Studia z Zakresu Prawa Pracy i Polityki Społecznej
Studies on Labour Law and Social Policy
2022, 29, nr 3: 351–362
doi:10.4467/25444654SPP.22.029.16574
www.ejournals.eu/sppips

Jagoda Jaskulska https://orcid.org/0000-0002-0904-0207
Nicolaus Copernicus University in Toruń

SYSTEMS FOR THE PROTECTION OF THE INTERESTS OF HEALTH PROFESSIONALS EMPLOYED BY MEDICAL ESTABLISHMENTS

Abstract

The article is devoted to the issue of the employment of medical personnel in medical entities under Polish law. It presents the permissible forms of employment of medical professionals, with particular emphasis on contracts for the provision of health services, the so-called civil law contracts, which have their source in Art. 26 and 27 of the Act on medical activity. The focus is on the differentiation of the protection of the interests of these persons depending on the form of employment adopted. The article also includes a consideration of the scope of reference of the regulation expressed in Art. 22 § 1^1 and 1^2 of the Labour Code to civil law contracts concluded by medical entities with persons practising a medical profession.

Słowa kluczowe: podmiot leczniczy, zawody medyczne, system ochrony zdrowia, kontrakt cywilnoprawny

Keywords: healthcare provider, medical profession, health system, civil law contract

ASJC: 3308, **JEL:** K31

1. Introduction

One of the main principles of the market economy is the principle of freedom of contract. It is expressed in the content of Art. 353^1 of the Civil Code Act of 23 April 1964 (Dz.U. 2022, item 1360 consolidated text, as amended, hereinafter referred to as: "the Civil Code," "c.c."), according to which parties entering into an agreement may arrange the legal relationship at their own discretion. However, it does not mean discretion in its establishment (decision of the Supreme Court of 3 June 2020, III UK 351/19, LEX 3207953). The content or purpose of the relationship may not contradict the characteristics (nature) of the relationship, the law, or the principles of social co-existence (Art. 353^1, second sentence c.c.), and the exceeding by the parties of the limits of freedom so defined may result in the invalidity of all or part of the

contract (judgment of the Court of Appeal in Gdańsk of 17 November 2015, III AUa 930/15, LEX 1950608).

The autonomy of the will of the parties is also respected in the sphere of employment. As emphasized in the jurisprudence, the parties are free to choose the type of legal relationship based on which work will be performed. At the same time they should be guided primarily by the manner of its realization (judgment of the Supreme Court of 13 April 2000, I PKN 594/99, OSNP 2001, No. 21, item 637). Therefore, employment does not always have to take place within the framework of an employment relationship, and the decisive significance in this respect is attributed to the will of the parties and their intention to shape the content of the legal relationship between them in a defined manner (judgment of the Supreme Court of 20 June 2018, I PK 48/17, LEX 2508183). However, the parties must take into account the consequences of their choice. Admittedly, in accordance with Art. 24 of the Constitution of the Republic of Poland of 2 April 1997 (Dz.U. 1997, No. 78, item 483 as amended), labour is under the protection of the Republic of Poland. However this protection is subject to differentiation depending on the adopted basis for employment. The protection extends the furthest in the case of employees who provide work on the basis of an employment relationship. However, a large percentage of those employed on the labour market are persons performing work under civil law contracts, including mandate contracts, and innominate contracts for the provision of services to which the provisions on mandate and contracts for specific work apply respectively (according to the Statistics Poland (2020), in 2020, a total of 911,977 persons performed work under mandate contracts and contracts for specific work), and here the protection is much more limited.

