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Research Article

DOCTOR'S PROFESSIONAL LIABILITY INSURANCE IN CIVIL LEGAL ORDER

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ABSTRACT

This article talks about the importance and relevance of civil regulation of doctor's professional liability insurance today. The economic, social and legal consequences of the lack of regulation of these relations are analyzed on the basis of statistical data and foreign experience. The level of regulation of medical professional liability insurance in the Republic of Uzbekistan and the analysis of regulatory legal documents are discussed.

KEYWORDS

Doctor, profession, responsibility, professional liability, insurance, professional liability insurance, doctor's professional liability insurance.

INTRODUCTION

The health of citizens is rightfully considered one of the most important components of the political system of any developed country and affects all aspects of socio-economic activity.

At the same time, the transition to a market economy and the expansion of the private segment of domestic healthcare have necessitated the development of mechanisms for insurance financial support of the healthcare system and the development of public-

private partnerships. In the future, the introduction of a compulsory health insurance system will attract a large amount of additional resources to the healthcare sector, introduce the principles of a market economy and economic means of managing the industry. It will be an additional impetus for the development of the health sector.

It is planned to introduce licensing of medical workers in the Republic of Uzbekistan. Accordingly, persons

who have received medical or other education in the Republic of Uzbekistan in accordance with state educational standards and have a specialist licensing certificate can engage in medical activities.

This, in turn, provides the following capabilities:

formation of personnel to ensure the guarantee and quality of medical services in the healthcare system;

have reliable information about the level of professional qualifications of medical personnel.

Therefore, civil regulation of doctor's professional liability insurance today is of great importance for the life of the state and society.

Lack of regulation of physician professional liability insurance may have the following consequences:

when, on the one hand, there is a search for legal protection of the legitimate interests and rights of patients, and on the other hand, actions related to the legal protection of the liability of medical workers take place, the doctor becomes a weaker category of subjects. medico-legal relations;

the entire healthcare system is ensured only through the activities of medical workers, and in most cases attention is paid to the issue of their duties and responsibilities, the implementation of their rights and the protection of their legitimate interests are ignored;

this leads to an increase in the number of legal cases in medical cases in connection with the protection of the rights and legitimate interests of doctors and patients [1].

N.B. Grishchenko defined the concept of professional responsibility as follows:

professional responsibility is the application of measures and sanctions against a professional subject if the intended results for third parties, including the state, organization and individual, are not achieved or not achieved properly [2; pp. 11-13].

Professional responsibility is a concept that includes the following:

- 1) only specialists and specialists with higher education (economic, legal, medical, technical and other fields) are engaged in this;
- 2) performing work in accordance with the results of professional goals, carrying out professional activities;
- 3) social significance of the result of professional activity;
- 4) the presence of additional measures and sanctions aimed at compensating for lost profits in the event of professional liability [3].

According to I.N. Romanova, "the purpose of professional liability insurance is to provide insurance protection to owners of certain professions against claims of injured persons, damage in the performance of their professional duties or similar claims. Such a claim can be filed by both the victim and other interested parties. Thus, if the patient died as a result of improper treatment, then he demands compensation for moral and material damage. Professional liability insurance can be mandatory or voluntary" [4].

O. V. Kolesnichenko stated that "professional liability insurance is based on the fact of an offense. In other words, there is no contractual liability for causing harm to the rights and legally protected interests of other persons" [5].

According to V.O. Filippov, “professional liability insurance pursues the following interrelated goals: protecting the interests of consumers of services; protecting the interests of performers” [6; p. 4].

Yalinsky A. and Rericht A. argued that “professional liability insurance has two goals: to protect the client from the insolvency of the professional entity that caused the losses, and to protect this entity from death in the event of a professional error” [7; p. 280].

So, summarizing the above concepts, in our opinion, the concept of professional liability insurance for a doctor can be defined as follows:

doctor’s professional liability insurance – relationships related to the protection of the doctor’s professional interests by paying compensation, compensation and other payments for possible risks and losses that may arise in the course of the doctor’s professional activities related to the diagnosis and treatment of the patient’s disease.

Medical professional liability insurance is also known as medical malpractice insurance. The essence of this insurance is to provide financial and property protection to medical personnel, including doctors, nurses, therapists and other representatives of the medical field, if they are held liable for negligence or misdiagnosis, as a result of which they caused harm to the patient. . The purpose of this insurance is to protect healthcare providers from financial ruin due to lawsuits and ensure that patients receive compensation for damages caused by medical negligence.

Another criterion for differentiating medical liability insurance models is the practice of blaming and punishing the health care provider. According to this criterion, a “guilty” and “innocent” system is distinguished. In most countries of the Organization

for Economic Co-operation and Development, medical negligence is assessed based on the interpretation of the concept of “fault”, developed and widely used in legislation and judicial practice. The “guilt” system, if the patient’s complaint is based on it, the guilty medical worker will experience the negative consequences of his wrong actions: punishment, reprimand, training - retraining, deprivation of a license, etc. The “guilt” system requires an appropriate court decision in connection with the application of punitive measures to a medical worker. This model is successfully used in the USA, Japan, Great Britain, Canada and a number of other countries.

