

UDC 343 811 (100)

A. V. Serbina

Lawyer, analyst of PH «Factor»,
Head of Donetsk separate division of All-Ukrainian Civic Organization
«Association of Lawyers Providing Free-Of-Charge Legal Aid»
Gagarina av., 248 / 60, Kharkiv, 61000, Ukraine

**PROCEDURE FOR PROVIDING MEDICAL ASSISTANCE TO CONVICTS
SENTENCED TO IMPRISONMENT IN UKRAINE**

This article reveals the procedure for providing medical assistance to persons serving sentences of imprisonment.

Ability to provide medical care to convicts sentenced to imprisonment is significantly restricted to conditions of detention in places of non-freedom: quality of work of the medical unit, availability of the necessary medicines and qualified doctors, access to medicine of an adequate standard.

The work of a lawyer is not only in protection against accusations, but also in an enforcement of rights of the client during the proceedings and serving his/her sentence.

Key words: medical assistance, conditions of non-freedom, free choice of doctor, quality, timeliness.

Problem statement. In current Ukrainian conditions it's extremely important to disclose the order of providing medical assistance to those who are in places of non-freedom, opportunities of imprisoned person and order of actions aimed at restoration of rights of that person.

Analysis of recent researches and publications. There is a lot of scientific studies dedicated to the legal status of prisoners. Among them: S. K. Akimov, A. B. Bryllyantov, N. V. Vytruk, L. D. Voevodyn, A. Y. Zubkov, Y. Y. Karpets, A. V. Kuznetsov, N. Y. Matuzov, M. P. Melentev, H. L. Mynakov, A. C. Mykhlyn, A. E. Natashev, Y. S. Noi, P. H. Ponomarev, V. Y. Selyverstov, H. A. Struchkov, Iu.M. Tkachevskiy, V. A. Utkyn, V. D. Fylymonov, Y. V. Shmarov, etc. But at same time there is no enough of complex researches on the medical assistance to such a group of patients, although many scholars and practitioners have repeatedly drawn attention in their studies and publications that medical rights of patients who are in places of non-freedom are in critical danger. The insularity, lack of effective secure communication with relatives and friends at large, «tied hands» of prisoners themselves leads to leveling of rights of patients that threatens human health and life.

Paper purpose is a disclosure of legislatively minimum standards of actions of penal institution's staff, aimed at ensuring and protection of health of those persons, who are serving their sentence in prison, in order to examine the possibility of actions needed to restore the violated rights.

Paper main body. According to Art. 27 of the Constitution of Ukraine everyone has the inalienable right to life. No one shall be arbitrarily deprived of

life. The duty of the state is to protect human life. Everyone has the right to protect his life and health, life and health of others from unlawful encroachments.

Serving sentence in detention facilities does not deprive a person of the right to protect his health, doesn't narrow or limit his rights. Unfortunately, in practice, it is hard for prisoners to maintain their health at the proper level; we mean a state of complete physical, mental and social wellbeing, not merely the absence of disease or disability. Terms of punishment in general are unfavorable for maintaining a state of complete health, and not even for recovery.

Along with the objective reasons of improper medical care there are the subjective reasons, which include client ignorance of his/her rights and opportunities, reluctance of representatives of detention facilities to fulfill the requirements of current legislation and their duties.

Each convict has those rights in the sphere of health protection: right to life [1, Art. 27], [2, Art. 281]; right to choose the doctor, which includes: right to choose the medical institution; right to choose a doctor; right to replace the doctor [3, Art. 34, 38]; right to information, which includes: right to get information about health; right to get information about medical intervention [2, Art. 285], [3, Art. 39]; right to privacy [2, Art. 288], [3, Art. 39–1]; right to choose methods of medical intervention [2, Art. 284]; right to personal security, including right to refuse medical intervention [2, Art. 284, 289], [3, Art. 43]; right to proper quality of health care [3, Art. 6]; right to compensation [3, Art. 6].

The rights of prisoners in the health protection sphere, the main principles of medical assistance and interaction of health care institutions of the State Criminal-Executive Service of Ukraine with health protection institutions on providing medical assistance to prisoners are stated by the Order of Organization of Providing Medical Assistance to Prisoners Sentenced to Imprisonment [4].

Healthcare institutions of State Criminal-Executive Service of Ukraine (hereinafter — SCES) include: specialized TB hospitals; specialized dermatology and venereal hospitals; specialized psychiatric hospitals; multidisciplinary hospital; multidisciplinary hospital for disabled of I and II groups that require constant medical care and rehabilitation; outpatient clinics; outpatient and preventive department; medical unit of penal facilities; points of health protection; pharmacy.

