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National Patients’ Rights and Responsibilities

6.1 Patients’ Rights

INTRODUCTION

At the current stage in the legal regulation of health care in Ukraine, the protection of human rights in health care is of great importance and relevance. A novelty of Ukrainian legislation is Article 24-1 “Protection of patients rights” of the law of Ukraine “On principles of Ukrainian Health Care Legislation”, where it has been declared the adoption of special law, which will define legal, economic, organizational basics of patients’ rights and legal interests protection. Multifaceted analysis of the national regulatory framework allows one to define clearly the rights of patients and to identify gaps in existing legislation in this area. For today patients’ rights are regulated most fully by the Law of Ukraine “Principles of Ukrainian Health Care Legislation” of November 19, 1992, the so-called Declaration of Human Rights for Health Care. In addition, the rights of patients can be determined on the basis of the norms of the Constitution of Ukraine of June 28, 1996, the Civil Code of Ukraine of January 16, 2003,

and the Physician's Oath approved by the Decree of the President of Ukraine of June 15, 1992. The elaboration of the national catalogue of patients' rights grounded in the European Charter of Patients' Rights is guided by the strategic course of Ukraine towards integration with the European Union and by numerous normative legal acts which reflect this course, in particular the Law of Ukraine "National Program for Adapting the Legislation of Ukraine to the Legislation of the European Union" of March 18, 2004, the Action Plan "Ukraine – European Union" approved by the Cabinet of Ministers of Ukraine on February 12, 2005 as well as an economic reform program for 2010-2014 "Prosperous Society, Competitive Economy, Efficient State" developed by the Committee on Economic Reform at the Administration of the President of Ukraine. This approach enables scholars and practitioners of medicine and law to identify gaps and shortcomings of the Ukrainian legislation, to define the main directions for improving the regulatory framework for health care, which is recognized as one of the priority areas for adapting the legislation of Ukraine to the legislation of the European Union (part V of the Law of Ukraine "National Program for Adapting the Legislation of Ukraine to the Legislation of the European Union" (18.03.2004)).

6.1.1 Right to Preventive Measures

a) Right 1 as stated in the European Charter of Patients' Rights (ECPR)

Every individual has the right to a proper service in order to prevent illness.

b) Right as stated in Country Constitution/ Legislation

▶ **Constitution of Ukraine of June 28, 1996 [Article 49 (parts 1, 2)].**

"Health care is provided through state funding of relevant socio-economic, medical and sanitary, health and prevention programs" (part 2).

▶ **Civil Code of Ukraine of January 16, 2003 [Articles 283, 286 (part 4)].**

▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 3 (part 1), 4 (paragraph 7), 6, 10 (paragraph "a", "b"), 31, 32, 35-1, 42, 43 (part 1), 53, 78 (paragraph "a")].**

In particular, according to Art. 4, the principles of health care include a preventive approach to health care.

Art. 6 guarantees the right to health which includes also the right to sanitary and epidemiological welfare on a territory or in a settlement where a citizen resides and a professional health and sanitary care.

“The state promotes healthy living of the population through ... the organization of medical, ecological and physical education ... creation of necessary conditions, including medical monitoring, for ... the development of a network of medical and athletic facilities, prevention clinics and other health care institutions ...” (part 1 Art. 32).

According to Art. 42, a medical intervention – the use of preventive methods ... that influence a human body – is allowed only when it can not harm the health of a patient.

- ▶ **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)).**

“Health authorities and health care facilities, medical staff and employees of educational and cultural institutions must promote public hygiene skills, healthy lifestyle” (part 3 Art. 21).

- ▶ **On Protection of the Population from Infectious Diseases: Law of Ukraine of April 6, 2000 [Articles 10, 11, 12, 21].**

“Organizing and carrying out prophylactic and preventive measures ... is imparted to the executive authorities, local government ... public health care institutions, enterprises, other institutions and organizations irrespective of their form of ownership as well as citizens” (part 1 Art. 11).

- ▶ **On Psychiatric Care: Law of Ukraine of February 22, 2000 [Article 9].**

“An individual may be declared temporarily (for up to five years) or permanently unfit to perform certain activities (work, jobs, services) that may pose immediate danger to him/her or others because of a mental disorder. To establish the capacity of an individual to perform certain activities (work, jobs, services) that place special demands on the state of his/her mental health, the individual is subjected to mandatory preliminary (before the activity) and periodic (in the process of) psychiatric examinations”.

- ▶ **On Combating Tuberculosis: Law of Ukraine of July 5, 2001 [Articles 8, 9].**

“In order to ensure timely detection of individuals infected with mycobacterium tuberculosis and tuberculosis patients, preventive medical screenings of the population are also conducted” (part 2 Art. 8). Categories of

individuals who are subject to obligatory preventive medical screenings for tuberculosis are also determined (part 3 Art. 8).

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].**

Section 2 singles out a number of most important directions and principles of health care development in Ukraine. In particular, it requires a reorientation of health care through the substantial strengthening of measures to prevent diseases and to create conditions for healthy living. Section 5 emphasizes an intensification of prevention activities in the health care system by improving the regulatory framework and formulating state policy aimed at preserving and promoting the health of the population

- ▶ **On the Physician's Oath: Decree of the President of Ukraine of June 15, 1992, [paragraphs 1, 6, part1].**

"All knowledge, strength and ability should be dedicated ... to treat and prevent diseases" (paragraph 1), "by example to promote education of physically and morally healthy generation" (paragraph 6).

- ▶ **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).**
- ▶ **On 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 the Procedure for Conducting Medical Examinations and Management 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 the Procedure for Conducting Preventive Vaccinations in Ukraine, Quality Control and Circulation of Immunological Drugs: Order of the Ministry of Health of Ukraine of September 16, 2006 No. 595.**
- ▶ **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 Clinical Examinations of the Population: Order of the Ministry of Health of Ukraine of August 27, 2010 No. 728 (paragraph 1).**

“Further development and improvement of preventive health care which aims at preventing diseases, promoting and strengthening health of every citizen of Ukraine is largely dependent on the success of clinical examinations of the population ... Prevention of diseases involves joint prevention measures by many centralized executive bodies and agencies, public organizations, expansion of scientific research aimed at preventing and reducing the incidence and prevalence of diseases, preservation and strengthening of public health”.

- ▶ **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.**
- ▶ **On Approval of Primary Records Form N 063-2/0 “Informed Consent and Evaluation of State of health of a Person or a Child by one of its Parents or other Legal Representative to Conduct Vaccination or Tuberculosis Examination” and a Instruction of its Filling in”: Order of Ministry of Health of Ukraine of January 31, 2009, No 1086.**
- ▶ **Concept of a Nationwide Program “Health – 2020: Ukrainian Dimension” Order of Cabinet of Ministers of Ukraine of October 31, 2011, No. 1164-r.**

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 [paragraphs 2.1, 3.2].**

“A primary goal of professional activities of a physician is ... disease prevention and rehabilitation of health” (paragraph 2.1). “...A physician is obliged, having taken into account specific characteristics of the disease, to use methods of prevention, diagnosis and treatments that he/she considers most effective in each case, keeping in mind the interests of the patient” (paragraph 3.2).

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.

e) Other Relevant Sources

- ▶ **On Observance the Order Concerning Enrollment of the Child into Preschool Educational Institution: Letter of the Ministry of Science, Education, Youth and Sport of Ukraine of 25.05.2011, № 1/9-389.**

f) Practical Examples

1. Example(s) of Compliance

Mr. K., born in 1994, together with his mother visited an outpatient clinic to have a preventive vaccination done. A nurse examined the patient, took his temperature to exclude any acute illness, informed his mother about possible side effects in post-vaccination period and obtained consent in writing from Mr. K and his mother. Only then the health care worker performed the vaccination.

2. Example(s) of Violation

Ms. N. filed an application to a kindergarten for her four-year old son. The head of the child care facility refused to accept the child, stating that the son of Ms. N. was vaccinated improperly, having violated the deadline requirements, and constitutes a danger to other children in the facility. The mother explained to the head of the preschool educational institution that her son could not get vaccinated on time because of medical counter indications and noted that she had a decision of the council of doctors that stipulated that the child could be admitted to and attend a kindergarten. The head did not alter her decision to refuse to accept the son to the pre-school.

3. Actual Case(s)

In April 2006, students of secondary school No. X in village D. were administered a Mantoux test. 15–20 minutes after the injection, the children felt indisposed and experienced deterioration of their state of health that led to their hospitalization. As the analysis of case histories testifies, prior to this type of diagnostic procedure all the children were for all practical purposes healthy. The parents of the children contacted the Research Institute of Virology, a leading academic virological organization. The specialists from the Institute concluded that introducing the children to the tuberculin caused a “glitch” in their immune system with subsequent allergic reorganization of the body and the development of autoimmune reactions. The tuberculin test was administered to the children in April 2006 in accordance with the Order of the Ministry of Health of Ukraine “On the Procedure for Conducting Preventive Vaccinations in Ukraine, Quality Control and Circulation of Immunological Drugs” of February 3, 2006 No. 48. The occurrence of iatrogenic illnesses in the children caused the parents to initiate a lawsuit (currently the case is pending in court). The plaintiffs in the case (seven in this case) demanded compensation for moral and material damage in the amount that cumulatively exceeded 7 million hryvnias.

g) Practice Notes

1. Prevention services include: a) prevention counseling (hygienic instruction and education) of individuals and groups; b) preventive medical examinations to detect early forms of diseases and their risk factors and to carry out wellness activities; c) immunization (vaccination); d) clinical examinations (clinical management and rehabilitation); e) prevention health services (engaging into different kinds of physical activities, attending health resorts, physio-therapy services, massage, etc.).
2. In order to observe human rights when conducting vaccination or tuberculosis examination one should remember the following: a) prophylactic vaccinations are conducted in vaccination rooms, which are established as separate branch division of a hospital, outpatient polyclinic or treatment and preventive health care institutions (further – LPZ) notwithstanding the form of property and operate within LPZ of general education institutions, of educational institutions of III-IV accreditation level, first-aid posts of enterprises; b) in conducting a vaccination there can be involved medical workers (doctor, paramedic, senior specialist with medical education) who were specially trained, know the rules of organization and techniques of conducting vaccination and tuberculosis examination, as well as are skilled to provide urgent medical aid in cases of post-vaccine complications; c) conducting of medical examination is obligatory before vaccination of tuberculosis examination; d) before vaccination or tuberculosis examination there shall be obtained an informed, voluntary and competent consent patient’s consent or his legal representative. The form “Informed Consent and Evaluation of State of health of a Person or a Child by one of its Parents or other Legal Representative to Conduct Vaccination or Tuberculosis

Examination” (form N 063-2/0) is filled in for all patients that are subject to vaccination or tuberculosis examination, notwithstanding their place of residence. A filled in form means that a person or one of the parents of a child or other legal representative receive comprehensive information concerning procedure of conducting vaccination or tuberculosis examination, contraindications for vaccination or tuberculosis examination, vaccine and possible unfavorable consequences. e) prophylactic vaccinations shall be conducted in conformity with sanitary rules, by one-time and self-blocking syringes, which guarantee the safety of the injection during immunization (the dosage is correct and second application of a syringe is impossible) f) after vaccination and tuberculosis examination were conducted there shall be carried out medical observation, as it is indicated in the instructions list of a certain vaccine/toxoid/tuberculin. In case the instruction doesn't indicate on the period during which an observation shall be carried out, a person shall be stay under survey of a doctor within 30 minutes after vaccination. g) medical contraindications are settled by a commission on vaccination, created by order of an LPZ according to the List of medical contraindications to prophylactic vaccination; h) a refusal from vaccination is certified by a mark that medical worker had provided clarification concerning consequences of such refusal and form 063-2/0 is to be filled in and signed by a person (in case of vaccination of underage persons – by their relatives or other legal representatives that substitute them) and medical worker. A territorial Sanitary and epidemiological service is informed of the fact of refusal.

3. To ensure the rights of a patient in the course of a medical examination, one must attend to the following: a) “A Report on the Results of a Periodical Medical Examination of Employees” is written on the basis of the results of the periodic medical examination in six copies and is sent among others to the employer and the trade union representative and this does not constitute a violation of the patient's right to medical privacy, b) a non-routine medical examination of an employee is conducted at the expense of the employer; c) a decision regarding job fitness of an employee is made by a health care institution that conducted the medical examination; d) specialized health care institutions that have the right to establish the diagnosis of an occupational disease on the basis of the results of medical examinations conduct clinical examinations of high risk employees and those with suspected occupational diseases.
4. Taking into account the collisions of legal regulation, the legal practice in the sphere of vaccination, which is not uniform, it should be noted that the issue regarding the abilities – right to education and right to refuse from prophylactic vaccination realization had been excluded. These two rights had been continuously confronting each other, which caused numerous problems both in medical and legal practices. For the time being, according to departmental clarification, a denial of a chief of pre-school educational institution to enroll the child, who was not subjected to prophylactic vaccination, is against the legislation of Ukraine. Chief

of preschool educational institution is obliged to enroll the child if there are medical certificates of a certain form and conclusion of a physician, indicating that this child can go to this preschool institution. (Letter of the Ministry of Science, Education, Youth and Sport of Ukraine of 25.05.2011, No 1/9-389)

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional standards related to the right to preventive measures in the context of the right to the highest attainable standard of physical and mental health discussed in sections 2 and 3.

6.1.2 Right of Access

a) Right 2 as Stated in the ECPR

Every individual has the right of access to the health services that his or her health needs require. The health services must guarantee equal access to everyone, without discriminating on the basis of financial resources, place of residence, kind of illness or time of access to services.

b) Right as Stated in Country Constitution/Legislation

▶ **Constitution of Ukraine of June 28, 1996 (Article 49 (parts 1, 3)).**

“Everyone has the right to health, medical care and medical insurance (part 1 Art. 49). “The state creates conditions for effective health care accessible to all citizens” (part 3 Art. 49).

▶ **Civil Code of Ukraine of January 16, 2003 [Articles 283, 284].**

“An individual has the right to health” (part 1 Art. 283).

▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 4 (part 4), 6].**

The principles of health care include, among others, equality of citizens, democracy and general accessibility of medical care and other services in the health care sector (part 4 Art. 4).

- ▶ **On Resistance to Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Protection of People Living With HIV: The Law of Ukraine of 12.12.1991. (The wording of 23.12.2010.) [Article 4, (paragraphs 4, 7)]**

“The state guarantees accessibility, and good quality of medical examinations conducted to detect HIV infection including anonymous one, together with previous and further consultative care provision; (paragraph 4) accessibility to means of prophylactic measure, enabling prevention of contracting and spreading HIV through sexual contact (paragraph 7)”

- ▶ **On Approval of the National Program for the Development of Primary Health and Sanitary Care Based on Family Medicine for the Period Ending in 2011: Law of Ukraine of January 22, 2010.**

“The goal of the National Program ... is to reduce the rate of illnesses, disability and mortality by forming and ensuring efficient functioning of the system of public health care that provides affordable and high quality primary health care based on family medicine.”

- ▶ **On Procedure of Carrying out the System of Health Care Reform in Vinnitsa, Dnipropetrovsk and Donetsk Regions and in Kyiv: Law of Ukraine of July 7 2011, No. N 8603**

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **On Approval of the Interim Standards for Medical Care of Adolescents and Youth: Order of the Ministry of Health of Ukraine of June 2, 2009 No. 382.**

“Availability means that the youth has a real opportunity to access services through the simplification of the application process, maximal optimization of the office hours to the needs of the youth, provision of free, comprehensive services and so on.”

- ▶ **Framework for Ensuring Quality of Health Care Services in Ukraine for the Period Ending in 2010: Order of the Ministry of Health of Ukraine of August 1, 2011 No. 454.**

Improving access to medical care is identified among the goals for implementing the Framework, while an increase in the availability and quality of health care is an expected result.

- ▶ **On Approval of a Unitary Glossary of Definitions (Glossary) on the Issues of Management of Medical Care Quality: Order of the Ministry of Health of Ukraine of July 20, 2011 No. 427.**
- ▶ **Issues of Management of Medical Care Quality: Order of the Ministry of Health of Ukraine of July 20, 2011 No. 427.**

Accessibility of medical care – is a free access to health care services, notwithstanding geographical, economic, social, cultural, organizational or language barriers.

In the discussion of the Right to Free Care below, as related to the Right to Access, we will examine those aspects of the right in question that we believe to be the most important in the context of its implementation. All other aspects of the right will be analyzed in other sub-sections, including the right not to be unlawfully discriminated against for health reasons (sub-section 6.1.16).

Right to Free Health Care

a) Every citizen has a right to free medical care in state or local health care institutions

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Article 49 (part 3)].**

“State and municipal health care facilities provide health care free of charge.”

- ▶ **Criminal Code of Ukraine of April 5, 2001 [Articles 184 (part 1), 354].**

“Violation of the right to free health care:

An unlawful demand to pay for medical care in any state or municipal health care institution shall be fined up to one hundred untaxed minimum wages or result in an arrest for up to six months “(part 1 Art. 184).

- ▶ **On the Legal Status of Foreigners and Stateless Persons: Law of Ukraine of February 4, 1994 [Article 10].**

“Foreigners and stateless persons residing permanently in Ukraine and also those who were granted refugee status in Ukraine enjoy medical care at the level of its citizens” (part 1).

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 8 (part 1,2), 18, 35-1 – 35-5]].**
- ▶ **On Protection of the Population from Infectious Diseases: Law of Ukraine of April 6, 2000 [Articles 10 (paragraph 4 part 1), 19 (paragraph 1 part 1)].**

“... Free medical care [is provided] to people suffering from infectious diseases at the state and municipal health care institutions and state research establishments”.

- ▶ **On Combating Tuberculosis: Law of Ukraine of July 5, 2001 [Articles 3 (part 2), 15 (part 1)]**

“The state ... determines ... that every citizen is provided with free tuberculosis care as well as accessibility and equal opportunities in receiving tuberculosis care ...”

- ▶ **On Protection of Childhood: Law of Ukraine of 26.04.2001. [Article 13 (paragraph 1 part 5)]**

“Children from large families shall be granted such benefits:
1) Ability to get medicines by prescription of a physician for free;...”

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **On the Physician’s Oath: Decree of the President of Ukraine of June 15, 1992, [paragraph 2 part 1].**

“... Be selfless and sensitive ...”.

- ▶ **Program for Providing Citizens with Guaranteed by the State Free Medical Care: Resolution of the Cabinet of Ministers of Ukraine of July 11, 2002 No. 955.**

In Art. 2, the Regulation stipulates that state and municipal health care institutions provide free health care of the following types: 1) emergency and urgent care – at the pre-hospitalization stage, the care is provided by emergency and urgent care units when there is a threat to human life, 2) outpatient care, 3) hospital care is provided in case of a severe manifestation of a disease and in urgent cases when intensive treatment, round the clock medical supervision and hospitalization are needed, including when there are indications of an epidemic, to children, pregnant and parturient women, patients upon recommendations of medical and social expert commissions, medical advisory commissions, 4) emergency dental care (in full

is provided to children, disabled, pensioners, students, pregnant women, women with children under 3 years of age), 5) nurse medical care to rural residents, 6) health-resort care to disabled and sick children at specialized and children's health resorts, 7) maintenance of children in orphanages, 8) medical and social assessment of disability.

- ▶ **On Approval of the Procedure for Providing Medical Assistance to Foreigners and Stateless Persons Temporarily Staying on the Territory of Ukraine and Recognition of Some Resolutions of Cabinet of Ministers of Ukraine Void: Resolution of the Cabinet of Ministers of Ukraine of March 22, 2011 No. 667.**

“Foreigners and stateless persons, permanently residing in Ukraine, shall be provided with medical care, including with emergency one for a fee unless the legislation and international agreements ratified by Ukraine do not foresee otherwise” (paragraph 1).

- ▶ **On Regulating Free and Preferential Dispensing of Medicines by Prescription in Cases of Outpatient Care of Certain Groups of Population and Certain Categories of Diseases: Resolution of the Cabinet of Ministers of Ukraine of August 17, 1998 No. 1303.**

To ensure optimal use of budgetary funds, elimination of multiplicity of decisions as to free and preferential dispensing of medicines in cases of outpatient care of certain groups of population and treatment of certain categories of diseases, the list of the groups of population which in case of outpatient care receive medicines by prescription at no cost or on preferential terms (appendix 1 of the Order) and the list of categories of diseases which when treated on the outpatient basis are entitled for free dispensing of medicines (appendix 2 of the Order).

- ▶ **On the Procedure for Purchasing of Medicines by Health Care Establishments and Institutions Financed from the Budget: Order of the Ministry of Health of Ukraine of September 5, 1996 No. 1071.**

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 6.2].**

“At state and municipal medical institutions, a doctor provides free medical care to patients within the amount of funding allocated to the institution.

Extortion by a doctor from a patient or his/her relatives of any fees not covered by the legislative and regulatory acts is criminal and immoral”.

e) Other Relevant Sources

- ▶ **Decision of the Constitutional Court of Ukraine regarding the constitutional petition of 53 People’s Deputies of Ukraine to provide an official interpretation of the provision in part 3 of Article 49 of the Constitution of Ukraine “at state and municipal institutions, health care is provided free of charge” (the case of free medical care) of May 29, 2002.**

“The provision in part 3 of Article 49 of the Constitution of Ukraine “at state and municipal institutions, health care is provided free of charge”, according to the Constitutional Court of Ukraine, should be understood to mean that state and municipal health care facilities provide medical care to all citizens regardless of its extent without any prior, current or subsequent payment for the assistance.

The concept of medical care, the conditions under which medical insurance is introduced, including state medical insurance, the formation and use of voluntary health funds, and also the procedure for providing medical services that go beyond medical care on a fee basis at state and municipal health care institutions and a list of such services are to be determined by the law”.

- ▶ **Decision of the Constitutional Court of Ukraine regarding the constitutional petition of 66 People’s Deputies of Ukraine to examine the conformity of the Resolution of the Cabinet of Ministers of Ukraine “On Approval of the List of Paid Services Provided by State Health Care Institutions and Medical Schools” with the Constitution of Ukraine (the case of paid medical services) of November 25, 1998.**

“The Constitutional Court of Ukraine believes that “a way out of the critical situation pertaining to budgetary financing of health care ...lies in the change of ... the conceptual approach to solving problems related to ensuring the constitutional right to health care, namely: development, approval, and implementation of relevant national programs which would clearly delineate the extent of free medical care provided to all citizens at state and municipal health care institutions which is guaranteed by the state (including supported with government funding)

The list of services that cannot be provided free of charge by the state at state health care institutions includes a medical examination of individuals seeking:

- to obtain a drivers license (section I, paragraph 24, subparagraph “a”);

- to obtain a permit to acquire and carry weapons, except for military and other personnel who are required to carry weapons by law (section I, paragraph 24, subparagraph “b”);
- to obtain relevant documents to travel abroad on invitation of relatives who live abroad (section I, paragraph 24, subparagraph “d”);
- to obtain relevant documents for rehabilitation in medical and health resort facilities abroad initiated by the individual (section I, paragraph 24, subparagraph “d”);
- to obtain relevant documents for business travel, except for civil servants whose work requires such travel and who have relevant medical documents (section I, paragraph 24, subparagraph “d”).

f) Practical Examples

1. Example(s) of Compliance

Mr. Yu, an HIV-positive patient, visited a gastroenterologist at his local clinic with a complaint of pain in the stomach area. After the examination, the patient was diagnosed with stomach ulcer. The doctor noted that the patient can undergo an outpatient treatment, assigned a course of treatment, and issued a prescription, having explained to the patient that he is entitled to free medicines at the pharmacies since HIV-positive patients have the right to free medicines if any disease is present, regardless of the type of the main underlying disease.

