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Clinical case of special legal liability which is the result of a doctor when combination of specialties

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Abstract

We analyzed a forensic case related to an unfavorable outcome of medical care by a pediatrician. One of the reasons for the unfavorable outcome of medical care was the combination of pediatric and pediatric neurology specialties by the doctor, which, according to experts, contributed to an incorrect assessment of the severity of the child's condition and incorrect assessment of general cerebral symptoms and neurological disorders, without proper differentiation. As a result, the diagnostic was not fully provided, and more serious diseases at the time were not excluded. We determined the objective and subjective aspects of liability for combination several specialties. A medical-legal and forensic assessment of a specific unfavorable outcome of medical practice is given. It is concluded that any combination of different specialties by a doctor not only requires additional professional duties but, at the same time, creates additional legal risks in term of criminal law, which should be taken into account by each specialist who has assumed additional obligations.

Keywords: forensic medical examination, medical care, medical law, pediatrics, combination of specialties, risks.

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At present, in Russia, in accordance with the order of the Ministry of Health of Russia dated December 20, 2012, No. 1183n "On approval of the nomenclature of positions of medical workers and pharmaceutical workers," many doctors combine their work activities both in the main and additional specialties [1]. As a rule, this is associated with a number of aspects of the Russian healthcare system, namely, low wages; an objective personnel shortage, in particular in medical facilities in underpopulated areas; an insufficient number of highly specialized doctors; etc. [2, 3].

In this article, we present a medical and legal analysis of a case from judicial practice and the legal consequences that have arisen when a doctor combines several specialties.

According to Article 60.2 of the Labor Code of the Russian Federation, combining specialties should be understood as the performance by an employee of the same employer, along with his main job due to the employment contract, of additional work in another profession (position), or the performance of the duties of a temporarily absent employee without being released from his primary job obligations [4]. For example, a pulmonologist, in addition to his main duties, performs a study of the external respiration function, taking part of the rate of a functional diagnostics doctor under an employment contract. As a rule, in small district hospitals, doctors of both therapeutic and surgical specialties have three or four certificates, combining, e.g., the positions of a surgeon, traumatologist, urologist, endoscopist, etc. [5]. Such specialists are also common for larger medical organizations of the second and third levels [6].

To implement such activities, a doctor must undergo a retraining process, regulated by the order of the Ministry of Health of Russia dated Octo-

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ber 8, 2015, No. 707n "On approval of qualification requirements for medical and pharmaceutical workers with higher education in the direction of training 'Health and Medical Sciences'" and obtain the appropriate certificates [7]. Moreover, on November 30, 2020, the Ministry of Health of Russia announced changes to the aforementioned qualification requirements, expanding the possibilities of professional retraining, allowing the points accumulated in the continuous medical education system to be counted in several related specialties at the same time. The draft amendments to the current document have now been presented for discussion [8].

The very fact of liberalization of the retraining process of medical workers indicates that the combination of specialties in medicine is essential and will be actively used in the Russian healthcare system. At the same time, the profession of a doctor is characterized by a high level of psychoemotional stress, requiring constant concentration and attention. An additional load in the form of combination can have an additional negative impact on the labor productivity and quality of professional duties, increasing significantly the legal risks [9, 10]. In this regard, regardless of the position held, medical workers are legally liable from the moment the employment contract enters into force [11].

To combine several specialties, a doctor must undergo a professional retraining program.

At the same time, a doctor often acquires a narrower level of theoretical knowledge and practical skills than during a residency in the same specialty.

To illustrate such legal risks, we will give an example from judicial practice with an unfavorable outcome due to the medical care provision by a doctor who combined the specialties. A criminal case was opened against doctor A under Part 2 of Article 109 of the Criminal Code of the Russian Federation on the fact of a child's death while providing medical care in the Central District Hospital (CDH).