2. Characteristics of employment in the health sector

The above determinations assume particular importance in the health care sector, where the admissibility of different forms of employment was determined by the legislature itself. These issues are regulated by the provisions of the Act of 15 April 2011 on medical activity (Dz.U. 2022, item 633 consolidated text, as amended, hereinafter referred to as: "the Act on medical activity," "a.m.a."), as well as the provisions of laws dedicated to specific medical professions. An example is the provision of Art. 19(1) of the Act of 15 July 2011 on nursing and midwifery professions (Dz.U. 2022, item 551 consolidated text, as amended, hereinafter referred to as: "a.n.m.p."). The catalogue of forms of practising the profession of a nurse and a midwife expressed directly therein includes: employment contract, service relationship, civil law contract, voluntary work, and professional practice. The same catalogue has been included in the text of the Act of 25 September 2015 on the profession of physiotherapist (Dz.U. 2022, item 168 consolidated text, as amended) in Art. 4(6). In turn, the Act on medical activity specifies that doctors, nurses, and physiotherapists may carry out medical activity within one-person business activity as an individual professional practice or in the form of a civil partnership, general partnership, or partnership as a group professional practice. The regulation will not, therefore, apply to persons practising medicine in an employment relationship,

service relationship, or on the basis of a civil law agreement entered into by a person who is not an entrepreneur (Rek 2019; Art. 5(2) a.m.a.). The legislator has clearly indicated that the performance of a therapeutic activity within the framework of a professional practice is not the conduct of a therapeutic entity (Art. 5(3) a.m.a.). The latter includes, among others, entrepreneurs within the meaning of the provisions of the Entrepreneurs' Law Act of 6 March 2018 (Dz.U. 2021, item 162 consolidated text, as amended), independent public health care institutions, research institutes, foundations, and associations, or military units performing a specific type of therapeutic activity by means of a therapeutic institution, e.g. a hospital. Unlike a professional practice, a medical entity does not have to be established and run by medical professionals. It can be established and operated by, *inter alia*, the State Treasury, local government units, or medical universities (Art. 6 a.m.a.). As regards physicians, special regulations should also be noted concerning the employment of doctors in training and of resident doctors (Art.15a, and Art. 16h of the Act of 5 December 1996 on professions of physician and dentist, Dz.U. 2022, item 1731, consolidated text, as amended, hereinafter referred to as: "a.p.p.d.").

Owing to the vast scope of the subject matter, the area of further considerations has been narrowed down to employment of medical personnel in medical entities on the basis of employment relationship or civil law contracts, including above all the so-called civil law contracts.

3. Employment of medical staff within employment relationship

The constitutive features of the employment relationship, which distinguish it from other legal relationships, are as follows: voluntariness, personal provision of work on a continuous basis, subordination, performance of work for the employer who at the same time bears the risk related to employment, and the paid nature of such employment (Art. 22(1) of the Labour Code Act of 26 June 1974, Dz.U. 2020, item 1320 consolidated text, as amended, hereinafter referred to as: "the Labour Code," "l.c."; judgment of the Supreme Court of 23 October 2006, I PK 113/06, LEX 208407). Employment under the employment relationship, as already indicated, offers the fullest protection of the interests of the employee. The provisions of the Labour Code stipulate an array of protective norms whose main purpose is to privilege the employee as the economically weaker party to the employment relationship (Art. 18 and 120 l.c.; judgment of the Supreme Court of 22 May 2012, II PK 245/11, LEX 1297783). However, with regard to certain categories of employees, specific provisions may define their employment relationship differently (judgment of the Supreme Court of 5 December 2017, II PK 286/17, LEX 2434444). This is because it is characteristic of labour law that, within its framework, in addition to the general model of employment from the Labour Code, there are also separate models, distinguished owing to the specificity of work of certain professional groups (Piątkowski 2017, pp. 36–37). The provisions of the Labour Code are then applied only to the extent not regulated in a specific manner (Art. 5 l.c.). With regard to the employment of medical personnel, regulations which are separate from the Labour Code are given primarily to the institutions of working time and medical duty. The Act on medical

activity introduces, in this respect, shorter working time standards for employees employed in a medical entity (working time cannot, in this case, exceed 7 hours 35 minutes per day and an average of 37 hours 55 minutes per week in an average five-day working week in an adopted accountable period, Art. 93 a.m.a.). Moreover, it modifies the rules of performing work in extended daily working hours (Art. 94 a.m.a.) or granting rest periods (Art. 97 a.m.a.). It also allows exceeding the maximum working time of 48 hours a week (the so-called opt-out clauses, Art. 96 a.m.a.). Significantly, the Act regulates the issue of medical duty time in a different way, fully classifying it as working time, thus adjusting the wording of national regulations to the EU Working Time Directive (see more Jaskulska, Jaskulski 2021). The Act on medical activity also provides separate rules for certain issues related to remunerating employees and granting them other benefits (e.g. Art. 62–66, 88 a.m.a.).

