

## 6.2 Patients' Responsibilities

### INTRODUCTION

Legal responsibility of an individual in the domain of health care is a mandatory particular form of human behavior that is defined by the law and is guaranteed by the state, that is aimed at ensuring the rights and protected interests of other individuals and/or promoting the preservation, strengthening, development and, in cases of health damage, recovery of the maximally attainable level of physical and mental state of one's own body.

Current health care legislation of Ukraine does not include norms that clearly regulate responsibilities of patients. Legal definition of this issue is refined through the process of a comprehensive analysis of the legal framework that regulates health care using the principle of "each right has a corresponding responsibility", i.e., whenever a health care provider has a right, then, naturally, a patient has a responsibility and vice versa.

In this Practitioner's Guide, we analyze general and special responsibilities of an individual in the domain of health care. General responsibilities pertain to all individuals engaged in health care while special responsibilities are a concern of only those individuals that are parties to a medical relationship, primarily, between a medical practitioner and a patient.

### 6.2.1 Responsibility to Take Care of One's Health and Health of One's Children, and to Cause no Harm to Health of Other Citizens

**a) Patients have the duty to take care of one's health and health of one's children, and to cause no harm to health of other citizens.**

**b) Responsibility as stated in Country Constitution/Legislation**

▶ **Criminal Code of Ukraine of April 5, 2001 [Articles 130, 133, 166].**

"Infecting somebody with human immunodeficiency virus or any other incurable contagious disease:

1. Consciously putting another individual in danger of being infected with human immunodeficiency virus or any other incurable contagious disease that is dangerous to human life is punishable by an arrest for up to three months or restriction of freedom for up to five years, or imprisonment for up to three years.

2. Infecting an individual with human immunodeficiency virus or another incurable infectious disease by another individual who knew that he/she is a carrier of this virus is punishable by imprisonment for a term of two to five years ..." (Art. 130).

"Infecting somebody with a venereal disease:

1. Infecting an individual with a venereal disease by another individual who knew about the presence of this disease is punishable by correctional labor for up to two years, or an arrest for up to six months, or restriction of freedom for up to two years or imprisonment for the same term ..." (Art. 133).

"Intentional neglect of a child or an individual under guardianship or custody:

Intentional failure of parents, guardians or trustees to carry out mandatory by law responsibilities to take care of the child or the individual under guardianship or custody which caused grave consequences is punishable by restriction of freedom for a term of two to five years or imprisonment for the same period of time" (Art. 166).

► **Administrative Code of Ukraine of December 7, 1984 [Article 173-2].**

"Committing domestic violence, that is intentionally committing any act of physical, psychological or economic nature (the use of physical violence that did not cause physical pain or bodily harm, threats, insults or harassment, deprivation of shelter, food, clothing, other property or funds for which the victim has a legal right, etc.), as the result of which the damage to physical or mental health of the victim was caused or could be caused as well as a failure to implement protective orders towards an individual against whom they were issued, a failure to complete correctional programs by an individual who committed an act of domestic violence is punishable by a fine of three to five times untaxed minimum wages or correctional labor for up to one month with twenty percent of the wages withheld and, if the circumstances of the case are such—and taking into account an individual offender—that these measures are found to be insufficient, by an administrative arrest for up to five days".

► **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 10 (paragraph "a"), 32].**

"Citizens of Ukraine must take care of their health and the health of their children, not harm the health of other citizens" (paragraph "a" Article 10).

► **On Ensuring Sanitary and Epidemiological Welfare of the Population: Law of Ukraine of February 24, 1994 [Articles 5 (parts 1, 2, 3), 21 (part 2)].**

"Citizens must take care of their health and the health and hygiene education of their children, not harm the health of other citizens (part 1 Art. 5).

- ▶ **On Domestic Violence: Law of Ukraine of November 15, 2001 [Article 1].**

“Physical violence in the family is an intentional infliction on a family member by another family member of corporal injuries that lead or may lead to the death of the victim, harm to physical and psychological health of the victim, injure his/her honor and dignity.”

