

**TOSHKENT DAVLAT YURIDIK UNIVERSITETI HUZURIDAGI
ILMIY DARAJALAR BERUVCHI DSc.07/30.12.2019.Yu.22.01
RAQAMLI ILMIY KENGASH**

TOSHKENT DAVLAT YURIDIK UNIVERSITETI

ISLOMQULOVA SHOHSANAM VAHOBJON QIZI

**VRACHNING KASBIY JAVOBGARLIGINI SUG'URTA QILISHNI
FUQAROVIIY-HUQUQIY TARTIBGA SOLISH**

12.00.03 – Fuqarolik huquqi. Tadbirkorlik huquqi.
Oila huquqi. Xalqaro xususiy huquq

**yuridik fanlar bo'yicha falsafa doktori (PhD) dissertatsiyasi
AVTOREFERATI**

Toshkent – 2024

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**KIRISH (falsafa doktori
(PhD) dissertatsiyasi
annotatsiyasi)**

Dissertatsiya mavzusining dolzarbligi va zarurati. Butun dunyoda aholining ijtimoiy-tibbiy himoyasi masalasi dolzarb ahamiyat kasb etadi. Ayniqsa, COVID-19 pandemiyasi dunyo bo'yicha tibbiyotning holati, kamchiliklari va ustunliklarini yanada yaqqol ko'rsatib berdi. Bu esa, o'z o'rnida, tibbiy xizmatning sifati, tibbiyot xodimlarining kasbiy malakasi, ularning javobgarligi, bemor huquqlarining kafolatlari kabi masalalar xususida chuqurroq mulohaza qilishga undaydi. Yevropa davlatlarida har yili tibbiyot xodimlari ustidan 10 mingga yaqin shikoyatlar sudlarga yuboriladi. Ularning yarmi sud tomonidan qanoatlantiriladi, chunki o'tkazilgan ekspertizalar tibbiyot xodimlarining tibbiy xatosi faktini isbotlaydi. Yevropa kasalxonalarida har yili 15 millionga yaqin odam tibbiy xatolar oqibatlaridan aziyat chekadi. Ya'ni har o'ninchi bemor davolanish uning sog'lig'i va hayotiga zarar yetkazishiga duch keladi. AQShda har yili 100 mingga yaqin bemor noto'g'ri tibbiy tashxisdan vafot etadi ¹. Eng gullab-yashnagan mamlakatlardan biri sifatida Germaniyada esa 2023-yilda yo'l qo'yilgan tibbiy xatolarning 43,4 foizi yetarlicha amalga oshirilmagan chora-tadbirlar oqibatida kelib chiqqan bo'lsa, 39,1 foiz tibbiy xatolar amalga oshirilgan chora-tadbirlarga qaramasdan sodir bo'lgan ². Chet ellik tadqiqotlar shuni ko'rsatadiki, tibbiy xatolarning eng katta foizi jarrohlikda to'g'ri keladi. Bu esa bemorlarning sog'lig'i va hayotiga zarar yetkazilganda mulkiy himoyalaniishning turli mexanizmlarini yaratish masalasining ahamiyatini yanada oshiradi.

Jahonda shunday mehanizmlarning eng maqbuli sifatida tibbiyot xodimlarining kasbiy javobgarligini majburiy sug'urtalash tizimi e'tirof etiladi. Rivojlangan mamlakatlarda tibbiyot xodimlarining kasbiy javobgarligini kafolatlaydigan bunday tartib XX asrning boshlarida amalga kiritilgan. Ushbu tizim eng rivojlangan davlatlar sifatida AQSh, Kanada, Germaniya, Shvetsiya, Yaponiya kabilar bo'lsa, Rossiya, Qozog'iston, Qirg'iziston kabi davlatlarda ushbu tizimni joriy etish harakati so'nggi o'n yilliklarda kuchaydi.

Mamlakatimizda esa birgina 2023-yilni olib qaraydigan bo'lsak, O'zbekiston Respublikasi Sog'liqni saqlash vazirligiga yuborilgan shikoyatlarning 6130 tasi tibbiyot xodimlarining kasbiy faoliyatidan norozilik bo'yichadir. Ushbu murojaatlarning 3070 tasi ijobiy qanoatlantirilgan bo'lsa, qolgan deyarli yarmiga yaqini qanoatlantirilmagan.

Uzoq vaqt davomida tibbiyot xodimlarining javobgarligini sug'urta qilish tizimini amalda qo'llayotgan rivojlangan mamlakatlarning tajribasi O'zbekiston Respublikasida ushbu turdagi sug'urta tizimini joriy etish va rivojlantirishda katta ahamiyatga ega. Shu bilan birga, har bir davlat tibbiyot xodimlarining javobgarligini kafolatlash modelini sog'liqni saqlash tizimi va umuman iqtisodiyotning o'ziga xos xususiyatlarini hisobga olgan holda belgilaydi.

¹ Fred Charatan. Medical errors kill almost 100000 Americans a year. PMID: PMC1117251 PMID: [10591699](https://pubmed.ncbi.nlm.nih.gov/articles/PMC1117251/#:~:text=See%20%22Family%20compensated%20for%20death,to%2098000%20Americans%20each%20year).
<https://pubmed.ncbi.nlm.nih.gov/articles/PMC1117251/#:~:text=See%20%22Family%20compensated%20for%20death,to%2098000%20Americans%20each%20year>.

² <https://www.statista.com/statistics/582805/distribution-medical-treatment-errors-germany-by-type/>

O‘zbekiston Respublikasi Konstitutsiyasining 1-moddasida O‘zbekiston boshqaruvning respublika shakliga ega bo‘lgan suveren, demokratik, huquqiy, ijtimoiy va dunyoviy davlat, deb belgilagan bo‘lib, bu fuqarolar sog‘lig‘ini saqlashga e‘tiborning kuchayishi, jumladan, sog‘liqni saqlash tizimining isloh etilishi vrach faoliyatini huquqiy jihatdan aniq tarzda me‘yorlashni taqozo etmoqda.

Vrachlar o‘z kasbiy faoliyati bilan bog‘liq vazifalarni ado etish jarayonidagi xatti-harakatlari, ularning nafaqat axloqiy-ma‘naviy yoki ma‘muriy va intizomiy ayblanishiga, balki aksariyat holatlarda jinoiy va fuqarolik javobgarlikka tortilishiga sabab bo‘lmoqda.

Shu nuqtai nazardan, tibbiy faoliyatning, jumladan, vrach faoliyatining huquqiy asoslariga oid qonunlar, normativ-huquqiy hujjatlar va boshqa ma‘lumotlarni o‘rganish va ularga amal qilish, avvalo, tibbiy yordam ko‘rsatish sifatini yaxshilanishida, shu bilan birga, vrachlarning asossiz javobgarlikka tortilishida, ularning javobgarligini sug‘urta qilishda, shubhasiz, muhim ahamiyatga egadir.

Bugungi kunda, yurtimizda ham tibbiy xizmat ko‘rsatishda sog‘lig‘i va hayotiga yetkazilgan zararni qoplash uchun fuqarolarning konstitutsiyaviy huquqlariga rioya etilishi uchun tibbiyot xodimlarining javobgarligini sug‘urta qilish sohasida yuzaga keladigan ijtimoiy-iqtisodiy munosabatlarni tartibga solish va O‘zbekistonda tibbiyot xodimlarining javobgarligini sug‘urta qilishning huquqiy, tashkiliy va moliyaviy asoslarini va tamoyillarini belgilash muhim ahamiyatga ega.

Xususan, sug‘urta tariflarini tartibga solish, bazaviy tarif stavkasi, sug‘urta shartnomasining amal qilish muddati, sug‘urta qoplamasi va sug‘urta mukofotlarini belgilash, sug‘urta qoplamasini to‘lash va regress talabi, vrachlarning javobgarligini sug‘urta qilish tartibi, sug‘urta hodisasini tekshirish tartibi va jarohatlanganlarga vrach tomonidan yetkazilgan zararni ixtiyoriy ravishda qoplash tartibini belgilash, amaldagi qonunchilik hujjatlardagi bo‘shliqlarni qonunchilik hujjatlari orqali to‘ldirish zarurati mavjud.

Bugungi kunda sug‘urta sohasida O‘zbekiston Respublikasining 2021-yil 23-noyabrdagi “Sug‘urta faoliyati to‘g‘risida”gi, 2015-yil 26-maydagi “Tashuvchining fuqarolik javobgarligini majburiy sug‘urta qilish to‘g‘risida”gi, 2009-yil 16-apreldagi “Ish beruvchining fuqarolik javobgarligini majburiy sug‘urta qilish to‘g‘risida”gi, 2008-yil 10-sentabrdagi “Ishlab chiqarishdagi baxtsiz hodisalar va kasb kasalliklaridan majburiy davlat ijtimoiy sug‘urtasi to‘g‘risida”gi, 2008-yil 21-apreldagi “Transport vositalari egalarining fuqarolik javobgarligini majburiy sug‘urta qilish to‘g‘risida”gi Qonunlari hamda bir nechta qonunosti hujjatlari qabul qilingan bo‘lsada, vrachning kasbiy javobgarligini sug‘urta qilishning huquqiy asoslari mavjud emas.

Shuningdek, mamlakatimizda tadqiqotchilar tomonidan sug‘urtaning umumiy qoidalari tadqiq qilingan bo‘lsada aynan vrachning kasbiy javobgarligini sug‘urta qilish masalalari tadqiq etilmagan, nazariy va amaliy jihatdan o‘rganilmagan.

Ushbu tadqiqot ishida quyidagi masalalarga alohida e‘tibor qaratilgan:

tibbiyot xodimlarining kasbiy javobgarligini sug'urta qilish to'g'risida muayyan normativ-huquqiy hujjat qabul qilinishini tezlashtirish;

tibbiyot xodimlarining kasbiy javobgarligini ixtiyoriy va majburiy sug'urta qilish shartnomaning xususiyatlari va uning tuzilishini belgilash;

O'zbekiston Respublikasi Vazirlar Mahkamasi tomonidan tasdiqlanadigan "Tibbiyot xodimlarining kasbiy javobgarligini majburiy sug'urta qilish qoidalari"ni ishlab chiqish;

ushbu sug'urtaning majburiyligi masalalarini o'rganish, xorijiy davlatlar amaliyoti orqali ijtiyoriy sug'urtaning ham xususiyatlarini tahlil qilish;

yetkazilgan zarar miqdorini o'rganish va sug'urta hodisasini tekshirishning o'ziga xos xususiyatlarini ko'rib chiqish;

dunyoda mashhur bo'lgan vrachning kasbiy javobgarligini sug'urta qilishni moliyalashtirish bo'yicha "**ijtimoiy model**" va "**bozor modeli**", vrachning kasbiy javobgarligini sug'urta qilish bo'yicha "**aybdor tizimi**" va "**aybsiz tizimi**", tibbiy xatoliklar bo'yicha "**beparvolik nazariyasi**" va "**loss of chance (imkoniyatlarni yo'qotish) nazariyasi**", zararni qoplash yuzasidan "**corrective justice**" nazariyasi, tibbiy javobgarlik bo'yicha "**caveat emptor**" va "**caveat venditor**" kabi maxsus nazariyalar va doktrinalar mamlakatimizda qonunchilikda, huquqni qo'llash va sud amaliyotidagi muammolarda chuqur tahlil qilish.

Tadqiqotning respublika fan va texnologiyalari rivojlanishining ustuvor yo'nalishlariga bog'liqligi. Dissertatsiya tadqiqoti respublika fan va texnologiyalar rivojlanishining "Axborotlashgan jamiyat va demokratik davlatni ijtimoiy, huquqiy, iqtisodiy, madaniy, ma'naviy-ma'rifiy rivojlantirishda innovatsion g'oyalar tizimini shakllantirish va ularni amalga oshirish yo'llari" ustuvor yo'nalishiga mos keladi.

Tadqiqot mavzusining o'rganilganlik darajasi. Mazkur mavzuni o'rganishda vrachning kasbiy javobgarligini sug'urta qilish bilan bog'liq munosabatlarni tartibga solishga qaratilgan xorijiy davlatlar qonunchilik hujjatlari, huquqni qo'llash amaliyoti hamda yuridik fanda mavjud bo'lgan konseptual yondashuvlar, ilmiy-nazariy qarashlar bayon etilgan adabiyotlardan foydalanildi.

Xususan, mamlakatimiz olimlari tomonidan sug'urtaning umumiy masalalari, shuningdek, muayyan turlari tadqiq etilgan. Jumladan, H.R.Rahmonqulov, O.Oqyulov, M.A.Aminjonova, N.Egamberdiyeva, F.Y.Shodmonov, Sh.A.Ismoilov, Sh.N.Ro'zinazarov, D.R.Maxmudov, M.S.Boltayevlar tomonidan sug'urtaning bir qator masalalari o'rganilgan. Bevosita tibbiyot sohasidagi sug'urtalar hamda fuqarolik va kasbiy javobgarlik bilan bog'liq sug'urtalarni tadqiq etishda ham harakatlar mavjud. Masalan, M.A.Aminjonova¹ tomonidan bozor iqtisodiyoti sharoitida sug'urta xizmati ko'rsatishning fuqarolik huquqiy muammolari, A.U.Ergashev² tomonidan transport vositalari egalari fuqarolik

¹ Aminjonova M.A. Bozor iqtisodiyot sharoitida sug'urta xizmati ko'rsatishning fuqarolik huquqiy muammolari. yu.f.n.dissertatsiyasi. – Toshkent: 2004.

² A.U.Ergashev. Transport vositalari egalari fuqarolik javobgarligi majburiy sug'urta shartnomasini qo'llash muammolari. yu.f.n.dissertatsiyasi. – T., 2012. -172 b.

javobgarligini majburiy sug'urtalash, Sh.S.Xamraqulov¹ tomonidan ish beruvchining fuqarolik javobgarligini majburiy sug'urtalash shartnomasini tartibga solish masalalari, I.T.Palvanov² tomonidan kasbiy javobgarlikni majburiy sug'urta qilishni fuqarolik-huquqiy tartibga solinishi o'rganilgan bo'lsa, M.S.Boltayev³ tomonidan tibbiy sug'urta shartnomasini fuqarolik-huquqiy tartibga solish masalalari tadqiq etilgan.

Vrachning kasbiy javobgarligini sug'urta qilish bilan bog'liq ayrim masalalar ingliz olimlari M.D.Frakes⁴, M.A.Rodwin, J.Silverman, D.Merfeld⁵, S.Robert⁶ va boshqalar tomonidan, rus olimlari Ermakov V.⁷, A.V.Voropayev, I.A.Voropayeva, Y.S.Isayev⁸, O.Yu.Krasilnikov⁹, E.I.Chetirus¹⁰ va S.Dedikov¹¹lar tomonidan o'rganilgan.

MDH davlatlarining huquqshunos olimlari I.E.Shinkarenko¹², E.Suxanov¹³, B.T.Sultanaliev¹⁴ lar tomonidan ham ushbu sug'urtaning umumiy masalari bo'yicha bir qator izlanishlar olib borilgan va olib borilmoqda.

Biroq mazkur dissertatsiya mavzusi doirasida O'zbekistonda kompleks tadqiq qilingan ilmiy tadqiqot ishi mavjud emas.

Dissertatsiya mavzusining dissertatsiya bajarilayotgan oliy ta'lim muassasasining ilmiy-tadqiqot ishlari rejalari bilan mosligi. Dissertatsiya mavzusi Toshkent davlat yuridik universitetining ilmiy-tadqiqot ishlari rejasiga kiritilgan hamda "Vrachning kasbiy javobgarligini sug'urta qilishni fuqaroviy-huquqiy tartibga solish" ilmiy tadqiqotlarining ustuvor yo'nalishlari doirasida amalga oshirilgan.

¹ Sh.S.Xamraqulov. Ish beruvchining fuqarolik javobgarligini majburiy sug'urtalash shartnomasini tartibga solish masalalari. yu.f.n.dissertatsiyasi. – Toshkent: 2024.

² I.T.Palvanov. Kasbiy javobgarlikni majburiy sug'urta qilishni fuqarolik-huquqiy tartibga solinishi. yu.f.n.dissertatsiyasi. – Toshkent: 2004.

³ Boltayev M.N. O'zbekiston Respublikasida tibbiy sug'urta faoliyatini fuqarolik-huquqiy tartibga solishni takomillashtirish masalalari. Yu.f.d.dissertatsiyasi. Avtoref. – Toshkent: 2022.

⁴ Frakes, M. D. The Surprising Relevance of Medical Malpractice Law / M. D. Frakes // University of Chicago Law Review. Forthcoming – 2014. URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2410426## (дата обращения 04.02.2019).

⁵ Rodwin, M. A. Why the medical malpractice crisis persists even when malpractice insurance premiums fall [Текст] / M. A. Rodwin, J. Silverman, D. Merfeld // Health Matrix. – 2015. – № 15. – P. 163-226.

⁶ Robert S. Bruer, Loss of a Chance As a Cause of Action in Medical Malpractice Cases, 59 MO. L. REV. (1994) Available at: <https://scholarship.law.missouri.edu/mlr/vol59/iss4/5>

⁷ Ермаков В. Страхование гражданской ответственности медицинских работников // Финансовая газета. 2003. Региональный выпуск. № 6–7.

⁸ А.В.Воропаев, И.А.Воропаева, Ю.С.Исаев. Страхование профессиональной ответственности медицинских работников. Основы медицинского права и этики. Сибирский медицинский журнал, 2006, № 2. С. 104-106.

⁹ О.Ю.Красильников, Риски страхования профессиональной ответственности медицинских работников. <http://risk2021.sgu.ru/files/Agenda2021.pdf>

¹⁰ Четырус Евгений Игоревич. Страхование гражданско-правовой ответственности за причинение вреда: дис. ... канд. юрид. наук: 12:00:03, Москва-2015.

