
DOCTOR AND PATIENT: TWO PARTIES OF ONE CONFLICT

A.S. Biduchak

Bukovinian State Medical University, Chernivtsi, Ukraine

Key words: *medical conflict, doctor, patient, imperfect work of physicians, models of conflict development.*

Bukovinian Medical Herald.
2022. V. 26, № 2 (102). P. 77-80.

DOI: 10.24061/2413-0737.XXVI.2.102.2022.14

E-mail: biduchak5@gmail.com

Resume. *The main specific signs and types of conflict in medicine between a doctor and patient in the system of theoretical and legal relations are analyzed and determined. The main views on the concept of "imperfect work of medical specialists", which is an infringement of standards of medical ethics and medical rights in rendering medical services are shown.*

Conclusions. *The main specific signs and types of conflict that influence the relationship between doctor and patient are identified. The creation of a legal and information base for the adjustment and settlement of conflicts in the medical field is an urgent state need which will favour an increase in patients' confidence in the health care system.*

ЛІКАР І ПАЦІЄНТ: ДВІ СТОРОНИ ОДНОГО КОНФЛІКТУ

A. С. Бідучак

Ключові слова: *медичний конфлікт, лікар, пацієнт, дефектна робота медиків, моделі розвитку конфлікту.*

Буковинський медичний вісник. 2022. Т. 26, № 2 (102). С. 77-80.

Резюме. *Проаналізовано та визначено основні специфічні ознаки та види виникнення конфлікту в медицині між лікарем та пацієнтом у системі теоретико-правових відносин. Показано основні погляди на поняття «дефектна робота медиків», що є порушенням норм медичної етики й медичного права у наданні медичних послуг.*

Висновки. *Встановлено основні специфічні ознаки та види виникнення конфлікту, які впливають на відносини між лікарем та пацієнтом. Створення правової та інформаційної бази для врегулювання й вирішення конфліктів у медичній галузі є нагальною потребою в державі, що сприятиме підвищенню ступеня довіри пацієнта до системи охорони здоров'я.*

Introduction. Relationships arising in the field of medical services have the following characteristics that influence the development of the conflict in this area: first, the relationships between the doctor and patient, when rendering medical services, are asymmetric because a doctor is a specialist and a patient, as a rule, is subjected to instructions; secondly, medical services are rendered under conditions of imperfect knowledge about a person and his state of health state; thirdly, in case of a conflict, the problem of proving the existence of the patient's rights violation, due to medical error and other improper actions or inactivity of medical staff becomes significant [1].

Objective: to analyze and determine the main specific signs and types of a conflict in medicine between doctor and patient in the system of theoretical and legal relations.

Results and discussion

Conflicts related to the rendering medical services should be understood as a conscious or unintentional violation by the party (parties) due to action or inactivity, social and/or economic rights and interests of the subjects of legal relations, foreseen and protected by the appropriate legislation, connected with rendering medical services. [2–4].

It is necessary to distinguish between such concepts as

"dispute" and "conflict" in the field of medical services. Debate is a discussion of problems caused by the desire to understand as deeply as possible, more thoroughly, the issues that have arisen in a patient or doctor; this is a clash of different views in the process of obtaining (providing) medical services. Conflict is an origin of contradictions that are difficult to resolve, lack of mutual understanding on various issues, associated with acute emotional experiences [5].

Before introducing the concept and considering the types of conflicts in the field of health care, it is necessary to show the distinctive features peculiar to medical activities in conflict situations. This is due to the fact that some specific features, not present in other areas of life, are peculiar to the field of health care, so, accordingly, the conflicts that arise in medicine will have some differences from those in other areas.

It is important to note the specific features that distinguish the origin of conflicts in the field of medicine:

1) the discrepancy between the target settings of the entities that provide medical care and the entities that receive it. The point is that for medical workers, the object of legal relations arising in the field of professional activity is the process of rendering medical care, and for patients,

Дискусії

the object of medical legal relations is unsubstantial personal benefits – life and health, which are the final result of medical care;

2) frequent need for the intervention of a third party (which is not a subject of conflict) to determine the correctness of medical care. Subdivisions of the forensic medical examination may be such a party.

3) financial and economic difficulties of domestic health care, as a result of which many patients' rights often cannot be realized. For example, the patient's right to receive high-quality and costly transplant care may not always be realized, which leads to the potential possibility of conflict between the patient and the medical institution.