In health care institutions of SCES emergency medical assistance, primary medical assistance, specialized (secondary) medical assistance are provided, sanitary-hygienic and anti-epidemic measures are carried, provision of medicinal products and medical devices is organized, rehabilitation treatment after diseases and injuries are performed [4].

In medical unit of penal facilities there is duty to control the health condition of prisoners through medical examinations, inspections, exercise of clinical supervision, provision of primary health assistance, emergency medical care, outpatient and inpatient care in accordance with the Basic Laws of Ukraine on Health Protection.

Talking about the basic rights of the convict, he has the right to free choice of a doctor [4]. In case when convict makes a request for admission of a chosen doctor, medical worker of SCES's health institution prepares a medical report on the health of the convict and the request to the administration of penal institution during one day.

Administration of the penal institution provides the access of the doctor to the convict within three working days after the presentation of passport, certificate of education and a specialist certificate made by the chosen doctor.

Health examination conclusion, consultations and information about the medical treatment made by the doctor have to be necessarily included in the medical record of the convicted person. Compensation of costs associated with the provision of medical care made by the chosen doctor is carried out by the own funds of the convict or his relatives.

Counseling, medical examination and medical treatment that are provided by the doctor chosen by the convict are carried out in conditions of SCES's medical institution in the presence of medical personnel.

In case of necessity of additional medical examinations, which may not be made in SCES's medical institutions (available equipment, laboratories and capability of health care is not provided for conducting these medical examinations), their conducting is implemented on the basis of medical institutions which are included in the indicative list where such medical examinations may be performed.

Administration of the penal institution during the period defined by the doctor provides directing of the convict for medical examination to the certain medical institution from the indicative list.

If it is found by the results of the medical examination of the convict that he needs medical assistance in the health institution from the indicative list, doctor of SCES's medical institution prepares a medical report about the health of the convict and requests the administration of penal institutions.

Administration of penal institutions provides transportation of the convict to such health institution from the indicative list no later than in period defined by the doctor. The administration also organizes and provides day and night ward of the convict during medical treatment in medical institution.

Medicinal products (or their equivalents) and technical and other means of rehabilitation can be obtained from relatives of convicts or other persons only if they are prescribed by a doctor and approved by the chief of SCES's medical institution [4].

For transfer of medicinal products (their equivalents) relatives of the convicts have to submit an application, which then have to be filed in a medical record. After receiving the parcel the convict scrutinizes the list of tools and products that have been transferred for his medical treatment and personally signs the document.

Another important aspect is a right to primary medical examination of convicts [4]. Upon arrival in penal facilities all prisoners undergo the primary medical examinations during the day in order to identify people who have suffered injuries, people who are posing a threat of epidemic to the environment

or are in need of medical care, and those with pediculosis. Results of survey are recorded in the medical card that is sent from detention centre together with the personal file of the convict.

In case of detection of injuries medical worker reports immediately to administration of penal institutions and comprises a reference in three copies, where he/she describes in detail the nature of the damage, their size and location. Two copies of reference are attached to the personal file and medical records, and the third copy is granted to convict [4].

About the fact of detection of injuries of convict the administration of penal institution informs the prosecutor in written form during the day and documents the injuries identified in the logbook.

In the case of detection of the prisoner's illness health medical officer estimates the health condition of the convict and possible danger to the environment. He also defines the possibility of providing medical care in the medical unit's conditions or determination of convict to the hospital or health institution from an indicative list.

Medical assistance to convict is provided immediately in conditions of medical unit of penal facilities. In case of impossibility of providing of such assistance fully the convict is determined to the hospital or the health care institution from the indicative list within the period determined by a medical worker in the medical record.

All HIV-infected convicts are taken on dispensary registration; registration record of HIV-infected person is filled.

After the primary medical examination convicts are sent to the quarantine, diagnostic and distribution department.

Within fourteen days of stay of convicts in the quarantine, diagnostic and distribution department they are subjected to full medical examination, that is performed by doctors of medical unit according to their professional direction, and fluorography examination (besides those convicts, that are examined during the last 11 month).

The complete medical examination includes: anamnestic information' collection; anthropometric researches (height, body weight); objective examination of organs and systems; gynecological examination of women with cytological smears for examination, girls — fingertip examination through the rectum (if indicated); evaluation of visual and hearing acuity; tuberculin diagnosis in penal institutions — for minors; blood samples (erythrocyte sedimentation rate, hemoglobin levels, leucocytes quantity, blood sugar indicated); urinalysis; ECG; fingertip examination through the rectum (if indicated); pneumotachometry (if indicated); women — palpation examination of breasts; review by therapist, psychiatrist, dentist and if necessary — review by other doctors; identification of persons with symptoms that require mandatory testing for tuberculosis because of the clinical screening' results (productive cough with sputum that lasts more than two weeks, weight loss, fever, night sweats, coughing up with blood, chest pain), in case of identifying of such persons — carrying out of double examination of sputum with the method of microscopy smear of sputum.