¹¹ Дедиков, С. Страхование профессиональной ответственности / С. Дедиков // Хозяйство и право. 2011. № 10(417). С. 68-89.

¹² Шинкаренко И.Э. Страхование ответственности. М., 1999.

¹³ Суханов Е.А. Лекция о праве собственности. – М., 1991.

¹⁴ Султаналиев Б.Т. Страхование профессиональной ответственности медицинских работников. Available at: https://arch.kyrlibnet.kg/uploads/UASULTANALIEV1_2010-3.pdf

Tadqiqotning maqsadi. Dissertatsiyaning maqsadi O‘zbekistonda vrachning kasbiy javobgarligini sug‘urta qilishni fuqarolik-huquqiy tartibga solish bilan bog‘liq ilmiy-nazariy va amaliy muammolarni aniqlash hamda qonunchilikni takomillashtirishga doir taklif va tavsiyalar ishlab chiqishdan iborat.

Tadqiqotning vazifalari:

vrachning kasbiy javobgarligini sug‘urta qilishning ahamiyati, o‘ziga xos xususiyatlari, mohiyatini o‘rganish;

vrachning kasbiy javobgarligini sug‘urta qilishga oid qonunchilikning rivojlanish genezisini tahlil qilish;

vrachning kasbiy javobgarligini sug‘urta qilish shartnomasi, sug‘urta mukofoti va sug‘urta tovonini, sug‘urta hodisasini aniqlash, subrogatsiya masalalarini o‘rgangan holda O‘zbekiston qonunchiligiga joriy etish;

vrachning kasbiy javobgarligini sug‘urta qilishni fuqarolik-huquqiy tartibga solishdagi muammolar va xorij amaliyotini o‘rganib chiqib, bu boradagi qonunchilikni takomillashtirishga qaratilgan taklif va tavsiyalar ishlab chiqish.

Tadqiqotning obyekti O‘zbekistonda vrachning kasbiy javobgarligini sug‘urta qilish bilan bog‘liq moddiy-huquqiy munosabatlar tizimi hisoblanadi.

Tadqiqotning predmetini vrachning huquqlarini amalga oshirish va himoya qilish masalalarini tartibga solishga qaratilgan normativ-huquqiy hujjatlar va ularni qo‘llash amaliyoti, ayrim xorijiy davlatlar qonunchiligi va amaliyotidagi tajribalar, shuningdek o‘rganilayotgan mavzuga oid xalqaro standartlar, ilmiy-nazariy qarashlar, konseptual yondashuvlar va g‘oyalar tashkil etadi.

Tadqiqotning usullari. Tadqiqot olib borishda formal-yuridik, qiyosiy-huquqiy, mantiqiy (tahlil, sintez, deduksiya va induksiya), statistik kabi usullar qo‘llanilgan.

Tadqiqotning ilmiy yangiligi quyidagilardan iborat:

O‘zbekiston Respublikasi Aholi sog‘lig‘ini saqlash kodeksi loyihasiga tibbiy faoliyat, tibbiy xato, tibbiyot xodimlarining kasbiy javobgarligini majburiy sug‘urta qilish shartnomasi kabi tushunchalarni kiritish;

O‘zbekiston Respublikasi Aholi sog‘lig‘ini saqlash kodeksi loyihasiga bemorning hayoti va sog‘lig‘iga e‘tiborsizlik yoki ehtiyotsizlik munosabati bilan tibbiy xodim tomonidan zarar yetkazganlik uchun tibbiyot xodimlarining kasbiy javobgarligini majburiy sug‘urtalash kerakligi haqidagi qoidani kiritish;

nodavlat tibbiyot tashkilotlarida yuz berishi mumkin bo‘lgan tibbiy xatolarning oldini olish maqsadida hamda ularning litsenziya talablari hamda shartlari bajarilishi monitoringini yuritish uchun barcha nodavlat tibbiyot tashkilotlarini maxsus axborot tizimiga ulash tartibini yo‘lga qo‘yish;

Vazirlar Mahkamasining 2022-yil 21-fevraldagi 80-son qarori bilan tasdiqlangan Maxsus elektron tizim orqali ayrim faoliyat turlarini litsenziyalash tartibi to‘g‘risidagi yagona nizomda tibbiy xatolarning oldini olish maqsadida tibbiy faoliyatni amalga oshirishda rioya qilish lozim bo‘lgan tartib-qoidalarni mustahkamlash;

nogironlikni aniqlashda tibbiy-ijtimoiy ekspertizaning rolini kuchaytirish, shuningdek, vrachning tibbiy xatosi oqibatida bemorlarda kelib chiqadigan nogironlikni tekshirishda tibbiy-ijtimoiy ekspertizaning ahamiyatini oshirish.

Tadqiqotning amaliy natijalari quyidagilardan iborat:

O‘zbekiston Respublikasi Vazirlar Mahkamasi qarori bilan tasdiqlanadigan “Tibbiyot xodilarining kasbiy javobgarligini majburiy sug‘urtalash qoidalari”ni ishlab chiqish taklifi ilgari surilgan;

O‘zbekiston Respublikasining “Fuqarolar sog‘lig‘ini saqlash to‘g‘risida”gi Qonuni 24-moddasida bemorning tibbiy yordam so‘rab murojaat qilgan va tibbiy yordam olayotgan paytda tibbiy yordam so‘rab murojaat qilgan shifokordan uning kasbiy javobgarligi sug‘urtalanganligi to‘g‘risidagi ma’lumotlarni talab qilish huquqini belgilash nazarda tutilgan;

O‘zbekiston Respublikasining “Fuqarolar sog‘lig‘ini saqlash to‘g‘risida” Qonuni 46-moddasini uchinchi xatboshisida tibbiyot va farmatsevtika xodimlarining tibbiy yordam ko‘rsatish nuqsoni oqibatida fuqarolarning hayoti va sog‘lig‘iga zarar yetgan hollarda yetkazilgan zarar o‘rni qonunchilikda belgilangan tartibda kasbiy javobgarligi sug‘urtasi hisobidan qoplanishi lozimligi asoslangan;

tibbiy faoliyat, tibbiy xato, tibbiyot xodimlarining kasbiy javobgarligini majburiy sug‘urta qilish shartnomasi, kasbiy javobgarlikni sug‘urta qilish kabi tushunchalarga mualliflik ta’riflari berilgan;

tibbiyot xodimlarining kasbiy javobgarligini sug‘urta qilish majburiy bo‘lishi lozimligi va buning ahamiyati asoslab berilgan;

O‘zbekiston Respublikasi Aholi sog‘lig‘ini saqlash kodeksi loyihasiga vrach faoliyatini amalga oshirish shartlari va tartibi, ularning javobgarligini sug‘urta qilish, shuningdek ularning huquq va majburiyatlari, sug‘urta tariflarini tartibga solish, bazaviy tarif stavkasi, sug‘urta shartnomasining amal qilish muddati, sug‘urta qoplamasi va sug‘urta mukofotlari, sug‘urta qoplamasini to‘lash va regress talabi, sug‘urta hodisasini tekshirish tartibi va bemor, jabrlanuvchi va naf oluvchining huquqlarini o‘z ichiga olgan tegishli moddalarni kiritish bo‘yicha takliflar berilgan.

Tadqiqot natijalarining ishonchliligi. Tadqiqot ishida qo‘llanilgan usullar, uning doirasida foydalanilgan nazariy ma’lumotlar rasmiy manbalardan olinganligi, fuqarolar va tibbiyot xodimlari o‘rtasida so‘rovnomalar o‘tkazilganligi, xorijiy tajriba va milliy qonun hujjatlarining o‘zaro tahlil qilinganligi, xulosa, taklif va tavsiyalarining amaliyotda joriy etilganligi, ilmiy tadqiqot natijalarining xorijiy va milliy nashrlarda e‘lon qilinganligi, bildirilgan taklif va xulosalarning tegishli davlat organlari tomonidan inobatga olinganligi bilan izohlanadi.

Tadqiqot natijalarining ilmiy va amaliy ahamiyati. Tadqiqot natijalarining ilmiy ahamiyati undagi ilmiy-nazariy xulosalar, taklif va tavsiyalar kelgusidagi ilmiy faoliyatda, qonun ijodkorligida, huquqni qo‘llash amaliyotida, qonun hujjatlarining tadqiqot mavzusiga oid tegishli normalarini sharhlashda, milliy qonunchilikni takomillashtirishda manba sifatida qo‘llashga hamda fuqarolik huquqi fanini ilmiy-nazariy jihatdan boyitishga xizmat qiladi. Tadqiqot natijalaridan yangi ilmiy tadqiqotlar olib borishda foydalanish mumkin.

Tadqiqot natijalarining amaliy ahamiyati qonun ijodkorligi faoliyatida, xususan normativ-huquqiy hujjatlarni tayyorlash hamda ularga o‘zgartirish va qo‘shimchalar kiritish jarayonida, huquqni qo‘llash amaliyotini takomillashtirishda

hamda oliy yuridik ta'lim muassasalarida xususiy huquq sohasidagi fanlarni o'qitishda xizmat qiladi.

Tadqiqot natijalarining joriy qilinishi. Tadqiqot ishi bo'yicha olingan ilmiy natijalardan quyidagilarda foydalanilgan:

tibbiy faoliyat, tibbiy xato, tibbiyot xodimlarining kasbiy javobgarligini majburiy sug'urta qilish shartnomasi kabi tushunchalarga bergan ta'riflari bo'yicha takliflar Aholi sog'lig'ini saqlash kodeksi loyihasining 4-moddasini ishlab chiqishda foydalanilgan (O'zbekiston Respublikasi Sog'liqni saqlash vazirligining 2024-yil 9-oktabrdagi 05-19/23177-son xati va dalolatnomasi). Mazkur taklif O'zbekiston Respublikasi Aholi sog'lig'ini saqlash kodeksi loyihasini tibbiy faoliyatga oid asosiy tushunchalar bilan to'ldirishga xizmat qilgan;

bemorning hayoti va sog'lig'iga e'tiborsizlik yoki ehtiyotsizlik munosabati bilan tibbiy xodim tomonidan zarar yetkazganlik uchun tibbiyot xodimlarining kasbiy javobgarligini majburiy sug'urtalash kerakligi haqidagi takliflar Aholi sog'lig'ini saqlash kodeksi loyihasining 187-moddasini ishlab chiqishda foydalanilgan (O'zbekiston Respublikasi Sog'liqni saqlash vazirligining 2024-yil 9-oktabrdagi 05-19/23177-son xati va dalolatnomasi). Mazkur taklif O'zbekiston Respublikasi Aholi sog'lig'ini saqlash kodeksi loyihasida tibbiyot xodimlarining huquqiy maqomi va huquqlarini belgilash uchun xizmat qilgan;

nodavlat tibbiyot tashkilotlarining litsenziya talablari hamda shartlari bajarilishi monitoringini yuritish uchun barcha nodavlat tibbiyot tashkilotlarini Sog'liqni saqlash vazirligining maxsus axborot tizimiga ulash va ushbu maxsus axborot tizimi orqali nodavlat tibbiyot tashkilotining xodimlari, tibbiy texnikasi, xizmat turlari, tibbiy statistika va boshqa hisobotlari monitoringini yuritish, tibbiy faoliyatni nazorat qilishda "xavfni tahlil qilish" tizimini yo'lga qo'yish haqidagi takliflaridan O'zbekiston Respublikasi Prezidentining 2023-yil 20-iyundagi PQ-197-son "Ma'muriy islohotlar doirasida sog'liqni saqlash sohasida davlat boshqaruvini samarali tashkil qilish chora-tadbirlari to'g'risida"gi qarorining 5-bandini ishlab chiqishda foydalanilgan (O'zbekiston Respublikasi Sog'liqni saqlash vazirligining 2024-yil 9-oktabrdagi 05-19/23177-son xati va dalolatnomasi). Ushbu taklifning joriy etilishi nodavlat tibbiyot tashkilotlarining litsenziya talablariga rioya qilishi yuzasidan monitoringni kuchaytirish va ular tomonidan yo'l qo'yiladigan tibbiy xatolarning oldini olishda huquqiy mexanizmlarni yaratishga xizmat qilgan;

tibbiy faoliyatni amalga oshirishda sanitariya qoidalari, me'yorlari va gigiyenik normativlarga rioya qilish; litsenziyalovchi organ tomonidan tasdiqlangan va (yoki) xalqaro tibbiy amaliyotda sinovdan o'tgan profilaktika usullari, diagnostika va davolash standartlariga rioya qilish haqidagi takliflaridan Vazirlar Mahkamasining 2022-yil 21-fevraldagi 80-son qarori bilan tasdiqlangan Maxsus elektron tizim orqali ayrim faoliyat turlarini litsenziyalash tartibi to'g'risidagi yagona nizomga 27-ilovasi (tibbiy faoliyatni litsenziyalash pasporti)ni ishlab chiqishda foydalanilgan (O'zbekiston Respublikasi Bosh vaziri kotibiyati Axborot-tahlil va yuridik ta'minlash departamentining 2024-yil 26-iyuldagi 15-son dalolatnomasi). Ushbu taklifning joriy etilishi tibbiy xizmatni ko'rsatuvchi tadbirkorlik subyektlari tomonidan litsenziyani olish uchun taqdim qilinadigan

hujjatlarga qo'yiladigan talablarning hamda tibbiyot xodimlari tomonidan tibbiy faoliyatni amalga oshirishning talab va shartlarining huquqiy asoslarini belgilashga xizmat qiladi;

O'zbekiston Respublikasining "Fuqarolar sog'lig'ini saqlash to'g'risida"gi Qonuni 37-moddasini "tekshiruvdan o'tkazilayotgan shaxsning klinik-funksional, ijtimoiy, kasbiy-mehnat va psixologik ma'lumotlarini kompleks baholash asosida uning sog'lig'i yo'qolganligi darajasini hamda organizmining funksiyalari turg'un buzilganligi sababli hayot faoliyati cheklanganligi darajasini, nogironlik guruhini, nogironlikning boshlanishi sababi hamda vaqtini aniqlash, shuningdek, shaxs uchun sog'lig'ining holatiga ko'ra mumkin bo'lgan mehnat faoliyati turlari va zarur mehnat sharoitlari, o'zgalarning parvarishiga, sanatoriy-kurortda davolanishning tegishli turlariga hamda ijtimoiy himoyaga bo'lgan ehtiyoji to'g'risida tavsiyalar berish tibbiy-ijtimoiy ekspertizadir" shaklida tahrir qilish haqidagi taklifdan "O'zbekiston Respublikasida tibbiy-ijtimoiy xizmatlar tizimi takomillashtirilishi munosabati bilan O'zbekiston Respublikasining ayrim qonun hujjatlariga o'zgartishlar kiritish to'g'risida"gi O'zbekiston Respublikasining 2022-yil 17-maydagi O'RQ-770-son Qonunini ishlab chiqishda foydanilgan (O'zbekiston Respublikasi Oliy Majlisi Qonunchilik palatasi huzuridagi Parlament tadqiqotlari institutining 2024-yil 21-avgustdagi 3/08-149-son xati va dalolatnomasi). Ushbu taklifning joriy etilishi nogironligi bo'lgan shaxslarni tibbiy-ijtimoiy ekspertizadan o'tkazishning huquqiy asoslarini belgilashda xizmat qiladi.

Tadqiqot natijalarining aprobatsiyasi. Tadqiqot natijalari 2 ta xalqaro va 2 ta respublika miqyosida o'tkazilgan ilmiy-amaliy konferensiyalarda muhokamadan o'tgan.

Tadqiqot natijalarining e'lon qilinganligi. Tadqiqot mavzusi va undagi xulosa, taklif va tavsiyalar bo'yicha jami 10 ta, shundan OAKning dissertatsiya asosiy ilmiy natijalarini chop etishga tavsiya etilgan nashrlarda 6 ta (2 ta xorijiy) maqolalar chop etilgan.

Dissertatsiyaning tuzilishi va hajmi. Dissertatsiya tarkibi kirish, uchta bob, xulosa, foydalanilgan adabiyotlar ro'yxatidan iborat. Dissertatsiya hajmi 143 betni (foydalanilgan adabiyotlar ro'yxatidan tashqari) tashkil etadi.

DISSERTATSIYANING ASOSIY MAZMUNI

Dissertatsiyaning **kirish** qismida tadqiqot mavzusining dolzarbligi va zarurati, tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yo'nalishlariga muvofiqligi, tadqiq etilayotgan muammoning o'rganilganlik darajasi, dissertatsiya mavzusining dissertatsiya bajarilayotgan oliy ta'lim muassasasining ilmiy-tadqiqot ishlari bilan bog'liqligi, tadqiqotning maqsad va vazifalari, obykti va predmeti, usullari, tadqiqotning ilmiy yangiligi va amaliy natijasi, tadqiqot natijalarining ishonchliligi, tadqiqot natijalarining ilmiy va amaliy ahamiyati, ularning joriy qilinganligi, tadqiqot natijalarining aprobatsiyasi, natijalarning e'lon qilinganligi, dissertatsiyaning hajmi va tuzilishi haqida ma'lumotlar yoritib berilgan.

Dissertatsiyaning *“Vrachning kasbiy javobgarligini sug‘urta qilishni fuqarolik-huquqiy tartibga solishning umumiy tavsifi”* deb nomlangan birinchi bobida vrachning kasbiy javobgarligini sug‘urta qilishni fuqarolik-huquqiy tartibga solishning omillari va zaruriyati, vrachning kasbiy javobgarligini sug‘urta qilish tushunchasiga oid ilmiy-nazariy qarashlar va uning mohiyati, vrachning kasbiy javobgarligini sug‘urta qilishga oid qonunchilikning rivojlanish genezisi tahlil qilingan.

