

# Prevention and settlement of conflicts of interest in health care of Ukraine as an administrative legal institute

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## **Abstract**

*The purpose of the study is to analyze certain legal problems in the development of the administrative-legal institution for preventing and resolving conflicts of interest in the healthcare sector. This article is based on an interdisciplinary approach using methods of analysis and synthesis, as well as comparative legal, dialectical and systemic methods. The concept of "prevention and settlement of conflicts of interest in the field of health care" is proposed, and the design of "administrative-legal institution for the prevention and settlement of conflicts of interest in the field of health care" is defined and its types are established. The analysis of the concept of "conflict of interest" in the scientific literature, national and international legal documents, in the legislation of foreign countries was carried out, the definition of "conflict of interest in the field of healthcare" was proposed. It has been established that in the legislation of certain foreign countries, the legal provision of a conflict of interest in the field of health care is carried out at the level of a special law "On Conflict of Interest", or provided for in laws on the prevention of corruption, or (in some states) also in a regulatory legal act in the field of health care. The elements of a conflict of interest in the field of healthcare (real or potential) are disclosed, their content is clarified. The elements of a conflict of interest in the field of healthcare (real or potential) are disclosed, their content is clarified. Two ways of resolving a conflict of interest in the healthcare sector have been identified: external and independent. It is established that the prevention and resolution of conflicts of interest in the healthcare sector consists of the following components: (1) prevention, (2) informing, (3) refraining from actions or decisions, and (4) settlement.*

**Keywords:** corruption, conflict of interests in the field of healthcare, legal regulation, legal liability, administrative law institute.

**JEL Classification:** K14, K24

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## **1. Introduction**

Combating corruption in the field of health protection requires comprehensive measures on the part of public authorities, which should ensure the successful implementation of the state anti-corruption policy in this area. Priority

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attention in these conditions should be given to eliminating the causes and conditions leading to the commission of corruption offenses committing of corruption offenses<sup>3</sup>. Among the causes of corruption, an important place is occupied by a conflict of interest, that is, a contradiction between the private and official interests of the activities of officials in the healthcare sector. The presence of such a situation worries the state and the public in Ukraine, as well as many EU countries and the world. The general declarative provision in Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the Twenty Principles for the Fight against Corruption obliges the participating States to take effective measures to prevent corruption and, in this regard, to raise public awareness and promote moral behavior in the public sphere. Recommendation No. R (2000) 10 of the Committee of Ministers on Codes of Conduct for Civil Servants contains a clear recognition that corruption poses a serious threat to the rule of law, democracy, human rights<sup>4</sup>, equality and social justice, hindering economic development and endangering the stability of democratic institutions and moral foundations of society. A comparative study conducted in the EU countries shows that “the vast majority of cases of corruption occur when the overriding self-interest of an official improperly influences his decision and the fight against it also in the health sector”<sup>5</sup>. The introduction and implementation of the prevention and resolution of conflicts of interest in the healthcare sector has been one of the main priorities of Ukraine and the international community over the past decades. The Association Agreement between Ukraine in 2014, on the one hand, and the European Union, on the other hand, proclaims that the Parties cooperate in the fight against corruption in both the private and public sectors (Article 22). Such changes put forward new requirements for officials and officials of the healthcare system, in particular, regarding the introduction of effective legal mechanisms for preventing and resolving conflicts of interest in the healthcare sector. Since the integration of Ukraine into the European medical space involves the reorientation of the entire healthcare system, including its administrative and legal support. It should be aimed at realizing the human right to health, further implementation of a patient-oriented model of medical reform, harmonization of domestic and international standards for the provision of medical care, and bringing the regulatory legal acts of Ukraine regarding the prevention and settlement of conflicts of interest in the field of healthcare in accordance with the legislation of the European Union.

International organizations played an important role in the process of differentiating patients' rights and conflicts of interest in the health system. The leading one among them has been the World Health Organization, which issued the

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<sup>3</sup> Spivak M., *Corruption offenses in the health protection sphere: analytical aspect*. Public law. 2013. 3 (11). 53–60, p. 53.

