

# MEDICAL PROFESSIONAL LIABILITY INSURANCE

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**Annotation.** The aim of the study is to form an integrated approach to understanding the context and legal necessity of medical professional liability insurance.

The methodological basis of the study is a set of scientific techniques and methods of scientific knowledge, including dialectical, historical-legal, logical-legal, system-structural, method of forecasting and comparative jurisprudence. Dialectical method has provided opportunities to analyze scientific positions regarding the content and development of medical professional liability insurance. Historical-legal method helps to study the genesis of the development of insurance in specific historical and legal situations, the development of theoretical scientific thought and legislation. The method of comparative law is used to study the legislative and regulatory acts of Ukraine and other countries in the world as well as to clarify the advantages and disadvantages of the mechanism of legal regulation the insurance of medical professional liability in various countries in the world. Systemic and structural methods have helped to clarify the content of the contracts connected with this kind of insurance. Formal-logical method has allowed analyzing the provisions of the legislation of Ukraine in the sphere of this type of insurance.

**Results.** This study contains a comprehensive scientific analysis of modern problems of medical professional liability insurance. The elements of the medical professional liability insurance contract are defined, namely: subject matter, insured, beneficiary, insurance risk, insurance event, conditionals of insurance compensation payment. It is stipulated that medical professional liability insurance contract shall have separate grounds for refusal to pay insurance compensation, inherent only to this type of insurance. It is shown that this type of insurance helps to manage the risks in medical practice activities. The concept of this type of insurance has been researched. The conditions to terminate the medical professional liability insurance have been identified.

**Conclusions.** Having considered the issues of medical professional liability insurance and examined the conditions of the medical professional liability insurance contract, it has been made a conclusion that it is necessary to introduce this type of insurance as mandatory for healthcare institutions and private practitioners. It has been proposed to introduce compulsory medical professional liability insurance by approving necessary alterations the valid legislation.

**Key words:** professional liability, medical professional, medical professional liability insurance.

## 1. Introduction.

The study of medical professional liability insurance is determined by scientific and practical considerations since society needs orderliness and predictability of relations in various spheres of life. This type of insurance is developing dynamically in a lot of countries. In Ukraine, only in recent years, interest in medical professional liability insurance has arisen from both potential insurers and insurers. According to the requirements of the Insurance Act of Ukraine, (2021) [1] and Fundamentals of Ukrainian legislation on health care, (1992) [2], medical professional liability insurance has not been even mentioned, which indicates the need to improve the legal regulation and solve many issues that arise in practice in its performance.



**2. Analysis of scientific publications** on this issue shows that the problems of medical professional liability insurance are relevant now and require comprehensive research, since the valid legislation is usually considered due to issues of civil liability insurance of healthcare institutions for improper provision of medical services by doctors and other medical staff. However, insufficient attention has been paid to medical professional liability insurance. Understanding the concept and conditions of the medical professional liability insurance contract is a complex and important issue.

**3. The aim of the study** is to form an integrated approach to understanding the context and legal necessity of medical professional liability insurance.

#### **4. Review and discussion.**

Medical professional liability insurance aims to protect the interests of patients. The development of this type of insurance is hampered by factors such as imperfections and uncertainty in the structure of the healthcare system in Ukraine. It shall not be expected significant popularity of medical professional liability insurance among public medical institutions. Only private medical institutions or self-supporting divisions of public health care institutions can conclude contracts of professional liability insurance for doctors [3, p. 86].

The medical professional liability insurance contract shall provide for all the essential conditions specified in the Article 982 of Civil Code of Ukraine [4] and Article 89 Insurance Act of Ukraine, (2021) [1]. To continue it shall be considered the definition of the subject matter of the medical professional liability insurance contract and other conditions of this contract.

S.V. Antonov and M.A. Meliushcheva have defined the subject matter of the insurance contract for doctors as the medical practice itself in case of bearing liability to the patient [5, p. 19]. However, this position has significant disadvantages, since the subject matter of the medical professional liability insurance contract shall be insurable interests – the material interest and/or need of the potential insured (health care institutions or private practitioners related to the liability of doctors and other medical staff to patient's, life and/or whose health may be harmed as a result of professional errors in the provision of medical services.

