

## 7.2 Providers' Responsibilities

This section highlights professional responsibilities of health care employees defined in their entirety in Article 78 of the Law of Ukraine "Principles of Ukrainian Health Care Legislation." They are general, that is they consist of those tasks that are related to carrying out medical practice in general. Special responsibilities of health care employees are those related to providing medical assistance to a patient and are not systematically fixed in the current legislation of Ukraine but are "scattered" throughout individual Articles of Law. The latter are covered in section 6.1, in accordance with the principle of correspondence between rights and responsibilities.

### 7.2.1 Responsibility to Provide Timely and Competent Medical Assistance; and Promote Public Health; Prevent and Treat Diseases

**a) This responsibility of health care employees corresponds to the right of patients to quality medical assistance, discussed in section 6.1.8.**

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

- ▶ **Constitution of Ukraine of June 28, 1996 [Article 49 (part 1)].**
- ▶ **Civil Code of Ukraine of January 16, 2003 [Article 284 (part 1), Chapter 63].**

"An individual has the right to receive medical assistance" (part 1 Article 284). "According to a contract to provide services, one party (a contractor) undertakes to perform the task set by the other party (a customer) to provide a service which is consumed in the process of committing certain acts or carrying out certain activities while the customer agrees to pay the contractor for the specified service, unless otherwise stated in the agreement. The provisions of this chapter may apply to all contracts for services (including health care – I.S.) (Article 901, Chapter 63).

- ▶ **On Protection of Consumer Rights: Law of Ukraine of May 12, 1991 (in the reading of December 1, 2005) [Articles 4, 6, 8, 10].**

Article 6 establishes the right of a consumer to proper quality of products (any product (goods), work or service, produced, performed or provided to meet social needs). A contractor shall convey to the consumer products

of an adequate quality and also provide information about these products. At the request of the consumer, the contractor is obliged to provide documents confirming adequate quality of the products.

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

“Health care employees must protect and promote public health, prevent and treat diseases, provide timely quality health care” (paragraph “a” Article 78).

“Timely and competent examination and curing of a patient is a duty of a doctor” (part 2 Article 34).

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

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

“To devote all knowledge, strength and abilities to the protection and improvement of the health of a human being, treat and prevent disease, provide medical assistance to all who need it”.

- ▶ **Interdisciplinary Comprehensive Program for 2002-2011 “Health of the Nation”: Resolution of the Cabinet of Ministers of Ukraine of January 10, 2002 No. 14 [section 31].**
- ▶ **Framework for Ensuring the Quality of Health Care Services in Ukraine for the Period Ending in 2020: Order of the Ministry of Health of Ukraine of August 1, 2011 No. 454.**

The tasks of the Framework include protection of interests of a patient in receiving quality health care.

- ▶ **On Approval of the Uniform Methods for Developing Clinical Guidelines, Medical Standards, Uniform Clinical Protocols for Medical Assistance, Local Protocols for Medical Assistance (Clinical Tracks for Patients) on Evidence-based Medicine: Order of the Ministry of Health of Ukraine, Academy of Medical Sciences of Ukraine of February 19, 2009 No. 102/18.**
- ▶ **On Approval the Plan of Measures Concerning the Framework of Clinical and Laboratory Researches Conduction for the Period Ending in 2015: Order of Ministry Of Health of Ukraine of October 17, 2010 No. 1003.**

- ▶ **On Procedure of Carrying out a Control and Management of Quality of Medical Care: Order of Ministry of Health of Ukraine of March 26. 2009. No. 189.**
- ▶ **On Procedure of Management of Quality of Medical Care: Order of Ministry of Health of Ukraine of February 24. 2010, No. 163.**
- ▶ **On Approval of a Unitary Glossary of Definitions (Glossary) on the Issues of Management of Medical Care Quality: Order of the Ministry of Health of Ukraine of July 20, 2011 No. 427.**
- ▶ **On Approving the Standards of Medical Care Provision and Indicators of Medical Care Quality: Order of the Ministry of Health of Ukraine of December 28, 2002 No. 507.**

The list of medical care quality indicators includes:

1. Accessibility of medical care.
  2. Economy of medical care.
  3. Effectiveness of medical care.
  4. Continuity of medical care.
  5. Scientific and technical level of medical care.
  6. The level of observance of medical care manufacturability.
  7. The level of clinical quality.
  8. The level of diagnostic's quality.
  9. The level of quality of medical care
  10. The level of quality of medical examination.
  11. The level of quality of prophylactic.
  12. The level of quality of rehabilitation.
  13. The level patients are satisfied with the medical care they received.
- ▶ **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. [paragraph 4.1]**

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

- ▶ **Code of Ethics of Physicians of Ukraine, adopted and signed at the National Congress of Health Care Organizations and at the X Congress of the Ukrainian Medical Association on September 27, 2009 [paragraphs 2.1, 2.3].**

Primary mission of professional activities of a physician (a practitioner and a researcher) is to preserve and protect the life and health of a human being in prenatal and postnatal period, to prevent diseases and promote health as well as reduce suffering caused by incurable diseases, at childbirth and in

death” (paragraph 2.1). “A doctor is fully responsible for his/her decisions and actions as to the life and health of patients” (paragraph 2.3).

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

There are no other relevant sources on this matter.

### **f) Practical Examples**

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

Ms. K. was hospitalized on her 39th week of pregnancy. The next day, the patient experienced an increase in blood pressure, so it was decided to conduct a cesarean section. During the surgery, her condition deteriorated, which was caused, as it turned out later, by the rejection of the standard medicine introduced during the surgery by the individual body of the patient. Previously, the deceased did not have any allergic reactions to medication. In spite of the skilled and conscientious medical assistance, the patient died.

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

Ms. N., who on December 25, 2004 at 2 am was admitted to the maternity ward of the central hospital of district I., was examined by doctors A. and B. within 24 hours of the admission. They decided upon natural birth as a method of delivery. On the same day at 22: 25, the pregnant woman naturally bore a living male child weighing 4 kg 300 g. The third stage of the labor was complicated by an inversion of the uterus and a uterine bleeding.

