

# Medical privacy as an object of civil legal relations

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## Abstract

The present article aims to investigate the place of personal non-property relations in the subject of civil law via general scientific methods such as logical, system-structural, analytical, synthetic and private-scientific methods. As a result, the state of information privacy, as its legal mode, is regarded by the patient as his/her personal non-material (intangible) benefit, satisfying his/her needs. In conclusion, medical privacy is a state of information about the health and private life of a patient in respect of which a certain legal mode is established, which is characterized by the degree of awareness of third parties about this information.

**Key words:** Medical privacy, civil law, medical.

## *La privacidad médica como objeto de relaciones jurídicas civiles*

## Resumen

El presente artículo tiene como objetivo investigar el lugar de las relaciones personales no relacionadas con la propiedad en el derecho civil a través de métodos científicos generales, tales como los métodos lógicos, estructurales del sistema, analíticos, sintéticos y científicos privados. Como resultado, el estado de privacidad de la información, como su modo legal, es considerado por el paciente como su beneficio personal no material (intangibles), que satisface sus necesidades. En conclusión, la privacidad médica es un estado de información sobre la salud y la vida privada de un paciente con respecto al cual se establece un cierto modo legal, que se caracteriza por el grado de conocimiento de terceros sobre esta información.

**Palabras clave:** privacidad médica, derecho civil, médico.

## **1. Introduction**

The provision and protection of privacy are essential for the normal functioning of a person in society. Difficulties will arise here at the stage of determining the boundaries of privacy itself, since it is almost impossible to establish clear boundaries of privacy. The private domain includes well-known categories that reinforce the protection of information belonging to the citizens from unlawful disclosure. These include medical privacy. To determine the legal nature of the category medical privacy, it is necessary to identify its place among the objects of civil law. A proper resolution of this issue affects the determination of the ways and means of legal regulation and legal protection. In the scientific doctrine, the object of civil rights is understood as a thing, on which the subjective rights and legal obligations of its participants are directed, in other words, the purpose for which the legal relation occurs. However, this issue has generated a great scientific debate. Some authors believe that an object is represented by the behavior of its participants, aimed at any benefits that can satisfy human needs in any civil legal relation. At the same time, the same authors give the point of view that... it is impossible, even with a sufficiently high degree of abstraction, to distinguish between the interaction of legal relation participants and their behavior aimed at corresponding benefits in the process of implementing a legal relation (Alekseev, 1995).

On the other hand, the meaning of the category objects of civil rights is to establish a specific civil law mode, that is, the possibility or impossibility of making certain transactions that entail a legal result. In this regard, the object of civil rights can be recognized as the legal mode of various benefits, and not these benefits themselves, since the legal mode differs them from each other, which is of ultimate importance for civil law. Despite the absence of the necessary legal regulation, the possibility of protecting personal non-property rights was not denied by Soviet legislation. The fundamentals of the civil legislation of the USSR and the Union Republics, adopted on December 8, 1961, established: civil law, in addition to property and related personal non-property relations, also regulates other personal non-property relations. The Civil Code of the RSFSR dated June 11, 1964 provided for a similar norm. It should be noted that there was no significant development in the protection of personal non-property relations. The fundamentals of the legislation of the USSR and the Union Republics on health care dated December 19, 1969 only indirectly affected the problem of the legal mode of medical privacy (Alekseev, 1989).

The fundamentals of the civil legislation of the USSR and the Union Republics dated May 31, 1991 recognized these relations as a subject of civil law, since nothing else was provided for by the legislative acts of the USSR and the Republics. This position of the legislator has not been changed even after the collapse of the USSR. The Civil Code of the Russian Federation Ann (2010) states that the inalienable human rights and freedoms, as well as other intangible benefits, are protected by civil law unless otherwise provided by the essence of these intangible benefits (Arslanov and Nizamieva, 2015).

## **2. Materials and methods**

The presented research is based on the data formulated in the domestic and foreign doctrinal and legislative sources. We used general scientific (logical, system-structural, analytical, synthetic) and private-scientific methods. The authors were faced with the task of analyzing the legal mode of

social relations regarding medical privacy, their legal regulation from the point of view of generally accepted scientific works in the theory of civil law (Arslanov, 2016).

### 3. Results

Secret is a mode of information confidentiality, which establishes certain requirements for the non-disclosure of relevant information. Based on the definition of the category secret and the information content that constitutes a medical privacy, the latter should be considered an intangible benefit. By its very nature, intangible benefit is a certain complex, socially useful property of a legal entity whose purpose is to individualize and identify an individual and a legal entity who is a subject of civil legal relations. We join the opinion of Babenko (2006), which offers to classify the non-property rights by type:

- 1) Aimed at the individualization of the authorized person;
- 2) Aimed at ensuring personal immunity;
- 3) Aimed at ensuring integrity and privacy of the authorized person.

The third group includes the rights to the inviolability of the home, the rights to privacy, lawyer, notary secret, the privacy of deposits and transactions in the banks, etc. This group of rights aimed at ensuring the personal integrity and privacy of the authorized person, can be attributed to medical privacy. The peculiarity of the non-property rights is their intangible nature, as well as the absence of the limits of their implementation established by the legislator. At the same time, it was established the boundaries of invasion into the personal field of life of other persons. It should be noted that it is necessary to study the privacy not as the information, but as different legal modes of privacy, because the same information may relate to different types of privacy in different situations. For example, it is possible to allocate a collective category - professional privacy. We can combine all kinds of privacy that are associated with any professional activity under this generic concept: medical, lawyer, notarial, etc. Since medical privacy protects, among other things, the patient's and the medical institution's confidential relations, and all medical personnel of the medical institution shall keep it due to their professional functions, medical privacy may be recognized as a type of professional privacy.

