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THE ISSUE OF ADVERSE EFFECTS IN CASE OF VITRO FERTILIZATION

Ruslan Kalinin^{1,2} , **Evgeniy Barinov^{1,2}**,
Sergey Dzhuvalyakov³, **Olga Romanova^{1,2}**  

¹A.I.Yevdokimov Moscow State University of Medicine and Dentistry, Moscow;

²Patrice Lumumba Peoples' Friendship University of Russia, Moscow;

³Bureau of Forensic Medical Examination of the Astrakhan Region, Astrakhan;

⁴Avtsyn Research Institute of Human Morphology of Petrovsky National Research Centre of Surgery, Moscow, Russia



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 olgpharm@yandex.ru

ABSTRACT

The article deals with the issues of regulation of practical activities related to the use of assisted reproductive technologies (ART). Currently, disputes about the quality and the results of in vitro fertilization, surrogacy and the use of other methods of infertility treatment are considered to be mainly in the realm of civil litigation. However, even the most high-tech medical devices are associated with a certain degree of risk to life and health. Cases of fatal outcomes among mothers or babies after the use of ART lead to the initiation of criminal cases against healthcare providers. At the same time, the forensic methodology of investigating such cases requires a commission forensic medical examination, the results of which become the major stumbling block at all stages of criminal proceedings. There are challenges in the organization and methodological support of the work of the investigation, the prosecutor's office and the courts. Especially, when several experts with opposite views clash in court over a case, where they completely or partially refute each other. In our paper we highlight an example of such a case to improve legislation and judicial practice in this area.

Keywords: in vitro fertilization, iatrogenic diseases, forensic medical examination, assisted reproductive technologies (ART)

INTRODUCTION

The prevalence of female infertility in developed countries has caused an increase in certain fields of medical practice, accompanied by risks associated with the provision of medical services. The legal status of embryos and fetuses in Russian legislation determines the resolution of most disputes concerning the quality of infertility treatment services within the realm of civil law. However, in certain cases, the adverse consequences of artificially induced pregnancies also impact the criminal process. In all cases related to legal conflicts in medical practice, the committee for forensic medical examination (hereinafter referred to as the "FME") takes precedence.

Obstetric activity has consistently been a significant source of criminal cases and lawsuits. Nowadays, patients' intolerance towards unfavorable pregnancy results has led to a complex phenomenon of criminalizing certain medical interventions, where the mere utilization of specific treatment methods by medical personnel is considered to be a crime. For instance, such situation has arisen about the use of the Christeller technique, which involves applying pressure to the fetus during childbirth. However, modern

medical science and practice consider the procedure to be outdated and strongly discourage its implementation due to the high risk of birth trauma. It is important that the regulatory document prohibiting this technique specifically refers to uncomplicated occipital presentation with a single fetus, which represents the simplest and most typical obstetric scenario. In practice, complications may arise during uncomplicated childbirth at any time, and performing an emergency cesarean cessation in a local hospital can pose significant logistical and personnel challenges [1,2,3,4,5,6].

The risk ratio associated with a specific medical procedure should be evaluated based on the current situation, rather than relying on abstract requirements calculated under ideal conditions. In this regard, the standardization of medical care at the federal level appears disputable, considering the disparities in equipment, medications, and personnel across different regions of Russia. Judges may not always have a comprehensive understanding of the variations in medical procedures and standards to the realities of a specific hospital. Consequently, the court, among other factors, has motivated the decision for a repeat forensic medical examination due to doubts about the accuracy of the expert committee's conclusion, which was unable to determine a diagnosis due to insufficient information regarding the capabilities of the medical institution provided in the case file. The court emphasized that the range of capabilities of medical organizations is standardized. However, based on the results of the repeated examination, the experts committee emphasized that experts in one city cannot be expected to know about the actual capabilities of a medical organization located more than 3 thousand kilometers away in another city. There was a lack of information about the capabilities of the medical institution in the case file. The examination should focus on evaluating the current capabilities of the hospital to diagnose and treat a specific pathology, which may not align with what is outlined in the relevant procedures or standards. The procedures, which regulate the provision of medical care, are regulated by legal acts written in the Russian language, and as such, FMEs should not be assigned solely for the purpose of their reading.

