

## The Nature Of Iatrogenic Crimes And The Possibility Of Their Transformation

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### ABSTRACT

The article analyzes the current criminal legal aspects of iatrogenic crimes in modern legal science. Particularly assessed is criminal legislation, which does not specifically indicate responsibility for independent crimes committed by medical workers. The national legislation of Uzbekistan is being studied regarding the protection of the health of citizens, criminal liability for medical errors that resulted in harm to health or death of a person, the objective side of which contains elements of iatrogenic crimes. A study of the empirical base has established that crimes committed by doctors in the classical form of arrogance or negligence are not limited to careless guilt; in many cases, criminal intent is established when the perpetrators are aware of the socially dangerous nature of their act and want harmful consequences to occur. At the same time, violation of professional duties by medical workers is often combined with other crimes/responsibilities to the full extent must be assessed as iatrogenic crimes. Based on modern judicial and investigative practice, issues of pharmaceutical workers belonging to the subjects of iatrogenic crimes are raised, since the specifics of their activities are related to the protection of the life and health of citizens. It is proposed to improve national criminal legislation, provide an independent chapter on liability for iatrogenic crimes of healthcare and pharmaceutical workers, indicating a specific form of guilt, modify the fundamentals of medical law, criminal legal disciplines, and develop a methodology for investigating iatrogenic crimes.

**Keywords:** Medical error, improper medical care, patient, harm to health, criminal liability of doctors and pharmacists.

### 1. INTRODUCTION

Human health and life are the highest values of any modern state, the protection of which is enshrined not only in the Constitution, but also in other legal acts of Uzbekistan. Updated Constitution of the Republic of Uzbekistan<sup>1</sup> states that the right to life is an inalienable right of every person and is protected by law (Article 25), everyone has the right to health care and qualified medical care (Article 48). The highest law of our country determined that the state is taking measures to develop the healthcare system, its state and non-state forms, various types of health insurance, and ensure the sanitary and epidemiological well-being of the population.

The Law of the Republic of Uzbekistan «On the Protection of Citizens' Health» sets itself the primary task of ensuring guarantees of citizens' rights to health protection by the state<sup>2</sup>. By regulating the rights of the patient when seeking medical care and receiving it, the Law determines the competencies of the highest government bodies that ensure these rights. Medical and pharmaceutical workers are engaged in professional activities only if they have a diploma of graduation from a higher or secondary specialized medical educational institution in the Republic of Uzbekistan. Persons take an oath when receiving a medical diploma (Article 44 of the Law), which obliges them to give all their knowledge and skills for treating a patient. Violation of the oath entails liability established by law.

However, the constitutional and legislative reflection of the serious and responsible activities of a doctor still does not exclude the problem of making a medical error, which leads to complications of treatment, the generation of other diseases, and often to the death of the patient. Life is structured in such a way that a person quite often seeks medical help, but it does not always guarantee us quality services. In some cases, it is difficult to determine whether the doctor was incompetent, violated the oath due to negligence in his duties, or due to objective factors, the provision of qualified medical care was impossible.

<sup>1</sup> Constitution of the Republic of Uzbekistan. Tashkent. Publisher «Adolat». 2024.P.12.

<sup>2</sup> Law of the Republic of Uzbekistan «On the protection of citizens' health» dated August 29, 1996 №265-1. Data appeals 30 July, 2024. URL: <https://lex.uz/acts/41329>.

## 2. METHODS OF THIS STUDY

the universal method of scientific knowledge has emerged dialectical materialism, as well as general scientific methods such as analysis, synthesis, deduction, induction, etc. In addition, regulations, scientific literature, and forensic investigative practice were used as a source.

## 3. THE MAIN STUDY

In modern science, issues related to medical errors, negative consequences of medical care, and methods for assessing the quality of medical services are studied by scientists not only from the point of view of medicine, but also from the point of view of criminal law and criminology, since these negative phenomena take place in medical practice and are called «iatrogenism».

The International Statistical Classification of Diseases and Related Health Problems (10 revision) indicated that «any pathological process resulting from a medical intervention is iatrogenism»<sup>3</sup>. Following this document, it is proposed to classify «iatrogenism» according to all causal characteristics, starting with diagnostic procedures and ending with treatment and preventive measures.

