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Protecting the Rights of Medical Services Consumers

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ABSTRACT
The article aims to analyze the legal aspects of protecting the rights of medical services consumers by identifying the parties of legal relations, establishing the specifics of medical services, the elements of violations of patients rights, the procedure for protecting the rights of medical services consumers. The system of general scientific and special methods, including dialectical, axiological, formal and legal methods has been applied during the research. It has been indicated that primary (medical services consumers, an entity providing medical services) and auxiliary subjects participate in legal relations for protecting the rights of medical services consumers. It has been proved that legal relations for protecting the rights of medical services consumers are characterized by: relations arising and being implemented in the healthcare sector; participation of entities with a special status (patient – hospital) in legal relations; application of a set of norms of medical law and protection of consumers rights; the fact of medical rights violation. It has been concluded that the legal fact of violating a patient's medical rights in the form of a medical tort is the reason for the emergence of legal relations for protecting the rights of medical services consumers.

KEYWORDS: Consumer, protection of consumers rights, service, health care, health care facility, contract for the provision of medical services, contract for medical care of the population.

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Protección de los derechos de los consumidores de servicios médicos

RESUMEN

El artículo tiene como objetivo analizar los aspectos legales de la protección de los derechos de los consumidores de servicios médicos, identificando las partes de las relaciones jurídicas, estableciendo las particularidades de los servicios médicos, los elementos de violación de los derechos de los pacientes y el procedimiento para proteger los derechos de los consumidores de servicios médicos. Durante la investigación se aplicó el sistema de métodos científicos generales y especiales, incluidos los métodos dialécticos, axiológicos, formales y jurídicos. Se ha indicado que en las relaciones jurídicas para la protección de los derechos de los consumidores de servicios médicos participan sujetos primarios (consumidores de servicios médicos, entidad prestadora de servicios médicos) y auxiliares. Se ha demostrado que las relaciones jurídicas para la protección de los derechos de los consumidores de servicios médicos se caracterizan por: relaciones que surgen y se implementan en el sector de la salud; participación de entidades con estatus especial (paciente – hospital) en las relaciones jurídicas; aplicación de un conjunto de normas de derecho médico y protección de los derechos de los consumidores; el hecho de la violación de los derechos médicos. Se ha llegado a la conclusión de que el hecho jurídico de violar los derechos médicos de un paciente en forma de agravio médico es la razón del surgimiento de relaciones jurídicas para proteger los derechos de los consumidores de servicios médicos.

PALABRAS CLAVE: Consumidor, protección de los derechos de los consumidores, servicio, atención de salud, establecimiento de salud, contrato de prestación de servicios médicos, contrato de atención médica de la población.

Introduction

Medical reform is ongoing in Ukraine. It was launched on April 1, 2020 by introducing The Program of Medical Guarantees at the level of secondary (specialized) medical care. Despite the martial law, partial destruction of medical infrastructure (for example, 292 hospitals were destroyed or badly damaged in 2022, 62 medical employees were killed (Kovtoniuk & Korchak, 2023)), this reform is going on to be implemented. Thus, the Resolution of the Cabinet of Ministers of Ukraine "Some issues of organizing a capable network of health care facilities" was approved on February 28, 2023. It was the basis to launch the functioning of hospital districts and hospital clusters that formed a capacity network of health care facilities (Resolution of the Cabinet of Ministers of Ukraine, 2023). The

above points out that Ukraine continues the systematic way to improve human rights in the medical sphere, the development of a transparent market for medical services and the formation of a mechanism for the protection of patients' rights.

Due to the gradual formation of the latest medical environment, a legal issue related to the protection of medical services consumers' rights has emerged. The medical service began to be considered as a product and therefore as a civil service as a result of the implementation of medical reform. This approach enabled medical services patients-consumers to seek the protection of their violated subjective right. For example, the number of offenses registered in 2022 on improper performance of professional duties by a medical or pharmaceutical employee according to the Prosecutor General's office was 326 (Kharytonov, 2023). Thus, the emergence of a practical basis gave impetus to the development of the concept for the protection of medical services consumers' rights at the level of scientific cognition, in particular determining the legal nature of medical services and a patient's rights to protect the violated subjective right to health care.

