

Review

Regulation of medical activity in Russia and Europe in the 10th – early 20th centuries: correlation between ethical and legal principles

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Abstract: The legal and ethical regulation of medical activity in Russia vs. European countries has common features and a number of specific differences. The regulation of medical activity in the Old Russian state and European medieval states was carried out within the framework of legal norms and Christian worldview, the main principle of which was service to one's neighbor. For instance, these were ethical issues that came to the fore. The secular state form, began its historical path with the emergence of the first secular doctors at the courts of ancient Russian princes. From the 16th century on, it became part of the state apparatus extending its influence to the social estate of the military servicemen. In the middle of the 19th century, during the period of the Zemstvo Reform, it became the main form of servicing rural population. The specificity of zemstvo medicine was the organization of medical activities based on of local self-government bodies and medical societies. At the beginning of the 19th century, with the increasing complexity of scientific knowledge and organization of medical services, European medical codes of ethics aimed at developing the rules of conduct to be followed by the members of newly emerging national medical associations. Despite regulating medical activity, the issues of healthcare were not given due attention, and there were no specific legislative acts affecting the health care regulation in prerevolutionary Russia. In Europe, too, for a long time, the responsibility of a medical professional for mistakes was considered from the standpoint of private relationships based on contractual and commercial principles.

Keywords: regulation of medical activity, church medicine, secular state medicine, traditional medicine, codes of ethics.

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Introduction

The regulation of medical activity, along with the presence of restrictions, and of internal and external control, are fundamental to high-quality professional medical practice. However, excessive control, causing a defensive reaction, can negatively affect the quality of medical care provided to patients [1]. At the same time, speaking of regulation, we should distinguish between the ethical regulation, based on the concept of moral principles, and legal regulation, based on legal principles. Discussing the social and legal significance of medical legislation development, researchers note that laws can be a powerful tool for strengthening global healthcare, but they are still largely underused and poorly understood [2].

Along with thousands of years of active ethical discussion about medical practice, different legal norms regarding medical practice coexist in various countries, which reflects local culture and relevant legal traditions.

In this context, the history of Russian medical legislation formation, the relationship between legal and ethical issues in the regulation of medical activity is of a special interest. Throughout

the history of the Russian state, there has been a contradictory but steady process of improving the legal control of the healthcare sector, carried out within the framework of legal norms and the development of various institutions with activities directly related to provisioning the medical care.

Material and Methods

The term *law* is commonly used to refer to the legal instruments, such as particular laws, treaties, and regulations that express public policy, along with the government institutions (such as courts, legislatures, and agencies) responsible for making, applying, and interpreting law. Well-designed laws can help building strong healthcare system, providing safe and nutritious food, evaluating and approving safe and effective medicines and vaccines, creating healthier and safer jobs, and improving both man-made and natural environment.

Our study is focused on examining a fairly long period of the medical activity regulation development from the ancient Russian period to the end of the imperial period, when Russia, actively interacting with Western countries, did not oppose itself to them.

The Soviet period is not considered since it requires special attention.

Many aspects related to the regulation of medical activity were already reflected in scientific, documentary, journalistic and other studies [3-5]. In part, this topic, primarily its historical aspects, has already been touched upon both in domestic and foreign scientific studies [6-8]. However, it should be noted that in available studies on the history of medicine, the legal support of the healthcare system was characterized in the most general and rather obscure terms. To a greater extent, attention was paid to legal issues in the legal literature dedicated to medicolegal issues. For instance, S.G. Stetsenko considered regulation from the standpoint of the theory of state and law [9]. As a rule, the authors touched upon modern problems of the healthcare system regulation and related legal issues [10-12].

At the same time, in the overwhelming majority of publications, issues related to regulating the provision of medical care were considered solely from a medical standpoint; at best, they were placed in the Russian national historical context, remaining isolated from the worldwide historical processes.

Results

Middle Ages

The Old Russian state developed in close relationship with European states and Byzantium. The predominant role of religious values both in Islamic and Christian countries determined the emphasis on the moral component of medical practice. The development of medicine and law was subordinated to the primacy of religious dogmas, including the issues of doctors' responsibility for unsuccessful treatment outcomes due to their inexpert actions.

Both in Russia and in Europe, such branches of medical care as traditional (folk), monastic, and secular medicine, have been developed. The regulation of traditional medicine, which goes back to conventional forms of beliefs and traditions, was largely based on nonlegal means: moral and ethical standards, and customs. After the adoption of Christianity in the Old Russian state, as well as in Europe, the persecution of alternative medicine practitioners, such as *volkhvs* (wizards), sorcerers, etc., begins. According to the *Charter of Prince Vladimir*, sorcery and herbals were considered the crimes against faith and were punished.

