

Obtaining the right to practice veterinary medicine in Poland. Legal and procedural characteristics

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Summary

This article analyses the legal nature of the right to practice the veterinary profession and the decision to grant or deny it to a candidate. The tasks, roles, and importance of the resolution of the Local Veterinary Medical Council have been defined. Attention has been drawn to the possibility of a factual assessment of the candidate's health qualifications and ethical predispositions to practice veterinary medicine. The administrative nature of obtaining this right through an administrative decision is presented as a manifestation of the application of law to an individual application and registration, which is secondary and incidental in nature. It is also demonstrated that in the Polish veterinary law, the veterinary oath is a ceremonial, traditional act without legal force. The results indicate that the right to practice veterinary medicine is a public subjective right resulting from a constitutive decision of an administrative authority, and practicing the profession without it is subject to criminal penalties.

Keywords: veterinary law, public law, administrative law, veterinary jurisprudence

It might be considered obvious that everyone who starts veterinary studies wants to practice as a veterinarian. However, many veterinary students and actual veterinarians are not aware that the DVM title obtained at the end of higher education is only a means to an end, which is to obtain the right to practice the veterinary profession. As a rule, without this feature, it is impossible to legally practice the veterinary profession in Poland in any of its forms, concerning the protection of public health, animal health or the environment.

The subject of the research is the legal nature and procedural aspects of obtaining the right to practice the profession of a veterinarian in Poland. The legal methodology of analysis and interpretation of statutory acts was used.

The concept and the legal institution of the right to practice the profession. From the conceptual point of view, the right to practice a profession constitutes an additional restriction within the framework of the normative limitations of access to certain professions. This applies to all regulated professions and professions of public trust in Poland, including veterinary medicine (7, 13-15, 18, 23). The fundamental reason for regulation of the veterinary profession and discussed rationing is the protection of the public interest, being the supreme *raison d'être* of the existence of self-governments for public trust professions in Poland, as prescribed in the

Art. 17 sec. 1 of the Polish Constitution, 1997 (4, 6, 9, 17).

From the normative point of view, the right to practice the veterinary profession is an individual, public, subjective right (17). This means that the person endowed with it has individual rights (legal empowerments) and can demand their realisation and their respect by the state and third parties. At the same time, it means that this person is burdened with specific, personal, legal obligations, and, therefore, can be demanded to fulfill them. In the event of non-fulfillment or improper fulfillment of professional obligations, or misuse of professional rights, veterinarians can be held liable, including special professional liability.

Undoubtedly, the right to practice the profession is not just a document, as some authors claim (19). The practical significance and legal importance of the issue under examination are much greater.

Research has shown that the provisions on obtaining the right to practice as a veterinarian in Poland are scattered throughout the Act on the Profession of Veterinarian and on Veterinary Professional Chambers, 1990 (further related to as the Act) (23). It was revealed that the right to practice the profession – not the professional title of a veterinarian (“DVM”) – determines the rights and obligations of veterinarians and allows to practice this profession. Completing veterinary studies is

not enough, and an academic diploma is only a mean to gain the right to practice. Only having this right allows legal commencement of practice.

As a rule, the right to practice the veterinary profession in Poland is granted for an indefinite period, but Art. 2g of the Act (23) provides for an interesting possibility of granting the right to practice the profession for a fixed period to a veterinarian from outside the EU in order to complete postgraduate training or obtain an academic degree. In addition, veterinarians from EU Member States may temporarily practice their profession in Poland without obtaining the Polish right to practice, on the basis of a notification, as described in Art. 2h of the Act (23).

Obtaining the right to practice. The Art. 2 et seq. of the discussed Act (23) states that the right to practice the veterinary profession is granted in administrative proceedings, in the applicatory procedure, by way of a resolution of the Local Veterinary Medical Council (Pol. *Okręgowa Rada Lekarsko-Weterynaryjna*, further related to as the Council).

This means, first, that the administrative authority with the legal competence to consider the analysed case and decide, is the Local Veterinary Medical Council.

Second, an application from the interested candidate is necessary, and the Council does not act *ex officio*, nor *motu proprio*.

Third, the Council, as a collegial body, makes resolutions through voting. Simultaneously, the Council's resolution is also an administrative decision (17, 29, 30, 32). Therefore, this decision must meet all the requirements provided for by the standards of administrative procedure (KPA) and is subject to verification in appeal administrative proceedings (in which the second instance administrative authority is the Polish National Veterinary Medical Council) and in the administrative court proceedings (1, 23, 26).