The opposite of the “guilt” system is the “no-guilt” system. This system is used in a number of Organization for Economic Cooperation and Development countries and is based on a no-fault compensation system. In these countries, a court determination of the liability of medical professionals is not a necessary condition for awarding compensation to injured patients. The starting point for implementing insurance coverage is usually the injury itself or a preventable injury. Compensation for injured patients is provided by commercial and non-profit insurance organizations (in Denmark, Finland) or by the state (Sweden and New Zealand) from private sources.

Insurance protection is characterized by a number of objective and subjective characteristics.

Objective signs usually include:

random state of occurrence of negative consequences;

the possibility of causing material damage and harm to life or health;

the need to prevent negative consequences, eliminate them and compensate for the damage caused.

Subjective signs of insurance protection include the conscious need of participants in public relations (state, individuals and legal entities) to take measures to implement insurance [8; pp. 735-739].

President of the Republic of Uzbekistan December 7, 2018

In decision number PQ-5590 "On comprehensive measures to radically improve the healthcare system of the Republic of Uzbekistan," the Ministry of Health was entrusted with the development of a draft Law of the Republic of Uzbekistan "On insurance of medical activities and compulsory liability of medical personnel". This bill has been submitted for public discussion on the portal for discussing draft regulatory legal documents.

According to the bill, the object of compulsory liability insurance for medical personnel is property interests associated with the occurrence of liability of medical personnel for obligations arising from harm to the life or health of victims due to a defect in the provision of medical care.

Medical malpractice is usually caused by a medical error. Such a medical error is defined as follows:

unintentional action or inaction of a medical worker in connection with the provision of medical care to a person seeking medical care, characterized as independence or negligence;

physical or moral harm from a medical worker to a patient;

an error by a medical worker in the conscientious performance of his professional duties without signs of a crime or offense;

inaccurate information provided by a medical worker in the course of his professional activities.

According to B.T. Sultanaliev, the subject of professional liability insurance for doctors is usually healthcare workers or healthcare organizations. This includes doctors, nurses, surgeons, dentists and other health care professionals. This may also include healthcare facilities such as hospitals, clinics, nursing homes and medical laboratories. The subjects of this insurance are individuals or organizations engaged in the provision of medical care or related services [9].

But, in our opinion, it is incorrect to call only medical personnel the subject of doctor's professional liability insurance. Because there are other parties involved in this insurance relationship. It is appropriate to recognize all those who have entered into this relationship as subjects of doctor's professional liability insurance.

That is, the subjects of liability insurance for medical workers are medical workers, insurers, victims and beneficiaries.

It is possible to divide the category of persons to whom the insurance risk is directed and the situations in which professional liability of a medical worker arises.

In the first case - harm to the life and (or) health of the patient, in the second case - the death of the patient.

Accordingly, we divide those entitled to compensation into victims and beneficiaries.

A patient whose life and (or) health was harmed during the provision of medical care to the victim.

Beneficiary The person entitled to receive insurance benefits in the event of the patient's death.

Analysis of a number of scientific literature and regulatory documents allows us to identify several types of professional liability insurance for doctors, namely voluntary and compulsory professional liability insurance.

With voluntary professional liability insurance in the event of harm caused by the insured or another person whose liability is insured (the insured person), a civil liability insurance contract is concluded for causing harm to the person or property of a third party.

The introduction of compulsory professional liability insurance not only ensures the protection of the property and professional rights of doctors, but also protects the rights of the patient. Mandatory professional liability insurance for medical personnel includes the following grounds:

presence of cases of harm to the life and health of citizens;

professional incompetence of a doctor or other employee of a medical organization;

lack of medical services;

the presence of claims against the medical institution;

lack of funds from medical organizations due to damage.

In accordance with the medical personnel liability insurance contract, the insurer undertakes to compensate the patient or beneficiary for harm caused to the life or health of the patient upon the occurrence of an insured event, within the limits of the insured amount specified in this contract.

Insurance risk is the occurrence of signs of probability and randomness of an insured event.

An insured event under professional liability insurance is recognized as the occurrence of civil liability of doctors and medical organizations.

Such medical negligence liability may arise as a result of:

medical-technical (when it is not enough to make a correct diagnosis by examining the patient);

diagnosis (misdiagnosis);

organizational (when the workplace and the treatment process are poorly organized);

treatment (incorrect choice of means and methods of treating the disease);

behavioral errors;

abuse of official position [10; pp. 250-253].

If the insured person voluntarily acknowledges the harm caused to the victim or there is a legally binding court decision on the claim, fulfillment of obligations under the insurance contract is required.

In conclusion, we can say that to ensure proper medical care for patients and prevent medical errors, the following measures must be taken:

Retraining and advanced training of medical workers in accordance with the labor legislation of the Republic of Uzbekistan;

carry out regular internal control over the quality and safety of medical activities and take appropriate measures based on the results of such control;

development of rules regulating the actions of employees in a specific situation, rules for maintaining medical records;

organizing training seminars and lectures on the legal aspects of organizing medical care for employees of medical organizations;

in order to take measures to mitigate the consequences of violations, introduce standards obliging employees to promptly notify the management of a medical organization about violations;

disclose to patients complete and reliable information about the treatment methods used.

By ensuring the above, medical errors made by doctors are prevented, as well as some problems that may arise in the future when insuring the property liability of a doctor to a patient.

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