Tadqiqotchi vrachning kasbiy javobgarligini sug‘urta qilishni fuqarolik-huquqiy tartibga solishning omillari va zaruriyatini tahliliy o‘rgangan. Jumladan, vrachning kasbiy javobgarligini sug‘urta qilishni fuqarolik-huquqiy tartibga solish omillari sifatida quyidagilarni birma-bir sanab o‘tgan:

bir tarafda bemorlarning qonuniy manfaatlari va huquqlarini himoya qilish uchun qonuniy himoya vositalarini izlash va boshqa tarafda tibbiyot xodimlarining javobgarligini huquqiy himoya qilish bilan bog‘liq harakatlar turganda, vrachlar tibbiy va huquqiy munosabatlar subyektlarining zaifroq toifasiga aylanib qoladilar;

sog‘liqni saqlashning butun tizimi faqat tibbiyot xodimlarining faoliyati orqali ta‘minlanadi hamda aksariyat hollarda ularning majburiyatlari va javobgarligi masalasiga e‘tibor qaratiladi, ularning huquqlarini amalga oshirish va qonuniy manfaatlarini himoya qilish e‘tibordan chetda qoladi;

vrachning va bemorlarning huquqlari hamda qonuniy manfaatlarini himoya qilish yuzasidan tibbiyot masalalarida sud ishlari sonining ko‘payishiga olib keladi.

Dissertantning fikricha, oxirgi yillarda sodir bo‘lgan koronavirus pandemiyasi (COVID-19 virusi) tufayli vrachning kasbiy javobgarligi sug‘urtasiga bo‘lgan ehtiyoj yanada ortib bordi. Chunki bir tomondan, yuqumli kasalliklar bilan ishlaydigan tibbiyot xodimlarining o‘zlari orasida infeksiya bilan kasallanish xavfi ortishiga sabab bo‘lgan bo‘lsa, boshqa tomondan tibbiy xavf natijasida bemorlar sog‘lig‘ining yomonlashishiga va hatto bemorning o‘limiga olib keladigan tibbiy xatolar vujudga keldi.

Shuningdek, tadqiqotchi kasbiy javobgarlik, kasbiy javobgarlikni sug‘urta qilish, tibbiyot xodimining kasbiy javobgarligini sug‘urta qilish shartnomasi kabi tushunchalarni tahlil qilishda bir qator olimlarning (N.B.Grishenko, I.N.Romanova, O.V.Kolesnichenko, V.O.Filippov, A.Jalinskiy va A.Rerix, T. Isakov, A. Karimov) fikr va mulohazalaridan foydalanib, ular bilan munozaraga kirishgan.

Dissertant tibbiyot xodimlarining kasbiy javobgarligini kafolatlashning xalqaro tajribasida moliyalashtirish manbai bo‘yicha ikki xil model: **bozor modeli** va **ijtimoiy model** mavjudligini ta‘kidlab, Shvetsiya va Kanada misolida ijtimoiy modelni, Germaniya misolida bozor modelini o‘rgangan. Ijtimoiy model ko‘proq davlat tibbiyot muassasalarining miqdori yuqori bo‘lgan davlatlarda mavjud. Ijtimoiy model davlat tomonidan bitta markazlashgan organ, masalan, Jamg‘arma yordamida amalga oshiriladigan sug‘urta tizimini moliyalashtirish va boshqarish nuqtai nazaridan katta mas‘uliyatni o‘z zimmasiga oladi. Tibbiy xizmat ko‘rsatish hajmi xususiy tashkilotlarda davlat tashkilotlaridan ko‘proq bo‘lgan mamlakatlarda tibbiyot xodimlari javobgarligini sug‘urta qilishda xususiy bozor katta ahamiyatga ega. Dissertatsiyada ikkala modelning ham elementlari tahlil qilingan holda

tadqiqotchi mamlakatimizda bozor modelidan foydalanish maqsadga muvofiqligi xususida to'xtamga kelgan.

Ilmiy ishni yozishda dissertant vrachning kasbiy javobgarligini sug'urtalash bo'yicha 2 ta muhim nazariya: **beparvolik nazariyasi** va **imkoniyatni yo'qotish nazariyasini** atroflicha o'rgangan hamda ushbu nazariyalarning ish uchun ahamiyatini yoritib bergan.

Tadqiqotchi tomonidan vrachning kasbiy javobgarligini sug'urta qilishga oid qonunchilikning rivojlanish genezisi va uni tartibga soluvchi qonunchilik hujjatlari turli davrlar asosida tahlil qilingan. O'zbekiston Respublikasida mustaqillikdan keyin tibbiyot xodimining kasbiy javobgarligini sug'urta qilish bo'yicha qonunchilikning rivojlanish jarayoni shartli ravishda quyidagi 3 ta davrga bo'lingan:

birinchi davr – tibbiyot xodimining kasbiy faoliyati, umumiy fuqarolik javobgarligini sug'urta qilish bo'yicha qonunchilikning rivojlanish jarayoni (1991-2000 yillar);

ikkinchi davr – bevosita ayrim toifa shaxslarning fuqaroviy javobgarligini sug'urta qilish bo'yicha qonunchilikning rivojlanish jarayoni (2001-2017 yillar);

uchinchi davr – ayrim toifa kasb egalarining va tibbiyot xodimining kasbiy javobgarligini sug'urta qilish bo'yicha qonunchilikning rivojlanish jarayoni (2018-yildan hozirga qadar).

Tadqiqotchi AQSH, Yaponiya, Germaniya, Shvetsiya va boshqa davlatlar tajribasini tahlil qilgan holda O'zbekiston Respublikasi Aholi sog'lig'ini saqlash kodeksi loyihasiga vrachning kasbiy javobgarligini majburiy sug'urta qilish bilan bog'liq qoidani kiritish taklifini va shu orqali ushbu munosabatlarni fuqarolik-huquqiy tartibga solish yuzasidan takliflarni ilgari surgan.

Vrachning kasbiy javobgarligini sug'urta qilishning fuqarolik-huquqiy tartibga solinishi quyidagi huquqiy va ijtimoiy-iqtisodiy **oqibatlar**ga sabab bo'lishi ko'rsatib o'tilgan:

birinchidan, tibbiyot xodimlarining mulkiy manfaatlarini himoya qilishda huquqiy asos yaratiladi;

ikkinchidan, mulkiy nizolarni sudgacha hal qilish imkoniyati yaratiladi;

uchinchidan, fuqarolarning to'laonli tibbiy yordamga bo'lgan konstitutsiyaviy huquqlarini, shu jumladan, bemorlarning mulkiy huquqlarini himoya qilish uchun qulay shart-sharoitlar yaratiladi;

to'rtinchidan, tibbiyot xodimlarining javobgarligini sug'urta qilish instituti amalga oshirilishini ta'minlaydigan vositalar va mexanizmlarni shakllantirish uchun huquqiy asoslar yaratiladi;

beshinchidan, kelgusida tibbiyot xodimlari va bemorlar o'rtasida vujudga kelishi mumkin bo'lgan nizolarning soni kamayishiga imkon yaratiladi.

Shuningdek, tadqiqotchi tomonidan tibbiyot xodimlarining kasbiy javobgarligini sug'urta qilish bo'yicha butun dunyoda "**aybdor**" tizimi va "**aybsiz**" tizimi amal qilishi aytib o'tilgan. Iqtisodiy hamkorlik va rivojlanish tashkilotiga a'zo bo'lgan aksariyat mamlakatlarda tibbiy yordam ko'rsatish nuqsoni uchun qonunchilik va sud amaliyotida ishlab chiqilgan hamda keng qo'llaniladigan aybni talqin qilish asosida baholanadi. Ayb tizimi tibbiyot xodimiga nisbatan jazo

choralari qo'llanilishi tufayli tegishli sud qarori qabul qilinishini talab qiladi. Ushbu model AQSh, Yaponiya, Buyuk Britaniya, Kanada va boshqa bir qator mamlakatlarda muvaffaqiyatli qo'llanilmoqda. Aybsiz tizimi esa aybsiz qoplash tizimiga asoslangan. Bunda sud tomonidan tibbiy mutaxassislarining javobgarligini belgilash zarar ko'rgan bemorlarga pul mablag'larini berish uchun zaruriy shart emas. Sug'urta uchun pul mablag'lari berishni amalga oshirishning boshlang'ich nuqtasi bo'lib odatda shikastlanishning o'zi yoki shikastlanishning oldini olish mumkinligi hisoblanadi. Jabrlangan bemorlarga zararni qoplash Daniya, Finlandiya kabi davlatlarda tijorat va notijorat sug'urta tashkilotlari tomonidan xususiy manbalar hisobidan yoki Shvetsiya va Yangi Zelandiya kabi davlatlarda davlat tomonidan amalga oshiriladi. Yuqoridagilarni talqin qilgan holda dissertant O'zbekiston uchun "aybdorlik" tizimi mos kelishi haqidagi xulosalarga kelgan.

Dissertatsiyaning ikkinchi bobi "*Vrachning kasbiy javobgarligini sug'urta qilish shartlari va tartibi*" deb nomlanib, unda vrachning kasbiy javobgarligini sug'urta qilish obyektini va subyektlari, vrachning kasbiy javobgarligini sug'urta qilish shartnomasi, sug'urta mukofoti va sug'urta to'voni, sug'urta hodisasini aniqlash tartibi hamda subrogatsiyani qo'llash kabi masalalar tahlil qilingan.

Tadqiqotchi vrachning kasbiy javobgarligini sug'urta qilish obyektini batafsil o'rgangan va tibbiyot xodimlarining kasbiy javobgarligini sug'urta qilish obyektini tibbiy yordam ko'rsatishdagi xatoliklar tufayli jabrlanuvchilarning hayoti yoki sog'lig'iga zarar yetkazish natijasida vujudga keladigan majburiyatlar bo'yicha tibbiyot xodimining javobgarligi yuzasidan **mulkiy manfaatlaridir** deya ta'rif bergan.

Bunda dissertant bir qator olimlar (A.E.Kozinov, E.P.Dolgoplova, T.S.Martyanova, V.Yu.Abramov, K.Hugel)ning fikr-mulohazalari bilan munozaraga kirishgan.

Tadqiqotchining talqinicha, tibbiyot xodimlarining javobgarligini sug'urta qilish subyektlari bo'lib sug'urtalovchi, tibbiyot xodimi (sug'urta qildiruvchi), jabrlanuvchi va naf oluvchilar hisoblanadilar. Ushbu masala yuzasidan dissertant Rossiya, Germaniya, AQSh davlatlarining amaliyotini o'rgangan. Shuningdek, Rossiya amaliyotiga qo'shilmagan holda, ushbu sug'urtada sug'urta qildiruvchi faqat jismoniy shaxs, ya'ni tibbiyot xodimi bo'lishi lozim, degan fikrni ilgari surgan. Vaholanki, Rossiyada tibbiyot xodimlari emas, tibbiyot muassasalarining kasbiy javobgarligini sug'urtalash amaliyoti mavjud, ammo kasb tushunchasi faqatgina jismoniy shaxsga xos bo'lib, yuridik shaxs kasbga ega bo'lishi mumkin emas.

Bundan tashqari dissertant "xalq tabobati vakillarining ham javobgarligini sug'urtalash kerakmi yoki yo'qmi?" degan fikrlar yuzasidan munozaraga kirishgan.

Tadqiqotchi vrachning kasbiy javobgarligini sug'urta qilish shartnomasi, sug'urta mukofoti va sug'urta to'voni, sug'urta hodisasi kabi tushunchalarni ochib berish uchun bir qancha olimlar (sug'urta mukofoti yuzasidan I.I.Stepanov; sug'urta shartnomasi yuzasidan M.I.Braginskiy, V.V.Vitryanskiy, S.V.Dedikov,

P.V.Sokol, A.E.Kozinov)ning fikrlari bilan munozaraga kirishib, bu tushunchalarga o'zining mualliflik ta'riflarini bergan.

Qozog'iston amaliyotidan kelib chiqqan holda, tibbiyot xodimining kasbiy javobgarligi sug'urtasi bo'yicha sug'urta to'voni miqdorini quyidagilarga bog'liq qilib belgilash kerakligini taklif qilgan:

tibbiy xato bemorning nogironligiga sabab bo'lmasa;

tibbiy xato bemorning 3-guruh nogironligiga sabab bo'lsa;

tibbiy xato bemorning 2-guruh nogironligiga sabab bo'lsa;

tibbiy xato bemorning 1-guruh nogironligiga sabab bo'lsa;

tibbiy xato bemorning o'limiga sabab bo'lsa.

Tadqiqotchi o'rganishlari natijasida sug'urta hodisasiga sabab bo'lgan tibbiy xatolikka nafaqat bemorni davolash jarayonidagi, balki bemorga tashxis qo'yish, diagnostika qilish, dori retseptlarini yozib berish, sanitariya-gigiyena qoidalariga amal qilish jarayonlaridagi xatoliklar ham kiradi, degan xulosaga kelgan va shu asosida vrach tomonidan yo'l qo'yiladigan tibbiy xatolarni davolashdan oldingi, davolash jarayonidagi va davolashdan keyingi tibbiy xatolar kabi turlarga bo'lishni taklif qilgan.

Tadqiqotchi tadqiq qilinayotgan sug'urta turidagi sug'urta hodisasini tahlil qilgan holda sug'urta hodisasi hisoblanadigan, sug'urta hodisasi hisoblanmaydigan hamda sug'urta hodisasi hisoblansa-da, sug'urtalovchi tomonidan regress talab qilish huquqi mavjud holatlar yuzasidan takliflarni ilgari surgan.

Vrach tomonidan jabrlanuvchiga yetkazilgan zararlarning turlari va zararni baholash tartibi yuzasidan xorijiy davlatlar qonunchiligi va amaliyoti o'rganilgan hamda zararni qoplash yuzasidan **“corrective justice”** nazariyasi tahlil qilinib, ushbu nazariyani mamlakatimiz qonunchiligida qo'llash afzalliklari yoritib berilgan.

Dissertatsiyaning uchinchi bobi **“Vrachning kasbiy javobgarligini sug'urta qilishni fuqarolik-huquqiy tartibga solishdagi muammolar va xorij amaliyoti”** deb nomlanib, bunda tadqiqotchi Germaniya, AQSh, Shvetsiya, Yaponiya, Buyuk Britaniya, Rossiya Federatsiyasi, Qozog'iston kabi davlatlar qonunchiligi va huquq amaliyotini o'rgangan hamda yoritib bergan.

Dissertatsiyada vrachning kasbiy javobgarligini sug'urta qilishda majburiy sug'urtalashni joriy etish muammoning asosiy yechimi ekanligini ta'kidlangan. Bunda fikrlar rus mualliflari L.B.Sitdikova va S.M.Kovalevskiyning qarashlari bilan asoslantirilgan. Ushbu majburiy sug'urta bo'yicha tegishli tartib qoidalarini O'zbekiston Respublikasi Aholi sog'lig'ini saqlash kodeksi loyihasiga kiritish taklif etilgan.

Dissertant tomonidan O'zbekiston Respublikasining “Fuqarolar sog'lig'ini saqlash to'g'risida” Qonuniga tadqiq etilayotgan mavzu yuzasidan bir qator o'zgartirishlar kiritish lozimligi asoslantirilgan. Jumladan, Qonunning 24-moddasiga qo'shimcha kiritib, bemor tibbiy yordam so'rab murojaat qilgan va tibbiy yordam olayotgan paytda tibbiy yordam so'rab murojaat qilgan shifokordan

uning kasbiy javobgarligi sug'urtalanganligi to'g'risidagi ma'lumotlarni talab qilish huquqiga egaligini nazarda tutish lozimligi ta'kidlangan.

Shuningdek, ushbu Qonunning 46-moddasi uchinchi xatboshisini ham o'zgartirib, uni "tibbiyot va farmatsevtika xodimlarining tibbiy yordam ko'rsatish nuqsoni oqibatida fuqarolarning hayoti va sog'lig'iga zarar yetgan hollarda yetkazilgan zarar o'rni qonunchilikda belgilangan tartibda kasbiy javobgarlik sug'urtasi hisobidan qoplanadi" tarzida tahrir qilish maqsadga muvofiqligi taklif qilingan.

Tadqiqotchi vrachning kasbiy javobgarligini majburiy sug'urta qilishning samarali ishlashi uchun eng yaxshi mexanizmlar sifatida quyidagi takliflarni keltirgan:

Dastavval O'zbekiston Respublikasi Mehnat kodeksiga kasbiy javobgarligi sug'urtalanmagan tibbiyot xodimi bilan mehnat shartnomasini tuzish taqiqlanishi bilan bog'liq qoidani kiritish. Ya'ni ishga kirish haqida ariza yozgan tibbiyot xodimidan uning kasbiy javobgarligi sug'urtalanganligi bo'yicha sug'urta polisini talab qilish lozim bo'ladi. Ushbu mexanizm orqali barcha mehnat faoliyatini olib borayotgan tibbiyot xodimlarining kasbiy javobgarligini majburiy sug'urtalashga erishilgan bo'ladi.

Ammo shuni ta'kidlash joizki, davlat tibbiyot muassasalarida mehnat munosabatlarining qonunchilikka muvofiq amalga oshirilishini nazorat qilish xususiy tibbiyot muassasalariga qaraganda osonroq. Lekin bugungi kunda ko'plab xususiy tibbiyot muassasalari vrachlar bilan mehnat shartnomasi tuzmagan holda hamkorlikda ishlaydigan, garchi mehnat shartnomasi bo'lmasada, vrachlarning ushbu muassasada faoliyat olib borishiga imkon yaratib beradigan holatlar amaliyotda uchrab turibdi. Bunday holatda sug'urtani amalga oshirish uchun eng maqbul yechim bu kasbiy javobgarlik sug'urtasini bevosita xususiy tibbiyot muassasasining litsenziyasiga bog'lab qo'yishdir.

