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Protection of medical data in the provision of consumer services: a comparative analysis of some aspects of medical ethics in Kazakhstan and the European Union

The ethics of medical research and the confidentiality inherent in doctor-patient relationships and the proper handling of medical data are critically important issues in contemporary medical law across the globe, including Kazakhstan and the European Union. The provision of medical services is inevitably associated with the processing of a large amount of personal data, which is especially "sensitive" than in other areas of consumer services. At the same time, regulation of this issue only by norms on the provision of consumer services is unacceptable. The issue of privacy makes these services a special area that requires more subtle and "smart" regulation. The core tension in this domain arises from conflicting interests: patients seek absolute confidentiality to safeguard their dignity rights, while the broader public interest often necessitates the disclosure of this information for the collective benefit of humanity. Medical data is inherently sensitive and demands a meticulous approach, along with thoughtfully designed legislative frameworks. The European Union has achieved substantial advancements in this area, having developed a robust legal framework and foundational principles, which are explored in this article. Kazakhstan can draw upon this progress in personal data protection within consumer medical services as a valuable model. Medical ethics and confidentiality are multifaceted concepts that can be examined from various perspectives, ranging from philosophical viewpoints to their significant economic implications within the healthcare market. This article examines medical ethics and confidentiality through the lens of Kazakh and European law, highlighting their primary trajectories and evolving trends. The article concludes that the European perspective on medical privacy is among the most highly developed and sound approaches, offering a reliable framework for other legal systems worldwide.

Keywords: medical privacy, European law, Kazakh legislation, provision of consumer services, doctor-patient ethics, medical confidentiality, medical data, personal data, sensitive data, medical services.

Introduction

The provision of consumer services is often more or less related to the receipt, processing, and transfer of personal consumer data. At the same time, the legislation of most countries of the world has legislative acts on personal data or the like. However, there is a service sector that is fundamentally different from the rest — it is the field of medical services. Confidentiality stands as a paramount condition and fundamental principle within doctor-patient interactions. This principle is safeguarded by professional codes of conduct and the legal frameworks of nations globally. As articulated, "Without the assurance that a doctor or other health professional will not disclose confidential information given by a patient, some people may withhold important information about their medical conditions which they find embarrassing" [1]. The issue of personal data protection is currently a pressing global concern, and the Republic of Kazakhstan is no exception to this trend. Medical data, in particular, represents an exceptionally vital category of personal data, containing information that necessitates rigorous protection. The relevance of this research topic is underscored by the urgency of the problem, the widespread embrace of digitalization, and the persistent threat of data breaches.

The primary objective of this article is to conduct a comparative analysis of legislative provisions and practical measures employed to protect medical information in Kazakhstan and the European Union. The article meticulously analyzes the advancements made by European Union countries in this field, insights from which Kazakhstan may eventually integrate into its own legislation. Furthermore, the current measures and regulations in force within Kazakhstan have been presented and thoroughly examined. The salience of this research topic is also amplified by the relatively limited scope and comparative scarcity of existing re-

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search in this specific domain. Few researchers have delved into this problem, primarily due to the restricted availability of materials and the inherent sensitivity of the subject matter. This article endeavors to engage the scientific community, as well as all individuals invested in this crucial issue.

Methods and materials

To conduct a comprehensive study of issues pertaining to medical data protection in the European Union and Kazakhstan, an extensive literature review was undertaken. This review focused on challenges associated with providing consumer medical services and methods of server protection, including those related to the lawful collection, preservation, and accessibility of medical data. The research involved a thorough examination of e-books, scholarly articles, and online resources. We performed an in-depth theoretical analysis of academic sources, as well as national and European legislation. A comparative legal method was employed to contrast the norms of national legislation with international agreements concerning medical services and treatment. Additionally, a system-structural method was utilized to identify the interconnections between the achievements of scientific doctrine and the degree to which these are reflected in legislation.

Results

In this study, we concluded that medical data should be subjected to anonymization and pseudonymization techniques (discussed in the subsequent session). In our opinion, one potential strategy for managing medical data involves a judicious combination of cutting-edge technical solutions and refined national legislation, thereby implementing robust legal safeguards. As the quality and adoption of digital medical data technologies, devices, smartwatches, and other wearables, mobile applications, and telemedicine continue to expand, the scope for resolving contentious issues in medical privacy will correspondingly broaden. Each situation involving medical data is distinct and demands a specific and balanced approach. Generally, handling sensitive data constitutes a specialized category, intrinsically linked with ethical considerations and moral implications. No country globally has yet arrived at a definitive and universally applicable solution, emphasizing the need for extreme sensitivity in this area.

