

## **Violation of the patients' rights to life and health in medical clinics (2014-2018)**

In the below document, Human Rights Center reviews the problematic issues observed in the service provided to the patients in medical institutions. In 2014-2018 the organization worked on many cases, which revealed that the reason of providing patients with inadequate medical service often was the carelessness, low qualification and negligence of the doctors.

During the medical service, the patient and medical institution start cooperation, which, in accordance to the Civil Code of Georgia, shall be based on the principles of honesty, justice and empathy, as there is the life of a person on the other side of this relation.

- **healthcare personnel shall act in respect to the professional ethic standards;**
- **shall act in accordance to the best interests of the patient;**
- **shall not use his/her professional knowledge and experience against the principles of humanism;**
- **shall be free and independent when making professional decisions related with the patient's interests**
- **shall not act in accordance to self-interests.**

The legal analysis of the Human Rights Center aims to make effectiveness, quality and adequate medical treatment coherent to the legislation.

The system created in the healthcare system by the state controls those medical institutions, which are licensed and operate in the entire territory of Georgia. The public law legal entity the State Agency for the Regulation of Medical Activities was created within the Ministry of Healthcare, whose statute determines the obligation of the Agency to monitor the medical service provided by a medical institution or licensed doctor upon the received application/complaint.

*Based on the analysis of concrete cases, Human Rights Center will underline those key problems, which were observed in the course of medical service provided to citizens.*

- **it is not ensured that doctors gave full explanations to the patients about ongoing medical treatment and possible risks**

In accordance to the Article 18 Part I-“c” of the Law of Georgia on Patient's Rights, patients may receive from medical care providers comprehensive, timely and clear information related to the planned prophylactic, diagnostics, treatment and rehabilitation services, associated risks and possible benefits. It is inadmissible to ignore the obligation of making clarifications to the patient that is required by the law.

- **medical documentation – medical records are not correctly processed; information about ongoing and implemented procedures are not correctly recorded;**
- **in case of surgical operations, patients are not provided with the information about expected risks;**
- **in case of death, exhumation and expertise of the patient are not offered to the relatives and in case of refusal no relevant documents are prepared;**

- **the main problem is incorrect diagnosis, consequently – incorrect medical treatment.**

When the problem is identified, the first stage is submitting application-complaint to the State Agency for the Medical Regulations, which, upon the received complaint, will start control of the implemented medical service in the medical institution or by the licensed doctor.

In accordance to the Article 104 of the Law of Georgia about Health Care a patient or his/her relative or legal representative shall have the right to file a complaint against a physician, a nurse, other medical worker, or a medical institution with the administration of the medical institution, a health care management body, a court, or other dispute adjudicating body.

In accordance to the Article 10 of the Law of Georgia on Patient's Rights, a patient or his/her legal representative may apply to a court and demand compensation for property and non-property damages resulted from:

- violation of patient rights
- medical malpractice
- other malfunctions of a medical institution
- improperly conducted supervision and control by the State

In accordance to the Article 992 of the Civil Code of Georgia *a person who causes harm to another person by unlawful, intentional or negligent action shall be bound to compensate the latter for his harm.*

The result of the service provided by a doctor or medical institution can be considered unlawful if it is considered to be illegal in accordance to the law on health care.

In accordance to the Article 1007 of the Civil Code, *the harm caused to a person's health during his treatment at a medical institution (outcome of surgical operation or incorrect diagnosis, etc.) shall be compensated on a general basis.* The harmdoer shall be released from liability if he proves that there was no fault on his part in the occurrence of the harm.

The burden of proof that the medical institution is not guilty in the occurred harm lays upon the medical institution itself.

Article 408 of the Civil Code states that, *a person who is obligated to compensate for damages must restore the state of affairs that would have existed if the circumstance giving rise to the duty to compensate had not occurred.*

If the victim gets disabled to work or has limited ability to perform his work or his requirements increased as a result of harm or health injury, the harm shall be compensated with monthly allowances.

