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Letter to the Editor

## Features of Legal Regulation of the Work of Medical and Pharmaceutical Workers and Differentiation of their Work

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### Abstract

Taking into account the role of medical and pharmaceutical workers in the healthcare system in ensuring the right of the population to life and health, the purpose of this publication is to formulate and disclose the features and problems of legal regulation of the work of medical and pharmaceutical workers and the differentiation of their work, the status of these subjects, the presentation of approaches to their resolution.

The article reveals the features and problems of legal regulation of the work of medical and pharmaceutical workers as subjects of relations in the implementation of medical and pharmaceutical activities. Attention is focused on the features and problems of the conceptual apparatus of legislation in the field of healthcare, in particular the categories of "medical worker" and "pharmaceutical worker". The authors argue that the legal regulation of the work of medical and pharmaceutical workers is carried out by a number of normative legal acts of various legal force, general and special, that is, built on the basis of the principle of unity and differentiation of legal regulation of labor relations. At the same time, on the other hand, the presence of many legal norms does not allow legal regulation to be effective, which contributes to the occurrence of its defects: duplication, collisions, etc.

The article analyzes foreign legislation and international experience regulating and regulating the legal status, as well as the activities of medical and pharmaceutical workers. The issues of systematization of legislation in the field of healthcare and optimization of legal regulation of the work of medical and pharmaceutical workers and persons who otherwise carry out medical and pharmaceutical activities are considered.

**Keywords:** medical and pharmaceutical worker; legal status of medical and pharmaceutical worker; legislation regulating relations in the field of healthcare.

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## Introduction

The subjects of labor relations in the field of medical and pharmaceutical activities are medical and pharmaceutical workers. The peculiarity of the legal status of medical and pharmaceutical workers is due to both the general norms of labor legislation and special regulations on various aspects of their activities. The role of law is growing in medical and pharmaceutical activities. It is necessary to consider a number of legal principles that an employee should be guided by. Among them, the main one is the attitude to legal norms and legislation. Appropriate legal training allows you to form a legal culture. And also forms the ability to practically apply legal norms in professional activity, analyze and solve legal problems.

The purpose of studying the legal regulation of the activities of medical and pharmaceutical workers is to help develop practical skills and abilities in solving professional tasks. The training of an employee obliges to know the basics of the legal system and legislation in the field of healthcare, the organization and functioning of judicial and other law enforcement and law enforcement agencies; legal and moral and ethical standards in the field of professional activity; rights, duties, problems of social and legal protection and responsibility of medical and pharmaceutical workers.

Special attention is paid to practical mastery of the basics of legislation, legal aspects of the organization of medical and expert activities of a doctor, the ability to use and compile regulatory and legal documents related to medical activities; take the necessary measures to prevent and restore violated rights. For this purpose, the relevant legislation considers possible solutions in the most important areas of medical and pharmaceutical activities. Solid knowledge of the legal foundations will facilitate the solution of issues of social protection of employees and will help to find the right way out of difficult life situations both in the implementation of activities and in everyday life [1].

Currently, the legal aspect in healthcare has undergone changes. An integral part of any human work is the information process, which largely determines both the practical activity itself and its results. In this regard, a medical professional needs to clearly know his rights and obligations, possess the basics of legal thinking and specific legal terminology.

For a long time in medicine, there was no detailed legal regulation of the activities of medical and pharmaceutical workers in the provision of medical services. Previously, medicine rarely came into contact with law [2].

A certain transformation and significant development of medicine in the Republic of Kazakhstan has increased the need to improve the legal regulation of public relations related to medical and pharmaceutical activities. The rule-making process in this area has intensified due to the adoption of a number of legislative acts. First of all, work on improving legislation in this area, or rather, in the Code of the Republic of Kazakhstan "On the Health of the people and the healthcare system" dated July 7, 2020.

The definition of the status and rights of medical and pharmaceutical workers is reflected in the following:

### **Article 270. Status of medical and pharmaceutical workers and their rights**

1. Medical and pharmaceutical workers have the right to basic guarantees provided for by the labor legislation of the Republic of Kazakhstan and other regulatory legal acts, including:

1) creation of appropriate conditions for the employee to perform work duties, including provision of necessary medical devices in accordance with the procedure established by the legislation of the Republic of Kazakhstan;

2) professional development or change of professional qualifications at the expense of the employer or budget funds provided for these purposes by the legislation of the Republic of Kazakhstan, if it is impossible to perform labor duties for health reasons and when employees are dismissed due to a reduction in the number or staff of employees, in connection with the liquidation of the organization;

3) Remuneration corresponding to the level of qualification;

