

# A comparative analysis of hungarian and american medical liability: examining medical malpractice in justice

## Abstract

In recent years, medical liability and medical malpractice lawsuits have gained particular importance in the field of law. They have a great influence on trust in medicine and the entire health care system, so their knowledge and understanding are indispensable. The purpose of my essay is to present and compare the Hungarian and American medical liability systems with a particular focus on medical malpractice and its impact on the pursuit of justice. I will light out that the Hungarian and the American legal frameworks concerning medical liability differ in several aspects, including the burden of proof, statutes of limitations, damage caps, and compensation mechanisms. By comparing and contrasting these two distinct contexts, i would like to show the strengths and weaknesses of each system and identify potential areas for improvement. Potential improvements may include clearer guidelines for determining medical malpractice, establishing specialist medical malpractice courts, incentivizing early settlement, and evaluating the need for limitation on damages. In conclusion, this essay presents an analysis of the medical liability systems in Hungary and the United States, focusing on medical malpractice. Through a comparative examination I would like to point out the need for reform to ensure justice for patients while protecting the healthcare profession. By learning from one another, both countries have the potential to enhance their respective medical liability systems and provide better avenues for resolving medical malpractice claims.

**Keywords:** medical malpractice, medical liability, comparative analysis, health care system

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## Introduction

Medical liability and medical malpractice cases are complex legal issues that have significant implications for healthcare providers, patients, and the overall healthcare system. Understanding how different jurisdictions approach medical liability is essential in ensuring fair and just outcomes for all parties involved. Medical responsibility can be traced back to 2030 BC when the Code of Hammurabi provided<sup>1</sup> that “If the doctor has treated a gentlemen with a lancet of bronze and has caused the gentleman to die, or has opened an abscess of the eye for a gentleman with a bronze lancet, and has caused the loss of the gentleman’s eye, one shall cut off his hands”<sup>2</sup> In this essay I would like to provide an analysis of the Hungarian and American medical liability systems in the light of medical malpractice lawsuits.

## Background on medical liability systems

The medical liability systems in both America and Hungary can be traced back to their respective legal frameworks. In America, the origins of the current system can be found in the 19th century development of tort law.<sup>3</sup> The Hungarian system, on the other hand, operates within a civil law framework influenced by European legal traditions. Despite these differences in origin, both systems aim to

<sup>1</sup>Meltzer Andrew J. *Our broken system: Medical liability in vascular practice*. 2021.

<sup>2</sup>Powis Smith JM. *Origin & History of Hebrew Law*. Chicago, IL: University of Chicago Press; 1931. p. 333.

<sup>3</sup>Michalak M. "Medical Malpractice Liability in the United States of America in the Light of the 19<sup>th</sup> Century Origins of the American Legal System." *Krakowskie Studia z Historii Państwa i Prawa*. 2021;14(3):287–305.

address issues related to medical negligence and hold healthcare providers accountable for their actions.

## Hungarian medical liability

To understand medical malpractice regulation in Hungary thoroughly it is essential first gain insight into the country’s legal system.

The Hungarian legal system is based on civil law principles with influences from Germanic and Roman law traditions.<sup>4</sup> The primary sources of law include statutes enacted by Parliament and regulations issued by government bodies.<sup>5</sup> In terms related to healthcare services such as medical malpractices there are specific laws designed specifically catered towards them. The Act on Healthcare provides a framework for regulating healthcare services in Hungary.<sup>6</sup> Additionally, the Civil Code governs general principles applicable across multiple areas including personal injuries caused by negligence.<sup>7</sup>

Hungary has specific laws and regulations that govern medical malpractice. The Act on Healthcare, among other things, regulates

<sup>4</sup>Reva Z. Legal dimensionos of traditional and complementary medicine practices in Turkey. *International Journal of Research -GRANTHAALAYAH*. 2022;10(1):47–56.

<sup>5</sup>Reva Z. Legal dimensionos of traditional and complementary medicine practices in Turkey. *International Journal of Research -GRANTHAALAYAH*. 2022;10(1):52.

<sup>6</sup>Legal Protection for Doctors in Use of Health Information Technology. *Journal of Education and Practice*. 2020.

<sup>7</sup>Reva Z. Legal dimensionos of traditional and complementary medicine practices in Turkey. *International Journal of Research -GRANTHAALAYAH*. 2022;10(1):51.

the provision of healthcare services and establishes patient rights.<sup>8</sup> It outlines the duties and responsibilities of healthcare professionals, including maintaining professional standards, providing informed consent, ensuring patient safety, and delivering appropriate treatment.

