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Dina Adilbaeva
«High Multidisciplinary Medical College «Turkestan»» PPA
Master of biological Science,
According to republican grant financing under №AP14972885
Turkestan, Kazakhstan



Kydyrali Rysbekov
«High Multidisciplinary Medical College «Turkestan»» PPA
Master of Science,
According to republican grant financing under №AP14972885
Turkestan, Kazakhstan



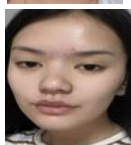
Fredrik Maisner
National University of Vienna
PhD doctor in Law and Bioethics
According to republican grant financing under №AP14972885
Vienna, Austria



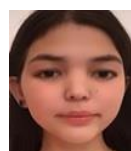
Kamshat Dihanovna Orazbekova
«High Multidisciplinary Medical College «Turkestan»» PPA
Senior Lecturer,
Turkestan, Kazakhstan



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



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



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

PROBLEM OF FORMULATION NEW THEORETICAL MODEL ABOUT HEALTHCARE LEGISLATION IN APPLIED MEDICINE

Abstract: Considering the system of medical and legal relations of medical workers with patients, theoretically, it is necessary to divide the norms of consideration of these legal relations as a complex sub-branch of law, where these legal relations are regulated by several sources from the system of centralization of such norms into a separate highly specialized regulatory legal act, better known as the "medical Code". Undoubtedly, a large number

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of studies have been devoted to this issue in the Republic of Kazakhstan over the past ten years, reflected in numerous publications, conference abstracts, monographs, dissertations, teaching aids and others.

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

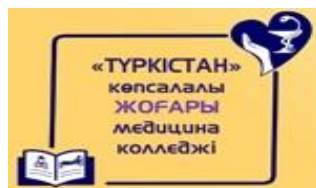
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Introduction



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

Considering medical law as a new relatively unexplored area of modern jurisprudence, it can be noted that in many countries it is a fairly significant area of jurisprudence. However, the question remains debatable whether "medical law" is a separate highly specialized and isolated area of modern jurisprudence in Kazakhstan or is it still a complex sub-branch of law. This issue needs to be analyzed first of all, since the basis of any legal research is always the law and it is he who determines the norms according to which this or that activity of subjects is regulated. This determines the study of the concepts and general characteristics of medical law regulating the legal relations of medical workers with patients in the civil law direction as a new theoretical model. To carry out such an analysis, it is necessary to analyze the established norms of modern Kazakh legislation in the field of administrative law, criminal law, civil law regulation and other norms not only of medical activity, but also in general general concepts of legal regulation. Only after that it is possible to consider how medical law in the Republic of Kazakhstan can be perceived as a separate area of modern jurisprudence or a complex sub-branch of law. It is this definition that can make it possible to determine under which vector the issues of legal regulation of the activities of medical workers in legal relations with patients in the civil direction can be considered. Is it possible to consider the legal relations of medical workers only in the civil-legal direction or is it possible to combine it with the norms of criminal,

administrative and other legislation of the Republic of Kazakhstan? Since there is no unified medical Code in the Republic of Kazakhstan that would cover all aspects of the activities of medical workers, the professional activities of medical workers are considered in accordance with the norms reflected in criminal, civil, administrative legislation, as well as legislation "On the health system and public health". However, in many countries with the Anglo-Saxon system of law and some countries with the Romano-Germanic system of law, the norms of medical legal relations are centralized in medical law, in which there is a medical code. In this medical Code, all provisions concerning medical activity are centralized, elements of which are absent in other normative legal acts, or are indicated with reference to the medical Code, which is the main source of medical law. At the same time, medical law focuses on the interdisciplinary approach of medical scientific research objects associated with legal principles, legal mechanisms and fundamental principles of current law in the field of healthcare, which may include the norms of criminal, civil and administrative legislation. However, all of the above requires the participation of a direct component of medical law. The real component of medicine is healthcare. Classifying healthcare from the standpoint of legal science, it can be indicated that this term represents the area of functioning of medical activities carried out by entities providing such assistance in direct contact with patients. These subjects are medical workers.

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№	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

Pic.1

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 of statistical research. 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.

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

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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, Akhmet Yassawi 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.

In Kazakhstan, the system of medical and legal relations of medical workers with patients is based on the current Code of the Republic of Kazakhstan "On the Health of the People and the Healthcare System", since it is he who forms the disposition in certain cases of the functioning of medical and legal relations (1). This is what distinguishes legal science from medical science in the field of consideration of medical law as a branch of legal science, which in the Republic of Kazakhstan is not centralized into a single medical Code, to which all other normative legal acts refer when regulating medical regulations (2). Nevertheless, as a theoretical model, medical law has a basis for existence, since currently a large number of studies are devoted to this area, a large number of works have been written, including teaching aids (3).

