

Amendment to Act on the Medical Profession

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Palliative care and pain treatment

Emergency physicians

Employment and substitute of physicians

Comment

On 18 December 2018 and 20 December 2018 the two chambers of the Austrian Parliament (the National Council and the Federal Council, respectively) adopted the government bill on the amendment of the Act on the Medical Profession, which provides significant amendments. The amendment will enter into force following its publication in the *Law Gazette*, which is expected in late January 2019.

Palliative care and pain treatment

Due to demographic changes in recent years, there have been ongoing debates about end of life care, questions associated with human dignity and corresponding developments in medical treatment. The ethical borderline was drawn in a recent case involving a physician. The doctor was charged with murder because he administered morphine to a 79-year old patient, which caused her to die. Although he was acquitted of both murder and negligent homicide, there remains significant consternation and uncertainty among practitioners of palliative medicine.

In the new Section 49a of the Act on the Medicinal Profession – which is similar in style to the German template for professional rules – the scope of the obligation for physicians to provide medical assistance for dying patients is formally laid out in law. Section 49a(1) provides that a physician must assist dying patients to preserve their dignity. Section 49a(2) specifically provides that within the scope of quality-assured palliative indications, all measures must be taken to relieve pain and torment despite the risk that this may accelerate the loss of vital functions.

This amendment clarifies that pain relief takes precedence over the prolongation of life, but this does not permit active euthanasia, which remains prohibited in Austria.

Emergency physicians

The rules on the training of emergency physicians date back to the late 1980s and provide for the completion of only 60 training units. The new amendment provides that training must be expanded to 80 units providing for a defined acquisition of emergency treatment skills (eg, assessment of the situation, prioritisation, coordination, evacuation and documentation) and a final examination. The acquisition of specific emergency treatment skills will be achieved through the best possible use of the resources under the new medical training (starting with a basic formation which provides basic knowledge) within the scope of the training of junior doctors in general practice and medical specialisation. Moreover, the law now provides for mandatory continued education for physicians, consisting of 16 additional units in the first three years of practice. The Chamber of Physicians will have the authority to enact detailed regulations and to supervise training.

Employment and substitute of physicians

The medical profession is a liberal profession in Austria. With the exception of doctors in hospitals, doctors are self-employed and cannot employ other physicians. Under the amended Section 47a, it

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is now possible for physicians to employ other physicians (a maximum of one full-time equivalent for single practices and two full-time equivalents for group practices). This applies only to physicians or group practices operating in specialised fields (including general practice).

Comment

In a recent article on spiritual healing (for further information please see "[Spiritual healing – no \(illegal\) quackery](#)"), the Supreme Administrative Court had held that the delineation of the medical reserve must be made on objective criteria. For an activity to belong to the medical reserve, the applied method must have a certain degree of rationality and the performance must require comprehensive knowledge typically provided by medical training.⁽¹⁾ Compelled by this decision, the draft bill from the Ministry of Health and Social Affairs provided an amendment to the definition of the 'exercise of the medical profession', which comprises any activity based on medical-scientific knowledge for direct or indirect application to humans by adding the words "including complementary and alternative methods of treatment". However, this proposal was removed from the government bill due to opposition from osteopaths, physiotherapists, speech therapists, biologists and other healthcare professionals. The proposed amendment could have reserved these services exclusively for physicians without achieving the intended purpose; "complementary and alternative methods of treatment" are also based on scientific knowledge and therefore the amendment would not have helped to qualify 'spiritual healing' as illegally exercising a medical profession.

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Endnotes

(1) Supreme Administrative Court, 26 April 2018 (Ro 2017/11/0018-3).

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