Taking into consideration that knowledge of the main theoretical and legal features of the conflict will allow a more informed approach to finding ways of reducing the incidence of conflicts in medicine, it is reasonable to define the conflict in reference to the specific features of health care. Conflict in the field of medical activity should be understood as an open confrontation between the subjects of legal relations in the field of medical activity, connected with the realization of their interests of incompatible nature.

The subjects of conflict in medicine can be individuals (patient, private practitioner) and legal entities (medical institution, health care authority).

Classification of conflicts in the field of medical activity should be carried out depending on the subject of legal regulation and the duration of the course. According to the first criterion, conflicts can be administrative-legal, criminal-legal, civil-legal, etc. According to the course duration, it is essential to distinguish between short-term and long-term conflicts in the field of medical activities [6].

Due to the theoretical features of the conflict and the practice of rendering medical care, it is advisable to distinguish between two types of conflicts in the field of medical activities:

1) those arising from legal relations in rendering medical care;

2) those arising from offenses in rendering medical care.

This division is due to both methodological expediency and understanding of the essence of the conflict. In the first case, the problem arises from the opposition of the rights of one subject of conflict and the responsibilities of another subject.

Considering the peculiarities of the conflict arising from offenses in rendering medical care, it should be noted that it means legal errors in the actions of physicians, the predominant cause of which is a violation of the current legislation [7-9]. The offenses of the medical workers, as it is said about the opposition of the medical profession purpose itself – to help people and illegal actions of doctors, are of great significance. In this aspect, it is necessary to focus on the imperfect work of doctors because it is the main source of conflicts.

As another equivalent of the proposed classification, conflicts in the field of medical activities can be rightful and illegal [9]. It is known that not all diseases, despite the efforts of doctors, end successfully, i.e., with recovery.

Society, trusting the people's health to the medical specialists, at the same time seeks to insure themselves against possible dangers associated with the specificities of medical activities, to reduce the risk, establish the only rules and approaches to the consideration of unsusceptible results of treatment. Here, no doubt, special importance is given to law as a universal mechanism for the regulation of social relations. In addition to that, the preliminary theoretical and legal understanding of the imperfect work of physicians through the prism of conflicts will allow managing legal norms that meet modern requirements of medicine and legal science.

In the available literary sources of legal and medical direction, there are different views on the concept of the imperfect work of physicians. However, more often, the authors turn to the definition of proper and improper work of doctors. The main criterion for inadequate medical care is either non-compliance with medical science and violation of deontology or violation of medical ethics and medical law, approved by official instructions and rules of the Ministry of Health. At the same time, in the context of theoretical and legal explaining of the conflict in the field of medical activities, it is advisable to introduce the concept of the imperfect work of doctors. In our opinion, a shortcoming in the provision of rendering medical care is poor quality diagnostics, treatment of the patient, and the organization of medical care, which led or could lead to negative consequences for the patient's health.

The causes of adverse effects in medicine can be diverse, beginning from untimely seeking medical advice of the patient to his doctor because of the disease, including atypical clinical course of the disease, and ending with the incurability of this pathology using the current arsenal of medicines. «The number of these factors, their significant differences in some cases, even in just the same diseases, the difficulty of differentiation into objective and subjective, the difficulty of identifying the main cause of unfavourable outcome leads to the fact that correct medical and legal assessment of unfavourable disease outcome in each case usually causes significant difficulties. Indeed, it is complicated to determine the extent of a doctor's responsibility for an unfavourable outcome. The manifestation of this was the introduction into practice considerations of similar cases in surgery of the principle «Post hoc – ergo ter hoc» («After that, it means as a consequence of it») [10]. In other words, in all cases of fatal outcomes that occurred shortly after the operation, the latter is considered the cause of death, and the doctor who performed it as the direct culprit. The main feature of this approach is imperativeness, based on the reactions of grief-stricken relatives. From a universal point of view, their attitude is certainly understandable, but such an approach cannot be called objective.

In general, by analogy with the proposed scheme for the theoretical model, we can note the most typical stages of conflict development in the defect of rendering medical care [11]:

- the emergence of a legal nature motive in the patient, unsatisfied with the quality of medical care provided to him; legally significant action of one of the parties (for

Дискусії

example, the presentation by a patient of the statement of claim to the law court);

- consideration of the conflict by the relevant legal instance;

- promulgation of a legal act completing the conflict in the field of medical activities.

