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Grounds and reasons for calling medical aid providers to the civil liability for causing harm to life and health of a patient

The article deals with a problem of calling the health institutes to civil liability for causing harm to life or health of a patient. The authors point out that there is no unified theoretical approach to the determination of civil liability of medical establishments for the harm caused to life and health of the patient, which ultimately affects the efficiency of the practical application of this category and quality of securing the patient's rights, protecting his interests. The authors studied viewpoints of lawyers on the concept of civil liability of medical organizations and came to certain conclusions. Grounds and reasons for calling medical workers to civil liability as well as related materials of judicial practice are presented and analyzed in the article.

Основание и условия привлечения к гражданско-правовой ответственности исполнителя медицинских услуг

В статье рассматривается вопрос привлечения к гражданско-правовой ответственности медицинских организаций при причинении вреда жизни и здоровью пациента. Авторами отмечается отсутствие единого теоретического подхода к определению гражданско-правовой ответственности исполнителя медицинских услуг за вред, причиненный жизни и здоровью пациента, что, в конечном итоге, сказывается на эффективности практического применения данной категории и качестве обеспечения прав пациента, защиты его интересов. В статье проанализированы точки зрения ученых-правоведов относительно понятия гражданско-правовой ответственности медицинских организаций, сделаны соответствующие выводы. В исследовании изучены основания и условия привлечения к гражданско-правовой ответственности; представлены и проанализированы материалы судебной практики по изучаемому вопросу.

Keywords: *civil liability, reasons for calling health establishments to civil liability, harm caused to life or health of a patient.*

Ключевые слова: *гражданско-правовая ответственность, условия привлечения к гражданско-правовой ответственности медицинских организаций, вред, причиненный жизни и здоровью.*

According to the Constitution of RF “Everyone will have the right to life” (Article 20); “Health of people shall be protected” (Article 7); “Everyone shall have the right to health protection and medical aid” (Article 41).

However, health workers rendering medical aid sometimes make professional mistakes ranging from incorrect prevention and diagnosis of the disease to its improper treatment which may cause worsening both a person’s health and his life.

V.V. Baibak, Candidate of Science (Law), said that not only restoration of violated civil rights and legal protection of interests, but also the state of medical practice as a whole depend on how the institution of civil liability of health establishments is organized.

Speaking about the definition of civil liability in the process of exercising medical activities, it is necessary to say that modern scientists consider issues of bringing to legal liability for improper implementation of medical activities. But their works do not comprise the definition of the concept of civil liability in this sphere.

It should be noted that S.G. Stetsenko was the first to give the definition of civil liability in the field of medical activity He wrote that this kind of responsibility is a “special version of legal liability arising as a result of violations of property or non-property values of citizens in the field of health care. Legal liability in health service means the redress of wrong” [10]. However, this definition does not point out at the person or entity, which should be regarded as a harm-doer.

Another definition of civil liability in the field of medical practice is offered by Y.S. Sidorovich. According to her, it is “the responsibility that results from injuring a patient's health and thus violating his property and personal non-property rights by health care staff. This fact requires that health establishment should redress the wrong” [9, p. 321 – 322].

The above-mentioned definitions specify the violation of both property and personal non-property rights of the patient by the medical organization. At the same time, damage to property (for example, costs borne by the patient to restore his health) will result from the damage to his personal non-property value (health or life). However, it should be noted that sometimes rendering medical assistance may cause justified harm to the patient’s health (for example, the medication therapy may lead to the drug side effects already extensively studied).

Summarizing and elaborating the above-mentioned definition, the authors propose to define civil liability in the field of medical activity as a form of legal liability, dealing with negative consequences in relation to the person carrying out medical activities which have caused harm to the patient’s health or life. This kind of civil liability should be used to restore the status of the person (patient) who has been injured.

The body of a crime (corpus delicti) has traditionally been considered as the cause of attachment of liability in jurisprudence. The authors' viewpoint is based on the fact that the common legal ground for calling persons to civil liability is civil violation. And the conditions of liability are the following: 1) causing of harm; 2) unlawful conduct of the harm-doer; 3) a causal link between the unlawful conduct and the damage occurred; 4) the guilt of the harm-doer.

Causing of harm may result in property (material) (loss or damage), and (or) non-material consequences (moral damage). Material damage occurs in case of violation of material (property) values, and violation of non-material (moral) values causes non-material harm. In this case, one and the same act may result in both material and non-material damage.

Any medical intervention connected with the prophylaxis, diagnosis, treatment or rehabilitation may sometimes be risky to human health. Causing harm to health and human life because of non-performance or improper performance of medical duties may lead to negative non-material consequences involving health deterioration or emergence of a new disease. Thus, a patient is said to have been inflicted physical or moral sufferings (moral damage).

