ACCORDING TO THE COURT OF CASSATION AND ARBITRATION DECISIONS THE PHYSICIAN'S COMPULSORY LIABILITY INSURANCE*

YARGITAY VE HAKEM KARARLARINA GÖRE HEKİMİN ZORUNLU MALİ SORUMLULUK SİGORTASI

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Abstract: According to the additional article 12 of the Law No. 1219, on the Law of "The Law on the Style of Application of the Medicine and Medical Sciences (LAMMS)", physicians, dentists and specialists as per specialist legislation, who are working in public health institutions and organisations are obliged to have an insurance against the damages that can be claimed from them by the third parties due to medical malpractice and against the recourse to be made to them by their own institutions. Half of this insurance premium is paid by themselves and the other half is paid from the revolving funds in institutions with revolving funds, and in institutions which do not have revolving funds, it is paid from the institution's budget. Those persons who work in private health institutions and organizations or who perform their profession freely are obliged to take out professional liability insurance in order to cover the damages that may be caused to persons due to medical malpractice and therefore the recourse to be made to theart. Compulsory professional liability insurance is made by those who perform their profession freely, and those working in private health institutions and organizations, by the relevant private health institutions and organizations. Half of the insurance premiums of the employees working in private health institutions and organizations are paid by themselves and half by the employers. In this study, the application of compulsory financial liability insurance of the physician's will be examined in the light of the decisions of the Court of Cassation and the Insurance Arbitration Appeal Arbitrator Board.

Keywords: Liability Insurance, Physician's Compulsory Financial Liability Insurance, the Features of Physician's Compulsory Financial Liability Insurance, the Decisions of Court of Cassation and the Insurance Arbitration Appeal Arbitrator Board Regarding Physician's Compulsory Financial Liability Insurance

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Özet: 1219 sayılı "Tababet ve Şuabatı San'atlarının Tarzı İcrasına Dair Kanun"un, Ek 12'inci maddesine göre Kamu sağlık kurum ve kuruluşlarında çalışan tabipler, diş tabipleri ve tıpta uzmanlık mevzuatına göre uzman olanlar, tıbbi kötü uygulama nedeniyle kendilerinden talep edilebilecek zararlar ile kurumlarınca kendilerine yapılacak rüculara karşı sigorta yaptırmak zorundadırlar. Bu sigorta priminin yarısı kendileri tarafından, diğer yarısı döner sermayesi bulunan kurumlarda döner sermayeden, döner sermayesi bulunmayan kurumlarda kurum bütçelerinden ödenir. Özel sağlık kurum ve kuruluşlarında çalışan veya mesleklerini serbest olarak icra eden bahse konu kişiler de tıbbi kötü uygulama sebebi ile kişilere verebilecekleri zararlar ile bu sebeple kendilerine yapılacak rücuları karşılamak üzere mesleki malî sorumluluk sigortası yaptırmak zorundadır. Zorunlu mesleki malî sorumluluk sigortası, mesleklerini serbest olarak icra edenlerin kendileri, özel sağlık kurum ve kuruluşlarında çalışanlar için ilgili özel sağlık kurum ve kuruluşları tarafından yaptırılır. Özel sağlık kurum ve kuruluşlarında çalışanların sigorta primlerinin yarısı kendileri tarafından, yarısı istihdam edenlerce ödenir. Bu çalışmada hekimin zorunlu mali sorumluluk sigortası uygulaması, Yargıtay ve Sigorta Tahkimi İtiraz Hakem Kurulu Kararları ışığında incelenecektir.

Anahtar Kelimeler: Sorumluluk Sigortası, Hekimin Zorunlu Mali Sorumluluk Sigortası, Hekimin Zorunlu Mali Sorumluluk Sigortası Özellikleri, Hekimin Zorunlu Mali Sorumluluk Sigortası Hakkındaki Yargıtay ve Sigorta Tahkimi İtiraz Hakem Kurulu Kararları

INTRODUCTION

The concept of malpractice is derived from the Latin words "male" and "prakxis", meaning "bad, malpractice". In the 44th General Assembly of the World Medical Association in 1992, medical malpractice was defined as "harm caused by the physician's failure to apply standard treatment during the treatment of the patient or the lack of skill and negligence in caring for the patient, which is the direct cause of the patient's harm".[1] According to the US doctrine, medical malpractice; "An act of negligence or executive action committed by a healthcare professional that causes harm or complications to the patient". Medical malpractice is the failure of the work to be done as planned and/or performed. However, the concept of complication; It refers to the undesired result that occurs despite the fulfilment of the duty of care and attention.[2]

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1 World Medical Association, Statement on Medical Malpractice; Marbelle, Spa- in 1992, Art. 2/a, http://hrlibrary.umn.edu/instree/malpractice.html, (Date of Access: 20.08.2019).

2 Özlem Özer et al., "Medical malpractices", Dicle Medical Journal, Y. 2015, p. 42/3, p. 395, https://dergipark.org.tr/tr/download/article-file/54610, (Date of Access: 09.09.2019).

In the 13th article of the Turkish Medical Association's Code of Professional Ethics, medical practice is defined as any kind of physician intervention that does not seem appropriate for the event, due to the lack of due diligence in accordance with the standard of medical science, that is, the professional rules and experience generally recognized and accepted in medical science. Therefore, failure to follow the standard practice during the diagnosis and treatment of the patient, lack of knowledge and skills and not applying appropriate treatment to the patient are considered as medical malpractice.

Medical practice errors, non-compliance with the standard of care for the treatment of the patient, lack of skill, negligence in providing care to the patient, the intervention foreseen and/or applied by the health care personnel during the delivery of the health service, the patient's illness going out of the normal course as a result of the faulty medical technique used, the decrease in the quality of life. Means that there is an increase in the number of patients (morbidity)[3] diagnosed and diagnosed with a certain disease and that diseases can even result in death (mortality).[4],[5]

Medical malpractice is basically divided into four parts, depending on medical treatment, negligence and practice: diagnosis, treatment, preventive treatment and other errors. Diagnostic errors arise due to the application of wrong and/or invalid tests and techniques, misapplication or interpretation of appropriate tests, incomplete or delayed diagnosis, and resulting in misdiagnosis, inadequate and wrong treatment, resulting in treatment errors. Treatment errors may be in the form of incorrect or inadequate treatment, or it may be related to the choice of surgical intervention technique and delaying the treatment, due to the error in the dose of the drug applied. Preventive treatment errors, on

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3 The number (or proportion) of patients diagnosed and diagnosed with a particular disease within a specific group and within a specified tim–e period. http://www.floradergisi.org/ getFileContent.aspx?op=html&ref_id=53&file_name=1996-1-3-208-209.htm&_ pk=6621c429-dcf6-43a9-88af-54455e811987, (Date of Access: 09.09.2019).

4 The number (rate) of deaths from a particular disease in the general population. (In particular, this rate is not only the mortality rate within the cases). http://www.floradergisi.org/ getFileContent.aspx?op=html&ref_id=53&file_name=1996-1-3-208-209.htm&_ pk=6621c429-dcf6-43a9-88af-54455e811987, (Date of Access: 09.09.2019).

5 Özer et al, p. 394.

the other hand, come to the fore due to inadequate monitoring, wrong and/or inadequate treatment and disease follow-up, and delayed or incomplete drug treatment. In addition to these, errors related to the equipment used or related to the system also cause various medical malpractices. Medical malpractices can be analysed by dividing them into medication errors and surgical errors. Medication errors are the most common errors in inpatients and outpatients. Errors associated with the administration of drugs and most of them are preventable.[6]

Medical malpractice includes all of the conditions in a wide range from the delay of the recovery to the death of the patient, going beyond the normal course of the disease, as a result of the suggestions and/or practices of the physician providing the services, the nurse and the health personnel such as the physiotherapist, psychologist or dietitian who are authorized to intervene in the patient according to the relevant law.[7] The basic criterion in terms of legal responsibility is the standard of an experienced specialist. In other words, the physician should be in a position to foresee any harm to the patient's health, objectively according to the normal development of events and subjectively according to his personal experience, personal skills, personal professional knowledge, quality, and degree of education. In other words, the physician has to comply with the duty of care while performing his profession. For example; Wound infection is a complication of an operation, but if antibiotics are necessary to prevent infection and the physician does not prescribe it, it turns into malpractice based on lack of care. On the other hand, if the patient develops a pulmonary embolism after a simple operation despite all precautions being taken, and therefore the patient is lost, this event is not considered malpractice.[8]

In this study, the physician's compulsory liability insurance will be examined in the light of the Supreme Court and Insurance Arbitration Appeal Board Decisions.

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6 Özer et al, p. 395.

7 Gürol Cantürk, "Tıbbi Malpraktis ve Tıbbi Bilirkişilik", Uluslararası Sağlık Hukuku Sempozyumu, 16-17 Ekim 2014, p. 303, http://tbbyayinlari.barobirlik.org.tr/TBB Books/536.pdf (Erişim Tarihi: 20.09.2017).

8 Yılmaz Yördem, "Overview of Judicial Decisions on Liability for Malpractice in Physician Professional Liability Insurance", Journal of Institute of Economic Deandlopment and Social Researches, 2018 Vol. 4, Issue 12, pp. 540, http://iksadjournal.org/Makaleler/1857965187_1.%204_12_ID78.%20 Y%c3%b6rdem_539-546.pdf, (Date of Access: 16.08.2019).

I. PHYSICIAN'S MANDATORY FINANCIAL LIABILITY INSURANCE

A. LEGAL REGULATION

In order to guarantee the responsibilities of all physicians, dentists and specialists in accordance with the legislation on specialization in medicine, against the damages resulting from malpractice, in accordance with the Annex 12 of the Law No. 1219 on the Practice of Medicine and Medical Arts (LAMMS)[9], " Compulsory Liability Insurance for Medical Malpractice" has been regulated.[10] Accordingly, physicians, dentists and specialists working in public and private health institutions and organizations or practicing their professions independently are obliged to take out professional liability insurance to cover the damages they may cause to individuals due to medical malpractice and the recourses to be made to them for this reason. . The liability insurance of people working in the public sector should also cover the recourses to be made to them by their institutions. Employees in private health institutions and organizations must be insured by their institutions. Half of the insurance premiums of the aforementioned persons working in public health institutions and organizations are paid by themselves, the other half is paid from the revolving fund in institutions with revolving funds, and from the budgets of institutions that do not have revolving funds. Half of the premiums of employees working in private health institutions and organizations are paid by their institutions and by the freelancers themselves.[11]

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9 Additional article 12 has been added to the Law No. 1219 with the 8th article of the Law No. 5947 on the "Full-time Work of University and Health Personnel and Amendments to Some Laws" published on 30.01.2010 D. and 27478 No. OG.

10 "Medical compulsory liability insurance", "physician liability insurance", "physician professional liability insurance", "compulsory physician professional liability insurance", "Mandatory Physician Liability Insurance" and similar names are used to express insurance in the doctrine and in the practice of the Supreme Court.

11 "It is misleading to present compulsory insurance against medical malpractice as a guarantee of patients' rightp. From the position of the co-provider, the doctor's fault was brought forward, as if he were the sole administrator of the right to health. Howeandr, in the world, it is important to moand from the domineering doctor type who does not want to take risks, to the participatory doctor type who cooperates with the patient. Making an insurance that reduces the pressure on the doctor and insures the patient directly is on the agenda of the world." Tennur Koyuncuoğlu, "Doctor Insurance or Patient Insurance?", TBB Journal, Y. 2011,

With the "Communiqué on the Procedures and Principles Regarding the Institution's Contribution in Compulsory Liability Insurance Regarding Medical Malpractice" and "Mandatory Liability Insurance Tariff and Instruction regarding Medical Malpractice" in the Annex to the Communiqué on the implementation of the Law No. 1219. Compulsory Liability Insurance General Conditions for Medical Malpractice"[12] was published and entered into force as of 30.07.2010.[13] Thus, the compulsory liability insurance of the physician, which is referred to as "Compulsory Liability Insurance for Medical Malpractice" in the provisions of the relevant law, has been implemented in our country since 2010.

B. PHYSICIAN'S MANDATORY FINANCIAL LIABILITY INSURANCE

1- In General

The compulsory liability insurance of the physician is a "loss insurance" and "passive liability insurance" in terms of securing the assets due to possible damages that may arise in the future.[14] The risk in liability insurance does not occur on the life of the policyholder or anyone else notified by the policyholder; on the contrary, it takes place on their property. Therefore, it is not a life insurance. Physician compulsory liability insurance cannot be made in the form of group insurance.[15]

I. 92, p. 433, http://tbbdergisi.barobirlik.org.tr/m2011-92-682, (Date of Access: 16.08.2019).

12 In the Communiqué published in 21.07.2010 T. and 27648 I. OG, 19.7.2011 T. and 27999 I. OG, 26.07.2014 T. and 29072 I. OG, 23.5.2015 T. and 29364 I. OG, 28.10. Amendments have been made with the Communiqués published in 2015 T. and 29516 I. OG and most recently 16.4.2016 T. and 29686 I. OG.

