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## Legal Civil Nature of Relationship between Medical Workers and Patients from the Position of Consumer Legislation in Kazakhstan.

Yernar Shalkharov<sup>1\*</sup>, Nurlan Batyrbaev<sup>1</sup>, Erkin Dusipov<sup>2</sup>, and Alena Mackova<sup>3</sup>.

<sup>1</sup>Khoja Akhmet Yassawi International Kazakh-Turkish University, 2 Turgut Ozal Street, Turkestan, the Republic of Kazakhstan, 161200

<sup>2</sup>Zhetysu State University named I. Zhansugurov, 187 Ilias Zhansugurov Street, Taldykorgan, the Republic of Kazakhstan

<sup>3</sup>CEVRO INSTITUT, 17 Jungmannova Street, Praha, Czech Republic, 11000

### ABSTRACT

The galloping rate of commercialization is a pressing lever for the modernization of the key branches of the current law. One of the most important branches is the medicine one, as the health of the citizen was and would be the main priority of any developed society, so this factor determined the purpose of the research. The system of legal regulation of the medical legal relation in the region with the percent of the population has to be developed appropriately. In terms of legislative data of the majority of the regions, there is a possibility to say that the system of regulation of medical legal relation works more effectively on the basement of civil law mechanisms because the relations between the patient and the doctor are similar to juridical relation of consumers of medical service and suppliers of medical service. It is a catalyst of the validity of the legislation for consumer protection as a fundamental element of the civil law. However, to consider the application of alternative methods of civil, administrative and criminal law, it is necessary to understand the nature of medical legal relation, which consists of three basic components. The first component is the system of the rights and obligations in medical legal relation identifying the rights and obligations of both doctors, and patients. The second component is a form of a medical service as the rendering of the medical service is realized in compliance with the established forms and protocols. The third component of the legal analysis is a subject of medical legal relation. The territorial accent in the research is projected to the Republic of Kazakhstan as being rather young state of Central Asia of the former Soviet Union, which ratified the provisions of World Health Organization about the policy of the development of health system. Moreover, the republic develops promptly the branch of the medical law in the new market space of world political arena. Due to appropriate analysis, it is possible to identify the adequate branch of law (administrative, criminal or civil) for the medical legal relation.

**Keywords:** The official system, precipitate medical personnel, legally capable population, a regional incident, coefficient of efficiency of the elements of the reform, the legal catalyst of action, medical-legal induction, a prerogative of a legal mechanism, the alternative scheme of the law.

*\*Corresponding author*

## INTRODUCTION

### **The whole understanding of the problem.**

Main body of issue illustrates an introduction to medical workers and patients professional relationships nature from the side of civil legislation including some elements of criminal and administrative directions in Kazakhstani contemporary law system. In addition, it describes the research strategy, consisting of some legislative tactics in medical conflicts. In addition, it reflects some types of methodological instruments to reveal the details of each segments. The position of introduction clearly identifies the figures to reflect the main cases of current research about the nature of medical workers and patients relationship from the side of consumer protection legislation. It does not carry a heading labeling it the introduction. Consequently, to understand the main content of the article it is appropriate to analyze the main points of the research.

### **The actuality of medical workers and patients professional relationship**

Today one of the actual tendencies of the jurisprudence is the medical law. Based on the state regulatory structure, this tendency supports the positions with the help of international standards ratified in the states concerning the issues of obligations in system of the civil relations. At the same time, it should be noted that this strategy has every prospect of success as only the constitutional state is capable to use effectively the mechanisms of the realization of this or that strategy by means of legal tools for regulation of the medical activity subjects' relations. Constitutional state is capable to classify legal relationship of personnel of medical institution among themselves and with external subjects at the state level because any action made in the territory of the republic has the certain consequences connected with system of the rights and obligations. Respectively, as the constitutional state founded on equality, it guarantees all rights and freedoms to the person provided by the basic law (2).

