



## ON THE RELATIONSHIP BETWEEN THE CONCEPTS OF "MEDICAL ERROR" AND "PROFESSIONAL CRIME OF A MEDICAL WORKER" IN LAW ENFORCEMENT IN THE RUSSIAN FEDERATION

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### ABSTRACT

In the Russian Federation, the problem of medical errors is particularly acute today due to the potential for bringing a medical professional, including criminal liability. This has become possible due to the criminalization in recent years of improper medical care, historically classified as medical errors. Based on the analysis of the definitions "medical error" and "professional crime of a medical worker", the article presents different views on the content of these concepts and the criteria for their differentiation, which are reflected in modern law enforcement practice. The article objectively confirms the fact that today a new category of professional crimes of medical workers has emerged, called iatrogenic crimes. The conclusion is made about the actual identification of medical error and iatrogenic crime in law enforcement, as well as about giving the clinical and philosophical concept of "medical error" a legal meaning.

**Keywords:** Medical (medical) error; Professional crime of a medical worker; Lawsuits against medical institutions; Grounds for holding a medical worker accountable; Special law enforcement practice.

## SOBRE A RELAÇÃO ENTRE OS CONCEITOS DE "ERRO MÉDICO" E "CRIME PROFISSIONAL DE UM TRABALHADOR MÉDICO" NA APLICAÇÃO DA LEI NA FEDERAÇÃO RUSSA

### RESUMO

Na Federação Russa, o problema dos erros médicos é particularmente grave hoje em dia devido ao potencial de responsabilização de um profissional médico, inclusive criminal. Isso se tornou possível devido à criminalização, nos últimos anos, do atendimento médico inadequado, historicamente classificado como erros médicos. Com base na análise das definições de "erro médico" e "crime profissional de um trabalhador médico", o artigo apresenta diferentes visões sobre o conteúdo desses conceitos e os critérios para sua diferenciação, que se refletem na prática moderna de aplicação da lei. O artigo confirma objetivamente o fato de que hoje surgiu uma nova categoria de crimes profissionais de profissionais da área médica, chamada de crimes iatrogênicos. A conclusão é feita sobre a identificação real do erro médico e do crime iatrogênico na aplicação da lei, bem como sobre a atribuição de um significado legal ao conceito clínico e filosófico de "erro médico".

**Palavras-chave:** Erro médico (médico); Resultado desfavorável do atendimento médico; Crime profissional de um trabalhador médico; Ações judiciais contra instituições médicas; Motivos para responsabilizar um trabalhador médico; Prática especial de aplicação da lei.





## 1 INTRODUCTION

In recent years, there has been a tendency in the world community to openly discuss the problem of medical errors, analyze them and develop effective measures to prevent such activities that harm not only the life and health of specific citizens, but also the prestige of the domestic medical activity itself. This approach is dictated not only by a general social awareness of the severity, sometimes irreparable, consequences of medical errors, but also by the significant financial costs incurred by medical organizations and the healthcare system as a whole, both to eliminate their consequences (treatment and rehabilitation of patients) and to pay various legally provided compensations to victims (harm caused to human health, lost earnings, moral damage, legal costs, and others) (Markosian, 2022).

Being a socially oriented state, the Russian Federation pays special attention to caring for the health of citizens, implementing federal and regional programs of state guarantees of free medical care to citizens. Effective measures are being taken to prevent and detect modern diseases earlier, promote a healthy lifestyle and take care of one's own health (Lukyanov, Tarasova, 2024). Medicine, keeping up with the times, has incorporated all the latest achievements from various fields of science and technology for the benefit of man, striving to preserve and restore his health, improve his physical condition, increase life expectancy and quality of life. These technologies also penetrate into all spheres of life, mutually conditioning the substantive part of the activity (Rastoropov et al., 2024b).

Nevertheless, such a good idea, like many things in medicine, has a "side effect." Almost all interventions (diagnostic and therapeutic), even well-known and repeatedly "tested" ones, pose potential risks, and the new highly effective techniques and related equipment used increase these risks due to their novelty, modern medicines, including vaccines, having proven their effectiveness and purposefulness, can be aggressive, and their long-term consequences applications are unknown (Kruchinina, 2024). The process of diagnosis and treatment of a patient inevitably becomes more complicated, thereby expanding not only the boundaries of "acceptable harm" in medicine – complications, but also supplementing them with professional mistakes of medical workers. Therefore, along with significant achievements in the field of medicine, the risk of harm to the patient in the process of providing medical care has increased significantly (Rastoropov et al., 2022). At the same time, in proportion to the increasing complexity of the processes and technologies used in modern clinical practice, the category of complexity of medical errors themselves





increases: they become objectively more difficult to identify and correct. This in itself significantly reduces the possibilities of their prevention and leads to an increase in the risks of certain medical interventions.

## **2 METHODOLOGY**

In the course of the research, a set of general scientific and private scientific methods of cognition of legal reality in the declared field of criminal law was used. The general scientific methods were analysis and synthesis, analogy, induction, deduction, generalization, juxtaposition, and comparison. Specialized private scientific methods are: content analysis of legal information from various sources, concrete sociological and formal legal research methods. The use of these methods ensured the receipt of scientific and theoretical material in the claimed field, its subsequent processing and obtaining specific results, which made it possible to present the author's concept of the relationship between the concepts of "medical error" and "professional crime of a medical worker".

