

своїх прав і свобод. Забороняється будь-яким чином впливати на особу при виборі нею захисника та перешкоджати захиснику в його діяльності з надання юридичної допомоги".

**Ключові слова:** конституція, допомога, професійна правнича допомога, право на професійну правничу допомогу, безплатність.

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### **ADMINISTRATIVE AND LEGAL STATUS OF GENERAL PRACTICE – FAMILY MEDICINE**

**Abstract.** The article is devoted to the disclosure of the problem of administrative and legal status of a general practitioner - a family doctor. Emphasis is placed on the importance of clearly defining the legal personality of the family doctor in view of reforming the health care system and overcoming the negative consequences of counteracting the COVID-19 pandemic.

Disclosure of administrative and legal status was carried out through the generally accepted categories of "legal status" enshrined in legal science. It is stated that there is no codification of legal norms in this area. This problem is emphasized against the background of the rapid response of the primary level to the threats of outbreaks of epidemics and pandemics.

**Keywords :** *legal status, medical worker, general practitioner, health care, family doctor.*

**Relevance of the study.** The restructuring of the health care system from a budget-organized to an insurance model has contributed to the emergence of a new form of relationship between patients and doctors. This transition contributed to the formation of a new form of medical care and the emergence of the institution of general practitioner - family medicine (hereinafter - family doctor). The creation of the new institute caused a number of organizational and legal problems related to the organization of the family doctor's work, financing of his activity, definition of the range of powers and stimulation of activity in the direction of his constant improvement of his qualification.

Unfortunately, it has to be stated that the existing legal regulation of a family doctor in Ukraine does not correspond to the level of development of public relations in the field of health care. Insufficiently taken into account specific aspects of activities that affect the quality of the treatment process, there are a number of problems with ensuring the rights and freedoms of the doctor, defending his rights and creating appropriate conditions for self-realization of a qualified specialist and counteracting the spread of COVID-19 [1].

**Recent publications review.** The problems of the formation of medical law were devoted to the work of S. Stetsenko, who is the founder of domestic medical law, V. Stetsenko actively worked on the issue of insurance medicine as another round of reform of the medical system. B. Logvinenko actively researched the legal regulation of departmental medicine. The work of O. Skochylias-Pavliv was dedicated to the legal status of a medical worker. However, it is necessary to state the absence of a single systematic approach to determining the priority of research on medical law in general, and the lack of work on the disclosure of the administrative and legal status of a general practitioner - family medicine.

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**The article's objective.** The active implementation of health care reform has caused a certain imbalance in the legal field of regulation of relations in the field of health care and a certain resistance of certain members of society. This issue is becoming increasingly important in combating the spread of COVID-19.

Given the above, it is necessary to state the urgent need to develop a perfect mechanism for regulating the legal status of a family doctor, the main areas of which will be: stimulating the professional growth of a family doctor, improving self-education; ensuring the professional rights and legitimate interests of the family doctor; determining the place of the family doctor in the health care system, etc.

**Discussion.** Disclosure of the administrative and legal status of a general practitioner - family medicine can not be fully disclosed without analyzing the concept of "legal status" as a subject of primary care. Legal science and practice understand the concept of "legal status" as a set of subjective legal rights and responsibilities, guarantees of rights and responsibilities.

At the same time, the legal status of a specific individual can be considered as the sum of general, special, individual statuses, the ratio of which varies depending on specific situations [2, p. 92]. At the general level, the legal status of a person and a citizen is enshrined in Section II of the Constitution of Ukraine. The norms defined in the Basic Law are general and universal for all people, regardless of their affiliation with certain religious or political groups, race, nationalities or other discriminatory characteristics. They are characterized by stability, are fundamental and fundamental for the definition of human rights.

