

FEATURES OF CRIMINAL LIABILITY OF MEDICAL WORKERS

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Abstract

In the context of the global coronavirus COVID-19 pandemic, the professional activity of medical workers has become one of the foundations of the life of civilized society, so the provision of medical services must be clearly regulated, in particular, by legal means. At the same time, both legislative and by-law irregularities in most aspects of professional activity of medical workers, lack of objective criteria for evaluating their activities, low level of social support of medical staff, a significant number of gaps in criminal law, which provide for liability for professional offenses of this category of individuals, which collectively encourages health professionals to neglect their professional responsibilities, as well as the confidence to avoid any kind of liability for such actions.

Keywords: *the subject of the crime, special subject, professional activity, official activity, life, individual, inactivity.*

Introduction

The topicality of the research is preconditioned by the urgency of the problem of providing quality medical services by health professionals in the performance of their professional duties, as well as the important social and legal importance of criminal liability of medical workers for crimes related to professional duties. Based on the study of statistics and empirical data, it has been found that the number of cases of gross violations of patients' rights by health professionals, in particular, the damage to health or fatalities for patients has varied within different limits, moreover, in recent years there has been a tendency to increase the number of such violations. Issues related to the criminal law characteristics of crimes committed by medical workers are complex in nature and important not only for the criminal legislation of Ukraine but also for the post-Soviet and European countries. The topicality of the outlined issues for Ukraine is intensified, first of all, in the conditions of reform processes of the healthcare system of Ukraine and the current criminal legislation. In general, the analysis of the scientific literature shows that the debatable issues concerning the application of the provisions of the law on criminal liability of medical workers related to professional activity have not been clearly resolved yet, which negatively affects law enforcement practice and therefore requires a comprehensive study and development of proposals to improve criminal law in this area.

Some issues of legal liability of medical workers, including the criminal one, were investigated in the works of Yu.V. Baulin, V.I. Borysov, S.B. Gavrysh, M.V. Radchenko, A.A. Tarasova, as well as in the works of S.G. Stetsenko, V.V. Stashis, I.Ya. Senyuta.

The analysis of the formation and development of legislation aimed at counteracting health crime is extremely relevant, as the historical connection between past and present legislation provides an opportunity to track the positive and negative processes of counteracting health crime and use the generalized historical experience in outlining directions for improving the effectiveness of organizational and legislative support for counteracting such crimes [1].

Methods

The methodology of the chosen problem is a systematic approach, as well as dialectical, formal-logical and structural-functional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law. The methodological basis of the study is theory cognition, its general method of materialist dialectics. The following were used as general scientific research methods: formal-logical and systematic methods.

Results

As stated by P.Y. Kuzminsky, the high degree of responsibility entrusted to the medical worker is mainly linked to the idea that they seem to receive in their hands the most significant social value - a person's life and health, moreover, in most cases, the person is ill, i.e. one who is already in danger. The latter is often associated with an individual's unhealthy lifestyle and irresponsible behavior towards their health. At the same time, while trusting medical works, society is trying to establish strict control over their activities, including through the usage of mechanisms of legal liability [2].

Legal bases of legal liability for offenses in the field of healthcare in Ukraine are defined by the Law of Ukraine "Fundamentals of the legislation of Ukraine on healthcare" [3]. Thus, according to Art. 80 of the Law of Ukraine "Fundamentals of the legislation of Ukraine", persons guilty of violating the legislation on healthcare, bear civil, administrative, or criminal liability in accordance with the legislation. At the same time, the provisions of Part 3 of Art. 34 of the Law of Ukraine "Fundamentals of the legislation of Ukraine on healthcare" should be taken into account, according to which the doctor is not liable for the health of the patient in case of refusal of the latter from medical prescriptions or violation of the established regime by the patient. Healthcare professionals at all levels are considered to be liable for health offenses. A medical worker is a doctor or paramedic (nurse) of a healthcare facility. A broader definition of this concept is given by O.S. Shchukin: "A medical worker is an individual (citizen of Ukraine or foreigner) who has obtained higher, secondary medical education and has undergone further special training or retraining, meets the uniform requirements confirmed by current documents (certificate of specialist), has

undertaken ethical obligations to know and comply with the requirements of medical deontology, and entered into an employment contract with licensed medical institutions for medical activities. The author includes doctors, pharmacists, provisors, and paramedics and notes that a person is granted the status of a medical worker if they actually perform professional duties in the relevant medical specialty” [4].

