

The legal forms of the practice of professional midwifery in Poland

Prawne formy wykonywania zawodu położnej w Polsce

Marta Bażydło^{*2,A,B,D,E,F}, Mariola Głowacka^{1:A,D,E,F}, Beata Haor^{3:A,D}, Anna Jurczak^{4:A,D,E}, Elżbieta Grochans^{4:A,D}, Beata Karakiewicz^{2:A,D}, Iwona Radlińska^{1:B,D,E,F}, Łukasz Radliński^{5,D,E,F}

1. Theory of Nursing Department, Collegium Medicum, Nicolaus Copernicus University, Toruń, ul. Jagiellońska 13-15, 85-067 Bydgoszcz, Poland
2. Chair and Department of Public Health, Pomeranian Medical University in Szczecin, ul. Żołnierska 48, 71-210 Szczecin, Poland
3. Neurological and Neurosurgical Nursing Department, Collegium Medicum, Nicolaus Copernicus University, Toruń, ul. Jagiellońska 13-15, 85-067 Bydgoszcz, Poland
4. Department of Nursing, Pomeranian Medical University in Szczecin, ul. Żołnierska 48, 71-210 Szczecin, Poland
5. Department of Software Engineering Faculty of Computer Science and Information Technology West Pomeranian University of Technology, Szczecin ul. Żołnierska 52, 71-210 Szczecin, Poland

A – koncepcja i przygotowanie projektu badań, B – wykonanie analiz diagnostycznych, zbieranie danych, C – analiza statystyczna, D – interpretacja danych, E – przygotowanie manuskryptu, F – opracowanie piśmiennictwa, G – pozyskanie funduszy, * – Autor do korespondencji.

Autor do korespondencji: Marta Bażydło, Chair and Department of Public Health, Pomeranian Medical University in Szczecin, ul. Żołnierska 48, 71-210 Szczecin, Poland

Summary

Background. In Poland, the midwifery profession is a regulated, independent and medical profession.

Objective. The aim of this work is to analyze the possible forms of professional midwifery allowed under applicable laws in Poland

Material and Methods. The work presents the overview of Polish legal acts (as for 15 May 2014) which refer to the practice of professional midwifery.

Results. The variety of the forms of practicing the midwifery profession under applicable laws in Poland does not contradict the fact that it is still a regulated profession. Prerequisite conditions that are to be met to practice this profession include: a certificate or diploma of graduation from a midwifery school, the license giving the right to practice the profession, full legal capacity, proper ethical code of conduct and proper health condition allowing one to practice this profession.

Conclusions. Legal regulations referring to the practice of professional midwifery in Poland support the optimal preparation of workplaces, reduction of the number of adverse occurrences and the increase in the quality of midwifery services.

Implications for practice. Various forms of practicing the profession, regulated by the law, stress both the autonomy of Polish midwives and their responsibility for the services provided. Legal regulations also promote the prevention of adverse occurrences in the practice of professional midwifery and aim at ensuring the optimal quality of the services in the context of the health protection system.

Keywords: legislation, health occupations, nurse-midwives

Streszczenie

Wstęp. W Polsce zawód położnej jest zawodem regulowanym, samodzielnym, medycznym dlatego jego wykonywanie wymaga respektowania zapisów licznych aktów prawnych.

Cel pracy. celem prezentowanej pracy jest analiza prawnie dopuszczalnych form wykonywania zawodu położnej w Polsce.

Materiał i metody. W pracy zastosowano przegląd polskich aktów prawnych (stan na dzień 15.05.2014 roku), dotyczących wykonywania zawodu położnej.

Wyniki. Różnorodność prawnie dopuszczalnych form wykonywania zawodu położnej w Polsce nie zmienia faktu, że jest to zawód regulowany. Niezbędne do jego wykonywania jest posiadanie świadectwa lub dyplomu ukończenia szkoły dla położnych, prawa wykonywania zawodu, dysponowanie pełną zdolnością do czynności prawnych oraz odpowiednim stanem zdrowia, pozwalającym na wykonywanie tego zawodu, a także wykazywanie nienagannej postawy etycznej.

