

Doi: [10.15863/TAS](https://doi.org/10.15863/TAS)
**International Scientific Journal
Theoretical & Applied Science**

p-ISSN: 2308-4944 (print) e-ISSN: 2409-0085 (online)

Year: 2015 Issue: 01 Volume: 21

Published: 30.01.2015 <http://www.T-Science.org>

SECTION 32. Jurisprudence.

Erkin Shajaevich Dusipov
Doctor of law science, professor,
The Faculty of law,
Zhetysu State University by name of I. Zhansugurov,
Kazakhstan

Nurlan Muhtarovich Batyrbaev
Candidate of law science, professor,
The faculty of law,
International Kazakh-Turkish University by name of
H.A. Yesseyev, Kazakhstan
nurlan_1974@mail.ru

Nurlybek Nurlanovich Uderbaev
Doctor of medical science,
department of legal aspects of healthcare
Kazakh Medical University of Continuing Education,
Kazakhstan

Yernar Sailaubekovich Shalkharov
Postgraduate student in PhD programme,
The faculty of law,
International Kazakh-Turkish University by name of
H.A. Yesseyev, Kazakhstan
yernar_shalkharov@bk.ru

**APPLIED ASPECTS OF APPLICATION OF INSURANCE OF
PROFESSIONAL RESPONSIBILITY OF DOCTOR IN MEDICAL
CONFLICTS AND AFFECTING MECHANISMS ON AREA OF
PROSECUTION IN KAZAKHSTAN REPUBLIC, CENTRAL ASIA:
DISCRIPTIVE APPROACH**

Abstract: *In this paper there were shown problems of solving medical conflicts and the integrating ways of developing medical workers protecting system. Authors illustrate present situation base on issue of statistic agency of Kazakhstan Republic about the potential threats from criminal code.*

Key words: *offence, punishment, legal capacity, obligations, medical indifference, damnification on a carelessness, threat, slander, presumption, professional medical responsibility, business reputation, medical mediator.*

Language: *English*

Citation: [Dusipov ES, Batyrbaev NM, Uderbaev NN, Shalkharov YS \(2015\) APPLIED ASPECTS OF APPLICATION OF INSURANCE OF PROFESSIONAL RESPONSIBILITY OF DOCTOR IN MEDICAL CONFLICTS AND AFFECTING MECHANISMS ON AREA OF PROSECUTION IN KAZAKHSTAN REPUBLIC, CENTRAL ASIA: DISCRIPTIVE APPROACH. ISJ Theoretical & Applied Science 01 \(21\): 89-93. doi: <http://dx.doi.org/10.15863/TAS.2015.01.21.16>](#)

Introduction.

Today in a system of developing innovation in social services medical sector is one of the highly problematic spheres in a legal view because of problem of legal relationship between medical worker and patient. There, no doubt that patient as consumer have enormous range of legal rights, which is uncontrolled legally and also with careless use it can bring very huge damage to doctor, whose rights are extremely less. In this case it is necessary to identify area of obligations of doctor and rights related to him. This issue will help to find a dangerous area for a prosecution and work out the

mechanisms of defense and affecting conflict by way of insurance of professional medical responsibility and institute of Cession.

Observational issue of current situation comparing with decisions analyzes.

Nowadays one of the most actual issues to solve is the question of using mechanisms of regulation in medical conflicts. Moreover it becomes more political and socio-economical issues because of their importance during the period of market economy [1, p. 13]. Consequently, today medical organizations are one of the most separated

commercial segments in the market. Furthermore, it apply to opportunity to such enormous segment of population as consumers [2, p. 8].. In this case patients are consumers and they have all rights and legal opportunities not only for receiving medical services in a quality and quantity they need but also to additional goods shown in material opportunities like financial equivalent of moral disease. This issue is no so adequate to medical workers, because number of patient rights are hugely much more than rights of medical workers [3, p. 15].. Thus, there burns misbalance of rights between two groups of population, which are patients as consumer and medical workers as representatives of service sector. It means that in conflict patients have more ability to win in a process than medical workers, which is oppose to the one of the main and importance principles as democracy [4, p. 18]..

