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**Наталія Колісниченко***завідувач кафедри соціально-гуманітарних наук**Навчально-наукового інституту публічної служби та управління**Національного університету «Одеська політехніка», д.держ.упр., професор**<https://orcid.org/0000-0003-1083-7990>**e-mail: ird@ukr.net*

## **СУТНІСТЬ КОНФЛІКТУ В СУДОВО-МЕДИЧНІЙ ЕКСПЕРТИЗИ ТА УПРАВЛІНСЬКІ СПОСОБИ ЙОГО ВИРІШЕННЯ (англ)**

У статті обґрунтовується сутність конфлікту в судово-медичній експертизі та моделюються управлінські способи його вирішення. Для вирішення питань управління конфліктами в сфері судової медицини виконуються такі завдання, по-перше, проаналізовано конфліктні ситуації в практиці судово-медичної експертизи, по-друге, класифіковано їх, по-третє, виявлено їхнє соціальне значення та наслідки, по-четверте, запропоновані адміністративні інструменти вирішення конфліктів. Серед проблематики конфліктів під час проведення судо-медичної експертизи виділено труднощі психолого-правового характеру; конфлікти між судмедекспертами спілкуються та родичами підозрюваного; конфлікти з фахівцями правоохоронних органів; конфлікти між медичними працівниками. Інструментами публічного управління у вирішенні конфліктів у сфері судмедекспертизи виявлено: правові інструменти; інституційні; соціальні; інфраструктурні; інструменти безпеки; психологічні інструменти; консультативні інструменти та документальні.

**Ключові слова:** судово-медична експертиза, конфлікт, конфлікт в судово-медичній експертизі, управління конфліктами, інструменти публічного управління у вирішенні конфліктів.

**Natalia Kolisnichenko***Head of the Department of Social and Humanitarian Sciences**ESI of Public Service and Administration Odesa Polytechnic National University,**Doctor of Sciences in Public Administration, Full Professor,**<https://orcid.org/0000-0003-1083-7990>**e-mail: ird@ukr.net*

## **THE NATURE OF THE CONFLICT IN THE FORENSIC MEDICAL EXPERTISE AND THE ADMINISTRATIVE INSTRUMENTS TO RESOLVE IT**

The paper examines the nature of the conflict in forensic medical expertise and reveals the models of managerial instruments of its solution. In order to study the conflicts management in such area as forensic medicine, it is necessary first, to analyze conflict situations in the practice of forensic medical expertise, secondly, to classify them, third, to identify their social meaning and consequences, and fourth, suggest the administrative ways in conflicts solution. The paper studies conflict situations in the practice of forensic medical expertise analyzing the subjective and objective factors of the conflict. It gives the conflicts classification and looks at the reasons for conflicts. The social nature of conflicts is examined within such consequences as difficulties, both psychological and legal nature; communication of forensic experts with the relatives of a criminal suspect; cooperation with the specialists of law enforcement agencies; conflicts between forensic medical experts and the group of medical workers. The instruments of public management in solving conflicts in the sphere of forensic medical expertise are examined (legal instruments;

institutional instruments; social instruments; infrastructural instruments; instruments of security; psychological, consultative and documentary instruments) are revealed and the appropriate recommendations are proposed.

**Key words:** forensic medical expertise, conflict, conflict in forensic medical expertise, conflict management, public management instruments in resolving conflicts.

Forensic medicine is a special area in medicine, a system of scientific knowledge about the patterns of occurrence, methods of detection, research methods, and principles for assessing medical facts that are a source of evidence during the investigation provided for by law. Its first and main task is to assist law enforcement agencies in cases (criminal and civil) related to a crime against life, health, the dignity of the individual, and the health of the population as a whole. The practice of forensic medicine is accompanied by social and ethical values. As a result, any conflict in forensic medical expertise - FME - can have a negative impact on the stability of these values. At the same time, conflicts are an integral part of our lives. When two parties are in conflict, regardless of the reason for their interaction, there is always the possibility of a conflict. To master and manage the conflict, it is important to have an idea of the classification of the conflict, the structure of the conflict, the causes of its occurrence, the dynamics and functions of the conflict, strategies, and methods of management: prevention, regulation, and resolution.