The study analyzed foreign literature and legislation of the European Union to compare it with Kazakh legislation on medical ethics in the provision of consumer services. Most of the foreign sources were investigated, since this topic has not yet been widely discussed in Kazakhstan. The article clearly separates the mechanism of providing consumer medical services from other areas, pointing out the need for delicate regulation of this service sector, especially in Kazakh legislation. Many of the measures are successfully used today in Kazakhstan to protect confidentiality in the interaction between a patient and a doctor; however, they are not clearly reflected in legislative acts. It is necessary to develop laws on amendments and additions to some legislative acts on the provision of medical consumer services. Such laws should affect and supplement all legislative acts that in one way or another relate to the provision of medical services, people's interaction with public and private clinics, the delivery of tests, the storage of medical data, and the use of such data for research purposes.

Discussion

European regulatory frameworks exhibit a particularly meticulous and comprehensive approach to the safeguarding of patient confidentiality. A pivotal reference point in this context is the Principles of European Medical Ethics, formally adopted in 1987. This foundational document outlines "the most important principles aimed at inspiring the professional conduct of doctors, in whatever branch of practice, their contacts with patients, with society and between themselves. It also refers to the specific situation of doctors, upon which good medical practice depends" [2].

These principles—adopted during a dedicated European conference—serve as ethical cornerstones of medical professionalism. Among them are a physician's unwavering commitment to patient care, the necessity of obtaining explicit informed consent, autonomy in both moral and technical aspects of care, the duty of confidentiality, professional competence, ethical obligations in end-of-life decisions, considerations in organ transplantation, reproductive ethics, collegial solidarity, and continuity of care. While each of these topics warrants an independent and extensive academic investigation, it is evident that the European approach reflects a highly integrated and intentional concern for the preservation and implementation of patients' rights at every stage of medical interaction.

A domain that has garnered increasing legal and ethical focus in Europe is that of genetic services, which have undergone rapid expansion in recent decades. These developments have necessitated a more ro-

bust ethical infrastructure, especially given the sensitive nature of genetic information. The primacy of human dignity, autonomy, and individual rights remains central. As one expert source highlights, "Harmonization of the technical aspects of genetic services in Europe requires a legal and ethical framework that respects cultural, religious, philosophical and other domestic characteristics of a given country and its population, but at the same time conforms to basic and universally accepted human rights. To continuously supervise the legal and ethical developments regarding the promotion and protection of the rights of patients and users of health services and to make the results of our research publicly available is a permanent challenge [3]".

Thus, confidentiality is not only a key determinant in fostering trust between the patient and physician; it is also an essential prerequisite for obtaining accurate and complete clinical information. The absence of adequate safeguards often leads patients to withhold or misrepresent critical health details — especially when those details pertain to private or sensitive matters. This behavior can significantly hinder the diagnostic process and compromise therapeutic outcomes. Confidentiality becomes even more relevant when the healthcare provider possesses medical data concerning multiple family members, for instance, in cases involving hereditary diseases or familial screenings.

It must be emphasized that medical confidentiality, although fundamental, is not considered absolute. Circumstances exist under which the disclosure of patient data may be legally or ethically warranted. Such exceptions include cases involving criminal investigations, situations where nondisclosure may result in harm to others, requirements mandated by public health regulations, technical malfunctions that compromise data security, and patient consent. Most national legislations, however, treat these deviations with the extreme caution and only permit them under narrowly defined conditions. As reflected in legal commentaries: "exceptions to this must be taken very seriously. They may include where there is a serious risk to the patient or another person, where required by law, where part of approved research, or where there are overwhelming societal interests [4]".

While the rationale behind disclosing patient data in the context of solving or preventing a crime is typically self-explanatory and ethically justified, the invocation of the "public interest" as grounds for disclosure remains far more nuanced and contentious. There exists a persistent ethical dilemma between an individual's inherent right to medical privacy and the collective needs of society, particularly when public health concerns are at stake. On the surface, it may appear that absolute confidentiality serves the individual best; however, broader ethical analyses reveal that disclosure — under tightly controlled circumstances—may enhance public safety and contribute to population-level health outcomes. As one scholarly viewpoint suggests, "the obligation to disclose medical or medical-related information can protect the public from potential threats from individual patients and ensure that accurate data is provided both about individuals and about the population as a whole" [3; 18].

