

# GEORGIAN MEDICAL NEWS

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ЕЖЕМЕСЯЧНЫЙ НАУЧНЫЙ ЖУРНАЛ

Медицинские новости Грузии  
საქართველოს სამედიცინო სიახლენი

# GEORGIAN MEDICAL NEWS

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გამოიცემა თბილისის სახელმწიფო სამედიცინო უნივერსიტეტთან  
თანამშრომლობითა და მისი პატრონაჟით

ЕЖЕМЕСЯЧНЫЙ НАУЧНЫЙ ЖУРНАЛ  
ТБИЛИСИ - НЬЮ-ЙОРК

**GMN: Georgian Medical News** is peer-reviewed, published monthly journal committed to promoting the science and art of medicine and the betterment of public health, published by the GMN Editorial Board and The International Academy of Sciences, Education, Industry and Arts (U.S.A.) since 1994. **GMN** carries original scientific articles on medicine, biology and pharmacy, which are of experimental, theoretical and practical character; publishes original research, reviews, commentaries, editorials, essays, medical news, and correspondence in English and Russian.

**GMN** is indexed in MEDLINE, SCOPUS, PubMed and VINITI Russian Academy of Sciences. The full text content is available through EBSCO databases.

**GMN: Медицинские новости Грузии** - ежемесячный рецензируемый научный журнал, издаётся Редакционной коллегией и Международной академией наук, образования, искусств и естествознания (IASEIA) США с 1994 года на русском и английском языках в целях поддержки медицинской науки и улучшения здравоохранения. В журнале публикуются оригинальные научные статьи в области медицины, биологии и фармации, статьи обзорного характера, научные сообщения, новости медицины и здравоохранения.

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**GMN: Georgian Medical News** – საქართველოს სამედიცინო სიახლენი – არის ყოველთვიური სამეცნიერო სამედიცინო რეცენზირებადი ჟურნალი, გამოიცემა 1994 წლიდან, წარმოადგენს სარედაქციო კოლეგიისა და აშშ-ის მეცნიერების, განათლების, ინდუსტრიის, ხელოვნებისა და ბუნებისმეტყველების საერთაშორისო აკადემიის ერთობლივ გამოცემას. GMN-ში რუსულ და ინგლისურ ენებზე ქვეყნდება ექსპერიმენტული, თეორიული და პრაქტიკული ხასიათის ორიგინალური სამეცნიერო სტატიები მედიცინის, ბიოლოგიისა და ფარმაციის სფეროში, მიმოხილვითი ხასიათის სტატიები.

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3. Submitted material must include a coverage of a topical subject, research methods, results, and review.

Authors of the scientific-research works must indicate the number of experimental biological species drawn in, list the employed methods of anesthetization and soporific means used during acute tests.

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2. სტატიის მოცულობა არ უნდა შეადგენდეს 10 გვერდზე ნაკლებს და 20 გვერდზე მეტს ლიტერატურის სიის და რეზიუმეების (ინგლისურ, რუსულ და ქართულ ენებზე) ჩათვლით.

3. სტატიაში საჭიროა გაშუქდეს: საკითხის აქტუალობა; კვლევის მიზანი; საკვლევი მასალა და გამოყენებული მეთოდები; მიღებული შედეგები და მათი განსჯა. ექსპერიმენტული ხასიათის სტატიების წარმოდგენისას ავტორებმა უნდა მიუთითონ საექსპერიმენტო ცხოველების სახეობა და რაოდენობა; გაუტკივარებისა და დაძინების მეთოდები (მწვავე ცდების პირობებში).

4. სტატიას თან უნდა ახლდეს რეზიუმე ინგლისურ, რუსულ და ქართულ ენებზე არანაკლებ ნახევარი გვერდის მოცულობისა (სათაურის, ავტორების, დაწესებულების მითითებით და უნდა შეიცავდეს შემდეგ განყოფილებებს: მიზანი, მასალა და მეთოდები, შედეგები და დასკვნები; ტექსტუალური ნაწილი არ უნდა იყოს 15 სტრიქონზე ნაკლები) და საკვანძო სიტყვების ჩამონათვალი (key words).

5. ცხრილები საჭიროა წარმოადგინოთ ნაბეჭდი სახით. ყველა ციფრული, შემაჯამებელი და პროცენტული მონაცემები უნდა შეესაბამებოდეს ტექსტში მოყვანილს.