Under Art. 7 sec. 1 of the Act, the provisions of the Code of Administrative Procedure, 1960 (further related to as the Code) (20) are applied by the Council directly, absolutely and decidedly (23). This covers all the general principles, as well as the absolute majority of specific provisions of the Code. Only minor procedural modifications and specific deviations from general rules of administrative proceedings, resulting from the Act (23) itself, are allowed. An example is Art. 2e sec. 1 of this statute, regarding the deadline for resolving the case: 30 days to confirm receipt of the application and 3 months to provide with final resolution. Current research indicates, however, that the specific details of the promptness indicated therein, can hardly be considered as "immediate actions" of a public administrative authority. Therefore, this norm does not implement the basic principle of promptness of proceedings established in Art. 12 of the Code (20).

The decision of the Council may be positive (decision on granting the right to practice veterinary profession) or negative (decision on the refusal to grant the right to

practice as a veterinarian) to the applicant. Both resolutions are constitutive administrative acts of the Council. They are not merely declaratory acts (17), because the Council really decides and has the scope of freedom to decide. Moreover, such decision creates a new legal situation for the applying veterinarian.

The discussed decision is made in writing, in accordance with the provisions of the administrative procedure (20). Taking into account the legal nature of proceedings, the legally relevant moment from which a specific veterinarian is burdened with obligations and from which he/she has the rights is the moment of delivery of the decision (17, 20). In the legal institution of delivery of decisions, it is about the opportunity to become familiar with the content of the decision – the act of applying the law to one's own individual case.

In the case of the traditional (postal or personal) form of receiving a decision, the document is a resolution with the signatures of the Council's members, and not a ceremonial diploma, which is purely commemorative, or a short certificate, or an additional information and congratulatory letter. Of course, apart from traditional mail delivery, also electronic delivery or the use of the fiction of delivery may also take place, in accordance with the norms of the administrative procedure (20).

Assessment of the candidates' predispositions. Granting the right to practice the profession of a veterinarian is not an automatic action based on the scheme: the application has been submitted – the application must be approved.

Thus, the Council has the possibility and legal obligation of an assessment of the professional predispositions of candidates. Persons who have only just completed veterinary medical studies, as well as persons who apply for re-admission to the professional corporation after losing the right to practice the veterinary profession as a result of a professional tort committed by them, are assessed. The significance of verifying predispositions is especially important in the second of the mentioned categories (1, 11, 23).

The assessment, verification and granting of the right to practice the profession are elements of the care over the proper performance of the veterinary profession exercised by the professional bodies (9, 11, 23, 30, 31). The situation in veterinary medicine is similar to regulations in other self-governments of public trust professions in Poland (1, 31).

The evaluation of candidates is two-stage and concerns preliminary, formal requirements and detailed, substantive evaluation requirements. As indicated, the Council is entitled to refuse to grant the right to practice the profession. The negative decision must be issued if the applicant does not meet any of the formal requirements, but it can also be issued to a veterinarian who meets the formal requirements provided for in the law.

Art. 2 sec. 1 of the Act (23) establishes a number of cumulative, *sine qua non* prerequisites for issuing a decision granting the discussed entitlement. This

enumeration is a closed catalogue. Preliminary, formal requirements are listed in Art. 2 sec. 1 points 1-3, 6 of this statute, and cover: the legal status of the individual (citizenship, legal capacity, and public rights) and completion of veterinary medical studies. Academic degree is considered a guarantee of competence in the field of veterinary medicine (2).

In further provisions of the Act, additional requirements for foreigners (EU citizens and non-EU citizens) are specified. Those mainly concern having appropriate theoretical and practical qualifications, as well as fluent knowledge of the Polish language. If knowledge gaps are identified, e.g. in the field of European veterinary law on food safety and combating infectious diseases, candidates must supplement their education.

Nevertheless, the legislator also provided for the requirement of health fitness to practice the profession and the requirement to present an “impeccable ethical attitude” in Art. 2 sec. 1 points 4-5 of the Act (23). These substantive requirements apply to all candidates, regardless of their place of origin and whether they are applying for the first time, or repeat application after losing the right to practice veterinary medicine.

The first of the substantive requirements – physical and mental health – is subject to assessment by the Council members only partially, as it is based on the recognition of a document such as a medical certificate and the presumption of its authenticity (3, 23).

The second requirement – ethical predispositions to work – should be assessed individually, based on a proper and comprehensive determination of the factual situation in accordance with the criterion of objective truth in administrative proceedings, established in the Art. 7 of the Code (1, 2, 10, 20, 30).

It has been found that the use of the name “impeccable ethical attitude” in the normative text is characteristic of the medical professions, examples of which are Art. 2 sec. 1 point 5 of the basic discussed Act (23), as well as Art. 5 sec. 1 point 5 of the Act on the Profession of Medical Physician and Dentist, 1996 (10, 27). However, this name and concept is equivalent to terms such as the “guarantee of proper performance of the profession” or “impeccable character”, used by the legislator and the doctrine in relation to other professions of public trust, such as attorneys or solicitors (1, 2, 5, 6, 10, 11, 25, 28, 30). These terms describe an unspecified general clause, that defines initial, basic ethical features that a candidate must necessarily meet in order to properly perform a profession of public trust (1, 2, 11). The point is not to make every representative of a profession of public trust ideally flawless and blameless, to be a “walking saint” – which is objectively impossible – but to make sure that the ethical conduct of a given candidate and his/her revealed character traits are in relation to the professional ideal (1, 11).