Judicial practice on the protection of medical services consumers' rights began to be formed simultaneously with these processes. Thus, there were cases in courts of improper performance of medical services related to medical error, disputing the contract for the provision of medical services, reimbursement of financial and moral damage as a result of providing poor quality medical services, etc. At the same time, despite the possibilities of legal tools for the protection of human rights in the medical sphere, there were practical issues regarding the use of legal structures of the protection. Thus, patients, due to insufficient awareness in the field of medical rights, do not always enter into a contract for the provision of medical services, as a consequence there is the issue on the qualification of the legal nature of legal relations as a contractual obligation or tort (Krat, 2022).

In order to solve the specified problem in the field of medical law, the authors of the article have set the purpose to analyze the legal aspects of protecting the rights of medical services consumers. We believe that the achievement of the specified purpose is possible by solving the following main objectives: identifying the parties of legal relations, establishing the

specifics of medical services, the elements of violations of patients rights, the procedure of protecting the rights of medical services consumers.

1. Literature review

Given the urgency of practical issues on the protection of medical services consumers' rights, scholars are involved into this topic in order to form scientific and practical conclusions in the field of medical law. V.M. Stratonov and A.O. Havlovska indicate the problematic aspect of this topic emphasizing the importance of legal obligations of consumers of medical services in the aspect of protecting medical rights (Stratonov & Havlovska, 2020, 54). This approach is conditioned by the search for the scientific construction of the legal status of the consumer of medical services. H.V. Kolisnykova, O.A. Stohnii describe the structure of the right to quality medical care, which covers accessibility (lack of discrimination; physical accessibility; economic accessibility; information accessibility); safety, efficacy, patient orientation, rationality, fairness (Kolisnykova & Stohnii, 2020, 107). Legal forms of the protection of medical services consumers' rights were the subject matter of scientific research by S. M. W. Nuryaasiinta (2020). N. Gafurova and F. Yusupova (2022) consider the protection of medical services consumers' rights through the practice of the European Court of Human Rights, which determines the right to health in the context of a number of human rights related to health, as well as reflects the wide content of the right to health. Specific features of the quality indicators in the field of medical services are the focus of attention in the work of R.A. Prastyanti, A.P. Santoso, S.E. Saidah, A.H. Ngestiningrum and A. Budiono (2023). Having analysed the researchers' scientific works, we can argue that the topic of the protection of medical services consumers' rights is urgent. This provision is quite natural, since health care protection is directly related to the human right to life.

Legal relations on the protection of medical services consumers' rights and potential conflicts between patients and entities providing health care services in hospitals require their scientific and practical study. The dynamics of both medical legal relations, as a result of innovative development of medicine and legal forms of protection of medical services patients, creates the basis for constant review of already formed concepts of protection in the field of

medical law. Therefore, the authors of this work pay attention to specific features of the legal status of the participants of the specified legal relations, as well as to the system of components of medical services quality, the subject matter and forms of the protection of medical services consumers' rights.

2. Methodology of the study

The study of the protection of medical services consumers' rights is regulatory one because it was conducted as a result of explaining the data arising from scientific concepts and legal norms related to the object of the research. The materials used by the authors in this scientific work were obtained from library materials related to the doctrinal understanding of the legal protection of medical services consumers' rights. The judicial practice of the Ukrainian courts in the field of protecting patients' rights was also used. Secondary research data were obtained from the analysis of documents, legal sources, in particular regulatory acts concerning consumers' protection, health care and services supply agreements. Some research materials are non-legal documents because they are taken from mass media sources that reveal the situation of public relations regarding the protection of medical services consumers' rights.

The achievement of results and conclusions of the research was possible due to the use of the system of general scientific and special methods of cognition. The basic method was dialectical, which allowed to identify the legal essence of legal protection of medical services consumers' rights. A qualitative approach was used to analyse the data obtained in the process of the conducted research. The applied axiological method made it possible to emphasize the relationship of the right to life and the right to health care, the system of human values in the healthcare sector. The formal and legal method was used to know the content of regulatory legal acts that are related to the subject matter of this research. The conclusions of this scientific work were obtained with the usage of the deductive reasoning method, that is, when the process of reasoning begins with hypotheses based on the data on the legal status of a patient and the legal protection of consumers rights in the field of medical rights in order to obtain a particular conclusion about the legal forms for protecting consumers of medical services.