### **c) Supporting Regulations/ Bylaws/ Orders**

- ▶ **Framework for the Development of Health Care of the Population of Ukraine: Decree of the President of Ukraine of December 7, 2000 No. 1313/2000 [Section 2: “Government Policy in the Health Care Sector “, Section 5: “Creating Conditions for Healthy Living”].**
- ▶ **Interdisciplinary Comprehensive Program for 2002-2011 “Health of the Nation”: Resolution of the Cabinet of Ministers of Ukraine of January 10, 2002 No. 14 [section 1 (paragraph 14), section 3 (paragraphs 2, 4, 6, 11), section 4 (paragraph 5), section 7 (paragraph 7), section 8 (paragraphs 3, 5), section 9 (paragraphs 1, 3), section 10 (paragraph 8), section 13 (paragraph 5), section 14 (paragraphs 1, 2, 5), section 16 (paragraphs 2, 5, 8), section 17 (paragraphs 1, 4, 9), section 19, section 27 (paragraph 2), section 37 (paragraphs 3, 5)].**
- ▶ **National Development Plan for the Health Care System of Ukraine for the Period Ending in 2010: Resolution of the Cabinet of Ministers of Ukraine of June 13, 2007 No. 815 (paragraph 8).**
- ▶ **Framework on Management of Medical Care Quality in the Sphere of Health Care in Ukraine for the Period up to 2020. Order of Ministry of Health of Ukraine of August 1, 2011, No. 454.**

Among the tasks of a framework are foreseen incentives as regards healthy lifestyle of the population.

### **d) Provider Code(s) of Ethics**

- ▶ **Code of Ethics of Physicians of Ukraine, adopted and signed at the National Congress of Health Care Organizations and at the X Congress of the Ukrainian Medical Association on September 27, 2009 (paragraph 3.5.).**

“A doctor must protect the interests of a child or a patient who can not make an independent decision if it is clear that those around him/her are indifferent to the interests of his/her life and health or he/she is not sufficiently conscious of these interests”.

### **e) Other Relevant Sources**

There are no other relevant sources on this matter.

### **f) Practical Examples**

#### **1. Example(s) of Compliance**

A 10-year old girl was given a “terrible” diagnosis by the doctors: leukemia. The parents spent all their funds on treatment, sold all their properties. The child was in the hospital for almost two years (having gone through painful medical procedures). The doctors predicted for the child the life expectancy of 6 months. However, the parents of the girl cared for her, doing everything possible and impossible to save her life. All this gave a positive result: the condition of the patient improved, she is in remission.

#### **2. Example(s) of Violation**

A 7 year old girl who had a number of diseases saw a pediatrician. As it turned out, until 6 years of age, the child was brought up by her grandmother in the village and was completely healthy. When the parents took the daughter to live in city K. and immediately sent her to school, she suddenly began to get frequently sick. The parents did not pay enough attention to the complaints of the child regarding her health and did not seek medical advice. In 3 months, the girl was admitted to the hospital not only with a complaint of an abdominal pain, but she also began to stutter, had symptoms of enuresis, tearfulness, irritability and sleep disorder. The physician explained to the parents that the primary cause of childhood diseases is improper care of the child’s health.

#### **3. Actual Case(s)**

Ms. Yu, who was raising a three year old son, was issued a protective order under Art. 13 of the Law of Ukraine “On Prevention of Domestic Violence”, since the officer from children’s criminal services had previously issued an official warning to her for committing physical violence against her child, in particular a failure to take measures to treat the child. The child was hospitalized at the Children’s City Hospital with left-side pneumonia complicated by pleurisy and strong intoxication. An ambulance was summoned by the neighbors who saw the dismal state of the child that resulted from his mother raising the son alone, leading frivolous way of life, paying no attention to the child, not seeking medical care even when it became necessary.

### **g) Practice Notes**

1. Violation of physical or mental health of a family member by another family member constitutes a component of physical violence.
2. Family members include: a) individuals who are married, 2) individuals who reside as one family, but are not married to each other, 3) their children, 4) individuals who are under guardianship or care, 5) individuals who are directly or indirectly related provided that they are living together.
3. Methods of responding to domestic violence are: 1) forms of response by officers of local police and children's criminal services – a warning, a protective order, 2) administrative responsibility, 3) criminal responsibility.
4. One should remember the mechanism defined in part 5 of Article. 43 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation" with regard to the refusal of medical intervention carried out by a legal representative of the patient which could have grave consequences for the latter. This normative provision establishes the responsibility of a doctor to report such a refusal and its consequences for the patient to the guardianship and care authorities that are among the bodies that, according to Art. 3 of the Law of Ukraine "On Prevention of Domestic Violence", are entrusted with the implementation of measures to prevent domestic violence.