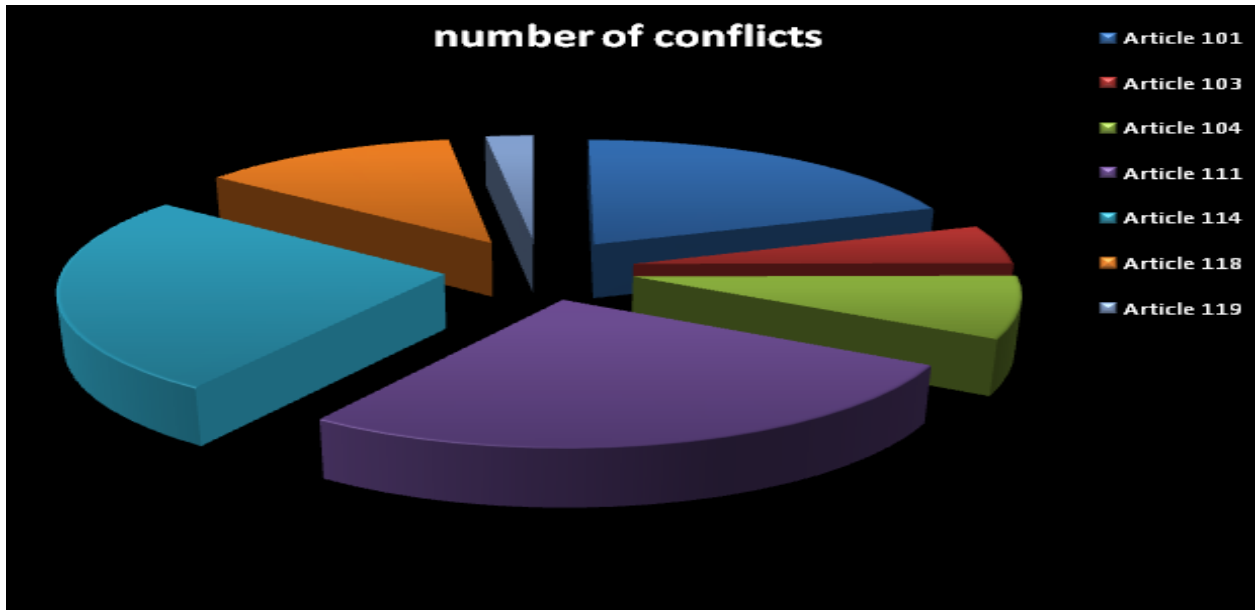
Also, it is obviously that state which have decreasing tendency of democracy is have no any ability to become successful in the world economical and political arena, which will lead to weak position of the state in the world arena [5, p. 24].. That is why improving and developing the system of medical workers right protection mechanism is one of the most actual issues for every state and have direct influence to population. Also there has been a lot of scientific evidence that in the states with highly developed system of medical protection system the level of legal nihilism is sharply less than in the states with no developed medical workers protection system [6, p. 11].. It is also serious question because medical workers presents them as specific group of specialists having qualification and social influencing differences [7, p. 2].. In Kazakhstan Republic expenses of time on the receipt of trade medical education average 9 years. A middle salary of doctors is approximately 350 dollars per monthh (it is approximately middle salary of the most high-paying group of doctors exceeds a the least pay group almost in four times).

At the same time doctors continue to be a group with the expressed altruistic motivation. They compassionate to experiencing of patient and agree to help him even in a damage by it own material and to another interests. Job of doctor performances have a direct social effect, on that in a great deal not only life of certain people but also stability of society depends on the whole [8, p. 45]..

