

# **Proxy decision making for incompetent patients**

## **Abstract**

The author of this thesis discusses the applicable Czech legislation on the proxy decision making for incompetent patients and the provision of medical care without informed consent. The thesis is divided into six parts, while the first part is devoted to the definition of the basic terms that are directly related to this topic and which are repeatedly used herein. These basic terms are the following: health services and healthcare, informed consent and the patient. The second chapter is devoted to sources of law, which are divided into three levels – international sources, European Union law and national sources. Within the national regulation, attention is focused mainly on Act No. 372/2011 Coll., On health services and conditions of their provision, as amended. It also outlines the issue of the duality of legal regulation, that was caused by the adoption of Act No. 89/2012 Coll., Civil Code. The third chapter deals with surrogate consent, attention is paid mainly to resolving conflicts of opinions and to the best interests principle, as to the key factor when granting the proxy consent. The fourth chapter is devoted to the institute of previously expressed wishes. The fifth chapter analyses the issue of providing health services to vulnerable persons, specifically children and people suffering from mental disorders. The last part of the thesis consists of *de lege ferenda* considerations on selected issues whose current legal regulation the author considers to be the most problematic. Such issues are namely the inadequacy of the regulation of surrogate consent and previously expressed wishes. The aim of this thesis is to provide a comprehensive analysis of decision-making for incompetent patients, especially to point out problematic aspects, while taking into account, *inter alia*, the case law of the European Court of Human Rights.

### **Key words:**

Proxy decision making, incompetent patients, vulnerable patients, informed consent, previously expressed wishes