<sup>4</sup> Shevchuk, O., Zui, V., Maryniv, I., Davydenko, S. & Mokhonchuk, S. (2021). *Human Right to Internet Access in Healthcare in the “Right to Health Concept”: Legal Issues*. European Journal of Sustainable Development, 10(2), 286. <https://doi.org/10.14207/ejsd.2021.v10n2p286>.

<sup>5</sup> *Conflict of Interest Policies and Practices in Nine EU Member States: A Comparative Review*. Organisation for Economic Co-operation and Development. 2005. SIGMA Papers 36, OECD Publishing. Available at: <https://ideas.repec.org/p/oec/govaac/36-en.html>.

Declaration on the Promotion of Patients' Rights in Europe along with the Model of Declaration on Patients' Rights, constituting the basis for creating the national legislation with regard to protection of health and, above all, constructing patients' rights<sup>6</sup>.

## 2. Materials and methods

This study is based on an interdisciplinary approach to the analysis of legal support for the prevention and settlement of conflicts of interest in the field of healthcare as an administrative and legal institution using comparative law, methods of analysis and synthesis, dialectical and systemic methods. Comparative legal and comparative methods were used in the study of legislative acts regulating the development of the legal institution for preventing and resolving conflicts of interest in the healthcare sector. The formal-logical method was used to establish the legal structure of "conflict of interest in healthcare". Methods of modeling, analysis and synthesis made it possible to identify methods and types and the concept of "prevention and settlement of conflicts of interest in the field of healthcare", to analyze the experience of foreign countries.

## 3. Literature review

Some researchers drew attention to the problems of resolving and preventing conflicts of interest in the healthcare sector, namely: Vorobyov K. P. (2013) studied the control and management of conflicts of interest in medicine and the role of new scientific approaches<sup>7</sup>, Lishchyshyna, O.M, Melnyk Ye.O. considered the features of resolving a conflict of interest in the development of medical and technological documents<sup>8</sup>, Eccles M.P., et. all. (2012) investigated conflicts of interest in clinical practice<sup>9</sup>; Bindslev J. B., et. all. (2013) disclosed conflicts of interest in clinical practice guidelines<sup>10</sup>, Guyatt G., et al. (2010) explored ways to deal with conflicts of interest in clinical practice guidelines<sup>11</sup>;

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<sup>6</sup> See in this regard, Paulina Jaszczuk (2018), *Protection of the patient against practices violating collective interests of consumers and collective interests of patients*, Review of European and Comparative Law, 32 (1), 2018, 7-17, p. 14.

<sup>7</sup> Vorobyov K. P., *Conflicts of interests in medicine and the role of new scientific approaches in their control and management*. Ukrainian Medical Journal. 2013. 4. 112–120. Available at: [http://nbuv.gov.ua/UJRN/UMCh\\_2013\\_4\\_25](http://nbuv.gov.ua/UJRN/UMCh_2013_4_25).

<sup>8</sup> Lishchyshyna, O.M, Melnyk Ye.O. *Conflict of interest in the development of medical and technological documents*. Ukrainian Medical Journal. 2014. 1 (99) – I/II. 92 - 94.

<sup>9</sup> Eccles M. P, Grimshaw J. M, Shekelle P, Schunemann H. J, Woolf S, *Developing clinical practice guidelines: target audiences, identifying topics for guidelines, guideline group composition and functioning and conflicts of interest*. Implement Sci 2012;7:60 10.1186/1748-5908-7-60.

<sup>10</sup> Bindslev J., Schroll J, Gotzsche P., Lundh A., *Underreporting of conflicts of interest in clinical practice guidelines: cross sectional study*. BMC Med Ethics 2013;14(1):19.

<sup>11</sup> Guyatt G, Akl EA, Hirsh J, Kearon C, Crowther M, Gutterman D, et al. *The vexing problem of guidelines and conflict of interest: a potential solution*. Ann Intern Med. 2010. June 1;152(11): 738-41. 10.7326/0003-4819-152-11-201006010-00254.

