

The criminally-legal responsibility of medical workers for professional crimes against the person and health

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Abstract

Introduction: The article is devoted to the actual problem of our time — the legal status of patients and doctors. The positive and negative aspects of informed consent are considered depending on the enlightenment and education of the society. The legal regulation of relations between the patient and the doctor, the quality of medical services, as well as the legal training of professional healthcare professionals are reflected.

Purpose: Estimation of efficiency of the organization, improving the quality of expert research and interaction with law enforcement.

Materials and methods: The objects of research were the organizational structure and methodological bases of management of forensic medical services in the country, forms of cooperation with law enforcement agencies. To address specific problems used complex expert methods and statistical analysis.

Results and discussion: In accordance with the criminal law the only basis of criminal responsibility is an act committed by a person, containing all the elements of an offense under the Criminal Code of the Republic of Kazakhstan. In addition, the excessive number of questions indicated the presence of inappropriate questions, duplicative or “diverting” to the side, and the presence of questions beyond the limits of competence of experts. This, in turn, indicates a lack of trained workers of inquiry, investigation, judges in the investigation and trial of this type of case. Obviously, there’s the appropriate assistance to law enforcement authorities to provide forensic science and practice as forensic medicine, as medical science, at the same time, is one of the special (or application) of Law, required to study law students who elected for themselves the criminal law specialization.

Keywords: Forensic; Emphasizing; Statistical analysis; Patient; Doctor; Law; Society; Healthcare

Introduction

As follows from the content of the State Health Development Program of the Republic of Kazakhstan "Densaulyk" for 2020-2025, approved by Decree of the President of the Republic of Kazakhstan dated October 12, 2021 No. transfer of modern medical technologies [1].

During the period of implementation of the State Health Development Program of the Republic of Kazakhstan "Salamatty Kazakhstan" for 2011-2015, the following was noted: an in-

crease in the population in the republic to 17,417.7 thousand people (as of 01.01.2015) with an annual population growth rate of 1, 4%; increase in life expectancy to 71.62 years; reduction in the overall mortality of the population by almost 15.3%; an increase in the birth rate by 2.6%; reduction of maternal mortality by 1.9 times; reduction in infant mortality by 1.7 times; reduction in the incidence of tuberculosis in the population by 30.3% and mortality by more than 2 times; maintaining the prevalence of the human immunodeficiency virus [1,2].

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Despite the positive dynamics of public health indicators, the life expectancy of the inhabitants of the Republic of Kazakhstan is almost 10 years less than in the OECD member countries. According to the forecasts of the Committee on Statistics of the Ministry of National Economy of the Republic of Kazakhstan, the population of the country by 2030 will exceed 21 million people, the proportion of older people will increase from 7.7% to approximately 11-13%. Changing demographics and an increase in chronic diseases will affect the demand for medical services [1,3].

That is why it is reasonable to strengthen the criminal law protection of medical legal relations or legal relations in the field of health care by separating an independent group of criminal offenses, the peculiarity of which is associated with a subject that is special. At the same time, health care is understood as a system of measures of a political, economic, legal, social, cultural, medical nature aimed at preventing and treating diseases, maintaining public hygiene and sanitation, maintaining and strengthening the physical and mental health of each person, maintaining his active long life, providing him medical care in case of loss of health (paragraph 36 of article 1 of the Code of the Republic of Kazakhstan "On the health of the people and the healthcare system" dated September 18, 2009 No. 193-IV) [3,4,7].

There is an opinion that the doctor (nurse) who treated him is responsible for the harm caused to the patient. However, this statement is incorrect. From the point of view of the legal regulation of the legal relationship between the doctor and the patient, in this case, the responsibility lies with the medical organization, which is obliged to fully compensate for the losses incurred by the patient due to improper treatment.

Violation of the procedure for conducting clinical trials and the use of new methods and means of prevention, diagnosis, treatment and medical rehabilitation (Article 318 of the Criminal Code of the Republic of Kazakhstan) [3,4].

The status of population health is an integral indicator of social orientation of society and social security which describes the degree of responsibility of the state to its citizens. Our republic during the formation conducted serious optimization in the social sphere, including health care. Life and health is the most important social values of great importance in the protection which is duly and quality health care. That is why the problem of the health and lives of citizens are closely related issues of quality of care and responsibility of the medical staff for the improper performance of their professional duties. So far, these questions remain underdeveloped and therefore is highly relevant [1,9,16].