4. Medical staff employed on the basis of civil law contracts

Apart from employment under the employment relationship, employment in medical entities may also take place under the regime of civil law, which, by definition, concerns work without the employee subordination, characteristic of the employment relationship. From this perspective, the regulation expressed in Art. 26 a.m.a. is significant. Pursuant to this provision, a healthcare entity, covered by the scope of the Public Procurement Law Act of 11 September 2019, Dz.U. 2021, item 1129 consolidated text (Art. 4, 5(1) and (6)), may award a contract for the provision of health services within a specified scope to a healthcare provider or a person who has obtained professional qualifications to provide health services. The entity carrying out medical activity, with which the medical entity may conclude a contract for provision of medical services, is persons practising their profession within the framework of a professional practice. Pursuant to Art. 5 and 18 a.m.a., such practice can be conducted in a facility designated for its conduct, which meets the criteria set by law, but it can also be conducted only at the place of call, as well as only in a medical facility on the basis of a contract with the medical entity running this facility. In this case, however, Art. 50a a.p.p.d. should be taken into account, from which it follows that a group medical practice may not be a party to an agreement on the provision of health care services if the place of its performance would be the entity providing the order. As indicated in the literature on the subject, this provision does not constitute an absolute ban on concluding such agreements with a group medical practice, but makes it inadmissible only if it would be performed in a medical entity awarding the contract (more detail Buczek 2016, commentary on Art. 50a (sec. 26)). Given the inconsistency of this regulation with the content of Art. 26 a.m.a., which does not introduce similar restrictions in this respect, it has become the subject of criticism from representatives of both legal science and medical circles (Buczek 2016, commentary on Art. 50a (sec. 27)). Pursuant to Art. 26 a.m.a., apart from doctors, nurses, and physiotherapists exercising their profession within the framework of professional practice, also other persons with professional qualifications to provide health care services, such as paramedics, may be parties to the agreement on the

provision of health care services. The doctrine of labour law assigns an economic character to the contract for the provision of health services, which means that these persons should also be entrepreneurs (Kubot 2011, p. 17).

The provisions on public procurement do not apply to the award of contracts for health care services. However, if the value of the contract exceeds the equivalent of EUR 30,000, it is necessary to implement a tender procedure. In other cases, holding a tender procedure is optional. The contracting authority enters into an agreement with the ordering party for the duration of the provision of health care services or for a definite period of time, no shorter than 3 months, unless the type and number of health care services justify the conclusion of an agreement for a shorter period (Art. 27(1) a.m.a.). Under this agreement the ordering party undertakes to provide health care services within the scope and under the conditions defined in the agreement, and the ordering party undertakes to pay remuneration for providing these services (Art. 27(2) a.m.a.). The obligatory relationship resulting from the conclusion of this agreement is referred to as "sub-contracting." As a result the health care entity that has previously concluded an agreement with the National Health Fund for the provision of health care services entrusts the person accepting the order (e.g. a physician conducting business activity in the form of an individual medical practice) with the provision of a certain range of health care services (Banaszczyk 2020). The agreement is concluded in writing under pain of invalidity (Art. 27(3) a.m.a.).

In accordance with the established line of jurisprudence, including the position recently expressed by the Court of Appeal in Gdańsk in the judgment of 7 October 2020 (V ACa 266/20, LEX 31017792), an agreement on the provision of healthcare services is a non-Code nominate contract of a civil law nature having its source in Art. 27 a.m.a. (see also the judgment of the Court of Appeal in Lublin of 25 July 2013, I ACa 73/13, LEX 1353794). It is not, therefore, strictly a mandate agreement or a contract for provision of services, to which the provisions on mandate agreements apply accordingly.

