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**LEGAL REGULATION OF PAID SERVICES
IN THE SPHERE OF HEALTHCARE
IN THE RUSSIAN EMPIRE AND THE RUSSIAN FEDERATION:
COMPARATIVE LEGAL ANALYSIS**

Specialty 5.1.1. – Theoretical and Historical Legal Sciences

Thesis/Dissertation Abstract
for a Candidate Degree in Juridical Science

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Research Rationale. Human health is the basis on which human progress is based, one of the key indicators of social development, reflecting the economic, labor and general cultural potential of society. In this regard, the primary task of the Russian state is to maintain and strengthen the health of its citizens. At the same time, modern state and municipal health care systems do not claim to monopolize the entire sphere of medical services, in accordance with paragraph 2 of Article 41 of the Constitution of the Russian Federation, measures are taken, including the development of private health care system¹. Currently, paid medical services are the most important component of the modern health care system, which are provided by both non-state and state medical organizations. In this regard, the study of the regularities of the formation of the legal framework regulating the provision of paid services in the field of healthcare in Russia is of particular interest.

The problems of research related to the study of legal regulation of paid medical services in recent years have been one of the most popular in such fields as jurisprudence, medicine, sociology. At the same time, with some exceptions, historians of law have been somewhat aloof from the discussion on this issue. But it is the history of the state and law that allows us to study the evolution of the legal regulation of paid services in health care, to trace the trends of formation and institutional design of paid services in the healthcare sector on specific historical material. Focus on the socio-economic development of society and the state in the historical context will help to understand the process of formation of the foundations of legal regulation in the relevant sphere of public relations, the evolution of basic concepts in the field of public health protection. This approach gives the opportunity to use historical experience in solving modern problems, taking into account national traditions and mentality of the Russian society, contributes to considering through the prism of the past the perspective of overcoming current problems, many of which are due to the historical past.

Despite the abundance of publications related to the study of legislation in the field of healthcare in Russia at various stages of its history, the legal regulation of paid

¹ Constitution of the Russian Federation: adopted by popular vote on December 12, 1993 with amendments approved in the course of the All-Russian vote on July 1, 2020 // Rossiyskaya Gazeta. July 4, 2020 No. 8198.

medical services has not yet become the subject of a special historical and legal comparative study. In this context, it seems relevant to study the historical prerequisites for the formation and current trends in the development of legal regulation of paid medical services in Russia.

The degree of scientific development of the issue. For the first time, the legal regulation of paid medical services in Russia is considered through the prism of the methodology of chrono-discrete monogeographic comparative jurisprudence. The issues of organizing the provision of paid medical services in Russia are reflected in the works of such scientists as I.G. Gal, O.V. Gridnev, V.M. Donin, E.V. Rozhkova, O.G. Krestyaninov, Yu.M. Komarov, S.S. Kuchin, E.V. Pesennikova, O.G. Pechnikova, A.V. Razumovsky, A.N. Trushenko.

In particular, a number of works of domestic and foreign researchers: A.P. Bunich, A.I. Gurov, T.A. Nagornaya, T. Kenny, R. Kiran, A.A. Krylov, T.I. Koryagina, O.V. Osipenko, K.A. Ulybin, J. Heinzen consider the elements of paid medical services in the Soviet period of healthcare development and the desire to organize paid services in the period of new economic policy.

Among the significant works of domestic researchers it is advisable to note the works of A.N. Pishchita, N.I. Pristankova, E.V. Rozhkova, E.M. Smirnova, S.G. Stetsenko, F.S. Tumusov, Y.L. Yudin, considering the formation of Russian legislation in the field of healthcare and the development of legal foundations for the management of medical activity in the pre-revolutionary period, as well as the current state of legal support for healthcare.