Wnioski. Uregulowania prawne dotyczące wykonywania zawodu położnej w Polsce sprzyjają optymalnemu przygotowaniu stanowisk pracy, redukcji zdarzeń niepożądanych oraz podnoszeniu jakości świadczeń realizowanych na rzecz podmiotu opieki.

Implications for practice. Różnorodne formy wykonywania zawodu, regulowane zapisami prawa, podkreślają autonomię polskiej położnej, ale także odpowiedzialność za podejmowane świadczenia na rzecz podmiotu opieki. Regulacje prawne służą także profilaktyce zdarzeń niepożądanych w praktyce zawodowej położnej oraz zmierzają do zapewnienia optymalnej jakości świadczeń w systemie ochrony zdrowia.

Słowa kluczowe: przepisy prawne, zawody medyczne, położne

BACKGROUND

In Poland, the midwifery profession is a regulated, independent and medical profession. This is why its practice requires respecting numerous legal records, which supports the preparation of workplaces, reduction of adverse occurrences and the increase in the quality of the services. The aim of this study is to analyze the forms of the practice of professional midwifery allowed under applicable laws in Poland.

MATERIAL AND METHODS

The research materials were the legal acts (as for 15 May 2014) which refer to the practice of the midwifery profession. The documents were selected with the use of the Online Legal Database, which includes bibliographic descriptions and Polish legal acts. They are

published in the Journal of Laws and Official Journal of the Republic of Poland (Monitor Polski) (<http://www.isap.gov.pl>). The method of document analysis was used in this study.

RESULTS

The legal basis for the professional midwifery practice in Poland

The Nurse's and Midwife's Professions Act dated 15 July explicitly indicates that the midwifery profession is an independent medical profession. The legislator also enumerates the forms in which a midwife can perform her profession. These forms are the following: under an employment contract, remaining in a service relationship, under a civil law contract, performing voluntary services or as both a private midwifery practitioner and an entrepreneur (Fig.1) [1, 2].

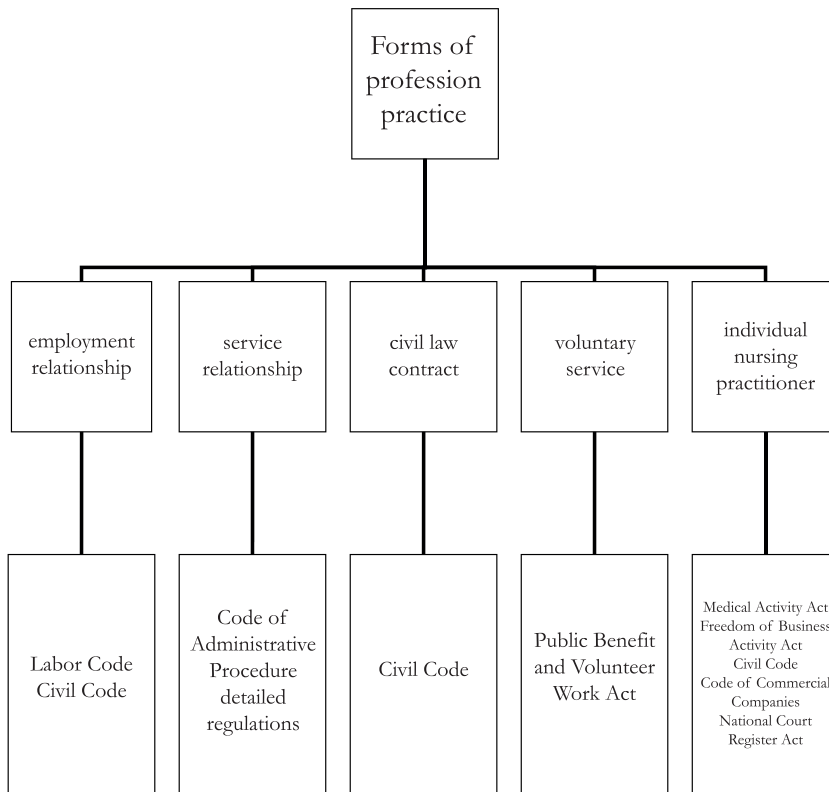


Figure 1. Division forms of professional practice.

