

Medical Act

(Federal law containing rules concerning the professional behavior of doctors)

- **Article 49: Provision of medical care to ill and healthy patients**

(1) Medical doctors are obliged to provide medical care and attention diligently, and equally to both healthy and sick patients who seek their assistance. Medical doctors are under the obligation to undergo continuing medical education by attending CME programmes recognised by the Medical Chambers in the provinces, by the Austrian Medical Chamber, or abroad, in order to safeguard the well-being of the ill and to protect the health of healthy patients according to the state of the art of medical science and experience and in respecting existing provisions and professional quality standards, especially according to the Health Quality Act (GQG), Federal Law I Nr 179/2004 (Federal Law Nr I 2002/65 and Federal Law Nr I 2003/140).

(2) Medical doctors have to exercise their profession personally and directly, if needed in cooperation with other medical doctors. Medical doctors may refer to the services of auxiliary persons, provided that the latter act under their direction and supervision.

(2a) Medical doctors and group practices have to evaluate their quality at regular intervals and have to submit the results to the Austrian Society of Quality Assurance & Quality Management in Medicine (Österreichische Gesellschaft für Qualitätssicherung & Qualitätsmanagement in der Medizin GmbH) by means of electronic data transmission, depending on their technical equipment (Fed Law Nr I 2003/140).

(2b) If the outcome of the evaluation or of the review suggests any direct health risk, or if it is omitted for reasons under the responsibility of the medical doctor or group practice, this constitutes a severe breach of professional duty, and thus a reason for cancelling the contracts the doctor holds with the health insurance funds, pursuant to §343 par. 4 of the General Social Insurance Law (Fed Law Nr 189/1955), provided that subject-specific quality standards regarding procedural and structural quality are affected. (Fed Law Nr I 2010/61).

(3) In individual cases, medical doctors may delegate medical acts to other health professionals or to trainees of a health profession, provided that the respective act is covered by the professional competence of the latter (Fed Law Nr I 2001/110). The medical doctor is responsible for this direction. There is no need for medical supervision, if medical acts are delegated to and undertaken by health professionals for whom medical supervision is not legally required. (Fed Law Nr I 2001/110)

(4) Medical students (diploma and doctoral studies) are authorized to engage in medical activities set out in par. 5, under the direction and supervision of fully qualified medical trainers, provided that they are trustworthy and in a proper state of health. They may be replaced by doctors in training on condition that the head of the department to which the doctors in training are attached confirms in writing that they possess the required medical knowledge and experience, required for this duty. (Fed Law Nr I 2010/61)

(5) Activities in terms of par. 4:

1. anamnesis taking
2. simple physical examination including blood pressure measurement
3. taking blood from a vein
4. intramuscular and subcutaneous injections

5. assistance in other medical activities, provided that the respective skills are indispensable for the successful completion of the medical studies and the medical students demonstrably possess the knowledge and experience necessary for the conscientious performance of these activities with regard to their level of difficulty.

(6) (Cancelled, Fed Law Nr I 2005/156)

- **Article 50:** If a doctor wishes to discontinue the treatment of a patient, he has to inform the patient in due time to organize a replacement.
- **Article 50a:** The doctor can delegate individual medical acts to a patient's family member, a person responsible for the patient, or a person who has a close relationship with the patient. The doctor has to instruct this person and make sure that he or she is capable of performing the respective medical acts. He has to inform the person that he or she can reject to take over these tasks.
- **Article 51:** The doctor is obliged to keep records about all patients he advises or treats, particularly about their state of health, the diagnosis, the history and course of their disease, and about the form and coverage of the advisory, diagnostic and therapeutic acts performed, including the medicinal products applied. Medicinal products applied have to be recorded in an identifiable manner, including the batch number. The doctor is obliged to grant the patient access to his records and make copies at his or her own expense. Doctors are entitled to collect and process personal data of patients and transmit them to social insurance agencies insofar as required for the fulfillment of their legal duties, and, with the patient's consent, to other doctors or medical institutions treating the patient. Records are to be stored for ten years.
- **Article 53** forbids doctors to give any information which is unobjective, untrue or damaging for the image of the medical profession. A doctor must not accept a remuneration for the referral of patients to another doctor, or promise such a remuneration for referrals to himself.
- **Article 54** obliges the doctor and his assistants to professional secrecy. There are exemptions concerning legally prescribed notifications, necessary exchange of information with social insurance agencies, overriding interests of public health or justice, and with the patient's consent. If a doctor has a suspicion of a patient having been severely injured or killed by a criminal act, or of a minor patient or a patient not able to care for himself having been mistreated, tortured, neglected or sexually abused, he has to make a report to the competent security authority, and in the case of minors, additionally to the youth welfare office. The doctor has to inform the patient about institutions for the protection of victims.
- **Article 55:** A doctor is entitled to issue a medical certificate only after having examined the patient diligently and having collected the necessary information to the best of his or her knowledge.
- **Article 56** obliges the doctor to keep his or her surgery in a hygienic state, to operate it corresponding to the quality standards applicable to his or her medical specialty, and to signpost it at the exterior. There are further detailed regulations on official inspections of surgeries, and on the possible contents of the surgery's external signboards.

- **Article 57** obliges doctors to keep a stock of medicinal products that are urgently required for first aid.

