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# Problems of Social Rights Enjoyment by Persons Diagnosed with Epilepsy: Legal Aspect

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## Abstract

Epilepsy is a disease that creates many problems for people with such a diagnosis in the enjoyment of their social rights. Despite the existing regulatory legal acts governing the protection of health and the social rights enjoyment by citizens with epilepsy, there are many questions on this topic both regarding accessibility of these norms to people with epilepsy and in terms of compliance of the current legislation with the norms of the Constitution of the Russian Federation. In this article, we tried to reflect the basic norms of the current legislation in the Russian Federation governing the provision of medical care to people with epilepsy, providing them with free medications, admission of patients with epilepsy and epileptic syndrome to various types of work, education, military service, possession of weapons, driving, and pay attention to the problems of people diagnosed with epilepsy.

**Keywords:** epilepsy, clinical guidelines, drug provision, work with a diagnosis of epilepsy, study with a diagnosis of epilepsy, driver's license, military service, disclosure of the diagnosis

## 1. Introduction

Article 7 of the Constitution of Russia proclaims the Russian Federation as a social state, the distinguishing feature of which is an active policy in the fields of science, education, health care, culture, etc. [1], as well as a high level of social responsibility of government to citizens.

Constitutional norms provide a person with a wide range of diverse rights and freedoms that cover all major areas of life and activity. The fundamental rights and freedoms enshrined in the Constitution of the Russian Federation are inalienable (Article 17) and equal (Article 19) for everybody. Everyone has the right to work (Article 37), to health protection (Article 41), and to education (Article 43).

## 2. Problems of the social rights enjoyment by persons with a diagnosis of epilepsy

The impact of epilepsy on the social life of citizens is very diverse. Fundamentally important issues in epilepsy are problems of diagnosis, modern

treatment, the impact of the diagnosis of epilepsy on employment, military service, the ability to drive a vehicle, etc.

## **2.1 The right to free medical care**

The legal basis of the state's obligation to develop and implement measures to protect the health of citizens is the provisions of Article 41 of the Constitution of the Russian Federation, which enshrines the right of citizens to health care and medical assistance, which is provided to citizens free of charge at the expense of the corresponding budget, insurance premiums, and other incomings. Thus, the right to medical care is among the constitutionally protected values and is an indispensable and inalienable benefit belonging to everyone from birth. This is a fundamental, initial legal establishment, basic for the entire system of specific rights and freedoms assigned to a person in the field of health care, which has the highest legal force [2].

To date, the main body of legislation in terms of the public health protection has been formed both at the federal and regional levels. At the same time, the modern legal framework does not fully ensure the constitutional right of citizens to health protection and medical care. At the moment, there are a number of gaps in federal legislation that prevent the full enjoyment of the right of citizens, including people with a diagnosis of epilepsy, to health protection, which will be discussed further below.

First of all, it seems necessary to eliminate the uncertainty of the status of the documents, on the basis of which patients are diagnosed and treated, and the quality of medical care is assessed. According to clause 1 of Article 37 of Federal Law No. 323-FZ dated November 21, 2011, "On the Basics of Health Protection of the Citizens in the Russian Federation" (hereinafter referred to as Law No. 323-FZ), medical care is arranged and provided in accordance with the procedures for providing medical care that are binding in the territory of the Russian Federation for all medical organizations, as well as on the basis of medical care standards [3]. At the same time, as follows from the explanation of the press service of the Ministry of Health of the Russian Federation dated 05.09.2017, the standards are flow charts developed on the basis of clinical guidelines, which are a list of services, medicines, medical devices, and other components of treatment that can be used for a particular disease with the average frequency and multiplicity of their representation in the group of patients with this disease. Standards cannot be used by the attending physician, as these are the documents used by the organizers of health care for planning and economic calculations, in particular when preparing the program of state guarantees of providing free medical care to citizens [4]. According to the above-mentioned message of the press service of the Ministry of Health of the Russian Federation dated 05.09.2017, the documents that establish the algorithm for patient management, diagnosis, and treatment are clinical guidelines. They do not establish uniform "patterned" requirements for the treatment of all patients, but contain the logistic structure of the doctor's actions, using diagnostic methods and treatment that have proven their effectiveness. At the same time, at present, federal legislation does not contain any indication of the obligatory observance of clinical guidelines. But from 01.01.2022, medical assistance will have to be carried out on the basis of, inter alia, clinical recommendations in accordance with Federal Law No. 489-FZ dated 25.12.2018 "On Amending Article 40 of the Federal Law "On Mandatory Medical Insurance in the Russian Federation" and the Federal Law "On the Basics of Health Protection of the Citizens in the Russian Federation" concerning clinical recommendations," where it is said that clinical recommendations are documents containing structured information based on scientific evidence on prevention,

diagnosis, treatment, and rehabilitation, including patient management protocols (treatment protocols), options for medical intervention, and the description of the sequence of actions of a medical worker taking into account the course of the disease, the presence of complications and comorbidities, and other factors affecting the results of medical care.

In accordance with clause 2 of Article 76 of Law No. 323-FZ, clinical guidelines on the provision of medical care are developed, among other things, taking into account the results of clinical testing, and are approved by medical professional nonprofit organizations in accordance with Article 37 on the arrangement of medical care. Developed and approved clinical guidelines are posted on the website of the Federal Electronic Medical Library of the Ministry of Health of the Russian Federation ([www.femb.ru](http://www.femb.ru)). The functional responsibilities of any medical practitioner include systematical reviewing and tracking the replenishment of the base with new clinical guidelines.

