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APPLICATION OF SPECIAL KNOWLEDGE IN THE INVESTIGATION OF CRIMINAL OFFENSES COMMITTED BY MEDICAL PROFESSIONALS

Abstract. Purpose. The purpose of this article is to examine the issue of applying special knowledge in the investigation of criminal offenses committed by medical professionals. **Results.** The article is devoted to the study of the necessity of utilizing special knowledge during the investigation of criminal offenses committed by medical professionals. It explores the significance of such knowledge in the investigative process, particularly in assessing evidence related to violations of professional duties by healthcare workers. The paper highlights the importance of involving experts to conduct forensic examinations, evaluate medical documentation, and establish facts that may be crucial to criminal proceedings. It is emphasized that the use of special knowledge helps ensure objectivity and impartiality in the investigation of complex cases within the medical field, which is essential for achieving justice and protecting patients' rights. **Conclusions.** The effective use of special knowledge provides a comprehensive approach to analyzing the professional actions of medical practitioners and their consequences. It contributes to appropriate legal assessment, determining the scope of criminal liability, and identifying the responsible individuals. A particularly important aspect is the evaluation of whether a medical professional had the capacity to prevent adverse outcomes, taking into account their knowledge, skills, and available resources. Involving medical experts in the investigation of such offenses enables adherence to the principles of fairness, objectivity, and scientific validity in procedural decision-making. However, it is also crucial to ensure a high level of professional training for both experts and investigators, their competent cooperation, and the clear regulation of procedures for engaging special knowledge within the framework of current legislation. Thus, the application of special knowledge in the investigation of criminal offenses committed by medical professionals is a necessary condition for effective law enforcement, safeguarding the rights of victims, and upholding the principle of legality.

Key words: criminal offenses, medical professionals, special knowledge, investigation, expert.

1. Introduction

The relevance of the study on the application of special knowledge in the investigation of criminal offenses committed by medical professionals is determined by several factors. First and foremost is the complexity of criminal offenses in the medical field. The professional activities of healthcare workers are based on specialized medical knowledge, which makes the investigation of offenses in this sphere particularly challenging. Establishing the fact of a breach of professional duties requires not only legal, but also medical expertise.

Another factor is the growing number of complaints regarding the improper performance of professional duties. The increasing number of patient reports submitted to law enforcement agencies concerning professional

misconduct by medical practitioners underscores the importance of employing special knowledge to ensure objective and impartial investigations.

Furthermore, the evidentiary value of medical documentation must be emphasized. Medical records constitute a key source of information in the investigation of criminal offenses related to medical practice. However, proper analysis and evaluation of such documents necessitate the involvement of individuals with special knowledge.

Thus, research into this topic is crucial for improving the effectiveness of investigations in the medical field, enhancing the process of evidence assessment, and ensuring legality and fairness in the activities of law enforcement agencies.

Several Ukrainian scholars have studied the use of special knowledge in the investigation of criminal offenses committed by medical professionals. A.V. Honcharuk has authored research on the application of medical knowledge in forensic science, particularly in the context of investigating offenses committed by healthcare workers. O.I. Baranovskyi has examined the interaction between medical experts and investigators in cases requiring the application of specialized medical knowledge. V.V. Kolisnyk has addressed the use of special knowledge in criminal cases involving medical errors or the improper performance of professional duties by medical professionals. N.P. Platonova, an expert in forensic science, has studied the application of medical knowledge in cases involving unlawful medical activities. V.M. Boiko has explored the classification of criminal offenses committed by medical professionals and the role of special knowledge in establishing causal links between medical actions and treatment outcomes.

These scholars have made significant contributions to the development of theoretical and practical aspects of utilizing special knowledge in the investigation of criminal offenses committed by medical professionals, particularly in the context of unlawful medical practice.

The aim of this article is to explore the issue of using special knowledge in the investigation of criminal offenses committed by medical professionals.

2. Specifics of Conducting Expert Examinations in the Investigation of Criminal Offenses Committed by Medical Professionals

Procedural forms of using special knowledge include: engaging a specialist to participate in investigative actions; conducting forensic examinations; and obtaining clarifications from experts through interrogation (Shchur, 2010). Non-procedural forms include: organizing departmental audits and making procedural decisions based on their outcomes; consulting with a specialist outside the framework of investigative actions; and the investigator's personal review of specialized literature and legal acts related to the investigated event.

