REVIEW ARTICLE

LEGAL CONFLICTS IN MEDICAL PRACTICE AND METHODS OF THEIR RESOLUTION

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ABSTRACT

The aim: A theoretical and applied study of the essence of legal conflicts in the field of medical activity in order to determine the proper system of ways to protect the interests of patients, doctors and other participants in medical legal relations.

Materials and methods: Various methods of scientific knowledge make up the methodological basis of research. Thus, the comparative legal method was used to compare the features of the legal regulation of the rights protection of medical legal relations subjects in different countries. The essence and classification criteria of both legal conflicts and methods of protection in the field of medical activity were investigated with the help of a system-complex method. The following other methods were used in the study, in particular: formal-logical, dialectical, analysis and synthesis.

Conclusions: The classification of dispute resolution methods in the aspect of medical activity indicates the possibility of distinguishing non-jurisdictional (self-defense) and jurisdictional (special, administrative, judicial protection) forms of patients' rights protection, as well as distinguishing two levels of such protection (pre-trial and judicial), each of which has its distinctive features and the patient himself is able to determine in what way and by what level to protect his rights. An important role in the conflict resolution in the field of health care is primarily played by the pre-trial protection, the defining features of which are the voluntary nature of conflict resolution, the availability, convenience and speed of dispute resolution as well as the possibility of compensation for the damage caused

KEY WORDS: medical activity; health care; legal conflict; forms of patients' rights protection; pre-trial protection level

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INTRODUCTION

There is no doubt that the 21st century is characterized by the rapid development of medicine, regarding both the improvement of medical law norms and the application of modern methods of diagnosis and treatment. On the one hand, this contributes to improving the quality of medical care and creating the possibility of treating very complex diseases, while on the other hand, it does not prevent from arising the conflict situations in terms of providing such care.

THE AIM

The aim of the article wasa comprehensive theoretical and applied study of the essence of legal conflicts that arise in the field of health care, in order to determine the appropriate system of ways to protect the interests of patients, doctors and other participants in medical legal relations.

The issue of determining the essence of legal conflicts as well as procedures and mechanisms for protecting the participants' rights in medical legal relations was being studied by a number of scientists, including Y. Astaykina, S. Bobrovnyk, L. Bokeriya., R. Hryvtsova, O. Drozdova, O. Klymenko, R. Maidanyk, H. Mykhailova, O. Mostovenko, T. Semina, R. Stefanchuk, S. Stetsenko, Y. Shvets, E. Shcheglov and others. At the same time, a comprehensive study of the legal nature of conflicts in the field of medical activity and methods of their resolution was virtually disregarded by the scientists.

MATERIALS AND METHODS

Various methods of scientific knowledge make up the methodological basis of research. Hence, the comparative legal method was used to compare the features of the legal regulation of the rights protection of medical legal relations subjects in different countries. The essence and classification criteria of both legal conflicts and methods of protection in the field of medical activity were investigated with the help of the system-complex method. The following other methods were used in the study, in particular: formal-logical, dialectical, analysis and synthesis.

REVIEW AND DISCUSSION

LEGAL CONFLICT AS A BASIS FOR THE PROTECTION OF SUBJECTS OF MEDICAL LEGAL RELATIONS

Actually, one of the medical activity features is that such professional activity is inextricably linked with a sufficiently large number of potential reasons for patients to remain dissatisfied with the provision of medical care. E. Shcheglov and M. Smutok note that even the slightest deviation from the results expected by the patient can affect the occurrence of a conflict situation, and when it comes to life and health, human consciousness and emotions are in a special state [1]. At the same time, it is necessary to take into account the fact that the doctor's profession is related to medical intervention, the peculiarity of the human body reactions, various manifestations of disease course, the problem of correct and timely diagnosis, etc., and therefore, objectively, the doctor cannot always foresee and do everything [2]. All this indicates an increased possibility of conflict occurrence during the medical care provision, which acquire a special, social significance.

