

The participation of a specialist in conducting crime-scene inspection when investigating the improper execution of professional duties by a medical or pharmaceutical worker

Участь спеціаліста в проведенні огляду місця події під час розслідування неналежного виконання професійних обов'язків медичним або фармацевтичним працівником

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Key words:

specialist, crime-scene inspection, doctor, forensic medical expert, expert criminalist, special knowledge.

Ключові слова:

спеціаліст, огляд місця події, лікар, судово-медичний експерт, експерт-криміналіст, спеціальні знання.

Actuality of the topic. Every person is a potential subject of medical legal relationship starting from the moment of his (her) birth and to death. Not only health but also life of the patient depends on correct or wrong actions of a health worker. One of the peculiarities of medical activity is that not all medical manipulations as well as methods of diagnosis and treatment, are useful for the patient and have positive results; some of them, in case of mistaken actions of medical staff, end with patient's complications in form of disability and even death. Each case of such false actions that are taken by medical staff should not be left without an appropriate response by law enforcement system¹.

As practice shows, one of the most effective investigative (search) actions in case of improper execution of professional duties is an inspection of the scene. The Code of Criminal Procedure of Ukraine states that for the purpose of obtaining assistance in matters requiring specialist knowledge, an investigator, a prosecutor may invite experts to participate in inspection.

The question of participation of specialists in the investigation of a crime stipulated by the Article 140 of the Criminal Code of Ukraine and in scientific literature is insufficient; the investigators do not always seek help of qualified specialists while conducting the inspection of the scene. That may lead to loss of important traces and evidence. Therefore, the question of participation of a specialist in scene inspection has special importance in investigating of such crimes.

The purpose of the paper is to highlight a number of theoretical and practical issues regarding the participation of a specialist in conducting a crime-scene inspection and when investigating improper execution of professional duties by a medical or pharmaceutical worker.

Presenting the main material. As it has been noted, among the investigative actions that are taken during the investigation of improper execution of professional duties by a medical or pharmaceutical worker inspection of the scene has a special significance. The quality of inspection often stipulates the course and outcome of criminal proceedings.

An analysis of investigative practice made it possible to distinguish typical failures and mistakes in investigators' actions during the inspection of a scene when investigating the improper execution of professional duties by a medical or pharmaceutical worker associated with the usage of a specialist's knowledge. In particular: 1) self-usage of technical and criminalistical instruments by the investigator distracts him from conducting investigative (search) actions and drafting procedural documents; 2) lack of own special knowledge during the description of specific objects and situations in the protocol; 3) errors in withdrawing of traces of a crime, which

¹ Redko Y.A. Concepts and sins of improper fulfillment of professional obligations by medical or pharmaceutical workers / Y.A. Redko // The forum is rights. – 2012. – № 1. – P. 816.

makes the realization of expert investigations impossible in future; 4) insufficient level of usage of scientific and technical instruments and methods during the search of the traces; 5) involvement of an expert of the same profile (usually a criminalist) in the inspection of the scene.

According to the Article 71 of the Criminal Procedure Code of Ukraine, an expert in criminal proceedings is a person who has special knowledge and skills of using technical or other instruments and can provide with advice during pre-trial investigation and trial on issues requiring appropriate knowledge and skills².

Any knowledgeable person can act as a specialist, to whom the law sets two main requirements: the lack of interest in investigation and competence that means the possession of special knowledge in particular field of knowledge or practice. The investigator has the right to involve a specialist during the preparation for conducting investigative actions, to receive clarifications on special issues that are arisen during their realization and obtaining results. The specialist remains independent within his competence, but coordinates his actions with the investigator and other people who are involved in investigative (search) actions³.

Special knowledge in medicine as form of special knowledge in criminal proceedings can be used in procedural and non-procedural form⁴.

During the crime-scene inspection when investigating some particular categories of crime it is widespread to use expert consultation, expressed in providing verbal information, substantiated pieces of advice and explanations related to various medical issues, as well as the involvement of a specialist when inspection of the scene.

The investigator may use professional consultation connected with inspection and removal of medical records, which contain information about the state of patient's health, data of inspection methods, medical treatment, physiotherapy, psychotherapeutic procedures, performed surgical operations, methods of relief of pain and postoperative complications, information about features of filling out and processing of a medical document.

The study of medical documents in investigation of these crimes is needed to clarify the way of committing and concealing a crime, assessing the actions of a doctor and other people in relation to the patient.

