



DEVELOPMENT OF THE LEGAL MECHANISM OF PROFESSIONAL LIABILITY INSURANCE IN THE MEDICAL BUSINESS: SEEKING A BALANCE BETWEEN THE INTERESTS OF PATIENTS AND PHYSICIANS

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ABSTRACT

The thesis is devoted to the study of the development of the legal mechanism of professional liability insurance in the medical business, considered as a tool for balancing the interests of patients and physicians. Based on the analysis of the legislation of the Republic of Uzbekistan, including the Healthcare Development Concept 2019–2025 and the draft Law “On Medical Activities and Compulsory Professional Liability Insurance of Medical Workers,” as well as expert opinions of the National Chamber of Innovative Healthcare, key problems and directions of reform are identified. The paper provides a comparative legal study of international experience, including the practices of the United States, European countries, Scandinavia, New Zealand, and recent innovations in Kazakhstan. The results of the analysis show that effective professional liability insurance should ensure guaranteed compensation for patients while simultaneously protecting doctors from excessive risks and unfounded claims. It is concluded that Uzbekistan’s legal framework requires further refinement, including alignment with international models, limiting regress claims against physicians, establishing transparent compensation mechanisms, and possibly introducing a state guarantee fund. It is emphasized that the search for an optimal insurance model is a dynamic process requiring constant monitoring and dialogue

between the state, the medical community, insurers, and patients.

1.INTRODUCTION

Professional liability insurance for medical practitioners is regarded as a vital instrument for ensuring a fair balance between the interests of patients and physicians. Patients gain guarantees of compensation for harm to health caused by medical errors, while physicians are protected from unbearable personal financial risks. International experience shows two primary models of liability: the fault-based tort system (e.g., the United States) and the no-fault compensation system (e.g., Sweden) [1]. In many European countries, professional liability insurance contributes to higher quality of care, reduced litigation, and greater patient satisfaction [2]. Properly designed, such a mechanism safeguards patient rights to compensation while simultaneously protecting medical professionals. Each country, however, develops its own legal and institutional approach. In Uzbekistan, interest in this issue has grown in recent years as healthcare reforms have advanced. The search for an optimal model of professional liability insurance has become an important task in building a resilient healthcare system. This thesis examines the development of liability insurance mechanisms for medical professionals in Uzbekistan in comparison with international practice, highlighting how to achieve a sustainable balance between patients and doctors.

2.METHODS

The study employs a review-analytical and comparative legal methodology. Uzbek legislation relating to healthcare and insurance was analyzed, in particular the Healthcare Development Concept 2019–2025 and the draft law on compulsory insurance of medical professional liability prepared on its basis [3]. Expert opinions from the National Chamber of Innovative Healthcare of Uzbekistan on the draft law were also taken into account [4]. Comparative analysis focused on international models, with emphasis on Kazakhstan's newly implemented liability insurance scheme for medical workers [5], including official statements from the Ministry of Health and statistical results from its first year [6]. Broader global practices—such as malpractice insurance in the US and no-fault systems in Scandinavia and New Zealand—were also reviewed. This interdisciplinary approach (legal analysis + comparative study) enables evaluation of both theoretical principles and practical outcomes of liability insurance, as well as the extent to which the balance between patient and physician interests is realized.

3.RESULTS

Until recently, Uzbekistan lacked a specific law mandating professional liability insurance for physicians. Cases of harm to patients were generally resolved under civil or criminal law. Individual licensing of doctors has not yet been introduced, which complicates the establishment of insurance for individual practitioners. In practice, liability claims are directed against the medical organization employing the doctor [4]. Presidential Decree № UP-5590 (2018) laid the foundation for reforms, calling for the adoption of a law “On Medical Activities and Compulsory Professional Liability Insurance for Medical Workers” [3]. A draft was prepared in 2019 with the stated aim of guaranteeing compensation to harmed patients [4].

