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Results of Analysis of Commission Forensic Medical Examinations of Kyiv City Clinical Bureau of Forensic Medical Examinations upon Improper Performance of Professional Duties by Medical Workers

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Abstract. Expert conclusions in various bureaus of Ukraine are written differently, medical personnel actions are interpreted differently. Moreover, these conclusions often contradict each other. The court has the right to take into account and use as the procedural sources of evidence (Part 2, Art. 84 of CCP) any expert conclusion, regardless of the expert institution level (local, regional, The Main Bureau of Forensic Medicine). **The objective** of this research was to analyze the commission forensic medical examinations performed at the commission department of Kyiv City Clinical Bureau of Forensic Medical Examinations (KCCBFME) during 2008-2015 with regard to cases concerning the quality of medical care. The data were subjected to statistical processing according to the standard methods of descriptive statistics. During a more detailed analysis of the examinations conducted at the commission department of KCCBFME the following features were discovered: the expert commission included only forensic experts, and only they put their signatures; doctors of other specialties were not included to the expert commission; in cases of appropriate questions, defects in medical care were classified as action and lack of action and was estimated according to the degree of act. Article 139 and Article 140 of the Criminal Code emphasize that no injury or pathological condition, but the defect of medical care should cause the serious consequences.

Keywords: forensic medical examination; defect in medical care.

Problem statement and analysis of the recent research

At present the questions to which an expert provides an answer should not go beyond his specialized knowledge – Part 2, Article 75 of the CCP of Ukraine (Code of Criminal Procedure) [1]. However, these questions are not fixed neither in the “Instructions for forensic examinations” nor in the “Rules of the commission forensic medical examinations at the Bureau of Forensic Examination” [2, 3, 4]. Due to the lack of a single forensic approach to the evaluation of medical care defects in Ukraine resulting from the absence of the rules of the examination in cases of health workers prosecution for “professional violation”, the question about formulation of expert conclusions is still unconcerned. In this regard, expert conclusions in various bureaus of Ukraine are written differently, medical personnel actions are interpreted differently. Moreover, these conclusions often contradict each other. At the same time, expert conclusions have the same legal efficacy no matter in what expert institution they were conducted. The court has the right to take into account and use as the procedural sources of evidence (Part 2, Art. 84 of CCP) any expert conclusion, regardless of the expert institution level (local, regional, The Main Bureau of Forensic Medicine).

The objective of the research was to analyze the commission forensic medical examinations, particularly with regard to “medical cases”, performed in Kyiv City Clinical Bureau of Forensic Medical Examinations.

Materials and methods of the research

Materials of the research involved forensic examinations performed at the commission department of Kyiv City Clinical Bureau of Forensic Medical Examinations (KCCBFME) during 2008-2015 with regard to cases concerning the quality of medical care.

The obtained data were subjected to statistical processing according to the standard methods of descriptive statistics using BIOSTAT programs. Statistical analysis included the calculation of primary statistical values (average value or standard error (M)).

Results of the research and their discussion

The statistical analysis of the examinations conducted at the commission department of bureau detected that the total amount of all commission examinations increased from 148 in 2008 to 204 in 2011. The number of such examinations was minimal in

2012 amounting 91 cases, and then increased to 245 in 2015. At the same time, as is evident from Table 1, the largest ratio of examinations with regard to “medical cases” was observed in 2013 ($36.26 \pm 3.48\%$), and the minimal one was noted in 2015 ($6.12 \pm 3.48\%$).

Distribution of examinations concerning the health care defects committed by health care workers of different specialties is provided in Table 2. Traditionally, the largest ratio of examinations with regard to medical cases referred to obstetric-gynecologic and surgical specialties. Analyzing the number of examinations in the dynamics it was noteworthy that the number of examinations regarding dentists and anesthesiologists tended to decrease from 2008 to 2015. Thus, examinations regarding dentists in 2014-2015 and regarding anesthesiologists in 2012-2015 were not scheduled. However, a clear trend towards the increase in the ratio of examinations regarding surgical (from $11.77 \pm 12.8\%$ in 2008 to $46.66 \pm 9\%$ in 2015) and obstetric-gynecologic (from $8.82 \pm 12.8\%$ in 2008 to $26.67 \pm 9\%$ in 2015) specialties was observed.