The head of the maternity department, Mr. A., a doctor of the highest qualification category, negligently treated his professional duties, refused to conduct medical manipulation to correct the uterus, and instructed doctor V., who did not have relevant practical skills and adequate medical certification, to carry out this manipulations. As a result, this manipulation was not performed in full, even though as a certified specialist Ms. V. should have mastered methods of stopping uterine bleeding and skills to correct the uterus. According to the opinion of the commission that conducted forensic analysis, manual correction of the uterus and, if it failed, a surgical treatment, including the removal of the uterus, was not carried out, even though such a correction could be carried out at the maternity department of the central hospital of district I. Due to the untimely and unqualified aid, the mother died.

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

While undergoing treatment at a health resort, on November 19, 2007, Ms. M. fell due to an inadequate condition of the sidewalks (covered with ice) on the territory of the resort and received an injury – she suffered from a closed fracture of the left radius bone of a standard type. To receive medical assistance, she was sent to the trauma department of the central district hospital. Medical assistance was provided to the patient by a trauma specialist, who established the diagnosis of a standard fracture of the left radius bone with a displacement.

According to the certificate of November 19, 2007, she received the following medical interventions: radiography, correction, cast immobilization, X-ray control. It was also established that the patient was sober at the time of the accident. On November 23, 2007, Ms. M. went to see a doctor at an outpatient medical center of city D. with a complaint of wrist pain and swelling. An attending physician – a trauma specialist – confirmed the diagnosis established at the central district hospital. However, he also noted in the primary medical documentation that the treatment assigned to Ms. M at the central district hospital did not meet the clinical protocols of medical assistance for this condition. As a result of improper medical assistance at the central district hospital, the patient experienced exacerbation of her chronic condition and developed iatrogenic pathology—left wrist dysfunction. Ms. M. filed a lawsuit to compensate her for moral (50,000 hryvnias) and material (7,759.45 hryvnias) damages. The case is being tried in a court of first instance.

### **g) Practice Notes**

1. Medical assistance should be provided by health care employees according to quality standards in order not to violate the rights of patients. This is of practical importance to lawyers for determining the range of professional violations made in each individual case by doctors.
  - 1.1. Quality of health care in administrative law is determined through administrative processes within the system of health care. Standards of health care are: 1) organizational standards and standards of personnel management (condition and structural characteristics of premises, level of communication, technical and instrumental equipment of health care institutions, professional level of their staff which is adequate and necessary for providing health care of good quality), 2) qualitative and quantitative standards which directly determine the level of health care by determining its quality, thus serving as a way to detect and eliminate poor-quality health care (range of medical assistance provided, diagnostic, medical/technological, medical/social standards).
  - 1.2. Quality of health care in civil law is determined through contractual and legal relations and obligations associated with causing damage in the course of providing this type of care.
  - 1.3. Quality of health care in criminal law is determined through criminal responsibility for professional crimes the content of which is specified in the Criminal Code of Ukraine, including the failure of a health care employee to provide medical assistance to a patient (Article 139), improper carrying out of professional duties by a health care employee (Article 140).
  - 1.4. Quality of health care in labor law is determined through the employment relations between administration of a health care institution and health care employees. Providing adequate health care is part of responsibilities of a health care institution as an employer, its administration delegates this responsibility to its employees through employment contracts, collective bargaining agreements, internal labor regulations. Administration of a

health care institution employs medical personnel who have diplomas and certificates of specialist that certify their knowledge of modern medical diagnostic technology and their ability to provide good quality medical assistance. Failure of an employee to provide medical assistance according to quality standards constitutes basis for bringing an employee to disciplinary action.

1.5 Quality of medical service – is a service, due to which resources are allocated in a way, that medical and sanitary needs of those who need help most of all, are satisfied most effectively and to the limit, and medical care and prophylactics is carried out due to requirements of the highest level. (Unitary Glossary of Definitions (Glossary) on the Issues of Management of Medical Care Quality 2011)

2. See also practical advice in section 6.1.8.

## **7.2.2 Responsibility to Provide Free Emergency Assistance to Citizens in Case of Accidents and Other Emergencies**

**a) This responsibility of health care employees corresponds to the right of patients to accessible health care, including free medical assistance, and is discussed in section 6.1.2.**

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

- ▶ **Criminal Code of Ukraine of April 5, 2001 [Article 139].**
- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 37, 43 (part 2), 78 (paragraph “b” part 1)].**

“Health care employees must provide emergency assistance in case of accidents and acute stages of diseases (part 1 Article 37). “Health care employees must provide free emergency assistance to citizens in case of accidents and other emergencies” (paragraph “b” Article 78).

- ▶ **On Protection of the Population and the Territory from Man-made and Natural Disasters: Law of Ukraine of June 8, 2000 (Article 13).**

“To provide free medical assistance to victims of man-made emergencies and natural disasters ...there exists State Disaster Medical Service as a special type of public emergency service” (part 2 Article 13).

- ▶ **On Emergency Services: Law of Ukraine of December 14, 1999 [Article 8].**

State Disaster Medical Service is a special type of state emergency service. The main objective of the State Disaster Medical Service is to provide citizens with free medical assistance ... (part 3 Article 8).

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

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

"...Provide medical assistance to those who need it" (paragraph 1)," ... be selfless and responsive to patients ..." (paragraph 2).

- ▶ **On Approval of the Provisions on the State Disaster Medical Service: Resolution of the Cabinet of Ministers of Ukraine of July 11, 2001 No. 827.**

"The main objective of the State Disaster Medical Service is to provide free medical assistance at the prehospital and hospital phases to disaster victims, rescuers and others involved in disaster relief, elimination of health and sanitary consequences of emergencies ..." (parts 1, 2 paragraph 12).

- ▶ **On Approval of the State Program for Creating a Unified System of Emergency Medical Assistance for the Period Ending in 2010: Resolution of the Cabinet of Ministers of Ukraine of November 5, 2007 No. 1290.**

"The goal of the program is to create conditions to increase availability and quality of emergency medical assistance, reduce disability and death due to accidents, injuries and poisonings ...."