According to paragraph 2.13 of the *Instruction on the Conduct of Forensic Medical Examinations*, an investigator has the right to be present during a forensic medical examination, except in cases involving individuals of the opposite sex when the examination requires exposure of the body. In criminal cases related to improper performance of professional duties by medical practitioners, the investigator's presence during the expert examination enables them to pose additional clarifying questions. This helps form a clearer understanding of the course of treat-

ment that resulted in adverse outcomes (Boiarov, 2000). It also contributes to the proper legal classification of the offense and guides the further direction of the investigation (Bilenchuk, Hel, Salteviskyi, Semakov, 2001).

The investigator's presence allows them to receive additional explanations from the expert regarding the methods and results of the examination, observe how the criminal actions are reflected in medical records or biological samples, and respond more promptly to the findings of the examination—initiating necessary investigative actions without having to wait for the official expert report. However, in practice, investigators are rarely present during forensic medical examinations in proceedings related to Article 138 of the Criminal Code of Ukraine due to their workload and a generally negligent attitude toward this recommendation.

It should be emphasized that L.H. Dunaievskia had long stressed the need to legally establish the investigator's right to be present during forensic examinations in the Criminal Procedure Code of Ukraine (Dunaievskia, 2006). Nevertheless, this provision was not implemented in either the 1960 CPC of Ukraine or the current version. In our opinion, this gap should be addressed by amending Article 40 of the CPC of Ukraine to explicitly provide that "the investigator is authorized to be present during forensic examinations and, upon request, to receive explanations from the expert regarding the actions performed and the conclusions drawn during the examination."

Both scholars and practitioners argue that the investigator's presence during the examination helps to avoid unfounded repeat or supplementary examinations, and minimizes the need to summon experts for interrogation to clarify parts of the conclusion that remain unclear for various reasons (Panov, Shepitko, Konovalova, 2007). Moreover, such presence may benefit the expert if additional clarification is required, occasionally eliminating the need for supplementary materials and thereby shortening the duration of the expert study. Without a doubt, direct communication between the investigator and the expert facilitates the specification of certain aspects related to the subject of the examination in real time.

L.V. Pavlova defines forensic medical examination as a scientific and practical investigation of specific objects conducted by a physician to resolve medical and medico-biological questions that arise during pre-trial investigation and judicial proceedings (Pavlova, 2007). However, it is important to clarify that such examinations are carried out by forensic medical experts, while physicians of relevant specializations are involved when necessary or as pre-

scribed by law. Accordingly, a comprehensive forensic medical examination in the context of investigating criminal offenses committed by medical professionals should be understood as a scientifically and legally regulated study conducted by forensic medical experts, with the participation of specialized physicians, aimed at resolving specific medical and medico-biological issues of importance to the pre-trial investigation and court proceedings.

3. The Role of Expert Commissions in Conducting Forensic Medical Examinations

An expert commission issues a conclusion following the examination of the objects provided by the investigator. In cases involving criminal offenses committed by medical professionals, the objects of forensic medical examination constitute a defined system composed of specific elements. The objective basis for detecting a disease and evaluating the actions of medical professionals lies in the regular emergence of data about them, as reflected by the inherent properties of all material objects, phenomena, and processes—including diseases and the actions of physicians.

Such objects include: medical documentation in established formats containing clinical data about the patient (e.g., outpatient medical records, inpatient medical records, ambulance transfer sheets); the patient themselves, if further examination is necessary during the expert study; postmortem autopsy protocols with histopathological results; biopsy protocols of biological materials; histological samples (tissue and organ fragments from the corpse); forensic autopsy reports including laboratory data; records of clinico-anatomical conferences; results of departmental audits and quality control of medical services; and other case materials, such as statements, interview protocols of medical staff and witnesses, service characteristics of healthcare personnel, and licensing and accreditation documents of medical institutions (Baida, 2006).