Thus, the legal status of a person and a citizen is based on the following principles: inalienability and inviolability; equality of rights and freedoms; unity of human and civil rights and responsibilities; guaranteeing human and civil rights and freedoms. The constitutional status of a person and a citizen is the basis for the acquisition of certain subjective rights, the imposition of duties and responsibilities. At the same time, individual - the status of a particular person, associated with his personal qualities, abilities and physical characteristics (gender, age, marital status, health status, etc.) [3, p. 59-60].

In contrast, the administrative and legal status is inherent in persons - participants in public relations. This type of legal status reveals a person's affiliation to a specific type of activity and reveals his specific functional activity (student, pensioner, serviceman, disabled person, official, etc.). It is characterized by the presence of specific rights and responsibilities. As an optional feature - the qualification requirements provided at the legislative level for the possibility of engaging in a certain type of activity and / or holding a relevant position. Also, these persons are characterized by the provision of additional and special rights and obligations in accordance with laws and other regulations.

The relationship between the individual and the state or other persons, recorded in legal form (rights, freedoms and responsibilities), constitute the legal status of the person, reflecting the characteristics of socio-cultural society, democratic relations and legality. From the Latin language "status" means "position" [4, p. 545]. Administrative and legal status as one of the types of legal status is interpreted by scholars as a system of rights and responsibilities that are assigned to the relevant subjects of administrative law; the rights and obligations of a person established by law, together with the scope and nature of the legal personality of this person; a set of rights and responsibilities established by legislative acts that guarantee the participation of citizens in the management of public affairs, the satisfaction of personal and public interests; a set of human rights and freedoms enshrined in the rules of administrative law, a set of responsibilities, guarantees of realization of rights and responsibilities and a mechanism for their protection by the state [5, p. 194; 6, p. 272; 7, p. 58].

Based on the above, it is appropriate to state the fact that medical workers have a characteristic special status, which specifies the general at the level of a particular group. Moreover, such legal status of medical workers is regulated in Ukraine by current laws and bylaws (statutes, regulations, etc.) to the extent necessary to perform the tasks assigned to them. Given the above, it is possible to identify the following structural elements of the administrative and legal status of the subject, in particular, medical workers. First, these are subjective rights and legal obligations; secondly - the scope and nature of legal personality (legal capacity and legal capacity); thirdly - administrative, in some cases - disciplinary, responsibility; fourth - special qualification requirements for the relevant position (education, experience, work experience in the specialty).

The relevant Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care" of November 19, 1992 stipulates that medical care (emergency, primary, secondary

(specialized), tertiary (highly specialized), palliative, medical rehabilitation) is provided accordingly. to medical indications by professionally trained medical personnel who are in employment with health care institutions that provide medical care in accordance with the license obtained in the manner prescribed by law, as well as natural persons-entrepreneurs who are registered and licensed in accordance with the law . In turn, in Art. 74 of the Fundamentals of Health Care Legislation clarifies that, in particular, only those persons may engage in medical and pharmaceutical activities.

At present, there is no single approach to defining the concept of "legal status" among scholars. The definitions submitted for consideration differ significantly in terms of accentuation and the desire to characterize a particular area of activity. In view of O. Zaychuk and N. Onishchenko, under the legal status suggest to understand the system of rights, freedoms and [9, p. 366].

In turn, Yu. Shemshushenko understands the legal status of the set of rights and responsibilities of individuals and legal entities, it does not disclose the features of its legal responsibility and the procedure for bringing such [10]. Influential researcher on this issue O. Skakun under the legal status suggests to understand a clear legal consolidation of the legal status of a person in society, according to which the subject of legal relations coordinates and implements its behavior [11, p. 57].

In his works V. Dovbysh defends the position according to which, on the basis of the current concept, under the legal status, it discloses the set of rights, freedoms and responsibilities of a person that has its legal basis. In addition, it divides the rights into subjective (the ability to independently choose their behavior within the legal field) and objective (enshrined in specific rules of law) [12].

Researcher O. Markov proposes to supplement the generally accepted rights and responsibilities in the legal status with optional elements: norms of morality and social norms that determine the privileged position of a person in society [13, p. 306].

