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UDC 347.155 (574)

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### **Problems and prospects of development of legal regulation of medical service in the Republic of Kazakhstan**

The article is devoted to the problems of legal regulation of medical service in the Republic of Kazakhstan in the modern time. The author examines current issues of healthcare quality and development prospects of the legislation on the healthcare. In the context of modernization of the existing legislation, the theme of the article is actual, and the study of these issues is timely.

*Key words:* patient, medical service, quality of medical care, expertise, insurance.

Providing patient's right to qualified medical care — the main goal of the state, which establishes norms, regulating relations arising on the provision of medical services. Until recently, the problems of legal regulation of medical services were studied partially and the prospects of development of legislation on

healthcare were rather indeterminate. For a long time, legislation which regulates medical services had a public law nature; declarative norms were aimed at providing the rights of the patient and they were not the constituent part of the civil law.

Occurred in Kazakhstan after the collapse of the USSR, the social, political and economical reforms, including the formation of priority of market economy, have had an impact on the medical services organization system. Existing in the past, a clear management hierarchy disintegrated with the collapse of the command-administrative system of governance. In an attempt to improve the efficiency of the healthcare system and increase the potential of the medical service branch, the state and its institutions have tried to change the system of organization, management and financing of healthcare. The absence of precise, elaborate and reasonable development strategy of the healthcare was among the many shortages and mistakes during the reformation of the healthcare system in the previous years. As a result, according to historical, political, social and economic determinants, the healthcare system of Kazakhstan had three models: the budgetary model, budget and insurance model, program budget model, with the elements of paid medical services at all stages of development.

The system of social and economic crisis of the 90th determined the reduction of many indicators of social health and healthcare. Experiencing the economic difficulties of the intermediate period, the national budget allocated for the national healthcare system less than 2 % [1; 45]. The underfunding of the healthcare led to reduction of medical organizations and workplaces, led to the aging of the material and technical base, led to reduction of equipment, instrumentation, products and tools for medical purposes. The total lack of medicines and dressings, insufficient supply of laboratories, the inability to provide a varied and balanced nutritional care of patients, low salaries of healthcare workers did not allow to reach the required level of quality and efficiency of medical service [1; 46].

The achievement of Kazakhstan of the path of sustainable economic growth and the macrostabilization formed a real ability to implement Art. 29 of the Constitution of the Republic of Kazakhstan (30 August 1995), which states:

1. Citizens of the Republic of Kazakhstan shall have the right to protection of health.
2. Citizens of the Republic shall be entitled to free, guaranteed, extensive medical assistance established by law.
3. Paid medical treatment shall be provided by state and private medical institutions as well as by persons engaged in private medical practice on the terms and according to the procedures stipulated by law.

The main social task and duty of the state became the strengthening of the state regulation and appropriate financial provision of guarantees in the sphere of public health.

Today Kazakhstan has all prerequisites, which are required for the development of legal regulation on the provision of medical services. Meanwhile, some representatives of national medical science consider that doctor-patient relationship should be regulated by ethical and moral norms, believing that the legislative regulation has a secondary role in medical professional part. Without denying the value of medical ethics, it must be emphasized that today the management of health and also the relations arising during medical healing directly between the patient and the doctor (medical institution) require in the legal regulation, because it affects the high-priority interests of citizens and society in general. Analysis of the current legislation, the study of theoretical and monographic sources of right in medicine, as well as the generalization of judicial practice in cases related to improper medical services lead to the necessity of further improvement of legal regulation of relations in the providing of medical services in relation to emerging legal issues.

The first and perhaps the most actual of these problems, in our opinion, is the solution of the question of responsibility of executors of medical services, which allows to take into account the interests of the executors of medical services and patients.

The increased responsibility for improper medical services can be imposed on executor, not only because of the rule of Art. 359 of the Civil Code of the Republic of Kazakhstan (The Grounds of Responsibility for Violating an Obligation), but also in accordance with Art. 947 of the Civil Code of the Republic of Kazakhstan, which provides the liability for damage to life and health of the person or as a result of defects of services, as well as due to inaccurate or incomplete information on the services; Art. 931 of the Civil Code of the Republic of Kazakhstan on responsibility for the damage caused by activity, creating greater danger to others. The using of X-ray machines, radon baths, cobalt guns, laser devices, ultrasonic devices, poisonous, narcotic, potent drugs, explosive and flammable medicines (ether and others), electrical current, medicines or medical technologies in implementation of medical experiments are considered to be the sources of high risk in the executors of healthcare activity.

Thus, the current legislation provides a range of exceptions to the general rule of responsibility on the basis of guilt by virtue of which the executors of medical services may be held responsible in the absence of fault in the improper performance of the obligation. This position of the legislator is often criticized. A number of scientists note that this approach «... the naturally followed an unfavorable outcome of the disease can terminate the responsibility for medical personnel,... the doctors who undertake treatment of the most seriously ill patients will be more responsible; there is a motivation for abandoning risky treatment, which creates the prerequisites to paralyze the initiative in providing emergency assistance» [2]. In our opinion, under current conditions increased responsibility for causing harm by the executors of medical services seems justified and meets the interests of patients. At the same time it is necessary to consider the interests of executors of medical services in cases when harm is caused by accident.

