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## Constitutional guarantee of the right to health and the practice of medical care: legal positions of the judicial authorities in cases related to cardiovascular pathology

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The article discusses a number of situations related medical and constitutional aspects of cardiovascular medical care. The ability to prevent the negative consequences caused by diseases is not only a task of medicine as a scientific and practical field, but also a task of the Constitution of the Russian Federation. Article 41 of the Constitution of the Russian Federation establishes the protection of human life and health as one of the main tasks of the state. Medical and civil aspects of the methods for preventing diseases and its consequences are shown. An integrated approach to the analysis of this problem contributes not only to the systematization of knowledge and experience in this field, but also helps to implement the definition of health of the World Health Organization.

**Key words:** pulmonary embolism, stroke, medical ethics, patient orientation, judicial practice, Constitution of the Russian Federation, Supreme Court of the Russian Federation.

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The doctor is a representative of medicine and a healthcare. These two categories should be separated. Medicine is an ancient cultural practice and a private science that learns about the world in a certain way, and then influences it for a certain purpose. The purpose of medicine is to prolong a person's life with maximum quality. This is the ethical side of medicine, its essence. Unlike medicine as such, healthcare is a legal institution.

Healthcare fulfils medical tasks, as well as those of the state in the field of medical categories. The importance of the institution of healthcare is confirmed, in particular, by the provisions of Article 41 of the Constitution of the Russian Federation, which guarantees the right of everyone to health and medical care, as well as Article 25 of the Universal Declaration of Human Rights, which establishes the right of everyone to medical care and the necessary social services needed to maintain the health and well-being of himself and his family [1].

Thus, the Russian Federation, as the main subject of legal relations, sets one of its priority goals to fulfill the objectives of medicine: to preserve and extend life with the highest quality for all citizens.

### **Legal regulation of health issues**

The implementation of healthcare tasks puts medicine in a position of regulation and tight control, that is, makes medicine a part of the legal system. This is confirmed both by the relevant regulation on the part of federal legislation, and adopted by industry regulatory legal acts of the Government of the Russian Federation, the Ministry of Health of the Russian Federation and other acts of departments. The fundamental legal act in this area is Federal Law of November 21, 2011 № 323-ФЗ "On fundamental healthcare principles in the Russian Federation", which establishes that the state recognizes the protection of public health as one of the most important conditions for physical and mental development. Medical organizations are required to recognize and respect the rights of citizens in the field of health care. Correspondingly, the branches of law — constitutional, civil, administrative, criminal, as well as the adopted acts of rule-making, become part of the medical process, which in its essence is the process of legal relations between the doctor (wider — the health worker) and the patient (wider — and his representatives). The correlation of responsibility for the quality of the implementation of goals and the specifics of the subject of medicine, including many a priori disregarded factors, leads to the fact that state guarantees face difficulties in their implementation. They are also complicated by the resource-

intensiveness of modern healthcare: the inclusion of relevant scientific tools and knowledge in the process. In fact, medicine balances between predictability and unpredictability, and such a balance should be controlled and regulated by the state.

All of the above suggests that the legal basis of the specialist's activities in the analyzed area acts both as a measure to protect the doctor's reputation and as a legal instrument. This instrument provides ability for doctor to feel as his own freedom and independence, significance the decision taken, and responsibility for their work [2].

### **Attitude of the judiciary on health issues**

The importance of human life is demonstrated by both domestic and international authorities.

In its judgment № 27-P of 6 November 2014, the Constitutional Court of the Russian Federation noted that when it comes to the death of a person, the reality of the suffering of family members is not questioned. In addition, "It is all the more significant in case when a spouse or close relative has a suspicion that the death of a loved one was caused by untimely or poor quality medical care provided by a health care institution"\*. The European Court of Human Rights, in its judgment of 27 June 2006 in the case of "Byrzykowski vs. Poland", stressed that possible mistakes made in the course of providing medical assistance and acquired as a result of the consideration of such cases should be immediately generalized and brought to the attention of medical workers in order to prevent the repetition of such mistakes and improve the safety of patients [3].

