost care.

Patient-specific risks are risks that arise from the patient's physical circumstances or circumstances (e.g. increased risk of complications in diabetes or severe heart disease, hand operation with a professional musician, eye surgery with an artist, struma surgery (surgery on the thyroid gland at risk of vocal cord injury / at one Singer).

Typical risks are risks which, in particular, are inherent in the planned procedure and cannot be reliably avoided even when the greatest care and error-free implementation are used, and surprise the uninformed patient, because he does not expect this result (OGH decision)

Examples of so-called psychological risks are vocal cord paralysis or tetany (convulsions, tingling), thyroid surgery, radiation damage during X-ray treatment. Blindness after nasal surgery, brain damage after heart surgery, lumbar puncture after ligament surgery, appearance of a boring of the intestinal wall in colonoscopy, dental damage after bronchoscopy (examination of the respiratory tract, urinary incontinence (uncontrolled urination) after prostate surgery, peroneus paralysis (loss of function of the nervus peroneus forefoot and toe extensor muscles) after varicose vein surgery.

Typical risks must always be cleared up, the obligation to inform is tightened here. Because of missing or inadequate explanation of the risk, then is also to be held liable if the intervention (e.g. an operation) has taken place and a typical surgical risk has been realized without the doctor's misconduct, about which the patient should have been informed In the event of the occurrence of an enlightened typical risk, he waives the liability of the physician. Risk education thus shifts the risk of damage from the doctor to the patient.

The doctor is in a dilemma. The explanation that bilateral vocal cord paralysis may occur in a presumably uncomplicated and necessary for the patient necessary thyroid surgery as a typical complication with a very low probability, of course, the patient considerably insecure.

Backup Enlightenment

The goal is to provide the patient with the knowledge necessary to ensure the success of the cure, d. H. how he should behave during and after the treatment. The patient should thereby actively participate in the treatment and be able to cooperate optimally. This relates to medication, diet, exercise therapy, immediate communication of the physician in the event of pain or certain symptoms, possible after-part consequences of non-compliance with therapeutic instructions, etc.

A treatment mistake can also be made to the doctor if he has not informed the patient about possible post-treatment complications and has given precise instructions on what to do then (eg contact a doctor immediately). A treatment error may also occur if the patient has not been informed that medication could impair their ability to drive.

Further information on medical education

Scope of the Enlightenment

This depends on the circumstances of the individual case. The education must be more extensive the less urgent the procedure is. In the case of imminent danger to life, education must be limited to what is absolutely necessary; in the case of a vital indication (life-threatening event), it may even be completely eliminated in individual cases.

- In the case of non-emergency treatment, a documented medical consultation and associated written consent of the patient are generally made.
- In the case of operations that are neither materially necessary nor urgent in terms of time, the demands on the education are particularly high (eg, purely cosmetic procedures or organ removal from an organ donor, such as a kidney donation).

The patient's desire for education is also to be met by "difficult" patients, regardless of how time-consuming or complicated the discussion may be. Lack of time is legally no argument against a detailed explanation.

If a patient is silent, the doctor should start the reconnaissance conversation and find out whether education is desired and how far it is tolerated.

Enlightenment waiver

If the patient refrains from being informed ("I trust you"), the doctor must document this lack of information in the medical history, and caution should be given in the event of a refusal to give information and particularly exact documentation.

Who explains?

Responsible for the clarification is basically the doctor who performs the treatment. If several doctors work together (eg general practitioner referral to a specialist or to the hospital with care by several physicians), a so-called step-by-step explanation can be carried out. Every doctor has to inform the patient about the dangers associated with his treatment. The last-resorting physician (e.g. the surgeon) must make sure that a full explanation has been given. The doctor employed in a hospital is obliged to provide information on the basis of the treatment contract or hospital admission contract. It will not always be possible for the attending physician to do the education himself. Delegation of medical education is only permitted to medical personnel. An education by (inexperienced) turn doctors is to be regarded as problematic, since risk situation and course of a treatment can be estimated correctly only on basis of appropriate experience with comparable cases. However, this cannot be assumed if a regular doctor informs about an operation. Where he u.a. not even assisted. In the case of a serious intervention, the qualification of the informing physician must be set to a stricter scale. At the request of the patient, the education must be done by a doctor authorized to practice his own profession. According to the case law, the patient should also be informed about the person of the operation if it is clear that he has a reasonable expectation of being operated on by a very specific doctor.

Of course, the resident physician is also required to provide information on the basis of the treatment contract. Outside the hospitals, the documentation about the education carried out is often not optimal and needs improvement. The doctor should bear in mind that he is already on mere assertion of the patient that he was not sufficiently or properly informed, demonstrative (the so-called burden of proof is up to the doctor).

Note: Burden of proof means who (the plaintiff or the defendant) has to prove something in the event of a claim (eg clarification of medical treatment carried out).

Who is to enlighten?

The patient or, if he or she is not competent or competent, whose legal representative relatives or confidants may not be informed about confidentiality, unless the patient gives his consent.

The insightful or competent minor child (the presumption of insight and judgment is valid from **the age of 14 years**) is self-educated. Only in the case of serious and sustained interventions requiring the consent of the careers or guardians are these also to be envisaged so that they can give their consent.

Time of enlightenment

The patient must have a reasonable waiting period. This depends on the urgency and severity of the procedure. The patient should have the opportunity to consult with relatives or a medical examiner. As a guide, the judicature is 1-3 days before the actual Take measure. In case of minor surgery, it is sufficient to provide information the day before the planned intervention.

Form of enlightenment

This takes place through the medical discussion, usually with the written consent of the patient to the information sheets presented and discussed with the patient.

The personal conversation is indispensable. Only in this way can the doctor get an idea of the level of knowledge, resilience and comprehension of the patient. He can ask questions and counter questions for understanding. Sketches, models, videos, etc. can be used.

The date, time as well as the course and content of the discussion are to be documented in a catchword. Enlightenment forms have an important, but only supportive character in the Enlightenment. They serve as one. Art checklist for conversation and evidence? They are mostly illustrations and allow the patient to take in peacefully the information provided (eg a comprehensive list of possible complications and risks in the case of certain treatment instructions, rules of conduct, etc.). There are also educational leaflets, CDs, videos or DVDs.

Enlightenment forms or other media are not a substitute for a discussion of enlightenment. Likewise, leaflets medicines are not a substitute for an educational conversation, since the doctor can be sure whether the patient has understood the content or the scope. The sole signing of a (possibly unread) information sheets is no proof that the patient has understood the content. A documented medical discussion is therefore always necessary.

