

KINDS OF RESPONSIBILITY OF MEDICAL STUFF FOR PROFESSIONAL CRIMES AND MISTAKES

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The article opens a subject of responsibility of health workers in professional activity, types of responsibility for professional offenses and crimes, also speaks about necessity of the unique medical code. Health and life of citizens are one of the basic elements protected by the Russian Constitution (article 41). Everyone has the right to health protection and medical care. Mistakes of health workers can lead to violation of the rights of citizens for health and life. The greatest harm to the patient and or his relatives brings violation of confidentiality of information on life and health of the patient mentioning its cultural and social wealth. It is information on sex change, existence incurable a disease, the facts from private life of the patient. Obligatory condition of responsibility for infliction of harm is the causal relationship between illegal behavior and the done harm. For example, if harm isn't a consequence of illegal behavior of the causer of harm, and has happened for other reasons, because of non-compliance with medical recommendations by the patient or owing to specific features of an organism of the patient, in the causer of harm there will be no duty to compensate harm.

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Professional activity of the health workers is based on three main concepts: professional training, professional ethics and professional legislation. Doctors and health workers receive professional skills in educational institutions of system of medical education. Ethical bases of a profession in process of studying of norms of medical ethics.[2] The international base of assessment of professional and moral qualities of health workers are such well-known documents as "Universal Declaration of Human Rights" (1948), "The declaration of the rights of the child" (1959), "The convention of the UN on the rights of the child" (1989), the Geneva declaration (1949), "The international code of medical ethics" (1949), "The convention on the rights and advantages of the person in connection with application of achievements of biology and medicine" (1996) which precisely and in detail state standards of professional medical morals.

Now the most vulnerable link is professional legislation. The main issue promoting emergence of the conflicts between doctors and patients is the lack of the accurate legislative base. The legislation of the Russian Federation defines the following types of responsibility of health workers for non-execution or inadequate execution of professional obligations:

- moral;
- disciplinary;
- material;
- civil;
- administrative;
- criminal.

The moral responsibility is such type of responsibility which comes at violation by health workers of moral and ethical standards and the principles and rules of conduct based on them

during performance of a professional duty. She comes at violation by health workers of the principles of ethics and medical ethics [6].

The disciplinary responsibility is such type of responsibility which comes at commission by workers of minor offense on the bases provided by the Labor Code of the Russian Federation. The labor legislation understands non-execution or inadequate execution by the worker as the concept "minor offence" through his fault of the labor duties assigned to him. For commission of minor offense the employer has the right to apply the following types of disciplinary punishments to the worker: reprimand; dismissal on the corresponding bases [3].

Administrative responsibility is a type of responsibility which comes at violation of the established state or public order, infringement of property, the rights and freedoms of citizens the existing order of management, etc.

This Code of the Russian Federation has regulated such questions as protection of the personality, protection of the rights and freedoms of the person and citizen, protection of public health, sanitary and epidemic wellbeing of the population, protection of public morality, environmental protection, an established order of implementation of the government, public order and public safety, property. Administrative offense involves administrative punishments which can be applied in such look as:

- prevention;
- administrative penalty;
- confiscation of the tool of commission of violation or subject;
- deprivation of the special right granted to the natural person;
- administrative detention;

– disqualification, etc. [4]

The liability of the parties can be concretized by the employment contract signed in writing or the agreements attached to it. The employer who has caused damage to property of the worker indemnifies this loss in full, and his size is estimated at market prices, acting in this area at the time of compensation of damage [3].

Civil responsibility is such type of responsibility which comes at violation of the established norms of civil law, non-execution or inadequate execution by the person of the duties with the legal consequences violating the subjective civil rights of other person. This responsibility consists in application to the offender (debtor) for the benefit of other person (creditor) or the state established by the law or the contract of corrective actions.

The civil legislation defines cases of emergence of civil responsibility and without fault when harm of life or to health of citizens is caused:

- a source of the increased danger;
- as a result of illegal condemnation of the citizen;
- illegal criminal prosecution;
- Dissemination of the data discrediting honor, advantage and business reputation, etc.[6]

Criminal liability – a type of responsibility which comes at commission by health workers of the guilty socially dangerous act forbidden by the Criminal code of the Russian Federation under the threat of punishment. To consequences of crimes against life and health the term “harm”, is applied to material consequences – “damage”.