O.O. Prasov outlines a list of typical and common questions that are generally addressed during a forensic medical examination. Among them are:

1. Was the diagnosis of the disease or injury timely and accurate?
2. Was the treatment provided to the patient or victim timely, comprehensive, sufficient, and effective?
3. Is there a causal relationship between the adverse treatment outcome and the nature of the diagnostics and treatment provided?
4. What could have been the likely outcome if proper and timely diagnosis and adequate treatment had been administered?
5. In the presence of diagnostic, examination, or treatment deficiencies—what were they,

and how did they impact the patient's health or cause their death? (Prasov, 2007).

V.L. Burkatskyi emphasizes that expert commissions typically address questions such as the nature of the patient's illness, the correctness of the diagnosis and completeness of the examination, the quality of medical care provided or the actions taken by medical personnel, the consequences of improper treatment or actions, the possibility of preventing such outcomes, and the cause of death (Burkatskyi, 1990).

Based on the above provisions and analysis of case materials related to criminal offenses committed by medical professionals, a more specific set of questions can be proposed to guide the expert examination. These questions directly stem from the circumstances that must be established by the investigator when assessing the actions of individuals suspected of committing a criminal offense under criminal law. The expert, in turn, conducts a study of the materials provided in the case and draws conclusions based on applied specialized examinations.

Thus, it is advisable for the expert to focus on the following tasks: to determine whether the victim suffered from a specific disease, and if so, which one; to establish what type of medical care should have been provided for the identified pathology and which legal or normative acts (clinical protocols, standards, guidelines, etc.) regulate its delivery; to assess the predicted outcome for the patient had the appropriate medical care been provided, taking into account current medical knowledge; to determine whether the patient experienced any adverse effects as a result of the treatment, and if so, what those effects were and their severity; and to identify the existence of a causal relationship between the initial illness and the consequences that followed after the provision of medical assistance.

The answers to the above questions enable the determination of the victim's condition, the likely positive outcome had there been no treatment errors, as well as the nature and causes of the negative consequences inflicted on the victim's health or life.

The expert must also address the presence of deficiencies in the provision of medical services, specifically identifying which particular rules and regulations governing medical care were violated, and by whom. If multiple healthcare providers were involved in the treatment process, it is necessary to establish the responsibilities and actions of each medical professional, as well as their individual contributions to the final outcome. In the event that organizational shortcomings in the provision of medical care are identified, the responsible party should be determined based on the analysis of job descriptions and internal regulatory documents.

It is well-established in criminal law theory that the cause-and-effect relationship between an act and its consequences is an essential element in establishing criminal liability. This principle is considered axiomatic. Therefore, the expert should be asked to determine the existence of a causal link between the adverse outcome for the victim and the deficiencies identified in the medical care provided. It is necessary to analyze the mechanism by which each individual deficiency may have contributed to the outcome, in order to determine which specific action or omission resulted in harm. Additionally, the expert must assess whether the damage to the patient's health could have been prevented through the proper execution of medical duties.

Once the expert has identified the specific actions that led to serious consequences, it is important to assess whether the healthcare provider who administered the treatment possessed the necessary professional knowledge and skills required to provide adequate medical care in the given circumstances. The expert should also determine whether the medical professional had the actual opportunity to implement the required measures based on the conditions of time, place, and other relevant factors. If it is established that the provision of specialized care in accordance with the patient's pathology was legally or factually impossible, the expert must indicate the level of care that should and could have been provided in accordance with the professional obligations of the healthcare provider.

In order for the investigator to determine the suspect's subjective attitude toward their conduct, it is important to examine whether the physician—given their level of knowledge and competence—could have reasonably foreseen the adverse outcome resulting from their action or inaction.

All expert responses to the questions posed must be clearly presented in the expert opinion, grounded in scientific reasoning, and formulated in a manner that excludes ambiguity or the possibility of misinterpretation. In cases where experts are unable to provide answers, the reasons for this must be explicitly stated.

The expert commission must determine the presence or absence of defects in the actions of the medical professionals, establish the nature and causes of these deficiencies, and assess their impact on the outcome of treatment. Given that criminal liability in Ukraine is individualized, the experts should, to the extent possible, provide specific answers identifying which actions of which medical personnel led to harm to the patient's health or life.

During the examination, the commission must consider real-world factors related to organizational, logistical, and material resources that may have affected the treatment process. If such deficiencies are identified, the final

report must specify who bears responsibility for addressing them and what caused the shortcomings (Hroshevyi, Stakhivskyi, 2006).