More detailed analysis of the examinations conducted at the commission department of KCCBFME detected the following:

- the expert commission included only forensic experts, and only they put their signatures; doctors of other specialties were not included to the expert commission;

- medical care was analyzed at each stage and the presence or absence of defects was indicated;

- cause and effect relationship between adverse effects was indicated;

- in addition, in cases of appropriate questions, defects in medical care were classified as action and lack of action and was estimated according to the degree of act.

It should be noted that this approach to the assessment of defects in medical care is not common and occurs rarely in the expert conclusions. At the same time, according to the results of previous studies, the largest number of judicial decisions concerning health care workers (all were accusational) under Article 140 of the CCP of Ukraine was in Kyiv in comparison with other regions of Ukraine and constituted $10.42\% \pm 0.52$ (5 cases).

It is worth mentioning that Article 139 and Article 140 of the Criminal Code state that failure to provide or improper performance of professional duties by health care workers or pharmacists without clear reasons shall cause (or may cause – for Part 1, Article 139) patient’s death or other serious consequences. So, it is emphasized that the defect in medical care should cause the serious consequences but not an injury or pathological condition.

Table 1. Dynamics of forensic examinations performed at the commission department of bureau during 2008-2015

| Years | Total number | Examinations concerning the quality of medical care | |
|-------|--------------|---|------------|
| | | amount | %±M |
| 2008 | 148 | 34 | 22.97±3.48 |
| 2009 | 119 | 22 | 18.49±3.48 |
| 2010 | 129 | 20 | 15.5±3.48 |
| 2011 | 204 | 31 | 15.2±3.48 |
| 2012 | 91 | 9 | 9.89±3.48 |
| 2013 | 171 | 62 | 36.26±3.48 |
| 2014 | 116 | 33 | 28.45±3.48 |
| 2015 | 245 | 15 | 6.12±3.48 |

Table 2. Quantitative characteristics of defects in the medical care committed by health care workers of different specialties during 2008-2015

| Years | Health care worker's specialty | | | | | | | | | | Total number n=226 |
|-------|--------------------------------|------------|-----------------------------------|------------|----------|------------|--------------------|-----------|---------------------------|------------|-----------------------|
| | Surgeons | | Obstetri-cians and gynecolo-gists | | Dentists | | Anesthesiolo-gists | | Other health care workers | | |
| | n= | %± M | n= | %± M | n= | %± M | n= | %± M | n= | %± M | |
| 2008 | 4 | 11.77±12.8 | 3 | 8.82±12.8 | 3 | 8.82±12.8 | 0 | 0 | 24 | 70.59±12.8 | 34 |
| 2009 | 6 | 27.27±8.5 | 2 | 9.09±8.5 | 2 | 9.09±8.5 | 1 | 4.55±8.5 | 11 | 50±8.5 | 22 |
| 2010 | 6 | 30±10 | 1 | 5±10 | 1 | 5±10 | 1 | 5±10 | 11 | 55±10 | 20 |
| 2011 | 3 | 9.68±10.1 | 7 | 22.58±10.1 | 2 | 6.45±10.1 | 1 | 3.23±10.1 | 18 | 58.06±10.1 | 31 |
| 2012 | 1 | 11.11±11.9 | 1 | 11.11±11.9 | 1 | 11.11±11.9 | 0 | 0 | 6 | 66.67±11.9 | 9 |
| 2013 | 3 | 4.84±14.9 | 8 | 12.9±14.9 | 2 | 3.23±14.9 | 0 | 0 | 49 | 79.03±14.9 | 62 |
| 2014 | 1 | 3.03±18.5 | 1 | 3.03±18.5 | 0 | 0 | 0 | 0 | 31 | 93.94±18.5 | 33 |
| 2015 | 7 | 46.66±9 | 4 | 26.67±9 | 0 | 0 | 0 | 0 | 4 | 26.67±9 | 15 |

Conclusions and prospects for further research

1. The statistical analysis of the examinations conducted at the commission department of bureau detected that the total number of all commission examinations increased from 148 in 2008 to 204 in 2011. The number of such examinations was minimal in 2012 amounting 91 cases, and then increased to 245 in 2015. The largest ratio of examinations with regard to "medical cases" was observed in 2013 (36.26 ± 3.48%), and the minimal one was noted in 2015 (6.12 ± 3.48%).