After the survey (obtainment of the results of the survey) doctor prepares the conclusion on the health of the convict (with the diagnosis) with recommendations for employment immediately, which is introduced in medical card.

Depending on the health condition and diagnosis convict is immediately provided with medical assistance.

Further medical monitoring of health of convicts is carried out during preventive medical examinations, as well as in the case of appeals of prisoners complaining for their health condition to the medical unit.

After the diagnosis of HIV infection [4] indications for appointment of antiretroviral therapy are defined by infectious disease specialist together with medical worker of medical unit of penal institution, who is responsible for pre- and post-test counseling, measures specified with «The Procedure of Interaction Between Health Care Institutions, Local Bodies of Internal Affairs, Penal Institutions and Detention Centers in Terms of Coherence of Follow-Up for HIV-Positive Persons, the Implementation of Clinical and Laboratory Monitoring about the Progress of the Disease and Antiretroviral Therapy» are taken [5].

In order to detect and prevent the spread of infectious, parasitic, detect of somatic and mental illness in penal institution prophylactic medical examination is conducted annually.

Preventive medical examination is conducted twice a year for juvenile convicts and convicts that are held in penal institutions in the areas of chamber type.

Therapist, psychiatrist, dentist are necessarily involved in preventive medical examination. In the absence of these professionals in the medical unit they are involved. Preventive medical examination of minors is hold by pediatrician, otolaryngologist, ophthalmologist, neurologist, surgeon, dentist and psychiatrist.

During the preventive medical examinations are carried out: anamnesis collection; anthropometric research (height, body weight); examination of organs and systems; gynecological examination of women with cytological smears for examination, girls — fingertip examination through the rectum (if indicated); visual and hearing acuity; tuberculin diagnosis in penal institutions for minors; blood count (erythrocyte sedimentation rate, hemoglobin levels, leucocytes quantity, blood sugar indicated); urinalysis; electrocardiography (from 15 years — once in 3 years, 30 years — every year); fluoroscopy (X-ray) of the chest — once a year; fingertip rectal examination (if indicated); pneumatic (if indicated); women — palpation examination of breast; review therapist, psychiatrist, dentist; review of convicts on pediculosis; if indicated — review of other doctors.

The results of preventive medical examination are recorded in the register of the results of passing of prophylactic medical examination and are fixed into the medical card of the convict.

Outpatient reception of convicts is performed in the medical unit at specific times each day, for which convicts are recorded in the journal of prior appointment for the outpatient reception. Reception without prior registration is hold by the decision of a doctor.

Prior to the outpatient reception an assistant picks outpatient cards of convicts, asks patients to ascertain their complaints, measures their body temperature, provides an overview on pediculosis and determines the order of referral to the reception according to their state condition.

Outpatient treatment, which lasts no more than 15–20 days, is nominated for those convicts, that don't need complicated methods of diagnosis and treatment.

The scope of diagnostic and therapeutic measures for patients depends on opportunities of providing laboratory, X-ray and other examinations in terms of medical unit.

Patients assigned to outpatient treatment, come to the medical unit for receiving medications and perform other procedures during the day at the certain hours. If there is a necessity of round-the-clock emergent medication medicines are given to the patients (not exceeding the daily requirement) by the prescription of the doctor.

Conclusion on temporary release from work is made by that doctor, who has made the reception, but no more than for three days at once.

For convicts, who are on the premises of chamber type, in the disciplinary detention centers, outpatient medical care is provided in situ by the medical worker during daily checking of the overall health condition of convicts. In cases where there is a threat to the health or life of the convict, who is held in these premises, medical worker informs immediately in writing the chief of the penal institution, who authorizes the movement of the convict to the medical unit.

Hospital of medical unit is designed to: examination and treatment of convicts who need inpatient treatment, with the treatment period up to 30 days; necessary inpatient aftercare of convicts discharged from medical or health-care institutions; temporary isolation in an insulator of medical unit of infectious or suspected at being infectious convicts before departure of them in the specialized hospital; inpatient treatment of non-transportable convicts up to stabilization of their condition and departure to hospital or health care institution; placing of juvenile convicts that belong to health-improvement groups.