On the last page of the information sheets find most of the following notes:

- I read and understood the information sheet. I was able to ask all questions that interested me. I will pay attention to the behavioral instructions.
- In the discussion with Mrs. / Mr. ... .were discussed among others ... as well as ...
- My questions were answered completely and comprehensibly.
- After careful consideration, I agree to
- I agree with any necessary additional or follow-up interventions

- I do not agree ... .I have been advised that this can delay and complicate the diagnosis and treatment of any disease.
- Place, date, time, signature of patient / authorized / caregiver, signature of physician (for example: DIOmed warning system).

For consent, there are no formal requirements, oral consent is in principle sufficient, an implicit consent possible (by conclusive action, the lawyer understands conclusive action, in which without explicit expressions of will alone on the circumstances for a specific legally relevant sake can be concluded). Consent is basically valid even if nothing was signed. However, there is the problem of not being forced to sign a signature that would sign it if it were to be documented.

Only in the following exceptional cases is a written form of consent always necessary:

- for serious treatment in psychiatric accommodation (S 39 UbG)
- in clinical trials (S39 AMG.S 50 MPG)
- for blood donations (S 8 BSG)
- with medically assisted reproduction (S 8 FMedG)
- in gene analysis (GTG)

Enlightenment of foreign-language patients

If, for linguistic reasons, the patient is unable to follow the reconnaissance interview, a linguist or confidant of the patient or an interpreter (requirement of consular representation possible) must be available. If this is not the case, if the treatment was not urgent, there may be a violation of the obligation to inform.

Concept of surgical extension

A necessary extension or change of the procedure occurring during the operation, which is not covered by the consent of the patient because it was not discussed with the patient prior to the procedure, can then be carried out if the new finding does not extend or change the procedure almost certainly leads to the death of the patient in the foreseeable future, or if the discontinuation of the operation for the purpose of extended education would involve additional dangerous complications and a patient's openness to opiate surgery is not to be expected Intervention, the patient should be informed before the procedure.

Economic education

Special education or warning duties do not hit the doctor. If no fee is agreed and if expressly gratuitous payment is not agreed, then appropriate remuneration shall be deemed agreed. However, it is first and foremost required to advise the patient in economic terms.

Example: A dentist had not informed that self-preservation would be applied to the patient for the best treatment. The court ruled that the patient does not have to pay this share.

Enlightenment error

About 30% of the patients who had a correct and detailed explanation in writing and orally (as part of a study with audio recordings) claimed at the end of their stay in the hospital that they had not been informed at all.

The burden of proof for the presence of a treatment error lies with the patient. The injured patient must prove that the doctor has behaved in a manner that has caused harm. Since the patient lacks the precise insight into the treatment process and the necessary expertise for the assessment, and since the determination of the causal relationship between behavior and harm can be extremely difficult, the case law provides the patient with relief in the proof of causality. In civil proceedings, therefore, it is sufficient to make the occurrence of the damage most probable by the behavior of the

physician (for example, in typical events in the sense of so-called prima facie evidence (p. 218), in case of documentation deficiencies or in the absence of control findings).

However, as the medical malpractice in the specific case can be difficult to prove, or the evidence of obtaining an expert opinion fails, lawyers or informants avoid the allegation of inadequate or lack of information, since this allegation is much easier to prove (so-called omnibus clause or substitute liability reason “Auffangtatbestand or Ersatzhaftungsgrund). In the assertion of treatment errors is increasingly argued with inadequate or lack of education. In court cases, the physician's obligation to provide information has become a kind of substitute liability for an unproven treatment error (or, in other words, another process opportunity if the patient cannot prove a culpable medical error on the part of the physician).

The burden of proof for a technically and juristically correct education as a prerequisite for the patient's written consent and documentation lies with the doctor or the hospital. A violation of the medical obligation to document in civil or criminal proceedings justifies the presumption. That the unofficial measure was not taken by the doctor (Quod non in acta, est no in munda - which is not in the act, did not happen). The professionally and legally correct information and its documentation thus represent an important protection for physicians. Due to the current legal situation, the patient can claim for damages (e.g. claim for pain) even if the treatment lege artis was performed, but violates the obligation to inform has been. It is sufficient even the patient's complete assertion that he was not sufficiently or properly informed (for example, about alternative methods) and his consent was therefore not free of defects. This is in principle already unlawful action. However, in order to prevent misuse by patients, the patient must demonstrate, in a reasonable manner, which he would have stood before a genuine decision-making body if he were properly informed, and he cannot claim that he had refused the treatment when properly informed.

Notes on the obligation to inform from a medical point of view

Patients usually prefer a physician-dominated decision-making process and especially listen to information that supports a decision that has already been made (as well as in daily life). Is the operation necessary? The patient tries negative things. Which psychologically cause a cognitive dissonance "to repress.

The obligation to inform has the disadvantage that it is inherently risky. Normally, the patient will be briefed that in 98% of the cases, complication will go on, while for half an hour, the remaining 2% will be elucidated, especially the most severe complications, including paralysis, blindness and death. Although the patient wants to know what happens to him, he does not want to undergo a necessary procedure. Which, for reasons of reason, he cannot escape anyway (for example, a necessary eye operation), all kinds of risks are showered on him. It therefore happens again and again that someone who was not afraid of an operation that was necessary for him anyway was afraid after the explanation.

Often, patients feel that the decision sticks to them, although they sometimes understand it. This should be avoided by the doctor despite the prevailing conditions.

6.6 Medical confidentiality

The right of the patient to confidentiality and secrecy is the basis of the relationship of trust between doctor and patient. The silent pardon is unlimited in duration and lasts beyond the duration of the treatment and beyond the death of the patient. She is u. a. in (S 54 ArzteG, S9 KAKuG and S121 StGB specified).

Basically:

The doctor and his assistants are required to maintain secrecy about all the secrets entrusted or disclosed to them in the exercise of their profession (S 54 para 1 ÄrzteG).

The medical confidentiality is not absolute, it can be broken in certain legal situations. However, the persons who learn about sensitive things in these cases are bound to secrecy.

Exceptions to medical confidentiality

- .1. Statutory reporting obligations on the health status of certain persons (eg certain illnesses, occupational diseases or occupational accidents).
- 2. Legally required disclosure obligations (see p.
- 3. Protecting higher-value public health interests or the administration of justice (see page 205).
- 4. Notifications for fee and medication billing to payers (social security funds, health care institutions) to the extent required.
- • 5.During release from confidentiality by the protected person S 54 para 2 no. 3 ÄrzteG)

Further important information about secrecy

General information

The doctor is obliged to provide the patient or his legal representative with all information and to grant access to the documentation and to hand over copies for reimbursement of costs. Relatives have no right to access the medical history, but the patient can delegate his right. However, the records should always be discussed with the patient in order to avoid misunderstandings. The right of the patient to unrestricted information or inspection may only be limited in special cases (so-called therapeutic privilege). In the case of medical concerns, access to a medical history can be partially or completely denied during ongoing treatment, but not the inspection of a completed medical history.