The license allowing to practice the profession is given to a midwife by the respective Nurses and Midwives District Council by way of a resolution. This resolution is passed on the request of the person concerned by the Nurses and Midwives District Council for the midwife's future workplace. In accordance with legal requirements, this procedure should last no more than 3 months since the day of the submission of all the required documents. The acts which refer to awarding the license to practice the midwifery profession correspond to the respective regulations of the Code of Administrative Procedure regarding all the administrative decisions [1].

The professional practice license is terminated if one of the causes mentioned by the legislator occurs. These are: death; loss of full legal capacity; license termination; resignation from the right to practise the profession; loss of the right to practise the profession as a consequence of a valid ruling given by the nurses and midwives tribunal or a court prohibition on the nursing practice; loss of Polish citizenship; in the case of foreigners – loss of EU citizenship or withdrawal of a settlement permit or long-term European Community resident status [1].

The data referring to midwives with the professional license is collected in the Central Register of Nurses and Midwives. The data required for registration includes one's first name, surname, information referring to one's right to practice the profession (its number and limitations), education and address. Every midwife is obliged to inform the district council about any changes in the listed data within 14 days [1].

Regardless of the analysis of the particular forms of practicing the profession, one needs to pay attention to what in fact the midwifery profession is. The answer to this question is included in article 5 of the Nurse's

and Midwife's Professions Act. It says that professional midwifery practice includes providing medical services which mostly are: (1) pregnancy recognition, and providing care during physiological pregnancy, (2) carrying out examinations which are necessary in terms of monitoring physiological pregnancy, and medical tests recommendation needed for early recognition of high-risk pregnancy, (3) supervising physiological delivery and monitoring the fetus by means of medical equipment, helping in natural delivery or, if needed, performing episiotomy, or, in emergency, helping in breech delivery (4) taking actions which are necessary in emergency, before the arrival of a doctor, the manual removal of placenta and, if needed, the manual examination of the uterus, (5) providing care over the mother and a newborn child and monitoring during the postnatal period, (6) the examination of newborn children, providing care and taking actions which are necessary in emergency, including reanimation, (7) following doctors' orders in the process of diagnostics, treatment and rehabilitation (8) providing the particular range of services in the context of prevention, diagnostics, treatment and rehabilitation, (9) the prevention of female disorders and obstetrics pathology, (10) the recognition of disorders in the case of mothers or children who need to be referred to a doctor, (11) providing medical care in the area of gynecology and obstetrics, (12) carrying out health education activities [1].

Apart from the activities mentioned above, the legislator also enumerates a number of other things that have been qualified as being part of the practice of professional midwifery. These include: teaching midwifery or nursing to students; performing activities which promote the professional education of nurses and midwives; doing research in terms

of the professional midwifery practice (mainly referring to the provision of care for a woman, her child and the family); managing nursing and midwifery staff; working in a healthcare entity as a member of the administrative staff responsible for the preparation, organization and supervision of health protection services; employment in public administrative institutions with the range of activities comprising the supervision of health protection or performing the function in a body of the self-government of nurses and midwives; and taking actions in aid of the self-government [1].

Moreover, one ought to pay attention to the Minister of Health Regulation dated 7 November 2007 on the type and range of prevention, diagnostics, treatment and rehabilitation services that can be provided by a nurse or a midwife without doctors' orders. This regulation lists the independent competences of a midwife.

