GEORGIAN MEDICAL NEWS

ISSN 1512-0112

NO 1 (346) Январь 2024

ТБИЛИСИ - NEW YORK

ЕЖЕМЕСЯЧНЫЙ НАУЧНЫЙ ЖУРНАЛ

Медицинские новости Грузии

საქართველოს სამედიცინო სიახლენი

GEORGIAN MEDICAL NEWS

Monthly Georgia-US joint scientific journal published both in electronic and paper formats of the Agency of Medical Information of the Georgian Association of Business Press. Published since 1994. Distributed in NIS, EU and USA.

GMN: Georgian Medical News is peer-reviewed, published monthly journal committed to promoting the science and art of medicine and the betterment of public health, published by the GMN Editorial Board since 1994. GMN carries original scientific articles on medicine, biology and pharmacy, which are of experimental, theoretical and practical character; publishes original research, reviews, commentaries, editorials, essays, medical news, and correspondence in English and Russian.

GMN is indexed in MEDLINE, SCOPUS, PubMed and VINITI Russian Academy of Sciences. The full text content is available through EBSCO databases.

GMN: Медицинские новости Грузии - ежемесячный рецензируемый научный журнал, издаётся Редакционной коллегией с 1994 года на русском и английском языках в целях поддержки медицинской науки и улучшения здравоохранения. В журнале публикуются оригинальные научные статьи в области медицины, биологии и фармации, статьи обзорного характера, научные сообщения, новости медицины и здравоохранения. Журнал индексируется в MEDLINE, отражён в базе данных SCOPUS, PubMed и ВИНИТИ РАН. Полнотекстовые статьи журнала доступны через БД EBSCO.

GMN: Georgian Medical News – საქართველოს სამედიცინო სიახლენი – არის ყოველთვიური სამეცნიერო სამედიცინო რეცენზირებადი ჟურნალი, გამოიცემა 1994 წლიდან, წარმოადგენს სარედაქციო კოლეგიისა და აშშ-ის მეცნიერების, განათლების, ინდუსტრიის, ხელოვნებისა და ბუნებისმეტყველების საერთაშორისო აკადემიის ერთობლივ გამოცემას. GMN-ში რუსულ და ინგლისურ ენებზე ქვეყნდება ექსპერიმენტული, თეორიული და პრაქტიკული ხასიათის ორიგინალური სამეცნიერო სტატიები მედიცინის, ბიოლოგიისა და ფარმაციის სფეროში, მიმოხილვითი ხასიათის სტატიები.

ჟურნალი ინდექსირებულია MEDLINE-ის საერთაშორისო სისტემაში, ასახულია SCOPUS-ის, PubMed-ის და ВИНИТИ РАН-ის მონაცემთა ბაზებში. სტატიების სრული ტექსტი ხელმისაწვდომია EBSCO-ს მონაცემთა ბაზებიდან.

WEBSITE

www.geomednews.com

К СВЕДЕНИЮ АВТОРОВ!

При направлении статьи в редакцию необходимо соблюдать следующие правила:

1. Статья должна быть представлена в двух экземплярах, на русском или английском языках, напечатанная через **полтора интервала на одной стороне стандартного листа с шириной левого поля в три сантиметра**. Используемый компьютерный шрифт для текста на русском и английском языках - **Times New Roman** (**Кириллица**), для текста на грузинском языке следует использовать **AcadNusx.** Размер шрифта - **12**. К рукописи, напечатанной на компьютере, должен быть приложен CD со статьей.

2. Размер статьи должен быть не менее десяти и не более двадцати страниц машинописи, включая указатель литературы и резюме на английском, русском и грузинском языках.

3. В статье должны быть освещены актуальность данного материала, методы и результаты исследования и их обсуждение.

При представлении в печать научных экспериментальных работ авторы должны указывать вид и количество экспериментальных животных, применявшиеся методы обезболивания и усыпления (в ходе острых опытов).

4. К статье должны быть приложены краткое (на полстраницы) резюме на английском, русском и грузинском языках (включающее следующие разделы: цель исследования, материал и методы, результаты и заключение) и список ключевых слов (key words).

5. Таблицы необходимо представлять в печатной форме. Фотокопии не принимаются. **Все цифровые, итоговые и процентные данные в таблицах должны соответствовать таковым в тексте статьи**. Таблицы и графики должны быть озаглавлены.

6. Фотографии должны быть контрастными, фотокопии с рентгенограмм - в позитивном изображении. Рисунки, чертежи и диаграммы следует озаглавить, пронумеровать и вставить в соответствующее место текста **в tiff формате**.

В подписях к микрофотографиям следует указывать степень увеличения через окуляр или объектив и метод окраски или импрегнации срезов.

7. Фамилии отечественных авторов приводятся в оригинальной транскрипции.

8. При оформлении и направлении статей в журнал МНГ просим авторов соблюдать правила, изложенные в «Единых требованиях к рукописям, представляемым в биомедицинские журналы», принятых Международным комитетом редакторов медицинских журналов - http://www.spinesurgery.ru/files/publish.pdf и http://www.nlm.nih.gov/bsd/uniform_requirements.html
В конце каждой оригинальной статьи приводится библиографический список. В список литературы включаются все материалы, на которые имеются ссылки в тексте. Список составляется в алфавитном порядке и нумеруется. Литературный источник приводится на языке оригинала. В списке литературы сначала приводятся работы, написанные знаками грузинского алфавита, затем кириллицей и латиницей. Ссылки на цитируемые работы в тексте статьи даются в квадратных скобках в виде номера, соответствующего номеру данной работы в списке литературы. Большинство цитированных источников должны быть за последние 5-7 лет.

9. Для получения права на публикацию статья должна иметь от руководителя работы или учреждения визу и сопроводительное отношение, написанные или напечатанные на бланке и заверенные подписью и печатью.

10. В конце статьи должны быть подписи всех авторов, полностью приведены их фамилии, имена и отчества, указаны служебный и домашний номера телефонов и адреса или иные координаты. Количество авторов (соавторов) не должно превышать пяти человек.

11. Редакция оставляет за собой право сокращать и исправлять статьи. Корректура авторам не высылается, вся работа и сверка проводится по авторскому оригиналу.

12. Недопустимо направление в редакцию работ, представленных к печати в иных издательствах или опубликованных в других изданиях.