The study of the system of paid medical services in Russia in the context of chrono-discrete analysis is impossible in isolation from the legal status of subjects of public relations in the field of healthcare. The issues concerning the legal status of providers and consumers of medical services were considered in the works by A.A. Budko, N.A. Belyakov, Z.L. Zalyalova (Mikheicheva), I.V. Zimin, O.Y. Kuznetsova, E.V. Priz, A.A. Sukhov, V.N. Shiryayev. The works of such authors as L.M. Vasilevsky, F.L. German, I.V. Davydovsky, E.O. Danilov, N.G. Kupriyanov, A.M. Lesnichenko, E.K. Senokosova, S.N. Tregubov, V.N. Shiryayev are devoted to the

study of the legal responsibility of medical workers in different historical periods in Russia.

Purpose and objectives of the study. The goal is to identify the features of the evolution and current trends in the development of the institution of paid medical services in Russia in the context of chrono-discrete analysis.

The research objectives can be defined in two planes. Firstly, to study the theoretical and methodological foundations of the legal regulation of paid medical services in Russia through the prism of a systematic analysis of historical concepts:

- to trace the evolution of the concepts and content of paid medical services;
- to study the development of the legal framework regulating the provision of paid medical services;
- to establish a chronological framework for the existence of paid medical services in Russia;
- to formulate a periodization of the history of paid medical services in Russia;
- to classify medical services from the point of view of the "payment" category.

Secondly, to study the dynamics of the legal status of providers and consumers of paid services in healthcare in the context of comparative legal analysis of the Russian Empire and the Russian Federation:

- to investigate the legal status of the provider of paid services in healthcare;
- to evaluate the rights and responsibilities of the providers in the Russian Empire and the Russian Federation;
- to investigate the legal status of the consumer of paid services in health care;
- to evaluate the rights and responsibilities of the service consumers in the Russian Empire and the Russian Federation;
- to investigate the legal responsibility for professional offenses in the provision of paid medical services;
- on the basis of comparison of pre-revolutionary and modern experience in the legal regulation of paid medical services, to develop practical recommendations for improving the current legislation.

Object and subject of the research. The object of the study is the legal regulation of paid medical services in the Russian Empire and the Russian Federation in the projection of comparative legal analysis. The subject of the study is the main trends in the formation and institutional design of paid medical services in Russia, disclosed on the basis of an analysis of pre-revolutionary, Soviet, modern regulatory legal acts and other historical sources.

Theoretical and methodological basis of the research.

The theoretical basis of the thesis was provided by studies in jurisprudence, philosophy, medicine, history and economics. The author relied on a block of works that allowed to analyze the collected material taking into account modern approaches to understanding the development of legal regulation of paid medical services in Russia. The works of Russian lawyers (I.G. Gal, E.O. Danilov, A.A. Demichev, Z.L. Zalyalova (Mikheicheva), I.V. Zimin, S.V. Kodan, A.V. Morozov, T.A. Nagornaya, A.M. Lesnichenko, A.P. Pechnikov), Russian (V.O. Samoilov, E.M. Smirnova, A.A. Khitrov) and foreign (L. McCarthy, J. Heinzen, J. O'Brien) historians, Russian (V.M. Donin, Yu.A. Korchagin, O.G. Krestyaninova, E.V. Rozhkova, F.S. Tumusov,) and foreign (T. Kenny) economists, Russian scientists in the field of medicine (N.A. Belyakov, A.A. Budko, A.V. Vladzimirsky, Yu.M. Komarov, O.Y. Kuznetsova, E.V. Pesennikova, E.V. Prize, A.V. Razumovsky), sociologist (A.A. Zinoviev), foreign political scientists (R. Kiran, J.P. Ziegler) were of great importance in determining the methodology and methodology, as well as modern theoretical guidelines for research.

The historical and legal nature of the study required reference to the works of the pre-revolutionary period, among which the works of historians A.N. Alelekov, V.N. Berkh, B.B. Veselovsky, F.F. Herman, I.I. Golikov, M.P. Klov Klov, jurists N.V. Varadinov, V.I. Guerrier, L.A. Kolychev, N.M. Korkunov, M.A. Korf, M.I. Mysh, N.S. Tagantsev, S.N. Tregubov, M.V. Shimanovskii, V.N. Shiryayev, specialists in the field of medicine K.K. Geling, P.N. Shiryayev, and others. K. Geling, P.I. Kedrov, N.G. Kupriyanov, M.A. Markus, M.Y. Lakhtin, G.E. Rein, V.M. Richter, A.A. Sukhov, N.G. Freiberg, Y.A. Chistovich, foreign economists F. Bastiat, J.B. Sey, K.I. Kastovich,