Persons providing health care services on the basis of an agreement specified in Art. 27 a.m.a. are not employees within the meaning of Art. 2 l.c. and are not subject to the protection stipulated in the Labour Code for persons providing work as part of an employment relationship. In particular, they are not guaranteed the right to daily and weekly rest periods, or the right to holiday leave; they are not entitled to rights related to parenthood, nor are they subject to general or special protection of the permanence of the employment relationship. The literature on the subject also points to the lack of adequate protection against mobbing of medical staff employed under a contract (Chauvin, Czapska-Małecka, Gogol 2021, pp. 103–151). Moreover, they are not subject to the regulations of the Act on medical activity, which specifically regulate the working time and on-call duty of employees working in medical entities. An additional difficulty may also be the obligation to pay independent social insurance premiums and advance payments for income tax.

On the other hand, by choosing to enter into a contract for the provision of health care services, the ordering party has greater autonomy in organizing the work process, including managing its working time (Klimek 2010, p. 13). The ordering party has an equal position with the service provider, who, unlike the employer, cannot unilaterally change

the content of the legal relationship between the two parties (as is the case, for example, with the temporary assignment of another job to an employee pursuant to Art. 42(4) l.c.). As a rule, employment under a contract is also connected with higher remuneration. The parties to such an agreement are also more flexible in determining its content, although as indicated by the legislator in Art. 27(4) a.m.a. it should include, in particular: determination of the scope of health services, determination of the manner of organization of providing health services, including the place, days and hours of their provision, the minimum number of persons providing certain health services, acceptance by the ordering party of the obligation to submit to an inspection carried out by the ordering party, determination of the types and manner of calculation of the amount payable by the ordering party to the party accepting the order for the performance of the order, and in the case of a fixed lump sum—the determination of its amount, the determination of the principles of settlements of accounts, as well as the principles and deadlines for the transfer of receivables, the determination of the procedure for providing the ordering party with information on the performance of the accepted order, the provisions concerning the detailed circumstances justifying the termination of the agreement with a notice of termination and the notice period, and the obligation of the ordering party to maintain specific statistical reporting. The agreement is terminated at the end of the period for which it was concluded, at the end of the provision of certain health care services, or as a result of a declaration of one of the parties, with a period of notice or without it, in the event that the other party grossly violates the material provisions of the agreement (Art. 27(8) a.m.a.). The ordering party cannot transfer the rights and obligations under the contract to a third party. However in this case the legislator permitted a different regulation of this issue in the contract (Art. 27(6) a.m.a.). As a result, contracts for the provision of health care services may contain a clause about the obligation of the entity accepting the order to provide replacement services in the event of the latter's prolonged absence. Importantly, liability for damage caused in the course of providing services within the scope of the contract awarded is borne jointly and severally by the ordering party and the person accepting the order (Art. 27(7) a.m.a.), and the obligation to conclude a civil liability insurance agreement is one of the conditions for conducting medical activity by medical professionals specified in the Act on medical activity. By way of comparison, if it is an employee who causes damage to a third party in the course of performing his/her employment duties, the entity obliged to repair the damage is the employer (Art. 120(1) l.c.). On the other hand, the employee bears responsibility only towards the employer, according to the rules specified in the provisions of the Labour Code.

The contract for provision of health services is one of the two types of civil law contracts provided for in the Act on medical activity (the other one is civil law contracts concluded with academic teachers in teaching hospitals or units of other medical entities provided to a medical university, see more Kubot 2011, pp. 19–20).

Furthermore, medical professionals may provide health services in a health care unit on the basis of mandate contracts and contracts for the provision of services from the Civil Code. Then, as in the case of other contracts of a civil law nature, the legal interest of the parties to

the contract for the provision of health care services is protected by limitations in the sphere of freedom of contract: the nature (specificity) of this legal relationship and the law and the principles of social interaction (Art. 353^1 c.c.).

In this context, one should also bear in mind Art. 304(1) l.c., which stipulates the employer's obligation to ensure safe and hygienic working conditions for natural persons performing work on a basis other than an employment relationship in the workplace or in a place designated by the employer, as well as for persons conducting their own business activity in the workplace or in a place designated by the employer.

