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National Providers' Rights and Responsibilities

7.1 Providers' Rights

INTRODUCTION

This section focuses on providers' rights, including the rights to work in decent conditions, freedom of association, due process, and other relevant country-specific rights. The concept of human rights in patient care refers to the application of general human rights principles to all stakeholders in the delivery of health care and recognizes the interdependence of patients' and providers' rights. Health workers are unable to provide patients with good care unless their rights are also respected and unless they can work under safe and respectful conditions. For each right outlined in the section, there is a brief explanation of how that right relates to health providers; and examination of its basis in country legislation, regulations and ethical codes; examples of compliance and violation; and practical notes for lawyers on litigation to protect provider rights.

Medical practice of health care professionals is directly associated with realization of constitutional human and civil rights of individuals and citizens to health, medical assistance and health insurance. Efficient organization of the work of medical practitioners is a major factor in ensuring public health, which consequently leads to social stability in a society.

The rights and responsibilities that define the legal status of medical practitioners in accordance with the national legislative framework are the subject of study in this chapter. This chapter examines specific rights guaranteed by the laws of Ukraine and responsibilities of medical professionals which lay out the foundation for professional medical practice and for proper protection of the rights of patients.

The Law of Ukraine “Principles of Ukrainian Health Care Legislation” contains a long list of professional rights and responsibilities of medical practitioners that can rightly be divided into general, i.e. those related to the working conditions, protection of their health, etc., and special, i.e. those arising in the process of providing medical assistance to patients. Section 7.1 of this chapter examines some general rights as well as some special conditions. It is worth keeping in mind that equality and freedom of choice in the relationship “doctor-patient” is based on the formula “the right of one subject of a medical legal relation corresponds to the responsibility of another subject”. Hence, certain rights of health care employees can be derived from the content of the responsibilities of patients.

7.1.1 Right to Work in Decent Conditions

a) Health workers enjoy a range of rights related to decent, safe, and healthy working conditions when providing care.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Article 43 (part 4)].**

“Everyone has the right to proper, safe and healthy working conditions ...”.

- ▶ **Labor Code of Ukraine of December 10, 1971 [Articles 2 (part 2), 153–155].**

“... Employees are entitled to healthy and safe working conditions ...” (part 2 Article 2). “At all enterprises, institutions and organizations, there should be created safe and hazard-free working conditions. Ensuring safe and hazard-free working conditions is the responsibility of the owner or an agency authorized by him/her”(Article 153).

- ▶ **Criminal Code of Ukraine of April 5, 2001 [Article 172].**
- ▶ **Administrative Code of Ukraine of December 7, 1984 [Article 41].**

“Violation of labor legislation and labor protection:

Violation of laws and regulations on labor protection incurs fines for employees in the amount of two to five times the untaxed minimum wages and for officials at enterprises, institutions and organizations irrespective of the form of their ownership and private entrepreneurs in the amount of five to ten times the untaxed minimum wages”(part 2 Article 41).

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 5, 6 (paragraph “d”), 77 (paragraph “b”)].**

Article 6 of the Law guarantees the right to health, including inter alia the right to safe and healthy working conditions.

“Health care employees are entitled to adequate working conditions in their professional activities” (paragraph “b” Article 77).

- ▶ **On Labour Protection: Law of Ukraine of October 14, 1992, the (in the reading of November 21, 2002) [Articles 1, 4].**

According to Article 1 of the Law, the right to adequate safe and healthy working conditions is ensured via labor protection through a system of legal, social, economic, organizational, technical, sanitary and preventive measures and means aimed at preserving life and health and preventing disability in the course of employment.

- ▶ **On Psychiatric Care: Law of Ukraine of February 22, 2000 [Article 29].**

“A psychiatric facility owner or an authorized body must provide appropriate working conditions for medical professionals and other staff involved in providing psychiatric care, including taking care of those who provide psychiatric care” (paragraph 9 Article 29).

- ▶ **On Combating Tuberculosis: Law of Ukraine of July 5, 2001 [Article 23].**

“Owners of health care institutions that conduct TB diagnostic procedures and treatment of patients or agencies authorized by them must provide employees of these institutions with necessary means of protection and carry out appropriate regular medical examinations of the employees.”

- ▶ **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 20]**

“An owner (an agency authorized by him/her) of a health care institution whose employees conduct diagnostic testing for HIV infection, provide medical assistance and social services to persons living with HIV, as well as come in contact with blood and other materials from infected persons, besmeared instruments, equipment or items, must supply the employees with necessary means of individual protection ... and also organize carrying out of an instruction of such employees as to special means of individual protection usage”.

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **Framework for the National Program for Improving Safety, Occupational Hygiene and Working Environment for 2006-2011: Regulation of the Cabinet of Ministers of Ukraine of May 11, 2006 No. 269-r.**

The goal of the Program is to develop and ensure implementation in practice of new safe technologies and scientific and technological advances in health care and occupational hygiene, to review and adapt national legislation on labor protection and occupational safety to that of the European Union in order to reduce occupational injuries and occupational diseases, to preserve labor potential of Ukraine and to create legal foundation for EU membership for Ukraine.

- ▶ **Issue of Prevention and Protection of the Population from HIV infection and AIDS: Resolution of the Cabinet of Ministers of Ukraine of December 18, 1998, No. 2026.**
- ▶ **On Approving the Norms of Working Time of Workers of Health Care Institutions: Order of the Ministry of Health of Ukraine of May 25, 2006, No. 319.**

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 4.5.].**

“Doctors – managers of health care institutions ... must undertake... creation of adequate conditions for professional activity ...”

e) Other Relevant Sources

- ▶ **On the Status of Working Conditions, Safety, Level of Occupational Injuries and Occupational Diseases in the Country and Tasks for the FTU Member Organizations to Enhance the Influence of Trade Unions in Ensuring Healthy and Safe Working Conditions: Resolution of the Council of the Federation of Trade Unions of Ukraine of July 6, 2006 No. P-5 -2.**

f) Practical Examples

1. Example(s) of Compliance

In 2008, health care institutions of Zaporizhzhia underwent inspections to establish whether the working conditions of health care employees were adequate. Results of the review of working conditions at the health care institutions were satisfactory – 12 chiefs of staff of the institutions were awarded for excellent performance.

2. Example(s) of Violation

Hospital No. 7 in Luhansk witnessed a tragedy: an oxygen tank explosion killed 16 people, among them medical staff of the establishment. To prevent similar accidents in the future, on behalf of the Government of Ukraine, the State Mining Industry Oversight Committee carried out a review of hospitals and facilities that fill tanks with oxygen. They established that gross violations at health care facilities were a regular phenomenon. After 1,288 inspections, the inspectors seized nearly 800 oxygen tanks that were stored on hospital premises (precisely this type of breach had led to numerous victims at the hospital in Luhansk), and the operation of further 2,500 tanks had to be temporarily stopped due to violations of safe operating conditions. It should be noted that before the explosion, the Committee had had no right to inspect hospitals due to the moratorium on inspections of small low risk enterprises, which include hospitals, introduced by the Government of Ukraine.

3. Actual Case(s)

While working as a doctor at a tuberculosis clinic, Ms. M. contracted a latent type of tuberculosis. After a lengthy and costly treatment, Ms. M. requested the chief of staff of the clinic to compensate her for her medical expenses. The chief of staff refused Ms. M.'s request, pointing out that she had been notified about the potential consequences of working at the clinic at the time she was hired. Ms. M contacted an official at the Department of Labor with a request to refund her the cost of her treatment. The official of the Department of Labor

explained to her that the compensation might be provided only when the fact of illness was confirmed by the conclusions of a medical expert commission. Having collected all necessary documents, including the conclusion of MSEC (Medical Social Expert Commission) which stated that Ms. M. had been subject to an occupational illness, Ms. M. initiated a lawsuit to compensate her for material and moral damages in connection with an occupational disease under part 1 of Article 23 of the Law of Ukraine "On Combating Tuberculosis". Presently, the case is being tried in court.

g) Practice Notes

- 1.** According to Article 153 of the Labor Code of Ukraine, an employee has the right to refuse an assigned task if, in any given occupational situation, carrying out this task presents a threat to his/her life or health or to the surrounding people and the environment. The presence of such a situation must be confirmed by an expert commission on occupational safety at a medical institution that includes a representative of the trade union and an authorized representative of the employees. The employee who refused to perform the task retains his/her average salary throughout this period.
- 2.** An employee has the right to terminate an employment contract at his/her discretion if the employer does not comply with the legislation on occupational safety and the conditions of the labor agreement on this issue. In this case, the employee is paid a severance pay in the amount stipulated in the labor agreement but not less than three months' wages (part 3 Article 38, Article 44 of the Labor Code of Ukraine).
- 3.** A mismatch between the existing conditions and the requirements of the legislation on labor protection constitute grounds for material liability of the company to the employee and the right of the employee to terminate a fixed term employment contract prematurely or resign without a two week notice. The qualifying conditions of this type are: a) working conditions at each workplace, b) safety of technological processes, machines, machinery, equipment and other assets, c) state of collective and individual protection, d) sanitary conditions.
- 4.** When an employee is compensated for the damage to his/her health, the amount of compensation includes:
 - payment of lost wages (or appropriate portion thereof), depending on the degree of loss of professional performance by the victim;
 - payment of a one time support grant to the victim (to the family members and dependents of the deceased);
 - reimbursement of the cost of medical and social assistance (enhanced nutrition, prosthesis, at home care, etc.).

Moreover, the victim is entitled to compensation for moral damage caused to him/her, in accordance with the procedure established by law.

h) Cross-referencing Relevant International and Regional Rights

Please, review international and regional norms, concerning right to adequate working conditions in the context of the following possibilities:

- right to work, illustrated in chapter 2.
- right to fair wage and safe working conditions, illustrated in chapter 2 and 3.
- right to work and equal possibilities, without sex discrimination, illustrated in chapter 3.
- right to reasonable duration of working day and working week, illustrated in chapter 3.

7.1.2 Right to Freedom of Association

a) Health workers' ability to form, join, and run associations without undue interference is critical to their ability to effectively defend their rights and provide good care.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Article 35 (parts 1, 3, 4)].**

“Citizens of Ukraine have the right to freedom of associations... in civil society organizations ... (part 1) ... have the right to participate in trade unions to protect their labor and socio-economic rights and interests (part 3)...”

- ▶ **Civil Code of Ukraine of January 16, 2003 [Article 314].**

“Individuals have the right to freedom of associations ... in civil society organizations ...” (part 1).

- ▶ **On Public Associations: Law of Ukraine of June 16, 1992.**

- ▶ **On Trade Unions, Their Rights and Guarantees of Their Activities: Law of Ukraine of September 15, 1999.**

“On the basis of their free will and without any permission, citizens of Ukraine have the right to form trade unions, to join them and leave them according to the conditions and procedure specified in their charters, to participate in trade union activities” (Article 6).

- ▶ **On Charity and Charitable Organizations: Law of Ukraine of September 16, 1997.**

- ▶ **On Employers' Organizations: Law of Ukraine of May 24, 2001.**

“Employers have the right to set up organizations of employers to exercise and protect their rights and realize their social, economic and other legitimate interests ...” (part 1 Article 2).

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Article 77 (paragraph “n” part 1)].**

“Health care ... employees have the right ... to set up medical societies, trade unions and other public organizations”.