- **Secrecy towards relatives**

In principle, other persons may only be given information if the patient has expressly permitted this. Although in most cases family support is desired, the duty of secrecy also applies to members of the family. Excluded are parents who are entitled to custody, guardian or guardian.

The patient can name confidants who can be informed to the same extent as the patient himself. The patient can also restrict the flow of information ("You may only say that, but never"). It should be recorded in the medical history, who is involved as a confidant in the treatment and who may not be involved under any circumstances.

For those who are admitted without consciousness, the wishes of the next of kin must be taken care of.

- **Telephone information about patients**

To ensure that only authorized persons are given information, a password should be agreed on the phone is queried. If the caller can identify himself as entitled, information may also be given to him by telephone.

- **Confidentiality to other doctors and staff**

Even if a doctor informs another doctor, this must be done only with the patient's consent. Within a hospital, of course, every professional group must receive all the information it needs to carry out its work (e.g. also cleaning staff at increased risk of infection).

- **Confidentiality towards other persons**

The duty of secrecy is to be maintained not only at the place of employment but also outside the home, for example during leisure time.

- **Confidentiality of auxiliary persons**

The duty of confidentiality also applies to auxiliary persons (e.g. assistants, medical assistance, writing staff, surgical assistants, students of health and nursing schools). The doctor must instruct the assistants on the obligation to maintain secrecy.

- **Confidentiality in organ transplants**

The KAKuG regulates the special duty of confidentiality of all parties involved with regard to the person of the donor and the recipient. The person of the donor may not be made known to the recipient.

- **Confidentiality in genetic analyzes**

Employers and insurance companies are prohibited. To ask for results from genetic analyzes. to accept or exploit (Genetic Engineering Act GTG).

- **Confidentiality against private insurance**

Insurance policies often include provisions that require the patient to release all future doctors from their duty of confidentiality to the insurance company. The validity of such a general childbirth clause is questionable. This is because the effectiveness of a valid childbirth depends on whether the patient is a patient with insight and judgment and delivers this childbirth free of intentional defects in individual cases.

Information on private insurance may only relate to:

- •. diagnosis
- .Wedding time and
- •. Billing-relevant services.

This must be observed in the communication between private insurance companies and hospitals or private doctors. In no case may private insurance be granted access to the entire documentation of the patient, unless there is an explicit consent of the patient for the specific individual case. In practice, it is therefore advisable to ask the insurance company to attach a declaration of discharge of the patient for the individual case to a request for transfer.

This can be very important for the patient, because if inadmissible insight into the entire medical history is granted, a discrepancy between information provided by the patient in the medical history and information given by the patient with regard to the insurance may make the insurance contract invalid derived from the insurance. A well-known question to doctors in this regard is whether the patient has previously suffered from such a condition. If the doctor accepts this and if the patient has not stated this condition when concluding the insurance contract, this may result in freedom from performance.

Information to lawyers

No patient data may be disclosed without the consent of the patient. A lawyer must be authorized by the patient. The request must be made in writing. The delivery should be made in the hospital via the wef of the medical directorate.

Information outside of a procedure

In general, physicians have no obligation to provide information to authorities, ministries, the police or the public prosecutor's office outside of a judicial procedure. An exception are only the legally standardized reporting and reporting obligations.

In the case of official acts of public security organs which are not subject to a legal mandate (mere request for information), the doctor is entitled to determine whether the disclosure of the secret of the nature and content for the protection of higher interests of the administration of justice is absolutely necessary in a particular case. In the case of inquiries from the safety authority, therefore, not all requested information must be issued immediately. However, security authorities have the right to identify certain persons: if it is feared that a person whose residence is unknown has committed suicide or has been the victim of acts of violence or an accident (Security Police Act SPG S24, 57, 65a).

- **Confidentiality after the death of the patient**

In principle, even after the death of the patient, confidentiality continues.

In individual cases, it will depend on whether it had corresponded to the presumed will of the deceased to keep certain circumstances secret. The doctor's decision will depend on whether he can assume that the patient would have released him from confidentiality for this specific case. There may be a possible collision of personal rights of the deceased, silence of the doctor and legitimate concerns of heirs. In the event of doubt, competent legal assistance should be sought prior to disclosure (eg legal department of the medical associations).

Delivery of autopsy findings to relatives

Legally, this must be a court order, this can be obtained at the district court.

Information about causes of death

A problem in doctor-patient communication concerns information about causes of death. The cause of death is, in principle, subject to medical confidentiality after the death of the patient. Strictly speaking, it is not permissible to announce the cause of death without further relatives or private insurances. Inquiries from private life and accident insurances are to be forwarded to the commissioning authority (for judicial autopsies to the court, to sanitary police autopsies of the Santas authority), to the institution for autopsy in hospitals. Information about illnesses (especially occupational disability occupational diseases) and the cause of death may be permitted to the social security and pension authorities.

Insight into the medical history of a deceased

Relatives only have the right to access the medical records of a deceased if a legal interest is asserted or a consent or suspected consent of the deceased is given. The final decision as to whether a suspected consent of the deceased is to be accepted lies with the court. If a treatment error is suspected, the patient advocacy body offers a review of the medical history and informs the relatives about the result of this review.

General to the doctor liability

Basically you can stick:

- •. The institution of the hospital (from the contractual liability, the doctor is a vicarious agent).
- •. the employed doctor (from the tort liability)
- •. a resident physician (he is a contractual partner of the patient and is liable for the contractual liability also for his vicarious agents, and he is liable for tortious liability for his own fault)
- •. A legal entity (from the so-called official liability).
- •. A liability insurance.

The contractual liability

The patient concludes a treatment contract with the hospital or a freelance physician the hospital or the freelance physician is fundamentally liable for this contract liability (so-called liability ex contracto) for the activities of all persons acting for them (the so-called vicarious agents), the hospital carrier has for his vicarious agents, the freelance physician z. For example, for his ordination assistance, he is responsible for an authority for its officials (official liability). It makes her a liability for third party debt. So you have to be a misconduct of their employees attributed to the vicarious agents (S 1313a ABGB). In the case of gross negligence, the liable party according to the Employee Liability Act (DnHG) has recourse (Recourse) against the party causing the damage.

The tortious liability

The liability for own negligence is called tortious liability (so-called liability ex delicto). The offense committed is the "damage" of the absolutely protected right to life or health. There is also a tort liability if a runner is knocked down by a car driver, i.e. a person without relationship to a contract suffers damage.

A patient may be in addition to the institution of the institution liable as a result of contractual liability for his vicarious agents - also personally complain to the doctor who has damaged him. The injured party must prove that the accused is at fault.

The medical liability insurance

The risk of civil liability can be insured by taking out liability insurance. Insurance cover exists for the practice of medical practice in accordance with the Medical Act. The medical liability insurance protects the assets of the doctor by paying justified third-party claims and rejecting unjustified claims. Liability insurance is liable for negligence, but not for intent

Magnitudes: With a large German insurance 120,000 doctors are insured. The number of claims per year is approximately 4,600, of which over 50% are unjustified.