## **6.2.2 Responsibility to Undergo Preventive Medical Screenings and Vaccinations**

**a) In cases established by the law patients are obliged to undergo preventive medical screenings and vaccinations.**

**b) Responsibility as stated in Country Constitution/Legislation**

- ▶ **Civil Code of Ukraine of January 16, 2003 [Article 286 (part 4)].**

"An individual may be required to undergo a medical examination in cases established by law".

- ▶ **Administrative Code of Ukraine of December 7, 1984 [Articles 44-1, 45].**

"Evasion of medical screenings or medical examinations:

Evasion by an individual who suffers from drug addiction of medical examinations to establish the presence of drugs in the body will result in a fine ranging from five to eighteen untaxed minimum wages. Evasion by an individual who abuses drugs or psychotropic substances of medical examinations will result in a fine ranging from eighteen to forty-three times

the untaxed minimum wages” (Art. 44-1).

“Evasion of screenings and preventive treatment by individuals suffering from venereal diseases:

evasion of a screening by an individual for whom there is sufficient data that he/she suffers from a venereal disease or of treatment by an individual who has been in contact with a patient who suffers from a venereal disease and requires prophylactic treatment, which persists even after a warning has been issued to them by public health authorities, shall result in a fine of three to five times the untaxed minimum wages” (Art. 45).

▶ **Labor Code of Ukraine of December 10, 1971 [Articles 46, 169, 191].**

Art. 46 of the Code establishes the grounds for suspension of employees from work; in particular, a refusal or an evasion of compulsory medical examinations.

▶ **On Labour safety: Law of Ukraine of October 10, 1992 [Article 17].**

▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 10 (paragraph “b”), 30, 31].**

“Citizens of Ukraine in cases stipulated by law must undergo preventive medical screenings and vaccinations” (paragraph “b” Art. 10).

“Mandatory medical examinations:

For the protection of public health, preventive medical examinations of minors, pregnant women, employees of enterprises, institutions and organizations with harmful and dangerous working conditions, military personnel and individuals whose professional and other activities involves servicing the population or increased danger to others are organized” (Art. 31).

▶ **On Protection of the Population from Infectious Diseases: Law of Ukraine of April 6, 2000 [Article 12].**

“Employees of certain professions, enterprises and organizations whose activities may lead to infection of these employees and (or) spread of infectious diseases by them are subject to mandatory preventive vaccinations... Competent adult citizens undergo preventive vaccinations with their consent after being provided with objective information about the vaccine, the consequences of refusing to undergo the vaccination and possible complications after the vaccination ...”.

▶ **On Ensuring Sanitary and Epidemiological Welfare of the Population: Law of Ukraine of February 24, 1994 [Articles 5 (part 3), 7 (paragraph 5 part 1)].**

“Citizens must undergo mandatory medical examinations and vaccinations in cases established by law” (part 3 Art. 5).

### **c) Supporting Regulations/ Bylaws/ Orders**

- ▶ **On Approval of the Procedure for Mandatory Preliminary and Periodic Psychiatric Examinations and a List of Medical Psychiatric Counterindications for Carrying out Certain Types of Activities: Resolution of the Cabinet of Ministers of Ukraine of September 27, 2000 No. 1465.**
- ▶ **On Approval of the Procedure for Conducting Obligatory Preliminary and Periodical Psychiatric Examinations: Order of Ministry of Health of Ukraine of January 17, 2002, No. 12.**
- ▶ **On Approval of the Procedure for Conducting Medical Examinations of Employees of Certain Categories: Order of the Ministry of Health of Ukraine of May 21, 2007 No. 246.**
- ▶ **On Approval of the Procedure for Conducting Medical Examinations and Screenings of Individuals who Abuse Drugs or Other Psychotropic Substances: Order of the Ministry of Health of Ukraine of June 16, 1998 No. 158/417.**
- ▶ **On Procedure for Conducting Preventive Vaccinations in Ukraine, Quality Control and Use of Immunological Drugs: Order of the Ministry of Health of Ukraine of February 3, 2006 No. 48.**
- ▶ **Provision on Medical Offices at Pre-schools: Order of the Ministry of Health of Ukraine and Ministry of Education and Science of Ukraine of August 30, 2005 No. 432/496.**
- ▶ **On Improving Outpatient Care of Children in Ukraine: Order of the Ministry of Health of Ukraine of November 29, 2002 No. 434.**
- ▶ **On Approval of the Provision on Medical Examination of Driver's License Applicants and Drivers of Vehicles: Order of the Ministry of Health of Ukraine of June 5, 2000 No. 124/345.**
- ▶ **On Clinical Examination of the Population: Order of the Ministry of Health of Ukraine of August 27, 2010 No. 728.**