6. ფოტოსურათები უნდა იყოს კონტრასტული; სურათები, ნახაზები, დიაგრამები - დასათაურებული, დანომრილი და სათანადო ადგილას ჩასმული. რენტგენოგრამების ფოტოასლები წარმოადგინეთ პოზიტიური გამოსახულებით **tiff** ფორმატში. მიკროფოტოსურათების წარწერებში საჭიროა მიუთითოთ ოკულარის ან ობიექტივის საშუალებით გადიდების ხარისხი, ანათალების შედეგის ან იმპრეგნაციის მეთოდი და აღნიშნოთ სურათის ზედა და ქვედა ნაწილები.

7. სამამულო ავტორების გვარები სტატიაში აღინიშნება ინიციალების თანდართვით, უცხოურისა – უცხოური ტრანსკრიპციით.

8. სტატიას თან უნდა ახლდეს ავტორის მიერ გამოყენებული სამამულო და უცხოური შრომების ბიბლიოგრაფიული სია (ბოლო 5-8 წლის სიღრმით). ანბანური წყობით წარმოდგენილ ბიბლიოგრაფიულ სიაში მიუთითეთ ჯერ სამამულო, შემდეგ უცხოელი ავტორები (გვარი, ინიციალები, სტატიის სათაური, ჟურნალის დასახელება, გამოცემის ადგილი, წელი, ჟურნალის №, პირველი და ბოლო გვერდები). მონოგრაფიის შემთხვევაში მიუთითეთ გამოცემის წელი, ადგილი და გვერდების საერთო რაოდენობა. ტექსტში კვადრატულ ფხიხლებში უნდა მიუთითოთ ავტორის შესაბამისი N ლიტერატურის სიის მიხედვით. მიზანშეწონილია, რომ ციტირებული წყაროების უმეტესი ნაწილი იყოს 5-6 წლის სიღრმის.

9. სტატიას თან უნდა ახლდეს: ა) დაწესებულების ან სამეცნიერო ხელმძღვანელის წარდგინება, დამოწმებული ხელმოწერითა და ბეჭდით; ბ) დარგის სპეციალისტის დამოწმებული რეცენზია, რომელშიც მითითებული იქნება საკითხის აქტუალობა, მასალის საკმაობა, მეთოდის სანდოობა, შედეგების სამეცნიერო-პრაქტიკული მნიშვნელობა.

10. სტატიის ბოლოს საჭიროა ყველა ავტორის ხელმოწერა, რომელთა რაოდენობა არ უნდა აღემატებოდეს 5-ს.

11. რედაქცია იტოვებს უფლებას შეასწოროს სტატია. ტექსტზე მუშაობა და შეჯერება ხდება საავტორო ორიგინალის მიხედვით.

12. დაუშვებელია რედაქციაში ისეთი სტატიის წარდგენა, რომელიც დასაბეჭდად წარდგენილი იყო სხვა რედაქციაში ან გამოქვეყნებული იყო სხვა გამოცემებში.

აღნიშნული წესების დარღვევის შემთხვევაში სტატიები არ განიხილება.



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## STATE OBLIGATIONS IN PROVISION OF THE PRIMARY PHYSICIAN'S RIGHT TO MEDICAL PRACTICE AS ENTREPRENEURSHIP IN LIGHT OF TRANSFORMATION OF THE HEALTH CARE SYSTEM IN UKRAINE

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Radical transformation of the health care system is being conducted nowadays in Ukraine [16]. Its main goal is to provide all Ukrainian citizens with equal access to quality healthcare services [17]. On March 30, 2018, the National Health Service of Ukraine was established as the central executive body that implements basic principle of medical reform namely “money goes after the patient”, so that the State pays for the cost of actually provided medical services. This payment mechanism is gradually replacing payment for every single place model used to exist in Ukraine [15]. The National Health Service of Ukraine enters into contracts with entities providing primary medical aid. They are: communal, private medical institutions, doctors being individual entrepreneurs providing primary medical aid. The National Health Service of Ukraine, on equal rights basis pays for the provision of guaranteed package of primary care services to all the above-mentioned entities having become partners of the Service. For the first four months of functioning the Service paid UAH 1.6 billion for provisions based on a single tariff.

To enter into agreement with the National Health Service of Ukraine and to receive costs from the budget for the provision of primary care to patients who have chosen their doctor are entitled to doctors practicing as individual entrepreneurs [6], implementing their right to this type of business activity in the field of health care as a general medical practice in accordance with the Article #42 of the Constitution of Ukraine [8]. As of April 2019, there are 107 physicians-entrepreneurs who are partners with the National Health Service in Ukraine. Together they provide primary health care services to nearly 100,000 patients, and receive income according the number of declarations signed with patients [6].