The first hospitals appeared at monasteries. Monastic medicine in Old Russian state and Western Europe, subordinated to religious ideology, was focused on the spread of the Orthodox and Catholic faiths, respectively. Monastic hospitals served as practical schools for monk doctors; they accumulated experience in treating the diseases and manufacturing medicines. Having played a positive role at a certain stage, the association of medicine with the church, observance of religious rituals, prayers, repentance, and *miracles of the saints* commenced slowing down the development of scientific medicine over time.

The legal regulation of specific issues related to medical practice in the Old Russian state was manifested in legislation since the 11th century. For example, the code of laws, *Russkaya Pravda* ("Russian Justice"), in its articles 2 and 30, contains information on remuneration to the doctor for provided medical care [13]. Herein, it is important to note that, first of all, it was not the medical practice per se that was the subject to regulation, but rather the responsibility of the doctor for improper performance

of the duties [14]. The regulation of medicine was triggered, on the one hand, by social stratification with a simultaneous increase in the value of life of representatives of certain social groups, and on the other hand, by an augmented role of the Orthodox Church in society and increased Byzantine influence, which was reflected in the development of monastic medicine. The latter was subjected to relatively strict legal regulation and rationalization. According to the *Church Charter*, healers were classified as church people and, accordingly, they were subordinate to the bishop [15]. In Russia, as in Byzantium, bishops could act as judges in many civil cases, including those related to the provision of medical care [16; 17]. They were guided in their decisions by the norms of medical ethics, the first information about which is contained in the *Kiev-Pechersky Patericon* [18].

During the period of the Tatar-Mongol rule, the legal regulation of medical care did not receive further development. The liberation of monasteries from tribute promoted their appearance in Russia in large numbers, which opened up wide opportunities for the development of monastic medicine based on the Christian worldview and ethical values. In a number of cases, the church continued to fight against *sorcerers, witches and healers*.

The development of the Muscovite state coincided in time with the Renaissance in Europe, starting from which the development of science contributed to a beginning of a new stage in the discussion of ethical issues. The spread of epidemics led to the emergence of quarantine measures and special regulations aimed at preventing the introduction and spread of infectious diseases, and from the beginning of the 16th century, specially appointed doctors began providing medical care at the hospitals in European cities. Simultaneously, university education continued to develop in Europe, within the framework of which it was possible to obtain training in the field of medicine. Knowledge of medicine in the late Middle Ages began to concentrate at European universities, dating back to the schools in Salerno and schools in the Arab caliphates. From the 15th-17th centuries, while maintaining the basic ethical requirements of Hippocratic ethics, traditional for the Western European medicine, novel ideas are developed in the works of intellectuals about human rights in the field of health care and receiving medical care, fairness in the distribution of medical services, the conditions for observing medical confidentiality as respect for the rights and dignity of the individual, and a number of others issues. Paracelsus entered the history of medical ethics as the creator of a new moral principle of medical activity, supplementing the Hippocratic principle of "*first do no harm*" with "*do good, create blessing*." Ethical principles contributed to strengthening the autonomy and increasing the competitiveness of doctors with university education. The interests of patients were considered more or less as valuable as those of the doctor [19].

Features of medical ethics in Russia were predetermined by the prevalence of the collective principle over the individual, the state over the person. In the 16th century, Russian monasteries abandoned the traditional gratuitous treatment and started charging the sick for provided assistance. In conditions of lagging behind Western medicine, church healing relied more on prayers rather than on knowledge and skills. The majority of the Moscow state population at that time used the services of traditional medicine representatives. In the 15th and 16th centuries, the rulers started inviting foreign doctors to Russia.

Since the end of the 15th century, punishments for medical errors appeared, which was reflected in the *Sudebnik of Tsar Ivan III* (a code of law). The centralization of government bodies was manifested in the emergence of the *Prikaz System* in Russia (*prikaz* being the analog of a modern ministry, office or department). The development of the medical activity regulation at the state level led to the creation of the *Aptekarsky* (i.e., pharmaceutical) *Prikaz* (i.e., order) in 1581. According to other sources, before the reign of Boris Godunov, it was called the *Pharmaceutical Hut*. It is noteworthy that such centralized body regulating medical activities did not exist in Western Europe at that time [20]. Attracting foreign specialists to the staff of the *Aptekarsky Prikaz* brought to life the formulation of requirements for their scientific and professional qualifications, and stringent regulations of their activities and remuneration were determined [21, p. 159]. In the 17th century, the foundations for the regulation of the military medical service were established, as well as litigation and punishment of medical workers for violations related to the performance of their duties [20, p. 12].