3. Results and Discussion

It is well-known that basic entities (consumers of medical services, entity providing medical services) and auxiliary entities (defense attorneys providing consultations on the forms of protecting medical rights, courts and other state authorities implementing the policy in the field of medical services) are involved in legal relations on the protection of medical services consumers' rights. Such division of participants in legal relations regarding the protection of medical services consumers' rights is due to the fact that legal protection within these legal relations is a dynamic process. The protection of medical rights begins from the moment when a medical service is provided (exercise of subjective right) and receives the dynamics of development as a result of violation of the subjective right to health care (direct protection of medical services consumers' rights). It is known that the exercise of subjective right is considered to be the actual commission of actions, acts of real behavior of a person, whose possibility of commission is given to a person by securing (acquisition) of subjective civil right (Kot, 2017, 18), and the right to defense can be considered as provided by law possibility of applying compulsory measures stipulated by the law or the contract for the termination of the offense and the restoration of the infringed right or, in case of impossibility of its restoration, for compensation for damages and moral harm done by the offences (Kot, 2017, 192).

Ensuring the proper level of health care, provision of available medical services and medical care to citizens is one of the main tasks of any state, including Ukraine (Teremetskyi et al., 2020, 160). That is why the state creates the conditions for the protection of violated medical rights. Depending on the scope of implementation and protection of subjective right, there may be specific features within the mechanism of exercising human rights, in particular in the field of medicine. Legal relations on the protection of medical services consumers' rights are characterized by: relationships that arise and are implemented in the healthcare sector; participation in legal relations of the entities having the special status (patient – hospital); application of medical law norms, in particular protection of consumers rights; the fact of the violation of medical rights. Therefore, the protection of medical services consumers' rights has its own concept of legal construction. Let's address the determination of the legal status of

special entities of legal relations on the protection of medical services consumers' rights in order to analyse it in details.

The primary entity in the mentioned legal relations is the consumer of medical services. There are conflicting approaches to this term in Ukrainian law, because the legislator provides such concepts as "patient", "consumer", "customer". Having analysed these concepts, one can argue that a patient operating with the intention of consumption of medical services is a special entity in the field of medical services in the medical legislation of Ukraine. In this case, the following terminological apparatus (from general to special) can be applied to the determination of a patient: customer – client – consumer – patient. Studying the terminological determinant of patient – consumer of medical services, M.I. Pasko rightly emphasizes that the construction of the concept of "patient" can be defined as: 1) a patient as a sick person (acquiring the legal status of a sick person); 2) a patient as a healthy person (does not have the status of a sick person, forms contractual relations on ensuring own health); 3) relationship of a physician – patient (involves the patient's participation in the treatment) (Pasko, 2017, 299-300). The construction of the patient is also offered by P. Oben, who determines the patient through the following components: 1) it is a person who suffers from illness, but remains the same unique person as he / she used to be; 2) a person suffering from illness, seeks medical services for the first time in regard to the disease and interacts with the entity providing medical services. At the same time, the condition of the disease or the role of the person as a health care consumer is dynamic. If the disease is cured, a person who has previously been a patient restores health and is no longer a patient (Oben, 2020, 908). Literature sources also prove that a patient is an individual who acquires the status of a consumer of medical services as a result of seeking diagnostic, preventive, therapeutic or rehabilitation medical care or by exercising the right to be a participant in a medical and biological experiment (Stratonov & Havlovska, 2020, 54). Summarizing the above, we can offer the following considerations: 1) a consumer of medical services is always a patient (an individual who has a disease or performs a preventive examination of own health); 2) a patient may not be a consumer of medical services in case of involvement as a healthy person into a clinical trial of a medicinal product; 3) a consumer of medical services acts as a medical

service's customer in order to exercise a subjective right to health care. Therefore, a consumer of medical services and a patient are close definitions, but may have a different content sense, which is of scientific and practical importance.