Ya'ni O'zbekiston Respublikasi Vazirlar Mahkamasining 2012-yil 21-fevraldagi 80-son "Maxsus elektron tizim orqali ayrim faoliyat turlarini litsenziyalash tartibi to'g'risidagi yagona nizomni tasdiqlash haqida"gi qaroriga tibbiyot muassasasining kasbiy javobgarligi sug'urtalanmagan tibbiyot xodimi bilan mehnat shartnomasini tuzishi yoki muassasada uning faoliyatiga ruxsat berishi tibbiyot muassasasining tibbiy faoliyat bilan shug'ullanish huquqini beruvchi litsenziyasi bekor bo'lishiga olib keladigan qo'shimcha kiritish lozimligi taklif qilingan.

Shuningdek, dissertant tomonidan "**Caveat Emptor**" va "**Caveat Venditor**" nazariyalarini sud amaliyotiga joriy etish kelgusida bemorlarga o'zlari murojaat qilayotgan tibbiyot muassasasi haqida to'liq xabardor bo'lish lozimligi majburiyatini yuklaydi va keyinchalik vrachlarga nisbatan bo'lishi mumkin bo'lgan asossiz da'volarning oldini olishi asoslangan. Shuningdek, O'zbekiston Respublikasi Sog'liqni saqlash vazirligi tomonidan "caveat emptor" belgisi ostida tibbiyotga oid muhim ma'lumotlar bilan aholini xabardor qilib borish tartibini joriy qilish taklif qilingan.

XULOSA

Vrachning kasbiy javobgarligini sug'urta qilishni fuqaroviy-huquqiy tartibga solishga oid tadqiqot ishi natijasida quyidagi ilmiy-nazariy hamda qonunchilikka oid taklif va xulosalar ishlab chiqildi:

I. Ilmiy-nazariy xulosalar:

1. Tibbiyot xodimlarining kasbiy javobgarligini kafolatlashning xalqaro tajribasida moliyalashtirish manbai bo'yicha ikki xil model – bozor modeli va ijtimoiy model mavjud bo'lib, O'zbekistonda bozor modelining elementlaridan foydalanish maqsadga muvofiqligi asoslangan;

2. Vrachning kasbiy javobgarligini sug'urtalash bo'yicha 2 ta muhim nazariya, ya'ni beparvolik nazariyasi va imkoniyatni yo'qotish nazariyasi mavjud bo'lib, imkoniyatni yo'qotish nazariyasi AQSh davlatida juda mashhur, ammo O'zbekiston Respublikasi roman-german huquq tizimiga mansubligi sababli ushbu nazariyani mamlakatimiz qonunchiligida qo'llashning imkoni mavjud emas. Shuning uchun barcha sug'urta turlariga xos bo'lgan umumiy nazariya sifatida beparvolik nazariyasini tatbiq etish maqsadga muvofiqligi taklif etilgan;

3. Vrachning kasbiy javobgarligini sug'urtalashning dunyoda 2 ta "aybdorlik" va "aybsizlik" tizimi mavjud hamda bu bo'yicha O'zbekiston qonunchiligini "aybdorlik" tizimiga asoslangan holda yaratish maqsadga muvofiqligi asoslangan. Chunki, bizningcha, yoritilayotgan sug'urta turining mohiyati ham shundan iboratki, tibbiyot xodimining javobgarligi yuzaga kelishi kerak. Bunday javobgarlikka sabab esa, albatta, vrach aybining, xatosining mavjudligidir. Sug'urtalashda "aybdorlik" tizimini tanlash kelgusida vujudga kelishi mumkin bo'lgan nizolarning, huquqni qo'llashdagi tushunmovchiliklarning oldini olishga yordam beradi;

4. "Tuzatuvchi adolat" (Corrective Justice) nazariyasini tibbiyot xodimining kasbiy xatosi oqibatida bemorning sog'lig'i va hayotiga zarar yetkazish bilan bog'liq sud ishlarida faol qo'llash taklif qilingan. Ushbu nazariyani qo'llash aybdorga nisbatan adolatli hukm chiqarilishiga va jabrlanuvchiga yetkazilgan zararining to'la qoplanishiga sabab bo'ladi;

5. "Caveat Emptor" va "Caveat Venditor" nazariyalarini sud amaliyotiga joriy etish kelgusida bemorlarga o'zlari murojaat qilayotgan tibbiyot muassasi haqida to'liq xabardor bo'lish lozimligi majburiyatini yuklaydi va keyinchalik vrachlarga nisbatan bo'lishi mumkin bo'lgan asossiz da'volarning oldini olishi asoslangan. Shuningdek, O'zbekiston Respublikasi Sog'liqni saqlash vazirligi tomonidan "Caveat Emptor" belgisi ostida tibbiyotga oid muhim ma'lumotlar bilan aholini xabardor qilib borish tartibini joriy qilish taklif qilingan;

6. Vrachning kasbiy javobgarligini sug'urtalashga oid bir qator atamalar ilmiy va nazariy tahlil qilingan holda quyidagi atamalarga mualliflik ta'riflari berildi:

"tibbiy faoliyat" – kasalliklarning oldini olish, tashxis qo'yish, davolash va bemorni rehabilitatsiya qilish, shuningdek, aholining sanitariya-epidemiologik

osoyishtaligini ta'minlash, tibbiy ekspertiza o'tkazishga qaratilgan, maxsus tibbiy ma'lumot va ko'nikmalarni talab qiladigan kasbiy faoliyat;

"tibbiy xato" – bemorga zarar yetkazgan yoki yetkazmagan o'rnatilgan normalar, qoidalar, tibbiy amaliyotda qabul qilingan odat va ish tartibi an'analariga rioya qilmaslik, tibbiy texnologiyalar, standartlar yoki ularni amalga oshirish natijalariga muvofiq bo'lmasligida ifodalangan davolash va diagnostika jarayonining, tashkiliy va texnik chora-tadbirlar, sanitariya va epidemiyaga qarshi tartib, tibbiy yordamning bir yoki bir necha bosqichlarida (statsionargacha, statsionarda va statsionardan keyin) dori ta'minotining buzilishi;

"tibbiyot xodimlarining kasbiy javobgarligini majburiy sug'urta qilish shartnomasi" – sug'urtalovchi uning bo'yicha sug'urta hodisasi vujudga kelganda kelishilgan to'lov (sug'urta mukofoti) yuzasidan tibbiyot xodimiga va (yoki) jabrlanuvchiga yoxud naf oluvchiga shartnomada nazarda tutilgan sug'urta hodisasi sodir bo'lganda jabrlanuvchining hayoti yoki sog'lig'iga yetkazilgan zararining o'rnini sug'urta summasi doirasida qoplash majburiyatini oladigan sug'urta shartnomasi;

"kasbiy javobgarlik" – bu ma'lum bilim, malaka va ko'nikmaga ega bo'lgan jismoniy shaxsga nisbatan davlatga, yuridik shaxs yoki boshqa jismoniy shaxslarga o'zining kasbiy faoliyati natijasida yetkazilgan moddiy va ma'naviy zarari uchun qonunchilikda belgilangan ta'sir choralari;

"sug'urta hodisasi" – tibbiyot xodimining kasbiy javobgarligini majburiy sug'urta qilish shartnomasi amal qilishi davrida jabrlanuvchilarning hayoti va sog'lig'iga zarar yetkazilganligi uchun tibbiyot xodimining kasbiy javobgarligi yuzaga kelganligining belgilangan tartibda tasdiqlangan fakti;

"sug'urta qildiruvchi" – tibbiy xizmatlar ko'rsatish huquqiga ega bo'lgan va sug'urtalovchi bilan kasbiy javobgarligini majburiy sug'urta qilish shartnomasini tuzgan tibbiyot xodimi;

"sug'urtalovchi" – tegishli turdagi sug'urta faoliyatini amalga oshirish huquqini beruvchi litsenziyaga ega bo'lgan, tibbiyot xodimining tibbiy xizmat ko'rsatayotganida bemorning hayoti va sog'lig'i uchun yetkazilgan zarardan majburiy sug'urtalashni amalga oshiruvchi yuridik shaxs;

"jabrlanuvchi" – tibbiy yordam olayotganida hayoti va (yoki) sog'lig'iga zarar yetkazilgan bemor;

"naf oluvchi" – bemor vafot etgan taqdirda sug'urta tovon puli olish huquqiga ega bo'lgan shaxs;

7. O'zbekiston Respublikasida vrachning kasbiy javobgarligini sug'urta qilish bo'yicha qonunchilikning rivojlanish jarayonini sug'urtaning rivojlanishida muhim yo'nalishni belgilab bergan va uning taraqqiyoti uchun alohida ahamiyat kasb etgan qonunchilik hujjatlarining qabul qilinish davrlarini inobatga olgan holda shartli ravishda 3 ta davrga bo'lish mumkin deb hisoblaymiz:

birinchi davr – tibbiyot xodimining kasbiy faoliyati, umumiy fuqarolik javobgarligini sug'urta qilish bo'yicha qonunchilikning rivojlanish jarayoni (1991-2000 yillar);

ikkinchi davr – bevosita ayrim toifa shaxslarning fuqaroviy javobgarligini sug'urta qilish bo'yicha qonunchilikning rivojlanish jarayoni (2001-2017 yillar);

uchinchi davr – ayrim toifa kasb egalarining va tibbiyot xodimining kasbiy javobgarligini sugʻurta qilish boʻyicha qonunchilikning rivojlanish jarayoni (2018 yildan hozirga qadar);

8. Vrachning kasbiy javobgarligini sugʻurtalashda obyekt va subyektlarni aniq belgilab olish katta ahamiyat kasb etadi. Obyektni aniqlash orqali munosabatning qaysi huquq doirasida tartibga solinishi lozimligi anglashiladi. Vrachning kasbiy javobgarligini sugʻurtalashda obyekt vrachning mulkiy manfaatlari hisoblanganligi sababli bu munosabatlar fuqarolik-huquqiy jihatdan tartibga solinadi;

9. Tibbiyot xodimlarining kasbiy javobgarligini sugʻurta qilish subyektlari boʻlib, sugʻurtalovchi, tibbiyot xodimi (sugʻurta qildiruvchi), jabrlanuvchi (sugʻurtalangan shaxs) va naf oluvchilar hisoblanishi asoslantirildi.

II. Qonunchilik hujjatlarini takomillashtirish boʻyicha taklif va tavsiyalar:

1. Oʻzbekiston Respublikasi Aholi sogʻligʻini saqlash kodeksi loyihasiga “Tibbiyot xodimlarining kasbiy javobgarligini majburiy sugʻurtalash” yuzasidan quyidagi moddalar va bandlarni kiritish:

1) Asosiy tushunchalar

...

tibbiy faoliyat – kasalliklarning oldini olish, tashxis qoʻyish, davolash va bemorni reabilitatsiya qilish, shuningdek, aholining sanitariya-epidemiologik osoyishtaligini taʼminlash, tibbiy ekspertiza oʻtkazishga qaratilgan, maxsus tibbiy maʼlumot va koʻnikmalarni talab qiladigan kasbiy faoliyat;

tibbiy xato – bemorga zarar yetkazgan yoki yetkazmagan oʻrnatilgan normalar, qoidalar, tibbiy amaliyotda qabul qilingan odat va ish tartibi anʼanalariga rioya qilmaslik, tibbiy texnologiyalar, standartlar yoki ularni amalga oshirish natijalariga muvofiq boʻlmasligida ifodalangan davolash va diagnostika jarayonining, tashkiliy va texnik chora-tadbirlar, sanitariya va epidemiyaga qarshi tartib, tibbiy yordamning bir yoki bir necha bosqichlarida (statsionargacha, statsionarda va statsionardan keyin) dori taʼminotining buzilishi;

tibbiyot xodimlarining kasbiy javobgarligini majburiy sugʻurta qilish shartnomasi – sugʻurtalovchi uning boʻyicha sugʻurta hodisasi vujudga kelganda kelishilgan toʻlov (sugʻurta mukofoti) yuzasidan tibbiyot xodimiga va (yoki) jabrlanuvchiga yoxud naf oluvchiga shartnomada nazarda tutilgan sugʻurta hodisasi sodir boʻlganda jabrlanuvchining hayoti yoki sogʻligʻiga yetkazilgan zararining oʻrnini sugʻurta summasi doirasida qoplash majburiyatini oladigan sugʻurta shartnomasi.

2) Tibbiyot xodimlarining javobgarligini majburiy sugʻurta qilish qoidalari

Ushbu Kodeksda belgilangan sugʻurta shartnomasi boʻyicha tomonlarning majburiyatlarini bajarish tartibi Oʻzbekiston Respublikasi Vazirlar Mahkamasi tomonidan tasdiqlanadigan tibbiyot xodimlarining javobgarligini majburiy sugʻurta qilish qoidalari bilan belgilanadi.

Tibbiyot xodimlarining kasbiy javobgarligini majburiy sug'urta qilish quyidagi qoidalarni o'z ichiga oladi:

sug'urta shartnomasini tuzish, o'zgartirish va bekor qilish tartibi;

sug'urta mukofotlarini to'lash tartibi;

sug'urta hodisasi yuz berganda tibbiyot xodimlarining javobgarligini majburiy sug'urta qilish ishtirokchilarining harakatlari;

sug'urta hodisasi yuz berganligini aniqlash va sug'urta tovonini to'lash tartibi;

yetkazilgan zararni baholash tartibi;

javobgarligini majburiy sug'urtalash bo'yicha nizolarni hal qilish tartibi.

3) Sug'urta hodisasini tekshirish tartibi

Sug'urta hodisasi sodir bo'lganda, tergov organlari guvohlarni, tibbiy yordam ko'rsatishda tibbiy nuqsonga yo'l qo'yganligi taxmin qilingan shaxslarni aniqlaydi va so'roq qiladi, tibbiyot tashkilotidan va boshqa shaxslardan zarur ma'lumotlarni, shuningdek, jabrlanuvchidan tushuntirishlar oladi.

Tergov komissiyasi to'plangan tergov materiallari asosida tekshirilayotgan sug'urta hodisasining holatlari va sabablarini, shuningdek tibbiy yordam ko'rsatishda nuqsonga yo'l qo'ygan shaxslarni aniqlaydi hamda tekshirilayotgan sug'urta hodisasini sug'urta hodisasi yoki sug'urta hodisasi bo'lmagan baxtsiz hodisa sifatida e'tirof etadi.

Quyidagilar o'rnatilgan tartibda tekshiriladi va tergov komissiyasining qarori bilan tibbiy xatolar qatoriga kiritilishi mumkin:

davolashdan oldingi tibbiy xatolar (vrachning jabrlanuvchiga tashxis qo'yish (tashxis qo'ya olmaslik, noto'g'ri tashxis qo'yish yoki tashxis qo'yishni kechiktirish), profilaktika yoki davolash usullarini qo'llashdagi xatosi);

davolash paytidagi tibbiy xatolar (jabrlanuvchiga nisbatan dori vositalari, immunobiologik preparatlar, dezinfeksiyalash vositalari va tibbiy buyumlarni tanlashning asoslilikini buzish; vakolatli organ tomonidan belgilangan tibbiy yordam ko'rsatish standartlarini yoki tibbiy yordam ko'rsatish tartibini buzgan holda tibbiy yordamni noto'g'ri ko'rsatish yoki ko'rsatmaslik; jabrlanuvchini sanitariya va epidemiyaga qarshi talablarga javob bermaydigan sharoitlarda tekshirish, davolash va saqlash; donorlik qoni yoki uning tarkibiy qismlarini xarid qilish, qayta ishlash, saqlash, tashish va klinik maqsadlarda qo'llash hamda qon mahsulotlaridan foydalanish tartibini buzish; tibbiyot tashkilotining dori vositalarini saqlash qoidalarini, dori vositalarini tarqatish qoidalarini, dori vositalarini ishlab chiqarish va tarqatish qoidalarini buzishi natijasida yaroqsiz holga kelgan dori vositasidan jabrlanuvchiga nisbatan foydalanish);

davolashdan keyingi tibbiy xatolar (jabrlanuvchi shaxsning o'lim vaqtini aniqlash mezonlari va tartibiga rioya qilmaslik, reanimatsiya tadbirlarini to'xtatish, reabilitatsiya jarayonini nazorat qilmaslik, reabilitatsiya davri bilan bog'liq tartibni buzish).

Mas'ul organlar jabrlanuvchiga nisbatan tibbiy xato faktini aniqlagan holda tibbiy yordam ko'rsatishdagi bunday xato jabrlanuvchining hayoti yoki sog'lig'iga zarar yetkazganligini ham aniqlashi kerak.

Quyidagilar sug'urta hodisasi hisoblanmaydi:

- a) tibbiy xato oqibati bo'lmagan jabrlanuvchining shikastlanishi va o'limi;
- b) tibbiy xato va ro'y bergan hodisa o'rtasida sababiy bog'liqlik bo'lmagan taqdirda, kasallik tufayli jabrlanuvchining nogiron deb tan olinishi yoki o'limi;
- c) jabrlanuvchining o'z joniga qasd qilishi oqibatida o'limi (o'lim tibbiyot xodimining tibbiy aralashuvi natijasida ro'y bergan hollar bundan mustasno);
- d) jabrlanuvchining davolab bo'lmaydigan kasalliklarini patologik jarayoni kechishining o'ziga xos xususiyatlari natijasida jabrlanuvchini nogironligi bo'lgan shaxs deb e'tirof etilishi yoki o'limi (agar tibbiy yordam tibbiy standartlar va protokollarga muvofiq amalga oshirilgan bo'lsa);
- e) ma'naviy zarar yetganligi.

4) Tibbiyot xodimlarining majburiyatlari

...

bemorning hayoti va sog'lig'iga e'tiborsizlik yoki ehtiyotsizlik munosabati bilan tibbiyot xodimi tomonidan zarar yetkazganlik uchun kasbiy javobgarligini majburiy sug'urtalash;

5) Xususiy tibbiyot muassasasining kasbiy javobgarligi sug'urtalanmagan tibbiyot xodimini ishga qabul qilganligi uchun javobgarligi

Xususiy tibbiyot muassasasining kasbiy javobgarligi sug'urtalanmagan tibbiyot xodimi bilan mehnat shartnomasini tuzishi uning tibbiy faoliyat bilan shug'ullanish huquqini beruvchi litsenziyasi bekor bo'lishiga olib keladi.