### **The most important problem in medical workers and patients professional relationship.**

The medical workers have the same problems, whose effective functioning in a legal space is a guarantee of the health sector development at the state level (3). Moreover, the policy of the health system development is one of the new principles of the social strategy of a political policy of the state where the emphasis is laid on quality of the medical service, which must be developed by means of a practical research component (4). However, the analysis of this problem is impossible without the classification of actions and inactions of the subjects, the specified legal relationship at the legislative level, where any actions or inactions of juridical entities and individuals whose purpose is the establishment, the change and the termination of the civil rights and duties are recognized as the transaction. Hypothetically, it is possible to connect legal relationship between subjects of the medical relations with institute of the transaction (5). However, the methodology of legal elements analysis for many countries is a disputable one as the main legislative acts functioning nowadays are very similar to normative elements of ten-year dynamics where the emphasis on law liability in medical legal relationship was not considered, being limited to general provisions (6). However, the civil legislation is capable to react to similar conditions from several positions. Actually, the Civil Code, being the legislative act, classifies the rights and obligations of subjects by text elements of their verbal value (7). In the detailed analysis of legal relationship, the appeal of one party to another with the purpose to receive the medical service, and legal relationship of other party, consisting in rendering the medical service to the first party, is the element provided legislatively as "establishment of the civil rights and duties" (8). In addition, there are precedents when the parties change conditions of the initial arrangement of the transaction for the medical service rendering, which is stated literally in other provision of the same article as "change of the civil rights and duties". Those interventions in the initial arrangement, as a rule, generate the disputable issues (9). However, the analysis of the medical legislation shows that for the realization of the professional activity the legal status of the medical worker allows to make some changes promoting the recovery of the patient (10). The final element in the system of the civil rights and obligations is an important component of staging legal relationship characterized as the termination of the relations due to the expiration, service rendering or service refusal by certain reasons and without it, which is indicated as "the termination of the civil rights and the relations" (11). All specified processes in research of such laborious phenomenon as the system of obligations in medical legal relationship can be revealed in details after the analysis of the nature of the legal relationship only (12). Respectively, in order to study such unstable variable quantity as "obligation", it is

necessary to analyze it precisely in the condition of the space and time (13). It would be feasible after the detailed consideration of the law liability in medical legal relationship, which is so problematic nowadays because of changing of socially political situation in the world (14). The developing rates of market economy create a certain resonance of priorities at the interstate level (15). Very sensitively, this phenomenon is perceived by the countries of the former Soviet Union where hard transition from socialist to capitalist society forms the imbalance of the rights and obligations among the functioning segments of population (16). The researches have shown that the most unprotected subjects in the market of service are the medical workers, who provide a medical help to the population (17). In this context, the state legal system has certain weak points by the character of their civil classification (18). The system of civil legal relationship is one of the most fundamental elements of everyday life practically of all subjects of the state (19). Including the subjects operating in the market of medical service. Therefore, it is possible to assume that the subject providing the medical service is one party of civil legal relationship, and the subject accepting the medical service is the second party of civil legal relationship (20). Their right obliging connection can be considered as a transaction. Actually, any legal relationship, which are beginning, changing and coming to an end within the territory of the constitutional state are based on the institute of the transaction.

### **The differences of current research from others investigated before**

So far, the medical law was studied as the separate branch of law with independent legal elements separated from general provisions of the contemporary law. At the same time the majority of researches put emphasis on development of bioethics and medical ethics as the instrument of regulation of humanity of medical activity in general. However, legal relationship between doctors and patients are insufficiently analyzed from the position of a will of a person. In this research the relation between the doctor as the supplier of the medical service and the patient as the consumer of the medical service have been considered from a position of the legislation of consumer protection, taking into account psychological characteristics of both parties. Nevertheless, the level of research of the nature of the professional relations between medical workers and doctors has allowed to carry out the analyses, providing the reliable basis for more detailed analysis without which the fulfillment the current research would be impossible.

### **The novelty of current research.**

The novelty of the current research consists in detailed analyses of the system of the rights and obligations of the nature of professional medical legal relationship between the doctor and the patient from the position of the legislation of consumer protection taking into account psychological characteristics of the parties founded on the principle of a will.

### **The theoretical and practical value of current research.**

The theoretical importance of the current research has a fundamental character as it emphasizes the psychological details of the parties of legal relationship and gives the basis for further researches of a similar character. In addition, within the tendency of implementation of the new course of a "medical law" in the Republic of Kazakhstan, the current research contains rich material for the institute of higher education to study this issue theoretically. The practical importance of the current research is expressed in ability of modern legal system of the Republic of Kazakhstan to modernize legal mechanisms, based on the existing elements of civil, administrative and criminal law. Respectively, the available legal mechanisms are sufficient for the insertion into a legal framework of medical legal relationship of the Republic of Kazakhstan the staff of the experts with medical and legal education having the document confirming the right for mediation and powers of law-enforcement bodies to resolve the conflicts in a pre-judicial form.