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **Program for Ukraine’s Integration into the European Union: Decree of the President of Ukraine of September 14, 2000 N 1072/2000 [section 4].**

- ▶ **On Approval of the Provision on the Procedure for Legalizing Civic Associations: Resolution of the Cabinet of Ministers of Ukraine of February 26, 1993 No. 140.**

- ▶ **On Approval of the Provision on Unified Register of Civic Associations: Order of the Ministry of Justice of Ukraine of December 19, 2008 No. 2226 / 5.**

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 2.12].**

“A doctor has the right to participate actively in the work of professional unions and associations while at the same time enjoying their protection and support. Medical unions and associations must promote and provide each of its members with assistance in complying with and upholding the principles of professionalism, professional independence, morality, ethics and deontology.”

e) Other Relevant Sources

- ▶ **“On the Law of Ukraine “On Civic Associations””:** Letter of the Supreme Arbitration Court of Ukraine of December 30, 1997 No. 01-8/500.
- ▶ **Recommendations on Record Keeping in Primary Trade Union Organizations (Trade Union Committee):** Standing Committee of the FTU Council on Organizational Issues of November 15, 2006.

f) Practical Examples

1. Example(s) of Compliance

On June 30, 1990, the Inaugural (1st) Congress of Ukrainian Medical Association (hereinafter – UMA) took place. That same year, UMA became a member of the World Federation of Ukrainian Medical Associations (WFUMA), the 3rd Congress of which (the first one in Ukraine) was held in August 1990 in Kyiv and Lviv. UMA’s aim is to promote and strengthen public health in Ukraine, to develop medical science, to promote professionalism of health care employees, their legal and social protection.

2. Example(s) of Violation

A group of cardiologists decided to set up a public organization “Cardiologists of Region L.” To this end, they contacted the regional Department of Justice and submitted a set of required documents. However, they were unlawfully denied registration on the grounds that the region already had a public organization of physicians-cardiologists.

3. Actual Case(s)

Employees of a private health care institution of city L. decided to unite and create a voluntary non-profit public organization (a trade union). On March 15, 2009, at the founding meeting of the trade union, the charter of the organization was adopted.

In accordance with Article 16 of the Law of Ukraine “On Trade Unions, Their Rights and Guarantees of Their Activities”, the employees of the trade union filed an application with the City Department of Justice. The application contained the charter (regulations), the minutes of the founding meeting of the trade union with the decision to approve the charter, information on elected bodies, on the presence of trade union organizations in relevant administrative-territorial units, on the founders of the association—in other words, all the documents necessary for the legalization of the trade union. However, they were wrongly denied legalization on the grounds of the lack of compliance of the filed documents with current legislation despite the fact that, pursuant to Part 5 of Article 16 of the Law of Ukraine “On Trade Unions, Their Rights and Guarantees of Their Activities”, a legalizing authority may not refuse legalization of a trade union or an association

of trade unions. In case of the non-compliance of the documents submitted by a trade union or an association of trade unions with the status in question, the legalizing body must request the trade union or the association of trade unions to provide additional documentation necessary to verify their status.

Employees of the health care institution filed a complaint against the actions of the employee of the City Department of Justice with the Regional Department of Justice: due to timely response measures, the trade union was legalized.

g) Practice Notes

- 1.** Trade unions and their associations have the right to represent its members as a means of exercising their constitutional right to appeal for protection of their rights to courts, to the Parliament Commissioner for Human Rights and to international judiciary institutions.
- 2.** Trade unions exercise their civic control over the payroll, compliance with labor laws and labor protection, creation of safe and non-harmful working conditions, adequate industrial and sanitary conditions, availability of means of individual and collective protection of employees.
- 3.** Trade unions may set up legal aid and inspection services and commissions to carry out their functions.
- 4.** The representatives of trade unions have the right to submit petitions to employers who are required to review them and provide detailed responses.

h) Cross-referencing Relevant International and Regional Rights

Please, review international and regional norms, concerning the right to set up scientific medical societies, trade unions and other public organizations in the context of:

- right of assembly and consolidation.
- right to set up trade unions and right to go on strike, illustrated in chapter 3.

7.1.3 Right to Due Process

a) Health care and service providers are potentially subject to a range of civil and administrative proceedings – disciplinary measures, medical negligence suits, administrative measures such as warnings, reprimands, suspension of activities, etc. – and are entitled to enjoyment of due process and a fair hearing.

Health care employees are entitled to judicial protection, including judicial protection of professional honor and dignity, in accordance with the health care legislation of Ukraine.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Articles 3, 55, 56, 59, 68].**

“A human being, his/her life and health, honor and dignity, bodily integrity and safety are recognized in Ukraine as the highest social value” (Article 3). “Rights and freedoms of human beings and citizens are protected by the courts. Everyone is guaranteed the right to challenge in court decisions, actions or inaction of state authorities, local government officials and employees” (parts 1, 2 Article 55). “Everyone has the right to legal assistance” (part 1 Article 59).

- ▶ **Criminal Procedure Code of Ukraine of December 28, 1960 [Articles 236-7, 236-8].**

“A resolution of an inquiry agency, an investigator, a prosecutor to institute criminal proceedings against a specific person or for a crime may be appealed in court at the administrative area where the agency or the official that issued the resolution is located in compliance with the rules of jurisdiction” (part 1 Article 236 -7).

- ▶ **Civil Procedure Code of Ukraine March 18, 2004 [Article 3].**

“Everyone has the right ... to appeal to courts for protection of their violated, unrecognized or disputed rights, freedoms or interests” (part 1 Article 3.).

- ▶ **Administrative Procedure Code of Ukraine of July 6, 2005 [Articles 6, 17-21].**

“Everyone is guaranteed the right to defend his/her rights, freedoms and interests in front of an independent and impartial court” (part 1 Article 6).

► **Civil Code of Ukraine of January 16, 2003 [Articles 15, 16, 297, 299].**

“Everyone has the right to defend his/her civil rights in the event of their infringement, non-recognition, or contestation” (part 1 Article 15). “Everyone has the right to appeal to courts for protection of his/her personal proprietary and non-proprietary rights and interests” (part 1 Article 16). “Everyone has the right to respect for his/her dignity and honor. Dignity and honor of an individual are inviolable. An individual has the right to appeal to the courts for protection of his/her dignity and honor” (Article 297). “An individual has the right to the inviolability of his/her business reputation. An individual may appeal to the courts for protection of his/her business reputation” (Article 299).

► **Labor Code of Ukraine of December 10, 1971 [Articles 128, 130, 134, 136, 137, 139, 147, 147-1, 148, 149, 150, 151, Chapter XV].**

“For each payment of wages, total amount of all deductions may not exceed 20%, and in cases provided for separately by the laws of Ukraine 50% of the wages to be paid to an employee” (Article 128).

“Employees are financially responsible for damage caused to the enterprise, institution or organization due to violation of labor regulations they are subject to. When proprietary liability is evoked, the rights and legitimate interests of employees are guaranteed by imposing liability only for direct actual damage and only in the extent and according to the procedure prescribed by the law provided that the damage caused to the enterprise, institution or organization was caused by unlawful action (inaction) of the employees. This liability is limited, as a rule, to a specific portion of employee’s wages and must not exceed the full amount of the damage caused, except as required by law” (parts 1, 2 Article 130).

For damage to the enterprise, institution or organization incurred in the course of carrying out employment duties, employees that caused the damage bear proprietary liability in the amount of the actual direct damage but not exceeding their average monthly wages” (part 1 Article 132).

“Prior to applying disciplinary deduction measures, an owner or a body authorized by him/her must require the violator of labor discipline to provide a written explanation. Only one disciplinary deduction may be applied to each violation of labor discipline. When selecting the type of penalty, the owner or the body authorized by him/her must consider the gravity of the offense committed, the damage caused, the circumstances under which the offense was committed, and previous record of the employee. A de-

duction is declared in the form of an order (regulation) and the employee is notified with a signature taken upon receipt” (Article 149).
 “A disciplinary deduction may be appealed by the employee in the manner prescribed by law” (Article 150).

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 77 (paragraph “o” part 1)].**

“Health care ... employees have the right ... to judicial protection ... of their professional honor and dignity.”

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **Framework for Ensuring the Quality of Health Care Services in Ukraine for the Period Ending in 2010: Order of the Ministry of Health of Ukraine of March 31, 2008 No. 166.**

“One of the tasks of the Framework is to provide protection of interests of health care employees against occupational hazards.”

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

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 2.4, 2.12, 4.5].**

“Humane goals, to which a doctor aspires, give him reason to seek legal protection of his/her own moral and ethical position and principles, personal dignity, financial security, creation of adequate conditions for professional activities” (paragraph 2.4). “The Commission on Bio-ethics, ethics commissions or committees at health care facilities, research institutions, universities, medical societies and associations have the right, when necessary, to uphold and defend in court the honor and dignity of [the doctor] with his/her consent as long as his/her professional actions comply with the Code of Ethics of Physicians of Ukraine” (paragraph 2.12). “Doctors, managers of health care facilities, scientific and educational institutions are obliged to ensure protection of moral and ethical position and principles, personal dignity ... of their subordinates” (paragraph 4.5).

e) Other Relevant Sources

- ▶ **Decision of the Constitutional Court of Ukraine regarding the constitutional request of citizen Hennadij Ivanovych Soldatov to provide the official interpretation of the provisions of Article 59 of the Constitution of Ukraine, Article 44 of the Criminal Procedure Code of Ukraine, Articles 268, 271 of the Administrative Code of Ukraine (the case of the right to free choice of counsel) of November 16, 2000 No. 13-rp/2000.**

“... The statement that everyone is free to choose the defender of their rights should be understood as a constitutional right of a suspect, an accused or a defendant in defending himself/herself against charges and of an individual facing administrative charges in order to obtain legal aid to select as a defender of his/her rights an individual who is an expert in law and is legally entitled to provide legal aid in person or by proxy on behalf of a legal entity.”

- ▶ **Decision of the Constitutional Court of Ukraine regarding the constitutional request of citizen Halyna Pavlivna Dziuba to provide the official interpretation of part 2 of Article 55 of the Constitution of Ukraine and Article 248-2 of the Civil Procedure Code of Ukraine (the case of citizen H. P. Dziuba on the right to challenge in court unlawful actions of an official) of November 25, 1997 No. 6-zp.**

“Part 2 of Article 55 of the Constitution of Ukraine should be understood as follows: everyone, i.e. a citizen of Ukraine, a foreigner, a stateless person, has a guaranteed by the state right to appeal to a court of general jurisdiction decisions, actions or inaction of any governmental agency, local authorities, officials and employees when the citizen of Ukraine, the foreigner, the stateless person believes that these decisions, actions or inaction violate or infringe on the rights and freedoms of the citizen of Ukraine, the foreigner, the stateless person or hinder their implementation, and therefore require legal protection in court.”

- ▶ **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).**
- ▶ **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.**

“... Dignity means recognition of the value of each individual as a unique bio-psychological entity, honor means positive social evaluation of an individual in the eyes of others based on the conformity of his/her actions (behavior) with generally accepted notions of good and evil, and reputation of an individual means public assessment of business and professional qualities acquired by this individual in carrying out employment, business, community or other duties.”

▶ **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.**

“By recourse, a responsible individual is charged the amount of expenses incurred in fulfilling the obligation to compensate for the damage, and if the law sets the limits of compensation or limits of liability of the responsible individual, then the individual is charged within these limits” (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.**

An employee is responsible to the enterprise (institution, organization) with which he/she has labor relations for the damage caused due to the violation of labor regulations. Compensation for the damage is provided regardless of whether the employee is faced with disciplinary, administrative or criminal liability for his/her actions (inaction) that caused the damage to the company, institution or organization. Under the rules of Article 132 of the Labour Code, employees who are responsible for damage caused to the enterprise, institution or organization in the course of carrying out their employment duties bear liability in the amount of actual direct damages but not in excess of their average monthly wages, except when the legislation demands compensation in excess of the amount of the wages. Direct real damage means, in particular, the loss, deterioration or decrease in the value of the property, the need for the enterprise, institution or organization to bear the cost of renovations, to acquire property or other assets or to make extra payments caused by the violation of employment regulations by an employee”.