At the same time, the current legislation, unfortunately, does not contain a clear concept of this category of "medical worker". In specialized regulations: the Law of Ukraine "Fundamentals of the legislation of Ukraine on health care" [8] and the Order of the Ministry of Health "On approval of the Procedure for choosing a doctor who provides primary care and forms of declaration on the choice of doctor providing primary care" from March 19, 2018 № 503 [17], the legislator appeals to such concepts as: "family doctor", "attending physician", "doctor of other specialties", etc.

Given the lack of pluralism of approaches to the general definition of the category "legal status", it is logical to conclude the lack of a centralized approach to the definitions of "legal status of a doctor" and "administrative and legal status of a family doctor".

Directly, an attempt to consolidate the legal status of a family doctor was made in the Order of the Ministry of Health of Ukraine "On approval of certain documents on family medicine" from 23.02.2001 № 72 [14].

An important novelty of this normative act is the consolidation in Annex 1 of the tasks of a general practitioner, which include: ensuring the provision of qualified primary treatment and prevention care to the population; implementation of medical care is carried out in the amount of qualification characteristics of a doctor in the specialty "general practice - family medicine"; this qualified care is provided in outpatient clinics and at home.

An important element of providing medical care by a family doctor is its provision on a family-territorial basis. A family doctor can be a person who graduated from the medical or pediatric faculty of the higher medical educational institution of III-IV levels of accreditation or the medical faculty of the university, passed the primary specialization in the higher medical educational institution of postgraduate education and specializes in "general practice-family medicine". specialist in this specialty. Thus, we can distinguish the following qualification requirements: 1) availability of higher medical education; 2) direction of education, medical business or pediatrics 3) successful completion of appropriate special training in the specialty "general practice-family medicine" and has a certificate of a specialist in this specialty.

A family doctor who works at a health care facility of communal property as a chief physician of a treatment and prevention facility is appointed and dismissed to the position of a family doctor. In his work he is directly subordinated to the head of the department of general practice - family medicine, in his absence - to the chief physician of the outpatient clinic.

According to the current legislation (Appendix 1 to the order of the Ministry of Health of Ukraine dated 23.02.2001 № 72), the family doctor has the following rights: 1) to control

the work of his subordinate secondary and junior medical staff; 2) to submit proposals to management to improve the organization of medical care to the population on the basis of general practice - family medicine; 3) to take part in meetings, scientific and practical conferences, seminars on the issues of providing medical and preventive care on the basis of general practice - family medicine; 4) to conduct business activities in the specialty "general practice - family medicine" [15].

The same normative act enshrines a number of responsibilities. In particular: 1) to provide qualified, including emergency, medical care in the amount of the qualification characteristics of the specialist in the profile; 2) in the cases shown, to provide counseling to patients by the head of the department, doctors of other specialties of the outpatient clinic, by agreement - by specialists of other treatment and prevention facilities; 3) to prepare patients for hospitalization and ensure their timely referral to inpatient treatment - to use in their work modern methods of prevention, diagnosis, treatment and rehabilitation of patients with various diseases; 4) to carry out preventive work aimed at identifying risk factors, early and latent forms of disease; 5) to organize and conduct a set of measures for medical examination of the population of the site (detection, registration, medical and health measures) and monitoring of his health; 6) to carry out sanitary and anti-epidemic work at the polling station; 7) to carry out sanitary-educational work among the population of a site; 8) to carry out examination of temporary incapacity for work of patients, in the presence of indications to direct them to the medical advisory commission; 9) to improve their professional skills systematically; 10) to keep accounting records; 11) to provide counseling to the population of the precinct on medical-social and medical-psychological issues, family planning issues; 12) to organize the provision of medical care to the population in extreme situations.

As we can see from the above, the imbalance between rights and responsibilities towards the emphasis on responsibilities is clearly visible. Despite the fairly regulated legal status of the family doctor, the block of rights looks somewhat limited and insufficiently complete. Yes, the protection of the rights of the family doctor and the procedure for his recovery were not reflected. It would be appropriate to establish a procedure for pre-trial and judicial defense of the rights of a family doctor in conflict with patients.