## **3 RESULTS AND DISCUSSION**

Medical errors (they are also medical errors in a broader sense) they are as eternal as medicine itself. It is no coincidence that doctors pay close attention to the concept of "medical error". Historically, the mistakes of healing were mentioned by Hippocrates, who said "A good doctor is one who rarely makes mistakes, but even better is one who does not hide his mistakes..." and "Life is short, the path of art is long, the opportunity is fleeting, experience is deceptive, judgment is difficult. Human needs force us to decide and act. But if we are demanding of ourselves, then not only success, but also error will become a source of knowledge." Throughout the entire period of medical development, mistakes have been studied by doctors themselves, since their importance for the prevention of non-repetition cannot be overestimated. At the same time, the historical attitude towards medical errors has varied from their concealment to recognition, analysis and disclosure. In Russian medicine, the first person to speak aloud about the mistakes of a doctor was an outstanding surgeon, the founder of military field and hospital surgery, and a wonderful teacher N.I. Pirogov, who wrote about the sacred duty of a conscientious teacher to immediately make public his mistakes and their consequences in order to warn and edify others, even less





experienced, from such misconceptions (Siluyanova & Nazarova, 2010, p. 99), about truthful, open confession of his mistakes in order to save his students and novice doctors from repetition by revealing the intricate mechanism of their mistakes, and he believed that the way to prevent mistakes was to publicly acknowledge them. He is considered the author of the term "medical error" in Russian clinical practice (Shchigoleva, 2016, p. 90). His outspoken self-criticism was unusual for that time, but it was she who created a solid foundation for the accumulation of cumulative experience from the analysis of medical errors.

The definition of medical error, given in 1928 by academician I.V. Davydovsky (1941), a famous Soviet pathologist, one of the founders of the pathological and anatomical service in the USSR, is very famous, according to which

a medical error is the result of a conscientious error of a doctor in his judgments and actions in the performance of special medical duties. The main difference between an error and other defects in medical practice is the exclusion of other intentional criminal acts – negligence and negligence, as well as ignorance. (pp. 697-700).

Among his contemporaries, the Soviet and Estonian gastroenterologist N.V. Elshtein in 2005, in his article "A modern view of medical errors", formulated the following definition of a medical error: "this is an act or omission of a doctor based on the imperfection of modern medical science, objective working conditions, insufficient qualifications or inability to use existing knowledge" (Elshtein, 2005, p. 88). It is worth noting that the above definitions were often criticized by colleagues in connection with logical errors (Dimov, 2008, pp. 5-6). At the same time, over the past decade, there have been increasing calls to finally determine the legal meaning of a medical error and its legal consequences, that is, to adequately qualify actions that are called a medical error (Nevzgodina, 2015, p. 137).

There is no generally accepted definition of medical error in the world. The work of a doctor is to a certain extent probabilistic in nature, the doctor often has to make a choice of one of several options. The so-called clinical discretion, and in fact, the choice of a solution and behavior, is based on the knowledge and clinical experience of the doctor, confidence in his practical skills, professional intuition, and also, importantly, on his attentiveness and sensitivity to the patient. One of the reasons for the mistakes is unconstructive, illogical medical thinking, unambiguous interpretation of the information received without proper





analysis, that is, defects in medical logic and medical thinking. Meanwhile, knowledge of logic increases not only the quality of the diagnosis, but also the professional level of the doctor as a whole, the effectiveness of his therapeutic and preventive work. According to the doctors themselves, every doctor, no matter what knowledge and experience he has, cannot be immune from mistakes. In fact, the concept of medical errors should include all costs, blunders, and shortcomings in the provision of medical care and the conduct of the therapeutic and diagnostic process (Rozhdestvenskaya et al., 2016, p. 490).

The views of modern clinicians on medical error have not only undergone significant changes, but have also become very divided. Some continue to insist that "a medical error, regardless of the consequences, is not criminally punishable ..." (Akopov & Maslov, 2006, p. 496), "a medical error is not punishable if it does not contain elements of a crime and a misdemeanor and the doctor, within the limits of the mandatory knowledge of his profession, could not have foreseen and prevented it" (Zasyapkina et al., 2016, p. 245) or since the term "medical error" is not included in the legislative acts (on liability), it means that the error is not a misdemeanor, offense or crime (Andreev, 2006, p. 9). Others believe that medical error should be considered as an offense, and it is this concept that should be the basis for holding medical professionals accountable for harming patients' health, therefore, in addition to legislative consolidation, it must be formulated fully and universally in order to apply this term both in civil and criminal law, as well as in criminal proceedings (Ivanov et al., 2021; Nguyen et al., 2021). At the same time, it is important for the medical community to exclude the possibility of making medical errors intentionally, as it implies that the doctor acts professionally and in good faith. It is also important that an error may result from the proper actions of medical professionals (Mann, 2023, p. 87). In this case, differentiation of the causes of errors becomes especially valuable. In confirmation of the above, we will cite the opinion of the doctor V.T. Palchun (2008) says that a medical error is a

discrepancy between diagnostic, therapeutic, preventive and other actions (or inaction of a doctor) in relation to a patient with professional knowledge and legalized relevant standards, which led to deterioration of health or death. However, a medical error caused by irresponsible actions of a doctor, negligence, negligence, elementary medical illiteracy, moral and ethical inferiority, which are legally classified as a crime or a misdemeanor, should be legally punishable. (p. 4).