Aiming to reveal the essence of the legal conflict itself as a basis for the protection of medical legal relations subject, it is necessary to pay attention to such an aspect as the protection of the doctor's honour and business reputation. This necessity is due to the fact that the profession of a doctor in recent years has increasingly become the object of social and legal control by society, taking into account, foremost, the rapid increase in the number of claims against medical institutions and doctors, as well as the number of criminal and civil cases initiated in connection with failure to provide or improper provision of medical care [3]. This shows that the legal conflict occurrence in the aspect of medical activity is the basis for the human rights protection in the field of health care not only in relation to patients, but to doctors and other participants in medical legal relations as well.

It should be noted that there is no unified understanding of the concept of "legal conflict" among scientists, however most of them adhere to the viewpoint that such a conflict, which is a type of social conflict, represents a certain confrontation regarding the interests, needs, and views of several subjects. Moreover, a number of such scientists, revealing the essence of the definition of this concept, pay attention to both its negative and positive features [4], pointing out that a legal conflict: can have a positive effect on the process of changing the legal reality, and, accordingly, inhibit or stimulate (be a driving force) social or state transformations [5], be a form of improving society, which enables people to gain experience not only of a negative, but of a positive nature as well (the ability to recognize the nature of conflict, the ability to manage it, and most importantly, to have conflict resolution mechanisms) [6].

Legal conflict must be considered as a dynamic process, and its occurrence and existence requires the presence of the following components: preconditions for the occurrence of a legally significant conflict situation; the existence of a legal conflict situation itself; and actions carried out by one of the parties to defend their interests (the direct content of the conflict), which makes it possible to classify such conflicts according to different criteria. Therefore, researching the types of legal conflicts, Y.O. Astaykina and O.M. Khokhlov come to the conclusion that the most accurate is the classification of these conflicts by law, since conflicts are possible in all spheres of life in society, and mostly conflicts arise from issues related to such spheres as labour, family, civil, administrative, financial, criminal, criminal procedure law, etc [7].

An important place among such conflicts is occupied by legal conflicts in the sphere of rights protection of medical legal relations subjects. The possibility of a legal conflict in the field of medical activity is due to the fact that the purpose of the contract for providing medical services is the provision of a service itself, and not the achievement of the recovery result [8], which is very often forgotten by patients, first of all, in the case when, as a result of providing such services, there was no improvement in their health condition. As rightly noted by O.S. Mostovenko, in practice, the object of legal relations for a doctor is the process of providing medical care (services), while for patients, it is their health, and sometimes their life (sometimes the patient forgets that the medical worker is not responsible for the onset of the patient's illness, and is not aware of the fact that doctors cannot guarantee one hundred percent recovery or improvement in the quality of life, regardless of the country where medical care will be provided, its cost, years of experience of the doctor himself) [9]. Unfortunately, in many cases, a medical error is a precondition for a legal conflict in the field of medical activity. Thus, according to scientists, there is no country where medical errors do not occur, just as there is no single universally accepted definition of such an error, and statistics show that up to 70,000 people die from errors of medical personnel in Great Britain every year, in Italy – about 90 thousand, in the USA – 50-100 thousand people, where, in addition, almost every tenth doctor becomes the object of legal claims from a former patient. In Germany, up to 100,000 cases of incorrect diagnosis of the disease, wrong prescription

of drugs as well as surgical and interventional care are detected annually [3]. A certain precondition for the increase in the number of legal conflicts in the field of medical activity was the increase in the legal literacy of the population in recent years, as a result of which the number of complaints from patients and their relatives, who apply for the protection of their rights, has significantly increased [10].

Having studied the preconditions for the occurrence of legal conflicts in the field of medical activity, it is necessary to reveal their essence, as well as the criteria for the classification of their types. Widespread in the literature is the point of view according to which a conflict in the field of medical activity should be understood as an open confrontation between subjects of legal relations in the field of medical activity, connected with their realization of interests of a mutually exclusive nature, while physical (patient, private doctor) and legal entities (medical institution, health care management body) can act as subjects of a legal conflict in medicine [11]. Other scientists hold an almost identical point of view [12].