In theory, conflict management includes: conflict forecasting; preventing some cases and at the same time stimulating other cases; termination and fighting the conflict; conflict regulation and resolution.

Therefore, in order to manage conflicts in such a vital area as forensic medicine, it is necessary first, to analyze conflict situations in the practice of forensic medical expertise, secondly, to classify them, third, to identify social meaning and consequences, and fourth, suggest the administrative ways in conflicts solution.

#### ***Conflict situations in the practice of forensic medical expertise.***

Conflict is one of the manifestations of social interaction, which proceeds in the form of confrontation of individuals, interests, views, and positions of at least two sides and is usually accompanied by negative emotions [5] that go beyond the formal rules and norms. The main causes of conflict situations in medicine are the following:

- insufficient attitude to the patient;
- false status information about patient's health from medical personnel;
- lack of informed consent of the patient for examination and treatment;
- lack of coherence and collegiality in the actions of doctors of different specialties;
- defects in maintaining medical records;
- professional incompetence;
- characterological features of the doctor and the patient.

There are objective and *subjective* factors of conflict. Among the objective ones is the imperfection of the regulatory acts in the field of healthcare, the low quality of education of some medical workers, the expansion of paid medical services, the destructive influence of the media, etc.

The subjective factors of the conflict are directly associated with the specifics of the profession of a doctor and the peculiarities of its implementation in recent years: deformation of the professional consciousness of doctors, low motivation, the imbalance of the personnel management system, weakening control by the medical institution's leadership, the underdevelopment of evidence-based medicine in recent years, etc. The guarantees of the independence of the forensic medical expert and the correctness of his/her conclusion are provided (in accordance with Art. 4 of the Law of Ukraine «On Forensic Expertise» [6]). Subjective reasons are often associated with a discrepancy between the patient's expectations and reality (subjective or realistic conflicts).

In the health sphere, in all cases of interaction between the doctor and the patient, a significant role is played by deontology. Deontology is a science studying moral principles of behavior, including diagnostic and therapeutic interaction. In this case the level of communicative competence of a medical worker, which is basic in resolving conflicts and is directly related to the analysis of the psychological state of the patient as a person is very important together with the

professionalism of a medical worker. It is important for the medical worker to maintain an interested attitude towards the patient, empathy, the desire to help the patient, and cooperation with him/her. It also protects the ego from professional deformation, formalism, and differentiation and provides emotional ego stability, balance. The skills of communicative interaction with the patient foster professional flexibility. The same aspects are relevant to the forensic expertise area.

### ***Conflicts classification.***

In the social structure of society, conflicts are characterized by level, scale, severity, scope of occurrence, and a number of other parameters [5]. The presence of such a parameter as the degree of conflict tension is an essential factor in the conflict's formation and development.

Besides, social and psychological regularities of group dynamics are also of particular importance here: the degree of cohesion of the respective groups, ways of nominating leaders, the ratio of formal and informal leadership, ensuring social support etc.

In recent years, the profession of a doctor has increasingly become an object of social and legal control by society, primarily taking into account the rapid increase in the number of medical claims regarding institutions and doctors [5].

In medical practice, conflicts are divided into short-term and long-term ones. Conflicts are also divided into positive (constructive) and negative (destructive). The positive role of conflicts is that they are necessary and even inevitable sources for the development of teamwork. The constructive side manifests itself more clearly when the level of conflict is sufficient in motivating people. The presence of positive properties in a conflict is often the reason that such conflicts are artificially included in the structure of the organization in order to obtain the desired positive effect.

