

## **The Protection of Medical Services Consumers in Contractual Relationship Based on Data of Claim Proceedings Within Dynamics of 10 Years**

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**Abstract:** Now a days, the medical claims are becoming popular in civil legal space of each country. That is why many branches of jurisprudence emerge. Such branches include the insurance of professional responsibility of health workers, the collecting proceedings in medical claims and the institute of compensation for moral harm which caused the damage of the health due to medical activities. All specified aspects are very important in synchronous development of medicine and law in case of techniques of interdisciplinary approach application. However, in order to actualize the new branches it is necessary to analyze and test the maneuverability of judicial proceedings in the court of first instance, appeal proceedings and the cassation. It is necessary to analyze the legal value of the evidentiary base, the degree of maneuverability of legal mechanisms, the risk of instability of claim satisfaction for the benefit of the party, the spatial dynamics of the judicial proceedings by analogy, the average indicator of the satisfaction of the parties of judicial proceedings and the index of refraction during judicial debate. The necessity of the research of such mechanisms is obligatory for the identification of the most important question in satisfaction of the claim for the benefit of the party how far the transaction between the parties in judicial proceedings is resistant to maneuvers in judicial space of medical legal relationship between the doctor and the patient. To understand this question it is necessary to consider a number of researches connected with a practical application of the methods in specific claims of the medical law with the purpose to identify a common denominator of the conflict.

**Key words:** The legal value of the evidentiary base, the degree of the maneuverability of legal mechanisms, the risk of instability of the claim satisfaction for benefit of the party, the spatial dynamics of the judicial proceedings by analogy

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### **INTRODUCTION**

**Whole understanding of the problem:** The developing tendency of the consumer protection within last ten years in dynamics begun from the consumer protection in a world market space and extended its influence to all areas of activity of each state which accepted the UN guidelines for consumer protection. The sector of the medical services has also been involved in philosophy of consideration of the patient as the consumer. The medical service in many countries, quite opportunely is acquiring a commercial nature. In the Republic of Kazakhstan, the new tendency of the protection of interests of the patient as the consumer has begun. The new tendency has a high comparative value; it is a beginning of the correct market relations. However, at the initial stage there is a problem of the promotion of the applied judicial proceedings by

means of institute of the transaction because the contractual legal relations are the most important element of all sector of the state segments functioning.

**Topicality of the research:** The applied judicial proceedings of the medical disputes have a high degree of the relevance in a civil space of the Republic of Kazakhstan due to universal dynamics of the development of the world law and the medical law as an industry of the jurisprudence has a rapid process of the synchronous development with other branches. Such branches may include the institute of mediation, the consumer protection and the system of functioning in a hierarchy of subordinate regulatory along with practice of application of orders, resolutions and other documents of the executive authority of the Republic of Kazakhstan (Shalkharov *et al.*, 2016). The Resolutions of the Supreme

Court of the Republic also have a high value along with the letters of explanatory character of the Prosecutor General's Office and the Resolutions of the Constitutional Council of the Republic of Kazakhstan because of the hierarchy of the governmental segments. All above-stated documents have a high legal value in judicial proceedings on medical disputes. It is important to consider each relevant segment of the evidential base and estimate its legal force separately for the application in complex proceedings (Shalkharov *et al.*, 2016).

**The main problem of the consideration of the protection of the health workers' rights in contractual relations:**

Contractual relations are the main component of any activities of the internal state segments functioning. Such normative element as "transaction" presented in the civil legislation of the Republic of Kazakhstan as activity or inactivity of the legal entity or citizen with the purpose to change or terminate the civil rights and obligations has a broad spectrum of activity for all system of the state and out of the state activities. It is known, that all legal space of the world determines the agreement as a form of the transaction where one person is specified by particular action together with another person with the element of details clarification for conducting the corresponding action (Shalkharov *et al.*, 2016). This action can be used for the civil rights and obligations establishment and for the changing or termination (Batyrbayev *et al.*, 2015). Nevertheless, this concept in medical claims has a number of the problems connected with evidential base of proceedings in jurisdiction of legal relationship between the patient and the health worker.

