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Research Article

ISSUES OF IMPROVING CIVIL-LEGAL RELATIONS ARISING IN THE PROVISION OF MEDICAL SERVICES

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ABSTRACT

In this article the issue of improving civil-legal relations arising in the provision of medical services is analyzed from a scientific-theoretical point of view, and the participation of the patient in civil-legal relations, who occupies the main place in the legal relations for the provision of medical services, was justified. In particular, based on the analysis of the patient's legal status from the point of view of civil law, proposals and recommendations on the theory of law enforcement were developed.

KEYWORDS

Medical service, patient, civil legal relationship, medical organization, doctor, consumer, customer.

INTRODUCTION

In our country, until the years of independence, the relationship between doctors and patients had only an administrative-legal nature, and medical care was considered one of the social benefits. We all know that medical activity is not regulated by the norms of civil law due to its lack of economic importance.

Meanwhile, as the President of the Republic of Uzbekistan, Shavkat Mirziyoyev, noted, if a person is not healthy, he will not enjoy work, material benefits, or the joys of life. Moreover, the protection of the health of its citizens, the formation a strong and

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effective medical system is one of the main tasks of a people-loving state[1] .

LITERATURE REVIEW

Therefore, the importance of providing timely, complete and high-quality medical care to every person is considered as a complex necessity for the whole society and the state includes comprehensive measures. Because of relations related to human health are legally regulated by various norms of the field and the illness of each person as well as their recovery are different, which causes complex legal relations. As rightly stated in the legal literature, it is necessary to take into account that it is impossible to fully know and control the nature of the physiological processes occurring in the human body. Interference in the work of the human body sometimes leads to unpredictable consequences[2].

It should be noted that the relationship between patients and medical institutions providing free medical care are not regulated by the norms of civil law, because such relations do not have the characteristics of civil-legal relations established in the current legislation[3]. In particular, the definition of medical services as a civil legal relationships can be seen in the occurrence of mandatory medical insurance contracts. Positions on the provision of paid or free medical services to patients in terms of a compulsory medical insurance contract are also defined as civil legal relations. These relations are defined as legal relations regulated in accordance with the civil-law agreement on the provision of paid medical care to citizens.

At the moment, civil-legal relations arising on the provision of medical services directly related to medical activities. Medical activity is a set of social relations regulated by civil-legal norms and having the character of civil-legal relations. In this regard, F.A. Vaitova explains the concepts of private medical activity and medical service as follows: Private medical activity is a entrepreneurial activity aimed at requiring medical services to patients by legal entities providing medical services licensed in accordance with the law. A medical service is a health examination by a person with certain qualifications who meets the requirements established by law in order to maintain and strengthen people's health or improve their physical and mental conditions[4]. In our opinion, the main feature of social relations arising in the course of medical activity is that they occur only on the basis of personal non-property interests represented by human health and life. Hence, the relationship between the doctor and the patient should be considered through the construction of civil law relations. In this case, it is reasonable to analyze the rights, legal obligations and bases of responsibility of a doctor and a patient as participants in civil-legal relations.

METHODS

(methodology, results). Today, the Civil Code of the Republic of Uzbekistan regulates public relations

[1]The speech of the President of the Republic of Uzbekistan Shavkat Mirziyoyev at the open dialogue meeting with representatives of the health sector (March 18, 2022) //uza.uz.

[2]Elina N.K. Pravovye problemy okazaniya meditsinskikh uslug: autoref. dis. ... candy. walk science Volgograd. - 2006. - 22 p.

[3]Vilgonenko I.M., Slepenek Yu.N. Pravovoe regulirovanie obyazatelstv po okazaniyu meditsinskikh uslug v systeme civil-pravovykh atnosheniy. - Moscow. - 2005. - S.125.

[4]Vaitova F.A. Regulation of civil legal relations in the field of medical services. Yu.f.n.Diss... Tashkent 2012. B.36

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regarding the regulation of medical services on the basis of the general provisions on the service contract. In particular, according to the first part of Article 703 of the Civil Code, the subject of a service contract for a fee is recognized as a customer. It follows that the customer is a patient of a doctor or medical institution ensuring medical care.