### **d) Provider Code(s) of Ethics**

There are no provisions in existing codes of ethics on this matter.

## e) Other Relevant Sources

There are no other relevant sources on this matter.

## f) Practical Examples

### 1. Example(s) of Compliance

Employees of the enterprise “X”, a manufacturer of beauty products, were sent to undergo a periodic preventive drug screening that is mandatory for this category of employees once a year. The employees underwent the drug screening, psychological testing and medical lab tests. After the screening, the staff received certificates for passing the preventive drug screening.

### 2. Example(s) of Violation

In one family in village B. of Polonskyj District, 4 people fell sick and died of diphtheria, including three children. Members of this family belonged to a religious sect and therefore refused to undergo a vaccination against the disease. As a result, the refusal of the medical intervention led to lethal consequences.

### 3. Actual Case(s)

An employer filed an application to have a periodic medical examination of two employees conducted: Mr. Zh., born in 1990, and Mr. N., born in 1991, (as individuals under 21 years of age). Sanitary-epidemiological services together with a trade union representative passed an act singling out these employees as those who should undergo the periodic medical examination. The employer provided conditions for conducting the examination, including a timely renewal of the contract with the health care facility, sent to the facility the lists of employees, informed the employees. But the employees, without providing grounds for their refusal, did not undergo the examination, assuring the employer that they were perfectly healthy. Since the deadline for passing the medical examination passed and the employees refused to undergo the examination, the employer dismissed the employees without pay on the basis of Article 46 of the Labor Code of Ukraine and paragraphs 3.6, 3.9 of the Order of the Ministry of Health of Ukraine “On Approval of the Procedure for Conducting Medical Examinations of Employees of Certain Categories.”

## g) Practice Notes

1. An employer dismisses from work those employees who fail to pass medical examinations within an established timeline and restrains from work those employees who by the results of medical examinations are established not to be fit to work for health reasons: this is not to be considered a violation of the right to personal integrity.
2. An employer has the right to submit an employee who evades mandatory medical examinations to disciplinary measures.

3. Upon a recommendation of appropriate officials from the State Sanitary and Epidemiological Service, enterprises, institutions and organizations are obliged to remove from work, study, attendance of pre-schools those individuals who are carriers of pathogens of infectious diseases, patients with infectious diseases dangerous for the surrounding, or people who are in contact with such patients, with payment of social security assistance in the manner established by law as well as those individuals who evade mandatory medical examinations or vaccinations against the infections listed by the centralized executive bodies managing the health care sector.

### **6.2.3 Responsibility to Provide Immediate Assistance to Other Citizens Whose Lives and Health Are in Danger**

**a) Patients shall provide immediate assistance to other citizens whose lives and health are in danger.**

**b) Responsibility as stated in Country Constitution/Legislation**

- ▶ **Criminal Code of Ukraine of April 5, 2001 [Article 136].**

“A failure to help an individual whose life is at risk:

A failure to assist a person who is in a life-threatening situation when such assistance can be provided, or a failure to inform appropriate authorities about this state of an individual or individuals, when such failure caused serious bodily injury, is punishable by a fine of two hundred to five hundred times the untaxed minimum wages or public labor for a term of one hundred and fifty to two hundred and forty hours, or an arrest for up to six months “.

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 10 (paragraph “c”), 37].**

“Citizens must provide emergency care to other citizens whose life and health are threatened” (paragraph “c” Art. 10). “In urgent cases when medical assistance cannot be provided due to lack of medical personnel at hand ... citizens must provide transportation to transport a patient to a health care facility” (Art. 37).

**c) Supporting Regulations/Bylaws/Orders**

There are no relevant supporting regulations of this particular responsibility.

#### **d) Provider Code(s) of Ethics**

There are no provisions in existing codes of ethics on this matter.