All of it allows to talk that the representatives of this professional group have the special value for society [9, p. 14].. At the same time of condition of their labour, material providing, terms of in-plant training, moral status in the eyes of patients fall short of them. It is necessary to distinguish the specially organized subjects of protection of rights for doctors. The first from them is a trade union of medical workers [10, p. 24].. Questioning show that for doctors former specific orientations are saved in regard to trade unions. They are considered mainly as a source of privileges. Among medical workers positive expectations are saved concerning ability of trade union to protect their rights, in spite of that neither legal nor economic support they from him do not get in a that volume that is needed [11, p. 13]..

There is also widely held view that in Kazakhstan Republic mostly cases again doctors are shown in criminal code of Kazakhstan and only 4 cases in administrative code. It means that huge percent of medical offences lead to prison. In Criminal Code there are 7 cases again the medical workers, which are Infliction of death on a carelessness (article 101), Intentional infliction of severe harm to the health (article 103), Intentional infliction of middle weight of harm to the health (article 104), Careless damnification to the health (article 111), Unproper implementation of professional duties medical and pharmaceutical workers (article 114), Unhelping to the patient (article 118) and Abandonment in a danger (article 119). According to republic statistic agency

1. Infliction of death on a carelessness (article 101) – 19.8%.
2. Intentional infliction of severe harm to the health (article 103) – 5.1%.
3. Intentional infliction of middle weight of harm to the health (article 104) – 8%.
4. Careless damnification to the health (article 111) – 26.6%.
5. Unproper implementation of professional duties medical and pharmaceutical workers (article 114) – 25.8%.
6. Unhelping to the patient (article 118) – 12.4%.
7. Abandonment in a danger (article 119) – 2.3% [12, p. 1]..



Pie chart 1. Percentage of medical crime in 2014 year.

Thus, according to the pie chart it is obviously that, there's been two domineering groups, which are article 111 of criminal code named "careless damnification to the health" in a which text there punishment is envisaged as fine in size of 900 - 1800 dollars, bringing in to social works on a term from 180 - 240 hours or limitation of freedom within two years and article 114 "Unproper implementation of professional duties medical and pharmaceutical workers" in which text it is systematized in form system of punishments, which are fine in size of 900 - 1600 dollars, by privation of right to hold certain positions or carry on certain activity within two years, or limitation of freedom within one year [13, p. 215].

Also, there exists some problem, closely related with individual quantities of person. So that, absence of knowledge of legislation, presence of contradictions and blanks, is in a current legislation that does not ripen after by too quickly changing public relations, and also absence of possibility of receipt of skilled legal help is all the factors influencing, no less what professionalism, on activity of medical workers, and, consequently, on quality, medical services given by them [14, p. 28]. The not best character is decide this problem and legal services in establishments of health protection. In spite of long-term work as a legal adviser of corresponding establishment, such lawyers, as a rule, appear unable to render a skilled help to the employer on such questions, as defence of interests of doctor on civil business on malpractice [15, p. 18].

The basic problem of legal services in medical organizations consists mostly in absence of corresponding specialization. Legal advisers mainly engage in drafting of economic contracts for a clinic, not sparing due attention to such questions, as relation of patients with doctors and establishment of health protection [16, p. 32].

In this situation, when courts and law enforcement authorities the more far of civil actions enters with demand refund of harm and statements about bringing in to criminal responsibility of medical workers in connection with their professional activity, when organizations are absent in Republic of Kazakhstan, carrying out defence of medical workers, and help, that is given by lawyers working in medical establishments and organizations, frequently is insufficient, a doctor is left one on one with the problem of the legal security [17, p. 17]. It would be correct and appropriate to provide the protection of rights for doctors professional medical associations, in positions of that to envisage work on the protection of rights of doctors and establishments of health protection. Similar organizations the activity effectively will be realized and influence on matter-position in the field of protection of rights for doctors. A conduct would minimize legal problems arising up in connection with professional activity of doctors [18, p. 56].