4) motivation of work in accordance with the level of qualification, with the specifics and complexity of work, with the volume and quality of work, as well as specific results of activity;

5) Creation of professional associations and participation in them;

6) insurance of professional liability for causing harm to the life and health of the patient in the absence of negligent or negligent attitude on the part of a medical professional;

7) Compensation for damage caused to life and health in the performance of official duties, in accordance with the legislation of the Republic of Kazakhstan;

8) Implementation of private medical practice and pharmaceutical activities in the presence of permits for medical and pharmaceutical activities;

9) Unhindered and free use of means of communication belonging to individuals and legal entities in case of transportation of the patient to the nearest medical organization for emergency medical care;

10) Reimbursement of transportation costs associated with travel.

2. The right to engage in medical activity is owned by employees who have technical and professional, post-secondary education, higher, postgraduate medical education, confirmed by a certificate of a specialist in the field of healthcare.

3. Resident doctors during the training period have the right to work in medical organizations in accordance with the certificate of a healthcare specialist under the supervision of a mentor.

4. Persons who have received medical education abroad are admitted to medical or pharmaceutical activities after the recognition of educational documents, a positive result of the assessment of professional readiness in an organization accredited by an authorized body, with the issuance of a certificate of a specialist in the field of healthcare.

The assessment of the professional readiness of persons who have received medical education abroad is carried out in accordance with the rules for assessing the professional readiness of graduates in medical education programs.

5. Medical incident - an event related to the provision of medical care in accordance with the standards of the organization of medical care and with the use of technologies, equipment and tools, caused by a deviation from the normal functioning of the body, which can harm the life and health of the patient, as well as lead to the death of the patient, except in cases provided for by administrative and criminal the legislation of the Republic of Kazakhstan.

The analysis of a medical incident is carried out through an internal audit of a medical organization, as well as by local public health authorities of regions, cities of republican significance and the capital, state bodies exercising state control in the areas of medical services (assistance), sanitary and epidemiological welfare of the population, circulation of medicines and medical devices, an authorized body.

#### **Article 271. Duties of medical and pharmaceutical workers**

1. Medical and pharmaceutical workers carry out activities in accordance with the legislation of the Republic of Kazakhstan and, guided by the principles of medical ethics and deontology, are obliged to:

- 1) To promote disease prevention, health promotion, promote a healthy lifestyle among the population of the Republic of Kazakhstan;
- 2) Provide medical care in accordance with their qualifications, official and official duties;
- 3) To involve, if necessary, specialists of a different profile or higher qualifications for consultation;
- 4) To observe and keep the secrecy of the medical worker, not to disclose information about diseases, intimate and family life of the patient;
- 5) Continuously improve the professional level;
- 6) Be registered in the National System of accounting of human resources in the field of healthcare;
- 7) When prescribing medicines, prescribe prescriptions for medicines within their competence in the presence of appropriate medical indications under an international nonproprietary name, except in cases of individual intolerance of the patient.

2. Medical and pharmaceutical workers, heads of medical organizations are not entitled to:

- 1) Participate in advertising of medicines and medical products;
- 2) Recommend to patients certain objects of retail sale of medicines and medical devices for the purpose of personal interest in receiving remuneration for their services;
- 3) Promote medicines and medical products with the participation of representatives of manufacturers of medicines and medical products and (or) distributors, with the exception of holding daily medical conferences, scientific and practical conferences and (or) specialized seminars [3].

Thus, there are no special articles in the Labor Code of the Republic of Kazakhstan regulating the specifics of labor relations of this category of employees [4].

In the specified special law the status of medical workers is established in a rather generalized form. Some differentiation still exists, for example, funding sources have been established for advanced training

and retraining of scientific and pedagogical personnel of state health organizations; social support measures have been established for medical workers of public health sector organizations working in rural areas and urban settlements; additional guarantees have been established for medical workers. Otherwise, there is a reference to special by-laws.

In the Republic of Tajikistan, the labor relations of medical workers are also regulated by the Labor Code of the Republic of Tajikistan dated July 23, 2016 (the Labor Code of the Republic of Tajikistan). In this act there are separate norms that regulate certain features of the work of medical workers (for example, Articles 70 of the Labor Code of the Republic of Tatarstan - establishes a shortened working time, 94 of the Labor Code of the Republic of Tatarstan - regulates the duration of the annual basic extended leave, 228 of the Labor Code of the Republic of Tatarstan - indicates the subordinate level of regulation of the features of part-time work). A more detailed legal regulation of the status of a medical worker can be noted in the Health Care Code of the Republic of Tajikistan dated May 30, 2017. In this case, it should be noted that there are more norms establishing the legal status of medical workers, at the same time, it should be noted that the legislator has chosen a substantive approach to the differentiation of such norms: they are contained in different articles and chapters of normative acts regulating various aspects of medical activity (for example, article 23 of Chapter 5; articles 48, 49, 56 of Chapter 7; Articles 61, 62 of Chapter 9 and others), that is, are not consolidated in a separate chapter.