Liability insurers have a great deal of insight into the variety of medical liability cases. Most of the liability insurance companies employ lawyers who deal exclusively with medical liability issues and are well-versed in the most up-to-date legal requirements. A problem for the insurer in medicine (as opposed to other liability forfeitures) is the so-called "long-tail risk", ie the late loss risk of the insurer, which is why liability insurers are increasingly withdrawing from the area of medical liability.

Insured event for salaried doctors and health professionals

Since there is liability insurance for the hospital where the regular doctor or specialist or health care professional is employed, these persons are protected in case of slight negligence.

A personal insured event for salaried physicians only occurs when the hospital attempts to enforce a so-called recourse claim, for example, in the case of gross negligence on the part of the physician.

For physicians, legal protection is available through membership of the doctor's office or private legal expenses insurance

Legal expenses insurance for a medical liability

A damaged patient or his heir can claim damages if four conditions are met:

1. Damage has occurred (e.g. assault or death).
2. There is a causal link between doing or not doing the harm and the damage done.
3. The behavior of the offender was unlawful. In the law on medical malpractice either the treatment or the education cannot have been carried out properly (treatment or clarification error).
4. There is a fault, d. H. it is the maleficent slight negligence, gross negligence or deliberate intent.

Ad 1) Damage and damages

First of all, it must be checked whether any damage has occurred (damage is a disadvantage that has been inflicted on someone in property, rights or his person). Damage was caused by a doctor if he has negatively changed the health of a patient. In the individual case, the occurrence of damage.

Determined by the so-called difference method. Roof, two states are compared to those before the onset of damage and that afterward.

Compensation: the patient or his survivors can cure costs, loss of earnings. Pain money, care costs, fee recovery. To claim funeral expenses or maintenance.

Ad 2) The causal connection between doing or omitting the injurer and the resulting damage

The injured person is only responsible for those damages caused by his actions or omissions causally. It is therefore examined whether there is a causal link between a breach of duty and the damage incurred (a so-called "due diligence" relationship). To answer this question, an expert must be called in to describe the current medical standards in the specific case and to make the often difficult causal findings. In civil proceedings, if there is no demonstrable typical course of events (so-called prima facie evidence, see p. 218), the patient must prove a high degree of likelihood of the occurrence of a medical malpractice. In criminal law, on the other hand, causality must be "almost certainly" proven, and the term "almost certainly" means that, in the expert's view, there are no reasonable doubts based on concrete evidence. If a causal link cannot be proved with the necessary certainty or if it is to be answered in the negative, liability is not considered in civil or criminal law. The difficulty is that the causality of certain circumstances for the occurrence of health-damaging consequences is not always scientifically provable with the necessary certainty. The medical. Medical science is not yet very advanced in the explanation of causal processes, which is why the statements are rather cautious. Especially with multi morbid patients, the causality of a particular medical act or omission for the onset of death at a given time can often not be substantiated with the requisite certainty. The task of the expert is to present the natural causal relations objectively and comprehensibly, but the legal assessment of the case is solely reserved to the judge.

Equivalence theory (condition theory)

The existence of a causal connection is investigated by the so-called condition sine qua non-formula (necessary condition), also called equivalency theory (condition theory), by "refraining from harming action in the case of doing." In case of "omission" to think of the opposite action. If success then fails, the action was causal.

In other words, any circumstance without which ..... success would not have occurred is causal ..... equivalent to the entry of the success. ..... One of equivalency theory. This is because every single condition would lead to the absence of the effect by their omission.

Example A 70-year-old fit man is hit by a car while crossing the road on a protective path. He suffers from a fractured femoral neck. The necessary bed rest causes pneumonia in the hospital. Where he dies. The car driver has to answer for the fatal consequences, because if one thinks of the damaging action - the accident - away, so also the added pneumonia and death accounted for. Adequacy theory (liability only for adequately caused damage)

But not everyone is responsible who has set a condition sine qua non. The injurer is liable only for predictable damage, d. H. only for those who did not join as a result of a very extraordinary chain of circumstances. The so-called "adequacy theory" examines whether the damage that has occurred is also such that it normally arises from the event, after the normal life experience. Cases of an atypical, Outside of the experience of life cannot be attributed to the careless actor. The equivalency theory draws the extreme limit of importability of a damage, d. H. every condition is equivalent. The adequacy theory therefore has the task of a meaningful limitation of the liability of the liable. You are liable only for adequate visible damages. The assessment of adequacy is reserved to the judge.

Examples: atypical causal events, such as a man injured in a traffic accident being killed on the way to the hospital by collision of the rescue vehicle with another car, are unpredictable (not adiabatic, ie they do not correspond to normal life experience). The car driver is not liable for this.

If an original packaging contains a wrong medicine because of a packaging error, although the administration is a sine qua non for the occurrence of the damage, the doctor is not liable, because according to the general life experience it cannot be expected that there is a packaging defect. Dissolves the annoyance or agitation z. If, for example, the death of a person who has been injured in health (e.g. in the case of previous damage of the heart) is to be answered in the negative, adequacy cannot be attributed to the person responsible for the accident If the existence of an adequacy relationship is affirmative, it must be determined whether a so-called risk context is given. The question is, whether through the negligent behavior has just realized that risk whose entry should prevent the transgressed norm.

Example: A patient dies in the hospital following administration of a blood reserve because the doctor has failed to perform a Bedside test. According to the rules of medical art, the very purpose of the bedside test (the transgressed norm) is to connect this complication, namely, the gift of group-like blood.

Pretense-proof or prima facie proof

In order not to let the patient's legal enforcement fail too often because of difficulties in obtaining evidence, the legal status of prima facie evidence or prima facie evidence has been developed to facilitate the relieving of evidence. This is based on the general life experience that certain processes are always typical and therefore it is likely that in the specific case, such a sequence was given.

Examples: The formation of a syringe abscess is typical for a lack of sterility of the syringe, a skin burn in radiation therapy is typical of excessive dosage of X-ray trajectories.

The shaking of a prima facie proof succeeds only if the doctor can prove that not his behavior, but another cause has caused the damage. If no demonstrable typical course of events, the patient must, as mentioned, in civil proceedings a high degree prove the likelihood of a medical malpractice.

Alternative causality

The competition between a random event and a potential treatment error (the so-called alternative causality) is a sensitive issue that has been the subject of sometimes controversial OGH decisions. Here, alternatively, a possible random event in the person of the patient (a so-called pathological condition, eg a diminished immune defense) and a possible treatment error coincide as the cause of the damage. According to the current legal opinion, the doctor is also liable if the causative factor of the injury consists in a coincidence. This means that the doctor has to adhere to a high probability of the causality of the medical malpractice. However, depending on the likelihood of causality, damage may be split between the injured party and the injured party. If it is not possible to determine whether the accident or a treatment error was causal for the damage, the damage must be shared between the injured party and the possible injurer, e.g. B 50:50.