It should be noted that according to statistics [12], the most significant causes of defects in the work of doctors are: inadequate qualification of health workers – 24,7%; incomplete examination of patients – 14,7%; inattentive attitude to the patient – 14,1%; drawbacks in the organization of the treatment process – 13,8%; underestimation of the influence of the patient's condition – 2,6%. And medical specialties that are most likely to be improperly performed are surgery, obstetrics and gynecology.

Taking into consideration the need for a comprehensive theoretical and legal analysis of medical activities, the study of conflicts as a consequence of defects in rendering medical care, taking into account the existing approaches, it is advisable to propose the following legal classification of defects in medical care:

- 1) medical errors;
- 2) accidents;
- 3) professional crimes.

When assessing defects in treatment (diagnostics), in the first place, it is necessary to establish the correctness or incorrectness of this care. It is necessary to be guided first of all by principles of regulatory legal acts and also merely medical canons accepted in the practice of doctors' work (standards of rendering of medical care). Characteristically, this is very important in the study of defects in medical care as a cause of legal conflicts, that the major fundamental decisions in medicine are made collegiately, but the responsibility in cases of problems is individualized and rests with the doctor.

Thus, the need for the correct interpretation and qualification of medical errors, accidents and professional crimes in medicine is motivated both by the frequency of conflicts as a result of such circumstances and the need to determine the role of doctors in the occurrence of defects in rendering medical care. Proper qualification of conflict situations in the field of medical activities will significantly change the situation in the national health care system, reducing the number of legal conflicts.

The negative consequences of the conflict in the field of health care are:

- attempts to limit the actions of the opponent – the patient's disregard for the opinion or recommendations of the doctor; opposite positions on the infliction of moral damage or ill-treatment;

- negative emotions prevail in the communication between the doctor and the patient, the image of the «enemy» is formed in relation to each other;

- all resources aimed at defeating the «enemy», not at fighting the disease.

Most conflict situations that arise as a result of patient dissatisfaction with treatment and care by the attitude of the medical staff can be resolved by a doctor or the head of a health care institution. However, even the consideration of

patients' complaints concerning the actions of medical staff with the subsequent imposition of disciplinary or administrative sanctions on them does not provide a full understanding of the cause of the conflict, as the patient is informed only of the results of the complaint and in addition to that no explanation.

Conclusion

The doctor's activity, regardless of his specialization and experience, is characterized by an increased possibility of conflicts in the process of medical and diagnostic process, despite the constant improvement of both diagnostics techniques and the use of the latest treatments.

The need of studying the preconditions and nature of the conflict between doctor and patient, as well as its content, requires the creation of a legal and information base for adjustment and resolving conflicts in the medical field that will help to resolve them on the early stage of development or on softening the possible consequences of such conflicts.

Список літератури

1. Мостовенко ОС. Захист прав пацієнта під час надання медичних послугу контексті цивільно-правової відповідальності. Науковий вісник публічного та приватного права. 2018;1(1):78-83.
2. Гребеньков ГВ, редактор. Конфліктологія: навчальний посібник. Львів: Магнолія; 2017. 228 с.
3. Чубко ОБ. Конфліктні ситуації у роботі лікаря як одна з причин професійного вигорання. *НейроNEWS*. 2015;8:10-2.
4. Розгон ОВ, Устінченко АМ. Способи вирішення конфліктів у медичних правовідносинах. *Вісник Харківського національного університету імені В. Н. Каразіна. Серія: Право*. 2016;22:123-26.
5. Дроздова ОВ. Диференціація способів і засобів захисту прав пацієнта. *Науковий вісник Херсонського державного університету. Серія: Юридичні науки*. 2016;1(1):109-13.
6. Заборовський ВВ, Нечипорук ЛД. Поняття та сутність юридичного конфлікту у сфері медичної діяльності. *Науковий вісник Ужгородського національного університету. Серія ПРАВО*. 2021;63:136-40.
7. Лемеха РІ. Кримінально-правове значення лікарської помилки. *Вісник Львівського торговельно-економічного університету. Юридичні науки*. 2019;8:102-8.
8. Майданик Р. Питання цивільно-правової відповідальності за договором про надання медичних послуг. *Право України*. 2011;11-12:82-90.
9. Миронова Г. Агресія пацієнта: як уникнути трагедії. *Ваше здоров'я*. 2016;25-26:23.
10. Церпицкая ОЛ. Новые тенденции во взаимоотношениях врача и пациента. *Скорая медицинская помощь*. 2016;1:4-8.
11. Саперов ВН. Значение для врачевания соблюдения основных принципов медицинской этики. *Справочник врача общей практики*. 2015;1:87-92.
12. Щеглов Є, Смуток М. Конфлікт медичного закладу з пацієнтом: правовий аспект. *Практика управління медичним закладом*. 2012;8:20-5.