It is in this respect that the Council has the freedom of decision and on these grounds may not grant the applicant the right to practice the veterinary profession.

The ethical premise is undoubtedly of an evaluative and discretionary nature, and remains within the scope of the decision-making freedom left by the legislator to the self-government authority (2, 10, 11, 30). However, as a rule, the proper ethical attitude of a given person is presumed (legal presumption), and its rebuttal can only occur as a result of collecting objective evidence in administrative proceedings. Therefore, the rebuttal of the presumption of impeccable ethical conduct of a given veterinarian must be based on the entirety of the evidence findings in the administrative proceedings concerning this person. Freedom of decision-making does not mean complete freedom of evaluation (1, 11).

Entry of a veterinarian into the register. It has been found that the role of entry into the register of veterinarians in a given register of the Local Veterinary Medical Chamber is generally overemphasized (17). This is partly due to the flawed wording of the provisions of the Act (23). Its Art. 17 sec. 1, concerning the obligations of individual veterinarians, states that before starting to practice the profession, it is necessary to obtain an entry in the register of members of the Veterinary Medical Chamber (17, 23).

Highlighting such an “obligation” at the very beginning of the chapter on the rights and obligations of members of the professional veterinary corporation testifies to the low legislative level of the discussed Act (23). The norm nominally resulting from this provision can hardly be considered an individual public law obligation imposed on individual veterinarians. This is, indeed, a norm establishing an obligation – not for individual veterinarians, but for the Council as a competent public administration authority.

The veterinarian has, however, a legal interest in obtaining this entry in order to legally practice his/her profession (17). Therefore, he/she is entitled to demand that the Council fulfills this obligation immediately after granting the right to practice, or in the event of the veterinarian transferring to another Local Chamber.

In addition, the research has shown that entry in the register is definitely of an incidental nature, it concerns a simple material/technical activity, of negligible importance for the performance of the profession itself. Unlike other researchers (17), the author may even risk stating that its importance, considered from the point of view of a veterinarian as a party to the proceedings, is in fact null and void – because entry in the register is only a logical and necessary consequence of obtaining the authorization itself, or of transferring it.

In addition, it should be noted that the legal nature of entry in the register is analogous in the case of human physicians and dentists (27), but different in relation to legal advisers (solicitors) and attorneys, where taking an oath and entering the register are constitutive elements of the procedure for obtaining the right to practice these professions (25, 28).

Veterinary oath. The veterinary oath is also, undoubtedly, an element of a centuries-old tradition, which

emphasises professional identity and ethos, rooted in the Hippocratic Oath. It is also a common practice, unifying the veterinary profession worldwide (16).

The oath is not mentioned in the discussed statutory Act (23), it is contained in the same normative act as the Polish Code of Veterinary Professional Ethics (further related to as the Ethical Code) (8). It was established by the Polish National Veterinary Medical Convention, so it undoubtedly constitutes internal law of the veterinary corporation. The oath acts as a kind of preamble, preceding the articulated part of the Ethical Code. It remains controversial whether the oath can be considered an element of the Ethical Code *sensu stricto* and, thus, a standard of professional ethics. It seems more appropriate to state that it is, on the one hand, a type of corporate soft law, and on the other, an important interpretative guideline for the articulated content of the Ethical Code.

The medical oath of human physicians and dentists is regulated similarly to the veterinary one, but a different situation can be observed in legal professions, in the case of which the obligation to take the oath is a necessary condition for obtaining the right to practice, and the oath formulas are included in the relevant statutory acts (11, 25, 28).

Corporate internal law cannot, on its own, without authorization in the act of Parliament, create new binding obligations for members of the self-government. It can only specify statutory norms (31).

Although taking an oath is irrelevant from the point of view of generally applicable law, it can be considered an element of the internal law of the Veterinary Medical Chamber and in this way constitute an argument for the necessity of completing this formality.

Furthermore, it should be noted that failure to take this oath or taking it at a later date does not suspend or limit in any way the possibility of practicing the veterinary profession. Therefore, it should be concluded that failure to take the oath cannot constitute grounds for incurring professional liability before a veterinary peer court.