Despite the regulation of the family doctor's daily routine, and according to paragraph 9 of Annex 2 to this Regulation, the schedule is fixed and approved by the Chief Physician of the treatment and prevention institution, taking into account labor legislation, overtime remains unspecified hours and weekends / holidays), as well as counseling citizens by phone outside working hours. In addition, analyzing the rights and responsibilities of the family doctor, his role in counteracting epidemics and pandemics is not disclosed, which is especially relevant with the burden placed on the doctor during the exacerbation of the viral disease COVID-19.

We support the opinion of V. Bezprozvannoi, on the need to adopt the Law of Ukraine "On the Rights of Medical and Pharmaceutical Workers", which would contain provisions on the principles of activity, status, functions of state control over the rights of medical and pharmaceutical workers, as well as establish a list of legal mechanisms to protect the rights of medical and pharmaceutical workers in Ukraine, specified the interpretation of the concepts "medical error" and "rights of medical workers" [16, p. 117].

**Conclusions.** Despite the rather large array of specialized regulations on the regulation of doctors in general and family doctors in particular, it is necessary to state the lack of codification in this area. This issue is especially relevant against the background of the rapid response of the primary level to the threats of outbreaks of epidemics and pandemics. The very definition of rights, responsibilities and features of defending the rights of doctors will create a proper basis for the mobilization of forces and means to protect the health of citizens.

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

**References**

1. Logvynenko B. O. Problemy normatyvno-pravovogo zabezpechennja protydii' COVID-19 organamy nacional'noi' policii'. [Problems of normative and legal support of counteraction of COVID-19 by national police bodies]. Dniprovskij naukovyj chasopys publichnogo upravlinnja, psihologii', prava. Dnieper Scientific Journal of Public Administration, Psychology, Law. 2020. No. 2. Pp. 48-52. [in Russ.].
2. Skochyljas-Pavliv, O. V. Pravovyj status medychnyh pracivnykiv: problemy administratyvno-pravovogo reguljuvannja. [Legal status of medical workers: problems of administrative and legal regulation]. Pravo i Suspil'stvo - Law and Society. 2019. No. 5. Pp. 92-98 [in Russ.].