5. Employment of medical personnel on the basis of civil law contracts in the light of Art. 22 § 11 and 12 l.c.

The scope of reference of the regulations expressed in Art. 22 § 1^1 and 1^2 l.c. to civil law contracts concluded with medical personnel under Art. 27 a.m.a. and to mandate contracts or contracts for the provision of services from the Civil Code poses a number of problems. Pursuant to Art. 22 § 1^1 and 1^2 l.c., employment in conditions corresponding to an employment relationship is employment based on that relationship, regardless of the name of the contract concluded between the parties, and in particular it is not permissible in such a situation to replace an employment contract with a civil law contract. The Supreme Court, in the judgment of 29 November 2019 (I PK 358/16, LEX 2433081), explained that the judicial examination of the nature of the legal relationship in terms of Art. 22 § 1^1 l.c. requires a determination as to whether the work performed under it has the characteristics of an employment relationship as defined in Art. 22 § 1 l.c. For this purpose, the court assesses the actual conditions of its performance, going beyond the interpretation of the very content of the agreement concluded between the parties.

Against this background, it is worth noting the recent judgment of the Supreme Court, in which it was held that:

> The work of a paramedic in a medical rescue team has the nature of co-operative work, which by its very nature requires subordination to the ongoing instructions of the designated person coordinating the rescue operation, thus exhibiting the basic feature of an employment relationship (Art. 22 § 1 l.c.) (judgment of the Supreme Court of 3 December 2019, I PK 189/18, LEX 3011505).

The factual findings in the case showed that a paramedic, previously working under an employment contract, after its termination entered into a civil-law agreement with the same entity, the object of which was to provide health care services. Importantly, however, the paramedic acted thereunder as an entrepreneur, but the court did not clearly qualify the agreement in terms of Art. 27 a.m.a. From the cooperative nature of the paramedic's work, the Supreme Court concluded that the choice of the method and scope of the service provided was not subject to the paramedic's autonomous decision, and he remained available in this respect to the instructions of the doctor, or paramedic, or system nurse indicated by the dispatcher

of the unit. This fact, according to the Supreme Court, determined the employment nature of the paramedic in the case in question. According to the Supreme Court, the fact that the paramedic entered into a third-party liability insurance contract is irrelevant to the assessment of the nature of the bond between the parties, and may even be regarded as a deliberate introduction into the contract of features characteristic of a civil law contract for the provision of medical services "in order to create an external perception of its civil law nature." Similarly, the Supreme Court assessed the provisions of the contract regarding the contractual penalty in the event of non-appearance at work and failure to provide a substitute, and allowing, with the consent of the medical entity, the possibility of substitution by another paramedic remaining with the entity. The rescuer's use of equipment provided by the rescue unit was also deemed to be characteristic of the employment relationship.

The position expressed by the Supreme Court in the aforementioned judgment may raise doubts, especially if one takes into account the previous body of judicature in this respect. As indicated by the Supreme Court in its judgment of 10 January 2014 (III PK 44/13, LEX 1754242), the provision of Art. 22 § 1^1 l.c. does not introduce a legal presumption of concluding an employment contract in every case of providing work. Nor does it limit the will of the parties in choosing the form of employment. The Supreme Court noted that when assessing the legal nature of legal relationships concluded with medical professionals (in the case in hand—with a nurse), the specific nature of their work should be taken into account, including above all the independence of the medical profession. The Supreme Court showed, using the example of a nurse, that a nurse remains independent even when he or she follows a doctor's orders, implementing the doctor's recommendations in the processes of diagnosis, treatment, and rehabilitation. The Supreme Court further explained that a nurse is not subordinated to the employer in the manner in which health services are provided. Adoption of a different position would be in conflict with the legal regulation of the independence of the nursing profession (currently Art. 2 a.n.m.p.). Thus, the nurse's subordination is limited to organizational and administrative issues, such as those related to the determination of the start and end times of work. This in turn, according to the view adopted by the Supreme Court in this judgment, is not a characteristic feature of the employment relationship only, but also occurs on the grounds of civil law contracts. In the view of the Supreme Court, in order to assess the legal nature of the relationship between the nurse and the health care institution, it is also important that the nurse has concluded a liability insurance contract, which in fact leads to assumption of the risk associated with the nurse's activity. Similarly, the existence—even potentially—of a possibility for a nurse to expect a person to replace him/her in the event of a longer absence precludes the assumption of an absolute obligation to provide work in person (see also the judgment of the Supreme Court of 28 October 1998, I PKN 416/98, LEX 35429).