Public health and private interests must be respected when conducting business activities in the field of health care on general medical practice.

Thus, the doctor obtains entrepreneurial status and enters into agreement with the National Health Service of Ukraine to receive funds for the provision of primary health care to patients guaranteed by the state. At the same time, the doctor being an entrepreneur, carries out business activity at his own risk and is responsible for his obligations by all his property, including property acquired not in connection with the implementation of entrepreneurial activity. From the Parts 3-4 of the Article #42 of the Constitution of Ukraine it follows that the state must protect competition of business activities in the field of health care. Unlawful restriction of competition and unfair contest are not allowed.

No less important is that the state is to create conditions for effective and accessible health care for all citizens, which corresponds Part 3 of the Article #49 of the Constitution of Ukraine. Health care should be provided free of charge in public and community healthcare facilities. In addition, according to the Article #42 of the Constitution of Ukraine, it goes about that the state is obliged to control the quality of all types of medical services and provisions.

Therefore, in the relationship of the doctor as a sole proprietor who provides primary medical care to the patient and of the

state in the context of transformation of the health care system in Ukraine, where there is a question not only on the rights and duties of doctor and patient, but also being the matter of the state. It is well known, that according to the Article #3 of the Constitution of Ukraine the assertion and protection of human and citizen rights and freedoms is the main responsibility of the state. There is no exception that the state has the obligation to ensure the right of physicians being entrepreneurs providing primary health care. In the context of thorough reform of the health care system in Ukraine, the issue of maintaining fair balance between private and public interests becomes crucial.

The purpose of this article is to identify the responsibilities of the state to ensure the right of a physician-entrepreneur providing primary medical aid to carry out this type of entrepreneurial activity in the field of health care as a general medical practice in the light of the transformation of the health care system in Ukraine.

*Research methods.* The methodological basis of the conducted research is the general methods of scientific cognitivism as well as concerning those used in legal science: methods of analysis and synthesis, formal logic, comparative law etc.

Currently, under the Convention for the Protection of Human Rights and Fundamental Freedoms [7], the right to perform entrepreneurial activity is the structural element of property rights that is attributed to the second generation of universally recognized human rights, therefore being protected unreservedly to its recognition within a particular jurisdiction. In this sense, it was enshrined in the Article #17 of the Universal Declaration of Human Rights in 1948 [2], which corresponds to Parts V and D of the Article #5 of the Convention on Liquidation of All Forms of Racial Discrimination [9]. Within the framework of the European Regional Human Rights Protection System, Article #1 of the Protocol 1 to the Convention on the Protection of Rights and Fundamental Freedoms (1950) can be distinguished. The logic of the provision of this norm is clearly reflected by the European Court of Human Rights in “Sporrong and Lönnrot vs. Sweden”, where the Article contains three separate regulations. The first of general norms proclaims the principle of peaceful possession of property; the second rule refers to cases of deprivation of property and subordinates it to certain conditions being placed into the second sentence of Part one. The third norm recognizes that countries have the right, in particular, to control the use of property in accordance with the common interest by introducing laws which they consider necessary for the purpose; this provision is in the Part two [13].

The main normative indication of the first Clause of the Article under review is the consolidation of substantive law of the possible widest content of the object and subject composition. The second Clause provides procedural safeguards that protect the sphere of freedom of peaceful possession of property, so the first part of the analyzed norm is fully dedicated to defining the subjective right of a person, and finally the third Clause that reflects sovereign right of the state to regulate property relations, i. e. already connected with the actual right, which, however, should not contradict the subjective right of a person for peace-

ful possession of his property. That is why, when applying the second part of the analyzed norms, the key jurisdiction fact to be determined by the European Court of Human Rights is to keep to fair balance between private and public interests.

It is the duty of the state to establish effective regulatory and organizational mechanisms to secure the right of a doctor being individual-entrepreneur providing primary medical care in order to carry out this type of business activity in the field of health care as a general medical practice.

As it is noted above, the right for business activity is enshrined in the Article #42 of the Constitution of Ukraine. The Commercial Code of Ukraine [1] establishes, in accordance with the Constitution of Ukraine, the legal bases of economic activity, which grounds on the diversity of economic entities of different forms of ownership.

