

ANNOTATION

To the dissertation for the degree of Doctor of Philosophy (PhD)
in the specialty of "6D030100-Jurisprudence"

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on the topic "Investigation of medical criminal offenses (on the example of Article
317 of the Criminal Code of the Republic of Kazakhstan"

Relevance of dissertation research. The health and life of the population are among the guarantees and the main foundations of society that relate to national security interests. These guarantees are enshrined in the Constitution of the Republic of Kazakhstan:... "citizens of the Republic of Kazakhstan have the right to health protection... Citizens of the Republic have the right to receive free guaranteed medical aid established by law... receiving chargeable medical care in public and private medical institutions, as well as from persons engaged in private medical practice, is carried out on the basis and in accordance with the procedure established by law.... "

Medical criminal offenses in 2014 were separated into a chapter of the Criminal Code of the Republic of Kazakhstan, the legislator carried out tremendous work and attached great importance to the legal relations that develop between the doctor and the patient. The threat to human life and health is a direct threat to the resources of the state and society. The degree of protection of the rights of patients and the rights of doctors is one of the important criteria for assessing the effectiveness of healthcare and the state as a whole.

On January 15, 2021, the Head of State K.K. Tokayev noted:... "The modernization of domestic health care is of particular importance. In a pandemic, the relevance of this problem has become obvious. The health care system should focus on patients, prioritize their interests, health and life. The transition to such a model is possible due to personification, the introduction of digital tools, and the expansion of people's access to qualified medical care. In this regard, a special role is played by the development of preventive medicine based on the prevention and early diagnosis of diseases.... "

In order to implement the instructions of the President of the Republic of Kazakhstan, the Government has developed the National Project "Quality and Affordable Health Care for Every Citizen "Healthy Nation" for 2021-2025, in which the first direction is "Affordable and High-Quality Medical Care, which includes 3 tasks: Ensuring wide coverage of the population with health services, preserving the health of pregnant women, strengthening the health of children and human resources. "

September 28, 2022, promoting the vector of development of domestic health care, K.K. Tokayev stressed:... "This is our duty as a state. But this is just the very minimum. Therefore, the second component of the project is also so important - the construction of multidisciplinary hospitals, which will reduce the time to receive qualified care for severe diseases and injuries. No wonder there is a

rule of the "golden hour" - the sooner the patient is delivered to the equipped hospital, the higher the chance that he will be saved.... "

In Kazakhstan, there are conditions for an affordable and guaranteed volume of free medical care, in which special attention is drawn to the facts of improper performance of professional duties by medical and pharmaceutical workers. Such facts in accordance with world trends require a mandatory study, assessment of the activities of a medical worker and the adoption of an objective and fair decision. At all times, the doctor's activities were treated with respect and honor for their difficult work, for revolutionary achievements, dedication and recognition of their mistakes. Positive and negative experiences form the basis for the development of medicine and the prevention of medical errors.

According to the Committee of Medical and Pharmaceutical Control of the Ministry of Health of the Republic of Kazakhstan, there is a tendency to increase the number of requests from subjects to receive medical care regarding its quality. The global trend of close attention to the activities of doctors corresponds to the time intervals that are available in Kazakhstan, this is about 2005. Nevertheless, the number of requests from citizens regarding medical workers increases from year to year.

Among the appeals of citizens, most of them are of a deontological nature, but there are also appeals about the quality of medical care and services.

It is the quality of medical care and services that establishes an inverse proportional dependence on the number of criminal cases initiated on the facts of medical criminal offenses provided for in Chapter 12 of the Criminal Code of the Republic of Kazakhstan.

Medical activity as a type of profession is noted in history not only by positive achievements, but also, among other things, by unfavorable outcomes of the diagnosis and treatment process. A review of the works of scientists on the topic of pre-trial investigation of medical criminal offenses and crimes persuades us to the fact that many scientists and law enforcement officers direct efforts to establish the doctor's guilt, but the process of investigating a criminal case of medical criminal offenses in an ideal approach should nevertheless have only two decisions: 1. Establishing the doctor's guilt; 2. Establishing the doctor's innocence.

Criminal liability issues of a medical worker in the implementation of medical activities draw the attention of the whole society, especially the medical community, many of which want to exclude criminal liability for medical criminal offenses. Such trends are accompanied by speeches by officials, attempts to amend the sanctions of one article from chapter 12 of the Criminal Code of the Republic of Kazakhstan and, in particular, article 317. This determines the fact that Article 317 of the Criminal Code of the Republic of Kazakhstan is the most "popular" among medical workers, and therefore requires careful study and resolution of problems with the investigation of the mentioned criminal offenses.