The life and health are the most important objects of criminal law protection. In relation to the unlawful acts in criminal matters relevant is the question of what crimes are committed by health care workers should be classified as a "professional." The criminal legislation of Kazakhstan does not evolve as a separate category of crime committed by medical professionals in the field of health care, that is, in the performance of

their professional duties. Also available in the literature, including forensic, information on this subject is controversial. In doing so, the number of professional health care workers are often crimes are ranked socially dangerous acts, which have no relation to the professional medical practice and are "ordinary".

Analysis of stipulated by the Criminal law offenses against the person and health, in chapter 1, section VII of the Special Part of the Criminal Code makes it an object based on a common criminal assault (the main direct object - human life and health, the additional direct object - a routine the professional activity) and availability of a special subject (medical officer) of interest to us clearly define the list of offenses: Part 2 of Art. 101 of the Criminal Code (causing death by negligence), Part 3. 111 of the Criminal Code (serious bodily injury through negligence), part 4. 116 of the Criminal Code (HIV infection), Parts 1 and 2 of Article 118 (failure to provide assistance to the patient), Parts 1 and 2 of Article 119 (abandonment in danger). Thus, such compositions in the current Criminal Code only five [3,10,13].

The aim of the searching: Estimation of efficiency of the organization, improving the quality of expert research and interaction with law enforcement.

The materials and methods of searching: The objects of research were the organizational structure and methodological bases of management of forensic medical services in the country, forms of cooperation with law enforcement agencies. To address specific problems used complex expert methods and statistical analysis.

Results and discussion

The general analysis of the compositions marked professional health workers crimes against the person and health allows briefly describe them as follows:

1. All of these compounds are concerned only special subject that has a special legal status and social roles associated with his profession.
2. All of these compounds are in addition to the material and socially dangerous act, which is expressed in the non-performance or improper performance of medical staff professional duties also include socially dangerous consequences (causing death or serious or moderate injury, or infection with HIV), as well as cause and-effect relationship between them.
3. Of the offense under these compositions performed exclusively in the form of reckless (carelessness or negligence).
4. In terms of the categorization of crimes, offenses under these formulations are less serious crime.
5. According to the same degree of public danger, all of these compositions are qualified. The legislator, regarding breach of professional duties as an aggravating circumstance, sets for these crimes more severe punishment, thus underlining the

high degree of public danger. This is evidenced, in particular, more severe sanctions of criminal law, as well as the possibility of additional penalty of deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, emphasizing the severity of the principal punishment.

The assignment of other compounds contained in Chapter 1 of the Criminal Code, one of the "professional" crime of medical workers illegally. First, all other formulations are characterized by either a common entity (including compositions provided, for example, Articles 96 (murder), 113 (forcible removal of organs or tissues for transplantation), 115 (venereal diseases) of the Criminal Code, and so on, for some reason often is referred to the number of crimes "related to occupational health professionals"), or a special subject, the signs of which, however, does not correspond to the "professional" nature by a person socially dangerous acts. The latter include compositions and under Art. 117 of the Criminal Code (illegal abortion), as an essential feature of a special subject in this case is not the profession of the person, and his lack of eligibility for the appropriate kind of medical practice. Furthermore, placing a number of professional health care workers crimes compositions with deliberate form of guilt (provided, for example, Articles 96 (murder), 113 (forcible removal of organs or tissues for transplantation) of the Criminal Code, etc.) is misleading because, firstly, the health worker is not a special subject in these compounds, and secondly, the presence of criminal intent, aimed at causing death or injury to human health, eliminates even the possibility of execution in the course of its implementation of humane duty medical officer [2,3,5].

Illegal abortion (Article 319 of the Criminal Code of the Republic of Kazakhstan).

Improper performance of professional duties by a medical or pharmaceutical worker (Article 317 of the Criminal Code of the Republic of Kazakhstan)[3,6,11].