Criminal liability is a separate type of legal liability, which is manifested in the obligation of a person, who has committed a socially dangerous act that falls under the characteristics of a crime provided by a separate article of the Special Part of the Criminal Code of Ukraine, to face restrictions in the form of criminal punishment. The basis for bringing a medical worker to criminal liability is their actions or inactivity, which by its nature falls under the crime provided by the Special Part of the Criminal Code (hereinafter - CC) of Ukraine [5]. Criminal crimes in the field of public health include, in particular, improper performance of professional duties, which led to infection of a person with human immunodeficiency virus or other incurable infectious disease (Art. 131 of the CC of Ukraine); disclosure of information on conducting a medical examination to detect infection with human immunodeficiency virus or other incurable infectious disease (Art. 132 of the CC of Ukraine); illegal abortion or sterilization (Art. 134 of the CC of Ukraine) - if the medical worker has no special medical education; illegal medical activity (Art. 138 of the CC of Ukraine) - medical activities without a special permit, carried out by a person who does not have proper medical education; failure to provide care to the patient by a medical worker (Art. 139 of the CC of Ukraine); improper performance of professional duties by a medical or pharmaceutical worker (Art. 140 of the CC of Ukraine); violation of the patient's rights (Art. 141 of the CC of Ukraine); illegal conduct of experiments on humans (Art. 142 of the CC of Ukraine); violation of the procedure for transplantation of anatomical materials established by law (Art. 143 of the CC of Ukraine); forced donation (Art. 144 of the CC of Ukraine); illegal disclosure of medical secrets (Art. 145 of the CC of Ukraine).

The issue of special crimes in the medical field is currently controversial, as it is for that commission

that a medical worker is prosecuted as a special subject of the crime. The definition of this crime was expressed by S.G. Stetsenko, who noted that a professional crime should be understood as an intentional or negligent act committed by a medical worker in the performance of professional duties, prohibited by criminal law under threat of punishment [6]. An exhaustive list of such crimes is contained in the Criminal Code of Ukraine. In order to analyze the legal regulation of criminal liability of medical workers for committing professional crimes, it is necessary to analyze separately each corpus delicti that falls under the signs of professional crime in the medical field. The most serious crime in the context of the research topic can be called a crime under Art. 119 of the CC of Ukraine. The article in question establishes a general norm regarding the criminal liability for the unintentional death of another person. From an objective point of view, this crime is characterized by an act that causes the death of another person, a consequence in the form of death, and a causal link between the consequence and the aforementioned act. Causing death by negligence is a sign of almost seventy crimes, in the case of falling into the act on most of the signs of one of these crimes, the qualification will not pass under Art. 119 of the CC. For example, Art. 141 provides for negligence in the subjective part that is subject to a separate qualification. Currently, the unintentional murder of another person by a medical worker qualifies under Art. 119 of the CC of Ukraine as “Murder through negligence”. The liability for such an act is the restriction of freedom or imprisonment for a term of three to five years. Murder of two or more individuals committed through negligence is punishable by imprisonment for a term of five to eight years [7]. The general nature of the aforementioned info requires special attention when applying to healthcare professionals, as it is mostly possible to apply the articles of the Special Part of the CC with a more detailed disposition. Another criminal offense to note is the improper performance of professional duties that has resulted in a person being infected with the human immunodeficiency virus or another incurable infectious disease. In this case, there is already an act in the form of improper performance of professional duties by medical, pharmaceutical

workers, due to dishonest treatment of them, that is, the composition of the crime in question is directly related to medical workers. For such actions, criminal law establishes liability in the form of restriction of freedom or imprisonment for up to three years. If such actions have led to the infection of two or more individuals with such diseases, the law provides for a sanction in the form of imprisonment or restriction of freedom for a term of three to eight years [5]. The person who committed such a crime is subject to an additional penalty - deprivation of the right to hold positions related to medical or pharmaceutical activities for up to three years. The notion of improper performance of professional duties, which is part of the objective side, can be formulated as the negligent, superficial performance of professional duties, contrary to the interests of professional activity. Criminal law also applies to criminal offenses, the object of which is the order of circulation of information about the medical examination to detect infection with human immunodeficiency virus or another incurable infectious disease. According to Art. 132 of the CC of Ukraine, disclosure of information about conducting a medical examination of a person to detect human immunodeficiency virus infection or another incurable infectious disease that is life-threatening or acquired immunodeficiency syndrome (hereinafter - AIDS) and its results, which became known in the connection with the performance of official or professional duties by an official of a medical institution, an auxiliary employee who obtained information on their own, or a medical worker, leads to criminal liability [7]. The sanction of such a socially dangerous act is an alternative, and therefore, one of the following types of punishment of the subject who committed this crime may be chosen for consideration by the court, such as

