(характер и условия последующей работы не позволяют заключить трудовой договор на неопределенный срок), а также в случаях субъективного характера, когда срок трудового договора согласовывается сторонами и зависит от их волеизъявления (интересы работника и основания, предусмотренные законодательными актами). Ошибочной признается позиция Верховного Суда Украины, который отождествляет понятие «интерес» и «желание» работника. Подчеркивается, что заключение срочного трудового договора предусматривает ряд невыгодных последствий для работника. В связи с этим определяются сферы необходимого и возможного заключения срочного трудового договора. Для обеспечения трудовых прав работников предлагается на законодательном уровне одновременно с установлением возможности заключать срочный трудовой договор определять конкретную продолжительность трудовых отношений. Обращается внимание и на необходимость приведения национального законодательства в соответствие с требованиями международных норм, которые предусматривают, что трудовые отношения с работниками не прекращаются, если только нет законных оснований для такого прекращения, связанного со способностями или поведением работника или вызванного производственной необходимостью.

Ключевые слова: право на труд, трудовой договор, срок трудового договора, виды срочных трудовых договоров.

Yakushev I. Utilization of the Right to Work under a Fixed-Term Employment Contract. The article is devoted to the analysis of the grounds for concluding and termination of the fixed-term employment contracts. The study has revealed that a fixed-term employment contract is concluded in the cases that are caused by the objective circumstances (the character and conditions of the future work do not allow to conclude an employment contract for an indefinite period), and in cases of subjective nature, when the term of the employment contract is agreed by the parties and depends on their will (interests of the employee or cases provided by legislative acts). The position of the Supreme Court of Ukraine is defined as untenable, since it equals the concepts of «interest» and «desire» of the employee, since a fixed-term employment contract may involve a number of disadvantages for the employee. In this regard, the scope of the necessary and possible situations for concluding a fixed-term employment contract have been determined. To ensure labor rights of the employee at the legislative level the author suggests to specify in the contract the length of time the employee agrees to work for the company, e.i to determine clearly the duration of a fixed-term employment contract. The emphasis is laid on the necessity to bring national legislation in line with the requirements of the international norms which specify that labor relations with employees shall not be terminated unless there are legal grounds for such termination related to the abilities or behavior of an employee or it is caused by current HR employment opportunities of the company.

Key words: the right to work, the employment contract, the term of the employment contract, types of fixed-term employment contracts

УДК 347.44

Z. Samchuk-Kolodiazhna

On the Issue of the Medical Services Contract Provision

In Ukraine neither during the existence of the Soviet state, nor during the years of independence there were no complex specialized studies on the regulation of relations in the sphere of health care, medical assistance, and even more on concluding a medical services contract. An analysis of current legislation, law enforcement practice, as well as scientific research suggests that there are many gaps in the regulation of relations related to the ensuring of the right on medical care provision and the relationships in the patient – doctor system require a more detailed legal definition.

Key words: health care, medical aid, medical service, medical institutions, doctor, patient (consumer), medication error, contract.

Scientific Research Objective. The existing norms in the legislation of Ukraine do not reflect both the specificity and complexity of the relations that arise between a doctor and a patient in concluding a

contract on the provision of medical services. Regulatory legal acts regulating the provision of medical care are in some cases not consistent and coordinated but more controversial. It should be noted that both in civil law science and in the legal literature of Ukraine there was no comprehensive study of legal relations on the provision of medical care, but only certain legal issues related to the subject of the study were analyzed in the works of domestic and foreign scholars.

Formulation of the purpose and objectives of the study is to identify the essence, key features and legal nature of medical services on the basis of a comprehensive analysis of legal relationships that arise in the provision of medical care between the medical institution (doctor) and the individual (patient) in the process of treatment, as well as the study of the subjects status in these relations and elements of the contract on the provision of medical services, the definitng of deficiencies in the regulation of these contracts.

Statement of Basic Materials. The Constitution of Ukraine (Article 3) declares that life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value, and the rights, freedoms of people and citizens are guaranteed in accordance with generally accepted principles and norms of international law. One of the most important human rights is the right on health care and medical care which is enshrined in Art. 49 of the Ukraine Constitution. Everyone has the right on health care and medical care, which is provided free of charge to citizens in state and municipal health care institutions [3].

The Law of Ukraine «The Fundamentals of the Ukrainian Legislation on Health Care» stipulates that the health care system is a system of measures carried out by organs of the state power and organs of municipal self-government, the officials, health care institutions, medical and pharmaceutical workers and citizens with the aim of preserving and removing the physiological and psychological functions, the optimal working capacity and the co-operative activity of a person with a maximal biologic, mildly independent individual life expectancy [4].