### ***The reasons for conflicts.***

The responsibility for the patient's life needs to take into account all potential conflict points related to the resolution of disputes, which occur during the provision of medical assistance [1]. A significant moment of conflict «doctor-patient» is the growing dissatisfaction of society with the quality of medical services. The development of civil society has led to an increase in patients' activity in the field of the protection of their rights. Therefore, the prevention of conflicts is relevant, and in cases of their occurrence, a constructive resolution is relevant. The focus of conflict prevention is on the increasing legal culture with the development of active models of doctors' behavior in accordance with the current social and economic conditions and legal civil acts. Most often in medical practice, there are non-objective or psychological *conflicts* (see [2]).

### ***Social nature of conflicts and their consequences.***

Conflicts objectively reduce the quality of expertise, therefore it is necessary to explicate their sources – both external and internal. The external sources of conflicts are the participants of the interaction in the process of forensic medical expertise. They are the relatives of the deceased/victims, relatives of those who are suspected, and employees of law enforcement institutions. The internal sources are medical workers related to FME.

1. The most serious difficulties, both psychological and legal nature, arise when the forensic expert communicates with the relatives of a victim. The cause of the conflict with the relatives of the deceased in half of the cases is the discrepancy between the results of the examination and the opinion of relatives. In most 10% of cases, it is the timing of the work. In any case, it is possible to protect forensic experts from the consequences of the conflict situation and resolve the conflict positively.

2. A more serious situation could be developed when forensic experts communicate with the relatives of a criminal suspect. The conclusions of the expert are the «aggravating» factors here that lead to consequences. These conclusions in 40% of cases cause conflicts with the relatives of the suspected persons because of a discrepancy in the results of expertise with the opinion of the relatives.

3. The specialists of law enforcement agencies who are the permanent partners of forensic experts, as they work with them. The real cause of conflicts in forensic expertise is contradictions between the expert opinions and conclusions of the investigation provided by law enforcement officers – almost 10% of cases. As a rule, in most cases, law enforcement officials are not satisfied with the work of experts regarding the deadlines for the implementation of expertise. That is the

main cause of conflicts with law enforcement authorities.

4. Forensic medical expertise is also characterized by conflicts inside the group of medical workers. The conflicts here are regulated according to the principles of medical deontology, but it does not exhaust the problem. There is a conflict in the communication of forensic experts with paramedical staff. The contradictions that arise between experts and paramedical personnel affect personal relations between them and strengthen psychological tension, complicating the difficult work conditions.

As a rule, the source of the conflict is the unskilled work of paramedical personnel. The lack of qualification of paramedical personnel is explained by its low interest in the results of work. Small salaries and difficult working conditions lead to the fact that there is no competition for the position of laboratory assistant in forensic expertise.

***The ways to avoid conflicts.***

There are various ways of conflict resolution:

1. *Confrontation (competition)*. It involves focusing only on one's own interests, completely ignoring the partner. There is a tough stance towards the opponent and irreconcilable antagonism towards other participants in the conflict in case of somebody's resistance.

2. *Evasion*. It is distinguished by the rapid avoidance of conflict. It is characterized by a low level of focus on both personal interests and the interests of the opponent. It is mutual.

3. *Adaptation*. It involves increasing attention to the interests of another person, while one's own interests are secondary. Such behavior in conflict is used if the situation is not particularly significant and it is important to maintain good relations with the opponent.

4. *Compromise*. It is one of the efficient forms of conflict resolution. At the same time, the parties are trying to resolve differences by making mutual concessions. It represents the so-called intermediate solution that satisfies both parties for a certain period of time.

5. *Collaboration*. It is characterized by the search for a solution that satisfies the parties while respecting their interests. Constructive and mutually beneficial conflict resolution helps to avoid undesirable consequences. It also maintains good relations between the parties.

It is evident that the most effective ways out of conflicts are cooperation and compromise.

It is recommended to organize an ethics committee to resolve conflicts and misunderstandings in forensic practice. The ethics committees in the forensic expertise may become the actors in the resolution of conflict cases, in order to avoid the appointments on repeated examinations, exhumations, and lawsuits. Besides, when there are conflict cases in the raion departments of the forensic medical service – oblast ethics consultants may assist in their resolution. The activity of the ethical committee in the FME unit will avoid many mistakes in assessing misconduct and offenses of forensic experts and other parties.