Law enforcement agencies still face significant challenges when it comes to appointing a FME committee and evaluating its results. The investigative practice in "medical cases" reveals a paradoxical trend. On the one hand, investigators withdraw from the investigation by transferring their authority to the representatives of the victims, with the entire investigation reduced to the seizure of medical documents, which are then handed over to experts. On the other hand, investigators heavily rely on the FME results, disregarding the correct and efficient execution of the examination. They neglect the effort to review the questions, often proposed by individuals without either medical or legal education. Additionally, investigators fail to provide experts with the necessary materials, and they do not plan the investigation in a way that ensures all relevant materials for the criminal case are already available by the time an expert examination is appointed. The Chairman of the Investigative Committee of the Russian Federation has acknowledged the ineffective approach of the investigation in utilizing the capabilities of FME in iatrogenic cases. It is worth noting that in most cases, the FME committees request additional information from investigators, indicating that the case materials are insufficient for conducting the expert examination, and in almost one-third of the cases, the requests made by the experts yield no results.

In several regions, there is still a practice of withholding criminal proceedings based on the negative outcome of medical care until there are clear and undeniable grounds to bring charges against medical professionals. As a result, decisions made by investigators to withhold proceedings are constantly appealed, which leads to prolonged procedural checks that can last for months, and sometimes even years. Eventually, FME committee is appointed based on the materials from the check, although this material often consists of disorganized explanations, copies of employment agreements, educational documents, and character references for doctors, which are usually irrelevant for an expert committee. Furthermore, Part 1.2 of Article 144 of the Code of Criminal Procedure of the Russian Federation explicitly states that the forensic examination conducted during the verification stage is subject to re-examination through additional or repeated expertise upon the request of the parties involved, regardless of the grounds specified in Article 207 of the Code of Criminal Procedure of the Russian Federation. It is rare for an iatrogenic case to proceed without such a request, which raises significant doubts about the usefulness of conducting a FME during the verification stage, considering the duration it takes. An expert assessment of medical care should be conducted at the final stage of the investigation after all other investigative actions have been completed. These actions include examining the crime scene, obtaining an autopsy report, interrogating doctors and victims, seizing medical documents and a histological archive, attaching the results of extrajudicial control measures to the case, conducting face-to-face interrogations, and verifying witness testimonies using a polygraph, among others. When making a decision to initiate a criminal case, the results of an autopsy are sufficient, and an exceptionally complex SME is not required. However, investigators must keep in mind that death from a disease is not considered to be violent, and statements from dissatisfied citizens regarding the medical care provided to their relatives and friends should not be taken as absolute truth.

The aim of the study is to analyze the case of woman's death after cesarean cessation in 33 weeks of pregnancy.

MATERIALS AND METHODS

The materials of case of woman's death after cesarean cessation in 33 weeks of pregnancy.

RESULTS AND DISCUSSION

A gynecologist was convicted under Part 2 of Article 109 of the Criminal Code of the Russian Federation in a case involving the death of a patient, which was caused by kidney damage resulting from chronic renal failure, hemodialysis, bilateral pneumonia, cerebral and pulmonary edema, which developed as a result of sepsis, complicated by chronic heart failure, anemia, and ischemic stroke. The root cause of sepsis was purulent endometritis (acute inflammation of the uterine mucosa), which occurred following the premature operative delivery of triplets at week 33 of gestation after in vitro fertilization. There was preeclampsia and peritonitis after cesarean section operations and repeated laparotomies (five in total) due to hematoma of the anterior abdominal wall and paralytic intestinal obstruction, extirpation of the uterus with fallopian tubes due to ovarian vein thrombosis and ligation of the internal iliac arteries to address hematoma of the small pelvis and anterior abdominal wall, ongoing peritonitis, subcutaneous eventration, dynamic small bowel obstruction, and the opening of retroperitoneal hematoma.