При нарушении указанных правил статьи не рассматриваются.

REQUIREMENTS

Please note, materials submitted to the Editorial Office Staff are supposed to meet the following requirements:

1. Articles must be provided with a double copy, in English or Russian languages and typed or compu-ter-printed on a single side of standard typing paper, with the left margin of **3** centimeters width, and **1.5** spacing between the lines, typeface - **Times New Roman** (**Cyrillic**), print size - **12** (referring to Georgian and Russian materials). With computer-printed texts please enclose a CD carrying the same file titled with Latin symbols.

2. Size of the article, including index and resume in English, Russian and Georgian languages must be at least 10 pages and not exceed the limit of 20 pages of typed or computer-printed text.

3. Submitted material must include a coverage of a topical subject, research methods, results, and review.

Authors of the scientific-research works must indicate the number of experimental biological species drawn in, list the employed methods of anesthetization and soporific means used during acute tests.

4. Articles must have a short (half page) abstract in English, Russian and Georgian (including the following sections: aim of study, material and methods, results and conclusions) and a list of key words.

5. Tables must be presented in an original typed or computer-printed form, instead of a photocopied version. **Numbers, totals, percentile data on the tables must coincide with those in the texts of the articles.** Tables and graphs must be headed.

6. Photographs are required to be contrasted and must be submitted with doubles. Please number each photograph with a pencil on its back, indicate author's name, title of the article (short version), and mark out its top and bottom parts. Drawings must be accurate, drafts and diagrams drawn in Indian ink (or black ink). Photocopies of the X-ray photographs must be presented in a positive image in **tiff format**.

Accurately numbered subtitles for each illustration must be listed on a separate sheet of paper. In the subtitles for the microphotographs please indicate the ocular and objective lens magnification power, method of coloring or impregnation of the microscopic sections (preparations).

7. Please indicate last names, first and middle initials of the native authors, present names and initials of the foreign authors in the transcription of the original language, enclose in parenthesis corresponding number under which the author is listed in the reference materials.

8. Please follow guidance offered to authors by The International Committee of Medical Journal Editors guidance in its Uniform Requirements for Manuscripts Submitted to Biomedical Journals publication available online at: http://www.nlm.nih.gov/bsd/uniform_requirements.html
http://www.icmje.org/urm_full.pdf
In GMN style for each work cited in the text, a bibliographic reference is given, and this is located at the end of the article under the title "References". All references cited in the text must be listed. The list of references should be arranged alphabetically and then numbered. References are numbered in the text [numbers in square brackets] and in the reference list and numbers are repeated throughout the text as needed. The bibliographic description is given in the language of publication (citations in Georgian script are followed by Cyrillic and Latin).

9. To obtain the rights of publication articles must be accompanied by a visa from the project instructor or the establishment, where the work has been performed, and a reference letter, both written or typed on a special signed form, certified by a stamp or a seal.

10. Articles must be signed by all of the authors at the end, and they must be provided with a list of full names, office and home phone numbers and addresses or other non-office locations where the authors could be reached. The number of the authors (co-authors) must not exceed the limit of 5 people.

11. Editorial Staff reserves the rights to cut down in size and correct the articles. Proof-sheets are not sent out to the authors. The entire editorial and collation work is performed according to the author's original text.

12. Sending in the works that have already been assigned to the press by other Editorial Staffs or have been printed by other publishers is not permissible.

Articles that Fail to Meet the Aforementioned Requirements are not Assigned to be Reviewed.

ავტორთა საყურადღებოდ!

რედაქციაში სტატიის წარმოდგენისას საჭიროა დავიცვათ შემდეგი წესები:

1. სტატია უნდა წარმოადგინოთ 2 ცალად, რუსულ ან ინგლისურ ენებზე,დაბეჭდილი სტანდარტული ფურცლის 1 გვერდზე, 3 სმ სიგანის მარცხენა ველისა და სტრიქონებს შორის 1,5 ინტერვალის დაცვით. გამოყენებული კომპიუტერული შრიფტი რუსულ და ინგლისურენოვან ტექსტებში - **Times New Roman (Кириллица)**, ხოლო ქართულენოვან ტექსტში საჭიროა გამოვიყენოთ **AcadNusx.** შრიფტის ზომა – 12. სტატიას თან უნდა ახლდეს CD სტატიით.

2. სტატიის მოცულობა არ უნდა შეადგენდეს 10 გვერდზე ნაკლებს და 20 გვერდზე მეტს ლიტერატურის სიის და რეზიუმეების (ინგლისურ, რუსულ და ქართულ ენებზე) ჩათვლით.

3. სტატიაში საჭიროა გაშუქდეს: საკითხის აქტუალობა; კვლევის მიზანი; საკვლევი მასალა და გამოყენებული მეთოდები; მიღებული შედეგები და მათი განსჯა. ექსპერიმენტული ხასიათის სტატიების წარმოდგენისას ავტორებმა უნდა მიუთითონ საექსპერიმენტო ცხოველების სახეობა და რაოდენობა; გაუტკივარებისა და დაძინების მეთოდები (მწვავე ცდების პირობებში).

4. სტატიას თან უნდა ახლდეს რეზიუმე ინგლისურ, რუსულ და ქართულ ენებზე არანაკლებ ნახევარი გვერდის მოცულობისა (სათაურის, ავტორების, დაწესებულების მითითებით და უნდა შეიცავდეს შემდეგ განყოფილებებს: მიზანი, მასალა და მეთოდები, შედეგები და დასკვნები; ტექსტუალური ნაწილი არ უნდა იყოს 15 სტრიქონზე ნაკლები) და საკვანძო სიტყვების ჩამონათვალი (key words).

5. ცხრილები საჭიროა წარმოადგინოთ ნაბეჭდი სახით. ყველა ციფრული, შემაჯამებელი და პროცენტული მონაცემები უნდა შეესაბამებოდეს ტექსტში მოყვანილს.