In Uzbekistan, facts of iatrogenesis serve as a criterion for assessing the effectiveness of the activities of specialized doctors and are understood as harm to health patient<sup>4</sup>. But still, analyzing national legislation and judicial investigative practice, it should be noted that the term «iatrogenism» is more often found in the medical literature or in regulations regulating legal relations in the field of healthcare than among lawyers.

In the world scientific literature, the term «iatrogenic» or «iatrogenic crimes» is interpreted differently. Thus, scientists in the field of medicine Sargsyan B.A., Shapkina N.B., Novoselov V.P. consider iatrogenesis «as cases when a patient, as a result of the actions of medical workers, develops a completely new, qualitatively different pathological condition than the previous, previously existing one, which could not exist without the intervention of medical workers» (Sargsyan, Shapkina, Novoselov 2010, 137). In separate studies (Avdeev, Kozlov 2009, 113), scientists define iatrogenic consequences as harm caused to a patient during medical activities. Some national medical scientists (Azizova, Sheraliev, Kholieva, Dadamukhamedova 2022, 120) consider iatrogenesis as «a marriage of medical work», while other researchers (Khudoyarova, Yuldasheva, Kuchkorov, Shirinova 2024, 113) still recognize iatrogenesis as crimes against life or human health committed by doctors as a result of non-ad

Legal scholars consider iatrogenesis as a criminal act committed by medical professionals in the exercise of their professional activities.

For the first time, an independent group of criminal attacks generated by the actions of medical workers as a result of criminal negligence or criminal attack and defined as «iatrogenic» was identified by Russian scientist V.D. Pristansky (Pristansky 1996). Investigating the issue raised, the scientist specifically defined iatrogenic crimes as a type of criminal crime attacks on human life or health committed by doctors as a result of improper provision or failure to provide medical care to citizens.

Later, other Russian scientists rightly pointed out that «iatrogenic crimes are intentional or careless socially dangerous acts of medical workers, violating the legal principles and conditions of medical care, committed in the performance of their professional or official duties and jeopardizing harm or causing harm to life and health, and other legal rights and interests of patients (Polkovnikova, Egorov 2022).

N.V. Pavlova, who analyzed the criminal legal regulation of medical activities, defined iatrogenic disease as the result of certain (usually negative) behavior of a medical worker, which contributes to the occurrence of negative changes in the mental and (or) physical state of the patient (Pavlova 2006).

Interested opinion Leah M.Ashe, which somewhat extended the nature of iatrogenic phenomena. So, the scientist points out that «iatrogenic (produced by a doctor) and nosocomial (produced in a hospital) (hospital-D.S.) — two terms used to describe the undesirable, harmful effects of medication or medicalization (for example, «iatrogenic overdose» or «nosocomial infection») (Ashe 2021).

Investigating the issues of criminalization of iatrogenic crimes, S.V. Zamaleeva substantiated that iatrogenesis is a medical and legal term meaning an act of a medical worker that resulted in death or harm to the patient's health (Zamaleeva 2016).

The broader position is that of A.F. Blinova, who considers «iatrogenic crimes as intentional and careless actions (inaction)

<sup>3</sup> World Health Organization. ICD-10: International Statistical Classification of Diseases and health-related problems: 10th revision: Volume 1: Part 2. Data appeals 1 augusta, 2024.

URL:<https://iris.who.int/handle/10665/87721?show=full>

<sup>4</sup> Resolution of the Cabinet of Ministers of the Republic of Uzbekistan «On additional measures to improve the quality of medical services, increase responsibility for the effectiveness of preventive measures in primary health care institutions». Appendix № 4 to [Regulations](#) on the procedure for conducting a rating assessment of the effectiveness of the activities of central district (city) multidisciplinary clinics, city and rural family clinics, rural medical centers, as well as medical and paramedical personnel. [Data addresses May 30, 2024.](#) URL: <https://lex.uz/docs/3345600>

that led to harm to health or death of the patient and committed by medical workers in the course of performing professional duties» (Blinova 2022). It seems that when defining this term, the author correctly indicated that these crimes can be committed either intentionally or through negligence, in the form of active actions or inaction that caused harm to health or the death of the patient; Moreover, the specified definition correctly indicates the subject of the crime - a medical worker who is subject to criminal liability for this crime.

Analyzing the opinions of these and other scientists (Alekhin, Bagmet, Bychkov 2018, Mashkova 2023, Podolny 2019, Radov 2020, Gaidar 2020, Iriskulbekov 2022), we can conclude that the emergence of the concept of iatrogenic crimes is due to the fact that medical workers responsible for health and human life by virtue of their professional duties and carrying them out in accordance with established rules and standards they may violate the norms accepted in the field of medicine (intentionally or through negligence), which will lead to harm to the patient's health or death.