and K.I. Kastov. A.A. Chistovich, foreign economists - F. Bastiat, J.B. Say, K.I. Kautsky, K. Marx, F. Engels, as well as researchers of philosophical problems of historical cognition (F.M.A. Voltaire, G.W.F. Hegel) were of great importance for the study of patterns of development and improvement of legislation in the field of public health protection.

Among the works of the Soviet period, the works of historians (V.P. Litvinov-Falinsky, T. Meyer-Steineg, L.Ya. Skorokhodov), economists (M.I. Bogolepov, A.P. Bunich, A.L. Vainshtein, S.S. Glezin, T.I. Koryagina, Yu. M. Tal, K.A. Ulybin), lawyers (G.Y. Manns, A.Y. Gurov), specialists in the field of medicine (L.M. Vasilevsky, I.V. Davydovsky, P.G. Dauge, N.A. Semashko, Y.L. Yudin) are significant for the study of socio-economic phenomena of the Russian society and state, and the development of legislation in the healthcare sector of this period.

It should be noted that the works of the authors of the pre-revolutionary and Soviet periods are rewarding and allow us to understand more deeply through the prism of modernity the patterns of development of legislation in healthcare in historical reality. The importance of studying historical experience once again emphasizes the validity of the thesis expressed by V.S. Nersesyants that "a worthy future of Russia can be neither a return to the past, nor a denial of the past, but necessarily – the continuation and renewal of the original history of the country, taking into account the accumulated experience and modern realities in the country and in the world"².

Methodological background of the thesis is characterized by a set of general scientific (historical-systemic, dialectical, logical approaches; ascents from the abstract to the concrete, formalization, comparison), and special (comparative-legal, formal-legal, interpretation of legal norms, extrapolation, theoretical-legal forecasting) methods of scientific cognition used in the work. Since we consider paid medical services as a chrono-discrete legal system, one of the methods used in the study is the institutional approach.

² *Nersesyants V.S. Philosophy of Law: Textbook for Universities. Moscow: INFRA-M: Norma, 1997. p. 354.*

This method is not used by itself, but through the prism of the methodology of chrono-discrete monogeographic comparative jurisprudence, developed for the comparative study of institutions, ideas, concepts and phenomena that existed in one country in different historical periods under conditions of interruption of historical tradition ³.

Information base of the study. Various sources, including archival material, a wide range of normative legal acts, monographs, essays, reviews, reports, journals, books, articles, encyclopedias, dictionaries, foreign literature, dissertations, as well as electronic resources formed the information base of the research.

The validity and reliability of the research results is established through the study of legal provisions enshrined in the Constitution of the Russian Federation, sectoral legislation, legislation on healthcare, legal documents, the use of modern scientific methodology in the work, referring to the concepts of domestic and foreign legal scientists, economists, political scientists/ analysts, the scientific validity of the main provisions and conclusions of the thesis, and also confirmed links to the analyzed material.

Defended positions, having scientific novelty.

1. Legal concepts of "service" and "assistance" were used in the legislation on healthcare in the Russian Empire, but they were not substantively distinguished. Using these categories, the legislator established payment both for the provision of *medical care* to a *patient*, and *services*, assuming their actual identity. When reconstructing the conceptual category of «medical care» in the context of practical application in the Russian Empire, it seems that *assistance to a patient who called on a medical worker consisted of medical services as useful actions carried out by a medical worker providing services and a product of labor inseparable from his actions, aimed at eliminating the negative consequences of the disease and having a certain cost*. During the Soviet period, the concept of "service" was not fixed in the legislation on healthcare, and "assistance" was enriched with a new meaning, reflected in the organization of free

³ See: Chrono-Discrete Monogeographic Comparative Law: Problems of Methodology: Monograph / ed. by A.A. Demichev. M.: RUSCIENCE, 2021.

medical and preventive measures, as well as measures for effective vocational rehabilitation, maximum prolongation of life and full harmonious development of the mental and physical strength of Soviet citizens. The concept of "medical service" was again integrated into the mechanism of legal regulation in the Russian Federation. However, the definition, drawn up by the legislator in the Federal Law No. 323-FZ dated November 21, 2011 "On the Basics of Public Health Protection in the Russian Federation" does not express economic characteristics: the inherent value of the service (which corresponds to paragraph 27 of the specialty passport 5.1.1).