The insured in the medical professional liability insurance contract is a health care institution and/or a private practitioner. Health care institutions are enterprises, institutions and organizations whose task is to meet the diverse needs of the population in the field of health care by providing health care, including a wide range of preventive and therapeutic measures or medical services, as well as performing other functions based on the professional activities of medical professionals. Doctor is a person who has received a higher medical education, has the title of medical specialist in a specific medical specialty (certificate of a medical specialist, certificate of assignment (confirmation) of the corresponding qualification category, etc.) and is eligible to practice medicine in accordance with the valid legislation of Ukraine. Medical practice shall be performed only by the persons who have the appropriate special education, meet legally defined qualification requirements and have received a license to perform business activities in medical practice.

Mostly, private healthcare institutions become insureds under the medical professional liability contract. This is explained not only by the wider material capabilities of these institutions and the desire for progressive forms of management, but also by the fact that private medical institutions and their staff are increasingly becoming objects of litigation by patients for compensation for harm caused to their health. Although employees of government and municipal healthcare institutions also quite often have to be involved in lawsuits or official investigations conducted by regulatory or law enforcement agencies. In particular, these are surgeons, dentists, ambulance and emergency medical doctors, resuscitators, functional diagnostic specialists, in whose practice there is a high probability of professional errors that can harm the health of patients [6, p. 69].

The beneficiary under the contract of medical professional liability insurance is a patient – an individual who receives medical care from the insured, undergoes a medical examination and/or treatment for an illness, pathological condition or other impairment of health and vital activity, or receives other medical services from the insured.

Insurance risks under the medical professional liability insurance contract are: errors in determining the diagnosis of the disease; errors in recommendations while performing the treatment; poor quality or completely incorrect course of treatment; errors when providing prescriptions for the use of medications; premature discharge from hospital or issuance of sick leaves; errors in instrumental methods of research and treatment; errors while performing surgery and others.

An analysis of the scientific sources allows stating that insurance experts consider that an insured event under a medical professional liability insurance contract is the determination of the healthcare institution's or a private practitioner's obligation to legally compensate for the harm caused to the life and/or health of a patient due to unintentional erroneous actions or inaction of a doctor or other medical staff [6, p. 68; 3, p. 87]. In our opinion, the pre-trial resolution of the case of compensation for the harm caused by the medical professional error to the patient shall gain more weight, since this is beneficial both for the insured and for their patient – the beneficiary. This issue shall be resolved by involving independent specialists in the matter.

An insured event is an event provided for in the medical professional liability insurance contract, as a result of which the professional liability of a healthcare institution or private practitioner arises for compensation for the harm caused to the patient as a result of failure to perform or improper performance of professional duties, and upon the occurrence of which the insurer becomes obligated to pay insurance compensation to the beneficiary.

Under the medical professional liability insurance contract, upon the occurrence of an insured event, the insured shall compensate: a sum of money determined by the insurance contract; necessary and reasonable costs for preliminary clarification of the circumstances that occurred as a result of the actions (inaction) of a medical professional; in case of litigation, costs for conducting the case; reasonable expenses to save lives, reduce harm to persons who suffered harm, the obligation to compensate for which is borne by the insured (earnings lost by the patient due to loss of ability to work or its reduction as a result of caused harm to health, additional expenses necessary to recover (for enhanced nutrition, sanatorium-resort treatment, outside care, prosthetics, transportation costs, etc.), part of the earnings that, in the event of the death of the patient, were lost by disabled persons who were under their support or entitled to receive maintenance from them, funeral expenses).

To pay the insurance compensation, the insured (beneficiary) is obliged to provide the insurer with documents confirming the occurrence of the insured event, the amount of damage and which are necessary for payment of the insurance compensation.