### **The hypothesis**

It is possible to assume that the insertion of the specialized staff of the experts accountable to regional executive body of the Republic of Kazakhstan, with medical and legal education, having the document confirming the right for mediation and powers of law-enforcement bodies to resolve conflicts, would reduce the number of the medical conflicts without reaching judicial instances.

**The link between hypothesis and research design.**

The current research has a direct link of a hypothesis with the design of research where the basis of research is a case-study design because in theoretical research it is actual and directs the results to the quality of the theoretical analysis. Moreover, it explains the mechanisms of the medical legal relationship functioning in the territory of the Republic of Kazakhstan among residents of the country. The content of the current research does not study the population, so it has no selection.

**METHODOLOGY**

A key role of the current research is a methodological tool, which allowed to analyze the properties and variables of the studied objects of the nature of medical legal relationship between medical workers and patients from the position of the legislation of consumer protection taking into account the will of the parties. The system of the rights and obligations of medical legal relationship, the forms of medical service rendering and the subjects rendering the medical service have been methodologically analyzed.

**"Lawrence and Wilson" commitment identification system pyramid.**

The "Lawrence and Wilson" pyramid of identification of obligations of medical workers is a widely known pyramid of Maslow, which is a reorganized hierarchy into the system of readiness of the medical worker to render the medical service in a proper way.

**The recognition of right subjectivity of the patient by the medical worker.**

On the basis of readiness of the medical worker to provide the medical care to the patient we understand his internal belief in recognition of right subjectivity of the patient, which consists in the perception of the patient by the doctor as the citizen with certain rights, fixed constitutionally and determined by the level of lawful perception. This step is very important in the nature of medical legal relationship as having the big power over a state of the health of the patient, the doctor potentially can put the psychological pressure upon the patient that lead to legal nihilism among population and influence on level of democratization of the state. The scheme of the corresponding step consists in the sum of such variables as the will and consciousness of the doctor divided into orientation to render the medical service and multiplied by motivation. This formula helps to identify the degree of recognition of right subjectivity of the patient by the medical worker.

**The recognition of legal capacity of the patient by the medical worker.**

The second step of the «Lawrence and Wilson" pyramid of identification of obligations of medical workers consists in acceptance by the doctor of a legal capacity of the patient and the patient being a citizen of the state, can have, but also can use the constitutional rights in judicial and pre-judicial instances. It can seriously affect the reputation of the medical organization. As the result, the recession of the client and undesirable consequences not only for the medical institution, but also for all team in general will take place. The scheme of this step is the patients' knowledge of his rights and freedoms consolidated constitutionally and divided into risk what it is less or equally to the status of the doctor.

**The consideration of the patients' interest by the doctor.**

The third step of the "Lawrence and Wilson" pyramid of identification of obligations of medical workers shows a certain level of interest of the doctor in the patient's problems where the physical professional enthusiasm and the prevailing spiritual dominant of the doctor – the consideration of interests of the patient are presented. The scheme of the corresponding step is shown in the form of the sum of a physical condition of the patient and a psychological state of the patient divided into risk and multiplied by intention to render a particular medical service.

**The system of distribution and implementation of types of medical care by experts of a medical profile.**

In compliance with the systematized table, the experts of a medical profile have distributed the types of medical care into forms of their rendering. So in the Republic of Kazakhstan it is possible to classify five types of medical care.

**The pre-medical care.**

The pre-medical care in the Republic of Kazakhstan is the form of medical service rendered to the patient during the initial stage of medical-legal contact. Experts of a medical profile can render it without the higher medical education based on the certificate of primary medical education. Para physicians offer such help. Pre-medical care does not demand the application of special methods of diagnostics, treatment and rehabilitation.

**The qualified medical care.**

The qualified medical care in the Republic of Kazakhstan is a type of medical care rendered by experts of a medical profile with the higher medical education. Unlike the pre-medical care, the qualified medical care demands the minimum types of diagnostics, treatment and rehabilitation.