▶ **On the Procedure for Handling Labor Disputes in Court: Resolution of the Supreme Court of Ukraine of November 6, 1992 No. 9.**

“As a general rule, individual labor disputes are settled by courts directly or after they are reviewed by the Committee on Labor Disputes (CLD) (paragraph 3). Under Article 233 of the Labor Code of Ukraine, the term

of one month (assigned to the settlement of labor disputes regarding the termination of employment) applies to all types of dismissal, regardless of the grounds for the termination of an employment contract (paragraph 4). Termination of an employment contract at the initiative of the owner or the body authorized by him/her is allowed only with the prior consent of the trade union, except as provided for in Articles 43 and 43 (1) of the Labor Code” (paragraph 15).

f) Practical Examples

1. Example(s) of Compliance

A plaintiff appealed to the court to defend her honor, dignity and business reputation and to procure a compensation for moral damages. She emphasized the fact that she had been working as an ambulance doctor at the Central City Hospital since 1990 and during the time of her employment she was repeatedly commended on her good work and was not subject to complaints by the administration, hospital staff or patients.

For a significant period of time, the defendant spread false information about her, orally as well as in the form of complaints that injured her honor, dignity and business reputation. In particular, on February 5, 2004, the defendant sent a complaint to the Executive Committee of the City Council in which he presented false information that injured honor, dignity and business reputation of the plaintiff, claiming that she showed lack of discipline, boorishness, insulted her fellow physicians and nursing staff in the course of her work. While on night duty, she did not want to work; when on call and in public places, she behaved arrogantly, demanded payment for the assistance she provided using methods of alternative medicine.

At the meeting of the trade union where the complaint was reviewed, and to which the plaintiff was not invited, she was issued a “public reprimand” for creating conflict situations at the workplace. However, on March 2, 2004, at the meeting convened to elect trade union representatives of the central hospital of city A. the facts specified in the complaint were not confirmed, as the minutes of the meeting attached to the case file testify.

The plaintiff was the target of increased attention and discussion among her co-workers and friends. The false information disseminated by the defendant became known to the patients of the plaintiff and certainly had an impact on her reputation and evoked in her a sense of humiliation and discomfort. In order to resume her former rhythm of life, she had to exert much effort, and this put a strain on her health. Because of the actions of the defendant, the plaintiff was depressed, suffered nervous stress, insomnia, often was ill and underwent several rounds of outpatient treatment.

The court decided to satisfy the claim in part by ordering a compensation for moral damage in the amount of 1,500 hryvnias.

2. Example(s) of Violation

On March 10, 2006, chief of staff D. of one of the hospitals in city D. received a letter from the deputy chief of staff K in which the latter proffered false information about the doctor-endocrinologist that injured his honor, dignity and business reputation.

The doctor asked the chief of staff to denounce as false the information that he had proven himself to be a scandalous, conflict igniting employee who could not find a common language with the rest of the team, constantly sent ungrounded complaints to different authorities, repeatedly disrupted consultations, made gross errors in diagnosis and methods of patient management, thus leading to increased postoperative complications, demonstrated insufficient professional level, threatened to appeal to the head of the department.

The doctor-endocrinologist explained that he had sufficient knowledge to carry his work, was trained abroad and, therefore, warned his co-workers against the use of outdated treatment methods. The doctor explained that he was defending his own position and this fact was falsely believed by the defendants to be conflict provoking, caused them to claim that he was a scandal seeking human being who could not find common language with the team. In addition, he did not write any complaints rather requested the senior staff of the hospital to protect his rights. He was not made acquainted with the schedules for hospital-internal consultations, did not sign any of them, therefore, the accusations of deliberately disrupting the work were unfounded.

He also considered as inaccurate the information about gross errors in diagnosis and methods of patient management, the claim not supported by any evidence, including by the fact that he was never subject to disciplinary measures. He requested the chief of staff to acknowledge the information contained in the letter as negative, not true, and such that injures his dignity, honor and business reputation as a human being, and therefore to denounce it in the same manner in which it had been disseminated. The doctor-endocrinologist said that if this information were not denounced, he would seek protection of his professional honor and dignity in court. The chief of staff D. noted that the health care employee responsible for disseminating the information outside the medical institution would be dismissed because he violated Article 1977 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation".

3. Actual Case(s)

Ms. M. initiated proceedings in court to protect her honor, dignity and business reputation, citing the fact that she worked as a head nurse in the central hospital of district K. and was required to organize and check adherence of the middle and junior medical staff to employment schedule and duties.

The acting chief of staff of the hospital approved the list of responsibilities of junior nurses who care for patients in the Department of Surgery and the plaintiff was supposed to inform the rest of the staff of their responsibilities. The defendant, a trade union representative, in a written statement to the members of the trade union "Health Care and Law" noted that the request made by the head nurse for all the nurses to sign a list of their responsibilities was a provocation on

the part of the hospital administration the sole purpose of which was to evade paying for the work performed and so on. Because the information distributed by the defendant was not true, and no unlawful actions towards the medical staff employed took place, the plaintiff asked the court to order the trade union to refute the information that was not true and discredited her honor, dignity and business reputation by making an apology in front of all the members of the trade union "Health Care and Law" and the entire medical staff of the central regional hospital at the general meeting as well as demand payment of compensation for moral damage in the amount of 1,700 hryvnias.

The Court concluded on the basis of the analysis of the list of responsibilities involved that the list contained no instructions to expand the range of duties of the nurses, did not make other nurses responsible for performing the duties of a nurse who was absent and whose working hours fell on Saturday and Sunday. The mere fact of being acquainted with the responsibilities did not deprive the medical staff of the right, provided and guaranteed by the Constitution of Ukraine and the current labor legislation of Ukraine, to receive wages, to solve possible disputes in this area in court. The plaintiff was required to perform her duties by the job regulations approved in accordance with the existing procedure and this fact may not be considered a provocation on the part of the hospital administration. By calling the members of the trade union "Health Care and Law" not to sign the statement of their responsibilities, the defendant had seriously violated the procedure for the settlement of labor disputes specified in chapter 15 of the Labor Code of Ukraine.

According to Article 297 of the Civil Code of Ukraine, everyone has the right to respect for his/her dignity and honor. Dignity and honor of an individual are inviolable. Thus, by making public the appeal to the medical staff of the Department of Surgery of the central hospital of district K, which contained false, distorted information, the defendant by this action seriously violated the right of Ms. M. to respect of her dignity and honor, which is inviolable, degraded her business reputation in the eyes of her subordinate medical personnel in a way that contradicts the established rules of communication between people, moral foundations of the society.

Under these circumstances, the court had no doubts about the defendant causing moral damage to the plaintiff, who according to Article 280 of the Civil Code of Ukraine was subject to compensation. The court decided to satisfy the claim: to order the defendant to compensate the plaintiff for moral damages in the amount of 1,700 hryvnias.

g) Practice Notes

1. In criminal law, the principle of presumption of innocence is operative: a person is not guilty of a crime and may not be subjected to criminal prosecution until his/her guilt is proven following an established legal procedure and is confirmed by the court's verdict. Nobody is obliged to prove his/her innocence of a committed crime (Article 62 of the Constitution of Ukraine). In civil law, the principle of presumption of guilt is operative: a person who caused the damage shall be relieved of the need

- to compensate for the damage if he/she proves that the damage was caused not due to his/her fault (Article 1166 of the Civil Code of Ukraine).
- 2.** Resolution to initiate criminal proceedings may be appealed in a court of general jurisdiction.
 - 3.** Claims arising from a breach of personal non-proprietary rights do not expire, except as provided by law (paragraph 1 part 1 Article 268).
 - 4.** Gains from inadequate performance by an employee of job duties not submitted or registered as state revenue (as well as other not submitted profits) may not be included in the damages recoverable from the employee (part 4 of Article 130 of the Labour Code of Ukraine).
 - 5.** An employee may not be deemed responsible for the damage caused by him/her in a state of emergency (part 4 of Article 130 of the Labor Code of Ukraine).
 - 6.** Employees bear financial responsibility in the full amount of the damage caused to their company, institution, organization due to their fault if the damage was caused by the actions of the employees which bear the characteristics of actions subject to criminal persecution (paragraph 3 of Article 134 of the Labor Code of Ukraine). An employee bears full financial responsibility not only in the cases when he/she was convicted, but also when the existence of the crime in his/her actions was established by the investigating authorities (criminal liability with the subsequent termination of the proceedings on non-rehabilitating grounds that do not exclude criminal responsibility).
 - 7.** A recourse claim may be brought to bear within three years from the date of the liability to compensate for damages being fulfilled (compensation in kind, periodic payments, etc.) (paragraph 8 of the Resolution of the Plenary Assembly of the Supreme Court of Ukraine “On the Procedure for Civil Lawsuits on Compensation for Damages Caused by Businesses, Institutions, Organizations and Their Employees”).
 - 8.** Disputes related to the suspension of employees from work upon the resolution of a prosecutor or an investigator are not subject to judicial review in civil proceedings and are resolved in the manner prescribed for appeals of the decisions of these bodies. After the repeal of such a resolution, the labor dispute is settled following the general procedure.
 - 9.** Regardless of who initiated the lawsuit—an employee, an employer, an agency authorized by him/her or a prosecutor—after the dispute is resolved by the Labor Disputes Committee, the court examines the case in limitation proceedings as a labor dispute resolved by the LDC, that is as a claim of an employee against an enterprises, institutions, organization.
 - 10.** An employee may apply for a settlement of a labor dispute directly to the court within three months from the day he/she learned or should have known of the violation of his/her rights, and in dismissal cases – within a month from the day a copy of the order of dismissal was handed to him/her or the date his/her employment record was handed to him/her.

11. Refusal of the trade union body to approve a dismissal constitutes the grounds for reinstatement of the employee at work.
12. An employee may not be dismissed during the period of temporary disability as well as during his/her stay on vacation. It includes annual and other leaves of absence granted to the employee with or without pay.
13. If the application for reinstatement at work was reviewed for more than one year and there was no fault of the employee in the delay, the average salary payment is made for the period of forced truancy for any time in excess of one year. When the employee is partly responsible, payments for forced truancy in excess of one year can be correspondingly reduced. The decision of the court regarding the guilt (the employee did not appear in court, committed other acts to delay the proceedings) or the innocence of the employee and regarding the extent of the reduction in benefits must be motivated.
14. An owner or a body authorized by him/her shall compensate an employee for moral damages if the violation of his/her legal rights resulted in mental suffering, loss of normal lifestyle and required extra effort to organize his/her life.

h) Cross-referencing Relevant International and Regional Rights

Please, review international and regional norms, concerning right to judicial protection in the context of:

- right to fair case hearing, illustrated in chapter 2 and chapter 3.
- right to efficient method of legal protection, illustrated in chapter 2 and chapter 3.
- right to one's personal life and reputation protection, illustrated in chapter 2 and chapter 3.

7.1.4 Right to Conduct Medical and Pharmaceutical Activities According to One's Specialization and Qualifications

a) Health care providers are entitled to conduct medical and pharmaceutical activities according to one's specialization and qualification in order established by the legislation.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Articles 43 (part 1), 53 (part 1)].**

“Everyone has the right to education (Article 53) and the right to work (Article 43).