13 Communiqué on Procedures and Principles Regarding Institutional Contribution in Compulsory Liability Insurance Regarding Medical Malpractice, which regulates the procedures and principles of corporate contribution to insurance premium, was published in 21.7.2010 T. and 27648 I. OG and entered into force on 30.7.2010. With the Communiqué published on 26.07.2014 T. and 29072 I. OG, the ANNEX 1 risk groups were amended with the tariff in the previous Communiqué.

14 Rıza Ayhan/Hayrettin Çağlar/Mehmet Özdamar, Insurance Law Textbook, 3. B., Ankara 2020, p. 301; "The new general conditions brought regulation in accordance with the technique known as "claims made" in practice". Samim Ünan, "Compulsory Physician Liability Insurance General Conditions Commentary", Turkish Association of Insurance Law, Istanbul 2012, p. 10.

15 TCC art. 1496/1: "Insurance can be made with a single contract in favor of per-

The purpose of liability insurance is to provide compensation claims that the insured may face due to the damage that may be caused to third parties. The insurer takes over the burden arising on the assets of the insured due to liability. Therefore, they do not mention the insurer's obligation to pay a certain amount agreed in the contract.[16]

The purpose of physician liability insurance, on the other hand, is to provide assurance against compensation claims in lawsuits filed against physicians against the damages they may cause to their patients as a result of error, negligence and misapplication while fulfilling their professional duties and obligations, in other words, it saves them from the financial burden that physicians may be exposed to due to legal liability. Thanks to this insurance, those who have suffered damage have the opportunity to apply to an institution (insurer) with a high financial power to meet the compensation receivables against the doctor who harmed theart.[17] The physician, whose responsibility is claimed, transfers the indemnity liability to the insurer, which, in some cases, reaches very high and unmanageable amounts. By making a payment to the third party, the insurer removes both the loss suffered by this person and the burden that the insured has incurred due to liability.[18] The state that employs a physician will transfer the responsibility arising from the action of the physician it employs to the insurer.

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sons belonging to a group of at least ten persons, who have the opportunity to determine who they are according to certain criteria, by the policyholder. During the continuation of the contract, everyone included in the group benefits from the insurance until the end of the group insurance contract. If the group falls below ten people after the conclusion of the contract, it does not affect the validity of the contract".

16 An insurance amount does not necessarily have to be agreed in the contract. The insurer can also provide "unlimited" coverage. It serves the purpose of determining the maximum amount that the insurer will be responsible for, calculating the insurance premium in a healthy way, and marketing the liability insurance product "for an affordable premium". Samim Ünan, Annotation on the Turkish Commercial Code, Book 6, Insurance Law, V. II, 1st B., Onikilevha Publishing, Istanbul 2016, p. 263.

17 In compulsory liability insurances, the protection of the interests of the injured rather than the insured comes to the fore. The purpose of compulsory insurance is to protect the public interest, unlike voluntary insurancep. Rauf Karasu, "Evaluation of the Provisions of the Turkish Commercial Code No. 6102 Regarding Liability Insurance", *İnönü University Faculty of Law* Journal Special Edition, Vol. 2, Y. 2015, p. 695.

18 Ünan, TCC Annotation, p. 263.

Likewise, the private health institution that employs a physician will be freed from the financial burden of its responsibility arising from the physician's actions. Because compulsory insurance covers not only the requests of those receiving treatment, but also the recourse requests of the public or private institution that employs the physician.[19]

2- Mandatory Physician Professional Liability Insurance Agreement

Physician's professional liability insurance is a contract that imposes obligations on both parties (sinallagmatic). The policyholder's obligation is to pay premiums, and the insurer's responsibility is to compensate the insured's loss when the risk occurs. In professional liability insurance, the insurer undertakes to pay the justified claims of third parties claiming compensation and to eliminate the claims of unfair compensation.[20] The insurance contract is signed on behalf of the insurer by the authorized person of the company or the agency[21] that made the contract.[22]

3- Persons Who Will Have Compulsory Physician Professional Liability Insurance

According to the law, all physicians who practice their profession in public or private health institutions or in their practice, dentists and those who are specialists (insured) according to the legislation on specialization in medicine[23] are obliged to take out compulsory professional liability insurance. Other health workers or those who do not engage in professional activities despite having the titles listed in

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19 Ünan, Mandatory Physician Insurance, p. 5.

20 Kemal Şenocak, Professional Liability Insurance, Turhan Bookstore, Ankara 2000, p. 141.

21 It is the agency that has the authority to make a contract on behalf of the insurer.

22 Rayegan Kender, Private Insurance Law in Turkey, Arıkan Publishing, 14. B., 2014, p. 142.

23 According to article 3/(r) of the "Regulation on Specialization Training in Medicine and Dentistry" published on 26.04.2014 D. and 28983 I. OG, Specialist: "The right to practice his art in that branch and the authorization to use the title of specialization by completing specialized training in one of the branches in the schedules. According to article 3/(s), Specialization education means "the education and training required to become a specialist in medicine or dentistry".

the Law are not obliged to take out insurance.[24] In the event that the professional activity defined in the policy is terminated, the insurance contract is terminated and the premium for the days not working is returned to the policyholder, without prejudice to the special provisions (General Conditions C. 6).

The person who is obliged to take out the insurance, that is, the insured and the physician whose liability is covered by the insurance, are not always the same person. Compulsory professional liability insurance is taken out by the relevant private health institutions and organizations for those who practice their profession independently and for those who work in private health institutions and organizations (LAMMS Annex Article 12/3).

If there is a voluntary insurance for these persons in accordance with the General Conditions of Professional Liability Insurance and this optional insurance is not made for the top of the coverage given with the compulsory insurance, multiple insurance provisions of the Turkish Commercial Code (TCC) are applied between this insurance and the compulsory insurance.

4- Features of Insurance

a) Scope of Risk

Physician's "Compulsory Financial Liability insurance" contract covers, indemnity payment of the physicians, dentists, and specialists[25] who work in public or private health institutions and organizations, during the contract period depending on the damages caused by their professional activities, while performing their professional activities within the scope of the policy. It provides coverage within the limits set in the policy against the claims. The insurant has to notify the insurer within ten days of the events that will necessitate his liability, and immediately to the insurer about the claims against him (TCC art. 1475).

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[24] Mustafa Çeker, Insurance Law, 10. B., Karahan Publishing House, Adana 2014, p. 304.

[25] Changed phrase: OG: D. 26.7.2014 and N. 29072.

aa) Risks Covered by Insurance

With this insurance contract, physicians, dentists and those who are experts in accordance with the legislation on specialization in medicine:

1) Damages arising as a result of the event[26] occurring during the contract period and claimed in accordance with the liability provisions, within the contract period or after the contract,[27]

2) Claims that may arise against the insured only during the contract period due to an event that occurred before the contract was made or while the contract was in force,

3) Litigation expenses related to this damage or claim,

Coverage is provided up to the specified insurance limits.[28] In other words, compulsory physician professional liability insurance covers all professional activities of the insured within the borders of the Republic of Turkey. In addition, special conditions may be agreed in the contract, not to the detriment of the policyholder and the insured.[29]

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26 "The incident must be the cause of the damage. Liability must also occur due to this incident." Ünan, TCC Annotation, p. 286.

27 "Damage is the deterioration of the property of the injured person, which is not the result of his will." Ünan, TCC Annotation, p. 288.

28 It is 200 thousand TL for the first risk group, 400 thousand TL for the second risk group, 600 thousand TL for the third risk group, and 800 thousand TL for the fourth risk group. In any case, the amount of compensation to be paid under the contract cannot exceed 1.800.000 TL.

29 In this way, the following risks may be covered by the special conditions (clauses) to be included in the contract: 1) Claims for damages arising from genetic engineering practices, 2) Claims for damages arising from all kinds of experiments or researches, 3) Directly or indirectly occurring as a result of all kinds of blood bank activities. Claims for compensation, 4) Compensation claims arising from all medical interventions without diagnostic or therapeutic purpose and all kinds of aesthetic surgeries performed by plastic surgeons for beautification purposes, 5) Compensation arising from all kinds of health services that assist reproduction (infertility treatment) or prevent reproduction (sterile treatment). claims, 6) Claims for damages that may arise from the willful actions of those whose actions the insured is responsible for, 7) All kinds of damage that may be due to AIDS or its pathogens or hepatitis A, B or C, or caused by them, or caused by their contribution, and mental health problems arising as a result of theart. comfort 8) Human and animal organs, blood, cells, all kinds of excretions, derivatives, genes, biosynthesis and related products are tested, modified, obtained, acquired, prepared, processed, handled, distributed, stored, substituted. 9) Claims against the insured due to being a manager or operator in a health institution (Professional Liability Insurance General Conditions Vol. 10/III (23.05.2013 D. and 28658 I. OG) and Genel Şartlar art. Vol. 10).

bb) Excluded Risks

The following cases are not covered by the insurance coverage:

1) Indemnity claims arising from the activities of the insured outside of his professional activity, which are covered by the policy and the limits of which are determined by legal rules or ethical rules,
2) Indemnity claims of the insured arising from the activities outside the scope of responsibility of the organizations covered by the policy, excluding the fulfillment of humanitarian duty,
3) All kinds of penalties and penal conditions, including administrative and judicial fines,
4) Compensation claims arising from all kinds of experiments, excluding those performed as a requirement of medical professional activity, within the framework determined by the relevant legislation (General Conditions A.3),
5) Compensation claims arising from the application of general anesthesia by dentists and surgeons, unless it is done in a licensed health institution or organization and except in emergencies and under the supervision of a duly authorized anesthesiologist,
6) Compensation claims arising from all kinds of treatment and health services provided during the period temporarily banned from the profession, excluding first aid and emergency response,
7) Indemnity claims arising from not having sufficient and necessary equipment and equipment due to personal fault of the insured in places where first aid or emergency aid services are provided,
8) Claims for damages due to the dangerous properties of a radioactive, toxic, explosive or any explosive nuclear compound or nuclear part thereof, other than for medical purposes,
9) Except for medical purposes, all kinds of diseases (including cancer) or asbestos-related indemnities arising from the use of diethylstibesterol (DES), dioxin, urea formaldehyde, asbestos, asbestos-containing products or asbestos-containing products (Professional Liability Insurance General Conditions C. 10/ II).

b) Receivables Covered by the Insurance

The coverage amount of the physician's compulsory liability insurance, the pecuniary and non-pecuniary compensation demanded in the event that an event requiring compensation occurs during the contract period while the insured is performing his/her professional activity specified in the policy, the litigation expenses related to this claim, the interest to be awarded and the reasonable expenses related to the claim claim against the insured, *(Litigation expenses to be decided by the court, the court fees imposed in the judicial decision against the insured, expert, discovery and witness expenses, attorney's fees in favor of the plaintiff)*[30] (2010 Communiqué art. A.2, IGC article A.1). Claims such as the payment of judicial fines related to criminal liability are not covered by the insurance.

c) Application Time of Insurance and Notification

According to art. 1473 of TCC, "*The insurer pays indemnity up to the amount stipulated in the insurance contract to the insured due to the liability of the insured arising from an event stipulated in the contract and that occurs during the insurance period, even if the loss occurs later, unless the contract provides otherwise*". With this provision, it is accepted that the insurance coverage will be valid for the events that have occurred between the agreed retroactive effect date and the date of the insurance contract, if the event is within the insurance period or if the policyholder (provided that he does not know that the event giving rise to his liability) has obtained retroactive insurance coverage. In other words, the TCC has adopted the event-based insurance (occurrence basis-event occurrence).[31] However, this provision is not a

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30 The assumption here is that the insurer was not sued and these amounts were not collected from him. If the claimant has also sued the insurer and these amounts are awarded against the insurer, the insurer will already pay them "its own liability" to the claimant. Ünan, Mandatory Physician Insurance, p. 11.