- ▶ **On a Unified System of Emergency Medical Assistance: Order of the Ministry of Health of Ukraine of June 1, 2009 No. 370 [section 1 (paragraph 2)].**

- ▶ **On Approval of the Action Plan for Implementing the State Program for Creating a Unified System of Emergency Medical Assistance for the Period Ending in 2010: Order of the Ministry of Health of Ukraine of May 12, 2008 No. 245.**

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

“State and municipal health care institutions provide free medical assistance, including the following types of care: 1) emergency and urgent care is provided at the pre-hospital stage by emergency stations (units), emergency care centers in conditions that threaten human life, 3) inpatient care is provided in case of acute stages of diseases and in urgent cases when one needs intensive treatment, round the clock medical supervision or hospitalization, including during epidemics, to children, pregnant and parturient women, patients referred by medical and social expert commissions or councils of doctors (Article 2).

- ▶ **On Licensing Conditions for Carrying Out Business Activities in Medical Practice: Order of Ministry of Health Ukraine of February 2, 2011. No. 49. [paragraph 4.1].**

#### **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 2.6].**

“At state and municipal health care institutions, doctors provide free medical assistance to patients within the funding allocated to these institutions”.

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

There are no other relevant sources on this matter.

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

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

A five-year old child received serious burns during a fire. The minor patient was immediately hospitalized at the nearest health care institution. The family of the girl was in a difficult financial situation and was unable to purchase the drugs needed for treatment. Health care employees explained to the parents that the patient had the right to free emergency medical assistance, including free medication.

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

Around two o'clock at night, an ambulance brought a man with serious injuries from an accident to one of the hospitals of city D. The patient urgently needed surgery. Before commencing the surgery, the surgeon decided to talk to the family members. Noting that the surgery which the victim required cost 2,000 hryvnias, the surgeon tried to clarify whether the relatives had such funds and whether he should commence the surgery.



### 3. Actual Case(s)

On December 15, 2008, the court of district S of city L. examined a case regarding the charges brought by Ms. M., who acted as a legal representative on behalf of her underage son K., against secondary school No. X in city L., with nurse L. acting as the third party. The plaintiff demanded compensation for moral damages in the amount of 10,000 hryvnias.

The court established that on December 1, 2008 underage K. with friends was playing football on the playground of secondary school No. X in city L. During the game, an accident occurred: the boy suffered a closed fracture of the middle third of the right femur accompanied by a dislocation (as it turned out later in the hospital). Since the accident occurred on the playground of secondary school No. X in city L., underage K. was taken to the school's health care unit. Nurse L., who at that time was on duty, refused to provide the child with emergency medical assistance. She defended her actions by arguing that underage K. was not a student at school No. X in city L. and, therefore, the nurse was not obliged to provide him with medical assistance.

Due to the inaction of the health care employee, the mother transported the child to the hospital by a taxi 2 hours and 25 minutes after the accident occurred, where the boy received urgent medical assistance. By that time, the child was in a life-threatening condition.

In this case, nurse L. did not perform her duty as a health care employee to provide emergency medical assistance to underage K., who had suffered severe injuries. The child suffered moral damages which consisted of exposure to physical pain, mental worry, disruption of his way of life.

Due to this, the court of district S. of city L. ordered the claims of Ms. M. to be satisfied and the moral damage to be compensated for in full.

### g) Practice Notes

1. In urgent cases, when there exists a real threat to the life of a patient, a consent of the patient or his/her legal representatives to a medical intervention is not needed.
2. If a health care employee had to provide medical assistance to a patient and under specific circumstances had the opportunity to do so but did not do so without providing any justifiable reasons, he/she is subject to criminal responsibility under Article 139 of the Criminal Code of Ukraine. The decision as to whether the reasons for failing to provide medical assistance are justifiable is made by competent authorities in each case individually.
3. Justifiable reasons include, in particular, irresistible force, state of emergency (for example, the need to provide priority assistance to a more seriously ill person), illness of the health care employee in question, lack of equipment or medicines. One cannot recognize as legitimate the reasons that involve the health care employee being absent from the site of his/her employment (being at home or on the road), being off duty, absence of a consent of the patient or a consent of his/her legal representatives

to a medical intervention in an emergency situation when there exists a real threat to the life of the patient.

4. See also practical advice in section 6.1.2 and 7.1.9.

### **7.2.3 Responsibility to Disseminate Scientific and Medical Knowledge Among the Population, to Promote Healthy Lifestyle, Including Using One's Own Example**

**a) This responsibility of health care employees corresponds to the right of patients to preventive measures, which is discussed in section 6.1.1.**

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

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

“Health care is provided through state funding of relevant socio-economic, medical, sanitary and prevention programs.”

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 32, 35-1, 78 (paragraph “c” part 1)].**

“The state promotes healthy living by disseminating scientific knowledge on health issues, organizing medical, environmental and physical education, implementing measures aimed at improving hygiene habits of the population ...” (part 1 Article 32.).

“Health care employees must disseminate scientific and medical knowledge among the population, promote healthy living, including by their own example” (paragraph “c” Article 78).

- ▶ **On Ensuring Sanitary and Epidemiological Welfare of the Population: Law of Ukraine of February 24, 1994 [Article 21 (parts 3, 4)].**

“Health care agencies and institutions, health care employees ... must promote public hygiene habits, healthy lifestyle” (part 3 Article 21).

- ▶ **On Measures to Prevent and Reduce Tobacco Consumption and its Harmful Impact on Public Health: Law of Ukraine of September 22, 2005 [Articles 14, 15].**

“Health care employees of health care institutions of all forms of ownership shall promote medical knowledge about prevention of diseases caused by smoking tobacco or other forms of its use, prevent their use among the population, especially among children and youth, provide practical advice on healthy lifestyle and recommend not starting to smoke or otherwise use tobacco products or discontinuing their use” (paragraphs 1, 2 part 1 Article 15).

- ▶ **On Wellness and Recreation of Children: Law of Ukraine of September 4, 2008 [Article 33 (paragraph 4 part 3)].**

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

- ▶ **Framework for the Development of Health Care of the Population of Ukraine: Decree of the President of Ukraine of December 7, 2000 No. 1313/2000 [section 5].**
- ▶ **On the Physician’s Oath: Decree of the President of Ukraine of June 15, 1992, [paragraph 6 part 1].**

“Using one’s own example to promote bringing up physically and morally healthy generation ...” (paragraph 6).

