

DISTRIBUTION OF OFFENSIVE INFORMATION CONCERNING MEDICAL WORKERS ON INTERNET

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Key words:

internet resources, medical workers, conflicts in medicine, offensive information, methods of protection.

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The aim of the study – to analyze the spread of offensive information about medical workers on the Internet and to determine the fundamental rights of protection of a medical worker in case of conflict situations.

Conclusion. Thus, protecting yourself and your reputation in the era of rapidly developing virtual worlds is quite possible, and there are already many positive examples in court decisions. However, there are several important factors to consider before going to court and, if necessary, seek the help of a professional lawyer.

Ключові слова:

інтернет-ресурси, медичні працівники, конфлікти у медицині, образлива інформація, способи захисту.

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ПОШИРЕННЯ ОБРАЗЛИВОЇ ІНФОРМАЦІЇ ЩОДО МЕДИЧНИХ ПРАЦІВНИКІВ У МЕРЕЖІ ІНТЕРНЕТ

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Мета дослідження – проаналізувати поширення образливої інформації про медичних працівників в мережі Інтернет та визначити основні права захисту медичного працівника у разі конфліктних ситуацій.

Висновок. Захистити себе та свою репутацію в епоху віртуальних світів, що стрімко розвиваються, цілком можливо, і в судових рішеннях вже є чимало позитивних прикладів. Проте є кілька важливих факторів, які слід врахувати перед тим, як звернутися до суду і, якщо необхідно, звернутися за допомогою до професійного юриста.

Introduction

Currently, the communication of citizens on various Internet sites, forums and social networks (Internet resources), where many of their users communicate with each other, exchange various information, including information about the work of medical organizations and individual medical workers is practised on a large scale. Most often, being not satisfied with the medical care provided or the actions of certain medical workers towards them, users of social networks leave many negative comments to the relevant persons and medical organizations, without thinking at all about the consequences of their actions [1, 2]. At the same time, the comments themselves are far from innocent in nature. Thus, it is not uncommon for patients, who are dissatisfied with the quality of treatment, to call the doctors who participated in the provision of medical care «murderers», «bribers», thereby actually accusing specific medical workers of committing crimes under the criminal code [3, 4].

Dissemination of information on the Internet has its own peculiarity. It is characterized by a significant speed of transmission of messages, coverage of a wide audience that is not limited by the borders of the city/district/country, the possibility of long-term storage of information and access to it for a considerable period, ISSN 1727-4338 <https://www.bsmu.edu.ua>

etc. These features of Internet communications have not only advantages, but also carry a number of risks that must be taken into account [5, 6].

Legislation and law-enforcement practice do not make any distinctions in the application of the above-mentioned legal norms regarding the actions of citizens on the Internet – such as the insult of specific persons posted on Internet sites and the spreading of information that does not correspond to the truth in the same way [7, 8]. So, if citizens post information on the Internet that is offensive to medical professionals or is true, i.e. is actually slanderous, this circumstance should be regarded as an unconditional offense.

The aim of the study

To analyze the spread of offensive information about medical workers on the Internet and to determine the basic rights of protection of a medical worker in case of conflict situations.

Main part

The possibility of free expression on the Internet is guaranteed to users by the Constitution of Ukraine [9], namely Art. 34 guarantees the right to freedom of thought

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and speech, free expression of one's views and beliefs. It is established that everyone has the right to freely collect, store, use and spread information orally, in writing or in any other way – of his choice. However, such information must be disseminated in compliance with legal norms on its authenticity and must not disgrace the honor, dignity and business reputation of other persons.

According to Art. 3 of the Constitution of Ukraine, the honor and dignity of a person is recognized as the highest social value. Violation of these fundamental rights requires appropriate protection. According to Art. 55 of the Constitution of Ukraine, everyone has the right to protect their rights and freedoms from violations and illegal encroachments by any means not prohibited by law [9]. According to Art. 15 of the Civil Code of Ukraine, every person has the right to protection of his civil right in case of its violation, non-recognition or dispute. The same right is granted to legal entities in accordance with Part 2 of Art. 94 of the Civil Code of Ukraine [10].

How can you protect the rights of medical workers who have been posted information that contains inaccurate information and (or) is offensive?

If the personal data of a medical worker is posted on the Internet without the knowledge and consent of a medical worker (and this often happens when, for example, on various Internet resources there is a discussion of the activities of a specific medical worker with the indication of his last name, first name, patronymic and other personal data), then he also has the opportunity to apply for the protection of his rights to the authorized body for the protection of the rights of personal data subjects. A medical worker can also send a request directly to the administration of the Internet resource on which the relevant information is posted, with a request for its removal [11, 12].

