REVIEW ARTICLE

Patient harm compensation in Ukraine and Poland: A comparative legal review of no-fault and hybrid mechanisms

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ABSTRACT

Aim: This review aimed to conduct a comparative legal analysis of patient harm compensation mechanisms in Ukraine and Poland, examine the transformation of Poland's compensation system for medical events, and assess the transferability of selected elements of the No-Fault model across different legal and healthcare systems.

Materials and Methods: This comparative legal and narrative review analyzed 26 sources identified through Google Scholar, Scopus, Web of Science, PubMed/MEDLINE, the Unified State Register of Court Decisions, the Supreme Court of Poland database, and official institutional websites. We examined Ukrainian judicial practice for 2022-2025; we identified 857 civil rulings, retained 765 after screening, and selected 56 Supreme Court judgments for qualitative analysis. Scientific literature in English, Polish, and Ukrainian published in 2011-2026 was included if it addressed patient compensation, medical liability, patient safety, medical events, or out-of-court compensation in the Ukrainian, Polish, or comparative legal context. Unrelated publications were excluded. Search terms included "No-Fault compensation", "patient compensation", "patient safety", "medical liability", "medical error", "medical event", "compensation fund", "out-of-court compensation", "Ukraine", and "Poland".

Conclusions: No-fault mechanisms should not replace traditional liability regimes. Selected elements, including recognition of a compensable medical event, a specialized out-of-court procedure, independent expert assessment, and sustainable financing, may be adapted to different legal and healthcare systems.

KEYWORDS: patient safety, medical errors, liability, legal, compensation and redress, jurisprudence

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INTRODUCTION

Compensation for harm caused to patients in the course of healthcare is closely connected with the protection of patients' rights and with the legal regulation of healthcare professionals' responsibility. In most legal systems, compensation remains primarily linked to fault-based liability and judicial assessment of the conduct of healthcare professionals or institutions. In medical cases, however, establishing professional fault and a causal relationship between the healthcare provided and the resulting harm may present particular evidentiary difficulties. Such disputes may consequently involve lengthy proceedings, substantial costs, and significant practical barriers for patients seeking compensation [1, 2].

These difficulties have encouraged the development of No-Fault compensation mechanisms, which may provide compensation without requiring proof of individual professional fault. Such mechanisms do not necessarily replace civil, disciplinary, or criminal liability; rather, compensation may be addressed separately while professional responsibility remains subject to applicable legal rules [3, 4].

The legal design of No-Fault and hybrid compensation mechanisms varies considerably across jurisdictions. Poland represents an important example of such institutional development. Its system of patient compensation has evolved from provincial medical event commissions towards a centralized Medical Events Compensation Fund, establishing a specialized out-of-court procedure for cases covered by the statutory concept of a medical event [5-10].

Against this background, the present study compares the legal mechanisms for compensating patient harm in Ukraine and Poland. The analysis focuses on the differences between fault-based judicial compensation and No-Fault-oriented procedures, the institutional separation of compensation from professional liability, and the conditions under which selected elements of the Polish model may be considered in the Ukrainian legal context.

AIM

The aim of this review was to conduct a comparative legal analysis of patient harm compensation mechanisms in Ukraine and Poland, to examine the transformation of the Polish system of compensation for medical events, and to assess the transferability of selected elements of the No-Fault model across different legal and healthcare systems.

MATERIALS AND METHODS

This study used a comparative legal and narrative review design to examine patient harm compensation mechanisms in Ukraine and Poland. The analysis combined comparative legal, formal legal, and systemic methods and covered legislation, judicial practice, official institutional documents,

and scientific literature concerning patient safety, medical events, medical liability, and compensation for patient harm.

Legal and institutional sources were identified through official national databases and institutional websites, including the Unified State Register of Court Decisions [11] for Ukraine and the Supreme Court of Poland database [12], together with relevant legislation and materials of the Patient Rights Ombudsman (Rzecznik Praw Pacjenta). Ukrainian judicial practice was examined for January 1, 2022–December 31, 2025 using combinations of the terms "compensation for damage", "improper provision of medical care", "medical service", and "compensation for non-pecuniary damage". The initial search identified 857 civil rulings; after manual screening, 765 relevant cases remained. Of these, 56 Supreme Court judgments were selected for detailed qualitative analysis, focusing on burden of proof, evidentiary standards, causation, and forensic medical examination.