The provision of medical services to a consumer-patient is implemented by a compulsory specialized entity – a health care facility, which guarantees health care of the population on the basis of the relevant license and professional activity of medical (pharmaceutical) employees and rehabilitation professionals (paragraph 9, Part 1 of the Art. 3 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care") (Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care" 1992). Health care facilities of Ukraine have been operating in the cluster system since 2023, which is determined by the Resolution of the Cabinet of Ministers of Ukraine No. 174 of 28 February 2023 (Resolution of the Cabinet of Ministers of Ukraine 2023). The main purpose of the health care facility is to provide medical care. The powers of health care facilities are provided in paragraph 13 of the License Conditions for conducting business activities within medical practice, according to which the holder of the license (health care facility) is obliged: to carry out medical practice in the specialties that were stated in the documents attached to the application to obtaine a license, or stated in a report about changes; to control the quality of medical care; to keep a medical secret; to ensure the organization of medical examinations of employees; to ensure conditions for free access of persons with disabilities to premises, etc. (Resolution of the Cabinet of Ministers of Ukraine 2016). In general, the healthcare facility is a specialized entity that carries out medical practice and provides medical care to the population. This entity must have an appropriate labor resource (medical employees), logistical, financial support. Publicly recognized the legal status of a health care facility as a capable participant in medical relations for the provision of medical care, creates the basis for the conclusion of medical services supply agreement.

The Ukrainian legislation does not define the concept of a medical service, but only consolidates such terms as medical care (the activities of professionally trained medical employees, aimed at prevention, diagnosis and treatment in connection with diseases, injuries, poisoning and pathological conditions, as well as in regard to the pregnancy and childbirth)

and medical treatment (Art. 1 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care") (Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care" 1992). I.V. Venediktova pays attention to the fact that medical care is not a medical service because medical care is provided without the free will of both authorized and obliged persons as a result of a legal fact – provision of medical care to a patient. Medical services, having economic content, take forms of property relations, and therefore become the subject matter of regulation of civil law (Venediktova, 2014, 46). Economic research states that a medical service, being a commodity of the market, is different from another product or service and is characterized by a number of own features: it does not exist before production; it is labour-consuming and does not have a clear value before the completion; it is not material; difficult to calculate; personified; intellectually depends on the manufacturer of a service; the quality of the service is changing even when performed by the same physician; is subjective and depends on the characteristics of a consumer, etc. (Marova & Vovk, 2017).

In defining the concept of a medical service, it is necessary to take into account its medical (therapeutic and prophylactic), socio-economic and legal components. The medical effect or therapeutic and prophylactic quality of the service is manifested in improving the health of a patient or alleviating his / her suffering or preventing chronic diseases. Socio-economic quality leads to improving the quality of life of an individual, increasing the duration, and promoting public health. The legal aspect is the occurrence of appropriate duties to the services' recipient (patient).

The main components of the concept of "medical service" are: a) activity; b) activity carried out with the help of special measures; c) activity aimed at diagnosis, treatment and prevention of the disease; d) activity carried out by health care facilities or individual-entrepreneurs engaged in private medical practice; e) activity to be licensed; f) medical services are provided on the basis of contracts (Chekhovska & Teremetskyi, 2023, 486). Generally, a medical service is a service of treatment and preventive nature, which is based on medical care in accordance with existing medical standards, supported by the system of competitive advantages (Artiukhina & Kratt, 2012, 196). In view of the legal technique of forming the understanding of a medical service, it should be borne in mind that every country and even

every health care organization must have its own structure for measuring the quality of medical services (Endeshaw, 2021, 114). The state guarantees the quality and safety of medical care for patients through the appropriate certification, licensing, accreditation and standardization system, as well as proper training and retraining of medical and pharmaceutical staff on the basis of existing state standards of training, performs control functions according to any medical practice (Kolisnykova & Stohnii, 2020, 107). It is the quality standards of a medical service that should be enshrined in the medical services supply agreement.

The receipt of medical services according to the modern legislation of Ukraine can be held under the medical guarantee program and the medical services supply agreement. The consumer, under the medical guarantee program, receives the service in accordance with the contract on medical care of the population under the medical guarantee program, which is concluded between the authorized agency and the health care facility, regardless of ownership form or individual-entrepreneur, who has received a license to implement economic activity in medical practice in accordance with the procedure established by law, which meet the requirements for the provider of medical services under the medical guarantee program established by the Cabinet of Ministers of Ukraine, and must meet the conditions of purchase, specifications for medical services, and also take into account the scope of providing medical services in accordance with the needs of each hospital district as defined in the medical guarantee program.

