

# *Peculiarities of the Legal Model of Relationship Creation Between a Doctor and a Patient in the Republic of Tajikistan*

N. Shukurova

The department of entrepreneurial law  
 Russian-Tajik Slavonic University  
 Dushanbe, Republic of Tajikistan  
 nargis-shukurova@mail.ru

**Abstract**—The peculiarities of the legal model of relationship between a doctor and a patient in the field of private medicine present relevant research subject. The medicine of Tajikistan preserves traditional paternalistic ideas. At the same time, Tajikistan, taking into account the market character of commercial medical services, has started to reform the legal regulation of relations between a doctor and a patient. One of the goals of the reforms is the adaptation of the existing health care system to market conditions. Legislative changes have affected the legal forms of regulation of relations between a doctor and a patient in the field of commercial medicine, the essence of which comes down to the understanding of a doctor and a patient as equal parties of legally binding relationship with their rights, duties and mutual responsibility. The basis of these changes is the development of contractual relations in the field of medical services as an alternative model of the doctor-patient relationship. The introduction of the contractual model is carried out not according to the principle of replacing the paternalistic model, but according to the principle of complementarity, that is, by means of complementing the paternalistic model.

**Keywords**—*private medicine; a doctor and a patient; medical paternalism; contractual model of relationship; reforms in the field of health care system*

## I. INTRODUCTION

The effectiveness of medical treatment in every particular case depends largely on the level of relationship creation between a doctor and a patient. In this regard, this issue presents the subject of research in many areas of scientific knowledge (philosophy, sociology, cultural studies, psychology, etc.), including jurisprudence.

The complexity of this issue led to the formation of separate models of the doctor-patient relationship, among which two models are the most interesting for the purposes of this study, they are paternalistic and contractual.

The paternalistic model is based on the moral principle of paternalism (from Latin *Pater* - father, *infans* - young, a child). This principle, by its origin, is the language of sociopolitical theories. It characterizes the type of relations between the state and citizens, in which the state manifests patronizing, guardianship, controlling attitude towards its citizens. The

state is the absolute spokesman for the benefits and interests of citizens, making decisions for them and acting on their behalf.

The main structural elements of this principle are love, care, mercy, blessing and justice, obligation, duty. That is why the idea of paternalism is the most common in medical field. In medical relations, it is characterized by the exclusive responsibility of a doctor for everything that happens to a patient, and a patient plays a passive role in making clinical decisions. Human life and the benefit of a patient is the highest law for a doctor. The use of power in relation to a person is justified here because of his lack of certain knowledge in the field of medicine [1].

In other words, medical paternalism implies that a doctor providing medical care to a patient is guided only by his own judgments about the needs of a patient for treatment, counseling and information. That is why such actions as compulsory examination and treatment, deception of patients and, in special cases, hiding information about a disease are justified in medical paternalism.

## II. RESULTS AND DISCUSSION

### A. *Traditional paternalism in Tajik medicine*

Paternalistic traditions in medicine originate from the time of the emergence of the rules of medical ethics. At the heart of the Hippocratic Oath also lies the paternalistic type of thinking. However, even before the Hippocratic Oath, this model of doctor-patient relationship prevailed in medical culture for several millennia [2].

In the context of Tajikistan, medical paternalism has deep roots. Even the Avestan prescriptions in the field of medicine reflected the paternalistic type of public consciousness: "When a doctor is asked for help or treatment, he is obliged to properly examine or check the condition of a patient in accordance with the methods of the competence of a doctor and appropriate medical treatment. A doctor should have a healing hand. Moreover he should take care of a patient in a timely manner and never punish the sick" [3].

The modern state policy of the Republic of Tajikistan (RT) in the field of healthcare system in terms of the issue of

doctor-patient relationship also largely reflects the paternalistic ideas, which is a natural matter for the legal and social state. After all, ensuring the safety of human life and health in a legal state is considered as a public good and a national wealth. Therefore, the protection of the rights and legitimate interests of citizens in the field of health care is the most important social and political task of every state aspiring to be legal [4].

