

Veronika Horielova,
Candidate of legal sciences,
Associate professor of department of state legal
sciences University «KROK»
ORCID: <https://orcid.org/0000-0001-6536-2422>

CONCEPTUAL PROVISIONS OF LAW AND MORALS IN A PANDEMIC CONDITION

The article is devoted to the problem of morality and law in a pandemic, because the COVID-19 pandemic has put doctors around the world in front of a tough issue of priority. In this regard, the question of the ethical choice of the doctor and what regulations he should be guided by is relevant.

The purpose of the article is to comprehensively assess the rights of the patient and the doctor in a pandemic, justify and identify the moral guidelines of the doctor in a pandemic. The patient's rights are analyzed in a broad sense: the legal relations in the field of health care are enshrined in the law, and in a narrow sense, as a subjective, real relationship between the doctor (medical institution) and the patient in need of care. It is revealed that the actions of a doctor cannot be prescribed as a certain algorithm, and each action and decision of a doctor in a certain extreme situation is only his independent, moral choice.

It has been studied that Ukraine takes responsibility for a sick person, giving him a number of additional rights, but there are certain restrictions in the law that can cause harm. It is proposed at the legislative level to develop ethical guidelines for doctors who must act in a pandemic, which will reduce the morale in which the health worker and the patient find themselves.

Keywords: morality, doctors, medical ethics, law, pandemic, patient.

Горелова В.

Концептуальні положення права та моралі в умовах пандемії

Стаття присвячена проблемі моралі і права в умовах пандемії, адже пандемія COVID-19 поставила лікарів всього світу перед жорстким питанням першочерговості надання допомоги. У зв'язку з цим, актуальним постає питання етичного вибору лікаря та яким нормативним актом він має керуватися.

Мета статті полягає в комплексному оцінюванні прав пацієнта та лікаря в умовах пандемії, обґрунтуванні і виявленні моральних орієнтирів лікаря в умовах пандемії. Проаналізовані права пацієнта в широкому значенні: закріплені в нормах закону правовідносини у сфері охорони здоров'я, та у вузькому значенні, як суб'єктивні, реальні взаємовідносини між лікарем (медичною установою) та потребуючим допомоги пацієнтом. Виявлено, що дії лікаря не можуть бути прописані в якості певного алгоритму, а, кожна дія і рішення лікаря в певній екстремальній ситуації це лише його самостійний, моральний вибір.

Досліджено, що Україна бере на себе відповідальність за хвору людину, наділяючи її цілою низкою додаткових прав, втім в законі існують і певні обмеження, які можуть завдавати шкоди. Запропоновано на законодавчому рівні розробити етичні інструкції для лікарів, які повинні діяти в умовах пандемії, що знизить моральний тиск в якому опиняється медичний працівник та пацієнт.

Ключові слова: мораль, лікарі, медична етика, право, пандемія, пацієнт.

Горелова В.

Концептуальные положения права и морали в условиях пандемии

Статья посвящена проблеме морали и права в условиях пандемии, ведь пандемия COVID-19 поставила врачей всего мира перед жестким вопросом первоочередности предоставления помощи. В связи с этим, актуальным становится вопрос этического выбора врача и каким нормативным актом он должен руководствоваться.

Цель статьи заключается в комплексной оценке прав пациента и врача в условиях пандемии, обосновании и выявлении нравственных ориентиров врача в условиях пандемии. Проанализированы права пациента в широком смысле: закрепленные в нормах закона правоотношения в сфере здравоохранения, и в узком смысле, как субъективные, реальные взаимоотношения между врачом (медицинским учреждением) и нуждающимся в помощи пациентом. Выведено, что действия врача не могут быть прописаны в качестве определенного алгоритма, а каждое действие и решение врача в определенной экстремальных ситуациях это лишь его само-

стойательной, нравственный выбор.

Доказано, что Украина берет на себя ответственность за больного человека, наделяя ее рядом дополнительных прав, впрочем в законе существуют и определенные ограничения, которые могут наносить вред. Предложено на законодательном уровне разработать этические инструкции для врачей, которые должны действовать в условиях пандемии, что снизит моральное давление в котором оказывается медицинский работник и пациент.

Ключевые слова: мораль, врачи, медицинская этика, право, пандемия, пациент.