The contract on public health care is an agreement for the benefit of third parties, who are patients in part of providing medical services, medical devices and medicinal products for them by the providers of medical services (Parts 1, 8, the Art. 8 of the Law of Ukraine "On State Financial Guarantees of Medical Service to the Population") (Law of Ukraine "On State Financial Guarantees of Medical Service to the Population" 2017). The medical services supply agreement belongs to the category of consensual contracts, it is considered concluded and is valid from the moment of reaching the consent of the parties on all essential conditions. A person may sign a typical draft contract offered by the executor, a patient's medical record may be issued and the contractor may make an appropriate entry thereto, there may be a

consultation on the phone or a service with the use of telemedicine. This contract is a type of service supply agreement, whose general provisions are enshrined in the Articles 901-907 of the Civil Code of Ukraine (The Civil Code of Ukraine 2003). Considering this, we can assume that one party (performer – medical service provider) under medical services supply agreement undertakes at the task of another party (the customer – consumer of medical services) to provide a medical service for the provision of specialized medical care in accordance with the established list of medical services, which is consumed in the process of providing medical care or treatment, and the customer undertakes to pay the contractor to the said service, unless otherwise stipulated by the agreement. Depending on the form of contractual relations, the peculiarities of the strategy and tactics of protecting the rights of medical services consumer may be established. For example, the decision of Ivano-Frankivsk Court of Appeal of 11 January 2022 in case No. 344/3764/21 stipulates that the plaintiff did not exercise the right to conclude a written agreement or the right to receive an accounting document (which confirms the fact of an oral agreement) certificate of completion or other document that could certify the fact of providing poor quality service by a specific entity. The above led to the occurrence of negative legal consequences for her, which make it impossible to protect her interests within civil proceedings. Therefore, the absence of medical services supply agreement can have a direct impact on the possibility of protecting patients' rights.

The legal fact for the protection of the consumer's rights will be a violation of the right in the field of qualitative medical care. In accordance with paragraph 13 of the Art. 1 of the Law of Ukraine "On Consumer Rights Protection", the proper quality of goods, work or services is the property of products that meets the requirements established for this category of products in regulatory legal acts and the terms of the contract with the consumer (Law of Ukraine "On Consumer Rights Protection" 1991). The Provisions for the control over the quality of medical care, approved by the Order of the Ministry of Health of Ukraine on September 28, 2012 No. 752 stipulate that the quality of medical care is the provision of medical care and conduction of other measures for organizing the provision of medical care by health care facilities in accordance with the standards established in the healthcare sector. The assessment of the quality of medical care includes determining the compliance of the provided medical care with

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the established healthcare standards (Order of the Ministry of Health of Ukraine 2012). The system of standards in the healthcare sector is enshrined in the Art. 14[1] of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care" (Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care" 1992). In particular, the sectoral standards in the healthcare sector are: the standard of medical care (medical standard); clinical protocol; health care rehabilitation protocol; logistical equipment; medicinal formulary; other norms, rules and regulations provided by laws regulating health care activities. In case of violation of the medical standard for the provision of medical care, there is a legal fact of the violation of a patient's medical rights. It must be noted that the concept of patients' rights, in the aspect of their protection, should be interpreted in a broad sense, which covers the basic individual rights of patients and the rights of consumers (Palm et al., 2020, 369).

Violation of patients' medical rights may be considered as a medical tort, which is the basis for the occurrence of obligations to compensate for financial and moral damage. The medical tort may generate legal relations in the field of medical care, taking into account the following conditions: 1) general condition: legal relations may occur, if a patient is alive and the harm is caused to his health; 2) the main grounds for the emergence of legal relations in the field of medical care will be a contract, and the medical tort – is an additional basis, which is aggregately legal; 3) if the medical services supply agreement was concluded: in case of harm to the health of a patient, there will be a need to provide a patient with medical care to eliminate deficiencies in the course of the contract, and therefore, there will be a legal relationship in the field of medical care; 4) if the medical services supply agreement was not concluded: in case of harm to the health of a patient while providing medical care, there will be a need to provide a patient medical care by medical care provider of another business entity depending on a patient's will or circumstances due to a patient's health situation (Seniuta, 2018, 109-110).