31 The event is an unlawful act that is the cause of the damage that requires the liability of the insured. Ünan, TCC Annotation, p. 288-290; A general definition of liability insurance has been made with this article. In the regulation introduced, the occurrence of the event constituting the basis for the risk within the contract period is taken as a basis. If the principle that the insurer is responsible for the losses incurred in his own period due to an event that occurred in the past was adopted, it was thought that the applicability of such insurance would be greatly reduced in practice. Because, when making a contract, the insurer will want to

mandatory provision. Therefore, the parties may agree otherwise in the insurance contract.[32]

Physician professional liability insurances can be made in three ways: claims made, occurrence basis-event occurrence or hybrid contracts.[33] Talep esasında, sadece sözleşme süresi içinde meydana gelen tıbbi kötü uygulamalar sözleşme teminatı altına alınmaktadır.[34] For example, a claim for compensation related to an incident that occurred in 2015 must be submitted by the end of 2015.[35] If the demand-based insurance is renewed without interruption (for example, if the contract

know all the past works and transactions of the insured and will want to control how they were done. Otherwise, it may face the danger of encountering very big risks. In addition, such an arrangement will pave the way for malicious applications. Namely, those who think that they may face a claim for compensation due to an error they have made will immediately go to the option of making an insurance contract: The liability of the insurer is tied to the events that will require the liability of the insured for the reasons explained above. At this point, it is not important that the loss arises or is claimed later than the contract period in order to mention the liability of the insurer. However, since the article is not mandatory, it is possible for the parties to determine the contract risk in different ways according to the types of liability insurance. TCC Article Justifications, https://www.tbmart.gov.tr/d22/1/1-1138.pdf, (Date of Access: 19.09.2019).

32 However, since the request can also be made orally, difficulties of proof may arise as to when it was made. Karasu, p. 689; Ünan, TCC Annotation, p. 291.

33 The risk is deemed to have occurred as soon as the insured learns about the subject of the insurance contract or that the injured party applies directly to the insurer (General Conditions Art. B. 1). In claims-based insurance, the risk is deemed to have occurred when the claim for compensation is made by the injured party to the policyholder. The request can also be made verbally, in which case difficulties may arise in the proof. Ünan, TCC Annotation, p. 292

34 Many liability insurances are made on a "demand basis" in our country: Environmental Pollution Financial Liability Insurance (General Conditions art. A.2); Compulsory Liability Insurance for Coastal Facilities Marine Pollution (General Conditions art. A.1); Compulsory Liability Insurance Regarding Medical Malpractice (General Conditions art. A.1 and B.1) Product Liability Insurance General Conditions. Professional Liability Insurance General Conditions, on the other hand, allow insurances made on the basis of both "incident+loss" and "incident+demand" principles, according to the agreement of the parties. Ünan, TCC Annotation, p. 292.

35 According to Çeker; "in claims made policies which cover events during the contract period, the indemnity claim can be claimed during the contract period, and the insurer has to cover the claims made within two years after the end of the insurance period, provided that it is caused by an event that occurred during the contract period. For example, if a valid contract was made between 01.04.2011 and 01.04.2012 and the patient died on 30.06.2012 after staying in the intensive care unit for a long time as a result of an erroneous surgery on 30.05.2011, the insurer becomes liable and becomes obliged to pay compensation even though the contract expires on 01.04.2012 ". Çeker, p. 309.

is renewed regularly in 2015, 2016, 2017, 2018 and 2019), the insured will be protected as there is no gap in the renewal of the contract. If there are gaps in the renewal of the contract, the insured will not be able to benefit from the protection for these periods when the contract is not signed/renewed.[36]

In event-based insurance, the insurance coverage will become operational provided that this event occurs within the insurance period.[37] TCC art. In 1473/1, the event principle is accepted in liability insurance.[38] Event-based insurance provides retroactive insurance coverage. In particular, in order to obtain insurance protection against claims for compensation for damages that may arise from faulty practices that were not known at the time of insurance, it is possible to provide insurance coverage as far back as the statute of limitations for liability (this is often the case in professional liability insurances of notaries and lawyers), so the insurer's need for retrospective review is in the event of an event. It also applies to basic insurance.[39]

In other words, the liability of the insurer and the insurance coverage continue until the statute of limitations for a claim expires. Thus, an advantage is provided to the insured. The insured (and the injured party) are entitled to benefit from this insurance, even if the damage occurs later due to the malpractice event that occurred during the insurance period and the claim for compensation is also claimed later. For example, in an event-based insurance covering the year 2014, the insurer is obliged to provide protection for this claim, even if the damage occurred in 2016 (for example, if the disability became definite on this date) and the injured party claimed compensation in 2018. In event-based insurance, it does not matter when the loss occurred. The damage may have occurred years later. Compensation process, on the other hand, can be claimed within the time limit or statute of limitati-

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36 Ünan, Mandatory Physician Insurance, p. 10.

37 Ünan, TCC Annotation, p. 288.

38 TCC art. 1473/1: "... the liability of the insured arising from an event foreseen in the contract and occurring during the insurance period, even if the loss arises later ...", Ünan, TCC Annotation, p. 288

39 If retroactive insurance coverage is obtained (provided that the policyholder does not know that the event giving rise to the liability has occurred), the insurance provides coverage between the agreed retroactive effect date and the date of the insurance contract. Ünan, TCC Annotation, p. 289.

ons stipulated for this system after the damage. The expiry of the statute of limitations does not actually prevent a claim for compensation; However, in cases where the statute of limitations occurs, it will not be possible for the creditor to proceed further, even if his claim is justified in substance, upon the defense of the statute of limitations, and his case will have to be rejected on the grounds of statute of limitations.[40]

Whereas, in claims-based insurances, the claim for compensation has to be filed until the end of the insurance contract, that is, until the end of 2014, as in the case above. However, if the claim-based insurance is renewed continuously and regularly from 2014 to 2018, the insured will be protected without any gaps.[41]

10 On the other hand, in mixed contracts, insurance contracts can be concluded that will include the situations that are not covered by both basic contracts. Mixed insurances limit the duration of insurance protection in terms of time. In this insurance, the right of the injured third party to claim from the insured responsible for the damage continues, while the right of claim against the liability insurer may expire. In insurances that include the condition that the indemnity claim is made within the insurance period or within a certain period following it, the liability of the insurer expires after this period, while the claim-based mixed insurance is renewed regularly and uninterruptedly every year, and in each renewal (included in the first insurance contract) the insurer's liability is valid from the start date. It is possible to apply to the insurer after the event, if it is decided that a guarantee will be provided. For example, if the liability arising from the indemnity claim against the insurant is foreseen as one year in the mixed insurance, although the statute of limitations applied is 10 years (provided that the event and the indemnity claim take place within the insurance period), the insurant will be liable for a period of approximately nine years longer than the insurer, in this case, is under threat for a long time.[42] For example, let's say that a mixed contract was made on 01.01.2017, including the events that took place a year ago. In the event that claims for damages arising from medical interventions performed

40 Ünan, TCC Annotation, p. 290.
41 Ünan, Mandatory Physician Insurance, p. 13.
42 Ünan, TCC Annotation, p. 295.

within a year ago (in 02.05.2016) or during the insurance period (in 2017) or within one year (2018) from the expiry of the insurance period, the damage is covered by the insurer.[43]

According to the IGC, the physician professional liability insurance provides coverage within the limits set in the policy against the claims made to him during the contract period due to the losses he caused due to his professional activity in the ten-year period before the contract date or during the contract period, while performing the professional activity covered by the policy. However, the beginning of the ten-year period cannot exceed 30 July 2009 and there is no insurance protection for notices made during insured periods due to events occurring during periods of more than one month of uninsured (IGC art. A.1).

Accordingly, the claim principle has been adopted with physician professional liability insurances and it has been assumed that the insurance will be renewed regularly every year. Accordingly, only the claims made to the insured during the insurance period are under insurance protection. In claims-based insurances, it is essential that the claim for compensation is brought against the insured physician, but in addition, the claim of the injured party must be "delivered" to the insurer within the insurance period. On the other hand, in the general conditions, it did not include any conditions regarding the notification, on the contrary, it deemed the request made to the insured sufficient. The sanction of not notifying the insurer of the claim immediately is stipulated in TCC art. 1475/3 by referring to art. 1446/2 of the TCC. Accordingly, if the non-delivery or late notification of the risk has led to an increase in the indemnity or price to be paid, a reduction from the indemnity or the price will be sought, depending on the gravity of the fault. In other words, when the insurer recourse to the insured in order to partially recover what he has paid after paying compensation to the injured party, a discount is made according to the severity of the fault to be applied.[44]

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43 In this type of insurance, since the insurer assumes a greater risk, the premium to be demanded will be higher. Çeker, p. 310.

44 Ünan, Mandatory Physician Insurance, p. 10.

The last sentence of General Conditions A.1/1 stipulates that "… *insurance protection will not be available for notifications made during insured periods due to events that occur during periods of more than one month of uninsurance*".[45] If a physician first takes out insurance in 2009, he will be able to benefit from this insurance for malpractice events after 2009 (it didn't happen the subject of a claim for compensation). For instance, the 2015 policy will come into effect and provide protection for claims made after the start of the insurance period in 2015, related to an incident in July 2014. Even if the same physician took out insurance for the first time in 2011, neglected to take out insurance in 2012 and 2013, and had an insurance policy issued again for 2014, for the event in July 2013, it would remain open in accordance with the general conditions (because there was a gap of more than one month), and will not benefit from the guarantee.

Assuming that the insurance contract was regularly signed from the beginning and the contract was last renewed in 2019, as insurance protection will be provided starting from 30 July 2009 until 2019 (it will also provide malpractice events that will occur from 30 July 2009 but have not yet been the subject of a claim for compensation).) The malpractice contract that occurred in 2015 will be deemed to be included in the scope and the claim for compensation brought forward in 2019 (within the insurance period) will be paid from the 2019 policy.

In the event that the insured terminates her professional activity, in addition to the retroactive coverage,[46] claims that may arise up to two years after the end of the contract due to her professional activity in the last insurance contract period are also covered.[47]

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45 It should be noted that this provision is incompatible with the feature of physician liability insurance to provide coverage for "past events". Ünan, Mandatory Physician Insurance, p. 10.

46 Physician liability insurance does not constitute fully retroactive insurance. Retroactive insurance is in question when the risk occurred before the insurance contract (but the parties did not know about this). However, in physician liability insurance, the risk occurs at the time the claim for compensation is made pursuant to Article B.1 of the General Conditions. This moment (after the contract is made) must take place within the insurance period. Ünan, Mandatory Physician Insurance, p. 11.

47 If the occupation were terminated, a two-year "additional" protection covering not only the last insurance period but the entire period up to the retroactive effect date would have been more appropriate. Ünan, Mandatory Physician Insurance, p. 10.

II. APPLICATION OF MANDATORY FINANCIAL LIABILITY INSURANCE ACCORDING TO THE DECISIONS OF THE JUDICIARY AND INSURANCE ARBITRATION OBJECTIVE COMMITTEE

A. JUDICIARY AND COURT DECISIONS

1. Jurisdiction

In the case subject to the decision of Y 11. HD, T. 13.2.2017, 2017/270 E. and 2017/765 K. ...10 With the decision of the Consumer Court dated 13.06.2016 and numbered 2016/626 E. and 2016/628 K., the local court Compulsory Financial Liability Insurance Policy for Medical Malpractice was made between the defendant and the third party, the physician to whom the case was requested, between 11.08.2015 - 11.08.2016, and the Insurance Law was regulated in the articles 1401 et al. of the TCC numbered 6102, Pursuant to Article 4 of the TCC, the issues arising from this law will be considered commercial lawsuits, considering the nature of the policy, it cannot be considered within the scope of the insurance stated in Article 3 of the Law No. 6502, since it is a compulsory policy, and since there is no proxy relationship between the defendant and the plaintiff, the defendant's It has given a decision of non-jurisdiction on the grounds that its liability arises from the insurance law and that the Commercial Court of First Instance is in charge. The decision has been appealed. The Court of Cassation decided to reject the appeals and uphold the verdict by a majority of the votes.[48]

[48] Dissenting Vote: In article 3/k of the Law on the Protection of Consumers No. 6502, the Consumer refers to "real or legal persons acting for non-commercial or non-professional purposes", and in article 3/1 of the Law, Consumer Transaction is also defined as "public legal persons in the goods or service markets". All kinds of contracts and legal transactions, including works, transportation, brokerage, insurance, proxy banking and similar contracts, established between real or legal persons acting for commercial or professional purposes or acting on behalf of or on behalf of the consumer. In Article 73/1 of the Law, "Consumer Courts are in charge in cases of disputes that may arise from Consumer Transactions and consumer-oriented practices", and in Article 83/2 of the Law, "there is a regulation in other laws regarding transactions in which the consumer is one of the parties, this transaction is a consumer transaction", and prevent the implementation of the provisions of this Law on duties and powers. It will not" is regulated. In the concrete dispute, compensation is demanded from the defendant company on the grounds that the out-of-court doctor, who is insured under the Compulsory Liability Insurance Policy for Medical Malpractice, was defective in the birth of the plaintiffs' child with a disability due to his failure to show the necessary attention

In the case subject to the decision of Y 11. HD, T. 5.12.2016, E. 2016/13640, and K. 2016/9304: In the case of the local court, the Law on the Protection of the Consumer numbered 6502 entered into force on 28.05.2014, according to the 3/1-L clause of the Law, it is stated that the "...insurance..."[49] business is a consumer transaction, and the court's lack of jurisdiction on the grounds that the consumer court is in charge and authorized in the case subject to the lawsuit, according to HMK 114/1-c and 115/2, it was decided to be rejected due to the procedure.

