THE PECULIARITIES OF IMPLEMENTATION OF THE RIGHT OF SENIOR CITIZENS TO UNCONSTRAINED AND CONSCIOUS CONSENT TO MEDICAL INTERVENTION

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Introduction.

While realizing the rights of patients to unconstrained and conscious consent to medical interventions it is very important to estimate the ability of elderly and aged patients to comprehend and analyze the specific medical information, which is given, and to take a conscious and independent decision about the medical intervention, which is offered.
Lingering chronic diseases, acute diseases and poor state of health can affect the ability of the patient to comprehend and analyze the medical information. In such a situation the patient can be unable to become completely aware of his / her situation and to evaluate the risk of the disease itself and the potential risk of the medical intervention which prevents him / her from making a conscious decision. These problems and problems of a similar kind are related mainly to elderly and aged patients.
Medical interventions in these cases can be complicated by somatic condition and some disorders in the mental condition which complicates the process of information exchange between the patient and the medial staff.
Though elderly and aged patients are considered to be capable and competent, they should be treated as a very vulnerable group of patients, who need additional care and protection of their interests because of possible incapability to realize their rights by themselves.

Main part

Health status and life span of population are major indicators of life quality and standards. Fast aging of population accompanied with lower birthrates is observed in the Russian Federation as well as in most industrially developed countries. People over 65 years of age account for about 15% of total population, their number will have doubled by 2020's.
The fastest growing group is the group of senile citizens who are heavily dependent on medical assistance and social protection. In the nearest future their number will increase 3 times.
Morbidity rate among elderly citizens is twice as much compared to young age, with senile citizens this number is 6 times as much. Up to 80% of retired citizens need medical and social care. As a rule, over 70% of these people suffer from several chronic diseases.
Two subjects of legal relations are distinguished in the process of providing medical care: medical workers and patients. Conditions of information exchange here are of know inequality: a long-term chronic disease, a severe acute condition, disorders of the nervous, cardio-vascular and other systems- all this cannot but have an adverse impact on the patient's ability to consider and analyze medical information.

Several questions arise with this respect. Is the patient able to comprehend its condition, evaluate critical risks? Is the patient able to take the right decision? These questions first of all refer to groups of elderly and senile patients.

Though aging of population, and patients, in particular, is not a unique feature of out time, it has been only the last decades that this problem deserved attention of physicians, psychologists, sociologists and lawyers. Process of aging is characterized by cerebral cortex activity reduction, inclination to stereotyped behavior, formation of neural processes torpidity.

Progressive weakness of memory, retardation of memorizing and learning processes are often observed rather early. On of the most characteristic features of aging is slowdown of psychic reactions. Taken together with a number of chronic diseases, this prevents patients from digestion of new medical information.

According to Krasnova O.V., Liders A.G., the highest speed of information processing and the highest volume of short-term memory are observed with the age group of 40-49 years of age. Credible reduction of these functions indicators has been revealed for the age group of 50- 59 years of age. The volume of processed information for the age group of 70-79 years of age is half as much, and for the age group of 80-89 it is 2.5 times less compared to the age group of 40-49 years of age.

These data testify to the fact that status of elderly and senile patients is rather complicated, given that this category of patients dominates in the total number of patients seeking medical care.

Efficiency of brain functions, such as perception and memory tends to decrease with age. Age-related decrease of these functions, in its turn, brings about not only quantitative but also qualitative changes in physic status of a person.

Symptoms of “normal” aging process include memory deterioration, perception process slowdown, abstract and logical thinking difficulty, that affects ability to analyze new medical information and take a reasoned decision.

Alongside with this, deterioration of the aforesaid functions can be related with a number of age-unrelated psychonoses. Normal and harmonious age-related waning of psychic functions is substituted with abnormal conditions.

At the initial stages of psychonosis progress a constructive cooperation is quite possible but contacting such patient with aggravated psychonosis is quite complicated.

Patients with such psychiatric disorders when hospitalized are not able to independently percept, analyze information and take a reasoned decision. The problem lies in the fact that on the one hand, a patient is not able to exercise its natural inherent birthright to dispose of its own health without assistance of third parties, and on the other hand, a medical worker which is a qualified professional cannot agree its actions with such patient.