Therefore, a medical tort occurs in case of the violation of medical rights of patients caused by the violation of the medical standard for the provision of medical care. It is the basis for the emergence of legal relations on the protection of medical services consumers' rights. In this case, the legal mean of regulating tort medical relations between a consumer of medical services and a provider of medical services is: 1) in case of receiving medical care within the

framework of the medical guarantee program – a contract on medical care of the population, the medical standard for providing medical care, medical legislation; 2) if there is a concluded medical services supply agreement – the main legal source of regulating relations will be a contractual norm and general principles of civil, medical legislation; 3) in case of providing emergency medical care beyond contractual structures, legal regulation will be based on regulatory legal acts of medical legislation.

In case of tort obligation relationships, a consumer of medical services receives the legal status of the creditor, who has the right to claim for compensation for financial and moral damage. The general principles of consumer rights in case of the violation of the terms of the medical services supply agreement are enshrined in the Art. 10 of the Law of Ukraine "On Consumer Rights Protection" (Law of Ukraine "On Consumer Rights Protection" 1991). The analysis of the given rights of the medical services consumer makes it possible to divide them into the following groups: 1) rights to compensate for financial, moral damage; 2) compensation rights in case of late provision of medical services; 3) rights to restore the violated right. As a result of providing poor quality medical service, a patient has the right to compensate for financial and moral damage (Parkhomenko, 2023). The right to compensate for moral damage will be given to the injured person, and in case of the death of a patient – members of the deceased patient, and such damage will be in the heartfelt suffering, which they experienced as a result of unlawful behavior against a patient (Art. 1168 of the Civil Code of Ukraine) (The Civil Code of Ukraine 2003).

The conditions for liability for causing a medical tort are: a) damage; b) unlawfulness of harm; c) a causal link between unlawful behavior and harm; d) the fault of the damage's performer (the performer is not responsible for failure, delayed or other improper performance of the obligation and shortcomings in the performed works or provided services, if he proves that they have arisen from the fault of the consumer himself or as a result of the force majeure) (Manuilova, 2011). The indicated elements must be determined in case of a medical tort. The object of harm in medical legal relations of consumers' rights protection is personal intangible goods (life, health). According to the decision of the High Specialized Court of Ukraine for Civil and Criminal Cases of 4 October 2017 (case No. 754/8692/16-ts): "The harm caused to

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health while medical intervention can include: bodily injuries, which destroy the anatomical integrity of organs and tissues or their physiological functions; the occurrence of consistently developed painful process or pathological condition along with the main disease of a patient, which after the recovery leave persistent consequences of damage in the form of distortion of the appearance of a part of the body, impaired function of organs or their systems; infection with an incurable disease or disease that requires temporary or constant isolation from society; the irreversibly dismissed possibility of healing a patient, as well as the development of a mental illness arised as a result of medical intervention" (Ruling of the High Specialized Court of Ukraine on Civil and Criminal Cases 2017).

The illegality of the caused harm is the violation of the terms of medical services and medical standards supply agreement for the provision of medical care. In this case, the onset of negative effects regarding the patient's health should have the direct relationship to the actions of the appropriate physician. It should be borne in mind that a medical services provider, that is the relevant health care facility is the debtor in the relations for the protection of medical services consumers' rights. Thus, the obligation to compensate for such harm, in accordance with the Art. 1172 of the Civil Code of Ukraine is entrusted to a medical facility (The Civil Code of Ukraine 2003). The employer has the right after compensation to the reverse requirement for the direct contractor of the service in the amount of compensation paid, unless the other amount is set by law. Besides, legal relations for compensation of damage caused to a patient should be regulated by the Charter of the relevant health care facility.