Legal relations on the provision of medical services are regulated by the Law of the Republic of Uzbekistan "On the Protection of Citizens' Health"[5] and "Consumer protection of rights". [6] Laws of the Republic of Uzbekistan Decree of the President of November 10, 1998 "On the State Program for Reforming the Health Care System of the Republic of Uzbekistan" [7], the decision of the Cabinet of Ministers of September 3, 1999 "On improving the financing of budget organizations"[8] ,No. 264 of the Cabinet of Ministers of June 8, 2004decision"Rules for the provision of highly qualified specialized medical care to the population on a paid basis by the specialized medical centers of the Republic in compliance with the quality standards of diagnosis and treatment"[9] ,of the Ministry of Health Regulation "On the supply of paid medical services to the population in treatment and prevention institutions within the system of the Ministry of Health of the Republic of Uzbekistan" approved by the order of May 31, 2010[10] is regulated by such legislation.

Decision of the President of the Republic of Uzbekistan dated April 25, 2022 "On additional measures to bring primary medical and sanitary care closer to the population and increase the efficiency of medical services"[11]. It is allowed to organize services on a paid basis in the multidisciplinary central polyclinics of the district (city) with the exception of free medical services guaranteed by the state.

In our conviction, this list of medical services organized on a paid basis, they need to adopt a legal document defining the rights and obligations, responsibility and the foundation of compensation of damage referring institutions to develop model contracts.

[5]of the Republic of Uzbekistanof August 29, 1996"On Citizens' Health Care".265-I qher *(National database of legislative information, 18.05.2022, No. 03/22/770/0424)*

[6]The Law of the Republic of Uzbekistan dated April 26, 1996 "On the Protection of Consumer Rights"No. 221-I q(National database of legislative information, 18.01.2022, No. 03/22/746/0032)

[7] UzbekistanRepublicPresident of November 10, 1998 ""On the State Program for Reforming the Health Care System of the Republic of Uzbekistan"Decree No. PF-2107(Collection of legal documents of the Republic of Uzbekistan, 2017, No. 11, Article 152; 09/28/2020, No. 06/20/6075/1330)

[8]UzbekistanRepublic Resolution No. 414 of the Cabinet of Ministers of September 3, 1999 "On improving the financing of budget organizations" (National database of legislative information, 04/05/2022, No. 09/22/153/0266)

[9]UzbekistanRepublic "Rules for the provision of high-quality specialized medical care to the population on a paid basis by the specialized medical centers of the Republic, in compliance with the quality standards of diagnosis and treatment" approved by the decision of the Cabinet of Ministers No. 264 dated June 8, 2004 (National database of legislative information, 04.15.2022, No. 09/22/191/0315)

[10]Order No. 161 of the Ministry of Health of May 31, 2010 "On the provision of paid medical services to the population in treatment and prevention institutions of the Ministry of Health of the Republic of Uzbekistan" (www.med.uz/fergana/uz/documents)

[11]Clause 6 of the Resolution of the President of the Republic of Uzbekistan No. PQ-215 dated April 25, 2022 "On additional measures to bring primary medical and sanitary care closer to the population and increase the efficiency of medical services" (National database of legislative information, 25.04.2022, 07 /22/215/0339)

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The document mentioned above illustrates that the consumer of medical services is recognized as a sick consumer according to the provisions of the laws of the Republic of Uzbekistan "On the protection of citizens' health" and "On the protection of consumer rights". Nevertheless, the patient who is the subject of the medical services is recognized as a "customer" and not a "consumer".

It should be noted that there are certain differences in the relationship between the concepts of "consumer" and "customer", and "consumer" may not always be equivalent to "customer". For example, in accordance with the law, a consumer is recognized as a citizen (individual) who buys goods for personal consumption or other purposes which orders work, services or has the same intention[12]. In this case, the consumer receiving paid services is considered a patient and at the same time the requirements of the Law of the Republic of Uzbekistan "On Citizens' Health Care" are applied to him.

It is important to note that in the relations related to the performance of work and provision of services, the consumer occupies the main place, because all work and service is focused on its consumer, that is the customer. There is a very intense "fight" in this relationship market[13].

And the customer has a number of activities such as the preparation of a specific item, the manufacture of equipment and similar products that cannot be obtained under the product supply contract related to production techniques, the preparation of items for household needs, the processing and repair of items and the refining of raw materials if the person gives assignments. If the customer is a citizen, he will enjoy consumer rights. If he is an individual entrepreneur or a legal entity or the state and its bodies, he cannot use this right[14].