Outdated causality

If the injuring party objects that the same damage would later have occurred even without the treatment being carried out, it is called "passing causality" (the error has, so to speak, overtaken the natural course of events) such cases the question answer whether the so-called "pathological plant" would certainly have caused the same damage in the foreseeable future without the concrete cause of the damage.

In this case, the doctor would be liable only for the temporal advance of the occurrence of the damage. If the injured party lives, it may be a so-called "premature" or "exacerbation" damage (ie a specific damage has either occurred earlier or has worsened) to replace, in case of death the injurer is liable for the bringing forward of death and has compensation claims only as long attend, as the injured probably would have lived because of his investment damage.

Example. A doctor gives a severe blood transfusion to a severely cancer patient in which the patient, who would have had only a few months to live without the medical error, will die. "

The rightful alternative behavior

If the doctor objects that the damage would have occurred even if the treatment was correct and lawful, then it is a question of the legitimate aging behavior of the child. "If the doctor succeeds in proving that a treatment would also have harmed lege artis, disclaims liability. Likewise, a liability is excluded, if a doctor, who has omitted the necessary

information of the patient (clarification error), can prove that in case of legitimate alternative behavior (proper education) the patient would have consented to the procedure (again, the burden of proof lies with the doctor)

Hypothetical causality

The question of whether an omitted act (e.g. a diagnostic or therapeutic medical measure) would have averted the occurrence of death or a bodily injury with a probability bordering on certainty arises in the criminal law in the case of so-called injunctive relief. The nature of the omitted action is to be defined exactly. Then, on the basis of general experience or, if necessary, specialist expert knowledge, it must be judged whether the performance of the required action would have averted the occurrence of the success. If this cannot be answered with certainty, the court in the sense of "in dubio pro reo" (in case of doubt for the accused) must assume that the hypothetical act could not have averted the success the doctor is therefore not liable for negligent homicide if, in the case of dutiful behavior, death was almost certainly "justifiable".

In other words, a doctor who fails to initiate a required examination or treatment, the patient's death is only to be charged if the patient would have survived with duly committed the date of actual death with almost certain probability.

6.22 Important Relevant Laws

Organ transplantation

According to the KAKuG, it is permissible for the deceased to remove individual organs or organ parts in order to save the lives of another person or restore their health through their transplantation (removal permit). This will alleviate the shortage of organs (as was the case in Germany) with regard to organ donation. A removal is only inadmissible if the doctors have a statement in which the deceased organ declined rejection.

Contradiction solution

For organ donations of the deceased, the so-called "contradiction solution" applies in Austria, d. H. one assumes consent unless there is an objection. The regulations apply to all withdrawals from Austria, therefore also to non-Austrians. Everyone is an organ donor, as long as he does not expressly deny it, for example by having a patient order he has with him or by registering in the opposition register (about 1% of the population).

An organ removal contradicted). The Opposition Register is located at the Öserreichische Bundesinstitut für Gesundheitswesen (ÖBIG-Transplant) and is a central file that all transplant centers query before organ removal.

In the case of minors or in the event of action not possible, opposition by a legal representative is only possible before death. The minor himself is also entitled to object. After death, a contradiction of third parties is legally no longer effective and an organ removal is in principle permitted. However, a late objection to organ removal in a deceased child is respected.

Absolute contraindications for organ donation are u. a. a generalized cancer and a positive HIV status. Positive hepatitis serology (evidence of infectious hepatic inflammation) is not an absolute contraindication because transplantation to hepatitis-positive patients (e.g. dialysis patients) is possible.

Organ removal in the living

Organ harvesting in the living realizing the act consisted of a bodily injury offense. They do not constitute a curative treatment on the part of the donor. An explicit legal regulation does not exist. Such interventions may only be performed on the basis of effective donor consent after the most detailed information has been provided. Come for a living donation u.a. Bone marrow, tail and pancreas body, kidney, liver lobe and lung segments. A binding of the transfer of the removed organ to certain recipients (e.g., relatives) does not exist, there is also no criminal charges prohibition. This carries the risk of commercialization of living organ donation.

Confidentiality in organ transplants

The KAKuG regulates the special duty of secrecy of all persons with regard to the person of the donor and recipient.

Housing Act (UbG)

The law regulates the placement of the mentally ill in hospitals and aims to protect their personal rights. There is a possibility to be admitted to a psychiatric ward or hospital in case of request (ie voluntarily). The patient may leave the agreement at any time. More often, however, a recording without desire, d. H. the will of the person concerned because, due to his state of health, he is currently unable to make a corresponding decision. In Austria, there are about 70,000 admissions to psychiatric hospitals per year (some of them multiple, about 20% of them involuntary).

Even the mentally ill have the fundamental right to personal freedom, but in which they can intervene under certain conditions. B. by restricting the freedom of movement. This occurs when a free change of location of the patient is prevented according to his will. This can include physical limitations (fixation, reticule), electronic locks or pharmacological immobilization. Restrictions are only permitted to the extent that they are indispensable in the individual case to avert danger to the life or health of the patient or others and to medical treatment and care. The restrictions must not be inappropriate in relation to their purpose. Restrictions for disciplinary reasons are inadmissible.

Accommodation without desire

There are three prerequisites for housing without desire:

- The person affected must be suffering from a mental illness (e.g. psychosis, schizophrenia, manic-depressive illness, alcohol or addictive addiction, neurotic disorders such as anorexia). A poor mental disability is not a mental illness in the sense of the UbG.
- .There must be a risk to the life or health of the patient or other persons in connection therewith (self and other hazards).
- The person concerned cannot be medically treated or cared for in any other way, in particular outside an institution.

Admission

Public security organs are entitled and obliged to provide a person for whom they consider the conditions for accommodation to be a medical examination. A placement against the will of the person concerned takes place after an examination by a medical officer or police doctor. This is usually called by the police to the scene and investigates the person concerned. If the investigation reveals the existence of the conditions of confinement (the certificate de: medical officer with detailed justification is referred to as a so-called parere), the person will be taken to an appropriate institution by the security authorities. In the event of imminent danger, security authorities can also send the person concerned to the asylum without a medical examination and certification.

A psychotic hospital patient must be presented to the district or police doctor unless there is a risk of delay, because only an official or a police doctor can confine to the closed area of psychiatric hospitals if the accommodation requirements are met. If a patient shows a mental disorder during an ordination and in this context is self-or foreign hazard and thus an acute danger exists, the doctor is obliged to call the police, who informs the medical officer and initiate everything else. If the threat is not acute, the psycho-social service can be asked for intervention.