The term «iatrogenic crimes» is of a generalized nature, confirming that doctors and medical workers commit illegal actions related to their professional activities. The absence in the legislation of independent crimes with specific elements of the objective side of the actions (inactions) of medical workers makes it difficult to establish in detail the signs of iatrogenic crimes. On the one hand, taking into account existing standards of medical services, should such criminal attacks be considered crimes with a blanket norm. On the other hand, perhaps the criminal actions (inaction) of medical workers are the cause of ordinary negligence, negligence not related to violation of established directives, or do the actions of a doctor indicate direct intent to commit a crime that resulted in harm to the health or life of the patient?

In our country, medical errors that result in harm to health or death of the patient entail criminal liability and we can say that they are considered as iatrogenic crimes. Criminal Code of Uzbekistan<sup>5</sup> such crimes, as a rule, include, first of all: improper performance of one's professional duties (Article 116 of the Criminal Code of the Republic of Uzbekistan (hereinafter referred to as the Criminal Code of the Republic of Uzbekistan), criminal abortion (Article 114 of the Criminal Code of the Republic of Uzbekistan), the spread of a sexually transmitted disease or HIV infection/AIDS (part five of Article 113 of the Criminal Code of the Republic of Uzbekistan), leaving in danger (Article 117 of the Criminal Code of the Republic of Uzbekistan) engaging in activities without a license (Article 190 of the Criminal Code of the Republic of Uzbekistan).

These crimes are mostly related to the professional duties of medical workers, who for some reason (incompetence, irresponsible approach to the performance of their duties, carelessness during the examination of the patient, negligence, etc.) did not provide proper medical care, as a result of which negative consequences occurred for the patient. As practice shows, most often these crimes are committed through negligence in the form of arrogance or negligence.

*Doctor R. worked as an obstetrician-gynecologist on duty in the maternity ward at the Yan Regional Medical Association. At 00:01 on March 17, pregnant citizen N. came to the maternity ward for the second time and complained of health problems. However, R.'s doctor did not give her condition a proper assessment, the diagnosis was not determined, and timely medical assistance was also not provided. As a result, the patient died during childbirth, the fetus died in the womb. Obstetrician-gynecologist R. was charged under part three of Article 116 of the Criminal Code of the Republic of Uzbekistan (failure or improper performance by a person of his professional duties due to careless or dishonest attitude towards them, resulting in the death of a person)<sup>6</sup>.*

At the same time, the presence of intent when committing crimes such as criminal abortion, the spread of sexually transmitted diseases or HIV infection/AIDS indicates that medical workers not only do not comply with established standards of medical care, but also, aware of the socially dangerous nature of the acts, want socially dangerous consequences to occur.

*The court sentenced the chief physician of a private medical clinic, S., to a long term of imprisonment for the fact that, being the leader of an organized criminal group, without having the right to do so, she was engaged in artificial termination of pregnancy for a long time for an appropriate reward (Article 114 of the Criminal Code of the Republic of Uzbekistan). Moreover, the criminal group was engaged not only in the criminal sale of newborns, but also in the deliberate taking of the lives of unwanted children<sup>7</sup>.*

As can be seen, medical workers were punished not only for intentional «iatrogenic crimes», but also for criminal attacks on human life, freedom, honor and dignity.

In addition to the above, it should be noted that the presence in the criminal law of such crimes as abuse of power or official powers (Article 205 of the Criminal Code of the Republic of Uzbekistan), official negligence (Article 207 of the Criminal Code of the Republic of Uzbekistan) and many other crimes against the management order (and sometimes some crimes against life, health, etc.) do not exclude bringing medical workers to criminal liability not only for violating professional duties doctor's oaths resulting in harm to health or death of a person, but also for other selfish crimes.

*N, being the chief physician of the maternity hospital, received a large bribe from a high-ranking official M. for concealing an unwanted pregnancy, and subsequently giving birth to D., who had an intimate relationship with M. D.'s pregnancy did*

<sup>5</sup> Criminal Code of the Republic Uzbekistan Tashkent. Publisher «Yuridik adabiyotlar publish».2024. P.360.

<sup>6</sup> Hereinafter, all links to judicial practice materials are provided using official information sources. Retrieved August 3, 2024 URL: <https://uznews.uz/posts/11709>.