Scientific literature was searched in Google Scholar, Scopus, Web of Science, and PubMed/MEDLINE using combinations of "No-Fault compensation", "patient compensation", "patient safety", "medical liability", "medical error", "medical event", "compensation fund", "out-of-court compensation", "Ukraine", and "Poland". Publications in English, Polish, and Ukrainian from 2011–2026 were eligible if they addressed patient compensation, medical liability, patient safety, medical events, or out-of-court compensation in the Ukrainian, Polish, or comparative legal context. Publications unrelated to these subjects or their legal regulation were excluded.

Particular attention was given to the Polish transition from provincial medical event commissions to the Medical Events Compensation Fund and to official information concerning its operation. The final reference set comprised 26 sources, including legislative acts, judicial decisions, official institutional documents, scientific publications, and international policy documents. Sources were analyzed qualitatively rather than statistically, with comparison focused on the basis for compensation, fault and causation, procedural accessibility, institutional design, financing, and the relationship between compensation and professional liability.

The following artificial intelligence tool was used during the preparation of the manuscript: ChatGPT (OpenAI). It was used for language editing, improvement of English phrasing, and assistance in organizing and refining the presentation of the material. All AI-assisted text was reviewed and edited by the authors. The scientific content, analysis, interpretation of the results, and conclusions are the authors' own intellectual contribution.

REVIEW AND DISCUSSION

CONCEPTUAL FOUNDATIONS OF THE NO-FAULT MODEL AND ITS PLACE IN MODERN MEDICAL LAW

Traditional mechanisms for compensating harm caused in healthcare are predominantly based on fault-based liability. A patient seeking compensation generally has to establish harm, an unlawful act or omission, a causal relationship, and, where required, the fault of the person responsible. In medical disputes, however, these elements may be difficult to establish because of the complexity of clinical decision-making, inherent risks of medical practice, and individual variations in the course of disease. An adverse treatment outcome does not, by itself, establish professional fault or a causal relationship sufficient for compensation [9, 10, 13].

During the second half of the twentieth century, several countries developed alternative approaches known as No-Fault compensation systems. Their principal characteristic is that compensation may be available without requiring the patient to establish the individual fault of a particular healthcare professional. The focus consequently shifts from determining individual professional fault to establishing whether the relevant medical event and its consequences satisfy the legal criteria for compensation [9, 10].

No-Fault mechanisms are generally associated with facilitating access to compensation, reducing reliance on adversarial determination of individual fault, and separating the compensatory function from procedures concerning professional liability. This separation may also have implications for patient safety by supporting the reporting and analysis of adverse events and near-misses and the use of such information for quality improvement and prevention of recurrence [3, 4].

An important feature of the No-Fault approach is therefore the distinction between compensation and liability. No-Fault compensation does not necessarily eliminate civil, disciplinary, or criminal responsibility, which may continue to operate through separate legal procedures where the applicable legal criteria are satisfied [9, 10, 14]. The introduction of an out-of-court compensation mechanism does not, in itself, alter the professional duty to provide healthcare in accordance with applicable standards.

For this comparative review, these dimensions provide a basis for distinguishing the general principles of No-Fault compensation from the institutional arrangements through which they are implemented. Ukraine and Poland illustrate different approaches: Ukraine relies predominantly on general civil liability and judicial mechanisms, whereas Poland has developed a specialized out-of-court pathway for compensating qualifying medical events.

CURRENT SYSTEM OF PATIENT HARM COMPENSATION IN UKRAINE: LEGAL MECHANISMS AND PRACTICAL CHALLENGES

In Ukraine, compensation for harm caused to patients in the course of healthcare is primarily based on general civil liability mechanisms. The Constitution guarantees the right to healthcare and judicial protection of violated rights [15], while the Civil Code provides for compensation for pecuniary and non-pecuniary damage caused by unlawful acts or omissions of individuals or legal entities [16]. At the same time, Ukrainian legislation does not establish a dedicated compensation mechanism specifically designed for harm associated with adverse medical events [17].