The rate of medical crime does not have absolutely stable indicators. So, in connection with the conduct of the Unified Register of Pre-trial Investigations (URPI) in our country in 2014, registration rates have increased sharply and have relatively stable values.

The total number of criminal cases about these criminal offenses in the proceedings of investigators of the Department of Internal Affairs of the Republic of Kazakhstan during one calendar year fluctuates between 300-350 criminal cases. Only 0.9% of the total goes to court with an indictment, about 10% of criminal cases are terminated on rehabilitating and non-rehabilitating grounds. The remaining percentage of criminal cases has been suspended or the procedural terms of the investigation have been interrupted, that is, the medical or pharmaceutical worker is actually under "constant suspicion."

This state of affairs is due to the "powerlessness" of law enforcement agencies, which directly indicates the lack of a full-fledged private methodology for investigating a group and types of medical criminal offenses.

The survey of investigators on the sufficiency of knowledge on the pre-trial investigation of medical criminal offenses in the performance of their professional duties under Art. 317 of the Criminal Code of the Republic of Kazakhstan showed that 67.2% of investigators believe that the amount of their knowledge is not enough. 92.2% of respondents showed that they do not have medical knowledge. 58.8% of investigators have not investigate medical criminal offenses before, most of them had not additional training on the methodology for investigating medical criminal offenses.

The lack of clear certainty in the formation of a system of elements of the forensic characteristics of medical criminal offenses is a signal for the development of a general methodology for pre-trial investigation of medical criminal offenses, provided for by Chapter 12 of the Special Part of the Criminal Code of the Republic of Kazakhstan, and a private methodology for pre-trial investigation of a medical criminal offense under Art. 317 of the Criminal Code of the Republic of Kazakhstan, the qualified feature of which is "improper performance of professional duties by a medical or pharmaceutical worker."

The above justifies the relevance of the topic of dissertation research. The need arises for a large-scale study of the phenomenon of medical criminal offenses qualified by Article 317 of the Criminal Code of the Republic of Kazakhstan, the features of pre-trial investigation and evidence, from a criminological point of view - to identify the reasons and conditions that determine these phenomena, as well as the need to develop fundamental scientific provisions for an objective and complete pre-trial investigation, and to develop forensic recommendations for pre-trial proceedings for medical criminal offenses.

The degree of scientific development of the problem. Criminal offenses committed by medical workers were studied by Soviet scientists V.I. Akopov, F.Yu. Berdichevsky, V.A. Glushkov, I.I. Gorelik, A.P. Gromov, P.S. Dagel, N.I. Zagorodnikov, A.N. Krasikov, M.N. Maleina, N.S. Malein, V.P. Novosyolov, I.F. Ogarkov, Yu.D. Sergeev, N.S. Tagantsev, A.A. Tarasov, M.D. Shargorodsky and others.

The issues of criminal liability for medical crimes and their criminological characteristics are devoted to the dissertation works of G.R. Rustemova (2003). V.V. Tatarkina (2007) E.V. Chervonykh (2009)

The criminal legal characteristics of medical criminal offenses were studied by the following scientists - V.A. Glushkov, E.V. Espergenova, I.V. Ivshin, G.A. Pashinyan, Y.V. Starostina, S.A. Khimchenko, A.N. Yazukhin.

The dissertation by A.G. Blinov (2001, 2014) is devoted to the protection issues and protection of patients' rights issues.

The following scholars devoted their works to the issues of criminal law regulation and criminal liability - O.E. Zhamkova (2007), N.K. Elina (2006), I.I. Nagornaya (2013), N.A. Ognerubov (2014), N.V. Pavlova (2006), M.V. Radchenko (2002), G.G. Karagezyan (2009), N.E. Krylova (2006) N.V. Miroshnichenko (2007) and others.

Research on pre-trial investigation in the field of criminalistics was carried out by: R.G. Amirov (2020), D.A. Venev (2016), M.A. Ibraev (2010), Y.I. Ivanova (2017), V.G. Ivanova (2020), V.D. Pristanskov (2000), K.A. Saranova tsev (2009), L.A. Sukharnikova (2006), M.V. Tuzlukova, M.M. Yakovlev (2008) and others.