According to the Supreme Court, the nature of the legal relationship between the nurse and the medical entity cannot be determined by the fact that the nurse uses equipment or tools made available to him/her by the medical entity where he/she provides services. As noted by the Supreme Court, the requirement to have one's own equipment at one's disposal was imposed by the legislator on the nurse practising exclusively at the place of call.

The legislator does not make similar reservations when allowing the possibility of carrying out professional practice in a medical establishment, so this criterion may not prejudge the employment nature of the nurse either. At this point, it may be added that the necessity for a health care provider to supply a nurse with, e.g. personal protective equipment may result from the already mentioned obligation to ensure safe and hygienic working conditions, not only for employees, but also for persons performing employment on another basis, as well as for persons conducting economic activity in the workplace.

It should be noted that in accordance with the position expressed in the case law, "an agreement concluded with a person conducting business activity in the field of providing services, who issued a bill for work performed, increased by VAT—is not an employment contract in the meaning of the Labour Code" (judgment of the Court of Appeal in Warsaw of 19 June 2002, III APa 197/01, LEX 74579). Therefore, the circumstance of issuing a bill for the services provided should also be taken into account when assessing the legal nature of the relationship between the healthcare provider and the medical professional.

Final remarks

Seeking, each time, in the legal relationship between a person exercising the medical profession and a medical entity on the basis of Art. 27 a.m.a., first and foremost, the feature of subordination, and marginalizing the remaining features, or giving them such significance that they aim only at concealing the true nature of the legal relationship, may lead to depriving this provision of its normative meaning. This does not mean, of course, that the performance of such a contract is not subject to assessment from the perspective of Art. 22 § 1^1 and 1^2 l.c. As emphasized by the Supreme Court in its judgment of 17 January 2019 (III PK 128/17, LEX 2607242), the provisions of Art. 26 and 27 a.m.a. regulate and allow the legal conclusion of nominate civil law contracts for the provision of health care services "if in such contracts prevail clearly statutorily permissible and unambiguously agreed predominant features of civil law contracts, which do not constitute obligations of labour law."[1] However, this assessment should take into account the fact that the identity of the object of this contract (provision of health services) with employment contracts was decided in this case by the legislature itself, as well as the fact that medical professions are characterized by autonomy, to which the legislature has assigned a normative meaning (Bączyk-Rozwadowska 2018, pp. 25 ff). The very determination of the scope of the employees' subordination in the context of the employment relationship creates a number of difficulties (Włodarczyk 2021, p. 1280). It is not surprising, therefore,

[1] In the cited judgment, the Supreme Court also stated that: "medical on-call duty does not constitute a typical employment method for nurses or midwives, who primarily perform work at strictly defined hours on each working day that is binding on them, and therefore their work does not consist exclusively in performing medical on-call duty, which could and may also be performed on the basis of civil law contracts performed by persons conducting individual practices in independent medical professions and on civil law grounds outside the employment relationship with the employing entity."

that similar problems occur when assessing a legal relationship in terms of Art. 22 § 1[1] l.c., all the more when considering that, as the Supreme Court stated the following:

> It is also acceptable to perform the same duties under both employment and civil law, unless other circumstances conflict with it (Art. 353[1] of the Civil Code in connection with Art. 300 of the Labour Code). The parties to the contract may decide on the basis of employment. The implication of this is that the will of the parties can change the basis of employment from an employment contract to a civil law contract (judgment of the Supreme Court of 18 July 2012, I UK 90/12, LEX 1232232).

This is all the more important if atypical elements are characteristic of a given agreement, which seems to be the case with respect to the Act on medical activity (judgment of the Supreme Court of 29 June 2010, I PK 44/10, OSNP 2011, No. 23–24, item 294).