Still others suggest another variation on the topic of medical errors, excluding the







indication of both her guilt and her causality in the definition, while retaining only a statement of fact – this is such a thought and/or actions of a doctor that do not correspond to reality. Or as an undesirable result resulting from either wrong thoughts or wrong actions. However, such a brief definition is unsuitable for forming a full-fledged legal concept, since it should reflect the grounds for attracting or excluding legal liability.

Opinions are also mixed about who should decide whether or not the doctor made a mistake. On the one hand, the question of the criminal or non-criminal content of a medical error follows only after establishing the fact of a medical error, which cannot be the competence of any one party in order to avoid a unilateral and corporate approach (Askov & Petrova, 2023, p. 87). On the other hand, the problem of medical error itself is increasingly being transferred to the legal sphere, which, in principle, it should not be related to. But this is the influence of time (Sergeev, 2003). However, everyone agrees on one thing: the essence of a medical error in the clinical understanding is reduced to a misconception associated with various causes, and in this regard, there is an objectively incorrect, incorrect, inappropriate act of a medical professional.

Forensic doctors have traditionally spoken a lot about medical errors, since in the course of their professional activities they are directly confronted with them on a regular basis, more precisely, with their consequences.

So, Sergeev Yu.D. and Yerofeev S.V. as of 2001, there were about 100 definitions and signs of medical (medical) errors in the medical literature alone. By now, there are undoubtedly more such author definitions. At the same time, they note that this concept has such contradictory content in the works of forensic doctors, clinicians and lawyers that this issue is completely confused in the literature. The current Russian legislation does not know such a legal concept at all. Thus, the concept of "medical error" does not have proper theoretical support either from a forensic or legal point of view, therefore it is indifferent to expert and legal practice (Sergeev & Erosheev, 2001, pp. 21-22). In general, forensic doctors believe that medical error is a complex concept that is established in the step-by-step solution of issues related to the competence of a doctor and a lawyer, taking into account the boundaries of their competence, which is caused by the lack of a clear conceptual framework and procedural regulation of the assessment of medical error as an offense. The fact of a medical error is determined by the professional medical community, and its legal qualification is carried out by a professional lawyer, taking into account the





medical assessment of improper medical care. At the same time, the authors also call a medical error a disadvantage and identify it with improper medical care (Pigolkin et al., 2018, p. 58). This position of forensic doctors is also of interest, when the term medical error is expanded to a more universal concept of medical error, which is proposed to mean the action or omission of a medical professional or a person who is required to provide medical care in accordance with the law or a special rule that does not correspond to the real state of health of a citizen in need of medical care, as well as the procedures, standards, guidelines, and methodological recommendations. It is worth paying attention to the clarification in the above definition of the subject of medical care (this is not only a medical professional), as well as an indication of some regulations for the provision of medical care. At the same time, the author warns of caution when attributing an act (action or omission) to a medical error (Shmarov, 2018, p. 52).

The views on the concept of "medical error" and representatives of the legal community differ no less radically. Lawyers confirm the absence of a legal interpretation of the concept of "medical error", pointing out that it belongs to medical terms. This concept is not a legal one, but a general medical one, they believe. It has become generally accepted and has been included in medical encyclopedias, monographs and other scientific literature. There is no such thing in civil or criminal law. Justice does not know this type of offense and does not use this concept, it is indifferent to the law (Sashko & Kochorova, 2009, p. 165).

However, in fairness, it should be noted that attempts to legislate the concept of medical error were made, in particular, during the development of the basic law in the field of healthcare. Thus, in the draft Federal Law "On the basics of public health protection in the Russian Federation" No. 534829-5 (Government of the Russian Federation, 2011), Chapter 12 "Responsibility in the field of health protection" provided for Article 92 "Medical error in the provision of medical care", according to the first part of which a violation of the quality or safety of medical services is recognized as a medical error in the provision of medical care. as well as its other drawback, regardless of the fault of the medical organization and its employees. The second part of the specified article of the law contained an indication that damage caused to the life and health of citizens as a result of a medical error in providing medical care is subject to compensation at the expense of insurance carried out on the basis of a separate federal law (Dung et al., 2021). In the adopted version of the current Federal Law No. 323-FZ dated 11/21/2011 "On the Basics of Public Health





protection in the Russian Federation" (State Duma of the Federal Assembly of the Russian Federation, 2011), this article, as well as any mention of a medical error, is missing.

Investigating the issues of criminalization of medical errors, E.V. Chervonykh calls this problem one of the most topical, but very poorly studied in modern Russian medicine as of 2010, although the importance and necessity of its solution have been recognized almost all over the world. In Russia, however, the majority of medical professionals deny the need to criminalize mistakes made in medical practice. Recognizing their high level in their own professional activities and their widespread nature, doctors are afraid of regulating medical errors in criminal legislation. The vast majority of patients, on the contrary, are convinced of the need to bring to criminal responsibility a medical professional who committed a "medical error", the result of which was serious harm to health or death of the patient. According to representatives of the supervisory authority, the prosecutor's office, the majority of criminal cases of medical errors do not reach court due to the lack of a clear distinction between criminal and lawful actions of a medical professional, and therefore harm to the life and health of a patient in such conditions is interpreted as a medical error, for which Russian law still does not provide criminal liability (Chervonykh, 2010).