The customer is a person interested in the result of the work. For this reason, in some cases, he gives an assignment based on of his own experience and in some cases relying on the professional skills of the performer.

In this occasion, the following opinions of T.A. Mominov are quite controversial: Civil legislation does not have special norms regarding who can participate as a customer in a service contract for a fee or which subjects of civil law cannot be parties to a service contract for a fee. In this contract, the general requirements set for the subjectivity of the civil law are imposed on the customers. Any subjects with civil capacity can participate as a customer in a service contract for a fee. [15]. According to J. Boboev's point of view on a mandatory subject in service relations, in particular, an individual and a legal entity carrying out entrepreneurial activities and specializing in the relevant sphere[16].

Purchasers - in accordance with the contract, who wishes to order paid medical services or is recognized as an individual or legal person, who is self-interested or will have the right to order for the benefit of a third

[12]See: Republic of Uzbekistan "On Protection of Consumer Rights".QArticle 1 (National database of legislative information, 18.01.2022, No. 03/22/746/0032).

[13]Babaev J.I. Problems of consumer rights and civil liability for their violation. diss. Ph.D. - T.: 2005.

[14]The team of authors. Civil rights. (Part II). Textbook - T.: TDYuI. - B.245.

[15] Mominov T.A. Civil-legal problems of services for a fee: Law. science. name dis.... - Tashkent: 2007. p. 68.

[16]Babaev J.I. Improvement of the civil-legal regulation of compensation for damages caused to the consumer: Doctor of Law. dis... - Tashkent: 2021. - B.127.

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party. It can be said that there is an uncertainty in the composition of subjects in the analyzed legal relations, which creates an objective need for more effective regulation of legal relations arising in the background of the provision of medical services.

In particular S.N.Bakunin pointed out, the development of new socio-economic relations makes it necessary to reconsider the entire range of legal relations, including in the field of health. Realization of the need to solve the urgent problems of healthcare occurs together with a significant increase in the population's interest in the legal regulation of the provision of medical services[17]. According to Shevchuk's opinion, the relationship between a doctor and a patient should be considered through the signs of legal relations, in which each of them is an active participant of legal obligations and subjective rights[18]. N.K.Elina believes that medical activity service provision can and even should be related to the performance of work to have a certain result (tangible or intangible)[19] thinks it is necessary. However, it can be said that the problem of predicting the outcome is not clear based on the specific characteristics of medical activity. Because the effectiveness of medical activity can be influenced by various factors depending on the individual's characteristics of the patient and the method of treatment, taking into account the pharmacological properties of constantly improved drugs.

E.V. Bogdanov explains his belief about paid medical services as follows: "The purpose of the contract on the provision of medical services for a fee is to meet the individual needs of a citizen for medical assistance. In order to meet the needs of a citizen for medical care, the organization provides the patient with a medical service that can be seen through a commodity that has a certain value. As a result, in order to receive the service, the citizen must pay the full cost of the service"[20].

Based on these analyses, it can be said that a patient is a person receiving medical care or an individual who applies for medical care regardless of his illness and condition. At the same time, it is permissible to recognize the patient as a consumer, not as a customer, under a contract for the provision of paid medical services. According to the Pechnikov's exploration, the complex nature of the legal regulation of relations on the supply of paid medical services makes it necessary to use the term "patient" instead of the term "customer", in which the patient is a medical service and (or) other medical care provided under a deal with a person who performs medical activities on a professional basis, individual (consumer) receiving assistance[21] is considered.

Conclusions and further perspectives of the study. At the same time, the legal status of patients and institutions providing medical services as participants in civil-legal relations, that arise between them,

[17]S.N. Bakunin Platnaya meditsinskaya usluga v mezhanezhe grajdansko-pravogo regulirovaniya zashchity jizni i zdorovya. https://www.elibrary.ru/

[18]Shevchuk E.P. Pravovaya priroda otnosheniy po vozmeshcheniyu vreda, prichinennogo poverjdeniem zdorovya pri okazanii meditsinskih uslug // Prolog: zurnal o prave. - 2018. - No. 2. - P.14-19.