The mentioned works are of great scientific and practical value, but do not cover the entire range of forensic recommendations related to the pre-trial investigation of medical criminal offenses related to improper performance of professional duties.

It is important to emphasize that not all important forensic aspects of pre-trial investigation of medical criminal offenses remained investigated. In the above mentioned works were studied the public danger and illegality of certain types of medical criminal offenses and crimes, analyzed the object of criminal encroachment, the subject of a medical worker who committed a socially dangerous act, methods of committing a medical criminal offense, circumstances and conditions affecting the improper provision of medical care and services, subjective side of a medical criminal offense, the consequences of improper medical care, peculiarities of individual investigative actions, peculiarities of the patient's personality, typical situations, algorithms of investigative actions, tactical techniques of individual investigative actions are proposed.

To an insufficient extent, the issues of forensic characteristics in relation to typical investigative situations, issues of overcoming opposition to the investigation, the algorithm for using tactical operations and techniques, the use of effective investigation methods, the peculiarities of using special knowledge when attracting experts and narrow specialists, conducting tacit investigative actions, studying the reasons and conditions for committing medical criminal offenses and measures to prevent them.

Goals and objectives of the study. The purpose of our dissertation research is to develop a private methodology for pre-trial investigation of a medical criminal offense under Art. 317 of the Criminal Code of the Republic of Kazakhstan, determine the set and content of structural elements, develop forensic recommendations for the initial and subsequent stages of the investigation, general and special prevention of medical criminal offenses.

To achieve the goal of the study, the following tasks have been set:

- conduct criminal legal and criminological analyses of a criminal offense under Art. 317 of the Criminal Code of the Republic of Kazakhstan;

- analyze structural elements of a private methodology for investigating medical criminal offenses and propose a private investigation methodology under Art. 317 of the Criminal Code of the Republic of Kazakhstan;

- analyze the following information at the time of registration with the URPI and highlight typical investigative situations of the initial stage of the investigation of a medical criminal offense under Art. 317 of the Criminal Code of the Republic of Kazakhstan;

- develop and propose a heuristic method for pre-trial investigation of medical criminal offenses;

- make proposals to attract special knowledge during the pre-trial investigation of a medical criminal offense under Art. 317 of the Criminal Code of the Republic of Kazakhstan;

- propose measures to avoid and prevent medical criminal offenses;

The object of the study is public relations in the field of practical activities of investigative and operational-forensic activities for pre-trial investigation, disclosure and prevention of medical criminal offenses under Art. 317 of the Criminal Code of the Republic of Kazakhstan.

The subject of the study is the principles and foundations of the formation and peculiarities of a private methodology for pre-trial investigation of medical criminal offenses under Art. 317 of the Criminal Code of the Republic of Kazakhstan, taking into account empirical experience.

Research methodology. The methodological basis of the study is a dialectical approach to the processes of cognition of medical criminal offenses, as socio-legal phenomena, the establishment of mutual agreement between the components within the framework of the pre-trial investigation process.

Dialectical understanding of the influence of scientific and legal progress on the processes of formation of branches of law: criminal, criminal procedure. The basis of the study was a philosophical understanding of the social essence of the process of criminalization of relations in the country and the resulting negative consequences for society in the person of the patient. In addition, in the process of dissertation research, the provisions of system-structural, activity approaches, comparative legal analysis, as well as the theory of criminal law, criminal procedure law, criminology, criminalistics, legal psychology and other legal sciences were applied. Private scientific methods were used: logical-semantic, historical-legal, system-structural, comparative-legal, statistical and specific-sociological, as well as the method of forensic modeling.

The theoretical basis of the dissertation study was the work of scientists and specialists in the field of criminal proceedings, criminalistics, criminal law and criminology of the CIS, such as A.F. Aubakirov, A.A. Aubakirova, A.N. Akhpanov, O.Ya. Bayev, A.M. Bagmet, A.O. Balgintaev, S.N. Bachurin, R.S. Belkin, S.F. Bychkova, I.A. Podgrin, B.V. Volzhenkin, T.S. Volchetskaya, V.K. Gavlo, I.F. Gerasimov, A.Ya. Ginzburg, E.G. Dzhakishev, U.S. Jackebaev, S.T. Dzhunisbekov, J.R. Dilbarkhanova, L.Ya. Drapkin, S.E. Erkenov, R.M. Zhamieva, M.A. Ibraev, A.A. Isaev, E.I. Kairzhanov, K.V. Kim, A.N. Kolesnichenko, V.E. Kornoukhov, P.N. Kotkin, V.D. Korma, A.M. Kustov, G.A. Mozgovykh, B.M.