As Article 5 of the Law states health care is a general obligation of the nation and the state. The State, public and other bodies, institutions, organs, organizations as well as officials and citizens should provide precedence of medical care in their own activity but not cause harm to health of people and individuals within the frameworks of their competence, provide medical aid to patients, invalids and accident victims, to help the workers of the health organs and institutions in their activity as well as to fulfill other obligations provided by the Constitution and the Law on health care [4].

«Health protection» is a concept of the broader spectrum than «medical aid», as well as «health protection» is regarded to be generic term related to the specific concept «medical aid» and «medical service». The medical aid is provided in a case of health loss when presence or otherwise of health don't prevent the elimination of all the other measures that comprise the health care notion. Thus medical care is one of the nonstudents of health care and is the best ways to protect your health.

The state recognizes the right of every Ukrainian citizen on health care and ensures his protection. Legally stipulated (Article 8 of the Law), that every citizen has the right to receive free of charge medical aid provided by the state and community health care institutions and that the state guarantees the provision of such assistance free of charge [4].

Provision of medical care is a complex system reflecting citizens' rights provided by the constitution. It deals with the rights of the patients on providing the qualified medical aid, as well as the rights of the doctors who provide such assistance. The patient who is free legally bound with medical institution is a subset of certain rights too. At the same time, the medical institution legally represented by the doctor is practicing in these legal relations not only as duties bearer but as a certain rights owner.

The general characterization of legal relationships in medical sphere in the broader sense is based on the definition of the legal bond between the medical institution and the patient seeking medical attention.

Civil law relations in the field of health care activities are oriented on contractual relations on a paid basis, since free medical care actually comes down to the professional consultation of a specialist doctor.

Medical activity is a set of measures of political, economic, legal, social, cultural, medical, sanitary, hygienic, anti-epidemic and scientific nature aimed at preserving and strengthening the physical and mental health of each person, supporting her active long life, including in the concept of «medical aid» and «medical service».

Medical care is a set of special, scientifically grounded measures that are used by medical professionals, and in other cases provided by law, by activity of the representatives of other professions aimed at helping a sick or injured person in order to overcome the negative consequences of illnesses, injuries, poisonings or other difficult conditions or health disorders. Medical care as a vocational and moral category is an integral part of any medical service.

In addition, the medical care is to provide qualified medical activity by the medical personnel in prevention, diagnose, treatment and rehabilitation in a case of minors, injuries, poisoning and pathological states as well as pregnancy and childbirth [4].

Medical service is an activity of the health care institutions as well as individuals-entrepreneurs registered and granted a license in the accordance with the established legal procedure in the field of health care and who are not restricted to provide only medical aid.

In the changed social and economic conditions the legal novation appeared such as a service, and a notion «medical aid» was substituted by the term «medical service». And what is more the subtle substitution of notions took place. However, sense the doctor invests in his activity remains the same – professional action on person's benefit seeking medical assistance, it means that individuals are seeking medical aid. Economic relations are beyond the relations doctor-patient even under the circumstances when the patient pays for medical services. Medical service is an economic legal category. Medical aid is vocational and moral category.

Medical service is a professional activity of medical institutions (organizations) or private individuals engaged in private medical practice in accordance with existing medical standards, which includes the application of special measures on health in the form of medical intervention, the potential result of which is the improvement of the general condition or the functioning of individual organs or systems of the human body, and (or) the achievement of certain aesthetic changes in appearance. Medical services are related to intangible, non-guaranteed services. The main purpose of the medical service is to improve or maintain the health of a person or to achieve certain aesthetic changes in the appearance of the patient.

The service as an economic and legal category is governed by the market rules. The market situation makes it changeable. The medical care has a permanent basis, non-obtained by market order or the principles of authority; it only covers the rules of medicine and the moral established in the society.

Medical service is an economic and legal regulation of medical care. Medical service is a means of economic activity in the field of health care. Thus the purpose of the medical care provision is health, and its means is a service. Medical service is an object of an economic activity. Health is not an object of such activity.

In accordance with Article 901 of the Civil Code of Ukraine service is the commission of certain actions or the abolition of certain activity.

Paragraph 1 of the Article 633 of the Civil Code of Ukraine provides an approximate list of the service types such: «communication, medical, hotel, banking services». In the meantime for the abovementioned one can see two groups of services: services aimed at intellectual actions and services aimed at physical actions. It should be noted that these actions (acts), even physical ones, are not called by the law as the work. Any regulation of the Civil Code of Ukraine does not link the legal category service to the «result» [9].

The service should cause such a beneficial effect that is possible only within the boundaries of the effective use of the service in ordinary circumstances, which in practice effectively captures the effect of the service by the foresight in the past of a number of other possible effects.

It should be noted that not the activity in a case of health care area is under the protection of law but the health is a legal norm prescribed by law [4].