However, expert analysis revealed shortcomings. First, the draft was set to take effect immediately despite the absence of a licensing system for doctors [4]. Second, compensation was capped within the insured amount, without ensuring full restitution [4]. If damages exceeded the limit, the remainder fell on the doctor or clinic. Third, moral damages and lost income were excluded, although these constitute up to 80% of real claims [4]. Finally, the draft introduced a regress clause: insurers could reclaim paid compensation from doctors found guilty in court, which undermined the very idea of insurance. The National Chamber concluded the draft favored insurers at the expense of medical professionals. As of 2025, the law has not been enacted, but reforms continue. Meanwhile, Uzbekistan has introduced related measures to protect doctors, such as administrative liability for obstructing lawful medical activity [7].

Globally, models vary. In many European and Asian countries, compulsory insurance through private insurers operates under state regulation. For example, Kazakhstan introduced compulsory professional liability insurance in 2024 via an insurance pool [5]. Employers pay annual premiums for each doctor, and compensation is drawn from pooled funds. The system emphasizes multi-level dispute resolution (internal clinic committees, independent expert review, health authorities) to avoid court litigation [5]. Importantly, physicians no longer pay damages personally; liability shifts to insurers. However, the first-year results were disappointing. Out of 2834 patient complaints, only 9 led to insurance payouts totaling ~59 million tenge, while premiums exceeded 3 billion tenge [6]. Moreover, criminal cases against doctors did not decrease significantly, with 107 new prosecutions in just six months of 2025. Experts argue the law was rushed and failed to deliver systemic improvements. Still, Kazakhstan is refining its approach, including public awareness campaigns and stricter protections for physicians [6].

Elsewhere, models diverge. The US employs a fault-based malpractice system with high compensation but also high costs and “defensive medicine.” Scandinavia and New Zealand, by contrast, operate no-fault schemes, compensating patients via public funds without litigating physician guilt [1]. Many EU countries adopt hybrid models requiring mandatory liability insurance as a condition for medical practice, with minimum coverage limits. In Russia, liability insurance remains voluntary but is gaining traction, particularly in the private sector [2]. Across all systems, the dual objective is clear: ensure fair patient compensation while preventing doctors from being financially ruined by claims.

4.DISCUSSION

The results of the analysis demonstrate that the introduction of professional liability insurance in healthcare is a complex but necessary measure that requires consideration of numerous factors to balance the interests of patients and physicians. First, the legal foundation must be solid: in Uzbekistan, before compulsory physician insurance can be introduced, the reform of individual licensing of medical practice must be completed [4]. Only with licensed subjects (physicians) does insuring their liability gain legal meaning [4]. At the same time, related norms (for example, the Civil Code) should be amended, or the new law should clearly stipulate that when damages exceed the insured amount, the excess should not automatically fall upon the physician or clinic. Otherwise, insurance will fail to protect medical workers, while patients may still receive insufficient compensation. Uzbek legislators must consider expert criticism: insurance coverage should include both direct and moral damages suffered by the

patient, otherwise trust in the system will remain low [4]. It may be advisable to set higher liability limits or establish a state reserve fund for extraordinary cases beyond the insured ceiling, ensuring victims are never left without full support.

Second, the balance of interests directly depends on the distribution of financial burdens and risks. Kazakhstan's experience shows that shifting premium payments to employers (clinics) and pooling risks through an insurance pool is a step in the right direction, freeing individual doctors from direct payments [5]. However, if insurers simultaneously retain the right of recourse claims against doctors (as in the initial Uzbek draft law) [4], physicians remain under financial threat even with an insurance policy. This contradicts the very essence of liability insurance. For genuine protection of doctors, the right of regress must be legally limited—permitted only in cases of intentional harm or gross negligence, not ordinary error. Such a guarantee would reduce fear among medical personnel that any insurance case could turn into a personal debt to the insurance company. In Uzbekistan, where doctors often fear criminal prosecution and aggressive claims, such legal safeguards would reduce tension and become part of the “social package” for medical workers.