Formulation of the problem. For several months, the population of the world has been in a state of depression caused by the COVID-19 pandemic, which has become a real test for all citizens, and especially for doctors around the world. The unpreparedness of countries for a pandemic on such a large scale has led to a situation where medical institutions are unable to cope with the huge influx of patients. Thus, the media constantly say that in Italy, Spain, the United States, France, Germany, Great Britain, Brazil, etc., there is a lack not only of artificial respiration, but also beds in intensive care units. Under such conditions, doctors find themselves in a situation where they need to choose who to connect to the ventilator and who not. Thus, doctors around the world are forced to use an unspoken rule - to treat more promising. There are a number of moral and legal issues: who and on what grounds should help doctors make such a difficult choice and what selection criteria may exist in this case? These and other ethical issues have been faced by medicine due to a pandemic around the world.

Analysis of recent research and publications. There is a need for modern researchers in medical ethics, such as R. Witch, Laurence McCullough, T. Caulfield, and other scholars, who have studied the issues of humanity in their work and emphasized the general lack of respect for physician autonomy.

Scientists VM pay considerable attention to the development of bioethics in the health care system and human rights. Zaporozhyan, ML Aryaev, Yu.V. Voronenko, Ya.F. Radish, T.A. Zanfirova, YF Radish and others.

The main provisions of medical ethics are also drawn mainly from such documents as the Helsinki Declaration of the World Medical Association (WMA), the International Code of Medical Ethics, the Lisbon Declaration on Patients' Rights, the Declaration on Patient Rights Policy in Europe (Amsterdam Declaration), the Code of Ethics doctors of Ukraine, etc.

Formulating the goals of the article. The COVID-19 pandemic today poses a tough question for doctors: which people deserve more help? What ethical choice should a doctor make and what should he be guided by? And should he make such a choice or is such a question unfair? The purpose of the article is to comprehensively assess the rights of the patient in a pandemic, justify and identify "moral beacons" - guidelines for the actions of the doctor in a pandemic.

Presentation of the main research material. Problems of ethics during the pandemic have existed for all ages. For example, the earliest mention of the M. Leprae pandemic dates back to 600 BC, which claimed the lives of thousands of people in ancient China, Egypt, India, Greece, Rome, and so on. About the horror of the pandemic M. Leprae in almost all Western countries, the peak of which occurred in the period XII-XIV centuries, when the infectious disease affected the population in almost all European countries. The legal situation of patients automatically became deplorable, because at the first signs of leprosy a person was found dead alive: they sang in the church as the deceased and arranged a symbolic funeral, after which the patient was given special clothes – a heavy hoodie. Still living people were deprived of all existing social rights at that time: it was forbidden to enter the church, to visit other public places (bazaars, fairs, theatres, etc.), wash in running water or drink it, touch other people's things. The disease was also a reason for divorce, and the sick person, deprived of all rights, meanwhile remained a public duty: when approaching people to warn of their appearance with a bell or shout "unclean!"

Today, the virus pandemic is a test of unity, solidarity, humanity and the ability to care for each other. Patients and doctors should want one thing - to help the patient and this is the basis of medical ethics. But often there is a situation when it is very difficult for patients and doctors to find a common language. On the one hand, the patient has the full right to decide on their own health by law, on the other hand, doctors in hospitals in the context of the COVID-19 pandemic receive unspoken instructions regarding the provision of so-called "priority care". Thus, the health care system has to mutate, simulating the placement of the patient in the centre of the coordinate system, because the decision for patients is still made by the doctor, just with less rudeness.

In the context of the COVID-19 pandemic, the world was faced primarily with limited resources in the health care system, ranging from the number of specialized beds, the number of places in intensive care units and the lack of doctors and medical professionals. In such circumstances, the Ukrainian health care system is faced with the need to take urgent measures. Also, financial insolvency is a big problem. According to a study published