The Empire

One of the most important aspects in the transformation of Russia carried out by Peter the Great at the beginning of the 18th century in accordance with the Western model was the establishment of military bureaucratic absolutism. The latter claimed that in order to become the *welfare state*, the state must regulate all aspects of the citizens' lives. During the reign of Peter I, various aspects of medical activity began to be regulated, which was largely due to the pragmatic tasks faced by the state. The emerging legal system defined the boundaries of the healthcare sector. At the beginning of the 18th century, Russian doctors with university degrees appeared.

Peter the Great, trying to establish an administrative structure albeit moving towards this goal by trial and error, largely copied the administrative system of Sweden, which he recognized as his teacher in military affairs and on the model of which he established central governing bodies called boards, including the Medical College (1721) renamed due to sole management into the Medical Office (1725).

Considerable attention was paid to the regulation of medical activities in the army and navy, which manifested itself in the further development of the regulation of both rights and obligations of regimental physicians and was reflected in such legal acts as the Military Charter of 1716 [22] and 1720 Marine Charter [23].

Decree of Peter the Great of August 14, 1721, "*On the Establishment of Pharmacies in the Cities under the Supervision of the Medical College, on Assistance to Those Seeking Medicines in the Provinces, and on Being under the Supervision of the Said College of Hospitals*" [24], which provided for the frequency of medical examination of the wounded and sick, the organization of anti-epidemic measures, professional activities of doctors, and organization of functioning of pharmacies and hospitals. In particular, doctors were prohibited to practice and treat without examination of their qualifications by the medical affairs management body. The content of these documents was analyzed in the publication by B.P. Salnikov and S.G. Stetsenko [25]. In general, at the beginning of the 18th century, there was an expansion of the regulatory role of law in the field of emerging health care system.

The publication of 1735 decree called "*General Regulations on Hospitals and on the Positions of Doctors and Other Medical Servants, Along with Commissars, Clerks, Artisans, Workers and Others*" [26] contributed to the design of the medical support system. The latter determined the categories of patients receiving medical care in certain hospitals, along with organizational and staffing structure of hospitals, the duties of officials, the procedure of hospital examination, training of patient bedside doctors, and other issues [27].

The Medical College was recreated under Catherine II in 1763 [28, p. 292]. Further on, the notion of the *regular state* was reincarnated into the concept of *enlightened absolutism*, emphasizing the management of the *laws of reason* and of the *common welfare* [29]. Its specific embodiment in the healthcare sector in the 18th century Russia was the issuing of *prikazes* of public charity, which were in charge of homes for the incurable and mentally ill, as well as hospitals providing free medical care to poor citizens [30, p. 9].

Paul I, trying to transform Russia according to the Prussian model and being an adherent of the regular state theory, carried out a series of reforms aiming at restoring order in state institutions. In 1797, the *Law on the Establishment of Provincial Medical Councils* was issued, which marked the emergence of bodies regulating medical activity in provinces and counties [31, p. 470]. The law was to ensure the management of medical affairs in such a way that, among other things, it would resolve the tasks of organizing sanitary supervision and combating epidemics. At the same time, despite the presence of various departments (*prikazes* of public charity, public health committees, etc.) in charge of taking care of people's health, the peasantry, which constituted the vast majority of the Russian population, was actually deprived of professional medical care, since the law per se obliged the landowners to provide it.

Less attention was paid to the ethical side of the issue. Medical ethics probably began with Professor Matvey Mudrov (1776-1831) from Moscow, who followed a Hippocratic policy. The main principle was, "*to treat the patient rather than the disease*" [32].

During the 19th century, the medical sector in European countries and Russia underwent two important changes: the professionalization of medicine and the rise of public healthcare systems. These advances needed public support to be successful, and an important part of obtaining and maintaining such support was the formulation of consistent ethical principles.

During the transition period from the 18th century to the 19th century, the medical profession started acquiring a modern look, when the long process of its formation created the conditions for the emergence of the first ethical code [33]. In 1803, the *Medical Ethics, or Code of Institutes and Precepts Adapted to the Professional Conduct of Physicians and Surgeons* was presented by Dr. Thomas Percival [33]. This groundbreaking work brought together what had been published over previous centuries. The Doctor was perceived as a gentleman exhibiting certain fundamental virtues. Percival was the first to use the term *medical ethics*, and his code was divided into four parts: obligations towards hospitals, professional conduct in private practice, relations with pharmaceutical professionals, and obligations towards the legal system [34]. In the first half of the 19th century, laws were passed in European countries regarding medical education and requirements for medical specialists. Another significant event was the establishment of the Department of

Medical Law at the University of Edinburgh in Great Britain in 1807 [35].