- ▶ **Tax Code of Ukraine of December 2, 2010 [Article 197 (paragraph 197.1.5, 197.1.6)].**

“Operations, connected with provision of services in the sphere of health protection by health care institutions, which obtained a licence to provide such services and provision of services by rehabilitation institutions to disabled persons and disabled children, which obtained a licence to provide such services in order established by the law, shall be released from taxation...”

- ▶ **On Higher Education: Law of Ukraine of January 17, 2002.**
- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 17, 74 (part 1), 74-1, 77 (paragraph “a”)].**

“Medical and pharmaceutical activities may be carried out by individuals with appropriate specialized education who meet the unified qualification standards” (part 1 Article 74). “Medical and pharmaceutical employees have the right to engage in medical and pharmaceutical activities according to their specialization and qualifications” (paragraph “a” Article 77). According to Article 74-1 of the Principles, individuals have the right to practice traditional medicine (healing).

- ▶ **On Licensing of Certain Types of Business Activities: Law of Ukraine of June 1, 2000 [Article 9].**

According to Article 9 of the Law (“Types of Business Activities Subject to Licensing), production, wholesale and retail of medicines (paragraph 9), medical practice (paragraph 26), processing of donor blood and its components and making preparations from it (p. 27) are subject to licensing.

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **On a Simplified System of Taxation, Accounting and Reporting of Subjects of Small Entrepreneurship: Decree of the President of Ukraine of July 7, 1998 No. 727/98 (in the wording of January 1, 2011).**
- ▶ **On Further Improvement of Certification of Physicians: Order of the Ministry of Health of Ukraine of December 19, 1997 No. 359.**

- ▶ **On the Procedure for Residency of Physicians and Subsequent Admission to Medical Practice: Order of the Ministry of Health of Ukraine of March 17, 1993 No. 48.**
- ▶ **On the Provision on the Certificate of Completion of Advanced Training and Retraining of Junior Medical and Pharmaceutical Specialists: Order of the Ministry of Health of Ukraine of September 7, 1993 No. 198.**
- ▶ **A Reference book of Qualification Characteristics of Professions. Number 78 “Health Care”: Order of the Ministry of Health of Ukraine of March 29, 2002 No. 117.**
- ▶ **On the Procedure for Admission to Medical and Pharmaceutical Practice in Ukraine of Citizens Who Completed Medical or Pharmaceutical Training in Educational Institutions Abroad: Order of the Ministry of Health of Ukraine of August 19, 1994 (in the reading of July 8, 2006) No. 118-S.**
- ▶ **On Granting Special Permission for Medical Practice in the Field of Alternative Medicine: Order of the Ministry of Health of Ukraine of August 10, 2000 No. 195.**
- ▶ **On Measures to Regulate Activities in the Field of Traditional and Alternative Medicine: Decree of the President of Ukraine of July 31, 1998 No. 823/98.**
- ▶ **On the Procedure for Certification and Assessment of Healing Abilities of Individual who Wish to Engage in Medical Activities in the Field of Traditional and Alternative Medicine: Order of the Ministry of Health of Ukraine of August 10, 2000 No. 195.**
- ▶ **On Approval of Standards for Administrative Services at the Ministry of Health of Ukraine: Order of the Ministry of Health of Ukraine of February 9, 2008 No. 65.**
- ▶ **Licencing Conditions for Conducting Certain Types of Business Activities in Medical Practice: Order of Ministry of Health of Ukraine of February 2, 2011 No. 49.**

“Medical practice is an activity associated with a set of special measures aimed at promoting better health, at improving sanitary culture, at preventing disease and disability, at diagnosis, assistance to individuals with acute and chronic illnesses and rehabilitation of the sick and the disabled which is carried out by individuals who have specialized education” (paragraph 1.3).

Licensing Conditions for Conducting Certain Types of Business Activities, Connected with Production, Wholesale and Retail Trading of Medicines: Order of Ukrainian State Inspection of Quality Control of Medical Drugs of September 21 2010 No. 340.

- ▶ **On Approval of the List of Licensing Bodies: Resolution of the Cabinet of Ministers of Ukraine of November 14, 2000 No. 1698. (the wording of October 21, 2010)**

d) Provider Code(s) of Ethics

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

e) Other Relevant Sources

- ▶ **Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship of July 15, 2010 No. 9051. "On Approval of Licensing Conditions for the Year of 2010".**
- ▶ **Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship of April 16, 2010 No. 4789. "On Labour Relations".**
- ▶ **Letter of Ministry of Health of Ukraine "On Prohibition to Lease the Buildings" of January 19, 2011 No. 09-28/17.**
- ▶ **Letter of Ministry of Health of Ukraine "On Recommendation not to Approve the Lease of the Buildings" of January 19, 2011. No. 09-28/17.**
- ▶ **Letter of Ministry of Health of Ukraine "On Giving Some Clarifications as regards Licensing of Business Activity in Medical Practice" of July 20, 2010. No. 17.01.13-58/2622.**
- ▶ **Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship "On Copies of Licence in Branch Departments" of November 9, 2001, No. 4-431-1106/663.**
- ▶ **Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship "On Carrying out Medical Practice" of December 24, 2002, No. 4-431-1069/6927.**

- ▶ **Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship “On Issuing a Copy of a Licence in Case of Branch Department of a Licencee’ Location Change” of January 14, 2003, No 4-432-29/197.**
- ▶ **Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship “On Licencing of a Non-traditional Medicine” of March 12, 2004, No 1471.**
- ▶ **Letter of Ministry of Health of Ukraine “On Licencing of Paramedics Stations of Enterprises” of March 22, 2004 No/ 13/05/03-02-17.**
- ▶ **Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship “On Giving Clarifications Concerning Certain Types of Business Activity Licencing” of November 4, 2004, No 7706.**
- ▶ **Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship “On Giving Clarifications Concerning the Necessity to Obtain a Licence when Delivering Services of a Body Massage” of October 12, 2004, No 7010.**
- ▶ **Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship “On Order of Separated Departments Licencing” of July 18, 2007, No 5265.**
- ▶ **Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship “On Obtaining a Licence in Case of a Legal Entity’s Reorganization” of September 8, No. 7574.**

f) Practical Examples

1. Example(s) of Compliance

Ms. O. decided to practice alternative medicine; she collected a set of necessary documents, in accordance with the requirements established by law, and submitted them to the Committee on Traditional and Alternative Medicine at the Ministry of Health of Ukraine. The Committee refused to grant the applicant a license because she wanted to pursue this type of medical activity to treat cancer patients which does not belong to the range of activities permitted on general grounds.

2. Example(s) of Violation

One of the pharmacies of city K was caught carrying out illegal pharmaceutical activities. A pharmacy employee who was trained at a pharmaceutical school overseas did not have a license to conduct pharmaceutical activities from the Department of Health at the Council of city K. According to the national legislation, citizens of Ukraine trained in medical or pharmacy schools abroad may be permitted to conduct medical and pharmaceutical activities in Ukraine. Junior medical and pharmaceutical employees receive the permission from the Departments of Health at the regional (city) Councils.

3. Actual Case(s)

Ms. K. works as a nurse in a health care institution. She registered as a business entity, leases premises at the same health care institution, and provides massage services. Ms. K. asked an attorney of the trade union of health care employees for legal advice regarding the necessity of obtaining a license.

According to paragraph 26 of Article 9 of the Law of Ukraine “On Licensing of Certain Types of Business Activities”, medical practice as a form of business activity is subject to licensing. Business activities with the specialization of a “massage therapist” belong to medical practice (KVED-85.12). Under current legislation, these services may be provided by physical therapists with appropriate education and training, physicians and pediatricians, as well as nurses (Order of the Ministry of Health of Ukraine of December 25, 1992 No. 195).

According to the Resolution of the Cabinet of Ministers of Ukraine “On Approval of the List of Licensing Bodies” of November 14, 2000 No. 1698, the Ministry of Health of Ukraine is established as the licensing authority for this type of activity. Hence, Ms. K. started the process of obtaining a license.

g) Practice Notes

1. A license to conduct business activities in medical practice may be granted to a legal entity, registered in accordance with the law, which set up a health care institution, and physical person – entrepreneur.
2. A license to conduct medical practice granted to a business entity certifies its right to conduct this type of activity in medical practice for a specified period of time and subject to its licensing conditions.
3. A license to conduct medical practice is granted for an unlimited period of time according to paragraph 5 of chapter I of the law of Ukraine “On making amendments to some laws of Ukraine, related to conditions of business management in Ukraine simplification”. But it should be remembered, that the term of a license, which subject of economic activity obtained before the above mentioned law came into force won’t be prolonged (paragraph 4 of chapter 2 of the law). Therefore, a license shall be redrafted, since the law doesn’t foresee the procedure of such license for an unlimited period of time prolongation.
4. A physical person – entrepreneur is empowered to employ doctors with higher medical education and junior specialists with medical education

according to the legislation (paragraph 2.5. of Licence Conditions for Conducting Certain Types of Business Activities in Medical Practice).

5. When applying a Simplified system of taxation, accounting and reporting of subjects of small entrepreneurship, physical persons – payers of a single tax, starting from the moment of a simplified system of taxation application up to the end of a calendar year, at any moment of carrying out entrepreneurial activity with participation of hired workers shall have not more than 10 persons, whose work is actually used, notwithstanding the changes in the number of workers which took place during calendar year” (Letter of State Tax Administration of Ukraine of July 30, 2008 No. 5509/K/ 17-0714).
6. Physicians, who do not work in certain medical specialty for about three years, are allowed to carry out medical practice after they passed an internship course.
7. In case of providing paid medical services a subject of economic activity shall give a consumer of such services (patient) certain document, ascertaining that a paid service has been delivered, under the law of Ukraine “On Protection of Consumer Rights”.

7.1.5 Right to Continuing Education and Training at Least Once Every Five Years in Relevant Institutions and Establishments

a) Medical workers have the right to continuing medical education and training at least every five years in relevant institutions and establishments.

b) Right as Stated in Country Constitution/Legislation

- ▶ **On Higher Education: Law of Ukraine of January 17, 2002 [Article 10]**
- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Article 77 (paragraph “c”)].**

“Medical and pharmaceutical employees have the right to continuing education and training at least once every five years in the relevant institutions and establishments.”

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **Register of Medical and Pharmaceutical Specialties: Orders of the Ministry of Health of Ukraine of June 9, 1993 No. 130 and of February 4, 1992 No. 24.**
- ▶ **On Further Improvement of the System of Residency Training of Doctors (Pharmacists): Order of the Ministry of Health of Ukraine of July 22, 1993 No. 166.**

“To ensure high level of qualifications of doctors (pharmacists), they are subject to continuing education and the level of their qualifications is subject to objective verification” (paragraph 1.1). “The main elements of the structure of continuing education is specialization and expansion of professional knowledge and skills” (paragraphs 1.2, 1.3). “Improvement as a form of training can be implemented through continuing education, thematic courses and pre-certification workshops (paragraph 2.2).

- ▶ **On Continuing Education of Junior Specialists with Medical and Pharmaceutical Degrees: Order of the Ministry of Health of Ukraine of September 7, 1993 No. 198.**
- ▶ **On Year-round Continuing Education and Training Courses for Junior Medical and Pharmaceutical Specialists: Order of the Ministry of Health of Ukraine of September 7, 1993 No. 198.**
- ▶ **On Approval of Primary Specialization (Residency) of Graduates of Medical (Pharmaceutical) Higher Educational Institutions of Ukraine: Order of the Ministry of Health of Ukraine of June 20, 1994 No. 104.**
- ▶ **On Approval of the Provision on Specialization (Residency) of Graduates of Higher Medical (Pharmaceutical) Educational Institutions of III-IV Level of Accreditation of Medical Departments of Universities: Order of the Ministry of Health of Ukraine of September 19, 1996 No. 291.**
- ▶ **On Further Improvement of Certification of Physicians: Order of the Ministry of Health of Ukraine of December 19, 1997 No. 359.**

“Certification of physicians is conducted in order to improve accountability for efficiency, work quality, and effective placement of specialists by taking into account their professional skills, experience and complexity of the work performed. Certification is an important form of moral and material incentives

aimed at improving functioning of health care facilities in order to improve further medical assistance to the population” (paragraph 1).

