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ADMINISTRATIVE LEGAL PERSONALITY OF A MEDICAL WORKER

The article describes the features of the implementation of the administrative legal personality of a medical worker. The methodological basis of the article is the general and special methods of legal science, in particular: the method of dialectical analysis, the method of prognostic modeling, formal-logical, normative-dogmatic, sociological methods. The expediency of understanding the category of administrative tortiousness of a medical worker as a rule of administrative law, which determines the extent of a medical worker's competence (a set of rights and duties), for the implementation of which, in fact, he will bear responsibility. It was determined that the conceptual problem of administrative legal personality (as a legal phenomenon) and related legislative dilemmas is the absence of a positive norm in the legislation that would reveal its content similar to the definition applied to civil legal personality. It is proposed to divide the rights of medical workers into: constitutional rights (respect for honor and dignity, equal rights of every person (equality), the right to freedom and personal integrity, freedom of thought and speech, etc.), general rights of medical workers (the right to proper conditions of professional activity; the right to mandatory insurance at the expense of the owner of the health care facility in case of harm to their life and health in connection with the performance of professional duties; the right to legal protection, etc.) and special rights medical workers (the right to engage in medical activities in accordance with the specialty and qualifications; free choice of approved forms, methods and means of activity, implementation in the established order of modern achievements of medical and pharmaceutical science and practice, etc.). At the same time, a classification of the duties of medical workers according to the scope of medical practice into: general professional duties of medical workers and special duties of medical workers is proposed.

Key words: medical workers, rights, duties, classification of rights and duties, legal personality, medical law.

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АДМІНІСТРАТИВНА ПРАВОСУБ'ЄКТНІСТЬ МЕДИЧНОГО ПРАЦІВНИКА

У статті надано характеристику особливостям здійснення адміністративної правосуб'єктності медичного працівника. Методологічною основою статті є загальні та спеціальні методи юридичної науки, зокрема: метод діалектичного аналізу, метод прогностичного моделювання, формально-логічний, нормативно-догматичний, соціологічний методи. Обґрунтовано доцільність розуміння категорії адміністративної деліктоздатності медичного працівника як сукупності норм адміністративного права, що обумовлює обсяг компетенції медичного працівника (сукупності прав та обов'язків), за реалізацію і в межах якої, власне, він і нестиме відповідальність. Визначено, що концептуальною проблемою адміністративної правосуб'єктності (як правового феномену) та пов'язаних із нею законодавчих дилем є відсутність позитивної норми в законодавстві, яка розкривала б його зміст подібно до визначення, що застосовується до цивільної правосуб'єктності. Запропоновано поділяти права медичних працівників на: конституційні права (повагу до честі та гідності, рівність прав кожної людини (рівноправ'я), право на свободу та особисту недоторканність, свободу думки і слова та ін.), загальні права медичних працівників (право на належні умови професійної діяльності; право на обов'язкове страхування за рахунок власника закладу охорони здоров'я

у разі заподіяння шкоди їхньому життю і здоров'ю у зв'язку з виконанням професійних обов'язків; право на судовий захист та ін.) і спеціальні права медичних працівників (право на заняття медичною діяльністю відповідно до спеціальності та кваліфікації; вільний вибір апробованих форм, методів і засобів діяльності, впровадження у встановленому порядку сучасних досягнень медичної та фармацевтичної науки і практики та ін.). Разом з тим запропоновано класифікацію обов'язків медичних працівників за обсягом здійснення медичної практики на: загальні професійні обов'язки медичних працівників та спеціальні обов'язки медичних працівників.

Ключові слова: медичні працівники, права, обов'язки, класифікація прав та обов'язків, правосуб'єктність, медичне право.

Actuality of theme. According to the Basics, the responsibilities of the attending physician are timely and qualified examination and treatment of the patient" (Part 2 of Article 34) and medical workers are obliged to contribute to the protection and strengthening of people's health, prevention and treatment of diseases, to provide timely and qualified medical and medical care" (clause "a" of Article 78).

Medical workers are obliged to provide medical care in accordance with quality standards, so as not to violate the rights of patients. This is of important practical importance for lawyers when clarifying the range of professional violations committed by doctors in one or another case. The problem of the main duties of medical personnel during the martial law in the country becomes especially relevant.