When speaking about the beauty, its owner is in the contractual arrangements with the certain individuals or a group of individuals. In these cases, there are certain and / or ancillary claims (from disapproval of the loan) to the owner of the health.

It should be noted that the possibility to inflict harm causes special relationships in the sphere of health care and medical aid provision. In contrast to other services dealing only with the money purchasing risks medical services involve also physical risks.

The essence of medical service as well as of other types of service is action. However, in contrast to other services, the essence of a medical service is a combination of practical activities. Special activity in case of health care is a service of a medical nature. This characteristic also makes it possible to isolate medical service from a set of all services given to the citizens in the arena of health care. This is an important topic because other legal issues come from medical service more often than from other services. Medicine deals with the human health, to support, to relieve and to strengthen it, and to make it work in a special way. The organism of human being as a subject of medical influence and as an object of medical activity clearly distinguishes a medical service from a number of other professional services.

In addition, within the framework of one medical specialty, the certain medical services are provided with various sizes and volume. On the contrary, various specialists may provide similar medical services. Defining of the medical service as activity of a certain medical field doesn't have any legal results since these

results are the consequences of the certain medical service possessing special essence and a certain set of constituents of the actions but not as a result of such service performer specialization [1, p. 25].

Thus the medical service is an action of the medical nature (medical care). Medical care is a content of a medical service. The medical care provides service with a medical content.

Medical services are provided on a contractual basis, which is mediated free of charge (in the case of medical assistance by state medical institutions) and reimbursement contracts. The law-maker hasn't fixed their definition or called them, but their content is established both in the Law of Ukraine «Fundamentals of the Legislation of Ukraine on Health Care» and in a number of special regulations on health care [4; 5].

It is noted in the legal literature in the legal literature that the provision of medical services should take into account those servicers not reaching that level and significance that enable regarding them special contractual types through their distinguishing characteristics and properties. Also the practical significance of medical services is so great that the lack of their significance and the inadequacy of the development as a precursor to the law, leads to the violation of rights and interests of medical services participants [2, p. 25].

Medical services as the basis for the emergence of contractual relations are predicted by the Law «On Consumer Protection» [6].

By legal nature the contract for the provision of medical services is bilateral (reciprocal), consensual or real in the case of emergency medical care, free of charge (when providing medical care by a public health care institution) or payable, public.

Parties: a patient (consumer) and a healthcare institution or a practicing healthcare worker as an entrepreneur.

A healthcare institution providing a medical service is obliged to provide appropriate medical treatment in time and a quality manner in accordance with the contract provisions, which are not legally defined, but which derive from the analysis of regulatory acts regulating such activities [5]. In the activity aimed at the provision of medical services the following methods are applied such as prevention, diagnostics, medical treatment, medical technologies, medicinal products, immune-biological remedies and disinfectants used in accordance with the established legal procedure. The healthcare institutions should provide the patient with the information pertaining the information about the place of the given healthcare services, working time pattern, a list of medical charged services mentioning the cost, about the conditions of providing and getting these services as well as information on certification and qualification of specialists in accordance with the established order, to perform taken obligations on providing medical services by efforts of own medical specialists and / or other medical staff having contractual relations with the medical establishments, to provide the patient with the opportunity to get acquainted with the medical documentation reflecting the medical condition and to give at the written request of the patient or either his representative copies of medical documents displaying the state of his health [4].

The patient rights and obligations are the following:

The patient has the right to receive the available information about the health condition, including the results of the examination, the health problem, the diagnosis and expected response to treatment, the method of treatment, the possible risks, the methods of medical intervention, their indications and the results of the treatment. Information registered in the patient's medical records may contain medical secrecy and can be given without the consent of the patient only on the grounds provided for in the provision of paid medical services contract [4].

Patient is obliged to fulfill the provisions of the medical services contract properly and to inform healthcare establishment in time about any prerequisites and conditions preventing the patient from the fulfillment of the contract provisions including information on canceling or change of the appointed time to receive medical service.

Medical establishment is bound to keep secret information about the fact of the patient's request for the medical assistance, his / her health condition, the diagnosis of his / her health problem as well as other information received in a case of his / her examination and treatment (medical secrecy).

The provision of the information related to the medical secrecy without the consent of the patient or either in the presence of his / her representative is able to be taken with the purpose of the patient's examination and treatment when he / she is unable to express his / her consent because of the health problem and in other cases provided for by the law of Ukraine [4].

In case of failure to provide or improper provision of medical services (assistance), the guilty party to the contract is liable for civil liability in the form of compensation for damages, payment of civil penalties and compensation (compensation) for non-pecuniary damage. Civil liability is the most appropriate means of legal response to offenses in the medical sector. When a criminal or administrative offense is committed, the medical officer has criminal or administrative liability in accordance with the law.