- ▶ **On Giving Clarifications as regards Licencing of Certain Types of Business Ativities: Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship of 4 November, 2004 No. 7706.**
- ▶ **On Giving Clarifications as regards the Necessity to Obtain a Licence by Those Delievering Body Massage Services: Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship of 12 October, 2004 No. 7010.**
- ▶ **On Order of Separated Subdivisions Licencing: Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship of 18 July. 2007 No. 5265.**
- ▶ **On Obtaining a Licence in Case of Legal Entity Reorganization: Letter of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship of 8 September, 2008 No. 7574.**
- ▶ **Procedure for Certification and Examination of Healing Abilities of Individuals who Wish to Conduct Medical Practice in the Field of Traditional and Alternative Medicine: Order of the Ministry of Health of Ukraine of 10 August, 2000 No. 195.**
- ▶ **Directory of Qualifying Characteristics of Specialties of Employees. Issue 78. Health Care: Order of the Ministry of Health of Ukraine of 29 March, 2002 No. 117.**
- ▶ **On Approval of the Register of Health Care Institutions, Medical and Pharmaceutical Positions for Junior Specialists with Pharmaceutical Education at Health Care Institutions: Order of the Ministry of Health of Ukraine of 28 October, 2002 No. 385.**
- ▶ **On Improving Certification of Pharmacists: Order of the Ministry of Health of Ukraine of 12 December, 2006 No. 818.**
- ▶ **Provision on the Procedure for Certification of Pharmacists: Order of the Ministry of Health of Ukraine of 12 December, 2006 No. 818.**

- ▶ **On Certification of Junior Specialists with Medical Degrees: Order of the Ministry of Health of Ukraine of 23 November, 2007 No. 742.**
- ▶ **On Certification of Specialists with Higher Non-medical Education, Working in the Health Care System: Order of the Ministry of Health of Ukraine of 12 August, 2009 No. 588.**
- ▶ **On Approval of the Provision on Carrying out Exams on Pre-attestation Courses: Order of Ministry of Health of Ukraine of 18 May, 1994 No. 73.**

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 27 September, 2009 [paragraph 4.5].**

“Doctors who are heads of health care institutions ... must ensure ... creation of adequate conditions for continuing education and training of their subordinates.”

e) Other Relevant Sources

There are no other relevant sources on this matter.

f) Practical Examples

1. Example(s) of Compliance

Creation of the Center for Continuing Education of Doctors in the city and opening in 2006 an affiliated branch of the Department of Family Medicine of the National Medical Academy for Postgraduate Education named after P. L. Shupyk was an important step in improving training of qualified personnel for primary health care facilities; namely, family doctors, who are key figures in the modern system of health care, especially in rural areas. Already today 50% of the population of the region is served by family physicians, for rural residents the figure is 52%.

2. Example(s) of Violation

In one of the hospitals of city O., a doctor specializing in infectious diseases failed, for unknown reasons, to take a continuing education course. Having no intention to take this course, he submitted a fake certificate testifying that he allegedly had already passed the course. Hence, this doctor managed to continue working for three more years until the fact of counterfeit was discovered.

3. Actual Case(s)

A cardiologist of second category, Dr. O., wanted to take part in the Ukrainian Congress of Cardiologists to improve his own professional skills and asked the hospital administration for permission to do so by submitting a written request containing an invitation sent to him by the organizers of the Congress. The chief of staff of the hospital suggested that the doctor should take an unpaid vacation for 3 days to attend the event at his own expense, justifying his response by pointing out that the hospital's budget did not have provisions for doctors' participation in this type of events. The doctor tried to explain that the budget should contain funds for business trips, for which each employee working under an employment contract is entitled under Article 121 of the Labor Code of Ukraine ("Guarantees and Compensations for Business Trips"). In addition, the doctor stressed that one of the guarantees related to business trips was the guarantee that employees during the entire period of the trip continue to receive their average wages and that they should not take part in such activities at their own expense. The chief of staff, however, persisted in his denial, and consequently, the employee, unwilling to lose his wages for the time spent at the Congress as well as due to lack of his own funds to cover travel expenses and sojourn in another city and also not to aggravate relations with the employer, decided not to participate in the Congress.

g) Practice Notes

1. To ensure high qualifications of doctors (pharmacists), they are required to participate in continuing education and are subject to regular objective examination of the level of their qualifications.
2. Given their needs in postgraduate training of physicians (specialization, advanced training, pre-certification programs), health care institutions fill out an application form for training for the following year using standard format and submit this application directly to the institutions (departments) of continuing education of physicians (pharmacists) and to the Ministry of Health of Ukraine prior to June 1 of each year.
3. The right of each doctor to advance his or her skills through continuing education is connected to the responsibility of a medical institution or a relevant Department of Health to provide him or her with such an opportunity.
4. Training of health care employees of health care institutions is financed from the state budget and is therefore conducted at the expense of the state.
5. The right to continuing education of health care employees corresponds to their responsibility to advance continually their professional knowledge and skills, identified in paragraph "f" of Article 78 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation". In other words, there is an inextricable link between the opportunity guaranteed by the state to develop one's professional skills, on the one hand, and a range of requirements as to the relevant level of qualifications of health care employees,

on the other. A reluctance on the part of a doctor to exercise his/her right to continuing education through participation in pre-certification programs and therefore subsequent certification as a “doctor-specialist” after residency training deprives the individual from continuing to occupy his or her position in a health care institution.

6. See also practical advice in section 7.2.5.

7.1.6 Right to Mandatory Insurance of Health Care Employees Against Damage to Life and Health While Carrying out Professional Duties at the Expense of the Owner of the Health Care Institution in Cases Established by Law

a) Health care providers are entitled to mandatory insurance against damage to life and health while carrying out their professional responsibilities at the expense of the owner of health care institution.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Articles 46 (parts 1, 2), 49 (part 1)].**

“Citizens have the right to social protection, including the right to social security in cases of complete, partial or temporary disability. This right is guaranteed by general mandatory state social insurance based on contributions by citizens, enterprises, institutions and organizations as well as budgetary and other sources of social support” (Article 46).

- ▶ **Labor Code of Ukraine of December 10, 1971 [Articles 253-255].**

“Individuals working under an employment agreement (contract) at enterprises, institutions and organizations, regardless of their form of ownership, type of business activity and management, or for an individual are subject to mandatory social insurance” (Article 253).

- ▶ **Principles of Ukrainian Legislation on Mandatory State Social Insurance: Law of Ukraine of January 14, 1998 [Articles 1, 4].**

One of the types of mandatory social insurance is insurance against work accidents and occupational diseases that cause disability (paragraph 4 Article 4).

- ▶ **On Mandatory State Social Insurance Against Work Accidents and Occupational Diseases that Cause Disability: Law of Ukraine of September 23, 1999 [Articles 1, 8, 9, 13, 14, 21, 46].**

Article 8 of the Law specifies those individuals who are subject to mandatory insurance against accidents: 1) individuals who are employed under an employment agreement (contract), 2) students of educational institutions, clinical interns, postgraduate students, doctoral students involved in any type of work during, before or after classes, during classes while acquiring skills, during practical training (internships) while working at enterprises. This law also covers such accidents (insurance cases) as embryo damage due to an injury or an occupational disease of the woman during her pregnancy because of which the child is born disabled. The infant, in accordance with medical conclusions, is considered to be insured, and up to 18 years of age or until graduation, but not after 23 years of age, he/she receives social insurance against accidents (Article 9).

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Article 77 (paragraphs “e”, “je”)].**

“Medical and pharmaceutical employees have the right to mandatory insurance at the expense of the owner of the health institution in the event of damage to their life and health while performing their professional duties in cases provided by law (paragraph “f” Article 77) and the right to social assistance from the state in case of illness, injury or other disability that was caused while performing their professional duties (paragraph “g” Article 77).

- ▶ **On Combating Tuberculosis: Law of Ukraine of July 5, 2001 [Article 23].**

“Tuberculosis of any type contracted by medical and other employees who provide medical assistance to TB patients, work with live TB agents or materials that contain them is recognized as an occupational disease and the damage caused to health by it is compensated for in accordance with the law. Employees who provide medical assistance to TB patients, work with live TB agents or materials containing them, conduct TB diagnostic testing and provide treatment and diagnostic care to TB patients are subject to the mandatory state social insurance against occupational diseases at the expense of the owner of the health care institution or an agency authorized by him/her.”

- ▶ **On Protection of the Population from Infectious Diseases: Law of Ukraine of April 6, 2000 [Article 39].**

“Infectious diseases contracted by medical and other employees while carrying out their professional duties in an environment with a high risk for contracting infectious disease agents (while providing medical assistance to patients suffering from infectious diseases, working with live pathogens or in the epicenter of an infectious disease break out, implementing disinfection measures, etc.) belong to occupational diseases. The above mentioned employees of state and municipal health care institutions and state research institutes are subject to mandatory state insurance against infectious diseases in the manner and on the terms set by the Cabinet of Ministers of Ukraine “.

▶ **On Ensuring Sanitary and Epidemiological Welfare of the Population: Law of Ukraine of February 24, 1994 [Article 38].**

“Life and health of employees of the State Sanitary and Epidemiological Service are subject to mandatory state insurance against injury or occupational diseases contracted while performing their employment duties. In the event of such an injury or an occupational disease, an employee of the State Sanitary and Epidemiological Service receives a one-time monetary assistance ranging from three to five years of his base salary, depending on the degree of disability.”

▶ **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]**

“HIV infection, a person was contaminated with, during her professional duties execution belongs to professional diseases”

▶ **On Psychiatric Care: Law of Ukraine of February 22, 2000 [Article 28].**

“Employees who participate in providing psychiatric care, including care for persons suffering from mental disorders, are subject to the mandatory state insurance against injury to their health or death related to carrying out their employment duties”

c) Supporting Regulations/ Bylaws/ Orders

▶ **On Approval of the List of Occupational Diseases: Resolution of the Cabinet of Ministers of Ukraine of November 8, 2000 No. 1662.**

The list of occupational diseases of health care employees:

1. Autonomic/sensory polyneuropathy of upper limbs (angioneurosis) – working with medical equipment that generates ultrasound.
2. Infectious and parasitic diseases, including tuberculosis, hepatitis, AIDS, syphilis, leptospirosis – working in health care institutions (dealing with infectious diseases, tuberculosis, blood banks, etc.).
3. Mycosis – working in health care institutions (dealing with infectious diseases, tuberculosis, blood banks).
4. Dysbacteriosis, visceral candidiasis – use of antibiotics, fungi-producers, protein-vitamin concentrates, etc. in medical and pharmaceutical practice.
5. Allergic diseases: conjunctivitis, rhinopharyngolaryngitis, rhinosinusitis, asthmatic bronchitis, bronchial asthma – work related to exposure to allergens in the chemical-pharmaceutical industry, medical and pharmaceutical establishments.
6. Neuroses associated with prolonged direct provision of mental health services – work of medical staff in psychiatric facilities.

