Hanna Spitsyna

DOI: https://doi.org/10.32353/acfs.7.2023.06
UDC 343.346.8

Hanna Spitsyna
First Deputy Director at National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute»,
Professor, Doctor of Law, Kharkiv, Ukraine
ORCID: https://orcid.org/0000-0001-9131-0642
e-mail: spitsyna_hanna@ukr.net

Ihor Davydenko,
Director, Kharkiv State Research and Forensic Sciense Center of the Ministry of Internal Affairs of Ukraine, Kharkiv, Ukraine
ORCID: https://orcid.org/0009-0008-0791-7619
e-mail: id2112@kr.net

Valeria Turska,
post graduate student (Ph.D in Law)
National Aerospace University – "Kharkiv Aviation Institute", Kharkiv, Ukraine
ORCID: https://orcid.org/0000-0003-4911-7093
e-mail: ValeriTurskaya@outlook.com

Ihor Davydenko

Valeria Turska

Theoretical Aspects Of Medical Workers' Criminal Liability

Abstract. *The article considers theoretical foundations of criminal liability for medical professionals. The issue of legal liability has been studied. The lack of awareness among medical workers and their supervisors regarding legal liability set by current legislation for violations in healthcare has been stressed. In particular, criminal liability is singled out as the most severe kind of legal liability. The main focus is on professional medical crime, its features and components. Crimes committed intentionally or negligently are described separately. An analysis of the proposal to refine the Criminal Code of Ukraine has been carried out, in particular with regard to the possibility of supplementing the law with a separate section devoted to crimes committed by medical professionals.*

The Article Aim is to study theoretical foundations of criminal liability for medical professionals through the systems analysis of legal regulation. The research paper provides a comprehensive overview of legal liability, with a specific focus on criminal liability for medical practitioners.

The methods of structural analysis and synthesis have been used to divide obtained information into distinct structural units and to systematically merge various aspects of information into a single structured presentation system aimed at summarizing information regarding criminal liability of medical professionals for crimes committed while performing their professional duties.

Conclusions. The findings suggest that there is a need for cooperation among the scientific community, legislative bodies, and medical professionals with the aim of developing legal norms and criminal liability system that will ensure protection of patients' rights and promote ethical and safe execution of medical duties.

Keywords: *medical professional, crime, criminal offense, professional activity, legal liability, criminal liability.*

Main Content Presentation: Health is of paramount importance in everyone's life. However, more and more people are facing the issue of receiving incompetent medical care or obtaining such aid for an additional fee. Yet, in the

© H. Spitsyna, I. Davydenko, V.Turska, 2023

context of the global COVID-19 pandemic, professional assistance of medical workers has become the foundation for preserving and ensuring vitality of modern society.

Article 3 of the Constitution of Ukraine states that the human being, his or her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. [1]

Article 49 of the Constitution of Ukraine envisages that everyone has the right to health protection, medical care and medical insurance. Health protection is ensured through state funding of the relevant socio-economic, medical and sanitary, health improvement and prophylactic programs. The State creates conditions for effective medical service accessible to all citizens. State and communal health protection institutions provide medical care free of charge; the existing network of such institutions shall not be reduced. The State promotes the development of medical institutions of all forms of ownership. [2]

This implies that the state is responsible for society and must ensure that every person has access to high-quality medical services. Medical professionals are obligated to perform their duties in line with established professional standards and ethical norms. They are expected to provide high-quality medical care, adhere to the principle of confidentiality, ensure patient safety, etc. However, there are frequent cases of low-quality and unqualified services being provided. In the context of medical services, the consequences of providing substandard services could be direct harm to a person's health, for which legal liability is envisaged.

Legal responsibility is a type of social responsibility which consists in the application by the state to the offender of certain coercive measures stipulated by sanctions of legal norms. The sole basis for legal liability is commission of a legal violation. If an individual's behavior does not exhibit signs of a legal violation, then that person is not subject to legal liability. [3]

In practice, many medical professionals and healthcare facility heads have a limited understanding of the legal liability set forth by current legislation for violations in the healthcare sector. This may result in two opposing consequences: on the one hand, knowledge about the grounds, types, and outcomes of legal liability disciplines medical professionals, reducing the likelihood of misconduct; on the other hand, it also helps to avoid their unwarranted accountability.