Criminal liability comes for commission of crime with the signs defining socially dangerous act provided by the Criminal Code of the Russian Federation and characterized as crime. Crimes where the health worker can be the subject of crime:

1. Crimes of small gravity:
 - Office forgery (Art. 292 of the Criminal Code of the Russian Federation).
2. Moderately severe crimes:
 - Negligent homicide (Art. 109 of the Criminal Code of the Russian Federation);
 - Causing heavy or moderately severe harm to health on imprudence (Art. 118 of the Criminal Code of the Russian Federation);
 - Infection with HIV infection (Art. 122 of the Criminal Code of the Russian Federation);
 - Illegal production of abortion (Art. 123 of the Criminal Code of the Russian Federation);
 - Not assistance to the patient (Art. 124 of the Criminal Code of the Russian Federation);

– Substitution of the child (Art. 153 of the Criminal Code of the Russian Federation);

– Illegal private medical and pharmaceutical activity (Art. 235 of the Criminal Code of the Russian Federation);

– Negligence (Art. 293 of the Criminal Code of the Russian Federation).

3. Serious crimes:

– The illegal room in a psychiatric hospital (Art. 128 of the Criminal Code of the Russian Federation).

4. Especially serious crimes:

– Murder (including euthanizing) (Art. 105 of the Criminal Code of the Russian Federation);

– Deliberate causing heavy harm to health (Art. 111 of the Criminal Code of the Russian Federation);

– Taking of a bribe (Art. 290 of the Criminal Code of the Russian Federation).

In the long term, all sections Medical the code has to be compounded and completely correspond to other branches of the right: criminal, civil, labor, family, international. Creation of the medical code – Complex and multilevel work which performance considerably will facilitate professional activity of health workers will also be a guarantee of health of patients and also the basis for prosecution, both medical personnel, and patients.

Features of forensic medical examination in cases of involvement of health workers to criminal liability for professional offenses [5].

Cases on charge of health workers of cases of professional offenses usually arise: 1) according to the complaint of patients (or their relatives); 2) at the initiative of administration of treatment and prevention facilities.

In order to avoid insubstantial accusation of the doctor a certain order of initiation of legal proceedings at professional offenses of health workers is provided. As a rule, before initiation of legal proceedings upon the revealed gross blunders and defects of delivery of health care the departmental special commission for conducting office investigation at the level of regional, city and other higher body of health care is created.

Tasks of the commission: 1. comprehensive assessment of the organization and quality of delivery of health care and also date of a post mortal examination or medico-legal research; 2. registration of results of office investigation in the form of “Conclusion” in which deciding part the revealed short comings and errors of delivery of health care, the reason and a condition of their emergence, communication with a disease failure are specified; 3. the direction of materials of check (no later than 3 days after its end) in prosecutor’s office.

When an inspection is carried out upon the demand of prosecutor's office, term her shouldn't exceed one month. Originals of medical documents, written explanations of the health workers who have allowed violations are subject to transfer to prosecutor's office together with "Conclusion".

When obtaining results of office investigation the prosecutor decides on initiation of legal proceedings, and the investigator (at initiation of legal proceedings) issues the decree on purpose of forensic medical examination.

Forensic medical examination in such cases is carried out "commission" as a part of the forensic scientists and highly skilled doctors-clinical physicians having, as a rule, academic degrees and ranks or a long standing and experience.

Except "Conclusion" of departmental office investigation, all criminal case file, including original medical documents (cards out-patient and the inpatient, operational register, sick-lists, X-rays, electrocardiograms, etc.), and in case of death – the Conclusion of forensic medical examination of a corpse or the protocol of post mortal examination of a corpse and this all additional and laboratory researches is provided to medico-legal commission of experts.

Typical questions which are raised on permission of examination is the following:

- timeliness and correctness of diagnostics of the damages or diseases which are available for the patient;

- timeliness, completeness, correctness and efficiency of performing treatment.

In case of carrying out surgery:

- existence or lack of indications (absolute or relative);

- timeliness and correctness of technical performance of operation;

- correctness of preoperative preparation and postoperative maintaining patient;

- existence of defects in diagnostics and treatment of a trauma or disease;

- by whom specifically they were allowed; their reasons;

- a role and a causal relationship with the come adverse effects;

- correctness of maintaining medical documentation.