Due to inability of elderly and senile patients to independently exercise their rights and protect their legal interests, they should be treated as a vulnerable group of population and they need interest intermediation by third parties.

In such situation it is necessary to involve an adult legal person which is able in a reasonable manner to protect the patient’s interests during the whole process of medical intervention.

The standing edition of the 1993 law of the RF “Fundamental legislation principles of public healthcare” does not regulate a situation when third parties in the capacity of a patient’s attorney alongside with competent patients can take part in resolving a matter of medical intervention. However, the Civil code of the RF (article 41) provides that adult competent person can request guardianship agencies to establish guardianship in the form

of custodial care if such person is not able due to its medical condition to exercise and protect its rights or fulfill its obligations at any times, including receiving medical care.
Custodial care is a form of guardianship. But if the subject of guardianship is a minor at the age of fourteen to eighteen years of age or a person which was held partially incompetent due to alcohol or drug abuse, **custodial care can be established for an adult competent person.**
Custodial care has the following features that are different from guardianship proper:
1. In custodial care a custodian is appointed by the guardianship agency upon written request of such adult competent person.
In guardianship, as distinguished from custodial care, guardianship is established by court ruling and does not depend on declaration of intention by such person under guardianship.
2. Only competent persons are eligible to custodial care.
3. Only persons of majority age are eligible to custodial care.
4. In custodial care any adult competent person can be appointed as a custodian (aid) upon request of the person under care regardless of presence or lack of any kind of kinship between them.
The patient under care has a full right to take part in discussing and decision-making on advisability of treatment or medical intervention to the extent it is capable of. Moreover, persons who take part in making vital decisions (custodians) are legally accountable for consequences of such decisions on a par with medical workers and patients.
Relatives take part in the treatment process to a greater or lesser extent. The patient's condition has an impact not only on the patient itself but also on its relatives. They also look after the patient; supply the patient with any necessary aids to the best of their abilities. This all cannot but change their work schedule, and sometimes their way of life. This argument plays in favor of involving relatives in decision-making process on medical intervention.
In discussing vital matters the patient has a right to involve any persons at its discretion and to such extent that it allows them access to confidential information related to its health status which is necessary for taking a reasoned decision.
5. Alongside with decisions taken by guardianship agencies with respect to appointment of a custodian, it is required to instrument a contract between such custodian (aid) and such person under care.
6. The person under care is entitled to request termination of custodial care at any time, while guardianship cannot be terminated upon request of the person under care.
Guardianship can be terminated only by a court ruling accepting such person as a competent person or lifting limitation of the person's under care competency pertaining to application of the guardian or guardianship agency.
In this case the person's under care rights are protected by law as the guardian is not entitled to grant its consent for medical intervention. But in case the patient is not able to express its will, the guardian has legal reasons to take part in decision-making process on medical intervention and protect the person's under care interests and benefits.
The patient with a severe chronic or acute condition is not left alone. In their turn, medical workers obtain legitimate grounds to discuss with its legal representatives complex issues of managing diseases that threat to the patient's health and life.
A patient's spouse, adult children, aunts, uncles, nephews and other relatives are not treated as its legal representatives under the Russian legislation, but if they are involved in such patient's life, reside in the same housing, keep house, assist as much as they can in providing care for such patient, their way of life cannot but change. They have to give up some customary conditions due to their relative's illness, bear material and financial

expenses, but according to the Russian legislation they are not entitled to take part in decision making process on any medical intervention.

Custodian care can change their situation and provide legal grounds (subject to such patient's relatives' consent) to protect the patient's interests and take part in discussing vital matters arising in the course of providing medical care.

Custodian care should be established for large majority of adult competent elderly and senile citizens to avoid conflicts arising from violation of such citizens' rights in the course of providing medical care.

Custodial care institution in the course of providing medical care to elderly and senile patients will allow them to exercise their inherent rights, protect their legal interests with active participation of their legal representatives (custodians) and regulate professional obligations of medical workers on the legal basis.