2. Example(s) of Violation

The Procuracy of city Kh. initiated a criminal case against a physician of one of the city health care institutions. The study of the case files demonstrates that a middle aged man with a chest pain came to the admissions department. However instead of providing immediate medical assistance to the patient, the medical staff sent his relatives to pay contributions to two charitable funds that operate at the hospital. Meanwhile, the patient was left to walk along the hallways of the admissions department without any assistance: this led to an abrupt deterioration of his state. Subsequently, the patient was diagnosed with an extensive myocardial infarction. After intensive resuscitation measures in the hospital and lasting outpatient rehabilitation, the patient survived but was assigned level 2 disability.

3. Actual Case(s)

Ms. H. appealed to the court to compensate her for material and moral damages. Her underage son P. is disabled, suffering from epilepsy. Current legislation guarantees to him free anticonvulsant medication. Since her son did not receive free of charge medication regularly, she was forced to buy it out of pocket and therefore asked the court to compensate her for the material damage in the amount of 2,650 hryvnias and 97 kopecks. In addition, the plaintiff believed that

she suffered moral damages: namely, deterioration of her living standards, moral suffering. She thus asked the court to compensate her for the moral damage in the amount of 10,000 hryvnias.

In court, it was established that underage P. was suffering from epilepsy since childhood. According to the medical conclusion No. 24 of April 19, 2000, he is disabled and since 1995 he is registered at the Regional Neuro-psychiatric Hospital Named after Yu. and is under medical supervision there.

According to the Resolution of the Cabinet of Ministers of Ukraine of August 17, 1998 No. 1303 "On Regulating Free and Preferential Dispensing of Medicines by Prescription in Cases of Outpatient Care of Certain Groups of Population and Certain Categories of Diseases", Mr. P. has the right to preferential dispensing of monthly anticonvulsant medicines.

Given the above, the court decided that in this case the plaintiff's claims were justifiable and reasonable. The court decided to satisfy the claims in part, with the Regional Neuro-psychiatric Hospital Named after Yu. ordered to pay Ms. H. 2,650 hryvnias and 97 kopeks to compensate for the material damage caused and 900 hryvnias for the moral damage.

g) Practice Notes

To ensure patients' right to free or preferential dispensing of medicines, one should remember the following: 1) free dispensing of medicines is carried out only in case of an outpatient treatment of a primary disease which qualifies the patient for benefits, 2) free and preferential dispensing of medicines in case of outpatient care is carried out by pharmacies on the basis of prescriptions written by doctors from the health care institutions servicing the area where the patient resides, 3) individuals who are treated in medical outpatient facilities affiliated with a particular company or organization and who are eligible for free or preferential dispensing of medicines receive the medicines from the pharmacies affiliated with these facilities, 4) free dispensing of medicines to disabled children under the age of 16 is carried out when a doctor's prescription is presented regardless of the place of residence of the child but within the confines of the Autonomous Republic of Crimea, individual regions, and the cities of Kyiv and Sevastopol, 5) AIDS patients and HIV-positive individuals regardless of the underlying disease are entitled to free medicines if they suffer from any other diseases.

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional standards related to the right of access in the context of the right to non-discrimination and equality discussed in sections 2 and 3.

6.1.3 Right to Information

a) Right 3 as Stated in the ECPR

Article 3. Right to Information

Every individual has the right to access to all kinds of information regarding their state of health, the health services and how to use them, and all that scientific research and technological innovation makes available.

b) Right as Stated in Country Constitution/Legislation

► **Constitution of Ukraine of June 28, 1996 [Articles 32 (part 3), 34].**

“Every citizen has the right to examine the information about oneself that is not a state or other secret protected by law at the offices of state authorities, local government, institutions and organizations” (part 3 Article 32.).

► **Civil Code of Ukraine of January 16, 2003 [Articles 285, 302].**

“The right to information about the state of one’s health:

1. An adult individual has the right to accurate and complete information about his/her state of health, including familiarization with relevant medical documents pertaining to health.

2. Parents (adoptive parents), guardians, trustees are entitled to information about the state of health of the child or the ward.

3. If information about a disease of an individual can worsen his/her health or impair the health of individuals identified in part two hereof, can impede treatment, health care practitioners have the right to provide incomplete information about the state of health of the individual, limit access to individual medical records.

4. In case of death of an individual, members of his/her family or other individuals authorized by them may be present when the causes of his/her death are examined and become acquainted with the conclusions about the causes of death and have the right to appeal these findings in court” (Art. 285).

► **On Information: Law of Ukraine of October 2, 1992 (wording of January 13, 2011) (Article 31).**

“Confidential information about physical person includes in particular data of persons health” (part 2 Article 11).

- ▶ **On Protection of Consumer Rights: Law of Ukraine of May 12, 1991 (in the reading of December 1, 2005) [Articles, 4 (part 4), 21 (part 1)].**

“... The rights of consumers are considered to be violated if in any way (except as provided by law) the right of a consumer to receive needed, accessible, accurate and timely information about a relevant product (any product, work or service) is restricted” (paragraph 5 part 1).

- ▶ **On Personal Data Protection: Law of Ukraine of June 1, 2010 [Articles 16-19].**
- ▶ **On Access to Public Information: Law of Ukraine of January 13, 2011. [Articles 1, 5, 6, 10, 11, 12, 13, 19-22]**
- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 6 (paragraph “f”), 39].**

Paragraph “f” of Art. 6 guarantees to an individual the right to accurate and timely information about his/her state of health and public health, including existing and possible risk factors and their degree.

“A patient who has reached adulthood is entitled to receive accurate and complete information about his/her state of health, including familiarization with relevant medical documentation regarding his /her health. Parents (adoptive parents), guardians, trustees have the right to obtain information about the state of health of the child or the ward” (parts 1, 2 Art. 39).

- ▶ **On Protection of the Population from Infectious Diseases: Law of Ukraine of April 6, 2000 [Articles 17, 19 (paragraph 2, part 1)].**

“Citizens ... are entitled to receive accurate information about the epidemic situation in Ukraine” (part 1)

“... Individuals suffering from infectious diseases or those who are carriers of bacteria have the right to receive accurate information about the outcome of their medical screening, examination, and treatment and to receive recommendations on prevention of infectious diseases” (paragraph 2 part 1 Art. 19).

- ▶ **On Psychiatric Care: Law of Ukraine of 22 February, 2000 [Article 6 (part 2)].**

“The right to obtain and use confidential information about the state of mental health of an individual and to receive psychiatric care belongs to the individual or his/her legal representative”.

- ▶ **On Resistance to Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Protection of People Living With HIV: The Law of Ukraine of 12.12.1991. (The wording of 23.12.2010.) [Articles 7 (paragraph 3) 13 (paragraph 4)]**

“Transfer of data about the results of person’s medical examination aimed at HIV detection, about the fact whether a person has HIV or not, by medical worker is allowed only: to a person, who was examined; and in cases and under conditions foreseen by part 3 of article 6 of this law, – to parents or other legal representatives of such person... (part 4, article 13). In case HIV was detected during examination of children in the age under 14 and persons, recognized incapable in order established by law, an authorized medical worker informs of this fact parents and other legal representatives of these persons... (part 3 article 7).”

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **“On Lists of Data, that Include Official and Confidential Information in the Ministry of Health of Ukraine”: Order of Ministry of Health of Ukraine of August 16, No. 517.**
- ▶ **On Approval of Primary Records Form N 063-2/0 “Informed Consent and Evaluation of State of health of a Person or a Child by one of its Parents or other Legal Representative to Conduct Vaccination or Tuberculosis Examination” and a Instruction of its Filling in”: Order of Ministry of Health of Ukraine of January 31, 2009, No 1086.**

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 3.7].**

“A patient has the right to full information about his/her state of health but he/she can refuse an access to this information or designate an individual to whom the information about his/her state of health can be communicated. The information can be withheld from the patient in cases when there are substantial grounds for believing that it could cause him/her serious harm. However, if the patient insists, a doctor is obliged to provide him/her with full information. In case of unfavorable prognosis for the patient, he/she is to be informed delicately and carefully, leaving hope for the continuation of life, a possible successful outcome”.

e) Other Relevant Sources

- ▶ **Decision of the Constitutional of Court of Ukraine regarding the official interpretation of Articles 3, 23, 31, 47, 48 of the Law of Ukraine “On Information” and Article 12 of the Law of Ukraine “On Procuracy” (the case of K. H. Ustymenko) of October 30, 1997.**

The Decision stipulates that medical information is data about state of health of an individual, his/her medical history, the purpose of the proposed studies and treatment, prognosis of the progression of the disease, including presence of the risk to life and health; this information according to its legal status is confidential. The Decision of the Constitutional Court of Ukraine also states that the duty of a doctor is to provide a patient and his/her family members or legal representatives with this information fully and in an accessible form at their request. This document also provides that in special cases when the information can harm the health of the patient, the doctor may limit the information. In this case, the doctor informs the family members or legal representatives of the patient, taking into account personal interests of the patient. The doctor acts in the same way when the patient is unconscious.

f) Practical Examples

1. Example(s) of Compliance

Citizen applied in a written form to head doctor of health care institution, in which he asked to give him a copy of medical card of the in-patient and X-ray pictures of his son, born 1995. These materials were necessary for him in order to get a consultation of specialists of the Institute of Traumatology and Orthopedics of the Academy of Medical Sciences of Ukraine. Head doctor, having considered an application, gave the applicant appropriate medical documentation.

2. Example(s) of Violation

Following an established legal procedure, the wife of Mr. M. who died in one of the hospitals of city Kh. requested the chief of staff of the medical institution to provide her with medical documentation, in particular copies of the medical records needed to ascertain the actual circumstances of the death of her husband and protect the interests of his heirs. In response to her request, she received a letter signed by the chief of staff which stated that her request to receive the medical information contradicts Articles 39 and 40 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation” and that the request to receive copies of the medical records violates the Law of Ukraine “On Information” and the Law of Ukraine “On Citizens’ Requests” and that the documents which she would like to receive can be provided only to the Procuracy and the courts in accordance with the established procedure.

3. Actual Case(s)

1. The Medical Social Expert Commission at the Department of Health and Medical Supplies of the City Administration of Kyiv (hereafter MSEC) refused to increase the level of disability assigned to Mr. B. In order to contest this unlawful, according to the citizen, decision of MSEC, he asked multiple times for an opportunity to familiarize himself with the records of his medical examination and to receive a formally certified copy of the act of medical examination by MSEC. Some of these requests remained unanswered while the responses he received contained a denial of his request without providing sufficient grounds for the denial.

In order to protect his right to medical information about his state of health, including the right to examine his medical records, Mr. B. appealed to the Administrative Court of one of the city districts of Kyiv to commit MSEC to undertake certain actions. During the trial, it was established that despite the fact that the information requested by the plaintiff concerning his person and the access to this information is not restricted by the law, the defendant denied the plaintiff an opportunity to get acquainted with the requested documents and to obtain officially certified copies of the examination conducted by MSEC; this is contrary to the norms of Articles 9, 31, part 8 of Article 32, and part 8 of Article 35 of the Law of Ukraine "On Information," Article 39 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation." Thus, with respect to the plaintiff, the defendant acted not in the way the laws of Ukraine prescribe, without due consideration and lacking right judgment; therefore, these actions of the defendant are unlawful and the claims of Mr. B. are justified. The Ruling of the Regional Administrative Court of Kyiv of October 24, 2007 satisfied in full the claims of the plaintiff.

2. Attorney M. contacted Department of Health with a complaint against the actions of the chief of staff of one of the hospitals of city L. Among other things, the complaint stated that the attorney requested information about the state of health of Mr.D., a son of his client with whom he signed a written agreement to provide him with legal assistance. The attorney referred to paragraph 2 of Article 285 of the Civil Code of Ukraine: "Parents ... are entitled to the information about the state of health of their child." The response of the authorized body stated that, according to Article 1 of the UN Convention of 1989 (ratified by Ukraine in 1991 in compliance with the procedure established by the legislation) and Article 6 of the Family Code of Ukraine, every human being prior to 18 years of age is considered a child unless according to the law applied to this individual he or she reaches adulthood earlier. Mr. D. does not belong to this age group and therefore cannot be considered a child under the current legislation. However, an adult individual has the right to accurate and complete information about his or her state of health: in other words, Mr. D himself has this right. Therefore, given the circumstances, the parents have no right to receive the requested information. In addition, the attorney was reminded that he had not provided any documents that testify to his right to represent the interests of Mr. D. Consequently, all medical information as well as the fact of seeking medical assistance are withheld from him on the grounds of medical confidentiality as required by Article 286 of the Civil Code of Ukraine, Article 23 of the Law of Ukraine "On Information," Articles 39-1, 40 of the

Law of Ukraine “Principles of Ukrainian Health Care Legislation.” This information is confidential and is provided only to a patient or other individuals according to the procedure established by the legislation.

g) Practice Notes

1. According to the national legislation, namely Article 1 of the UN Convention on the Rights of the Child and Article 6 of the Family Code of Ukraine, every human being prior to 18 years of age is considered a child unless according to the law applied to this individual he or she reaches adulthood earlier. As the analysis of legal practice testifies, sometimes petitions of legal representatives contain unlawful claims to information about, for instance, the state of health of the children which have reached adulthood. This information is not always requested by parents themselves, rather the requests can be contained in queries submitted by attorneys or petitions by other representatives who signed a contract to provide legal assistance to the parents or were given a written authority to represent the interests of the parents. Indeed, for parents children of any age are still children. However, from the point of view of the lawmakers, as stated above, an individual ceases to be a child when he or she reaches adulthood.
2. Article 34 of the Constitution of Ukraine serves as an important guarantee of the right to medical information. In part 2 of this article, it is stated that “everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.” In part 3 of the same article of the Constitution of Ukraine, it is stated that the exercise of these rights may be restricted by the law to protect public health. According to Article 21 of the Law of Ukraine “On Information” of October 2, 1992, (wording of May 9, 2011) the undisclosed information doesn’t include, in particular, data of emergency situations, that occurred or may occur and endanger the safety of people, data of population state of health, medical service, social demographic indicators. According to part 4 of Article 8 of the Law of Ukraine “On State Secrets” of January 21, 1994, the information about the state of health of the population, their standard of living, including nourishment, clothing, shelter, medical care and social security as well as socio-demographic indicators does not constitute state secrets.
3. The right to medical information can be exercised only upon reaching adulthood (Article 1 of the Law of Ukraine “On Protection of Childhood”).
4. The extent of the information provided to the members of the family of a patient depends on the following:
 - 4.1) whether the patient is living and can exercise his or her rights;

If the patient is living, the issue of the right of parents (adoptive parents), a guardian, a trustee to the information about the state of health of the child or the ward is properly regulated in paragraph 2 of Article 285 of the Civil Code of Ukraine and part 2 of Article 39 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation”. In order to preserve the right to

medical confidentiality, it appears to be correct that medical information is provided to the family members only upon the consent of the patient when the patient is living. Certainly, this should be a general rule the exceptions to which should be clearly specified in the legislation. Therefore, in our opinion, the provisions of the Decision of the Constitutional Court of Ukraine of October 30, 1997 (the case of K. H. Ustymenko), according to which a doctor is obliged to provide medical information upon a request of a patient or members of his or her family in full and in an accessible form, are correct in the sense of the responsibility of a doctor to provide the information upon a request of the family members of the patient only in case of the death of the patient, or upon the consent of the patient, or according to legally established exceptions when there is no consent of the patient.

4.2) whether the patient is dead;

The legislation regulates certain aspects of this problem. According to the Decision of the Constitutional Court of Ukraine of October 30, 1997 (the case of K. H. Ustymenko) (hereafter the Decision), a doctor is obliged to provide medical information upon a request of a patient or members of his or her family in full and in an accessible form. As is clear, the Decision refers to the two cases under consideration.

In the event of the death of an individual, the members of his or her family or other individuals authorized by them have the right to be present at the autopsy conducted to establish the cause of death and to examine the findings as to the cause of death as well as the right to appeal these findings in court (paragraph 4 of Article 285 of the Civil Code of Ukraine and part 5 of Article 39 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation”). It deals with the right of the members of the family of the patient to examine the medical information in question but given a clearly defined extent of the medical information available for review. Using the principle of analogy of law, the need to protect the rights of the successors of a deceased patient (for example, the right to compensation for moral damage, as guaranteed by part 2 of Article 1168 of the Civil Code of Ukraine), one should in one’s appeal (petition, request) specify the extent of medical information requested by the applicant (not limited to those records that are clearly defined in the regulations) providing appropriate motivation.

5. Implementation of the right of a patient to examine relevant medical documents. There are two alternative paths for addressing this issue as long as the patient or his/her legal representative make a request in accordance with the procedure established by the legislation. The first path is for a staff member of a medical institution to provide officially certified copies of the requested medical records, and the second path is for a staff member to determine the conditions under which the individual(s) can be granted an opportunity to review medical records directly in the health care institution in question. Both of these procedures are currently correct procedures “from the point of view of the legislation.”

- 6.** Access by a representative or an attorney to medical information about their client (a patient at a health care institution). An attorney as well as a legal representative have the right to review primary medical documentation only upon presenting the documents that testify to their authority to represent the interests of a client (a patient at a health care institution) and an officially registered information request (for an attorney) and an application (for a legal representative). An information request or an application should have a copy of a letter of attorney, a warrant, or a contract supplied as Attachments, thus providing an individual who will consider the request with an opportunity to establish that the applicant has the right to review the information about the state of health of the client – the information that is confidential under the current legislation of Ukraine.

One should remember that the authority of a representative is established by a power of attorney, of a legal representative by a birth certificate or the decision on his/her appointment as a guardian or a trustee. The authority of an attorney as a representative is testified to by: 1) a proxy, 2) a contract, 3) a warrant issued by a relevant bar association and an excerpt from the contract, indicating the authority of the attorney as a representative or restricting his right to carry out certain procedural actions. An excerpt is validated by the signatures of the parties.

- 7.** Article 6 of the Law of Ukraine “On Advocacy” defines the rights of an attorney, including: 1) to collect information about the data that can be used as evidence: a) to request and receive documents or their copies from enterprises, institutions, organizations, associations, b) to get acquainted with the documents and materials needed to carry out assignments, except those protected by law as secrets; 2) to utilize scientific and technical means in accordance with the law.

The utilization by an attorney of scientific and technical means consists of conducting sound and video recordings, etc., the latter arising from the application of the principle of analogy of law to paragraph 5 of Part 2 of Article 1948 of the Criminal Procedure Code of Ukraine and relevant explanations provided in paragraph 12 of the Resolution of the Supreme Court of Ukraine “On the Application of Legislation that Guarantees the Right to Protection in Criminal Proceedings” of October 24, 2003, No. 8.

It should be noted that the Law of Ukraine “On Advocacy” does not make any provisions for specific deadline restrictions for consideration of attorneys’ requests and therefore by the principle of analogy of law the terms set forth in the Law of Ukraine “On Citizens’ Petitions” are to be used” (Art. 20).

- 8.** A health care employee has the right to limit the extent of the medical information provided in cases established by the law. For instance when the full information can harm the health of a patient (paragraph 3 of Article 285 of the Civil Code of Ukraine, part 4 of Article 39 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation, Decision of the Constitutional Court of Ukraine of October 30, 1997). The legislator didn’t foresee the criteria of conditions that influence the scope of information that is provided, but

in the theory of medical law one can attribute to these cases the cases of certain diseases (for instance, oncology), or cases characterized by a particular state of a patient (including an incurable patient).

9. Provision of a right to medical information is carried out, using mechanisms, defined in the Law of Ukraine “On Citizens’ Appeals”.
10. One should remember the new mechanism established by the Law of Ukraine “On Protection of Personal Data” in the context of an access to personal data, a new means of implementing a petition – a request to access personal data (Articles 16- 19 of the Law of Ukraine “On Protection of Personal Data”).
11. While carrying out one’s right in the sphere of health care, a person may face the necessity to get data, which were obtained or created in the process of fulfilling ones powers, firstly Ministry of Health of Ukraine. In this context one should remember that Ministry of Health of Ukraine is a manager of information:
 - 1) Which was obtained or created by the Ministry while carrying out its powers and stays in its possession.
 - 2) which was obtained or created while securing the activity of institutions and organizations operating within the frameworks of Ministry of Health of Ukraine, of advisory and consulting bodies of the Ministry and stays in its possession.

Within the frameworks of access to public information in the sphere of health care one should pay attention at the following remarks:

- a) a request for information is submitted by a physical person or legal entity, association of citizens without a status of a legal entity in written or in oral form during personal reception or by post, e-mail, phone or fax.
- b) a request for information is submitted in a arbitrary form.
- c) while submitting a request for information a person shall indicate on the form of receiving an information which is convenient for him.
- d) on a requestor’s demand the first list of request copy shall be under the seal of Ministry of Health of Ukraine indicating the date of coming and incoming number of the request. Such copy shall be given back to requestor.
- e) There had been prepared a typical form of a request for information (is available on the web site of the Ministry of Health of Ukraine and consulting room)
- f) a reply for a request shall be given in a way, chosen by a requestor within five days since the day of a requests coming (under the general rule).
- g) Information for the request shall be given for free. In case requested information contains the documents of more than 10 sheets, a requestor shall be informed of this very fact within five days from the day of request’s coming and a requestor is informed of the actual expenses connected with copying or printing of documents and of the props and order of compensation of such expenses. Information is given within three working days after compensation of actual expenses has been confirmed.

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional standards related to the right to information discussed in sections 2 and 3.

6.1.4 Right to Consent

a) Right 4 as Stated in the ECPR

Article 4. Right to Consent

Every individual has the right of access to all information that might enable him or her to actively participate in the decisions regarding his or her health; this information is a prerequisite for any procedure and treatment, including the participation in scientific research.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Articles 28 (part 3), 29 (part 1)].**

“No person without his or her voluntary consent may be subjected to medical, scientific or other experiments” (part 3 Article 28). “Everyone has the right to bodily integrity” (part 1 Art. 29).

- ▶ **Civil Code of Ukraine of January 16, 2003 [Articles 284 (parts 3, 4, 5), 286 (part 4), 289].**

“Providing medical care to an individual who has attained 14 years of age is carried out upon his or her consent. A competent adult individual who understands the significance of his/her actions and can control them has the right to refuse a treatment. In urgent cases, if there is a real threat to the life of an individual, medical assistance is granted without a consent of the individual or his or her parents (adoptive parents), guardian, trustee (parts 3, 4, 5 Art. 284).

- ▶ **Criminal Code of Ukraine of April 5, 2001 (Article 151).**

“An unlawful placement in a psychiatric institution:

1. A placement in a psychiatric institution of a mentally healthy individual who is known to be such is punishable by an arrest for a term of three to six months or a restriction of freedom for up to two years or an imprisonment

for the same term and a withdrawal of the right to occupy certain positions or engage in certain activities for up to three years.

2. The same act that caused serious consequences is punishable by an imprisonment for a term of two to five years and a withdrawal of the right to occupy certain positions or engage in certain activities for up to three years.”

▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 42, 43, 44].**

“A consent of an informed patient, according to Article 39 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation,” is needed to apply methods of diagnosis, prevention and treatment. A patient under 14 years of age (a minor) and a patient recognized by law as incompetent undergoes a medical intervention upon the consent of his/her legal representatives. In urgent cases, when a real threat to the life of a patient is present, a consent of the patient or his/her legal representatives to carry out a medical intervention is not needed.