Notable legal cases or precedents relevant to medical malpractice regulation are essential in understanding how courts apply legal principles in such cases. It is worth mentioning the case of Darmawan<sup>9</sup> where a doctor was found guilty of performing an abortion without proper authorization. This case highlights the importance of adhering to legal requirements and obtaining informed consent from patients. Such precedents can guide future judgments in medical negligence cases.

In Hungary, medical liability is primarily governed by Act LXXXIII of 1997 on Medical Activity, which sets forth the obligations of healthcare professionals and the rights of patients. This legislation establishes the principles of medical liability, including the primary duty of care owed by healthcare providers to their patients.<sup>10</sup>

When it comes to medical malpractice in Hungary, patients have the right to seek compensation for damages caused by medical errors. The judicial process typically involves filing a civil lawsuit against the healthcare provider, seeking financial compensation for medical expenses, pain and suffering, and other related damages. Medical experts are often called upon to testify and provide their professional opinions to the court.

One significant aspect of the Hungarian medical liability system is the existence of medical arbitration committees. These committees consist of medical and legal experts who make nonbinding judgments in cases of alleged malpractice. The aim is to provide an alternative dispute resolution mechanism, promoting swift and cost-effective resolution for both parties involved. However, the final decision still rests with the judiciary, leaving the arbitration committee's ruling as only a persuasive reference.

## American medical liability

In the United States, medical liability laws and regulations are primarily governed by state laws, with varying degrees of similarities and divergences. Medical malpractice cases typically fall under civil law, and the burden of proof lies with the plaintiff, who must show that the healthcare provider breached the duty of care owed to the patient, and that such breach caused harm.

To establish medical malpractice, expert testimony from healthcare professionals is often required to assess whether the defendant's actions deviated from the standard of care expected of a reasonably skilled and diligent professional in similar circumstances. The process of litigation can be complex and time-consuming, often involving discovery, depositions, and expert testimony.

One distinctive feature of medical liability in the United States is the availability of malpractice insurance. Healthcare providers in the U.S. often obtain medical malpractice insurance, which serves as a financial protection mechanism against malpractice claims. This insurance system helps mitigate the potential financial burden for healthcare providers and facilitates the pursuit of fair compensation for injured patients.

<sup>8</sup>Legal Protection for Doctors in Use of Health Information Technology. *Journal of Education and Practice*. 2020.

<sup>9</sup>Darmawan R. Penegakan Hukum Terhadap Malpraktek Dokter yang Melakukan Aborsi" (STUDI PUTUSAN NO.288/PID.SUS/2018/PN. NJK)." *El-Iqthisadi: Jurnal Hukum Ekonomi Syariah Fakultas Syariah Dan Hukum*. 2020;2(2):15.

<sup>10</sup>1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól.

## Comparison and discussion

Healthcare professionals have various duties and responsibilities towards their patients in Hungary and in America too. These include providing competent care based on current medical knowledge, maintaining confidentiality, obtaining informed consent before procedures or treatments and communicating effectively with patients.<sup>11</sup> Professional standards governing healthcare professions serve as guidelines for ethical conduct by practitioners.

The Hungarian and American medical liability systems share similarities in their focus on patient rights and the pursuit of justice in cases of medical malpractice. Both systems rely on expert testimony to assess the standard of care, and both provide a platform for patients to seek compensation for damages incurred due to medical errors.

Patients have certain rights when it comes to receiving safe and quality healthcare services in Hungary. They have the right to access necessary information about their condition, receive clear explanations about proposed treatments or procedures, give informed consent before any interventions, and expect confidentiality regarding their personal health information.<sup>12</sup>

Additionally, there are mechanisms available for patients to lodge complaints if they believe they have been victims of medical malpractice. These mechanisms may include investigations into alleged misconduct, compensation schemes for injured parties, or alternative dispute resolution processes.

However, distinctive differences exist in terms of the legal frameworks. Hungary employs medical arbitration committees, offering an alternative dispute resolution mechanism that can potentially expedite the resolution process. In contrast, the U.S. emphasizes litigation, allowing for thorough examination under the court's scrutiny but potentially leading to prolonged and costly proceedings.

Furthermore, the existence of mandatory malpractice insurance in the U.S. ensures that patients have access to financial compensation, even if the healthcare provider is found liable for medical malpractice. This is not a requirement in Hungary, potentially posing challenges for patients seeking adequate compensation.

In Hungary, liability for medical malpractice can be both civil and criminal in nature. Civil liability refers to the responsibility of healthcare professionals to compensate patients for harm or injury caused by their negligence.<sup>13</sup> Criminal liability may arise in cases of gross negligence or intentional harm.

## Standard of care

One key aspect of analyzing any medical liability system is understanding the standard of care expected from healthcare providers. In America, this standard typically requires physicians to adhere to accepted professional norms established by competent peers

<sup>11</sup>Purwadianto A, Sugiharto AF, Sari FA, et al. Ethicomedicolegal aspects of the COVID-19 health services in preparing regulations and intermediaries for clinical dispute resolution: a systematic review. *Medical Journal of Indonesia*. 2022;31(1):38–49.