One particularly sensitive and legally complex aspect of medical confidentiality pertains to a patient's written authorization for the secondary use of their personal health data for scientific or clinical research. This dimension of consent is not only an ethical imperative, but also a cornerstone for biomedical progress. The systematic reuse of anonymized or pseudonymized medical data holds considerable potential in addressing global health challenges and advancing evidence-based medicine. However, the process of obtaining granular, case-by-case consent poses logistical barriers and often clashes with research scalability. As noted in scholarly literature, "the most common adaptations of consent are models that shift away from specific consent, such as 'broad consent', covering a broad range of future data uses" [5]. This shift underscores the ethical balancing act between individual autonomy and the collective scientific benefit derived from large-scale data reuse.

"There is however an ongoing debate on the legal validity and ethical acceptability of broad consent" [6]. And what first of all worried the policy makers and lawyers was the possibility of the violation of the principles of the General Data Protection Regulation by such a broad consent. "In the draft GDPR texts, the current conflicting positions of the Parliament and Council on this topic appear to be reflected. Some indicate that broad consent may not meet the conditions on consent as defined in the Parliament's draft GDPR, regarding the information that must be given to the individual" [7]. At the same time, the patient has the right to refuse consent to the use of his data, which happens quite often, because of the patient's fear of becoming disclosed.

However, extensive research in favor of public interest, apparently, still inclined the council to adhere to broad consent. "The position of the Council seems to be that broad consent should be possible for medical research" [8]. At the same time, dealing with this, it is absolutely impossible to forget about the principle of proportionality and necessity. Data for reuse should be disclosed exactly as much as it is necessary for re-

search. Thus, one of the main principles of the EU approach to data "as open as possible, as close as necessary" is observed.

Another measure to respect the confidentiality of medical data is anonymization and pseudonymization. These measures can, to some extent, free the medical staff and the patient from the need to fill out a consent form, because the data is protected in this way. Nevertheless, this does not always help to maintain real confidentiality when re-examining data. In addition, some medical data themselves contain genetic and other material that allows identifying a person even without specifying real data.

Attention is now turned to the consideration of how the EU legal framework interprets these concepts. The term anonymization is defined in current EU legal documents as a "technique, which irreversibly prevents identification, taking into account all the means 'likely reasonably' to be used" [9]. Pseudonymization is also considered as a useful security measure. "When it comes to anonymized statistics, GDPR is seen as an enabler as it actively defines, enables and encourages sharing of anonymized statistics. This can be attributed to the fact that the GDPR makes sharing identifiable data a bit more difficult, while it does not pose any obstacles towards sharing anonymized data. There are much more concerns about data protection, partly due to implementation of the GDPR, which makes it more difficult to share data for scientific purposes. GDPR limits some projects to only share the aggregated data as a way to avoid sharing individual level data and the GDPR challenges that come with that" [10]. But even here there are pitfalls. Anonymization is becoming an increasingly difficult task when it comes to a large volume of medical research. Some scientists and IT specialists consider it impossible from a technical point of view to anonymize large amounts of data.

In contrast to the European Union's comprehensive and well-established legal framework on medical ethics and data protection, the Republic of Kazakhstan has only relatively recently begun to develop structured approaches to these issues. Kazakhstan's key legislative instruments in this area include the Code of the Republic of Kazakhstan "On People's Health and the Healthcare System" (adopted July 7, 2020), which regulates the rights and obligations of patients and healthcare providers, including provisions on the confidentiality of personal medical data.

Article 77 of the Code explicitly enshrines the principle of medical secrecy, stipulating that medical workers, as well as other persons who have access to medical information in the course of their professional activities, are obliged not to disclose medical secrets without the consent of the patient, except in strictly defined cases. These include threats to public health, judicial requests, or when required for epidemiological control. This mirrors similar exceptions recognized in the European Union, such as those based on public interest or legal obligations. However, the mechanisms for enforcing these standards in Kazakhstan remain less robust than in the EU, particularly in terms of regulatory oversight and patient recourse.

In terms of digital health data, Kazakhstan has made steps toward electronic health systems integration through the development of the Unified National Electronic Health System (UNEHS), aiming to digitize medical records and services nationwide. However, the country still faces challenges related to secure infrastructure, staff training, and standardization of data handling protocols. Unlike the GDPR in the EU, Kazakhstan lacks a specialized, enforceable framework solely dedicated to personal data protection in healthcare, although general provisions exist under the Law of the Republic of Kazakhstan "On Personal Data and Their Protection" (2013). This law sets out the obligations for obtaining consent and protecting personal data but does not fully reflect the scope or enforcement strength of the GDPR, especially regarding concepts, such as "pseudonymization" or the "right to be forgotten".