References

1. Mostovenko OS. Zakhyst prav patsiiienta pid chas nadannia medychnykh posluhu konteksti tsyvil'no-pravovoi vidpovidal'nosti [Protecting the rights of the patient while providing medical services in the context of civil liability]. *Naukovyi visnyk publichnoho ta pryvatnoho prava*.

Дискусії

2018;1(1):78-83. (in Ukrainian).

2. Hreben'kov HV, editor. Konfliktolohiia: navchal'nyi posibnyk [Conflictology: a textbook]. Lviv: Mahnoliia; 2017. 228 p. (in Ukrainian).

3. Chubko OB. Konfliktni situatsii u roboti likaria yak odna z prychnyn profesiinoho vyhorannia [Conflict situations in the work of a doctor as one of the causes of burnout]. NeuroNEWS. 2015;8:10-2. (in Ukrainian).

4. Rozghon OV, Ustinchenko AM. Sposoby vyrishennia konfliktiv u medychnykh pravovidnosynakh [Ways to resolve conflicts in medical relationships]. Visnyk Kharkivs'koho natsional'noho universytetu imeni V. N. Karazina. Serii: Pravo. 2016;22:123-26. (in Ukrainian).

5. Drozdova OV. Dyferentsiatsiia sposobiv i zasobiv zakhystu prav patsiienta [Differentiation of methods and means of protecting the rights of the patient]. Naukovyi visnyk Khersons'koho derzhavnogo universytetu. Serii: Yurydychni nauky. 2016;1(1):109-13. (in Ukrainian).

6. Zaborovs'kyi VV, Nechyporuk LD. Poniattia ta sutnist' yurydychnoho konfliktu u sferi medychnoi diial'nosti [The concept and essence of legal conflict in the field of medical activities]. Naukovyi visnyk Uzhhorods'koho natsional'noho universytetu. Serii: PRAVO. 2021;63:136-40. (in Ukrainian).

7. Lemekha RI. Kryminal'no-pravove znachennia likars'koi

pomylyky [Criminal significance of medical error]. Visnyk L'vivs'koho torhovel'no-ekonomichnoho universytetu. Yurydychni nauky. 2019;8:102-8. (in Ukrainian).

8. Maidanyk R. Pytannia tsyvil'no-pravovoi vidpovidal'nosti za dohovorem pro nadannia medychnykh posluh [Issues of civil liability under the contract for the provision of medical services]. Pravo Ukrainy. 2011;11-12:82-90. (in Ukrainian).

9. Myronova H. Ahresiiia patsiienta: yak unyknyty trahedii [Patient aggression: how to avoid tragedy]. Vashe zdorov'ia. 2016;25-26:23. (in Ukrainian).

10. Tserpitskaya OL. Novye tendentsii vo vzaimootnosheniakh vracha i patsiienta [New trends in the doctor-patient relationship]. Skoraya meditsinskaya pomoshch'. 2016;1:4-8. (in Ukrainian).

11. Saperov VN. Znachenie dlya vrachevaniya soblyudeniya osnovnykh printsipov meditsinskoy etiki [Significance for the practice of adherence to the basic principles of medical ethics]. Spravochnik vracha obshchey praktiki. 2015;1:87-92. (in Ukrainian).

12. Schehlov Ye, Smutok M. Konflikt medychnoho zakladu z patsiientom: pravovyi aspekt [The conflict of the medical institution with the patient: the legal aspect]. Praktyka upravlinnia medychnym zakladom. 2012;8:20-5. (in Ukrainian).

Information about the author

Biduchak A.S. – MD, PhD, Associate Professor of the Department of Social Medicine and Public Health, Bukovinian State Medical University, Chernivtsi, Ukraine.

Відомості про автора:

Бідучак А.С. – канд.мед.наук., доцент кафедри соціальної медицини та організації охорони здоров'я, Буковинський державний медичний університет, м. Чернівці, Україна.

*Надійшла до редакції 20.04.22
Рецензент – проф. Сидорчук Л.П.
© А.С. Бідучак, 2022*