The optimal solution of the problem of increased responsibility of executors of medical services, which allows to take into account the interests of medical services executors and patients, is the use of the responsibility Insurance Institute of medical service executors'.

For that purpose the experience of foreign countries can be used, where it was established and was being successfully operated for a long time. The problem of professional responsibility insurance of medical institutions has been the subject of discussion in the literature for many years [3]. Seems not only advise but also necessary to study the experience of professional responsibility insurance of medical services executors in those countries, where this institution has been widely used and for the years of its use the dignity and disadvantages have been studied.

Along with the action of the insurance institution, the system of compensation of harm which was caused to life and health of the patient was developed in several countries. This system was originally introduced in New Zealand. Its use is based on the fact that in some cases, when harm to patients is not caused by the negligent actions of the medical personnel, and can be explained by unfavorable circumstances, unexpected reactions of the patient, and other unpredictable factors. Complaints of patients are considered by The Accident Compensation Corporation of New Zealand; if the Corporation finds out that there is no accident, and that those are responsible actions of the doctor, the patient can apply for compensation in the courts. Consequently, the compensation system is not a substitute for professional responsibility insurance for physicians, it complements professional responsibility insurance institute [4; 172].

A similar system operates in Sweden, Finland and Norway. There are statements about necessity of using foreign experience on this issue in Russia [5; 50].

The introduction of such system in practice of national healthcare should be considered justified and useful, as it is in the interests of patients and medical services executors.

One of the most actual issues of today, which is decided by the state, regulating relations in the sphere of social health, is the problem of providing quality of medical services.

Fact, that the quality of healthcare is under constant attention of the Head of the State Nursultan Nazarbayev, it was confirmed in his Address «Strategy» Kazakhstan-2050 «: New political course of the established state». Leader of the nation emphasized that «we are creating necessary conditions to ensure high-quality healthcare services in all regions of the country. As part of a long-term modernization of the national healthcare system we must introduce throughout the country unified standards of quality of medical services, improve and unify the material and technical equipment of medical institutions». [6] The President gave a precise instruction: «Set at the legislative level holding an international accreditation of medical high schools and institutions» [6].

The purpose of accreditation is ensuring continuous improvement of the social healthcare services' quality through the introduction of effective management and medical technologies in accordance with international approaches in the practice of medical institutions. The expected results of the participation of healthcare organizations in accreditation programs are increase of management efficiency, increase of planning and analysis activities, personnel's participating in solving of problems of medical institution, improving the structure of healthcare organizations (modernization of premises and communications, landscaping), improving the quality of medical documentation, reducing risks for patients in obtaining medical service. These aspects are included in the standards of accreditation and primarily in the self-assessment it identifies compliance or noncompliance with these requirements.

Committee of control of medical and pharmaceutical activity of the Ministry of Healthcare and Social Development of the Republic of Kazakhstan has held the accreditation of medical institutions since 2009, which was aimed at ensuring the safety and quality of medical services.

Further, it should be noted that the problems associated with imperfect mechanisms of medical services examination exist worldwide. Different countries have taken different approaches to the examination according to the peculiarities of national healthcare systems. However, nowadays there is no universal scheme that fully satisfies both sides — the patient and the medical services executor. In this regard, all the countries work continuously to improve the assessment of medical services' quality. Our country is no exception.

Since 2009, Kazakhstan has made the introduction of new mechanisms for quality examination of medical services. The first one relates to the activities of the internal audit service, which was established in all medical institutions according to the Code of the Republic of Kazakhstan On People's Health and Healthcare System. The aim of creating this service in medical organizations is ensuring the rights of patients to receive timely, qualitative and safe medical service in the required volume. Representatives of the internal audit service solve problems (complaints) of patients in optimal time (5 days) as they occur (Art. 58 of the Code of the Republic of Kazakhstan On People's Health and Healthcare System) [7]. In case of dissatisfaction with the quality of medical services, violations of the ethics principles and deontology, as well as the suggestions for improving the medical service execution, the patient can go to any of the members the internal audit service, information on which is placed open in the medical organization.

The mechanism of external examination of the medical services' quality has undergone a number of significant changes, which are connected with the creation of independent experts institute for objective assessment of quality of medical services provided to patients in the Republic of Kazakhstan.

However, despite this, the disputes about the quality of medical services today, as previously, are solved mainly with involvement of forensic medical experts. At the same time, answering these questions, experts often use terms, the exact meaning of which they do not know or assess the circumstances when such an assessment is not their competence or conversely they use such terms, the exact meaning of which is not always obvious to the parties.

The complexity of such cases related to the fact that the court has to evaluate very specific matters arising in the field, when the judges have almost no idea. In these circumstances, the forensic medical examination almost always decides the outcome of the dispute, so the quality of forensic medical examination becomes extremely important.

Nevertheless, patients, protecting the right to qualified medical services, point out at esprit de corps of the medical profession members, the uncertainty and inconsistency of expert opinions, which leads to the fact that one case is assigned to several forensic examinations and prolongation of trials on «medical affairs» for years.

