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Rauan Zheksenbekov «High Multidisciplinar Medical College «Turkestan»» PPA Senior Lecturer, According to republican grant financiation under №AP14972885 Turkestan, Kazakhstan



Botagoz Nabieva

«High Multidisciplinar Medical College «Turkestan»» PPA

Senior Lecturer,
According to republican grant financiation under №AP14972885

Turkestan, Kazakhstan



Anri Busham

Notre Dame National University

PhD doctor in medicine

Chief Executive of Mercy Clinic.

According to republican grant financiation under №AP14972885

Paris, France



Kydyrali Rysbekov«High Multidisciplinar Medical College «Turkestan»» PPA
Director
Turkestan Kazakhstan



Kamshat Dihanovna Orazbekova «High Multidisciplinary Medical College «Turkestan»» PPA Senior Lecturer, Turkestan, Kazakhstan



Albina Sibgatulina
«High Multidisciplinar Medical College «Turkestan»» PPA
MK-103 group student
Young Scientist of «Seikhan Scientific Group» LTD



Venera Kudaibergen «High Multidisciplinar Medical College «Turkestan»» PPA MK-103 group student Young Scientist of «Seikhan Scientific Group» LTD



Sarvinoz Zurieva

«High Multidisciplinar Medical College «Turkestan»» PPA MK-103 group student Young Scientist of «Seikhan Scientific Group» LTD

THE CONCEPT AND GENERAL CHARACTERISTICS OF HEALTHCARE LEGISLATION



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Abstract: To date, the health of a citizen is one of the most priority objects of modern law, protected by the Constitution of the Republic of Kazakhstan, to which every citizen has the right. Assuming that the main goal is to take care of the health of citizens, the Republic of Kazakhstan has built a strong healthcare system where every citizen has the opportunity to receive high-quality medical service. The present gives the state policy on the development of healthcare in terms of improving the quality of medical services through legal systematization a special priority, expressed and formalized in the Message of the President of the Republic of Kazakhstan as the twenty-first direction of a new stage of comprehensive modernization of the domestic and foreign policy of the Republic of Kazakhstan. Nevertheless, today there are quite a large number of disagreements between patients and medical professionals, which attaches some importance to the specifics of their legal relations. Analyzing the legislation on healthcare in general, it is possible to identify a clear regulation of their legal relations. However, the present does not exclude the fact of possible harassment of the rights of participants in medical and legal legal relations. Analyzing the legislative norms, it can be noted that the provisions regulating the legal relations of medical workers with patients are already reflected in administrative, criminal, civil legislation, legislation "On Consumer Protection", "On the health of the people and the healthcare system" and other regulatory legal acts. At the same time, in accordance with the specifics of research, this dissertation does not consider the provisions of labor legislation, legislation "On medical insurance", legislation on special social services, as well as other norms related to the provisions on combating acquired human immunodeficiency syndrome (AIDS), socially significant diseases, pathologic and anatomical departments, palliative care, anti-plague and others. The norms of labor legislation are not considered due to the fact that the purpose of the dissertation research is not to study the legal relations of a medical worker as an employee and a medical organization as an employer.

Key words: persecution, victim, personal space, psychological barrier, personal boundaries, moral suffering, non-property asset.

Language: English

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Introduction



По результатам технического задания грантовского проекта КН МОН РК утвержденного приказом Председателя КН МОН РК от «2» марта 2022 года № 27-нж

The norms of the legislation on medical insurance are not considered due to the fact that they are more aimed at patients than at medical workers, the legislation "On special services" is also not considered due to the fact that it is aimed more at recipients of medical services. This dissertation is devoted specifically to the issues of legal regulation of the activities of medical workers. Therefore, it can be assumed that due to the volume and variety of health care elements, all of the above norms cannot be reflected in one study. Even the medical activity itself, separately considered in the civil law direction, is a huge volume that should be systematized according to a certain principle. This shows the need to study the most relevant direction in modern Kazakh legislation "On the health of the people and the healthcare system" - the legal relations of medical workers and patients. To prove the relevance of the legal relations of medical workers, a number of studies related to the insurance of professional liability of medical workers, medical error and others can be cited. At the same