If a lack of consent can lead to serious consequences for a patient, a doctor must explain this to the patient. If after the explanation is given the patient refuses a treatment, the doctor has the right to obtain from the patient a written confirmation of the refusal, and if such confirmation cannot be obtained, the doctor may certify the lack of consent by means of a relevant act in the presence of witnesses.

A patient who has acquired full civil capacity and understands the significance of his/her actions and can control them has the right to refuse a treatment. If a refusal originates with a legal representative of a patient and can have grave consequences for the patient, the doctor must inform the guardianship and custody authorities” (Art. 43).

▶ **On Psychiatric Care: Law of Ukraine of February 22, 2000 [Articles 6 (part 6), 11, 12, 13].**

“A psychiatric examination is conducted by a psychiatrist at the request or with a conscious consent of an individual; in case of an individual under 14 years of age (a minor) – at the request or with a consent of his/her parents or another legal representative; in case of an individual recognized legally as incompetent – at the request or with a consent of his/her guardian” (part 2 Article 11). “Outpatient psychiatric care is provided by a psychiatrist at the request or with a consent of an individual; in case of an individual under 14 years of age (a minor) – at the request or with a consent of his/her parents or another legal representative; in case of an individual recognized legally as incompetent – at the request or with a consent of his/her guardian ...” (part 2 Article 12.). “An individual is admitted to a psychiatric institution voluntarily – at his/her request or with his/her consent” (part 1 Article 13.).

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

“... Competent adult citizens receive preventive vaccinations upon their consent after being provided with objective information about the vaccination, the consequences of a refusal to undergo the vaccination and possible complications after the vaccination. Individuals under the age of fifteen or those legally recognized as incompetent undergo preventive vaccinations upon the consent of their objectively informed parents or legal representatives. Individuals aged between fifteen and eighteen or recognized by the court as partially competent undergo preventive vaccinations upon their consent after being provided with objective information and upon the consent of their objectively informed parents or legal representatives. If an individual and (or) his/her legal representatives refuse a mandatory preventive vaccination, a doctor has the right to obtain from them a written confirmation of the refusal and in case of a refusal to provide such a confirmation to have it confirmed by a relevant act in the presence of witnesses.”

▶ **On Measures Against Illicit Trafficking of Narcotic Drugs, Psychotropic Substances and Precursors as well as Their Abuse: Law of Ukraine of February 15, 1995 [Article 14]**

“If a medical screening or examination reveals that an individual who abuses drugs or psychotropic substances and who has been diagnosed as “addicted” requires treatment, including on inpatient or outpatient basis, a drug treatment specialist is obliged to suggest to this individual that he/she should undergo a voluntary drug treatment and supply this individual with a referral to a drug treatment facility for such a treatment.

▶ **On Resistance to Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Protection of People Living With HIV: The Law of Ukraine of 12.12.1991. (The wording of 23.12.2010.) [Article 6, (articles 2, 3)]**

“Examination of children in the age under 14, and persons, recognized incapable in order established by the law is conducted at the request of their parents or legal representatives and in case of a recognized informed consent availability. Parents and legal representatives of these persons are entitled to be present during such examination conduction, be familiar with the results of examination and are obliged to keep the data, concerning the HIV status of persons, they represent confidential (part 2). Examination of children at the age under 14, deprived of parental care, who are under the guardianship of children educational institutions with full state maintenance, is conducted in case they realize the consequences of such examination at the request of their legal representatives and in case an informed consent of

such persons is available and in order to prescribe treatment, maintenance and support connected with HIV... of these children (part 3)”

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **On Approval of the Interim Standards for Medical Care of Adolescents and Youth: Order of the Ministry of Health of Ukraine of June 2, 2009 No. 382.**

“... Minors under the age of 14 receive medical services upon a consent of their parents and minors aged between 14 and 18 – upon their own consent and a consent of their parents (guardians, family members) in accordance with current laws; non-medical services (counseling, information) are provided upon a consent of the minor” (paragraph 3.1).

- ▶ **On Clinical Examination of the Population: Order of the Ministry of Health of Ukraine of August 27, 2010 No. 728 [paragraph 3.2].**

“As part of an annual medical examination ... girls of 15 years of age (upon their informed consent) undergo a digital rectal or bi-manual examination.”

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 voluntary consent of a patient to undergo an examination, a treatment or a study with his/her participation must be obtained by a doctor in the course of a personal conversation with the patient. This consent must be conscious ... If the patient is unable to express his/her consent consciously, the consent is given by a legal representative or a permanent guardian of the patient. Conducting therapeutic and diagnostic measures without the consent of a patient is allowed only when a threat to the life or health of the patient is present and he/she is unable to adequately evaluate the situation. Decisions in such cases should be taken collectively with the participation of the family of the patient. During a treatment of a child or a patient who is under the guardianship, a doctor must provide full information to his/her parents or guardians, obtain their consent to use any specific method of treatment or medication.”

e) Other Relevant Sources

There are no other relevant sources on this matter.

f) Practical Examples

1. Example(s) of Compliance

Ms. Yu, born in 1994 and 5 weeks pregnant, requested an obstetrician-gynecologist to administer her abortion. After a lengthy conversation with the patient, having conducted preabortion consultation concerning peculiarities of a chosen method of abortion, its potential consequences to health, and examined a patient carried out an abortion due to paragraph 17 of the “Instruction on Order of Carrying out an Artificial Abortion” approved by Order of Ministry of Health of Ukraine of July 20, 2006, No. 508 (in the wording of May 5, 2009).

2. Example(s) of Violation

Mr. G. was taken to the emergency department of a hospital where on the basis of necessary diagnostic procedures he was diagnosed with an acute intestinal obstruction which constitutes an absolute (vital) indication for surgery. An attending physician informed the patient of the diagnosis, the risks to his life and health; however, the patient expressed a number of concerns and comments about the viability of this medical intervention. The patient claimed that he did not have material means to cover the surgery and therefore refused the medical intervention. Having obtained patient’s refusal to undergo the surgical intervention in writing, the health care employee prescribed to him a medication treatment that turned out to be ineffective: two days later Mr. G. died in an intensive care unit.

3. Actual Case(s)

In April 2005, Mr. Ts. (who at the time in question was a minor) together with his father visited a cardiologist, Dr. T., at the central district hospital on account of feeling ill. Having examined the EKG of the heart which was done previously, the doctor did not find any deviations from the norm. He examined the neck of the patient and, given the height of the patient, he concluded that the patient is probably suffering from a pinched nerve. The doctor provided neither the patient nor his father with any medical information, did not obtain a consent from the patient to undergo the medical intervention he intended to perform; rather, he asked Mr. Ts. to lie down on the couch and carried out several manual manipulations that involved sharp turns of the head.

After the medical intervention carried out by the doctor to correct a disk slippage in the cervical spine, the patient’s condition significantly worsened. For a long period of time, Mr. Ts. was treated at a specialized medical center. He was diagnosed with Atlantoaxial subluxation and was assigned the treatment that included a cervical collar. From November 2005 to September 2006, Mr. Ts. was on the leave of absence from his studies.

Following an established procedure, the father of Mr. Ts. filed a complaint with the Procuracy. The latter upon the results of the investigation refused to initiate criminal proceedings due to the absence of a crime, as per Article 137 of the Criminal Code of Ukraine, Article 140 of the Criminal Code of Ukraine, and paragraph 2 of Article 6 of the Criminal Procedure Code of Ukraine. As to the violations of the procedure for medical examinations and filling out medical documentation by the cardiologist, the prosecutor initiated disciplinary proceedings against Mr. T., and accordingly the chief of staff of the medical establishment issued an order whereby the doctor was reprimanded. The patient initiated a lawsuit to be compensated for the moral and material damage caused by the damage to his health. On December 23, 2009, the court ruled to partially satisfy the claim: it decided in favor of the plaintiff to recover financial damages in the amount of 7,585 hryvnias and recover 3,000 hryvnias for moral damages caused by an improper medical care provided.

g) Practice Notes

1. The following are the criteria of legality of a patient's consent or refusal of a medical intervention: 1) awareness (being informed), 2) voluntariness, 3) competence.
2. Awareness is related to the right of an individual to medical information. An informed consent or refusal of a medical intervention presupposes providing the patient in accordance with a legally specified procedure with medical information and updates regarding the needed medical intervention on the basis of which the patient or/ and his legal representative can exercise his or her right to bodily integrity and can make a decision whether to accept or refuse the medical intervention.
3. The information that should be provided to a patient is of two types, namely: general, i.e. medical information, and specialized, i.e. information regarding the proposed medical intervention which is different in each individual case rather than applies generally to the treatment of a given illness, etc.

Medical information: a) state of health of an individual, b) history of the illness, c) purpose of proposed tests and therapeutic measures, d) forecast of a possible progression of the illness, d) risks to life and health involved.

Information about a medical intervention: a) purpose of the medical intervention, b) duration of the medical intervention, c) consequences of the medical intervention, d) alternative methods of treatment of the illness, e) forecast and risks of the proposed medical intervention.

4. Voluntariness, as the second criterion required for an informed consent or refusal of a medical intervention, constitutes acceptance by the patient or/ and his legal representative of the decisions about his or her state of health in the process of which he/she exercises the right to bodily integrity without any influence of any outside factors. The consent must be voluntary, that is not arrived at under any pressure on the patient or/

and his legal representative, with the guaranteed opportunity to revoke the consent at any time thereafter.

5. Competence is patient's or/ and his legal representative, ability to make decisions about accepting or refusing a medical intervention, guaranteed by the legislation, if they are of a normatively established age and are capable.

As a general rule and according to the legislation, the following individuals are incompetent to give consent to a medical intervention: a) individuals under 14 years of age, b) incompetent individuals. c) individuals, whose capability is limited (the lawmaker didn't express his will as regards realization of a right to consent for medical intervention, by this group of people, which can be understood as a result of literary interpretation of the norm of part 3 Article 284 of Civil Code of Ukraine and part 1 Article 43 of the Law of Ukraine "On Principles of Ukrainian Health Care Legislation). Taking into account the rights of a physical person, whose legal capability is limited, that are foreseen by Article 37 of Civil Code of Ukraine, similar approach to regulation of the right to refuse from medical interference by these group of people, we come to a conclusion that persons whose capability is limited are incompetent to realize their right to give a consent for medical interference. Individuals from 14 to 18 years of age undergo a medical intervention upon the consent of the minor patient and of the parents (guardians, family members) of the patient..

An analysis of the legislation establishes that the following individuals are incompetent to refuse a medical intervention (as a general rule): a) individuals under 18 years of age (if full civil capacity has not been reached or granted to them earlier in accordance with the law), b) incompetent individuals.

6. In law enforcement practice, problems associated with the implementation of the right to consent may emerge while attempting to preserve compliance with one of the criteria of legality: namely, competence. The order of the Ministry of Health of Ukraine "On Approval of the Interim Standards for Medical Care of Adolescents and Youth" of June 2, 2009 No. 382 (hereinafter, the Standards) establishes the requirement to obtain a consent of both subjects of a medical legal relation (a patient and his/her parents / guardians / family members) in particular when providing medical assistance to an underage patient (from 14 to 18 year of age). Therefore, while analyzing the prerogatives of each of the subjects, namely the right to consent to a medical intervention that both the patient and his/her parents (guardians, family members) have, one should clarify possible ways of implementing this right:
 - 1) if a consent to a medical intervention is given by both subjects of a medical legal relation, then there do not exist any problems for carrying out medical practice;
 - 2) if a patient gives his/her consent to undergo a medical intervention while, for example, the parents do not give a consent, a health care practitioner who must perform the intervention faces a problem since he/she

does not have legal grounds for performing the intervention without having an opportunity to obtain a consent to the necessary intervention in full. Under these circumstances (except for urgent cases when the consent of the patient or his/her legal representatives for a medical intervention is not required), one should utilize the following mechanisms:

a) in accordance with a generally known legal maxim, when there are several competing legal regulations of varying legal power, one should apply the one that is higher in the hierarchy of legal acts: for example, a law rather than a subordinate legislative act. Both the Civil Code of Ukraine and the Law of Ukraine “Principles of Ukrainian Health Care Legislation” set a limit of 14 years of age for the realization of the right to consent to a medical intervention. The Standard is designed to refine and clarify certain aspects of the realization of this right which are established by the laws. So, if there is a “conflict” between the Standard, which under certain legal circumstances could produce the conditions that create obstacles for the patient to realize his/her right, and the said laws, one should follow the regulation supplied in the vanguard document;

b) Complying with part 3 of Article 284 of the Civil Code of Ukraine and part 1 of Article 43 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation”, a health care employee obtains a personal consent of a minor patient. In addition, the employee must ensure the second component of the consensus – a consent of the parents, as provided in part 5 of Article 43 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation”. In other words, if a legal representative of the patient refuses to give consent and this refusal can have grave consequences for the patient, the doctor must inform the guardianship and custody authorities. Thus, on the one hand, one can achieve a legislative balance and, on the other hand, ensure realization of human rights in the provision of medical care;

3) If a minor patient does not consent to a medical intervention, but, for example, his/her parents give a consent, a health care employee must behave in the following manner under these circumstances, in compliance with current legislation:

the right to refuse a medical intervention belongs to a competent adult patient (part 4 of Article 284 of the Civil Code of Ukraine, part 4 of Article 43 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation”), i.e. a minor patient is not endowed with this power, and therefore a component associated with the refusal by a minor patient does not have any legal consequences for the health care employee who having received a consent from the parents can provide necessary medical care to the patient.

7. The format of a consent or a refusal of a medical intervention. As a general rule, a consent can be given both in an oral and in a written form, because the legislation does not define any of the forms as mandatory. A refusal can also be given in both formats, since the norms proscribe only the right of a doctor to obtain a refusal in writing, not the obligation (... the doctor has the right to obtain a written confirmation from the patient, and if the

written confirmation cannot be obtained, the refusal can be confirmed by a relevant act in the presence of witnesses).

8. A medical intervention without the consent of a patient and/or his/her legal representatives is permitted in emergency situations. The law does not contain a list of emergency situations which pose a real threat to the life of a patient, thus giving a doctor the right to perform a surgery, to use complex diagnostic methods and to perform other kinds of medical interventions without a consent. One should remember that in these cases, the doctor operates under a state of emergency. The state of emergency occurs under certain conditions: namely, when a) a danger to human life is real, not potential; therefore, when a so-called planned surgery is used as a possible method of treatment, one can not appeal to the state of emergency; b) a threat to life cannot be eliminated by means other than the selected method of intervention (for example, a surgery, a blood transfusion); c) the damage caused by the medical intervention should constitute less danger for the patient than the damage caused by the pathology or the injury addressed by this intervention.
9. See also practice notes in *subchapter 7.1.9*

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional standards related to the right to consent in the context of the following rights:

- the right to freedom and bodily integrity, discussed in sections 2 and 3.
- the right to privacy, discussed in sections 2 and 3.
- the right to freedom from torture and other cruel, inhuman and degrading treatment, discussed in sections 2 and 3.
- the right to bodily integrity, discussed in sections 2 and 3.
- the right to the highest attainable standard of physical and mental health, discussed
- in sections 2 and 3.

6.1.5 Right to Free Choice

a) Right 5 as Stated in the ECPR

Article 5. Right to Free Choice

Each individual has the right to freely chose from among different treatment procedures and providers on the basis of adequate information.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Civil Code of Ukraine of January 16, 2003 [Articles 284 (part 2), 633].**

“An individual who has reached fourteen years of age and who requested medical care to be provided to him/her has the right to choose a doctor and a method of treatment in accordance with latter’s recommendations” (part 2 Art. 284).

“A contract is public when one party – the entrepreneur – undertakes an obligation to sell goods, perform work or provide services to anyone who requests them (retail, public transportation, communication, medical, hotel services, banking, etc.)” (part 1 Art. 633).

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 6 (paragraph “d”), 34 (part 2), 36, 38].**

Paragraph “e” of Article 6 stipulates that every citizen of Ukraine has the right to health which includes, inter alia, skilled medical and sanitary care, including free choice of a doctor and a health care institution.

“An attending physician is selected by a patient or appointed in order established by these principles. A patient has the right to demand a replacement of the doctor (Art. 34).

“Every patient who has reached fourteen years of age and who requested medical care to be provided to him/her has the right to free choice of a doctor, if the latter can offer his/her services, and a choice of treatment, following doctor’s recommendations. Every patient has the right, whenever it is justified by his condition, to be admitted to any health care institution of his/her choice, if the institution is able to provide appropriate treatment” (Art. 38).

- ▶ **On Protection of Consumer Rights: Law of Ukraine of May 12, 1991 (in the reading of December 1, 2005) [Article 21].**

“... The rights of a consumer are considered violated when a sale of a product in any way violates the right of the consumer to freedom of choice of the products (any goods, services or work) (paragraph 1 part 1).

- ▶ **On Resistance to Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Protection of People Living With HIV: The Law of Ukraine of 12.12.1991. (The wording of 23.12.2010.) [Article 6, (part 4)]**

“Free examination aimed at HIV detection and the corresponding pre-examination and after examination consultation, preparation and issuance of a conclusion about examination results can be conducted by medical institutions notwithstanding form of their property and subordination, by the services of social support and other organizations dealing with prevention of diseases caused by HIV, which acquired special licence to conduct such activity and have an accredited medical laboratory”

- ▶ **On Protection of the Population from Infectious Diseases: Law of Ukraine of April 6, 2000 [Article 7].**
- ▶ **On Combating Tuberculosis: Law of Ukraine of July 5, 2001 [Article 8 (part 1)].**
- ▶ **On Measures Against Illicit Trafficking of Narcotic Drugs, Psychotropic Substances and Precursors as well as Their Abuse: Law of Ukraine of February 15, 1995 [Article 14 (part 4)].**

“Treatment of addiction to narcotic drugs or psychotropic substances is performed at health care facilities regardless of their form of ownership that have permits of the Ministry of Health of Ukraine to carry out such an activity.”

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **Provision on the Procedure for Sending Citizens for Treatment Abroad: Resolution of the Cabinet of Ministers of Ukraine of December 8, 1995 No. 991.**
- ▶ **Instructions on the Procedure for Issuing Documents that Certify Temporary Disability of Citizens: Order of the Ministry of Health of Ukraine of November 13, 2001 No. 455 [paragraph 1.5].**

Paragraph 1.5 of the Instructions contains a prohibition for certain categories of health care professionals and health care institutions to issue disability leave certificates. According to paragraph 1.5.2. of the Instructions, “physicians at private health care institutions, private physicians (individuals—agents of entrepreneurial activity) have no right to issue disability leave certificates”.

- ▶ **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 3.8].**

“Individuals whose temporary disability occurred outside of the area of their permanent residence and work receive a disability leave certificate signed by the chief of staff of a medical institution, certified with a round seal of the institution. A note is placed under the heading “I permit to issue a disability leave certificate” with a mandatory record made in the outpatient or inpatient medical chart.

- ▶ **On Regulating the Procedure for Sending Citizens for Treatment Abroad: Order of the Ministry of Health of Ukraine of November 1, 2006 No. 725 (in the reading of February 28, 2008 No. 307).**
- ▶ **On Clinical Examination of the Population: Order of the Ministry of Health of Ukraine of August 27, 2010 No. 728 [paragraph 3].**

“Organisational support and management of clinical examinations are carried out by the health care authorities or health care facilities that are in charge of providing health care to the population on the administrative territory in question.”

- ▶ **On Procedure of Selection a Doctor, That Provides With Primary Medical Care: Order of Ministry of Health of Ukraine of July, 28, 2011, No. 443.**

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 respect the right of a patient to free choice of a physician and his/her involvement in making decisions about medical treatment ...”

e) Other Relevant Sources

There are no other relevant sources on this matter.

f) Practical Examples

1. Example(s) of Compliance

Mr. P. became ill while staying with his family in another city, not in the area of his permanent residence. He asked a local physician to visit him at home; the latter provided him with a required medical care but refused to issue a disability leave certificate to him on the grounds that Mr. P. did not permanently reside at the current address. The patient requested the chief of staff of the medical institution in charge of the area of his sojourn to issue him a disability leave certificate which he received and the certificate was certified with the signature of the chief of staff.

2. Example(s) of Violation

Ms. N., born in 1948, forwarded a request to the chief of staff of an outpatient health care institution to change her primary care physician. She justified her request by claiming that the doctor was inattentive and did not perform his duties properly. The chief of staff flatly refused to change the primary care physician of the patient and suggested that she should switch to a private health care institution since all his doctors were overloaded and could not be attentive to each patient.

3. Actual Case(s)

Mr. Yu, born in 2001, who lived in city D., was hospitalized in a serious condition with an acute glomerulonephritis in the city children's hospital. During the treatment, the condition of the child rapidly deteriorated, it was necessary to conduct hemodialysis, but this could not be carried out at the hospital in question. The parents insisted on transferring their son to the regional children's hospital, where an artificial kidney system was available. The attending physician claimed that the hospitalization of local patients at the regional hospital was not permitted and that the local hospital had all necessary equipment and specialists to assist Mr. Yu. In a day, the patient in a critical condition was transferred to an intensive care unit. The parents appealed to the chief of staff of the institution with a complaint in writing that inappropriate medical care was being provided, in particular pointing out the violation of their right to a free choice of a health care institution, a choice of the methods of treatments, guaranteed to them by Articles 6 and 38 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation." By the order of the chief of staff, a council of doctors examined the patient and it was decided to transfer him to the regional hospital for further treatment, including hemodialysis. The chief of staff of the regional specialized children's hospital did not object to admitting Mr. Yu, who was provided with all necessary medical care.

g) Practice Notes

1. The internal structure of the right to freedom of choice in the domain of health care consists of five elements (options), namely: a) the right to free choice of a doctor, b) the right to choose methods of treatment fol-

lowing doctor's recommendations, c) the right to choose a health care institution, d) the right to change a doctor upon patient's demand, e) the right to receive treatment abroad in case needed assistance cannot be provided in health care institutions in Ukraine.

2. A patient can exercise the above analyzed rights only after having reached the age of 14.
3. The protection of the right to free choice of a doctor and a medical institution is primarily carried out through the procedure of contacting medical officials, such as the head of a department, a deputy chief of staff of a medical facility and the chief of staff. A written statement, duly executed, registered and addressed to the above officials, which includes references to legal acts that guarantee the right to free choice in most cases produces a desired result – medical assistance is provided in the hospital of choice or by the doctor selected.
4. In private hospitals not owned by the state which provide medical services on the basis of a public contract the protection of the right to freedom of choice of a doctor or a medical institution is realized on the basis of the provisions of the Civil Code of Ukraine and the Law of Ukraine “On Protection of Consumer Rights.”
5. A contract regarding medical services is according to its legal nature a public contract. The conditions of a public contract are the same for all consumers, except those who are legally entitled to appropriate benefits. An entrepreneur does not have the right to favor some consumers over others in entering with them into a public contract unless otherwise established by law. An entrepreneur has no right to refuse to enter into a public contract if he/she has the capacity to provide the consumer with relevant goods (work, services). In other words, a patient can not be denied medical services when such services can be provided by the medical institution in question. In case of an unlawful refusal on the part of the entrepreneur to enter into a public contract, he/she has to reimburse the damage to consumers incurred by the refusal.

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional standards related to the right to free choice in the context of the following rights:

- the right to freedom and bodily integrity, discussed in sections 2 and 3.
- the right to privacy, discussed in sections 2 and 3.
- the right to freedom from torture and other cruel, inhuman and degrading treatment, discussed in sections 2 and 3.
- the right to bodily integrity, discussed in sections 2 and 3.
- the right to the highest attainable standard of physical and mental health, discussed in sections 2 and 3.

