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Tort Liability of Medical Activity Subjects for Improper Provision of Medical Services

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ABSTRACT

Currently, attention is being increasingly focused on human rights in the field of health care, the number of criminal cases and civil proceedings is growing in this area, the population's demands on the health care quality are increasing, new medical technologies are being introduced, which corresponds to the complexity of legal structures in the field of legal regulation. In this regard, knowledge of medical law is the key to success and protection of healthcare professionals, as well as social development. An important task has been set for the healthcare workers - to obtain and improve knowledge of the basic laws in the field of public health care, to know and be able to use the sources of medical law, to be able to apply it within the performance of their professional and official duties. As a rule, the provision of medical services of inadequate quality causes patient's dissatisfaction or leads to a violation of the terms and conditions of the contract, as well as entails harm to the health and life of a person purchasing the medical service. Tort liabilities, being one of the types of civil obligations, have their inherent elements and structural features that determine any civil obligations legal relationship.

Key words: Medical law, Civil liability, Healthcare worker, Medical service, Tort liability

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INTRODUCTION

According to the theory that has developed in civil science, the classification of the liability components is as follows: subject, object, and content. The tort liability subjects can be any participants in civil relations. As in other legal obligations, the tort liability subjects are referred to as the creditor and the debtor. The name "creditor", as well as the set of rights and obligations of the creditor, is acquired by a person who has suffered harm. This person can be any citizen (foreigner, stateless person), regardless of his/her age and legal capacity, as well as an organization. The debtor, in turn, is a person who caused the specified harm to the creditor. The debtor in these legal relations can be both the direct harm-doer and a person responsible for his/her/its actions. At the same time, the debtor can only be a person with dispositive capacity, i.e., a person who is able to take responsibility for his/her/its actions. This person can be any citizen (foreigner, stateless person) regardless of his/her age and legal capacity, as well as an organization.

In this case, the liability object is compensation, which the debtor shall transfer in favor of the victim. It can be expressed both in the form of the victim's property restoration in kind, and in the form of compensation for the harm caused. The law allows both of these forms of compensation for harm, while, in practice, the losses are mainly recovered from the harm-doer.

METHODS

The study used both the general scientific method of an integrated approach and specific scientific methods of cognition, including dialectical, formal logical, historical, systematic, comparative legal, technical and legal, the method of analysis and generalization of legislation and the practice of its application.

RESULTS AND DISCUSSION

The legal doctrine recognizes the theory

that an offense composition includes four elements: harm, wrongfulness of the act, causal relationship between the act and the harm, and guilt. These constituent parts of the offense are simultaneously the preconditions of civil liability.

To assess these elements in the context of healthcare practice, it is necessary to consider each of the listed concepts. In the legal scientific literature, harm is defined as "property or non-property consequences unfavorable for the subject of civil law, resulting in damage to or destruction of property belonging to him/her, as well as as injury or death to an individual" [1].

In accordance with the point of view of the Federal Compulsory Health Insurance Fund (FCHIF), expressed in the form of an explanation, harm (damage) is "real damage caused to the life and health of the insured, as well as lost profits associated with the action or inaction of the employees of the healthcare institutions, regardless of the forms of ownership, or private practitioners (specialists, workers) in the provision of medical and (or) drug assistance, which are subject to compensation". The harm that has arisen during the provision of medical services can only be caused to those benefits to which it is directly and immediately related [2]. These benefits are "life, health, physical and mental integrity, human individuality (constancy). The last two benefits are not specified in the law, but the open list of Article 150 of the Civil Code of the Russian Federation and the existing theoretical justification give them full right to exist" [3].

In addition, damage (harm) can be material and moral [4]. It should be noted that these two types of harm to health shall be affected only when they are causally related to the harm that has arisen (disease or damage resulting from the doctor's activity). Thus, from the point of view of Kozminykh et al. painful sensations in the neck, hoarseness in a patient who has suffered because of medical services for tooth extraction, causing physical suffering, refer to moral harm. In similar cases, moral harm is understood as "a type of property liability for harm to health" (clause 35 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 3 dated April 28, 1994 "On judicial practice in cases of compensation for harm caused by damage to health")" [5].

At the same time, it is necessary to find the line between the direct harmful effects of medical manipulations from the deterioration of health in an already existing disease, in cases where this deterioration occurred because of medical services provided in an inappropriate or untimely manner [6,7]. Another constituent element, the presence of which is necessary for the emergence of tort liability, is wrongfulness. "Liability is still possible only if illegal actions are committed, even if it occurs regardless of the guilt. If they are not there, there is no liability either" [8].