In the Republic of Belarus, this type of relationship is also regulated both at the level of the Labor Code of the Republic of Belarus of July 26, 1999 (hereinafter referred to as the Labor Code of the Republic of Belarus) and the special Law "On Healthcare" of June 18, 1993. In the Labor Code of the Republic of Belarus, some elements of legal relations of medical workers are regulated by rules-exceptions (for example, articles 143 of the Labor Code of the Republic of Belarus (exceptional cases of involvement in work on a day off without the consent of an employee), 255 of the Labor Code of the Republic of Belarus (restriction of part-time work)), and other features of labor regulation of this category of employees are carried out, by virtue of the norm of the article 319 of the Labor Code of the Republic of Belarus, the republican public administration body conducting state policy in the field of healthcare. The above-mentioned special law defines the concepts of "healthcare worker" and "medical worker" as separate categories, and also regulates in detail the status of such persons. Thus, a medical worker is an individual who has a higher or secondary specialized medical education, confirmed by a document on education, and, in accordance with the procedure established by the legislation of the Republic of Belarus, is engaged in activities related to the organization and provision of medical care, ensuring the sanitary and epidemiological welfare of the population, conducting medical examinations. In addition to the articles that indirectly define the duties of medical workers (for example, article 41 – "Patients' rights"), the law contains special chapters regulating the status of these subjects - Chapters 10, 11.

The Labor Code of the Republic of Poland (Kodeks practice) of June 26, 1974, as a general act of legislation, regulates labor relations. In this act there are no norms dedicated to the special regulation of the work of medical workers. Regulation of the work of subjects engaged in medical activities (both within the framework of labor relations and other, for example, civil law) is carried out at the level of special laws and/or by-laws (for example, the Law on the State Emergency Medical Service (ustawa o Państwowym Ratownictwie Medycznym) of September 8, 2006, the Law on Professions doctor and dentist (ustawa o zawodach lekarza i lekarza dentystry) from December 5, 1996) [5].

A medical worker is the main subject of a legal relationship arising in the process of providing medical services to the population. At the same time, the range of his rights and obligations is much wider than that of the patient, and legal responsibility for non-provision (improper provision) of medical services [6].

Various approaches to the definition of legal competencies of medical workers, ways of their formation and improvement are being developed not only in the categorical field of medicine (public health and healthcare, sociology of medicine and clinical specialties), but also in the framework of legal, sociological, economic sciences [7].

The right to exercise medical activity is key in the system of health care organization, it depends on him who exactly will provide professional medical care. The procedure for admission to the exercise of professional functions, the rights and obligations of a medical worker, as well as restrictions imposed on him, are contained in a special regulatory act – Federal Law No. 323-FZ of November 21, 2011 "On the basics of protecting the health of citizens in the Russian Federation" [8].

Regulation of the work of medical workers in Russia is carried out primarily by the Labor Code of the Russian Federation, Law No. Z23-F3, laws of the subjects of the Russian Federation, as well as a significant number of subordinate regulations detailing the provisions of laws [9].

The relevance of the features of the legal regulation of the work of medical workers is connected not only with the shortcomings of its legal regulation, but also with the specifics of their work aimed at preserving the health of citizens [10].

The legal status of a medical worker is his legal position in relations related to professional activity, regulated by the norms of law. The components of the legal status of a medical worker are legal personality and his real rights and obligations. Legal personality includes two main structural elements: special (professional) legal capacity and the ability to independently exercise rights and obligations (legal capacity) [11].

Speaking about the regulation of medical activity, it is necessary to understand the very specifics of this type of activity and its components. The healthcare sector is a broad area of legal relations that requires legal regulation. The regulation of medical activity is carried out using the mechanism of legal regulation, which includes the norms of law, acts of application of law, acts of realization of rights and obligations [12].

The events of the last two years, primarily the pandemic of coronavirus infection with its wave-like course, have clearly marked the role of the medical worker not only as a socially significant figure, but also as a factor

ensuring the progressive socio-economic development of society [13].

The specific of the legal status of medical workers is explained by the fact that regulation is based not only on general labor law norms, but also on special regulations affecting various features of their activities. The basis of the legislative regulation of the work of medical workers is the generally recognized principles and norms of international law, as well as the norms of national legislation [14].