- ▶ **On Approval of the Lists of Industries, Enterprises, Jobs, Professions, and Positions that Qualify an Employee for an Early Retirement: Resolution of the Cabinet of Ministers of Ukraine of January 16, 2003 No. 36 [paragraph XIX].**
- ▶ **On Approval of the Procedure and Terms of Mandatory Insurance of Health Care Employees and Other Individuals Against Contracting Human Immunodeficiency Virus in the Course of Their Professional Activities as well as against Subsequent Disability or Death from the Diseases Caused by the Development of HIV and the List of Categories of Health Care Employees and Other Individuals Subject to Mandatory Insurance Against Contracting Human Immunodeficiency Virus in the Course of Their Professional Activities as well as Against Subsequent Disability or Death from the Diseases Caused by the Development of HIV: Resolution of the Cabinet of Ministers of Ukraine of October 16, 1998 No. 1642.**
- ▶ **Instructions on Establishing a Causal Connection Between Death and an Occupational Disease (Poisoning) or an Occupational Injury: Order of the Ministry of Health of Ukraine of November 15, 2005 No. 606.**

“A causal link between death and an occupational disease (poisoning) or an occupational injury is a connection that can be established to the progression of an occupational disease (poisoning) or the impact of an occupational injury taking into account their form, stages, severity of functional disorders, development of complications throughout one’s life, pathomorphological and histological changes in organs and systems of the body found during the autopsy and death” (part 2 chapter 1).

- ▶ **On Improving Treatment of HIV and AIDS Patients: Order of the Ministry of Health of Ukraine of December 12, 2003 No. 580.**
- ▶ **On Improving HIV Diagnosis: Order of the Ministry of Health of Ukraine of May 11, 2010 No. 388.**

d) Provider Code(s) of Ethics

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

e) Other Relevant Sources

- ▶ **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.**

“Compensation for damages to health of employees due to injuries from accidents or occupational diseases is carried out according to the legislation on insurance against accidents.

While settling disputes about compensation for damages on the grounds of disability due to an occupational disease, the courts should bear in mind that the list of the diseases was approved by the Resolution of the Cabinet of Ministers of Ukraine of November 8, 2000 № 1662. As an exception, a disease not included in this list may be recognized as covered by the insurance if at the time of the settlement medical science has new information that provides grounds for treating this disease as occupational. An occupational disease is covered by the insurance even when its detection or diagnosis occurred at the time the victim was no longer in labor relations with the enterprise where he/she contracted the disease” (Article 14).

f) Practical Examples

1. Example(s) of Compliance

In hospitals of city K. in 2008, an inspection was carried out to establish whether medical personnel who provide medical assistance to HIV-infected individuals, conduct laboratory testing and research of HIV infection were insured. All of them were indeed insured by health care institutions against injury to life and health.

2. Example(s) of Violation

Mr. M., a chief of staff of a psychiatric institution, ordered medical personnel of this institution to obtain insurance at their own expense threatening them with being fired in case they failed to comply with his order. On the basis of numerous complaints of the medical staff, the chief of staff was prosecuted and all the employees were insured by the health care institution.

3. Actual Case(s)

An employee of a health care institution contacted one of the regional AIDS Prevention Centers claiming that his damaged skin came in contact with the blood of a patient. Contrary to the Order of the Ministry of Health of Ukraine “On Improving Treatment of HIV and AIDS Patients” of December 12, 2003 No. 580, he was denied immediate post-exposure prophylaxis. An intervention of an attorney of a public association, who directed a written request to the head of the AIDS Prevention Center asking for immediate post-exposure prophylaxis, forestalled a violation of the rights of the health care employee, who received post-exposure prophylaxis following an established procedure, thus preventing an occupational disease. In his request, the attorney indicated that under the above mentioned Order all health care employees working in institutions where there is a risk of HIV infection at the workplace should be able to receive immediate post-exposure prophylaxis. To do this, all regions stockpile ARV drugs, regional AIDS Prevention Centers provide advice regarding the procedure for post-exposure prophylaxis. Indications for administering post-exposure prophylaxis are skin damage by a sharp object (a prick or a cut by a sharp instrument) which was contaminated with blood, biological fluid mixed with blood or other potentially HIV infected materials or damaged skin / mucous membranes of a health care employee coming in contact with the specified materials.

g) Practice Notes

1. Individuals who work under an employment agreement (contract) in health care institutions of any form of ownership do not bear any costs for insurance against accidents.
2. Medical and pharmaceutical employees who themselves are legal entities (entrepreneurs) may chose to sign an agreement with the Social Insurance Fund against Accidents regarding voluntary insurance against accidents (Article 11 of the Law of Ukraine “On Mandatory State Social Insurance against Work Accidents and Occupational Diseases that Cause Disability”).
3. The amount of the contribution to a mandatory state social insurance fund, depending on its type, is established annually by Verkhovna Rada of Ukraine for both employers and insured individuals for each type of insurance for a calendar year as a percentage rate. This takes place at the same time when the State Budget of Ukraine is approved, unless provided otherwise by the laws of Ukraine for certain types of mandatory state social insurances.
4. Disputes concerning the amount of insurance premiums as well as the extent of the damage and the right to compensation for it, imposition of fines and other issues are resolved in court. At one’s own discretion, a concerned individual may request a settlement of the dispute by a special commission of an executive branch of the Social Insurance Fund against Accidents. The commission is composed of representatives of the state, insured individuals, and insurers on public service and parity basis (Article

55 of the Law of Ukraine “On Mandatory State Social Insurance against Work Accidents and Occupational Diseases that Cause Disability”).

5. Payments for the first five days of disability due to an occupational injury or an occupational disease are carried out by the enterprise.
6. The principle that guides the behavior of medical personnel should be: “all patients should be treated as if they are infected by infections that can be transmitted through blood” (Order of the Ministry of Health of Ukraine “On Improving Treatment of HIV and AIDS Patients” of December 12, 2003).
7. A commission that investigates an accident may establish that the damage to health was not only the fault of the employer but also took place due to the violation of regulations on labor protection by the employee, then the amount of one-time compensation as a form of insurance payment is reduced by the decision of the commission, but not by more than 50%. Depending on the circumstances, the amount of one-time payment may be reduced on the grounds indicated above by the court.
8. When applying for compensation after three years from the date of the onset of disability due to an accident, payment of the compensation is made from the date of application filing.

7.1.7 Right to Share Information About a Patient Without His/Her Consent or Consent of His/Her Representative

a) A health care employee has the right to disclose confidential medical information without consent of an individual or his/her legal representatives in cases stipulated by law.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Constitution of Ukraine of June 28, 1996 [Articles 32 (part 2), 34 (part 3)].**

“Dissemination of confidential information about an individual ... is not permitted without his/her consent except in the cases determined by law and only in the interests of national security, economic prosperity and human rights, territorial integrity or civil order, in order to prevent disorder or crimes, to protect public health, reputation or rights of others, to prevent disclosure of information received in confidence, or to maintain the authority and impartiality of justice ...” (part 2 Article 32, part 3 Article 34).

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

▶ **Civil Code of Ukraine of January 16, 2003 [Article 285 (parts 2, 4)].**

“Parents (adoptive parents), guardians, trustees have the right to information about the state of health of the child or ward” (part 2 Article 285). “In case of death of a patient, members of his/her family or other individuals authorized by them may be present at the examination of the causes of his/her death, get acquainted with conclusions regarding the causes of death” (part 4 Article 285).

▶ **Family Code of Ukraine of January 10, 2002 [Article 30].**

“Results of a medical examination are confidential and are only disclosed to a bride/groom” (part 4 Article 30).

▶ **On Information: Law of Ukraine of October 2, 1992 [Article 30].**

“Classified information may be disclosed without a consent of its owner if it is socially significant, that is if it is an object of public interest and if the public’s right to know this information outweighs the right of the owner to protect it” (part 11).

▶ **On Ensuring Sanitary and Epidemiological Welfare of the Population: Law of Ukraine of February 24, 1994 [Article 7].**

“When there exists a threat of spreading an infectious disease; when there is a fact of avoidance of a mandatory medical examination or vaccination against officially listed infections; in order for companies, institutions and organizations—upon a recommendation of appropriate officials of the State Sanitary and Epidemiological Service—to remove from work, study, attendance of pre-school those people who are carriers of pathogens of infectious diseases, patients with infectious diseases that pose danger to others, or persons who have been in contact with such patients as well as persons who avoid mandatory medical examinations or vaccinations against infections that are officially listed by the central executive authorities in the health care sector” (paragraph 5 part 1 Article 7); “in case of extraordinary events and situations that threaten public health, sanitary and epidemiological welfare in order to provide information to the authorities, institutions and agencies of Sanitary and Epidemiological Service” (paragraph 6 part 1 Article 7).

▶ **On Prevention of Domestic Violence: Law of Ukraine of November 15, 2001 [Article 9].**

“Employees of centers for medical and social rehabilitation of victims of domestic violence ... report cases of domestic violence to district police

inspectors or officers of children's units of criminal police (paragraph 4 part 4) ... provide information on the issue of prevention of domestic violence at the request of relevant authorities (paragraph 5 part 4).

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 39 (parts 2, 5), 39-1, 40, 43 (part 1)].**

“Parents (adoptive parents), guardians, trustees have the right to information about the state of health of the child or the ward (part 2 Article 39). “In case of death of a patient, members of his/her family or other individuals authorized by them may be present at the examination of the causes of his/her death, may get acquainted with conclusions regarding the causes of death” (part 5, Article 39).

- ▶ **On Psychiatric Care: Law of Ukraine of February 22, 2000 [Article 6 (parts 3, 4)].**

“Transfer of information about mental health of an individual and the fact of providing him/her with psychiatric care is permitted without a consent of the individual or without a consent of his/her legal representative in order: 1) to organize mental health care of an individual who suffers from a severe mental disorder, 2) to assist an inquiry, preliminary investigation or a trial, upon a written request of the person conducting the inquiry, an investigator, a prosecutor and the court ...” (part 4 Article 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]**

“... Information, about the results of person's examination aimed at HIV detection, about whether a person is HIV positive or not, is a medical secret. Medical workers are obliged to take necessary measures to provide proper reservation of such confidential information about the persons living with HIV and protection of this information from being illegally disclosed to third persons. (part 3, article 13)

Transfer of the above mentioned information by medical worker is allowed only:

to a person, who was examined, and in cases and under the conditions established in part 3, article 6 of this law – to parents or other representatives of these persons;

to other medical workers or medical institutions – only in connection with treatment of this person;

to other third persons – only under the court decision and in cases established by the law (article 13, part 4)

- ▶ **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 5)].**

“... Information about an individual receiving treatment at a drug treatment facility can be provided only to law enforcement agencies in case the individual is being brought to criminal or administrative justice.”

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

“Information about an individual contracting an infectious disease that is sexually transmitted, undergoing a medical examination for this reason, information about his/her sex life received by officials and medical personnel of health care institutions in the course of performing their professional duties constitutes a medical secret. Transfer of such information is allowed only in cases established by the legislation of Ukraine.

- ▶ **On Combating Tuberculosis: Law of Ukraine of July 5, 2001 [Articles 12 (part 8), 17 (part 2)].**

“If a patient with active TB is released from a penal institution or a prison, the institution must notify the health care authorities at the place of residence chosen by the patient” (part 2 Article 17).

c) Supporting Regulations/ Bylaws/ Orders

- ▶ **On the Physician’s Oath: Decree of the President of Ukraine of June 15, 1992, [paragraph 1 parts 3, 4].**

“Maintaining medical confidentiality, not using it to harm a person (paragraph 3) ... not hiding the truth when it could hurt a patient (paragraph 4).