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[21]Pechnikova O.G., Pechnikov A.P. K voprosu ob usloviyakh dogovora okazania platnykh meditsinskikhstyle // Juridicheskaya nauka i pravookhranitelnaya praktika. - 2012. - No. 2 (20). - S. 54-58.

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including rights, obligations and liability are determined based on the general rules, as noted above, Chapter 38 of the Civil Code (" It is known to be regulated by the norms of "Service for a fee".

These norms of a general nature requires the establishment of rules aimed at the full regulation of relations related to paid medical services in the civil legislation. Because they do not provide a full opportunity to clearly and completely define the patient's legal rights and safety in the process of providing paid medical services under the agreement and this situation is not specified by medical organizations in the rules of providing paid medical services.

It should be acknowledged that the issue of wide implementation of information technologies in order to protect the rights of patients in the provision of medical services is also emphasized by researchers.

In particular, according to P. Delbon's point of view, the information system and decision support system are necessary to develop and strengthen the relationship of care and trust between the doctor and the patient includes the right to determine and voluntary choice of treatment offered by the doctor - serves to guarantee confidence in the consequences of the patient's behavior and protect the rights of all participating subjects[22].

For example, in Sweden, a national health information exchange (HIE) platform has been developed to enable information exchange between different health information systems, to access and work with critical health information, and to explore limitations. Through this project, the authors demonstrated the importance of meeting the needs of patients for collaboration and information exchange during the design and evaluation of eHealth services at the national and local levels[23]. In general, as the main goal of the information society is to minimize the impact of the human factor by reducing the share of manual labor and automating the activities of medical services, this issue also has a positive effect on the attitude of patients to civil-legal protection in the field of medical services.

It should be noted that it is expedient to analyze the bases of obligations and liability of the parties in civil relations arising on the provision of medical services. Because, in most cases there is always a risk of harming the patient's life and health, even if the correct medical care is provided, as a result of which the quality assessment, as well as the estimated possibility of obtaining a specific final result (material or intangible), for medical activities that describe other types of services is considered complicated.

In other words, it is problematic to determine the health or adverse effects before and after the provision of medical services, given that exposure to one organ, tissue or function, as a rule affects the entire human body.

In addition, the course of physiological and pathological processes in the human body undergoes changes even without any therapeutic effects on it. Moreover, it is necessary to clearly indicate the

[22]P. Delbon, The protection of health in the care and trust relationship between doctor and patient: Competence, professional autonomy and responsibility of the doctor and decision-making autonomy of the patient. Journal of Public Health Research 7 3 (2018) 97-100. doi: 10.4081/jphr.2018.1423

[23]N. Davoody, S. Koch, I. Krakow, M. Hagglund, Accessing and sharing health information for postdischarge stroke care through a national health information exchange platform - a case study. BMC Medical Informatics and Decision Making 19 (2019) 95. doi: 10.1186/s12911-019-0816-x

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obligations of the parties in the activity of providing medical services. In particular, according to Nagornaya's opinion, the fact that the legislation does not provide a list of diseases under "medical intervention" creates a situation where any medical treatment can be considered "medical intervention". Also, all other areas of medical intervention, where medical services are not provided under the contract, are also deprived of the sign of voluntary informed consent of the patient (for example, compulsory treatment of tuberculosis, drug and alcoholism, certain mental diseases) [24].

Therefore, the responsibility of both parties in the provision of medical services are not effectively regulated and are based only on the reliability of mutual relations.

Furthermore, while some researchers recognize that the provision of medical services is not legally regulated, they believe that it is necessary to develop a Medical Code and this Code should be the basis of medical legislation and it can regulate in detail the issue of responsibility of persons providing medical services[25]. comments are being made. Therefore, in our opinion, it is necessary to develop a set of modern legal documents on the rights and obligations of patients in the field of healthcare in order to more clearly regulate public relations in the provision of medical services.

Medical service included in free economic turnover should be regulated by contractual obligations. The use of civil-legal mechanisms also creates an opportunity to more effectively balance the interests of the medical organization and the patient. The increasing commercialization of health care, on the one hand, increases the responsibility of medical organizations for the quality of services provided, and on the other hand, requires the creation of effective mechanisms to protect the rights of consumers of medical services.