For medical professionals, it is important to possess sufficient knowledge of legal norms related to their professional activities. This includes duties and responsibilities of medical workers, rules for providing medical care, confidentiality of medical information, adherence to medical standards and ethical principles.

A proper understanding of legal liability helps medical professionals avoid violations and crime commission in medical practice. They should be familiar with the requirements of the law and be aware of potential consequences of their actions. It contributes to improving the quality of medical care and ensuring patient safety.

In addition, conscientious adherence to legal norms helps protect medical professionals from groundless accusations and malicious lawsuits. Knowledge of legal liability can serve as a tool to safeguard their rights and interests in cases where they are unjustly held accountable.

Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Disclaimer

The funder had no role in the study design, data collection and analysis, decision to publish, or preparation of the manuscript.

Contributors

The author contributed solely to the intellectual discussion underlying this paper, case-law exploration, writing and editing, and accept responsibility for the content and interpretation.

Declaration of Competing Interest

The author declare that they have no conflict of interest.

[1] Конституція України.URL:https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80#n4178

[2] Там само.

[3] Семерак І.О., Семерак О.С. Основи правознавства. Знання, 2008 рік. URL:https://pidru4niki.com/1584072059019/pravo/osnovi_pravoznavstva

Hanna Spitsyna,
Ihor Davydenko,
Valeria Turska

THEORETICAL ASPECTS OF MEDICAL WORKERS' CRIMINAL LIABILITY

The article considers theoretical foundations of criminal liability for medical professionals. The issue of legal liability has been studied. The lack of awareness among medical workers and their supervisors regarding legal liability set by current legislation for violations in healthcare has been stressed. In particular, criminal liability is singled out as the most severe kind of legal liability. The main focus is on professional medical crime, its features and components. Crimes committed intentionally or negligently are described separately. An analysis of the proposal to refine the Criminal Code of Ukraine has been carried out, in particular with regard to the possibility of supplementing the law with a separate section devoted to crimes committed by medical professionals.

The Article Aim is to study theoretical foundations of criminal liability for medical professionals through the systems analysis of legal regulation. The research paper provides a comprehensive overview of legal liability, with a specific focus on criminal liability for medical practitioners.

The methods of structural analysis and synthesis have been used to divide obtained information into distinct structural units and to systematically merge various aspects of information into a single structured presentation system aimed at summarizing information regarding criminal liability of medical professionals

Thus, understanding theoretical aspects of medical workers' legal liability helps ensure high-quality medical care and protect legitimate rights and interests of medical workers.

Criminal liability is the most stringent kind of responsibility.

Criminal liability of medical professionals is an important aspect of legal regulation of medical activity. It is determined by the country's legislation. Its aim is to ensure accountability of medical professionals for potential crimes they might commit in their professional activity. In Ukraine, criminal liability of medical workers is governed by the Criminal Code of Ukraine.

Crimes involving medical activity include unlawful homicide or infliction of severe bodily harm, causing death due to negligence, forgery of medical documents, corruption, illicit enrichment, etc.

When analyzing medical professionals' criminal liability, emphasis should be made on professional medical crimes. Criminal liability for such crimes (criminal offenses) arises in cases where a medical worker:

Engages in a socially dangerous action or inaction. This can mean active actions inflicting harm to a person's life or health, or passive actions when a medical professional fails to take necessary measures to prevent adverse consequences.

Demonstrates a direct link between his/her action (inaction) and her/his professional medical practice and execution of professional duties.

Exhibits violations in medical care of which, given his/her qualification, specialization, and profession, he/she should have been aware.

Is involved in detrimental outcomes for a person's health or well-being. This signifies that the medical professional's actions or inactions have led to adverse health effects or even placed a person's life at risk.

These points reflect the main criteria upon which criminal liability for medical workers is established. By analyzing these aspects, one can determine whether there are grounds for criminal prosecution and liability in cases related to medical practice.

Based on the analysis of crimes associated with performance of professional duties by medical workers, the following features can be identified:

Crimes are committed in the medical field, meaning they pertain to provision of public medical services.

Perpetrators of such crimes are specific subjects: medical professionals who commit these crimes when fulfilling their professional duties related to provision of medical care or services.

Crimes pose a threat or cause actual harm to the life or health of a person (or persons) or to other legal relations protected by criminal law. This implies that these crimes might pose a real danger to the lives and health of individuals or jeopardize other legal relations protected under criminal law.

