

Criminal and legal aspect of protection of the patients rights

Научный руководитель – Алиева Патимат Шапиулаевна

Хидивова Мадина Магомедсултановна

Студент (специалист)

Российская правовая академия МЮ РФ, Северо-Кавказский филиал, Махачкала, Россия

E-mail: hidivova@gmail.com

Today, not all medical interventions come to an end safely (by recovery of the patient). In this context, it seems necessary to coverage of issues, related to the regulation of the legal defects of the doctors' work.

Stetsenko S.G. identifies the following types of medical care defects: medical errors, accidents, medical crimes.

"Medical error is a defect of care, associated with the improper actions of the medical staff and characterized by an honest mistake in the absence of signs of deliberate or careless crime" (On protection of the health of citizens: Fundamentals of the Legislation of 22.07.1993 № 5487-1 // Sheets SND and the VC. 1993. № 33. Art. 1318. Article 61).

Accidents in rendering of medical services "on the origin of health services differs significantly from medical errors, because it does not depend on any actions or omissions of a doctor.

As for medical crimes, this category needs separate consideration. Article 14 of the Criminal Code of the Russian Federation defines the offense, as wrongful, culpable socially dangerous act, prohibited by the criminal law under the threat of punishment.

Sashko S.Y. identifies several categories of medical crimes: crimes against life and health, crimes against public health and public safety, environmental crimes, crimes against the government, and interests of public service and service in local government (On protection of the health of citizens: Fundamentals of the Legislation of 22.07.1993 № 5487-1 // Sheets SND and the VC. 1993. № 33. Art. 1318. The explanatory note to the draft federal law "On the basis of public health protection in the Russian Federation" p.87 // posted on the website of the Russian newspaper August 30, 2010).

From the analysis of the Criminal Code of the Russian Federation, it is possible to allocate elements of structure of a medical crime.

The object is public relations in the sphere of the protection of life, health, personality, environmental health and social security protection; public relations in the sphere of realization of state power.

The objective side is represented by an illegal act (for example, Art. 109, 235, 290 of the Criminal Code of the Russian Federation), or failure to act (Article 124, 125, 293 of the Criminal Code) (Sashko S.J. 2009, p. 56)

The subjective side can be expressed in the form of intent (for example, Art. 111, 125) and in the form of negligence (for example, Article 109).

Only the special subject can make the researched category of crimes. Namely, a health worker, a person working in a medical organization, responsibilities of which include the provision of a patient care.

Criminal liability comes in case of violation of balance of publicrelations. In particular, in case of non-compliance with the right, or, respectively failure to carry out of the obligation assigned to it by any of participants of the public relations.

In a situation, when the medical institution has no right to refuse to the patient delivery of health care, application of Articles 124, 125 of the Criminal Code of the Russian Federation is possible, for example.

In a case of refusal of the patient from medical intervention, the possible consequences must be explained to the citizen or his legal representative in a form, available to it, according to Article 33 of the Fundamentals of Legislation on health of a citizen (Stetsenko S.G. 2004. №2).

The refusal of medical intervention is arranged by entry in medical documentation and signed by the citizen or his legal representative, and also the health worker with indication of possible consequences. In case of failure to carry out of this obligation the health, worker can be brought to trial (for example, Art. 124), depending on circumstances.

The obligation on rendering services, in proper quality, is assigned to medical institution, on behalf of its workers. Otherwise, an application of articles 109, 111, 112, 115, 118 of the Criminal Code of the Russian Federation is possible.

Fundamentals of legislation on health care (Article 30) sets a patient's right to privacy of information about handling the fact of medical care, health status, diagnosis and other information obtained during examination and treatment. In this regard, in this article we would like also to address the criminal law protection of medical confidentiality (The Criminal Code of the Russian Federation from 13.06.1996 // № 25. Art. 2954.219).

The medical secret comprise the following information: information about the fact of seeking care, the health of the citizen, the diagnosis on his disease, and other information obtained during examination and treatment. For violation of the provisions of the law may attract criminal liability under Articles 137, 201, 285, 286 of the Criminal Code of the RF.

Analysis of the norms of the Criminal Code of the Russian Federation gives us an overview of the elements of the crime when disclosing medical secrets. However, due to the nature of the socially dangerous act, it proposed to add it by Ch. 19 of the Criminal Code of Article 137.1 - disclosure of medical confidentiality.

It is expected to provide the following compounds: illegal disclosure of information about persons, applying for the provision of medical services by a medical professional, if this information became known to him during training, professional performance, service and other duties; the same act, as expressed in the communication of information about a person, who has HIV or AIDS, venereal, mental illness, alcoholism, drug addiction, substance abuse, as well as information on the operations, associated with the human reproductive function or to change the sexual identity, or information, belonging to the area of the sexual life of a person; the same acts, if they resulted in serious consequences.

Источники и литература

- 1) 1. On protection of the health of citizens: Fundamentals of the Legislation of 22.07.1993 № 5487-1 // Sheets SND and the VC. 1993. № 33. Art. 1318. Article 61
- 2) 2. On protection of the health of citizens: Fundamentals of the Legislation of 22.07.1993 № 5487-1 // Sheets SND and the VC. 1993. № 33. Art. 1318. The explanatory note to the draft federal law "On the basis of public health protection in the Russian Federation" // posted on the website of the Russian newspaper August 30, 2010
- 3) 3. Sashko S.J., Kochorova L.V. Medical Law. Tutorial. - M., 2009, p. 56.
- 4) 4. Stetsenko S.G. Medical error and accidents in the practice of health care institutions: legal aspects / S.G.Stetsenko // Lawyer. 2004. №2.
- 5) 5. The Criminal Code of the Russian Federation from 13.06.1996 // Code of Laws of the Russian Federation. 1996. № 25. Art. 2954.219.