time, it is important to note the need for a medical professional to always be understanding towards the patient. A prerequisite for the development of such areas in the Republic of Kazakhstan is a certain imbalance of rights and obligations between medical professionals and patients, where patients as consumers of medical services have more rights and fewer obligations in the system of receiving medical services than a medical worker, who, on the contrary, has more obligations than rights. Therefore, special emphasis was placed on the specifics of the legal relationship between a medical worker and a patient in the system of legislation of the Republic of Kazakhstan "On the healthcare system" with a detailed systematization of the legal status of a medical worker, since it is the medical worker who is the weak side of the legal relationship with the patient due to the presence of more obligations than rights. At the same time, in the dissertation, the activity of medical workers is considered as a secondary priority, since it gives only a certain characteristic to the types



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of medical workers who carry out medical activities, depending on the level of education, specialization, length of service, contact with patients and other gradations.

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Nº	ИРН	Наименование	Заявитель	Научный руководитель	Период реализации	Группа объектов ГНТЭ	Статус	Готовность	Создать
1	AP14972885	Медицинское право: актуальные проблемы модернизации качества человеческих ресурсов посредством совершенствования системы правоотношений между медицинским работником и пациентом	Шалхаров Ернар Сайлаубекович	Шалхаров Ернар Сайлаубекович	2022 - 2024	Конкурс на грантовое финансирование исследований молодых ученых по проекту «Жас ғалым» на 2022-2024 годы	Подано	100%	Действие
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II. RESEARCH METHODOLOGY AND ETHICAL QUESTIONS.

Description of scientific methods used in the project as a justification of how to achieve the goals

Methodologically, this study assumes the use of three types of methodological tools: externally descriptive, internal-detailed and statistically correlative.

Externally, the descriptive tool involves the use of four types of registration of research results. Cluster systematization of the information array. The present methodological tool assumes grouping of semantic blocks in the text by an order of transition from a greater variable to smaller. It is necessary in the study, since it helps to fix the transition from the general sense to the result being studied. Also, deduction, induction, abstraction and detailing can be included in this group, which find useful use in the analysis of the literature data systematized according to the 2-2-1 system, which assumes two sources of foreign countries, two sources of near abroad and one source of Kazakh writings. Working with the writings in this study is important because it allows us to navigate in the direction statistical research. αf Two-dimensional projection of task reflection. This methodological tool assumes a visual analysis of the tasks results. So each section answers one specific task. In accordance with this analysis, we can observe the summation of the results of tasks to achieve a common goal, and we can see a phased achievement of the goal from one task to another.

The catalyzing of literary data by a legal element. This methodological tool makes it possible to note the adaptation of the writings used to the studied territorial space or population.

F.I.N.E.R criterion. In accordance with the F.I.N.E.R criterion, the research question is analyzed from five positions: F-feasible, I-interesting, N-novel, E-ethical, R-relevant

The internal-detailed methodological tool assumes a number of specific scientific and legal methods, the purpose of which is a detailed analysis of elements with vector accentuation of key nuances. There are the following methods:

Multivariate subjective analysis. This scientific and legal tool allows you to conduct a subjective analysis of each of the species, enterprise and activity for the sake of strengths, consisting of mobility, elasticity, flexibility and maneuverability, weaknesses expressed in dependence, rigidity, bureaucracy and fluidity, opportunities expressed in innovation, PR Abilities, spreadability, projectivity and risks, reflected in the loss of time, slow growth, dependence on reputation and disloyalty.

Pyramid of "Lawrence and Wilson" for identification of obligations. This scientific and legal methodological tool involves an analysis of the recognition of the parties' legal personality through a simple formula where the will is summed up with consciousness, divided into focus and multiplied by motivation. Similarly, the system involves analyzing the legal capacity of the parties, expressed in a simple formula, according to which the patient's awareness is divided into risk, which in turn is greater or equal to the status of the doctor. The third stage of the present pyramid is the consideration of the interests of the parties, expressed in the formula where, the physical state is summed up with the moral state and is divided by the risk multiplied by the intention.

The scale "Mason Awns" on the analysis of rights and obligations. The scientific and legal tools that identify the relationship between the primary and secondary obligations; and public interest in the primary rights, secondary rights and in the personal interest

System of comparative claims distribution. It presupposes an analysis of court cases for resistance to maneuvers of civil-consumer legal relations between a doctor and a patient in medical law.