6.1.6 Right to Privacy and Confidentiality

a) Right 6 as Stated in the ECPR

Article 6. Right to Privacy and Confidentiality

Every individual has the right to confidentiality of personal information, including information regarding his or her state of health and potential diagnostic or therapeutic procedures, as well as the protection of his or her privacy during the performance of diagnostic exams, specialist visits, and medical/surgical treatments in general.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Articles 49 (parts. 1, 2), 34].**

“There shall be no interference with one’s private and family life, except in the cases stipulated in the Constitution of Ukraine. Collection, storage, use and dissemination of confidential information about an individual without his/her consent is not permitted, except in the cases determined by law and only in the interests of national security, economic prosperity and human rights” (Art. 32).

- ▶ **Civil Code of Ukraine of January 16, 2003 [Articles 285 (part 4), 286].**

“The right to confidentiality of one’s state of health:

1. An individual has the right to confidentiality regarding one’s state of health, the fact of seeking medical assistance, diagnosis, and the information obtained during one’s medical examination.
2. One may not demand and provide information about the diagnosis and treatment of an individual to his/her place of work or study.
3. An individual must refrain from disseminating the information referred to in the first paragraph of this Article which became known to this individual in connection with his/her official duties or from other sources” (Art. 286).

- ▶ **Criminal Code of Ukraine of April 5, 2001 [Article 132, 145].**

“An unlawful disclosure of a medical secret:

A willful disclosure of a medical secret by an individual to whom it became known in connection with carrying out his/her professional or official duties and if this action caused grave consequences is punishable by a fine of up to fifty times the untaxed minimum wages or public service for up to two hundred and forty hours or a withdrawal of the right to occupy certain positions or engage in certain activities for up to three years, or correctional labor for up to two years.” (Article 145)

- ▶ **On Information: Law of Ukraine of October 2, 1992 (Article 46 (part 3)).(in wording of January 13, 2011).**

“Confidential information is the one concerning physical person... Confidential information can be extended due to the will (under the consent) of a corresponding person, in order and under conditions established by her, and in other cases established by the law”

- ▶ **On Personal Data Protection: Law of Ukraine of June 1, 2010 [Article 7].**

“Processing of personal data ... concerning one’s health or sex life is prohibited” (part 1 Art. 7).

- ▶ **On Access to Public Information: Law of Ukraine of January 13, 2011. [Articles 6-8].**

- ▶ **On State Secrets: Law of Ukraine of January 21, 1994 [Article 8 (part 4)].**

“... Information about public health, standard of living, including food, clothing, shelter, medical care and social security as well as about socio-demographic indicators, state of police, public education and culture do not constitute a state secret”.

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 39-1, 40, 78 (“d”)].**

“A patient has the right to confidentiality of the information about his/her state of health, the fact of seeking medical assistance, diagnosis, and the information obtained during his/her medical examination.

One may not demand and provide information about a diagnosis and treatment of an individual to his/her place of work or study”(Art. 39-1).

“Medical employees and other individuals who in the course of performing their professional or official duties become aware of an illness, medical examination and its results, sex and family life of an individual have no right to disclose this information except in the cases provided for by the legislation. While using the information that constitutes a medical secret in the educational process and research, including its publication in specialized literature, one should ensure the anonymity of a patient”(Art. 40).

- ▶ **On Psychiatric Care: Law of Ukraine of February 22, 2000 [Article 6 (parts 1, 8)].**

“Medical staff and other professionals involved in providing psychiatric care and individuals who as the result of training or performing professional,

official, community or other duties became aware of a mental disorder suffered by an individual, of the fact of seeking psychiatric assistance and treatment in a psychiatric facility or a stay at a psycho-neurological institution for social protection or special education, as well as other information about the mental state of an individual, his/her private life, may not divulge this information ..." (part 1 Art. 6).

- ▶ **On Resistance to Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Protection of People Living With HIV: The Law of Ukraine of 12.12.1991. (The wording of 23.12.2010.) [Article 13 , (part 3)]**

"Information about the results of medical examination, presence or absence of HIV infection in an individual who underwent a medical examination is confidential and constitutes a medical secret. Medical workers are obliged to take certain measures in order to provide confidentiality of information about persons living with HIV, and protection of such information from illegal disclosure"

- ▶ **On Protection of the Population from Infectious Diseases: Law of Ukraine of April 6, 2000 [Article 26 (part 2)].**

"Information about an individual being infected with an infectious disease that is sexually transmitted, medical examinations on this account which he/she underwent, data related to his/her sex life which was received in connection with the performance of professional duties by officials and medical staff at a health care institution constitutes a medical secret."

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **On the Physician's Oath: Decree of the President of Ukraine of June 15, 1992, [paragraph 3 part 1).**

"... guard a medical secret; do not use it to harm an individual".

- ▶ **On Approval of the Instructions on the Procedure for Recording, Storing and Using Documents, Case Files, Excerpts and Other Material Media Containing Confidential Information that is Owned by the State: Resolution of the Cabinet of Ministers of Ukraine of November 27, 1998 No. 1893.**

The Instructions define a procedure for maintenance, storage, use and destruction of documents, case files, excerpts, magnetic and other physical media containing confidential information that is the property of the state which are mandatory for all central executive bodies, the Cabinet of Min-

isters of the Autonomous Republic of Crimea, local executive authorities, local government, enterprises, institutions and organizations regardless of their form of ownership.

- ▶ **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 3.2).**

“... A preliminary diagnosis, a final diagnosis, and the ICD-10 code can be disclosed only upon a written consent of a patient. Otherwise, the preliminary and final diagnoses and the ICD-10 code must not be disclosed. If upon a written approval of the head of the department due to deontological concerns, a doctor changes the wording of the diagnosis and the ICD-10 code of the actual disease, he/she must make a note in the inpatient or outpatient file that provides reasons for the change of the diagnosis and the ICD-10 code.”

- ▶ **On Approval of the Interim Standards for Medical Care of Adolescents and Youth: Order of the Ministry of Health of Ukraine of June 2, 2009, No. 382 (Interim Standard 4).**

“In an establishment, one maintains confidentiality while providing services, including correspondence, maintenance of medical records, telephone conversations, etc., except in the cases provided for by current legislation.”

- ▶ **Licensing Conditions for Conducting Certain Types of Business Activities in Medical Practice: Order of Ministry of Health of Ukraine of February 2, 2011 No. 49. [paragraph 4.1]**
- ▶ **“On Lists of Data, that Include Official and Confidential Information in the Ministry of Health of Ukraine”: Order of Ministry of Health of Ukraine of August 16, No. 517.**

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 3.6).**

“Every patient has the right to guard personal secrets. A doctor as well as other individuals involved in providing medical care, must keep medical secrets even after the death of a patient, as well as the fact of the patient seeking medical assistance, in the absence of other instructions from the patient or when the disease does not threaten his family and society. Confidentiality extends to all information obtained in the course of treating a patient (including diagnosis, methods of treatment, prognosis).”

e) Other Relevant Sources

- ▶ **Clarification Concerning Procedure of Indicating the Diagnosis in the Letter of Disability of a Patient: Letter of the Executive Board of Social Insurance Fund for Temporary Disability of 23.03.2011, No 04-30-620.**

“Primary diagnosis, final diagnosis and MKX – 10 code should be indicated in the letter of disability exclusively under the written permission of a patient. Another way of indication of Primary diagnosis, final diagnosis and MKX – 10 code is not foreseen.

- ▶ **Decision of the Constitutional Court of Ukraine regarding the official interpretation of Articles 3, 23, 31, 47, 48 of the Law of Ukraine “On Information” and Article 12 of the Law of Ukraine “On Procuracy (the case of K. H. Ustymenko): Law of Ukraine of October 30, 1997.**

In its Decision, the Constitutional Court of Ukraine established that it is prohibited not only to collect but also to store, use and disseminate confidential information about an individual without his/her prior consent, except as provided by law and only in the interests of national security, economic prosperity, human rights and freedoms of an individual. Confidential information includes information about an individual, including his/her state of health. Moreover, we emphasize the need to distinguish between two terms – medical secret, i.e. information about a patient and medical information, i.e. information for a patient.

f) Practical Examples

1. Example(s) of Compliance

An employer and a trade union organization requested a health care institution to provide them with the information about the state of health of the employee, Ms. L., in particular, her diagnosis. Soon thereafter they received a reply from the chief of staff of the health care institution which contained a refusal to provide the information requested. The chief of staff said that the information requested

by the employer and the trade union constitutes a medical secret and therefore is confidential and is not to be disclosed.

2. Example(s) of Violation

Ms. Yu. filed a complaint with the Central District Court of city M. to compensate her for the damage caused by the disclosure of her HIV-positive status and, as a consequence, her loss of employment. The health care institution where the woman underwent a preventive medical screening sent to her employer an excerpt from her inpatient medical file that listed the HIV diagnosis. The plaintiff did not receive any information about her diagnosis from the medical institution. Instead, the officials of the medical institution in question informed the father of Ms. Yu. of the diagnosis.

3. Actual Case(s)

Pecherskyj District Court of Kyiv held hearings of an administrative lawsuit initiated by S. Poberezhets to establish as illegal and contradicting the legal acts of higher legal authority the Order “On Approval of a Sample Technical Description of a Disability Leave Certificate and Instructions on the Procedure for Filling Out a Disability Leave Certificate” of November 3, 2004 No. 532 / 274/136-os/1406 in the part that contains: a) an approval of a sample disability leave certificate, b) an approval of the technical description of the disability leave certificate, c) an approval of the Instructions on the procedure for filling out the disability leave certificate.

In the administrative lawsuit, the plaintiff asked the court to recognize as illegal and contradicting the legal acts of higher legal authority the order to include in a disability leave certificate the information regarding a preliminary and a final diagnosis and a disease code from the International Classification of Diseases and Related Health Problems (ICD-10).

On July 25, 2006, the court decided to satisfy the administrative lawsuit of S. Poberezhets against the Ministry of Health of Ukraine, the Ministry of Labor and Social Policy of Ukraine, the Social Insurance Fund for Temporary Disability, the Social Insurance Fund of Ukraine for Work Accidents and Occupational Diseases to recognize the Order as illegal and contradicting the legal acts of higher legal authority: in particular, to recognize as illegal and contradicting legal acts of higher legal authority the provisions of the Order regarding the inclusion in a disability leave certificate of preliminary and final diagnoses and the disease code from ICD-10 and to eliminate these provisions from the Order.

g) Practice Notes

1. The following information constitutes the content of a medical secret: a) information about the state of health of a patient, b) information about the illness, c) information about the diagnosis, d) information obtained during a medical examination, d) information about the fact of seeking medical assistance, e) information about the medical examination and

its results, f) information about the methods of treatment, g) information about the sexual behavior and family life of an individual.

All the information obtained in the course of providing medical assistance should be subject to medical confidentiality. It can provisionally be divided into two groups: 1) medical information, 2) non-medical information, i.e., the information that pertains to the private life and the family of an individual. Each of these groups of information refer both to a patient (diagnosis, prognosis, harmful habits, family and personal life, etc.) and to the relatives of the patient (hereditary diseases, the state of health of the relatives, their private and family life, etc.), depending on each individual case.

2. The subjects of medical confidentiality are health care employees and other individuals who become aware of the information that constitutes a medical secret due to their professional duties.

On the basis of the review of legal documents and medical and legal literature on medical secrets, one can single out the following groups of subjects:

I) medical staff (the chief of staff of a medical institution, his/her deputies, doctors, nurses, obstetricians, support personnel, etc.).

II) other individuals who in the course of performing their professional duties come in contact with confidential information. This group is divided into the following subgroups: 1) individuals who work at a health care institution but are not medical practitioners (drivers, cafeteria personnel at a medical institution, archivists of medical records, administrative personnel, etc.), 2) pharmaceutical personnel, 3) students who come in contact with confidential information in the course of their medical training and internship at health care institutions, 4) employees of an insurance company, 5) Representatives of bodies of health care system management, in particular personnel at departments of health at the governmental and municipal organizations, 6) employees of educational institutions (preschool educational institutions, elementary and high schools for social rehabilitation, educational rehabilitation centers, etc.) 7) individuals who acquire confidential information in accordance with the law (departments of preliminary and criminal investigation, courts, People's Deputies, etc.).

3. Immunity of a witness. Article 51 of the Civil Action Code of Ukraine ("Individuals Who Are Not Subject to Questioning as Witnesses") provides that individuals who cannot be questioned as witnesses are individuals who, according to the law, are required to keep secret a particular type of information that has been entrusted to them in connection with their employment (paragraph 2, part 1, Article 51).

According to paragraph 1 of part 1 of Article 69 of the Criminal Procedure Code of Ukraine, questioning of lawyers and other law professionals who, according to the law, are entitled to provide legal assistance either in person or by proxy as well as questioning of physicians regarding the facts that were entrusted to them or became known to them in the course of their professional activities is possible only if they are exempted from the obliga-

tion to safeguard the professional secret or maintain the confidentiality of the information by the individual who entrusted them with this information. However, the law permits questioning these individuals as witnesses regarding any other facts that can serve as evidence in a case, as for instance when an attorney or a doctor happen to be eyewitnesses of a crime.

4. The time limit on safeguarding a medical secret; namely, the status of the confidentiality requirement after the death of the individual involved. There exists a school of thought that upholds the absolute nature of medical confidentiality, including after the death of a patient. The law regulates this issue only in terms of part 4 of Article 285 of the Civil Code of Ukraine and part 5 of Article 39-1 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation” which guarantee the right of the family members or other individuals authorized by them to be present at the investigation of the cause of death of the patient and review the findings on the cause of death as well as the right to contest those findings in court in case of the death of the patient. In our opinion, one should agree with those researchers who allow as exceptions to the general rule a disclosure of the secrets of the dead. These exceptions include a disclosure of the information for the sake of the rehabilitation of the individual who died but always only upon the consent of the successors, relatives and heirs of the deceased, protection of the rights of family members because they have the right to non-pecuniary damage etc. Interested individuals who request this information must provide appropriate reasons for the need to receive it (for details see section 6.1.3).
5. See also practice notes in *subchapter 7.1.7*.

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional standards related to the right to privacy in sections 2 and 3.

6.1.7 Right to Respect of Patients’ Time

a) Right 7 as Stated in the ECPR

Article 7. Right to Respect of Patients’ Time

Each individual has the right to receive necessary treatment within a swift and predetermined period of time. This right applies at each phase of the treatment.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 34 (part 2), 78 (paragraph “a” part 1)].**

“Medical workers shall... provide timely and qualified medical care” [paragraph “a” part 1, Article 78].”

- ▶ **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.**

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **On Measures to Improve Emergency Medical Care of the Population in Ukraine: Order of the Ministry of Health of Ukraine of August 29, 2008 No. 500 [paragraph 2.1].**

“Providing emergency medical care to patients on any given territory at the pre-hospitalization stage in the shortest time possible after receiving an emergency call”.

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 3.3].**

“... A doctor must dedicate to a patient sufficient time and attention required to make a correct diagnosis, to carry out complete assistance, to justify prescriptions and recommendations for further treatment, to provide the patient with this information in detail and in a form comprehensible to him/her...”

e) Other Relevant Sources

There are no other relevant sources on this matter.

f) Practical Examples

1. Example(s) of Compliance

Ms. D. came to see an ophthalmologist with her underage child. In spite of the fact that the office hours of the doctor have already ended, it was the end

of the working day, he still examined the child without a delay and prescribed necessary treatment.

2. Example(s) of Violation

Mr. N., born in 1930, came to visit a physician at an outpatient clinic, complaining of a headache and an increase in blood pressure. On this day, in spite of his age and the state of his health, he waited to be seen by the doctor all day because the doctor examined patients slowly and left her office several times without any explanation to the patients who waited in line. 30 minutes before the end of the office hours, the doctor said that she will not see anybody else that day because she had to fill out a lot of medical records. The doctor said that all who did not receive assistance that day could, given their condition which she estimated “by the eye”, return to see her next day. Only due to his own persistence did Mr. N. receive medical care on the day in question.

3. Actual Case(s)

The Department of Health of city T. received a complaint from Mr. Zh. The latter pointed out that he called an ambulance for his wife who suffered from an acute pain that was caused, as subsequently established, by a renal colic. As stated by the plaintiff, half an hour passed after he made the first emergency call before he called again and requested an ambulance a second time. Although he was assured that the ambulance had already left, it arrived only in an hour. The plaintiff stated in his complaint that he was outraged most of all by the arrogant attitude of the medical staff and a delay in providing medical care to his wife who was suffering for a long time. By the order of the head of the Department of Health, a commission was set up which carried out an official investigation to verify the facts presented in the complaint. The commission prepared a statement in which it pointed out shortcomings in providing emergency medical care to the population, with the view of the requirements set forth in the Order of the Ministry of Health of Ukraine “On Measures to Improve Emergency Medical Care of the Population in Ukraine” of August 29, 2008 No. 500. The head of the Department of Health forwarded this statement together with his recommendations to optimize the functioning of the emergency unit to the chief of staff of the unit. In addition, a reply to the plaintiff was prepared with the description of the response measures undertaken. The head of staff of the emergency unit implemented disciplinary measures against those responsible.

g) Practice Notes

The actions of the medical staff, in particular a failure to arrive to assist the patient upon an emergency call, a superficial, formal, delayed examination of the patient who required medical care can be assessed according to Art. 139 of the Criminal Code of Ukraine (“Failure of a Health Care Employee to Provide a Patient with Medical Assistance”). A failure of a health care employee to provide necessary medical care to a patient at a health care institution due to careless or irresponsible attitude to his/her

professional responsibilities, including those associated with promptness of providing medical assistance, is subject to Article 140 of the Criminal Code of Ukraine (“Inadequate Carrying Out of Professional Duties by a Medical or Pharmaceutical Employee”).

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional standards related to the right to respect of patients' time in the context of the right to the highest attainable standard of physical and mental health discussed in sections 2 and 3.

6.1.8 Right to the Observance of Quality Standards

a) Right 8 as Stated in the ECPR

Article 8. Right to the Observance of Quality Standards

Each individual has the right of access to high quality health services on the basis of the specification and observance of precise standards.

b) Right as Stated in Country Constitution/Legislation

▶ **Constitution of Ukraine of June 28, 1996 [Article 49 (part 1)].**

“Everyone has the right to health, medical assistance and medical insurance”.

▶ **Civil Code of Ukraine of January 16, 2003 [Articles 284 (part 1)].**

“An individual has the right to receive medical assistance”.

▶ **Criminal Code of Ukraine of April 5, 2001 [Articles 139, 140].**

“A failure of a medical employee to provide a patient with medical care:

1. A failure of a health care practitioner to provide a patient with assistance without good reasons when the health care practitioner must in accordance with established rules provide such assistance if he/she knows in advance that this failure can have grave consequences for the patient is fined up to fifty times untaxed minimum wages and a withdrawal of the right to occupy certain positions or engage in certain type of activities for up to three years, or public services for up to two hundred hours, or correctional labor for up to two years.

2. The same action if it caused the death of the patient or other grave consequences is punishable by restriction of freedom for a term of four years or imprisonment for up to three years and an optional withdrawal of the right to occupy certain positions or engage in certain type of activities for up to three years” (Art. 139).

“Inadequate carrying out of professional responsibilities by medical or pharmaceutical employees:

1. A failure to carry out or inadequate carrying out of professional duties by a medical or pharmaceutical employee due to careless or irresponsible attitude to them when they cause grave consequences for a patient is punishable by withdrawal of the right to occupy certain positions or engage in certain types of activities for up to five years, or correctional labor for up to two years, or restriction of freedom for up to two years or imprisonment for the same period of time.

2. The same action if it caused any grave consequences to a minor is punishable by restriction of freedom for a term of five years or imprisonment for up to three years and withdrawal of the right to occupy certain positions or engage in certain type of activities for up to three years” (Art. 140).

- ▶ **On Protection of Consumer Rights: Law of Ukraine of May 12, 1991 (in the reading of December 1, 2005) [Article 4 (paragraph 2 part 1), 6].**

According to part 1 of Art. 4, a consumer has among others the right to an adequate quality of products and services (paragraph 2).

Article 6 confirms the right of consumers to adequate quality of products (any products (goods), work or services produced, performed or provided to meet social needs). A contractor shall transfer to the consumer products of adequate quality and also provide information about these products. A contractor at the request of the consumer is obliged to provide documents confirming the adequate quality of the product.

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 6 (paragraph “e”), 14-1, 33, 34 (part 2), 35 – 35-5, 78 (paragraph “a”)].**

Article 6 guarantees the right to qualified medical and sanitary care, including free choice of a doctor, a choice of methods of treatment following doctor’s recommendations and a health care institution (paragraph “e”).

- ▶ **On Protection of the Population from Infectious Diseases: Law of Ukraine of April 6, 2000 [Article 24 (part 1)].**
- ▶ **On Approval of the National Program for the Development of Primary Health and Sanitary Care Based on Family Medicine for the Period Ending in 2011: Law of Ukraine of January 22, 2010.**

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **On the Physician's Oath: Decree of the President of Ukraine of June 15, 1992, [paragraph 1 part 1].**

“To devote all his/her knowledge, strength and abilities to the protection and improvement of the health of an individual ... provide medical care to all who need it”.

- ▶ **Framework for Ensuring the Quality of Health Care Services in Ukraine for the Period Ending in 2020: Order of the Ministry of Health of Ukraine of August 1, 2011 No. 454.**

The tasks for implementing the Framework include protection of the interests of the patient in the course of receiving quality health care. Besides this there had been defined major ways of solving problems in the sphere of increasing the quality of medical services, in particular creation of an effective system of medical services standartization.

- ▶ **On Approval of the Uniform Methods for Developing Clinical Guidelines, Medical Standards, Uniform Clinical Protocols for Medical Assistance, Local Protocols for Medical Assistance (Clinical Tracks for Patients) on Evidence-based Medicine: Order of the Ministry of Health of Ukraine, Academy of Medical Sciences of Ukraine of February 19, 2009 No. 102/18.**

Modern approach to improving the quality of medical care aims at controlling and improving the functioning of the health care system, increasing its effectiveness through the practice based on evidence and high quality clinical studies as the basis of clinical information. Modern medical practice requires doctors to use only the most reliable evidence, requires patients to take an informed active part in prevention programs and in the process of receiving medical care. An indicator of quality of health care is either a quantitative or a qualitative indicator that is supported by evidence or consensus about its direct impact on the quality of health care and is defined retrospectively.

- ▶ **On Approval the Plan of Measures Concerning the Framework of Clinical and Laboratory Researches Conduction for the Period Ending in 2015: Order of Ministry Of Health of Ukraine of October 17, 2010 No. 1003.**
- ▶ **On Procedure of Carrying out a Control and Management of Quality of Medical Care: Order of Ministry of Health of Ukraine of March 26. 2009. No. 189.**

“The purpose of carrying out a control over quality of medical care is a securement of patients’ rights to obtain a medical care in a necessary amount and of proper quality by way of optimal application of personnel and material and technical resources of health care, application of perfect medical technologies (paragraph 7)”

- ▶ **On Procedure of Management of Quality of Medical Care: Order of Ministry of Health of Ukraine of February 24, 2010, No. 163.**
- ▶ **On Approving the Standards of Medical Care Provision and Indicators of Medical Care Quality: Order of the Ministry of Health of Ukraine of December 28, 2002 No. 507.**
The list of medical care quality indicators includes:
 1. Accessibility of medical care.
 2. Economy of medical care.
 3. Effectiveness of medical care.
 4. Continuity of medical care.
 5. Scientific and technical level of medical care.
 6. The level of observance of medical care manufacturability.
 7. The level of clinical quality.
 8. The level of diagnostic’s quality.
 9. The level of quality of medical care
 10. The level of quality of medical examination.
 11. The level of quality of prophylactic.
 12. The level of quality of rehabilitation.
 13. The level patients are satisfied with the medical care they received.
- ▶ **On Approval of a Unitary Glossary of Definitions (Glossary) on the Issues of Management of Medical Care Quality: Order of the Ministry of Health of Ukraine of July 20, 2011 No. 427.**

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 3.2).**

“ A doctor is responsible for the quality and humanity of medical care provided to patients and any other professional actions that intervene in the life and health of an individual.

e) Other Relevant Sources

There are no other relevant sources on this matter.

f) Practical Examples

1. Example(s) of Compliance

Ms. V., born in 1940, while in an airport waiting room, felt weak and experienced an acute chest pain. She sought medical help at the airport clinic where she was provided with necessary assistance until the arrival of a cardiac ambulance crews. The patient was hospitalized with myocardial infarction for an inpatient treatment.