The legal regulation of this sphere should not carry a punitive function, it should create such conditions as to prevent new offenses, and not create difficulties in the implementation of medical care. In addition, it is necessary to acquaint employees of medical institutions with the main regulatory legal acts that directly supervise their field of activity, so that they are familiar with the basic rules and understand that all their actions are carried out within the framework of the law. Often, employees are guided mainly only by internal regulations of the hospital, such as orders and charters, and specific familiarization with laws and other by-laws recedes into the background, although in this case they are of prevailing importance [15].

Some features of the regulation of working conditions of medical workers are fixed in Article 350 of the Labor Code of the Russian Federation [16].

In the legal status of pharmaceutical and other workers in the sphere of circulation of medicines for medical use, the following components can be distinguished: 1) a general status based on a concluded employment contract and representing a system of common rights, duties and responsibilities provided for by labor legislation and other regulatory legal acts containing labor law norms; 2) a special status due to the specifics of the position and (or) specialty, level of education, qualifications [17].

One of the subjects of labor relations in the field of medical activity is a medical worker [18].

Meanwhile, the high status of doctors and other medical personnel, the presence of undeniable specifics in their working conditions, a significant amount of attention, as well as the social significance of their activities cannot but testify in favor of the fact that there are all the necessary grounds for systematization of labor standards for medical workers within a separate section in the legislation [19].

Health is the main value for any person; therefore its protection seems to be the main task of the modern legal and social state [20].

In general, the mechanism of international legal cooperation in this aspect is a complex legal education, in which we distinguish two components: institutional (organizational and structural) and legal (legal) [21].

The social policy proclaimed in the Amsterdam Declaration is based on a multi-stage strategy, including the adoption of legislative and by-laws defining the rights and obligations of patients, medical workers and healthcare institutions [22].

The appearance of new provisions in the legal material of a regulatory nature regulating the activities of medical and pharmaceutical organizations is a natural consequence of the current stage of improving science and industry in the medical and pharmaceutical sector [23].



Socio-economic transformations show that healthcare is not just a social sphere, but a life support system, which must be considered as an important factor in the national security of the country [24].

Medical activity is a specific form of professional activity in which deviation from norms and regulations, with the exception of certain extraordinary cases, is unacceptable due to an extremely complex object and regulated legal relations - human life. Therefore, it is in the interests of any state to outline the circle of legal relations in the designated area in a normative and detailed way [25].

One of the main goals of labor legislation is to create favorable working conditions and protect the rights and interests of employees and employers. Currently, there are a diverse number of professions, each of which has a uniqueness in connection with the implementation of a certain labor function, its performance in certain conditions, as well as due to the professional qualities that a particular employee should possess [26].

It is concluded that the adoption of the Labor Code necessitates a more accurate study of the problems that arise in the process of applying the rules of law governing

### Conclusions

The analysis of the legislation of the above-mentioned countries shows that a high degree of differentiation is a characteristic feature of the legal regulation of the work of persons engaged in medical and pharmaceutical activities. At the same time, the availability of the necessary legal regulation of regulatory support does not depend on the presence or absence of relevant acts. The norms of codes and laws, as a rule, are partial in terms of determining the legal status of medical workers and persons who otherwise carry out medical activities. The established rules are more often general in nature, while norms prevail, which indicates the existence of a broad system of special laws and regulations. Conclusions are drawn about the revision of the paramount need to improve approaches from the point of view of legal regulation of the work of medical workers as a category of persons whose activities are of

the specifics of the work of employees of certain categories (for example, labor relations with persons with disabilities, still imperfect due to the youth of the branch of labor law itself), conflict of laws issues, contradictions in a huge array legal documents in the field of not only labor law, but also other branches [27].

Fundamental rights and freedoms is a concept widely used in the constitutional lexicon and means those human and civil rights and freedoms that are enshrined in the Constitution of the state. These rights and freedoms are the most important, fundamental for the status of an individual in a given state and society, they determine the content of other rights and freedoms of citizens [28].

Healthcare is one of the priorities of the state's social policy in modern countries, since the health of the nation is of independent value and acts as an important component of the country's overall potential [29].

Life and health have always been and are the most important values of every person and citizen, the neglect of which leads to irreversible consequences. The right to health is a social right, the loss of which detracts from the importance of many other benefits and values [30].

particular importance to society. The legislation regulating relations in the field of healthcare is defined by a number of legal defects, including: flaws in the conceptual system, inconsistency, repeatability and inconsistency of norms, the existence of a huge volume of by-laws, which complicates, and in some cases makes it impossible to achieve the effectiveness of legal regulation. Increasing the level of this kind of regulation in this area will improve the quality of solving issues, in particular, related to the improvement of the conceptual apparatus by introducing missing terms into special legislation that will cover all categories of entities engaged in such activities for the provision of medical care and medical services; fixing the definition of "medical worker"; the introduction of norms establishing the specifics of the legal regulation of the work of medical workers; systematization of legislation in the field of healthcare.