Crimes can be committed intentionally or due to negligence. This means that occurrence of such crimes can result from deliberate harmful actions or inactions, as well as from carelessness or insufficient attentiveness of a medical or pharmaceutical worker. [4]

Such features define the specifics of crimes associated with professional activities of medical professionals and allow them to be considered in the context of criminal liability.

[4] Чеботарьова Г.В. Ненадання допомоги хворому медичним працівником: проблеми кримінально-правової характеристики об'єктивних ознак злочину. *Ученуіе записки Таврического национального университета им. В.И. Вернадского.* 2010. Т. 23(62). № 1. С. 295. (Серия «Юридические науки»).

Professional medical criminal offense is a serious violation committed by a medical professional while performing her/his professional duties. It is an act that is prohibited by criminal law and is subject to criminal liability. These crimes can be committed both intentionally and through negligence.

It encompasses actions or inactions that pose a threat or inflict actual harm to the life, health of a person, or other protected legal relations. These crimes are committed in the field of medical service when medical workers provide medical care or other services.

Holding persons accountable for professional medical crimes aims to protect rights and interests of patients, as well as maintain public trust in the medical system. This contributes to punishment of those who intentionally or negligently violate medical practice standards and harm patients.

Given severe consequences that can result from a professional medical criminal offense, it's essential for medical professionals to be familiar with their duties and standards, adhere to ethical principles, and carry out their professional activities with responsibility and care.

Thus, a professional medical criminal offense is defined as an intentional or negligent act committed by a medical worker while performing their professional duties, which is prohibited by criminal law under the threat of punishment. These crimes are related to healthcare and pose a threat to the life, health of a person, or violate other legal relations protected by criminal law.

Intentional medical crimes are serious violations committed with the intent to harm life, health, or other legal relations of a person. Such crimes require special consideration as they negatively impact trust in the medical profession and the healthcare system as a whole. To classify actions as intentional medical crimes, the following aspects should be taken into account: an intentional act involves a conscious and deliberate commission of an action, awareness of its unlawful nature, and consequences. A medical worker committing an intentional crime has the intent to harm a patient or other persons. Intentional medical crimes are related to the performance of professional duties by a medical worker. They may consist of improper prescription of medicines, medical under-diagnosis, incompetent medical intervention, or other actions that pose a threat to the patient's life and health. The aforementioned medical crimes imply a breach of medical care standards, which are defined by professional ethical norms and medical protocols. These violations can include lack of knowledge, incompetence, negligence, or deliberate disregard of medical protocols. Intentional medical crimes have tangible consequences for the life, health, or legal interests of a person receiving medical treatment. They may range from physical injuries and health deterioration to disability or even death.

Such medical crimes are serious violations of medical ethics, public trust, and legal norms. They require thorough investigation and prosecution of those responsible to ensure protection of patients' rights and preservation of standards in professional medical practice.

It is also important to consider crimes committed out of negligence. Negligent medical crimes are another category of violations committed by medical workers while fulfilling their duties. The distinguishing feature of these crimes lies in their unintentional nature. To recognize actions as negligent medical crimes, it should be noted that such actions are carried out without the intent to cause harm but arise from negligence, incompetence, or carelessness of a medical worker. It can include improper use of medicines, under-diagnosis, unqualified execution of medical procedures, or non-compliance with medical standards.

Medical crimes committed due to negligence pertain to professional duties of a medical worker. They occur from improper executive actions, errors made, or unqualified decision-making during medical care provision or medical procedures performance.

for crimes committed while performing their professional duties.

Conclusions. The findings suggest that there is a need for cooperation among the scientific community, legislative bodies, and medical professionals with the aim of developing legal norms and criminal liability system that will ensure protection of patients' rights and promote ethical and safe execution of medical duties.

Keywords: medical professional, crime, criminal offense, professional activity, legal liability, criminal liability.