6. ფოტოსურათები უნდა იყოს კონტრასტული; სურათები, ნახაზები, დიაგრამები - დასათაურებული, დანომრილი და სათანადო ადგილას ჩასმული. რენტგენოგრამების ფოტოასლები წარმოადგინეთ პოზიტიური გამოსახულებით **tiff** ფორმატში. მიკროფოტოსურათების წარწერებში საჭიროა მიუთითოთ ოკულარის ან ობიექტივის საშუალებით გადიდების ხარისხი, ანათალების შეღებვის ან იმპრეგნაციის მეთოდი და აღნიშნოთ სურათის ზედა და ქვედა ნაწილები.

7. სამამულო ავტორების გვარები სტატიაში აღინიშნება ინიციალების თანდართვით, უცხოურისა – უცხოური ტრანსკრიპციით.

8. სტატიას თან უნდა ახლდეს ავტორის მიერ გამოყენებული სამამულო და უცხოური შრომების ბიბლიოგრაფიული სია (ბოლო 5-8 წლის სიღრმით). ანბანური წყობით წარმოდგენილ ბიბლიოგრაფიულ სიაში მიუთითეთ ჯერ სამამულო, შემდეგ უცხოელი ავტორები (გვარი, ინიციალები, სტატიის სათაური, ჟურნალის დასახელება, გამოცემის ადგილი, წელი, ჟურნალის №, პირველი და ბოლო გვერდები). მონოგრაფიის შემთხვევაში მიუთითეთ გამოცემის წელი, ადგილი და გვერდების საერთო რაოდენობა. ტექსტში კვადრატულ ფჩხილებში უნდა მიუთითოთ ავტორის შესაბამისი N ლიტერატურის სიის მიხედვით. მიზანშეწონილია, რომ ციტირებული წყაროების უმეტესი ნაწილი იყოს 5-6 წლის სიღრმის.

9. სტატიას თან უნდა ახლდეს: ა) დაწესებულების ან სამეცნიერო ხელმძღვანელის წარდგინება, დამოწმებული ხელმოწერითა და ბეჭდით; ბ) დარგის სპეციალისტის დამოწმებული რეცენზია, რომელშიც მითითებული იქნება საკითხის აქტუალობა, მასალის საკმაობა, მეთოდის სანდოობა, შედეგების სამეცნიერო-პრაქტიკული მნიშვნელობა.

10. სტატიის ბოლოს საჭიროა ყველა ავტორის ხელმოწერა, რომელთა რაოდენობა არ უნდა აღემატებოდეს 5-ს.

11. რედაქცია იტოვებს უფლებას შეასწოროს სტატია. ტექსტზე მუშაობა და შეჯერება ხდება საავტორო ორიგინალის მიხედვით.

12. დაუშვებელია რედაქციაში ისეთი სტატიის წარდგენა, რომელიც დასაბეჭდად წარდგენილი იყო სხვა რედაქციაში ან გამოქვეყნებული იყო სხვა გამოცემებში.

აღნიშნული წესების დარღვევის შემთხვევაში სტატიები არ განიხილება.

GEORGIAN MEDICAL NEWS
No 1 (346) 2024

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GEORGIAN MEDICAL NEWS
No 1 (346) 2024

LEGAL NATURE OF MEDICAL SERVICES: SPECIFICS OF UKRAINIAN DOCTRINE

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Abstract.

Aim: The purpose of the article is to analyze the specifics of the Ukrainian doctrine regarding the legal nature of medical services and areas for improving legal regulation.

Materials and methods: The research is based on the analysis and comparison of Ukrainian and EU law, content analysis of the terminology of legal sources, legal positions of the Constitutional Court of Ukraine, scientific researches, description and generalization of existing achievements and issues in the field of legal regulation of healthcare services. Research methods are monographic analysis, systematic and structural analysis, comparative and legal analysis, linguistic analysis, content analysis, method of generalization.

Results: The need to unify the special categorical apparatus of Ukrainian legislation has been substantiated. It has been proved that due to the improvement of domestic legislation through the implementation of the norms of European private law, the doctrine and practice of legal regulation will correspond to the nature of the regulated relations. The content, structure, and specific features of legal relations for the provision of medical services in the Ukrainian legal system have been determined.

Conclusions: The authors have made a conclusion about the private legal nature of medical services in the domestic legal doctrine. Recommendations have been made for the legislation of Ukraine, which regulates civil relations for the provision of medical services, regarding the introduction of special norms related to the personal non-property rights of the relations' participants, contractual representation of a patient, legal terms for the provision of medical services without obtaining the consent.

Key words. Health care, medical care, legal nature of medical services, personal non-property rights, civil contracts, patient's representation.

Introduction.

The organization of the health care system and the provision of medical care in the country usually reflects the prevailing paradigm of values and the leading legal guidelines of society. The objective processes of the modern history of Ukraine are related to the orientation towards Euro-Atlantic integration, European values, and the ideology of anthropocentrism. A person and his inviolable rights predictably gain primacy in the hierarchy of social priorities in the latest legislation of Ukraine, because of this reason, which makes appropriate demands on the state in ensuring these rights with a real legal content: positive and legal mechanisms of implementation and effective protection. A person, his life and health, honor and dignity, inviolability and security are recognized as the highest social values according to the Art. 3 of the Constitution of Ukraine.

Therefore, increased attention and scientific interest to the problems of civil relations in the healthcare sector are stimulated by the objective realities of today, in particular, a systematic objective regularity of the expansion of the scope of private law methods in the regulation of relations for the provision of medical services.

In addition to the above, a number of systematic problems await their legal support and resolution in the light of current tendencies in the development of the healthcare sector and the medical area. Thus, a special factor in the actualization of research on civil relations in regard to the provision of medical services was the reform of the healthcare sector, which is ongoing in Ukraine, and those changes in the economic and legal model of its functioning, which caused the need to restart the legal mechanism of providing medical care to the population, actualized new approaches to determining the essence of a medical service and the sectoral subordination of emerging legal relations. Objective processes of reassessment of the role of private law and public law means of influence on new legal relations, the grounds for the emergence of civil relations, and the role of a contract in their regulation take place on the basis of these principles.

The above actualizes a special social order for studying civil regulation of relations on the provision of medical services, the objectives of which are: analysis and adjustment of a special categorical apparatus; research of the legal nature of medical services within new conditions; determining the content, elements and features of legal relations that are subject to regulation; substantiating directions and ways of improving the mechanism of legal regulation. Based on the results of the research, the authors have identified the gaps in the doctrine and practice of law enforcement, substantiated recommendations for the legislation of Ukraine, which regulates civil relations on the provision of medical services.