Contracts of mandate or innominate contracts for the provision of services pursuant to Art. 750 c.c. are subject to a more "rigorous" assessment, especially when they are entered into by an entity which does not have the status of an entrepreneur. In this case, the legislator does not introduce, on the grounds of the Act on medical activity, any specific regulations, and thus, in the light of Art. 22 § 1[1] and 1[2] l.c., they are subject to assessment primarily under the general rules of the Civil Code. Although also in this case it should be borne in mind that, e.g. with regard to nurses, the legislature itself has determined the admissibility of carrying out this profession, *inter alia*, on the basis of a civil law contract, regulating therefore, the matter of carrying out the profession of a nurse uniformly for all forms of employment (Art. 4 and 19 a.m.a.).

To sum up, as a result of actions undertaken by the legislator, the health care sector has become an area in which, owing to the differentiation of legally permissible forms of employment, a diversification of protection of the interests of persons practising the same profession occurs. The issue analysed above is only a fragment of a broader and highly complex matter related to the functioning of the Polish health care system, and beyond the area of consideration remain such issues as combining employment on the basis of an employment contract and a civil law contract in the same health care unit. The problems identified in this field are inextricably linked, on the one hand, with serious staff shortages and the unfavourable age structure of medical staff faced by the health care system in recent years and, on the other hand, with the need to ensure continuity in the provision of health care services (NIK 2019, p. 39). The excess of demand for health care over human resources induces the entities participating in this trade to seek solutions, which are often aimed at minimizing or even eliminating the restrictions resulting from the protective norms of the labour law, primarily in the area of working time. Naturally, one cannot remain indifferent to the negative consequences of such actions, including, above all, the overworking of persons providing these services and its impact on the quality of medical services provided. According to the 2019 report of the Supreme Audit Office, in almost 41% of hospitals, multiple cases of combining two or more consecutive medical on-call duties, immediately before or after which doctors provided services under an employment contract, were recorded (NIK 2019, pp. 37–38). Hence, it is unacceptable to use

certain legal institutions contrary to their nature and purpose, but what is equally important, their subsequent judicial assessment should not disregard the purpose for which solutions, such as the one provided for in Art. 26 and 27 a.m.a. (and earlier in the Act of 30 August 1991 on health care facilities, Dz.U. 2007, No. 14, item 89, consolidated text, as amended), have found their way into the legal system. The possibility of differentiating the basis of employment of persons performing medical professions, and in particular the admissibility of concluding civil law contracts with them, should not raise any doubts. as it results from the provisions of the law. This is, however, under the assumption that the parties, having decided to conclude a specific legal relationship, will pursue it with consistency. However, the practice shows that sometimes the parties to the legal relationship depart from its basic assumptions to such an extent that difficulties may arise in the legal classification of this relationship. The divergences in the judicial assessment of the legal nature of legal relationships characteristic of employment in the health care sector, presented in the article, additionally complicate this already problematic issue.

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Legal acts

The Constitution of the Republic of Poland of 2 April 1997, Dz.U. 1997, No. 78, item 483 as amended.
The Civil Code Act of 23 April 1964, Dz.U. 2022, item 1360 consolidated text, as amended.
The Labour Code Act of 26 June 1974, Dz.U. 2020, item 1320 consolidated text, as amended.
The Act of 30 August 1991 on health care facilities, Dz.U. 2007, No. 14, item 89 consolidated text, as amended.
The Act of 5 December 1996 on the professions of physician and dentist, Dz.U. 2022, item 1731, consolidated text, as amended.
The Act of 15 April 2011 on medical activity, Dz.U. 2022, item 633 consolidated text, as amended.
The Act of 15 July 2011 on nursing and midwifery professions, Dz.U. 2022, item 551 consolidated text, as amended.
The Act of 25 September 2015 on the profession of physiotherapist, Dz.U. 2022, item 168 consolidated text, as amended.
The Entrepreneurs' Law Act of 6 March 2018, Dz.U. 2021, item 162 consolidated text, as amended.
The Public Procurement Law Act of 11 September 2019, Dz.U. 2021, item 1129 consolidated text.