The victim has right to request expenses of the medical service in advance. The same rules work in case of necessity of professional trainings.

Instead the allowance, the victim may claim compensation if there is respective reasonable ground.

Material harm includes the expenses incurred by the patient as well as the future expenses of the patient. Imposing responsibility to remunerate the harm, in general, always includes restoration of the original state. As in the concrete case the health conditions of the person were harmed and it is almost impossible to restore his original conditions, the amount of remuneration is calculated according to the past and future expenses necessary for the medical treatment.

In the cases of body or health harm, the victim may request remuneration for nonmaterial damage too. When calculating the amount of the harm, the responsibility of the service-provider for the performing the duties adequately shall be taken into account. The time and place of the implementation of the agreement shall be taken into account when calculating the harm amount.

### **Review of the cases processed by Human Rights Center in 2014-2018**

- ✓ *Based on the application of Human Rights Center, investigation started into the alleged crime committed in the medical clinic Lancet*

On February 10, 2016 patient K.K passed away in the clinic Lancet as a result of liver transplantation; one month later, on March 15, 2016 – one more patient – G.Ch. deceased in the clinic Lancet.

HRC addressed the State Regulation Agency for Medical Activities with the request to start examination of the case, and in accordance to their conclusion the medical treatment and manipulations of G.Ch and K.K from the moment they were placed in the clinic before the death were conducted through absolute violation of the legislation. The transplantation operation was done without the permission of the Transplantation Council in accordance to the Article 18 part “g” of the Law of Georgia about the Transplantation of the Organs that is violation of the Article 53 Part 3 of the Law of Georgia about Health Care. The transplantation operation was conducted by the doctors, who did not have the certificate of medical activities issued by the State of Georgia that is violation of the Article 11 Part 5 of the Law of Georgia about the Activities of the Doctor and in fact, they were performing illegal medical activities. It is obvious that the procedures necessary for the transplantation were not carried out.

Human Rights Center addressed the State Regulations Agency for Medical Activities on May 19, 2016 to prohibit the clinic Lancet to conduct transplantation operations. The Agency satisfied the request of the HRC on September 28, 2016.

Human Rights Center also addressed the Chief Prosecutor’s Office of Georgia with regard to the death facts of the patients in the medical clinic Lancet, as the signs of criminal offences were identified in them.

Based on the resolution of the Tbilisi City Court, Chief Prosecutor’s Office arrested the director of the medical clinic Ltd Lancet F.J for hiding the information about the circumstances creating

threat to the life or/and health of patients and for the misappropriation of huge amount of money from the patients – the crime is punishable under the Article 180 Part 3 and Article 247 Part 1 of the Criminal Code of Georgia. Based on the court judgment, F.J was sentenced to six-year imprisonment.

- ✓ **medical personnel did not conduct timely and adequate medical analysis of the new-born child**

HRC lawyer provides G.D with legal aid, whose son – N.D has been in coma since March 2014 in the paliatal unit of the intensive therapy department of the Iashvili Medical Center.

In December 2016, the State Regulations Agency for Medical Activities issued the conclusion according to which **the violation observed as a result of the examination of the provided medical service the Agency raised the issue of the professional responsibility of the doctors M.F, G.B, D.P, L.M and N.E of the Ltd M. Iashvili Children’s Central Hospital in front of the Trade Union Council.**

On March 26, 2014, patient, three months old infant N.D was placed in the Iashvili Medical Clinic with acute respiratory insufficiency and was placed in the intensive care unit. Neuropathologists examined him several times in the Pediatritian Private Clinic and concluded that the patient had no problems with regard to neurology. At the same time, both lungs were without any pathology.