<sup>7</sup> Official information source. Retrieved August 3, 2024. URL: <https://www.gazeta.uz/en/2018/06/18/abortion/>

not allow an abortion, and when D. gave birth to a healthy child, on N.'s instructions, obstetrician-gynecologist K., together with nurse P., strangled the newborn with a pillow, as a result of which the child died of asphyxia. The court sentenced medical workers and other accomplices in the crime for a combination of crimes provided for in part two of paragraphs «c, c, c» of Article 97 (premeditated murder of a person known to the perpetrator to be in a helpless state, with particular cruelty, by a group of persons), part two paragraph «b» Article 210 (receiving a bribe on a large scale), part one of Article 205 (abuse of power or official authority) of the Criminal Code of the Republic of Uzbekistan<sup>8</sup>.

The above gives reason to believe that the grounds and limits of criminal liability for iatrogenic crimes have not been sufficiently studied, the question of the form of guilt of criminal attacks committed by doctors has not been specified, signs of the subjective and objective side of these crimes have not been formed, as Gaidar A.A. correctly noted. «should we talk here about intent, negligence, or can we talk about a double form of guilt, or are these crimes covered by the concept of mixed guilt?» (Gaidar 2020).

Analyzing the features of the investigation of iatrogenic crimes committed during the provision of medical care V.D. Pristanskov came to the conclusion that «an iatrogenic crime can only be careless in the form of guilt, linking the essence of an iatrogenic crime and medical error» (Pristanskov 2007). Along with this, a study of the forensic theory of investigating iatrogenic crimes allowed the scientist to conclude that «the greatest difficulty is posed by the issues of arguing the grounds and limits of criminal liability, which is largely explained by the lack of legal support for the rules for the provision of medical care and medical technological standards regulating the medical process» (Pristanskov 2015).

The current state of criminal law in Uzbekistan indicates that iatrogenic crimes are committed both through negligence and intentionally. An important factor is the occurrence of socially dangerous consequences, such as harm to the patient's health or his death due to improper performance of his professional duties by medical workers.

Another issue that requires discussion and specification when qualifying the actions of guilty doctors is the commission of iatrogenic crimes in combination with deliberate attacks on the life or health of the patient (as mentioned in the example indicated above). At first glance, criminal actions are reasonably classified as premeditated murder or malfeasance. At the same time, these crimes are committed by medical workers as part of their professional duties, the victims of crimes are patients in need of medical care, according to established standards, a doctor must provide qualified medical care, but in reality, not only is medical rules ignored, but also intentional violent crime is committed when the medical worker anticipates and wishes the death of the patient. It seems that these illegal actions of medical workers contain signs of iatrogenic crimes in combination with softwarecriminal law qualifying feature committing a crime «by a medical professional against a patient».

As stated earlier, in accordance with the Law of the Republic of Uzbekistan «On the Protection of Citizens' Health»<sup>9</sup> the state healthcare system also includes pharmaceutical enterprises and organizations, enterprises for the production of medicines, medical products and medical equipment (Article 8), similar private enterprises also belong to the healthcare system. In other words, the activities of pharmaceutical workers in Uzbekistan are equated to the work of doctors; they are also responsible for human health and life.

However, it should be noted that the elements of the crime provided for in Article 186<sup>3</sup> The Criminal Code of the Republic of Uzbekistan, the objective side of which is expressed in the production, manufacture, acquisition, storage, transportation for the purpose of sale or sale of substandard or counterfeit medicines or medical products, the sale of medicines or medical products outside pharmacies and their branches, as well as violation of the procedure for retail sale by prescription of medicines containing potent substances does not contain a single element of an iatrogenic crime. Moreover, this article is located in the chapter «Crimes in the economic sphere» of the Criminal Code of the Republic of Uzbekistan, that is, the objective side of the specified crime is encroachment on the foundations of the economy. However, the adoption of medications prescribed by doctors, the use of medical equipment and other medical products certainly affects the health and life of the patient. Therefore, any deviation from the prescribed rules during the production of the drug

It is appropriate to give a clear example of judicial and investigative practice, which received public resonance in Uzbekistan this year, which testifies to the iatrogenic nature of the crimes committed by pharmaceutical workers, resulting in human casualties.