According to E.L. Nevzgodina, expressed back in 2015, this term can be attributed to one of the most discussed and most ambiguous in terms of the content that researchers of the problem put into it, ... polar views are expressed: some authors believe that a medical error always means that the perpetrator is not guilty and therefore is always the basis for exemption from liability for harm caused, others, on the contrary, proceed from the fact that a medical error is always guilty and therefore always an offense and, consequently, the basis for legal liability. The author herself demonstrates a tough position regarding medical error, pointing out that medical error is negligence, negligence, professional ignorance. This is a crime, but it is more immoral than many others, that is, worse than many other professional crimes.

When the harm caused during the provision of medical care does not fall under extreme necessity, legitimate risk, irresistible force or the action of a source of increased danger, an error means only one thing – the doctor's lack of guilt in the form of intent, but there is always guilt in the form of negligence – negligence, negligence, professional ignorance. A professional mistake is always a fault. (Nevzgodina, 2015, pp. 137-139).







Other authors hold a similar position, saying that a medical error is a violation by a medical professional performing his professional duties of the rules, requirements, instructions, methods of diagnosis, treatment and prevention of specific diseases, which negligently caused injury to the victim(s) serious injury to health or death (Suchkov, 2010, p. 74). It is characterized only by culpable actions, under certain conditions an equal sign can be placed between the concept of a medical error and a crime, and criminal liability should follow for a medical error (Potseluev & Gorbunov, 2017).

A number of authors hold opposite views, believing that a medical error is a negative result of diagnostic, therapeutic or organizational measures of a doctor, that is, when they receive medical care of the appropriate volume and content, however, the patient is harmed or the positive effect of treatment is not achieved in the absence of the doctor's fault (Alexandrova et al., 2006, p. 167). I agree with this approach, i.e. Suchkova (2014), who defines a medical error as an action (inaction) by a doctor, due to his conscientious error, resulting in harm to the patient's life (health) or failure to achieve a positive effect of medical measures in the absence of the doctor's fault. It can become the basis of responsibility only together with guilt, which, as follows from the above definition, is not included in it.

Some specialists link medical error with risks in providing medical care. Thus, according to A.V. Kudakov (2011, p. 8), a medical error is the choice by a medical professional of methods and means of diagnosis and treatment that are dangerous to the patient's life or health, caused by ignorance or presumptuous disregard of special legally significant requirements for professional behavior in the current situation.

The analysis of the diverse opinions of law enforcement officers leads to the conclusion that medical errors today are recognized not only as errors that occurred independently of the will of the doctor (objective medical reasons), but also as errors that are the fault of the doctor who committed or did not commit medical manipulation (Suchkova, 2014, p. 117), and as subjective medical errors should be recognized as such.

Nevertheless, the vast majority of lawyers believe that medical errors should be divided into culpable unlawful acts that caused death or harm to the patient's health, as well as medical errors committed innocently (Zamaleeva, 2014, p. 44). As can be seen, this division is based on the principle of guilt, which characterizes the intellectual processes occurring in the mind of the subject of the crime (in our case, medical workers in connection with their professional activities). Therefore, in law enforcement practice, if the actions of





medical workers are found to be erroneous, two issues have to be resolved: the presence (or absence) of guilt in the actions of the doctor who made the mistake, and the possibility of legal liability of the latter in case of improper professional activity.

Naturally, sociologists and psychologists joined the discussion of the problems of medical errors, considering them to be one of the actual causes of the intractable social conflict between doctor and patient, which, by the scale of its prevalence in Russian society, is nationwide (Semina, 2016, p. 88). According to sociologists, medical error is

not only and not so much a clinical misconception, it is a social fact caused, often, by psychological, economic, ergonomic and other factors ... socially, medical error and criminal negligence in providing medical care are not differentiated in the minds of patients... The mass media do not distinguish mistakes from misdemeanors and crimes, which leads to the formation of a negative image of a doctor in the public consciousness. Such publications form phobias among medical workers themselves, contribute to their psychological destabilization and, consequently, provoke new mistakes. A person most often makes mistakes precisely when he is most afraid of making mistakes. (Andreev, 2006, p. 10).

T.V. Semina believes that in the public consciousness it is customary to consider any harm to a patient as a medical error. However, unlike mistakes in other professions, a doctor's mistake will come at a very high price. Considering this fact, this is one of the most acute and topical topics that always finds a warm response in society. The term "medical error" is legally incorrect and should not be used (Semina, 2016, p. 101). E.V. Farber notes that despite the obvious progress in medicine, there are no fewer errors in medical practice. Mistakes made by medical professionals reduce the authority of the medical profession and hinder the establishment of a civilized relationship between doctor and patient. Actually, the problem of medical errors puzzles not only specialists, but also journalists, sociologists, and political scientists. Opinions on the need for legislative consolidation of the concept of "medical error" have long been divided: most practicing lawyers consider medical error to be a construct specially invented by doctors to conceal or justify careless medical crimes, therefore they adhere to the opinion about the need for legislative consolidation of this term, but the legislator does not see the need for this, therefore does not give a legal definition of medical error (Farber et al., 2015, pp. 16-17).