**The problem of bureaucracy as a natural phenomenon of the developing state within dynamics of 20 years:** One of the main problems is the high level of bureaucracy in case of registration of the medical claims. So, in case of registration of the statement of claim according to medical dispute, the claimant has to show not only the document justifying his form of discontent but also the results of various inspections of the defendant regarding the compliance of the person with the standard of realization of such activities. In a typical situation the claimant doesn't know the algorithm of such procedure as he is not the segment of the health care system and it would be necessary to find many forms of inspections being the specialist not only in the field of the law, but the medicine as well. Such problems take place in most of the countries where the information is a paid service for a particular category of people (Wurtz *et al.*, 2015).

**A problem of the discrepancy of the elements of the analogical content:**

The contemporary legal space of the Romano-Germanic law system has a specific judicial element which is known as the law analogy (Westwood and Rieley, 2015). Therefore, the jurisprudence divided into civil, administrative and criminal law, gives the chance of the alternative use of the legal tools for the citizens (Wall *et al.*, 2015). Respectively, the citizen who registered the claim about the recognition of the action or inaction of the subjects of the medical activities as illegal has a certain choice of the criminal, administrative or civil course (Templeman *et al.*, 2015). In most of the cases, the citizens are not always informed about the expected result of claim proceedings over the defendant. They have a certain level of knowledge regarding the types of punishment within the frame of the criminal law, administrative sanctions and possibility of penalties in the civil sector of the law (Green *et al.*, 2015). In some of the cases, the judicial authorities have a right to choose the direction (Platteau and Wahhaj, 2015).

**A problem of the low level of recognition of medical legal relationship as the transaction by judicial authorities:**

Being the participant of the market of the private medical institutions, the patient has a numerous alternatives to have a problem with the evidential base for the completed transaction with the subject of medical activities (Kerr and Brown, 2015). It is known that transactions are executed in written simple, notarial and oral forms (Harmon and Kale, 2015). At the same time, the transaction of the oral form has a low coefficient of recognition by court because the recording requires a certain sanction of the prosecutor's office, in case of the intention of the patient as a consumer to fix the transaction by means of audio and video gadgets (Linderroth *et al.*, 2015). There are no other methods to fix the initial stage of the oral form of the transaction now. At the same time, the simple written form of the transaction has risk of non-recognition due to certain aspects connected with deception, threat, fettering terms and age factors (Cunningham *et al.*, 2015). In this case, the evidential base is the inaccessible element of proceedings.

**A problem of inaccessibility of the evidential base in the medical conflicts:**

The effective settlement of the medical conflict is possible if everything is arranged properly in compliance with regulations of the civil law (Karasov and Ostacher, 2015). Such regulations sometimes require the registration of a certain sort of legitimate appendices. The above-mentioned appendices present the evidential base of the medical claim proceedings (Willick, 2015). However, such base is inaccessible to ordinary consumer who is not

the permanent subject of the medical activities (Delotte *et al.*, 2015). The executive bodies of the state possess the methods of the preparation and registration of the evidential base. It increases the risk of impossibility to get the necessary appendices (Dusipov, 2015) by the claimant.

**A problem of the legitimacy of proofs obtaining on medical claims:** Nowadays for the consumer of the medical service is so difficult to prove the infringement of his rights (Song *et al.*, 2015). Justifying the infringement of the rights from the position of two types of penalties, it is not an easy task to demand the excessive profit from the defendant. During the medical dispute, the patient as the consumer of medical services can demand only the compensation for the material harm the financial costs based on checks, cash orders, coupons, invoices and agreements. The compensation for moral harm does not have a basis for penalty and the court during the proceedings concerning penalties for moral harm makes a decision based on internal beliefs which makes the legal procedure in medical sphere rather problematic due to the shortage of the legitimacy of the evidential base on medical claims (Abramowitz *et al.*, 2015).