The notion of the importance of individual autonomy served as a counterbalance to the paternalism inherent in both clinical and public ethical traditions of health. The concept of the *patient rights*, which emerged from liberal political philosophy, became the most influential idea during this period.

Relations between doctors and patients were regulated mainly by civil law norms, and only in some cases by criminal law. The contractual relationships in the field of medical care led to the fact that doctors were not responsible for their mistakes, since the choice of a doctor was coming from the patient. In France, at the end of the 18th century, the responsibility of doctors was presumed solely for intentional crimes, whereas in case of medical errors, material compensation was considered sufficient [35, p. 40].

By the end of the 19th century, several important topics were already present in public discourse regarding health care policy and practice. Tensions between autonomy and paternalism, public welfare vs. personal freedom, and risk vs. benefit became apparent in the course of public debates on contentious issues [36]. Several texts of the period on medical ethics were also heavily based on these issues. John Gregory's *Lectures on the Duties and Qualifications of the Physician* (1772), Thomas Percival's *Medical Ethics* (1803), Jukes de Styrup's *Code of Medical Ethics* (1878), and the American Medical Association's *Code of Medical Ethics* demonstrated the influence of their time, albeit such influence generally leaned in favor of a paternalistic, patient-centered perspective [37]. The origin of bioethics is associated with the name of Claude Bernard, who in his book, *An Introduction to the Study of Experimental Medicine* (1865) called on the researcher to the moral duty to protect his participants during their participation in the experiment [38].

By the beginning of the 19th century, under the influence of discoveries in the field of natural science and the ideas of the French Revolution, a reorganization of the care for mental patients was carried out in Europe. Mental patients were restored in their human and civil rights, and mental institutions began to be turned into medical hospitals. These trends also took place in Russia [39].

In the Russian Empire, the Medical College came under the jurisdiction of the Ministry of the Interior from 1803 and became known as the Medical Department [25]. The regulation of medical activity was performed by decrees of Alexander I and departmental acts of the Ministry of the Interior.

The revival of the *regular state* during the reign of Nicholas I (1825-1855) was manifested in the creation of a comprehensive "*Code of Laws of the Russian Empire*", the task of which, on the one hand, was to regulate all spheres of society, and on the other hand, to systematize a large number of acts. In 1857, as part of the volume XIII of the *Code of Laws*, a single Medical Charter was formed [40], which became the first systematized document that determined the legal provision of health care in Russia.

As another manifestation of the *regular state* theory in the field of medical relations, we could mention the reforms of 1836 and 1842, according to which the Central Administration of the Civil Medical Unit, Affairs of Forensic Medicine and Medical Police was in the structure of the Medical Department of the Ministry of the Interior. The main function of the Medical Department was the adoption of general administrative measures for the proper implementation of the medical and police measures, specified in

the Medical Charters, throughout Russia (in the unified Medical Charter since 1857) [41]. The Medical Charter, which existed until October 1917, regulated the requirements to professionals admitted to medical practice, including the requirement to confirm their qualifications.

As a result of the 1864 Zemstvo Reform in Russia, self-government bodies were created called *zemstvos* that began to manage locally medical affairs and sanitary statistics. District *zemstvos* started inviting doctors, and very soon *zemstvo* medicine became a special form of medical and sanitary provision of the rural population in Russia that had no foreign analogs all the way up to 1917, and care for public health occupied a significant place in the budgets of *zemstvos* [42]. Maintenance of sanitary statistics, implementation of sanitary supervision and practical sanitary measures were among the tasks of *zemstvo* medicine [31, p. 469, 474; 43; 44]. *Zemstvo* doctors had idealistic views on the dedication of service to society and people [32]. On the other hand, in dealing with illiterate peasants, paternalism was a necessity. The ethical problems of health care and medicine became the subject of heated discussions in both professional and popular literature.

Local medical societies adopted their own codes of ethics, but Russian national code of medical ethics was never formulated, since there was no national medical society in the country. *The Confessions of a Doctor* by Vikenty Veresaev, published in 1901, placed the problems of the relationship between a doctor and a patient and experimentation on people at the center of public discussions both nationwide and abroad [45]. Medicine as money-making was criticized and ridiculed in Russian literature. Medical morality was generally understood as a moral life in action, in which deeds are much more important than words (e.g., formal codes of medical ethics).