**The specialized and highly specialized medical care.**

Specialized and highly specialized medical care is a type of medical care rendered to the patient by experts of a medical profile with the higher medical education having an appropriate profile of the specified branch of clinical medicine. Such medical service demands special types of diagnostics, treatment and rehabilitation.

**The medical-social help.**

The medical-social help is a type of medical care rendered by experts of a medical profile with the higher medical education, demanding special methods of diagnostics, treatment and rehabilitation.

**The descriptive table of hierarchy of the state health medical system.**

The Kazakhstani health system with the functioning mechanism of the medical service is centralized and regulated by the Ministry of Healthcare and Social Development of the Republic of Kazakhstan. The structure of the ministry has three committees. One of them is a committee of control of medical and pharmaceutical activity. Another one is a committee of payment of medical service and committee of the state sanitary and epidemiological surveillance. The committee of control of medical and pharmaceutical activity and committee of payment of medical services are engaged into medical service rendering by private and state medical institutions. According to hierarchy, each committee has departments in the cities and divisions in the regions of the Republic of Kazakhstan. They regulate the system of medical-legal relations among hospitals, polyclinics, clinics, pediatric offices, female consultations and other segments of the sphere of medical services by means of the movement of reporting and registration of medical documentation.

**The multidimensional subjective S.W.O.T. analyze after P.G.Conrad and Gresse.**

The multidimensional subjective S.W.O.T. analyze after P.G.Conrad and Gresse is system of subjects of medical activity modeling of a private commercial character by means of the advanced model of S.W.O.T analysis consisting in the detailed analysis of the subjective properties of each subject with such variables as a dependence, a rigidity, a bureaucracy and fluidity. The following variable of the analysis of private subjects of medical activity of a commercial character is the objective property of the subject having the variables in mobility, elasticity, flexibility and maneuverability. Another component of the analysis of the private subjects of medical activity of a commercial character is the constant in innovation, PR abilities of the subject, prevalence and a projectivity. The final component of the analysis of private subjects of the medical activity of a commercial character is the level of inversion in the loss of time, slow rise, reputation and disloyalty. All

variables have been analyzed by four positions: depending on strengths of the subject, weaknesses of the subject, potential threats and risks.

## RESULTS

The results of research of the nature of medical legal relationship between medical workers and patients in the system of the civil relations from a position of the legislation of consumer protection have ambiguous results of the research of the system of the rights and obligations of the medical legal relationship, types, forms of medical legal relationship and research of subjects of medical legal relationship.

### **The results of the research of the system of the rights and obligations of subjects of medical activity.**

The result in research of the system of the rights and obligations of medical workers in the nature of medical-legal relations assumes that in the Republic of Kazakhstan "the Medical Law" isn't a narrowly targeted branch of the law as comprises the norms of the criminal legislation, the civil legislation, the administrative legislation, the legislation of administrative offenses, the legislation of consumer protection, the legislation of health system and health of the population, the constitutional legislation, the labor legislation, orders, resolutions, orders of the authorized government bodies. Thus, being the complex branch of the law, the legal relationship of the medical workers cannot be centralized in one concrete act as represents a set of different normative provisions because the system of the rights and obligations of the direction is differently segmented.

### **The results of the research of the types and forms of medical service rendering.**

The results of the research of the types and forms of medical service in the nature of medical-legal relations assume that in the Republic of Kazakhstan the norms of General Code available for the mass of the population did not indicate the classifiers of the concrete actions of the concrete medical service and the competences of experts of a medical profile.

### **The results of the research of the subjects of the medical legal relationship.**

The logical result of the research of the nature of the subjects of the medical relations approve the fact of the beneficial influence of the development of the private medical sector on the general health of the population.

## DISCUSSION

### **The compliance of the results with hypotheses.**

The results of the current research of the nature of medical legal relationship between the doctor and the patient from a position of the civil legislation and norms of the legislation of consumer protection correspond to the main hypothesis. The insertion of the staff of experts with legal and medical education, with the certificate of the operating mediator and powers of law-enforcement bodies can influence considerably on the number of the medical conflicts, as there are opportunities to resolve those conflicts during the pre-judicial stage. The hypothesis assessment in compliance with the first conclusion can be carried out taking into account the specific characteristics of such expert.