The provisions of the Health Service Code of the Republic of Tajikistan are largely focused on a paternalistic approach to the question of the doctor-patient relationship. Many principles of state health policy reflect its ideas: 1) the principle of providing a guaranteed amount of free medical care; 2) the principle of protecting the health of a mother and a child; 3) the principle of access to medical care; 4) the principle of socially oriented health care, aimed at meeting the needs of population and improving the quality of life (Article №3 of the Code) [5].

Paternalistic views are also manifested in the norms defining cases of medical intervention without the consent of a patient. In particular, pregnant women and juveniles do not have the right to refuse of examination and treatment (Article 43 of the Health Service Code of the Republic of Tajikistan). Moreover, the obligation to undergo examination and treatment is spread to citizens, in the presence of diseases, the list of which is established by the Ministry of Health and Social Protection of the Republic of Tajikistan.

The criterion for including the disease in this list is the degree of danger of the disease to others. For example, according to the Article № 53 of the Health Service Code of the Republic of Tajikistan, citizens with tuberculosis, leprosy, human immunodeficiency virus and acquired immunodeficiency syndrome, venereal and other dangerous diseases are required to undergo a medical examination and treatment upon the request of medical organizations. Otherwise, they are subject to compulsory examination and treatment.

Paternalistic ideas also fill the content and scope of many professional duties of medical and pharmaceutical workers, established in Article № 49 of the Health Service Code. As an example, we present the following duties:

- 1) The duty to carry out the activities, guided by the humane principles of medical ethics, governing the moral relationship of health professionals with patients, their relatives and among themselves; the obligation to comply with the Ethics Code of Doctors of the Republic of Tajikistan;
- 2) The duty of compassion towards patients;
- 3) To prevent actions that may harm the health of a citizen;
- 4) The obligation to provide first aid to citizens on streets, other public places and at home, in all cases, in the absence of timely assistance;
- 5) To keep medical confidentiality and other personal information;
- 6) To decide on medical confidentiality from a patient in each case in the interests of a patient;

7) To use positive influence of medical word on psyche of patients, prevent such behavior which can adversely affect a patient or relatives;

8) To strictly follow the rules of medical ethics when communicating with patients and their families.

Thus, in the healthcare system of the Republic of Tajikistan, the paternalistic approach is considered as the optimal model for the creation of relationship between a doctor and a patient. The preservation of paternalism in Tajikistan as a systemically important model for the traditional health care system is reasoned by certain socio-historical factors.

The fact is that the peculiarities of the development of national mentality make it necessary to take into account several aspects in the creation of a model of the relationship between a doctor and a patient in Tajik. These aspects are as follows:

Firstly, historically formed cultural medical traditions;

Secondly, the special role of spirituality in the public sense of justice and the role of moral ideals and principles;

Thirdly, Islamic moral values are predominant in the public consciousness, where healthy lifestyle and health protection play an important role.

In other words, paternalistic ideas in Tajik medicine play a large social role.

In addition to Tajikistan, the similarity of medical legislation to the paternalistic model is observed in many post-Soviet countries. In scientific literature, this is explained by the fact that this model was leading and dominant in their past joint history [6].

### *B. Criticism of medical paternalism*

However, in global community, starting from the second half of the 20th century - during the period of active creation of civil society, there appeared a tendency of strong criticism of medical paternalism as the dominant model of the doctor-patient relationship. Nowadays a critical approach to the paternalistic model in the field of medicine prevails in scientific community [7]. The supporters of the critical approach prove their position by the fact that paternalism in medicine deprives a patient of the opportunity to make independent decisions regarding their health, shifting this task to a doctor.