Upon appealing the local court decision, the Court of Cassation "the compensation case subject to concrete dispute is the risk indemnity receivable arising from insurance contracts regulated in Articles 1401 and the following of TCC numbered 6102 has decided. The liability of the defendant company has derived from article 1473 of the afo-

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and care. In case the defendant company undertakes the responsibility of the medical service provided by the non-litigation doctor to the plaintiffs under the power of attorney agreement, with the insurance policy, the plaintiffs are the "consumer" stated in article 3/k of the Law No. 6502, and the insurance policy issued by the defendant company is under the 3rd paragraph of the Law. It is the "consumer transaction" expressed in the article L, and the Consumer Courts are responsible for the dispute, according to the express provision of Article 73/1 of the Law. Insurance Law is regulated in the 6th book of the Turkish Commercial Code No. 6102, which came into force on 01.07.2012, in articles 1401-1520, in accordance with article 4/1-a of the Law, cases arising from insurance disputes are considered commercial lawsuits, and in article 5 of the Law, Commercial Courts of First Instance are assigned. However, with the article 3/k, L and 73/1 of the Law No. 6502, which entered into force on 28.05.2004, the provisions of the Law No. 6102 regarding the duty were abolished in terms of insurance disputes within the scope of the Law No. 6502. In disputes, Consumer Courts are accepted as responsible. Moreover, the explicit provision of Article 83/2 of Law No. 6502 emphasizes that the Consumer Court is in charge in the dispute, without leaving any room for doubt. "As it is understood from all these explanations, for example, if one of the parties in the transportation or insurance contracts issued in the TCC is a consumer, the transaction subject to the lawsuit will now be considered a consumer transaction, so the Law No. 6502 will be applied and its duty will be determined accordingly (National Commentary Aristo Publications p. 1280). Since the Consumer Court is in charge of the dispute, while the local court's decision should be reversed, I am against the majority opinion that the decision should be upheld by ignoring the articles 3/k, L, 73/1 and 83/2 of the Law No. 6502. www.kazanci.com, (Date of Access: 25/08/2019).

[49] Law no. 6502 art. 3/1: In the implementation of this Law, "l) Consumer transaction: A work established between consumers and real or legal persons acting for commercial or professional purposes, including public legal entities in the goods or service markets, or acting on behalf of or on behalf of them, means all kinds of contracts and legal transactions, including transportation, brokerage, insurance, power of attorney, banking and similar contracts.

rementioned Law, and since the dispute will be resolved by applying the provisions of the TCC, it has decided to overturn the decision of the local court regarding the dismissal of the case due to the procedural mandate, on the grounds that the duty to hear the case rests with the Commercial Court of First Instance."[50]

In the decision of the Istanbul Regional Court of Justice (BAM) 19. HD, 16.02.2018 T., 2018/206 E. and 2018/228 K., "In the case that is the subject of the decision of the Kocaeli 2nd Commercial Court of First Instance T., 2017/509 E. and 2017/464 K. given upon the application of the appeal procedure." The local court concluded that plaintiff ... applied to the ... hospital belonging to defendant ... during the second pregnancy period in 2015 and all his controls and examinations were carried out by the other defendant specialist physician ... during the period until the birth. Due to the fact that the child has Down syndrome, the tests during pregnancy were not fully performed, and they were not warned about this issue, the doctor filed a pecuniary and non-pecuniary damage lawsuit against the defendants with the allegation that he was negligent here, the plaintiffs are not merchants here, but they are consumers, the plaintiff party, in this case, the other defendant ... Although he claimed that the Commercial Court was in charge due to the fact that he filed a lawsuit against the insurance company within the scope of the complementary physician liability insurance he made with the Insurance Company, and because the insurance law was regulated by the TCC, in article 3/1 of the Law on Consumer Protection No. In this case, only because it is stated that it is a consumer transaction Since one of the defendants is insured, it will not be necessary to be heard in the Commercial Court, since the concrete incident arises from a typical consumer transaction, the duty of hearing the case belongs to the Consumer Court in accordance with Article 3/1 of the Law on the Protection of Consumers No. and it should be taken into consideration at every stage of the proceedings, and it was decided that the file should be sent to the Kocaeli Consumer Court on Duty.

The plaintiffs filed an appeal on the grounds that the decision of non-jurisdiction given by the court was not correct and that the competent court was the Commercial Court.

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50 www.kazanci.com, (Date of Access: 25.08.2019).

According to the BAM decision, "the relationship between the plaintiff and the defendants is in the nature of a power of attorney agreement. The power of attorney agreement has been included in the scope of Law No 6502, which entered into force on 28.05.2014. The lawsuit was filed on 08.05.2017. According to the provisional article 1 of the Consumer Law No. 6502: "This Lawsuits filed before the effective date of the law will continue to be heard in the court where they were filed". Therefore, stating that no decision of non-jurisdiction can be given for lawsuits filed before it enters into force. Consumer transaction is also defined in clause I of the article. It included such transportation, power of attorney, brokerage, insurance, banking, working, etc. in the scope of the consumer contracts, which is established between the real person and legal person consumers. The duty of the Commercial Courts is regulated in articles 4 and 5 of the TCC No 6102, and the plaintiffs that he was not a trader, accordingly, the relative merits of the case, since it is understood that there is no free lawsuit and there is a consumer transaction between the parties, the court in charge of this case is the consumer court. Considering the date of the dispute between the parties and the effective date of the Act No 6502, the decision of the court that the Consumer Courts are in charge is appropriate since it is a consumer transaction and the consumer Courts are in charge. Since the dispute between the parties remains within the scope of the Law on the Protection of the Consumer, the Consumer Court is responsible for hearing the case. The regulations related to the task are related to public order and are observed ex officio at every stage of the proceedings, even if the parties do not put them forward. There is no vested right in matters related to the task. Considering the reasons for the appeal and the decision made in the examination made within the scope of the file, considering the decision and its justification, it was unanimously decided to reject the appeal law application on the merits, saying that the appeal requests of the plaintiffs were not deemed appropriate, since the decision of the first instance court was in accordance with the procedure and the law.[51]

As can be seen from the decisions, in some decisions it has been decided that the court in charge of hearing the case is the "Commerci-

[51] http://emsaI.uyap.gov.tr/BilgiBankasiIstemciWeb/, (Date of Access: 28.08.2019).

al Court of First Instance", and in some decisions, the case should be heard in the "Consumer Court", because it is a consumer transaction. The issue became even more important in article 20 of the "Law on the Procedure for Initiating the Follow-up of Receivables Arising from the Subscription Agreement" dated 06.12.2018 numbered 7155, and with the addition of article 5/A, after article 5 of the "Turkish Commercial Code" dated 13.01.2011 and numbered 6102[52]. According to Article 5/A titled mediation as a condition of action: "1) Before filing a lawsuit specified that in Article 4 of this Law and other laws against claims for receivables and compensation, the subject of which is the payment of a certain amount of money from commercial lawsuits, it is compulsory for action to apply to a mediator. 2) The mediator concludes the application within six weeks from the date of his assignment. This period may be extended by the mediator for a maximum of two weeks in compulsory cases. In this case, it becomes important whether the lawsuits to be filed regarding insurance are also subject to the mediation condition.

Article 4 of the TCC states: "The cases that are clearly stated as commercial cases in the Turkish Commercial Code or special laws or that are clearly stated to be pending in the Commercial Courts are absolute commercial cases."

Since the insurance law is regulated in the TCC with Article 4 of the TCC, the lawsuits arising from these contracts are considered as commercial lawsuits. On the other hand, in article 3/1(l) of the Law on the Protection of the Consumer (LPC) No. 6502[53] "*All kinds of contracts and legal transactions, in the goods or services markets, including works (locatio conductio operis), transportation, brokerage, insurance, power of attorney, banking and similar contracts whose established between consumers and real or legal persons including public legal entities acting for commercial or professional purposes, or acting on behalf of or on behalf of them" as defined.* With Article 3/1(k) of Law No. 6502, the consumer is defined as "*a real or legal person acting for non-commercial or non-professional purposes*". According to article 73/1 of the same Law, "*Consumer Courts are in charge*

52 OG: D. 19.12.2018 and N. 30630.

53 The Law dated 07.11.2013 and numbered 6502 entered into force by being published in the OG dated 28.11.2013 and numbered 28835.

of cases related to disputes that may arise from consumer transactions and consumer-oriented practices". LPC should be considered as a more specific law than the TCC when both the previous law and the next law, and the private and general law are evaluated. As a matter of fact, the concept of consumer transaction defined in LPC also supports this.

In addition, Article 83/2 of the LPC clearly states that "*The regulation in other laws regarding the transactions in which one of the parties is formed by the consumer does not prevent this transaction from being considered a consumer transaction and the implementation of the provisions of this Law regarding duty and authority.*" In this case, there is a dual distinction. First, the insured who files a lawsuit against the insurer is considered a consumer unless he "acts for commercial or professional purposes".[54] On the other hand, if the person filing a lawsuit against the insurance company "acts for commercial or professional purposes", there will be a commercial lawsuit and the lawsuit will be heard in the commercial court. In this case, compulsory mediation will be in question.[55]

Article 73/A was added to the LPC with article 59 of the "Law on the Amendment of the Code of Civil Procedure and Some Laws".[56] With this new article, mediation has been introduced as a mandatory litigation condition for consumer cases. According to article 73/A of

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54 Y 11. HD's decision dated 21.05.2018 and numbered 2016-15082/3733 "...The case is about the request for the refund of the deductions made based on the private pension insurance contract. In article 3/1-k it is regulated that the consumer will express, and in article 3/1-l the consumer transaction is regulated, and 73/1 of the same Law is stipulated. Considering that the transactions arising from the insurance contract within the scope of the Law No. 6502 are also consumer transactions and the settlement place of the disputes related to the aforementioned contracts is the consumer courts, it should be decided that the case be rejected out of procedure in accordance with Article 115/2 of the Code of Civil Procedure numbered 6100...". www.kazanci.coart.tr, (Date of Access: 19.08.2020).

55 The decision of the 11th HD, dated 16.04.2018 and numbered 2017-1010/2784: "... According to the entire scope of the file, the Court determined that the doctor who gave birth to the plaintiff and followed her pregnancy was insured with the Compulsory Liability Insurance Policy for Medical Malpractice. The case was rejected on the grounds that the doctor alleged to have caused the damage has taken out insurance due to his professional activity, he is not a consumer; there is no contract between the plaintiffs and the defendant. Therefore the insurance law provisions of the TCC should be applied in the case. In case of a request within the legal time limit, it is appropriate to decide to send the file to the Commercial Court...". www.kazanci.com.tr, (Date of Access: 19.08.2020).

56 The Law dated 22.7.2020 and numbered 7251 entered into force by being published in the OG dated 28.07.2020 and numbered 31199.

LPC, "The fact that a mediator has been applied before filing a lawsuit in disputes heard in consumer courts is a condition of action. Provisions regarding mediation are not applied as a condition of action in the following matters:

a) Disputes within the scope of the duty of the consumer arbitration committee,

b) Objections to the decisions of the consumer arbitration committee,

c) The cases specified in the sixth paragraph of Article 73[57],

ç) The cases mentioned in Article 74[58] and

d) Disputes in the nature of a consumer transaction and arising from the same property

Article 18/A-11 of HUAK does not apply to the detriment of the consumer.[59]

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57 According to LPC article 73/6, consumer organizations, relevant public institutions, and organizations, and the Ministry; in order to take a preliminary injunction to prevent or stop it, or to detect, prevent or stop the unlawful situation except for the provisions regarding unfair commercial practices and commercial advertisements, in cases where there is a danger of a situation inconsistent with this Law, which generally concerns consumers, it may file a lawsuit in consumer courts.