For the occurrence of civil liability for harm to health, it is necessary that such harm is committed by the fault of the damage's performer (physician), except in cases provided by law. That is, a medical employee should make a medical error that occurs as a result of the wrong actions of a physician in the process of the diagnosis or treatment. The reasons for the improper performance of professional duties by physicians are divided into two groups: objective and subjective. Objective reasons include those caused by the lack of development of medical science and practice that exist outside of human consciousness and have arisen regardless of the will, professionalism and personal qualities of a physician. Subjective reasons (i.e. related to the personal characteristics of a physician, his / her professionalism and are the

result of certain actions or omissions) were found in 44 cases (17.8 % of the studied medical cases), where the expert commissions established unqualified actions of physicians (Franchuk, 2018, 140). Therefore, the guilt of a medical employee in cases on the protection of medical services consumers' rights should be identified through the analysis of the detected medical error.

It should be separately emphasized that the protection of medical services consumers' rights may be exercised in extrajudicial and court proceedings. The pre-trial proceedings provide for a patient's claim to the administration of a health care facility with a written statement substantiating facts that indicate poor provision of medical services and the requirement for free elimination of shortcomings or proportional reduction in the price of the provided services, complete compensation for financial and moral damage. In case of refusal of the administration of a medical facility to satisfy the above requirements, one should go to the court in the framework of full proceedings for the protection of consumers' rights.

Conclusion

The conducted study on the protection of medical services consumers' rights allow us to offer the following conclusions:

1. Analysis of the parties of legal relations for the protection of the rights of medical services consumers proved that the mandatory entities of these legal relations are: 1) consumer of medical services / patient / customer of medical services; 2) specialized entity – health care facility / provider of medical services / performer of medical services. Moreover, the primary entity within the mentioned legal relations is the consumer of medical services.

The authors of the article have considered conflicting approaches to the understanding of the term of "consumer of medical services" for the first time in the doctrine of Ukrainian medical law. The following conclusions have been made as a result of the conducted analysis and correlation of the terms of "patient", "consumer", "customer":

1) the legal status of a patient has certain specific features. Thus, the consumer of medical services is always a patient (individual) and acts as a customer of medical service in order to exercise a subjective right to health care;

2) at the same time, a patient may not be a consumer of medical services, if a healthy person is involved into a clinical trial of a medicinal product;

3) regarding the legal status of a health care facility, it is stated that this entity must have an appropriate work resource (medical employees), logistical and financial support, which allows providing medical services that meet the established medical standards of medical care. Publicly recognized the legal status of a health care facility as a capable participant in medical relations for the provision of medical care, creates a basis for the conclusion of a contract for the provision of medical services.

2. The authors of the article have argued for the first time that legal relations on the protection of medical services consumers' rights are characterizrd by: relations that arise and are implemented in the healthcare sector; participation in legal relations with the special status entities (patient – hospital); application of medical law norms and of consumers rights; the fact of the violation of medical rights.

3. Based on the analysis of the current Ukrainian legislation regulating legal relations in the sphere of medical services it has been concluded that such services can be provided under the program of medical guarantees, a medical services supply agreement or in terms of providing emergency medical care. The authors have determined that the reason for the emergence of legal relations on the protection of medical services consumers' rights is the legal fact of violation of a patient's medical rights in the form of a medical tort. At the same time the object of the protection of medical services consumers' rights is the absolute good – personal intangible goods (life, health).

4. The authors of the article have proved for the first time within the theory of medical law that legal regulation of relations for the protection of medical services consumers' rights has certain specific features that depend on the availability of contractual structures concluded between the consumer and the provider of medical services. Thus, in case of receiving medical care within the framework of the medical guarantee program, the main source of legal regulation is the contract on health care of the population, the medical standard for providing medical care, medical legislation. If there is a contract for the provision of medical services – the main legal source of regulation of relations will be a contractual norm

and general principles of civil and medical legislation. In case of providing emergency medical care beyond contractual structures, legal regulation will be based on regulatory legal acts of medical legislation.

5. It has been defined that protection of medical services consumers' rights can be exercised within extrajudicial procedure and in court. If there are tort obligations, the consumer of medical services receives: (a) the legal status of the creditor and has the right to claim for compensation of financial and / or moral damage; (b) compensation in case of late provision of medical services; (c) restoration of the violated right to health care.

6. It has been emphasized that considering the dynamics of medical relations development, one can consider that determining the correlation of the fault of the health care facility, a medical employee with the category of "medical error", as well as the expansion of medical services consumers' rights are perspective areas of research in the field of medical services.

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