In order to ensure the equal status of a doctor and a patient, it is necessary to expand the range of the rights of a patient, including the right to information. A new look at the problem of the doctor-patient relationship changed the principle of paternalism to the principle of cooperation or, as it is also called, the principle of informed consent [8], which implies a prohibition on medical confidentiality, informing a patient about all the stages of medical treatment and getting his consent to carry out medical manipulations. In the framework of new approach, a doctor and a patient act as two equal participants in relations with their rights and duties.

The spread of anti-paternalistic views led to the emergence of new models of doctor-patient relationships, among which the contractual model deserves special attention. This model formed in the context of increasing commercialization of healthcare sector, when the state allowed the involvement of medical institutions in property, commodity and money circulation and introduced elements of market relations into the sphere of medical care and medical services.

The contractual model is based on contractual relationships in which a doctor and a patient act on the basis of mutual obligations and expected mutual benefits. Concluding a contract for medical care, a patient acquires certain guarantees for the provision of qualified medical services, guarantees for the availability of medical care, which may, for example, be expressed in establishing a joint schedule of visits to a doctor.

In addition within the framework of contractual relationship, a patient has the right to interrupt the course of medical treatment and change a doctor, the right to be informed about all the stages of treatment and to obtain consent to conduct medical treatment. The degree of medical intervention depends on the needs and financial capabilities of a patient.

A patient, for his own reasons, may refuse to undergo certain medical treatment and other medical manipulations. In turn, the provider of medical services within the framework of the contract makes certain requirements to a patient in terms of the implementation of relevant medical prescriptions and recommendations. The contractual model complies with the principles of freedom of contract in a greater extent [9].

The change of views on the problem of interaction between a doctor and a patient could not but lead to the change in the legal regulation of medical relations, because, as noted by I.A. Pokrovsky, the further human rights become paramount, the more definite is the movement along the path of the protection of a person as such in the totality of its individual interests and peculiarities [10].

In many countries, the detailed regulation of rights and obligations has been widely consolidated. Thus, for example, in the Republic of Moldova there is the Law No. 263 dated the 27<sup>th</sup> of October 2005 "On the Rights and Liability of a Patient". This Law is based on the principle of mutual trust between a patient and a medical worker. According to its provisions, a patient, along with the rights, bears a certain responsibility, the scope of which includes:

1) The compliance with the rules of behavior established for patients in medical and sanitary institution, as well as the fulfillment of the instructions of a doctor during out-patient and in-patient treatment;

2) The exclusion of pharmaceutical products and medicinal substances if they are not prescribed by consulting doctor. It includes drugs, other psychotropic substances and alcohol during the period of treatment in a health care facility.

In case if a serious violation of the rules of treatment and behavior in a medical and sanitary institution entailed material and moral damage, a patient takes the corresponding responsibility in accordance with the law [11].

There is a similar Law in the Karachay - Cherkessian Republic - the Law "On the Rights of a Patient" dated the 15<sup>th</sup> of April, 2002, № 18-RL. This Law provides for the following duties of a patient: 1) to provide reliable information to attending doctor about his complaints, past diseases, medical advice, about changes in health status; 2) to observe the rules of behavior of patients in a medical institution; 3) to respect the rights of other patients and personnel of medical institution; 4) to take into account financial capabilities to pay for the provision of medical care in excess of the amounts guaranteed by the state.

The responsibility of a patient is established for failure to perform the following duties: 1) non-compliance with the regime of treatment; 2) refusal to provide medical care with full information about the possible consequences of such refusal [12].

Talking about European medical legislation, it is necessary to note that in European countries the problem of legal regulation of the relationship between a doctor and a patient has received the greatest significance. For example, in Finland, the Law on the Status and Rights of Patients was adopted in 1992. This was the first law regulating the status of a patient and his rights.

The scope of this Law covers all the areas of health care system, as well as medical services provided by social welfare institutions.

The analysis of its provisions allows establishing the following picture of the legal status of a patient:

1) The treatment and forms of treatment cannot be carried out without the consent of a patient;

2) A patient can, at his request, receive information about his state of health, the amount of the intended course of treatment, risk factors and possible alternative forms of treatment;

3) A patient has the right to refer to the information recorded in his medical history and make changes in it;

4) A patient who is not satisfied with the course of treatment has the right to file a complaint to an appropriate authority.