2. Example(s) of Violation

After a road accident, a 23 year old resident of city K was transported to the central district hospital of the city where he was treated for three days in an intensive care with a diagnosis of brain injury. Two days later, the patient died. The protocol (file) of autopsy states that the cause of death was an internal injury of the gastrointestinal tract with an extensive hemorrhage which in the course of treatment was not diagnosed. Based on this document, a criminal case against the attending physician of the central district hospital was opened and a forensic investigation was initiated which established the inadequacy of the assistance provided by the doctor.

3. Actual Case(s)

Defendants Mr. S. and Mr. T., health care employees, who on May 22, 2007 held the offices of the head of the maternity department of the central district hospital of district N., region P. (hereinafter, the hospital) and of the obstetrician-gynecologist at the maternity department respectively, failed to fulfill their professional duties while assisting with Ms. D.'s delivery due to careless and irresponsible attitude to their duties which caused grave consequences – the death of the mother.

On May 22, 2007 at 7:30, the pregnant woman commenced giving birth and at 17:00 of that day the delivery reached its active phase. Since in the course of the delivery complications emerged, the doctors decided to resort to surgery – a cesarean section (the surgery was performed on May 22, 2007).

After the surgery, contrary to the requirements of the provisions of the Order of the Ministry of Health of Ukraine “On Organizing Inpatient Obstetric, Gynecological, and Neonatal Care in Ukraine” of December 29, 2003 No. 620, the doctors left the woman without their supervision. Due to this, an atonic bleeding in the postoperative period (caesarean section) suffered by the patient was diagnosed late and in addition the obstetrician-gynecologist Mr. S. did not supply the maternity department with the required reserve components of blood.

This inaction led to the onset of a hemorrhagic shock of the 3-4 degree in the patient: namely, as it became known at 20:10 of the same day, the patient lost 1200 ml of blood, indicating that the patient remained without medical supervision for 40 minutes. As a result, the untimely diagnosis of the patient, Ms. D, with uterine bleeding, delayed medical care in conjunction with its inadequacy led to the development of irreversible changes in the brain tissue of the mother and subsequently caused the death of the victim.

On March 29, 2010, having examined the case, the court passed a verdict to convict Mr. S. on the basis of part 1 of Article 140 of the Criminal Code of Ukraine for 2 (two) years of restriction of freedom and on the basis of part 1 of Article 140 of the Criminal Code of Ukraine to deprive Mr. T of the right to hold a position of an obstetrician-gynecologist for 3 years and on the basis of paragraph “d” of Article 1 of the Law of Ukraine “On Amnesty” of December 12, 2008 to release Mr. T. from serving the sentence imposed. The court decided to satisfy the civil suit of Ms. K. (the mother of the victim) in full: namely, it ordered Mr. S. and Mr. T. to compensate Ms. K. jointly for material damage in the amount of 282.86 hryvnias and for moral damage in the amount of 100,000 hryvnias. A separate resolution was passed in the case.

g) Practice Notes

- 1.** Control over quality of medical care is conducted by the clinical expert commissions of the Ministry of Health of Ukraine (further Commissions). Commissions control the quality of medical care solely or by clinical and expert commissions of Autonomous republic of Crimea, of regions and of the towns of Kyiv and Sevastopol.
- 2.** Control over quality of medical care in the health care institutions of state or communal property, subordinated to Ministry of Health of Ukraine is carried out by the Commissions during in or out checks by way of making request and obtaining necessary papers of medical institutions to provide an examination of primary medical papers.
- 3.** Order of the Ministry of Health of Ukraine is a ground for control over quality of medical care. An act of expert control of a form approved by the Ministry of Health of Ukraine shall be prepared, taking into account the results of an examination. An act shall be signed by all members of the Commission and every page of the act is certified by them. A sitting of a Commission shall be added to the protocol.
- 4.** A conclusion of the act of expert control shall be approved by the simple majority vote of members of the Commission. In case there is an equal number of votes, the vote of a chief of the commission shall be considered decisive. Under the decision of minister of health of Ukraine can be conducted a second control over quality of medical care in case half of the commission members do not agree with an act of expert control.
- 5.** Copies of an act of an expert control of the Commission may be given to applicants on their request.
- 6.** A quality of medical care control shall be conducted in cases a) of death b) of complications c) of invalidity of working age persons d) of hospitalization for the second time and for same reasons within the same year e) of illnesses demanding extended or shortened treatment (or temporary disability) f) of different diagnosis g) connected with complaints of patients or their relatives.

7. Control of medical care quality can be external and internal. An external one is conducted by way of planned or non planned checks as regards observance of license conditions of medical practice, expert evaluation of whether medical institutions meet the requirements of state accreditation, attestation of doctors and junior specialists with medical education. An internal is a control, conducted by medical commissions, morbid anatomy conferences, doctors (self-control) and headships of medical institutions by way of examination whether a provide medical care meets the requirements of state standards, norms, clinical protocols
8. All applications that were submitted to the Commission shall be considered within 30 days. In case a Commission can't make a decision during this period if time, a term of consideration can be prolonged up to 15 days.
9. The issue of the quality of any service, including medical service, provided to a consumer, a patient, is regulated by the Law of Ukraine "On Protection of Consumer Rights."
10. Adequate quality of service is a property of the products of the service which meet the requirements established for this category of products by the legislative acts and the conditions of the contract with the consumer. Quality of medical care – is a proper (according to standards, clinical protocols) realization of all measures, which are safe, rational and accepted from the point of view of costs, which are used in this society and influence the mortality, morbidity and invalidity.
11. Inadequate carrying out of professional duties by a health care practitioner due to his/her careless or irresponsible attitude to them is subject to criminal responsibility under Article 140 of the Criminal Code of Ukraine. Inadequate carrying out of professional duties occurs when a medical or pharmaceutical employee carries out his/her duties partially, carelessly, superficially, not as required by the standards of his/her professional activity.
12. Standards for providing medical assistance and clinical protocols for individual nosologies and areas of medical activity which dictate to medical staff how to provide medical assistance are part of Ukrainian health care legislation.
13. To understand the law correctly, one should remember the following correlation in medical practice: clinical guidelines answer the question: "What can be done?" (standards of clinical practice); standards of medical care answer the question "How should it be done given the conditions in the country?"; protocols for medical care answer the question "How should it be carried out?".
14. Clinical guidelines and standards of medical care differ in their legal status. Clinical guidelines are a professional document that is adopted at a forum of an association or another organization of specialists, includes systematized provisions as regards medical service, worked out on the basis of evidence-based medicine and is aimed at supporting a doctor and a patient while making decisions in different clinical situations. Clinical guidelines are a normative document adopted at the national level by the

Ministry of Health of Ukraine and has a mandatory status, defines norms, requirements to an organization and criteria of quality of medical care provision, as well as indicators, that will be used to carry out an audit on different levels of system of medical care quality management. A limited number of the standards of medical care is developed, depending on the social and medical priorities, and they include groups of diseases or conditions that affect large groups of working age population and lead to major losses in the economy of the country. Standards of medical care foresee rules, standards as well as indicators of quality of medical care of certain kind provision, which are worked out taking into consideration modern level of medical science and practice development.

- 15.** Protocols for medical care are also a normative document, which defines the requirements as regards diagnostic, medical, prophylactic and rehabilitation methods of medical care provision and their consistency. Protocols provide rules and technologies for implementing standards of medical care, determine the procedure for interaction between subjects of medical care relations and the conditions for a transition from one stage of medical care to another. Clinical protocols are approved by the Ministry of Health of Ukraine.
- 16.** Consumer rights are considered to be violated (Article 21 of the Law of Ukraine “On Protection of Consumer Rights”) when at the stage of consumption of the product the right to free choice of the product by the consumer is violated in any way; when the right of the consumer to obtain all necessary, available, reliable and timely information about the relevant product is violated (except as provided by law); when the consumer is provided with the product that is dangerous, of inadequate quality, or fraudulent.
- 17.** To protect one’s violated right to medical care, an individual may use all necessary legal instruments, including the courts. The protection of consumer rights is carried out by courts in accordance with Article 22 of the Law of Ukraine “On Protection of Consumer Rights.”
- 18.** The quality of medical care in the event of a conflict between the subjects of a medical relationship in the course of a medical hearing is established by the bureau of forensic examinations and clinical and expert commissions.
- 19.** The State ensures the quality and safety of medical care of patients through the system of certification, licensing, accreditation and standardization as well as through proper training and re-training of medical and pharmaceutical personnel utilizing existing national standards of training and exercising control over all forms of medical practice.

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional standards related to the right to the observance of quality standards in the context of the right to the highest attainable standard of physical and mental health discussed in sections 2 and 3 and the right to life discussed in sections 2 and 3.

6.1.9 Right to Safety

a) Right 9 as Stated in the ECPR

Article 9. Right to Safety

Each individual has the right to be free from harm caused by the poor functioning of health services, medical malpractice and errors, and the right of access to health services and treatments that meet high safety standards.

b) Right as Stated in Country Constitution/Legislation

▶ **Constitution of Ukraine of June 28, 1996 [Article 49 (part 1)].**

“Everyone has the right to health care, medical assistance and medical insurance.”

▶ **Civil Code of Ukraine of January 16, 2003 [Article 284 (part 1)].**

“An individual has the right to receive medical assistance.”

▶ **“On Advertising: Law of Ukraine of July, 3, 1996 [Article 21]**

▶ **Criminal Code of Ukraine of April 5, 2001 [Articles 139, 140].**

▶ **On Protection of Consumer Rights: Law of Ukraine of May 12, 1991 (in the reading of December 1, 2005) [Articles 4 (paragraph 3 part 1), 6 (paragraph 3 part 1)].**

The law guarantees the right of consumers to the safety of products (goods, work, or services) (Article 4) and notes that the requirements regarding the safety of a product for life and health of consumers are established by legal documents (Article 6).

▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 42, 44].**

“A medical intervention is allowed only if it can not harm the health of a patient. A medical intervention that is associated with risks to the health of a patient is permitted as an exception when there is an urgent need for it and when a potential harm from the use of methods of diagnosis, prevention or treatment is less than that expected in case of non-interference and the danger to the life of the patient cannot be eliminated by other means. Risky methods of diagnosis, prevention or treatment are recognized as acceptable if they meet current scientific well-founded requirements designed to prevent the real threat to life and health of the patient, are used upon a consent of the patient informed of their possible harmful effects on the patient and the doctor utilizes all measures appropriate in such cases to prevent damage to life and health of the patient” (Art. 42).

“In medical practice, only the methods of prevention, diagnosis, treatment, and rehabilitation as well as medicines approved for use by the Ministry of Health of Ukraine are to be utilized.

New methods of prevention, diagnosis, treatment, rehabilitation and medicines that are in the process of being approved but are not yet approved for use can be utilized to treat an individual only upon obtaining his/her written consent. In case of individuals under 14 years of age (minors), above mentioned methods and medicines can be used upon a written consent of their parents or legal representatives; in case of individuals aged between 14 and 18 years, upon their written consent and a written consent of their parents or legal representatives; in case of individuals whose civil capacity is limited, upon their written consent and a written consent of their guardians; in case of individuals recognized as legally incompetent, upon a written consent of their legal representatives. When obtaining a consent for the use of new methods of prevention, diagnosis, treatment, rehabilitation and medicines that are in the process of being approved but are not yet approved for use, one should supply an individual and (or) his/her legal representative with information about the goals, methods, side effects, potential risks and expected results” (Art. 44).

▶ **On Psychiatric Care: Law of Ukraine of February 22, 2000 [Article 7].**

▶ **On Protection of the Population from Infectious Diseases: Law of Ukraine of April 6, 2000 [Article 13 (part 3)].**

▶ **On Resistance to Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Protection of People Living With HIV: The Law of Ukraine of 12.12.1991. (The wording of 23.12.2010.) [Article 4, (paragraph 4)]**

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **On Approval of the Interim Standards for Medical Care of Adolescents and Youth: Order of the Ministry of Health of Ukraine of June.2, 2009 No. 382.**
- ▶ **On Approving the Temporary Branch Classifier of Medical Procedures (Services): Order of The Ministry of Health of Ukraine of February 14, 2007, No. 67.**
- ▶ **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.**

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 [paragraphs 3.8, 3.12, 3.14).**

“In case of an error or when as the result of it unforeseen complications emerge, a doctor must inform the patient, a colleague in higher standing or the head of the department and in the absence of complications -- the administration of the establishment where he/she works and direct his/her actions immediately to correct negative consequences without waiting for instructions. If necessary, he/she should involve other specialists, informing them honestly about the nature of the error or the complications that occurred. ... A doctor has no right to leave patients when there is a state of general danger” (paragraph 3.12). “A doctor can not offer to a patient the methods of treatment, pharmaceuticals and other medical products not admitted into general circulation by the Ministry of Health of Ukraine in accordance with the legal procedure” (paragraph 3.14).

e) Other Relevant Sources

There are no other relevant sources on this matter.

f) Practical Examples

1. Example(s) of Compliance

While providing a patient, Mr. K., born in 1941, with medical information, a physician informed the patient that to enhance the medication therapy used, it would be advisable to follow the procedure developed by the scientists of the research institute. The health care practitioner explained to the patient that this

procedure is still at the stage of testing, the results are positive, so if the patient agrees to use it, he must give his consent in writing.

2. Example(s) of Violation

While providing assistance to a minor, an attending physician decided to use medicines which were not approved for general circulation since other means, in his opinion, did not give the desired result. In a few days, the patient's condition dramatically worsened and the patient was transferred to an intensive care unit where he died without regaining consciousness the next day. The parents of the boy learned that the doctor used medicines not yet approved for use by the Ministry of Health of Ukraine.

3. Actual Case(s)

On March 26, 2009, Ms. O., born in 1995, visited the gynecology department of the clinical hospital No. 4 of city D. In the doctors' office, she turned to the obstetrician-gynecologist Ms. Zh. with a request to administer her abortion, explaining that she already has a small child, is in a difficult financial situation, and her husband is against having a second child. The doctor agreed to perform an abortion, she obtained a consent of the patient in writing and immediately directed her into the surgery room where she performed the abortion. In the process of the abortion, the doctor became suspicious of a perforation of the uterus and decided to hospitalize the patient at the gynecology department, where the patient was administered a series of diagnostic tests that did not establish the presence of a perforation. Three days later, when the sepsis began, the diagnosis of the perforation of the uterus was confirmed when the complex of all the necessary diagnostic measures was utilized. Ms. O. was urgently sent for surgery—complete hysterectomy including removal of the fallopian tubes—as the result of which the patient was deprived of the reproductive function. On the basis of this fact, a criminal law suit was initiated against the doctor, Ms. Zh., under part 2 of Article 140 of the Criminal Code of Ukraine. During the pre-trial investigation, a forensic medical examination was carried out which concluded that the doctor committed several violations of professional duties and the actions of the doctor caused serious damage to the patient. The case was referred for trial on the basis of finding the doctor guilty. A civil law suit was initiated to compensate the patient for moral damages in the amount of 60,000 hryvnias. During the proceedings, the attorney of the defendant applied for amnesty, resulting in a court order to terminate criminal proceedings in connection with the release of Ms. Zh. from criminal responsibility. Ms. O. initiated civil proceedings to compensate her for moral damage in the amount of 60,000 hryvnias caused by the improper actions of the doctor. In this case, the court passed a decision to satisfy the claim in part: to recover from the clinical hospital No. 4 of city D. compensation in the amount of 40 thousand hryvnias in favor of the plaintiff.

g) Practice Notes

1. Responsibility for compliance with safety practices related to health and life of patients at health care institutions in the course of providing medical care falls on the administration and medical workers of these institutions or individual health care practitioners at the place of their activities.
2. To protect this right, one can utilize all the mechanisms and procedures covered in Chapter 8.

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional standards related to the right to the observance of quality standards in the context of the right to the highest attainable standard of physical and mental health discussed in sections 2 and 3 and the right to life discussed in sections 2 and 3.

6.1.10 Right to Innovation

a) Right 10 as Stated in the ECPR

Article 10. Right to Innovation

Each individual has the right of access to innovative procedures, including diagnostic procedures, according to international standards and independently of economic or financial considerations.

b) Right as Stated in Country Constitution/Legislation

▶ **Constitution of Ukraine of June 28, 1996 [Article 28 (part 3)].**

“No person can be subjected to medical, scientific or other experiments without his/her free consent.”

▶ **Civil Code of Ukraine of January 16, 2003 [Articles 281 (parts 3, 7), 289 (parts 4), 290].**

“Medical, scientific and other experiments can be carried out only on an adult competent individual upon his/her free consent. Clinical experiments are carried out in conformity with the law.” (part 3 Art. 281). “Given medical indications, an adult woman has the right to artificial insemination and a transfer of an embryo into her body” (part 7 Art. 281).

▶ **“On Advertising: Law of Ukraine of July, 3, 1996 [Article 21**

- ▶ **Criminal Code of Ukraine of April 5, 2001 [Articles 141, 142, 143, 149].**

“Violations of the rights of a patient:

Conducting clinical trials of medicines without a written consent of a patient or his/her legal representative, or on a minor or an incompetent individual if these actions caused the death of the patient or other grave consequences is punishable by restriction of freedom for a term of three to five years or imprisonment for the same term” (Art. 141).

“Illegal experiments on a person:

1. Illegal biomedical, psychological or other experiments on an individual if they created danger to his/her life or health is punishable by a fine of two hundred untaxed minimum wages, or correctional labor for up to two years or restriction of freedom for a term of four years accompanied by a withdrawal of the right to occupy certain positions or engage in certain type of activities for up to three years.

2. The action defined in the first paragraph of this Article if committed against a minor, two or more individuals, by means of coercion or deception, and also if it caused long term health disorders in the victim is punishable by restriction of freedom for a term of five years or imprisonment for the same term with an optional withdrawal of the right to occupy certain positions or engage in certain types of activities for up to three years” (Art. 142).

- ▶ **Family Code of Ukraine of January 10, 2002 [Article 123].**

1. When a wife gives birth to a child conceived through the use of assisted reproductive technologies carried out upon a written consent of her husband, he is recorded as the father of the child.

2. When an embryo of a child conceived by a couple through the use of assisted reproductive technologies is transferred into the body of another woman, the child’s parents are the couple.

3. A couple is recognized as the parents of a child when the child is born by the wife after a human embryo conceived by her husband and another woman through the use of assisted reproductive technologies was transferred into the body of the wife”.

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 45, 47, 48, 51].**

Performing bio-medical experiments on people is permitted given their socially useful purpose when they are scientifically well-founded, there exist benefits from a possible success that outweigh the risk of causing serious damage to the health or life of the patients, there is transparency in carrying out the experiment, full information concerning the procedure of the experiment is provided to and a free consent is obtained from an

adult competent individual who is subjected to the experiment, and medical confidentiality is maintained. It is prohibited to conduct research experiments on patients, prisoners or prisoners of war, as well as therapeutic experiments on individuals whose ailment has no direct connection to the goals of the therapeutic experiment” (Art. 45).

“An artificial insemination and embryo implantation are used in accordance with the terms and procedures established by the Ministry of Health of Ukraine, given the presence of medical indications for an adult women who undergoes such a procedure, provided there is a written consent of the couple and the anonymity of a donor and medical confidentiality are ensured” (Art. 48).

- ▶ **On Banning Reproductive Human Cloning: Law of Ukraine of December 14, 2004.**
- ▶ **On Transplantation of Organs and Other Anatomical Materials to a Human Being: Law of Ukraine of July 16, 1999 [Articles 6 (part 1), 16].**

“Transplantation as a method of treatment is used only if there are medical indications and upon a consent of an objectively informed competent recipient only in those cases when the removal of danger to life or restoration of health of the recipient is not possible through other methods of treatment” (part 1 Art. 6).

“Every competent adult individual may give a written consent to or reject an offer to become a donor of anatomical materials in the event of his/her death. In the absence of such declaration, the anatomical materials of a deceased competent adult individual can be taken upon a consent of a spouse or relatives who lived with the deceased. The anatomical materials of a deceased minor, partially competent or incompetent individual can be taken upon a consent of their legal representatives ... The anatomical materials of a deceased competent adult individual whose donor application is not available as well as of a minor, partially competent and incompetent individual may not be taken if a consent of the individuals listed in part one of this Article was not obtained or can not be obtained” (Art. 16).

- ▶ **On Medicines: Law of Ukraine of April 4, 1996 [Articles 7, 8].**

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **On Approval of the State Program “Reproductive Health of the Nation” for the Period Ending in 2015: Resolution of the Cabinet of Ministers of Ukraine of December 27, 2006 No. 1849.**

- ▶ **Rules for Civil Status State Registration in Ukraine: Order of the Ministry of Justice of Ukraine of October 18, 2000 No. 52 / 5.**
- ▶ **On Approval of the Instructions on the Procedure for the Use of Assisted Reproductive Technologies: Order of the Ministry of Health of Ukraine of December 23, 2008 No. 771.**
- ▶ **On Approval of the Procedure for Referring Women for the First Round of Treatment of Infertility Using Methods of Assisted Reproductive Technologies on the Grounds of Absolute Medical Indications Paid for from the Budget: Order of the Ministry of Health of Ukraine of November 29, 2004 No. 579.**
- ▶ **On Approval of the Plan of Action to Carry Out Measures for Enforcing the Implementation of the State Program “Reproductive Health of the Nation for the Period Ending in 2015”: Order of the Ministry of Health of Ukraine of July 4, 2007 No. 372/34.**
- ▶ **On Improving of Health Care to Individuals in Need of Sex Change (Correction) Provision: Order of the Ministry of Health of Ukraine of February 3, 2011 No. 60.**
- ▶ **A Regulation on Commission on Sex Change (Correction): Order of the Ministry of Health of Ukraine of February 3, 2011 No. 60.**
- ▶ **Procedure for Medical Examination of Individuals in Need of Sex Change (Correction): Order of the Ministry of Health of Ukraine of February 3, 2011 No. 60.**
- ▶ **On Approval of the Procedure for Clinical Trials of Medicines and Expert Review of the Materials of Clinical Trials and Approval of the Model Regulation on Ethics Commissions: Order of the Ministry of Health of Ukraine of September 23, 2009 No. 690.**
- ▶ **Model Regulation on Ethics Commissions: Order of the State Inspectorate for Quality Control of Medicines at the Ministry of Health of Ukraine of May 14, 2010 No. 56.**
- ▶ **On Introducing Telemedicine in Health Care Institutions: Order of the Ministry of Health of Ukraine of March 26, 2010 No. 261.**
- ▶ **On Approving the Temporary Branch Classifier of Medical Procedures (Services): Order of The Ministry of Health of Ukraine of February 14, 2007, No. 7**

- ▶ **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.**

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 3.1 section 5 “Scientific Research Involving Patients”, section 6 “New Medical Technologies ”].**

“ Scientific research involving patients may be carried out by doctors only when it complies with all of the following conditions: a) when it is aimed at improving the health of patients who participate in the experiment, b) when it becomes a significant contribution to the medical science and practice c) when the results of previous studies and existing data do not suggest the presence of risk to develop complications, d) on condition that all necessary measures for patient safety are procured” (paragraph 5.5).