2. O'zbekiston Respublikasi Vazirlar Mahkamasi qarori bilan tasdiqlanadigan "Tibbiyot xodimlarining kasbiy javobgarligini majburiy sug'urtalash qoidalari"ni ishlab chiqish va bunda quyidagilarni nazarda tutish:

1) Ushbu Qoidalarda quyidagi tushunchalardan foydalaniladi:

sug'urta hodisasi – tibbiyot xodimining kasbiy javobgarligini majburiy sug'urta qilish shartnomasi amal qilishi davrida jabrlanuvchilarning hayoti va sog'lig'iga zarar yetkazilganligi uchun tibbiyot xodimining kasbiy javobgarligi yuzaga kelganligining belgilangan tartibda tasdiqlangan fakti;

sug'urta qildiruvchi – tibbiy xizmatlar ko'rsatish huquqiga ega bo'lgan va sug'urtalovchi bilan kasbiy javobgarligini majburiy sug'urta qilish shartnomasini tuzgan tibbiyot xodimi;

sug'urtalovchi – tegishli turdagi sug'urta faoliyatini amalga oshirish huquqini beruvchi litsenziyaga ega bo'lgan, tibbiyot xodimining tibbiy xizmat ko'rsatayotganida bemorning hayoti va sog'lig'i uchun yetkazilgan zarardan majburiy sug'urtalashni amalga oshiruvchi yuridik shaxs;

jabrlanuvchi – tibbiy yordam olayotganida hayoti va (yoki) sog'lig'iga zarar yetkazilgan bemor;

naf oluvchi - bemor vafot etgan taqdirda sug'urta tovon puli olish huquqiga ega bo'lgan shaxs.

2) Sug'urta tariflarining bazaviy stavkalari quyidagilarni inobatga olgan holda belgilanishi lozim:

vrachning kasbiy tajribasi, ish staji va malakasi;

ko'rsatilayotgan tibbiy yordamning turlari;

tibbiy yordam ko'rsatilishida zarar yetkazish ehtimoli;

vrachning sug'urta tarixi

yetkazilgan zararining hajmiga ta'sir etuvchi boshqa omillar.

3) Sug'urtalovchi quyidagi hollarda regress huquqidan foydalanishi lozim:

tibbiyot xodimi tomonidan jabrlanuvchining hayoti yoki sog'lig'iga zarar qasddan sodir etilgan jinoiy harakat oqibatida yetkazilgan bo'lsa;

tibbiyot xodimi tomonidan jabrlanuvchining hayoti yoki sog'lig'iga yetkazilgan zarar beparvolik oqibatida bo'lishiga qaramay, agar u tibbiy xatolikni oldini olish imkoniyatiga ega bo'lgan holda bunday harakatni amalga oshirmaganligi yoki tibbiy yordamning sifati va xavfsizligi bilan bog'liq barcha zarur standartlarga rioya qilish uchun o'z vakolatlari doirasida zarur choralarni ko'rmaganligi aniqlansa;

tibbiyot xodimi tomonidan jabrlanuvchining hayoti yoki sog'lig'iga zarar mast holda (alkogol, giyohvand moddalar yoki boshqalar ta'sirida) tibbiy yordam ko'rsatish oqibatida yetkazilgan bo'lsa.

Agar tibbiyot xodimi o'zi tomonidan yuqoridagi holatlar bo'yicha yetkazilgan zarar ish beruvchining aybi bilan sodir bo'lganligini isbotlay olsa, O'zbekiston Respublikasi Fuqarolik kodeksining 989-moddasi qoidalari qo'llaniladi.

4) Vrachning kasbiy javobgarligi sug'urtasi bo'yicha sug'urta puli miqdori quyidagilarga bog'liq bo'lishi kerak:

tibbiy xato bemorning nogironligiga olib kelmaydigan zarar yetkazgan bo'lsa;

tibbiy xato bemorning 3-guruh nogironligiga sabab bo'lsa;

tibbiy xato bemorning 2-guruh nogironligiga sabab bo'lsa;

tibbiy xato bemorning 1-guruh nogironligiga sabab bo'lsa;

tibbiy xato bemorning o'limiga sabab bo'lsa.

3. O'zbekiston Respublikasi Fuqarolik kodeksining 52-bobini quyidagi mazmundagi modda bilan to'ldirish:

"Sug'urta hodisasi – bu sug'urta shartnomasida belgilangan sodir bo'lishi natijasida sug'urta to'lovini amalga oshirish nazarda tutilgan voqea.

Ixtiyoriy sug'urta bo'yicha sug'urta hodisasi tomonlarning kelishuviga ko'ra belgilanadi, majburiy sug'urtada esa sug'urta hodisalarining turlari O'zbekiston Respublikasining qonunchilik hujjatlarida nazarda tutiladi."

4. O'zbekiston Respublikasi Fuqarolik kodeksining 942-moddasi uchinchi xatboshisini quyidagi tahrirda bayon etish:

"Sug'urtaning ayrim turlari bo'yicha sug'urta mukofotining miqdori qonunchilik hujjatlarida belgilangan sug'urta tariflariga muvofiq aniqlanadi."

5. O'zbekiston Respublikasining "Fuqarolar sog'lig'ini saqlash to'g'risida" Qonuni 24-moddasini quyidagi xatboshi bilan to'ldirish:

Bemor tibbiy yordam so'rab murojaat qilgan va tibbiy yordam olayotgan paytda quyidagi huquqlarga ega:

...

tibbiy yordam so'rab murojaat qilgan shifokordan uning kasbiy javobgarligi sug'urtalanganligi to'g'risidagi ma'lumotlarni talab qilish;

6. O‘zbekiston Respublikasining “Fuqarolar sog‘lig‘ini saqlash to‘g‘risida” Qonuni 37-moddasini quyidagi tahrirda bayon etish:

“37-modda. Tibbiy-ijtimoiy ekspertiza

Tekshiruvdan o‘tkazilayotgan shaxsning klinik-funksional, ijtimoiy, kasbiy-mehnat va psixologik ma’lumotlarini kompleks baholash asosida uning sog‘lig‘i yo‘qolganligi darajasini hamda organizmining funksiyalari turg‘un buzilganligi sababli hayot faoliyati cheklanganligi darajasini, nogironlik guruhini, nogironlikning boshlanishi sababi hamda vaqtini aniqlash, shuningdek shaxs uchun sog‘lig‘ining holatiga ko‘ra mumkin bo‘lgan mehnat faoliyati turlari va zarur mehnat sharoitlari, o‘zgalarning parvarishiga, sanatoriy-kurortda davolanishning tegishli turlariga hamda ijtimoiy himoyaga bo‘lgan ehtiyoji to‘g‘risida tavsiyalar berish tibbiy-ijtimoiy ekspertizadir.

Tibbiy-ijtimoiy ekspertizani tashkil qilish va o‘tkazish tartibi qonunchilikda belgilab qo‘yiladi.

Tibbiy-ijtimoiy ekspertizani o‘tkazgan muassasaning xulosasi ustidan fuqaroning o‘zi yoki uning qonuniy vakili sudga shikoyat qilishi mumkin.”¹

7. O‘zbekiston Respublikasining “Fuqarolar sog‘lig‘ini saqlash to‘g‘risida” Qonuni 46-moddasini uchinchi xatboshisini quyidagi tahrirda bayon etish:

“Tibbiyot va farmasevtika xodimlarining tibbiy xato oqibatida fuqarolarning hayoti va sog‘lig‘iga zarar yetgan hollarda yetkazilgan zarar o‘rni qonunchilikda belgilangan tartibda kasbiy javobgarligi sug‘urtasi hisobidan qoplanadi”.

8. O‘zbekiston Respublikasi Prezidentining 2023-yil 20-iyundagi PQ-197-sonli “Ma’muriy islohotlar doirasida sog‘liqni saqlash sohasida davlat boshqaruvini samarali tashkil qilish chora-tadbirlari to‘g‘risida”gi qarori quyidagi mazmundagi 5-band bilan to‘ldirish:

“5. Shunday tartib o‘rnatilsinki, unga ko‘ra tibbiyot sohasida xususiy sektor faoliyatini rivojlantirish va ko‘rsatilayotgan tibbiy xizmatlar sifatini oshirish uchun 2023-yil yakuniga qadar nodavlat tibbiyot tashkilotlarining litsenziya talablari hamda shartlari bajarilishi monitoringini yuritish quyidagicha tashkil etiladi:

a) barcha nodavlat tibbiyot tashkilotlarini Sog‘liqni saqlash vazirligining maxsus axborot tizimiga ulash;

b) Sog‘liqni saqlash vazirligining maxsus axborot tizimi orqali: nodavlat tibbiyot tashkilotining xodimlari, tibbiy texnikasi, xizmat turlari, tibbiy statistika va boshqa hisobotlari monitoringini yuritish;

tibbiy faoliyatni nazorat qilishda “xavfni tahlil qilish” tizimini yo‘lga qo‘yish.”²

9. O‘zbekiston Respublikasi Vazirlar Mahkamasining 2022-yil 21-fevraldagi 80-son qarori bilan tasdiqlangan Maxsus elektron tizim orqali ayrim faoliyat turlarini litsenziyalash tartibi to‘g‘risidagi yagona nizomga 27-

¹ Ushbu taklif qonunchilikka joriy etilganligi to‘g‘risida O‘zbekiston Respublikasi Oliy Majlisi Qonunchilik Palatasi huzuridagi Parlament tadqiqotlari institutining 2024-yil 21-avgustdagi 3/08-149-son xati va dalolatnomasi olingan.

² Ushbu taklif qonunchilikka joriy etilganligi to‘g‘risida O‘zbekiston Respublikasi Sog‘liqni saqlash vazirligining 2024-yil 9-oktabrdagi 05-19/23177-son xati va dalolatnomasi olingan.

ilovasi (tibbiy faoliyatni litsenziyalash pasporti)ning 9-pozitsiyasi 3-ustuni “v” bandi quyidagi mazmundagi xatboshilar bilan to‘ldirilsin:

“tibbiy faoliyatni amalga oshirishda sanitariya qoidalari, me‘yorlari va gigiyenik normativlarga rioya qilish;

litsenziyalovchi organ tomonidan tasdiqlangan va (yoki) xalqaro tibbiy amaliyotda sinovdan o‘tgan profilaktika usullari, diagnostika va davolash standartlariga rioya qilish”¹

III. Huquqni qo‘llash amaliyotini takomillashtirish bo‘yicha taklif va tavsiyalar:

1. Vrachning kasbiy javobgarligini sug‘urta qilishni tartibga solish tibbiy xizmat sifatining yanada yaxshilanishiga, vrachlarning huquq va manfaatlarini himoya qilinishida huquqiy mexanizm yaratilishiga, vrachning o‘z kasbiga nisbatan yanada ishonchini hamda mas‘uliyatining oshishiga sabab bo‘ladi.

2. Davlat tibbiy sug‘urtasi jamg‘armasiga tibbiyot xodimlarining kasbiy javobgarligini sug‘urtalash buyicha mablag‘ ajratilib, ushbu vazifani ham shu Jamg‘armaga yuklash yoki Shvetsiya va Kanada tajribasidan kelib chiqqan holda O‘zbekiston Vrachlar assotsiatsiyasining vazifalari qatoriga tibbiyot xodimlarining kasbiy javobgarligini sug‘urtalashga ko‘maklashishni kiritish maqsadga muvofiq.

3. Sug‘urtada sug‘urta hodisasini tekshirish va aniqlashning o‘zi ham katta bir murakkab jarayon bo‘lib, bu bo‘yicha Germaniya tajribasi o‘rganildi va sug‘urta hodisasini to‘g‘ri tekshirish faqat haqiqiy da‘volar bo‘yicha to‘lovlar to‘lanishini ta‘minlashga, shifokorni asossiz yoki bo‘rttirilgan da‘volardan himoya qilishga yordam beradi. Mamlakatimizda O‘zbekiston Respublikasi Jinoyat kodeksida fuqarolarning sog‘lig‘i va hayotiga zarar yetkazganlik uchun jinoiy javobgarlik nazarda tutilgan. Ushbu holatlarni tekshirish, gumondorlarni so‘roq qilish va aniqlash tergov organlari tomonidan aniqlanadi. Demak, ushbu jarayonda bevosita sug‘urta hodisasi sodir etilgan yoki etilmaganligi ham oydinlashadi. Sug‘urta kompaniyalari esa tergov organlarining xulosalariga tayanishi, shuningdek, o‘zlari ham bevosita ushbu jarayonda ishtirok etishlari mumkin, deb hisoblaymiz. Ya‘ni ushbu sug‘urtada sug‘urta hodisasini tekshirish va aniqlash tergov organlari tomonidan amalga oshirilishi kerakligi taklif etilgan.

¹ Ushbu taklif qonunchilikka joriy etilganligi to‘g‘risida O‘zbekiston Respublikasi Bosh vaziri kotibiyatining Axborot-tahlil va yuridik ta‘minlash departamentining 2024-yil 26-iyuldagi 15-son dalolatnomasi olingan.

**SCIENTIFIC COUNCIL No. DSc.07/30.12.2019.Yu.22.01
FOR AWARDING OF THE SCIENTIFIC DEGREES
AT TASHKENT STATE UNIVERSITY OF LAW**

TASHKENT STATE UNIVERSITY OF LAW

ISLOMKULOVA SHOKHSANAM VAHOBJON KIZI

**CIVIL-LEGAL REGULATION OF DOCTOR'S PROFESSIONAL
RESPONSIBILITY INSURANCE**

12.00.03 – Civil law. Entrepreneurship law.
Family law. International private law

Doctoral (PhD) dissertation abstract on legal sciences

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The doctoral dissertation is available at the Information Resource Center of Tashkent State University of Law (registered under No. 1327), (Address 100047, Amir Temur street, 35. Tashkent city. Phone: (99871) 233-66-36).

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INTRODUCTION (abstract of PhD thesis)

The actuality and relevance of the dissertation them. The issue of social and medical protection of the population is the urgent importance all over the world. In particular, the COVID-19 pandemic has clearly shown the state of medicine, its shortcomings and advantages around the world. This, in turn, prompts a deeper reflection on issues such as the quality of medical services, professional qualifications of medical staff, their responsibility, guarantees of patient rights. In European countries, about 10,000 complaints against medical staff are sent to courts every year. Half of them are satisfied by the court, because the conducted examinations prove the fact of medical malpractices of medical staff. About 15 million people suffer from medical malpractices in European hospitals every year. That is, every tenth patient faces harm to his health and life. Every year, about 100,000 patients in the United States die from wrong medical diagnosis¹. In Germany, one of the most prosperous countries, in 2023, 43.4% of medical fault were caused by inadequate measures, while 39.1% of medical fault occurred despite the measures were taken². Foreign studies show that the largest percentage of medical fault occurs in surgery. This increases the importance of creating various mechanisms of property protection in case of damage to the health and life of patients.

The system of mandatory professional responsibility insurance of medical staff is recognized as the most acceptable of such mechanisms in the world. In developed countries, such a procedure, which guarantees the professional responsibility of medical staff, it was implemented at the beginning of the 20th century. The USA, Canada, Germany, Sweden, and Japan are the most developed countries of this system, while the movement to introduce this system has intensified in recent decades in countries such as Russia, Kazakhstan and Kyrgyzstan.

In our country, if we take the year 2023 alone, 6130 of the complaints sent to the Ministry of Health of the Republic of Uzbekistan are about dissatisfaction with the professional activity of medical staff. 3070 of these appeals were positively satisfied and almost half of the remaining ones were not satisfied.

The experience of developed countries, which have been implementing the medical workers' responsibility insurance system for a long time, is of great importance in the introduction and development of this type of insurance system in the Republic of Uzbekistan. Meantime, each state determines the model of guaranteeing the responsibility of medical workers, taking into account the specific characteristics of the health care system and the economy as a whole.

Article 1 of the Constitution of the Republic of Uzbekistan defines Uzbekistan is a sovereign democratic, legal, social and secular state with a republican form of government, and the increased attention to the health of

¹ Fred Charatan. Medical fault kill almost 100000 Americans a year. PMID: PMC1117251 PMID: [10591699](https://pubmed.ncbi.nlm.nih.gov/10591699/). <https://pubmed.ncbi.nlm.nih.gov/articles/PMC1117251/#:~:text=See%20%22Family%20compensated%20for%20death,to%2098000%20Americans%20each%20year.>

² <https://www.statista.com/statistics/582805/distribution-medical-treatment-errors-germany-by-type/>

citizens, including the reform of the health care system, clearly defines and requires training the work of a doctor from a legal point of view.

The actions of doctors in the course of fulfilling their professional duties cause not only their moral-spiritual or administrative and disciplinary accusations, but also criminal and civil responsibility in most cases.

From this point of view, studying and following the laws, regulations and other information on the legal basis of medical activity, including the activity of a doctor, is undoubtedly important in improving the quality of medical care, at the same time, in the prevention of unreasonable responsibility of doctors, insuring their responsibility.

These days, in our country, in order to comply with the constitutional rights of citizens to compensate for the damage caused to health and life in the provision of medical services, it is necessary to regulate the socio-economic relations that arise in the field of insurance of the responsibility of medical personnel and the legal, organizational and financial bases and principles of insurance of the responsibility of medical personnel in Uzbekistan.

In particular, there is a necessity to determine the procedure, to fill the gaps in the current legislation regulating insurance tariffs, the base tariff rate, the validity period of the insurance contract, the determination of insurance coverage and insurance premiums, the payment of insurance coverage and the demand for recourse, the procedure for insuring the responsibility of doctors, the procedure for investigating the insurance event, and the voluntary compensation of damage caused by doctors to the injured.