3. Skakun O. F. Teorija derzhavy i prava [Theory of state and law]. Kyi'v: Alerta, 2000. [in Russ.].
4. Morozov S. M., Shkaraputa L. M. Slovnyk inshomovnyh sliv [Dictionary of foreign words]. Kyi'v: Naukova dumka, 2000. [in Russ.].
5. Aver'janova V. B. (Eds.) Administratyvne pravo Ukrai'ny. Akademichnyj kurs [Administrative law of Ukraine. Academic course]. (Vols.1-2). Kyi'v : Jurydychna dumka, 2004. [in Russ.].
6. Kivalov S. V., Bila, L. R. Administratyvne pravo Ukrai'ny [Administrative law of Ukraine]. Odesa: Feniks, 2008. [in Russ.].
7. Bytjak Ju. P., Garashhuk V. M., D'jachenko O. V. et.al. Administratyvne pravo Ukrai'ny [Administrative law of Ukraine]. Ju.P. Bytjaka. (Ed.). Kyi'v: Jurinkom Inter, 2004. [in Russ.].
8. Osnovy zakonodavstva Ukrai'ny pro ohoronu zdorov'ja : Zakon Ukrai'ny vid 19 listopada 1992 r. № 2801-XII. [Fundamentals of Ukrainian legislation on health care: Law of Ukraine of November 19, 1992 N 2801-XII]. URL: <http://zakon3.rada.gov.ua/laws/show/2801-12zakon3.rada.gov.ua> [in Ukr.].
9. Zajchuk, O. V., Onishhenko, N. M. Teorija derzhavy i prava. Akademichnyj kurs [Theory of state and law. Academic course]. Kyi'v: Jurinkom Inter, 2008. [in Russ.].
10. Shemshuchenko Ju. S. Jurydychna encyklopedija [Legal encyclopedia]. Ju.S. Shemshuchenko (Ed.) et.al. (Vols. 1-6). Kyi'v: Ukrai'ns'ka encyklopedija, 1998. URL: <http://leksika.com.ua/19980614/legal/>. 5 [in Russ].
11. Skakun O.F. Teorija derzhavy i prava [Theory of state and law]. Kyi'v: Alerta, 2010. [in Russ.].
12. Dovbysh V. A. Pravovyj status vitchyznjanyh policejs'kyh: neobhidnist' vdoskonalennja [Legal status of domestic police: the need for improvement] : XLV nauk.-tehn. konf. pidrozdiliv Vinnyts'kogo nacional'nogo tehnicnogo universytetu (NTKP VNTU–2016) - Proceedings of XLV scientific and technical conf. divisions of Vinnytsia National Technical University (STCU VNTU). URL: <https://conferences.vntu.edu.ua> [in Ukr.].
13. Markova O. O. Zahyst sub'jektyvnyh prav i zakonnyh interesiv pry zastosuvanni form dogovirного reguljuvannja vidnosyn. [Protection of subjective rights and legitimate interests in the application of forms of contractual regulation of relations]. 2013. No. 3. Pp. 340–346. URL: [http://nbuv.gov.ua/UJRN/FP\\_index.htm\\_2013\\_3\\_57](http://nbuv.gov.ua/UJRN/FP_index.htm_2013_3_57). [in Ukr.].
14. Pro zatverdzhennja okremyh dokumentiv z pytan' simejnoi' medycyny. Nakaz Ministerstva ohorony zdorov'ja Ukrai'ny vid 23.02.2001 № 72. [About the statement of separate documents concerning family medicine. Order of the Ministry of Health of Ukraine of 23 February, .2001 N 72]. [in Ukr.].
15. Pro zatverdzhennja okremyh dokumentiv z pytan' simejnoi' medycyny. Nakaz Ministerstva ohorony zdorov'ja Ukrai'ny vid 23.02.2001 № 72 [About the statement of separate documents concerning family medicine. Order of the Ministry of Health of Ukraine of 23 February, 2001 N 72].
16. Bezprozvanna, V.M. Pravo na medychnu dijalt'nist' ta pravovyj status medychnyh organizacij (do problemy derzhavnogo reguljuvannja prav medychnyh pracivnykiv) [The right to medical activity and the legal status of medical organizations (to the problem of state regulation of the rights of medical workers)] Ekonomika ta derzhava - Economy and state. 2010. No. 10. Pp. 116–117. [in Ukr.].
17. Pro zatverdzhennja Porjadku vyboru likarja, jakyj nadaje pervynnu medychnu dopomogu, ta formy deklaracii' pro vybir likarja, jakyj nadaje pervynnu medychnu dopomogu. Nakaz MOZ vid 19 bereznja 2018 roku № 503 [On approval of the Procedure for selection of a doctor who provides primary care and the form of declaration on selection of a doctor who provides primary care. Order of the Ministry of Health of March 19, 2018 N 503]. Retrieved from <https://moz.gov.ua/article/ministry-mandates/nakaz-moz-ukraini-vid-19032018--503-pro-zatverdzhennja-porjadku-viboru-likarja-jakij-nadae-pervinnu-medichnu-dopomogu-ta-formi-deklaracii-pro-vibir-likarja-jakij-nadae-pervinnu-medichnu-dopomogu?preview=1> [in Ukr.].