2. The study of Russian legislation regulating relations in the sphere of healthcare has shown that the system of paid medical services, which should be understood as a stable group of interrelated legal norms regulating the rights, duties and responsibilities of all subjects of public relations related to the provision of paid medical services, is not an exclusively modern legal system. From the point of view of the methodology of chrono-discret monogeographic comparative jurisprudence, the author proposed to identify the periods of development of paid medical services in Russia:

1) from April 29, 1754 to February 18, 1919 – the period of formation and development of paid medical services in the Russian Empire and the early Soviet period;

2) from February 18, 1919 to December 1, 1924 – the period of formation of free medical care, the first chrono-discrete pause in the history of paid medical services;

3) from December 1, 1924 to May 13, 1934 – the recovery phase of paid medical care in public institutions and the development of private medicine;

4) from May 13, 1934 to July 22, 1993 – the period of free health care in the Soviet and early post-Soviet periods, the second chrono-discrete pause in the history of paid medical services;

5) from June 22, 1993 to the present – the period of revival and intensive development of paid medical services in the Russian Federation (which corresponds to pp. 23, 34, 39, 41, 44, 45, 46, 47 of the specialty passport 5.1.1).

3. Based on the historical, comparative and legal analysis of the issue under study in Russia, the classification of medical services in terms of payment for services is

proposed, represented by «conditionally» free, paid and free medical services. The corresponding definitions are given:

- *"conditionally" free medical services* are medical services, payment for which is made in favor of the contractor at the expense of funds formed from *compulsory* contributions;
- *paid medical services* are medical services, where payment under the contract is made directly at the expense of personal funds of consumers of services;
- *free medical services* are medical services, payment for which is made in favor of the service provider by a third party(s) and consists of transfers, gratuitous for the consumer of services.

As part of the comparative analysis, the simultaneous coexistence of free, "conditionally" free and paid medical services in the Russian Federation, as well as in the Russian Empire, has been established. In the Soviet Union, free and paid medical services coexisted. At the same time, paid medical services were divided into legal ones, which were legislated in the period (1924-1934), and "shadow" ones in the period (1934-1993), payment for which was made in violation of the law and represented informal payments (which corresponds to paragraphs 39, 41, 45, 46 of the specialty passport 5.1.1).

4. The duties of medical officers and private practitioners of the imperial period can be divided into two groups:

1. *The duties of healthcare providers to patients:*

- to show humanity and compassion, constant readiness to provide medical assistance;
- to behave in a manner befitting one's title;
- to perform their professional duties properly;
- to prescribe medicines and write prescriptions clearly in plain Latin, indicating your academic title, first and last name;
- to control the dispensing of high-quality medicines from pharmacies at a set price;

- to keep the information secret, that has become known in the performance of professional duties.

2. *The duties of healthcare providers to the state:*

- to serve the head of state faithfully;
- to faithfully and impartially perform the official duties in accordance with the oath;
- to obey superiors and fulfill their legitimate requests;
- to carry out a forensic medical examination at the request of the police (in the absence of medical staff, it was assigned to private practitioners);
- to observe moral behavior in private life;
- to organize therapeutic and preventive measures to ensure sanitary and epidemiological well-being in the Empire (during epidemics it was also assigned to private practitioners) (which corresponds to paragraphs 39, 41 of the specialty passport 5.1.1).

5. In relation to the period of the Russian Empire, it is possible to distinguish such basic rights of consumers of services as the right to:

- qualified medical services;
- consultation of specialists;
- protection of information constituting medical confidentiality;
- refusal of medical intervention;
- treatment in conditions that meet sanitary and hygienic requirements;
- admission to the sick (dying) clergyman (which corresponds to paragraphs 39, 41 of the specialty passport 5.1.1).