In this case, the medical institution is obliged to assist a patient in case of need, when filing a complaint or petition for compensation of losses;

5) In certain cases when providing medical care to a juvenile patient, his point of view should be taken into account.

After the manner of Finland, the laws on the legal status of patients were enacted in other foreign countries: In the Netherlands - in 1995, in Israel - in 1996, in Lithuania - in 1996, in Iceland - in 1997, in Denmark - in 1998 [ 13].

### *C. The reformation of medical healthcare system in the Republic of Tajikistan*

The new system of public opinion also affected the medical legislation of the Republic of Tajikistan and was the beginning of reforms in the healthcare branch. One of the goals of the reforms is to adapt the existing health care system to market conditions.

The legislative changes have affected the legal forms of regulation of relations between a doctor and a patient in the field of commercial medicine, the essence of which reduces to an understanding of a doctor and a patient as equal parties of legally binding relationship with their rights, duties and mutual responsibility.

First of all, the fundamentals of public health were revised. The joint responsibility of the state, medical institutions and citizens for the preservation and strengthening of individual and public health received the status of the principle of state health policy (Article № 3 of the Health Service Code of the Republic of Tajikistan). The essence of this principle comes down to the fact that, in the context of treatment, both a doctor and a patient are bound by mutual responsibility and mutual assistance. Of course, in any case, a medical institution bears legal responsibility for the result of improper provision of medical services, but the psychological responsibility lies on a patient to a certain extent.

The implementation of this principle was consolidated in the normative establishment of certain duties of citizens:

- 1) To take care of their health, the health of family and others;
- 2) To comply with the regulations on the conduct of fluorography, prophylactic vaccinations and medical examinations in the terms established by the health authorities for the prevention of infectious diseases;
- 3) To follow the regime in medical institutions in cases of stay in in-patient treatment;
- 4) To carry out prescriptions of an attending physician in cases of stay in outpatient treatment (Article № 50 of the Health Service Code).

The practical significance of the identification of the fact that a person, when concluding or implementing a contract for the provision of medical services, does not fulfill the prescriptions of an attending doctor, is that failure to cooperate with a doctor may be considered as treatment evasion and may be equal to the fault of a patient. For example, such a form of negligent actions (inaction) of a patient, such as interrupting treatment, failure to perform drug therapy prescribed by a doctor, causing a complication of a disease may be the grounds for the exemption the health care provider from compensation for harm.

However, despite such significant changes in the development of legal regulation of relations between a doctor and a patient, it is hard to say that their rights and obligations in relation to each other are detailed and consolidated at the legislative level.

The above mentioned Article № 50 of the Health Service Code of the Republic of Tajikistan, which reflected the obligation of citizens to follow the prescriptions of an

attending doctor, is of a general nature. Its provisions do not focus on the duties of a patient, but provide for the general duties of citizens to comply with the requirements of legislation in the field of health care.

The Article № 68 of the Code, dedicated to the contract on the provision of medical care and services, there is no information about the rights and obligations of a provider of medical services and a patient. Chapter № 37 of the Civil Code of the Republic of Tajikistan "Compensated provision of services" also does not contain a detailed description of the obligations of the parties to a contract on compensated services in relation to various services [14].

### III. CONCLUSION

Thus, it should be noted that while preserving traditional paternalistic ideas in medicine in Tajikistan, a legislator, relying on the experience of Western European states and taking into account the market nature of commercial medical services, started to reform the legal regulation of doctor-patient relations. The basis of these changes is the development of contractual relations in the field of medical services as an alternative model of the doctor-patient relationship.

The introduction of the contractual model is carried out not according to the principle of the replacement of the paternalistic model, but according to the principle of complementarity, that is, by means of complementing the paternalistic model.

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