In conditions of hospital of medical unit inpatient treatment of minor convicts with diseases that can be cured in two weeks is carried only, in the presence of a medical pediatrician. In the absence of pediatrician or in case when minor convicts require a longer period of inpatient treatment, they are immediately sent to the health institution from the indicative list.

Reception of convicts in hospital of medical unit is carried out if there is an output of the doctor about the necessity of examination and treatment in hospital in the medical record.

Medical card is prepared for each convict, which includes data on all diagnostic and treatment process, including those obtained during examination of the convict, with a letter of assignments. Chief of the medical unit (another medical worker) reports about all cases of emergency or planned hospitalization and discharge from the medical unit to the head of the department of social and psychological services.

All patients must undergo sanitization. Underwear of convict is handed over to the laundry, and then it is disinfected and is returned to the convict after the discharge from the hospital. Clothing and footwear of convict are stored in the medical unit.

In hospitals preventive disinfection measures and the current and final disinfection considering the diagnosis of infectious is hold.

In the hospital convicts who pose a danger to the environment (infectious, contagious skin diseases, mental illness, etc.) are placed separately from other prisoners. To do this in a hospital infectious and psychiatric insulators are equipped.

During his stay in hospital the convict is examined according to his/her disease. Through this examination all the medical techniques of instrumental and laboratory researches are used.

Bearing in mind the results of the examination and diagnosis the doctor of medical unit immediately appoints the treatment to convict in the scope prescribed by standards and norms of medical assistance in public health, clinical protocols of medical assistance.

In hospital medical unit medical worker is on duty around the clock. The doctor on duty corrects medical appointments considering the health conditions of the patient.

Prisoners with mental and behavioral disorders are assigned to the restorative therapy with agents that affect the metabolism, and sensitizing therapy, because of use of psychotropic substances in hospital medical unit.

In the cases of mental and behavioral disorders, aggressive behavior with manifestations of violence, attempt to commit self-mutilation, state of excitement, measure of isolation in the form of placement to a single-chamber insulator of medical unit is used to the convict.

The isolated convict has to be examined by the medical worker at least once every three to four hours. The duration of single-purpose insulation is installed to eight hours, to continue its term a new appointment is made. In order to extend the isolation term for more than 48 hours and before each new appointment the patient has to be examined by the psychiatrist (commission of psychiatrists).

For minors who are physically weakened, are weighing below the established norm, are suffering various serious diseases, trauma, surgery, with long-term nature deviations in health, and are belonging to a special group of accounting and are subjected to constant medical observation, health-improvement groups in inpatient medical units are created.

The convict is subjected to referral for hospitalization in medical institutions in case when the disease emerged or chronic diseases worsened and their medical treatment requires hospitalization to medical institution, as well as in need of further medical examination in hospital conditions.

Medical record and an extract from the medical record (in convertible form) of the convict, who was treated in the medical unit of the prison, are attached to the personal files of the convict, who is sent to the hospital.

In case of direction of a woman with her child the child's birth certificate and the history of child's growth development are attached.

Medical staff has an access to medical records exclusively.

Considering the state of health of convict according to the conclusion of a doctor, the convict who is hospitalized to the medical institution have to be transported in accompany with the medical worker, who is taking part in the escort of prisoners, provides medical care to prisoners during transportation and is appointed by the chief medical officer of prison. Transportation of prisoners with leprosy is carried out in specially equipped cars.

Reception of prisoners in hospital of penal institutions is based on the command and the presence of medical opinion about the necessity of treating of convict in hospitals or examination in inpatient medical units.

It is forbidden to take convicts with infectious diseases to multihospitals in the case of absence of an infection-boxed compartment in a part of the hospital. These prisoners are immediately sent to the hospital or the health care institution from the indicative list of the profile, under which there is such a branch.

Prisoners who came to the hospital are recorded in logbooks; everyone gets a medical record, which recorded data on all diagnostic and treatment process.

Conclusions. Ukrainian legislative framework clearly regulates the treatment of convicts in order to maintain their health and life. Knowledge of the principles and consistency of care for persons who are in places of non-freedom, and legal requirements for quality and timely medical care allows such persons to control the administration and staff of penal institutions to respond to their omission, negligence or willful violation of the legislation. In each case, it will help to save a life and greatly improve his/her health, both physically and mentally.