The Plenum of the Supreme Court of the Russian Federation, as one of the main courts, also plays an essential role in the qualification of an act. In particular, in Resolution № 10 of the Plenum of the Supreme Court of the Russian Federation of December 20, 1994, "Certain Questions of Applying of Legislation on Compensation for Moral Damage", the degree of moral or physical suffering is assessed by the court taking into account the actual circumstances of damage, the individual characteristics of the victim and other specific

\* Judgement of the Constitutional Court of the Russian Federation of 30.11.2016 № 27-P "in the case of the constitutionality verification of paragraph 1 of Part 8 of Article 14 of the Federal Law "On Insurance Contributions to the Pension Fund of the Russian Federation, the Social Insurance Fund of the Russian Federation, the Federal Compulsory Medical Insurance Fund" and Article 227 of the Tax Code of the Russian Federation in connection with the request of the Kirov Regional Court". Computer-assisted legal research system "ConsultantPlus", local version (date of request 22.07.2019).

circumstances indicating the severity of the suffering. The most important role in this issue is played by Resolution № 522 of the Government of the Russian Federation of August 17, 2007 "On Approval of Regulations for Determining the Degree of Severity of Damage to Health on the Basis of Danger to Human Life". It establishes the criteria for determining the causal link between injuries that have caused harm to the health/death of a patient and the actions of physicians.

### Clinical-legal example

As a special case, illustration of ethical legal relations in the process of implementation of human rights guarantees provided by Article 41 of the Constitution of the Russian Federation, with a doctor as a subject of medicine and a subject of the legal system — the main active element and the main responsible person (and later — a possible defendant), we cite an example from the practice of cardiovascular care, namely — acute cerebrovascular event.

The example is based on the verdict of the Moscow District Court, the appeal judgment of the regional court. The peculiarity of this case is that as a result of poor quality of medical services, expressed in the improper performance of official duties, the patient died. The man N. was hospitalized in a cardiac clinic of the regional center due to acute coronary syndrome. He was given a thrombolytic treatment, followed by coronary angiography and then a minimally invasive intervention, after which his condition was stabilized. By evening, however, the patient had symptoms of acute cerebrovascular accident. Since the hospital did not have a neurological service and the necessary diagnostic equipment, the patient was transferred to the regional hospital. But when the patient was brought in and examined by a neurologist, a neurosurgeon, he was given a CT scan and hospitalization was denied. At the time of his research, his neurological status was stable and there was no indication of neurosurgical intervention. Due to the patient's registration in one of the districts of the regional center, it was recommended that he be transported to the city hospital for further treatment. In particular, the decision was justified by the lack of beds in the regional hospital. In the course of transportation, the neurological status of the patient worsened and, despite treatment at the city hospital, he died.

In this case, legal, organizational, biomedical and ethical aspects are intertwined.

From a legal and organizational point of view, questions such as the causal link between the physician's actions and the patient's death are at top of mind. For the legal qualification of the act, both the actions of the doctor (objectively unjustified

transportation of the patient) and inaction (failure to provide the necessary medical, intensive care help) are significant. In other words, it is important to understand whether medical assistance has been provided in accordance with the norms of the law: right, timely and in full.

From a biomedical point of view, it is important to take into account the physician's qualifications and experience in the field of intensive care for people with vital organs' disorders until their activities are stabilized.

In addition, relevant medical organizations must be provided with the necessary number of doctors, equipment and drugs. In doing so, the physician must take such measures as not to result in the severity of the disease, as well as the development of its complications in one form or another. The objective difficulties of clinical diagnostics and tactics are clear. They are caused by the complexity of the pathological processes underlying the cardiovascular complication. For example, the development of thrombotic and thromboembolic episodes in the arterial system depends on the balance of the pro- and anticoagulant systems [4], and the further course of ischemic events in a particular territory may be exacerbated both in the case of physician action and in case of inaction. The actions are based on diagnostic information that may be insufficient for a variety of reasons, whether purely medical, organizational or professional.

From an ethical point of view, the fundamental issue is whether to decide whether to provide medical care in strict compliance with existing regulations or not. In such a situation, the physician is asked whether he has the right to treat a patient if there are no available beds in the hospital; whether he is entitled to hospitalize a patient if there is a lack of legal documentation or if there is a likelihood (even low) of such a patient dying. Is it the right of the doctor to decide to transport the patient if this in any way extends the period from the beginning of the complication to the provision of specialized medical care? All these rather controversial, but at the same time important questions in law and medicine are not unambiguously answered, and the ethical actions to be taken in the event of an unfavourable course of disease may raise the issue of harm to health. In the case of certain doubts, the physician has to make a decision in accordance with his ideas of professional duty. But in the event of doubts about the outcome, the parties to legal relations in each case have the right to appeal to the court.

It is also important to note the aspects of communication between doctors and relatives of patients, doctors and other healthcare professionals. According to the case file, there are statements like

"complain to the President", "have you made an agreement with me?", "too many documents have to be processed" heard by the patient's relatives.

Comments by some healthcare providers on the actions of others also matter. In the process of patient routing, when difficulties arise, communication is often the factor that forms a picture of care in the minds of the patient's relatives (especially in the case of complications or fatal outcomes) [5]. As a result, it is non-constructive communication that can be the starting point for a lawsuit.