Actions of a doctor applying new medical technologies (transplantation of human organs and tissues, human genome interventions, reproductive function interventions, etc.) are defined by the ethical and legislative acts of Ukraine, recommendations and requirements of the World Health Organization, UNESCO Bioethics Committee and Commission on Bioethics” (paragraph 6.1).

e) Other Relevant Sources

There are no other relevant sources on this matter.

f) Practical Examples

1. Example(s) of Compliance

Many people are still wary of IVF as a means of conception for fear of violating female bodily functions. But there exists evidence that after a baby conceived in this way is born, many women become pregnant again on their own. The global rate of success of this method is 25-30%. It is the same as that of natural conception. That is from among a hundred couples seeking to conceive only 25-30 do conceive. In particular, lately in vitro fertilization has already been conducted “in a phial” – IVF and ICSI. The first case of in vitro fertilization in Ternopil resulted in a city resident who could not conceive for about ten years being now poised to become a mother. Several other women after the same procedure are waiting for a confirmation of their pregnancy.

2. Example(s) of Violation

A couple that could not have children visited a medical center with an aim to address their problem through reproductive technologies. Due to a negligent attitude of doctors to their professional duties, as part of the surrogacy program, the eggs and sperm used for insemination were derived not from the couple. The embryos were transferred into the uterus of a “surrogate mother” who bears a child for this couple.

3. Actual Case(s)

Mr. K., who was hospitalized in an emergency care hospital with an acute myocardial infarction, died in an intensive care unit. The wife appealed to the Prosecutor with a complaint of inadequate actions of the medical employees of the health care institution in question. An inspection found out a number of professional violations that were committed by the medical staff both in the course of providing medical care and in conducting a clinical trial of a medicine. On the basis of these findings, a criminal lawsuit was initiated under part 1 of Article 140 and Article 141 of the Criminal Code of Ukraine. In the course of preliminary investigation, it was established that in the process of admitting the patient to the hospital, the doctor at the hospital intensive care unit examined the patient for the purpose of his inclusion in the ExTrakt-Timi 25 trial. The patient’s medical file contained an informed consent of Mr. K. to be included in a clinical trial as part of the project “The Use of Enoxaparin for Thrombolytic Reperfusion in the Treatment of an Acute Myocardial Infarction”. Examination of this document revealed several violations in the implementation of the patient’s right to consent to a bio-medical experiment: from inadequate information provided to a violation of voluntariness in obtaining the consent. Several forensic examinations were carried out in this case—forensic medical as well as forensic technical examinations—which revealed the facts of negligent attitude to one’s professional duties, violation of the procedure for conducting clinical trials, counterfeiting of primary medical documentation. The case is at the stage of preliminary investigation.

g) Practice Notes

1. It is extremely difficult for biological parents who provided the embryo for subsequent placement in the uterus of a surrogate mother to prove their right to a newborn child. The registration of the birth of the child is carried out by the woman (a donor) upon an application submitted by the couple who gave consent for her fertilization. In this case, together with the document confirming the birth of the child by the woman a notarized written consent of the woman (a donor) to register the couple as parents of the child is submitted. A medical birth certificate records the donor woman – a surrogate mother.
2. The Family Code of Ukraine contains the presumption of paternity of the couple, the Code of Civil Registration in Ukraine clearly exhibits legislative protection of a surrogate mother and contains the presumption of her maternity.

3. If there is a need to ensure the interests of an individual in the area of surrogate motherhood, one should remember the contractual relationship involved. It is reasonable that a couple that wishes to have a baby, a surrogate mother and a health care facility which carries out the implantation of the embryo are the parties to the contract.
4. In the case of a transplantation, there operates a presumption of a refusal to undergo the intervention.
5. A trade in human anatomical materials other than the bone marrow is prohibited.
6. The terms of legality of an artificial insemination and embryo implantation are:
 - a competent adult woman as the subject of the right exercised;
 - written consent of the couple;
 - guarantee of the anonymity of the donor;
 - preservation of medical confidentiality.
7. In connection with sex change an application on making amendments in a birth civil status act can be submitted to the department of civil status acts registration at the place of applicant's residence or at the location of a health care institution of Ukraine, which issued a sex change certificate. After the amendments in a birth civil status act had been made an applicant receives a birth certificate once more.

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional standards related to the right to innovation in the context of the right to the highest attainable standard of physical and mental health discussed in sections 2 and 3

6.1.11 Right to Avoid Unnecessary Suffering and Pain

a) Right 11 as Stated in the ECPR

Article 11. Right to Avoid Unnecessary Suffering and Pain

Each individual has the right to avoid as much suffering and pain as possible, in each phase of his or her illness.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Articles 3, 28 (part 2)].**

“Person’s life and health, honor and dignity, inviolability and safety are recognized in Ukraine as the highest social value” (Art. 3).

“No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment” (part 2 Art. 28).

- ▶ **Civil Code of Ukraine of January 16, 2003 [Article 289 (part 2)].**

“An individual can not be subjected to torture, cruel, inhuman or degrading treatment or punishment”.

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 6, 8 (part 2), 35-4, 52].**

- ▶ **On Approval of the National Programme to Combat Cancer for the Period Ending in 2016: Law of Ukraine of December 23, 2009.**

- ▶ **On Approval of the National Programme for HIV Prevention, Treatment, Care and Support to HIV-infected and AIDS Patients for 2009-2013: Law of Ukraine of February 19, 2009.**

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **On the Physician’s Oath: Decree of the President of Ukraine of June 15, 1992, [paragraph 2 part 1].**

“... To be selfless and responsive to patients ...”

- ▶ **On Approval of the Clinical Protocol for Providing Palliative Care, Symptomatic and Immunosuppressive Therapy to HIV and AIDS Patients: Order of the Ministry of Health of Ukraine of July 3, 2007 No. 368**

“...Relieving pain and other symptoms of the illness to improve the quality of life of a patient, educating the family of the patient in how to alleviate the suffering of the loved one ... Medical services in palliative care should be available around the clock”.

- ▶ **On Approval of the Sample Regulation on Hospice and Palliative Care Departments for HIV and AIDS Patients: Order of the Ministry of Health of Ukraine of December 27, 2007 No. 866.**

- ▶ **On Approval of the Sample Regulation on “Hospice” hospital (department, palliative treatment ward) for Tuberculosis Patients: Order of the Ministry of Health of Ukraine of June 11, 2010 No. 483.**
- ▶ **On Establishing the State Enterprise “Institute of Palliative and Hospice Medicine” at the Ministry of Health of Ukraine: Order of the Ministry of Health of Ukraine of July 24, 2008 No. 159-O.**
- ▶ **Instruction defining an order of medical provision in the Security Service of Ukraine: Order of the Security Service of Ukraine of 08.10.2007 (paragraph 7. 1)**

“A patient has a right to:

... pain connected with disease or/ and medical intervention...”

- ▶ **On Approving of a Typical Table of Equipping Medical Institutions, Providing Health Care to Cancer Patients with Major Medical Accessories and Products of Medical Purpose. Order of Ministry of Health of Ukraine of December 15, No. 954.**
- ▶ **On Approving the Order of Drugs, Psychotropic Substances and Precursors Circulation in Health Care Institutions of Ukraine. Of January 21, 2010, No. 11.**

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 3.11].**

“A doctor must remain next to a dying patient until the last moments of the patient’s life, provide appropriate therapy and supervision, maintain adequate quality of life, maximally relieve physical and mental suffering of the patient and his/her family utilizing all the means available”.

e) Other Relevant Sources

There are no other relevant sources on this matter.

f) Practical Examples

1. Example(s) of Compliance

Plaintiff Mr. Yu initiated a lawsuit against the central hospital of city D. in order to be compensated for moral damage. On October 27, 2005 he was injured at work and sought medical assistance at the hospital. On the same day, he was hospitalized with the diagnosis of “trauma to the right half of the chest” but did not receive any treatment and was discharged for work on October 31, 2005. The plaintiff repeatedly explained to the head of the Trauma Department Mr. B. that he felt a sharp pain in the chest, suggesting that he had broken bones, and asked for an adequate course of treatment and pain management, but this was denied to him. After the discharge from the hospital, his condition worsened, and Mr. Yu was forced to seek help from another health care institution where he has received appropriate medical care. The claims of Mr. Y were satisfied, the court decided to order the defendant to pay 5,000 hryvnias to compensate for the moral damage caused.

2. Example(s) of Violation

For almost two weeks in one of the regional hospitals, a woman was dying from cancer “with a pronounced pain syndrome”. Only after a neighbor in the ward complained to the chief of staff of the merciless behavior of the attending physician, the woman was prescribed opioid analgesics. This decision was made the day before the death of the patient.

3. Actual Case(s)

In March 2007, Mr. B. was arrested by the police on suspicion of having committed a crime. He was charged with committing a crime under part 2 of Article 121 and part 3 of Article 185 of the Criminal Code of Ukraine and “detention” was used as a precautionary measure. The case was referred to the District Court of district Z., region Kh. In April 2007, while in prison No. X, he was diagnosed with cancer (hiperrefroma) of the left kidney T3-4 N1 M1, metastatic process in lungs 4/II class. group, and chronic liver cirrhosis.

The representative of Mr. B. repeatedly submitted to the court a petition to change the preventive measure used because of the grave state of health of Mr. B., but none of the petitions was granted. Moreover, Mr. B. was mandatorily transported to the court hearings of his case (the court is located 50 km from the prison), which inflicted to him great physical and moral suffering.

Both before and during his detention in prison, Mr. B. constantly complained of an intolerable pain. According to the medical certificate issued by the head of the medical unit of the prison, Mr. B. was provided with symptomatic treatment, including narcotic analgesics; however, Mr. B. claimed that the amount prescribed to him was insufficient given the last stage of the disease. Besides, the prison did not have its own specialist-oncologist and because of this the applicant suffered daily pain and suffering.

An address to the European Court of Human Rights states that the failure to provide adequate medical care violated Art. 3 of the Convention on Human

Rights and Fundamental Freedoms. In addition, induced transportation of Mr. B. to and from the hearings caused him pain and physical and moral suffering that may fall under the definition of “torture” as defined in Art. 3 of the Convention. On the basis of the request addressed to the European Court of Human Rights and to the relevant government authorities, Mr. B. was hospitalized in the regional cancer hospital where his malignant tumor was removed and he received a proper postoperative treatment, radiation therapy, etc.

g) Practice Notes

1. Pain management as one type of medical intervention has indications, counter indications and complications. It is usually a supplementary intervention, additional to the main intervention: for example, the main intervention is delivery and supplementary intervention is epidural anesthesia. Pain management aims to ease and relieve the pain without slowing down the process of the main medical intervention and without harming the patient.
2. Palliative care is provided to patients at the last stages of incurable diseases and includes a complex of measures directed at easing of physical and emotional sufferings of a patient and providing of psycho-physical and moral support of their family members.
3. A relief of pain and other symptoms to improve the quality of life of a patient is one of the leading normatively defined principles of palliative care, and therefore, while justifying one’s request, in order to create conditions for realizing the right in question and in spite of the imperfections of the legal regulation of this issue, one should utilize this fundamental approach.

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional standards related to the right to prevent possible suffering and pain in the context of the right to the highest attainable standard of physical and mental health discussed in sections 2 and 3

6.1.12 Right to Personalized Treatment

a) Right 12 as Stated in the ECPR

Article 12. Right to Personalized Treatment

Each individual has the right to diagnostic or therapeutic programs tailored as much as possible to his or her personal needs.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 6 (paragraph “e” part 1), 35-1 – 35-5, 38 (part 1), 39 (part 3), 43 (part 3)].**

Articles 6 and 38 provide for the choice of treatment in accordance with medical recommendations of the doctor and Article 1939 provides for the right to medical information, particularly regarding the goal of the proposed studies and treatment, prognosis of the possible development of the disease; Article 43 refers to the duty of the doctor to explain that the lack of a consent to a medical intervention can lead to serious consequences for the patient (that is, we are dealing with particular aspects of the right to personalized treatment that is defined through other rights of the patient).

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **A Guide to Qualificational Characteristics of Professions of Employees: Order of the Ministry of Health of Ukraine of March 29, 2002 No. 117**

Paragraph 35, “A neurosurgeon” – the doctor, in particular, justifies an outline, a plan and tactics for examination and treatment of a patient, indications and counterindications for the surgery, a plan for its preparation. He/she develops outlines for postoperative supervision of the patient, prevention of possible complications;

Paragraph 86, “A surgeon” – the doctor determines indications for hospitalization according to the type of the disease, tactics for medication-based and surgical treatment of the patient, taking into account his/her state, the need for preoperative preparation;

Paragraph 87, “a Pediatric Surgeon” – the doctor determines indications for hospitalization according to the type of the disease, tactics for medication-based and surgical treatment of the patient, taking into account his/her state, the need for preoperative preparation. He/she develops outlines for postoperative supervision of the patient;

Paragraph 90, “Cardiovascular Surgeon” – the doctor develops a plan for preparing the patient for either an urgent or a routine surgery, determines the level of disruption of hemostasis, prepares all functional systems of the body of the patient for the surgery. He/she detects possible transfusion reactions and complications, takes measures to address them. He/she develops outlines for postoperative management of the patient and measures for prevention of complications.

- ▶ **On Approval of the Uniform Methods for Developing Clinical Guidelines, Medical Standards, Uniform Clinical Protocols for Medical Assistance, Local Protocols for Medical Assistance (Clinical Tracks for Patients) on Evidence-based Medicine: Order of the Ministry of Health of Ukraine, Academy of Medical Sciences of Ukraine of February 19, 2009 No. 102/18.**

“Evidence-based medicine is fair, accurate and deliberate use of the best clinical research for making treatment choices for a particular patient”.

- ▶ **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.**

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 3.2).**

“In his/her work, he/she must observe the Constitution and laws of Ukraine, existing regulations on medical practice, taking into account peculiarities of the disease, must use methods of prevention, diagnosis and treatments that are considered most effective in each case, guided by the interests of the patient ... In case of providing patient care under the circumstances not envisaged by the legislation, regulations and job instructions, a physician must consider primarily the interests of the patient, the principles of medical ethics and morality”.

e) Other Relevant Sources

There are no other relevant sources on this matter.

f) Practical Examples

1. Example(s) of Compliance

An obstetrician-gynecologist examined a 37 years old pregnant woman: the doctor gathered basic information pertaining to anamnesis and based on obstetric examination, filled out necessary medical documentation, determined the amount of general and individual laboratory tests needed. Given the age of the the woman, her complicated medical history (stillbirth with previous pregnancies), she sent the patient for medical genetic counseling, a screening for perinatal period infections and a screening for gestational diabetes.

2. Example(s) of Violation

On the third week of pregnancy, Ms. N. visited an obstetrician-gynecologist for a prenatal exam. The doctor gathered basic information related to anamnesis and the obstetric examination, filled out necessary medical documentation, determined the amount of laboratory tests needed. The pregnant woman regularly visited the doctor and repeatedly complained about the deterioration of her state of health which the doctor attributed to toxicosis. On the seventh month of pregnancy, Ms. N. was admitted to the hospital in a serious condition: it was determined that the fetus in the womb froze. The life of the woman was saved. After the diagnosis was established, it became clear that she did not have a screening for perinatal infection performed even though she repeatedly complained of poor health and stated that she could not get pregnant for a long time. While developing an individual plan for patient management, at the outset the doctor did not schedule necessary testing and did not point out the need to follow up with the patient, to take into account her state at a later stage.

3. Actual Case(s)

Mr. F. contacted a private health care institution to have a surgery performed to correct the pathology of intervertebral discs. Relying on Temporary Interdisciplinary Unified Standards for Medical Diagnostic and Therapeutic Technologies in Adult Inpatient Care in Health Care Institutions of Ukraine, approved by the Order of the Ministry of Health of Ukraine of July 27, 1998, the physician determined the amount of diagnostic studies the patient should undergo before the surgery. After the surgery, the patient's condition improved, he was able to move around on his own, but he developed purulent-septic complications, the possibility of which he was warned of by the doctor prior to the medical intervention. Mr. F. wrote a complaint against the doctor to the head of the clinic, noting that the doctor did not carry out prevention of possible complications, in particular, did not prescribe him antibiotics, did not develop a proper outline for postoperative supervision, did not observe his condition in the dynamic situation, indicating only that the standards for providing this type of care do not provide for the introduction of antibiotics. Hence, no individual approach to treatment was provided in this facility. In order to resolve the conflict, the chief of staff of the clinic reimbursed the patient for the cost of the stay and treatment in the clinic, institution, and the patient was provided with further assistance at the institution free of charge until his full recovery.

g) Practice Notes

1. While examining medical records, it is necessary to analyze clinical standards or clinical protocols for specific medical nosology, to determine whether a medical practitioner performed a full range of diagnostic and therapeutic services, whether the state of health of the patient was taken into account, his/her medical history, whether preliminary examination of the patient was carried out. This can be achieved by comparing the medical history of an inpatient or an outpatient, on the one hand, and the standards, protocols for medical care on the other.

2. While choosing an individual plan for the diagnosis and treatment of a patient, a physician must obtain patient's consent to planned interventions.
3. While developing an individual plan for treatment, diagnosis, prevention or rehabilitation, a physician should consider the overall requirements set out in the regulations, principles of evidence-based medicine: that is, he/she must use systematically, precisely and consciously the best results of clinical trials for the treatment of a specific patient.

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional standards related to the right to personalized treatment in the context of the right to the highest attainable standard of physical and mental health discussed in sections 2 and 3 and in the context of the right to non-discrimination and equality discussed in sections 2 and 3.

6.1.13 Right to Complain

a) Right 13 as Stated in the ECPR

Article 13. Right to Complain

Each individual has the right to complain whenever he or she has suffered a harm and the right to receive a response or other feedback.

b) Right as Stated in Country Constitution/Legislation

▶ Constitution of Ukraine of June 28, 1996 [Article 40].

“Everyone has the right to file an individual or a collective written petition or personally appeal to public authorities, local government and officials and employees of the bodies that are required to examine petitions and provide an answer within the period determined by law”.

▶ On Citizens' Petitions: Law of Ukraine of October 2, 1996.

“Citizens of Ukraine have the right to appeal to state authorities, local government, public associations, enterprises, institutions and organizations irrespective of their form of ownership, media, other officials in accordance with their executive responsibilities with comments, complaints and suggestions concerning their statutory activities, a petition or a request to

implement one's socio-economic, political and personal rights and interests as well as complaints of their violation" (part 1 Art. 1).

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Article 6 (paragraph "f")].**

Article 6 guarantees the right to appeal unlawful decisions and actions of employees, institutions and health care authorities.

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **On Immediate Measures to Ensure Implementation and Guarantee the Constitutional Right to Appeal to State and Local Authorities: Decree of the President of Ukraine of February 7, 2008 No. 109/2008.**
- ▶ **On Approval of the Instructions on Handling Citizens' Petitions by State and Local Authorities, Public Associations, Enterprises, Institutions and Organizations Regardless of Their Form of Ownership and in the Media: Resolution of the Cabinet of Ministers of Ukraine of April 14, 1997 No. 348.**
- ▶ **On Implementation of the Decree of the President of Ukraine of February 7, 2008 No. 109/2008 "On Immediate Measures to Ensure Implementation and Guarantee the Constitutional Right to Appeal to State and Local Authorities": Order of the Ministry of Health of Ukraine of March 14, 2008 No. 132.**

"To carry out a comprehensive analysis of handling of citizens' petitions and to take immediate steps to ensure implementation of the constitutional right of citizens to a written petition, an appointment in person, a mandatory well-grounded answer, strict implementation of the provisions of the Law of Ukraine "On Citizens's Petitions", organized handling of citizens' petitions ..." (paragraph 1.1).

- ▶ **On Approval of the Provision on the Procedure for Handling Citizens' Petitions and Setting up Appointments at the Ministry of Internal Affairs of Ukraine: Order of Ministry of Internal Affairs of Ukraine of October 10, 2004 No. 1177.**
- ▶ **On Handling the Review and Resolution of Petitions and Setting up Appointments at the Offices of Procuracy of Ukraine of December 28, 2005 No. 9.**

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. N. filed a complaint with the Department of Health against the chief of staff of a health care institution. The head of the Department issued an executive order to set up a commission to carry out an internal investigation of the facts described in the petition. As a result, the commission prepared a statement on the basis of which the head of the Department provided the petitioner with a response within a month.

2. Example(s) of Violation

Mr. S., an attorney of Mr. Yu who due to a poor repositioning of a fractures at the Regional Hospital of Region Zh. received group III disability, sent a complaint to the Department of Health at the regional administration. Two months later, the attorney received a letter of response which stated that the review of the complaint found no violations of the professional duties by the doctors. In the complaint to the Ministry of Health of Ukraine, the attorney pointed out not only the biased and incomplete review of the petition but also the violation of the deadline for the review of the complaint. In particular, he noted that the date in the case number on the letter of response was indicated in compliance with the current legislation while the stamp on the envelope indicated a significant difference between the date that was specified in the letter of response and the date when the letter was mailed.

3. Actual Case(s)

Mr. N. filed a complaint against a health care practitioner at an outpatient clinic explaining that his son, born in 1985, visited the doctor with symptoms of malaise, hyperthermia, and pain. The doctor reassured the patient by stating that he had influenza and prescribed a medication-based treatment to him. A few days later the son was hospitalized with left-side pneumonia and strong intoxication. Mr. N., as a father, demanded that the chief of staff of the clinic examined the negligent performance of professional duties by the physician. In 15 days, the chief of staff of the clinic replied to the petitioner that according to current legislation, namely Article 16 of the Law of Ukraine "On Citizens' Petitions", a complaint on behalf of a minor must be submitted by his/her legal representative and a parent does qualify as one. However, at this point, according to Article 32 of the Civil Code of Ukraine, his son is no longer a minor so the father has no right to file a complaint on his son's behalf. The answer to his petition may be granted only

if the applicant in addition to the complaint includes a document that properly testifies to the scope of his authority (power of attorney).

g) Practice Notes

- 1.** Requirements for petitions one should keep in mind while resorting to this method of defense:
 - a) a petition must specify a full name (not just initials) and a place of residence of the citizen, formulate the issue clearly, stating a request or a demand;
 - b) petition format – oral or written; type of filing – by an individual (individual) or by a group of people (collective); method of filing – personally or through a representative whose powers are properly certified; method of delivering it to the recipient – directly by taking it there (one should obtain a receipt) or by mail (by registered or by certified mail);
 - c) a written petition must be signed and dated by the petitioner(s);
 - d) repeated petitions from the same citizen on the same issue are not reviewed by the same body if the first petition was resolved nor are those petitions that were submitted too late and petitions from individuals declared incompetent by the court;
 - d) a complaint on behalf of a minor or an incompetent individual is filed by his/her legal representatives;
 - e) a decision may be contested by appealing to higher authorities or higher officials within one year after being adopted, but not later than one month after the citizen became aware of the decision. A deadline missed due to valid reasons may be restored by an authority or an official that reviews the complaint;
 - e) petition review deadlines: petitions are reviewed and resolved within one month from the date of their receipt, and those that do not require further examination are reviewed without delay but not later than fifteen days from their receipt. If issues raised in the petition can not be resolved within one month, the head of the authority, enterprise, institution, organization or his/her deputy set necessary time for the review and inform the petitioner about it. However, the overall term for resolving the issues raised in the petition may not exceed forty-five days;
 - g) petitions are reviewed free of charge;
 - h) if a petitioner wants to be personally present (by oneself or with a representative) when the petition is reviewed, it is advisable to request in the complaint or the petition that the authority reviewing the petition secure this right.
- 2.** Proposals, petitions and complaints by the same citizen on the same issue sent to different recipients and submitted to one and the same organization (duplicates) are recorded under the registration number assigned to the first proposal, petition, or complaint with the addition of a serial number that follows a slash.