- ▶ **Interdisciplinary Comprehensive Program for 2002-2011 “Health of the Nation”: Resolution of the Cabinet of Ministers of Ukraine of January 10, 2002 No. 14 [section 1 paragraph 20, section 3 Introduction, section 19, section 37].**
- ▶ **Prosperous Society, Competitive Economy, Efficient State: Economic Reform Program for 2010-2014 of June 2, 2010 [section “Reforming Health Care”].**
- ▶ **National Development Plan for the Health Care System of Ukraine for the Period Ending in 2010: Resolution of the Cabinet of Ministers of Ukraine of June 13, 2007 No. 815 [paragraph 9].**
- ▶ **Framework on Management of Medical Care Quality in the Sphere of Health Care in Ukraine for the Period up to 2020. Order of Ministry of Health of Ukraine of August 1, 2011, No. 454.**

## d) Provider Code(s) of Ethics

- ▶ **Code of Ethics of Physicians of Ukraine, adopted and signed at the National Congress of Health Care Organizations and at the X Congress of the Ukrainian Medical Association on September 27, 2009 [paragraph 2.11].**

“A doctor must promote healthy lifestyle by his/her own behavior and other available means (lectures, talks, media, internet etc.) and serve as an exemple of adhering to its norms and rules”.

## e) Other Relevant Sources

There are no other relevant sources on this matter.

## f) Practical Examples

### 1. Example(s) of Compliance

When seeing his patients, physician T. from a regional hospital handed out brochures and booklets with information about HIV/AIDS and hepatitis B and C.

### 2. Example(s) of Violation

The head of one of the schools asked employees of a health care institution in city Ch. to conduct an educational event with teenagers about HIV/AIDS prevention. However, the head of staff of the medical institution refused to sent a health care employee to disseminate scientific and medical knowledge among students, arguing that education of children should be taken care of by parents and teachers while the duty of doctors is to cure.

### 3. Actual Case(s)

The court of district Z in city L. examined the lawsuit initiated by Ms. M against Municipal Hospital No. X in city L. to recognize as unlawful her dismissal, to reinstate her at work with the payment of average wages for the time of her forced absence.

The court established that Ms. M. worked as a cardiologist at Municipal Hospital No. X in city L. and on May 20, 2009 was fired for showing up at her workplace drunk, in accordance with paragraph 7 of part 1 of Article 1940 of the Labor Code of Ukraine.

The plaintiff considered her dismissal to be unlawful since she had previously been subject to only one disciplinary measure in the form of a reprimand and this could not serve as evidence of a systematic failure to fulfill the responsibilities entrusted to her by the employment agreement and internal labor regulations without a justifiable reason.

At the trial, the representative of the defendant indicated that the plaintiff had showed up at her workplace drunk, as evidenced by the relevant medical re-

port. It was noted that this behavior of the health care employee testified to the violation by the employee of her professional duties, in particular the duty to promote healthy lifestyle, including by her own example, of the rules of professional ethics. As a punishment for such an action, one can utilize a dismissal of an employee from work (in accordance with paragraph 7 of part 1 of Article 40 of the Labour Code of Ukraine).

Hence, the court recognized the dismissal of the doctor as legitimate and decided to deny the claim of Ms. M. against Municipal Hospital No. X in city L. whereby she requested to recognize her dismissal as unlawful and to reinstate her at work with the payment of average wages for the time of her forced absence.

### **g) Practice Notes**

1. Advanced training programs for health care employees should include special topics on methods and means of prevention and giving up of tobacco use.
2. For violating this duty, a disciplinary action may be brought against a health care employee.
3. See also practical advice in section 6.1.1.

## **7.2.4 Responsibility to Comply with the Requirements of Professional Ethics and Deontology and to Maintain Medical Secrecy**

**a) This responsibility of health care employees corresponds to the right of patients to confidentiality of information about their health, and is also highlighted through the prism of the right of health care employees to share information about a patient, discussed in section 7.1.7.**

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

- ▶ **Constitution of Ukraine of June 28, 1996 [Article 32 (parts 1, 2)].**
- ▶ **Civil Code of Ukraine of January 16, 2003 [Articles 285 (part 4), 286].**

“An individual has the right to confidentiality of information about his/her health, the fact of seeking medical assistance, diagnosis, and information obtained during his/her medical examination” (part 1 Article 286).

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

“An unlawful disclosure of a medical secret:

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

- ▶ **On Information: Law of Ukraine of October 2, 1992 [in the wording of January 13, 2011] [Article 21].**
- ▶ **On Personal Data Protection: Law of Ukraine of June 1, 2010 [Article 7].**

“Processing of personal data is prohibited” (part 1). The provisions of this Article shall not apply ... if processing of personal data ... is needed for health care, to ensure care or treatment provided that such data are processed by health care employees or other individuals from health care institutions who are in charge of protecting personal data” (paragraph 6 part 2).

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 39-1, 40, 76, 78 (paragraph “d” part 1)].**

“A medical secret:

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

“Health care employees must adhere to the rules of professional ethics and deontology, preserve medical confidentiality” (paragraph “d” Article 78).

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

- ▶ **On the Physician’s Oath: Decree of the President of Ukraine of June 15, 1992, [paragraphs 1–4, 6 part 1].**

“To be invariably guided in one’s actions and thoughts by the principles of universal morality ...” (paragraph 2), to preserve confidentiality of medical information, not use it to harm a person” (paragraph 3), to adhere to the

rules of professional ethics ...” (paragraph 4) “... to uphold high ideals of compassion, love, harmony and mutual respect between people” (paragraph 6).

- ▶ **Interdisciplinary Comprehensive Program for 2002-2011 “Health of the Nation”:** Resolution of the Cabinet of Ministers of Ukraine of January 10, 2002 No. 14 [section 38].
- ▶ **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 3.2].

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

- ▶ **Licensing Conditions for Conducting Business Activities in Medical Practice:** Order of Ministry of Health of Ukraine of February 2, 2011 No. 49 [paragraph 4.1 (part 6)].

“To adhere to the rules of professional ethics and deontology, to preserve medical confidentiality.”

- ▶ **On Lists of Data, that Include Official and Confidential Information in the Ministry of Health of Ukraine:** Order of Ministry of Health of Ukraine of August 16, No. 517.