Medical admission examination in the asylum

The person in question is immediately examined in the asylum by two psychiatrists. Admission may only take place if the conditions for accommodation are met. Thus, the accommodation requirements must be confirmed by an official or police doctor as well as in the hospital by two psychiatrists.

Information and communication

The patient arrested against his will has to be informed about the reasons for the placement. Immediately inform the competent district court (local court) and a patient lawyer. These special patient advocates (not identical with patient advocates under KAKuG and state law) work in psychiatric hospitals. They are legal representatives of patients who are accommodated under the UbG, i.e. a guardian, but with narrower powers. The representative's right to inspect the medical history is unlimited, and that of the patient is basically the same as far as it is not detrimental to his well-being. A refusal of insight must be justified and documented.

Hearing and oral proceedings (judicial review)

This is prescribed in the UbG. Within four days, the responsible judge must obtain a personal impression of romance in the institution (first hearing of the patient). If the court comes to the conclusion that the accommodation requirements are met, it first declares the accommodation as provisionally admissible and triggers an oral hearing. This must take place no later than 14 days after the hearing. If the court concludes that the conditions for lodging the accommodation are not met, the failure to do so must be declared inadmissible and immediately withdrawn.

In order to prepare for the negligent hearing, the judge must appoint an expert to personally investigate the person concerned and to issue a critical report. At the end of the oral proceedings, the court shall decide on the admissibility of the accommodation by resolution. The decision must be announced at the hearing in the presence of the patient, explained and explained to the patient. If accommodation is declared admissible, a time limit shall be set, which shall not exceed three months from the beginning of the placement. If the person concerned has to be kept longer than the time limit set by the court, a further hearing and expert appraisal must be held.

Treatment of the patient

The patient must be informed about the treatment. The patient's representative without restriction is not entitled to compulsory treatment, even if the patient is subject to consent, treatment is only permissible with the consent of the patient, and in the case of non-consenting patients the consent of the representative is necessary.

Epidemic Law (EpG)

An epidemic is the frequent occurrence of certain infectious diseases (epidemics) in local and temporal limits. The (EpG) is used to control, monitor and prevent communicable diseases. There are implementing regulations concerning the segregation of the sick, handling of corpses, etc.

- In the case of particularly dangerous diseases, there is a duty to notify if a suspicion of illness exists.
- For other diseases, est is the onset of the disease if the diagnosis is
- .in case of death, notifiable.

The complaint is to be reported to the health department (within 24 hours) Suspects and patients are required to examine it. The authority has authority for coercive measures. The obligation to notify diseases not covered by the epidemic law is governed by special laws. By order of the Federal Ministry of Health could be included better illnesses, whereby a quick reaction is possible. Today, as a result of international mobility, there are threats of new diseases (SARS, bird flu, etc.).

Tuberculosis Act (TbG)

Any disease of tuberculosis requiring medical treatment or monitoring is subject to reporting requirements. Likewise every death, if at the time of death there was a disease of tuberculosis requiring medical treatment or supervision.

The report must be returned to the district administrative authority (within three days). The authority may order surveys, examinations and forced detention in a hospital. Series and check-up examinations for specific persons or

occupational groups serve as prevention. For persons suffering from infectious tuberculosis, the obligation to undergo medical treatment. Infectious tuberculosis is present when a person excretes tuberculosis bacteria.

Sexually transmitted diseases law (GeschlKHG)

The law applies only to the venereal diseases gonorrhea (gonorrhea), syphilis (lues venera), ulcer moll (soft shaker) and lymphogranuloma inguinal (venereal lymph node inflammation).

Every doctor is obliged to provide personal information and advice, in particular on the possibilities of infection, and must inform the patient about the rules of conduct and about the obligation to treat.

Each sex patient is required to undergo treatment by a doctor for the duration of the transferability of the disease. If the patient is treated and informs the doctor about the names of the sex partners, so that they can be treated as well, no report will be given, but the illness is subject to medical confidentiality.

The doctor is only obliged to report the case to the competent district administrative authority, if a further spread of the disease is to be feared or if the patient escapes the medical treatment or observation?

Persons suspected of being sexually ill and not under treatment must undergo a medical examination (examination obligation)

Surveillance of prostitutes

Anyone who professionally condones sexual acts on his own body or intends to do such acts on others must undergo an examination by a public health officer for the presence of sexually transmitted diseases before commencing the activity and subsequently every week. The weekly examinations are to be confirmed in a photo ID (colloquially referred to as "cover" in Vienna). If a venereal disease is diagnosed during the examination, the ID card must be withdrawn and only removed after the cure. An HIV test is obligatory (maximum every 3 months). If HIV infection has been proven or the result is not clearly negative, the practice of prostitution is prohibited

There are about 500 registered prostitutes in Vienna, the number of unregistered prostitutes is estimated at 5,000-8,000 and the number of free contacts at around 15,000 per day. The main problem of secret prostitution is that there are no check-ups and sexually transmitted diseases and HIV infections are transmitted to a large extent. Contributing to this is the high-risk behavior of the suitors and the direct offer of unprotected sexual contacts.

AIDS Act

AIDS is present if there is adequate evidence of infection by a human immunodeficiency virus (HIV) and at least one indicator disease (e.g. pulmonary tuberculosis, bacterial pneumonia, pulmonary edema, Kaposi's sarcoma) disclosure obligations.

Within one week, every manifest illness of AIDS and every death of AIDS are subject to notification. A death is also to be reported if a report has already been made about the previous illness. The notification must be sent to the Federal Ministry of Health and contains only the first letters of the first and last name, date of birth, gender and relevant anamnestic and clinical information.

Information, counseling and reporting obligations for HIV infection

Every doctor is obliged to inform and advise a person infected with HIV, in particular about the rules of conduct of infection and treatment. He is entitled to interview a HIV-infected patient for contact persons and to ask them first to ask the patient to undergo a voluntary HIV examination. If the request was unsuccessful, he is entitled to summon the contacts. The physician is therefore entitled to. Source of infection research.

In principle, the (medical confidentiality also applies in the context of the treatment, and care of HIV-infected patients. The mere infection (HIV-positivity) is not notifiable, but the disclosure of a secret is allowed if this is necessary to protect a higher quality legal rights For example, when it is feared that a patient who is not patient by his behavior could endanger others, because the doctor not only has to protect the well-being of the patient, but also the protection of the healthy person, i.e. he is entitled to a patient's sexual partner (esp. Inform the HIV infection if the patient behaves irresponsibly Furthermore, the doctor has a patient who suffers from a portable, notifiable and reportable illness on possible criminal consequences.

(SS 178, 179 StGB), if this despite the knowledge of the infection behaves irresponsibly.

Intentional threat to humans from communicable diseases

178 StGB

Who commits an action? which is capable of inducing the spread of a communicable disease to humans is punishable by imprisonment of up to three years or by a fine of up to 360 daily rates if the disease is of a type related, even if limited, notifiable or notifiable diseases belongs.