However, despite the fact that the legislation contains enough mechanisms to protect honor, dignity and professional reputation, medical professionals prefer to remain silent and not respond to various statements of their former patients, although impartial information posted on Internet resources is gaining quite wide publicity and becomes public property. At the same time, the statements and published information, which are sometimes openly negative and often contain a variety of unreliable information, remaining unrefuted by medical professionals, significantly undermine the professional reputation of the latter, forming a negative public opinion about this or that doctor or midwife, employee [13]. The main reason why doctors so little apply for the protection of their professional reputation, honor and dignity is not so much ignorance of their rights as ignorance of the mechanism of their implementation.

Ways to protect against the spread of untrue information on the Internet

Damage caused by the dissemination of untrue information on the Internet can be inflicted on both individuals and legal entities.

The current legislation of Ukraine distinguishes two methods of protection: general and special, which are applied in court and extrajudicial proceedings.

Therefore, in the case of posting information on the Internet that violates honor, dignity, and business

reputation, the person whose rights have been violated can either directly contact the person, who committed the violation, with a demand for the refutation of such information, or go to the court with a claim for protection dignity, honor and business reputation [14, 15].

According to the Resolution of the Plenum of the Supreme Court of Ukraine «On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and legal entity», the choice of a method of protection of personal non-property rights, in particular the right to respect for dignity and honor, the right to the inviolability of business reputation, belongs to the plaintiff [16]. At the same time, a person whose right has been violated can choose both general and special ways of protecting his right, defined by the law that regulates specific civil legal relations. In this regard, the courts should take into account that, according to Article 275 of the Civil Code of Ukraine, the protection of personal non-property rights is carried out in the manner established by Chapter 3 of this Code, as well as in other ways in accordance with the content of this right, the manner of its distribution and the consequences that caused this violation [10].

Such special methods of protection include:

- refutation of inaccurate information and/or the right to reply (Article 277 of the Civil Code of Ukraine)
- prohibition of dissemination of information that violates personal non-property rights (Article 278 of the Civil Code of Ukraine).

In certain cases that are directly provided for by the current legislation (Part 1 of Article 277 of the Civil Code of Ukraine, Article 6 of the Resolution of the Plenum of the Supreme Court of Ukraine «On judicial practice in cases of protection of the dignity and honor of a natural person, as well as the business reputation of a natural and legal person») a natural person also has the right to demand the refutation of false information in case when it is disseminated concerning other persons.

First of all, this applies to family members of an individual, such as spouses, parents, children, grandmother, grandfather, great-grandmother, great-grandfather, grandchildren, great-grandchildren, etc. However, such dissemination of false information about family members of an individual should violate the personal non-property rights of this individual [10, 16].

So, for example, when false information is spread that an individual is the child of a «traitor to the motherland», he (she) has the right to demand the refutation of this information, not because it violates the right to respect for the honor and dignity of the father, but because the right of this individual to dignity and honor is indirectly violated. And the father of this person has the right to demand the refutation of such information because this information violates his right to respect for honor and dignity [17].

The same procedure is provided for the right to rebut and respond to false information that has been spread about deceased persons. In this case, the legislator recognizes the family members of the deceased person, his close relatives and other interested persons as the subjects who have the right to demand refutation of this information or give an answer to it. At the same time,

the specified persons are also considered to be primarily acting in their own interest, and require the protection of their own personal non-property rights and only indirectly the good name of the deceased person. This is stated in Part 2 of Art. 277 of the Civil Code of Ukraine and Part 2 of Art. 6 Resolutions of the Plenum of the Supreme Court of Ukraine «On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity» [10, 16].

Persons responsible for spreading false information on the Internet

According to Art. 12 of the Resolution of the Plenum of the Supreme Court of Ukraine «On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity» [16], the proper defendant in the event of disseminating disputed information on the Internet is the author of the relevant information material and the owner of the website, the persons of which the plaintiff must establish and indicate in the statement of claim.

If the author of the disseminated information is unknown or his identity and/or place of residence (location) cannot be established, as well as when the information is anonymous and access to the site is free, the proper defendant is the owner of the website where the specified information material is posted, since just he created a technological opportunity and conditions for the spread of unreliable information [18].