58 LPC article 74: (1) The Ministry, consumers or consumer organizations may file a lawsuit in order to determine that a serial product offered for sale is defective, to stop its production or sale, to eliminate the defect and to have it collected from those who hold it for sale. (2) If it is determined by a court decision that the serial goods offered for sale are defective, the court may decide to temporarily suspend the sale of the goods or to remedy the defect, depending on the nature of the defect. The manufacturer or importer is obliged to remove the defect of the goods within three months at the latest from the notification date of the court decision. In the event that it is impossible to eliminate the defect of the goods, the goods are collected by the manufacturer or the importer or have it collected. The seized goods are partially or completely destroyed or destroyed according to the risks they carry. Litigation and compensation rights of the consumer regarding the destroyed goods are reserved. (3) In the event that a series of goods offered for sale carries a defect that endanger the safety of the consumer, the provisions of the Law on the Preparation and Implementation of the Technical Legislation Regarding the Products are reserved.

59 Civil Procedure Mediation Law article 18/A-11: "In the event that the mediation activity ends due to the failure of one of the parties to attend the first meeting without a valid excuse, the party who did not attend the meeting is stated in the final report and this party is held responsible for the entire cost of the trial, even if it is partially or fully justified in the case. In addition, no attorney's fee shall

In the event that the parties cannot be reached at the end of the mediation activity, the meeting cannot be held because the parties do not attend, or the parties come to an agreement or fail to come to an agreement, the mediation fee to be paid by the consumer is covered from the budget of the Ministry of Justice. However, in the specified cases, the mediation fee cannot exceed the two-hour fee amount according to the First Part of the Mediation Fee Schedule, annexed to the Mediation Minimum Fee Schedule. In case the lawsuit filed at the end of the mediation activity is concluded in favor of the consumer, the mediation fee is collected from the defendant in accordance with the provisions of Law No. 6183 and recorded as income in the budget.

In this case, for the cases arising from the insurance contract, which is considered as a consumer transaction, consumer courts will be in charge in accordance with the provision in LCP article 73/1; "Consumer courts are in charge in cases of disputes that may arise from consumer transactions and consumer-oriented practices". According to Article 73/A added to the LCP in terms of such cases, mediation will be applied before filing a lawsuit in accordance with this provision, since it is a condition to apply to a mediator before filing a lawsuit in disputes heard in consumer courts.

In this case, the regulation of the TCC and the regulation of the LPC conflict. Considering that the LPC was accepted by the Turkish Grand National Assembly on 07.11.2013 and published in the Official Gazette dated 28.11.2013, the 3/L and 73/1 provisions of Law No. 6502 and the TCC article 4 provision were tacitly abolished. In this situation, the cases are subject to the insurance contract for consumers it should be accepted that it is no longer a commercial case. For this reason, the courts in charge are the Consumer Courts, and since there is no commercial lawsuit, it is seen that they are not subject to the mediation condition.[60]

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be awarded in favor of this party. In cases to be filed after the mediation activity ended due to the failure of both parties to attend the first meeting, the litigation expenses incurred by the parties are left on their own responsibility."

60 "It is not a reasonable solution to leave the implementation of the provisions in the LPC to the commercial courts, not to the special judicial bodies established for this purpose in this law. At this point, it should be noted that when deciding on insurance disputes in which consumers are a party, both judges who are experts in consumer law and judges with expertise in insurance law are needed. In this re-

However, those who are obliged to take out compulsory physician financial insurance despite the insured consumers who have an insurance contract are not among the consumer persons defined with the phrase *"real or legal person acting for non-commercial or non-professional purposes"* in article 3/k of the Law No. 6502. According to the LPC are not considered consumers. Because they are in the position of taking out this insurance for professional purposes. Therefore, the lawsuits to be filed within the scope of this insurance are again within the jurisdiction of the Commercial Court of First Instance. Since the lawsuit can also be filed by third parties, the lawsuits to be filed by third parties in the position of legal successor[61] should also file a lawsuit at Commercial Court.

2. Standing to Sue

Istanbul 14th Commercial Court of First Instance, in its decision numbered 19.02.2019 T., 2017/634 E. and 2019/154 K., by the local court, Gynecology and Obstetrics Specialist Op. Upon being asked by the General Directorate of Management Services of the Ministry of Health, which insurance company issued Dr …'s physician professional liability insurance policy, in the mail-dated reply letter of the General Directorate of Management Services of the Ministry of Health, Gynecology and Obstetrics Specialist Op. It has been reported that Dr. …'s compulsory physician professional liability insurance policy was insured by … Insurance.

If public officials cause harm to persons while exercising their powers or performing their duties, it constitutes a service fault of the relevant public institution. In this regard, the Constitution art. 40/III, article 129/V, Law No. 657 art. 13 (and HGK 2011/4-592 E., 2012/25 K.) contains mandatory provisions. In this case, the responsible is the public institution under whose order the public official works, and the case should be brought against that institution. On the other hand, from the

spect, the most correct solution is to settle insurance disputes in which consumers are a party, in consumer courts, which are also specialized in insurance contract law." Samim Ünan, Sigorta Tüketici Hukuku, On İki Levha Yayıncılık, İstanbul 2016, p. 156.

61 Haluk N. Nomer, "The Relationship Between Subrogation and Recourse, Especially the Role of Subrogation in terms of Social Insurance and Private Insurance Recourse Rights", *İHFM*, Y. 1997, LV, I. 3, p. 247.

point of view of the basic principles of Responsibility Law; the fact that such a regulation is included in the legislation is an important guarantee for the loss of the injured party. In the case that is the subject of the case; The defendant, who works as a doctor in the defendant ministry and is a public officer, applied wrong diagnosis and treatment, did not have the decisive tests for the detection of Down syndrome or did not inform the family according to the results of the test, therefore, due to the life-long disability of the child, the loss of work days and severe disability. It is claimed that he inflicted damage on the claimant during his duty and due to his duty, by causing him to be constantly in need of a caregiver. 129/5 of the Constitution. Article 13/1 of the Civil Servants Law No. 657 pursuant to article; Claims for damages arising from the faulty actions of public officials while exercising their powers may be brought against the administration or against the compulsory physician professional liability insurance, provided that they are recoursed and in accordance with the conditions set forth in the law. The case, on the other hand, is the non-litigation of the treating physician, Dr. It was filed against the defendant Y insurance, who has compulsory physician professional liability insurance of this doctor with the claim that he is X, and as a result of the investigation made by the court, the treatment was given to Gynecology and Obstetrics Specialist Op. It was determined that Dr. X applied it, and it was determined that this doctor was not insured with the defendant's insurance with the compulsory physician professional liability insurance, and was insured with Anadolu Sigorta out of action.[62]

The lawsuit must be filed against the insurance company that last signed the insurance contract. In cases where the insurer changes, the insured must notify the new insurer of the events that occurred during the old insurance (and have not yet been the subject of a claim). If the insurance company is changed after the indemnity request is submitted, and a contract is made with another insurer, the new insurance company must be informed about the events that occurred in the previous contract periods. In other words, the new insurance company must have made a contract knowing the past claims, otherwise the case will be dismissed due to the absence of passive hostility.

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[62] http://emsal.uyap.gov.tr/BilgiBankasiIstemciWeb/, (Date of Access: 28.08.2019).

For example: If the compulsory physician liability insurance was taken out by the insurer A in 2013, 2014 and 2015, and by the insurer B starting from 2016, an event that took place in 2014 and which was within the knowledge of the insured as of the moment of occurrence, will be 10 times a year in 2014 pursuant to TTK art. 1475/1 should be notified to the insurer A within the same day, and to B in accordance with TCC 1435 when making a contract with insurer B in 2016.[63]

In addition, if it is desired to file a lawsuit not only with the doctor but against the doctor or only against the hospital, it will be decided whether the court to be prosecuted will be an administrative court or a civil court, depending on whether the doctor works in a public institution or a private institution.

3. Appeal Authority

Y 17. HD, 24.01.2014 T., 2014/13726 E. and 2014/11093 K. numbered decision is related to the claim for compensation for the damage suffered due to the application. Y 17. HD, 24.01.2014 T., 2014/13726 E. and 2014/11093 K. numbered decision is related to the claim for compensation for the damage suffered due to the application. According to this decision, the duty of reviewing the appeal belongs to the 11th Civil Chamber of the Supreme Court of Appeals, pursuant to the 14th article of the Supreme Court of Appeals Law No.[64]

As can be seen from the decision, the aforementioned decision is an explanatory decision on which appellate authority to examine the decisions of the local court, and which legal department of the Court of Cassation is authorized.

4. Obligation to Light

In the case subject to decision Y 13. HD, 9.4.2014 T., 2013/30822 E. and 2014/10772 K., the Plaintiff stated that he was treated for a bone curvature in his nose at the Private B... Hospital belonging to the defendant company, he was operated during the treatment, and that he

63 Ünan, Mandatory Physician Insurance, p. 14-15.

64 https://kararama.yargitay.gov.tr/YargitayBilgiBankasiIstemciWeb/, (Date of Access: 28.08.2019)

had undergone post-operative control. He claimed that when he went to the same hospital for the purpose of surgery, the defendant doctor learned that İbrahim had left the hospital, that he was interested in the treatment of another doctor in the same hospital, that he had permanent damage to his nose as a result of the wrong operation and that there was no possibility of recovery, that he could not work due to the wrong treatment and that he was deeply saddened. He requested the collection of material damages of TL 40,000.00 and non-pecuniary damages of TL 40,000.00 from the defendants with legal interest. In line with the forensic medicine report received, the court decided to reject the case on the grounds that there was no fault to be attributed to the defendants, and the judgment was appealed by the plaintiff.

According to the decision of the appeal, the basis of the case is the contract of attorney and it was based on the breach of the duty of care. Pursuant to articles 386 et seq (TBK 502 and sequel) of the Code of Obligations, which regulates the power of attorney, although the attorney is not responsible for the failure to achieve the result he or she intended while performing the duty of attorney. He may be liable for the damages, arising from the lack of diligence in the transactions, actions, and behaviors of his efforts to achieve this result. The responsibility of the agent generally depends on the rules regarding the responsibility of the worker. He has to act diligently like a substitute worker and is responsible for even the slightest fault. (TBK art. 396/1) Therefore, all the faults of the doctor within his professional field, even if it is slight, should be accepted as an element of responsibility. In order for the patient not to be harmed, the doctor has to fulfill all professional requirements, determine the patient's medical condition in a timely manner and without delay, take the necessary precautions in full, and determine and apply the appropriate treatment without delay. Even at the minimum level, he is obliged to carry out research to remove this hesitation and to take protective measures in the meantime, in cases that cause hesitation. While choosing between various treatment methods, the characteristics of the patient and the disease should be considered, attitudes and behaviors that would put him at risk should be avoided, and the safest way should be chosen. Indeed, the patient has the right to expect the surrogate, who is a professional doctor, to show meticulous care and attention at all stages of treatment. The attorney, who

does not show due diligence, is 394/1 of the BK. In accordance with the provision of the article (TBK article 510/1), the power of attorney must be deemed not to have been duly performed. The doctor should not be held responsible if the result has not changed even though the requirements and rules of medicine are followed.

Another important regulation is the European Convention on Biomedicine.[65] In the first article of this contract titled "Purpose; *The parties to this convention are "obligated to protect the dignity and identity of all human beings and to ensure that the integrity and other rights and freedoms of everyone are respected, without discrimination, in the practice of biology and medicine."* In Article 4 of the Convention, under the title of "Compliance with Professional Rules"; "*Any intervention in the health field, including research, must be done in accordance with relevant professional obligations and standards."* In accordance with Article 90 of our Constitution, the contract has become a part of our domestic law.

On the other hand, the subject of "Consent" is regulated in Article 5 of the Biomedicine Convention, and "Any intervention in the field of health can be made after the person concerned gives his/her free and informed consent to the intervention. This person should be informed beforehand about the purpose and nature of the intervention, its consequences, and dangers." Appropriate information will be given about the subject. The person concerned will always be able to freely withdraw his consent". The scope of consent has been determined and regulations have been introduced in parallel with the established practices of our Department. It is not enough to just consent to the surgery. In addition, complications must be explained. However, this consent has also been clarified as it was just emphasized above. As a matter of fact, a regulation has been made in article 26 of the Physician Ethics Regulation; and possible side effects, the consequences of the disease if the patient does not accept the recommended treatment, possible treatment options, and risks. The lighting to be made should be in accordance with the cultural, social, and mental state of the patient. Information should be given in a way that can be understood by the

[65] "Convention on the Protection of Human Rights and Human Dignity with respect to the Application of Biology and Medicine" was approved by Law 03.12.2003 D. and 5013 N., and entered into force after being published in the OG: D. 09.12.2003 and N. 25311.

patient. The patient determines the persons to be informed other than the patient. All health-related interventions can be made with the free and informed consent of the person. Consent is void if it has been obtained through coercion, threat, incomplete disclosure, or deception. In emergencies, the consent of the legal representative is obtained in cases where the patient is underage or unconscious, or unable to make a decision. With its arrangement, it is explained how the lighting will be made. In informed consent, the burden of proof is on the physician or the hospital. As such, it is imperative for the defendants to inform the patient of the possible outcome and complications prior to surgery.