The Verkhovna Rada of Ukraine (the Parliament of Ukraine) adopted the Law of Ukraine “On State Registration of Legal Entities, Individuals-Entrepreneurs and Public Formations” dated May 15, 2003 [3]. On the basis of the Constitution of Ukraine and this Law, Ukraine has adopted other normative legal acts that regulate relations that arise in the sphere of state registration. The doctor is supposed submit to the center of administrative services the following documents: passport, individual tax number, application stating the code of economic activities – “General medical practice” (86.21) [4]. Usually, the next day a certificate of entrepreneur on state registration is issued to the doctor. After that, the doctor as an entrepreneur is registered with the tax authorities. The doctor is supposed to be provided with the place for medical practice. It must meet the requirements of the State Building Norms of Ukraine “Buildings and Structures. DBN Healthcare Facilities B.2.2-10-2001” and Established Sanitary Standards. Also, the doctor as an entrepreneur is provided with equipment in accordance with the Model of logistical equipment of health care institutions and entrepreneurs providing primary medical care (Order of the Ministry of Healthcare of Ukraine dated 26.01.2018 #148).

Article #12 of the Commercial Code of Ukraine establishes the means of state regulation of economic activity, including the sphere of healthcare: state order; licensing, patenting and quotas; technical regulation; application of standards and limits; regulation of prices and tariffs; provision of investment, tax and other privileges; providing grants, compensations, targeted innovations and subsidies. The conditions, volumes, spheres and procedure of application of certain types of state regulation of economic activity in the sphere of healthcare are determined by the Commercial Code of Ukraine, other legislative acts of Ukraine, as well as programs of economic and social development.

According to Article #12 of the Commercial Code of Ukraine, licensing is the means of state regulation in the field of economy aimed at ensuring unified state policy in this sphere and protecting economic and social interests of the state, society and particular consumers. Relationships in regards of licensing of medical practice are regulated by the Law of Ukraine “On Licensing of Certain Types of Business Activities” [5]. Individuals-entrepreneurs who provide primary health care are subject to be licensed.

The Cabinet of Ministers of Ukraine approved the Licensing Conditions for conducting business activities in medical practice (resolution of March 28, 2016 No. 285 [11]). The license conditions set the organizational, personnel and technological requirements for the licensee’s material and technical base, which are obligatory for performing in the course of conducting business

activity in medical practice, and also defines an exhaustive list of documents that are appended to the application for obtaining a license for conducting business activity in medical practice. The license is issued by the Ministry of Healthcare of Ukraine.

Property rights are protected when the property exists. Taking into account comparatively broad interpretation of the concept of “property”, which covers both physical objects and assets, in the case-law of the European Court of Human Rights to delineate the boundaries of the distribution by individuals of their legal requirements for tangible or intangible objects, which is essential to prove “legitimate anticipation” or “legitimate expectation” [10].

The doctor being individual-entrepreneur providing primary medical care is subject to register in the electronic healthcare system. The physician is to select and to install medical information system and register himself as a doctor in this system. Only then the doctor being an individual-entrepreneur can sign declarations with patients. This is to be done on electronic healthcare system. In order to receive costs for the services provided it is necessary to sign contract with the National Health Service. This can be done at any time [15]. The money for the signed declarations under the contract with the National Health Service of Ukraine goes directly to the bank account of the doctor (individual-entrepreneur). Along with it the state is obliged to transfer funds to the doctor. Despite the fact that the concept of “legitimate anticipation” often refers to payments by the state, which may vary depending on economic and social policy in each specific area, nevertheless the European Court of Human Rights gives the following substantiation in support of its position: “when the essence of a person’s claim is related to the property right, the person to whom it is granted may be considered to have “legitimate anticipation”, if there is sufficient basis for such a right is approved in national law. As it is stated in the resolution of the European Court of Human Rights in the case “Kopetsky vs. Slovakia”, the concept of “legitimate anticipation” as it should be more specific than being a mere hope, and of course it should be based on legitimate provision or legal act like a court decision [12].

There are some basic law in Ukraine: Laws of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Improving Legislation on the Activities of Health Care Institutions” of 06/04/2017 # 2002; “On State Financial Guarantees for the Provision of Medical Services and Medicines” dated 19.10.2017 No. 2168-VIII; “On Improving the Availability and Quality of Health Care in Rural Areas” of 14.11.2017 No. 2206-VIII; «On Amendments to the Budget Code of Ukraine» dated 07.12.2017 № 2233-VIII; Resolutions of the Cabinet of Ministers of Ukraine: “On Approval of the Order of Establishing Hospital Districts” of 9/9/2016 # 932; “Some Issues of Implementation of the Pilot Project on Changing the Financing Mechanism for the Provision of Medical Assistance in Selected Research Institutions of the National Academy of Medical Sciences” of 14.06.2017 #425; “On Approval of the Methodology for Calculating the Cost of Medical Services” dated 27.12.2017 No. 1075; “On the Establishment of the National Health Service of Ukraine” dated 27.12.2017 No. 1101; «On Amendments to Annex 2 to the Licensing Conditions for Conducting Business Activities in Medical Practice» of December 27, 2017 No. 1105; «On Amendments to Annex 1 to the Resolution of the Cabinet of Ministers of Ukraine of April 5, 2014 No. 85» of March 28, 2018 No. 270; “Some Issues of the Public Health Board on the National Health Service” of March 28, 2018 # 271; “On Approving the Procedure of Using the Funds Provided in the State