**Differences of the current research from others investigated before:** The claim proceeding on medical disputes from the position of the consumer legislation based on contractual relations is a specific branch of the law which appeared recently. Many scientists analyzed the empirical aspects of this direction subdividing them into various segments of the medical law. Other researchers found the results by means of interdisciplinary approach of jurisprudence and medicine. However, the practical consideration of the medical claims based on protection of the rights of the patients as consumers in contractual relations has not been analyzed earlier. This is a distinguishing feature of our research and it is significant for certain territorial units.

**Novelty of the current research:** The novelty of this research is in detailed and systematic consideration of crucial elements of applied judicial proceedings on medical claims for protection of the rights of patients as consumers based on institute of contractual proceedings of civil and procedural space from the position of the maneuverability of such proceedings.

**Theoretical and practical value of the current research:** The theoretical importance of this research attempts to consider the practical proceedings, connected with legal

relationship between patients as consumers and health workers within contractual relations. The important issue for this research is an empirical base of the theoretical investigations which are connected with each other and compared by indicators of procedural data of several states; it is effective material for further theoretical development of educational and methodological manuals according to medical law.

The practical importance of this research is in a creation of precedential base of the medical claims in civil space based on contractual relations. The present time has a high efficiency in procedural space and in mediation which assumes the positive dynamics of the development of the medical legislation in specific territorial unit. Moreover, having alternative options of legal mechanisms in a civil law process, the current research has a chance to solve medical conflicts in pre-judicial proceedings, including mediation

**Hypothesis:** The hypothesis assumes that the implementation of the specialized mechanisms of the evidential base in medical processes will increase the number of the satisfied affairs. The effective legal proceedings will be transformed into applied proceedings on medical claims giving rise to the development of the new direction of the medical law in a particular territorial unit.

**The link between hypothesis and research design:** There is a direct connection of the hypothesis with the design of the research. The main component of the research is a case study as it is an appropriate technology in theoretical investigations for explanation of the functioning of the system of medical legal relationship in specific territorial unit among residents of the country. The content of the research does not study the population; it does not have the random sample.

## **MATERIALS AND METHODS**

A key role of this research belongs to the methodological tools for the analysis of the standard properties and variables of the objects of the medical legal relationship between health workers and patients from the position of the consumer protection law with declaration of the will of the parties in contractual proceedings. Therefore, the variables of maneuverability of the consumer protection law in medical legal relationship, the risk of instability, spatial dynamics, an average value of a satisfaction and the index of refraction have been analyzed methodologically.

**Synthesis:** The method of the synthesis of the legal elements has allowed recreating the supposed medical legal procedure, based on empirical data and the passable precedents of two countries, the Republic of Kazakhstan and the United States of America. The precedents were very effective for the detailed understanding of the theoretical data.

**Abstracting:** In accordance with abstracting methodology, the certain legal elements have been excluded from precedents of both countries and applied to new created precedents, in compliance with expected absence of the elements. Some elements from empirical material have been selected and transferred to applied proceedings of earlier legal cases that allowed to consider and predict the expected results in applied proceedings.

**Deduction:** The technique of deduction has allowed the analyzing the experience of the industrialized countries in a procedural space and applying some abstracting elements in the claim proceedings on medical disputes that gave an effective empirical material for further theoretical interpretation of the applied legal mechanisms.

**Induction:** The technique of induction predicted the potential concordance with well-known judicial precedents on medical claims. The developed potentially applicable legal mechanisms of consumer protection in contractual proceedings have been integrated and tested through a computer modeling of a potential outcome.