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**Роман ОПАЦЬКИЙ**  
**АДМІНІСТРАТИВНО-ПРАВОВИЙ СТАТУС ЛІКАРЯ**  
**ЗАГАЛЬНОЇ ПРАКТИКИ - СІМЕЙНОЇ МЕДИЦИНИ**

**Анотація.** Стаття присвячена розкриттю проблеми адміністративно-правового статусу лікаря загальної практики – сімейного лікаря. Акцентовано увагу на важливості чіткого визначення правосуб'єктності сімейного лікаря з огляду на реформування системи охорони здоров'я та подолання негативних наслідків у протидії пандемії COVID-19.

Розкриття адміністративно-правового статусу здійснювалося через загальноприйняті категорії «правовий статус» закріплені в юридичній науці. Під правовим статусом медичного працівника запропоновано розуміти сукупність суб'єктивних юридичних прав та обов'язків, гарантій здійснення прав і обов'язків. Водночас правовий статус конкретної фізичної особи можна розглядати як суму загального, спеціального, індивідуального статусів, співвідношення яких варіює залежно від конкретних ситуацій.

Адміністративно-правовий статус лікаря загальної практики – сімейного лікаря, як різновид правового статусу, доречно розглядати як комплекс суб'єктивних прав і обов'язків, які

закріплено у відповідних адміністративно-правових нормах. Виділено такі структурні елементи адміністративно-правового статусу, зокрема, сімейного лікаря: публічні суб'єктивні права та юридичні обов'язки, обсяг і характер правосуб'єктності (дієздатності та правоздатності), адміністративна, у деяких випадках – дисциплінарна, відповідальність. Автор підтримує позицію про необхідність прийняти Закон України «Про права медичних і фармацевтичних працівників», який би містив положення про засади діяльності медичних працівників.

Як підсумок, констатується відсутність кодифікації норм права з даного напрямку. Акцентується дана проблема на тлі оперативного реагування первинної ланки на загрози при спалаху епідемій та пандемій. Саме визначення прав, обов'язків то особливостей відстоювання прав лікарів створить належне підґрунтя для мобілізації сил та засобі по охороні здоров'я громадян.

**Ключові слова:** правовий статус, медичний працівник, лікар загальної практики, охорона здоров'я, сімейний лікар.

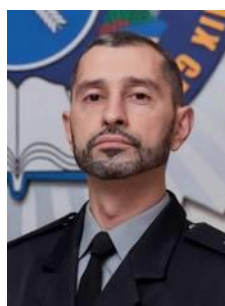
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### **PERMITS OF ADMINISTRATIVE AND LEGAL ENVIRONMENTAL SECURITY: ESSENCE, TYPES FOR IMPROVEMENT**

**Abstract.** The article, based on the analysis of current legislation, available scientific, journalistic and methodological sources, including foreign experience, defines the concept, clarifies the essence and importance of administrative remedies in ensuring air safety.

It is established that the essence of legal protection of atmospheric air is to limit those anthropogenic impacts on atmospheric air that have negative consequences for humans and the environment. Carrying out protection of atmospheric air, the state in the person of the authorized nature protection bodies proceeds from a task to prevent harm to the person and environment in the course of interaction of a society and the atmosphere.

The importance of administrative and legal means of air protection is emphasized, which are proposed to be considered as legal phenomena expressed in instruments (institutions) and administrative and legal actions of the subjects of administrative and legal protection of this important natural component, aimed at preserving and restoring its natural state, living conditions, environmental safety and prevention of harmful effects of atmospheric air on human health and the environment.

The specific features inherent in the administrative and legal means of air protection are outlined, including: the special sphere of influence of these means, which is associated with the solely use to preserve, improve and restore atmospheric air, prevent and reduce its pollution and chemical compounds, physical and biological factors; exclusive application only within the scope of administrative and legal relations arising during the protection of this natural component; availability of a wide range of subjects of application; dominance among them of application of measures of control-supervisory and preventive-coercive character; predominant detailing and development in departmental regulations and decisions of local authorities and local self-government; use in the application of technical and legal content and nature.

**Keywords:** atmospheric air, atmospheric air safety, administrative remedy, legal protection, administrative legal protection.

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