Literature review.

The problematic issue of the legal nature of medical services has become a topical subject of scientific research since the adoption of the Civil Code of Ukraine in 2003, where the right to medical care and the patient's rights during the provision of medical assistance received special regulation. Relations in the field of medical services have received special attention since 2016 because of the reform of the organization and financing of medical services. A lot of dissertations, monographs and articles

have been recently focused on studying various aspects of legal regulation on the provision of medical services.

Thus, Buletsa [1] carried out an important analysis of the correlation between the concepts of "medical care", "medical service", "contract for the provision of medical services (assistance)", "patient" since the results of the provision of medical services (care) depend on a clear definition of these concepts. Senyuta [2] comprehensively studied theoretical and practical aspects of civil legal relations in the field of providing medical care. Herts [3] focused on the analysis of contractual obligations in the field of medical services provision. Myronova [4] revealed the private legal nature of relations for the provision of medical care; she has also analyzed the impact of paternalistic legal traditions, which were natural for the population of Ukraine, on the regulation of legal relations for the provision of medical services. Teremetskyi et al. [5] studied specific features of legal support for the provision of socially significant medical services in modern conditions, as well as the problems arising during the provision of medical care to persons sentenced to imprisonment [6]. Chekhovska et al. [7] offered the system of guarantees for the protection of human rights within private relations arising in regard to the provision of medical services. Certain issues regarding the legal nature of medical services, specific features of their civil regulation were studied by Maydanyk [8], Blaschuk [9], who made a significant contribution to the study of the subject-object elements and the nature of obligations in the construction of a civil contract on the provision of medical services.

Methodology of the study.

The research is based on the analysis and comparison of Ukrainian and EU law, content analysis of the terminology of legal sources, legal positions of the Constitutional Court of Ukraine, scientific researches, description and generalization of existing achievements and issues in the field of legal regulation of healthcare services.

General scientific and special methods of scientific research were used in the article. The method of monographic analysis helped to clarify a range of problematic issues related to the improvement of legal regulation on the provision of medical services in Ukraine. The methods of analysis and synthesis made it possible to isolate and generalize the existing legal material for understanding the legal nature of medical services and to form the authors' point of view of its essence, legal model, and adequate tools of legal influence on the relevant legal relations. The priority distribution of special terminology in the relevant legislation was revealed due to the application of the content analysis. The linguistic analysis made it possible to meaningfully define and unify the categorical apparatus. The comparative and legal method made it possible to carry out the analysis of sources of literature, legal acts of Ukraine, European legal standards in the field of regulation of relations on the provision of medical services, which allowed us to identify gaps and shortcomings of the domestic doctrine and practice of legal enforcement. The generalization method made it possible to draw important and appropriate conclusions based on the conducted research.

Results & Discussion.

Medical care or medical service: regarding the issue of defining the conceptual apparatus:

The issues of legal certainty of the essence of relations while providing medical care have become especially relevant in the context of the initiated in Ukraine reform of the organization and financing of the health care sector within new ideological, economic, and legal principles. The terms of "medical service" and "medical care" have become since then an important part of the national legislation and have acquired a significant legal burden. Those terms were applied and redefined in a number of regulatory legal acts that were adopted or amended for the needs of legal support of the reform. In particular, a new conceptual model, new rules for the provision of medical services and new terminology have been stipulated in the special Law of Ukraine "On State Financial Guarantees of Medical Service to the Population" [10] and the main specialized Law of Ukraine "Fundamentals of the legislation of Ukraine on health care" [11].

However, the diversity of the categorical apparatus of domestic legislation is impressive. One can find the usage of such notions as: medical care, health care, medical treatment, medical intervention, medical service in various regulatory acts. The Law of Ukraine "Fundamentals of the legislation of Ukraine on health care" [11], which defines the legal, organizational, economic, and social principles of health care in Ukraine, and regulates social relations in this area, contains several specific terms: "service" is used 24 times, "provision of medical services" – 35, "intervention" – 12, "medical care" – 187, "treatment" – 58 times. Terminological chaos is compounded by the fact that both the meaning of the concepts and their relationship to each other are not always clear from the context. This situation is especially unacceptable in terms of the English-language terminology used to regulate services in medicine. Thus, only two specific terms: services and treatment provider are used for 11 Articles of the English-language version of the "Principles, Definitions and Model Rules of European Private Law Draft Common Frame of Reference" [12] focused on the topic of medical services.

The situation is complicated by the lack of a single terminological ideology of the regulatory framework; the content of the main concepts remains unclear. The differences of opinions existing in the Ukrainian doctrine regarding the issue of terminology forced the Constitutional Court of Ukraine to note in paragraph 3 of the decision's reasoning [13] that the notions of "medical care" and "medical service" defined by scholars, which were provided to the court, are interpreted both as synonyms and as antonyms, and as part of each other. It is unfavourable situation for the formation and development of civil legislation in the context of reforming the health care sector that requires a balanced definition of the main notions and justification of the relevant legal definitions, which should contribute to the harmonization and improvement of the mechanisms of legal impact on the relevant relations.

Specification of the subject area of applying the concepts of "medical care", "medical intervention", "treatment" is, first of all, necessary in the context of this legal study. The term of "medical care" is currently part of the conceptual apparatus of

the Civil Code of Ukraine [14], which enshrines the right to medical care and its main components (Art. 284), in particular the patient's right to choose treatment methods and to refuse from treatment. It is obvious that both terms – "medical care" and "treatment" – are used arbitrarily, the term "medical intervention" is not used in the Civil Code of Ukraine. However, the main specialized Law of Ukraine "Fundamentals of the legislation of Ukraine on health care" [11] already stipulates the patient's right to medical intervention and its components. As one can see from the context of the applicable legislation, the term "medical care" is used either in a sense close to the term of "medical intervention", or to indicate those relations that arise during the provision of services, i.e., as a synonym for medical service on a free-of-charge basis for a patient.

However, the term of "medical care" is found only in the Art. 3 of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine [15] in the context of equal access to medicine. It is obvious that it is about the obligation of states to ensure a certain level of social justice and equal access to medical services of appropriate quality. It is also indicative that the terms of "intervention in the healthcare sector" and "medical intervention" are used to characterize legal relations and human rights in the context of the impact on a human body by means of biomedicine.