Nurgaliev, RT Nurtaev, V.A. Obraztsov, G.R. Rustemova, N.A. Selivanov, B.H. Toleubekova, E.K. Utebaev, B.M. Shaver, V.I. Shikanov, A.V. Shmonin, A.A. Eisman, N.P. Yablokov and others.

The empirical basis of the study was the statistics of the Committee for Legal Statistics and Special Accounting under the General Prosecutor's Office of the Republic of Kazakhstan, the Supreme Court of the Republic of Kazakhstan, operational and investigative practice, analytical materials and reviews of territorial police bodies in the period from 2015 to 2022. The dissertation studied: 24 criminal cases. More than 50 employees of the investigative apparatus of the Ministry of Internal Affairs of the Republic of Kazakhstan, more than 100 practicing medical workers and doctors, more than 150 citizens were interviewed by questionnaire.

The normative basis of the study was the provisions of the Constitution of the Republic of Kazakhstan, criminal, criminal procedure legislation of the Republic of Kazakhstan, other laws of the Republic of Kazakhstan and International Regulations.

The scientific novelty of the dissertation is that the author applied an original comprehensive approach to the study of issues of pre-trial investigation of medical criminal offenses under Art. 317 of the Criminal Code of the Republic of Kazakhstan. The elements of the forensic characteristic were analyzed from the point of view of personal investigative experience in investigating crimes, typical situations of trace information at the initial stage of the investigation were highlighted, standard versions were proposed, an algorithm for initial procedural and investigative actions was created. The universal heuristic method of investigating a criminal offense, collecting and analyzing significant information, expressed in the "Table of Evidence and Evidentiary Facts," was substantiated, tactical operations and methods of investigation were proposed, as a result, a new type of private methodology for investigating a medical criminal offense under Article 317 of the Criminal Code of the Republic of Kazakhstan was developed and proposed. In addition, a doctrinal interpretation of a special subject provided for in Part 5 of Article 317 of the Criminal Code of the Republic of Kazakhstan is given, new factors have been identified and studied that contribute to the commission of medical criminal offenses provided for in Chapter 12 of the Special Part of the Criminal Code of the Republic of Kazakhstan and measures have been proposed to avoid and prevent them.

Main provisions and conclusions to be defended. The following most significant new theoretical provisions obtained and formulated during the dissertation study, which constitute the methodology for pre-trial investigation of medical criminal offenses under Art. 317 of the Criminal Code of the Republic of Kazakhstan:

1. The structure of a private methodology for pre-trial investigation of a medical criminal offense under Art. 317 of the Criminal Code of the Republic of Kazakhstan was developed. Structural elements are highlighted: theoretical foundations for building a private methodology for investigating a medical criminal offense in the form of criminal law and criminological characteristics;

forensic characterization of specified medical criminal offense; circumstances to be established; typical investigative situations; typical versions; forensic tactical operations, tactical techniques for conducting separate investigative and unspoken investigative actions; forensic prevention of criminal medical offenses.

2. An expansive interpretation was given to a special subject under Part 5 of Art. 317 of the Criminal Code of the Republic of Kazakhstan, which clarifies the concept of "an employee of the of household organization or other services to the population" subject to criminal liability under this type of medical criminal offense. The criteria for identifying the mentioned special subject for solving issues in the process of qualification of the deed are determined.

3. Typical and less typical investigative situations have been developed at the initial stage of the investigation of medical criminal offenses. The favorable and unfavorable sides of each typical investigative situation were identified, forensic recommendations were given to verify them. Recommendations have been developed for the optimal combination and combination of investigative and tacit investigative actions, depending on the current investigative situation.

4. Forensic tactical operations have been developed and proposed, determined by the tasks of pre-trial investigation of medical criminal offenses provided for by Article 317 of the Criminal Code of the Republic of Kazakhstan. The goals of each tactical operation are established, an algorithm of procedural and investigative actions for each tactical operation is proposed, the need for their implementation is justified.

5. The heuristic method "Table of evidence and evidentiary facts" was developed and proposed in the investigation of a medical criminal offense under Art. 317 of the Criminal Code of the Republic of Kazakhstan, which allows establishing the full mechanism of a criminal offense, correlation links between objects of evidence and criminally significant information, criminal consequences are justified depending on visually built versions and models of criminal behavior.