- **Article 136: Disciplinary offences**

(1) Medical doctors render themselves liable for disciplinary offences if, in Austria or abroad:

1. their conduct with regard to the community, patients or colleagues damages the reputation of the Austrian medical profession, or

2. they act contrary to professional duties to which each medical and dental doctor has committed himself at the occasion of the award of the doctorate, respectively to which they are committed pursuant to the present Federal Law or other regulations.

(2) A disciplinary offence in terms of par (1) 1. or 2. is given at any rate, if

1. a doctor continues to exercise his profession despite he has been legally convicted of suspension for a limited period of time (§ 139 (1) 3.) or

2. a doctor has committed one or several criminal acts deliberately and has been convicted by an Austrian or foreign court to imprisonment of more than six months, or to more than 360 daily rates, or to a fine of more than 36 240 € (Fed Law Nr I 2001/110).

In case of multiple convictions in form of imprisonment and fines, the total length of prison sentences and the length of imprisonment imposed subsidiarily for cases where the fine is incollectible are summed up. If the court in its decision(s) awards only fines, they are summed up (Fed Law Nr I 2001/110).

3. Doctors who are nationals of parties to the Treaty of the European Economic Area and provide temporary medical services in Austria (§37), as well as doctors exercising the medical profession in Austria pursuant to §36, are subject to Austrian disciplinary law only with regard to disciplinary offences committed in Austria.

4. Doctors exercising their profession in an employed capacity in a regional authority or a public body with an own disciplinary law, are not subject to the disciplinary provisions of the present Federal Law with regard to their professional activity and their related professional duties. However, if the employment within the public body is terminated before a disciplinary proceeding pending there has been concluded by a valid decision, any disciplinary offences will be subject to the disciplinary provisions of the present Federal Law. The corporation public body has to inform the Austrian Medical Chamber without delay about the discontinuation of disciplinary proceedings due to the termination of employment of the doctor.

5. The fact that the circumstances of the disciplinary offence constitute elements of a crime or an administrative offence does not preclude disciplinary proceedings.

6. However, disciplinary proceedings are precluded if another competent disciplinary authority has already imposed sanctions on the doctor, respectively the extraordinary member of the Medical Chamber, for the same offence. The

proceeding at the Disciplinary Council or Disciplinary Senate is suspended while a proceeding that has been initiated earlier is pending.

7. Unless otherwise provided in the present Federal Law, negligent conduct alone renders the doctor liable to prosecution (§6 of the Criminal Code).
8. A disciplinary offence is not prosecuted by the Disciplinary Council, if the doctor's fault is minor and his conduct has led to no, or only unimportant consequences.

- **Article 139: Disciplinary sanctions**

(1) Disciplinary sanctions are

1. a written reprimand
2. a fine of up to 36 340 € (Fed Law I/2001/110)
3. the temporary suspension of medical practice
4. the striking-off the Medical Register

(2) In case of disciplinary offences pursuant to § 136 par. 2, the sanction imposed pursuant to par (1) 3. shall not exceed a period of 3 years. In all other cases, the sanction imposed pursuant to par (1) 3 shall not exceed one year, in the case of first conviction this period shall not exceed 3 months. The suspension of medical practice pursuant to par. (1) 3 refers to medical practice in Austria, with the exception of doctors exercising their profession in an employed capacity with a regional authority, or another public body with individual disciplinary authority.

(3) Disciplinary sanctions pursuant to par (1) 2.-4. may be qualified by a probation period of 1-3 years, if it can be assumed that the threat alone will be sufficient to keep the accused from committing further disciplinary offences and that the enforcement of the sanction is not required to prevent other doctors from committing disciplinary offences.

(4) The disciplinary sanction pursuant to par. (1) 4. shall be imposed in particular if the accused exercises the medical profession although a disciplinary sanction pursuant to par. (1) 3. has been imposed on him/her, unless a smaller sanction is sufficient in consideration of the particular circumstances of the case.

(5) After a disciplinary sanction has been imposed pursuant to par. (1) 4, the doctor can only be re-admitted to the Medical Register after a period of three years of non medical practice. Even after expiration of this period, the Austrian Medical Chamber has the power to refuse re-admittance due to lack of trustworthiness (§ 27 par. 8).

(6) If an accused doctor is supposed to have committed several disciplinary offences, only one disciplinary sanction shall be imposed, with the exception of par. 10. § 31 and § 40 of the Criminal Code shall apply correspondingly.

(7) The assessment of the penalty shall take into account in particular the seriousness of fault and the resulting harm, especially with regard to patients. The assessment of fines shall, in addition, take into account the financial situation of the accused. § 32 to § 35 of the Criminal Code shall apply correspondingly.

- (8) If a prior sanction has been waived on probation (par.3) and the doctor is convicted of a new disciplinary offence during the probation period, either the probational waiver of the sanction shall be revoked, or the probation period shall be prolonged to up to 5 years, if this seems sufficient to keep the accused from committing further disciplinary offences. This decision is taken after hearing the accused either in the judgement about the latest offence, or in a separate decision.
- (9) If the probational waiver is not revoked, the sentence is considered finally waived after expiration of the probation period. § 49, § 55 and § 56 of the Criminal Code shall apply correspondingly. Periods of non-medical practice are not counted towards the probation period.
- (10) In the disciplinary decision it may be specified that the entire judgement shall be published in the publication of the competent regional Medical Chamber, and, if need be, in addition in the publication of the Austrian Medical Chamber, provided that this is in the interest of safeguarding the reputation of the Austrian Medical profession and of the respect of the medical professional duties.