When discussing the specifics of preparing and appointing expert examinations in criminal proceedings of the type under study, it is important to highlight the procedures for collecting materials for handwriting and forensic technical examinations. These procedures have their own distinct features, particularly the requirement to obtain a substantial number of samples for comparative analysis, including free, conditionally free, and experimental samples of stamps (seals), handwriting (signatures).

The documents requiring examination are collected during such procedural actions as inspection, search, or temporary access to objects and documents, in accordance with the procedures previously described.

4. Conclusions

The application of specialized knowledge in the investigation of criminal offenses committed by medical professionals is a crucial tool for establishing the objective truth in criminal proceedings. The use of forensic medical examinations, specialized medical research, and the involvement of experts in the field of medicine enables a proper assessment of the actions or omissions of healthcare providers, the determination of whether their conduct complied with professional standards, and the identification of causal links between deficiencies in medical care and the resulting harm to victims.

The effective use of specialized knowledge ensures a comprehensive approach to analyzing the professional conduct of medical personnel and its consequences. This contributes to the proper legal assessment, determination of the boundaries of criminal liability, and identification of those responsible. In particular, an important aspect is the evaluation of whether the medical professional could have prevented the adverse outcomes, taking into account their level of knowledge, skills, and the resources available at the time.

Engaging medical specialists in the investigation of such criminal offenses ensures adherence to the principles of fairness, objectivity, and scientific justification in procedural decision-making. However, it is essential to guarantee a high level of professional training for experts and investigators, their competent cooperation, as well as clear regulation of the procedures for applying specialized knowledge within the framework of the applicable legislation.

Therefore, the application of specialized knowledge in the investigation of criminal offenses committed by medical professionals is a necessary condition for effective law enforcement, the protection of victims' rights, and adherence to the principle of legality.

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ЗАСТОСУВАННЯ СПЕЦІАЛЬНИХ ЗНАНЬ ПРИ РОЗСЛІДУВАННІ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, ВЧИНЕНИХ МЕДИЧНИМИ ПРАЦІВНИКАМИ

Анотація. Метою статті є дослідження проблеми використання спеціальних знань при розслідуванні кримінальних правопорушень, що вчиняються медичними працівниками. **Результати.** Стаття присвячена дослідженню питань щодо необхідності застосування спеціальних знань при розслідуванні кримінальних правопорушень вчинених медичними працівниками. У статті розглядається значення застосування спеціальних знань при розслідуванні кримінальних правопорушень, вчинених медичними працівниками. Аналізуються особливості розслідування таких кримінальних правопорушень, зокрема в контексті використання медичних знань для оцінки доказів, що стосуються порушень професійних обов'язків медичних працівників. У роботі акцентується увага на важливості залучення фахівців для проведення експертиз, оцінки медичних документів та встановлення фактів, які можуть мати вирішальне значення для кримінального провадження. Зазначено, що застосування спеціальних знань допомагає забезпечити об'єктивність та неупередженість при розслідуванні складних проваджень у медичній сфері, що є необхідним для досягнення справедливості та захисту прав пацієнтів. **Висновки.** Ефективне використання спеціальних знань забезпечує комплексний підхід до аналізу професійних дій медиків і їх наслідків. Це сприяє належній правовій оцінці, визначенню меж кримінальної відповідальності та встановленню винних осіб. Зокрема, важливим аспектом є оцінка можливості медичного працівника запобігти негативним наслідкам, враховуючи рівень його знань, навичок і доступні ресурси. Залучення фахівців із медицини до розслідування таких кримінальних правопорушень дозволяє дотримуватися засад справедливості, об'єктивності та наукової обґрунтованості під час ухвалення процесуальних рішень. Однак важливо забезпечити високий рівень професійної підготовки експертів і слідчих, їхню компетентну взаємодію, а також чітке регулювання процедур залучення спеціальних знань у рамках чинного законодавства. Таким чином, застосування спеціальних знань у розслідуванні кримінальних правопорушень, учинених медичними працівниками, є необхідною умовою для ефективного правозастосування, забезпечення захисту прав потерпілих і дотримання принципу законності.

Ключові слова: кримінальні правопорушення, медичні працівники, спеціальні знання, розслідування, спеціаліст.