Today, in the field of insurance, the Law of the Republic of Uzbekistan “On Insurance Activities”, on November 23, 2021, “On Mandatory Civil Responsibility Insurance of the Carrier”, on May 26, 2015, “On Mandatory Civil Responsibility Insurance of the Employer”, on April 16, 2009, “On Mandatory State Social Insurance against Industrial Accidents and Professional Diseases”, on September 10, 2008, “On Mandatory Civil Responsibility Insurance of Vehicle Owners”, on April 21, 2008, and several other legal acts although accepted, there is no legal basis for professional responsibility insurance of doctors.

In addition, although the general rules of insurance have been studied by researchers in our country, the issues of professional responsibility insurance of doctors have not been studied, theoretically and practically.

This research focuses on the following issues:

speeding the adoption of a specific normative legal acts on professional responsibility insurance of medical personnel;

defining the characteristics and structure of the contract for voluntary and mandatory professional responsibility insurance of medical personnel;

developing “Rules for compulsory professional responsibility insurance of medical personnel” by the Cabinet of Ministers of the Republic of Uzbekistan;

studying the issues of mandatory insurance, to analyze the features of voluntary insurance through the practice of foreign countries;

studying the amount of damage and consider the specific features of insurance event investigation;

analyzing the following special theories and doctrines, which are famous in the world, application of law and problems in judicial practice: on financing the professional responsibility insurance of doctors – “social model” and “market model”, on medical professional responsibility insurance – “guilty system” and “no fault system”, on medical fault – “negligence theory” and “loss of chance” theory, theory regarding compensation of damages – “corrective justice”, regarding medical responsibility – “caveat emptor” and “caveat vendor”.

The dependence of the research on the priority areas of development of science and technologies in the country. This research work was performed within the framework of the priority “Ways to form a system of innovative ideas and implement them in the social, legal, economic, cultural, spiritual and educational development of an informed society and a democratic state” of the science and technology development of the Republic.

The extent of the study of the research problem. The scientific study and research carried out the legal acts of foreign countries aimed at regulating relations related to doctor’s professional responsibility insurance, the law enforcement practice and the literature describing the conceptual approaches and scientific-theoretical views available in legal science were applied.

In general, the scientists of our country have researched the general issues of insurance, as well as specific types. In particular, H.R. Rahmonkulov, O. Okyulov, I.B. Zokirov, M.A. Aminjonova, N. Egamberdiyeva, F.Y. Shodmonov, Sh.A. Ismoilov, Sh.N. Ruzinazarov, D.R. Makhmudov, M.S. Boltayev studied a number of insurance issues. There are also efforts to research direct medical insurance and civil and professional responsibility insurance. For instance, civil legal problems of providing insurance services in the market economy by M.A. Aminjonova¹, compulsory insurance of civil responsibility of vehicle owners by A.U.Ergashev², issues of regulating the employer's compulsory civil liability insurance contract by Sh.S.Khamraqulov³, if the civil-legal regulation of compulsory professional responsibility insurance has been studied by I.T.Palvanov⁴, the issues of civil-legal regulation of the medical insurance contract were researched by M.S.Boltayev⁵.

Some issues related to doctor’s professional responsibility insurance were studied by scientists working in the Anglo-American legal system such as M.D.Frakes⁶, M.A.Rodwin, J.Silverman, D.Merfeld⁷, S.Robert¹ and others, also by

¹ Aminjonova M.A. Bozor iqtisodiyot sharoitida sug’urta xizmati ko’rsatishning fuqarolik huquqiy muammolari. yu.f.n.dissertatsiyasi. – Toshkent: 2004.

² A.U.Ergashev. Transport vositalari egalari fuqarolik javobgarligi majburiy sug’urta shartnomasini qo’llash muammolari. yu.f.n.dissertatsiyasi. – T., 2012. -172 b.

³ Sh.S.Xamraqulov. Ish beruvchining fuqarolik javobgarligini majburiy sug’urtalash shartnomasini tartibga solish masalalari. yu.f.n.dissertatsiyasi. – Toshkent: 2024.

⁴ I.T.Pavlanov. Kasbiy javobgarlikni majburiy sug’urta qilishni fuqarolik-huquqiy tartibga solinishi. yu.f.n.dissertatsiyasi. – Toshkent: 2004.

⁵ Boltayev M.N. O’zbekiston Respublikasida tibbiy sug’urta faoliyatini fuqarolik-huquqiy tartibga solishni takomillashtirish masalalari. Yu.f.d.dissertatsiyasi. Avtoref. – Toshkent: 2022.

⁶ Frakes, M. D. The Surprising Relevance of Medical Malpractice Law / M. D. Frakes // University of Chicago Law Review. Forthcoming – 2014. URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2410426### (дата обращения 04.02.2019).

⁷ Rodwin, M. A. Why the medical malpractice crisis persists even when malpractice insurance premiums fall [Текст] / M. A. Rodwin, J. Silverman, D. Merfeld // Health Matrix. – 2015. – № 15. – P. 163-226.

russian scientists such as V.Ermakov², A.V.Voropaev, I.A.Voropaeva, Yu.S.Isaev³, O.Yu.Krasilnikov⁴, E.I.Chetirus⁵ and S.Dedikov⁶.

The scientists of the CIS member have been conducted a number of researches on the general issues of this insurance and are being conducted by I.E.Shinkarenko⁷, E.Suxanov⁸, B.T.Sultanaliyev⁹.

However, the analysis of the above-mentioned scientific works shows that there is no comprehensively studied on the basis of the legislation of the Republic of Uzbekistan.

Relation of the dissertation research with the research plans of the higher educational institution where the dissertation has performed. The topic of the dissertation is included in the research plan of the Tashkent State University of Law and was carried out within the priority directions of scientific research “Civil-legal regulation of doctor’s professional responsibility insurance”.

The aim of the research. The aim of the dissertation is to identify the scientific-theoretical and practical problems related to the civil-legal regulation of doctors’ professional responsibility insurance and to develop suggestions and recommendations for improving the legislation.

The tasks of the research are to:

study the importance, characteristics, essence of doctor’s professional responsibility insurance;

analyze the genesis of the development of the legislation on doctor’s professional responsibility insurance;

introduce to the legislation of Uzbekistan doctor’s insurance and insurance compensation, determining the insurance event, subrogation issues by studying the professional responsibility insurance of doctor’s contract;

study the problems of civil-legal regulation of doctor’s responsibility insurance and foreign practice, develop the proposals and recommendations aimed at improving the legislation in this regard.

The object of the research is the system of material and legal relations related to doctors’ professional responsibility insurance.

The subject of the research is normative legal acts and the practice of their application aimed at regulating the implementation and protection of doctors’

¹ Robert S. Bruer, Loss of a Chance As a Cause of Action in Medical Malpractice Cases, 59 MO. L. REV. (1994) Available at: <https://scholarship.law.missouri.edu/mlr/vol59/iss4/5>

² Ермаков В. Страхование гражданской ответственности медицинских работников // Финансовая газета. 2003. Региональный выпуск. № 6–7.

³ А.В.Воропаев, И.А.Воропаева, Ю.С.Исаев. Страхование профессиональной ответственности медицинских работников. Основы медицинского права и этики. Сибирский медицинский журнал, 2006, № 2. С. 104-106.

⁴ О.Ю.Красильников, Риски страхования профессиональной ответственности медицинских работников. <http://risk2021.sgu.ru/files/Agenda2021.pdf>

⁵ Четырус Евгений Игоревич. Страхование гражданско-правовой ответственности за причинение вреда: дис. ... канд. юрид. наук: 12:00:03, Москва-2015.

⁶ Дедиков, С. Страхование профессиональной ответственности / С. Дедиков // Хозяйство и право. 2011. № 10(417). С. 68-89.

⁷ Шинкаренко И.Э. Страхование ответственности. М., 1999.

⁸ Суханов Е.А. Лекция о праве собственности. – М., 1991.

⁹ Султаналиев Б.Т. Страхование профессиональной ответственности медицинских работников. Available at: https://arch.kyrlibnet.kg/uploads/UASULTANALIEV1_2010-3.pdf

rights, experiences in the legislation and practice of some foreign countries, as well as international standards, scientific-theoretical views, conceptual approaches and ideas related to the subject under research.

Research methods. Methods such as systematic-structural, comparative-legal, logical, specific sociological, complex research of scientific sources, induction and deduction and statistical data analysis methods were applied in the research.

Scientific novelty of the research is as follows:

to include concepts such as medical activity, medical fault, contract of compulsory professional responsibility insurance of medical workers in the draft Code of Public Healthcare of the Republic of Uzbekistan;

to include in the draft Code of Public Healthcare of the Republic of Uzbekistan the provision of mandatory professional responsibility insurance of medical personnel for damage caused by medical personnel due to negligence or carelessness to the patient's life and health;

to establish a procedure for connecting all non-governmental medical organizations to a special information system in order to prevent medical fault that may occur in non-governmental medical organizations and to monitor the fulfillment of their license requirements and conditions;

to strengthen the procedures to be followed in the implementation of medical activities in order to prevent medical fault in the unified regulation on the procedure for licensing certain types of activities through a special electronic system, approved by the Cabinet of Ministers' resolution No. 80 of February 21, 2022;

to strengthen the role of medical and social expertise in determining disability, as well as increasing the importance of medical and social expertise in examining the disability caused by a doctor's medical fault in patients.

Practical results of the research include as follows:

It has been put forward, a proposal to develop "Rules of mandatory professional responsibility insurance of medical personnel" by the resolution of the Cabinet of Ministers of the Republic of Uzbekistan;

It is proposed to stipulate right of the patient to request information about his professional responsibility insurance from doctors who applied for medical care and while receiving medical care in Article 24 of the Law of the Republic of Uzbekistan "On the Protection of Citizens' Health";

It is proved that based on the fact that in cases where the lives and health of citizens are damaged due to the defect in the provision of medical care by medical and pharmaceutical workers, the damage should be covered by professional responsibility insurance in accordance with the procedure established by law, in the third paragraph of Article 46 of the Law of the Republic of Uzbekistan "On the Protection of Citizens' Health";

author's definitions are provided for concepts such as medical activity, medical fault, mandatory professional responsibility insurance contract of medical personnel, professional responsibility insurance;

the necessity of mandatory professional responsibility insurance of medical personnel and its importance are justified;

It is proposed to supplement the draft Code of Public Healthcare of the Republic of Uzbekistan on the conditions and procedure for the implementation of medical activities, insurance of their responsibility, as well as their rights and obligations, regulation of insurance tariffs, basic tariff rate, validity period of the insurance contract, insurance coverage and insurance premiums, payment of insurance coverage and include relevant provisions including recourse claims, insurance event investigation procedures, and patient, victim, and beneficiary rights offers.

Reresponsibility of research results. The results of the research are summarized in accordance with the rules of foreign and national legislation, the experience of developed countries, the law enforcement practice, the results of the analysis of statistical data, formalized with relevant acts, the conclusions, proposals and recommendations are approved and publication of research results in national and foreign publications, as well as approval by the authorities determine the reresponsibility of the research.

The scientific and practical significance of the results of the research. The scientific significance of the results of the research is to conduct research on theoretical and legal issues to improve conclusions, proposals and recommendations contained in it serve as the effectiveness of informational support in the process of rulemaking, to interpret the relevant rules of normative legal acts, to improve the national legislation and scientific-theoretical enrichment of the science of civil law. The results of research can be used in conducting new scientific research.

The practical significance of the research results is in the activity of rule-making, in particular, in the process of preparing normative legal acts and in the process of making amendments and additions to them, in improving the law enforcement practice and in teaching subjects in the sphere of private law in higher legal educational institutions.

Implementation of the research results. The scientific results of the research work were applied as follows:

the proposal that connecting all non-governmental medical organizations to the special information system of the Ministry of Health in order to monitor the fulfillment of license requirements and conditions of non-governmental medical organizations and monitoring the employees, medical equipment, types of services, medical statistics and other reports of non-governmental medical organizations through this special information system, from his proposals to establish a system of “risk analysis” in the control of activities has been submitted in the development Paragraph 5 of the Resolution of the President of the Republic of Uzbekistan “On measures to effectively organize public administration in the sphere of health care within the basis of administrative reforms”, on June 20, 2023 No. RP–197 (Reference and letter of the of the Ministry of Health of the Republic of Uzbekistan on March 11, 2024, No. 05-19/5062). The implementation of this proposal served to strengthen monitoring of non-governmental medical

organizations compliance with license requirements and to create legal mechanisms to prevent medical malpractices committed by them;

the proposal that compliance with sanitary rules, standards and hygienic regulations in the implementation of medical activities; the proposal that compliance with preventive methods, diagnostic and treatment standards approved by the licensing body and (or) tested in international medical practice has been used in the development of Annex 27 (passport for medical activity licensing) to the unified regulation on the procedure for licensing certain types of activities through a special electronic system, approved by the resolution of the Cabinet of Ministers, on February 21, 2022, No. 80 (Reference of the Department of Information-Analysis and Legal Support of the Secretariat of the Prime Minister of the Republic of Uzbekistan, on July 26, 2024, No. 15). The implementation of this proposal serves to determine the legal basis of the requirements for the acts submitted by business entities providing medical services for obtaining a license, as well as the requirements and conditions for the implementation of medical activities by medical personnel.

the proposal that in cases of violations of the law, such as production and (or) sale of unregistered, low-quality, counterfeit drugs, as well as illegal copies of drugs registered in the Republic of Uzbekistan as license requirements and conditions has been used in the development of Annex 28 (passport for licensing of pharmaceutical activities) to the single regulation on the procedure for licensing separate types of activity by means of special electronic system, approved by the resolution of the Cabinet of Ministers, on February 21, 2022, No. 80 Reference of the Department of Information-Analysis and Legal Support of the Secretariat of the Prime Minister of the Republic of Uzbekistan, on July 26, 2024, No. 15). The implementation of this proposal serves to determine the legal basis of the requirements for the documents submitted for obtaining a license by business entities that provide pharmaceutical services, as well as the requirements and conditions for the implementation of pharmaceutical activities.

the proposal that according to Article 37 of the Law of the Republic of Uzbekistan “On the Protecting the Health of Citizens”, based on a comprehensive assessment of clinical-functional, social, professional-labor and psychological data of the person being examined, his health or determining the level of disability and the level of life activity limitation due to permanent impairment of body functions, the group of disabilities, the cause and time of the onset of disability, as well as the types of work activities possible for a person according to the state of health and the necessary working conditions, care for others , from the proposal to edit in the form that it is medical and social expertise to make recommendations about the appropriate types of treatment in a sanatorium-resort and the need for social protection has been used in the development of the Law of the Republic of Uzbekistan “On Amendments to Certain Legislations of the Republic of Uzbekistan in Connection with the Improvement of the System of Medical and Social Services in the Republic of Uzbekistan” on May 17, 2022, LRU–770 (Letter and reference of the Institute of Parliamentary Research under the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, on August 21, 2024, No. 3/08-149). The implementation of this proposal serves to determine the legal basis for medical and social examination of persons with disabilities;

the proposals that definitions of concepts such as medical activity, medical malpractice, medical personnel responsibility insurance contract has been applied in the development of Article 4 of the draft Public Health Code (Reference and letter of the of the Ministry of Health of the Republic of Uzbekistan on March 11, 2024, No. 05-19/5062). This proposal serves to supplement the draft Code of Public Health of the Republic of Uzbekistan with the basic concepts of medical activity;

the proposals that medical personnel are entitled to professional responsibility insurance for damage caused by medical personnel due to negligence or carelessness to the patient's life and health has been used in the development of Article 187 of the draft Code of Public Health (Reference and letter of the of the Ministry of Health of the Republic of Uzbekistan on March 11, 2024, No. 05-19/5062). This proposal serves to determine the legal status and rights of medical staff in the draft Code of Public Health of the Republic of Uzbekistan.

Approbation of the results of the research. The results of this research have been shared at 2 international and 2 national scientific-practical conferences and seminars.

Publication of the research results. According to the results of this research, a total of 10 articles on the theme of research and its conclusions, proposals and recommendations, 6 (including 2 articles in foreign journals) articles were published in the publications recommended for publication of the main scientific results of the dissertation.

The structure and volume of the dissertation. The content of the dissertation consists of an introduction, three chapters, a conclusion, a list of references and appendices. The volume of the dissertation is 143 pages (excluding the list of reference).

THE MAIN CONTENT OF THE DISSERTATION

The **introduction** of the dissertation includes the relevance and necessity of the research theme, the relevance of the research to the main priorities of the national science and technology development, the review of foreign scientific research on the subject, the level of studying the problem, the relation of the dissertation theme to the scientific research work of higher education institution where the dissertation is written, the aim and tasks, object and subject, methods, scientific novelty and results of the research, reresponsibility of the research results, scientific and practical significance of the research results, their implementation, the approbation, announcement of the results, structure and the volume of the dissertation.

The first chapter of the dissertation is entitled “**General description of the civil-legal regulation of doctors’ professional responsibility insurance**”, the chapter analyzed the factors and necessity of the civil-legal regulation of doctors’ professional responsibility insurance, the scientific and theoretical views on the concept of doctors’ professional responsibility insurance and its essence, the genesis of the development of the legislation on doctors’ professional responsibility insurance.

The dissertator analytically studied that the factors and necessity of civil-legal regulation of doctor's professional responsibility insurance. In particular, he listed the following as factors of civil-legal regulation of doctor's professional responsibility insurance:

on the one hand, there is a search for legal means of protection for the legal interests and rights of patients and on the other hand there are actions related to the legal protection of the responsibility of medical personnel, doctors become a weaker category of subjects of medical and legal relations;

the entire healthcare system is provided only through the activities of medical personnel and in most cases attention is paid to the issue of their obligations and liabilities, the realization of their rights and the protection of their legitimate interests are neglected;

leads to an increase in the number of court cases in medical matters regarding the protection of the rights and legal interests of doctors and patients.