Budget for the Provision of Primary Health Care to the Population” of March 28, 2018 No. 283; «On approval of requirements to the provider of public health services, with which the main administrative distributive bodies enter into contracts on medical care of the population» of March 28, 2018 No. 391; “On Approval of the Procedure for Implementation of State Guarantees of Public Health Care under the Program of Medical Guarantees for Primary Care for 2018” of April 25, 2018 No. 407; “On Some Issues Regarding Health Care Contracts Under the Health Guarantee Program” of April 25, 2018 # 411; “On Some E-Health Issues” of April 25, 2018, No. 411, and others; Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Concept of Health Care Financing Reform” of 30.11.2016 #1013-p; “On Approval of the Concept of Reforming the Mechanisms of Public Procurement of Medicines and Medical Devices” of 23.08.2017 #582-p; “On Approval of the Action Plan for the Implementation of the Healthcare Financing System Reform Concept for the Period up to 2020” dated 15.11.2017 #-p. etc.; Orders of the Ministry of Healthcare of Ukraine: “On testing of components of the electronic system of exchange of medical information necessary for launching a new model of financing at the primary level of providing medical care” dated 07.09.2017 No. 1060; «On Amendments to the Order of the Ministry of Healthcare of Ukraine of September 7, 2017 #1060» of March 7, 2018 # 461; “On Approval of the Procedure for Choosing Primary Care Doctor and Forms of Declaration on Choosing Primary Care Doctor” dated 19.03.2018 #503; “On Approval of the Procedure for Primary Care Assistance” dated 19.03.2018 #504 and others.

Therefore, the National Health Service of Ukraine is obliged to transfer to the bank account of a physician-entrepreneur providing primary care, funds based on declarations signed with patients in order to provide a guaranteed package of primary medical care services for these patients.

The Ministry of Healthcare of Ukraine has approved the list of medical services that primary care physicians should provide (Order # 504, March 19, 2018). In addition to diagnosis, treatment, taking care after chronic patients and prevention of diseases, this list also includes a certain amount of research, vaccination on the calendar of vaccinations, prescribing for medicines and certificates, including sick leaves.

The doctor being individual-entrepreneur providing primary medical care can enter into an agreement with existing laboratories, to which he pays for the medical analysis. The payment is made from the funds received for the treatment of patients, since these costs are included in the capital rate. Prescription of medicines under the program “Affordable Medicines” can be prescribed by a doctor-entrepreneur providing primary medical care starting from April 1, 2019. The program is administered by the National Health Service of Ukraine. From now on, prescriptions for the program are written by doctors only on the electronic health care system using medical information system installed at the doctor’s office. To perform this there is to be an appropriate module supplied. It doesn’t matter where the patient lives and where the prescription was issued. A physician-entrepreneur providing primary medical care is supposed to be licensed by the Ministry of Healthcare of Ukraine; this doctor is quite the same treating physician as other doctors working at state and public healthcare institutions and, accordingly, has the same rights as others, including issuing sick leaves. The doctor-entrepreneur does not need state accreditation to issue sick leaves. A physician (including doctors-entrepreneurs) may issue a sick leave for the period of up to five calendar days, with a fur-

ther extension on up to ten calendar days. Doctors who provide medical assistance as sole proprietors may also prescribe vaccination. The Order #280 of the Ministry of Health of Ukraine of February 1, 2019 approved the corresponding changes to the “Regulations on the organization and carrying out of preventive vaccinations”. Medicines for preventive vaccinations, purchased at the costs of budget funds, are provided, among others, by individual-entrepreneurs having been licensed for the right to conduct business activities in medical practice and concluded contracts with the National Health Service of Ukraine, in accordance with the Order of the Ministry of Healthcare of Ukraine, dated 27 February 2019 #473 “On Approval of the Procedure for Distribution and Transfer of Immunobiological Medicines (Vaccines) and Medical Devices Used for Preventive Vaccinations”.