Neuman J., et al. (2011) drew attention to the financial aspects of conflicts of interest among the members of the clinical practice guidelines panel in Canada and the USA<sup>12</sup>, Norris S. L., et al. (2011) conducted a systematic review regarding conflicts of interest in the development of clinical practice guidelines<sup>13</sup>; Graham T., et al. (2015) studied selected issues of managing conflicts of interest in the UK<sup>14</sup>, Muth C.C. (2017) studied the issues of resolving conflicts of interest in medicine<sup>15</sup> and others. An irresolvable conflict of interest in the healthcare sector can lead to various abuses of official position in this area. According to some experts in the legal field, misunderstanding and underestimation of the importance of a conflict of interest in the management of healthcare continues. The study of forms and methods of preventing and resolving conflicts of interest in the field of healthcare as an administrative and legal institution, establishing its features, disclosing its concept, which in modern conditions are not sufficiently studied and systemized, has practical and scientific significance and indicates the relevance of this study.

#### 4. Results and discussion

The institute of law in the scientific literature is meant as a separate group of legal norms regulating homogeneous social relations of a particular type (p. 250)<sup>16</sup>. The category "health care" is a system of legal, socio-economic and therapeutic and preventive measures and means aimed at preserving, strengthening and restoring the physical and mental health of a person (p.290)<sup>17</sup>, according to the WHO constitution, health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. According to Art. 3 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare", the healthcare sector is a system of measures carried out by state authorities and local governments, their officials, healthcare institutions, individual entrepreneurs registered in the manner prescribed by law and received a license for the right to produce economic activities in medical practice, medical and pharmaceutical

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<sup>12</sup> Neuman J, Korenstein D, Ross JS, Keyhani S. *Prevalence of financial conflicts of interest among panel members producing clinical practice guidelines in Canada and United States: cross sectional study*. BMJ. 2011;343:d5621 10.1136/bmj.d5621.

<sup>13</sup> Norris S.L, Holmer H.K, Ogden L.A, Burda B.U. *Conflict of interest in clinical practice guideline development: a systematic review*. PLoS One 2011; 6(10):e25153 10.1371/journal.pone.0025153.

<sup>14</sup> Graham, T, Alderson, P. and Stokes T. *Managing Conflicts of Interest in the UK National Institute for Health and Care Excellence (NICE) Clinical Guidelines Programme: Qualitative Study, 2015*. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4374927>.

<sup>15</sup> Muth C.C. *Conflict of Interest in Medicine*. JAMA. 2017;317(17):1812. doi:10.1001/jama.2017.4044.

<sup>16</sup> Tsvik M.V., Petryshyn O.V., Avramenko L.V. *Zahalna teoriia derzhavy i prava [General theory of state and law]*. Kharkiv: Pravo. 2010. 584 p.

<sup>17</sup> Norris S.L, Holmer H.K, Ogden L.A, Burda B.U. *Conflict of interest in clinical practice guideline development: a systematic review*. PLoS One 2011;6(10):e25153 10.1371/journal.pone.0025153.

workers, public associations and citizens in order to preserve and restore physiological and psychological functions, optimal performance and social activity of a person with the maximum biologically possible individuality life<sup>18</sup>.

The administrative-legal institution for the prevention and settlement of conflicts of interest in the field of healthcare is a system of administrative and legal norms that regulate managerial relations that arise regarding the prevention and settlement of conflicts of interest in the field of healthcare and are part of the branch of administrative law. This institution is complex, it can be divided into such sub-institutions (1) prevention of conflicts of interest in the health sector (2) settlement of conflicts of interest in the health sector. The fact of a conflict of interest in the field of healthcare may occur in the presence of public (official) powers and private interest of persons holding certain positions in the field of healthcare. Subjects subject to restrictions related to conflict of interest in the administrative-legal regulation of preventing and resolving conflicts of interest in the field of healthcare are different types of persons in accordance with their positions and functions, also performed by authorities in the field of healthcare. It is also important that officials of health care institutions have specific administrative and legal statuses that are different from the status of a citizen, which is due to their social roles and professional knowledge.