Elucidation of the essence of legal conflicts in the field of medical activity is primarily aimed at preventing the occurrence of conflict situations or at mitigating their consequences and ending them. Investigating this question, H.L. Mykhailova rightly points out that, on the one hand, the most effective method of preventing conflict situations related to the provision of medical services is their prevention and resolution at an early stage of development (for this purpose, specialized state and non-state institutions are created) [13], and on the other hand, it requires the existence of an extensive system that will allow the specific features of consideration and resolution of disputes in the field of medical activity, taking into account all their diversity. The proper functioning of the relevant system would contribute not only to the consideration and resolution of conflict situations at the stages of their origin and development, but also to the accelerated process of restoration of violated rights in the field of health care. This necessity is due to the fact that preventing the occurrence of conflict situations will definitely contribute to the improvement of the relationship between the doctor and the patient, which will have a positive effect on the outcome of treatment and will prevent the spread of a negative attitude towards medicine in general, which is becoming threatening.

The variety of disputes that may arise in the field of medical activity implies the possibility of the existence of different criteria for the classification of legal conflicts. Therefore, according to scientists, the classification of legal conflicts in the field of medical activity should be carried out according to several criteria, namely: depending on the subject of legal regulation (administrative-legal, criminal-legal, civil-legal, etc.); by duration (short-term; long-term); and depending on the theoretical features of the legal conflict and the practice of providing medical care (legitimate, i.e., those arising from legal relations during the medical care provision, and illegal – those arising from offenses during the provision of medical care) [14].

The existence of a significant number of disputes in the field of medical activity as well as criteria for the classification of relevant legal conflicts also implies the existence of an extensive system of ways for resolving such conflicts, which necessitates the study of procedures and mechanisms for the rights protection of medical legal relations subjects.

The need for the existence of such an extensive system of ways to resolve legal conflicts between medical legal relations subjects is due to the fact that, on the one hand, a person, his life and health are recognized as the highest social value, and on the other hand, when performing medical activities, in particular, as regards provision of medical services (especially paid ones), as rightly noted by O.V. Klymenko, there is always a possibility of dissatisfaction with their quality, and, therefore, a mechanism for handling complaints, disputes and conflicts must be provided (in the aspect of health care, due to the delicacy of this sphere, the effectiveness of such a mechanism is doubly important) [15].

In the legal literature, there is no single approach to defining the procedure and mechanisms for protecting the rights of medical legal relations subjects, and scientists cite various ways of protecting such rights and criteria for their classification. The most widespread is the criterion of classification depending on the entity to which the medical legal relations participants turn for the protection of their violated rights and interests, according to which the forms of human rights protection in the field of health care are divided into non-jurisdictional (self-defense; alternative conflict resolution; assistance of independent public associations and appeals to professional medical associations) and jurisdiction [16], within which it is necessary to allocate: 1) judicial, namely the human rights protection in the field of health care in civil, criminal, administrative and constitutional proceedings; 2) extrajudicial: administrative form of human rights protection in the field of health care; appeal to the prosecutor's office; appeal to internal affairs bodies; appeal to the Commissioner of the Verkhovna Rada of Ukraine for human rights [12].

A slightly different approach is followed by O.V. Rozhon and A.M. Ustinchenko, who divide the methods of resolving disputes in medical legal relations into tra-

ditional (judicial and extrajudicial (appeal to the head of the medical institution (oral and written); appeal to the health care management body; assistance of independent public organizations and professional associations; complaint to the prosecutor's office and others)) and alternative (being popular and widely used in Europe, the USA, Canada, Australia), which primarily include: negotiations; mediation; arbitration [12].

There are other criteria for the classification of dispute resolution methods in the aspect of medical activity in the legal literature. Thus, O.V. Drozdova indicates the possibility of selection of preventive and suppressive measures (aimed at suspending an action that violates the patients' rights); restorative (aimed at restoring the patients' rights); compensatory (compensation for property and moral damage) [18] methods, while the means of protection are as follows: the patient's appeal to the ombudsman, non-governmental organizations, the mediator, the arbitration court; submitting a complaint to the relevant body in an administrative procedure; a claim to a court of general jurisdiction and an appeal to the European Court of Human Rights [19].

This makes it possible to come to a conclusion about the possibility of distinguishing non-jurisdictional (self-defense) and jurisdictional (special, administrative, judicial protection) forms of patients' rights protection, as well as distinguishing two levels of such protection (pre-trial and judicial), each of which has its own distinctive features and the patient has the right to determine himself in what way and by what level to protect his rights.