- a fine of fifty to one hundred non-taxable minimum incomes;
- public works for up to two hundred and forty hours;
- correctional work for up to two years;
- restriction of freedom for up to three years [7].

The aforementioned crime is also characterized by a special subject in the form of an official of a medical

institution, an auxiliary employee of such an institution, or a medical worker. The objective side is to disclose information about the patient's medical examination or its results. Disclosure of information means that the person who is obliged to keep the information illegally acquaints third parties with it or creates conditions for such acquaintance. Those who have committed this crime may also be subject to an additional penalty - deprivation of the right to hold certain positions or engage in certain activities for up to three years.

Crimes committed by medical workers in connection with their professional activities can be divided into the following:

- crimes against life and health of the person (patient);
- crimes against the rights of the person (patient);
- crimes in the field of economic activity in medical practice;
- crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogs or precursors;
- other crimes committed by medical workers in connection with their professional activities [8].

The problem of criminal liability of medical workers for professional offenses seems to be one of the most difficult in criminal law. Objective criminal assessment of illegal actions of medical workers is complicated by the specifics of professional medical and pharmaceutical activities, the main content of which is to provide appropriate medical and preventive care [9].

Usually, most criminal proceedings against doctors concern the classification of their actions as criminal, namely provided by Art. 140 of the CC of Ukraine. In particular, it is the failure or improper performance of professional duties by a medical worker as a result of negligent or dishonest treatment, if this has caused serious consequences for the patient. This is the only article in Ukrainian law that is used in 90-95% of cases of any initiated criminal proceedings in the field of medical activity [10].

Failure to perform professional duties should be understood as meaning that a healthcare professional does not perform the actions that they were obliged to perform within the scope of their professional activity [11-17]. Such an obligation must be enshrined in a legislative or by-law legal act or in internal medical norms (protocols, regulations,

instructions, etc.). In addition, the fact of the employee's awareness of this act and the availability of appropriate qualifications must be proved. Thus, this concept can be understood as the total inactivity of the medical worker. For example, such inactivity may be a refusal to hospitalize a patient in need of emergency medical care, a refusal to perform emergency surgery, leaving a patient unattended, refusing treatment, etc.

The term "improper performance of professional duties" means a situation where a medical worker performs their duties incompletely, carelessly, superficially, not as required by the interests of their professional activity [18-20].

Therefore, in the presence of risks of inadequate medical care, priority should be given to monitoring and fully documenting physiological changes after surgery, monitoring compliance with medical procedures in accordance with clinical protocols approved by the Ministry of Health, and in case of death - immediate and independent (should not be conducted in the same institution to ensure maximum independence) pathological examination, which can establish a causal link between the actions/inactivity of doctors and the death of the patient [20-22].

We also consider it expedient to introduce keeping double medical records of patients in stationary and ambulant treatment, which involves the presence of one medical record in medical institutions, and another one directly on the hands of a sick patient. This will minimize the risk of illegal rewriting, addition, or other amendments to medical records.

Discussion

As a result of the research, we can say that the criminal liability of medical workers is fully enshrined in the Criminal Code of Ukraine. A medical worker, according to the analytical norms, acts as a special subject of the crime. Professional medical crimes themselves are detailed and fully disclosed within the framework of criminal legislation. The subject of these crimes is special and separately defined by criminal law. During the legal qualification of this type of crime, special attention should be paid to the subjective side, as it is important to determine the intent of the medical worker to commit crimes.

Thus, a medical worker can be held criminally liable for committing crimes on a general basis, and the CC of Ukraine has a number of corpus delicti that are relevant to the professional activities of a medical worker.

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