Theoretically, it is necessary to distinguish the process of classifying the provision of medical services by medical workers, where, in accordance with the legal systems of some countries, some countries designate the process of providing medical services from the position of causing harm to life, health, property or non-property components, which is a fairly adequate doctrine, since this concept characterizes the risk of liability of the parties to medical legal relations (4). Other countries characterize medical and legal relations from the position of a transaction, according to which citizens and legal entities establish, modify and terminate civil rights and obligations by their actions and inactions (5). Both analogies are quite relevant and applicable to the modern healthcare system not only within Ukraine, but also within the state territorial unit of the Republic of Kazakhstan. However, the question of the degree of applicability of one of the doctrines of medical and legal relations of medical workers with patients is a rather controversial issue of many legal studies (6). A possible solution today is to combine the norms of heterogeneous legislation in the process of functioning of the mechanisms of medical and legal relations of medical workers with patients on the basis of the norms of legislation "On the health of the people and the health care system", in accordance with the forms of civil legislation (7). Nevertheless, assessing the level of the current legislation of the Republic of

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Kazakhstan, it is important to note the adequacy of the use of a narrowly-profiled medical Code, which is currently not possible due to complexity (8). Nevertheless, some elements of medical law adopted in most countries with the Anglo-Saxon system of law and some countries with the Romano-Germanic system of law may be used in the legal space of Kazakhstan and other states, where the system of medical and legal relations of medical workers with patients is more a complex sub-branch of law. The condition for such is the basing of the basic norms on the norms of the legislation of the Republic of Kazakhstan "On the health of the people and the healthcare system" (9).

Thus, summarizing the analysis of medical and legal relations of medical workers with patients in the civil law direction as a new theoretical model, it is necessary to highlight the developing direction of modern jurisprudence, better known as "medical law" (10). This model already functions in many countries as a highly specialized area of jurisprudence and manifests itself in the presence of a single regulatory legal act better known as the Medical Code (11), which contains all the provisions in the text of a single act, the provisions of which are not repeated in other acts or are cited with reference to the medical Code (12). There is no such thing in the Republic of Kazakhstan (13). The implementation of such a policy to centralize the norms of medical and legal relations into a single source in the Republic of Kazakhstan requires, at least, a complete reform of not only the legislation on healthcare, but also other NPA (14). Therefore, the present is not an appropriate solution within the Republic of Kazakhstan. But, the development of a theoretical basis for the formation of specific legal analysis mechanisms with a methodology for applying elements of consideration of medical and legal relations in countries where they are centralized in the "medical Code" (15) is quite acceptable for improving the Kazakh model, where such norms are available (16).

IV. DISCUSSION.

Assuming by its nature an analysis of the specifics and characteristics of the professional activity of a medical worker, this implies the direct identification of the concept of a medical worker as a whole and by segments in accordance with the components characterizing the status, types, specifics and characteristics that define medical workers (17). Recreating a single projection of the concept of a medical worker based on identifying the legal status of a medical worker, designating the main characteristics of a medical worker, emphasizing the specifics of medical workers and analyzing the types of medical workers by abstracting regulatory elements and components of scientific and theoretical data is the method of establishing the concept of a medical worker (18).

For a more correct and versatile coverage of the study of the concept of a medical worker, its legal status, characteristics, specifics, types should be considered, as well as theoretically – based on the results of leading legal studies conducted in the Republic of Kazakhstan, in the near and far abroad (19). That is, the status of a medical worker must be considered from two angles: legally and theoretically (20).

Legislative consideration of the characteristics of a medical worker is carried out on the basis of the norms of the Kazakh legislation "On the health of the people and the health care system" (21), where one can notice the normative element given in subsection 67, part 1 of Article 1 of the relevant Code, where the description of the main terms was characterized by the term "medical workers" (22). In accordance with this article, citizens who have received professional medical education and who are engaged in medical activities are recognized as medical workers. Breaking down the definition provided by the legislation on the identification of a medical worker by composition, it can be indicated that professional medical education and medical activity are two heterogeneous concepts in their composition, unrelated by either nature or specificity (23). Medical education, in accordance with the definition of the same norm, is a system of training, retraining and advanced training of a medical worker, including a composite of awareness and skills acquired during training, retraining and advanced training in a certain specialization, reflected in the official document on completion of training and obtaining a specialty (24). Considering medical activity separately, it can be noted that the legislation of the Republic of Kazakhstan "On the health of the people and the healthcare system" described medical activity as the professional activity of citizens with higher or secondary professional medical education, as well as legal entities whose activities are aimed at protecting the health of citizens (25). Thus, it can be understood that legally medical workers can be both persons who have received higher and secondary medical education, and persons without medical education, but engaged in protecting the health of citizens.

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

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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.

Thus, it is necessary to distinguish between the concept of "healthcare worker" and "medical worker". All persons who carry out their work obligations in a healthcare organization, regardless of their specialty,

type of activity and contact with patients, are recognized as healthcare workers. Persons with secondary or higher medical education whose functional responsibilities include direct contact with patients in the process of diagnosis, treatment and rehabilitation are recognized as medical professionals.

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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