2. The largest ratio of examinations with regard to medical cases referred to obstetric-gynecologic and surgical specialties. Analyzing the number of examinations in the dynamics it was noteworthy that the number of examinations regarding dentists and anesthesiologists tended to decrease from 2008 to 2015. However, a clear trend towards the increase in the ratio of examinations regarding surgical (from 11.77 ± 12.8% in 2008 to 46.66 ± 9% in 2015) and obstetric-gynecologic (from 8.82 ± 12.8% in 2008 to 26.67 ± 9% in 2015) specialties was observed.

3. During a more detailed analysis of the examinations conducted at the commission department of KCCBFME the following features were discovered: the expert commission included only forensic experts, and only they put their signatures; doctors of other specialties were not included to the expert commission; in cases of appropriate questions, defects in medical care were classified as action and lack of action and was estimated according to the degree of act.

4. According to Article 139 and Article 140 of the Criminal Code, failure to provide or improper performance of professional duties by health care workers or pharmacists without clear reasons shall cause (or may cause – for Part 1, Article 139) patient's death or other serious consequences. So, it is emphasized that the defect in medical care should cause the serious consequences but not an injury or pathological condition.

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Плетенецька А.О.

Результати аналізу комісійних судово-медичних експертиз Київського міського клінічного бюро сме за фактом ненадання медичної допомоги професійними обов'язків медичними працівниками

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Резюме. Експертні підсумки у різних бюро України пишуться по-різному, діяння медичного персоналу також інтерпретуються

по-різному, при цьому нерідко ці підсумки протирічать один одному. При цьому суд в праві прийняти до уваги і використати у якості процесуального джерела доказів (ч.2., ст. 84 КПК) будь який Висновок експерта, не залежно від рівня експертної установи (міське, обласне, Головне бюро судово-медичної експертизи). Метою дослідження було проведення аналізу комісійних судово-медичних експертиз, що були виконані у відділі комісійних судово-медичних експертиз Київському клінічному міському бюро СМЕ за 2008-2015 рр за справами щодо якості надання медичної допомоги. Отримані дані підлягали статистичній обробці стандартними методиками описової статистики. При більш детальному аналізі експертиз, проведених у комісійному відділі КМКБСМЕ було виявлено наступні особливості: до комісії експертів входили тільки судово-медичні експерти, тільки вони ставили свої підписи; лікарі інших спеціальностей не були внесені до експертної комісії; за наявності відповідних питань дефекти надання медичної допомоги класифікувалися у вигляді дії та бездіяльності та оцінювалися за ступенем тяжкості. У ст. 139 та ст. 140 ККУ підкреслюється, що не ушкодження або патологічний стан, а саме дефект надання медичної допомоги повинен призвести до тяжких наслідків.

Ключові слова: судово-медична експертиза, дефект медичної допомоги.

Плетенецька А.А.

Результаты анализа комиссионных судебно-медицинских экспертиз Киевского городского клинического бюро сме по факту ненадлежащего выполнения профессиональных обязанностей медицинскими работниками

Кафедра судебной медицины НМАПО имени П.Л. Шупика

Резюме. Экспертные выводы в различных бюро Украины пишутся по-разному, действия медицинского персонала также интерпретируются по-разному, при этом нередко эти выводы противоречат друг другу. При этом суд вправе принять во внимание и использовать в качестве процессуального источника доказательств (ч.2., ст. 84 УПК) любое Заключение эксперта, независимо от уровня экспертного учреждения (городское, областное, Главное бюро судебно-медицинской экспертизы). Целью исследования было проведение анализа комиссионных судебно-медицинских экспертиз, выполненных в отделе комиссионных судебно-медицинских экспертиз Киевского городского клинического бюро СМЕ за 2008-2015 гг по делам о качестве оказания медицинской помощи. Полученные данные подвергались статистической обработке стандартными методиками описательной статистики. При более детальном анализе экспертиз, проведенных в комиссионном отделе КМКБСМЕ были выявлены следующие особенности: в комиссию экспертов входили только судебно-медицинские эксперты, только они ставили свои подписи; врачи других специальностей не были внесены в экспертную комиссию; при наличии соответствующих вопросов дефекты оказания медицинской помощи классифицировались в виде действия и бездействия и оценивались по степени тяжести. В ст. 139 и ст. 140 УК подчеркивается, что не повреждение или патологическое состояние, а именно дефект оказания медицинской помощи должен привести к тяжелым последствиям.

Ключевые слова: судебно-медицинская экспертиза, дефект медицинской помощи.

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