Legal relations that arise regarding the prevention and settlement of conflicts of interest in the field of healthcare are regulated by the Constitution of Ukraine, international treaties, the consent to be bound by which is provided by the Verkhovna Rada of Ukraine, other laws, as well as other regulatory legal acts adopted for their implementation (Article 2 of the Law of Ukraine "On the Prevention of Corruption")<sup>19</sup>. Also, this Law contains a number of provisions regarding the need to comply with legislation to prevent corruption in the healthcare sector. In this scientific article, we are interested in the healthcare sector that falls under the regulatory influence of the norms of administrative law and the actions of administrative legislation. However, only certain attitudes in the field of healthcare relate to the administrative-legal institution for preventing and resolving conflicts of interest in the field of healthcare. Such legal relations are those that are directly related to the public administration of this area. Thus, it can be argued that the introduction of the category of conflict of interest by the healthcare sector regarding the public administration of this sphere is primarily related to the need to prevent the corrupt behavior of medical and pharmaceutical workers. Therefore, in the event of a conflict of interest among public health officials, measures should be taken to prevent and resolve them.

Important in the development of the legal institution for the prevention and settlement of conflicts of interest in the field of healthcare is the establishment of the concept of "conflict of interest in the field of healthcare". Establishing a

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<sup>18</sup> Fundamentals of the legislation of Ukraine on health care: Law of Ukraine of November 19, 1992 № 2801-XII. Available at: <https://zakon.rada.gov.ua/laws/show/2801-12>.

<sup>19</sup> On the prevention of corruption: Law of Ukraine of 10.14.2014 №. 1700-VII. Information of the Verkhovna Rada of Ukraine. 2014. No. 49. Art. 2056.

conflict of interest in the healthcare sector is primarily related to Ukraine's international obligations arising from the UN Convention against Corruption (New York, 2003). According to paragraph 4 of Art. 7 "Public sector" of the said Convention, each State Party shall endeavor, in accordance with the fundamental principles of its domestic law, to establish, maintain and strengthen systems that promote transparency and prevent conflicts of interest<sup>20</sup>. The UN Convention against Corruption does not use the term "conflict of interest" itself, but its essence is expressed quite definitely by terms that are close in content: "conflict of interest", "conflict of interest". In the International Code of Conduct for Public Officials, to which the mentioned Convention refers, the mechanisms for preventing and resolving conflicts of interest are regulated in such provisions of Chapter II "Conflicts of Interest and Waiver"<sup>21</sup>: The concept of "conflict of interest" is used in international documents for the activities of civil servants. Thus, Article 8 of Recommendation No. R(2000)10 of the Committee of Ministers of the Council of Europe to member states on codes of conduct for civil servants, adopted at the 106th session of the Committee of Ministers on May 11, 2000, states that: "A civil servant should not allow, that his or his personal interests are in conflict with his or his public office. It is his or her duty to avoid such conflicts, real, potential or possible. A civil servant should not abuse his position in favor of personal interests. Article 13 of the above Recommendations introduces the concept of a conflict of interest: "a conflict of interest arises in a situation where a public official has an influential personal interest or can influence the impartiality and objectivity of the performance of his or her official duties." The personal interest of a public official includes any advantage to him or him, his or his family, close relatives, friends or persons or organizations with which he or she has or had a business or political relationship. This also includes any financial or civil liability, for that matter.

The norms of international legislation aimed at preventing and resolving conflicts of interest in the field of healthcare also influenced the development of this category in legislation in certain foreign countries. For example, the desire to apply codes, or standards of conduct, in their legal systems has been declared today by more than 170 participating countries that have ratified the UN Convention against Corruption of October 31, 2003. Thus, in Canada there is a separate law "On Conflict of Interest" dated December 12, 2006, which entered into force on July 9, 2007. Among the main objectives of the implementation of this legislative act are the following: (1) to minimize the possibility of conflicts arising between private interests and public duties. the duties of officials and ensure that these conflicts are resolved in the public interest if they arise; (2) give the Commissioner for Conflicts of Interest and Ethics the power to determine the measures necessary to prevent conflicts of interest and to determine whether there has been a violation

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<sup>20</sup> United Nations Convention against Corruption: International Document of 31.10.2003 № 995\_c16. Official Gazette of Ukraine. 2010. № 10. № 44. 2006, Art. 2938., Art. 506.