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## Медицина және фармацевтика қызметкерлерінің еңбегін құқықтық реттеудің ерекшеліктері және олардың еңбегін саралау

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### Түйіндеме

Денсаулық сақтау жүйесіндегі медицина және фармацевтика қызметкерлерінің халықтың өмірі мен денсаулығына құқығын қамтамасыз етудегі рөлін ескере отырып, осы жарияланымның мақсаты медицина және фармацевтика қызметкерлерінің еңбегін құқықтық реттеудің және олардың еңбегін саралаудың ерекшеліктері мен проблемаларын, аталған субъектілердің мәртебесін белгілеу және ашу, оларды шешудің тәсілдерін баяндау болып табылады.

Мақалада медициналық және фармацевтикалық қызметті жүзеге асыру жөніндегі қатынастардың субъектілері ретінде медицина және фармацевтика қызметкерлерінің еңбегін құқықтық реттеудің ерекшеліктері мен проблемалары ашылады. Денсаулық сақтау саласындағы заңнаманың ұғымдық аппаратының ерекшеліктері мен проблемаларына, атап айтқанда "медицина қызметкері" және "фармацевтика қызметкері" санаттарына ерекше назар аударылады. Авторлар медициналық және фармацевтикалық қызметкерлердің еңбегін құқықтық реттеу әр түрлі құқықтық күш, жалпы және арнайы сипаттағы бірқатар нормативтік құқықтық актілермен жүзеге асырылады, яғни еңбек қатынастарын құқықтық реттеудің бірлігі мен саралануы принциптеріне негізделген. Сонымен бірге, екінші жағынан, көптеген құқықтық нормалардың болуы құқықтық реттеудің тиімді болуына мүмкіндік бермейді, бұл оның ақауларының пайда болуына ықпал етеді: қайталану, қақтығыстар және т.б.

Сондай-ақ, мақалада шетелдік заңнама мен құқықтық мәртебені реттейтін және реттейтін халықаралық тәжірибе, медицина және фармацевтика қызметкерлерінің қызметі талданады. Денсаулық сақтау саласындағы заңнаманы жүйелеу және медициналық және фармацевтикалық қызметкерлер мен өзге де негіздерде медициналық және фармацевтикалық қызметті жүзеге асыратын адамдардың еңбегін құқықтық реттеуді оңтайландыру мәселелері қаралады.

Түйін сөздер: медицина және фармацевтика қызметкері, медицина және фармацевтика қызметкерінің құқықтық мәртебесі, денсаулық сақтау саласындағы қатынастарды реттейтін заңнама.

## Особенности правового регулирования труда медицинских фармацевтических работников и дифференциация их труда

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### Резюме

Учитывая роль медицинских и фармацевтических работников в системе здравоохранения в обеспечении права населения на жизнь и здоровье целью данной публикации являются постановка и раскрытие особенностей и проблем правового регулирования труда медицинских и фармацевтических работников и дифференциации их труда, статуса указанных субъектов, изложение подходов к их разрешению.

В статье раскрываются особенности и проблемы правового регулирования труда медицинских и фармацевтических работников как субъектов отношений по осуществлению медицинской и фармацевтической деятельности. Акцентируется внимание на особенностях и проблемах понятийного аппарата законодательства в сфере здравоохранения, в частности категорий «медицинский работник» и «фармацевтический работник». Авторы утверждают, что правовое регулирование труда медицинских и фармацевтических работников осуществляется целым рядом нормативно-правовых актов различной юридической силы, общего и специального характера, то есть построенного на основе принципа единства и дифференциации правового регулирования трудовых отношений. В то же время, с другой стороны, наличие множества правовых норм не позволяет правовому регулированию быть эффективным, что способствует возникновению его дефектов: дублирования, коллизий и проч.

В статье анализируется иностранное законодательство и международный опыт, регламентирующие и регулирующие правовой статус, а также деятельность медицинских и фармацевтических работников. Рассматриваются вопросы систематизации законодательства в сфере здравоохранения и оптимизации правового регулирования труда медицинских и фармацевтических работников и лиц, которые на иных основаниях осуществляют медицинскую и фармацевтическую деятельность.

Ключевые слова: медицинский и фармацевтический работник; правовой статус медицинского и фармацевтического работника, законодательство, регулирующие отношения в сфере здравоохранения.