At the same time, it is important to note that both the term "wrongfulness" itself and the list of acts that could be recognized as illegal are not reflected in the current civil legislation. In the literature, wrongfulness is interpreted objectively and subjectively. "A civil wrongful act violates the rule of law by violating the person's rights in a specific respect" [9].

To date, several approaches of Russian civil scientists have been formulated regarding the problem of wrongfulness in medical law. Thus, Kalmykov et al. points out that "wrongfulness is expressed in the presence of production, design or other shortcomings, which are the result of violations of the existing requirements for the healthcare quality" [9]. The opposite position was taken by Tikhomirov et al. who believes that unlawfulness is defined as "the issue of inconsistency of actions with the official requirements, instructions, rules, as well as the absence of their contradiction to objective and subjective law" [10]. Stetsenko et al. supporting the point of view of Tikhomirov et al. expresses her opinion that unlawfulness implies the presence of a certain deviation from the healthcare rules (norms), violation of the patient's subjective right [11].

Among these theories, the most complete is the point of view of Kozminykh. It is possible to formulate the following wrongfulness criteria in relation to healthcare services on its basis:

Committing acts that do not fully or partially meet the requirements of regulatory legal acts.

Presence of a shortage of medical services, which manifests itself in non-compliance with the provision standard, the terms and conditions of

the contract or the usual quality requirements.

The third component necessary for the onset of tort liability in the field of medical activity is the presence of a cause-and-effect relationship between an unlawful action (inaction) and harm. In the law enforcement practice, the principle that a person is responsible for harm caused by him/her to another person has become widespread. Thus, when the court has not established a causal relationship between the act and the damage caused, it is impossible to bring the defendant to justice.

A causal relationship, among other things, can be established by eliminating the likely causes of damage to health.

Summarizing the above, it can be argued that the doctor is imposed civil liability in the presence of a direct causal relationship, when there are no legally significant facts that are important for the imposition of civil liability within the provision of medical services between the doctor's illegal actions and harm to the patient's health.

The fourth condition for the emergence of non-contractual liability is guilt.

Civil legislation identifies three forms of guilt: intent, negligence, and gross negligence. The intent includes situations when the employee of the healthcare institution realized the unlawfulness of his/her actions and foresaw the onset of consequences associated with these actions. Negligent forms of guilt mean that a healthcare professional:

Foresaw the onset of harmful consequences, but arrogantly counted on their prevention.

Did not foresee the onset of harmful consequences, although he/she could and should have foreseen these consequences with the necessary care and foresight.

In the situations of harm to life or health, the civil law provides for several forms of guilt in relation to the victim, but not the harm-doer. Thus, the form of guilt of the healthcare institution's employee does not determine the onset of tort liability. At the same time, the courts, when considering disputes related to harm to life or health, shall consider the degree of guilt, when it is necessary to determine the amount of compensation for moral harm.

It is important to note that there is a point of view in the legal literature stating that it is possible to take an idea of liability without fault from foreign practice. The main idea of such a principle is expressed in the automatic payment of compensation to the patient in case of harm to his/her health. In this case, the personal composition of the harm-doers, the employees of the medical institution, does not matter since the payment is made without identifying a particular guilty person. This approach is seen as somewhat inappropriate for integration into the Russian legal field since a healthcare institution will have to bear responsibility for actions that do not even meet the criterion of negligence under such conditions.

It is also necessary to identify the issue of compensation for moral harm. Thus, in accordance with the provisions of clause 3 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated December 20, 1994, the presence of guilt is mandatory to satisfy a claim for compensation for moral harm, except in cases stipulated by law:

The harm was caused by a source of increased danger.

The harm was caused because of unlawful conviction, unlawful use as a preventive measure of detention or undertaking not to leave, unlawful imposition of an administrative penalty in the form of administrative arrest.

The harm has been caused by the dissemination of information discrediting honor, dignity and business reputation.

Based on the foregoing, it seems viable to assume that in the case of torts related to medical care, moral damage is compensated regardless of the fault only if there is an additional variable - a source of increased danger.

The Supreme Court of the Russian Federation understands the following as a source of increased danger: “The source of increased danger should be recognized as any activity, the implementation of which creates an increased likelihood of harm due to the impossibility of full control over it, as well as activities related to the use, transportation, storage of items, substances and other objects of production, economic or other purpose with the same properties”.

According to the points of view expressed in the special medical literature, vaccination contains an increased risk of unpredictable, uncontrollable complications associated with the special properties of vaccines, manifested by causing harm to health and even death. The official instruction for vaccination against tick-borne encephalitis, which is a regulatory document for vaccination, includes a large list of contraindications to its use. Accordingly, the vaccination against tick-borne encephalitis initially presupposes the possibility of uncontrolled side effects [9].