PRE-TRIAL LEVEL OF PROTECTION OF THE RIGHTS OF SUBJECTS OF MEDICAL LEGAL RELATIONS

An important role in the conflict resolution in the field of health care is primarily played by the pre-trial protection, the defining feature of which is the voluntary nature of the conflict resolution (voluntary recognition by the guilty party of the violations committed by it and compensation for the damage caused to the patient) [20], and which is simpler and more accessible (compared to a judicial one) [21], as it is less costly in terms of time and financial resources [22], as well as more convenient (does not require special knowledge) and an effective method for dispute resolution and the possibility of damage compensation without bureaucracy (it is sometimes more profitable for medical institutions to compensate materially caused damage than to enter into a legal process, which, in addition to the so-called "drag", will also have a negative impact on the reputation of the health care institution) [9].

The pre-trial level of the rights protection of medical legal relations subjects is widespread in law enforcement practice and is characterized by the availability of a significant number of ways for its implementation. Analyzing this level of protection, the viewpoint of S.B. Buletsa deserves attention. The scientist indicates the following options: appeal to the head of the medical institution (oral and written); appeal to the higher health management body; appeal to the ethical council, if there is one; seeking help from independent public associations and professional associations; application to the licensing and accreditation commission; filing a complaint with the prosecutor's office; mediation [23], as well as singles out such a method as no-fault compensation system (pre-trial compensation without fault, which takes place in Sweden (a special insurance fund is created at the expense of monthly contributions from commercial medical enterprises and private practitioners), Scotland, Finland, Denmark, New Zealand and in some US states, and it is a no-fault compensation system where patients suffering from post-treatment disability do not go to court to receive compensation) [24].

Without diminishing the role of each of the specified methods, in our opinion, an important role is played by the activity of medical arbitrations (commissions) and the proper functioning of medical self-governance, in particular in the aspect of preventing rights violation of both patients and doctors. Thus, O.V. Klymenko draws attention to the essential role of medical arbitrations (commissions), pointing above all to the example of the USA, where medical arbitrations function on the basis of the Rules of Commercial Arbitration in compliance with the law and taking into account the basic rights and freedoms of a person and a patient [15], as well as the existence of medical arbitrations association. The experience of Austria (medical commissions operate on the basis of a statute or a provision adopted in accordance with the resolution of the Chamber of Physicians and the National Medical Association) and Germany (where the first Medical Arbitration Commission was created back in 1975) [25] is also positive. Along with medical arbitrations (commissions), the activity of independent institutions on medical ethics matters is also important (following France, which was the first to create the National Committee on Medical Ethics, similar committees were created in Italy and Denmark, and now such institutions exist in almost all countries of Europe (Hungary, Slovakia, the Czech Republic, etc.). Committees on ethics are created in medical institutions as an alternative to judicial review of decisions of a medical institution, which have an ethical, moral and legal nature [26]. According to S. B. Buletsa, the advantage

of the activity of such a committee in Hungary is that every hospital has representatives of patients' rights, and their task is to help patients in studying their rights, writing complaints, informing medical workers about patients' rights violation, while such a representative is not in an employment relationship with the hospital as well as health care administration, and therefore he is an independent person and this contributes to the correct resolution of controversial issues between the patient and the doctor [24].

In order to protect the patients' rights, in particular those who are characterized by increased vulnerability (for example, in need of compulsory psychiatric care, are incapacitated, etc.), an important role is played by the medico-legal partnership. Positive in this case is the experience of the USA, where such a partnership is developing at a wide pace (today, according to the National Center for Medical-Legal Partnerships, there are more than 300 medical-legal partnerships in 46 states), whose activities are aimed at improving the health and well-being of low-income citizens and other vulnerable segments of the population by meeting their legal needs and promoting the elimination of legal barriers in the field of health care [27].