In the consent document dated 06.07.2009 submitted to the file, it cannot be understood with the content of the file that the defendant informed the plaintiff about this issue and warned by making justified explanations; whether the plaintiff was sufficiently enlightened and whether the plaintiff would consent to this operation even if the complications of the operation were known. In general terms, it was reported that he was aware of the side effects and complications, and the complications of this type of surgery were not explained. On the other hand, in the report of the Forensic Medicine Institute 3rd Forensic Medicine Specialization Board dated 03.10.2012, which was taken by the court, it was stated that "... the plaintiff performed SMR surgery with the diagnosis of septum deviation in the defendant Private B... Hospital, and septum perforation occurred after the operation, It was stated that the perforation that occurred is one of the complications that may occur during this type of surgery, that the patient should be informed if perforation is detected, but it is not clear when the perforation develops. The Forensic Medicine report based on the judgment is not sufficient to determine whether the defendant physician is at fault. In that case, the court should make a decision by obtaining a report that is suitable for the inspection of the party, the court and the Supreme Court, explaining the reasons, whether the defendant physician has a fault in the nose surgery of the plaintiff and whether there is a permanent symptom after the operation, from the panel of experts to be selected from the medical faculty, where the ENT specialists are present, regarding the operation undergone by the plaintiff. . If it is determined that the perforation in the claimant is a complication, it should be considered that the illumination is not sufficient and a decision should be

made in accordance with the result. The fact that the court has made a written judgment with an incomplete examination by ignoring these aspects is against the procedure and the law and requires annulment. Therefore, it was unanimously decided to reverse the decision in favor of the plaintiff.[66]

There are many decisions of the Court of Cassation in which physicians are sentenced to compensation due to non-fulfillment of the obligation to inform.[67] Even though the lawsuit was filed for the fault of the physician and it was determined that the physician did not have any fault, the violation of the obligation to inform is accepted as the main reason for the compensation. In the decisions of the Supreme Court, the simple and printed consent form was not considered sufficient. It has not been accepted as valid that the physician obtains written consent from the patient but makes the clarification verbally, and it has been accepted that the clarification was not made because it was not written. In this way, on the one hand, the burden of proving enlightenment was placed on the physician, and it was also accepted that the consent form did not mean enlightenment, in line with the views defended in the doctrine.[68]

The basic criteria for valid consent to be mentioned are, that the patient knows what he or she consents to. As a matter of fact, in order for the consent to be legally valid, the person must know the state of health, the intervention, its effects, and consequences, and be sufficiently enlightened on this issue. It is the physician who is responsible for enlightenment. This physician must be the physician administering the treatment. There is no need for the patient to make a request from the physician for clarification. With the clarification, the patient should be informed about the diagnosis made as a result of examinations,

66 www.kazanci.com.tr, (Date of Access: 25.08.2019).

67 Rıza/Çağlar/Özdamar, p. 106.

68 Obtaining the patient's consent before any kind of medical intervention is the result of respecting this right of the person who has the personality right over his/her own body. For this reason, every person who applies to a health institution to receive health care has the right to receive information about any attempt against his or her physical and mental integrity. Here, the point to be noted is that the patient will need to be in a position to freely decide on the medical intervention that is considered to be applied to him. The provision of this situation depends on the adequacy of the illumination by the physician. Informing the patient will serve to ensure the right to decide about his own future. Yördem, p. 543.

tests, and analyzes, the medical interventions that are planned to be applied, and other available treatment methods. At this point, it is up to the physician about the medical intervention, the type, form, and scope of the intervention, whether it will give a definite result, and to give information about possible complications to the patient.

According to the 26th article of the Turkish Medical Association Code of Professional Ethics, titled Informed Consent, the physician includes the patient's health status and the diagnosis, the type of treatment method proposed, the chance of success and duration, the risks of the treatment method for the patient's health, the use of the drugs given, and possible side effects, illuminates the effects of the disease, the possible treatment options, and the risks of the disease if the patient does not accept the recommended treatment. The lighting to be made should be in accordance with the cultural, social, and mental state of the patient. Information should be given in a way that can be understood by the patient. The patient determines the persons to be informed other than the patient. All health-related interventions can be made with the free and informed consent of the person. Consent is void if it has been obtained through coercion, threat, incomplete disclosure, or deception. The obligation to inform rests with the physician. This physician is the physician who administers the treatment. The fact that the obligation belongs to the physician also imposes the burden of proof on the physician.

In its decision numbered Y 13. HD, 16.1.2014 T., 2013/17487 E., and 2014/794 K., the Plaintiff stated that on 14.07.2009: the defendant was admitted to the hospital in an unconscious state as a result of falling, he was discharged after being operated on twice after intensive care, after platinum implantation. However, when his pain increased, he applied to another hospital and U.U. he claimed that all the platinum that was attached to the Faculty of Medicine was dismantled, and demanded a decision for pecuniary and non-pecuniary damages due to the defendant's fault. The defendant requested the rejection of the lawsuit, arguing that all kinds of medical procedures and interventions were carried out in the treatment and surgery of the plaintiff and that there was no fault. The court dismissed the case and the judgment was appealed by the plaintiff.

According to the Court of Cassation, the basis of the case is the attorneyship contract, in accordance with articles 386, and the following, which regulate the power of attorney, of the Code of Obligations. It is based on the breach of the duty of care. Although the attorney is not responsible for the failure to achieve the result towards which he or she is working while performing the duty of attorney. He is responsible for the damages arising from the lack of diligence in the transactions, actions, and behaviors of his or her efforts to achieve this result. The responsibility of the agent generally depends on the rules regarding the responsibility of the worker. He has to act diligently like a substitute worker and is responsible for even the slightest fault (BK. art. 321/1). Therefore, all the faults of the doctor within his professional field, even if it is slight, should be accepted as an element of responsibility. In order for the patient not to be harmed, the doctor has to fulfill all the professional requirements, determine the patient's medical condition on time and without delay, take the precautions required by the concrete situation, and determine and apply the appropriate treatment without delay. Even at the minimum level, he is obliged to carry out research to remove this hesitation and to take protective measures in the meantime, in cases that cause hesitation. While making a choice between various treatment methods, the characteristics of the patient and the disease should be considered, attitudes and behaviors that would put him at risk should be avoided, and the safest way should be chosen. Indeed, the client (patient) has the right to expect the surrogate, who is a professional doctor, to show meticulous care and attention at all stages of the treatment. The attorney, who does not show due diligence, is 394/1 of the BK. In accordance with the provision of the article, the power of attorney must be deemed not to have been duly performed. The doctor should not be held responsible if the result has not changed even though the requirements and rules of medicine are followed. Considering these explanations, it is not enough for the patient to simply consent to the surgery. In addition, the complications must also be explained, that is, this consent must be informed consent. As a matter of fact, a regulation was made in Article 26 of the Physician Ethics Rules and states that "The physician should consider the patient's health status and diagnosis, the type of treatment method proposed, the chance of success and duration, the risks of the treatment method

for the patient's health, the use of the given drugs and their possible side effects, the patients recommended illuminates the consequences of the disease, possible treatment options and risks if he does not accept the treatment. The lighting to be made should be in accordance with the cultural, social, and mental state of the patient. The information should be given in a way that can be understood by the patient. The patient himself determines who will be informed outside the patient. Any attempt can be made with the person's free and informed consent. The consent is invalid if it has been obtained through coercion, threat, incomplete illumination, or deception. In emergencies, in cases where the patient is underage or unconscious, or unable to make a decision, the permission of his legal representative is to explain how the lighting will be done with the regulation. In informed consent, the burden of proof is on the physician or the hospital. If we look at the concrete case in the light of the explanations explained above; it is understood that the plaintiff was exposed to a series of treatments and interventions after the operation in the defendant's hospital. It is against the procedure and the law that the court ignored these aspects and made a written judgment with the incomplete examination, and it was unanimously decided to overturn the decision for the benefit of the plaintiff.[69]

In the decision numbered 13. HD, 11.04.2013, T. 2013/2273 E. and 2013/9491 K., "*...If it is concluded that there is no medical error but a complication, it is decided that the defendants should be considered responsible, considering that the burden of proof is on the defendants in the informed consent, and a decision should be made in accordance with the result to be achieved.*" Despite these and similar decisions, more and more lawsuits may be filed if physicians show a lack of information.[70]

5. Coverage of Insurance

In the case subject to the decision of Y 11. HD, 08.07.2019 T., 2019/2062 E., and 2019/5048 K., the Dispute Arbitrator in the decision of 17.02.2018 T. and 2018/İHK-11136 given by the Insurance Arbitration Commission Appeal Arbitration Committee By the delegation[71]; It

69 www.kazanci.com.tr, (Date of Access: 25.08.2019).
70 Yördem, p. 544.
71 Rıza/Çaglar/Özdamar, p. 116 et al.

was decided to reject the case on the grounds that the notice made by the administration to the claimant/insured did not include the claim for compensation in the General Conditions of Compulsory Liability Insurance Regarding Medical Malpractice, therefore the risk did not materialize. In the decision of the appeal arbitral tribunal; With the acceptance of the case, it was accepted that the defendant was responsible for the risk that occurred during the notification, the defense of withdrawal from the file was not appropriate since the explanations in the decision of the Aydın 2nd Administrative Court against the administration were sufficient, and the objection to the defect detection was important in terms of foreign relations. As of 2017, it was decided to collect it from the defendant together with its legal interest. Although the defendant's attorney appealed in due time, it was sent to the Court of Cassation for an appeal review by the Istanbul Anatolian 10th Commercial Court of First Instance, where it was deposited for safekeeping.

According to the Court of Cassation, pursuant to Article 61 of the TCO, if more than one person causes damage together or they are responsible for the same damage due to various reasons, the provisions regarding joint liability are applied to those responsible. According to Article 40/3 of the Constitution, the damage suffered by a person as a result of unfair actions by official officials is also compensated by the State according to the law. The right of recourse to the responsible official of the state is reserved. At the same time, according to Article 129/5 of the Constitution, lawsuits for compensation arising from the faults committed by civil servants and other public officials while exercising their powers can only be brought against the administration, provided that they are recoursed; and in accordance with the forms and conditions set forth by the Law. In cases where the state jointly causes damage or is responsible for the damage due to various reasons, only the state can be prosecuted in accordance with the prevailing provision of the Constitution. If the administration is sentenced to pay compensation as a result of this lawsuit, in accordance with the last sentence of paragraph 1 of the 13th article of the Civil Servants Law No. 657, the administration has the right of recourse to the responsible person according to the general provisions. If the damage is based on the personal fault of more than one public official, the administration will only recourse to each public official at the rate of its own fault (B. Akyılmaz, The

Problem of Recourse to a Public Official in Administrative Law, Fikret Eren's Gift 2006, p. 1057). As a matter of fact, it is also stated in the doctrine that the state can recourse to the public official who caused the damage for the compensation paid to the injured person at the rate of fault according to the general principles. In the concrete case; in the file numbered T. 19.09.2012, 2011/563 E. and 2013/406 K. of Kuşadası 1 Criminal Court of First Instance, where the plaintiff caused the death of Raziye Pınar by negligence as a result of the examination and treatment performed with the non-trial doctor while she was working as a doctor in the public hospital. It is clear from the Forensic Medicine Institute report. In the full remedy action brought by the relatives of the deceased against the Ministry of Health, Aydın 2 Administrative Court, with its decision numbered 2016/463 E. and 2017/798 K., decided to pay the plaintiffs 80,000 TL of non-pecuniary damages. The Ministry of Health demanded % of the payment made to the relatives of the deceased on the grounds that he was one of the two doctors who performed the treatment, and the plaintiff/insured paid 53,090 TL from the amount paid to the Ministry out of the case. In this case, the plaintiff/insured requested the amount paid to the administration from the insurer. However, as it can be understood from the explanations above, the public official can only recourse to the doctor at the rate of his fault. . As such, taking into account the defense of the defendant insurer that the insured doctor will be liable for the damage at the rate of his fault, an expert report determining the defect rate in the medical practice of the insured doctor that caused the damage in an auditable manner, is obtained in an amount corresponding to the doctor's fault rate from the compensation paid to the relatives of the deceased in accordance with the Administrative Court's decision. While the insurance company should be held responsible, it was not appropriate to hold the defendant responsible for the entire recourse payment made to the administration by the insured doctor in writing, and it was decided to reverse the decision for the benefit of the defendant.[72]

According to the decision numbered Y 11. HD, T. 13.1.2016, E. 2015/14376, and K. 2016/249: "The decision of the Court of … dated

[72] https://karararama.yargitay.gov.tr/YargitayBilgiBankasiIstemciWeb/, (Date of Access: 28.08.2019).