Depending on the situation, a health-care specialist can help to determine the range of health care staff that could be involved in providing medical care in connection with the relevant pathology.

A specialist may also assist in formulating questions for examination or correct them, if they are already outlined by the investigator. The need to engage a specialist is due to the specific issues in the field of medical activities, which are submitted to the expert. At the same time, the investigator, using the reference list of questions to the expert, often does not correctly associate them with the circumstances of the investigative criminal proceedings, which makes the expert, answering such questions, wasting time in vain, instead of solving other, more unclear and truly important issues⁵.

Hence, the advantage of counseling is that the investigator receives expert assistance promptly on special questions concerning the location of the event. Consultations help the investigator to assess the evidence, to make a decision about appointment of an expertise in time, and determine the range of issues addressed to the expert and others⁶.

It is important to involve a specialist to participate in crime scene and corpse inspection. A forensic medical expert or a doctor of any profile during the examination acts as a specialist, since during the investigation the examination is not realized (such activity is the competence of the expert).

² Criminal and Criminal Procedural Codes of Ukraine. – K. : KM Publishing, 2012. – P. 178.

³ Kosmina N.M. Special knowledge of individuals during the investigation of drug trafficking and their structure / N.M. Kosmina // Forensic messenger. – 2013. – № 1 (19). – P. 37.

⁴ Omelychuk L.V. Application of special knowledge in the investigation of crimes related to improper provision of medical care / L.V. Omelychuk // Scientific Herald of the National University of the State Tax Service of Ukraine (Economics, Law). – 2012. – № 3 (58). – P. 238.

⁵ Stetsik B.V. Methodology for investigation of illegal Curative Activities : dissertation of the Candidate of Laws : 12.00.09 / B.V. Stetsik. – Lviv, 2016. – P. 119.

⁶ Maruschak O.A. Use of special knowledge in the investigation of tax evasion, fees (obligatory payments) / O.A. Maruschak // Actual problems of legal science and practice. – 2016. – № 1. – P. 41.

It should be noted that for conducting an inspection of the corpse while inquisition the investigated category of crime it is useful to involve a forensic medical expert. This is due to the existence of so-called «Professional Corporation» among doctors. That is, the investigator needs to be protected from any possible biased, non-objective actions and specialist's valuations who is involved in conducting of corpse's inspection.

A forensic medical expert, when arriving for inspection of the scene must make sure that the death of the victim was the result of the crime. If the victim has any signs of life, we need to take all necessary measures to restore the basic vital functions of the body (CPR, artificial ventilation of the lungs, etc.) and call the ambulance carriage to the scene.

So, a forensic medical expert (a doctor) will help the investigator during the inspection of the scene:

- to confirm the fact and the time of death ;
- to describe the position of the corpse in details and to establish its original position, if it is possible;
- to conduct an inspection of the corpse and to describe it in a protocol;

– to examine and to describe the clothes on the corpse in details (the name of piece of clothing, the type of fabric which it is sewn of, the color and picture of the fabric, the level of outwearing, the smell of clothing, the condition of fasteners, the content of pockets, description of contamination and damage of clothing, its location and appearance (spot, flow, color), the nature of the contaminated substance (blood, vomit), the shape, the size and the state of the contaminated substance (liquid, dried, dry)⁷.

- to investigate and to describe cadaveric phenomena (early and late).
- to define, to examine and to describe the damage on all parts of the body (localization, properties, shape, size, condition of the edges, ends and bottom of wounds, third-party inclusions, etc.), to establish an instrument of injury and to find an instrument on the scene.

During the investigation, a forensic medical expert may use such scientific and technical instruments as: dynamometer – for studying cadaverous spots. For example, the spot is pressed for 3–5 seconds with a force of about 2 kilograms per square centimeter and then the time of recovery of spot's color is measured by chronometer. In case of need for differentiation of cadaverous spots and hemorrhages, cuts are made on the skin. Neurological hammer is used for performing tests for mechanical irritation of skeletal muscles and tendon reflexes. One-percent solution of pilocarpine and atropine is used to check the reaction of the eyes. Chronometer is used to measure the time of changing the color of cadaverous spots. Tuberculosis syringe and needles are used for injections etc.⁸.

An expert criminalist assists the investigator during:

- the caption of traces of shoes, hands, hair in the crime site;
- collection traces of body secretions (rinse waters, vomit, blood etc.);
- detection and withdrawal of things that were used while committing a crime (medical products), for example (needles, syringes, scalpels).