Doctor A had a higher medical education in the specialty "Pediatrics," an internship diploma in the same specialty, a qualification of pediatrician, diplomas of professional retraining, certificates of a specialist in the specialties "Pediatric neurology" and "Neonatology," a confirmed highest qualification category, and a 24-year continuous work experience in the specialty at the time of the events. In accordance with the employment contract and its supplementary agreement, doctor A had to provide medical care as a pediatrician, neonatologist, and neurologist (pediatric department). In view of the objectively forced nature of part-time jobs in three specialties under conditions of personnel shortage in small settlements, doctor A also performed the duties of the head of the children's department.

A five-month-old child was admitted to the reception and diagnostic department of the CDH with complaints of atony and double vomiting following a bathhouse visit. The patient was examined by the pediatrician (doctor B) on duty. During the examination, pulsation and bulging of the anterior fontanelle were revealed. Infusion therapy was prescribed to the child.

Two hours after admission to the department, doctor A was called, who was on duty at home awaiting a call to work. Doctor A arrived two hours after the call; examined the child; made the diagnosis of perinatal lesion of the central nervous system (CNS), late recovery period, and depression, myotonic, and astheno-neurotic syndromes, prescribed a treatment, and left the CDH.

After five hours, the child in severe condition with negative dynamics was transferred to the department of anesthesiology and intensive care with suspicion of intraventricular hemorrhage. The child's condition continued to deteriorate. One hour after the patient's stay in the department, it was decided to transfer him to an artificial lung ventilation. The cardiac arrest was recorded 45 minutes after the connection to the machine for artificial lung ventilation. After 30 minutes, the child's biological death was registered.

It should be added that doctor B, who was on duty at the time of the child's admission to the CDH, performed the duties of a pediatrician and a pathoanatomist. Due to this fact, the parents refused from autopsy at the CDH, arguing that doctor B in this situation is a person of interest. As a result, the child's corpse was examined by a forensic expert in the CDH in the presence of a pathoanatomist from the regional pathoanatomical bureau, without the participation of employees of the CDH.

According to the case file, the child was born from a mother whose pregnancy was accompanied by intrauterine fetal hypoxia, contributing to the development of CNS perinatal damage. At three months old, the child was registered with the diagnosis indicated by doctor A. Thus, the child's treatment by doctor A was performed during the entire period of supervision of the perinatal lesion of the CNS. It should be noted that a few days before the above-described case, the child was at a scheduled appointment with doctor A, where the parents were strongly advised not to take the child to the bathhouse. However, the parents did not consider this medical instruction seriously.

The deceased child's parents turned to the prosecutor's office. A criminal case was initiated under Part 2 of Article 109 of the Criminal Code of

the Russian Federation "Causing death by negligence due to improper performance by a person of his professional duties" on the fact of a child's death during the provision of medical care by doctor A [12].

During the preliminary investigation, three commissions of forensic medical examinations (CFME) were performed. At the same time, defects in medical care provision were identified, having significant differences in each examination, traditionally influencing the formation of the experts' position regarding the establishment of a causal relationship with an unfavorable outcome [13].

According to the conclusion of the CFME No. 1, among the defects identified, it was noted that the child's examination was limited only to a general and biochemical blood test and X-ray of the chest cavity organs in frontal view. At the same time, lumbar puncture (to rule out meningitis and intraventricular hemorrhage) and inoculation of vomiting matters (to identify the disease's possible causative agent) were not performed. Drug treatment was prescribed and not performed in full, as antiviral therapy was not prescribed and not performed. Anti-edema therapy was not continued in presence of an increasing cerebral edema. It was revealed that the child's cause of death was a generalized viral-bacterial infection of unknown etiology, complicated by cerebral edema with a penetration into the foramen magnum. In addition, diagnostic and treatment shortcomings were found to be not directly causal to the child's death.

In the conclusion of CFME No. 2, the expert commission identified shortcomings in medical care provision at the diagnostic stage, namely, liver enzymes were not investigated in the biochemical blood test, and a coagulogram was not prescribed. It was also indicated that there was no lumbar puncture and no inoculation of vomiting matters. Moreover, microscopic signs of fibrosis of the submucous layer in the small intestine wall were revealed, indicating that the pathological process lasted for at least six months, which in turn does not exclude the possibility of intrauterine infection with cytomegalovirus infection.