The theoretical basis of the study is the fundamental methodological work of such scientists as: P. P. Andrushko, Yu. V. Baulin, D. O. Balabanova, P. S. Berzin, I. G. Bogatyrev, V. I. Borisov, F. H. Burchak, O. Yu. Busol, P. A. Vorobey, V. K. Hryshuk, R. Yu. Grevtsova, O.M. Humin, V. O. Tulyakov and others.

The purpose of the article is to establish the content of the category "administrative legal personality of a medical worker".

Presenting main material. Administrative legal relations are significantly different from other types of legal relations, have their own specific content, which is revealed in the signs of administrative-legal relations proposed by administrative scientists. Thus, administrative-legal relations have: voluntary nature, which is manifested in the fact that "the state expresses its will to the people of Ukraine through the issuance of relevant administrative-legal norms, the participants of these relations exercise their will, are aware of the significance of their actions and can bear responsibility for them" (V. I. Kurylo) (Kurylo, 2008: 39); the specific basis is public interests related to the "realization of public tasks, that is, those tasks that belong to the exclusive competence of subjects of public administration" (R. S. Melnyk, V. M. Bevzenko) (Melnyk, 2014: 121- 122); special methods of settlement, i.e. "administrative-legal relations

that arise between the bodies of executive power and other participants of administrative law, are not always relations carried out by the method of power and subordination. These relations can be implemented on the basis of both power and subordination, and equality of the parties, that is, each party is obliged to fulfill the specific requirements of the legal norm" (Y. P. Bityak) (Bytyak, 2007: 60).

Legal literature interprets many opinions regarding the structure of legal status. Thus, A. Kolodiy and A. Oliynyk define its following elements: status legal norms and legal relations; subjective rights, freedoms and legal obligations; citizenship; legal principles and legal guarantees; legitimate interests; legal personality; legal responsibility (Kolodiy, 2003). Some authors consider legal obligation, legality, law and order, legal awareness, humanism, and justice as elements of legal status. According to A. Panchyshyn, the structure of legal status as an integrated concept includes: legal norms that determine status; basic rights, freedoms, legal interests and obligations; legal personality; legal principles; citizenship; guarantees of rights and freedoms; legal responsibility; legal relations of a general type (Pashchynshyn, 2010: 95-96).

Thus, the content of the administrative-legal status includes the rights, freedoms and obligations of subjects of administrative law. Rights are the interests of a certain subject of administrative and legal relations, which consist in the use and free disposal of social goods and values, and also allow the enjoyment of basic freedoms within the limits established by law. Accordingly, an obligation is a set of subject of administrative law to others, which are a certain organic necessity that reconciles personal and public interests. Thus, the rights and obligations as complex elements of the administrative-legal status distinguish its integral component, without any of the elements of which it cannot exist. Therefore, the specified elements (rights and duties) refer to the main component of any administrative-legal status of a legal entity. Accordingly, "legal entity", legal status, powers, competence, tasks (functions), place and role, appointment, individual characteristics and citizenship are distinguished as additional elements.

The administrative capacity of a medical worker is determined by the peculiarities of administrative and legal relations in the field of health care, in which the acquisition and exercise of the corresponding rights and duties by personal actions occurs if the physical person has a medical or other education, completed further special training or retraining and compliance the only qualification requirements, which are confirmed by the relevant documents (certificate of a specialist), when performing their professional duties related to the provision of medical care, and being in labor relations with a health care institution of any form of ownership, an individual entrepreneur or engaged in individual medical practice.

Based on the modern doctrine of Ukrainian administrative law, the main goal of administrative and legal norms is to ensure human and citizen rights in all spheres of relations, including in the field of health care. Thus, the modern content of the norms of administrative law consists not only and not so much in regulating the means of administrative coercion, in particular, administrative responsibility, but becomes a means of ensuring the rights and interests of a person protected by law (Averyanov, 2004: 31).

As a result of the implementation of the norms of administrative law, administrative-legal relations arise, which are social relations regulated by the norms of administrative law, in which the parties participate as bearers of rights and obligations established and ensured by administrative-legal regulations. The content of administrative legal relations consists of subjective rights and legal obligations of participants (subjects). They characterize the legal relationship between subjects who become the bearers of mutually determined subjective rights and legal obligations. For example, according to Art. 6 Fundamentals, every citizen has the right to qualified medical care, including the free choice of a doctor and health care facility; reliable and timely information about the state of one's health and the health of the population, including existing and possible risk factors and their degree; the possibility of joining public organizations for the purpose of promoting health care; legal protection against any illegal forms of discrimination related to health, etc. The subjective right of a sick person is the right to consent (or refuse) to the use of treatment methods proposed by the attending physician or consulting physician. Article 10 of the Foundation defines the duties of citizens in the field of health care. At the same time, the dominant duty of a medical worker is to provide medical care to patients, and Art. 77 of the Fundamentals establishes the pro-

fessional rights and benefits of medical and pharmaceutical workers.