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

- ▶ **Code of Ethics of Physicians of Ukraine, adopted and signed at the National Congress of Health Care Organizations and at the X Congress of the Ukrainian Medical Association on September 27, 2009 [paragraphs 2.1, 2.2, 3.6].**

“A doctor as well as other individuals involved in providing medical assistance must not disclose medical secrets even after the death of a patient nor the fact of the patient seeking medical assistance, in the absence of

other instructions from the patient or when the disease does not threaten his/her family and society. Confidentiality extends to all the information obtained in the course of treating a patient (including diagnosis, methods of treatment, prognosis).”

## e) Other Relevant Sources

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

At the request of a patient, his/her family members or legal representatives, a doctor must provide them with complete medical information in an accessible form. Rules for the use of information which is subject to medical confidentiality, i.e. the information about a patient, as opposed to medical information, i.e. the information for a patient, are established by Article 40 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation” and part 3 of Article 46 of the Law of Ukraine “On Information.”

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

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

## f) Practical Examples

### 1. Example(s) of Compliance

Ms. N., head of the Department of Prevention and Treatment at the Regional Drug Addiction Treatment Center of the State Health Care Administration of Region M. (hereinafter – the Center), was reprimanded for the breach of labor discipline during a preventive drug examination on February 14, 2008 (she asked questions in a way that was offensive to human dignity) by Order No. 61-L of March 14, 2008. However Ms. N. filed a lawsuit against the Center demanding to recognize as illegal the Order to impose on her a disciplinary penalty. It was established that, while examining patients, the plaintiff put to them questions from the test “Audit” developed by the Ministry of Health of Ukraine (Instructions) and established diagnoses on the basis of the number of points scored. Psychological testing is obligatory during the exam. Witnesses (the individuals who complained to the chief of staff of the Center about what they considered to be an incorrect behavior



on the part of the doctor) noted that they in fact did not like the questions put to them in the course of the examination by the doctor: in their view, these questions were demeaning and insulting. This is why the plaintiff was reprimanded. At the proceedings, the court concluded that the head of the department was subjected to disciplinary action unlawfully because compliance with the requirements of the Instructions approved by the Ministry of Health of Ukraine can not be regarded as a breach of professional ethics and deontology of health care employees.

## 2. Example(s) of Violation

Ms. A. visited a gynecologist in Hospital No. 1 in city K. with the complaint of indisposition. On the basis of the exam, doctor S. established that Ms. A. was on the 3rd week of pregnancy. Then the doctor asked whether the woman was married. Having received a negative response, he began to humiliate the patient and threatened that he would notify her parents about the immoral behavior of their daughter.

The patient contacted the chief of staff of the hospital with a complaint of the violation of the rules of professional ethics and deontology by gynecologist S.

## 3. Actual Case(s)

The court of district K region K examined in open proceedings the lawsuit of Mr. O. against the central hospital of the region to cancel the order to impose a disciplinary action. The plaintiff supported his claim and explained that the disciplinary action was brought against him without any legal basis. At the previous session of the court, the representative of the defendant did not recognize the claim and applied for the case to be tried in absentia. After hearing the explanation of the plaintiff and his representative and examining the case file, the court concluded that the application was subject to satisfaction on the following grounds: in the order of April 15, 2009 No. 52-K, Mr. O. was reprimanded for the violation of deontological norms. The plaintiff was informed of the order to impose disciplinary measures only on May 25, 2009.

The order stated that the reason for the reprimand was the report submitted by Mr. O. and oral explanations of other health care employees. The representative of the defendant did not apply for a subpoena for questioning these employees as witnesses and did not provide the report of the plaintiff. In addition, neither the order nor the materials provided by the representative of the medical institution mentioned the time, the place and other factual circumstances of the alleged violation of labor discipline.

The Court noted that the term “deontology” should be understood in two ways. First of all, it constitutes professional ethics of health care employees, principles of conduct of medical staff in relation to patients designed to maximize the effectiveness of treatment. Secondly, it constitutes part of ethics that studies the issue of responsibilities, the scope of mandatory and moral requirements and the relations between them. Thus, the court concluded that by imposing a disciplinary punishment the hospital management took into account only the first aspect of the concept “deontology”.

Article 147 of the Labor Code of Ukraine specifies that only one method of punishment, including a reprimand, may be applied to an employee for a violation of labor discipline. According to the information provided by the health care institution, no deontological norms were adopted at the hospital. So, in general it was not clear what norms had been violated by Mr. O., when, under what circumstances and regarding whom (medical staff or patients).

Thus, the court concluded that the order in the part being disputed was groundless, and therefore the claim was lawful and was subject to satisfaction.

### **g) Practice Notes**

1. When clarifying the issue of bringing medical workers to responsibility for non-fulfillment of an analyzed duty, one should note, that it is possible under the condition rules of professional ethics and deontology are placed into a source of law. Nowadays moral and deontological norms are foreseen by Physicians' Oath – by-law act, and in the Law of Ukraine “On Principles of Ukrainian health Care Legislation”, in the latter it is foreseen by declarative definition of a medical worker behavior. Requirements of professional ethics and deontology are highlighted in vault of moral norms – Code of Ethics of Physicians of Ukraine. Medical workers shall not be responsible for breach of this Code provisions.
2. Moral norm with legal coloring, or a single legal and moral principle is one of the basics of medical practice – medical secret. In case of breach of this principle by medical worker, he/she will bear civil or criminal responsibility, depending on the conditions of the breach. Undoubtedly, moral and deontological responsibility will take place for breach of medical secret due to Code of Ethics of Physicians of Ukraine.
3. See also practice notes in subchapters 6.1.6 and 7.1.7.

## **7.2.5 Responsibility to Advance Constantly Professional Knowledge and Skills**

**a) This responsibility of health care employees corresponds to the right of patients to quality professional medical assistance, discussed in section 6.1.8.**

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

- ▶ **Criminal Code of Ukraine of April 5, 2001 [Article 140].**
- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Article 78 (paragraph “e” part 1)].**

“Health care employees must constantly improve their professional knowledge and skills” (paragraph “e” Article 78).

### c) Supporting Regulations/ Bylaws/ Orders

- ▶ **Framework for the Development of Health Care of the Population of Ukraine: Decree of the President of Ukraine of December 7, 2000 No. 1313/2000 [Section 7].**

- ▶ **On the Physician’s Oath: Decree of the President of Ukraine of June 15, 1992, [paragraph 5 part 1].**

“Continually expend and improve one’s knowledge and skills ...”.