The article 151 of the Civil Code of the Russian Federation (hereinafter - the Civil Code) states: if the citizen has been inflicted a moral damage (the physical or moral sufferings) by the actions, violating his personal non-property rights or infringing upon the other non- material values in his possession, and also in the other law-stipulated cases, the court may impose upon the culprit the duty to pay out the monetary compensation for the said damage.

According to the Resolution of the Plenum of the Supreme Court of the Russian Federation moral damage may lie in moral sufferings, connected with the loss of relatives, loss of earnings, disclosure of confident family and medical information, spread of false information discrediting the honor, dignity or business reputation of a citizen, temporary circumscription or deprivation of any rights, physical pain and suffering, which a person has experienced due to injury or other impairment of health or due to disease caused by moral suffering, etc.[4].

To exemplify the above information let's turn to the case of S.L.V., who filed a claim for personal health injury to the Pervorechenskij district court of Vladivostok, Primorsky territory, against the Clinical Hospital at the railway station of Vladivostok "Russian Railways" OJSC. The case file reveals that under the policy of obligatory medical insurance the plaintiff applied to the dental polyclinic to have her two teeth cured. As a result of improper treatment one of the teeth had to be extracted, which led to the formation of a scar tissue. The plaintiff grounded her claims on the fact that the medical workers initially made the wrong diagnosis and medical assistance was rendered to her improperly. All this time the affected tooth was causing physical suffering to the plaintiff: there was an inflammation, she could not take food. The treatment was not properly provided. Eventually S.L.V. needed denture treatment.

The plaintiff asked the total amount of 100,000 rubles as compensation for moral damages and 10,890 rubles to cover medical expenses for the forthcoming treatment.

The representative of the defendant did not admit the claim because no harm to the plaintiff's health was caused by the actions of the defendant, no negative consequences of medical treatment were revealed. Nor did the representative admit the plaintiff's claim for the recovery of medical expenses for the forthcoming treatment, as the submitted calculation was made for prosthodontic treatment of five teeth, whereas through the defendant's fault the plaintiff lost one tooth.

In accordance with the Part 1 of the article 1064 of the Civil Code the injury inflicted on the personality or property of an individual will be the subject to full compensation by the person who inflicted the damage.

According to the Resolution of the Plenum of the Supreme Court of the Russian Federation of January, 26, 2010 № 1 "On application by the courts of civil legislation governing relations for the obligations arising in case of any damage to life or health of the citizen", in addition to pecuniary compensation, the aggrieved person shall be entitled to non-pecuniary compensation in a case of fault

The act of forensic medical examination showed that the diagnosis made to S.L.V. by doctors of the Clinical Hospital at the railway station of Vladivostok "Russian Railways" OJSC was wrong; the plaintiff did not receive adequate medical examination and proper medical treatment. Dental treatment rendered to S.L.V. did not meet the medical and technical requirements of the dental service.

In accordance with the article 1101 of the Civil Code the court came to the conclusion about the possibility of recovering moral damages in favor of the plaintiff in the amount of 50,000 rubles. With regard to the plaintiff's claim for the recovery of material damages in the amount of 10,890 rubles to cover medical expenses for the forthcoming prosthodontic treatment of five teeth, the court found it to be groundless and not liable to satisfaction, as the plaintiff presented no evidence that all five teeth were extracted through the fault of the defendant. [5]

Unlawful behaviour, a cause-and-effect relationship as well as damage are necessary conditions for civil liability both according to general rules and in medical practice in particular.

Unlawfulness is the violation of state-sanctioned legal norms. Unlawful acts are directly caused by the person's wrongful conduct which is expressed in action (or inaction) that violates legal norms. Whether the conduct is lawful or not is judged by the analysis of the person's actions and their compliance with legal norms. If the rules of law imperatively ascertain that a person is to perform certain actions (or not to do it), but does not do what is ordered by law, his behavior is considered unlawful.

Most scientists agree that unlawfulness is derogation from the fixed standards of providing medical assistance (S. G. Stetsenko, Y. S. Sidorovich). According to Y. S. Sidorovich the wrongfulness of medical activities is the action or inaction of medical staff. And this action or inaction violates certain rules, norms, standards that regulate the medical activities. The consequence of it is the deterioration of the patient's health, as well as the violation of his subjective rights [9, p. 60].

The article 79 of the Federal Law "On the Fundamentals of Public Health Protection in the Russian Federation" proclaims that medical institutions must

exercise their professional activity in accordance with the law and other legal acts of the Russian Federation. The organization and implementation of medical activities should correspond to the norms and standards of health care. Medical institutions should provide patients with accurate information about the services provided, the effectiveness of the treatment methods used, pharmaceuticals and medical items. Medical aid providers should inform the public of medical activities and medical workers, their education and qualification; ensure patient confidentiality; provide training, retraining and refresher training of health workers [3].