Data about the owner of the website can be requested in accordance with the provisions of the Civil Procedure Code of Ukraine from the administrator of the system of registration and accounting of domain names and addresses of the Ukrainian segment of the Internet. However, such information can be requested only in the course of court proceedings or within the framework of submitting a request for the provision of evidence, which, in its turn, does not allow timely determination of the subjective composition of the participants in the court process. This is also stated in clause 13 of the Information Letter of the Higher Commercial Court of Ukraine «On some issues of the practice of legislation application on information by commercial courts» [19]. This clause states that in the case of posting information on the Internet in a form available for public viewing, a person whose rights and legitimate interests are violated by its distribution, may file appropriate claims against the owner of the website on which this information is posted. Data about the website owner can be requested in accordance with the requirements of articles 30 and 65 of the Code of Civil Procedure from the limited liability company «Hostmeister», which currently administers the system of registration and accounting of domain names and addresses of the Ukrainian segment of the Internet. After the implementation of measures related to the redelegation of administration rights, these functions should be performed by the «Ukrainian Network Information Center» association (<http://uanic.net/>).

If information that harms the business reputation of a business entity was distributed on an Internet site (even

if it was not registered as a mass media) and the court found that such information is not true, then according to the court decision, it must be refuted on the same website. In case that the relevant information is distributed in the form of messages not by the owner of the site, access to which is free, but by third parties who are anonymous, then the responsibility for such information spreading and the resulting damage to the business reputation of the business entity must be borne by the owner of the site, since his activity created technological opportunities and conditions for the dissemination of negative information that does not correspond to reality and violates the rights and legitimate interests of a person. At the same time, if the Internet site is not registered in Ukraine and it is impossible to establish information about its owner, then, in accordance with the legal position of the Supreme Court of Ukraine, in such a case, the court has the right to establish the fact of falsity of this information and refute it in the order of separate proceedings (clause 13 of the Resolution of the Plenum of the Supreme Court of Ukraine «On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity») [16].

In addition, some questions arise regarding the dissemination of false information that defames honor, dignity and business reputation in case when it was disseminated as a result of an error resulting from an imperfection or temporary failure of the software. This can happen when a person sent information to another person to whom it relates, but against their will, due to a failure in the computer network or an error in the computer distribution of information, it was delivered to other recipients. In this case, it would be correct to place the responsibility, together with the person who spread this information, on the company-developer of this software, or the person responsible for its quality [18, 22, 23]. However, this rule will be only effective if this software product is licensed.

Based on the established practice, in order to protect one's rights to defend one's professional reputation, honor and dignity, as well as in the case of an insult, it is more expedient to apply to the prosecutor's office with a corresponding statement [20, 24]. In the application, it is necessary to indicate all the circumstances, namely:

- provide information that, in the applicant's opinion, is untrue or offensive;
- indicate the Internet resource where similar information is posted;
- add screenshots confirming the placement of this information on this resource;
- provide facts affirming that the posted information is true;
- to ask to check the posted information and initiate proceedings in the case of an administrative offense, and if the information contains insults, or initiate a criminal case.

It is especially worth noting that sometimes the prosecutor's office should be contacted in order to establish the identity of a user who posted an offensive text or untrue information, because often users post such information anonymously, using different nicknames,

which does not allow reliably to establish their identity [20, 25]. As practice shows, during the relevant inspection, the prosecutor's office manages to establish the identity of the user and bring him to justice.

In order to compensate moral damage, it is necessary to apply to the court. The statement of claim follows:

- to reflect all the circumstances and facts in detail;
- add to the statement of claim evidence of the distribution of defamatory information (screenshots certified by a notary public);
- to produce proofs that the given information, spread information is slander;
- to ask the court to issue a decision concerning publication of disproof and compensation of the moral damage from the person who spread defamatory information.

It is expedient to submit the statement of claim together with the corresponding application to the prosecutor's office. We also recommend posting the submitted applications to the prosecutor's office and the court on the Internet resource, where the information that disgraces the applicant's honor, dignity, and professional reputation was posted [4].

The administration of the Internet address space in Ukraine is managed

Currently, in Ukraine, the authorized organization for the administration of the address space of the Ukrainian segment of the Internet is the Association of Enterprises «Ukrainian Network Information Center» (UANIC) (<http://uanic.net/>) [26]. In its turn, the mentioned association created the consortium «Ukrainian Support Center for Numbers and Addresses» (Competence Center, <http://web-fix.org/>), which provides numerous services related to fixing the distribution of this or that information in the World Wide Web. Network [27].

Conclusion

When the state adopts laws, it is necessary to create conditions aimed at protecting the medical worker in conflict situations. To introduce also a course on successful communication during conflicts, which should teach medical students to recognize situations that may pose a threat and the spread of offensive information on the Internet.

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