It was established that the child's cause of death could be atypical Reye's syndrome. The expert commission also concluded that the listed shortcomings do not have a direct causal relationship with the child's death.

According to the results of repeated CFME No. 3, the child's death was caused by an acute generalized viral-bacterial infection (of unknown etiology) with a predominant lesion of the respiratory tract, intestines, and brain, complicated by acute respiratory failure, multiple organ failure (liver, kidney, heart), pulmonary and brain edema, with penetration into the foramen magnum.

The expert commission revealed the following defects:

– The correct diagnosis has not been established.

– The timely transportation of the child to a hospital of a higher level was not performed.

– There were no consultations with a pediatric infectious disease specialist and an otorhinolaryngologist.

– A study has not been performed for viruses of respiratory infections, Epstein-Barr virus and cytomegalovirus.

– There was no bacteriological examination of the mucus from the tonsils and the posterior pharyngeal wall for aerobic and optionally anaerobic microorganisms.

– No bacteriological examination of feces was performed.

– Not all the necessary indicators of a biochemical blood test, in particular liver enzymes, have been investigated.

– Antiviral and immunostimulating therapy has not been prescribed.

Thus, the incomplete conduct of the necessary laboratory studies that could confirm or refute the opinion about the disease did not allow a full differential diagnostic search and the establishment of the correct diagnosis. The examination in the CDH was not possible due to the lack of diagnostic facilities, which required the child's urgent transfer to a higher-level hospital with a pediatric neurosurgical department and intensive care unit and a computed tomograph. However, despite the parents' request to doctor A, such a decision was not made.

Defects made in medical care provision to a child did not interfere with the course of the infectious process, thereby contributing to disease progression and death, but were not an independent cause of it. Thus, the experts' commission came to the conclusion that there is a causal relationship between the defects in the child's medical care in the CDH and his death, which, however, is of an indirect nature.

Considering that there are contradictions between the CFME's conclusions, regarding the child's cause of the death, the court's verdict was based on the CFME No. 3 conclusion, since it contains the most complete answers to the questions posed.

The court adjudged doctor A guilty of committing a crime under Part 2 of Article 109 of the Criminal Code of the Russian Federation, sentenced to a 2-year custodial restraint with the obligation not to leave the municipality without the consent of a specialized body and with 2-year

deprivation of the right engage in medical activities. At the same time, based on the clause 3 of Part 1 of Article 24 of the Criminal Procedure Code of the Russian Federation, the accused was released from the imposed punishment due to the expiration of the statute of limitations for criminal prosecution.

According to the court's verdict, doctor A had the appropriate education; therefore, she should have had the necessary amount of knowledge and the level of professional training in each of the specialties in which she performed her labor activity.

According to the court, in violation of the provisions of employment position instruction and medical care standards, doctor A "made an incorrect diagnosis to the child; underestimated the severity of the condition; and did not make a timely decision to transfer the child to the intensive care unit, to transfer him urgently to a higher-level hospital; accordingly, she did not provide the child with properly qualified medical care, leading to his death by negligence."

The above example clearly shows the need for medical workers' strict adherence to all employment position instructions and job responsibilities. Despite the acquired amount of knowledge and competencies, the combination of several specialties does not always allow for a full differential diagnostics to be performed properly and to provide high-quality medical care to the patient. At the same time, the lack of an alternative opinion of colleagues about the developing clinical presentation of the disease can lead to a subsequent incorrect interpretation and assessment of clinical and laboratory parameters and tests performed.

According to the authors, the cause of the unfavorable outcome in this particular case was the defects in medical care provision due to the lack of alertness and advisory opinion due to the combination of several specialties by the medical worker. At the same time, the example reveals that even the presence in the case of the fact of patients' noncompliance with the direct prescriptions of the doctor (a ban on visiting the bathhouse) and the absence of a direct nature of the causal relationship between defects and an unfavorable outcome are interpreted by the law enforcement officer against the medical worker.

CONCLUSION

The combination of specialties not only imposes additional professional duties on the medical worker but also creates additional legal, in particular criminal, risks that should be taken into account by every doctor who has undertaken obligations in additional specialties.

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