According to the dissertator, the necessity for medical professional responsibility insurance has increased due to the coronavirus pandemic (COVID-19) that has occurred in recent years. Because on the one hand, the risk of infection increased among the medical staff working with infectious diseases, on the other hand, as a result of the medical risk, medical malpractices occurred that led to the deterioration of the health of patients and even the death of the patient.

In addition, in the analysis of concepts such as professional responsibility, professional responsibility insurance, contract of professional responsibility insurance of a medical worker, the researcher used a number of scientists (N.B.Grishenko, I.N.Romanova, O.V.Kolesnichenko, V.O.Filippov, A.Jalinsky and A.Rericht, T.Isakov, A.Karimov) applied their opinions, comments and entered into a discussion with them.

In the international experience of guaranteeing the professional responsibility of medical staff, the dissertation emphasizes the existence of two different models of the source of financing: the market model and the social model, he studied the social model in the case of Sweden and Canada and the market model in the case of Germany. The social model is more common in countries with a high number of public medical institutions. The social model assumes a greater responsibility for the financing and management of the insurance system implemented by the state through one centralized body, such as the Fund. In countries where the volume of medical service provision is more in private organizations than in public organizations, the private market is of great importance in the insurance of the responsibility of medical personnel. Having analyzed the elements of both models in the dissertation, the researcher came to a conclusion about the feasibility of using the market model in our country.

When writing a scientific work, the dissertator studied 2 important theories of doctor's professional responsibility insurance: **the theory of negligence** and **the theory of loss of chance** and highlighted the importance of these theories for the research.

The genesis of the development of the legislation on professional responsibility insurance of doctors and the legal acts regulating it were analyzed by the researcher based on different periods. After the independence of the Republic of Uzbekistan, the development process of the legislation on professional

responsibility insurance of the medical worker was conditionally divided into the following 3 periods:

the first period – the development process of legislation on general civil responsibility insurance (1991-2000);

the second period – the process of development of legislation on professional responsibility insurance (2000-2018);

the third period – the process of development of legislation on professional responsibility insurance of a medical worker (from 2018 to now).

The analysis of the experience of the USA, Japan, Germany, Sweden and other countries, the dissertator made a proposal to develop a draft Law on mandatory professional responsibility insurance of doctors and thereby put forward proposals for the civil-legal regulation of these relations.

It is shown that the civil-legal regulation of doctors' professional responsibility insurance causes the following legal and socio-economic **consequences**:

firstly, a legal basis is created to protect the property interests of medical staff;

secondly, it will be possible to settle property disputes before the court;

thirdly, favorable conditions will be created to protect the constitutional rights of citizens to full medical care, including the property rights of patients;

fourthly, legal grounds will be created for the formation of tools and mechanisms that ensure the implementation of the institution of responsibility insurance of medical personnel;

fifthly, it will allow to reduce the number of conflicts that may arise between medical staff and patients in the future.

The researcher also mentioned that the “guilty” system and the “no-guilty” system apply worldwide for the insurance of professional responsibility of medical staff. In most countries of the Organization for Economic Co-operation and Development, medical malpractice is assessed based on the interpretation of fault developed and widely used in legislation and case law. The guilt system requires the adoption of an appropriate court decision due to the application of punitive measures against the medical worker. This model is successfully used in the USA, Japan, Great Britain, Canada and a number of other countries. The no-fault system is based on the no-fault compensation system. In this case, determining the responsibility of medical specialists by the court is not a necessary condition for giving money to the injured patients. The starting point for making insurance payments is usually the injury itself or the possibility of injury being prevented. Compensation for injured patients is provided by commercial and non-profit insurance organizations in countries such as Denmark and Finland, or by the state in countries such as Sweden and New Zealand. Interpreting the above, the researcher came to the conclusion that the “guilty” system is suitable for Uzbekistan.

The second chapter of the dissertation is entitled **“Conditions and procedures for doctor’s professional responsibility insurance”**, it analyzed the object and subjects of doctors’ professional responsibility insurance, the contract of doctors’ responsibility insurance, the insurance premium and insurance compensation, the procedure for determining the insurance event, and the use of subrogation.

The researcher deeply studied the object of doctors' professional responsibility insurance and defined the object of the professional responsibility insurance of the medical personnel as the **property interests** of the medical personnel in relation to the liabilities arising as a result of damage to the life or health of the victims due to errors in the provision of medical care.

In this, the dissertator entered into a discussion with the opinions of a number of scientists (A.E.Kozinov, E.P.Dolgoplova, T.S.Martyanova, V.Y.Abramov, K.Hugel).

According to the dissertator, the subjects of responsibility insurance of medical staff are the insurer, the medical worker (insured), the victim and the beneficiaries. In connection with this issue, the dissertation student studied the practice of Russia, Germany, and the USA. In addition, disagreeing with the Russian practice, he put forward the opinion that the policyholder in this insurance should be only a natural person, that is, a medical worker. However, in Russia, there is a practice of professional responsibility insurance of medical institutions, not medical personnel, but the concept of profession is specific only to an individual, and a legal entity cannot have a profession.

In addition, the dissertator started a discussion on whether or not it is necessary to insure the responsibility of representatives of folk medicine.

The dissertator discussed a number of scientists (I.I. Stepanov regarding the insurance premium; M.I. Braginsky, V.V. Vitryansky, S.V. Dedikov, P.V. Sokol, A.E. Kozinov) in order to reveal concepts such as the insurance contract of the professional responsibility of the researcher doctor, insurance premium and insurance compensation, insurance event entered into a discussion with his thoughts and gave his author's definitions to these concepts.

According to the practice of Kazakhstan, it is proposed that the amount of insurance compensation for medical professional responsibility insurance should be determined depending on as follows:

- if the medical malpractice did not cause the patient's disability;
- if the medical malpractice caused the child's disability;
- if a medical malpractice causes the patient to have a disability of the 3rd group;
- if a medical malpractice causes the patient to have a disability of the 2nd group;
- if the medical malpractice caused the patient's 1st group disability;
- if a medical malpractice causes the patient's death.

As a result of the researcher's studies, it is proposed to divide medical fault into types such as pre-treatment, during treatment and post-treatment medical fault that caused the insurance event includes not only errors in the process of treating the patient, but also errors in the process of diagnosing the patient, diagnosing, writing prescriptions, and following sanitary and hygiene rules.

Analyzing the insurance event of the researched type of insurance, the researcher put forward proposals regarding the cases that are considered an insurance event, are not considered an insurance event, and have the right to demand recourse by the insurer if the insurance event is considered an insurance event.

The legislation and practice of foreign countries regarding the types of damage caused by doctor to the victim and the procedure for assessing the damage were studied, and the theory of “corrective justice” was analyzed regarding the compensation of damage, and the advantages of using this theory in the legislation of our country were highlighted.

The third chapter of the dissertation is entitled **“Problems in the civil-legal regulation of doctors’ professional responsibility insurance and foreign practice”**, in which the dissertator studied and explained the legislation and legal practice of countries such as Germany, USA, Sweden, Japan, Great Britain, Russian Federation, Kazakhstan.

In the dissertation, it is emphasized that the introduction of mandatory insurance in doctors’ professional responsibility insurance is the main solution to the problem. The opinions are based on the views of Russian authors L.B.Sitdikova and S. M. Kovalevsky. It is proposed to develop a draft Law on compulsory insurance.

The dissertator justified that the necessity to introduce a number of changes to the Law of the Republic of Uzbekistan “On the Protecting the Health of Citizens” in relation to the theme under research. For instance, amending to Article 24 of the Law, it is stated that it is necessary to provide that the patient has the right to request information on his professional responsibility insurance from doctors’ who applied for medical care and while receiving medical care.

In addition, it is proposed to change the third paragraph of Article 46 of this Law and edit it in the form of “in cases where the life and health of citizens are damaged due to medical and pharmaceutical personnel’s defective provision of medical care, the damage caused will be covered by professional responsibility insurance in accordance with the procedure established by the law”.

The researcher made the following suggestions as the best mechanisms for the effective operation of compulsory medical professional responsibility insurance:

Firstly, to introduce a provision in the Labor Code of the Republic of Uzbekistan regarding the prohibition of concluding an employment contract with a medical worker whose professional responsibility is not insured. That is, it will be necessary to request an insurance policy from the medical worker who has written an application for employment. Through this mechanism, compulsory professional responsibility insurance of all medical workers performing their work activities will be achieved.

However, it is worth noting that it is easier to control the implementation of labor relations in accordance with the law in state medical institutions than in private medical institutions. But today, many private medical institutions work in cooperation with doctors without concluding an employment contract, and even though there is no employment contract, there are cases in practice that make it possible for doctors to work in this institution. In such a case, the most optimal solution for the implementation of insurance is to attach the professional responsibility insurance directly to the license of the private medical institution.

That is, according to the resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 80 of February 21, 2012 “On the approval of the uniform regulation on the procedure for licensing certain types of activities through a special electronic system”, the medical institution may enter into an employment

contract with a medical worker who is not insured for professional responsibility or allow him to work in the institution. It is necessary to enter a supplement that will result in the cancellation of the license of the medical institution giving the right to engage in medical activities done

In addition, the introduction of the “caveat emptor” and “caveat venditor” theories into judicial practice by the author imposes the obligation on patients to be fully informed about the medical institution they are applying to, and the unjustified actions that may be taken against doctors. based on the prevention of claims. The Ministry of Health of the Republic of Uzbekistan proposed to introduce the procedure of informing the population with important medical information under the sign of “caveat emptor”.

CONCLUSION

The results of the scientific-theoretical analysis of the civil-legal regulation of doctors' professional responsibility insurance set for the research led to the following scientific and practical conclusions, as well as suggestions and recommendations for further improvement of the normative legal basis:

1. Scientific and theoretical conclusions

1. In the international experience of guaranteeing the professional responsibility of medical personnel, there are two different models of the source of financing - the market model and the social model, and the feasibility of using the elements of the market model in Uzbekistan is proved.

2. There are 2 important theories of professional responsibility insurance of doctors, i.e. the theory of negligence and the theory of loss of chance. The theory of loss of chance is popular in the USA, but due to the fact that the Republic of Uzbekistan belongs to the Romano-Germanic legal system, it is not possible to apply this theory in the legislation of our country. Therefore, it is proposed to apply the theory of negligence as a general theory characteristic of all types of insurance.

3. There are 2 systems (“guilt” and “innocence”) of professional responsibility insurance of doctors in the world, and it is reasonable to create the legislation of Uzbekistan based on the “guilt” system. Because in our opinion, the essence of the covered type of insurance is that the responsibility of the medical worker should arise. The reason for such responsibility is, of course, the presence of doctors' fault and error. Choosing the “guilt” system in insurance helps to prevent disputes and misunderstandings in the application of the law that may arise in the future.

4. It is proposed to actively apply the theory of “corrective justice” in court cases related to damage to the health and life of the patient due to the professional error of the medical worker. Applying this theory will result in a just verdict for the guilty party and full compensation for the harm caused to the victim.

5. The introduction of the “caveat emptor” and “caveat venditor” theories into judicial practice imposes on patients the obligation to be fully informed about the medical institution to which they are applying, and the unjustified claims that may be made against doctors. In addition, the Ministry of Health of the Republic of

Uzbekistan proposed to introduce the procedure of informing the population with important medical information under the sign of “caveat emptor”.

6. Following a scientific and theoretical analysis of a number of terms related to the professional responsibility insurance of doctors, author’s definitions were given to the following terms:

“medical activity” – a professional activity requiring special medical knowledge and skills aimed at preventing diseases, diagnosing, treating and rehabilitating patients, as well as ensuring sanitary-epidemiological peace of the population, conducting medical expertise;

“medical fault” – a treatment and diagnostic process, an organizational and technical measure expressed in non-compliance with the established rules, rules, customs and work order traditions accepted in medical practice, medical technologies, standards or the results of their implementation, which caused harm to the patient, sanitary and anti-epidemic procedure, violation of drug supply at one or more stages of medical care (pre-hospital, in-hospital and post-hospital);

“mandatory professional responsibility insurance contract of medical personnel” – an insurance contract that undertakes to cover within the amount on compensation for damage caused to the life or health of the victim in the event of an insured event provided for in the contract to the medical worker and (or) the victim or the beneficiary, based on the agreed payment (insurance premium) in the event of an insured event.;

“professional responsibility” is the legal action against an individual with certain knowledge, skills, and abilities to the state, a legal entity, or other individuals for material and moral damage caused by his professional activity.

“insurance event” – the fact that the professional responsibility of a medical worker has arisen due to damage to the life and health of the victims during the period of validity of the compulsory professional responsibility insurance contract of the medical worker;

“insured” – a medical worker who has the right to provide medical services and has concluded a contract of compulsory professional responsibility insurance;

“insurer” – a legal entity that has a license that gives the right to carry out the relevant type of insurance activity, and carries out compulsory insurance against damage caused to the life and health of a patient during the provision of medical services by a medical worker;

“victim” – a patient whose life and/or health was harmed while receiving medical care;

“beneficiary” – a person who has the right to receive insurance compensation in case of death of the patient.

7. In the Republic of Uzbekistan, we believe that the development process of the legislation on professional responsibility insurance of doctors can be conditionally divided into 3 periods, taking into account the periods of adoption of the legislative documents that determined an important direction in the development of insurance and gained special importance for its development:

the first period – the development process of legislation on the professional activity of a medical worker, general civil responsibility insurance (1991-2000);

the second period – the development process of the legislation on civil responsibility insurance of certain categories of persons (2001-2017);

the third period is the development process of legislation on professional responsibility insurance of certain categories of professionals and medical personnel (from 2018 to now).

8. It is quite important to clearly define the objects and subjects in the professional responsibility insurance of doctors. By defining the object, it is understood within which law the relationship should be regulated. Since the object of the professional responsibility insurance of doctors is considered to be the property interests of doctors, these relations are regulated by civil law.

9. It was justified that the insurer, medical worker (insured), victim (insured) and beneficiaries are the subjects of professional responsibility insurance of medical personnel.

I. Suggestions and recommendations for further improving the normative legal base:

1. The following Articles and Paragraphs in connection with “Mandatory professional responsibility insurance of medical personnel” in the draft Code of Public Health of the Republic of Uzbekistan should be supplemented as follows:

1) Basic concepts

...
“**medical activity** – is a professional activity carried out by legal entities and individuals aimed at preventing, diagnosing, treating and rehabilitating diseases that require special medical knowledge and skills, as well as ensuring sanitary-epidemiological peace of the population, conducting medical expertise;

medical malpractice – is a treatment and diagnostic process, organizational and technical measures expressed in non-compliance with the established rules, customs and work order traditions accepted in medical practice, medical technologies, standards or the results of their implementation, which caused or did not harm the patient, sanitary and anti-epidemic procedure, disruption of drug supply at one or more stages of medical care (pre-hospital, in-hospital and post-hospital);

contract of compulsory professional responsibility insurance of medical personnel – an insurance contract in which the insurer undertakes to compensate the medical worker and (or) the victim or the beneficiary for the damage caused to the life or health of the victim in the event of the insurance event provided for in the contract, within the sum of the insurance, based on the agreed payment (insurance premium).

2) Provisions of mandatory responsibility insurance of medical personnel

The procedure for fulfilling the obligations of the parties under the insurance contract specified in this Code is determined by the rules of compulsory responsibility insurance of medical personnel approved by the Cabinet of Ministers of the Republic of Uzbekistan.

Compulsory professional responsibility insurance of medical personnel includes provisions as follows:

- the procedure for concluding, changing and canceling the insurance contract;
- the procedure for payment of insurance premiums;

the actions of participants in compulsory insurance of responsibility of medical personnel in the event of an insured event;

the procedure for determining the occurrence of an insurance event and payment of insurance compensation;

damage assessment procedure;

the procedure for resolving disputes on compulsory responsibility insurance.

3) **The procedure for verifying an insurance event**

In the event of an insurance event, investigative bodies identify and interrogate witnesses, persons suspected of causing medical malpractice in the provision of medical care, receive necessary information from the medical organization and other persons, as well as explanations from the victim.

On the basis of the collected investigative materials, the investigation commission determines the circumstances and causes of the insurance event under investigation, as well as the persons who committed a defect in the provision of medical care, and recognizes the insurance event under investigation as an insurance event or an accident that is not an insurance event.

The following are investigated in the established order and can be included among medical fault by the decision of the investigative commission:

pre-treatment medical fault (a doctor's error in diagnosing the victim (failure to diagnose, misdiagnosis or delay in diagnosis), prevention or treatment methods);

medical fault during treatment (violation of the reasonableness of the selection of drugs, immunobiological preparations, disinfectants and medical supplies for the victim; incorrect provision or non-provision of medical care in violation of the standards of medical care provided by the competent authority or the procedure for providing medical care; failure to provide the victim with sanitary and anti-epidemic requirements examination, treatment and storage in unresponsive conditions; procurement, processing, storage, transportation and use of blood products for clinical purposes; violation of the medical organization's rules for the storage of drugs, the rules for the distribution of drugs use against the victim of a medicine that has become unusable as a result of violating the rules of release and distribution);

post-treatment medical fault (non-observance of the criteria and procedure for determining the time of death of the victim, stopping of resuscitation measures, failure to control the rehabilitation process, violation of the procedure related to the rehabilitation period).

When determining the fact of a medical fault against the victim, the responsible bodies must also determine whether such an error in the provision of medical care harmed the victim's life or health.

The following are not considered insured events:

a) injury and death of the victim that is not the result of a medical fault;

b) in the absence of a causal connection between the medical fault and the incident, recognition of the victim as disabled or death due to the disease;

c) death of the victim as a result of suicide (with the exception of cases when the death occurred as a result of the medical intervention of a medical worker);

d) recognition of the victim as a person with a disability or death as a result of specific features of the pathologic process of incurable diseases of the victim (if medical care was provided in accordance with medical standards and protocols);

e) moral damage.