Of course, doctors themselves are fully aware of the social significance of not only





the clinical, but also the deontological component of their daily activities. Professional skill, or the art of a doctor, is a creative process that is combined with a sensitive, cordial, sincere attitude towards the patient. Success in medicine begins with attention to the patient, and all failures and troubles, as a rule, begin with a lack of such attention. A particularly striking evidence of this is the category of medical errors designated as deontological, which are based on a violation of the principles of proper behavior of a doctor towards a patient, in other words, non-compliance with ethical standards in medicine (Rozhdestvenskaya et al., 2016, p. 492). Medical scientists are calling for the development of a theory of medical errors based on the generalization of the "negative" medical experience of at least the past century, since the medical and philosophical aspects of this problem cannot be solved "from scratch." According to A.S. Dimov, the versatility of the problem of medical errors and its high significance require an accurate and universal, and in fact, a medical and philosophical definition that would not be distorted in favor of one position or another, when the same fact would be considered by a doctor as an accident, by a lawyer as a medical error, and by a patient as a crime. Medical error is an inevitable phenomenon, and it is always the result of a doctor's activity, that is, his professional and personal imperfections (Dimov, 2016).

Due to the extreme ambiguity of the concept, judicial investigative practice prefers to avoid its use in procedural documents, which is certainly reasonable (Rastoropov et al., 2024a). At the same time, forensic doctors note that the materials of civil cases on claims against medical institutions in connection with deficiencies in the provision of medical care (the number of which is steadily growing every year) are replete with the term "medical error" (Shmarov, 2018, p. 49). This is explained, in our opinion, by a certain simplification, as well as by the greater publicity and openness of the civil procedure compared to the criminal one, as it is more formalized, where the so-called "investigation secrecy" regime operates at the stage of preliminary investigation (pre-trial proceedings). Nevertheless, this term, despite its occurrence in the materials of civil cases, is not used in final court decisions.

An analysis of the legislation of the Russian Federation has shown that neither criminal nor civil legislation (including acts of interpretation of legal norms), as well as sectoral legislation on healthcare, contain any mention of errors in general, and medical errors in particular. Thus, the concept of "medical error" has no normative consolidation and interpretation today and probably will not have in the near future. Thus, the initiative of the Union of the Medical Community "National Medical Chambers" (established in 2010),





proposed back in 2019, to introduce this term into sectoral legislation on healthcare and consolidate its content, did not find support and, as a result, was not implemented. We believe there could be several reasons for this, but the main ones include the following.

Firstly, there is a lack of consensus in the professional medical community about the exact meaning of the concept of "medical (medical, curative) error," since it is medical professionals who, in our opinion, are more interested in the essence than others. Secondly, there was a lack of support from the legal community, since the concept was supposed to be given, among other things, a legal meaning, as a basis excluding the possibility of bringing a medical professional who made a professional mistake to criminal responsibility, that is, to be normatively fixed in order to legitimize its use in procedural documents. It may be a case of a similar incident (an accident that often accompanies a medical error in medical literature), which is the closest legal concept in the theory of criminal law, which is considered innocent harm and does not entail liability (Article 28 of the Criminal Code of the Russian Federation). However, the opinions of experts vary greatly here. It is also suggested that patients who are directly interested in its semantic and legal content should be involved in the development of a multifactorial and universal concept of medical error. In our opinion, it will not be easy, if at all possible, for these parties to agree on such an acute issue for each of them as a medical error.

At the same time, it can be argued that in modern law enforcement, the philosophical category of "error", endowed with a special feature for the subject – "medical error" – has actually become a legal concept. There is a lot of evidence for this. Thus, in criminal and civil proceedings in the last decade, such a category of cases as "cases of medical errors" has emerged. Despite the absence of this mention in the official documentation of the courts, it quite specifically indicates the specialization of the composition of the court in the civil process. As for criminal proceedings, the term "medical error" is used in the document flow of the Investigative Committee of the Russian Federation, the preliminary investigation body that directly investigates criminal cases of professional crimes of medical workers, in particular in some statistical reporting forms (Khazizulin, 2022, p. 114).

In modern criminal law enforcement, a category of so-called iatrogenic crimes has become entrenched, that is, professional crimes of medical workers committed while providing medical care. Researchers of current Russian criminal law call them new crimes with a special public attitude towards them, which is due to their very nature and danger,





since they are committed by implementing or ignoring a special protective function inherent exclusively to medical workers. This explains the special position of professional torts in the provision of medical care among others (Khazizulin, 2022, p. 109). In addition, iatrogenic crimes themselves belong to the category of latent, complex and difficult to prove, and the process of their investigation is complicated by the specifics of professional medical activity itself and the peculiarities of its regulatory regulation (Askov & Petrova, 2023, p. 89).

There is also a terminological controversy of the "iatrogenic crime" construction, which researchers regularly pay attention to (Mozgov & Mozgova, 2004; Nikitina, 2007; Pristanskov, 2000; Ulezko, 2018; Zamaleeva, 2018), and they note that "despite the comprehensive use of this term, it does not officially have a definition and is not included in any regulatory legal act in the Russian Federation" (Pogosyan & Tilyukina, 2019, p. 18), it is more important to realize the very fact of the isolation of this group of crimes on the basis of the subject and his professional activity. Today, this approach is well-established and well-founded.

However, one cannot disagree with the opinion that

the circle of iatrogenic crimes is a scientific classification, ... and it does not in any way affect the tightening of criminal liability against medical workers, because it does not add any new types of crimes to the Criminal Code of the Russian Federation, but simply groups the types of crimes provided for by the current criminal legislation. The appearance of this scientific category has not changed either the content of the current criminal legislation or the scope of criminal law repression against medical workers. (Ulezko, 2018, p. 49).