Thus, it seems reasonable to conclude that vaccination against tick-borne encephalitis and vaccination in general have some signs of the source of increased danger, and moral harm is subject to compensation regardless of the doctor's fault in this situation.

Summarizing the above, in relation to the obligations arising from harm to health in the provision of medical services, the same four-element construction of a civil offense is applied [12]. At the same time, there is some specificity due to the peculiarities of the provision of services in the healthcare sector.

Thus, according to V.T. Smirnov: “The main purpose of the harm compensation institution is not the offender's punishment, but restoration of the violated right of the victim at the harm-doer's expense...” [13]. And then: “However, one cannot reduce the entire significance of the named institution to the task of liquidating property consequences... to the task of compensating for the damage that has already arisen, that is, turning its edge only into the past. To reduce the importance of the harm compensation institution only to a restorative function means to simplify, to belittle the role of tort liability in general. Its significance goes far beyond the limits of the restorative task and pursues a much broader goal - to prevent the very possibility of the appearance of harmful facts [13].

SUMMARY

Among other things, the non-contractual harm compensation institution of compensation has also the educational or preventive value. This idea provides for a wide range of possibilities, enshrined in its norms and institutions. The imposition of obligation to compensate for the damage caused is an important incentive to refrain from committing offenses, as well as to take actions aimed at neutralizing the causes and conditions conducive to them.

It is impossible not to touch upon the "public-law element" present in the legal relations under consideration. On the one hand, the legal norms should ensure the protection of the victim's rights and interests; on the other hand, the legal norms should ensure a “painless” way out of this situation for the contractor. Achieving such a balance is currently not a solved problem. There is an institution of compulsory professional liability insurance in several countries. In Russia, the first steps are still being taken in the formation of the institute of voluntary insurance of professional liability of contractors under a medical service agreement. At the same time, it is important to understand that the mechanism for implementing the functions of tort liability also optimizes the mechanism of professional liability insurance.

Among other things, the punitive aspect is also highlighted in the functions of the rules of law aimed at compensation for harm in the legal periodicals. Thus, V. Varkallo believes that liability for compensation for harm implements three functions: punitive, preventive-educational, and compensatory [13].

CONCLUSIONS

It is important to note that the current civil law or contract may establish the harm-doer's obligation to pay compensation in excess of the amount of compensation for harm (clause 1 of Article 1064, Article 1085 of the Civil Code of the Russian Federation, etc.). The imposition of additional obligation is the punishment for the harm-doer.

Thus, the analysis of points of view on the tort liability functions allows saying that the obligations arising from causing harm can perform three functions: compensatory (or restorative); preventive-educational (or preventive); and punitive (or repressive). At the same time, the key is the compensatory (or restorative) function.

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REFERENCES

1. Sukhanov EA. Civil law: Textbook: in 4 volumes/Edn by Sukhanov. Vol 4. Liability law. "Consultant Plus" Reference Legal System.
2. Sidorova A, Bezverkhov A, Yudin A. Prospects for the development of the russian telemedicine market: Legal aspect. Lecture Notes in Networks and Systems 2021; 133:789-796
3. Shevchuk, S.S. (2004). The concept and features of the legal regime of life, health (Bodily, Physical) Inviolability and human dignity as objects of personal non-property rights. Subjects and objects in modern civil relations and some of their features: Monographic collection. Stavropol 2004.
4. Allhoff F. Medical error and moral luck. Kennedy Institute Ethics J 2019; 29:187-203.
5. Kozminykh E. Obligations due to harm to health in the provision of medical services. Russian Justice 2001; 2.
6. Mirskikh I, Mingaleva Z, Kuranov V, et al. Digitization of Medicine in Russia: Mainstream development and potential. Lecture Notes in Networks and Systems 2021; 136:337-345.
7. Krekora-Zając D. Civil liability for damages related to germline and embryo editing against the legal admissibility of gene editing. Palgrave Communications, 2020; 6.
8. Rabets AM. Obligations to compensate for harm caused to life and health. 1998.
9. Kalmykov Yu. Compensation for damage caused to property. Saratov 1965.
10. Tikhomirov AV. Problems of legal qualification of harm to health in the provision of medical services: Thesis for the candidate of law. 2017; 410.
11. Stetsenkom SG. Medical law. 2004.
12. Smirno VT. Civil liability of state-owned enterprises for injury or death to workers. 1957.
13. Varkallo V. On liability under civil law. 1978.