A patient seeking compensation generally has to establish the relevant elements of civil liability, including harm, unlawfulness, causation, and, where required by law, fault.

In healthcare disputes, causation and compliance with professional duties are among the main evidentiary difficulties [18-20]. The complexity of clinical decision-making, the severity of the patient's condition, comorbidities, individual physiological responses, and the limitations of available treatment methods may complicate the assessment of whether an adverse outcome resulted from improper healthcare. Accordingly, forensic medical examinations and other expert evidence may play an important role in determining compliance with the applicable standard of care and the causal relationship between healthcare and the resulting harm [18, 19].

The Ukrainian system also operates at the intersection of civil and criminal liability. Criminal proceedings may become relevant where an alleged breach of professional duties constitutes a criminal offence, while related civil claims may increase the procedural complexity of disputes arising from the same medical incident [19, 20].

These features illustrate limitations of a predominantly fault-based system. Where compensation depends on establishing professional wrongdoing, proceedings may focus substantially on individual responsibility rather than on the broader circumstances contributing to an adverse event. From a patient-safety perspective, this may create tension between individual accountability and the reporting and analysis of errors and near-misses. No-Fault and hybrid models seek, among other objectives, to separate compensation from the determination of individual fault and thereby create greater scope for patient-safety considerations [3, 4, 9, 10]. The effectiveness of compensation may therefore depend not only on the formal availability of a legal claim but also on whether the procedure provides a realistic and timely opportunity to obtain compensation.

The Ukrainian framework also lacks a dedicated compensation fund and a specialized administrative out-of-court procedure for medical events. Judicial proceedings consequently remain the principal mechanism for obtaining compensation for harm allegedly caused in healthcare [17, 18].

Recent Supreme Court case law nevertheless demonstrates the development of procedural approaches relevant to patient claims. In its judgment of 19 November 2025 in case No. 761/11951/22, the Supreme Court addressed the distribution of the burden of proof in claims for compensation for harm, indicating that the claimant must establish the existence of harm and the causal relationship, while the defendant must establish the absence of unlawfulness and fault [21].

In its judgment of 11 December 2024 in case No. 361/5334/18, the Supreme Court further confirmed that, in tort disputes concerning medical care, a patient is not required to prove the defendant's fault where a statutory presumption of fault applies. The Court also emphasized the patient's lack of professional medical knowledge and recognized that, after a possible breach in the provision of medical care is indicated, the burden of proof may shift to the healthcare institution or physician. Expert reports obtained in criminal proceedings were also recognized as admissible evidence in the related civil case, and the liability of the healthcare institution for harm caused by its employees in the performance of their professional duties was confirmed [22].

TRANSFORMATION OF THE MEDICAL EVENT COMPENSATION SYSTEM IN POLAND: FROM PROVINCIAL COMMISSIONS TO THE MEDICAL EVENTS COMPENSATION FUND

Poland developed specialized compensation mechanisms as an alternative to lengthy civil proceedings, allowing compensation in certain cases without establishing the individual fault of a healthcare professional [9, 10, 23].

An important stage was the introduction in 2011 of provincial medical event commissions (wojewódzkie komisje do spraw orzekania o zdarzeniach medycznych). Their function was to determine whether a medical event had occurred. The commissions considered cases involving infections, bodily injuries, health disorders, or deaths associated with diagnosis or treatment [5, 24].

Although the commissions represented an important procedural development, practical experience revealed limitations, including relatively limited compensation amounts, differences in decision-making between commissions, difficulties in interaction with insurers, and weaknesses in the mechanism's compensatory function [6, 24].

A further stage of reform was the establishment of the Medical Events Compensation Fund (Fundusz Kompensacyjny Zdarzeń Medycznych), which became operational in 2023 and is administered by the Patient Rights Ombudsman (Rzecznik Praw Pacjenta). The Fund provides an out-of-court pathway for persons who have suffered harm as a result of a qualifying medical event without requiring proof of individual professional fault [5, 7, 8].