The practice of professional midwifery under an employment contract

A midwife can perform her profession under an employment contract, remaining in an employment relationship. The basic act regulating the employment relationship is the Code of Labor. It defines the employment relationship in article 22. It is a relationship in which an employee is obliged to perform particular work for the employer. The characteristic thing is that work is performed under the control of an employer in a particular place and time. The employer is obliged to remunerate the employee. The Code of Labor says that it does not matter how the employment agreement is called; if it fulfills the criteria listed above (and even not all of them), it is referred to as employment. Hence, even in the case of a contract to

perform a specified task, if one contracting party undertakes to do some work in aid of the other party in a specified place and time, and the other contracting party obliges itself to remunerate the former party, both parties are connected by means of an employment relationship and both of them can exercise their rights in a court [3].

The employment relationship can be established under an employment contract, cooperative contract of employment, by appointment, nomination or by one's own choice [3]. Thus, midwives can perform their profession under an employment contract. It can be either a permanent or fixed-term employment contract. Still, article 25 of the Code of Labor is worth paying attention to, which says that the third fixed-term contract amounts to a permanent employment contract, unless the breaks between the previous contracts lasted for a month or longer. There are exceptions to this principle, mainly referring to replacement employment, casual or seasonal employment or work performed cyclically [3].

The employee privilege principle, mentioned in article 18 of the Code of Labor, is also worth taking into consideration. It means that the regulations of the employment contract and other acts, on the basis of which the employment relationship is established, cannot be less favorable for the employee than the rules regulated by the higher-level labor law. Lower-level acts cannot be less favorable for the employee than higher-level acts. For example, an employment contract cannot regulate a particular issue (i.e. work time) less favorably than an act. However, if this is the case, the less favorable regulation is invalid, and the adequate higher-level principles of labor law are applied instead [3].

The Code of Labor also regulates other issues connected with the employment

relationship such as: remuneration, the employee's and employer's duties, employees' material liability, holidays/days off, employees' rights connected with parenthood resulting from the employment relationship, health and safety standards, and time of work [3].

One should also pay attention to the Minister of Health Regulation of 28 December 2012 on the way of establishing minimal standards of employment of midwives and nurses in healthcare entities that are not entrepreneurs. This regulation refers to medical activity performed by independent public healthcare institutions, budget entities, research institutes, foundations, associations, churches and religious associations. While regulating the minimal standards of midwives' employment, these entities have to take into consideration a number of conditions, including the following: the type and range of services provided, including prevention activities, the number of patients to be provided with care in a given year, equipment and medical apparatus, means of transport and communication, work schedules, the proper category of care for a particular patient, the number of patients qualified to particular category of care, employment type and the organization in particular entities or organizational units not providing health services, the average time of a midwife's availability in the period of a year [4].

The practice of professional midwifery in a service relationship

This type of employment refers mostly to midwives employed in the prison system. The issue of service relationship is regulated by means of other regulations, referring to particular services, for example by means the Prison Service Act of 9 April 2010 [5]. The service relationship is established on the basis of an appointment done by the manager

of a particular organizational entity [5]. An appointment is a decision and this is why the Code of Administrative Procedure applies here [5].

The practice of professional midwifery under a civil-law contract

The issue of civil-law contracts is regulated by the Civil Code. In accordance with article 353 of the Polish law, there is the contract freedom. This means that the parties of a contract can regulate the legal relationship between them at their discretion. However, it cannot violate the nature of the relationship, the act or the principles of community life [6].

As a result, midwives can work under nominate or innominate contracts. Nominate contracts are those which are regulated by the Civil Code. The most popular contract in this context is the contract to perform a specified task or the contract of mandate [6].