In light of the presented interpretation, it should be considered whether the completion of the oath ceremony is in its essence a voluntary act of every veterinarian and whether, in connection with this, private-law liability for failure to keep the oath may be considered in the context of a voluntary declaration of will to assume the obligations arising from the oath? An affirmative answer would be incorrect. The obligations to comply with the provisions of the law and the principles of ethics, as well as detailed manifestations of this ethics regulated in the provisions of the Ethical Code, such as compliance with current veterinary knowledge or safeguarding the dignity of the profession, which the oath deals with, do not result from a voluntary submission of a solemn declaration of will by a veterinarian.

The analysis showed that, in contrast to the Council's resolution granting the right to practice the profession,

the statutory provisions do not attach any legal consequences or legal significance to the taking of an oath by a veterinarian. Taking or not taking a veterinary oath does not imply consequences in terms of professional liability, because they arise *ipso iure* and *ex lege*, as a result of obtaining the right to practice the profession. The statutory obligations apply independently of the will of the given veterinarian.

It should be observed that the explicit wording of the oath itself is contrary to this basic norm of professional liability, established by the Act (23). Therefore, the content of the oath should be adapted to the standard of statutory norms, that are of supreme position.

Illegal veterinary practice. As already mentioned, it is prohibited by law to practice veterinary medicine without obtaining the right to practice this profession. Criminal liability for illegal performance of veterinary services under Art. 30 of the Act on Animal Health Facilities, 2003 (21) is an offence that can be committed by anyone who provides such services without the appropriate legal qualifications (12). The most likely, typical examples of illegal practice of veterinary medicine include:

- a veterinary technician (or veterinary nurse) performing activities for which he/she is not authorized;
- a veterinarian (DVM) who does not have the right to practice (has not obtained it after finishing studies, or has lost it due to different reasons);
- a veterinarian who has the right to practice from another EU Member State, but has not completed the formalities provided for in Art. 2h of the Act (23);
- a veterinarian from outside the EU, who has violated the norm resulting from Art. 2g of the Act (23);
- and a person without any veterinary education.

Due to the nature of veterinary services this offence can only be committed through action, not through omission. The perpetrator may act both unintentionally and intentionally, with direct or potential intent.

The penalties established for such conduct are: a fine of PLN 20 to PLN 5,000 or a restriction of freedom. These punishments might be combined (22). The second of the above penalties lasts a month and includes the obligation to perform unpaid, controlled work for social purposes for 20 to 40 hours, the inability to change the place of permanent residence and terminate the employment relationship without the consent of the court, as well as the obligation to provide explanations regarding the course of serving the sentence. Additionally, the court may oblige the punished person to repair the damage caused by them or to apologize to the potentially injured party. If the convicted person evades the execution of the sentence, they may be subject to a substitute penalty of arrest. Serving the sentence for the discussed offence should arouse in the perpetrator the will to comply with the law on the performance of the veterinary profession and have a positive impact on the formation of socially desirable attitudes (22, 23).

The necessity of having legal authorizations to perform veterinary procedures is also emphasized by Art. 27 sec. 1-2 of the Animal Protection Act, 1997 (24). Additionally, performing surgical procedures by persons who do not have the right to practice veterinary medicine is penalized as a form of animal cruelty and is subject to imprisonment for up to 3 years, according to Art. 6 sec. 2 point 8, and Art. 35 ff. of the Animal Protection Act (24).

Recapitulation. The obtained results indicate that the decision (voting) on granting or refusing to grant the right to practice the veterinary profession in Poland is a decisive element that creates legal entitlements and obligations. It has been shown that, on the other hand, neither the taking of the veterinary oath (a ceremony without legal consequences) nor the entry of a veterinarian into the register (which is a material and technical action, resulting from having the right to practice the profession) have such a character.

The similarities with the professions of human physicians and dentists, and the differences observed in relation to the legal professions, concerning registry entries and the oath, make it possible to state that the Polish legislator uses two mechanisms for granting the right to practice in various professions of public trust: one scheme is applied in medical professions, including veterinary medicine, and a different one – in legal professions.

The conducted research highlights the role and significance of the Local Veterinary Medical Council. It should be remembered that this collective body performs not only management or law-making functions within the veterinary corporation, but also acts as a public administration authority in matters of granting the right to practice the profession. The legal requirement to conduct a factual and meticulous assessment of the candidates' health qualifications and ethical predispositions to practice the discussed profession, indicates that the Council members should put more effort into assessing applicants, avoiding both automatism and arbitrariness in resolving individual cases.

The presented administrative nature of obtaining this right by way of a constitutive administrative decision proves how great the power is and how serious the responsibility of this administrative authority for its decisions. The possession of the right to practice the veterinary profession significantly and profoundly shapes the legal situation of an individual veterinarian, by imposing on him/her a number of legal obligations and allowing him to exercise numerous rights related to the practice of veterinary medicine. All subsequent professional rights and duties of a given veterinarian depend on the resolution of the Council. In connection with this, it is necessary to correctly understand both the legal nature of the right to practice the profession and the mechanism of its granting, which have been demonstrated in this study.

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