***The instruments of public management in solving conflicts in the sphere of FME.***

*Legal instruments.* Conflicts can become the reason for the appeal to higher authorities (to the health authorities, to the Ombudsman, to the State Inspectorate of Ukraine for protection of consumer rights, internal affairs bodies), to court. The main legal acts regulating offenses in the field of health care, are: the Constitution of Ukraine, the Civil Code of Ukraine, laws of Ukraine «Fundamentals of Legislation of Ukraine on health protection», «On protection of personal Data», «On Protection of Consumer Rights». The legislative and legal framework also needs to be improved. The functioning of the FME structures and activities of forensic experts, the rules for conducting expert studies are to be regulated

*Institutional instruments.* Institutions of forensic medical expertise are a part of the forensic medical service of the Ministry of Health of Ukraine (MoH) and are built on the principles of agency [3, 4]. There are propositions to withdraw the forensic medical service from the subordination to the Health ministry, creating an integral public service with clear vertical managerial links. Besides, to resolve conflicts - as a result of the expertise, the source of which is the dissatisfaction of the relatives of the deceased, the victim, the accused, the plaintiff, and the defendant in court, - an appeal should be recommended to an alternative regional Center for Independent Forensic Expertise. As a third party, to resolve conflicts and misunderstandings in forensic practice, the local ethical committee can be established on the basis of the regional FME

structure.

*Social instruments.* Social instruments of public management are to be improved because of the extremely low social protection of employees of the FME structures due to a lack of legislative framework and insufficient funding.

*Infrastructural instruments.* To reduce psychological tension and avoid conflicts in the forensic medical service the infrastructural actions are to be provided connected with the effective organization of the work environment, the functioning of separate, sufficiently equipped mortuary buildings, the relatively aesthetic design of the workplace, the availability of restrooms and psychological relief, rooms for eating, etc. It is to be convenient with a certain comfort and mood for the work of forensic experts.

*The instruments of security.* It is also necessary to ensure the safety of the FME experts, and minimize the risk of injury, infection, negative mental impact, unpleasant odors and other effects of negative factors. The administrative bodies are to provide such facilities as waiting rooms and halls for farewell procedures with the body of the deceased/victim, organize the prompt delivery of the bodies of the deceased, place for medical certificates of death or other documents without extra time, obtain proper information in any time of the day.

*Psychological instruments.* To resolve conflicts, the source of which is the unwillingness of the relatives of the deceased, the victim, the accused, the plaintiff and the defendant in court, to recognize the result of the expertise, their subjective opinion about the low-quality level of expertise or falsification of the results of expertise it is recommended to introduce a position of a clinical psychologist or social worker to the staff of the FME structure.

*Consultative instruments.* To resolve conflicts with representatives of law enforcement agencies and the court, it is possible to introduce such a position as a consultant/specialist-advisor who would provide the necessary advisory help for the court in formulating an expert task.

*Documentary instruments.* To resolve conflicts, the nature of which is the dissatisfaction of the relatives of the deceased/victim who refuse to receive «Expert's Conclusions» – it is recommended to develop and put into practice the so-called «consultation paper». This paper can specify the reason and time of death, mechanism of bodily injury, prescription regarding their formation, the severity of harm to health, the presence and degree of alcohol intoxication

**Conclusion.** The most effective way of conflict prevention is to prevent its occurrence. Therefore, it is important to pay special attention to preventive measures. Ineffectively resolved conflict situations are fraught with sad consequences for the activities of an individual forensic expert, and the entire medical institution. They are: the formation of a negative image, losses, and litigation. Therefore, it is important to be able to choose the right strategy for the behavior of medical personnel in a conflict. That allows to ensure the realization of the citizens' rights, to protect the FME experts if patients abuse their rights.

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