At the same time, the category of professional crimes of medical workers, without expanding the scope of the criminal law, not only formed a separate classification group of crimes against the person (human life and health), public health and safety, but also defined the specialization of law enforcement in this area, both at the level of preliminary investigation of criminal cases of iatrogenic crimes, prosecutorial supervision and judicial proceedings, as well as the "profiling" of the legal community in order to properly ensure the principle of adversarial criminal proceedings at all its stages (Ivanov et al., 2022). Today, we are witnessing changes and improvements in the work of judicial investigative and supervisory authorities in this group of crimes due to the development of modern criminal legislation on iatrogenic crimes, which still raises questions about the legal interpretation of







medical errors and professional crimes of medical professionals.

#### 4 CONCLUSIONS

The above makes it possible to conclude that in modern Russian law enforcement, medical error, while remaining an extremely ambiguous concept in its content and having no normative basis, nevertheless becomes a legal category, being identified with such a special type of professional crimes as iatrogenic crimes.

Iatrogenic crimes, as a special category of crimes in the field of medicine, are proposed to be defined as socially dangerous, illegal, punishable acts committed by medical professionals in the provision of medical care, which directly caused, through their negligence, adverse treatment outcomes in the form of harm caused to the patient's health or the onset of his death.

The proposed definition makes it possible to assess a medical error as a special case of iatrogenic crimes, by virtue of which a medical professional is allowed to create a danger of the occurrence of these socially dangerous consequences due to improper performance of their professional duties.

#### REFERENCES

Akopov, V.I., & Maslov, E.N. (2006). *Stradaniya Gippokrata: (pravovyye i eticheskiye problemy sovremennoy meditsiny i otvetstvennost' meditsinskikh rabotnikov)* [The sufferings of Hippocrates: (Legal and ethical problems of modern medicine and the responsibility of medical professionals)]. Rostov-on-Don: Priazovsky Krai, 520 p.

Alexandrova, O.Yu., Gerasimenko, N.F., Grigoriev, Yu.I., & Grigoriev, I.Yu. (2006). *Otvetstvennost' za pravonarusheniya v meditsine: ucheb. posobiye dlya studentov med. vuzov i sistemy poslevuzovskogo prof. obrazovaniya vrachey* [Responsibility for offenses in medicine: A textbook for students of medical universities and the system of postgraduate professional education of doctors]. Moscow: Publishing Center "Academy", 238 p.

Andreev, A.A. (2006). *Otnosheniye k vrachebnym oshibkam i sotsial'nyye puti ikh preduprezhdeniya* [Attitude to medical errors and social ways of their prevention]: Abstract of the dissertation ... Candidate of Medical Sciences. Volgograd State Medical University, Volgograd, 27 p.

Askov, N.N., & Petrova, T.N. (2023). O razgranichenii sostavov prestupleniy, predusmotrennykh stat'yami 109, 118 i 238 UK RF, v primenenii k meditsinskim rabotnikam: sravnitel'no-pravovoy analiz [On the differentiation of the elements of crimes provided for in Articles 109, 118 and 238 of the Criminal Code of the Russian Federation, concerning





medical workers: Comparative legal analysis]. *Vestnik of the St. Petersburg University of the Ministry of Internal Affairs of Russia*, 4(100), 87-97. <https://doi.org/10.35750/2071-8284-2023-4-87-97>

Chervonykh, E.V. (2010). Kriminalizatsiya vrachebnykh oshibok [Criminalization of medical errors]. *All-Russian Journal of Criminology*, 3(13), 36-44.

Davydovsky, I.V. (1941). *Vrachebnyye oshibki* [Medical errors]. Moscow: Sovetskaya meditsina.

Dimov, A.S. (2008). Vrachebnaya oshibka: obosnovannost' definititsii i klassifikatsiya [Medical mistake: Validity of the definition and classification]. *Medical Examination Problem*, 8(1(29), 5-8.

Dimov, A.S. (2016). Antikredo vracha s pozitsii errologia Medica: mezhdu teoriyey i praktikoy [Physician's anticredo from the standpoint of errologiamedica: Between theory and practice]. *Clinical Medicine*, 94(8), 631-638.

Dung, V.K., Ivanov, D.A., Pushkarev, V.V., Khoryakov, S.N., & Kremneva, E.A. (2021). Genesis of the institute for the compensation of detriment caused by crime. *Propositos y Representaciones*, 9(S1), e1398.

Elshtein, N.V. (2005). Sovremennyy vzglyad na vrachebnyye oshibki [Modern view on medical errors]. *Terapevticheskii arkhiv*, 8, 88-92.

Farber, E.V., Sergeev, Yu.D., & Shurupova, R.V. (2015). Sotsiologicheskiye i pravovyye aspekty oshibok, sovershayemykh vrachami i patsiyentami [The sociological and legal aspects of mistakes making by physicians and patients]. *Sociology of Medicine*, 14(2), 16-18.

Government of the Russian Federation. (2011). Draft Federal Law "On the basics of public health protection in the Russian Federation" No. 534829-5. Retrieved from <https://sozd.duma.gov.ru/bill/534829-5?ysclid=mbq8a03ee7183222648>

Ivanov, D.A., Polyakova, A.V., Pushkarev, V.V., Fadeev, P.V., Chasovnikova, O.G., & Skachko, A.V. (2022). The adversarial principle in criminal proceedings in the digital format under the sanitary and epidemiologic regulations (COVID-19). *Lex Humana*, 14(2), 496-505.