Appeals of citizens for the independent examination promotes an objective assessment.

The establishment of independent experts institute in the Republic of Kazakhstan is aimed at the realization of the rights of patients and medical workers. Currently the association of independent experts successfully functions protecting the rights of patients associations, associations of people with various diseases (diabetic, oncological, cardiological, and others), professional NGOs. These institutions are actively involved in solving problems of arising social issues.

The registry of independent experts accredited in the established order was created on the site of the Ministry of Healthcare and Social Development of the Republic of Kazakhstan.

Independent experts may be involved in conducting of external and internal examinations as part of the internal audit service.

In order to comply the principles of the independence of the expert's examination, such as openness, objectivity and transparency, the experts are part of the Commission, which investigates people's complaints about the quality of medical services; experts conduct an examination of deaths for the volume of payment for services rendered; experts are involved in the examination of candidates' certification cases, who passes examinations for qualifying category, as well as the experts are part of the commission for the examination of specialists with higher and secondary medical education.

Insufficiently developed in our country, in our view, the prejudicial dispute resolution mechanism in cases related to citizens' medical services. Foreign experience shows that the function of the prejudicial disputes is executed by independent or neutral medical expert commissions, which analyze and handle the medical errors of professional associations of doctors, as well as so-called conciliation commissions, supported by consumer protection associations and physicians' associations. In Germany, approximately 90 % of the expert opinions of such commissions lead to prejudicial conflict solution [8; 34].

It should be emphasized that the problem of legal regulation of the quality of medical services is now one of the most debated and undeveloped problems; it needs a deep and comprehensive study with experts in

various fields (lawyers, economists, doctors, experts in healthcare management, etc.). In particular, it is necessary to develop the concepts of quality of medical services, determine drawback and significant drawback of medical services, as well as the consequences of the provision of medical services with drawback, determine patients' and the clients' rights in this situation.

The further improvement of the existing legislation on the healthcare is also associated with the solution of existing problems in the field of organs trafficking and tissues for transplantation, accessibility of new methods of reproductive technologies for needy patients, ensuring the rights of people with HIV, AIDS, alcoholism, drug addiction and others.

Obviously, that the healthcare system of the Republic of Kazakhstan needs further reformation. Among the directions of reformation is the conversion of the healthcare system on a market basis, the possible creation of a health insurance system, a precise division of free and paid medical care, etc. Experts agree that the market of paid medical services in Kazakhstan will develop dynamically, therefore, the role of medical services contract as the legal form of ensure the implementation of citizens' right to medical services will be increasingly growing.

In our view, Kazakhstan provides necessary basis for the development and the legal regulation of the provision of medical services. Much has been done to ensure the right of citizens to receive qualitative medical aid. However, some problems still exist, and further work on improving the efficiency of existing norms of medical service will contribute to their operative solution.

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### **Қазақстан Республикасында медициналық қызмет көрсетуді құқықтық реттеудің даму келешегі мен мәселелері**

Мақала қазіргі кезеңдегі Қазақстан Республикасында медициналық қызмет көрсетуді құқықтық реттеудің мәселелеріне арналған. Автормен медициналық қызмет көрсетудің сапасын қамтамасыз етудің өзекті сұрақтары және денсаулық сақтау туралы заңнаманың даму басымдықтары қарастырылған. Қолданыстағы заңнаманың жаңартылуы жағдайында мақаланың тақырыбы өзекті, ал көрсетілген мәселелерді зерттеуі заман талаптарына сай болып табылады.

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## Проблемы и перспективы развития правового регулирования медицинского обслуживания в Республике Казахстан

Статья посвящена проблемам правового регулирования медицинского обслуживания в Республике Казахстан в современный период. Автором рассматриваются актуальные вопросы обеспечения качества медицинского обслуживания и перспективы развития законодательства о здравоохранении. В условиях обновления действующего законодательства тема статьи представляется актуальной, а исследование указанных вопросов — своевременным.

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### The legal regulation of the purchase and sale agreement in the sphere of entrepreneurship

The article considers the conditions of ordering business relations, namely the legal conditions of sale and purchase, especially the implementation of constancy between entrepreneurship subjects. Conditions provide useful remedies that satisfy the interests of the involved subjects. Only the terms of payment achieve the impossible condition using administrative legal bodies, to guarantee the discipline, consistency and to organize in economic circles, for обеспечения of mutual interests based on legal regulations.

*Key words:* term, buying-selling terms, entrepreneurship, momentous rules, consumer, seller, buyer, businessman.

The concept of the subject has its origins in the legal Rome and today is many faces and entrenched notion. It is considered from three perspectives: emergence of legal relations, based on this it is the legal relations, and of course as the form of perception of the legal relations. In the Roman legal system the term includes two bases: firstly, conventio or consensus, and secondly, special contract basis in the form of specific purpose (causa) [1; 120].

In modern theory of law the term «term» (condition) is used in various basis. Namely, according to some authors, the term is, firstly, appearance, change and termination of relationship, namely, legal argument and, secondly, formation of these foundations are legal relationships themselves. According to other authors, the term is despite of legitimate data and contingent liability, it is a document proving securing binding of legal relationship.