#### **e) Other Relevant Sources**

There are no other relevant sources on this matter.

#### **f) Practical Examples**

##### **1. Example(s) of Compliance**

At about 11:30, on March 16, in a private house in city M., a fire broke out, the roof beams were burning. Rescuers from the Ministry of Emergency Situations (MES) localized the fire in the shortest possible time and saved the adjacent private buildings. During the fire, an 82-year old owner of the building and his 25-year-old grandson, who pulled the grandfather out of the fire, were in the building. The young man did not lose his presence of mind and administered first aid to an individual who was in the situation that presented threat to his life and health, he called the MES services to request a fire squad and an ambulance.

##### **2. Example(s) of Violation**

On the highway between city Ch. and city V., a driver of “Volkswagen” lost control of the vehicle, drove off the road and crashed into a tree. Due to the indifference of the motorists who were passing by the accident and did not provide first aid to the victims, 5 people died.

##### **3. Actual Case(s)**

A man was seriously injured in a rural area. The condition of the victim required immediate medical assistance, including a surgical intervention. A paramedic provided necessary medical assistance and called for an ambulance from the city, but given the serious condition of the patient and in order to avoid losing time, he asked the owner of a nearby car to take the victim to the hospital. The owner of the car (the car was in a working condition) refused the request of the paramedic, thus forsaking his responsibility to provide emergency assistance to an individual in a life-threatening situation. There were no other cars nearby. The victim died two and a half hours after having been injured while in an ambulance on the way to the hospital. An investigation into the death of the victim was conducted and on the basis of its results a criminal case regarding the failure to assist an individual in a life-threatening situation was opened (part 3 Art. 136 of the Criminal Code of Ukraine). The owner of the car was exempted from criminal liability under the Law of Ukraine on Amnesty (Article 44 of the Criminal Code of Ukraine).

### **g) Practice Notes**

1. If a health care practitioner failed to provide assistance to an individual in a life-threatening situation, he/she is subject to criminal liability under Art. 139 of the Criminal Code of Ukraine "Failure of a Medical Practitioner to Assist a Patient".

## **6.2.4 Responsibility to Adhere to a Prescribed Treatment Regimen and Comply With the Internal Rules of a Health Care Institution**

**a) This responsibility corresponds to the right of a health care practitioner to refuse to continue to oversee a patient.**

### **b) Responsibility as stated in Country Constitution/Legislation**

- ▶ **Criminal Code of Ukraine of April 5, 2001 [Articles 139, 140].**
- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Article 34 (parts 2, 3)].**

Art. 34 of Principles establishes the responsibility of a patient via the right of a doctor, namely: "A doctor has the right to refuse to continue to oversee a patient if the latter does not adhere to medical prescriptions or internal rules of a health institution provided that such adherence does not threaten the life of the patient and public health. The doctor is not responsible for the health of a patient in case the latter refused to adhere to medical prescriptions or breached the regiment established for him/her"

### **c) Supporting Regulations/ Bylaws/ Orders**

- ▶ **Instructions on the Procedure for Filling Out a Disability Leave Certificate: Order of the Ministry of Health of Ukraine, the Ministry of Labor and Social Policy of Ukraine, Social Insurance Fund for Temporary Disability, Social Insurance Fund for Work Accidents and Occupational Diseases of November 3, 2004 No. 532 / 274/136-os/1406 (paragraph 4.1).**

"If a patient violated a prescribed regiment, a physician indicates the type of the violation in a disability leave certificate (e.g., late arrival to doctor's appointment, abuse of alcohol, drugs, toxic substances during treatment, showing up at work without a permission from the doctor, leaving a health care institution without permission, leaving to undergo treatment in another health care institution without receiving a certified permission to do so, etc.).

#### **d) Provider Code(s) of Ethics**

There are no provisions in existing codes of ethics on this matter.

#### **e) Other Relevant Sources**

There are no other relevant sources on this matter.

#### **f) Practical Examples**

##### **1. Example(s) of Compliance**

Mr. D. asked a family doctor for medical assistance on account of feeling ill. The doctor assigned a number of tests and thus established the diagnosis: “Arterial Hypertension”. He provided the patient with medical information and recommended certain methods of treatment. The patient agreed to the treatment, carefully followed all the instructions and kept all follow up visits with the doctor scheduled in advance.