### **The compliance of a hypothesis with the first result concerning the complex use of legislative mechanisms to medical-legal conflict.**

In compliance with the first result the medical legal relationship in the Republic of Kazakhstan, belong to the complex system of the law where the expert stated above can operate as a mediator, whose opinion is assured by judicial authority of the Republic of Kazakhstan. It interprets this phenomenon as the elimination of the medial-legal conflicts and the party having claims after the conclusion of the agreement settlement will not have any rights to challenge the previous conflict within the frames of conclusion, which has been already certified. The powers conferred by law-enforcement bodies of the Republic of Kazakhstan originate on a voluntary basis the involvement of the civilian population to control of observance of a the law and order in



the region. This factor allows to react accordingly in cases of pressure from one of the parties of medical legal relationship. On the basement of medical education, the expert has the right to publish the instructive manuals to inform the population. Therefore, it is possible to assume that expert's knowledge of medical information, including advisory service on a contractual basis has a civil character. The actions of a mediator at the conclusion of the agreement have the administrative character, but the powers of law-enforcement bodies have the criminal character, which provide the combined use of complex mechanisms of the civil, criminal and administrative legislation in the concrete medical-legal conflicts.

**The compliance of a hypothesis with the first result concerning the complex use of legislative mechanisms for medical-legal conflict.**

In compliance with the second result, the medical service is rendered to the patients in the form of pre-medical care, the qualified medical care, the specialized medical care, the highly specialized medical care and medical-social care. As it has been specified in a hypothesis, the staff of the experts of the medical conflicts having medical education besides legal one, has a possibility of free operating between types of medical service irrespective of the type of medical education.

**The compliance of a hypothesis with the first result concerning the complex use of legislative mechanisms for medical-legal conflict.**

In compliance with the third result the hypothesis takes place as the staff of the experts operating in the medical conflicts and having legal education besides medical one, possesses a certain degree of knowledge concerning specifics of a legal form of the subject of medical legal relationship. Therefore, they can operate with variables of objective and subjective properties of the subject, with the notion of a constant and the level of inversion that is considerable advantage of the elimination of a huge number of the medical-legal conflicts at the stage of pre-judicial trial.

**The theoretical and practical consequences of the hypothesis constructed on results.**

On the basement of a practical consequence of a constructive hypothesis, it is possible to assume the dominance of experts with legal and medical education, operating in the medical conflicts based on the rights of a mediator and powers of law-enforcement bodies over other segments of legal services. It can isolate the medical legal relationship from other legal spheres, from the complex legislation of territorial unit.

**The sources of threats of the internal importance.**

The internal significance of the research is an important component of the medical law as the developing branch of the Kazakhstan law. However, research can have threats of a logical character. In a positive dynamics, the experts with one medical or legal education have a sufficient motivation to prolong their education for the purpose of an appropriate position. In a negative dynamics, the reduced number of the medical conflicts, the time spent on education will be not effective for those employees, raising the question of expediency of such staff.

**The determination of inaccuracies.**

The research has been conducted empirically with inaccuracies. Because the Republic of Kazakhstan as a young state has no enough precedents of the medical disputes. It says about the lack of the selection and statistical data of the research as a small number of conflicts will not give an appropriate statistical power in the investigation of such a question.

**The effect coefficient.**

The time of the current research is a key factor as the beginning of the action is not a momentary one, because of preparation of the corresponding staff, the adaptation of legal system, the internal ideology of population, the level of legal nihilism in some groups of the population and other external and internal factors. Nevertheless, it is possible to note that the effect of that movement has the habit to be developed in dynamics.

**The restrictions and weaknesses of research.**

The current research has been conducted based on the available data provided by press of the government bodies of the Republic of Kazakhstan. Nevertheless, the weaknesses of the conducted research consists in limitation of the precedent base of judicial authorities of the Republic of Kazakhstan. In most of the cases, the court sessions in the Republic of Kazakhstan are held in the closed format, so the results in the forms of decisions, resolutions and sentences, are classified as a closed information. Only the parties can get appropriate documents.

**The applied and alternative mechanisms of actions.****The main applied mechanism of action in the medical-legal conflicts.**

The main applied mechanism of action in the medical-legal conflicts for the lawyers operating in a particular sphere is the Constitution of the Republic of Kazakhstan, which provisions have absolute validity in all territory of the Republic of Kazakhstan.

