Information

Legal liability of medical worker for professional remedies

N.I Kravchenko

Filatov Institute of Eye Diseases and Tissue Therapy of NAMS of Ukraine

Odessa (Ukraine)

Legal responsibility of medical workers for committing an offense is the application of measures of state coercion to the person who committed the offense. In practical terms, legal responsibility arises when a legal conflict in the field of medical care has arisen and all the means of resolving it have already been exhausted.

Essentially, the responsibility of a doctor means the measure of the state's influence on a person who, for one reason or another, has committed an act contrary to the norms and rules adopted in medicine. It is important to note that first of all it is a violation of the professional duties of the doctor.

From a legal point of view, doctors should be aware of such liability, which occurs in the case of offenses.

In practice, the lack of knowledge of law for doctors can be dangerous today. To ensure that health professionals can perform their professional duties, without looking at possible legal sanctions, they need to have deep knowledge of the law in general and of legal liability in particular.

It should be noted that Article 6 of the Law of Ukraine "Fundamentals of the legislation of Ukraine on health care" establishes:

- every citizen of Ukraine has the right to health care, which includes, in particular, qualified medical assistance, including the free choice of a doctor, the choice of treatment methods in accordance with his recommendations and the health care institution;
- compensation for damage caused to health.

Article 8 of the Law pointed guarantees that in case of violation of legitimate rights and interests of citizens in the field of health care the relevant state, public or other bodies, enterprises, institutions and organizations, their officials and citizens are obliged to take measures to restore the violated rights, protection of legitimate interests and compensation of harm.

With the adoption of the new Civil Code of Ukraine, with the introduction of amendments to the Law of Ukraine "Fundamentals of the legislation of Ukraine on health care", and with the formation of a judicial practice in cases of bringing medical workers to the responsibility, there are four fundamentally different types of responsibility of doctors for the committed offenses, namely: criminal, civil (property), administrative and disciplinary.

I. In accordance with the law, criminal responsibility comes for the crime - the commission of a socially dangerous offense committed by a person, which contains the crime, provided for in the Criminal Code of Ukraine. A professional medical crime should be understood as a deliberate or careless act committed by a health professional when performing his professional duties prohibited by a criminal law under threat of punishment.

In the work of medical workers, deliberate crimes occur less often than careless ones. Among the crimes of the first group (intentional) the most socially dangerous is the failure to assist sick person by a medical professional (Article 139 of the CCU). At the same time, among the careless crimes, the most relevant are the inadequate performance of professional duties by a medical or pharmaceutical worker (Article 140 of the Code of Civil Procedure), murder due to negligence (Article 119 of the Code of Civil Procedure) and careless or grave injury to bodily harm (Article 128 of the Code of Civil Procedure).

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The profession of a doctor is related to the need for experimentation in certain situations. This is necessary both for the development of medical science and for the salvation of the life and health of an individual who can no longer help traditional methods and means of medicine.

A medical worker must know the conditions for the legality of an act involving a risk in medical practice. They include:

1. Health damage is inflicted to achieve a socially beneficial goal. The experiment should not be conducted for the sake of an experiment - it is aimed at the development of medical science or the salvation of human life and health.
2. This goal cannot be achieved by conventional non-risk means. If it is possible to provide assistance to a person who needs it in a conventional, traditional, non-risk way, then, in the event of damage to the health of a person, the action of a doctor is a crime.
3. The harmful effects of a risk are recognized by the medical professional only as a side effect and a possible alternative to his actions.
4. A medical worker has the appropriate knowledge and skills to prevent harmful consequences in a particular situation.
5. A medical worker used enough, in his opinion, measures to prevent harm to the patient's life and health.

In the presence of all these conditions, the risk that the medical worker has gone through when performing his professional duties will be justified, this will be a circumstance that excludes the crime of the act. It should be noted that knowledge of the conditions of legality of an act associated with the risk of medical activity gives the medical worker the opportunity to use new methods of treatment without fear of criminal prosecution.

All crimes for which health professionals can be prosecuted are divided into three groups:

- Professional medical crimes
- Occupational medical crimes
- The crimes for which health professionals are being prosecuted on a general basis

The first group includes crimes related to the professional activities of health professionals. Dangerous acts prohibited by the CCU under the threat of punishment and associated with medical activities, include in particular:

- improper performance of professional duties, which caused the person to be infected by a human immunodeficiency virus or other incurable infectious disease (Article 131);
- improper performance of duties related to the protection of the life and health of children (Article 137);
- illegal medical activities (Article 138);
- the failure to assist sick person by a medical professional (Article 139);
- improper performance of professional duties by a medical or pharmaceutical worker (Article 140);
- violation of the procedure for the transplantation of organs or tissues of a person established by law (Article 143);
- illegal disclosure of medical secrets (Article 145)
- violation of established rules of circulation of narcotic drugs, psychotropic substances, their analogues or precursors (Article 320) and others.

The second group of crimes for which medical workers may be prosecuted are socially dangerous acts that are related to the performance of medical duties by the medical worker. The CCU provides for crimes in the field of official activity. Some of them may also be relevant to medical staff, but only to those who are officials. These are crimes as follow:

- improper performance of duties related to the protection of the life and health of children (Article 137);
- violation of the right to free medical care (Article 184);
- abuse of power or official position (Article 364);
- official forgery (Article 366);
- service negligence (Article 367);
- accepting the offer, promise or receipt of improper benefits officer (Art. 368) and others.