## RESULTS

The results of the research of the medical legal relationship between health workers and patients in the system of the civil law relations from the position of the consumer protection law by means of mechanisms of applied proceedings has ambiguous results. The ambiguity is revealed in the conception of the agreement in medical legal relationship, in the risk of non-recognition of the agreement based on regulations of the transaction and protection of the information rights of the patients as consumers and health workers as service providers of a medical character.

**Results of the research of the conception of the contract between the health worker and the patient:** The results of the conception of the contract research between the patient and the health worker assume that patient's visit to the doctor is a sort of agreement. According to the regulations of the transaction, the patient visiting doctor establishes the civil laws and liabilities, choosing service

of the medical character. In case of necessity, the patient can change the civil laws and liabilities and after the receiving of the corresponding medical service, he terminates the rights and liabilities. In case of implied agreement in practical proceedings, it is important to note that testimony of witnesses is a valid reason of transaction fixing on the basement of the civil and procedural legislation when the defendant pays the appropriate amount to the witness in case of satisfaction of the claim for the benefit of the claimant.

**Results of the research of the risk of non-recognition of the agreement:** The results of the research of the risk of non-recognition of the agreement showed the number of variables which can qualify the conditions of the conclusion of the agreement as invalid in case of threat, violence and deception. In addition, the transaction can be specified as invalid if it is executed on extremely adverse conditions for some of the parties. Respectively, the provision of the agreement according to transaction is similar to contact of the patient with the health worker or organization.

**Results of the research of the protection of the information rights of the patients and health workers:** The logical results of the research of the protection of the information rights of the consumers and health workers allocated a range of exclusive rights of both parties of medical legal relationship. On the basement of the relevant standards, the health workers possess an inviolable information protected by the state. It could be the information of a medical secret, the constitutional information rights, the information concerning the corporate policy of the medical institution and the information according to which the health worker has signed the act of non-proliferation of the medical institution's information. For the patients there is a number of variable data which must be provided by the health worker in compliance with the consumer protection law.

## DISCUSSION

**Concordance of the results with hypotheses:** The results of the research of the protection of the patient's rights in contractual relations of proceeding sector from the position of the applied proceedings correspond to the main hypothesis according to which the implementation of the specialized mechanisms of the evidential base in medical processes and the number of the satisfied affairs will be increased. In addition, the effective legal proceedings will be transformed into applied proceedings

on medical claims and give rise to the development of the new direction of the medical law in the territorial unit. Moreover, these mechanisms can affect considerably the results of many judicial proceedings of the first instance, appeals instance and the cassation.

**Concordance of the hypothesis with the first result concerning the establishment of the conception of the contract between the patient and the health worker:**

According to the first results, the medical legal relationship in the Republic of Kazakhstan belongs to contractual proceedings as the contact of the health worker supporting the patient, the health worker providing service of a medical character for the patient is a sort of transaction and visiting the doctor, the patient establishes the civil laws and liabilities. Receiving recommendations of treatment or changing the path of treatment the patient modifies the civil laws and obligations. Refusing from service of the doctor or treatment the patient terminates the civil laws and obligations. As it is known, the transaction is an action or inaction of the citizens and legal entities directed to establishment, change or termination of the civil laws and obligations. At the same time, the bilateral transaction is an agreement, irrespective of the written or oral form.

**Concordance of the hypothesis with the second result concerning the risk of non-recognition of the transaction:**

According to the second result the medical service supporting the patients, being the transaction has risk to be non-recognized due to different factors. The transaction can be executed under the influence of violence, deception or threat. In addition, there are imaginary, feigned or fettering, transactions with a dummy character.

**Concordance of the hypothesis with the third result concerning the protection of information rights of the patients and health workers:**

According to the third result, the hypothesis takes place as the mechanisms of realization of medical claims based on the principle of contractual legal relationship have specific features. These features depend on level of information protectability of the parties and the parties would be secured from infringement on the personal or professional information rights that strengthens the force of the claim twice.