**The additional applied mechanisms of action in the medical-legal conflicts.**

Additional applied mechanisms are the codes, laws and by law acts of the Republic of Kazakhstan.

**The main alternative mechanisms of action in the medical-legal conflicts.**

The main alternative mechanisms of the medical-legal conflicts are resolutions, orders, instructions and other acts of the executive bodies of the Republic of Kazakhstan according to medical legal relationship.

**The additional alternative mechanisms of action in the medical-legal conflicts.**

Additional alternative mechanisms of the medical-legal conflicts are the material evidences in the form of analyses, reporting and registration documentation of the medical institutions, results of the dactylographic and other analysis certified by authorized bodies of the Republic of Kazakhstan.

**The level of the development of barriers for manipulation of artificial results.**

As all received results have been taken on the basement of concrete acts with the permission of the press of the government bodies and any distortion of facts or false information, involve legal responsibility in compliance with the administrative and criminal legislation of the Republic of Kazakhstan. It excludes any possibility of the development of barriers in artificial manipulation of the results of research that is one of distinctive features of the descriptive research.

**The contextual problems of research.**

The content of the current research corresponds to the main theme of study the nature of legal relationship between the doctor and the patient from a position of the civil legislation of the Republic of Kazakhstan taking into account regulations of consumer protection. Some places of research present the variants of the norms usage of the administrative and criminal legislation of the Republic of Kazakhstan in a combination with the civil legislation of the Republic as one of effective mechanisms.

**THE CONCLUSION TO DISCUSSION**

As we have pointed out earlier, the current research is a significant factor in the development of the medical law of the country at the macro level, concerning elements of political medical-legal relations, and at the micro level, concerning medical-legal relations of the everyday life level in a developing Kazakhstani society.