Hanna Spitsyna,
Ihor Davydenko,
Valeria Turska

THEORETISCHE ASPEKTE DER STRAFHAFTUNG VON MEDIZINISCHEM ARBEITNEHMER

Der Artikel untersucht die theoretischen Grundlagen der strafrechtlichen Verantwortlichkeit von Medizinern. Die Frage der rechtlichen Haftung wird berücksichtigt. Der Autor weist auf das Problem der Unkenntnis sowohl der Angehörigen der Gesundheitsberufe als auch ihrer Führungskräfte hinsichtlich der rechtlichen Haftung hin, die in der geltenden Gesetzgebung für Verstöße im Gesundheitssektor vorgesehen ist. Insbesondere wird die strafrechtliche Haftung als schwerste Form der rechtlichen Haftung hervorgehoben. Das Hauptaugenmerk liegt auf berufsmedizinischen Straftaten, ihren Anzeichen und Komponenten. Eine gesonderte Charakterisierung der vorsätzlich oder fahrlässig begangenen Straftaten erfolgt. Der Autor analysiert den Vorschlag zur Verbesserung des Strafgesetzbuches der Ukraine, nämlich die Möglichkeit, das Gesetz über die strafrechtliche Haftung um einen separaten Abschnitt über von medizinischen Fachkräften begangene Straftaten zu ergänzen. Der Autor kommt zu dem Schluss, dass eine Zusammenarbeit zwischen der wissenschaftlichen Gemeinschaft, den gesetzgebenden Körperschaften und den medizinischen Fachkräften erforderlich ist, um Rechtsnormen und ein System der strafrechtlichen Haftung zu entwickeln, das den Schutz der Patientenrechte gewährleistet und die ethische und sichere Durchführung von Maßnahmen fördert medizinische Aufgaben.

Schlüsselwörter: medizinisches Fachpersonal, Kriminalität, Straftat, berufliche Tätigkeit, rechtliche Haftung, strafrechtliche Haftung.

Hanna Spitsyna,
Ihor Davydenko,
Valeria Turska

TEORETYCZNE ASPEKTY ODPOWIEDZIALNOŚCI KARNEJ PRACOWNIKÓW MEDYCZNYCH

W artykule zbadano teoretyczne podstawy odpowiedzialności karnej lekarzy. Rozważana jest kwestia odpowiedzialności prawnej. Autorka zwraca uwagę na problem niewiedzy zarówno pracowników służby zdrowia, jak i ich menadżerów w zakresie odpowiedzialności prawnej przewidzianej przez obowiązujące przepisy dotyczące naruszeń w sektorze opieki zdrowotnej. W szczególności podkreśla się odpowiedzialność karną jako najsurowszy rodzaj odpowiedzialności prawnej. Główną uwagę poświęcono zawodowym przestępstwom medycznym, ich oznakom i elementom składowym. Dokonano odrębnej charakterystyki przestępstw popełnionych umyślnie lub przez zaniedbanie. Autorka analizuje propozycję ulepszenia Kodeksu karnego Ukrainy, a mianowicie możliwość uzupełnienia ustawy o odpowiedzialności karnej odrębnym rozdziałem dotyczącym przestępstw popełnianych przez osoby wykonujące zawody medyczne. Autor stwierdza, że istnieje potrzeba współpracy środowiska naukowego, organów legislacyjnych i zawodów medycznych w celu wypracowania norm prawnych i systemu odpowiedzialności karnej, które zapewnią ochronę praw pacjenta oraz będą sprzyjać etycznemu i bezpiecznemu wykonywaniu świadczeń zdrowotnych. obowiązki lekarskie.

Słowa kluczowe: lekarz, przestępstwo, przestępstwo, działalność zawodowa, odpowiedzialność prawna, odpowiedzialność karna.

The above-mentioned medical crimes lead to adverse consequences for the health, life, or legal interests of a patient and may include internal organ damage, health complications, worsening prognosis of a disease, or improper treatment.

To recognize actions as negligent medical crimes, objective criteria indicating a breach of medical practice standards are required. These standards define the accepted norms of action that medical professionals should follow when providing medical care.

In other words, negligent medical crimes result in serious consequences and require objective examination and careful investigation. Negligent medical crimes pose a significant threat to the safety and well-being of patients. Their commission violates the most fundamental principles of medical practice, trust relationship, and ethical standards. Such crimes demand rigorous investigation and a responsible approach to prosecuting perpetrators.

Consequences of negligent medical crimes can be tragic, causing physical or psychological suffering, health deterioration, or even patients' death. Such instances erode patients' trust in the medical system and can negatively impact their willingness to turn to medical professionals.

Given the severity of these crimes, it is essential to develop and implement efficient measures to prevent their occurrence in the future. These measures may include improvements in training and advanced training for medical workers, strengthening monitoring and control systems, and ensuring strict punishment for perpetrators. Only by implementing preventative measures and ensuring fair justice can trust in the medical system be maintained and high-quality medical care for all patients be guaranteed. These crimes erode patients' trust in the medical system and necessitate introduction of a responsible approach to punishing perpetrators and preventing similar incidents in the future.