Ethically, Kazakhstan aligns with internationally accepted norms, including the principles of informed consent, autonomy, and the patient's right to participate in treatment decisions. However, the implementation of these principles is inconsistent due to socio-cultural factors, limited legal literacy among patients, and hierarchical structures within the healthcare system. Studies in Kazakhstan indicate a relatively lower rate of patient involvement in decision-making processes compared to the EU countries, suggesting the need for further education of both medical professionals and the public on patients' rights and medical ethics.

A significant comparative distinction lies in the research context. While the EU strongly emphasizes formal consent mechanisms — especially in the reuse of personal data for scientific research — Kazakhstan is only beginning to introduce such frameworks. National legislation does not yet clearly delineate between types of consent (e.g., specific, broad, dynamic), and ethical review boards are not uniformly equipped to assess the proportionality of data usage in research. This presents a gap in the protection of patients' data when reused for scientific purposes. For instance, without clear guidelines on broad consent, researchers in Kazakhstan might face challenges in obtaining valid consent for long-term or future research projects, potentially hindering valuable scientific endeavors while also raising privacy concerns. Developing a nuanced

framework for research consent that balances scientific progress with patient rights is a crucial area for legislative reform.

Another point of divergence is the institutional framework: the European Data Protection Board (EDPB) coordinates cross-border data protection issues and supervises consistent application of the GDPR across the EU member states. Kazakhstan currently lacks such a centralized and specialized authority focused solely on health data, which limits the consistency and effectiveness of enforcement.

In addition, Kazakhstan could benefit from increased international cooperation and knowledge sharing with the EU countries in order to learn from their experience in implementing reliable data protection systems in the provision of medical consumer services. This could include joint training programs for lawyers and medical professionals, technicians, as well as the development of pilot projects for secure data exchange in scientific research while maintaining strict ethical standards. A strong and effective symbiosis of both technical protection measures and legal norms is needed, which together will give the strongest result.

Conclusions

The challenge confronting medical privacy, particularly in recent decades, is the escalating use of devices and medical applications for health monitoring, which accumulate vast amounts of personal data, markers, and indicators. Often, individuals do not fully consider what information is being tracked beyond general data like location or contact details; even heart rate and physical activity levels are collected. Today, as medicine undergoes active digitalization in many countries, solutions must be found for the secure handling of digital content as well. It is imperative to ensure that each patient can independently manage their medical data through secure digital identification, keys, and passwords, allowing them to track their sensitive information. The medical record must be strictly confidential and protected by all available technical measures.

Medical ethics and privacy are intrinsically linked to the patient's active participation in health-related decision-making and their control over and manipulation of their own body. The doctor should facilitate such opportunities to the extent that is reasonable and feasible. This is because medical ethics is not a unilateral process but a well-established system of interconnected relationships. Therefore, in summary, we have identified the primary areas of medical privacy today, strategies for its protection, as well as existing disadvantages and potential risks. What solutions can be proposed to address these shortcomings? And what path should Kazakhstan pursue for the most rapid and effective development in this sphere?

First, patient health data should only be shared for legitimate public health purposes, and only to the precise extent necessary for the research being conducted. This data must be stored in a highly encrypted form for digital medical data, and in a secure, inaccessible location for physical data carriers. Additionally, the number of individuals to whom data may be legally disclosed should be minimized. There should be clear accountability for the mishandling of medical data. Consistent adherence to ethical data privacy principles can foster public confidence in medicine generally and encourage many patients to be more open and truthful with medical staff. The issue of trust plays a significant role, thus strict adherence to all rules for completing consent forms and reusing data for scientific research is essential.

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А.Е. Абдрасулова, Ю.С. Костяная

Тұтыну қызметтерін көрсету кезінде медициналық деректерді қорғау: Қазақстан мен Еуропалық одақтағы медициналық этиканың кейбір аспектілерін салыстырмалы талдау