Along with the protection of patients' rights, an important role is also played by the availability of effective ways for protecting the doctors' rights. The proper functioning of medical self-government is important in this case. We agree that in those countries where membership in self-governing medical associations is mandatory, they have the right to decide on admission to the profession, disciplinary powers over a doctor, up to depriving him of the right to practice medicine (certainly, if there is for good reasons). At the same time, such associations take care of the legal support of the doctor (in cases where a civil suit is brought or criminal proceedings are opened, this is extremely important), given that "medical" cases are recognized worldwide as one of the most difficult categories of cases. Most foreign countries ensure the activity of self-governing organizations at the highest level (for example, in Switzerland, Norway, Spain, Turkey, Bulgaria, Romania, Slovakia, Slovenia, Croatia, Montenegro, it is regulated by special laws, in Poland – by the Constitution of the country, while in Finland, the medical self-governing association performs the function of a medical trade union, i.e. it takes care of issues of protecting the doctors' rights to decent wages, working conditions, etc.) [28]. Medical self-government, apart from the countries of the European Community, is widespread in North and South America, South and East Asia, and a significant part of African countries, where there were adopted laws by which the state transferred regulatory functions in the management of the health care system to medical self-government as well as outlined the organizational principles of the doctors' professional activity [29].

The protection of the doctors' rights is primarily related to the fact that such institutions have professional lawyers (attorneys) who specialize in medical law, in particular in cases of medical errors [30]. The study of their legal status gave us the opportunity to come to the conclusion that a medical lawyer is a person who carries out professional activities related to the protection, representation and provision of other types of legal assistance to a client (in particular, a patient, a doctor, a medical institution, socially vulnerable segments of the population), that requires both the possession of medical knowledge (laws in the field of medicine, standards that regulate the ethical and professional behaviour of doctors, etc.), as well as his awareness of a number of other areas of law, which may also be the subject of lawsuits or other pretentious activities in the field of health care. Their professional activity is important both in the aspect of consulting their client (a patient of a medical institution) before starting to provide assistance, and in the context of protecting the rights and interests of the doctor (if considering the case of bringing the doctor to civil or criminal liability for medical malpractice committed by his mistake), and the medical institution as a whole (performance of "contractual work", participation in pre-trial proceedings (including ethics committees), as well as in court procedures for the settlement of disputes arising between the medical organization and its clients, in particular patients and their relatives [31-33].

CONCLUSIONS

The peculiarity of medical activity is that such professional activity of doctors is characterized by an increased possibility of conflict occurrence during its implementation, which acquire a special social significance. This is due to the fact that such activity, despite the permanent improvement of the quality of medical care and the predominant use of modern methods for diagnosis and treatment, is inextricably linked with a sufficiently large number of potential reasons for patients to remain dissatisfied with the medical care provision. Therefore, the legal conflict occurrence in the aspect of medical activity is the basis for the human rights protection in the field of health care not only of patients, but of doctors and other participants in medical legal relations as well.

Legal conflict in the field of medical activity is a dynamic process, the origin and existence of which requires the need to study the preconditions for its occurrence, the essence of the conflict situation itself,

as well as its content (actions taken by participants to defend their rights and interests). Elucidation of the essence of legal conflicts in the field of medical activity is primarily aimed at preventing the occurrence of conflict situations, solving them at an early stage of development, or mitigating the possible consequences of such conflicts.

The availability of a significant number of disputes in the field of medical activity as well as criteria for the classification of relevant legal conflicts, requires the existence of an extensive system of conflict resolution methods between medical legal relations subjects, the proper functioning of which will contribute not only to the consideration and resolution of conflict situations at the stages of their nature and development, but also the accelerated process of restoration of violated rights in the field of health care, which, above all, will prevent the spread of a negative attitude towards medicine in general, which is becoming threatening.

The classification of dispute resolution methods in the aspect of medical activity indicates the possibility of distinguishing non-jurisdictional (self-defense) and jurisdictional (special, administrative, judicial protection) forms of patients' rights protection, as well as distinguishing two levels of such protection (pre-trial and judicial), each of which has its distinctive features and the patient himself is able to determine in what way and by what level to protect his rights. An important role in the conflict resolution in the field of health care is primarily played by the pre-trial protection, the defining features of which are the voluntary nature of conflict resolution, the availability, convenience and speed of dispute resolution as well as the possibility of compensation for the damage caused. This level of the rights protection of medical legal relations subjects is widespread in law enforcement practice and is characterized by the availability of a significant number of ways for its implementation, among which an important role is played by the activities of medical arbitrations (commissions), independent institutions on medical ethics, as well as the proper functioning of medical self-governance.

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