Certain researchers suggest supplementing the Special Part of the Criminal Code of Ukraine with a separate section for crimes committed by medical professionals. This initiative aims to improve legal regulation and more efficiently address such crimes.

An argument in favor of this idea is that medical workers have a special status in society and play a vital role in preserving people's lives and health. Given the above, a separate section of the Criminal Code may allow for a more detailed regulation of their activities and introduction of accountability for specific violations related to medical practice.

Such a section could encompass a wide range of medical crimes associated with improper provision of medical care, violation of professional standards, authority abuse, forgery of medical documents, and other similar actions. Creating a separate section can contribute to a clearer understanding of these offenses and simplify their investigation and prosecution.

However, it is essential to note that such designation of a separate group of crimes requires thorough justification, broad discussion, and involvement of various parties, including representatives of the medical community, law enforcement agencies, and human rights organizations. The final decision to include such a section in the Criminal Code should be well-reasoned, balanced, and aimed at ensuring justice, protecting patients' rights, and holding medical workers accountable in the event of committing crimes.

It is worth pointing out that theoretical aspects of criminal liability for medical professionals in Ukraine generate significant interest and require in-depth study. Establishing criminal liability for medical workers is crucial for ensuring legality and maintaining public trust in the healthcare system.

One of the key aspects of criminal liability is defining professional medical crimes which covers both intentional and negligent acts of medical professionals in the performance of their duties. Violations in the healthcare sector can have serious consequences for persons' lives and health;

therefore, it is essential to have a clear understanding of the grounds, types, and implications of criminal liability.

Experience has demonstrated that many medical workers and healthcare facility heads have a superficial understanding of the legal liability stipulated by legislation. Knowledge about grounds, types, and consequences of criminal liability disciplines medical professionals and reduces the likelihood of their unwarranted prosecution.

Taking into account complexity of situations that medical professionals encounter in their practice, it is essential to ensure objective consideration and careful investigation of medical crimes. This will help restore patients' trust in the medical system and ensure proper accountability for those responsible. What is more, there is a need for preventive measures and implementation of efficient strategies to prevent similar incidents in the future.

Conclusions. Given the significance of the medical profession and its impact on people's lives and health, criminal liability of medical workers should be carefully considered and ensured at an appropriate level of justice. This requires collaboration between the academic community, legislative bodies, and medical professionals with a view to developing legal norms and a system of criminal liability which will ensure protection of patients' rights and promote ethical and safe performance of medical duties.

References

Konstytutsiia Ukrainy. URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80#n4178 [in Ukrainian].

Semerak I.O., Semerak O.S. OSNOVY PRAVOZNAVSTVA, Znannia, 2008 rik. URL:https://pidru4niki.com/1584072059019/pravo/osnovi_pravoznavstva [in Ukrainian].

Chebotarova H.V. Nenadannia dopomohy khvoromu medychnym pratsivnykom: problemy kryminalno-pravovoi kharakterystyky obiektyvnykh oznak zlochynu. Uchenyie zapysky Tavrycheskoho natsyonalnoho unyversyteta ym. V.Y. Vernadskoho. 2010. T. 23(62). № 1. S. 292–298. (Seryia «Iurydycheskye nauky»). [in Ukrainian].

Yuliia Shopina. Kharakterystyka kryminalnoi vidpovidalnosti medychnoho abo farmatsevtychnoho pratsivnyka. Pidpryiemnytstvo, hospodarstvo i pravo: shchomis. nauk.-prakt. hosp.-prav. zhurn. / NDI pryvat. prava i pidpryiemnytstva Ukrainy NAPrN Ukrainy. – Kyiv.2020. 3/2020, c. 270-274 .URL: http://pgp-journal.kiev.ua/archive/2020/3/46.pdf [in Ukrainian].

Received by Editorial Board: 09.07.2023

Suggested Citation:

Spitsyna, H., Davydenko, I., Turska, V. (2023). Theoretical Aspects Of Medical Workers' Criminal Liability. *Archives of Criminology and Forensic Sciences*. 1 (7). 82-87. DOI: https://doi.org/10.32353/acfs.7.2023.06