<sup>21</sup> International Code of Conduct for Public Officials: International Document dated 23.07.1996 № 995\_788. Available at: [https://zakon.rada.gov.ua/laws/show/995\\_788#T](https://zakon.rada.gov.ua/laws/show/995_788#T).

of this Law<sup>22</sup>. In the Czech Republic, Law No. 159/2006 of March 16, 2006 on Conflict of Interest stipulates that a public official is obliged to refrain from any action in which his personal interests may affect the performance of his functions. For the purposes of this Law, personal interest means an interest that brings a public official, a person close to a public official, a legal person controlled by public officials, or a person close to a public official, to increase property, property or other benefits, to prevent possible diminution of property or other benefit or other benefit<sup>23</sup>. Also, a separate law on conflict of interest was adopted in the Kyrgyz Republic. In particular, in the Law of the Kyrgyz Republic “On Conflict of Interest” dated December 12, 2017 No. 206 (11), a conflict of interest is defined as a conflict between public legal obligations and personal (private) interests of persons defined in the norms of this Law, in which their personal (private) interests affect or may affect the performance of their official duties, which leads or may lead to a violation of the rights and interests of citizens, organizations and the state. A conflict of interest can be potential, real, and has already taken place (art. 1)<sup>24</sup>.

Therefore, the concept of "conflict of interest" is defined at the level of a special legislative act. In some foreign countries, the concept of "conflict of interest in the field of healthcare" has been introduced into special laws regulating the activities of medical and pharmaceutical workers. Thus, in the Health Code of the Republic of Tajikistan, the concept of “conflict of interest” is a situation in which the personal interest of medical and pharmaceutical workers in their work for the purpose of making a profit with the help of pharmaceutical companies or through their representative offices can cause dishonest behavior. performance of professional activities of healthcare professionals and contradict the interests of the patient<sup>25</sup>. In fact, all formal definitions of the term "conflict of interest" have a common content. It can be concluded that the prohibition on conflict of interest in the field of healthcare is provided for in the legislation of many foreign countries, in some the term "conflict of interest" is disclosed in the framework of legislative acts on the prevention of corruption, in other countries - in separate laws on conflict of interest, we note that the concept of "conflict of interest" in relation to the healthcare sector has been taken into special laws regulating the activities of medical and pharmaceutical workers.

Note that the Law of Ukraine “Fundamentals of Ukrainian Legislation on Health Care” does not specify the concept of “conflict of interest in the field of health care”. In the order of the Ministry of Health of Ukraine dated March 27, 2012, No. 207 "On approval of the procedure for conducting an audit in the system

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<sup>22</sup> Conflict of Interest Act (S.C. 2006, c. 9, s. 2). Available at: <https://laws-lois.justice.gc.ca/eng/acts/c-36.65/page-1.html#h-92024>.

<sup>23</sup> Zákon č. 159/2006 Sb. Zákon o střetu zájmů. Available at: <https://www.zakonyprolidi.cz/cs/2006-159>.

<sup>24</sup> Conflict of interest: Law of the Kyrgyz Republic of 12 December 2017 № 206 (11). Available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111716>.

<sup>25</sup> Conflict of Interest Policies and Practices in Nine EU Member States: A Comparative Review. Organisation for Economic Co-operation and Development. 2005. SIGMA Papers 36, OECD Publishing. Available at: <https://ideas.repec.org/p/oec/govaac/36-en.html>.

of the Ministry of Health of Ukraine", the concept of "conflict of interest" was introduced. The term "conflict of interest" is defined as a contradiction between the personal interests of an employee of the department and his official duties, the presence of which may affect the objectivity or impartiality of his decisions, as well as the commission or non-commission of actions in the process of exercising the official powers granted to him (1.2.)<sup>26</sup>. Thus, the conflict of interest is always based on the contradiction between the personal and public interests of an official in the field of healthcare, in which his personal interest may affect the improper performance of official duties in this area.