The grounds for refusal to pay insurance compensation are determined in Article 104 of the Insurance Act of Ukraine (2021) [1]. In addition to the general grounds for refusal to pay insurance compensation, there are those that are typical only for medical professional liability insurance contracts, namely: illegal actions of the insured; any activity of the insured which are not related to his professional activities; loss, destruction or damage to documents related to the professional activities of the insured; the action of natural phenomena; performance the medical practice not provided for by a license; actions (inaction) of the insured related to break of medical confidentiality issues; implementation of medical practice by persons without appropriate special education and persons who do not meet qualification requirements; operation by the insured of any type of transport (except sanitary); the use by the insured in the treatment process of donor blood that does not have a certificate of the determined type, as well as medical drugs with an expired statute of limitations; break by the insured the documents determining the procedure for using disposable medical instruments; etc.

The medical professional liability insurance contract shall be terminated upon expiration. An insurance contract may be terminated in cases where the possibility of the occurrence of an insured event has ceased after the conclusion of the contract and the existence of the insurance risk has ceased due to circumstances other than the occurrence of the insured event, namely: due to the

termination of the medical practice of the insured in the manner defined by the valid legislation of Ukraine; termination of the certificate of a medical specialist or license to practice medicine that the insured had; as a result of a ban on the insured to engage in medical practice in the manner and in cases provided for by the valid legislation of Ukraine; etc.

Medical professional liability insurance is one of the most widespread types of compulsory insurance in most countries of the world [7, p. 122–125]. Having considered the issues of medical professional liability insurance and examined the conditions of medical professional liability insurance contract, it has been concluded that it is necessary to introduce this type of insurance as compulsory insurance for healthcare institutions and private practitioners. Additionally, that is stipulated by the following circumstances. The medical professional liability to a patient shall always arise in cases of harm to them. However, even determining the medical professional liability does not provide timely and full compensation for damage to the patient, primarily due to the lack of funds from the healthcare system or from a private practitioner. In this sense, it is the mechanism of compulsory insurance of medical professional liability that shall create a system for protecting the rights and interests of both patients and doctors in the event of an insured event [8, p. 57-58].

It is proposed to introduce compulsory insurance of medical professional liability by improving the valid legislation. Article 999 of the Civil Code of Ukraine establishes that the law may determine the obligation of an individual or business entity to be an insured of liability to other persons at their own expense or at the expense of an interested party (compulsory insurance) [4]. So, the first stage shall be to alter the Fundamentals of Ukrainian Legislation on Health Care Act of Ukraine (1992) on medical professional liability insurance, which shall stipulate that a healthcare institution and/or a private practitioner are required to insure their professional liability by concluding a medical professional liability insurance contract before starting business activities related to medical practice. The subject matter of the medical professional liability insurance contract shall stipulate the insurable interests – the material interest and/or need of the potential insured (health care institutions or private practitioners related to the liability of doctors and other medical staff to patient's lives and/or health) which may be caused harm resulting from professional errors in the provision of medical services. Other conditions of the medical professional liability insurance contract shall be determined in the manner defined by valid legislation.

## 5. Conclusions.

Consequently, medical professional liability insurance is an effective means of protecting the interests of patients, healthcare institutions, private practitioners and other medical personnel. Professional errors of persons providing medical care and medical assistance can cause significant harm to the life and health of third parties, since these persons perform their professional duties under the circumstances that are risky and uncertain.

Medical professional liability insurance shall be mandatory for healthcare institutions and private practitioners, since the medical professional liability to a patient shall always bear in cases of harm to them and regardless of guilt. To ensure timely and full compensation for damage to the patient, the mechanism of compulsory insurance of medical professional liability will create a system for protecting the rights and interests of both patients and doctors in the event of an insured event.

Therefore, we propose to adopt compulsory medical professional liability insurance by improving the valid legislation, namely to add needed articles to Fundamentals of Ukrainian Legislation on Health Care Act of Ukraine on medical professional liability insurance, indicating the subject matter and conditions of insurance.

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