According to modern civil legislation, civil liability is recognized as a punishment for an offense that has negative consequences in the form of depriving the offender of subjective civil rights or imposing new or additional civil legal obligations. It should be noted that civil liability in the field of medical activity, along with the basic principles typical of general civil liability, has its own characteristics. Such specificity depends on the composition of special subjects of social relations in this area, the characteristics of the object being damaged, and the characteristics of determining the illegality of the damage caused[26].

Civil-legal liability is the consequences of failure to fulfill or improper fulfillment of one's obligations by a person, which leads to violation of the civil rights of another person. In this regard, as it is correctly stated

[24] NagornayaS.V. Grajdanskaya otvetstvennost meditsinskikh uchrejdenii pri neispolnenii ili nenadlejashchem ispolnenii obyazatelstv po dogovoro na predostavlenie lechebno-profilakticheskoy pomoshchi (meditsinskikh uslug) kak odin iz aspektov zashchity prav pasitinov // Desyatiletie obyazatelnogo meditsinskogo strashovaniya. Experience, problem, perspective. Sbornik nauchno- prakticheskikh rabot. - Voronezh, 2003. - P.236-243.

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in the legal literature, in the determination of civil-legal responsibility in the field of medical activity. Firstly, liability is considered a sanction for an offense that causes negative consequences in the form of depriving the offender of subjective civil rights or imposing new or additional civil obligations and secondly the victim is always a individual - a human being and the person who caused a detrimental effect on a medical institution (or a person performing medical activities), thirdly the responsibility is limited to a specific object, in particular life and health[27].

It follows from this that the emergence of civil-legal liability within the scope of medical activity, if this activity resulted in harming the patient is inextricably linked with the failure of medical personnel to properly fulfill their professional obligations. The main feature of civil liability in this case is that the patient is required to prove the fact of the offense, and the medical organization is required to prove his innocence.

It should be noted that the harm caused to the patient by the provision of medical services is caused by non-fulfillment of contractual obligations, on the other hand, the civil liability of a medical worker may also arise due to the harm caused to the health of the patient out of deal. Because emergency medical intervention is different from encuring medical care if the person's condition does not allow them to express their will. After all, in such cases, the voluntary consent of the patient is not necessary and obligatory for the doctor.

Therefore, it is acceptable to analyze the damage caused by non-performance or improper performance of the paid medical service contract and the obligations arising from the damage.

In particular, in the study of legal relations related to the provision of medical services, some foreign scientists consider that in practice, the patient is a weak party who does not have medical knowledge in relation to the medical organization, and conflicts that may arise in the situation related to it (for example, the organization of the treatment process, mistakes made by medical personnel) leads to changes in the equal position of the participants and concludes that this situation creates clear advantages for the medical institution[28]. This situation negatively affects on the protection of the patient's rights. Based on this, the conflict is represented by a deviation from the principle of legal equality of the parties.

In addition, if the person who caused the damage does not prove that the patient has no moral or physical experience, the patient has the right to demand compensation for moral damage in the case of violation of the right to health[29] .

Therefore, it is considered appropriate to impose the obligation to prove the absence of a causal relationship between the doctor's actions and the damage caused to the patient's health to the medical organization that treated the patient, and to establish rules in the national legislation aimed at creating an opportunity for specialized organizations that contribute to the

[27]Egorov K.V. Pravormernoek and nepravomernoe prichinenie vreda v sphere meditsinskoy deyatelnosti: civil-law aspect:Autoref. dis. ... candy. walk science - Kazan, 2006. -S.11.

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correct and objective consideration of the case to participate in disputes as third parties.

CONCLUSION

In conclusion, it can be said that medical service is a complex object of civil rights and civil-legal regulation. It differs from other services in that it includes health care and has a clearly targeted effect on health.

In this regard, medical service should be understood as preventive, diagnostic, treatment, recovery and rehabilitation measures carried out by a medical organization or medical personnel with a special permit and aimed at improving the patient's health and requiring a certain cost.

Also, taking into account that the provisions related to medical services established in the current legislative documents are not fully compatible with the effective protection and protection of the rights and legal interests of the subjects of the medical services contract, in our opinion, it is necessary to adopt a regulatory document that defines the civil-legal procedures for providing paid services to the population. .

In addition, the inclusion of a separate chapter in the Civil Code of the Republic of Uzbekistan, which summarizes the provisions related to the contract for the provision of paid medical services will constitute to solve the above-mentioned issues.

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