03.12.2014 and numbered 2014/1117-2014/613 was appealed in the case heard between the parties. The plaintiff's attorney stated that his client is a general practitioner and he is with the defendant company, that a lawsuit was filed against him for causing the death of a patient who was treated in the hospital where he worked between 18/04/2010 - 19/04/2010 and it was decided to be acquitted by him as his attorney in this case. The defense was made and a 7.000 TL attorney's fee was collected, the said fee was not paid by the defendant despite the request from the defendant, whereas the attorney's fee does not constitute a fine or penal clause, which is considered an exception in the policy, although it is not explicitly stated in the policy that the attorney's fee will be paid, as an exception. Since it is not counted in the policy, the payment should be made by accepting that it is covered by the policy, in fact, this issue is also accepted by the defendant, because it is clearly and unconditionally stated on the official website that the attorney fees are covered by insurance, and in the information form, the coverage of litigation expenses and court costs is covered. Claiming that it was clearly regulated that he was in his possession, he demanded and sued the collection of 7,000.00 TL from the defendant. The attorney of the defendant states that the claim of the plaintiff is the guarantee of the Legal Protection Insurance, that there is no such coverage in the policy subject to the lawsuit, that the scope of the insurance is stated in the policy, that if a lawsuit is filed against the plaintiff with a claim for compensation and it is accepted, the court costs related to this claim can be paid to the plaintiff, however, in such a situation. Arguing that the claim was not covered by the policy and requested the dismissal of the case. According to the court, the insurance policy subject to the lawsuit protects the damages caused to third parties due to medical malpractices related to the plaintiff's duty, and only the damages inflicted by the plaintiff to the third parties are covered, and the attorney's fee paid by the plaintiff himself and to his lawyer, who acts as his representative, is not covered by the insurance on the grounds, the case was dismissed. The plaintiff's attorney appealed the decision. According to the information and documents in the case file, and the fact that there is no procedural and unlawful aspect in the discussion and evaluation of the evidence-based on the justification of the court decision, all appeals of the plaintiff's attorney are not appropriate. For

the reasons explained, it was unanimously decided to reject all appeals of the plaintiff's attorney and to uphold the judgment found in accordance with the procedure and the law.[73]

According to the 28.05.2019 T., 2017/125 E. and 2019/358 K. of the Istanbul 7th Commercial Court of First Instance: The lawsuit filed is a lawsuit for pecuniary and non-pecuniary damages. The nature of the liability policy of the insurance policy, in which a compulsory physician professional liability insurance policy with a term of 20.02.2016-2017 was issued in the name of Dr..., who was notified by the defendant, that the birth event that took place on 13.06.2012 is covered by the policy provisions. Therefore, the issue that needs to be examined first is whether the reported Dr ..., who is alleged to have caused the damage has an effective action in the formation of the damage, whether there is a professional error; that is whether there is a physician defect, negligence, or mistake as an obstetrician. Accordingly, in the root and additional reports obtained from the expert committee selected in the field, the pregnancy process, the birth, and postpartum period were examined in detail, clearly, concretely and open to inspection. Since the doctor intervened appropriately and in a timely manner when dystocia occurred, in short, there was no physician's fault or negligence in the formation of the damage, therefore, the defendant insurance company was not responsible according to the liability insurance policy, and this issue was concretely determined, and the pediatric neurologist was included in the expert committee due to the shoulder dystocia in the child. It is not necessary to get a report because the primary issue to be examined is whether the professional error of the doctor caused the damage or not, and this has been clearly and clearly determined with the expert report[74], since the defendant's insurance company is not res-

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73 www.kazanci.com, (Date of Access: 25.08.2019).

74 In the Eexpert Report dated 11.12.2017, submitted by the expert committee to the file, it is stated that "In the event, which is based on the claim for compensation by the plaintiffs, Açıkalın, the Plaintiff... , that the doctor had appropriate and timely intervention at the time of shoulder dystocia, the insured physician who delivered the baby applied the current medical interventions in place and on time, no careless and inadequate intervention was made, and it was considered flawless, by the defendant insurance company regarding Dr. ... 20.02.2016-2017 Term..., Compulsory Physician Professional Liability Insurance Policy with no.... is issued, the liability of the insurance company in accordance with the policy is dependent on the precondition of the responsibility of the insured physician, the

ponsible within the scope of the liability policy, it was understood that it was necessary to reject the lawsuit, and it was decided to reject the lawsuit within 2 weeks, with the appeal legal remedy open.[75]

6. Retroactive Insurance

In the case subject to the decision of Y 11. HD, 12.6.2017 T., 2016/4503 E. and 2017/3591 K., according to the decision of the 2nd Civil Court of First Instance, dated 20.10.2015 and numbered 2015/162-2015/772; In accordance with Article 1458 of the TCC, it is possible to take out insurance with retroactive effect, therefore the insurance policy subject to the lawsuit is valid, but in accordance with the same article; It was decided to reject the lawsuit on the grounds that it was prohibited and invalidated to conclude an insurance contract with retroactive effect due to the realized risk, that the plaintiff was aware that a compensation lawsuit was filed against him. Due to medical practice at the insurance policy issuance date and the case was dismissed on the grounds that the claimant could not claim a claim as such.

Upon the appeal of the decision, the Court of Cassation, pursuant to Article B.1 of the General Conditions of Compulsory Liability Insurance Regarding Medical Malpractice, the risk will be deemed to have occurred when the insured learns that a claim for compensation has been made from him or the injured person applies directly to the insurer; accordingly, in the concrete dispute, it was understood that the plaintiff was aware of the risk with the lawsuit filed against him before

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insured physician Dr...., who gave birth in the event, does not have any defect or negligence that may cause damage, Therefore, the physician is responsible for the fault. It is also stated that the liability of the insurer will not arise from the side of the insurer. In the additional report dated 12.11.2018 taken from the expert committee for the evaluation of the objections of the plaintiff party, the answers to the questions requested by the plaintiff's attorney to be answered in the petition of objection to the root report were given in the supplementary report. no risk factors were detected before and during the period of childbirth, the labor follow-up proceeds in accordance with the current scientific data, the doctor intervenes appropriately and in a timely manner when there is shoulder dystocia, the insured physician who delivered the baby applies the current medical interventions on time and in a timely manner, and there is no careless and inadequate intervention. It was reported that the opinion on the issue was preserved".

75 http://emsal.uyap.gov.tr/BilgiBankasiIstemciWeb/, (Date of Access: 28.08.2019).

the policy issuance date, and it was decided to reject all the appeals of the plaintiff's attorney and to uphold the decision.[76]

The insurance period is indicated on the policy drawn up with the conclusion of the insurance contract. This date shows the starting time and the continuation period of the performances arising from the insurance contract. The beginning of the insurer's obligation to bear the risk is regulated by TCC art. 1421.[77] Pursuant to this article, if there is no contrary agreement, the liability of the insurer begins with the payment of the premium or the first installment; in insurances related to land and sea transportation of goods, the insurer is responsible for concluding the contract. Sometimes, however, it may come up that the events (risks) that may have occurred before the conclusion of the insurance contract are requested to benefit from insurance protection. Realization of such a request is possible within the meaning of TCC article 1421 and TCC article 1458. Because in accordance with article 1421of the TCC, a contrary contract can be made. Therefore, the parties may specify a date before the payment of the premium or the first installment or before the conclusion of the insurance contract as the beginning of the liability of the insurer. If the parties have agreed on a date prior to the conclusion of the insurance contract as the beginning of the insurer's liability and hence insurance protection, retroactive insurance will be in question in such cases.[78] In other words, retroactive

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76 www.kazanci.com, (Date of Access: 25.08.2019).

77 According to the CO, the insurance contract is established by making a proposal (offer) by the policyholder or the insurer and the acceptance of this proposal by the other party of the contract. The moment of establishment of the insurance contract also determines the starting time of the form of insurance. The technical start time of the insurance contract refers to the moment when the premium or the first installment must be paid. The beginning of the insurer's moment of bearing the risk indicates the material start time of the insurance contract, and with the beginning of this moment, insurance protection begins. M. Sadık Çapa, "Retroactive Insurance", Journal of Gazi University Faculty of Law,, Vol. XVIII, Y. 2014, I. 3-4, p. 343, http://webftp.gazi.edu.tr/hukuk/dergi/18_3-4_14.pdf, (Date of Access: 16.08.2019).

78 The provision of CC article 1458 on retroactive insurance can also be applied to liability insurances. General Conditions of Compulsory Liability Insurance Regarding Medical Malpractice m. It is located in A.1. Pursuant to this article, in the ten-year period prior to the contract date or during the contract period, the professional indemnity claims and litigation expenses related to this claim and the interest to be awarded during the contract period due to the damage caused by the activity and the reasonable expenses related to the compensation claim claimed

insurance is the conclusion of the material start time of the insurance contract starting from a date before the formal start time.[79] Retroactive insurance is established at the time of agreement between the insurer and the policyholder regarding the retroactive effect of the insurance protection, and thus, the parties extend the insurance protection to be provided with this contract to a date before the conclusion of the contract; that is, they make it possible to have a retrospective effect. [80]

In retroactive insurance, insurance protection covers a moment before the conclusion of the contract, providing assurance against the possibility that the contractual interest may be damaged. However, it provides assurance for the risk that is objectively uncertain whether this purpose is realized or not. On the other hand, if it is known by the policyholder and the insured that the risk has occurred, this purpose stipulated in TCC article 1458 disappears. The main function of retroactive insurance is to ensure the period between the claim for the conclusion of the insurance contract and the conclusion of the contract.[81]

In retroactive insurance, if the risk is known at the date of the contract, this insurance is invalid. For example, if a doctor takes out retroactive insurance to cover the date of the event after learning that a lawsuit has been filed against him for medical malpractice or a claim for compensation is made with a warning, this insurance contract does not

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against the insured, are determined in the policy. Provides guarantees within limits. Therefore, the parties to the insurance contract will be able to make insurance with retrospective effect, which can take the insurance protection back ten years from the date of the contract. Çapa, p. 359.

79 With retrospective insurance, the insurer's obligation to protect under the contract is not limited to the material beginning of the contract, but extends to a date prior to the starting time of the contract. As a rule, the insurer and the policyholder can freely agree on this date. Exceptionally, the will to set this date may be restricted. Capa, p. 354.

80 In this respect, the provision of TCC art.1458 is an exception to the rule stipulated in TCC art.1421, since it changes the material start time of the insurance. Çapa, p. 343.

81 Temporary insurance protection, which is not included in the TCC, provides temporary protection to the policyholder for a certain period of time. Temporary insurance protection arises from economic, insurance, and risk policy needs. In temporary insurance protection, the material beginning of the insurance and the beginning of the form coincide at the same time. In other words, insurance protection is carried out in a way that starts from the moment of establishment of the contract. Therefore, retroactive insurance and temporary insurance protection are different institutions. Çapa, p. 346

create any liability for the insurance company. Knowing that a lawsuit has been filed against him, the doctor is obliged to pay the premium debt arising from the insurance he has taken out for this reason, to the insurer.[82]

However, if the risk has not yet materialized despite the claim or threat that a malpractice lawsuit will be filed, it is possible for the doctor to take out insurance with retrospective effect upon a patient's statement that he or she will file a compensation lawsuit against the doctor. In this case, the insurance contract is valid since the risk has not occurred yet. The objective uncertainty of the risk is among the most important elements of the insurance contract. [83]

Therefore, if it is known by the parties of the insurance contract that the risk has occurred or that the possibility of its realization has disappeared, the insurance contract cannot be established in a valid way, since ignorance of the occurrence of the risk cannot be aforesaid. In this case, the insurance contract is invalid.[84]

Another important issue is the situation with doctors working in the public sector. As it is known, it is not possible to file a lawsuit for damages directly against doctors working in the public sector. Such cases must first be brought against the public administration. The public institution may recourse to its own faulty personnel for the compensation it has to pay later. For this reason, if health personnel who are informed that a lawsuit has been filed against the public administration, takes out retroactive insurance from now on, will this insurance

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82 The objective uncertainty of the risk is among the most important elements of the insurance contract. Therefore, if it is known by the parties of the insurance contract that the risk has occurred or that the possibility of its realization has disappeared, the insurance contract cannot be established in a valid way, since ignorance of the occurrence of the risk cannot be mentioned. In this case, the insurance contract is invalid. Çapa, p. 347.