6. Based on a scientific generalization of the causes and conditions contributing to the commission of medical criminal offenses, the results of a sociological survey and the factors of committing medical criminal offenses under Art. 317 of the Criminal Code of the Republic of Kazakhstan. To improve the effectiveness of the investigation, avoidance and prevention of medical criminal offenses, measures have been proposed for general and special warning, where it is assumed:

a. to impement the educational process for students in medical institutions the teaching of disciplines: "Medical law," "Fundamentals of criminal legislation," "Forensic medicine" in order to improve legal literacy and legal awareness of future medical and pharmaceutical workers;

b. in order to ensure the improvement of the quality of medical care and improve the level of health care in the Republic of Kazakhstan, to implement, in view of medical practitioners, the organization and conduct of regular advanced training courses, depending on their specialization, with the involvement of foreign specialists on the basis of leading domestic and foreign medical institutions;

c. on the basis of the police departments in the system of the Ministry of Internal Affairs of the Republic of Kazakhstan to develop and create advanced training courses for investigators and interrogators on a private methodology for investigating medical criminal offenses under Article 317 of the Criminal Code of the Republic of Kazakhstan, based on the provisions of this dissertation study;

d. to propose the development of an interdepartmental order and the procedure for involving narrow specialists in the pre-trial investigation of medical criminal offenses when appointing a commission forensic medical examination of the quality of medical care.

The reliability of the research results is provided by its methodology, as well as the empirical basis on which the scientific provisions and conclusions of the dissertation are based.

Theoretical significance of the dissertation study. The theoretical significance of the work is that a number of messages can be perceived in the process of further development of the theory of criminal procedure law, such sections of forensic science as forensic tactics and the methodology for pre-trial investigation of certain types of criminal offenses. A number of its provisions will make it possible to enrich the subject of the theory of evidence related to proving the fact of the commission and the circumstances of medical criminal offenses.

The practical significance of the results determines the author's provisions on the description of elements of the forensic characteristic, the development of typical investigative situations, the development of practical recommendations for the use of the "table of evidence and evidentiary facts" method, the algorithm of the initial and subsequent stages of the investigation, forensic prevention measures, the use of electronic evidence in the pre-trial investigation of medical criminal offenses.

The results of the study were introduced and used in the educational process when teaching at the Law Faculty of Alikhan Bokeikhan University such educational disciplines as "Criminal Law," "Criminology," "Criminal Procedure Law," "Fundamentals of Crime Qualification," "Criminalistics," "Pre-trial Criminal Proceedings," "Forensic Expertise."

Testing and implementation of study results. The main conclusions, proposals and recommendations are outlined by the author in the following scientific publications:

- 1 article in the journal included in the Scopus database:

1. Methods of Pre-Trial Investigation of Criminal Offenses and Content of Its Structural Elements: Case of Kazakhstan // International Journal of Criminology and Sociology, 2020, 9, 325-334;

- in 3 journals recommended CCFES (The Committee for Control in the Field of Education and Science):

1. The use of tactical operations during the pre-trial investigation in cases of medical criminal offenses//Khabarshi-Vestnik. - 2022. - №1(75). - S.64-70

2. The concept and signs of medical criminal offences (iatrogenic crimes) // 2022. - Fylym No. 1 (72). - S.29-35

3. Features of forensic prevention of medical criminal offenses//Khabarshi-Vestnik. - 2022. №2 (76). - S.81-86

The provisions of this study were reported at the International Practical Conference dedicated to the 70th anniversary of Professor B.M. Nurgaliev "Forensic and Criminal Procedure Science: the current state and trends of development" (Karaganda, 2022)

The ideas and results of this study were presented at the round table "Problematic issues of establishing the guilt of medical workers in the criminal proceedings of the Republic of Kazakhstan" (2021), the author created electronic questionnaires and conducted a survey of employees of the investigative apparatus of the Department of Internal Affairs of the Republic of Kazakhstan, medical workers and the population. The survey results are covered in this dissertation study.

A number of theoretical proposals and practical recommendations on the problem under study have been put into practice by the investigative department of the Semey Police Department of the Abai Police Department.

Scope and structure of dissertation research.

The scope and structure of the dissertation meets the main purpose and subject of the work. The structure of the thesis is caused by nature of work and logic of a research. The dissertation consists of an introduction, three sections, including eleven subsections, a conclusion, a list of used literature. The total amount of work is 169 pages of computer text.