In the appeal, the defendant's lawyer raised several circumstances that challenge the guilt of the client, including:

- the defendant was not the attending physician at the time when the medical care deficiency occurred (the timely diagnosis of sepsis was not established), therefore she cannot be held personally responsible for it;
- the investigator violated the principle of the presumption of innocence by outlining the plot of the case in the decision appointing the FME committee. This issue requires special attention. It is common to encounter investigator decisions that make categorical statements accusing medical professionals of a crime, even when there is no evidence to support such claims apart from statements from the patient's relatives up to the date of the decision. However, the problem lies not in the investigators' preconceived notion of doctors' guilt, but rather in their unwillingness to question the victims' statements. Often, when scheduling an examination, the investigator fails to develop its own understanding of the incident and simply copies the text from the victim's petition, explanation, or interrogation into the decision, forgetting that the FME committee is not intended to consider citizens' complaints, but rather to serve as a procedural action organized and directed by the investigator in collaboration with the experts. The presumption of innocence has a very specific meaning, primarily involving the burden of proof. Therefore, in this regard, it is not possible to agree with the defense counsel – the phrasing of the circumstances in the investigator's decision cannot violate the presumption of innocence, as the experts cannot be released from their duties mandated by federal law by the investigator's decision, and, at any stage of the investigation, the experts must provide an objective conclusion. Nonetheless, a problem does exist, particularly concerning the wording of issues submitted for examination. The use of convoluted and suggestive formulations, containing logical and logical errors, as well as references to distorted facts, significantly complicates the experts' work. Investigators are hesitant to edit questions made by the victims, inundating the experts with numerous, often hundreds of, unnecessary questions, when only four are sufficient. The description of the case's plot is frequently presented in a superficial and inadequate manner, negatively impacting the organizational stage of the FME committee.

The defense counsel's main argument revolves around the inadmissibility of the FME committee's conclusion, citing the stance of the General Prosecutor's Office of the Russian Federation regarding examinations conducted by employees of the Investigative Committee of the Russian Federation. In general, the practice of prosecutorial supervision in "medical cases" lacks uniformity and coherence. The General Prosecutor's Office of the Russian Federation believes that conducting a FME within investigative bodies is unacceptable, as well as that Article 238 of the Criminal Code of the Russian Federation is inapplicable to medical errors. However, this does not prevent prosecutors from issuing indictments based on conclusions provided by experts from the Investigative Committee, including those related to Article 238 of the Criminal Code of the Russian Federation.

The phrasing in the Court of Appeal's decision in this case is of particular interest. The court acknowledged that "as indicated by the verdict, the findings of the court of first instance regarding the doctor's culpability in the committed crime are based on the conclusions from the forensic medical examination". This acknowledgement by the court highlights that the entire law enforcement process revolved around the evaluation and agreement with experts' conclusion, which can undermine the principle of the presumption of innocence even more severely than the investigator's decision, since the court lacks expertise in assessing the FME committee's conclusion and is often limited in its assessment. Often such assessment simply entails the court unconditionally trusting the examination's conclusion, as it finds no reason to question it. In other words, the presumption of innocence is replaced by the presumption of trust (in the cases where a guilty verdict is reached).