6. In the context of medical professionals' liability for professional offenses, the main professional acts of healthcare workers of the imperial period, which were wrongful in nature/illegal, were highlighted:

- failure to respond to a patient's call (failure to provide assistance to a patient, regardless of his state of health);
- medical errors (due to "ignorance of their art");
- illegal medical activity;

- demanding re-payment for medical services rendered to «indigent» patients, or payment from other patients in excess of that required by law;
- failure to appear when requested by the police for a forensic medical examination;
- premature termination of pregnancy;
- induced termination of pregnancy;
- accepting bribes by a medical official.

Depending on the nature of professional offenses, the following types of legal liability could be provided for medical workers:

- *Criminal*: for crimes and misdemeanors, depending on the nature and severity of which the perpetrators were subjected to criminal penalties and corrections;
- *Civil*: for breach of contractual obligations, for damage and losses caused by a crime or misdemeanor;
- *Disciplinary*: for improper fulfillment or non-fulfillment by medical workers of professional duties stipulated by the Medical Charter, with subsequent punishment imposed by medical superiors (which corresponds to paragraphs 29, 39, 41 of the specialty passport 5.1.1).

The theoretical and practical significance of the study.

The theoretical significance of the research lies in a comprehensive scientific development aimed at obtaining and generalizing new knowledge about the legal regulation of paid services in healthcare, covering the pre-revolutionary, Soviet and modern periods of Russia. The provisions and conclusions formulated in the study contribute to obtaining new knowledge on the history of the state and law of Russia.

Practical significance lies in the development and proposal, based on the use of historical experience, of a set of recommendations for modernizing the current legislation in terms of improving the concept of "medical service" and establishing legal protection for medical workers, as well as determining additional penalties for professional offenses.

The results of the study can be taken into account when building a modern model of healthcare, as well as applied in the implementation of the educational process in

higher educational institutions as part of the courses "History of State and Law of Russia" and "History of the Development of Legislation in the Field of Healthcare".

Research Results Evaluation. The main provisions and theoretical conclusions of the thesis were discussed at the meetings of the Department of History and Theory of State and Law of the Law Faculty of Nizhny Novgorod Institute of Management, branch of the Russian Academy of National Economy and Public Administration under the President of the Russian Federation.

The most significant provisions and conclusions were reflected in 17 publications, of which 5 articles are in periodicals recommended by the State Commission for Academic Degrees and Titles of Russia for the publication of the main results of the thesis for the degree of Candidate of Sciences, and also presented to the scientific community at scientific and practical conferences of various levels: All-Russian Scientific and Practical Conference "Current issues of preliminary investigation" (Nizhny Novgorod, October 18, 2018), II All-Russian Scientific and Practical Conference with international participation "Medicine and Law in modern conditions" (Nizhny Novgorod, February 12, 2019), III All-Russian Scientific and Practical Conference "Medicine and Law in modern conditions" (Nizhny Novgorod, February 11, 2020), All-Russian Scientific and Practical Conference "Current problems of combating corruption in modern conditions: theory and practice" (Nizhny Novgorod, December 22, 2021), All-Russian Scientific and Practical Conference "Current problems of using special knowledge in the detection and proving of economic crimes" (Nizhny Novgorod, October 26, 2021), All-Russian Scientific and Practical Conference "Criminalistic means of ensuring economic security of Russia" (Nizhny Novgorod, November 16, 2021), University Scientific and Practical Seminar "Current issues of counteraction to crimes of economic and corruption orientation" (Nizhny Novgorod, April 15, 2021, April 14, 2022), All-Russian Scientific and Practical Conference "Criminalistic and criminal procedural means of ensuring economic security of Russia" (Nizhny Novgorod, November 16, 2021, November 16, 2022), All-Russian Scientific Conference "Current issues and prospects for the development of the scientific school of chrono-discrete monogeographic comparative jurisprudence" (Nizhny Novgorod,

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