Negligent danger to humans from communicable diseases

179 StGB

Anyone who negligently commits the act threatened with punishment in S178 can be punished with a freedom sentence of up to one year or a fine of up to 360 daily sentences.

Consent in an HIV test

if the HIV test is indicated for the clarification of unclear disease symptoms in a specific case, it may be assumed that the patient has consented to the patient's consent, although it is only for the protection of third parties (eg before a planned operation) or only a general screening is to be made, a special consent is required. A secret HIV reading is inadmissible, as well as a test against the declared will of the patient. If necessary, the patient should be treated as HIV positive.

Reproductive Medicine Act (FMedG)

Medically assisted reproduction is understood to mean the use of medical methods to induce swan fever other than through sexual intercourse. The possibilities of insemination, in vitro fertilization (IVF), retort babies or surrogate motherhoods required comprehensive legal regulations.

In Austria, it is generally prohibited: egg donation, embryo donation, surrogacy and reproductive cloning. Limited permissible are artificial insemination and in vitro fertilization. The FMedG regulates u. a. who legally counts as mother and father and which status a sperm donor has. There are no family and inheritance relationships between the sperm donor and the child conceived with a third name. In a semen donation Third insemination triffi the sperm donor no maintenance obligation. However, the child conceived by a sperm donation is granted the right to know his genetic ancestry. The hospital must therefore keep and keep appropriate records.

157 GTC

If the mother's husband has consented to medically assisted reproduction with the semen of a third party judicial record or a notary's act, it cannot be claimed that the child conceived with the seed of the third party is not descended from the mother's husband.

In in vitro fertilization, egg and sperm cells are combined outside the womb and the resulting embryo is inserted into the womb. The implementation may only be carried out in approved hospitals and is strictly regulated. Preimplantation diagnostics is prohibited. In general, the study of viable cells (embryos) is only too casual if it is necessary to induce pregnancy.

Genetic engineering law (GTG)

This regulates u. a. working with genetically modified organisms, releasing and placing on the market such organisms or products derived therefrom, as well as the application of gene analysis and gene therapy to humans. Time is u. a. the protection of human health, offspring and the environment.

The GTG prohibits employers and insurers. To collect the results of genetic analyzes, to demand to accumulate or otherwise exploit them. Prenatal gene analysis is also regulated in the Genetic Engineering Law (GTG). It requires the consent of the pregnant woman after comprehensive enlightenment on informative value, risks and scope of genetic analysis.

Prenatal gene analysis and wrongful birth

In the case of insufficient information about the limited possibilities of prenatal diagnosis or diagnoses, there is a liability for family planning damages "(so-called wrongful bi this means that according to current case law (OGHtcheidung) the parents of a disabled child are entitled to compensation for those financial disadvantages. The children are caused by the obstruction of their child as a result of the unwanted birth (e.g. increased of care). On the other hand, after an OGH decision, an unwanted healthy child (for example, failure of a male sterilization) does not cause any damage. This distinction between disabled and healthy Indians and the "materialized view" is often criticized.

These damages are so-called pure financial losses. Which are covered in Medical liability insurance contracts (Arzthaftpflicht versicherungsverträgen) only up to a relatively small insured sum (about 7,200 euros). Especially Gynecology and Obstetrics and Nursing Hospitals clinicians must increase the coverage levels accordingly to provide adequate insurance coverage in the event of claims for compensation.

From 6th week of pregnancy and the medicine method till 49 day (with abortion pill mifgegne) at the disposal. The expenses are paid by the health insurance nivht and amount to erea 300'- 800 euro.

Indications solution

After expiry of the three-month period punishment comes only in the way of the indication solution in question. The demolition is then worthless if he is required to avert winer first danger to life or you physical and mental health of the people who are in serious danger if that child mentally or physically severely damaged (sog.engenichscheindikation) or the pregnant at the time of the pregnancy was underage (less than 14 years). A temporal firist does not exist at an indication solution (in principle termination is possible until the beginning of opening labor so-called .fetcid).

Abortion in the hospital

Hospitals are not obliged to perform abortions (with the exception of an emergency situation). If a hospital has decided to carry out an abortion, no doctor can be obliged to do so (conscience clause). This also applies to nursing staff.

Consent

Consent to a termination of pregnancy may be given by a minor mother alone, provided that she is able to qualify (from 14 years old earlier) a consent of a third party (parental guardian) is only required if the patient is incapable and capable of judgment.

Pill afterwards

A mere imposition of inhibition (inhibition of implantation) (intrauterine pessary, pill thereafter) is not a termination of abortion. Note: Outpatient clinics and established physicians are often confronted with young girls and women who want to have the pill thereafter (purging) in contraceptives within 72 hours of unprotected intercourse or failure of a contraceptive method). Pill and .. pill thereafter, can be prescribed from the age of 14 without the consent of the parents. If, for ethical reasons, a doctor makes the decision not to issue a prescription, the patient must accept it. However, the doctor must allow her access to another doctor.

Criminal abortion

The death of women by so-called, criminal abortion is today, as a result of legalization of the abortion, fortunately no longer found. Frequent causes of death in abortions caused by so-called Abortionists "were air embolism (when injecting fluids into the uterus also entered the air in the open blood vessels). Inflammation of the pelvic nerve after piercing the uterus and sepsis (blood poisoning) by unclean Instrument.

Baby flap and anonymous birth

By placing a newborn in a so-called baby flap of a hospital or by a so-called anonymous birth, the child can be fritterige for adoption. The concern for the further care of the child rests with the youth welfare agency (Jugendamt). There is a certain ridge after birth. To the decision of release to be undone for adoption. There is also the possibility of leaving a sealed letter to the child, which the child can pick up as a matter of completeness, if he / she wants to know about the circumstances. The purpose of this facility is to prevent mothers from giving birth to their babies secretly or alone have put away or kill them out of desperation.

For the anonymous birth within a hospital a exact procedure must be specified. No records based on the first or last name or on the social security number may be kept. Nevertheless, a history of illness is to be created on the basis of case features (e.g. with a chosen name and date of birth), because only then can alleged treatment errors at best be refuted. The birth announcement must be provided with a special note.

The medical euthanasia

In many cases, problems arise at the end of life that have not only legal and medical aspects, but also ethical and religious aspects.

Man can (over) determine his own dying (right to dignified dying). It must also be protected against premature termination of life by interventions by others. There is not only the caring family and caregivers. The demand for saving expensive Therapies or complex Betrenungen u.a.

In Austria, there is no statutory definition or explicit regulation of euthanasia. In other words, when and under what conditions it is exceptionally permissible to release the physician from his or her life-support or even to permit him life-shortening interventions.