The taxation mode is varying significantly. Instead of the income tax on individual-entrepreneur of the third group usually chosen by doctors, they pay 5% of their total income. That is from any funds debited onto the account of the individual-entrepreneur a single tax is to be paid. The amount of a single social contribution is determined by the doctor-entrepreneur. Its minimum is 22% of the minimal salary. With this single social contribution, a minimum pension is accumulated by the doctor, and the amount of the single social compensation is calculated by the doctor for his being on a sick leave. The minimum single social contribution entails the calculation of sick leave from the minimum salary. If a doctor pays a larger single social contribution, he or she receives larger social protection.

Thus, in the most general form, the positive obligations of the state require from the national authorities introducing and taking up all reasonable and appropriate measures the guarantee of doctor’s right to be in business, its security, protection and implementation promoting in each case [14]. The European Court of Justice emphasizes that it does not matter whether substantive right under the Convention on Human Rights and Fundamental Freedoms is ensured by the positive obligations of the state or requires just non-interference within its implementation [14].

The state also has an obligation to establish legislative framework basis that includes proper court to allow doctors-entrepreneurs who claim that their rights are violated, to effectively assert their rights and exercise them. If the state does not do this, it will not fulfill its duty to defend the rule of law and prevent arbitrariness.

#### Conclusions.

1. It is established that the right to conduct entrepreneurial activity is a structural element of free peaceful possession of property in the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms. The first part of the Article #1 of Protocol 1 to the Convention norms is dedicated to the subjective right of a person; and just the third provision reflects sovereign right of the State to regulate property relations, that is being already linked to objective law. The aforementioned objective right must not be contrary to the subjective right of a person for peaceful possession of his property. It is emphasized because of when applying to the second part of the Article 1, Protocol 1 to the Convention, the key legal fact to be determined by the European Court of Human Rights is to maintain a fair balance between private and public interests.

2. The elements of the mechanism for ensuring the rights of doctors being individuals-entrepreneurs providing primary health care to carry out this type of business activity in the field of health care as a general medical practice have been specified: 1) subject - state; 2) norms of law, the functional purpose of which is the regulation of social relations arising when ex-

exercising general medical practice by a physician-entrepreneur providing primary health care; 3) legal acts, interpretative and legal acts, acts of application of norms of law; 4) legal facts; 5) the legal connection between the subjects of social relations that arise during the implementation of the general medical practice by a physician-entrepreneur providing primary health care; 6) regulatory and organizational and legal guarantees of ensuring the rights of individuals-entrepreneurs providing primary health care to carry out this type of business activity in the field of health care as a general medical practice. It is emphasized that the right of a doctor as individual-entrepreneur providing primary medical aid, that is to carry out general medical practice corresponds to the obligation of the state on effective provision of this right.

The system of state obligations for ensuring the right of doctors being individuals-entrepreneurs, that have become partners of the National Health Service of Ukraine, is to carry out this type of business activity in the field of health care as a general medical practice has been determined. It is grounded that the duty of the state is to provide effective legal and organizational lawful mechanisms to ensure the above-mentioned right of doctor-entrepreneur.

3. The conducted analysis has developed the concept of “legitimate anticipation” or “legitimate expectation” further, which often regards payments made by the state that depend on economic and social policies in each sphere. It is proved that a doctor-entrepreneur having become a partner of the National Health Service of Ukraine has a “legitimate anticipation” in order to be credited by the bank on the grounds of declarations signed with patients to provide package of primary health care services guaranteed to these patients. The state is obliged to provide such payments. If the payments fail to be provided, so the country’s economic, social or healthcare policy cannot be an excuse for the state, because there is sufficient basis for such a doctor’s right in national law, and no disputes as for the proper interpretation and application of national law.

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## SUMMARY

### STATE OBLIGATIONS IN PROVISION OF THE PRIMARY PHYSICIAN’S RIGHT TO MEDICAL PRACTICE AS ENTREPRENEURSHIP IN LIGHT OF TRANSFORMATION OF THE HEALTH CARE SYSTEM IN UKRAINE