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A statistically correlated study involves an assessment of the interrelationships between several factors, called variables, not controlled by the researcher, and which in turn is aimed at establishing changes in one variable when the other changes or influences it. Data processing is expected using the SPSS program, which will give greater validity to the results of the study. Since this research is related to such matters as honor, dignity, business reputation and other non-property characteristics of individuals, the application and circulation of a specially developed questionnaire is highly relevant, since it will only be possible to fix a constant based on quantitative data.

Critical points, alternative ways to implement **the project.** The present study will be conducted on the basis of the Turkestan Multidisciplinary Medical College, AkhmetYassawi International Kazakh-Turkish University, the Academy of Public Administration under the first president of the Republic of Kazakhstan. This allows expanding the scope of research to similar territorial units of other countries in accordance with the memorandums of educational institutions. These countries include Turkey, the Czech Republic, Poland, France, the United States and Turkmenistan. If it is not possible to determine which indicators, it is possible to cooperate with marketing and other firms that can provide personal data for residents of other countries.

The methods used in the project to ensure compliance with the principles and norms of scientific ethics. Project participants will strictly adhere to the principles of scientific ethics, will not allow the scientific data fabrication, falsification, plagiarism, false co-authorship, the use of collective research by individual participants, data and findings obtained in studies without agreement with other participants. All participants in the project have equal rights to the results of the conducted studies. Intellectual property rights of participants will be protected accordingly by the law of the Republic of Kazakhstan on intellectual property rights.

Detailed Procedure and Mechanism for Conducting the Research:

This project will be carried out in 3 stages: At the first stage, protocols and manuals, equipment and supplies will be prepared. A primary analysis of the literature data will be carried out, a questionnaire is constructed and the circulation is calculated. At the second stage, there will be work with government agencies, including courts and prosecutorial authorities. Also, the second stage involves working with the subjects of medical activity and collecting information on survey results. The third stage will summarize the results of the studies, which will be reflected in the relevant publications, author certificates, implementation certificates and training materials on medical law: "Basics of Medical Law in the RK", "Advanced Course of Medical Law in the

RK", "Progressive Course of Medical Law in RK. All three textbooks will be translated into the state, English and Turkish languages.

Conditions for registration and separation of intellectual property rights for research results:

For the protection of the results of intellectual property of scientific research, it is planned to publish scientific papers in foreign editions in SCOPUS database; Author certificates, training materials, conferences thesis.

The results of the research will be implemented in the form of practical recommendations for preventive measures and prevention of medical legal conflicts, as well as methods for their forecasting through alternative algorithms for the functioning of civil law elements in medical legal conflicts in cases involving legal relations and the activities of medical workers.

III. RESULTS.

Criminal and administrative legislation already has a clear structure of penalties for specific actions and omissions of medical workers, while civil legislation, which has a sufficiently large number of regulatory instruments, is currently not fully used in regulating the legal relations of medical workers with patients (1). Therefore, consideration of the legal relations of medical workers with patients in the civil law direction is the basis of this dissertation research. Since one of the main elements of civil legislation is the quality of the medical service provided, the issue of the ability of a medical worker to provide such a service is one of the main components of legal relations, which gives reason to analyze the nature of the legal relations of the parties (2). In accordance with the above, the issue of improving the quality of medical services is determined through the institute of advanced training of personnel providing such medical services - a medical worker, which is regulated in the list of tasks of the state program in the field of healthcare, where the basis for improving the professional level of a medical worker is medical education (3). These principles are highlighted as a special priority in another state program "Densaulyk" for 2016-2019, where ways of legal regulation through regulatory acts are considered as the basis for implementation (4). With a civil-law view of medical legal relations, it is possible to designate the norms of private law, which, on the basis of not only national norms, but also international acts functioning within the legal space of the UN countries regarding the control system for the protection of human rights, represent a certain mechanism for citizens to exercise their rights to protect their health (5). Considering human health as the main subject of medical and legal relations between medical workers and patients, it can be noted that the Constitution of the Republic of Kazakhstan guarantees health protection to every citizen, which notes the particular importance of legislation on healthcare (6). Given the nature of the