The patient submits an application to the Patient Rights Ombudsman, after which the relevant circumstances are assessed, and a decision on eligibility is issued [7, 8]. Civil, disciplinary, and criminal liability remains subject to separate legal procedures.

Initial official data indicate substantial use of the new mechanism. According to the Patient Rights Ombudsman, although the Fund has operated since September 2023, the first compensation decisions were issued in June 2024 following adoption of the necessary regulatory framework. In 2024, more than 1,500 applications were submitted. More than 260 decisions were issued, including 162 positive decisions, and the total compensation awarded reached nearly PLN 9.5 million [25]. These figures indicate substantial initial use, although the short period of operation does not permit conclusions concerning long-term effectiveness.

Although centralized and out-of-court, the Polish mechanism represents a hybrid arrangement rather than a classical No-Fault system in its broadest sense, operating alongside traditional civil, disciplinary, and criminal liability mechanisms [6, 9, 10]. This separation may also support patient-safety objectives by allowing adverse events to be addressed as a basis for identifying systemic risks and preventing recurrence, while questions of individual professional responsibility remain subject to separate procedures [1, 3].

COMPARATIVE ANALYSIS OF PATIENT HARM COMPENSATION MECHANISMS IN UKRAINE AND POLAND

Ukraine relies predominantly on general civil liability and judicial proceedings, whereas Poland has developed a specialized out-of-court mechanism for compensating qualifying medical events through the Medical Events Compensation Fund [5-7, 9, 10].

The systems differ first in the legal basis and conditions for obtaining compensation. In Ukraine, claims are generally considered within the framework of civil liability, requiring assessment of harm, unlawfulness, causation, and the applicable basis of liability. Although the statutory presumption of fault and judicial rules on the burden of proof may alleviate some evidentiary difficulties, compensation remains connected with the determination of civil liability [17-22]. In Poland, the procedure administered by the Patient Rights Ombudsman under the Medical Events Compensation Fund does not require proof of individual professional fault as a condition for compensation [5-10].

A second difference concerns the institutional pathway and role of expert evidence. In Ukraine, judicial proceedings remain the principal mechanism, and expert evidence may be important in determining compliance with the applicable standard of care and the causal relationship between healthcare and harm [18, 19, 21, 22]. Poland provides a centralized administrative pathway through the Patient Rights Ombudsman, in which assessment of the circumstances of a medical event remains important but is not structured primarily around proving individual professional fault [5, 7, 8].

These differences can be summarized according to several analytical dimensions (Table 1).

The Polish experience should therefore not be interpreted as a simple replacement of a fault-based system with a comprehensive No-Fault model. Rather, it demonstrates how selected No-Fault elements can be incorporated into an existing legal system through a specialized compensation mechanism while preserving other forms of professional accountability.

TRANSFERABILITY OF SELECTED NO-FAULT ELEMENTS: COMPARATIVE AND INSTITUTIONAL CONSIDERATIONS

One potentially transferable element is the legal recognition of a medical event as a distinct category relevant to compensation. Such recognition may separate the compensatory function from the determination of individual professional fault, while civil, disciplinary, or criminal liability remains subject to separate procedures [9, 10]. A related element is a specialized out-of-court procedure through which patients may seek compensation without pursuing conventional liability litigation. The Polish experience demonstrates that such a procedure can coexist with traditional liability mechanisms while preserving access to judicial protection [5-7].