3. Files to be permanently or temporarily (for more than 10 years) stored are transferred to the archives of the organization two years after they were closed. Files for temporary storage (for up to 10 years) are submitted to the archives by the decision of the head of the organization. After the expiration of the storage period, the proposals, petitions and complaints are destroyed.
4. All petitions received by the addressee must be accepted and uniformly recorded on the day of their arrival using registration cards suitable to be processed on personal computers or in the register (permitted to be used in organizations that receive annually up to 600 proposals, petitions and complaints and the same number of citizens' requests for an in person appointment). Envelopes (envelope clippings) are stored together with proposals, petitions, complaints. Registration of in person appointments is done on the cards, in a register or with the help of computers.
5. An administrative form of protection which includes an appeal (a written or an oral proposal (recommendation), a petition (solicitation) and a complaint) is discussed in section 8.2.2.

6.1.14 Right to Compensation

a) Right 14 as Stated in the ECPR

Article 14. Right to Compensation

Each individual has the right to receive sufficient compensation within a reasonably short time whenever he or she has suffered physical or moral and psychological harm caused by a health service treatment.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Article 3 (part 1)].**
- ▶ **Civil Code of Ukraine of January 16, 2003 [Articles 22 (part 1), 23, 906, 1166 (part 1, 2), 1167 (part 1), 1168, 1195-1203, 1209].**

“An individual who suffered losses as a result of having his/her civil right violated is entitled to compensation” (Article 22). “A individual is entitled to compensation for moral damages due to violations of his/her rights. Moral damages are physical pain and suffering that an individual suffered due to an injury or other damage to health; emotional distress that an individual suffered due to an unlawful behavior in relation to him/her, members of his/her family or his/her close relatives; humiliation of honor and dignity of an individual as well as business reputation of an individual or a legal entity. Moral damages are compensated for with money, other property or otherwise. The size of monetary compensation for moral damages is

determined by the court depending on the nature of the offense, the degree of physical and mental suffering, decreased abilities of the victim or deprivation of the ability to exercise them, degree of guilt of the individual who inflicted moral damage, if it constitutes grounds for compensation, as well as other essential circumstances. When determining the amount of compensation, one takes into account the requirements of reasonableness and fairness. Moral damages are recoverable regardless of property damages to be compensated for and are not dependent on the size of the latter compensation. Moral damage is compensated for only once, unless otherwise provided by a contract or the laws.” (Article 23).

“Moral damage caused to an individual or an entity by unlawful decisions, actions or inaction shall be compensated by the person who caused it, if his/her guilt is established” (Art. 1167).

“Compensation for moral damage caused by an injury, other damage to health, or death of the individual:

1. Moral damage caused by an injury or other damage to health may be compensated for once or by means of monthly payments.

2. Moral damage caused by the death of an individual is compensated to the husband (wife), parents (adoptive parents), children (adopted children) as well as those who lived with the deceased as one family” (Art. 1168).

“An individual or a legal entity that has caused an injury or damage to the health of another individual is required to compensate the victim for the wages (income) lost due to the loss or reduction of professional or general capacities and compensate for additional expenses caused by the need for enhanced nutrition, rehabilitation at a resort, purchase of medication, prosthetics, outside care, etc.” (paragraph 1 Art. 1195). “Damage caused to an individual by an injury or other damage to health is compensated in addition to the pension assigned due to the loss of health or pension received previously as well as other income” (part 3 Art. 1195).

► **On Protection of Consumer Rights: Law of Ukraine of May 12, 1991 (in the reading of December 1, 2005) [Articles 4 (paragraph 5 part 1), 16].**

“A consumer has the right ... to be compensated for damages (losses) caused by defective or counterfeit products or products of poor quality and proprietary and moral (non-proprietary) damage caused by the products that constitute danger to life and health of people in the cases stipulated by law” (paragraph 5 part 1 Article 4).

Article 16 of this Law (“Proprietary Liability for Damage Caused by Defective Products or Products of Poor Quality”) states among other:

1. Damage to life, health or property of the consumer caused by defective products or products of poor quality is compensated in full, unless the law provides for a higher degree of liability.

2. Each victim has the right to demand compensation for damages suffered regardless of whether he/she had a contractual relationship with the manufacturer (provider, seller).

Given this, a consumer is required to prove: 1) presence of damage, 2) defects in the product, 3) presence of a causal link between the damage and the defects. The liability of the producer (provider), according to the provisions of this Law, does not depend on the actions or inaction of others who are related in some way to the damage caused by the defective products or products of poor quality.

5. A manufacturer (provider, seller) is exempt from liability if he/she proves that: 1) the damage was caused due to the fault of the consumer as a result of the violation of the established rules of use, storage or transportation of the products or force majeure, 2) he/she did not introduce the product into circulation, 3) the defect in the product resulted from the observance of legal requirements by the manufacturer or following mandatory prescriptions of the state authorities.

- ▶ **On Mandatory State Social Insurance for Temporary Disability and Costs Arising from a Birth or a Burial: Law of Ukraine of January 18, 2001 (Article 51).**
- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Article 6 (paragraphs “k”, “l”)].**

Article 6 states that : “each citizen of Ukraine has the right to health which presupposes ... compensation for damage caused to health (paragraph “k”); ...to appeal unlawful decisions and actions of employees, institutions and health care authorities (paragraph “l”).”

- ▶ **On Protection of the Population from Infectious Diseases: Law of Ukraine of April 6, 2000 [Article 19 (paragraph 3 part 1)].**

“To initiate a lawsuit to be compensated for damages caused to one’s health and (or) property as a result of the violation of the laws that protect the population from infectious diseases”.

- ▶ **On Resistance to Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Protection of People Living With HIV: The Law of Ukraine of 12.12.1991. (The wording of 23.12.2010.) (Article 17)**

“Persons, who were contaminated with HIV during blood (its components) transfusion, biological liquids, cell tissues and human organs transplantation, conduction of medical manipulations and execution of ones duties, have the right to judicial compensation for damages to their health”

“... The right to be compensated for damages related to the restriction of their rights which resulted from the disclosure of the fact that these individuals were infected with human immunodeficiency virus” (paragraph 1 part 2 Art. 17).

“People who were infected with an HIV-infection as a result of medical manipulations are entitled to a redress for the damage caused to their health by the responsible individual” (Art. 20).

▶ **On Psychiatric Care: Law of Ukraine of February 22, 2000 [Article 25 (paragraph 15 part 3)].**

“... The right to compensation for damages suffered or damages to one’s property as a result of an illegal placement into a psychiatric institution or neuropsychiatric institution for social protection or special education or because of a failure to provide safe conditions for psychiatric care or disclosure of confidential information about mental health and the fact of mental health care being provided”.

c) Supporting Regulations/Bylaws/Orders

▶ **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.**

“The aim of the framework... is securement of reimbursement in case of medical medical damages incurment.”

d) Provider Code(s) of Ethics

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

e) Other Relevant Sources

▶ **Responsibility of medical workers: Letter of the Ministry of Justice of Ukraine, Department of Constitutional, Labor and Humanitarian Legislation of January 20, 2011.**

▶ **On Judicial Practice in Cases of Compensation for Moral (Non-proprietary) Damage: Resolution of the Plenary Assembly of the Supreme Court of May 25, 2001 No. 5 (as amended by the Resolution of the Supreme Court of Ukraine of May 25, 2001 No. 5).**

“Moral damages are non-proprietary losses due to moral or physical suffering or other negative effects caused to an individual or a legal entity by unlawful actions or inaction of others.

A claim for compensation for moral (non-proprietary) damage must contain a statement of what the damage is, what wrongful actions or inaction caused the damage to the plaintiff, on what grounds he/she determined the extent of the damage, and what evidence confirms this.

According to the general rules for civil liability, while settling the dispute about the compensation for moral (non-proprietary) damage, the following is mandatory to be established: presence of the damage, unlawfulness of the actions of the individual/entity that caused the damage, presence of a causal connection between the damage and the unlawful actions as well as the guilt of the individual/entity that caused the damage. An individual or a legal entity is exempt from liability for non-proprietary damage if he/she proves that the latter was not due to his/her fault.

The court, in particular, must determine what evidence exists to support the fact of moral or physical suffering or non-proprietary losses by the plaintiff, what circumstances or what actions (inaction) caused the damage, what monetary sum or in what material form the plaintiff assesses the damage he/she suffered and on the basis of what considerations this assessment is based as well as other circumstances relevant to resolving the dispute. The court determines the amount of compensation for moral (non-proprietary) damage on the basis of the nature and extent of the suffering (physical, emotional, mental, etc.) incurred by the plaintiff, the nature of non-proprietary losses (their duration, possibility of recovery, etc.) and taking into consideration other circumstances. In particular, the state of health of the victim, the severity of forced changes to his/her life and employment relations, the degree of reduction of prestige, business reputation, time and effort needed to restore the previous state are taken into consideration. In doing this, the court relies on the requirements of reasonableness, fairness and deliberation.

If moral damage was caused to an individual, the obligation to compensate for it rests on the perpetrators regardless of whether the victim suffered any property damage and whether he/she was compensated for it”.

► **On the Procedure for Civil Lawsuits on Consumer Rights Protection: Resolution of the Plenary Assembly of the Supreme Court of Ukraine of April 12, 1996 No. 5.**

“... In hearing the lawsuits on consumer protection initiated as a result of inaccurate or incomplete information about goods (work, services) ... the court should proceed from the assumption that the consumer has no specialized knowledge about the properties and characteristics of the goods (work, services).

... Damage to life, health or property of consumers by goods (work, services) which contain structural, manufacturing, formulation or other flaws, or in connection with the use of the products, materials, equipment, tools, instruments and other means necessary to carry out given work or services by the provider regardless of his/her knowledge of their properties, or by selling goods (work, services) without compliance with specified require-

ments for the safety of life and health of consumers and their property, or in connection with the acquisition by the consumer of goods (work, services) without being provided with necessary, accessible and credible information which would grant an opportunity to make a competent choice—is compensated in full if the law does not provide for a higher degree of liability, and given such a law in the amount established by it. Each consumer-victim has the right to demand a compensation for the damage regardless of whether he/she is in a contractual relationship with the manufacturer (provider) and this right is valid for a term of specified service life (shelf life) of the product and, if the term is not set, for ten years from the time when the product was manufactured (work, services were accepted). If, in violation of the law, the manufacturer (provider, seller) failed to warn consumers about the availability of service life (shelf life) for the product or part of it (results of work), about the mandatory conditions for its use and possible consequences of the failure of complying with them, and about what to do after the service/shelf life term expires, the damage is subject to compensation even when the damage was caused after the expiration of the term”.

► **On the Procedure for Civil Lawsuits on Compensation for Damages: Resolution of the Plenary Assembly of the Supreme Court of Ukraine of March 27, 1992 No. 6.**

“In hearing lawsuits to compensate for damages, courts should bear in mind ... that a legal entity is liable only when the individual who is responsible for causing the damage has labor relations with this organization and the damage was caused in connection with him/her carrying out his/her employment (service) duties, regardless whether the labor contract in question was for a permanent, seasonal, temporary employment or he/she was an employee of the organization under other conditions” (paragraph 5). “An individual who is responsible for the damages caused due to the fault of another individual has the right to a counterclaim against the guilty person; it will not contradict the law for the victim to exercise the option of claiming compensation directly from the guilty person if by law the liability boundaries between the guilty person and the person responsible for him/her are the same” (paragraph 8).

► **On the Procedure for Civil Lawsuits on Compensation for Damages Caused by Businesses, Institutions, Organizations and Their Employees: Resolution of the Plenary Assembly of the Supreme Court of Ukraine of December 29, 1992 No. 14.**

“The demands of others based on improper carrying out of employment duties by an employee (compensation for damage to one’s property, health ...) are to be met by the enterprise to which the guilty employee is liable by recourse by the norms of labor legislation.

f) Practical Examples

1. Example(s) of Compliance

Mr. Ts died in the cardiology department of a health care institution because of inadequate medical care provided. His daughter filed a complaint against the medical personnel with the police. The latter, on the basis of a preliminary investigation, found no grounds for a criminal investigation into the death of Mr. Ts. The daughter of the deceased initiated a civil lawsuit to compensate her for material and moral damages inflicted by her father's death with the hospital acting as a defendant in the case. The court partially satisfied the claim.

2. Example(s) of Violation

Mr. D., born in 1993, (who by the decision of the guardianship and care authorities was granted full civil capacity in order to enter into an employment contract) was hospitalized in a medical facility after a road accident. After a medical intervention was carried out to consolidate an open fracture of a tibia bone and a long postoperative period, it turned out that the patient developed iatrogenic pathology – osteomyelitis. The father initiated a lawsuit to recover the moral and material damage caused to him and his son by unlawful actions of the medical staff.

3. Actual Case(s)

In December 2006, Mr. M. filed a lawsuit against the Information and Advisory Center "T." to compensate him for material damage in the amount of 1,300 hryvnias and moral damage in the amount of 50,000 hryvnias. To substantiate his claim, the plaintiff cited the fact that in May 2006 he asked the defendant for medical assistance because he showed signs of some ailment of the urinary-reproductive system. On March 12, 2006, the plaintiff was examined at a branch of the defendant's company where the plaintiff was diagnosed with "chronic cystopyelitis" and was prescribed a three stage rehabilitation treatment using the drugs of the company "T." The course of treatment ended in September 2006. Since the condition and the state of health of Mr. M. did not improve as the result of the treatment, he went for a consultation to the Kharkiv Urological Center where he was examined and diagnosed with "prostate cancer". The plaintiff argued that due to the wrong diagnosis made by the defendant, he failed to detect the disease on time and receive appropriate medical care. The ruling of the court of November 14, 2007 granted the motion of the plaintiff to take to court as defendants for the center workers "T." Mr. R and Mr. K. The ruling of the court of November 21, 2005 granted the plaintiff's motion to secure compliance and impose a seizure of property of Center "T", Mr. R and Mr. K. in the amount of 52,000 hryvnias each, irrespective of the location of the property. The defendants challenged the ruling. The Court of Appeal concluded that the appeal must be met only in part given that the form of the satisfaction of the claim elected by the court is not commensurate with the amount of the claim. The Court decided to satisfy the claim in part as follows: to recover material damage in full, that is

in the amount of 1,300 hryvnias and to recover moral damage in the amount of 30 thousand hryvnias from the defendants jointly.

g) Practice Notes

1. The right to compensation for moral damage.

1.1. According to paragraph 1 of Article 60 of the Civil Procedure Code of Ukraine, each party is obliged to prove the circumstances to which it appeals as grounds for a claim. Paragraph 4 of the Resolution of the Plenary Assembly of the Supreme Court of Ukraine “On Judicial Practice in Cases of Compensation for Moral (Non-proprietary) Damage” indicates that, “according to Article 137 of the Civil Procedure Code of Ukraine, while filing a claim a plaintiff should state the grounds on which the amount of damage is determined and the evidence that supports it”.

In the majority of claims to compensate for moral damage filed in court, plaintiffs do not go beyond the statement: “I suffered moral damage”. However, the lack of evidence as to what kind of moral damage was incurred by the unlawful actions of the defendant (defendants) leads to a court ruling to suspend proceedings and, if no corrections are made by the plaintiff within a set period of time, the court rules to drop the case.

1.2. According to Article 57 of the Civil Procedure Code of Ukraine, evidence consists of any facts on the basis of which the court can determine the presence or absence of circumstances that either justify or challenge the claims and demands of the parties involved and other circumstances relevant to solving the case. These facts are determined on the basis of the statements of the parties involved, third parties, their representatives questioned as witnesses, witness testimonies, written evidence, material evidence, including audio and video recordings, conclusions of experts.

Psychological forensic examination constitutes one of the methods of establishing the fact of moral damage. A forensic psychologist can establish the presence or absence of signs of moral damage that was incurred to an individual and determine a material equivalent of the moral damage that was incurred. The findings of medical practitioners (for example, notes made by a psychiatrist on the state of health of a patient in primary medical documentation) serve as popular evidence of the state of health of the plaintiff and of the impact of negative emotional experiences on the deterioration of his or her health in cases that involve compensation for moral damage.

In the course of presenting evidence in court, one should clarify a causal link between each piece of evidence and the fact of causing moral damage. Availability of sufficient evidence guarantees a fair determination of the amount of compensation for moral damage by the court.

1.3. According to Article 268 of the Civil Code of Ukraine, the claims arising from the violation of personal, non-proprietary, rights do not expire. .

1.4. In those cases when the amount of compensation for moral damage is determined as a multiple of minimum wages or minimal untaxed income of a citizen, one should utilize the minimum wages or minimal untaxed income at the time of the proceedings.

1.5. When moral damage was caused by several defendants, the claims should be made against each individual defendant. When moral damage was caused by unlawful actions of several individuals, the amount of the compensation is determined taking into account the degree of liability of each of them. When moral damage was inflicted by a group of individuals collectively (interconnected, cumulative actions or actions unified by a single intention), the compensation is a joint responsibility.

1.6. According to Article 1172 of the Civil Code of Ukraine and paragraph 8 of the Resolution of the Plenary Assembly of the Supreme Court of Ukraine "On Judicial Practice in Cases of Compensation for Moral (Non-proprietary) Damage", when moral damage was caused by an individual in the course of performing his/her employment duties, the responsibility falls on the organization which employs this individual, and the individual is liable to the organization in the order of recourse. Under such circumstances, the claim is made against the employer (a health care institution or an individual entrepreneur) who acts as a defendant, and the medical practitioner whose actions caused the damage acts as the third party.

1.7. Moral damage is recoverable regardless of the compensation for material damage and is not dependent on the size of this compensation. Moral damage is compensated for only once, unless otherwise provided by a contract or by law. When determining the amount of compensation, one should take into account the requirements of reasonableness and fairness. In any case, the amount of compensation should be adequate for the moral damage incurred.

2. The right to compensation for material damage.

2.1. Among many ways to protect personal non-proprietary rights and, in particular, the rights of patients in the course of providing them with medical assistance or medical services, there is a right to restitution and other compensation for material damage. In the health sector, the responsibility falls onto health care institutions and medical practitioners who engage in private practice. Civil liability is divided into 2 types: 1) contractual; 2) delictual.

2.2. Contractual and delictual liabilities are delineated by the rule whereby if the conditions for a contractual claim are met, a non-contractual claim is not evoked: contractual claims supersede non-contractual claims. This, of course, does not weaken the liability established by law. The decision on contractual liability is made if the parties have contractual obligations. If there are no contractual obligations between the parties, it is permitted to resort to delictual liability.

2.3. When providing medical services under a payment contract, contractual liability is involved. Its amount cannot be less than the amount of delictual liability. On the contrary, the level of compensation for damages

can be increased in comparison with the general rule. The function of the contract in such cases is that with its help the obligation imposed by the law to compensate for the damage applies in one of the following three areas: grounds for the commitment, parties of the commitment, and content of the commitment.

The analysis of contractual obligations shows that, according to section 2 of Article 901 of the Civil Code of Ukraine, the rules established in Section 63 of “Services. General Considerations” apply to all service contracts (including medical service contracts) if they do not contradict the essence of the commitment.

2.4. The conditions for delictual liability in the health sector according to the civil legislation of Ukraine are: 1) an unlawful action (inaction) of medical staff, 2) damage caused to a patient, 3) a causal connection between the unlawful action and the onset of the damage, 4) liability of the party that inflicted the damage.

2.5. The civil legislation of Ukraine operates on the principle of the presumption of guilt of an individual who inflicted damage while providing medical assistance: consequently, innocence is to be proven by the individual that committed an offense. As a general rule defined in part 2 of Article 1166 and part 1 of Article 1167 of the Civil Code of Ukraine, an offender is exempt from compensating for material and moral damage when he or she proves that the damage was not due to his or her fault.

2.6. Article 1172 of the Civil Code of Ukraine requires compensation for the damage caused by employees (medical staff) while performing their job (employment duties) to be made by the legal entity (including a medical institution) or the individual that employ them. Under such circumstances, the employer (a health care institution or an individual entrepreneur) acts as a defendant while the medical employees whose actions caused the damage constitute a third party.

2.7. Material damage in the domain of health care consists of: a) actual losses – losses that an individual suffered or is forced to suffer to recover the violated right (medication, prosthetics, diagnosis, treatment and rehabilitation, resort rehabilitation, enhanced nutrition, outside care, burial, tombstone construction expenses (paragraph 1 part 2 Article 22, Articles 1195, 1201 of the Civil Code of Ukraine)), b) lost profits – revenue that an individual could realistically obtain under normal circumstances if his/her right were not violated (wages (income) lost due to the loss or decrease in professional capacities or total disability (paragraph 2 part 2 Article 22, Article 1195 of the Civil Code of Ukraine)).

2.8. The degree of loss of professional capacity (in a percentage format) as well as the need for outside assistance are determined by a forensic examination. If due to the damage to health, the victim incurs additional expenses for medical and social assistance, these expenses are to be recovered from the individual responsible for the damage, while the need for such expenses and their duration have to be confirmed by a forensic examination.

2.9. Recovery of additional expenses to be incurred by the victim in the future can be carried out within the timeframe specified in the conclusion of the Medical Social Examination Commission or forensic examination. While recovering the expenses for prosthetics, purchase of a resort trip for rehabilitation, a court must specify in its decision that the awarded amounts are to be transferred to the relevant organization that will provide these services to the victim.

2.10. In the case of death of a victim, an organization or a citizen responsible for the damage are required to reimburse funeral expenses (including funeral services and ceremonies) to individuals who incurred the expenses. Therefore, the claims to recover funeral expenses may be presented by the individuals that are entitled to compensation in connection with the death of a breadwinner and by outsiders – citizens and organizations that actually incurred the expenses. The cost of tombstone construction and fencing are based on their actual value but not above the marginal cost of standard tombstones and fences in the area in question.

2.11. For a detailed clarification of all other mechanisms of compensation for damage to health, examine, in particular, paragraphs 12, 17-22 of the Resolution of the Plenary Assembly of the Supreme Court of Ukraine “On Judicial Practice in Civil Cases of Compensation for Damages”.

6.1.15 Right to Life

a) Every person has a right to life, including during his/her transformation into subject of medical relations – a patient.

b) Right as Stated in Country Constitution/Legislation

► **Constitution of Ukraine of June 28, 1996 [Article 3, 21, 27, 64].**

“A human being, his/her life and health, honor and dignity, inviolability and safety are recognized in Ukraine as the highest social value” (Art. 3). “All people are free and equal in their dignity and rights” (Art. 21). “Everyone has an inalienable right to life. No one may be arbitrarily deprived of life. Responsibility of the government is to protect human life” (Art. 27). This right may not be restricted even in emergency or under martial law (Art. 64).

► **Civil Code of Ukraine of January 16, 2003 [Article 281].**

“The right to life:

1. An individual has an inalienable right to life.
2. An individual may not be deprived of life.

An individual has the right to protect his/her life and health, and the life and health of another individual from unlawful encroachments using any means not prohibited by law.