Foreign experience is quite interesting. So, for example, there is Society of medical defence in England. Many doctors are the members of this society. Any doctor consisting of this public

organization has a right to direct in her a statement with a request about the grant of defence, about participating in a court on his side in case of accusing of making a medical mistake. In the state of this organization there are professional lawyers that is specialized on a medical right, in particular, on businesses about malpractices. So, any lawsuit given against a doctor, as a rule, is directed by a corresponding doctor in Society of medical defence. Society advises him on legal questions in relation to the methods of achievement of positive result on the protection of the rights and undertakes defence of his interests on a lawsuit. In Republic of Kazakhstan similar organizations while exists not enough [19, p. 28]. Therefore doctors must apply for defence directly to the practicing advocates. But, unfortunately, presently there are extremely small specialists in area of medical right, and doctors are very problematic to get a skilled legal help. It is special it is important, when the question is about laying an action in regard to the guilty actions (misactions) of doctor [20, p. 15]. So goes the world, in spite of traditional opinion of problematical character of proving of guilt of doctor, are a very difficult task exactly for defence, but not for a prosecution [21, p. 65].

In this connection it would be desirable to name basic normatively-legal acts, regulating mutual relations "doctor-patient" in Republics of Kazakhstan : Constitution of Republic of Kazakhstan, Criminal, Administrative, Civil, Labour and Domestic codes, Code of Republic of Kazakhstan "About the health of people and system of health protection" (with changes and additions

on the state on 10.07.2012); by republican laws: "About the protection of consumers", "About a psychiatric help and guarantees of rights for citizens at her providing", "About medical insurance of citizens in Republics of Kazakhstan" et al. Main the feature of the legislative adjusting of these mutual relations in Republics of Kazakhstan consists in that for a doctor, mainly, prohibitions are set, and for a patient certain rights, foremost, as a consumer of health protection.

By a basic document, regulating work of doctor, there is Code of Republic of Kazakhstan "About the health of people and system of health protection" (with changes and additions on the state on 10.07.2012) the article 182. Therefore for more complete realization of constitutional norms, institutes and principles, regulative a health protection, some positions require the further development [22, p. 8]. Thus, research appears actual in development and scientific ground of model of organization of legal aid to the medical workers in Republics of Kazakhstan.

Conclusion

To sum up the figures, it is obviously that in every hospital there should exist special law department, but it will be too expensive and one of the best way to protect medical workers is creating in a governmental level special service of medical mediators. As a narrow specialized segment of lawyers they will have much ability to protect interests and rights of the medical workers than in a current, which will lead to increase of public trust to law and decrease the level of legal nihilism.

References:

1. (2014) Medical aspects of insanity in Polish Criminal Law, Review Article, Polish Annals of Medicine, Volume, 21, Issue 1, June 2014, pp. 69-73, Leszek Frąckowiak, Kamil Frąckowiak
2. (2007) The teaching of legal medicine in Australasia, Review Article, Journal of Forensic an Legal Medicine, Volume 14, Issue 5, July 2007, pp. 284-288, Roy G. Beran
3. (2014) Health care decision-making, CM and the law, Advances in Integrative Medicine, Volume 1, Issue 1, January 2014, pp. 40-43, Elizabeth Brophy
4. (2009) Healthcare data breaches burgeon in wake of new laws, Computer Fraud & Security, Volume 2009, Issue 7, July 2009, pp. 2-3
5. (2014) Changing healthcare laws and their impact on US allergy-immunology practice, Annals of Allergy, Asthma & Immunology, Volume 112, Issue 1, January 2014, pp. 3, Gailen D. Marshall Jr
6. (2014) Right to health, essential medicines, and lawsuits for access to medicines – A scoping study, Review Article, Social Science & Medicine, Volume 121, November 2014, Pages 48-55, Claudia Marcela Vargas-Peláez, Marina Rajjche Mattozo Rover, Silvana Nair Leite, Francisco Rossi Buenaventura, Marení Rocha Farias
7. (2014) Ethical and legal challenges of personalized medicine: Paradigmatic examples of research, prevention, diagnosis and treatment, Original Research Article,