##### **2. Example(s) of Violation**

A patient underwent a neurological surgery. While discharging the patient, an attending physician informed the patient about the postoperative regiment and how he should adhere to medical prescriptions, supplying him with a discharge sheet and a memo. For example, the patient was warned that the next day after the discharge he should visit a family doctor for a consultation in the office or call and ask a family doctor to visit him at home, inform the doctor of any complications. The patient contacted the doctor only four days later with a complaint of hyperthermia, general weakness, sharp pain in the area of the surgical intervention. A failure to comply with the recommendations resulted in the development of complications, their severity.

##### **3. Actual Case(s)**

Mr. D. was a patient at a gastroenterology department of the city hospital of city Zh. due to an aggravation of gastritis. The patient was assigned a treatment to which he consented but adhered to it only periodically. A nurse repeatedly complained to the doctor that despite her requests and explanations the patient refused to take pills, smoked in the hallway of the department, violated the dietary regiment. An attending physician also noted that the patient left the hospital without informing the medical staff about it, repeatedly failed to appear at the morning and evening rounds, did not follow prescriptions. Given the absence of the threat to life and health of the patient, the attending physician’s report, explanations of the nurse, the chief of staff of the hospital decided to discharge the patient from the hospital early and in a disability leave certificate indicated the violations of the assigned regiment by the patient, in accordance with Article 34 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation” and paragraph 4.1 of the Instructions on the Procedure for Filling Out a Disability Leave Certificate: Order of the Ministry of Health of Ukraine, the Ministry of

Labor and Social Policy of Ukraine, Social Insurance Fund for Temporary Disability, Social Insurance Fund for Work Accidents and Occupational Diseases of November 3, 2004.

### **g) Practice Notes**

- 1.** This responsibility corresponds to the doctor's right to refuse to continue to oversee a patient. Due to literary interpretation of legislative norms follows that only one subject from the circle of medical workers, is empowered with a right to refuse to continue to oversee a patient.
- 2.** The legality of exercising this right is dependent on the absence of a threat to patient's life and public health in general and the following are the pre-conditions for the refusal: 1) the patient does not adhere to a prescribed treatment, 2) the patient does not adhere to the rules and regulations of the health care institution.
- 3.** In terms of the first precondition, the doctor-patient relationship is based on the principle of equality and is dispositive. By exercising his or her right to receive professional medical care, including the right to make a choice of the methods of treatment, a patient gives an informed voluntary consent to a medical intervention in accordance with the legislation (part 2 of Article 284 of the Civil Code of Ukraine, Article 43 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation"). From this point onward and until a refusal to continue with this intervention, the patient is responsible for adhering to the prescribed treatment. According to part 3 of Article 34 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation", a doctor is not responsible for the state of health of a patient in case the latter refuses to adhere to the prescribed treatment.
- 4.** In terms of the second precondition, the relationships between the parties of a medical contract are administrative, hierarchical. Namely, a patients who exercises his or her right to professional medical assistance, including the choice of a health care institution, must adhere to the rules and regulations of the health care institution of his/her choice. It is certainly a responsibility of health care practitioners to inform the patient of such rules, as confirmed by the patient's signature in his or her inpatient file. A doctor is not responsible for the state of health of the patient in case the latter violates the prescribed regiment and regulations (part 3 of Article 34 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation").
- 5.** The list of cases in which a physician has the right to refuse to provide medical assistance is clearly defined and comprehensive, thus serving as another guarantee of the rights of patients. As a general rule, a refusal to provide medical assistance to a patient is an unlawful act that in certain cases constitutes a criminal offense, namely: "Failure of a Medical Practitioner to Provide Medical Assistance to a Patient" (Article 139 of the Criminal Code of Ukraine), "Inadequate Carrying Out of Professional Duties by a Medical or Pharmaceutical Practitioner" (Article 140 of the Criminal Code of Ukraine), etc.
- 6.** See also practice notes in subchapter 7.1.8.