Third, patient interests require a transparent and accessible mechanism of compensation. Here, institutional measures are crucial: creating an independent expert commission or medical ombudsman to handle complaints of harm. A pre-trial settlement procedure should be provided, in which the commission establishes the fact of medical error (or accident) and the recommended compensation amount. This would speed up compensation and reduce prolonged court disputes. European practice shows that active involvement of insurers in assessing and resolving cases reduces conflict if patients feel they have a real chance for fair compensation without lengthy litigation. Moreover, insurers, motivated to minimize payouts, will promote prevention: training doctors, implementing safety protocols—benefiting both patients (fewer incidents) and doctors (fewer claims). Thus, liability insurance should be integrated into the broader healthcare quality management system.

Fourth, international lessons show that without broad awareness and trust, the system will not function. Even the most well-drafted law is ineffective if neither patients nor healthcare professionals understand it. For example, in the first months after liability insurance was introduced in Kazakhstan, many patients were unaware of their right to seek compensation from clinics [6]. Therefore, legislative changes must be accompanied by public awareness campaigns: informing citizens about their rights and procedures for obtaining compensation, and educating medical staff about their rights and obligations under insurance. Medical associations and the National Chamber can play a central role in disseminating this information and protecting physicians' interests during implementation.

Finally, the search for an optimal model may require combining mechanisms. Uzbekistan could consider phased introduction: at the first stage, compulsory liability insurance for private clinics and independent practitioners, where disputes are more likely, as a pilot program. Later, it could be expanded across the entire healthcare system. Another possibility is establishing a state liability guarantee fund (a social model), as previously proposed in the region [8]. Such a fund, financed through insurance contributions or the state budget, could cover cases where insurers refuse to pay due to formalities or when insured limits are exceeded. This “two-layer” mechanism would enhance patient protection. At the same time, state participation would

moderate commercial insurer interests, preventing situations where collected premiums vastly exceed payouts. Ultimately, experts emphasize: laws must be carefully tuned so both sides feel protected and disputes are resolved within the legal framework, not through confrontation [6].

To conclude the discussion, it must be stressed that the balance of interests is not static but a dynamic process. Constant monitoring of practice, collecting data on insurance cases, litigation, and financial outcomes is necessary. If it becomes clear that the system is “misaligned”—for example, generating excessive profits for insurers with minimal patient benefit or failing to ease court burdens—timely adjustments to legislation and procedures will be needed [6]. Constructive dialogue among patients, physicians, insurers, and the state is the key to ensuring professional liability insurance becomes a true bridge balancing interests rather than a source of conflict [9].

5.CONCLUSION

The development of a legal mechanism for professional liability insurance in the medical business is a complex but essential reform for Uzbekistan. International and regional experience shows that well-designed insurance can act as an effective mediator between patient and physician: the harmed patient receives guaranteed compensation, and the doctor is shielded from the destructive consequences of litigation [10]. Yet this balance can only be achieved through careful refinement of legislation and infrastructure. In Uzbekistan, initial steps have been taken: the need for insurance has been acknowledged, and a draft law prepared and subjected to expert review [3]. The review revealed key areas for improvement: aligning provisions with other laws, resolving contradictions (such as licensing), and ensuring fair risk distribution without excessive burdens on doctors [4]. At the same time, the best features of foreign models and neighboring countries’ mistakes should be considered.

Crucially, in the final system, patients must be confident of receiving full compensation for justified harm, doctors must be protected from disproportionate punishment for unintentional errors, and insurers must serve as financial guarantors rather than arbiters of doctors’ fate. In other words, a legal framework must be created in which both patient and physician feel secure, knowing their rights are safeguarded. The legislator’s art lies in finding the golden mean: a mechanism that promotes quality and accountability in medicine without generating fear or mistrust. Standing on the path of introducing compulsory health insurance more broadly, Uzbekistan has the opportunity to synchronize this reform with liability insurance—building a comprehensive system that protects both citizens’ health and medical workers’ professional standing. Ongoing legislative improvement, grounded in monitoring and dialogue with stakeholders, will allow the achievement of a truly sustainable balance of interests, where both physicians and patients are equal beneficiaries of insurance protection

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