- ▶ **Interdisciplinary Comprehensive Program for 2002-2011 “Health of the Nation”: Resolution of the Cabinet of Ministers of Ukraine of January 10, 2002 No. 14 [section 33].**

- ▶ **National Development Plan for the Health Care System of Ukraine for the Period Ending in 2010: Resolution of the Cabinet of Ministers of Ukraine of June 13, 2007 No. 815 [paragraph 7].**

- ▶ **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).

- ▶ **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 Certification of Physicians: Order of the Ministry of Health of Ukraine of December 19, 1997 No. 359.**

The main objective of certification is to determine the level of professional training of physicians, to assess their experience, further possible use of specialists, improvement of their professional skills (paragraph 1.2).

- ▶ **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 Certification of Junior Specialists with Medical Degrees: Order of the Ministry of Health of Ukraine of November 23, 2007 No. 742.**
- ▶ **Framework on Management of Medical Care Quality in the Sphere of Health Care in Ukraine for the Period up to 2020. Order of Ministry of Health of Ukraine of August 1, 2011, No. 454.**
- ▶ **On 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 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 Organizing Training of Medical and Non-medical Staff to Provide Medical Assistance in Emergency Situations: Order of the Ministry of Health of Ukraine of March 18, 2005 No. 120.**
- ▶ **On Improving the System of Training to Provide Emergency Medical Assistance: Order of the Ministry of Health of Ukraine of November 13, 2009 No. 833.**

#### **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 2.3].**

“... A doctor must systematically improve his/her skills by utilizing in his/her practice the most effective previously known and the latest achievements of medical science in the manner prescribed by law.”

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

There are no other relevant sources on this matter.

## f) Practical Examples

### 1. Example(s) of Compliance

For more than 20 years already, doctors from Ukraine undergo training abroad. The purpose of these trips is to increase professional knowledge and skills of the health care employees. Upon acquiring new practical skills abroad, our health care employees successfully apply them in their practice in Ukraine, thus having a positive effect on the care of our citizens.

### 2. Example(s) of Violation

Mr. A., a physician of the first category from Hospital No. X in city Zh., did not increase the level of his professional knowledge and skills. As a result, in his medical practice, he committed significant errors (errors in the diagnosis of patients, etc.). Due to this, the chief of staff of Hospital No. X in city Zh. requested the Certification Commission to deprive the physician of his qualification category. Having considered the request, the Certification Commission decided to reduce the qualification category of physician A. from first to second.

### 3. Actual Case(s)

Ms. R. filed a lawsuit against Medical Center “Spektr” of LLC “BUVI” located in city F., demanding compensation for proprietary and material damages. Having suspected pregnancy and not wishing to give birth again, the plaintiff requested the defendant to diagnose and, if necessary, terminate her pregnancy at an earlier stage by means of vacuum aspiration, as a method of pregnancy termination least damaging to one’s health. The ultrasound did not confirm pregnancy and the diagnosis of uterine fibroma was established. However, one month later, given that pregnancy symptoms did not disappear, the plaintiff sought assistance from another private health care institution and received confirmation of her pregnancy. The next day, her pregnancy was also confirmed by the medical center “Spektr”. However, the deadline for early termination of pregnancy had already passed. The court found that the plaintiff suffered proprietary damage in the amount of the value of diagnostic ultrasound as well as moral damage due to an unwanted event – the birth of a child – which placed the family into a difficult financial situation. Unlawfulness of the actions of the doctor of the medical center “Spektr” was confirmed by the results of the investigation conducted by the Commission of the Ministry of Health of Ukraine which corroborated the absence of a gynecologist trained to conduct ultrasound studies at the center. Based on the above, on September 11, 2006, the Court of city F passed a decision to satisfy in part the plaintiff’s claims and to order the defendant to compensate her for proprietary damage in the amount of 45 hryvnias and for moral damage in the amount of 5,000 hryvnias and cover the plaintiff’s legal expenses in the amount of 68 hryvnias.

### **g) Practice Notes**

1. The right of health care employees to continuing education and advanced training at least once every five years in relevant institutions and establishments (paragraph “c” of Article 77 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation”) corresponds to their responsibility to advance continually their professional knowledge and skills, identified in paragraph “e” of Article 78 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation”. In other words, there is an inextricable link between an 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. Thus, a reluctance of a doctor to exercise his/her right to continuing education through participation in pre-certification programs and subsequent certification as a “doctor-specialist” after an initial internship deprives the individual of a chance to continue to occupy his/her position in a health care institution.
2. Individuals who did not work within a particular specialization for more than three years and individuals who were not certified when expected or who were denied new certification (or a confirmation of the current certification) may not engage in medical activities within this specialization without first undergoing training.
3. The responsibility analyzed in this section indicates that service providers must possess such characteristics as professionalism. For inadequate performance of their professional duties because of careless or dishonest attitude to them, health care employees are subject to criminal liability under Article 140 of the Criminal Code of Ukraine. Performance of professional duties is considered to be inadequate when a health care employee performs his/her duties not in full, carelessly, superficially, not as required in the interests of his/her professional activities.
4. See also practical advice in section 7.1.5.

## **7.2.6 Responsibility to Provide Assistance in the Form of Counsel to One’s Co-workers and Other Health Care Employees**

**a) Health care providers are obliged to provide assistance in the form of counsel to their co-workers and other health care employees.**

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

- ▶ **Civil Code of Ukraine of January 16, 2003 [Article 287 (part 1)].**

“An individual who is being treated on inpatient basis in a health care facility has the right to be seen by outside health care professionals.”

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 6 (paragraph “n”), 78 (paragraph “f” part 1)].**

“Health care employees must provide assistance to their co-workers and other health care employees in the form of counsel” (paragraph “f” Article 78).

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

- ▶ **On the Physician’s Oath: Decree of the President of Ukraine of June 15, 1992, [paragraph 5 part 1].**

“If necessary, seek assistance from co-workers and never deny assistance to them, be fair to co-workers”.

- ▶ **On Approval of the State Program for Creating a Unified System of Emergency Medical Assistance for the Period Ending in 2010: Resolution of the Cabinet of Ministers of Ukraine of November 5, 2007 No. 1290.**

To provide the population with medical assistance at an appropriate level, one should, in particular, ensure cooperation between medical institutions ... and a system of assistance in the form of counsel.