Independent expert assessment would remain important in a No-Fault or hybrid system for determining the circumstances of a medical event, the nature and extent of harm, and the relevant causal relationship. Its function could, however, focus primarily on establishing whether the event and its consequences satisfy the statutory criteria for compensation

Criterion	Ukraine	Poland
Primary compensation mechanism	Court proceedings	Out-of-court compensation procedure, with judicial protection remaining available
Role of fault	Relevant to civil liability; statutory presumptions and burden-of-proof rules may affect how fault is established	Individual professional fault is not a prerequisite under the Fund procedure
Specialized compensation mechanism	No dedicated national medical-event compensation fund	Medical Events Compensation Fund
Institutional pathway	Primarily judicial	Centralized administrative procedure administered by the Patient Rights Ombudsman
Role of expert evidence	Often important for assessing the standard of care and causation	Relevant to assessment of the medical event and its consequences
Compensatory orientation	Closely connected with the determination of civil liability	Primarily focused on compensation for qualifying medical events
Relationship between compensation and liability	Generally addressed within the framework of civil liability proceedings	Compensation and professional liability may be addressed through separate procedures
Procedural character	Predominantly judicial process	Specialized out-of-court administrative procedure
Funding mechanism	Compensation generally sought through civil liability mechanisms	Dedicated Medical Events Compensation Fund
Patient-safety orientation	Primarily addressed within the existing liability and judicial framework	Greater institutional separation between compensation and individual responsibility

Source: developed by the authors based on [1-3, 5-10, 15-22, 24, 26].

rather than on identifying an individual at fault [18-20]. The Polish Fund provides an example of centralized financing, although other systems may rely on public funding, insurance arrangements, or contributions from healthcare institutions. The appropriate financing model should therefore reflect the organization of the national healthcare system [7, 8].

Compensation mechanisms should be connected, where appropriate, with processes for identifying and analyzing medical incidents. Separating compensation from individual fault may create conditions for more systematic reporting of adverse events and near-misses, provided that relevant information is appropriately integrated into healthcare quality and risk-management processes [1-3, 26]. At the same time, the introduction of a No-Fault element does not require the elimination of professional accountability. The Polish experience demonstrates that compensation may coexist with civil, disciplinary, and criminal liability, allowing different legal mechanisms to perform different functions [5-7, 9, 10].

For Ukraine, implementation would require careful consideration of the interaction between any new compensation mechanism and the existing civil, medical, and criminal-law framework, particularly the distinction between adverse treatment outcomes, medical errors, and professional negligence [18-20]. Ukrainian judicial experience demonstrates the importance of causation, professional standards, burden of proof, and expert evidence in patient harm disputes [18-22].

The transition from provincial medical event commissions to the Medical Events Compensation Fund illustrates how institutional arrangements can evolve in response to practical experience and identified limitations [5-7, 24]. This supports gradual adaptation in which individual elements are assessed according to their compatibility with national legal and healthcare structures rather than introduced as a single comprehensive reform. Thus, the principal transferable value of the Polish experience lies in the functional separation of patient compensation from the determination of individual fault, combined with continued professional accountability. Depending on the national context, this principle may be implemented through a specialized out-of-court procedure, expert assessment, a sustainable financing mechanism, and appropriate integration with patient-safety systems.

CONCLUSIONS

The Ukrainian system remains predominantly based on general civil liability and judicial proceedings, whereas Poland has developed a specialized out-of-court mechanism for compensating qualifying medical events.

The principal institutional significance of the No-Fault approach lies in separating the compensatory function from the determination of individual professional fault, allowing patient compensation and professional accountability to perform different legal functions.

The Polish experience demonstrates a gradual transformation of patient compensation mechanisms, from provincial medical event commissions to the centralized Medical Events Compensation Fund administered by the Patient Rights Ombudsman.

The comparison indicates significant differences between Ukraine and Poland in the basis for compensation, institutional pathways, the role of fault, burden of proof and expert evidence, financing, and the relationship between compensation and professional liability. Poland provides a more clearly defined out-of-court compensatory pathway, while Ukraine remains predominantly judicial and liability-oriented.

No-Fault elements should be assessed functionally rather than through direct transplantation of a foreign institutional model. Potentially adaptable elements include recognition of a compensable medical event as a distinct legal category, a specialized out-of-court compensation procedure, independent expert assessment, and a sustainable financial mechanism.

The effectiveness of such mechanisms depends not only on their legal design but also on their integration with patient-safety, risk-management, and professional accountability systems. The Polish experience suggests that No-Fault mechanisms may develop incrementally and coexist with existing liability regimes.

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CONFLICT OF INTEREST
The Authors declare no conflict of interest

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