3. Medical, scientific and other experiments may be carried out only on a competent adult individual with his/her voluntary consent.

4. One may not satisfy the request of an individual to terminate his/her life.

5. Sterilization may take place only at the request of an adult individual. Sterilization of an incompetent individual on the grounds of medical indications

may be performed only with the consent of his/her guardian, in compliance with the requirements established by law.

6. An abortion performed no later than twelve weeks into pregnancy may be carried out upon the request of a woman.

In cases established by law, an abortion may be performed during pregnancy

of twelve to twenty-two weeks.

The list of circumstances that allow an abortion to be performed after twelve weeks of pregnancy is established by law.

7. An adult woman or man eligible on the grounds of medical indications has the right to undergo treatment programs that utilize assisted reproductive

technologies according to the procedure and conditions established by law” (Art. 281).

▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 50, 52 (part 3)].**

“Medical personnel may not perform euthanasia—an intentional acceleration of death or putting an incurable patient to death to end his/her suffering”. [part 3 Article 50].

c) Supporting Regulations/ Bylaws/ Orders

▶ **On the Implementation of Article 281 of the Civil Code of Ukraine: Resolution of the Cabinet of Ministers of Ukraine of February 15, 2006 No. 144.**

▶ **On Approval of the State Program “Reproductive Health of the Nation” for the Period Ending in 2015: Resolution of the Cabinet of Ministers of Ukraine of December 27, 2006 No. 1849.**

▶ **Clinical Protocols for Obstetric and Gynecological Care: Order of the Ministry of Health of Ukraine of December 29, 2005 No. 782.**

- ▶ **On Improvement of Outpatient Obstetric and Gynecological Care in Ukraine: Order of the Ministry of Health of Ukraine of December 28, 2002 No. 503.**
- ▶ **On Organizing Stationary Obstetric, Gynecological and Neonatal Care in Ukraine: Order of the Ministry of Health of Ukraine of December 29, 2003 No. 620.**
- ▶ **Instructions on the Procedure for Abortions: Order of the Ministry of Health of Ukraine of July 20, 2006 No. 508.**
- ▶ **On the Use of Methods of Sterilization of Citizens: Order of the Ministry of Health of Ukraine of July 6, 1994 No. 121.**
- ▶ **Procedure for the Use of Methods of Surgical Sterilization of Women: Order of the Ministry of Health of Ukraine of July 6, 1994 No. 121.**
- ▶ **List of Medical Indications for Surgical Sterilization of Men: Order of the Ministry of Health of Ukraine of July 6, 1994 No. 121.**
- ▶ **Procedure for the Use of Methods of Surgical Sterilization of Men: Order of the Ministry of Health of Ukraine of July 6, 1994 No. 121.**
- ▶ **On Approval of the Procedure for Referring Women for the First Round of Treatment of Infertility Using Methods of Assisted Reproductive Technologies on the Grounds of Absolute Medical Indications Paid for from the Budget: Order of the Ministry of Health of Ukraine of November 29, 2004 No. 579.**
- ▶ **On Approval of the Plan of Action to Enforce Implementation of the State Program “Reproductive Health of the Nation” for the Period Ending in 2015: Order of the Ministry of Health of Ukraine of July 4, 2007 No. 372/34.**
- ▶ **On Approval of the Clinical Protocol for Resuscitation and Post Intensive Care of Newborn: Order of the Ministry of Health of Ukraine of June 8, 2007 No. 312.**
- ▶ **Instructions on Declaring Death of an Individual on the Grounds of Brain Death: Order of the Ministry of Health of Ukraine “On Approval of Legal Documents for Transplantation” of September 25, 2000 No. 226.**

- ▶ **Instructions on Determining the Criteria for Prenatal Period, Live Births, and Still Births: Order of the Ministry of Health of Ukraine of March 29, 2006 No. 179.**

According to this legal act, live birth means the expulsion or extraction from the body of the mother of a fetus which after the expulsion / extraction (regardless of the duration of pregnancy, whether or not the umbilical cord is cut and whether placenta separated) breathes or has any other signs of life such as heartbeat, umbilical cord pulsation, certain movements of skeletal muscles. Still birth means the expulsion or extraction from the body of the mother of a fetus that is on the 22 full week of pregnancy (after 154th day from the first day of the last normal menstrual period) or weighs 500 grams or more which does not breathe and does not show any signs of life such as heartbeat, umbilical cord pulsation, or certain movements of skeletal muscles.

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 (paragraphs 3.11).**

“A doctor must be next to a dying patient till the last moment of his/her life ... The issue of termination of resuscitation measures should be decided collectively if possible and when the state of the individual is defined as an irreversible death according to the criteria established by the Ministry of Health of Ukraine. A doctor has no right to accelerate death deliberately, perform euthanasia or engage others to perform it” (paragraph 3.11).

e) Other Relevant Sources

- ▶ **Decision of the Constitutional Court of Ukraine regarding the constitutional petition of 51 Peoples’ Deputies of Ukraine to examine the conformity of Articles 24, 58, 59, 60, 93, 190-1 of the Criminal Code of Ukraine in part that makes provisions for death penalty as a form of punishment with the Constitution of Ukraine (the case of death penalty) of December 29, 1999.**

The court noted that the constitutional guarantee of the inalienable right of every individual to life, like all other rights and freedoms of citizens in Ukraine, is based on the following principle: exceptions to the rights and freedoms of citizens are established by the Constitution of Ukraine not by laws or other regulations. According to the provisions of part 1 of Art. 64 of the Constitution of Ukraine, “the constitutional rights and freedoms of

a human being and a citizen may not be restricted, except in the cases specified in the Constitution of Ukraine.”

f) Practical Examples

1. Example(s) of Compliance

Ms. H., 26 years of age who suffered from a congenital heart defect, became pregnant and decided to carry on with the pregnancy. However, after 22 weeks of pregnancy, the state of health of the patient rapidly deteriorated and it was decided to terminate the pregnancy on the grounds of medical indications.

2. Example(s) of Violation

Citizen R, who got into a car accident prematurely, started her maternity activity and as a result she gave birth to a child that weighed 600 grams. A neonatologist informed the woman, that such children are not to be nurtured and nevertheless woman's requests to provide this child with resuscitation care, medical workers didn't consider the child viable and as a result didn't take any measures, which caused the death of a child.

3. Actual Case(s)

Plaintiff D. brought proceedings against municipal health care institution “L central district hospital” (further – L. CDH), third person I, and asked the court to pass a decision, that would make the defendant compensate her moral damages, that were caused as a result of a damage to her health. Plaintiff indicated, that on September 16 2000, she applied to gynecology department of the L. CDH, to doctor I. for an operation of abortion. After the operation she felt bad, but the doctor didn't react to her complaints. Next day her state of health became worse, and was accompanied by a pain syndrome, and during the whole day nobody surveyed her and provided medical care. In the evening she was examined by the doctor on duty A, who indicated that as a result of uterine perforation, there happened a hematocele and a sepsis. She was operated on by doctors N and S. In her refined statement of claim D. referred to the fact she incurred moral damages, caused by physical pain, long postoperative treatment, problems with health, that appeared after the abortion was carried out, absence of normal sexual life, loss of reproductive function, deterioration of relations with her husband. She asked for compensation of 480 000 gryvnas.

A claim to L. CDH, third person I. for compensation of moral damages, that appeared as a result of injury to health, was partially satisfied. The court passed a decision to recover a plaintiff moral damages of 20 000 gryvnas (twenty thousand gryvnas).

g) Practice Notes

- 1.** Right to health care, including right to medical care is a guarantee.
- 2.** The criteria of live birth are clearly defined in the legislation by the provisions of the Instructions on Determining the Criteria of Prenatal Period, Live Births, and Still Births approved by the Order of the Ministry of Health of Ukraine of March 29, 2006 No.179. As the analysis of this legal act demonstrates, only children who are born after 22 weeks of pregnancy or weight 500 gr. or more are considered to be live born, provided there are signs of life, and should be nursed. According to the aforementioned legal act, a newborn is born live if it exhibits at least one of the following characteristics: a) breathing, b) heartbeat c) umbilical venous pulsation, d) skeletal muscle movements. In absence of all (not any one) of these characteristics, a newborn is considered to be dead.
- 3.** Resuscitation assistance is provided to children born live (according to the criteria of live birth), taking into account their chances of survival on the basis of clinical protocols for neonatal resuscitation and taking into account the degree of their prematurity, intrapartum hypoxia, etc.
- 4.** Resuscitation measures in the cases that involve terminal conditions constitute the utmost manifestation of emergency care and always qualify as extreme necessity. When the decision not to resuscitate is made, it can only mean that the resuscitation measures have not been undertaken due to clinical death of the patient or sudden fading of bodily functions. The decision not to resuscitate is not equivalent to a refusal to treat the disease or, for instance, to provide an effective form of pain relief, as it can certainly cause considerable harm to the patient.
- 5.** A human being is considered dead at the moment brain death is established. Brain death means complete and irreversible loss of all brain functions. The moment of brain death can be established after ruling out all other possible under the circumstances causes for the loss of consciousness and bodily functions (Article 15 of the Law of Ukraine “On Transplantation of Organs and Other Anatomical Materials to a Human Being” of July 16, 1999). Brain death is equivalent to the death of a human being. The diagnosis of brain death is established by a council of physicians that includes an anesthesiologist with at least 5 years of experience in intensive care. To conduct special studies, the council should include other specialists with at least 5 years of experience in their respective fields of specialization, including those invited from other medical institutions as outside consultants. The members of the council are approved by the head of the intensive care department that cares for the patient and, in his/her absence, the physician on duty at the medical institution” (Instructions on Declaring Death of an Individual on the Grounds of Brain Death approved by the Order of the Ministry of Health of Ukraine “On Approval of Legal Documents for Transplantation” of September 25, 2000 No. 226).

h) Cross-referencing Relevant International and Regional Rights

Please review international and regional norms, concerning human right to life and respect for human dignity during health care provision in the context of: right to life, illustrated in chapter 2 and chapter 3;

6.1.16 Right not to Be Unlawfully Discriminated Against for Health Reasons

a) Right as Stated in the ECPR

There are no provisions in the ECPR on this matter.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Articles 21, 22 (parts 2, 3), 24 (part 2)].**

“All people are free and equal in dignity and rights. Human rights and freedoms are inalienable and inviolable” (Art. 21). “Constitutional rights and freedoms are guaranteed and can not be annulled. When adopting new laws or amending existing laws, the content and scope of existing rights and freedoms may not be diminished” (Art. 22). “There can be no privileges or restrictions based on race, color, political, religious and other beliefs, sex, ethnic or social origin, property status, place of residence, linguistic or other characteristics” (Art. 24).

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 6 (paragraph “j”), 9].**

Paragraph “j” of Art. 6 establishes the right of every citizen to legal protection against any illegal form of discrimination for health reasons.

“Restrictions of civil rights for health reasons:

1. On the grounds and in accordance with the laws of Ukraine, citizens may be for health reasons declared temporarily or permanently unfit for professional or other activities related to the increase in danger to others as well as to performance of certain public functions.
2. Using forced medical measures against individuals who committed socially dangerous acts, restriction of rights of citizens in the form of compulsory medical examinations or forced hospitalization and in connection with the quarantine measures is permitted only on the grounds and in accordance with the laws of Ukraine.

3. A decision to restrict the rights of citizens related to their state of health may be challenged in court” (Art. 9).

▶ **On Psychiatric Care: Law of Ukraine of February 22, 2000 [Article 9].**

“Restrictions associated with the performance of certain activities: Due to mental disorder, an individual may be declared temporarily (for up to five years) or permanently unfit to perform certain activities (work, jobs, services) that may pose immediate danger to oneself or others. To establish the capacity of an individual to perform certain activities (work, jobs, services) that place special requirements on the state of his/her mental health, he/she is subject to a preliminary (prior to the activity) and periodic (in the process of the activity) psychiatric examinations (Art. 9).

▶ **On Protection of the Population from Infectious Diseases: Law of Ukraine of April 6, 2000 [Article 23].**

“If individuals whose work involves servicing the population and may lead to the spread of infectious diseases carry infectious diseases, they, upon their consent, are temporarily transferred to perform the work that is not associated with the risk of spreading infectious diseases. If these individuals cannot be transferred to another job, they are suspended from work in the manner prescribed by law. During the period of their suspension from work, these individuals are paid temporary disability benefits”.

▶ **On Resistance to Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Protection of People Living With HIV: The Law of Ukraine of 12.12.1991. (The wording of 23.12.2010.) [Article 17]**

“Job dismissing, refusal to hire, denial of admission to educational, medical institutions, social support and maintenance institutions and social services, as well as refusal to provide medical care and social services, restricting other rights of people living with HIV, on the grounds of his/her HIV status, and restriction of rights and duties of their relatives and on the same grounds is forbidden”

According to Art. 17 of this law, HIV-positive citizens of Ukraine enjoy all the rights and freedoms guaranteed by the Constitution and the laws of Ukraine, other legislative acts of Ukraine. According to Art. 18 of the same law, it is prohibited to deny them admission to health care institutions, to deprive them of medical care, to impair other rights of the individuals on the grounds that they are HIV-positive or to AIDS patients as well as impair the rights of their relatives and loved ones on these grounds.

▶ **On Combating Tuberculosis: Law of Ukraine of July 5, 2001 [Articles 8, 12].**

c) Supporting Regulations/Bylaws/Orders

- ▶ **On Approval of a Unitary Glossary of Definitions (Glossary) on the Issues of Management of Medical Care Quality: Order of the Ministry of Health of Ukraine of July 20, 2011 No. 427.**
- ▶ **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.**

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 2.9).**

“A doctor must provide medical care within the domain of his/her specialization to all patients regardless of their age, sex, race, nationality, religion, social status, political opinions, place of residence, citizenship and other non-medical characteristics, including their financial situation.”

e) Other Relevant Sources

There are no other relevant sources on this matter.

f) Practical Examples

1. Example(s) of Compliance

Mr. N., who was HIV-positive, was hospitalized at the Department of Infectious Diseases of the City Hospital for Infectious Diseases with a suspected acute hepatitis. An attending physician, while filling out his medical records, learned about the patient's HIV status, this information however did not influence the quality and amount of medical care or treatment of the patient. In the process of diagnostic studies conducted, Mr. N. was diagnosed with “Hepatitis C, acute stage, icteric form.”

2. Example(s) of Violation

Mr. A. was transported to the admissions department of the emergency unit at the hospital from the scene of an accident with a double fracture of the lower limb. He was denied admission because during the processing of medical history and collecting of patient's data, the patient admitted that in the past he suffered from tuberculosis. To be admitted to the hospital, the patient was required to

present a letter of reference from a TB clinic testifying to the absence of the disease. After the patient presented such a reference, he was forced to procure a new one from the out of town TB clinic, demonstrating the reluctance of the hospital staff to provide this patient with medical care in general.

3. Actual Case(s)

Oleksij B., who was diagnosed as HIV-positive, was fired from his job as a driver for the editorial office of the district newspaper “Zlahoda”. He filed a lawsuit demanding to be restored in his job and to receive compensation for moral damage. The district newspaper “Zlahoda”, the district administration, the district council, and the treasury acted as defendants. During the trial, it was established that the editor-in-chief of the district newspaper committed a gross violation of the constitutional rights and freedoms of the HIV-positive citizen, degraded his dignity. The claim of Oleksij V. was satisfied by the decision of the District Court of October 18, 2004: he was restored in his job, and the defendants were ordered to compensate him for moral damage in the amount of 4,000 hryvnias. This case is considered to be one of the most high-profile cases in Ukraine and serves as a positive example of the effectiveness of the mechanisms of protection against unlawful forms of discrimination.

g) Practice Notes

1. The right not be discriminated against for health reasons is guaranteed by the national legislation and provides every individual with an opportunity to exercise his/her rights and fulfill his/her responsibilities regardless of his/her state of health, except when subject to legal restrictions of such rights. The legislation of Ukraine prohibits any kind of unlawful discrimination while the restrictions of one’s rights for health reasons sanctioned by the law may be carried out only on the grounds and in the manner required by the law; any failure to comply may be appealed in accordance with the procedure established by the law. In particular, these restrictions are specified in Articles 19, 20, 84, 92-96 of the Criminal Code of Ukraine, Article 9 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation”, Article 21 of the Law of Ukraine “On Protection of the Population from Infectious Diseases”, Articles 3, 4, 11, 12, 14 of the Law of Ukraine “On Psychiatric Care”, Articles 8, 12 of the Law of Ukraine “On Combating Tuberculosis”.
2. A rather effective mechanism to protect the right not to be discriminated against for reasons of health given as a rule an urgent need to obtain medical assistance is a written complaint addressed to the chief of staff of a health care institution and/or the head of the department of health at the local administration/council. This form of protection of the right is more efficient and often allows one to resolve the issue immediately while the review of the complaint by the local police, prosecutors, and courts may take time.

3. A request to provide a written explanation of the reasons and causes for a failure to realize a right can serve as a no less effective method of protection against discrimination. Any refusal to satisfy a request or a complaint should be grounded in the norms of the law: this usually leads to the satisfaction of the claim of a patient. In addition, written paperwork that documents a refusal to implement a human right in the health sector constitutes perfect evidence for the protection of the violated right in court. For example, administrative proceedings can establish the actions of state authorities, local governments, their officials and employees, other individuals involved in high level managerial activities, including delegated powers, as unlawful and violating human rights.

h) Cross-referencing Relevant International and Regional Rights

Please, review international and regional norms concerning the right not to be unlawfully discriminated against for health reasons in the context of:

- right to physical inviolability, illustrated in chapter 2 and chapter 3.
- right to non-discrimination and equality, illustrated in chapter 2 and chapter 3.
- right to the highest and attainable level of physical and mental health, illustrated in chapter 2 and chapter 3.

6.1.17 Right to Respect for Human Dignity in the Course of Receiving Medical Care

a) Every person has a right to respect for her dignity, including during his/her transformation into subject of medical relations – patient.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Article 28 (part 1, 2), 64, 68].**

“Everyone has the right to respect for his/her dignity. No one may be subjected to torture, cruel, inhuman or degrading treatment or punishment” (Art. 28). At the constitutional level, it is established that the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment (Art. 28) may not be restricted even in emergency or under martial law (Art. 64). Art. 68 establishes one of the constitutional duties, namely: not to infringe on the rights, freedoms, honor and dignity of others.

▶ **Civil Code of Ukraine of January 16, 2003 [Article 297].**

“The right to dignity and honor:

1. Everyone has the right to respect for his/her dignity and honor.
2. The dignity and honor of an individual is inviolable.
3. An individual may file a lawsuit to protect his/her dignity and honor” (Art. 297).

c) 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 (paragraphs 2.2, 3.13).**

“A doctor may not leave unattended any manifestations of violence or debasement of human dignity” (paragraph 3.13)”

d) Other Relevant Sources

▶ **On Judicial Practice in Cases of Protection of Dignity and Honor of an Individual as well as Business Reputation of an Individual or a Legal Entity: Resolution of the Plenary Assembly of the Supreme Court of Ukraine of February 27, 2009 No. 1.**

e) Practical Examples

1. Example(s) of Compliance

Citizen G. a commercial sex worker applied for gynecological help. Obstetrician-gynecologist listened to her complaints very attentively, collected her medical history, conducted proper medical examination, told her about the prophylactics of sexually transmitted diseases, and directed her to additional examination with a suspicion of a venereal disease.

2. Example(s) of Violation

May, 26, 2006 citizen of a town M. gave birth to a daughter, and May, 31 she and her daughter were hospitalized. June, 5 doctors were informed of the fact that the woman is HIV-infected. The same day doctors prohibited this woman to stay with a child and suggested that she left the hospital, and in the presence of nurses she was blamed of irresponsible attitude to maternity. Due to the decision of Leninskyj district court on September 4, 2007 her claim was satisfied and she was compensated moral damages, she was incurred by infringement of her right to respect of human dignity and honor.

3. Actual Case(s)

Citizen P. applied to court with a suit to citizen O., asking for the protection of her honor, dignity, reputation and for reimbursement of moral damages. During the court hearing, a plaintiff supported her claims and clarified that on October 11, 2006, a defendant, while carrying out his professional duties of a physician-traumaic in the presence of medical workers and students, disseminated information, that P. had been drunk, leads immoral way of life and as a result of which she was injured – closed fracture of a left radius in a typical place. P. highlighted that such information was misleading, and the ones defaming her honor and dignity. Plaintiff indicated that instead of timely medical care, she was humiliated and convicted. Citizen O. didn't recognize the claim and informed that his words were a joke, and a patient was provided with medical care according to requirements of providing medical care to adult population in outpatient polyclinics on the specialty "Orthopedics and Traumatology", approved by Order of Ministry of Health of Ukraine of December 28, 2002, No. 507. Plaintiff asked the court to compensate oblige a defendant to compensate her 1650 hryvnas moral damages, to apologize, and compensate a state duty that she paid - 17 hryvnas. The court, having evaluated the facts, partially satisfied the claims, and passed a decision, obliging a defendant to compensate 1000 hryvnas of moral damages and also obliged a defendant to apologize.

f) Practice Notes

1. Current legislation doesn't contain the definition of a term dignity, since it is a moral and ethical category and at the same time it is a personal non-pecuniary right.
2. Under the term dignity one should understand recognition of every physical person as unique biopsychological value. Honor is connected with positive social estimation of a person in the eyes of surrounding people, which is based on conformity of her actions (behavior) to generally accepted ideas of goodness and evil. (paragraph 4 of Resolution of the Plenary Assembly of the Supreme Court of Ukraine of February 27, 2009 No. 1. "On Judicial Practice in Cases of Protection of Dignity and Honor of an Individual as well as Business Reputation of an Individual or a Legal Entity")
3. A claim for protection of dignity, honor and working reputation may be submitted by physical person, in an analyzed example it is a patient, in case of dissemination of apocryphal data, which infringes upon person's non-pecuniary right, and other interested persons (in particular, family members, relatives), if such data directly or indirectly breach their rights.
4. Apocryphal is an information, which is misleading or was incorrectly presented; that is the one that contains data about events and phenomena, which didn't exist at all, or existed but the data of which are misleading (incomplete or distorted). Negative information about the person is considered misleading, if a person that disseminated such information doesn't prove the contrary. (Presumption of integrity).

5. Defendants in the case as regards protection of dignity, honor and working reputation is physical or juridical person, who or whis disseminated such misleading information and author of such information. Cases of such category shall not be considered due to the rules of Code of Administartive Justice of Ukraine, since such disputes do not have a public character, even in case a party to a dispute is a subject of authority.
6. Legal structure of a delict, the availability of which can be a basis for satisfaction of a claim, is a complex of such circumstances: a) dissemination of information that is informing one or more persons of this very data and in any way. b) Disseminated information concerns a certain physical or juridical person, a plaintiff. c) dissemination of unreliable information, the one that is misleading d) Dissemination if information that breaches personal non-pecuniary rights, namely the one that damages certain personal non pecuniary interests, or interefers into persons free realization of her non-pecuniary right.
7. Ways of protection of ones dignity in case of dissemination of misleading data are: a) right to a reply; b) refutation of misleading information; c) compensation to a plaintiff for losses and moral damages, caused by such infringements.

g) Cross-referencing Relevant International and Regional Rights

Please review international and regional norms, concerning human right to life and respect for human dignity during health care provision in the context of:

- right to the highest and attainable level of physical and mental health, illustrated in chapter 2 and chapter 3.
- right to be free from torture, cruel, inhuman and the one humiliating human dignity treatment, illustrated in chapters 2 and 3.