The institute of *zemstvo* medicine assumed regulatory functions rather than solely therapeutic designation. For instance, in 1889, at the 5th provincial congress of doctors and representatives of *zemstvos*, Dr. V.D. Chenykaev came forward with the following proposals in his report: "a *zemstvo* doctor should monitor the sanitary condition of the public school; the plan of the newly built school should be discussed with the doctor; the size of the classrooms match the number of children..." [46, p. 26].

At the same time, there was no body in the country that carried out a unified regulation and control over medical activities. Despite the legislative reference that "the Higher Directorate of the Medical and Sanitary Department is under the jurisdiction of the Ministry of the Interior", there were a number of institutions, departments and fields, to which the power of the latter did not extend. Cossack regions, a number of settlements, mining, fisheries, and other territories subordinate to other ministries were withdrawn from the jurisdiction of the Ministry of Internal Affairs. Without exception, all departments and ministries had their own autonomous medical unit. Furthermore, a provision establishing a definite and coordinated work of all departments was absent.

According to the law, the administrative authority in the field of medical supervision over how regional officials and doctors perform their duties at their workplaces belonged to the Office of the Chief Medical Inspector at the Ministry of Interior. However, the legislation did not regulate in any way the issues of subsidizing

zemstvo and city institutions, of subsidies for fighting epidemics and for hospital construction.

A characteristic feature was the absence of a comprehensive sanitary legislation, which would make it obligatory to observe health protection, labor safety, and to build factories and plants, water pipes, sewerage, etc. in a certain way. Sanitary legislation was in the period of legitimizing only medical and police measures, addressed to an individual in terms of norms and punishments. Consequently, all practical activity regarding the struggle for a sanitary culture turned into a pursuit of individual violators of sanitary requirements. Besides, there were emergency orders of the highest authorities, medical rules for fighting plague and cholera, and special royal orders. However, these laws were applied only in exceptional circumstances, and with the cessation of epidemics, they ceased to operate. Hence, they did not eliminate the main factors favoring the development of infectious diseases [47, p. 17-19].

It is also necessary to emphasize the pronounced opposition of scientific medicine to traditional medical practices, including Tibetan medicine (the latter had a certain popularity in metropolitan society at the turn of the 19th-20th centuries) [48].

The 19th century laws did not contain provisions related to the punishment for medical errors, including those resulting in the death of a patient. The "Punishment Regulations" of 1885 prescribed suspension from medical practice in case of medical errors until the qualifications were confirmed; and in the event of the patient's death, the guilty person needed church repentance [49].

Conclusions

Hence, as our analysis demonstrated, the legal and ethical regulations of medical activity in Russia developed under the influence of external factors and Russian national sociopolitical processes.

The regulation of medical activity in the Old Russian state and European medieval states was carried out within the framework of legal norms, as well as through the Christian worldview, the main principle of which was service to one's neighbor. Therein, these were ethical issues that came to the fore.

The church in the Old Russian state, and later in the Moscow state, did not have a monopoly on medical care. Therefore, along with church healers, secular doctors and specialists in traditional medicine were engaged in medical activities. The secular state form, having begun its historical path with the advent of the first secular doctors at the courts of ancient Russian princes, becomes part of the state apparatus from the 16th century on, and extends its influence to the military service social estate, turning into the main form of service for the rural population during the period of the Zemstvo Reform in the middle of the 19th century. The specificity of zemstvo medicine was the organization of medical activities based on local self-government bodies and medical societies.

Herewith, it is important to point out that traditional medicine always existed in the form of the simplest methods and means of medical treatment available in every household. Monastic medicine gradually lost its role both in Russia and in European countries due to the onset of secularization processes.

At the beginning of the 19th century, with the increasing complexity of both scientific knowledge and organization of

medical services, European medical codes of ethics aimed at developing rules of conduct to be followed by members of the newly emerging national medical associations.

Despite regulating medical activity, the issues of health care were not given due attention, and there were no specific legislative acts affecting the regulation of health care in prerevolutionary Russia. As for Europe, for a long time, the responsibility of a medical professional for erroneous treatment was considered from the standpoint of private relationships based on contractual and commercial principles as well.

From the end of the 19th – beginning of the 20th centuries, medical law was characterized by the desire to ensure wide availability of medical services and their variety, including the possibility of developing both public and private sectors of the medical care; as well as by state regulation of medical activity and medical education.

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