Table 3. – Healthcare System of the Republic of Kazakhstan - Hierarchy

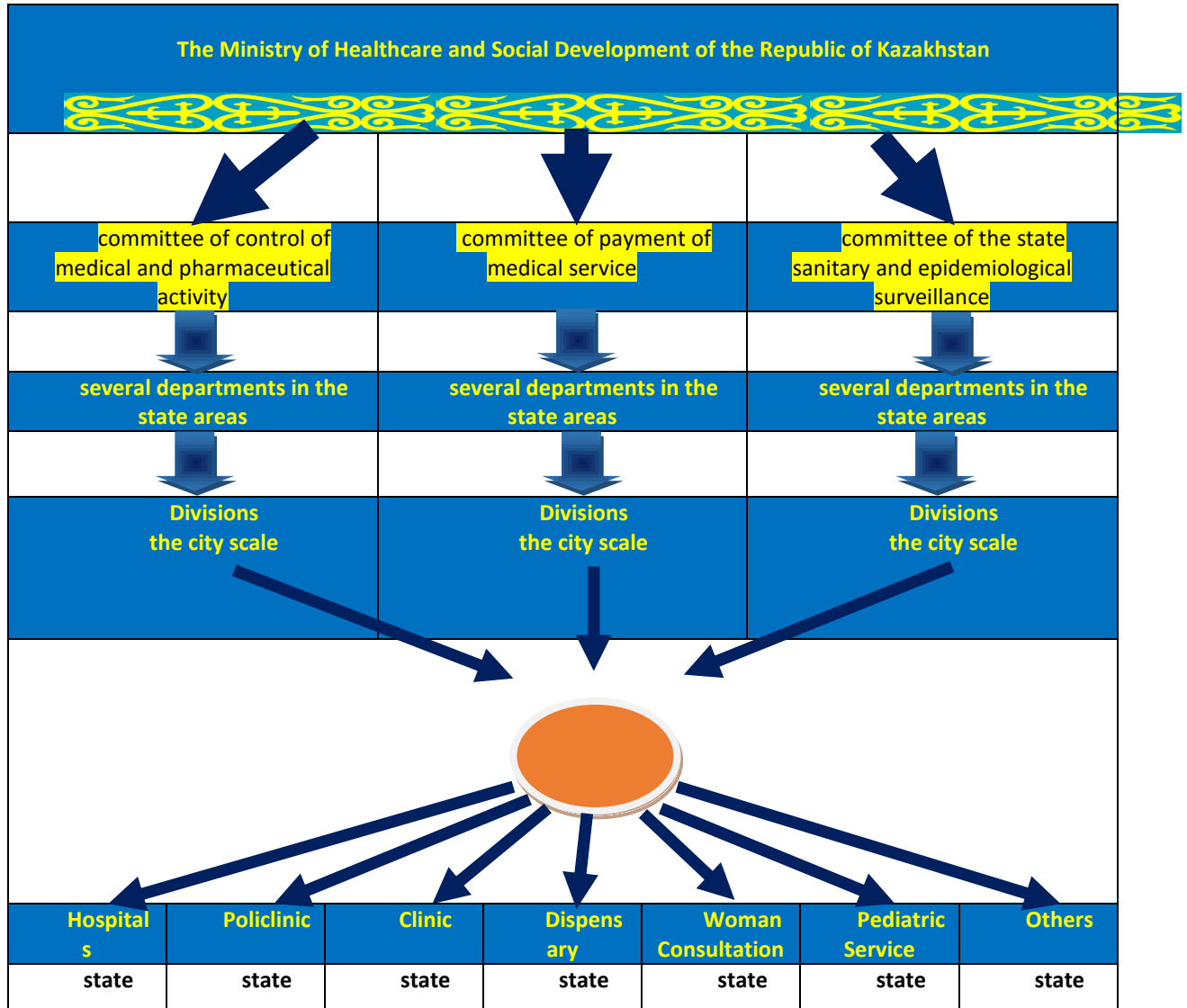


Table 4. Multidimensional subjective S.W.O.T. analyze after P.G.Conrad and Gresseem.

MULTIDIMENSIONAL SUBJECTIVE S.W.O.T. ANALYZE AFTER P.G.CONRAD AND GRESSEM									
«INDIVIDUAL BUSINESSMEN»									
Stretch		Weakness		Opportunities		Threats			
■	Ω	∞	∞	∞	∞	∞	∞	∞	∞
■	≡	↵	↵	↵	↵	↵	↵	↵	↵
■	đ	₹	₹	₹	₹	₹	₹	₹	₹
■	Σ	€	€	€	€	€	€	€	€
«MANAGING ASSOCIATIONS»									
«ALL» ASSOCIATION WITH LIMITED LIABILITY					«AAR» ASSOCIATION WITH ADDITIONAL RESPONSIBILITY				
Stretch	Weakness	Opportunities	Threats	Stretch	Weakness	Opportunities	Threats	Stretch	Threats
■	Σ	↵	∞	∞	≡	∞	∞	∞	∞
■	Σ	₹	∞	∞	Ω	€	∞	∞	∞
■	Ω	∞	∞	∞	đ	₹	∞	∞	∞
■	≡	€	∞	∞	Σ	↵	∞	∞	∞
«FA» FULL ASSOCIATION					«KA» COMMAND ASSOCIATION				
Stretch	Weakness	Opportunities	Threats	Stretch	Weakness	Opportunities	Threats	Stretch	Threats
■	Σ	∞	∞	∞	Ω	∞	∞	∞	∞
■	≡	€	∞	∞	đ	₹	∞	∞	∞
■	đ	₹	∞	∞	≡	€	∞	∞	∞
■	≡	↵	∞	∞	Σ	↵	∞	∞	∞
«JOINT-STOCK COMPANIES»									
Stretch		Weakness		Opportunities		Threats			
■	≡	↵	∞	∞	∞	∞	∞	∞	∞
■	Σ	₹	∞	∞	∞	∞	∞	∞	∞
■	Ω	€	∞	∞	∞	∞	∞	∞	∞
■	đ	∞	∞	∞	∞	∞	∞	∞	∞
Mark Definition									
■ - objective reasoning value		■ - subjective reasoning value		■ - constant value		■ - inversion value			
Constant Identification M.G.H symbols									
Stretch		Weakness		Opportunities		Threats			
Σ - mobility		∞ - dependence		∞ - innovations		∞ - time wasting			
Ω - elastic		€ - rigid		∞ - PR abilities		∞ - slow rise			
đ - flexibility		₹ - bureaucracy		∞ - prevalence		∞ - lost of reputation			
≡ - manoeuvrability		↵ - staff turnover		∞ - projectivity		∞ - unsociability			

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