- ▶ **Some Aspects of Conducting Investigations and Keeping Records of Accidents, Occupational Diseases, and Industrial Accidents: Resolution of the Cabinet of Ministers of Ukraine of August 25, 2004 No. 1112 (paragraph 9).**

“... When a victim of an accident asks for assistance without presenting a referral from the enterprise, the enterprise where the victim works, executive management of the fund responsible for the area where the enterprise is located or for the area where the accident took place when the individual involved is self-employed are informed, and if an acute form of an occupational disease (poisoning) is established, the institution (agency) of the

State Sanitary and Epidemiological Service servicing the enterprise where the victim works or an institution of this type that services the area where the accident took place in case of a self-employed individual are informed. “

- ▶ **On the Procedure for Investigating Accidents and Keeping Record of Non-industrial Accidents: Resolution of the Cabinet of Ministers of Ukraine of March 22, 2001 No. 270 (paragraph 6).**

“... In case of visits by or delivery of victims of accidents, either fatal due to injuries caused by another person or as a result of an accident that occurred due to being in contact with firearms, ammunition and explosive materials or as a result of a road accident, in order to notify the police, and in cases with fatal outcomes – the Procuracy.”

- ▶ **On Improving Voluntary Counseling and Testing for HIV Infection: Order of the Ministry of Health of Ukraine of August 19, 2005 No. 415 [paragraph 4.3].**

“Given that the information about HIV test results, presence or absence of HIV infection in a person who underwent a medical examination is confidential and constitutes a medical secret, the information may be disclosed only to the person to whom it refers, and in cases provided by the legislation of Ukraine also to legal representatives of such persons, health care institutions, Procuracy, investigation and inquiry agencies and courts.

This information may not be reported to state non-medical and private (both medical and non-medical) institutions, organizations, establishments, associations of citizens, even if pre-testing counseling was conducted at these institutions, organizations and establishments” (paragraph 4.3).

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 3.6.)**

“Medical information about a patient may be disclosed: 1) when there is a written consent of the patient, 2) if demanded on sound grounds by the investigation and inquiry agencies, prosecution, courts and State Sanitary and Epidemiological Service 3) if maintaining confidentiality substantially endangers the health and lives of patients and /or other people (dangerous infectious diseases), 4) in case other specialists are involved in the process of treatment who need the information on professional grounds. Examination of a patient is possible only with his/her consent, consent of his/her parents or his/her guardian. “

e) Other Relevant Sources

There are no other relevant sources on this matter.

f) Practical Examples

1. Example(s) of Compliance

While Mr. M. was undergoing inpatient treatment in a hospital in city K., the patient's wife asked the chief of staff of the hospital to provide her with medical records, including a copy of the patient file of her husband. In response to this request, she received a letter signed by the chief of staff of the hospital which stated that her request to obtain medical information violates the right of Mr. M. to medical confidentiality and violates Articles 39, 39-1 and 40 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation."

2. Example(s) of Violation

Patient A. was treated in one of the hospitals of city Kh. with a diagnosis confirming a presence of a gynecological disease that did not present any significant threat to the life or health of the patient. The woman did not want to tell members of her family about the disease. In conversation with the attending physician, she asked him to keep this information confidential because she was afraid to lose the love and respect of her husband. Dr. M. in a telephone conversation with the husband of the patient, while answering his questions about the state of health of his wife, informed him about her diagnosis.

3. Actual Case(s)

Mr. N. was delivered to a hospital in connection with a surface knife wound received during a fight with his wife. The victim requested the doctor not to inform the police about the case. However, the doctor on his own initiative informed the police of the injury and the circumstances under which it was incurred. After being discharged, the patient filed a complaint with the Ministry of Health and the Procuracy against the doctor who revealed the information about his diagnosis, his state of health, and his family life. Mr. N.'s complaint was forwarded to the regional Department of Health. After an internal investigation, a detailed response was sent to the patient. In particular, the response stated that the doctor acted within the law and his actions did not violate the requirements specified in the Procedure for Investigating and Keeping Record of Non-industrial Accident which asserts the duty of health care facilities to send written notifications about accidents to relevant authorities.

g) Practice Notes

1. While legitimately disclosing medical confidential information, a health care employee must remember the following:
 - a) while exercising the right to share information about a patient, a health care employee should have clear knowledge of the legal provisions that

regulate sharing of medical information, thus legitimately disclosing medical confidential information and should perform such actions upon receiving a formal request that follows the procedure prescribed by law;

b) while reviewing requests of entitled individuals, one should distinguish between those cases where these individuals need medical information in order to perform their employment duties (for example, to carry out internal inspections) and act as employers, and those cases where the individuals perform their official duties (for example, carry out investigations). Hence, in the first case, by providing medical information, health care employees would violate applicable laws of Ukraine, in particular Article 286 of the Civil Code of Ukraine, Article 39-1 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation” and in the second case, they will act legally, regardless of the will of the patient or his/her legal representatives.

c) medical confidential information may be disclosed while preparing petitions, legal queries in the cases defined by law. One of these cases is when the disclosure of the information could serve the interests of relatives and heirs of a deceased, for instance, to compensate for damages caused by the death of the individual. The record should contain a note stating that the requested documents are necessary to protect one’s interests (to protect the interests of a client – for lawyers) as an heir in connection, for instance, with the death of a husband (wife);

d) if confidential medical information that is not subject to disclosure is needed to exercise one’s rights (the rights of clients – for lawyers), one can request such information during the trial by filing a request to obtain evidence under Article 137 of the Civil Procedure Code of Ukraine.

2. See also practical advice in section 6.1.3.

7.1.8 Right to Refuse Further Management of a Patient

a) Health care providers have the right to refuse management of a patient in cases foreseen by the legislation.

b) Right as Stated in Country Constitution/Legislation

- ▶ **Criminal Code of Ukraine of April 5, 2001 [Articles 139, 140].**
- ▶ **Civil Code of Ukraine of January 16, 2003 [Article 284 (part 5)].**
- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 34 (parts 3, 4), 38, 43 (part 2)].**

“A doctor has the right to refuse further management of a patient if the latter fails to comply with medical prescriptions or internal regulations of the health care institution, provided that this refusal does not threaten the life and health of the patient and the health of the population. A doctor is not responsible for the health of a patient in case the latter refuses to follow medical prescriptions or violates the prescribed regiment (Article 34). “Every patient ... has the right to freedom of choice of a doctor as long as the latter offers his/her services Every patient has the right, whenever this is justified by his/her condition, to be admitted to any health care institution of his/her choice as long as the facility is able to provide appropriate treatment” (Article 38)

- ▶ **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**

c) Supporting Regulations/ Bylaws/ Orders

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

“Whenever a patient violates a prescribed regiment, a physician indicates the type of the violation in a disability leave certificate (for instance, late arrival at the doctor’s office, use of alcohol, drugs, toxic substances during the course of treatment, showing up to work without permission from the doctor; leaving the health care institution without permission; traveling for treatment to another health care institution without the record of the permission to do so, etc.).

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 3.4].**

“Except for emergency cases, a doctor has the right to refuse to treat a patient if he/she is convinced that there is no necessary mutual trust between him/her and the patient, if he/she feels him/herself not competent enough or does not have at his/her disposal necessary capacity for treat-

ment and in other cases as long as this does not contradict the Physician's Oath in Ukraine."

e) Other Relevant Sources

There are no other relevant sources on this matter.

f) Practical Examples

1. Example(s) of Compliance

In September 2002, Mr. K. visited Central Hospital of city L for an operation on an infected bedsore on his buttock. After the surgery, the doctor scheduled a series of procedures for the patient and recommended that he should stay in the hospital for 3 days for further observation of his condition, to which the patient agreed. However, the patient did not follow any of the recommendations and the next day he left the hospital. Because of this, the doctor refused to treat patient K. further, using his right guaranteed by Article 34 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation." A few days later, Mr. K. again visited the hospital complaining of the worsening of his condition, he was provided with an expert medical assistance, but in his temporary disability leave certificate it was recorded that the patient did not adhere to the hospital regimen.

2. Example(s) of Violation

Ms. R. filed a lawsuit at the District Court to compensate her for moral damage caused by inadequate medical assistance provided to her in one of the dental clinics. The patient demanded compensation in the amount of 500 thousand hryvnias. She won the lawsuit and received the compensation – albeit in a 10 times smaller amount. The doctors and the clinic management did not agree with the court decision and therefore appealed it. However, the higher authorities left the decision unchanged.

The doctors were unable to substantiate their position. One reason turned out to be improper documentation. In particular, it was never established that the plaintiff refused to adhere to medical recommendations. The gist of the matter is that while the root canal of one of the patient's teeth was being re-filled, the surplus of the filling material penetrated into the mandibular canal and injured the lower alveolar nerve. The patient was assigned a conservative treatment, physiotherapy. However, according to the physician, she did not follow the recommendations because she was getting ready to go on vacation. Due to this, the doctor refused to treat the patient further. However, the clinic could not document the refusal of the patient to follow the recommendations; therefore, it had to pay compensation to the victim in the amount of 50 thousand hryvnias.

3. Actual Case(s)

A criminal investigation against Mr. P., the head of the Trauma Department of one of the hospitals of city N was completed. The doctor, who had almost thirty

years of work experience, was charged by the prosecution for leaving a patient in a high risk condition and the patient subsequently died. The District Prosecutor's office charged him under Article 139 of the Criminal Code of Ukraine "Failure of a Health Care Employee to Help a Patient." The circumstances of the case are the following: patient D was taken to the Trauma Department of the district hospital by his relatives who found him lying in the street. The relatives had searched for him for about a week and had already lost hope to find him alive. According to the investigation data, Mr. D. had been beaten. However, as evidenced by the case file, the physician on duty at the Trauma Department at the time refused to examine the patient claiming that the latter was dirty and had managed to annoy him in the past. It turned out that Mr. D. had already been sent to the hospital in the past but had not been hospitalized on account of various pretexts. The physician refused the offer of the relatives to wash the injured patient by themselves. Eventually, the victim was hospitalized in another hospital where in a few days he died. The commission experts who conducted the investigation concluded that if provided with timely care by physician P, Mr. D. would have lived because the injuries that had been inflicted on him did not constitute a threat to his life. The doctor continues to serve as the head of the department and claims that the case against him is imaginary. The maximum penalty which threatens the physician is restriction of freedom for a term of four years or imprisonment for up to three years with an optional withdrawal of the right to occupy certain positions or engage in certain types of activities for up to three years (part 2 of Article 139 of the Criminal Code of Ukraine).

g) Practice Notes

1. In addition to Article 34 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation" which clearly defines the right of a doctor to refuse to provide medical assistance, there is Article 38 of the same law which states that a patient has the right to a free choice of a doctor as long as the latter offers his/her services. The law does not provide for cases in which the physician has the right to refuse to assist a patient due to being unable to offer his/her services. This subjective notion gives rise to problems in legal practice; therefore, we propose to fill the legal gap by deontological norms (paragraph 3.4 of the Code of Ethics of Physicians of Ukraine). In practice, cases where a doctor can not offer his/her services could be interpreted as those that contain grounds for the doctor to refuse to manage a patients as defined in the Code of Ethics of Physicians of Ukraine.
2. Another legitimate ground for refusal to provide medical assistance is established by the norms in part 2 of Article 38 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation." It follows from the provisions of this norm that except for emergency situations, a patient may be denied assistance if the institution selected by the patient is unable to provide appropriate treatment (for example, absence of necessary equipment, specialized experts, units).
3. See also practical advice in section 6.2.4.

7.1.9 Right to Conduct Medical Intervention Without Consent of a Patient and/or His/Her Legal Representatives

a) Health care providers have the right to conduct medical intervention without consent of a patient and/or his/her legal representatives in certain cases.

b) Right as Stated in Country Constitution/Legislation

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

“Every person has the right to ... bodily integrity.”