The definition and correlation of the concepts of "medical care" and "medical service" in scientific and regulatory sources of Ukraine has its own history of development. The Decision of the Constitutional Court of Ukraine of 1998 [16] noted that "the concept of "medical care" in medical science mainly covers treatment, preventive measures, which are carried out during diseases, injuries, childbirth, as well as medical examination and some other types of medical works. The content of the concept of "medical service", which is close to "medical care", remains undefined not only in regulatory acts, but also in medical literature".

Studying the content of the concept of "medical care", the Constitutional Court of Ukraine in its Decision No. 10-rp/2002 noted that "the word "care", in the linguistic aspect, means assistance, support (physical, financial, moral, etc.) in something; someone's protection, rescue in trouble; to exert a certain influence, which gives the desired consequences, brings relief, benefit, including healing; an action aimed at supporting (implementation of someone's requests or needs for something) under certain circumstances". The term of "medical care" in regard to the legal meaning is widely used in the national legislation of Ukraine, there are its certain definitions by the World Health Organization, scholars, medical universities, and academies. There is no comprehensive legal definition of this concept in the laws of Ukraine, and therefore it requires normative regulation, which goes beyond the powers of the Constitutional Court of Ukraine" [13].

Using the methodology of determining the concepts developed by logic, it is necessary, first of all, to indicate the genus (class), where the subject of definition belongs to, secondly, to find out the special generic characteristics that personify and distinguish it from others of the same genus, and on these grounds to formulate a definition, or a concise logical description containing the most essential features of the defined concept. In this aspect, both medical care, medical service and medical treatment are varieties of medical activity with an emphasis on its medical, legal, and economic components. Therefore, medical care should be understood as a special professional activity for prevention, diagnosis, treatment, rehabilitation; medical intervention – as an activity with the use of special measures related to the impact of medicine on the human body; medical service – as an activity of a business entity on a contractual and remuneration basis; and medical treatment – as the same activity of providing services by a business entity on an ongoing basis.

Taking into account the above, it can be considered as a significant fact that the definitions of "medical care" and "medical service" in domestic legislation gradually began to be formulated through the reference to the generic concept of "activity" for them. Medical care in accordance with paragraph 1 of the Art. 1 of the Resolution of the Cabinet of Ministers of Ukraine "Programs for providing citizens with state-guaranteed free medical care" [17] is a type of activity that includes a set of measures aimed at rehabilitation and treatment of patients in a condition that at the time of its provision threatens life, health and work capacity and is carried out by professionally trained employees, who have the appropriate right according to the law.

The Art. 3 of the Law of Ukraine "Fundamentals of the legislation on health care" [11] defines the key concepts as follows: medical care – activity of professionally trained medical employees; medical treatment – the activity of health care institutions, rehabilitation institutions, departments, units and certain entrepreneurs who are registered and have received the appropriate license in the manner prescribed by law in the healthcare sector; public health care service (medical service) – a service provided to a patient by a health care institution or an individual – an entrepreneur who is registered and received a license to conduct economic activity in medical practice in accordance with the procedure established by law, and is paid by a customer. The state, relevant local self-government agencies, legal entities, and individuals, including the patient, can be the customer of public medical services.

Therefore, both terms of "medical care" and "medical service", from the position of a general sociological approach, are applied to the same "work operations" that perform the same socially useful function: they satisfy human needs and the interests of society in terms of protection, maintenance, strengthening and restoration human health. However, it is important to identify the difference from the point of view of jurisprudence and legal regulation. Thus, there is a medical component in the concept of medical care. However, a medical service involves the formation, organization, and regulation of economic and legal relations between their participants. Therefore, it would be appropriate, in order to prevent unnecessary duplication of essences and taking into account the distorted content of the concepts of "medical care", "medical intervention", "treatment", to exclude the term of "treatment" from legal circulation and replace the term of "medical care" with "medical interventio" or "medical services" depending on the context of application. Such steps will certainly contribute to the relief and unification of the terminological apparatus of legal acts.

Legal nature of relations for the provision of medical services:

Maydanyk notes that Ukrainian science has not got "clear doctrinal provisions and legislative rules regarding the general understanding of medical services and common conditions for their provision" [8]. However, due to the efforts of the author and other scholars, we cannot admit that it is necessary to start building the system of civil regulation for the provision of medical services in Ukraine from the very beginning. The lack of clarity in the doctrine and unequivocal legal conditions for the provision of medical services does not indicate their total absence. The fact that the field of providing medical services is functioning and progressing, both in socio-economic and organizational legal aspects, testifies to the viability of the selected models of financial, economic, and legal development. Besides, legal science actively studies this sphere of relations in both public and private law dimensions.

Researchers in Ukraine distinguished the contract for the provision of medical care from the contract for the provision of medical services for some time, mainly on the basis of such a feature as gratuitousness and compensatory nature. This understanding was facilitated by the position of the Constitutional Court of Ukraine [13], who interpreted the norm of the Art. 49 of the Constitution of Ukraine in its Decision No. 10-rp/2002 in order to clarify the content and scope of gratuitous medical care. This Decision legally distinguished medical care, which is provided free of charge, and medical services with the compensatory nature. However, the Constitutional Court of Ukraine avoided defining the concept of medical care in this decision but started the tradition of combining the terms of "free of charge" and "medical care" in the inextricable systemic relationship of the phrase "free medical care". Since then, the interpretation that medical care is provided to all citizens free of charge – regardless of its volume and without previous, current or subsequent calculation has become widespread.

The Constitutional Court of Ukraine separately noted that the specified provision does not prohibit the possibility of providing citizens with medical services that go beyond medical care (according to the terminology of the World Health Organization – "medical services of secondary importance", "paramedical services") in the specified institutions for a fee. The list of such paid services cannot intrude into the boundaries of free medical care and in accordance with the requirements of paragraph 6 of Part 1 of the Art. 92 of the Constitution of Ukraine should be established by law. That is, medical services are the volume of medicine that goes beyond medical care, is based on a paid basis, and is determined by an exhaustive list at the level of a law.