References

1. Constitution of Ukraine [Text]: Law of Ukraine of 28.06.1996 // State Paper of Verkhovna Rada of Ukraine. — 1996. — № 30. — 141 p.
2. Civil Code of Ukraine [Electronic resource]: Code of 16.01.2003 № 435-IV. — Access mode: <http://zakon2.rada.gov.ua/laws/show/435-15> — Title from the screen.
3. Basic Laws of Ukraine on Health Protection [Electronic resource]: Law of Ukraine of 19.11.1992 № 2801-XII. — Access mode: <http://zakon2.rada.gov.ua/laws/show/2801-12> — Title from the screen.
4. On Approval of the Provision of Medical Assistance to Convicts Sentenced to Prison [Electronic resource]: Order of Ministry of Justice of Ukraine, Ministry of Health of Ukraine of 15.08.2014 № 1348/5/572. — Access mode: http://Search.Ligazakon.Ua/L_Doc2.Nsf/Link1/RE25767.Html — Title from the screen.
5. Procedure of Interaction Between Health Care Institutions, Local Bodies of Internal Affairs, Penal Institutions and Detention Centers in Terms of Coherence of Follow-Up for HIV-Positive Persons, the Implementation of Clinical and Laboratory Monitoring about the Progress of the Disease and Antiretroviral Therapy [Electronic resource]: Order of the Ministry of Health of Ukraine, the Interior Ministry of Ukraine, the Ministry of Justice of Ukraine of 05.09.2012 № 692/775/1311/5. — Access mode: <http://zakon4.rada.gov.ua/laws/show/z1615-12> — Title from the screen.

А. В. Сербіна

Донецький відокремлений підрозділ

ВГО «Об'єднання адвокатів, які надають безоплатну правову допомогу»

пр. Гагаріна, 248, кв. 60, 61000, Харків, Україна

**ПОРЯДОК НАДАННЯ МЕДИЧНОЇ ДОПОМОГИ ЗАСУДЖЕНИМ
ДО ПОЗБАВЛЕННЯ ВОЛІ В УКРАЇНІ**

Резюме

Дана стаття розкриває порядок надання медичної допомоги особам, які відбувають покарання у вигляді позбавлення волі.

Можливість надання медичної допомоги засудженим до позбавлення волі суттєво обмежується умовами перебування у місцях несвободи: якістю роботи медичної частини, наявністю необхідних медичних препаратів, кваліфікованих лікарів, доступу до медицини належного рівня.

Робота адвоката полягає не тільки у здійсненні захисту клієнта від обвинувачення, але й забезпеченні дотримання прав клієнта під час здійснення провадження та відбування покарання.

Українська законодавча база досить чітко регламентує порядок поведження із засудженими з метою збереження їхнього здоров'я та життя. Знання принципів та послідовності надання медичної допомоги особам, які перебувають у місцях несвободи, та вимог законодавства щодо якісної та своєчасної медичної допомоги таким особам дозволяє контролювати адміністрацію та працівників установ виконання покарань, вчасно реагувати на їх бездіяльність, халатність чи умисне порушення вимог законодавства, що, в кожному окремому випадку, дасть змогу зберегти життя людині та в значній мірі покращити стан її здоров'я, як фізичного, так і психічного.

Ключові слова: медична допомога, умови несвободи, вільний вибір лікаря, якість, своєчасність.

А. В. Сербина

Донецкое обособленное подразделение ВОО

«Объединение адвокатов, которые предоставляют бесплатную правовую помощь»

пр. Гагарина, 248, кв. 60, Харьков, 61000, Украина

ПОРЯДОК ОКАЗАНИЯ МЕДИЦИНСКОЙ ПОМОЩИ ОСУЖДЕННЫМ К ЛИШЕНИЮ СВОБОДЫ В УКРАИНЕ

Резюме

Данная статья раскрывает порядок оказания медицинской помощи лицам, отбывающим наказание в виде лишения свободы.

Возможность оказания медицинской помощи осужденным к лишению свободы существенно ограничивается условиями пребывания в местах несвободы: качеством работы медицинской части, наличием необходимых медицинских препаратов, квалифицированных врачей, доступа к медицине надлежащего уровня.

Работа адвоката заключается не только в осуществлении защиты клиента от обвинения, но и в обеспечении соблюдения прав клиента во время осуществления производства и отбывания наказания.

Украинская законодательная база достаточно четко регламентирует порядок обращения с осужденными с целью охраны их здоровья и жизни. Знание принципов и последовательности оказания медицинской помощи лицам, находящимся в местах несвободы, и требований законодательства относительно качественной и своевременной медицинской помощи таким лицам позволяет контролировать администрацию и сотрудников учреждений исполнения наказаний, своевременно реагировать на их бездействие, халатность или умышленное нарушение требований законодательства, что, в каждом отдельном случае, позволит сохранить жизнь человеку и в значительной степени улучшить состояние его здоровья, как физического, так и психического.

Ключевые слова: медицинская помощь, условия несвободы, свободный выбор врача, качество, своевременность.