*The Tashkent City Criminal Court sentenced members of an organized criminal group (23 accused in total) on charges of committing crimes under paragraphs «a,b» of article 186, part 4<sup>3</sup>, paragraph «d» of part 2 of article 210, paragraph «a» of part 2 of article 209, part 3 of article 184 of the Criminal Code of the Republic of Uzbekistan.*

*The court found that officials of the Agency for the Development of the Pharmaceutical Industry facilitated the illegal supply to Uzbekistan by a limited liability company «Quramax Medical» baby syrup «Doc-1 Max», produced by an Indian pharmaceutical company «Marion Biotech». The drug passed a laboratory test at the Scientific Center for Standardization of Medicines and certificates of conformity were issued for an appropriate fee. Later it turned out that this syrup contained*

<sup>8</sup> Official information source. Date of application 15 august 2024. URL: <https://www.gazeta.uz/en/2018/06/18>

<sup>9</sup> Law of the Republic of Uzbekistan «On the protection of citizens' health» dated August 29, 1996 №265-1. Data appeals 30 july, 2024. URL: <https://lex.uz/acts/41329>.



*a high dose of a toxic substance «ethylene glycol», which resulted in the death of 69 young children, more than 20 children became disabled<sup>10</sup>.*

This tragic event once again confirmed the need for officials and pharmaceutical workers to take a responsible attitude towards their professional responsibilities. Violation of compliance with established regulations, self-interest, dishonesty, immorality pharmaceutical officials resulted in numerous child casualties.

In the main, the perpetrators were criminally liable under article 189<sup>3</sup> part 3, paragraph «a,b» of the Criminal Code of the Republic of Uzbekistan (Production, manufacture, acquisition, storage, transportation for the purpose of sale or sale of substandard or counterfeit medicines or medical products, sale of medicines or medical products outside pharmacies and their branches, as well as violation of the procedure for retail sale by prescription of medicines containing potent substances, resulting in human casualties and other grave consequences). The main direct object of the crime is social relations that ensure the procedure established by law for monitoring the quality of medicines or medical products, the interests of consumers in the field of economic activity, and the safety of medicines or medical products purchased by them appointments, as well as protection against falsification of products of manufacturers of the above goods. Meanwhile, social relations that ensure the life and health of citizens are an additional direct object. Whereas, from a criminal legal point of view, the main object of a socially dangerous attack committed by professional pharmaceutical workers was, of course, the life and health of people, which allows us to assert that this type of crime is iatrogenic.

#### 4. CONCLUSIONS

Summarizing the above, we come to the following conclusion.

In the modern world, achievements in the field of medicine have reached a new level; advanced technologies, the latest medicines, and the use of artificial intelligence in the provision of medical services affect not only the quality of medical care, but are often the cause of medical errors, improper provision of medical care, and an increase in cases of negative consequences unprofessionalism of doctors and pharmacists. Some research into judicial and investigative practice in Uzbekistan has revealed that the legislative regulation of criminal liability for iatrogenic crimes must be improved; there are insufficient theoretical foundations for the correct legal qualification of the criminal actions of the perpetrators.

It seems that it is necessary to introduce into national criminal legislation a chapter providing for liability for iatrogenic crimes, which would provide for independent criminal liability of medical and pharmaceutical workers and personally reveal the essence of each iatrogenic crime, which will improve judicial practice in matters of correctly qualifying the actions of the perpetrators and imposing fair punishment. It seems appropriate to discuss the introduction into some crimes of a qualifying feature of the commission of a crime «by a medical worker in relation to a patient» in order to detail the criminal liability of doctors who have committed intentional crimes in the performance of their professional duties.

It is also necessary to specify the form of guilt, purpose, motive for committing iatrogenic crimes, indicating the mandatory elements of the subjective side of the specified criminal act. In our opinion, the issue of blanket disposition of some iatrogenic crimes also deserves discussion, because the professional activities of medical workers are determined by existing regulations.

The development of the theoretical foundations of iatrogenic crimes would be facilitated by the modernization of the science of medical law, as one of the branches of law regulating legal relations in the field of provision of medical and pharmaceutical services. In this regard, we think it is necessary to introduce academic disciplines «Medical Law» and «Criminal Procedure Basis of Iatrogenic Crimes» in the country's law schools. In addition, recommendations and methods for investigating iatrogenic crimes in the forensic aspect should be developed.

These problems require an integrated approach to solving them.

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<sup>10</sup> Official information source. Retrieved August 3, 2024. URL: <https://www.gazeta.uz/en/2024/02/26/dok-1-maks/>

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