### **6.2.5 Responsibility to Receive Medical Assistance Without One's Own Consent or Consent of One's Own Representative in Emergency Situations When There Is a Real Threat to One's Life**

**a) This responsibility corresponds to the right of a health care practitioner to perform a medical intervention without the consent of a patient and/or his/her legal representatives.**

#### **b) Responsibility as stated in Country Constitution/Legislation**

- ▶ **Constitution of Ukraine of June 28, 1996 [Article 29 (part 1)].**

*“Every individual has the right to ... bodily integrity.”*

- ▶ **Civil Code of Ukraine of January 16, 2003 [Article 284 (part 5)].**

“In urgent cases, if there is a real threat to the life of an individual, medical assistance is granted without the consent of the individual or his or her parents (adoptive parents), guardian, trustee.”

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Article 43 (part 2)].**

“In urgent cases when there is a real threat to the life of a patient, the consent of the patient or his legal representatives to a medical intervention is not required.”

#### **c) Supporting Regulations/Bylaws/Orders**

There are no relevant supporting regulations of this particular responsibility.

#### **d) Provider Code(s) of Ethics**

- ▶ **Code of Ethics of Physicians of Ukraine, adopted and signed at the National Congress of Health Care Organizations and at the X Congress of the Ukrainian Medical Association on September 27, 2009 (paragraph 3.5).**

“Treatment and diagnostic measures may be performed without the consent of a patient only when there exists a threat to his/her life and health and when he/she is unable to evaluate the situation adequately.”

## e) Other Relevant Sources

There are no other relevant sources on this matter.

## f) Practical Examples

### 1. Example(s) of Compliance

A patient was diagnosed with kidney tumor without metastasis and presence of permanent macro hematuria. Physicians noted that, given the life signs of the patient, a nephrectomy will be performed. The patient had doubts, since he was warned of the high degree of risk associated with possible pulmonary embolism, major blood loss, and high mortality.

### 2. Example(s) of Violation

A woman on the fifth week of pregnancy contacted a medical institution to have abortion performed. During this medical intervention, a perforation of the uterus took place. The doctor did not immediately diagnose the injury. Only a day later, when the woman was hospitalized in a serious condition, the perforation was found; however, the woman did not give consent to have hysterectomy, arguing that she was young, had no children and did not want to lose her reproductive function. The doctors informed the patient about possible consequences, obtained a written refusal to the procedure, and assigned medication-based treatment. A few days later, in an intensive care unit, the patient died of multi-septic state.

### 3. Actual Case(s)

A 10-year old boy who fell from the balcony of the 3rd floor and received injuries which caused blood loss was hospitalized in the regional children's hospital. On the basis of examination, the doctors determined that the boy needed an urgent blood transfusion; however, the parents did not consent to the intervention, arguing that such a procedure can be dangerous for the child because there is a risk of an HIV infection, hepatitis B and C infections. The doctors informed the parents about possible consequences of their refusal for their son, but the parents insisted not to perform the transfusion. Having assessed the overall state of the patient, the council of doctors (headed by the clinical deputy chief of staff of the hospital), the medical practitioners decided that alternative methods were ineffective in this case, the extent of bleeding involved could not be stopped with medication-based treatment, the blood loss could not be compensated for by other means, and therefore, given the life signs, they decided to perform the blood transfusion. A few hours later, the state of the patient stabilized. The parents wrote a complaint against the medical practitioners to the Department of Health at the State Administration of region L. By the order of the head of the Department of Health, the commission was created which found that the medical practitioners were guided by the need of urgency, the medical intervention was carried out in accordance with current laws, on the basis of life (absolute) indications. The parents, who were invited to the commission's meeting when

it reviewed their complaint, were offered an explanation of all the possible consequences of their refusal for the child's health, the adequacy of the action of the doctors in this situation. The conflict between the parents and the doctors was thus resolved.

### **g) Practice Notes**

- 1.** The law does not contain a list of extreme emergency situations that pose a real threat to the life of a patient and which give a doctor the right to perform a surgery, use complex diagnostic methods, etc. without the consent of the patient or his/her legal representatives.
- 2.** By providing a patient with medical care in an urgent situation, a doctor acts in a state of emergency, that is the harm that can be caused to the patient is less than the averted danger.
- 3.** If a doctor failed to undertake all measures necessary to ensure a successful outcome of a surgery or another medical intervention, or otherwise improperly performed his/her professional duties, an appeal to the state of emergency is not going to be valid and, given an unfavorable outcome of the intervention, the physician will carry responsibility for his/her unlawful actions .
- 4.** See also practical advice in subsection 7.1.9.