by Global Health, the national health care system is one of the weakest among the countries of the former Soviet Union in Europe. It is organizationally and financially inefficient; it does not have sufficient capacity to meet the health needs of the population, and it faces many challenges that Ukraine is trying to address in the ongoing reform of the sector. Modernization of the health care system is still at an early stage, new approaches are being introduced only in some regions of the country as pilot projects. The system has low ratings not only on the health of the population, but also on the availability of services, as financial costs are obstacles to achieving justice and equality. The Government of Ukraine has only limited resources to finance health care, which should be distributed among various medical institutions. Also, corruption in health services has long been a barrier to accelerating health system reform. Conditions in medical facilities remain inadequate; modern medical technologies are introduced only to a limited extent [1, p.6]. The unpreparedness for a pandemic has thus led to the unspoken rule of treating more promising patients. Would such a rule be immoral? - Of course. However, any immoral behaviour cannot lead to criminal punishment, because it is not inherently a crime. Besides, the jurisprudence is burdened with such "immoral crimes" as medical error (punishable act) and accident (unpunished act). In a virus pandemic, it is convenient to "project" a medical error into any "comorbidity" and thus, both immoral crimes cease to be immoral at all, making it a convenient field for medical arbitrariness. Also, there is no normative stipulation of the terms "accident" and "medical error". Thus, we find ourselves in a situation where we proclaim the rights of everyone, and on the other hand, frightened and weak - we quickly change values and moral priorities. In this case, It would be appropriate to add the statement of researchers that in the modern world there is constant talk about the worthlessness of human life as a personal intangible good, which led to international and national legal norms that provide comprehensive protection of life, while the life of an individual every day depreciates [2, p. 60].

In the conditions of the pandemic we faced today, the existing problem of micro-allocation of resources, when a doctor with an acute shortage of resources (beds, devices, drugs) is faced with the choice of who to save and who not. It is clear that overloading patients in hospitals in need of intensive care, even with high public responsibility and internal morale of the doctor does not guarantee adequate care for each individual patient in need of attention. The doctor is guided by the criteria of clinical necessity and potential effectiveness of treatment, which does not fit into the framework guaranteed in accordance with Art. 27 of the Constitution of Ukraine, the right of every person to life. It is the duty of the state to protect the lives of everyone [3] and this means that the question of selectivity between people regarding the issue of treatment cannot stand. The doctor's actions also cannot be prescribed as a specific algorithm. Thus, each action and decision of the doctor in a certain situation is only its independent, moral, «human» choice. This is fully consistent with the content and purpose of the doctor, because the purpose of his professional activities and vocation - to maintain and protect human health, which should be the main concern [4]. Thus, it is not possible to issue any regulations regarding privileges in treatment or rescue. For example, a document «prioritize rescuing women» or «rescuing only those for whom a bed has been found» would not be legal. after all, the purpose of his professional activity and vocation is to support and protect human health, which should be the main concern [4]. Thus, it is not possible to issue any regulations regarding privileges in treatment or rescue. For example, a document «prioritize rescuing women» or «rescuing only those for whom a bed has been found» would not be legal. after all, the purpose of his professional activity and vocation is to support and protect human health, which should be the main concern [4]. Thus, it is not possible to issue any regulations regarding privileges in treatment or rescue. For example, a document «prioritize rescuing women» or «rescuing only those for whom a bed has been found» would not be legal.

The basis of these principles, from which all other ethical norms follow, according to the instructions of the Steering Committee of the Council of Europe on Bioethics is the need to respect and protect human dignity and «the principle of human priority» [5, p.10]. The rights of every person are inalienable and inviolable (Article 21) [3], and the rights of patients (the right of temporarily ill people) are derived from the rules established by law [6, p.79]. Thus, the rights of patients in a broad sense - is enshrined in the law of the legal relationship in the field of health care, and in a narrow sense - is a subjective, real relationship between the doctor (medical institution) and the patient in need of care. According to Art. 19 of the Law of Ukraine «On Protection of the population from infectious diseases», a person who has contracted an infectious disease or is a bacterium carrier, has the right to:

- free treatment in state and municipal health care institutions and state research institutions;
- receiving reliable information about the results of medical examination, examination and treatment;
- obtaining recommendations to prevent the spread of infectious diseases;
- application to the court with claims for damages in cases of damage to health and (or) property as a result of violation of legislation on protection of the population from infectious diseases [7]. Thus, Ukraine takes responsibility for a sick person. However, this law has certain limitations. For example, this applies to

the epidemiological search for cases of coronavirus disease (COVID-19) by mandatory testing (Article 35-1); obligation of medical workers in case of detection of a patient with an infectious disease to take measures for his temporary isolation (Article 38) [7].

In our opinion, it is necessary to minimize the pressure of society on doctors, but for this society must trust the doctor, believe that the doctor acts legally and fairly, with full efficiency, and not as a result of benefit, error or laziness. And such trust is catastrophically small today.

Conclusions. Quality and affordable medicine is the calling card of any state, because a healthy nation is the future of the country, and caring for a person is the foundation of medical activity, the meaning of its existence, the foundation on which the human rights system is built.

In our opinion, it is necessary to develop ethical instructions for doctors in a pandemic, because in this case, we have two vulnerabilities: the doctor and the patient.

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