The cause-and-effect relationship is also a necessary condition for civil liability.

The cause-and-effect relationship between phenomena of reality exists independently of human will and consciousness. Thus, in order for a certain phenomenon (event) to occur, a person or entity is to perform a certain act. Meanwhile, the effects resulting from harm-doing are often unpredictable; they may occur even a few years after a tort has been committed [8, p. 4 – 21].

The above relationship is manifested in the fact that in any situation one event (cause) always precedes the other, gives rise to it; and the other event (effect) always results from the first one.

As judged by the analysis of judicial practice, the identification of the cause-and-effect link is the most difficult and time-consuming process. Forensic medical examination helps to establish the link between the harm caused and the action (inaction) of the harm-doer (in this case, medical aid providers).

Thus, one of the cases heard in the Central district court of Novokuznetsk, stated that the B. N. filed a claim for consumer protection against the “City Clinical Hospital № 1”. The case file reveals that the plaintiff and the defendant signed a contract for the provision of paid medical services. According to the contract, the defendant was to render paid medical services to the plaintiff - to correct the shape of the nose. The operation was carried out, but the desired result was not achieved. The plaintiff applied with a claim to the defendant, the patient was undergone repeated operation. But after the second operation defects were not corrected. The plaintiff suffered severe pain in the nose and shortness of breath. As a result, the plaintiff had to apply to the “Platinental” Company, LTD for correction of the negative consequences of the operations.

According to the forensic medical examination of the Russian Center of the RF Ministry of Health, the technique of the operation, the plaintiff was undergone initially, is recommended in world medical literature; it does not contradict the requirements of plastic surgery, oral and maxillofacial surgery, otolaryngology. It is the operating surgeon who chooses the technique of the operation and who takes into account the wishes of the patient. The expert commission did not reveal infringements of operation technique and stages of rhinoplasty and repeated rhinoplasty. Besides, expert medical commission did not exclude the possibility of displacing the nasal dorsum graft through the fault of the plaintiff since she herself removed fixing dressings.

The appellate court considered the expert opinion competent evidence, because it was complete and reasoned [6].

Fault is another condition for calling public health organizations to civil liability.

In accordance with the article 401 of the Civil Code the person, who has not discharged the obligation or who has discharged it in an improper way, shall bear responsibility for this, if it has happened through his fault (an ill intention or carelessness on his part), with the exception of the cases, when the other grounds of the responsibility have been stipulated by the law or by the contract [2]. The fault according to the Civil Code of the Russian Federation assumes the forms of intention and negligence.

The article 1095 of the Civil Code states that injury inflicted on the life and health of a person shall be subject to redress by the person who has rendered the service (executor), regardless of his fault and of the fact whether the victim has been in contractual relations with him or not.

In this case, the injury in consequence of constructive, recipe and other shortcomings of rendering medical service or the provision of incorrect or insufficient information about the service shall be subject to redress.

In the Criminal Law no person shall be considered guilty until finally convicted by a court (presumption of innocence). The burden of proof is thus on the prosecution, which has to convince the court that the accused is guilty beyond a reasonable doubt. And, on the contrary, Civil Law stipulates the principle of “presumption of guilt of a tortfeasor”. According to it, the guilt of a person who causes harm or violates the obligation is initially assumed. This principle stems from item 2, Article 401 of Civil Code which states that the absence of the guilt shall be proven by the person, who has violated the obligation.

According to this principle the injured person is not obliged to prove the guilt of the person who caused him harm. The victim is obliged to prove only the fact of being injured by certain actions (inactions) of the defendant.

This statutory provision is objectively necessary because it is often difficult to prove the guilt of the harmdoer, especially in the cases requiring specialized medical knowledge.

But because the activities in medical sphere are rather specific, causing harm may be possible due to a particular clinical course, which is independent of the medical aid provider. Innocent infliction takes place in such cases. Consequently, the medical aid performer shall bear no responsibility, provided that all necessary actions have been taken, but a harmful consequence has still occurred.

Thus, in order to call the medical organization to civil liability the following conditions are necessary: causing harm to a person’s life and health; unlawful conduct of the harm-doer; a causal link between the injury and the action (or inaction) of the harmdoer.

According to the article 1095 of the Civil Code, if the injury is inflicted on the person’s life or health in consequence of untrustworthy or insufficient information about medical services and also in consequence of constructive, recipe

or other shortcomings of medical service, medical aid providers will be called to the civil liability regardless of their fault.

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