Medical personnel of the Iashvili Clinic did not take immediate measures that caused worsening of the patient’s health conditions. Nowadays, the patient is still in coma in the intensive care unit of the Iashvili Hospital. The doctors of the Iashvili Hospital and invited doctors state that the situation is irreversible. **Professional Development Council gathered on December 6, 2018 to make decision on the professional responsibilities of the doctors over N.D’s case. According to the Council’s decision, state certificate of the doctor M.F was suspended for 2 months; doctor G.B’s certificate was suspended for one month; and the doctors D.F and L.M received only written reprimands.**

As the medical documentation shows and the conclusion of the State Regulation Agency for Medical Activities states, the health conditions of the infant extremely worsened because of the delayed involvement of the doctors and their incompetent and negligent attitude towards their duties.

In August 2017, the Tbilisi Prosecutor’s Office started investigation into the harm brought to the health conditions of the infant due to carelessness of doctors.

- ✓ **Doctors inadequately assess expected risks**

On June 12, 2017, one third of the right thigh of the patient E.K was amputated because of atherosclerosis and occlusion of blood-vessels.

The patient had fever during 10 days. He had respiratory problems and was coughing. The emergency brigade took him to the Intensive Care Department on October 6, 2017. Because of gravity of his conditions, he was placed in the intensive care unit but in vain. His heart stopped beating and doctors could not save him.

✓ **Lethal results of the doctors' low qualification**

Family members of the deceased patients applied to Human Rights Center for help over three different cases; they complained about the low qualification of the medical personnel that caused death of the patients.

On April 16, 2016 medical emergency brigade took G.J to the clinic HealthyCore, where, as a result of the medical service provided by the doctors, the health conditions of the patient worsened on April 17 and on April 25 he passed away.

Patient G.J periodically took all necessary medical analysis. On April 16, 2016 G.J started coughing because of accidental gulping of food. On the same day, at 19:00, after the cardiogram examination, the family doctor M.G clarified to the patient that due to his old age it was better to get oxygen artificially. The doctor also started infusion process. The patient was under supervision of the family doctor during three hours. After he left, at 23:00 pm the family called emergency brigade. The emergency doctors gave urinating medicine – Lazex. The family members told the doctor that the patient had done infusion and according to the recommendation of the family doctor he needed to receive oxygen artificially. The emergency brigade doctors did not adequately react to the provided information. They took the patient to the clinic HealthyCore, where the doctors continued his treatment with Lazex that allegedly caused worsening of the patient's health and his problem. Currently, the Regulations Agency and prosecutor's office are studying the case.

Low qualification of the medical personnel was the problem in one more case processed by the organization. Namely, in 2014, as a result of wrong medical manipulations, patient Z.G died in the Gudushauri National Medical Center. The fact was confirmed by the State Regulations Agency for Medical Activities. The Agency studied the case materials and concluded significant violations that caused the death of the patient Z.G. Currently, the prosecutor's office is studying the case.

Human Rights Center provided patient M.B with legal aid. The case of his medical treatment was discussed during the session of the Professional Development Council of the Ministry of Labor, Healthcare and Social Welfare. According to the decision of the Council, doctor T.A of the Ltd Traumatology had his state certificate suspended during 3 months and was ordered to take one-month professional rehabilitation course; Doctor P.V received written reprimand.

The cases processed by Human Rights Center reveal that the level of medical service in Georgia does not meet the international healthcare standards and needs special monitoring from the side of the respective state institutions. The decisions of the Professional Development Council suspends the state licenses only for short time or issues reprimands that is often irrelevant to the

medical treatment results – significantly worsened the health conditions of the patients or created threats to their lives.

**It is important:**

- *medical service shall be based on effective control over the medical treatment and diagnostic process;*
- *strategic or operative objectives shall be determined in advance;*
- *medical service shall be oriented on the quality;*
- *in order to receive positive result from the medical treatment, respective actions shall be planned timely in due respect of qualification and effectiveness;*
- *medical personnel shall obtain adequate information from the patients to correctly assess the needs and plan relevant medical manipulations.*