- ▶ **On Approval of the Action Plan for Implementing the State Program for Creating a Unified System of Emergency Medical Assistance for the Period Ending in 2010: Order of the Ministry of Health of Ukraine of May 12, 2008 No. 245.**

“To introduce assistance provided by the Ukrainian Research Center for Emergency Medical Assistance and Disaster Medicine ... via telecommunication facilities and consisting of information and advice to medical staff of health care institutions ... regarding diagnosis and treatment of urgent conditions caused by the action of poisonous substances” (paragraph 7).

- ▶ **On Measures to Improve Emergency Medical Assistance to the Population in Ukraine: Order of the Ministry of Health of Ukraine of August 29, 2008 No. 500 [paragraph 3.10].**

“Organization of medical assistance and advice to health care institutions as to their preparedness to work under conditions of emergency” (paragraph 3.10. Sample Provision on the Deputy Chief of Staff of Emergency Units in Charge of Emergency Operations, Disaster Medicine and Civil Protection of the Population).

- ▶ **On a Unified System of Emergency Medical Assistance: Order of the Ministry of Health of Ukraine of June 1, 2009 No. 370 [section 2 (paragraph 3.4)].**

#### **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 3.2, 4.2, 4.4, 4.6].**

“If necessary, a doctor must seek assistance from his/her co-workers” (paragraph 3.2). “... A doctor must treat his/her co-workers with respect and kindness” (paragraph 4.2). “In difficult clinical cases, doctors must provide advise and assistance to their co-workers in a respectful form. The outcome of the entire treatment process is the responsibility of only an attending physician who may chose either to take into account the recommendations or to reject them based exclusively on the interests of the patient” (paragraph 4.4). “Doctors must respect other medical and support personnel, ensure continued improvement of their skills” (paragraph 4.6).

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

There are no other relevant sources on this matter.

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

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

A regional outpatient clinic of region Ch. provides medical consultations in 24 fields. Number of visits to the clinic average 538 per day (a planned average is 375), that is the actual operational capacity exceeds the planned one in 1,4 times. There were found no violations of the procedure for providing medical advice to one’s co-workers and other health care employees by the medical staff of the clinic.

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

An ambulance brought patient O. to the admission office of one of the hospitals of city K. After an exam by a doctor from the intensive care unit, the patient was scheduled to be examined by doctors with other specializations – a physician,



a surgeon, a trauma specialist and a toxicologist. The toxicologist refused to examine the patient, citing lack of time. The deputy chief of staff of the hospital in charge of clinical operations was informed of the refusal. By his order, the toxicologist was sent to the admissions unit to provide counsel assistance to the medical personnel there.

### 3. Actual Case(s)

Ms. N., who was on the 37th week of pregnancy, was admitted to the maternity ward of a regional hospital in a serious condition. An attending physician followed the state of the pregnant woman, made all the necessary entries in the medical file of the inpatient. The condition of the patient deteriorated, and the attending physician informed the head of the maternity ward of this fact. The latter ignored the information, remarking to himself that the young inexperienced physician was excessively cautious. The head of the maternity ward said that he was preparing a report to health care authorities and as soon as he was free, he would take a look at the patient. In a critical condition, the pregnant woman was transferred to the intensive care unit, and the deputy chief of staff in charge of clinical operations was informed of this. The latter immediately called the council of physicians. A treatment plan for the patient in this serious condition was determined with the participation of consulting physicians with relevant specializations, the chief of staff and the doctors from the maternity ward, 7 people in total. The condition of the pregnant woman was stabilized.

To clarify the circumstances of this case, a commission was set up by the order of the chief of staff of the health care institution. In its conclusion, the commission pointed to the unprofessional actions of the head of the maternity ward, his inability to manage adequately activities of his staff, his inability to organize the process of providing qualified inpatient obstetric and gynecological care, his failure to advise young professionals, particularly in complicated clinical cases. The chief of staff of the hospital reprimanded the head of the maternity ward, sent him to take part in continuing education courses on the topic of organization and management of health care ahead of his regular schedule, as well as to attend courses in obstetrics and gynecology. In addition, he ordered quarterly seminars on deontology to be conducted at the hospital.

### g) Practice Notes

Types of assistance in the form of counsel:

1. Scheduled and emergency visits of medical consultants.
2. Counsel is a form of structuring of health care that requires joint action of at least three health care employee aimed at ensuring patients' right to health. Depending on the circumstances, there are the following types of counsel:
  - 2.1. Decision making in the context of providing medical assistance. For example, according to paragraph 12 of the Order of the Ministry of Health of Ukraine "On Approval of the Clinical Protocols for Obstetric and Gynecological Care" of December 15, 2003 No. 582, if a c-section reveals

Couvelaire uterus, a hysterectomy without the removal of the appendages is carried out. A decision to expand surgical intervention is adopted by a council of doctors.

2.2. Collegial examination of patients. For instance, in accordance with paragraph 4.8 of the Order of the Ministry of Health of Ukraine “On Organizing Inpatient Obstetric, Gynecological, and Neonatal Care in Ukraine” of December 29, 2003 No. 620, a serious condition of a patient requires convening a council of doctors immediately. To determine a treatment strategy for a complicated patient, upon a motion of the head of a department, a deputy chief of staff of the medical institution in charge of clinical operations appoints a council of doctors that includes consultants with relevant specializations, other doctors from the department, a hospital manager, and members of the staff of the outpatient subdivision (in an outpatient institution) – not fewer than 3 individuals. The protocol and the conclusions of the council are recorded in an inpatient medical file and are signed by all the members of the council.

2.3. An examination by a specialist. For example, according to paragraph 4.6 of the Order of the Ministry of Health of Ukraine “On Organizing Inpatient Obstetric, Gynecological, and Neonatal Care in Ukraine”, during the first 24 hours of patient’s stay in a hospital, the patient is examined by a physician who establishes a preliminary diagnosis; during the first 3 days in the hospital, the head of the department in conjunction with the physician establishes a clinical diagnosis with clarifications of the treatment plan, extent of additional tests, and consultations of relevant experts (if necessary).