Ivanov, D.A., Pushkarev, V.V., Alimamedov, E.N., & Kim, D.V. (2021). Harm caused by a crime to a legal entity: Criminal legal, criminal intelligence and criminal procedural aspects of comparative legal research. *Revista GEINTEC*, 11(2), 1377-1385.

Khazizulin, V.B. (2022). Ponyatiye prestupleniy, sovershayemykh pri okazanii meditsinskoy pomoshchi [The concept of crimes committed in the provision of health care]. *Bulletin of the Moscow Academy of the Investigative Committee of the Russian Federation*, 3, 106-121. <https://doi.org/10.54217/2588-0136.2022.33.3.011>





Kruchinina, N.V. (2024). Actual Biomedicine's Resources of and Criminal Risks. Gaps in Russian Legislation, 17(7), 098-104. <https://doi.org/10.33693/2072-3164-2024-17-7-098-104>

Kudakov, A.V. (2011). *Vrachebnaya oshibka i yeye ugovno-pravovaya otsenka* [Medical error and its criminal legal assessment]: Abstract of the dissertation ... Candidate of Legal Sciences. Saratov State Academy of Law, Saratov, 22 p.

Lukyanov, S.A., Tarasova, I.A. (2024). Formation of the Concept of «Medical Police» in the Russian Empire. Gaps in Russian Legislation, 17(2), 021-025. <https://doi.org/10.33693/2072-3164-2024-17-2-021-025>

Mann, M.L. (2023). Problemy zakrepleniya v deystvuyushchem zakonodatel'stve ponyatiya vrachebnoy oshibki [Problems of enshrining the concept of medical error in the current legislation]. *Russian Law: Education, Practice, Research*, 1, 83-90. [https://doi.org/10.34076/2410\\_2709\\_2023\\_1\\_83](https://doi.org/10.34076/2410_2709_2023_1_83)

Markosian, D.G. (2022). To the Question of the Legal Mechanism for Ensuring the Function of Healthcare in the Russian Federation. Gaps in Russian Legislation. 15(5), 253-259. <https://doi.org/10.33693/2072-3164-2022-15-5-253-259>

Mozgov, A.A., & Mozgova, I.N. (2004). Vrachebnaya oshibka kak aktual'naya problema sudebnoy praktiki ["Medical error" as an urgent task of judicial practice]. *Meditsinskoye pravo*, 2, 31-38.

Nevzgodina, E.L. (2015). Yuridicheskaya kvalifikatsiya meditsinskoy oshibki i yeye pravovyye posledstviya [Legal qualification of medical error and legal implications]. *Herald of Omsk University. Series Law*, 2(43), 137-144.

Nguyen, V.T., Pushkarev, V.V., Tokareva, E.V. & Makeev, A.V., & Shepeleva, O.R. (2021). Compensation for damage caused by a crime in the Socialist Republic of Vietnam and the Russian Federation. *Jurnal Cita Hukum*, 9(2), 211-220. <https://doi.org/10.15408/jch.v9i2.21738>

Nikitina, I.O. (2007). *Prestupleniya v sfere zdravookhraneniya: zakonodatel'stvo, yuridicheskiy analiz, kvalifikatsiya, prichiny i mery preduprezhdeniya* [Crimes in the field of healthcare: Legislation, legal analysis, qualifications, causes and preventive measures]: Abstract of the dissertation ... Candidate of Legal Sciences. Nizhny Novgorod Academy of the Ministry of Internal Affairs of the Russian Federation, Nizhny Novgorod, 32 p.

Palchun, V.G. (2008). Vrachebnyye oshibki - klassifikatsiya i preduprezhdeniye [Medical error - Classification and prevention]. *Russian Bulletin of Otorhinolaryngology*, 1, 4-7.

Pigolkin, Yu.I., Morozov, Yu.E., & Globa, I.V. (2018). Kompetentsii vracha i yurista pri ustanovlenii vrachebnoy oshibki [Competence of a doctor and a lawyer in establishing a medical error]. *Actual Problems of Medicine and Biology*, 2, 58-59. <https://doi.org/10.24411/2587-4926-2018-10018>





Pogosyan, A.A., & Tilyukina, A.G. (2019). Yatrogennyye prestupleniya kak novyy vid prestupleniy v ugovnom prave Rossiyskoy Federatsii [Yatrogenny crimes as a new type of crime in criminal law of the Russian Federation]. *Russian-Asian Law Journal*, 2, 17-20.

Potseluev, E.L., & Gorbunov, A.E. (2017). Meditsinskaya oshibka i prestupleniye: ravnoznachnyye ponyatiya [Medical error and crime: Equivalent concepts]? *Electronic Scientific Journal "Science. Society. State"*, 5(1(17)), 128-135.

Pristanskov, V.D. (2000). *Teoreticheskiye i metodologicheskiye problemy rassledovaniya yatrogennykh prestupleniy* [Theoretical and methodological problems of investigation of iatrogenic crimes]: Dis. ... Candidate of Legal Sciences. Saint Petersburg Law Institute of the Prosecutor General's Office of the Russian Federation, St. Petersburg, 122 p.

Rastoropov, S., Pushkarev, V., Fadeev, P., Grimalskaya, S., & Chikovani, M. (2024a). Legal relations arising between an investigator and a legal entity THAT has suffered from a crime in the criminal process of the Russian Federation. *Relações Internacionais no Mundo Atual*, 1(43), 367-376.