This article, in fact, contains two rules. The objective side of a criminal offense Part 1 of Art. 317 of the Criminal Code of the Republic of Kazakhstan includes actions or omissions related to: a) failure to comply; b) improper performance of professional duties; c) non-compliance with the procedure or standards for the provision of medical care. According to the legislative structure, the composition is material, therefore, the criminal offense is considered completed from the moment of negligent occurrence of moderate harm to health.

Medical activities include the professional activities of individuals who have received higher or secondary professional medical education, as well as legal entities operating in the field of healthcare (Article 36 of the Code of the Republic of Kazakhstan "On the health of the people and the healthcare system" dated September 18, 2009 No. 193-IV) . As part of this activity, the following types of medical care are provided:

- 1) pre-medical;
- 2) qualified;
- 3) specialized;
- 4) high-tech medical service;
- 5) medical and social.

The qualifying signs are negligent infliction of: a) grievous bodily harm (Part 2); b) the death of a person (part 3); c) death

of two or more persons (part 4).

The second criminal law norm contained in the analyzed article (part 5 of article 317 of the Criminal Code of the Republic of Kazakhstan) provides for the responsibility of medical workers or workers of domestic or other services to the population for improper performance of their professional duties that resulted in the infection of another person with HIV / AIDS[3,13,19].

In other words, an intentional crime with the performance of professional medical responsibilities is not connected. Using the same in the commission of intentional crimes of professional medical knowledge, skills, abilities, trust placed in the person as a medical professional, medical equipment, etc. to achieve the criminal result may qualify depending on the circumstances as a means of committing a crime (eg, premeditated murder by an overdose of the drug), the instruments of crime (for example, using the assassination of medical equipment or medical equipment). Obviously, it is all has no relation to "professional" offenses of medical staff [14,15,20].

It should also touch briefly on those essential features which characterize it as a medical officer as special subject of the crimes.

The legal regulation of the relationship between the patient and the doctor, the quality of the provision of medical services largely depends on the level of legal knowledge of medical workers, which is extremely low, and the legal training of healthcare professionals, as an important part of the general professional training of a doctor, is in an unsatisfactory state.

First, health care workers should have the admission to the implementation of professional medical practice, ie right to engage in such activities. This feature should be considered as the most important, since its absence (for doctors and nurses) in itself is obviously excludes criminal responsibility on questions of formulations. The basis of the law on health care right to engage in professional medical practice as a general rule provides for a person of professional medical education and specialist certificate (for employees) or specialist certificate and license to elect the form of medical practice (for those who have private health practice) [14,10,21].

Second, health care workers as a special subject of the crimes, should be obliged to provide the appropriate type of care. Such duty may arise either from the presence of the employment relationship between the health professional and medical institution (organization), state, municipal or private health care system, or the fact of occupation health professional in private medical practice as a citizen engaged in the established order in entrepreneurial activities without forming a legal entity . From the meaning of Art. 393.399 CC RK that health workers in private practice, which should conclude a public contract with anyone who approached him, of course, within the limits allowed for a different kinds of medical activity [3,4,9].

Only the presence of these two features in its entirety - the right to engage in professional medical practice and legally mandated duty to provide immediate medical care arising from the employment contract (for employed persons) or a public contract (for individual entrepreneurs) - a legitimate reason for face recognition special subject of the crimes. Topic criminal malpractice for professional crime not only are in-

terested in the broad range of health of the public, but also represents a significant social and legal problem. We have to admit that a breach of professional duties medical personnel takes place, and we can not say that in practice we have to deal with individual cases like this. Moreover, the acts of this nature and involve socially dangerous consequences, such as injury of varying severity, and even death. At the same time, the most important principle of the criminal law of inevitability of punishment for socially dangerous acts of this kind are not always respected. Investigative and judicial and forensic practice indicates the objective of such cases. To a certain extent this is caused by problems with the search, retention and evaluation of evidence in criminal cases of occupational crimes. At the same time, the most significant challenges is assessment of crime in the actions of health care professional. The opportunities for forensic examination while not used to the full [6,7,8].

In accordance with the criminal law the only basis of criminal responsibility is an act committed by a person, containing all the elements of an offense under the Criminal Code of the Republic of Kazakhstan. The indications of crime are the object of the crime, the objective side of the crime, subject of the crime, subjective side of crime.