3. Granting access to employees from other health care institutions and calling a medical council at the request of a patient. This is guaranteed to the patient by Article 287 of the Civil Code of Ukraine and paragraph “n” of Article 6 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation”.

### **7.2.7 Responsibility to Provide Patients or Other Qualified Individuals With Medical Information**

**a) This responsibility of health care employees corresponds to the right of patients to information about their health, which is discussed in section 6.1.3.**

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

- ▶ **Constitution of Ukraine of June 28, 1996 [Articles 32 (part 3), 34].**
- ▶ **Civil Code of Ukraine of January 16, 2003 [Article 285].**

“An adult individual has the right to accurate and complete information about his/her state of health, including familiarization with relevant medical documents related to health” (part 1).

- ▶ **On Information: Law of Ukraine of October 2, 1992 [in the wording of January 13, 2011] [Articles 11, 21].**
- ▶ **On State Secrets: Law of Ukraine of January 21, 1994 [Article 8 (part 4)].**
- ▶ **On Protection of Consumer Rights: Law of Ukraine of May 12, 1991 (in the reading of December 1, 2005) [Article 6].**

“... A contractor must deliver to a consumer products of adequate quality and provide information about these products ...” (part 1).

- ▶ **Principles of Ukrainian Health Care Legislation: Law of Ukraine of November 19, 1992 [Articles 6 (paragraph “f”), 39].**

“A patient who has reached the age of majority is entitled to receive accurate and complete information about his/her health, including familiarization with relevant medical documentation regarding his/her health (part 1 Article 39). “Parents (adoptive parents), guardians, trustees have the right to obtain information about the state of health of the child or the ward (part 2 Article 39). “A health care employee must provide a patient with information about his/her health, purpose of proposed studies and treatment, possible prognosis for the disease, including risks to life and health, in an accessible form.” (part 3 Article 39).

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

- ▶ **On Submitting a Request for Public Information: Order of Ministry of Health of Ukraine of July 6, 2011, No. 395.**
- ▶ **On Lists of Data, that Include Official and Confidential Information in the Ministry of Health of Ukraine: Order of Ministry of Health of Ukraine of August 16, No. 517.**

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

- ▶ **Code of Ethics of Physicians of Ukraine, adopted and signed at the National Congress of Health Care Organizations and at the X Congress of the Ukrainian Medical Association on September 27, 2009 [paragraphs 3.3, 3.5].**

“In the course of treatment while providing a patient with information about his/her condition and recommended treatment, a doctor should take into account personal characteristics of the patient, examine patient’s assessment of the situation” (paragraph 3.3). “When treating a child or a patient who is under guardianship, a doctor must provide complete information to his/her parents or guardians” (paragraph 3.5).

## e) Other Relevant Sources

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

The Decision of the Constitutional Court of Ukraine states that the responsibility of a doctor is to provide a patient and his/her family members or legal representatives with this type of information fully and in an accessible form at their request.

## f) Practical Examples

### 1. Example(s) of Compliance

Mr. L. requested City Hospital No. X in city O. to provide him with information about the health of his son, who was being treated at the intensive care unit of the hospital. Medical staff provided the father with an opportunity to examine the medical file of the inpatient while the doctor in charge explained to him the diagnosis established for his son, possible methods of treatment and their likely consequences in an accessible form.

### 2. Example(s) of Violation

On December 16, 2008, Mr. G. and his representative submitted a written request to the chief of staff of City Hospital No. 4 to enable them to examine medical records of an inpatient, Mr. G., who was suffering from mental illness. They were denied access to the records without any justification of the denial provided. On January 29, 2009, the plaintiff and his representative submitted a second written request to examine primary medical records of Mr. G. which they addressed to the chief of staff of the hospital, but they neither were given access to the documents nor were they provided with a response to their request. To protect his right to medical information, the patient had to appeal to the court.

### 3. Actual Case(s)

According to the lawsuit filed by Ms. M. against Hospital No. 5 in city K. demanding compensation for proprietary and moral damages, the district court of city K. established, on the basis of submitted evidence, that the defendant failed to provide prompt and competent medical assistance, namely: a laparoscopy was

performed improperly, causing bleeding which was not detected on time and the patient went into a hemorrhagic shock (paragraph “a” part 1 Article 78 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation”). The doctors also failed their responsibility to provide the patient with information about her health, the purpose of proposed studies and treatment, possible prognosis for the disease, including risks to life and health in an accessible form. In particular, they failed to inform Ms. M. about possible consequences of the proposed medical intervention, the risk to her health (part 3, Article 39 of the Law of Ukraine “Principles of Ukrainian Health Care Legislation”). The decision of the court of March 24, 2006 made in absentia granted to the plaintiff the satisfaction of her claims in part: 200 hryvnias were allocated towards the compensation for proprietary damage and 10,000 hryvnias towards the compensation for moral damage. However, on March 15, 2007, the decision of the Court of Appeals of region D reduced the amount of compensation for moral damage to 3,000 hryvnias. The Court of Appeals concluded that the assigned amount of compensation for moral damage did not reflect the extent of moral and physical suffering and did not take into account the degree of responsibility of the defendant.

## **g) Practice Notes**

1. To ensure the right of patients to information about their state of health, it is of great practical importance to clarify the content (characteristics) of medical information. Health care employees must provide medical information that has the following characteristics:
  - 1.1. Accessible form that has two aspects: external and internal. An external aspect manifests itself in a patient, his/her legal representative or an individual authorized by him/her having an access to medical information: i. e., by means of filing a request, an attorney request or an information request to obtain information, and as a consequence, by obtaining the information. This can take the form of either receiving duly attested copies of required documents or receiving necessary information directly at a health care facility. An internal aspect manifests itself in the information being provided in an accessible form, with the patient or another individual entitled by law to the information being able to understand the content of the information.
  - 1.2. Accuracy of information: i. e., providing the information contained in medical records.
  - 1.3. Completeness of information: i. e., providing the amount of information specified in the procedural documents of an authorized individual or in the oral request of a patient or when a doctor obtains an informed consent to conduct a medical intervention, except when a health care employee exercises his/her right to provide incomplete information in the interests of the patient.
  - 1.4. Timeliness of information manifests itself in two forms of exercising the responsibility: a) providing information requested within a timeframe set by law; b) providing medical information prior to a medical intervention.
2. See also practical advice in section 6.1.3.