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prevalence of private law relations in society, one can also note the role of civil legislation in establishing medical and legal norms, which over time become more and more adapted to the legal relations of medical workers with patients (7). Based on these norms, it can be assumed that the legal relations of medical workers can be systematized by the norms of civil legislation. So, by accepting a patient, a medical worker establishes civil rights and obligations, determining the tactics of diagnosis and treatment, he changes rights and obligations, and by discharging a patient, he terminates civil rights and obligations (8). The place of medical and legal relations of medical workers with patients in the legal system. Analyzing the professional legal relations of medical workers, it is possible to note the place of medical and legal legal relations of medical workers with patients in the modern legal space, which include the norms of civil legislation, legislation "On the health of the people and the healthcare system" and legislation "On consumer protection" (9). At the same time, as some studies conducted in the field of conflicts have shown, providing pediatric care by medical professionals, each of the industries is strictly segmented. Labor professional legal relations between a medical worker and a healthcare organization are regulated by labor legislation (10). Commercial legal relations of medical workers, if they have the status of an individual entrepreneur, are regulated by civil, tax and other Codes (11). Crimes of medical workers are classified by the Criminal Code, and administrative offenses are classified by the Code of Administrative Offenses. Relations with patients in the commercial sector are regulated by consumer protection legislation (12). Other legal relations of medical workers are oriented in accordance with the specifics of each of the regulations. Nevertheless, it can be noted that the legislation on public health serves as a single basis for the activities of medical workers (13).

IV. DISCUSSION.

As the subject of medical and legal relations of medical workers with patients, it is possible to designate the relations of medical workers with patients, which are directly or indirectly indicated in the current modern norms of criminal, administrative and civil legislation of the Republic of Kazakhstan (14). Therefore, it can be noted that the nature of legal relations also implies a large number of legal issues that can be classified both from the standpoint of analyzing the level of public danger and from the standpoint of analyzing civil rights and obligations. In the Republic of Kazakhstan, medical and legal scientific research is multifaceted and actively developing in accordance with the realities of the present time (15). For example, the basics of criminology, which is being improved in parallel with the developing forensic and pathoanatomic science. Based on the experience of the Soviet Union, medico-

legal norms from a legal point of view were adopted to a greater extent in the text of criminal legislation, less often in the text of administrative legislation, where they concerned negligence, endangerment and other restrictive measures (16). Civil legislation began to develop in the direction of medical and legal legal relations recently, in parallel with the development of market relations in the territory of the post-Soviet countries (17). This was due to the emergence of commercial medical institutions that provide medical care to citizens on a reimbursable basis. Consequently, the commercialization of medical services has strengthened the role of civil legislation in the medical and legal relations of medical workers with patients, putting the nature of legal relations as a subject in the civil law industry, where, in accordance with the current civil legislation, the patient has acquired the status of a consumer of medical services (18). This strengthened the civil status of the patient as a consumer, adding to him an additional range of rights, reinforced by separately delimited legislation on consumer protection, which, in turn, adds obligations for the medical worker as a party providing medical services for the patient, where the medical worker bears additional obligations (19). Consequently, the nature of the responsibility of the medical worker has also become possible to consider according to the degree of causing material and moral harm. As a method of medical and legal relations of medical workers with patients, it is possible to note the methods given in criminal, administrative and civil legislation, the legal force of which is strengthened by the basic law - the Constitution (20).

The system of medical and legal relations of medical workers with patients represents a certain set of norms of health legislation aimed at regulating the professional activities of medical workers, control over improving the quality of medical services provided, the development and dynamics of medical and legal science, and others. Currently, the system of medical and legal relations of medical workers with patients is classified as a complex sub-branch of law, as an academic discipline and as a branch of legal science (21).

As a complex sub-branch of law, the system of medical and legal relations of medical workers with patients is commonly understood as a set of versatile norms that function depending on a certain order and specifics of the medical and legal conflict. As an academic discipline, the system of medical and legal relations of medical workers with patients has a certain range of knowledge that can be useful for students not only of legal, but also of medical, pharmaceutical, toxicological, biological, epidemiological and other related specialties (22).

As a field of legal science, the system of medical and legal relations of medical workers with patients in the civil law direction can be classified and improved through the use of Western methods of analysis,



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synthesis and design of some regulatory elements according to a certain algorithm (23).