The Constitutional Court of Ukraine escaped a difficult socio-legal situation through this legal way because state guarantees of providing medical care within state and municipal health care institutions to all citizens regardless of its scope cannot be absolute – they are limited by the resources available in the state. Therefore, institutions were allowed to provide medical services going beyond medical care for a fee. In fact, the mentioned Decision of the Constitutional Court of Ukraine No. 10-rp/2002 legally distinguished medical care, which is provided free of charge, and medical services, which can be provided for a fee. The legal positions expressed in the Decision have been subjected to fair criticism since then.

Senyuta rightly objects that "the source of funding for the provision of medical services cannot be considered a criterion for distinguishing legal relations in the field of providing medical care as a subject matter of legal regulation of civil law" [2]. Herts believes that "the concept of "medical service" reflects the civil nature of relations for the provision of medical care, since the main basis for its provision is the contract for the provision of medical services [3]. Medical service as a type of services is an independent object of civil rights [14]. Instead, the concept of "medical care" is interdisciplinary one and is mainly considered in the context of the personal non-property rights of an individual in civil law and the state-guaranteed right of every person in the healthcare sector within constitutional law".

Thus, a deeper penetration of legal science into the essence of the studied relations provides convincing grounds for the conclusion that gratuitousness and compensatory nature are not sufficient distinguishing features for the specification of the relationship for the provision of medical care or medical services. Herewith, they can be for a patient and a performer only from the point of view that the patient or the medical institution does not directly pay for the services provided. However, all medical interventions are carried out at the expense of any source of funding. Considering the above, the regulation of relations cannot be made dependent on the source of financing the services. The basis for distinguishing the legal regimes for regulating relations while providing medical services for the purpose of medical intervention is the nature of the legal relationship between their participants.

A service is a category that indicates the nature of the legal relationship between the parties of private relations, and a medical service is characterized as a type of services, the subject matter of which is the provision of medical care or the implementation of medical intervention. Medical services from the substantive point of view have a variety of purely medical orientation. However, they are a type of services from the legal point of view, which are based on uniform principles of private law and mainly regulated by the norms of civil legislation, taking into account the specificity of subject-object elements of legal relations. Based on this, the legal relationship between a patient and a medical institution (private physician) from a formal legal point of view can in all cases be considered precisely as the civil relationship for the provision of medical services.

The adoption of the Law of Ukraine "On State Financial Guarantees of Medical Service to the Population" [10] facilitated the implementation of changes in the provision of free and paid medical services in health care institutions of state and municipal form of ownership. The state according to this Law guarantees (in line with the rates at the expense of the State Budget of Ukraine) full payment for the provision of medical services and medicinal products required by the citizens under the medical guarantee program. A state-guaranteed package of services is established, the list of which will be approved annually by the Government. Narrowing of the medical guarantee program is prohibited. The provider of medical services is obliged to inform a patient about the medical services and medicinal products

that can be received in a certain institution under the medical guarantee program. It is forbidden to demand remuneration from patients in state and municipal health care institutions in any form for medical services and medicinal products provided under the specified program.

Maydanyk evaluating the new legal model of providing medical services in Ukraine claims that "the provision of free medical care for patients under the programs of state guarantees of medical care is. by its legal nature, a civil service with certain features of public social services" [8]. Therefore, despite the increased level of public and legal influence, in particular the use of the construction of a contract for medical care, these legal relations are also "regulated by the general rules on the contract and provision of medical services stipulated by the Civil Code of Ukraine".

Based on the regulatory acts adopted for the preparation and implementation of the reform of the healthcare sector, the orientation of the new model on contractual relations is obvious, which definitely corresponds to modern realities and global approaches to the legal regulation of the area. One can conclude from the text of the Law that there are two types of legal relations on the basis of two types of contracts regulating relations for the provision of medical services.

The first group of relations is formed on the basis of contracts between business entities and the Authorized agency – the central body of the executive power, which implements the state policy in the field of state financial guarantees of medical care for the population. This group includes:

1) contract on medical care of the population under the medical guarantee program. It is concluded between providers of medical services, who have received a license to carry out economic activities within medical practice and / or have the right to provide rehabilitation assistance in accordance with the law, and the Authorized agency, which is the National Health Service of Ukraine.

2) reimbursement agreement (reimbursement of the costs of medicinal products dispensed to a patient based on a prescription to business entities engaged in the retail trade of medicinal products at the expense of the State Budget of Ukraine). It is concluded between the National Health Service of Ukraine and a business entity. The contract on medical care of the population and the contract on reimbursement by their legal nature are contracts for the benefit of third parties – patients in terms of providing them medical services and medicinal products by business entities.

The second group of legal relations arises between a patient and a provider of medical services under the medical guarantee program. The patient or (his or her legal representative) exercises the right to choose a physician, health care institution and receive medical services under the medical guarantee program by submitting a declaration to the provider of medical services on the choice of a physician who provides primary medical care. The patient's right to choose a physician and a medical care institution before the start of the medical reform in 2016 was more as a principle than a subjective right of the patient. As of now, the Law has introduced the procedure for the patient to exercise the right to choose a physician by submitting to the provider of medical services a declaration on the choice of a physician who provides primary medical care. The emphasis in these legal relations is on the protection of the patient's rights [18], and their regulation is carried out on the basis of the Civil Code of Ukraine [14]. Holistic model of legal regulation of the provision of medical services based on the private law method has been developed in Ukraine in this context.

Areas for improving civil regulation of relations for the provision of medical services:

All the authors who study the legal relations for the provision of medical services have reached a consensus that the legal structure of medical services, on the one hand, is a civil legal institution subject to the civil legislation regulating the relations for the provision of services. On the other hand, the provision of services in the healthcare and medical care sector has its own distinctive features due to special sensitive objects of legal regulation. Similarly, the contract for the provision of medical services is a fairly established legal structure in Ukraine, despite the lack of its definition in civil legislation. However, its distinct specificity is related to a number of objects and rights in contractual relations that are subject to special protection at the level of norms of international and legal acts on human rights and the Constitution of Ukraine. Specific features in the legal regulation of relations for the provision of medical services arise from this objective circumstance that is pointed out by the researchers.