83 The objective uncertainty of the risk is among the most important elements of the insurance contract. Therefore, if it is known by the parties of the insurance contract that the risk has occurred or that the possibility of its realization has disappeared, the insurance contract cannot be established in a valid way, since ignorance of the occurrence of the risk cannot be aforesaid. In this case, the insurance contract is invalid. Capa, p. 347.

84 Erkin Göçmen, "Can Malpractice Insurance with Retrospective Effect Be Made?", Medical Academy, https://www.medikalakademi.coart.tr/gecmise-etkili-malpraktis-sigortasi- yapilabilir mi?, p. 1, (Date of Access: 16.08.2019).

contract be valid? Whether a lawsuit has been filed primarily against the public institution employing the health personnel or the health personnel themselves, it is not possible to have retroactive insurance in both cases. Because after the health personnel learned that a lawsuit has been filed against the administration for the time being due to the realization of the risk, it is not possible to have effective insurance if it has passed on the grounds that he did not know, that the risk has occurred yet.[85]

7. Occurrence of Risk

According to the decision numbered Y 11. HD, T 25.6.2018, E 2016/11529 and K 2018/4747: Following the criminal court's finding that the accused doctors were at fault; the victims of the crime had the opportunity to make a legal claim from the date of the incident, the date of the damage/risk was determined by the court. Article A. 1.b of the General Conditions of Professional Liability Insurance, that the policy was drawn up with retroactive effect, including the previous events that the risk occurred on a date before the policy was issued, and that the risk arising from the death event is also within the scope of the policy. Pursuant to Article 2 of the TMK, the claim in the policy text that "protection will be provided only against the claims that may arise against the insured during the contract period" is in the nature of asserting an actually impossible condition, and in line with the same condition, the indemnity arising from the risk is not paid to the insured person based on this condition. In violation of the honesty rule in accordance with the provision, it has been decided to accept the case.

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[85] According to the contrary view, in this case, the risk did not occur within the meaning of Article B.1 of the General Conditions of Compulsory Liability Insurance Regarding Medical Malpractice, since there is no compensation case against the doctor yet. It is also possible that this lawsuit filed against the public administration may result in a defect related to the planning, organization, arrangement, and arrangement of the health service in general, to result against the administration. In this case, since the doctor will not have any responsibility to the administration, the administration will not be able to file a recourse lawsuit against the doctor. In other words, it is still indeterminate whether the doctor has a fault and recourse liability at the time of the lawsuit filed against the public administration. Göçmen, p. 1.

The case is about the claim for compensation for the damage suffered under the professional liability insurance policy. In the insurance policy concluded between the parties for the dates 31.05.2006-31.05.2007, the guarantee limit was determined as 50.000 TL, and the court should have ruled that the liability of the defendant is limited to the policy limit, but it was not correct to accept the case over 54.120 TL by exceeding the coverage limit in the policy. It was unanimously decided to overturn it. According to article B.1 of the General Conditions of Professional Liability Insurance[86], titled loss and compensation, the Contract; In case it is done as specified in subparagraph (a) of A.1. (against damages arising as a result of an event occurring during the contract period and indemnity claimed during or after the contract period in accordance with the liability provisions), due to the professional activity of the insured during the contract period, As a result of the loss of others, both during the contract period and within two years from the end of the contract, as specified in subparagraph (b) of A.1. depending on the event that occurred before the contract was concluded or while the contract was in force, provided that it is not less than one year[87]; a) Payment is made by the insured with the knowledge and written consent of the insurer, or b) In professional liability insurances, where the insurer also undertakes to provide legal assistance to the insured, upon notification of the lawsuit or legal proceeding, c) The court that the loss has occurred and that this loss arises from the liability of the insured In the event that it is decided by the company, the risk is realized. Thus, an occurrence basis-event occurrence claim has been accepted in the Professional Liability Insurance.

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86 OG: D. 26.05.2013 and N. 28658.

87 Professional Liability Insurance General Conditions article A.1 with this insurance contract, while performing the professional activity of the insured specified in the policy and the subject of which is defined by the relevant parties; a) Against the damages that arise as a result of an event occurring during the contract period and whose compensation is claimed during or after the contract period in accordance with the liability provisions, or b) Against the claims that can be made against the insured only during the contract period due to an event that occurred before the contract was concluded or while the contract was in force. Guarantee is given up to the amount specified in the contract, including reasonable expenses related to the request. The parties can make a contract to include one of the (a) and (b) clauses, or they may make a contract to include both. If it is made for the responsibility of the insured regarding the business, this insurance also covers the responsibility of the insured's representative and the people employed in the business or part of the business in the management, supervision, and business, unless there is a contrary provision in the contract.

However, according to Article B.1 of the provision of the General Conditions of Compulsory Liability Insurance Regarding Medical Malpractice, the claim is deemed to have occurred as soon as the insured learns that a claim has been made to him regarding the subject of the insurance contract or the injured party directly applies to the insurer claims made based insurance is adopted.

B. ARBITRAL AWARDS

Since the damages subject to insurance contracts are generally concluded in accordance with the arbitrator's decision in insurance arbitration, the dispute is not referred to by the Insurance Arbitration Commission Appeals Tribunal much. For this reason, the published decisions on the compulsory liability insurance of the physician are limited.

1. Insurance coverage

In another decision given by the Insurance Arbitration Commission Appeal Arbitration Committee, Z.Ç. gave birth in Private Huzur Hospital on 06.02.2010 and gave birth to a baby named A.C. ZÇ claimed that they had made an agreement with the hospital employee Dr. G.B. that he should be present at the birth before the birth, and that a faulty intervention was made during the birth, thus causing at least 32.3% of the applicant's A.C., who was not born, to be disabled; applied to the Insurance Arbitration Commission with a request for the collection of pecuniary and non-pecuniary damages for the surgery and treatment expenses that were not paid by the insurance company. The application was partially accepted by the Insurance Arbitration Committee; this decision was appealed by the Insurance Company's attorney.

However, a lawsuit was filed against Dr. G.B. by the attorney of the plaintiff party with the file number 2010/10 E. of the Istanbul 15th Civil Court of First Instance. Since the report from the General Assembly of Forensic Medicine is expected during the court proceedings during the application to the Arbitration Committee, this situation is made a preliminary issue and since the report is of a nature that will affect the decision to be made by the Arbitration Committee, it is necessary

to make a preliminary issue and wait for the report to be prepared, in accordance with Article 30/16 of the Insurance Law No. 5684 and with the consent of the parties' attorneys, it was decided to take an additional two months; and finally, the request was partially accepted.[88]

[88] The Arbitration Panel of Disputes decided that the defendant of the case in the general court, Dr. In its application for arbitration, G.B.N. rejected the procedural objection on the grounds that the defendant was an insurance company. Therefore the same case had not been brought before the general court, and the conditions were not met because the defendants were different. On the grounds that the doctor, who was less faulty in the main aspect, should be considered completely faulty, he accepted the requests for material and moral compensation differently. In the concrete case; 30/14 of the Insurance Law No. 5684. According to the article: "An application cannot be made to the Commission regarding the disputes submitted to the Court and the Arbitration Committee for Consumer Problems pursuant to the provisions of the Law on the Protection of the Consumer" and "the same lawsuit has been filed before and is still pending," as stated in article 114/1.1 of the CPC. The conditions of "not being" have not been met. For this reason, it is not wrong to reject the objection on this issue by the Arbitration Committee of Disputes; the objection of the insurance company regarding this issue had to be rejected. In terms of pecuniary and non-pecuniary damages: As a result, in the decision of the Forensic Medicine Institute 2nd Specialization Department dated 12.06.2015, it was stated that "no fault could be found attributable to the relevant physician and other health personnel". Since the general court had decided to receive a report from the General Assembly of Forensic Medicine, it was decided to submit this report if it came, or to wait for it if it did not, and the representative of the insurance company submitted the report of the General Assembly of Forensic Medicine to the file. As a result of the report of the General Board of Forensic Medicine dated 29.09.2016: "G1 P0, 39-40 weeks old, 5-6 cm, 80% effacement, a painfully pregnant woman who applied to the private X Hospital date on 06.02.2010 was in labor for about 3 hours. After the follow-up, she gave birth by applying nsd+epi with vacuum, developed posterior occiput, developed shoulder dystocia at birth, and right brachial plexus paralysis was detected in a 3770-g born baby. It is understood that the decision taken to put a vacuum in order to prevent the baby from waiting too long in a pregnant woman with a weakness for straining is medically correct, that vacuum is applied by the midwife at the instruction and control of the physician who is in another operation, that the shoulder dystocia that develops at birth and the brachial plexus damage that develops due to it can be treated with a vacuum. normal delivery of brachial plexus lesion detected in small It has been unanimously agreed that it can be seen due to maneuvers during the removal of the baby from the vaginal route even in cases where all care is shown during the procedure and it is described as an unpredictable and unpreventable complication, therefore, no defect that can be attributed to the relevant physician and other health officials in terms of the formation of a plexus brachialis lesion in the baby during labor. It is agreed" assessment was made. In the face of the reports of the 2nd Specialization Department of the Forensic Medicine Institute and the General Assembly of Forensic Medicine, which confirmed each other and were given unanimously, the applicants' representative submitted the file and Dr. X University Medical Faculty Ordinary Medicine USA report stating that GB was defective could not be valued. Unless there is a contrary provision in the policy,

CONCLUSION

Against damages resulting from malpractice in medicine, known as malpractice in practice; The Physician's Compulsory Liability Insurance for Medical Malpractice (Compulsory Liability Insurance for Medical Malpractice) has been regulated as compulsory insurance in order to cover the responsibilities of all physicians, dentists, and those who are specialists in accordance with the legislation on specialization in medicine.

The purpose of physician compulsory liability insurance is to relieve physicians of the financial burden they may be exposed to due to legal liability. Thanks to this insurance, those who have suffered damage have the opportunity to apply to an institution that has a strong financial power to cover the compensation receivables for the physician who harmed them. Physician's professional liability insurance is a contract that imposes obligations on both parties (synallagmatic). The insured's debt is to pay premiums, and the insurer's debt is to compensate the insured's loss when the risk occurs.

Damages arising as a result of an event that occurred during the contract period with IGC and indemnified within the contract period or after the contract in accordance with the liability provisions, claims that may arise against the insured only during the contract period due to an event that occurred before the conclusion of the contract or while

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the insured must be at fault in order for the insurance company to be considered liable under the Health Professionals Individual Risks Insurance Policy. Since the reports of the 2nd Specialization Department of the Forensic Medicine Institute and the General Board of Forensic Medicine, which confirm each other and received unanimously: "No fault was found attributable to the relevant physician and other health officials", the defendant insurance company is not liable under the Health Professionals Individual Risks Insurance Policy cannot be mentioned either. Therefore, it was not correct that the insurance company decided to pay pecuniary and non-pecuniary damages for the reasons stated in the decision. Since the objection of the defendant's insurance company on this matter was valid, it was necessary to abolish the decision of the Arbitration Committee for Disputes on 14.04.2017 and to reject the application with its acceptance. For the reasons explained: With the acceptance of the objection: Annulment of the Dispute Arbitration Committee's decision dated 05.09.2016 and numbered 2016/16881 Basis, 2016/ 25537, rejection of the application, 30/12 of the Insurance Law No. 5684. In accordance with the article, it was decided unanimously with the possibility of appeal as of the case amount insurances. Journal of Insurance Arbitration Decision, I. 30, 2017 April-June, I. 30, 2017 April-June, p. 68-75, (Erişim Tarihi: 22.08.2019).

the contract was in force, and this loss or damage While the litigation expenses related to the claim are counted within the scope of the insurance, the indemnity claims arising from the activities of the insured outside of the professional activity covered by the policy and the limits of which are determined by the rules of law or ethical rules, compensation claims of the insured arising from the activities of the insured outside the scope of responsibility of the organizations covered by the policy, excluding the fulfillment of humanitarian duty. Indemnity claims arising from all kinds of experiments are excluded from the scope of insurance, except for those performed as a requirement of medical professional activity within the framework determined by the relevant legislation and all kinds of penal and penal conditions, including administrative and judicial fines.

While determining the scope in terms of time, the claimed principle has been adopted in physician professional liability insurance and it has been assumed that the insurance will be renewed regularly every year. In demand-based insurance, only medical malpractices that occur during the contract period are covered by the contract. Therefore, if the liability insurance is interrupted and a malpractice event occurs during the interruption period for which the insurer is liable, the resulting loss will not be covered by the insurer.

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