4) The obligations of medical and pharmaceutical personnel

...

compulsory professional responsibility insurance for damage to the patient's life and health caused by a medical worker due to negligence or carelessness;

5) Responsibility of a private medical institution for employing a medical worker who is not covered by professional responsibility insurance

The conclusion of an employment contract by a private medical institution with a medical worker who does not have professional responsibility insurance leads to the cancellation of his license to practice medical activity.

2. the development of "Rules of compulsory professional responsibility insurance of medical personnel" approved by the resolution of the Cabinet of Ministers of the Republic of Uzbekistan and providing as follows:

1) The following provisions are used in these Rules:

insurance event – the fact that the medical worker's professional responsibility has arisen for damage to the life and health of the victims during the period of validity of the contract of compulsory professional responsibility insurance of the medical worker, confirmed in the prescribed manner;

insurer – a legal entity that has a license that gives the right to carry out the relevant type of insurance activity and carries out compulsory insurance against damage caused to the life and health of a patient during the provision of medical services by a medical worker;

victim – a patient whose life and/or health was harmed while receiving medical care;

beneficiary – a person who has the right to receive insurance compensation in case of death of the patient.

2) The basic rates of insurance tariffs should be set taking into account the following:

doctors' professional experience, seniority and qualifications;

types of medical care provided;

the possibility of harm in the provision of medical care;

doctors' insurance history;

other factors affecting the size of the damage.

3) The insurer should use the right of subrogation in the following cases:

if damage to the victim's life or health was caused by a medical worker as a result of a criminal act committed intentionally;

despite the fact that the damage caused to the life or health of the victim by a medical worker was caused by negligence, if it is determined that he did not perform such an action, having the opportunity to prevent a medical malpractice, or did not take the necessary measures within the scope of his authority to comply with all necessary standards related to the quality and safety of medical care;

if the medical worker harmed the life or health of the victim while intoxicated (under the influence of alcohol, drugs or others) as a result of providing medical care.

If the medical worker can prove that the damage caused by him in the above cases was caused by the fault of the employer, the provisions of Article 989 of the Civil Code of the Republic of Uzbekistan shall be applied.

3) The amount of insurance compensation under the professional responsibility insurance of a medical worker should depend on the following:

if the medical malpractice caused damage that did not cause the patient's disability;

if a medical malpractice causes the patient to have a disability of the third group;

if a medical malpractice causes the patient to have a disability of the second group;

if a medical malpractice causes the patient to have a disability of the first group;

if a medical malpractice causes the death of patient.

2. The Chapter 52 of the Civil Code of the Republic of Uzbekistan should be supplemented with the following article:

“Insurance event – is an event for which an insurance payment is provided as a result of the occurrence specified in the insurance contract.

In voluntary insurance, the insurance event is determined by the agreement of the parties and in compulsory insurance, the types of insurance events are stipulated in the legislation of the Republic of Uzbekistan.”

4. It should be stated the third paragraph of Article 942 of the Civil Code of the Republic of Uzbekistan as follows:

“The amount of the insurance premium for certain types of insurance is determined in accordance with the insurance tariffs established by legislation.”

5. It should be supplemented with the following paragraph to Article 24 of the Law of the Republic of Uzbekistan “On the Protecting the of Health of Citizens”:

The patient has the following rights while applying for medical care and receiving medical care:

...

request information on professional responsibility insurance from the doctor who applied for medical assistance;

6. It should be stated the third paragraph of Article 46 of the Law of the Republic of Uzbekistan “On the Protecting the of Health of Citizens” as follows:

“In cases where the lives and health of citizens are harmed by medical and pharmaceutical workers as a result of a defect in the provision of medical care, the damage caused is covered by professional responsibility insurance in accordance with the procedure established with law.”

7. Article 37 of the Law of the Republic of Uzbekistan “On Protection of Citizens’ Health” is proposed to be stated in the following version:

“Article 37. Medical and social expertise

Based on the comprehensive evaluation of the clinical-functional, social, professional-labor and psychological data of the person being examined, the level of his health loss and the level of life activity limitation due to permanent impairment of his body functions, disability group, onset of disability determining the cause and time, as well as the types of work activities possible for the person

according to the state of health and the necessary working conditions, the need for the care of others, the appropriate types of treatment in a sanatorium-resort, and social protection making recommendations about is medical and social expertise.

The procedure for organizing and conducting medical and social expertise shall be determined by legislation.

The citizen himself or his legal representative can appeal to the court against the conclusion of the institution that conducted the medical and social expertise”¹.

8. The third paragraph of Article 46 of the Law of the Republic of Uzbekistan “On the Protection of Citizens’ Health” shall be stated in the following version:

“In cases where the lives and health of citizens are damaged as a result of medical fault of medical and pharmaceutical workers, the damages are covered by professional responsibility insurance in accordance with the procedure established by law.”

9. The resolution of the President of the Republic of Uzbekistan, on June 20, 2023, No. PQ-197, “On measures to effectively organize public administration in the field of health care within the framework of administrative reforms” should be supplemented with the following section 5:

“5. A procedure should be established according to which the monitoring of the fulfillment of license requirements and conditions of non-governmental medical organizations until the end of 2023 in order to develop the activities of the private sector in the field of medicine and improve the quality of the provided medical services will be organized as follows:

- a) connecting all non-governmental medical organizations to the special information system of the Ministry of Health;
- b) through the special information system of the Ministry of Health: monitoring of non-governmental medical organization’s employees, medical equipment, types of services, medical statistics and other reports; to establish a system of “risk analysis” in the control of medical activities.²

10. Position 9, column 3, section “v” of Annex 27 to the unified regulation on the procedure for licensing certain types of activities through a special electronic system approved by the resolution of the Cabinet of Ministers of the Republic of Uzbekistan, No. 80, on February 21, 2022, (medical activity licensing passport) is as follows be filled with paragraphs:

"observance of sanitary rules, standards and hygienic regulations in the implementation of medical activities;

compliance with preventive methods, diagnostic and treatment standards approved by the licensing body and (or) tested in international medical practice;”³

¹ Ushbu taklif qonunchilikka joriy etilganligi to‘g‘risida O‘zbekiston Respublikasi Oliy Majlisi Qonunchilik Palatasi huzuridagi Parlament tadqiqotlari institutining 2024-yil 21-avgustdagi 3/08-149-son xati va dalolatnomasi olingan.

² Ushbu taklif qonunchilikka joriy etilganligi to‘g‘risida O‘zbekiston Respublikasi Sog‘liqni saqlash vazirligining 2024-yil 9-oktabrdagi 05-19/23177-son xati va dalolatnomasi olingan.

³ Ushbu taklif qonunchilikka joriy etilganligi to‘g‘risida O‘zbekiston Respublikasi Bosh vaziri kotibiyatining Axborot-tahlil va yuridik ta‘minlash departamentining 2024-yil 26-iyuldagi 15-son dalolatnomasi olingan.

III. Proposals and recommendations for improving the practice of law enforcement:

1. Regulation of the professional responsibility insurance of doctors will lead to further improvement of the quality of medical services, creation of a legal mechanism for the protection of the rights and interests of doctors, increased confidence and responsibility of doctors towards his profession.

2. Funds for professional responsibility insurance of medical personnel are allocated to the State Medical Insurance Fund, and it is appropriate to assign this task to this Fund or, based on the experience of Sweden and Canada, to include assistance in professional responsibility insurance of medical personnel among the duties of the Association of Doctors of Uzbekistan.

3. In insurance, the investigation and determination of the insured event itself is a very complex process, and the German experience has been studied in this regard, and the correct investigation of the insured event helps to ensure that payments are made only on real claims, and protects doctors from unreasonable or exaggerated claims. In our country, the Criminal Code of the Republic of Uzbekistan provides for criminal responsibility for harming the health and life of citizens. Investigation of these cases, questioning and identification of suspects are determined by investigative bodies. So, in this process, it will be clarified whether or not an insurance event has been committed directly. We believe that insurance companies can rely on the conclusions of investigative bodies, and also participate directly in this process. That is, in this insurance, it is proposed that the investigation and determination of the insurance event should be carried out by investigative bodies.

**НАУЧНЫЙ СОВЕТ DSc.07/30.12.2019.Yu.22.01 ПО
ПРИСУЖДЕНИЮ УЧЕНЫХ СТЕПЕНЕЙ ПРИ ТАШКЕНТСКОМ
ГОСУДАРСТВЕННОМ ЮРИДИЧЕСКОМ УНИВЕРСИТЕТЕ**

**ТАШКЕНТСКИЙ ГОСУДАРСТВЕННЫЙ ЮРИДИЧЕСКИЙ
УНИВЕРСИТЕТ**

Исломкулова Шохсанам Вахобжон кизи

**ГРАЖДАНСКО-ПРАВОВОЕ РЕГУЛИРОВАНИЕ СТРАХОВАНИЯ
ПРОФЕССИОНАЛЬНОЙ ОТВЕТСТВЕННОСТИ ВРАЧА**

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АВТОРЕФЕРАТ
диссертации доктора философии (PhD) по юридическим наукам

Ташкент – 2024

Тема диссертации доктора наук (Doctor of Philosophy) зарегистрирована Высшей аттестационной комиссией при Министерстве высшего образования, науки и инноваций Республики Узбекистан за № В2023.1.PhD/Yu932.

Диссертация выполнена в Ташкентском государственном юридическом университете.

Автореферат диссертации размещен на трех языках (узбекском, английском, русском (резюме)) на веб-сайте Научного совета (www.tsul.uz) и Информационно-образовательном портале «Ziynet» (www.ziynet.uz).

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Ведущая организация:

Университет общественной безопасности
Республики Узбекистан

Защита диссертации состоится 4 января 2025 года в 10.00 часов на заседании Научного совета DSc.07/30.12.2019.Yu.22.01 при Ташкентском государственном юридическом университете (Адрес: 100047, г. Ташкент, улица Сайилгох, 35. Тел.: (99871) 233-66-36; факс: (99871) 233-37-48; e-mail: info@tsul.uz).

С диссертацией можно ознакомиться в Информационно-ресурсном центре Ташкентского государственного юридического университета (зарегистрировано за № 1327). (Адрес: 100047, г. Ташкент, ул. Амира Темура, 13. Тел.: (99871) 233-66-36).

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(протокол реестра № 63 от «18» декабря 2024 года).



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ВВЕДЕНИЕ (аннотация диссертации доктора философии (PhD))

Цель исследования заключается в выявлении научно-теоретических и практических проблем, связанных с гражданско-правовым регулированием страхования профессиональной ответственности врача, а также в разработке предложений и рекомендаций по совершенствованию законодательства.

Объектом исследования является система материально-правовых отношений, связанных со страхованием профессиональной ответственности врача.

Предметом исследования являются нормативно-правовые акты и практика их применения, направленные на регулирование вопросов реализации и защиты прав врача, опыт законодательства и практики некоторых зарубежных стран, а также международные стандарты, научно-теоретические взгляды, концептуальные подходы и идеи, относящиеся к исследуемой теме.

Научная новизна исследования заключается в следующем:

включение в проект Кодекса Республики Узбекистан о здравоохранении таких понятий, как медицинская деятельность, медицинская ошибка, обязательное страхование профессиональной ответственности медицинских работников;

включение в проект Кодекса Республики Узбекистан о здравоохранении положения о необходимости обязательного страхования профессиональной ответственности медицинских работников за причинение вреда пациенту вследствие небрежности или неосторожности;

установление порядка подключения всех негосударственных медицинских организаций к специальной информационной системе для предотвращения возможных медицинских ошибок и мониторинга выполнения требований и условий лицензирования;

закрепление в Едином положении о порядке лицензирования отдельных видов деятельности через специальную электронную систему, утвержденном постановлением Кабинета Министров от 21 февраля 2022 года № 80, правил и норм, которые должны соблюдаться при осуществлении медицинской деятельности в целях предотвращения медицинских ошибок;

усиление роли медико-социальной экспертизы при определении инвалидности, а также повышение значения медико-социальной экспертизы при проверке случаев инвалидности, вызванной медицинской ошибкой врача.

Внедрение результатов исследования. Научные результаты, полученные в ходе исследования, использованы в следующем:

Предложения по терминологии, такие как определение понятий «медицинская деятельность», «дефекты оказания медицинской помощи», «договор обязательного страхования профессиональной ответственности медицинских работников» были учтены при разработке статьи 4 проекта Кодекса Республики Узбекистан о здоровье населения (письмо Министерства здравоохранения Республики Узбекистан №05-19/5062 от 11 марта 2024

года). Данные предложения направлены на дополнение проекта Кодекса основными терминами, касающимися медицинской деятельности;

Предложение о праве на обязательное страхование профессиональной ответственности медицинских работников за вред, причиненный жизни и здоровью пациента вследствие халатности или неосторожности, было использовано при разработке статьи 187 проекта Кодекса Республики Узбекистан о здоровье населения (письмо Министерства здравоохранения Республики Узбекистан №05-19/5062 от 11 марта 2024 года). Данное предложение служит для определения правового статуса и прав медицинских работников в проекте Кодекса Республики Узбекистан о здоровье населения;

Предложения по подключению всех частных медицинских учреждений к специальной информационной системе Министерства здравоохранения для мониторинга соблюдения лицензионных требований и условий, а также для ведения мониторинга сотрудников, медицинского оборудования, видов услуг, медицинской статистики и другой отчетности частных медицинских учреждений через данную информационную систему, а также по внедрению системы «анализа рисков» в контроль медицинской деятельности были учтены при разработке пункта 5 Постановления Президента Республики Узбекистан № ПП-197 от 20 июня 2023 года «О мерах по эффективной организации государственного управления в сфере здравоохранения в рамках административных реформ» (письмо Министерства здравоохранения Республики Узбекистан №05-19/5062 от 11 марта 2024 года и соответствующий акт). Внедрение данного предложения направлено на усиление мониторинга соблюдения лицензионных требований частными медицинскими учреждениями и создание правовых механизмов для предотвращения медицинских ошибок;

Предложения по соблюдению санитарных правил, норм и гигиенических нормативов при осуществлении медицинской деятельности; соблюдению стандартов профилактики, диагностики и лечения, утвержденных лицензирующим органом и/или проверенных международной медицинской практикой, были использованы при разработке Приложения 27 (Паспорт лицензирования медицинской деятельности) Единого регламента по лицензированию отдельных видов деятельности, утвержденного Постановлением Кабинета Министров Республики Узбекистан №80 от 21 февраля 2022 года (акт Департамента информации, анализа и юридического обеспечения Аппарата Премьер-министра Республики Узбекистан №15 от 26 июля 2024 года). Внедрение данного предложения служит для установления правовых основ требований к документам, представляемым предпринимательскими субъектами, оказывающими медицинские услуги, а также условий и требований для осуществления медицинской деятельности;

Предложение по редакции статьи 37 Закона Республики Узбекистан «О защите здоровья граждан» в следующей формулировке: «Медико-социальная экспертиза – это оценка клинико-функциональных, социальных, профессионально-трудовых и психологических данных обследуемого лица на основе комплексного анализа для определения степени утраты здоровья,

устойчивого нарушения функций организма, степени ограничения жизнедеятельности, группы инвалидности, а также причины и времени наступления инвалидности; выдача рекомендаций о видах трудовой деятельности и условиях труда, возможных для обследуемого лица, о необходимости ухода, соответствующих видах санаторно-курортного лечения и социальной защите», было использовано при разработке Закона Республики Узбекистан № ЗРУ-770 от 17 мая 2022 года «О внесении изменений в отдельные законодательные акты Республики Узбекистан в связи с совершенствованием системы медико-социальных услуг в Республике Узбекистан» (письмо Института парламентских исследований при Законодательной палате Олий Мажлиса Республики Узбекистан №3/08-149 от 21 августа 2024 года и соответствующий акт). Внедрение данного предложения служит для установления правовых основ проведения медико-социальной экспертизы для лиц с инвалидностью.

Структура и объем диссертации. Диссертация состоит из введения, трех глав, заключения и списка использованных источников. Объем диссертации составляет 143 страниц (без учета списка использованных источников).

E'LON QILINGAN ISHLAR RO'YXATI
LIST OF PUBLISHED WORKS
СПИСОК ОПУБЛИКОВАННЫХ РАБОТ

I bo'lim (I part; I часть)

1. Islomqulova Sh.V. Vrachning kasbiy javobgarligini sug'urta qilishga oid qonunchilikning rivojlanish genezesi // Huquqiy tadqiqotlar jurnali – Журнал правовых исследований – Journal of law research. № 12. 2023. – B. 28–35 (12.00.00; №19).

2. Islomqulova Sh.V. Vrachning kasbiy javobgarligini sug'urta qilish tushunchasi va mohiyati // SCIENCEPROBLEMS.UZ. Ijtimoiy-gumanitar fanlarning dolzarb muammolari. Актуальные проблемы социально-гуманитарных наук. Actual problems of humanities and social sciences. № S/8 (3). 2023. – B. 359–365. (12.00.00).

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4. Islomqulova Sh.V. Tibbiyot xodimining kasbiy javobgarligini sug'urta qilishda sug'urta mukofoti, tovonlari, sug'urta puli // “ODILLIK MEZONI”. № 8. 2024. -B. 27-28. (12.00.00; №21).

5. Islomqulova Sh.V. Doctor's professional liability insurance in civil legal order // The American Journal of Political Science Law and Criminology. Volume 5. Issue 12. 2021. ISSN 2695-0803 (IMPACT FACTOR SJIF 2023: 7. 304). p.p 11–16.

6. Islomqulova Sh.V. Object and subjects of professional liability insurance of doctors // The American Journal of Social Science and Education Innovations. Volume 5. Issue 12. 2021. ISSN 2689-100X (IMPACT FACTOR SJIF 2023: 7.223.). p.p 121–126.

II bo'lim (II part; II часть)

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