Rastoropov, S., Solomatina, A., Yakovleva, V., Pushkarev, V., Shatalov, R., & Ermachenko, A. (2024b). The use of artificial intelligence and other technologies in criminal proceedings: Problems, solutions and prospects. *Relacoes Internacionais no Mundo Atual*, 3(45), 381-391.

Rastoropov, S.V., Petrova, T.N., & Chigrina O.R. (2022). Ekspertnaya otsenka nenadlezhashchego okazaniya meditsinskoy pomoshchi v ugovnom sudoproizvodstve: pogonya za kolichestvom ili kachestvom [Expert assessment of improper medical care in criminal proceedings: The pursuit of quantity or quality]? *Eurasian Law Journal*, 12(175), 305-307.

Rozhdestvenskaya, T.A., Lysenko, O.V., & Prusakova, O.I. (2016). Problema vrachebnykh oshibok v meditsinskoy deontologii [Problem of medical errors in medical ethics]. *Health is the basis of human potential: Problems and solutions*, 11(2), 490-492.

Sashko, S.Yu., & Kochorova, L.V. (2009). *Meditsinskoye pravo: uchebnoye posobiye* [Medical law: Textbook]. Moscow: GEOTAR-Media, 352 p.

Semina, T.V. (2016). Sotsial'nyy konflikt "vrach - patsiyent" v sovremennom rossiyskom obshchestve: ob'yektivnyye prichiny i sub'yektivnyye faktory [Social conflict "doctor - patient" in modern Russian society: The objective reasons and subjective factors]. *Moscow State University Bulletin. Series 18. Sociology and Political Science*, 22(1), 84-106. <https://doi.org/10.24290/1029-3736-2016-22-1-84-106>

Sergeev, V.D., & Erosheev, S.B. (2001). *Neblagopriyatnyy iskhod okazaniya meditsinskoy pomoshchi* [Unfavorable outcome of medical care]. Moscow; Ivanovo: Ivanovskaya gazeta, 288 p.

Sergeev, Yu.D. (2003). Meditsinskoye pravo v Rossiyskoy Federatsii [Medical law in the Russian Federation]. *Meditsinskoye pravo*, 2, 3-5.







Shchigoleva, E.V. (2016). Publikatsiya vrachebnykh oshibok kak vospitatel'nyy metod N.I. Pirogova i tsenneyshiy opyt dlya yego posledovateley [Publication of medical errors as a N.I. Pirogov's educational method and valuable experience for his followers]. *Bulletin of the Council of Young Scientists and Specialists of the Chelyabinsk region*, 2(4(15)), 89-91.

Shmarov, L.A. (2018). Logicheskiy analiz ponyatiya "meditsinskaya oshibka" [The logical analysis of the notion of "medical error"]. *Forensic Medical Expertise*, 3, 49-53. <https://doi.org/10.17116/sudmed201861349-53>

Siluyanova, I.V., & Nazarova, E.V. (2010). Vklad N. I. Pirogova v razvitiye professional'noy etiki vracha [Contribution of N.I.Pirogov in the development of professional ethics of physicians]. *Bulletin of the Russian State Medical University*, 5, 98-101.

State Duma of the Federal Assembly of the Russian Federation. (2011). Federal Law of November 21, 2011, No. 323-FZ "On the basics of public health protection in the Russian Federation". Retrieved from <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102152259&ysclid=mbq8j5s23p622191107>

Suchkov, A.V. (2010). Analiz definitsiy ponyatiy "Vrachebnaya oshibka", "Yatrogeniya", "Defekt okazaniya meditsinskoy pomoshchi" kak tsel' ustanovleniya obstayatel'stv, podlezhashchikh dokazyvaniyu po professional'nyim prestupleniyam, sovershennym meditsinskimi rabotnikami [Analysis of concept definitions "MEDical mistake", "Iatrogenia", "Defect in medical care rendering" for investigation of circumstances that are to be proved for professional crimes accomplished by medical workers]. *Medical Newsletter of Vyatka*, 2, 70-78.

Suchkova, T.E. (2014). K voprosu o neobkhodimosti opredeleniya pravovykh kriteriyev vrachebnoy oshibki [On the need to determine the legal criteria for medical error]. *Bulletin of Vyatka State University for the Humanities*, 12, 112-121.

Ulezko, S.I. (2018). Ponyatiye yatrogennykh prestupleniy [The concept of iatrogenic crimes]. *Society and Law*, 2(64), 46-51.

Zamaleeva, S.V. (2014). K voprosu o sootnoshenii ponyatiy "vrachebnaya oshibka" i "yatrogeniya" [On the relationship between the concepts of "medical error" and "iatrogeny"]. In *Teoreticheskiye i prakticheskiye aspekty razvitiya yuridicheskoy nauki* [Theoretical and practical aspects of the development of legal science]: Collection of scientific papers based on the results of the international scientific and practical conference, August 11, 2017, Rostov-on-Don, Russia (pp. 44-46). Moscow: Innovative Center for the Development of Education and Science.

Zamaleeva, S.V. (2018). *Kriminalizatsiya yatrogennykh prestupleniy* [Criminalization of iatrogenic crimes]: A monograph. Moscow: Yurlitinform, 176 p.

Zasyapkina, E.V., Katrunov, V.A., & Kuznetsova, M.N. (2016). K voprosu o vrachebnykh oshibkakh: metodologiya i kriterii opredeleniya [On the issue of medical errors: Methodology and criteria for determination]. *Bulletin of Medical Internet Conferences*, 6(1), 243-247.