Except listed, on permission of commission of experts also other questions following from features of a concrete case can be raised.

According to the criminal procedure legislation the commission of experts can request additional materials, be present at interrogations of defendants and witnesses, to ask them through the investigator questions.

The health worker made responsible with the consent of the investigator has the right to be present at discussion of questions and answers, to specify details of the facts of the case, to raise additional questions on permission of commission of experts, to announce branch any of experts and to ask to designate other persons as experts.

It is also necessary to distinguish professional medical offenses and crimes and medical mistakes.

The main signs qualifying a medical mistake are: observance by health workers provided by the law and customs of rules of professional behavior. In medical practice situations when health or life of the patient can be kept meet or aren't kept depending on a number of subjective and objective factors. A problem of qualification of a medical error most often connect with such situations.

In medical literature several opinions on the concept "medical mistakes" are expressed. One experts consider that this "nonpunishable" conscientious delusion in the absence of negligence, negligence which has entailed deterioration in a condition of the patient or his death. According to other look the medical mistake is the wrong, negligent, unfair actions at delivery of health care.

From the legal point of view among medical errors the patient needs to distinguish illegal guilty acts of health workers and cases of infliction of harm in the absence of fault. Illegal, guilty acts are qualified as crimes or offenses and attract criminal, disciplinary, civil liability. If in infliction of harm health of the patient doesn't have fault of medical stuff, then there is no specific structure of offense also, so, there is no responsibility also. Thus, it is necessary to speak about existence of the subjective and objective reasons of mistakes at delivery of health care.

The subjective reasons of punishable medical mistakes which lead to infliction of harm to health of the patient or his death are, for example, inattentive or incomplete inspection of the patient, negligent performance of operations, inadequate assessment clinical and dates of laboratory, the wrong wording of the diagnosis, negligent care of the patient. They are made owing to imprudence or the insufficient level of knowledge.

Types of medical mistakes:

- 1) diagnostic (in recognition of diseases and their complications, viewing or the wrong diagnosis of a disease or a complication);

- 2) medical and tactical (are as a result of diagnostic mistakes);

3) technical (miscalculations in carrying out diagnostic and medical manipulations, procedures, techniques, operations);

4) organizational (disadvantages of the organization of these or those types of a medical care, necessary operating conditions of this or that service);

5) deontological (in behavior of the doctor, his communication with patients and their relatives, an average and junior medical staff);

6) mistakes in filling of medical documentation (obscure, inexact records of operations, the wrong maintaining the diary of the postoperative period, an extract at the direction of the patient in other medical institution) [7].

Harm can be done to the patient by any employee of healthcare institution which provided it a medical care. Definition of negligence of personnel can be simple in some affairs, but in others to give the correct qualification happens very difficult. Often there is a question: who bears responsibility from quite big stuff of clinic which can include the general practitioner, the consultant, other specialists of hospital and also junior medical staff.

Definition of a causal relationship between estimated negligence of staff which allegedly became the harm reason and harm can be also somewhat difficult. A claim can be submitted immediately against the doctor when there are bases to assume negligence from its party. If harm is done by the employee of healthcare institution, then the patient can use several opportunities for protection of the violated rights: to submit the statement of claim against the specific health worker from whom, according to him, harming, against medical institution or against both took place, attracting medico-prophylactic organization as the codefendant. In practice many claims are submitted against healthcare institutions.

The objective reasons of medical mistakes (atypical course of a disease, abnormal anatomic features of the patient, unexpected allergic reaction) though attract infliction of harm to health of the patient or his death, but don't attract legal responsibility.

Jurisprudence on the affairs bound to infliction of harm to the patient at delivery of

health care recognizes lack of fault of medical institution, medical personnel if the last didn't expect and couldn't expect that its actions will do harm to health of the patient.

Summing up the result, it should be noted the following. The main tasks of the state in the field of protection of public health:

- improvement of quality and increase in availability of medical care;

- implementation of the federal and territorial target programs aimed at providing sanitary and epidemiologic wellbeing of the population;

- creation of the economic and social conditions promoting decrease in prevalence of negative risk factors and reduction of their influence on the person.

Also health workers need not to forget about basic provisions from an swear of the doctor and about moral aspects of their professional activity, certainly, based on professional abilities, knowledge, skills and to be guided by base of the current legislation and knowledge of legal consequences of the actions or non-actions [1].

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