Another specific feature, which follows from the special status of a patient as a participant in legal relations for the provision of medical services, is contractual representation relations in the modern mechanism of civil regulation for the provision of medical services. The practical sense of authorizing a proxyholder on health care issues is gradually being lost due to specific features of the domestic legal culture and paternalistic expectations. If a patient becomes incapable to make decisions, then decisions on treatment and care in this case are traditionally made by physicians or relatives / guardians, even if they do not agree with the patient's personal preferences [4]. Herewith, the contractual regulation of private law relations is a somewhat new and unusual phenomenon in the domestic healthcare sector, because previously existing legal relations that arose during the treatment process were mainly regulated by the norms of medical ethics and administrative law [4]. At the same time, a new paradigm of civil regulation of legal relations for the provision of medical services is gradually being formed in Ukraine. In particular, the institution of the patient's proxyholder and the patient's authorized representative partially found its actualization in the Ukrainian legal system with the beginning of the reform of the health care system and the relevant legislation. The Order of the Ministry of Health of Ukraine [19] defines a new subject of legal relations for the provision of medical services – the patient's proxyholder.

However, either the Civil Code of Ukraine or the Law of Ukraine "Fundamentals of the legislation of Ukraine on health care" do not currently contain such a participant of relations as the patient's representative. Therefore, no person (even a spouse, adult children, other relatives) has in practice the right to receive medical information about an adult legally capable person, to

give consent to medical intervention or hospitalization or to refuse to provide them, and to sign any documents on behalf of the patient within civil legal relations for the provision of medical services. Against the background of the anticipatory introduction of the institution of contractual representation in special regulatory legal acts, the lack of its regulation at the level of the Civil Code of Ukraine creates a legal vacuum and is essentially unproductive gap in legislation.

We believe that the introduction of special norms into the updated civil legislation that are related to the personal non-property rights of the participants in the relations, contractual representation of the patient, the legal conditions for the provision of medical services without obtaining consent, will contribute to taking into account the specifics of legal relations for the provision of medical services, the unification of civil instruments and the improvement of the means of influence on civil relations arising during the provision of medical services.

Nationwide discussion on the main areas of re-codification of civil legislation norms has been announced in Ukraine in order to quickly carry out a systematic update of regulatory array of the Civil Code. Joining the scientific discourse that has been started, we note that there is an urgent need to form a balanced civil construction of medical services and to lay out a systematized set of norms in the form of a separate chapter in the updated Civil Code of Ukraine. This step is important to eliminate the legal uncertainty existing both at the conceptual and regulatory levels regarding: the qualification of relations for the provision of medical services covered by legal norms; participants in relations for the provision of medical services, their obligations, and rights; legal consequences of violating the obligations. It is also necessary to find a place for legal regulation of special legal regimes: informing about the content of a service; refusal of the weak party (patient) from the provision of services; legal consequences of contract rejection, etc.

The outstanding European document with private law content Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of reference – DCFR is advisable to take as a sample. The document embodies modern model of civil law because the rules formulated there are the product of European civilized thought and, according to experts from different countries, they better ensure the regulation of relevant relations. The rules set forth in Part C "Services (Part C. Services)" are applied to contracts under which one party, the provider of services, undertakes to supply services to another party, the customer, in exchange for a price; and with appropriate adaptations to contracts, under which the provider of services undertakes to supply services to the customer otherwise than in exchange for a price (This Part of Book IV applies: (a) to contracts under which one party, the service provider, undertakes to supply a service to the other party, the client, in exchange for a price; and (b) with appropriate adaptations, to contracts under which the service provider undertakes to supply a service to the client otherwise than in exchange for a price). It is also applied to the field of medical services.

The document presents the special Chapter focused on medical services, which contains 11 Articles with a model content that is as close as possible to the specifics of the area concerning the provision of medical services in the European private law tradition. The following Articles are recommended as the basic minimally necessary norms that should be included in the special Chapter "Treatment" in the DCFR: 1. Scope; 2. Preliminary assessment; 3. Obligations regarding instruments, medicines, materials, installations and premises; 4. Obligation of skill and care; 5. Obligation to inform; 6. Obligation to inform in case of unnecessary or experimental treatment; 7 Exceptions to the obligation to inform; 8. Obligation not to treat without consent; 9. Records; 10. Remedies for non-performance; 11. Obligations of treatment-providing organizations.

According to the presented scheme, the Chapter "Medical services" of the Civil Code of Ukraine should contain both the basic provisions on medical services and separate norms that are related to special requirements for the provider in terms of qualification, quality, and care; special regimes of emergency cases; guarantees of non-property rights of relations' participants, etc.

In particular, it is necessary to include norms focused on legal regulation of civil relations, which arise from the personal non-property rights of relations' participants and are part of the legal relationship for the provision of medical services. Thus, the dual legal status of a physician implies that, on the one hand, he is an employee of a health care institution (or an individual entrepreneur), performs his labor and professional duties, is a representative of medical services provider (or services provider), and an obligor. On the other hand, a physician is an individual who has all human rights, subjective civil rights, including personal non-property rights to respect for dignity, individuality, and religious beliefs. Therefore, it can be argued that a physician in the process of performing his professional duties is a participant of personal non-property relations. Therefore, being a representative of a legal entity of the provider of medical care, which is a participant in civil relations with a patient (or a business entity), the physician can exercise his personal autonomy by exercising his personal non-property rights. One of such personal non-property rights of a physician as a human being and an individual is the right to refuse to treat a patient for reasons of conscience, which derives from the fundamental human right to freedom of religion, conscience and thought, as well as from the duty of the state to respect this right [4].

The patient's rights, which derive from human rights, are an important component of the civil regulation of relations on the provision of medical services. For this reason, it is necessary to stipulate basic provisions and special norms in the civil legislation that are related to exercising the patient's rights to: consent, refusal, obtaining medical information about himself, drawing up advance directives on medical intervention, appointing a proxyholder with a certain scope of powers. Due to such new tools, a person as a participant in civil relations will be able to benefit from the appointment of a proxyholder, who on the basis of the engagement agreement, will have the opportunity to obtain medical information about the patient or take some contractual decisions regarding the choice of treatment methods, etc. Such civil means contain new possibilities, extending the autonomy of the patient in time and space while exercising his subjective

rights, in particular, extending the principle of consent even to those situations when the will of the patient cannot be taken into account for various reasons.

Conclusion.