Article 1 of the Law of Ukraine "On the Prevention of Corruption" provides for two types of conflict of interest: (1) potential; (2) real<sup>27</sup>. The term "conflict of interest" is also not defined in this Law. However, the legislation of Ukraine also distinguishes the following 4 types of conflict of interest in the development of medical standards of medical care: (1) "personal material interest"; (2) "impersonal material interest"; (3) non-material interest", (4) "family interest"<sup>28</sup>. Article 1 of the current Law of Ukraine "On the Prevention of Corruption" specifies the concept of "potential conflict of interest" - as the presence of a private interest in the area in which it performs official or representative powers, may affect the objectivity or impartiality of decision-making, or the commission or failure to perform actions in the exercise of these powers (paragraph 9 of part 1 of Article 1 of the Law), real conflict of interest - a contradiction between the private interest of a person and his official or representative powers, which affects the objectivity or impartiality of decision-making, or the commission or non-commission of actions during the implementation of the said powers (paragraph 13 of part 1 of article 1 of the Law)<sup>29</sup>. Article 1 of the Law of Ukraine "On the Prevention of Corruption" reflects the term "private interest". Which should be understood as any property or non-property interest of a person, in particular due to personal, family, friendly or other non-official relations with individuals or legal entities, as well as those that arise in connection with membership or activities in public, political, religious or other organizations. We also note that, based on the provisions of the Law of Ukraine "On the Prevention of Corruption", it follows that an unresolved conflict of interest in the healthcare sector is one of the types of offenses associated with corruption.

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<sup>26</sup> *About approval of the Procedure for conducting an audit in the system of the Ministry of Health of Ukraine*: order of the Ministry of Health of Ukraine dated 27.03.2012. No. 207 Available at: [http://www.moz.gov.ua/ua/portal/dn\\_20120327\\_207.html](http://www.moz.gov.ua/ua/portal/dn_20120327_207.html).

<sup>27</sup> *On the prevention of corruption*: Law of Ukraine of 10.14. 2014 №. 1700-VII. Information of the Verkhovna Rada of Ukraine. 2014. No. 49. St. 2056.

<sup>28</sup> *Regulations on the multidisciplinary working group on the development of medical standards (unified clinical protocols) of medical care on the basis of evidence-based medicine*: Order of the Ministry of Health of Ukraine 28.09.2012 № 751. Official Gazette of Ukraine. 2012, № 95, p. 145, Art. 3857 Available at: <https://zakon.rada.gov.ua/laws/show/z2001-12#n9>.

<sup>29</sup> *On the prevention of corruption*: Law of Ukraine of 10.14.2014 №. 1700-VII. Information of the Verkhovna Rada of Ukraine. 2014. No. 49. Art. 2056.



Let us consider the components of a potential conflict of interest in the field of healthcare, for example, in the activities of officials in the implementation of medical activities. There are three of them. First - according to the job description or other document, a person must perform the relevant official or representative duties or be authorized to perform the above duties. The second is that for any reason, an official of a healthcare institution should have a private interest precisely in the area in which she performs her official duties or representative powers. Third, the private interest of an official of a healthcare institution may affect in the future the objectivity or impartiality of her decision-making, or the commission or non-commission of actions in the performance of these duties and powers. The absence of any component means that there is no potential conflict of interest.

Regarding the components of a real conflict of interest for an official in the activities of officials in the implementation of medical activities. There are also three of them. The first component remains unchanged. The second element has changed. Regardless of the reason, an official has already developed a private interest precisely in the area in which she exercises her official or representative powers. The third component is completely new. In an official, a contradiction arises between the private interest of a person and his official or representative powers. This contradiction arises at the very moment when an official begins to exercise these powers due to the need to make an appropriate decision or to perform or not to perform appropriate actions.

Among scientists there is no single point of view on the concept of "conflict of interest", and the concept of "conflict of interest in the field of healthcare" has not been established either. Thus, Guyatt G. et al. understand conflicts of interest in clinical practice as the set of conditions under which professional judgment about a primary interest (such as the welfare of the patient or the validity of a study) tends to unduly influence a secondary interest (such as financial gain)<sup>30</sup>. Lishchyshyna, O.M, Melnyk Ye. O. investigating the conflict of interest in the development of medical and technological documents, the concept of "conflict of interest" is proposed to be understood as a situation in which the private interests of a person involved in the process of evaluating or analyzing information affect (positively or negatively) the quality of the assessment, the reliability of the data or the results of the assessment<sup>31</sup>. According to other scientists, the conflict of interest in the healthcare system, by its nature and content, is more of a moral conflict of state (public) interests and the personal interests of the person holding the corresponding position in the healthcare system. In practice, very often there is a very seductive for officials in this area, in which his personal and public interests intersect. Moreover, the implementation of public interest "in

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<sup>30</sup> Guyatt G, Akl E.A, Hirsh J, Kearon C, Crowther M, Gutterman D, et al. *The vexing problem of guidelines and conflict of interest: a potential solution*. Ann Intern Med. 2010. June 1;152(11): 738-41. 10.7326/0003-4819-152-11-201006010-00254.