Under the contract to perform a specified task the employee is obliged to perform the task, and the employer is obliged to pay for it. This type of contract is regulated with title XV of the third book of the Civil Code. The characteristic feature of this contract is the fact that it does not consist only in performing a task, but in achieving the specified result. The whole activity is independently performed by the employee. The essence of this contract is the achievement of the result, not the fulfillment of certain activities. This is why – in the case of professional midwifery practice – this contract does not appear to be as important as the contract of mandate or innominate contract [6, 7].

The contract of mandate means that a person accepting the contract is obliged to carry out a particular legal act for the employer (article 734, § 1 of the Civil Code). It seems that services of a nurse are not legal acts, so in the case of the professional midwifery

practice the contract of mandate will not apply. However, article 750 of the Civil Code is worth noticing; it says that for the contracts referring to services, not regulated with other laws, the principles of mandate can be applied. This is why this type of contract can refer to services provided by a midwife. The fact that under this type of contract a midwife is only obliged to perform some activities, not to gain any particular result, is also worth considering. Nonetheless, a midwife should always perform her duties with due diligence [6, 7].

Professional midwifery practice as voluntary service

According to the Nurse's and Midwife's Professions Act, every midwife can practice her profession in the form of voluntary service. Voluntary service issues are regulated by the Act on Public Benefit and Volunteer Work dated 24 April 2003. According to the act, voluntary service can be practiced in aid of non-governmental organizations, entities performing activities of public benefit, public administrative bodies and institutions subject to them. Voluntary service refers to statutory activities of these entities, not to those connected with their business activity. Voluntary service cannot be performed in aid of medical institutions [8].

Every person who wants to practice voluntary service as a midwife has to obtain a license which gives her the right to perform her profession. A volunteer and the beneficiary make an agreement in which the range, type and time of providing the services are determined. If the services are provided for more than 30 days, such an agreement should be concluded in writing. This agreement should include a provision regarding the possibility to dissolve it. A volunteer has the right to demand a written statement about the service provided. The other party of the agreement is obliged to

give such a statement to the volunteer. They can also optionally give the volunteer a written opinion about the services provided. In the context of issues not regulated by the Public Benefit and Volunteer Work, the principles of Civil Code apply [8].

Private midwifery practitioner

As it has already been mentioned, the Nurse's and Midwife's Professions Act indicates that a midwife can practice her profession as a private midwifery practitioner, which is regulated by the Medical Activity Act. This act gives a midwife the right to conduct business activity as an entrepreneur. In the case of a one-person business, a midwife is a private or private specialist midwifery practitioner. In the context of the business run by several or more people, it is called the sole practitioners group [9, 10, 11].

Being an individual midwifery practitioner means conducting business activity as a natural person. General rules for conducting the business activity is regulated by the Freedom of Business Activity Act discussed below [9, 12].

The sole practitioners group can be established in the form of a partnership: a civil one (regulated by the Civil Code) and a general and limited liability ones (regulated by the Code of Commercial Companies) [9].

A midwife who is a individual midwifery practitioner is an entrepreneur. This is why her business activity is regulated by the provisions of the Freedom of Business Activity Act. It introduces a definition of business activity; a profit-making activity of a productive, construction, commercial, service character, and prospection for and exploration of mineral deposits. Moreover, it is also professional activity carried out continuously and in an organized way. Whereas an entrepreneur, under the act, is a natural or legal person,

organizational entity which is not a legal person entitled with legal capacity, conducting their own business activity. The equity partners of a civil law partnership are also called entrepreneurs. As a result, a midwife working as a private midwifery practitioner, either individually or in a group, is claimed to be an entrepreneur [9, 12].

What is important here is the moment in which an entrepreneur can start conducting their business activity. In the context of being a private midwifery practitioner, that is the day of submitting the application of registration to the Business Activity Central Register and Information Record, and in the case of the sole practitioners group – that is after being registered as an entrepreneur in the National Court Register [12, 13].