However, as evidenced by the expert practice to allow forensic examinations in cases about criminal responsibility of health workers for professional offense, usually contains questions whose resolution to some degree allows to install only the presence or absence objective signs by offences (an act harmful effects, the causal link between them). In this case, on the other side, the analysis of decisions and determinations on the appointment of forensic cases are in this category indicates that very often to ask a lot of questions to allow for expert, sometimes not calculated as a ten. Many questions are often accompanied by ambiguities in their wording that complicates their clarification by members of expert committees, "clogs" examination. In addition, the excessive number of questions indicated the presence of inappropriate questions, duplicative or "diverting" to the side, and the presence of questions beyond the limits of competence of experts. This, in turn, indicates a lack of trained workers of inquiry, investigation, judges in the investigation and trial of this type of case. Obviously, there's the appropriate assistance to law enforcement authorities to provide forensic science and practice as forensic medicine, as medical science, at the same time, is one of the special (or application) of Law, required to study law students who elected for themselves the criminal law specialization.

According to Novoselov V.P., and Sergeev Y.D., Erofeev S. [22,23,24] the formulation of questions to allow forensic examinations on this type of case should be strictly subordinated to the practical problem of proper knowledge of these crimes, exactly - establishing all constituent elements, to identify which special knowledge is required in the field of medicine. It should be noted that for this category of cases, as perhaps no one else, special knowledge in the field of medicine required for the establishment almost all the elements of the crime, both as objective and subjective:

1.for qualification of actions (inaction) of a health care worker as socially dangerous and illegal act, assess harmful conse-

quences and causal connection between them (the objective side of the crime);

2.for establishing in the act of medical worker signs of encroaching upon to the established rules of medical care (additional direct object);

3.for determining compliance or non-compliance level of education and health professional training of medical workers to requirements which presented to him as a person dealing with the same kind of professional medical practice (special subject);

4.for establishing the possibility or impossibility of foresight harmful consequences by medical officer as a result of the his actions (inaction), and also the presence or absence of such duty of foresight the particular circumstances of medical accidents, lever of education, professional training, also individual quality of health workers - skills and practical experience (of the offense).

Obviously, none of these problems can not be solved without special knowledge in the field of medicine, so to resolve all these issues necessarily requires the appointment of a forensic medical examination. Thus the basic and, in our opinion, so far quality unsolved problem of forensic medical science is to develop evidence-based methodological approaches to adequately resolution of these issues through integrated medical and legal approach, especially as noted above, the court medicine is not only a medical but also a special legal discipline.

Another very important issue that significantly affects on the quality of manufacturing expertise is the question about specific training of experts. At the first it is the preparation of full-time forensic medical experts taking part in the production of examinations for "medical cases". Here we are not talking about the need for the second – the law education. However, such training must include an examination of the foundations of the theory of law, selected questions of criminal law and criminal procedure, and the theory of criminology and forensic examination in relation to this category of professional crimes of health care workers. The experience of our colleagues indicates that that elucidation of forensic medical experts of these issues considerably increases the quality expertises, their evidential significance. In view of this, we consider it as highly desirable opening on the base of National Centre of Forensic Medicine of MoH or a position to the department of forensic medicine cycles of thematic improvement for experts of departments difficult examinations on these issues.

Furthermore, the experience of the expert evidence is generally insufficient training required to work in expert committees of external experts to the specific problems which are solved in the production of this kind of expertise, which also requires appropriate training, of course, in a different form. Furthermore, the experience of the expert evidence is generally insufficient training required to work in expert committees of external experts to the specific problems to be solved in the production of this kind of expertise, which also requires appropriate training, of course, in a different form. Perhaps this form of training would be an independent study of external experts prior to their participation in the examinations specifically designed for these materials, such as duly approved methodological recommendations for physicians.

Conclusions

Thus, some questions do not exhaust the whole problem. The topic of professional participation of medical workers in crimes, due to their complexity and specificity, undoubtedly requires further careful study and analysis. The provision of medical services is an area of increased responsibility, because human health is its main value and gift that needs to be protected. Unfortunately, the development of modern methods of treating patients does not always keep pace with the increase in the number of new diseases and viruses that arise against the backdrop of a deteriorating environmental situation in the world. This unpleasant moment is aggravated by the frequent uncertainty in the relationship between the doctor and the patient.

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