**Theoretical and practical consequences of the hypothesis constructed on results:**

The consequences of the

constructive hypothesis assume the certain dynamics on territorial unit both from the practical and theoretical positions. In case of the development of the corresponding mechanisms in applied proceedings of the market of legal services, there is a high probability of emergence of the specialized services on medical disputes which presupposes the training of the staff with the help of teaching materials and manuals.

**Sources of the threats of the internal importance:** The internal importance of the research is a crucial component of the medical law which is a developing industry of the Kazakhstani jurisprudence. However, research can have threats of a logical character. In positive dynamics, the legal mechanisms can be rather real and available due to online government development, but other tools can have a negative dynamics, as the bureaucratic force of some mechanisms can be strengthened twice due to the necessity of such tools. The reason of such tendency depends on disbalance of legal mechanisms.

**Determination of inaccuracies:** The research was conducted empirically and could have inaccuracies because the Republic of Kazakhstan as a young state had not enough precedents on medical disputes that explained the lack of the sample and statistical data of the investigation as the small amounts would not provide a proper statistical capacity of the research of the overwhelming issue.

**Effect coefficient:** The time in the research is one of the key factors and it is impossible to perceive the beginning of the action as a momentary due to preparation of the corresponding mechanisms, adaptation of law system, internal ideology of population and a certain degree of legal nihilism in some national groups and other external and internal factors. In addition, the promotion of legal force of some mechanisms in applied proceedings is a very important component. Nevertheless, it is possible to note that the effect of such movement is in a dynamic development.

**Restrictions and the weaknesses of the research:** This research was conducted on the basement of the available data provided by press service of the state bodies of the Republic of Kazakhstan. Nevertheless, the weaknesses of the conducted research are in a limited possibility of results obtaining from judicial authorities of the Republic of Kazakhstan due to closeness of the sessions of the judicial authority.

**Applied and alternative mechanisms of the action**  
**The main applied mechanism of the action in the medico-legal conflicts:** The main applied mechanism of

action in the medico-legal conflicts for the lawyers working in a particular sphere is the Constitution of the Republic of Kazakhstan the provisions of which have absolute legal force in all territory of the Republic of Kazakhstan.

**The additional applied mechanism of the action in the medico-legal conflicts:** The additional applied mechanism are codes, laws and by-laws of the Republic of Kazakhstan.

**The main alternative mechanism of the action in the medico-legal conflicts:** The main alternative mechanism of the medico-legal conflicts solution are resolutions, orders, instructions and other acts of executive bodies of the Republic of Kazakhstan concerning medical legal relationship.

**The additional alternative mechanism of the action in the medico-legal conflicts:** The additional alternative mechanisms of the medico-legal conflicts solution are physical evidences in the form of analyses, the reporting and accounting documentation of the medical institutions, the results of the dactylographic examinations and other data certified by authorized bodies of the Republic of Kazakhstan.

**Level of the barriers development for manipulation with artificial results:** All results have been obtained on the basement of specific legal acts, with the permission of state bodies and the press service of the state bodies. The misstatements or false information involves the legal responsibility in accordance with administrative and penal legislation of the Republic of Kazakhstan that excludes any possibility for manipulation with artificial results that is one of distinctive features of the descriptive research.

**Contextual problems of the research:** The content of this research corresponds with the main subject of the legal relationship between the doctor and the patient from the position of the civil legislation of the Republic of Kazakhstan taking into account the regulations concerning the protection of the consumer. Some statements of the research demonstrate the use of regulations of the administrative and penal legislation of the Republic of Kazakhstan in a combination with the civil legislation of the Republic as the main efficient mechanism.

## CONCLUSION

It would be necessary to take into account a factor of such direction development in applied proceedings. The

theoretical and the scientific variables can take place in effective use of such tools in practice. Nevertheless, the judicial authorities and ordinary people do not process the factors influencing on dynamics of distribution of such tools. However, in case of the correct use of such tools even the human factor has a low extent of influence on medico-legal mechanisms because of the high level of maneuverability.

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