The grounds for exemption from civil liability for violations in the provision of medical services are the intention of the patient, force majeure, irresistible force and so-called, «medical error» [7, p. 54].

Conclusions. Thus, provision of free medical services is guaranteed by the Constitution of Ukraine and assigned in a number of legislative acts as well as the medical services provided on a paid basis by any medical institution are specifically defined and in case of refusal or inadequate provision the legislator has provided both civil law and criminal, administrative and disciplinary liability.

The law draft on medical reform adopted by the Verkhovna Rada of Ukraine is intended to improve the legal regulation on the provision of medical services both on a commercial and free basis, and to improve the health protection of Ukrainian citizens, which is guaranteed by the main Law of the state, which will become the further subject of the study.

Sources and Literature

1. Drozdova M.E. Nadannja platnix medichnix poslug naselennju. Oblik ta opodatkuvannja / M.E. Drozdova // Glavbuh. – 1999. – №6. – S. 25-29.
2. Konvencija pro zahyst prav ta gidnosti ljudini u zv'jazku z vikoristannjam dosjagnen' biologii ta medicini: Konvencija pro prava ljudini ta biomedicinu (Ov'jedo, 4 kvitnja 1997 roku, № ETS/164) [Elektronnyj resurs]. – Rezhym dostupu: http://akon4.rada.gov.ua/laws/show/994_443.
3. Constitution of Ukraine // Vidomosti Verhovnoi Rady Ukraini. – 1996. – №30. – St. 141.
4. Osnovi zakonodavstva Ukrainy pro ohoronu zdorov'ja: Zakon Ukrainy vid 19.11.1992 r.// Vidomosti Verhovnoi Rady Ukrainy. – 1993. – №4. – St. 19-20.
5. Pro zatverdzhennja pereliku platnix poslug, jaki nadajut'sja v derzhavnyh zakladah ohoroni zdorov'ja ta vyshchyx zakladah medichnoji osvity: Postanova Kabinetu Ministriv Ukrainy vid 17 veresnja 1996 r. №1138. [Elektronnyj resurs]. – Rezhym dostupu: http://zakon.nau.ua/doc/?code=970EF.
6. Pro zahyst prav spozhivachiv: Zakon Ukrainy vid 15.12.1993 r. // Vidomosti Verhovnoi Rady Ukrainy. – 1994. – №1. – St. 1.
7. Stecenko S.G. Likars'ki pomylki i neshchasni vypadki v praktyci robit ustanov ohoroni zdorov'ja: pravovi aspekty /S.G. Stecenko // Jurist. – 2004. – №2. – S. 54-59.
8. Cyvil'nyj kodeks Ukrainy vid 16 sichnja 2003 // Vidomosti Verxovnoi Rady Ukrainy. – 2003. – № 40-44. – St. 356.

Самчук-Колодяжна З. Питання договору надання медичних послуг. В Україні а ні за часів існування радянської держави, а ні за роки незалежності не було здійснено ніяких комплексних спеціальних досліджень з питань регулювання відносин, які виникають в сфері охорони здоров'я, наданні медичної допомоги, а тим більше при укладенні договору про надання медичної послуги. Існуючі в законодавстві України норми не відображають специфічності, комплексності відносин, що виникають між лікарем і пацієнтом при укладенні договору на надання медичної послуги, а нормативно-правові акти, які регулюють відносини по наданню медичної допомоги, у ряді випадків не є послідовними, узгодженими, а більш суперечливими. Аналіз чинного законодавства, правозастосовної практики, наукових досліджень свідчить про те, що існує чимало прогалин в регулюванні відносин, пов'язаних із забезпеченням права на надання медичної допомоги, а відносини в системі лікар–пацієнт потребують більш детального юридичного визначення.

Ключові слова: охорона здоров'я, медична допомога, медична послуга, медичні заклади, лікар, пацієнт (споживач), лікарська помилка, договір.

Самчук-Колодяжная З. Вопросы договора оказания медицинских услуг. В Украине ни во времена существования советского государства, ни за годы независимости не было осуществлено никаких комплексных специальных исследований по вопросам регулирования отношений, возникающих в сфере здравоохранения, оказании медицинской помощи, а тем более при заключении договора о предоставлении медицинской услуги. Анализ действующего законодательства, правоприменительной практики, научных исследований свидетельствует о том, что существует немало пробелов в регулировании отношений, связанных с обеспечением права на оказание медицинской помощи, а отношения в системе врач-пациент требуют более детального юридического определения.

Ключевые слова: здравоохранение, медицинская помощь, медицинская услуга, медицинские учреждения, врач, пациент (потребитель), врачебная ошибка, договор.