Furthermore, the appellate court noted that the case file contained another FME committee's conclusion, which contradicted the conclusion on which the prosecution was based, including on the issue of a direct causal relationship between the doctor's actions and the death, while the court of first instance did not provide any reasons for favoring one expert committee over the other. Furthermore, it was noted that the experts did not have license to practice medicine, which raised concerns about the principle of expert independence, as one of the experts was an employee of the investigative department. Due to these incurable procedural violations, the case was returned to the court of first instance. However, it remains unclear why the court deemed these violations to be incurable, thus preventing the summoning of experts for questioning, verifying the actual (rather than formal) grounds for their disqualification, assessing the individual role and contribution of each expert to the conclusions, and potentially ordering a re-examination, if necessary. Moreover, the impact of the absence of a license on the examination of the criminal case materials is unknown, especially considering the absence of licensing requirements. It is worth noting that the issue of conducting expert examinations in the Investigative Committee of the Russian Federation has already been brought before the Constitutional Court of the Russian Federation. However, there were insufficient grounds to address the complaint in this matter. Similarly, a citizen's complaint regarding the conduct of a forensic medical examination based on the case materials in the absence of a license faced the same outcome. These issues remain unresolved.

CONCLUSION

The above example clearly highlights the prevailing trends in modern law enforcement practices regarding iatrogenic cases. The focus on such cases primarily revolves around the conclusions of the expert committees rather than the case itself. Furthermore, the assessment of expert opinions as evidence is based on verifying the formal aspects of the expert process. As a result, the court's role primarily lies in ensuring adherence to the procedural aspects of the FME based on the case materials. Disagreements often arise when interpreting the legal norms governing this procedure, as experts tend to prioritize assessing the objective signs of a crime while neglecting subjective aspects, which are frequently left unaddressed or inadequately evaluated.

In the specific instance of a woman's death after in vitro fertilization, an acquittal was issued and subsequently upheld. This case highlights several unresolved issues within law enforcement practices regarding iatrogenic cases, especially those involving such complex matters that require legal and expert assessment as potential consequences of assisted reproductive technologies. Artificially induced pregnancy can result in severe and sometimes unpredictable complications, even without any shortcomings in medical care. However, it is essential for legal, forensic, and expert institutions to be prepared to protect the interests of consumers of such services, including during criminal proceedings. Legislation concerning forensic medical examination in cases of medical errors requires further improvement, while investigative and judicial practices should be streamlined, systematized, and standardized.

REFERENCES

1. Habek D. Forensic expertise in obstetrics and gynecology - Forensic expert experience. Eur J Obstet Gynecol Reprod Biol. 2021 Jan;256:1-5. DOI: [10.1016/j.ejogrb.2020.10.046](https://doi.org/10.1016/j.ejogrb.2020.10.046)
2. Vassilopoulou L., Matalliotakis M., Zervou M.I., Matalliotaki Ch., Spandidos D.A., Matalliotakis I., Goulielmos G.N. Endometriosis and in vitro fertilisation. Exp Ther Med. 2018 Aug;16(2):1043-1051. DOI: [10.3892/etm.2018.6307](https://doi.org/10.3892/etm.2018.6307)
3. Yagmurov OD, Karavayev VM, Korobkov NA, Karev VE, Tolmachev IA, Fetisov VA. Problems of expert assessment of a case of fatal rupture of the wall of the rudimentary horn of the uterus in ectopic pregnancy. Sudebno-Meditsinskaya Ekspertisa. 2022;65(2):40-45. DOI: [10.17116/sudmed20226502140](https://doi.org/10.17116/sudmed20226502140) (In Russ.)
4. Kovalev AV, Pletyanova IV. The identification of the drawbacks in the provision of medical assistance based on the so-called biased data. Sudebno-Meditsinskaya Ekspertisa. 2015;58(3):48-51. (In Russ.) DOI: [10.17116/sudmed201558348-51](https://doi.org/10.17116/sudmed201558348-51)
5. Kozminykh E.V. In vitro fertilization with lethal outcome. Legal issues in healthcare. 2012; 7: 28-33. (In Russ.)
6. Samsonova V.O. Assisted reproductive technologies: nuances of court proceedings. Legal issues in healthcare. 2016;. 11: 62-71. (In Russ.)