Thus, the latest socio-cultural orientations and tendencies of t Ukraine's civic movement surely actualize the application of civil law to the regulation of relations for the provision of medical services, since the very dispositive and empowering means of legal influence on the participants of private relations are the most suitable for taking into account the private interest, which is particularly important in this field.

Medical services within modern legal studies and regulatory legal acts are considered as a form of legal relationship between legally equal participants in private relations, the content of which is the provision of medical care to the recipient of services. Medical services, from the content point of view, have a diverse, purely medical orientation. They are a type of services, from the legal point of view, that are based on uniform principles of private law and are mainly regulated by the norms of civil legislation, taking into account the specifics of the subjects and the object of legal relations. Under such conditions, all relations for the provision of medical services, which arise between legally equal participants, are currently classified by the doctrine as private legal relations, which are regulated by the norms of civil legislation.

In terms of the ongoing re-codification of civil legislation in Ukraine, there is an urgent need to form a balanced civil and legal construction of medical services and to formulate a systematized set of norms in the form of a separate Chapter in the updated Civil Code of Ukraine. This step is important to eliminate the legal uncertainty that exists both at the conceptual and regulatory levels regarding qualification of relations for the provision of medical services; participants in relations for the provision of medical services, their obligations and rights; legal consequences for violating the obligations. It is also necessary to find a place for legal regulation of special legal regimes: informing about the content of services; refusal of the weak party to provide the service, etc.

We believe that the introduction of special norms into the updated civil legislation, which are related to the personal non-property rights of the relations' participants, contractual representation of a patient, the legal terms for the provision of medical services without obtaining consent will contribute to the consideration of specific features of legal relations for the provision of medical services, to the unification of civil instruments and to the improvement of influence means on civil relations arising during the provision of medical services.

Disclosure: The authors declare no conflict of interest.

Funding: Self-funded.

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სამედიცინო მომსახურების იურიდიული ბუნება: უკრაინული დოქტრინის მახასიათებლები

სტატიის მიზანია გაანალიზოს უკრაინული დოქტრინის სპეციფიკა სამედიცინო მომსახურების სამართლებრივ ბუნებასთან და სამართლებრივი რეგულირების გაუმჯობესების სფეროებთან დაკავშირებით.

კვლევა ეფუძნება უკრაინისა და ევროკავშირის სამართლის ანალიზსა და შედარებას, სამართლებრივი წყაროების ტერმინოლოგიის კონტენტ ანალიზს, უკრაინის საკონსტიტუციო სასამართლოს სამართლებრივ პოზიციებს, სამეცნიერო კვლევებს, არსებული მიღწევებისა და სამართლებრივი რეგულირების სფეროში არსებული საკითხების აღწერასა და განზოგადებას. ჯანდაცვის სერვისების. კვლევის მეთოდებია: მონოგრაფიული ანალიზი, სისტემური და სტრუქტურული ანალიზი, შედარებითი და სამართლებრივი ანალიზი, ლინგვისტური ანალიზი, შინაარსის ანალიზი, განზოგადების მეთოდი.

დასაბუთებულია უკრაინის კანონმდებლობის სპეციალური კატეგორიული აპარატის გაერთიანების აუცილებლობა. დადასტურდა, რომ ევროპული კერძო სამართლის ნორმების დანერგვით შიდა კანონმდებლობის სრულყოფის გამო, სამართლებრივი რეგულირების დოქტრინა და პრაქტიკა შეესატყვისება მოწესრიგებული ურთიერთობების ხასიათს. განისაზღვრა უკრაინის სამართლებრივ სისტემაში სამედიცინო მომსახურების გაწევის სამართლებრივი ურთიერთობების შინაარსი, სტრუქტურა და სპეციფიკური მახასიათებლები.

ავტორებმა გააკეთეს დასკვნა შიდასამართლებრივ დოქტრინაში სამედიცინო მომსახურების კერძო სამართლებრივი ბუნების შესახებ. გაცემულია რეკომენდაციები უკრაინის კანონმდებლობასთან დაკავშირებით, რომელიც არეგულირებს სამოქალაქო ურთიერთობებს სამედიცინო მომსახურების გაწევისთვის, ურთიერთობის მონაწილეთა პირად არაქონებრივ უფლებებთან დაკავშირებული სპეციალური ნორმების შემოღებასთან დაკავშირებით, პაციენტის სახელშეკრულებო წარმომადგენლობასთან დაკავშირებით, სამართლებრივი პირობების შესახებ. სამედიცინო მომსახურების გაწევა თანხმობის გარეშე.

საკვანძო სიტყვები: ჯანდაცვა, სამედიცინო მომსახურება, სამედიცინო მომსახურების სამართლებრივი ბუნება, პირადი არაქონებრივი უფლებები, სამოქალაქო ხელშეკრულებები, პაციენტის წარმომადგენლობა.

Правовая природа медицинских услуг: особенности украинской доктрины

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Цель статьи: проанализировать особенности украинской доктрины относительно правовой природы медицинских услуг и направлений совершенствования правового регулирования.

Исследование основано на анализе и сравнении законодательства Украины и ЕС, контент-анализе терминологии источников права, правовых позиций Конституционного Суда Украины, научных исследованиях, описании и обобщении существующих достижений и проблем в сфере правового регулирования. медицинских услуг. Методами исследования являются: монографический анализ, системный и структурный анализ, сравнительно-правовой анализ, лингвистический анализ, контент-анализ, метод обобщения.

Обоснована необходимость унификации специального категориального аппарата украинского законодательства. Доказано, что за счет совершенствования отечественного законодательства путем внедрения норм европейского частного права доктрина и практика правового регулирования будут соответствовать характеру регулируемых отношений. Определены содержание, структура и особенности правоотношений по предоставлению медицинских услуг в правовой системе Украины.

Авторы сделали вывод о частноправовой природе медицинских услуг в отечественной правовой доктрине. Сформулированы рекомендации в контексте урегулирования гражданских отношений по предоставлению медицинских услуг, относительно введения специальных норм, касающихся личных неимущественных прав участников отношений, договорного представительства пациента, юридических условий оказание медицинских услуг без получения согласия.

Ключевые слова: здравоохранение, медицинская помощь, правовая природа медицинских услуг, личные неимущественные права, гражданско-правовые договоры, представительство пациента.