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

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

- ▶ **Criminal Code of Ukraine of April 5, 2001 [Articles 92, 96].**

“A compulsory treatment may be ordered by the court, regardless of the sentence, for those individuals who committed crimes and have diseases that endanger the health of others” (part 1 Article 96).

- ▶ **Civil Procedure Code of Ukraine March 18, 2004 [Articles 10, 11].**

“A decision to satisfy a request of a psychiatrist, a representative of a psychiatric institution (Article 279) forms the basis for compulsory administering of appropriate psychiatric care. (part 2 Article 282).

“Having reviewed a request for compulsory admission to a TB institution or continuation of the treatment, the court makes a decision ... The decision to satisfy the request constitutes grounds for compulsory hospitalization or further treatment of an individual at a TB institution for the period of time established by law.” (Article 286).

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

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

- ▶ **On Ensuring Sanitary and Epidemiological Welfare of the Population: Law of Ukraine of February 24, 1994 [Article 28 (part 2)].**

“Those patients who suffer from especially dangerous infectious diseases are subject to compulsory inpatient treatment if they refuse to be admitted to a hospital, and those who are carriers of disease agents and persons who had contact with such patients are subject to compulsory medical supervision and quarantine following an established procedure.”

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

“Patients suffering from infectious forms of tuberculosis, including those who are socially marginalized due to concomitant chronic alcoholism, drug addiction or substance abuse, are subject to compulsory hospitalization in TB facilities and are required to undergo appropriate treatment. In case of avoidance of mandatory hospitalization, these individuals are to be located, restrained and hospitalized in a TB facility in a compulsory manner by the decision of the court to prevent the spread of tuberculosis” (part 2 Article 12).

- ▶ **On Psychiatric Care: Law of Ukraine of February 22, 2000 [Articles 11, 12, 14].**

“Psychiatric examination of an individual may be conducted without his/her consent or without a consent of his/her legal representative in cases when the data obtained provide sufficient grounds for a reasonable claim that this individual suffers from a serious mental disorder ... A decision to conduct a psychiatric examination of an individual without his/her informed consent or without a consent of his/her legal representative is made by a psychiatrist on the basis of a written statement that contains information that provides sufficient grounds for such an examination” (part 3 Article 11). “Outpatient psychiatric assistance is provided to an individual without his/her informed consent or without a consent of his/her legal representative by a psychiatrist in a compulsory manner by the decision of a court (part 2 Article 12). “A person who suffers from mental disorder may be hospitalized in a psychiatric institution without his/her informed consent or without a consent of his/her legal representative when an examination or a treatment are possible only on inpatient basis and when it is established that this person suffers from a severe form of mental disorder ...” (Article 14).

- ▶ **On Protection of the Population from Infectious Diseases: Law of Ukraine of April 6, 2000 [Article 26 (part 1)].**

“Individuals who suffer from infectious diseases that are sexually transmitted are subject to compulsory treatment (anonymous, if requested).”

- ▶ **On Measures against Illicit Trafficking of Narcotic Drugs, Psychotropic Substances and Precursors as well as their Abuse: Law of Ukraine of February 15, 1995 [Articles 13, 16].**

“An individual who refuses to undergo a medical examination or medical screening is to be escorted to a drug treatment facility by the police” (part 2 Article 13). “An individual who is recognized as a drug addict but refuses to undergo a voluntary treatment or continues to use drugs after the treatment without a prescription of the doctor and whose relatives or other persons contacted the police or the Procuracy due to the dangerous behavior of the individual may be sent for a drug addiction treatment to a specialized drug addiction treatment facility of the Department of Health by the decision of the court while minors who have attained the age of sixteen may be sent to a specialized medical and educational institution for a term of up to one year” (part 1 Article 16).

c) Supporting Regulations/Bylaws/Orders

There are no relevant supporting regulations of this particular right.

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].**

“Administering treatment and diagnostic measures without a consent of a patient is permitted only in cases when there is a threat to his/her life or health and he/she is unable to adequately evaluate the situation.”

e) Other Relevant Sources

There are no other relevant sources on this matter

f) Practical Examples

1. Example(s) of Compliance

A statement made by Psychiatric Hospital No. 2 of region B. indicated that since December 28, 2005 Mr. A had been undergoing a compulsory treatment at the Intensive Care Unit by the decision of the district court of city K. of November 25, 2005 in accordance with section 1 of Article 115 and part 1 of Article 131 of the Criminal Code of Ukraine because he had committed a socially dangerous act. At the end of the treatment, the mental state of the psychiatric patient did not improve. His answers to questions given after a pause were not always to the

point. His thinking was incohesive with signs of discontinuity, with obsessive ideas of manipulation and prosecution. He was internally tense, disturbed. He was reluctant to discuss what had happened and acknowledged his guilt only formally. He expressed suicidal thoughts. He had no critical assessment of his condition.

As it is clear from the conclusion of the council of doctors of June 3, 2009, patient A. suffered from a prolonged reactive psychosis, schizophrenia-like syndrome. Given the lack of positive changes in the mental state and behavior of the patient, he needed to continue with the treatment at the intensive care unit.

2. Example(s) of Violation

On February 8, 2007, the prosecutor of city S. reported that in 2006 about 60 children-orphaned from children's orphanages and boarding schools were unlawfully detained in a city psychiatric hospital for one month. As the prosecutor reported, a criminal case was opened on the basis of this fact. The prosecutor suggested that some children had been indeed in need of this type of aid, however, he expressed surprise at the fact that the psychiatric hospital treated young patients in a bureaucratic manner: "Doctors should have discharged those children who did not need hospital treatment immediately."

3. Actual Case(s)

Since 1978, Mr. N., a defendant, had worked as a full time surgeon at a municipal hospital of district S. city S. region T and according to part 1 of Article 364 of the Criminal Code of Ukraine did not constitute a hospital official. On June 8, 2007, during his time off, i.e. while not on duty as an emergency physician at the municipal hospital of district S. region T, he exceeded his authority in order to admit a victim, Mr. D., to the municipal psychiatric and neurological hospital of region T. as an inpatient, thus violating Articles 3 and 13 of the Law of Ukraine "On Psychiatric Care", Order of the Ministry of Health of Ukraine No. 304 of July 24, 2001 "On Approval of Certain Forms of Documents on Mental Health Care". Without permission and contrary to the procedure established by law, knowing that his actions might cause significant damage to Mr. D., he gave directions to hospitalize the patient at the regional municipal psychiatric and neurological hospital (hereinafter – RMPNH), assigning to the patient the diagnosis of "manic-depressive syndrome". On the basis of this, employees of the district division of the Ministry of Internal Affairs of Ukraine of district P. region T., who according to Article 8 of the Law of Ukraine "On Psychiatric Care" must provide assistance to medical staff upon their request in administering compulsory psychiatric care and ensuring safe conditions of access to an individual and his/her psychiatric examination, were summoned to arrive at the home of Mr. D. in city S. in order to transport him to RMPNH.

These actions of the doctor contradict Article 10 of the Law of Ukraine "On Psychiatric Care", according to which psychiatric assistance is provided by psychiatrists with legally obtained license. At the trial, the defendant Mr. N. pleaded not guilty to the charges against him. The victim stated that he was detained in the health care facility until June 12, 2007 and was then discharged since the con-

clusions of the council of doctors confirmed that he was mentally healthy while the diagnosis of manic-depressive syndrome recorded in the referral written by Mr. N. was not confirmed. The victim believes that the surgeon's actions caused considerable damage to his interests, including mental suffering, questioning of his mental health in the eyes of his family and friends.

The Court decided that the actions of the defendant should be classified under Article 356 of the Criminal Code of Ukraine as unauthorized, that is actions willfully committed contrary to the procedure established by law, the lawfulness of which was challenged by an individual citizen because they caused significant damage to the interests of the citizen. This assessment of the actions of the defendant was supported by the prosecution: on June 30, 2009, the prosecutor ordered the charges against the defendant to be changed (instead of being tried under part 1 of Article 366, part 1 of Article 365 and part 1 of Article 151 of the Criminal Code of Ukraine he was to be tried under Article 356 of the Criminal Code of Ukraine).

While deliberating a penalty for the defendant, the court took into account the severity of the offense, the identity of the offender and the circumstances mitigating the punishment, such as his positive assessment at his workplace and the place of his residence, illnesses he suffered, and therefore decided upon a punishment under Article 356 of the Criminal Code of Ukraine in the form of a fine which was deemed to be necessary and sufficient for the defendant to correct what had been done and to prevent further crimes.

There was no civil lawsuit filed in this case.

g) Practice Notes

1. The law does not contain a list of extreme emergency situations that pose a real threat to the life of a patient which give a doctor the right to perform a surgery, use sophisticated methods of diagnosis or conduct other forms of medical intervention without a consent of the patient or his/her legal representatives.

The draft of the Law of Ukraine "On National System of Emergency Medical Assistance" gives one an idea of the national legislation on urgent care. According to Article 1 of this bill, urgent situation is an instant pathological change in the functions of the human body that threatens the life and health of an individual or people surrounding him/her.

2. Medical practice testifies that such "urgent cases" are covered by the system of emergency (urgent) surgery. In the doctrine, emergency surgery means that one can not postpone a surgery, that it is carried out on the basis of vital, absolute indications, that without the surgery, the death of the patient is inevitable, and that the surgery offers a chance for survival, especially if it is performed in a timely manner. "
3. Urgent surgeries (in emergency situations) are performed shortly after the admission of a patient to a hospital (within 1-2 hours) (acute appendicitis, intestinal obstruction, peritonitis, acute purulent diseases). Urgent surgeries are performed immediately; simultaneously one strives to forestall a

shock or even a clinical death (severe bleeding due to a rupture of the spleen, liver, a rupture of large vessels).

4. Absolute (vital) indications for a surgery are diseases and conditions that pose a threat to the life of a patient and that can be treated only by means of the surgery. This group of indications include, for example, asphyxia, bleeding of any etiology, acute diseases of the abdomen (acute appendicitis, acute cholecystitis, incarcerated hernia, acute purulent surgical diseases, acute intestinal obstruction, etc.).
5. The law ensures the right of a doctor to carry out medical intervention without a consent of a patient or his/her legal representatives, but only in exceptional cases, when a delay in diagnosis or a delay in administering a surgery threatens the life of the patient. In this case, one deals with the so-called vital indicators for complex diagnostic procedures that themselves can be life threatening and for performing surgical interventions. Resuscitation measures in terminal patients are the highest manifestation of emergency and always belong to the circumstances of extreme urgency, subject to the requirements of the law.

Actions of a doctor in emergency situations are actions performed under the conditions of absolute necessity that arises from the real danger threatening the life of a patient and can not be eliminated by any means other than a specific surgery, for example. The state of emergency occurs under certain conditions, namely when:

- danger to human life is real, not potential. Therefore, for example, when a so-called planned surgery is used as a possible method of treatment, it does not constitute the state of emergency;
 - threat to life cannot be eliminated by means other than the selected method of intervention (a surgery, a blood transfusion, etc.);
 - damage to be caused by a medical intervention should constitute less danger for the patient than the damage to be caused by the pathology or the injury addressed by this intervention.
6. In addition to the actions of a doctor in emergencies, the legislators established a series of legitimate conditions under which medical assistance may be provided without a consent of an individual or his/her legal representative and which will not be considered a violation of the right of the patient to consent or refusal of a medical intervention.
 7. Employees should not be responsible for the damage caused by the employee who was acting in a state of emergency (part 4 of Article 130 of the Labor Code of Ukraine).