The principles of medical and legal legal relations of medical workers with patients can be noted as certain doctrines when considering the objects of medical and legal legal relations of medical workers. This includes respect for human rights in the field of health protection, priority of preventive measures in the field of public health protection, accessibility of medical and social assistance, social protection of citizens in case of loss of health and responsibility of state bodies in the field of health (24).

The sources of medical and legal relations of medical workers with patients can be distinguished as the regulated foundations of the functioning of the health care system, the professional activities of medical workers, the degree of protection of patients as persons receiving medical services and other relevant factors. This is reflected in the Constitution, the Criminal, Civil and Labor Codes, the Code of Administrative Offenses, the Code "On the Health of the People and the Health Care System", the laws on social security, health insurance and other similar acts (25).

The mechanism of functioning of medical and legal legal relations of medical workers with patients is a complex sequence of various kinds of real actions and inactions regulated by specific provisions of the current legislation of the state territorial unit, classified in a certain order taking into account the specifics of medical activity. At the same time, the specificity of medical activity lies in its components, without which it does not make sense and is not expedient.

The basis of the functioning of the system of medical and legal relations of medical workers with patients in countries with a developed system of medical law is the medical Code. Analyzing the Kazakh legislation, it can be assumed that the Code of the Republic of Kazakhstan "On the Health of the People and the healthcare system" can be used as such a Code as one of the sources of medical and legal legal relations. However, it is not correct to consider it the only source of legal relations between medical workers and patients, since the Constitution, the Criminal, Civil, Labor Codes, the Code of Administrative Offenses and some other regulatory legal acts related to medical and legal relations between medical workers and patients are also sources of medical and legal legal relations. Consequently, in the Republic of Kazakhstan, the Code of the Republic of Kazakhstan "On the Health of the People and the healthcare system" is not the only source of law, as is customary in most countries where medical legal relations are regulated only by medical law, as there are other regulatory legal acts regulating these legal relations in civil, criminal, administrative and other directions.

Thus, the main acts of medical and legal legal relations are based on the Code of the Republic of Kazakhstan "On the health of the people and the healthcare system", which is not the main source, since it is the Constitution of the Republic of Kazakhstan, is not subordinate, since all the provisions of this Code are necessary primarily to fix the result of the activities of a medical worker, but is a regulatory source rights, due to the presence of explanatory norms.

V. ACKNOWLEDGEMENTS.

This study was carried out on the basis of a private institution "Higher Multidisciplinary Medical College "Turkestan"", which has a certain room and equipment for conducting research. It is also necessary to note the high level of involvement of the staff of the college, who have made a significant contribution to the development of this topic. As for the student potential, there were many activists who agreed to take part in the research in various positions listed below. These positions include data and positions from the table below. Thus, as a legal experiment, the research group planned a study with the participation of 16 full-time students in the specialty of nursing. So 8 students participated in an experiment where each of them was given the role of an active stalker and a passive stalker, as well as an active victim and a passive victim. Four students monitored and four students supervised each group of tests.

VI. CONCLUSION.

Being in the constant dynamics of the rapidly developing state system of the republic, the medical services sector should have a certain stability in operation based on local legislation and openness to integration. Accordingly, this legislation provides for all public relations implemented in the healthcare sector on the basis of the basic law and other regulatory legal acts. At the same time, in the legislative order, the sector of providing medical services has some features that distinguish it from the legislation "On public procurement". These features are: the choice of a service provider to provide a volume of free guaranteed medical reimbursement of costs to healthcare organizations, purchase of medicines and medical devices within the guaranteed volume of free medical care. Also, in order to form a preliminary vision of the legal form of the provision of medical services, it is necessary, first of all, to focus on the types of medical activities. Normative types of medical activities are reflected in some processes of functioning of subjects of medical activity, which consist in medical care, laboratory diagnostics and pathoanatomic diagnostics, as well as in the areas of blood procurement and its components, sanitary and epidemiological welfare of the population, public health protection, educational and



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scientific activities, as well as in the field of expertise. Legal forms for such types of activities are established by the authorized body on the basis of generally accepted legal forms expressed in the orders of the Minister of Health of the Republic of Kazakhstan in accordance with the specifics of each service.

VII. RECOMMENDATION.

In Kazakhstan Republic medical law system it is actual to identify general concept of medical worker in the system of healthcare services not only from the governmental side but, from the position of private healthcare services.

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