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In the article issues of state obligations to ensure the right of a doctor-entrepreneur providing primary medical care to such a type of business activity in the healthcare sector as general medical practice are under study. The attention is focused on the fact that the relevance of the research of this issue is challenged by the lack of comprehensive theoretical investigations, as well as practical necessity in the light of the transformation of the healthcare system of Ukraine. Attention is drawn to the fact that in 2018 the National Health Service of Ukraine was established as the central executive body. The having existed model for paying for every single place in the hospital in Ukraine is being replaced by a new model for financing the health system. The National Health Service of Ukraine being the Budget distributor implements basic principle of the medical reform “*money goes after the patient*”. The commanding-administrative model of relations has been replaced by a contractual one: The National Health Service of Ukraine pays for the provision of guaranteed



package of primary medical care services along with medical institutions and doctors as individual-entrepreneurs having become partners of the Service. The purpose of the article is to identify the obligations of the state to ensure the right of a doctor being individual-entrepreneur providing primary medical care to carry out such a type of business activity in the healthcare sector as general medical practice in the light of the transformation of the Ukrainian healthcare system. The object of the study is social relations that arise when the state ensures the right of doctors-entrepreneurs providing primary medical care. The methodological basis of the study is the general and special methods of scientific knowledge (formal logical method, comparative legal, structural logical). The system of obligations of the state to ensure the right of doctors-entrepreneurs having become partners of the National Health Service of Ukraine carrying out such a type of business activity in the healthcare sector as general medical practice is determined. The legal and organizational mechanisms for ensuring this right are analyzed. The

assessment of their effectiveness is given. Attention is paid on the practice of the European Court of Human Rights, which is the source of law for member-states of the European Council. The concepts of “legitimate anticipation” or “legitimate expectation” are analyzed, which often relate to government payments that depend on economic and social policies in each sphere. It is argued that the doctor-entrepreneur having become a partner of the Service, has a “legal anticipation” so that funds should be transferred to his bank account on the basis of declarations signed with patients to provide them with a package of primary medical care services guaranteed to these patients. The state is obliged to provide such payments. If payments fail to be provided, the county’s economic, social, or health policy cannot be an excuse for the state.

**Keywords:** doctor, general medical practice, primary medical health care, entrepreneurship, the right for entrepreneurship, business activity in the healthcare sector, healthcare system, state obligations.

## РЕЗЮМЕ

### ОБЯЗАННОСТИ ГОСУДАРСТВА ПО ОБЕСПЕЧЕНИЮ ПРАВА НА ОСУЩЕСТВЛЕНИЕ ПРЕДПРИНИМАТЕЛЬСКОЙ ДЕЯТЕЛЬНОСТИ ПО МЕДИЦИНСКОЙ ПРАКТИКЕ ВРАЧОМ, ОКАЗЫВАЮЩИМ ПЕРВИЧНУЮ МЕДИЦИНСКУЮ ПОМОЩЬ, В СВЕТЕ ТРАНСФОРМАЦИИ СИСТЕМЫ ЗДРАВООХРАНЕНИЯ УКРАИНЫ

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В статье рассматривается вопрос обязанностей государства по обеспечению права врача – физического лица-предпринимателя, оказывающего первичную медицинскую помощь, на такой вид предпринимательской деятельности в сфере здравоохранения как общая медицинская практика. Акцентируется внимание на том, что актуальность исследования этого вопроса вызвана отсутствием комплексных теоретических разработок, а также практической необходимостью ввиду кардинальной трансформации системы здравоохранения Украины. Обращается внимание на то, что в 2018 году была создана Национальная служба здоровья Украины – центральный орган исполнительной власти. Существующая ранее в Украине модель оплаты койко-мест заменяется новой моделью финансирования системы здравоохранения. Распорядитель бюджетных средств – Национальная служба здоровья Украины – реализует основной принцип медицинской реформы «деньги идут за пациентом». На смену командно-административной модели отношений пришла контрактная: Национальная служба здоровья Украины оплачивает предоставление гарантированного пакета услуг первичной медицинской помощи наряду с медицинскими учреждениями и врачам – физическим лицам-предпринимателям, которые стали партнерами Службы. Цель исследования – определить обязанности государства по обеспечению права врача - физического лица-предпринимателя, который оказывает первичную медицинскую помощь, на осуществление такого вида предпринимательской деятельности в сфере здравоохранения как общая медицинская практика в свете трансформации системы здравоохранения Украины. Объектом исследования являются общественные отношения, возни-