Practically, the question of who in the field of medical activity is an official is very important. According to Art. 364 of the Criminal Code of Ukraine, officials are persons who permanently or temporarily carry out the functions of the authorities, as well as permanently or temporarily occupy positions related to the execution of organizational and administrative or administrative and economic obligations or perform such duties under special powers in enterprises, establishments or organizations, regardless of the form of ownership. Thus, an official in the field of medical activity should be understood as a person who has the authority in the field of medical activity, which carries out organizational and administrative and administrative functions in the departments of health care, medical and preventive, sanitary and hygienic and other establishments of state and municipal health care systems.

The third group from the classification presented consists of crimes for which medical professionals are prosecuted on general grounds. These may include those crimes for which the medical officer is prosecuted as a general subject of the crime, that is without taking into account the relation to professional medical activity.

Another component of the crime that is most commonly encountered in practice is the inadequate performance of professional duties by a health worker. This crime is characterized by negligence on the subjective side and is considered to be complete from the time of the onset of grave consequences for the patient (for example, death of the patient, his suicide, causing severe or moderate damage to health).

Failure to perform professional duties means that the health worker does not commit the actions that he was obliged to perform due to the work performed. Improper

performance of professional duties occurs when a health worker performs his duties not in full, carelessly, superficially, not as the interests of his professional activities require. Failure to perform or improper performance of professional duties can be both one-off and systematic. Such crimes are classified, in particular, by the following acts:

- untimely or incorrect diagnosis of the disease;
- leaving the patient without proper medical care;
- leaving foreign objects in the patient's body during surgery;
- the use of wrong treatment;
- insufficient control over medical equipment;
- failure by a nurse to follow instructions of a doctor regarding the use of drugs or procedures, etc.

II. Civil liability in the field of medical activities is a form of legal liability that arises as a result of violations in the field of property or personal non-property benefits of citizens in the field of health care, which mainly consists in the need for compensation. Personal, non-property benefits of citizens directly related to medical activities, primarily concern life and health. For this reason, it can be argued that civil liability is a unique means of ensuring the protection of personal non-property rights (life and health) of patients in the provision of medical care.

Civil liability arises in case of violation by medical workers of their professional duties, as a result of which the harm to the patient's health was inflicted. If the basis of the offense is a medical offense, the medical officer's prosecution does not impede the possibility of exerting a claim on the part of the patient or his legal representatives of civil legal harm. The main factor of civil liability is the need to reimburse the damage.

The legal grounds for compensation for non-pecuniary damage suffered by a patient in the provision of medical care are: the Civil Code of Ukraine, the Law of Ukraine "On Consumer Rights Protection", Resolution of the Plenum of the Supreme Court of Ukraine dated March 31, 1995 "On judicial practice in cases of compensation for moral (non-proprietary) harm".

Article 23 of the Civil Code of Ukraine guarantees a person the right to compensation for moral damage inflicted as a result of violation of its rights, namely:

1. in the physical pain and suffering that an individual has suffered due to injury or other health damage;
2. in the emotional suffering that an individual has suffered due to the unlawful conduct of the individual, members of his family or close relatives;
3. in the emotional suffering that an individual has suffered in connection with the destruction or damage to his property;
4. in the humiliation of honor, dignity, and business reputation of a natural or legal person

III. The administrative responsibility of a health professional is a form of legal liability, which is to apply special sanctions (administrative penalties) to medical workers who have committed administrative misconduct.

The administrative liability arises for the offense committed in the field of public administration and specified in the Code of Ukraine on Administrative Violations (CUAV) in the field of public health.

The current CUAV defines the following types of administrative penalties (Article 23): warning, fine, deprivation of special right granted to a citizen, correctional work, administrative arrest and others.

IV. Disciplinary liability of healthcare workers occurs in violation of the requirements of labor legislation. The normative and legal basis for the disciplinary liability of medical workers consists of the Code of Labor Laws of Ukraine (hereinafter - Labor Code), the Law of Ukraine "On Occupational Safety and Health" and others.

Disciplinary liability of a healthcare worker is a separate legal liability, which occurs in the event of a breach of employment duties. It should be emphasized that it is precisely the violation of the labor duties of the healthcare worker. Moreover, if we consider these violations, then disciplinary responsibility is the least severe one.

It is important to point out that violations of labor legislation are indicated in the context of the rights and obligations of the employee to the employer in the job descriptions.

In this regard, the medical officer may be subject to disciplinary liability for failure to comply with any of the duties specified in the job descriptions. The following behavior (ie, actions or omissions) of an employee who is not in compliance with the Rules of the internal labor regulations is illegal, for example, late arriving at work, absenteeism, appearance at work in a state of intoxication. Equally illegal is the refusal to comply with the lawful order of the head of the health care institution (employer), non-compliance with the rules of work at the appropriate equipment, rules of storage of potent substances, as well as poisonous, narcotic substances, and others.

In labor law, there are two types of disciplinary punishment: reprimand and dismissal on appropriate grounds.