The administrative-legal regime of relations in the field of health care consists in establishing for the participants of these relations, and above all for patients and members of the medical staff, mandatory rules that relate to the prevention, diagnosis, treatment of diseases and rehabilitation of persons who were ill with these ailments, and bans on certain types of activities.

The essence of the administrative and legal regulation of the activities of health care workers is that the state establishes certain, fixed by legal norms, rights and obligations of persons who have the right to professionally engage in medical and pharmaceutical activities.

These legal rights and obligations of medical workers do not always guarantee their practical observance and provision. Therefore, it is especially important to consider and characterize the individual rights and obligations of medical workers, so that it is possible to analyze the main violations of these rights by the state and methods of their prevention, as well as ways to improve the legal status of a medical worker.

According to the Constitution of Ukraine, everyone has the right to education (Article 53) and the right to work (Article 43). According to Art. 74 Fundamentals, medical and pharmaceutical practice can be carried out by persons who have the appropriate education and meet the uniform qualification requirements. The only qualification requirements for persons who carry out certain types of medical and pharmaceutical activities, provide rehabilitation assistance, are established by the central executive body, which ensures the formation of state policy in the field of health care. Managers of health care facilities, rehabilitation facilities, departments, subdivisions, as well as bodies authorized to issue licenses for conducting relevant types of economic activity are responsible for compliance with the specified qualification requirements. Persons who have undergone medical, pharmaceutical or rehabilitation training in educational institutions of foreign countries are admitted to professional activities after checking their qualifications in accordance with the procedure established by the central executive body, which ensures the formation of state policy in the field of health care, unless otherwise provided by law or international treaties in which Ukraine participates (Law of Ukraine, 1992). The professional duties, rights and responsibilities of medical workers are determined by job instructions and functional duties developed in health care institutions in accordance with the specific conditions of their activity and approved by their managers.

Thus, a person who meets the statutory requirements for medical or pharmaceutical activity and actually performs it, either in a health care institution or individually, conducting a private medical or pharmaceutical practice, may be granted the status of a "health care worker." According to point "a" of Art. 77 of the Fundamentals, only medical and pharmaceutical workers have the right to engage in medical and pharmaceutical activities in accordance with the acquired specialty and qualification.

The only qualification requirements for persons engaged in certain types of medical and pharmaceutical practice, including in the field of folk and non-traditional medicine, are established by a specially authorized central executive authority in the field of health care, which is the Ministry of Health of Ukraine. The responsibility for compliance with the specified qualification requirements lies with the heads of health care institutions and bodies authorized to issue licenses to natural persons – subjects of entrepreneurial activity. Thus, the Order of the Ministry of Health of Ukraine dated October 28, 2002 No. 385 approved the List of medical, pharmacist positions and positions of junior specialists with pharmaceutical education in health care institutions, and the Order of the Ministry of Health of Ukraine dated March 29, 2002 No. 117 approved the Directory of Qualification Characteristics of Employees' Professions. Issue 78 "Health Care".

Licensing of this type of economic activity is also a mandatory element of medical practice, because according to Art. 7 of the Law on Licensing of Certain Types of Economic Activity: Law of Ukraine dated March 2, 2015 ("List of Types of Economic Activity Subject to Licensing"), the production of medicinal products, wholesale and retail trade of medicinal products (art. 10), medical practice are subject to licensing (art. 15).

Conclusions. Therefore, it is worth proposing a classification of the duties of medical workers according to the scope of medical practice into: general professional duties of medical workers, which are related to the implementation of medical practice in general (contribute to the protection and strengthening of people's health, prevention and treatment of diseases, provide timely and qualified medical, medical and rehabilitation assistance, etc.) and special duties of medical workers related to the provision of medical assistance to the patient and arising from the rights of patients (to provide appropriate medical care aimed at preventing the disease; to promote effective and affordable for all citizens to medical care without discrimination based on the availability of financial resources, place of residence, type of illness or time of seeking help; to provide the patient with complete and reliable information about the state of his health and to acquaint him with relevant medical documents related to health, etc..).

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