When investigating the improper execution of professional duties by a medical or a pharmaceutical worker, we also need the usage of pharmaceutical, pharmacological and, in some cases, technical knowledge⁹.

During the crime-scene inspection a pharmacist (a provisor, a clinical provisor) helps the investigator to pay attention to the less-visible traces of drugs that could be found on various subjects related to the provision of an inappropriate patient care, for example, on doctor's clothes, near the body of the corpse, on the floor, on medical instruments, medical wastes etc.; carries out a review of drugs (in the case of seizure of ampoules, pills; the existence of inscription on ampoules, tablets, ampoule filling fluid level, liquid color and sediment, the way of packaging and packing material, numerical designations and the name of the manufacturer and others¹⁰); to determine the method of proper packaging of medicines.

⁷ Bilets'kyi Ye.M. Forensic Medicine and Forensic Psychiatry / Ye.M. Bilets'kyi, G.A. Bilets'ka. Kharkiv : National Law Academy named after Yaroslav the Wise, 2005. – P. 45.

⁸ Timchishin D.M. Use of scientific and technical means to investigate murders : dissertation of the Candidate of Laws : 12.00.09 / D.M. Timchishin. – Kyiv, 2014. – P. 108–109.

⁹ Kapustina M.V. The problems of using special knowledge in the investigation of iatrogenic crimes / M.V. Kapustina // Theory and practice of forensic examination and criminalistics. – № 8. – P. 161.

¹⁰ Soroka S.O. Features of detection and conduct of investigative (search) actions at the initial stage of the investigation of drug smuggling / S.O. Soroka [Electronic resource]. – Access mode : <http://science.lpnu.ua/sites/default/files/journal-paper/2017/may/2175/vnulpurn201480138.pdf>.

We should remember that while investigating drugs during the inspection of the scene, sampling and subsequent storage, it is necessary to know about safety precautions while dealing with them. It is important to remember, that drugs, which will be sent for an examination in the future, should not undergo changes after seizure. Removed medicines, carriers and samples are packed separately (in glass bottles, vials, polyethylene bags). For example, for packaging some liquids glassware is used, tightly covered with a plug and additionally repressurized, pasting with a sticky tape, and then wrapped into the paper. As drugs are very sensitive to the effects of the sunlight, oxygen, air, moisture and elevated temperature, they should be kept sealed in a dark, cool place.

In case of malfunction of diagnostic and medical devices, technical knowledge is used, since modern equipment may represent a complex set of different systems, devices, aggregates and other elements, and an investigator may not be aware of their purpose and structure¹¹.

Consequently, the effectiveness of the crime-scene inspection while investigating the improper execution of duties by medical and pharmaceutical workers depends on the involvement of qualified specialists in the field of medicine, criminalistics, pharmaceuticals, pharmacology, and technology in time. Their assistance will help to identify the method of committing an offense correctly (for example, clarifying the order of medical measures taken in accordance with the victim's diagnosis), removing samples, documents and substances that are necessary for further examination and other investigation tasks.

Summary

In the article that is entitled "The participation of a specialist in conducting crime-scene inspection when investigating the improper execution of professional duties by a medical or pharmaceutical worker" is told about the possibility of using an expertise by an investigator during the inspection of a scene of a crime. At the beginning we are talking about typical shortcomings and problems in investigators' activities during investigative action. Then the author talks about the widespread usage of special knowledge during the investigation of the crime. The article provides information about a doctor, a forensic medical expert, a pharmacist, a criminalist, a psychologist and a technician who assists the investigator during the inquest of improper execution of professional duties by a medical or pharmaceutical worker. In conclusion, the author describes positive aspects of criminal proceedings in case of involvement of specialists who have special knowledge in the investigative (search) activity.

Анотація

У статті визначено особливості використання спеціальних знань у формі участі спеціаліста в проведенні огляду місця події та огляду трупа під час розслідування неналежного виконання професійних обов'язків медичним або фармацевтичним працівником. Розкрито зміст консультативної допомоги фахівців у галузі медицини, фармацевтики, техніки та значення таких відомостей для виконання завдань розслідування.

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¹¹ Taran O.V. Use of special knowledge in the investigation of crimes against production safety : Guidelines / O.V. Taran, N.V. Timofeev – Kyiv, 2016. – P. 24-25.

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