- Revista Portuguesa de Saúde Pública, Volume 32, Issue 2, July–December 2014, pp. 164-180, João V. Cordeiro
8. (2014) Chapter 15 - Health Technology, Quality, Law, and Ethics, The New Public Health (Third Edition), 2014, pp. 771-819, Theodore H. Tulchinsky, Elena A. Varavikova
 9. (2014) The doctor–patient relationship, defensive medicine and overprescription in Chinese public hospitals: Evidence from a cross-sectional survey in Shenzhen city, Original Research Article, Social Science & Medicine, Volume 123, December 2014, pp. 64-71, Alex Jingwei He
 10. (2015) Anser letter #521/3-1 from Statistic Agency of Kazakhstan Republic.
 11. (2015) Criminal Code of Kazakhstan Republic.
 12. (2005) Evidence-based medicine and tort law, Original Research Article, Seminars in Diagnostic Pathology, Volume 22, Issue 2, May 2005, pp. 167-176, Elliott Foucar, Mark R. Wick
 13. (2014) The role of civil society organizations in the institutionalization of indigenous medicine in Bolivia, Original Research Article, Social Science & Medicine, Volume 123, December 2014, pp. 287-294, Deby Babis
 14. (2014) PHP57 - Pricing of Medicines In Poland – Two-Year Overview Of How The New Law Affected Costs Of Reimbursement, Value in Health, Volume 17, Issue 7, November 2014, pp. A413-A414, D. Szmurlo, M. Wladysiuk, R. Plisko
 15. (2014) Big Law and Big Med: The deprofessionalization of legal and medical services, Original Research Article, International Review of Law and Economics, Volume 38, Supplement, June 2014, pp. 64-76, Richard A. Epstein
 16. (2014) The 11th Indo Pacific Association of Law, Medicine and Science Congress 2013 in Kuala Lumpur, Malaysia, Journal of Forensic Radiology and Imaging, Volume 2, Issue 1, January 2014, pp. 44-4, L.C. Ebert, M.J. Thali, Patricia M. Flach
 17. (1999) LAW AND ETHICS IN EMERGENCY MEDICINE, Original Research Article, Emergency Medicine Clinics of North America, Volume 17, Issue 2, 1 May 1999, pp. 307-325, Arthur R. Derse
 18. (2003) International report: current state and development of health insurance and emergency medicine in Germany. the influence of health insurance laws on the practice of emergency medicine in a European country, Original Research Article, The Journal of Emergency Medicine, Volume 25, Issue 2, August 2003, pp. 203-210, Elke Platz, Tareq Bey, Frank G Walter
 19. (2010) Research on Component Law of Chinese Patent Medicine for Anti-influenza and Development of New Recipes for Anti-influenza by Unsupervised Data Mining Methods, Original Research Article, Journal of Traditional Chinese Medicine, Volume 30, Issue 4, December 2010, pp. 288-293, Shi-huan TANG, Jian-xin CHEN, Geng LI, Hong-wei WU, Chang CHEN, Na ZHANG, Na GAO, Hong-jun YANG, Lu-qi HUANG
 20. (2014) Legal Issues in Genetic Medicine, Reference Module in Biomedical Sciences, 2014, P.R. Reilly
 21. (2013) P.17.11 DEFENSIVE MEDICINE PRACTICES AMONG GASTROENTEROLOGISTS IN LOMBARDY: BETWEEN LAWSUITS AND ECONOMIC CRISIS, Digestive and Liver Disease, Volume 45, Supplement 2, March 2013, pp. S206-S207, L. Elli, A. Tenca, M. Soncini, G. Spinzi, E. Buscarini, D. Conte
 22. (2014) Appraising the profile of ethics, law and professionalism in basic medical education, Review Article, Investigación en Educación Médica, Volume 3, Issue 12, October–December 2014, pp. 209-213, Roger P. Worthington, Greg Becker, Richard Hays