<sup>12</sup>Purwadianto A, Sugiharto AF, Sari FA, "Ethicomedicolegal aspects of the COVID-19 health services in preparing regulations and intermediaries for clinical dispute resolution: a systematic review. *Medical Journal of Indonesia*. 2022;31(1):41.

<sup>13</sup>Darmawan R. Penegakan Hukum Terhadap Malpraktek Dokter yang Melakukan Aborsi" (STUDI PUTUSAN NO.288/PID.SUS/2018/PN. NJK)." *El-Iqthisadi: Jurnal Hukum Ekonomi Syariah Fakultas Syariah Dan Hukum*. 2(2).

practicing under similar circumstances.<sup>14</sup> In Hungary, the standard of care is determined by assessing whether a healthcare professional acted with the level of skill and knowledge expected in their field.<sup>15</sup>

### Burden of proof

Establishing the burden of proof is crucial in medical malpractice cases as it determines who has the responsibility to present evidence supporting their claims. In American law, plaintiffs have the burden of proving that a healthcare provider breached the applicable standard of care and caused harm to the patient.<sup>16</sup> Hungarian law places a similar burden on patients seeking compensation for medical malpractice but also requires them to demonstrate a causal link between the alleged negligence and resulting harm.

### Compensation for damages

The availability and mechanisms for compensating victims of medical malpractice vary between America and Hungary. In America, damages can include economic losses such as medical expenses or lost wages as well as noneconomic damages like pain and suffering.<sup>17</sup> Compensation may be awarded through settlements negotiated outside court or through jury verdicts following trials. In Hungary, compensation mechanisms are primarily based on civil law principles where monetary damages are awarded to victims to restore them to their pre-injury state.<sup>18</sup>

<sup>14</sup>McQuoid-Mason DJ. Liability of doctors based on negligence for culpable homicide: No need to change the law concerning medical negligence or to establish special medical malpractice courts – use mediation and medical assessors instead. *South African Medical Journal*. 2022;112(3):216–218.

<sup>15</sup>Wu KH, Po-Chun Chuang, Chih-Min Su, et al. Medical Liability of Residents in Taiwan Criminal Court: An Analysis of Closed Malpractice Cases. *Emergency Medicine International*. 2020;2020:1–7.

<sup>16</sup>Aldalati A, Venkatesh R Bellamkonda, Gregory P Moore, et al. Three Cases of Emergency Department Medical Malpractice Involving 'Consultations': How Is Liability Legally Determined? *Clinical Practice and Cases in Emergency Medicine*. 2021;5(3):283–288.

<sup>17</sup>McQuoid-Mason DJ. Liability of doctors based on negligence for culpable homicide: No need to change the law concerning medical negligence or to establish special medical malpractice courts – use mediation and medical assessors instead. *South African Medical Journal*. 2022;112(3):217.

<sup>18</sup>Wu KH, Po-Chun Chuang, Chih-Min Su, et al. Medical Liability of Residents in Taiwan Criminal Court: An Analysis of Closed Malpractice Cases. *Emergency Medicine International*. 2020;2020:5.

### Case studies or examples

Examining specific case studies or examples can shed light on key differences between American and Hungarian approaches to handling medical malpractice claims. For instance, in an American case involving emergency department consultations, liability was determined based on factors such as breach of duty and causation.<sup>19</sup> Comparatively, a study analyzing closed malpractice cases in Taiwan found that criminal courts often held residents responsible for negligence leading to patient harm.<sup>20</sup>

### Conclusion

In conclusion, comparing and contrasting the Hungarian and American medical liability systems provides insights into how different legal frameworks approach medical malpractice cases. While both systems aim to address issues of negligence and protect patient rights, variations exist in terms of legal foundations, standards of care, burden of proof, and compensation for damages. The Hungarian and the American medical liability systems demonstrates the significance of legal frameworks in shaping the pursuit of justice for medical malpractice cases. While both systems prioritize patient rights and emphasize the role of expert opinion, differences such as medical arbitration committees and the availability of malpractice insurance impact the speed and efficiency of the resolution process. Policymakers in each country can benefit from studying the strengths and weaknesses of the alternate system, leading to potential improvements in their own medical liability framework to better serve patients and healthcare providers alike. Understanding these nuances can inform discussions on potential areas for improvement within each system and promote a fairer and more efficient resolution of medical malpractice claims.

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None.

### Conflicts of interest

The author declares there is no conflict of interest.

<sup>19</sup>Aldalati et al., 284.

<sup>20</sup>Wu et al., 6.