Медициналық зерттеулердің этикасы, дәрігер мен пациент арасындағы қарым-қатынасқа тән құпиялылық және медициналық деректерді дұрыс өңдеу — бүкіл әлем бойынша, соның ішінде Қазақстан мен Еуропалық одақтағы заманауи медициналық заңнаманың маңызды мәселелері. Медициналық қызмет көрсету тұтынушылық қызметтердің басқа салаларына қарағанда дербес деректердің, әсіресе «сезімтал» деректердің үлкен көлемін өңдеумен байланысты. Бұл ретте, бұл мәселені тек тұтыну қызметтерін көрсету туралы нормалармен реттеуге жол берілмейді. Құпиялылық мәселесі бұл қызметтерді неғұрлым нәзік және «ақылды» реттеуді қажет ететін ерекше салаға айналдырады. Бұл саладағы негізгі шиеленіс қарама-қайшы мүдделерден туындайды: пациенттер өздерінің қадір-қасиет құқықтарын қорғау үшін абсолютті құпиялылықты іздейді, ал кеңірек қоғамдық мүдделер көбінесе адамзаттың ұжымдық игілігі үшін бұл ақпаратты ашуды талап етеді. Медициналық деректер бастапқыда құпия және тиянақты ойластырылған заңнамалық базамен бірге мұқият тәсілді қажет етеді. Еуропалық одақ осы мақалада қарастырылған сенімді құқықтық база мен іргелі принциптерді әзірлеу арқылы осы салада айтарлықтай жетістіктерге жетті. Қазақстан тұтынушылық медициналық қызметтер шеңберінде дербес деректерді қорғаудағы осы прогресті құнды үлгі ретінде пайдалана алады. Медициналық этика және құпиялылық — бұл философиялық көзқарастардан бастап олардың денсаулық сақтау нарығындағы маңызды экономикалық салдарына дейінгі әртүрлі көзқарастардан зерттеуге болатын көп қырлы ұғымдар. Мақалада медициналық этика мен құпиялылық қазақстандық және еуропалық заңнаманың призмасы арқылы қарастырылған. Олардың дамуының негізгі бағыттары мен тенденциялары талданған. Қорытындылай келе, авторлар медициналық құпияны қорғаудың еуропалық тәсілі әлемдегі басқа құқықтық жүйелер үшін сенімді негіз ұсына отырып, ең дамыған және негізделген тәсілдердің бірі деген тұжырымдама жасаған.

Кілт сөздер: медициналық құпиялылық, еуропалық құқық, қазақстандық заңнама, тұтынушыларға қызмет көрсету, дәрігер-пациенттің этикасы, медициналық құпиялылық, медициналық деректер, жеке деректер, құпия деректер, медициналық қызметтер.

А.Е. Абдрасулова, Ю.С. Костяная

Защита медицинских данных при оказании потребительских услуг: сравнительный анализ некоторых аспектов медицинской этики в Казахстане и Европейском союзе

Этика медицинских исследований, конфиденциальность, присущая отношениям между врачом и пациентом, и надлежащее обращение с медицинскими данными являются критически важными вопросами современного медицинского права во всем мире, включая Казахстан и Европейский союз. Оказание медицинских услуг неизбежно связано с обработкой большого объема персональных данных, особенно «чувствительных» нежели в других сферах потребительских услуг. При этом, регулирование этого вопроса только лишь нормами об оказании потребительских услуг недопустимо. Вопрос конфиденциальности делает эти услуги особой сферой, требующей более тонкого и «умного» регулирования. Основная напряженность в этой области возникает из-за конфликта интересов: пациенты стремятся к абсолютной конфиденциальности, чтобы защитить свои права на достоинство, в то время

как более широкие общественные интересы часто требуют раскрытия этой информации на благо всего человечества. Медицинские данные по своей сути являются конфиденциальными и требуют тщательного подхода, а также продуманной законодательной базы. Европейский союз добился значительных успехов в этой области, разработав надежную правовую базу и основополагающие принципы, которые рассматриваются в этой статье. Казахстан может использовать этот прогресс в области защиты персональных данных при оказании медицинских услуг потребителям в качестве ценной модели. Медицинская этика и конфиденциальность — это многогранные понятия, которые можно рассматривать с разных точек зрения, начиная от философских воззрений и заканчивая их значительными экономическими последствиями для рынка здравоохранения. В статье медицинская этика и конфиденциальность рассматриваются через призму казахстанского и европейского законодательства. Анализируются основные направления и тенденции их развития. В заключении авторы делают вывод о том, что европейский подход к защите медицинской тайны является одним из наиболее развитых и обоснованных, предлагая надежную основу для других правовых систем по всему миру.

Ключевые слова: медицинская тайна, Европейское право, казахстанское законодательство, предоставление потребительских услуг, этика взаимоотношений врача и пациента, врачебная тайна, медицинские данные, персональные данные, конфиденциальные данные, медицинские услуги.

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