In the present case, the intensive care physician refused to provide medical assistance to the patient because he had registration in another constituent entity of the federation, there was no free bed in the medical center, and the required specialist (neurosurgeon) was in another medical organization. The decision was made to transport the patient, which led to worsening in his condition, resulting in his death after a period of time. During the session of the court, it was established that the attending physician had the opportunity to provide medical care in a particular medical center (without transferring the patient), but the intensivist treated the patient carelessly, which resulted in the death of the patient. The court found the physician guilty of causing the death by negligence and imposed a criminal penalty.

All of this, of course, does not mean that the legal position on a particular case is universal, ultimatum and cannot be corrected. Referring to the above example, it is worth noting that the respondent party used its right to appeal against the court decision in order to make an acquittal (however, ineffective: the appeal courts left the verdict of the court of first instance unchanged, the stated requirements — without satisfaction).

### **Ethical analysis**

Ethical analysis can be a useful tool in resolving such contentious issues. A number of ethical algorithms can be used to support medical intuition, not just theoretical but applied ones. The combination of actions in this and any such situation can be imagined as an equation where the replacement of variables can be obtained from a conditional "1" (100%), in the case when the patient is fully recovered, to a "0", representing the lethal outcome. Intermediate results can be a kind of assessment of the patient's well-being and health. The physician is required to maximize the result of the equation under the available conditions.

One of the main variables of the equation will be the conditions of certainty/uncertainty and risk. Obviously, the uncertainty conditions increase the

risk assessment and exclude the possibility of the physician orientation an unequivocally optimistic outcome as the starting point for choosing the best solution. Maximal risk minimization in uncertainty is a priority for the physician.

In the above situation of the patient's non-hospitalization with the subsequent statement of claim we have a number of mistakes in the decision making by the doctor. Firstly, the situation seems to have been mistakenly perceived as clear and defined. Secondly, there is a lack of risk assessment: cardiovascular pathology a priori has an increased risk to the patient's life. This requires the doctor to double-check own beliefs that the patient is safe, rather than hoping for a well outcome.

In this context, we can see that the deontological imperative of caring for the patient's life is a medical duty, which is combined with an analytical approach to assessing the situation. A child's understanding of simple moral functions arises before rational thinking, which speaks in favor of the possibility of a preset understanding of moral concepts, and thus of their quicker reproducibility and coordination, than in rational reasoning. In other words, ethical decisions are made intuitively, but can also be the result of analysis.

It is not necessary to translate difficult ethical decisions into the language of mathematics in case of acute pathology. But if the key points are fixed, properly formulated, and complemented by qualitative rationalization in advance, it is possible to significantly reduce the number ethical decisions and strategies of interaction with the patient that leads to the death. This assumption is reinforced by the fact that lethal outcomes and complications are not the result of malice, but of behavioral patterns of the mentally healthy and most likely rational physicians who, for various reasons, have made the wrong emphasis on assessing the situation.

Thus, despite the absolute need to understand the legal aspects of medicine, a well-structured sense of rapid analysis of the situation in emergency situations can be an effective and even independent protection against dangerous decisions.

### **Conclusion**

"Infliction of death by negligence" is the worst case scenario for medical, legal and ethical reasons. For this reason, it is necessary not only to take into account the existing legal norms of health care regulation, but also personal perceptions of duty, honor, conscience, right and wrong [6]. It can be characterized by complex contradiction.

The importance of providing medical care and the value of human life is highlighted not only in federal

and regional legislation, but also directly in the Constitution of the Russian Federation. This only confirms the key value for society of the decisions that a doctor makes every day.

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### References

1. Vitruk NV. Constitutional judgement. Judicial-constitutional law and process. 2010;3:436-40. (In Russ.)
2. Evseev AP. Psychology of the constitutional legal process: monograph. 2013;172-3. (In Russ.)
3. Krapivkina OA. About personalized character of modern judicial discourse. Messenger of Irkutsk state linguistic university. 2010;4:27-34. (In Russ.)
4. Buy MZ, Levedeva AY, Gordeev IG, et al. Heart rate variability and hemostatic parameters in patients with coronary heart disease and chronic heart failure. Russ J Cardiol. 2013;18(5):6-11. (In Russ.)
5. Taratukhin EO. Patient's personality: an interdisciplinary approach to cardiovascular pathology. Russ J Cardiol. 2014;19(9):22-5. (In Russ.)
6. Pokrovsky IA. The main problems of civil law. 2003; 96 p. (In Russ.)