The Medical Activity Act says that being an individual midwifery practitioner is a regulated activity. This means that some additional requirements – different from those for a common entrepreneur – need to be met by the practitioner to conduct such an activity. These requirements are specified in the Medical Activity Act. They are: (1) having the right to practise the profession, (2) at

least 2-year work experience, (3) continuous practice of the profession during the period of more than 5 years in the last 6 years, (4) having one’s own room/office to provide health services, equipped with apparatus and medical equipment, and having a positive opinion from the Public Health Inspection on fulfilling the conditions that allow one to perform medical services, (5) liability insurance, (6) a midwife practising her profession as a specialist nursing practitioner is obliged to hold a specialization [9, 14].

The legislator divides midwifery practice according to the place of its performance. Nursing practice can be performed only in places of call or only in a company or in a healthcare institution under the contract. Such a division is important in the context of the requirements which have to be met by a nurse to conduct such an activity [9].

A midwife practising her profession only in a healthcare institution on the basis of a contract does not have to have her own room/office. Whereas a midwife performing health services in a place of call has to have medical equipment which will allow her to provide a patient with particular medical services in the place of the patient’s permanent or temporary

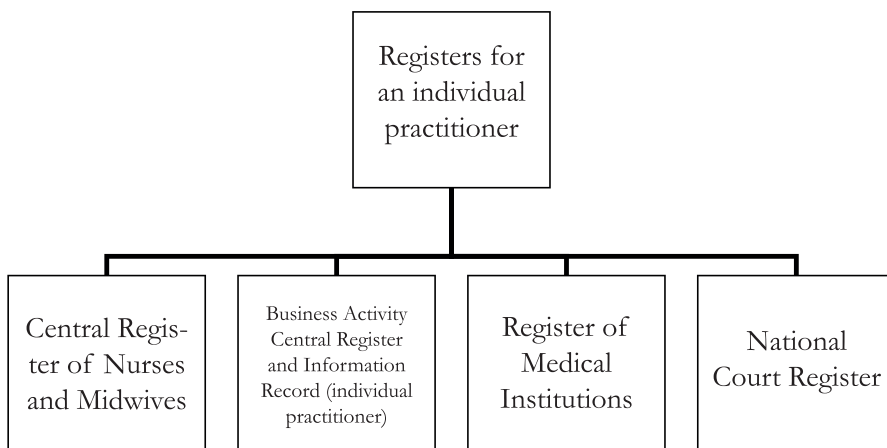


Figure 2. Registers in which an individual practitioner has to be listed.

residence. She also has to register the address of the business activity and the place where the medical documentation is collected, but she does not have to have her own room/office [9]. To perform a medical activity, an individual midwifery practitioner has to be registered as healthcare provider (Fig. 2) [9].

The Nurse's and Midwife's Professions Act gives the Chamber of Nurses and Midwives the right to do visitation aimed at assessing the practitioner in terms of her professional practice. If during such visitation violations of the principles of the professional ethics are detected or law regulations are found to have been culpably breached (according to the Nurse's and Midwife's Professions Act), the Chamber of Nurses and Midwives reports to the Regional Screener for Professional Liability. If during visitation a midwife practising her profession as a practitioner blatantly violates the conditions of practising the profession, the Chamber of Nurses and Midwives deletes her practice from the Register of Health Care Providers [9].

Responsibility of Midwives

Responsibility of midwife depends on the legal form of the base of her employment. The midwife under a contract of employment is working on behalf of her employer and under his direction. She does not make any agreement with patient. If midwife causes a damage then her employer takes the sole responsibility. The midwife is liable to her employer according to art. 120 § 2 of The Code of Labour– with the recourse limited to three-month salary [3]. If the patient proves that the midwife acted intentionally, the regression is in full. We are dealing with the intent when the midwife has acted or failed to act, to which she was obliged and empowered, with intent to cause patient harm. Thus it is unusual situation in the relations patient-

midwife.