кающие при обеспечении государством права врачей - физических лиц-предпринимателей, оказывающих первичную медицинскую помощь. Методологической основой проведенного исследования являются общие и специальные методы научного познания (формально-логический метод, сравнительно-правовой, структурно-логический). Определена система обязанностей государства по обеспечению права на осуществление такого вида предпринимательской деятельности в сфере здравоохранения, как общая медицинская практика, врачами - физическими лицами-предпринимателями, которые стали партнерами Национальной службы здоровья Украины. Проанализированы нормативно-правовой и организационно-правовой механизмы обеспечения данного права. Дана оценка их эффективности. Акцентировано внимание на практике Европейского суда по правам человека, которая является источником права в государствах-участниках Совета Европы. Проанализированы концепции «законного ожидания» или «правомерного ожидания», которые часто касаются проведения выплат государством, и которые зависят от экономической и социальной политики в каждой сфере. Аргументируется, что врач – физическое лицо-предприниматель, который стал партнером Службы, имеет «законное ожидание» на перечисление ему средств на банковский счет на основании подписанных с пациентами деклараций для предоставления гарантированного этим пациентам пакета услуг первичной медицинской помощи. Государство несет обязанность осуществлять такие выплаты. В случае неосуществления таких выплат – для государства не может служить оправданием государственная экономическая политика, социальная, или политика в сфере здравоохранения.

რეზიუმე

სახელმწიფოს ვალდებულებები პირველადი სამედიცინო დახმარების გამწვევი ექიმის მიერ სამედიცინო პრაქტიკის სამეწარმეო საქმიანობის განხორციელების უფლების დაცვის თვალსაზრისით, უკრაინის ჯანდაცვის სისტემის ტრანსფორმაციის შუქზე

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სტატიაში განხილულია სახელმწიფოს ვალდებულებები ექიმის – ფიზიკური პირი-მეწარმის მიერ პირველადი სამედიცინო დახმარების გაწვევის უფლების უზრუნველყოფასთან დაკავშირებით სამეწარმეო საქმიანობის ისეთ სახეობაზე ჯანდაცვაში, როგორცაა ზოგადი სამედიცინო პრაქტიკა. ყურადღება გამახვილებულია იმაზე, რომ ამ საკითხის კვლევის აქტუალობა განპირობებულია კომპლექსური თეორიული დამუშავებების არარსებობით, ასევე, საკითხის პრაქტიკული აუცილებლობით უკრაინის ჯანდაცვის სისტემის კარდინალურ ტრანსფორმაციასთან დაკავშირებით.

ჩატარებული კვლევის მეთოდოლოგიურ საფუძველს წარმოადგენდა სამეცნიერო შემეცნების ზოგადი და სპეციალური მეთოდები (ფორმალურ-ლოგიკური, შედარებით-სამართლებრივი, სტრუქტურულ-ლოგიკური). განსაზღვრულია სახელმწიფოს ვალდებულებების სისტემა უკრაინის ჯანმრთელობის ეროვნული სამ-

სახურის პარტნიორი ექიმების – ფიზიკური პირი-მეწარმეების მიერ პირველადი სამედიცინო დახმარების გაწვევის უფლების უზრუნველყოფასთან დაკავშირებით სამეწარმეო საქმიანობის ისეთ სახეობაზე ჯანდაცვაში, როგორცაა ზოგადი სამედიცინო პრაქტიკა. გაანალიზებულია აღნიშნული უფლების უზრუნველყოფის ნორმატიულ-სამართლებრივი და ორგანიზაციულ-სამართლებრივი მექანიზმები. შეფასებულია მათი ეფექტურობა. ყურადღება გამახვილებულია ადამიანის უფლებათა ევროპის სასამართლოს პრაქტიკაზე, რომელიც ევროპის საბჭოს წევრ-ქვეყნებში სამართლის წყაროს წარმოადგენს. გაანალიზებულია “კანონიერი მოლოდინის” ან “სამართლიანი მოლოდინის” კონცეფციები, რომლებიც ხშირად ეხება სახელ-მწიფოს მიერ გადახდების განხორციელებას და დამოკიდებულია ეკონომიკურ და სოციალურ პოლიტიკაზე თითოეულ სფეროში. არგუმენტირებულია, რომ ექიმს – ფიზიკურ პირს-მეწარმეს, რომელიც უკრაინის ჯანმრთელობის ეროვნული სამსახურის პარტნიორი გახდა, აქვს “კანონიერი მოლოდინი”, რომ მის საბანკო ანგარიშზე დაირიცხოს სახსრები პაციენტებთან გაფორმებული დეკლარაციის საფუძველზე, რომელიც პაციენტებს პირველადი სამედიცინო დახმარების მომსახურების პაკეტის მიღების გარანტიას აძლევს. სახელმწიფოს აქვს ვალდებულება, განახორციელოს ასეთი გადახდები. აღნიშნულის განუხორციელებლობა არ შეიძლება გამართლებული იქნეს სახელმწიფო ეკონომიკური, სოციალური პოლიტიკით, ან პოლიტიკით ჯანდაცვის სფეროში.

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