Any phenomenon has some content that depends on how the phenomenon is directly determined itself. That is, medical privacy as a legal category will be filled with the content of legal norms regulating social relations in this area. Turning to the second approach in defining medical privacy as an object of civil rights, it should be said that the legal mode of social relations is implemented through special methods and techniques. In this case, we are talking about the confidentiality of information that has the nature of a medical privacy. The method of legal regulation in the theory of law is usually called the methods of legal influence, their combination, characterizing the use of social relations of one or another set of legal means in a given area. Legal regulation is not limited to the use of one method, in most cases it is possible to speak of mixed combinations of methods depending on the impact subject - an authorized or obligated person (Babenko, 2006).

The ways of legal influence, which are expressed in legal norms and in other elements of the legal system are commonly called legal regulation methods, the main ones being permission, positive commitment and prohibition. The right to perform certain acts by an authorized person at its own discretion is called permission or authorization. However, there are positions stating that the

permission content is outlined by clear boundaries, the frameworks separating legal permission from arbitrary actions in the scientific literature. For example, vesting a patient with the rights to protect medical privacy is a permission as a way of legal regulation. The imposition of duties on the implementation of certain actions is called a positive obligation, and on the abstention from committing certain actions - a prohibition. The latter can be seen, for example, in the wording of Part 2 of Article 13 of the Federal Law No. 323-FZ dated November 21, 2011 (as amended on March 7, 2018) On the Basis of the Protection of Public Health in the Russian Federation, according to which the unlawful disclosure of a medical secret of a citizen is not allowed during training, performance of professional duties..., etc. (Saraev, 2002).

Privacy is based on certain information, so it is important to establish the object of legal relations formed around it. It can be assumed that the categories of privacy and information can be considered as the objects of civil rights independently of each other, therefore we will consider them in comparison. Based on the norms of Article 5 of the Federal Law No. 149-FZ dated July 27, 2006 On Information, Information Technologies and Protection of Information, the information is the object of civil rights. This regulatory consolidation was also reflected in the scientific literature, in particular, in the papers of (Kopylov, 2005; Gorodov, 2001; Bondar, 2004). There is a separate terminological problematic that does not allow for the exact separation of the object of civil rights of privacy from the object of civil rights of information. In particular, Article 13 of the Federal Law On the Basis of the Protection of Public Health in the Russian Federation understands medical privacy as the information about the fact that a citizen has sought medical care, his/her state of health and diagnosis, other information obtained during his/her medical examination and treatment.

For a special subject (for example, a doctor), the information obtained, which is subject to protection through the legal mode of medical privacy, is transparent, that is, the doctor is sufficiently informed about specific objects, circumstances, and results since receiving the information. In this regard, Pavlov (2016) proposes to include the transparency concept in the terminology of the legislative regulation of social relations arising with regard to the information. In his opinion, such changes would allow for more detailed differentiation of information into publicly available, limited access, as well as information with denied access. He also proposes to divide the information, respectively, into disclosed (transparent), non-disclosed (non-transparent) or partially disclosed (partially transparent). The next important aspect characterizing the information is its defined state. As previously noted, to assign the information to the objects of civil law, it is necessary to allocate two of its states: transparency (i.e. openness, publicity) and non-transparency (i.e. closeness, privacy). The relationship between these two states has already been paid attention to in the science of civil law (Matuzov and Malko, 2004).

Based on the foregoing, a privacy can be understood as a state of information, when there is a certain degree of awareness of one circle of persons, or of one person about any phenomenon of reality. The same applies to medical privacy as a state of information about the health and personal life of a patient, about which a narrow circle of people is aware. For the patient himself/herself, the social interest lies in the closed nature of information about his/her health and personal life. Therefore, we believe that medical secrecy can be qualified as an intangible good. In other words, the state of information privacy, as its legal mode, is regarded by the patient as his/her personal non-material (intangible) benefit, satisfying his/her needs. This state is the object of civil legal relations, which is called a medical privacy.

#### 4. Conclusions

Medical privacy is a state of information about the health and private life of a patient in respect of which a certain legal mode is established, which is characterized by the degree of awareness of third parties about this information. The indicated condition, which allows to satisfy the patient's social interest in the safety and privacy of information, is its intangible benefit. Thus, medical privacy is subject to civil law relations. On the other hand, medical privacy possesses the signs of an intangible benefit, referred to the objects of civil rights by the legislator in Article 128 of the Civil Code of the Russian Federation. The non-proprietary (intangible) benefits characterized by Article 150 of the Civil Code of the Russian Federation include medical privacy as a secret and manifestation of privacy.

#### 5. Summary

After analyzing the social relations being developed around medical privacy and its civil and legal regulation, it can be noted that the study of both medical privacy as a secret is generally developed from the standpoint of the theory of legal modes at present. The idea of securing the latter as the objects of civil law has not yet been reflected in the legislation.

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