<sup>31</sup> Lishchyshyna, O.M, Melnyk Ye.O. *Conflict of interest in the development of medical and technological documents*. Ukrainian Medical Journal. 2014. № 1 (99) – I/II. pp. 92-94, p. 92.

their own favor", at their discretion for officials in the healthcare system, may have a large material or other benefit. It can be proposed, from our point of view, that "prevention and settlement of conflicts of interest in the field of healthcare" is a set of legal norms applied in the event of a situation in which an official in the field of healthcare, performing his duties, has a private interest (personal interest), which may lead to the adoption of an unlawful decision or the commission of an unlawful act in the field of healthcare, and aimed at eliminating the risks of occurrence or neutralizing such an act.

The Law of Ukraine "On the Prevention of Corruption" section V "Prevention and settlement of conflicts of interest", which defines: prevention and settlement of conflicts of interest (Article 28), measures of external and independent settlement of such a conflict (Article 29), removal from the assignment, taking actions, making a decision or participating in its adoption (Art. 30), restricting access to information (Art. 31), viewing the scope of official powers (Art. 32), exercising powers of external control (art. 33), transfer or dismissal of a person due to the presence of a conflict of interest (art. 34), features of the settlement of a conflict of interest that arose in the activities of certain categories of persons authorized to perform the functions of the state or local government (art. 35), prevent conflicts of interest [16]<sup>32</sup>. Article 29 of this Law of Ukraine defines ways of external and independent settlement of conflicts of interest. Thus, from our point of view, the duties of health officials regarding conflict of interest in this area can be represented as a logical combination of 4 elements, namely: (1) prevention, (2) informing, (3) refraining from actions or decisions and (4) settlement.

In the context of a conflict of interest in healthcare institutions, the most problematic issue is the joint work of relatives in one institution, if they are subordinate to each other. So, in this situation, there are all three components of a potential conflict of interest: 1) the relevant official duties of an official (for example, the head physician); 2) the emergence of a private interest due to the relevant family and kinship relations of an official; 3) the possibility in the future of biased or unanticipated actions of an official regarding relatives. The real conflict of interest is the joint work of relatives in one institution, if they are subordinate to each other. Here we can also notice the presence of all three components of a real conflict of interest: the relevant official duties of an official (for example, the head physician); a potential conflict of interest already exists (the chief physician knows that one of the subordinates is his close person); the emergence of a contradiction between the private interest of an official and his official duties (this contradiction arises from the moment when the head doctor performs his duties and knows that one of the subordinates is his close person or hires him).

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<sup>32</sup> *On the prevention of corruption*: Law of Ukraine of 10.14.2014 №. 1700-VII. Information of the Verkhovna Rada of Ukraine. 2014. No. 49. Art. 2056.

## 5. Conclusion

A conflict of interest in the healthcare sector is a conflict between public legal obligations and private interests of an individual in the healthcare sector, the presence of which may affect the objectivity or impartiality of decisions made, as well as the commission or non-commission of actions in the exercise of his official powers in the healthcare sector. By establishing the requirement to prevent the emergence and settlement of an existing conflict of interest in the field of healthcare, the state, as it were, recognizes the insufficiency of not only the moral and ethical standards inherent in every society, but also the legal ones that determine the behavior of officials of state bodies. This indicates the preventive nature of the legal regulation of conflicts of interest in the healthcare sector in the anti-corruption legislation of Ukraine: the state creates additional tools designed to minimize the influence of private interest on the actions or decisions of officials in the healthcare sector. The problem of resolving a conflict of interest in the activities of health officials requires the adoption of the Law of Ukraine "On Conflict of Interest", which determined the system of relevant state structures and systematic and coordinated actions of all civil society institutions.

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