The Netherlands and Belgium have heavily criticized legal regulations according to which For example, an incurably ill person may, at various times, declare in front of a commission to want to die and subsequently be killed by a physician within certain limits. According to Austrian law, such killing can by no means be justified, as well as other international developments. Once you have the opportunity for active, dedicated euthanasia, it will be difficult to maintain firm boundaries.

Traditionally, a distinction is made between active and passive euthanasia. Active euthanasia includes measures that cause or accelerate the onset of death through active action. The term passive inhibition includes measures that cause death by refraining from further (artificial) prolongation of life. This reluctance to take active measures to end or limit

life-sustaining treatment (e.g., stopping artificial respiration, stopping the artificial diet). Therefore, it is better to talk about limiting therapy or changing the therapy goal.

Direct active euthanasia is punishable in Austria.

Direct active euthanasia is punishable in Austria. The intentional killing of a person is general depending on the constellation punishable as murder (S 75 StGB), which also applies to killings out of pity "manslaughter (S 76 SGB) in generally understandable violent emotion" killing on request (S 77 SGB) or participation on suicide (S 78 StGB).

Killing on demand

S 77 Criminal Code

Anyone who kills another person whose earnest and urgent desire is to be punished with imprisonment of six months and fifteen years.

Killing on demand is a so-called privileged case of willful killing (which is punished more leniently). The act consists of killing someone else for his earnest and insistent (and comprehensible) desire. The mere consent to the killing is not enough. A killing on request (e.g. by a, death or by the active Administration of drugs or poisons) is punishable even in case of incurable fatal illness, even if they abbreviate a painful death or the perpetrator has acted out of compassion.

Example: A seriously ill woman asks a doctor to free her from the unbearable pain and give her a quick-acting injection. The doctor administers these and releases the woman from her suffering. He is responsible if he has made the immediate killing. 77 StGB.

Participation in suicide

$ 78 StGB

Anyone who induces others to kill themselves or help them is punishable by imprisonment of six months to five years.

Participation in suicide is punishable in Austria. Temptation means z. For example, persuading a terminally ill person to commit suicide. To provide help means z. B the suicide safe suitable center z. As a weapon or poison to provide. If the suicide persists in the execution of the act itself, the sufficiency of the remedy also falls in. Participation in suicide.

Example: Deathly person asks a friend to get medication so that he can leave his life. The friend gets the medication. He is responsible for s78.

In Germany, there is no such offense, in Switzerland, the suicide aid is impunity if it is for altruistic reasons (Art 115 Swiss StGB). This is significant in the so-called "free escort" by providing drug in the context of euthanasia organizations in Switzerland.

Indirect active euthanasia

However, prolonging life without regard to the patient at any cost and prohibiting any form of euthanasia would be undignified. Indirect active euthanasia is considered permissible, as the purpose of the effort is not the death of man. These are side effects of a medically indicated therapy, such as the acceptance of life-shortening Neberkngen strong analgesics in an inevitable dying. Pain relief is the life extension. The legal-dogmatic justification for it is however disputed, because the administration of the means is fundamentally causal for the death and the physician considers an earlier occurrence of the death possible and with it off. "But it concerns here around the so-called social adequacy of the behavior. A palliative care (palliative medicine) soothing treatment is socially adequate, but the optimal treatment for a dying person includes any medically acceptable pain relief (significant dosage!) According to the rules of medical science as an unintended side-effect, death occurs sooner, so pain treatment may even be necessary.

Passive euthanasia

By this one understands the omission of a life extension, either with refusal of a further treatment by the patient or with hopelessness of the treatment. Life-sustaining measures are either not started or not continued. Legally, there is no difference, whether a treatment was not started or a treatment started is canceled.

The doctor has basically a so-called (Garantenstellung) Garant position (according to S 2 StGB) and is committed to life. Decisive here is how far this duty of guarantor of the doctor extends. It ends when dying seems to be inevitable after medical experience. The assessment in a particular case, whether a treatment should be continued, is not a legal, but a medical one. According to the legal opinion founded the technical-technical and medical possibility to artificially extend the life no obligation to do so.

The refusal of further treatment by the fatal patient is to be considered, even if he dies thereby (right to passive euthanasia). In case of inability to consent, either the patient can decide on a discontinuation of treatment by an anticipated living will, or the guardian or the doctor. However, there should be no relocation of the medical decision to relatives of the patient.

Medically meaningful and available measures may not be omitted or aborted, only the omission of the medical indication terminates the treatment obligation. Under passive euthanasia, for example, an active shutdown of devices (eg, artificial respiration) may also result in hopelessness. Even if switching off a device is an active activity, its social meaning is a failure to perform medical treatment.

Also, an artificial diet is a medical treatment that must not be carried out against the will of the patient, does not belong to the basic care and does not have to be maintained until the patient dies for other reasons. Weaning should therefore be treated in the same way as discontinuation of other intensive care methods.

Treatment discontinuation in the absence of the will of the patient

Here is the supposed will of the patient to act. If this cannot be determined, it is the responsibility of the doctor to decide when in individual cases the limit of the treatment obligation is reached. Criteria are that dying seems inevitable, the patient suffers severely, a restoration of a dignified life according to general ideas is not to be expected and that life can only be maintained by intensive and continuous use of modern medical technology.

Difficult this question because of the prognosis uncertainties in cerebral injured for ever-conscious or communication-incompetent, when these are in a coma, but not yet dying. If, according to medical knowledge, it is clear that a coma awakening is more likely to be ruled out, it seems appropriate to allow treatment to be discontinued because the physician is not required to provide life support at all costs. In each case there is a duty to maintain the basic supply. This includes palliative care and pain control measures. Wound care and nursing measures for the physical well-being of the patient.

DNR-Order

A "Do Not Resuscitate" order may either be a living will or a medical referral to another person to refrain from resuscitation, for example, if physician is instructed by another physician to refrain from resuscitating it to check the directive (as well as any professional instructions) for a possible criminal offense and to act accordingly. In principle, the decision is left to each doctor.

Other fires are significant punitive measures

Negligent killing s80 StGB

Anyone who causes the death of someone else can be punished with a free-marriage penalty of up to one year.

The offense is the causation of the death of another person by careless action or omission.

Examples: who induces the death of another by transfusing a wrong blood bank without having properly performed a bedside test: by refraining from being admitted to hospital for certain diagnosed illnesses. B. in case of suspected pulmonary embolism fails the necessary treatments.

Negligent killing under particularly dangerous conditions

ss81 StGB

He who leads accidentally the death of another

1. Under particularly good conditions.
2. after having seen or even foreseen that an activity is imminent before the offense, even if only negligently, by the enjoyment of alcohol or the use of another interfering agent, into a state of intoxication which does not exclude the possibility of admissibility whose first name in this condition is capable of producing a remedy for the life, health or physical safety of another, or which is fit for purpose, or

- Translated to English by DR. Ahmed Shihab Ahmed Aldosary