The midwife employed in therapeutic entity on the basis of a civil contract is the side receiving order and must register as an “individual practice exclusively in the company of a medicinal entity”. Then she is liable jointly with that entity for the damage caused to the patient. Such joint liability means that the therapeutic entity pays compensation if the midwife will not be able to satisfy patient's claims. But then, this entity has a right of recourse against the perpetrator of the damage (midwife) to the entire amount it has paid. The principle of joint liability is to satisfy patient's claims as quickly as possible. The case at the court may not occur. In the event of health damage the midwife should first, with the consent from the patient, personally take steps to remedy. If this is not possible, i.e. the patient does not agree or the damage cannot be repaired, the patient should be informed about the opportunity to repair the damage by the insurance company under an agreement of liability insurance made between the midwife and insurance company. The obligation for such agreement arises at the start of the work by one of the forms of individual or group practices in accordance with art. 19, 25-27 of The Medical Activity Act [9]. The midwife performing health care services under a contract with the National Health Fund acts on behalf of the fund and the patient should direct the claims to the regional branch of the fund.

The midwives acting by an individual or group practice in the office or in a place of call (i.e. private practice) have the greatest responsibility. Then the patient signs a service contract and midwives are responsible not only for damage caused to the patient, but for any deviation from the agreement or its failure to perform in accordance with art. 417 of the Civil Code [6]. This is the so-called contractual

liability. Such contract may cover more duties than those arising from professional standards, e.g. more frequent visits, prenatal education, etc. When the health damage arises the patient must prove that the midwife breached the principles of due care that was either reckless (she did not want to harm, even though she knew that she was violating the rules of the art of medicine) or careless (she caused damage due to violation of the applicable rules of the art of medicine which she did not know). The nurse may though be liable by a tort according to art. 415 of the Civil Code for causing damage as a result of unlawful conduct that has been her own fault. The midwife is liable only for the normal consequences of acts or omissions that caused the damage in accordance with art. 361 § 1 of the Civil Code [6]. It means that the midwife is not responsible for unforeseen complications or unusual symptoms of the disease, difficult to diagnose even for a specialist. Of course, as mentioned above, a self-repair or pointing insurance agreement should be taken first.

Midwives providing health services within the group practice make a contract with patient and are jointly liable with all partners in a civil partnership (art. 864 of the Civil Code) under the contract or for damages (tort) [6]. For midwives the responsibility according to joint partnership is preferable. Here each midwife is only liable for her obligations to patients according to contract or tort in case of personal injury (art. 95 of The Code of Commercial Companies) [16].

DISCUSSION

The variety of the forms of the profession practice under applicable law in Poland does not contradict the fact that it is still a regulated profession. This means that the constitutional freedom of profession practice is overcome. The first paragraph of article

65 indicates that everyone needs to have the assurance of freedom of choice when it comes to the practice of their profession and the choice of workplace. The exceptions are also regulated by acts, e.g. the Nurse's and Midwife's Professions Act mentioned above. It determines the conditions that have to be met to obtain the right to practice the profession of a midwife. First of all, a person who can be entitled with such a right should have a certificate or a diploma of graduation from a Polish midwifery school (or of graduation from a foreign school, regulated by other laws). Full legal capacity is also required. The capacity to perform acts in law gives the possibility of making a declaration of intent which can entail legal effects. In accordance with the Civil Code, such a possibility is given to people who have reached maturity, unless they are (legally) incapacitated. To be awarded a license to practice the midwifery profession, a person should also be fit and healthy enough to practice the profession, and have the proper ethical code of conduct [9, 15].

CONCLUSIONS AND IMPLICATIONS FOR PRACTICE

Various forms of the profession practice are regulated with the law. They create the possibility of practicing the profession adequately with the actual prospects of employment. Moreover, they stress the autonomy of a Polish midwife and her responsibility for the services provided. Legal regulations also support the prevention of adverse occurrences in the case of individual midwifery practitioners and aim at ensuring the optimal quality of the services in the context of the health protection system.

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