To date, more than 1200 clinical guidelines on various diseases and conditions have been developed and are in force. Despite the fact that epilepsy is one of the most common diseases of the central nervous system, which has a wide variety of forms, radically different in treatment tactics and prognosis, unfortunately, clinical guidelines have not been approved on any of them by medical professional nonprofit organizations of neurologists and epileptologists operating in Russia, based on which an ordinary neurologist, regardless of length of service and experience, using the prescribed algorithm, could provide qualified assistance and referring to which could prescribe the necessary drugs to the patient free of charge, regardless of their value. In addition, in the presence of prescribed clinical guidelines, an epileptologist could ensure the start of treatment not only with classical drugs but also with the use of modern medicines and could decide in time on the need for surgical treatment of diseases. It is known that in many situations in patients with epilepsy, the time of the treatment start is the key to a complete cure and/or lack of disability.

It can be stated that the combination of “legislative inaction of public organizations” with the fact that the adoption of various kinds of bylaws (from the relevant orders of the Ministry of Health of Russia to the legal acts of health authorities in the constituent entities of the Russian Federation), developing the provisions of Law No. 323-FZ, is catastrophically late or nonexistent [5] and does not allow epileptologists to provide full assistance to patients with a diagnosis of epilepsy. Thus, there is a paradoxical situation. Clinical guidelines are given a leading role in the development of standards of care, the treatment of patients suffering from epilepsy, and assessing the quality of care. However, these fundamental documents that directly or indirectly regulate many legal relations in the field of health care of patients with epilepsy are absent. This situation requires immediate actions to develop and adopt all the necessary clinical guidelines for the treatment of patients with a diagnosis of epilepsy, which will be drawn up taking into account new medicines and medical technologies.

## **2.2 The right to free provision of medicines**

Another topical issue concerns the availability of free drug provision for patients with epilepsy. Unfortunately, the rights of all citizens to access free drug provision are “not officially recognized, which goes against international agreements on human rights adopted at the UN level” [6]. Most of our citizens exercise their right to free drug provision in accordance with legal guarantees for compulsory health insurance programs, in the so-called general legal regime. Along with the general one, it is also possible to single out a special legal regime for drug provision on the basis of the fact that the citizens have a particular disease, assigned by the legislator



to the corresponding list, or a certain legal status [7]. In actual fact, the existence of such a special legal regime means nonobservance of the Constitution of the Russian Federation and is discriminatory against the majority of citizens in terms of free drug provision.

Within the framework of a special legal regime, drugs are provided to citizens from among the categories listed in Article 6.1 of Federal Law “On State Social Assistance” No. 178-FZ dated 17.07.1999 [8] (hereinafter referred to as Law No. 178-FZ): disabled people, participants of the Great Patriotic War, combat veterans, residents of besieged Leningrad, etc. Resolution of the Government of the Russian Federation No. 890 dated 30.07.1994 established a list of population groups and disease categories, for outpatient treatment of which drugs are dispensed on medical prescriptions free of charge [9]. By letter of the Ministry of Health and Social Development of the Russian Federation No. 489-BC dated 03.02.2006 “On dispensing medicines to the population on medical prescriptions for outpatient treatment free of charge or with a 50% discount,” it is explained that Resolution of the Government of the Russian Federation No. 890 dated 30.07.1994 provides for financing of expenses when paying for drugs to certain population groups at the expense of funds of the constituent entities of the Russian Federation and other sources attracted by them for these purposes [10]. According to these documents, drug provision to certain categories of citizens, including people with epilepsy, is carried out both at the federal and regional levels. At the same time, patients with an established diagnosis of epilepsy have the right to be provided with free medicines, regardless of the presence or absence of disability and other preferential grounds.

At the same time, the constituent entities of the Russian Federation have the right to establish their own circle (including the extended one) of recipients of drug provision. Taking into account the fact that citizens from the categories listed in Law No. 178-FZ, as a rule, reside in the territory of certain constituent entities of the Russian Federation, they are entitled to drug provision as both federal and regional benefit recipients. Hence, it follows that they are entitled to receive drug provision for two reasons. At the same time, in the event of refusal from drug provision of one level, for example, a regional level, they retain the right to drug provision of another level-the federal level. However, in fact, the rights of certain categories of citizens to drug provision are often violated, and for various reasons, more often of an economic nature, they are denied free medicines.

Another topical issue is the discrepancy between the federal program [11] and regional programs of state guarantees of free medical care to citizens. According to clause 3 of Part 1 of Article 16 of Law No. 323-FZ, the development, approval, and implementation of the territorial program of state guarantees of free medical care to citizens, including the territorial program of compulsory medical insurance, are the powers of the state authorities of the constituent entities of the Russian Federation. The federal legislator, empowering the state authorities of the constituent entities of the Russian Federation with the above powers and including the legislation of the constituent entities of the Russian Federation to the system of legal regulators in the field of health, at the same time established the scope and limits for the implementation of the regulatory powers of the state authorities of the constituent entities of the Russian Federation in this field, stipulating the provisions in parts 1 and 3 of Article 81 of Law No. 323-FZ, according to which the state authorities of the constituent entities of the Russian Federation approve territorial programs of state guarantees of free medical care to citizens in accordance with the Federal Program. The prescription on the need to adopt a territorial program in accordance with the Federal Program is also contained in the third paragraph of Section I (General Provisions) of the Federal Program. Federal legislation does not provide the

constituent entities of the Russian Federation with the right to adjust territorial programs downwardly. Moreover, by virtue of Part 3 of Article 81 of Law No. 323-FZ, territorial programs of state guarantees of free medical care to citizens, subject to the compliance with financial standards established by the program of state guarantees of free medical care to citizens, may contain additional types and conditions of medical care, as well as additional volumes of medical care, including those providing the possibility of exceeding the averages established by medical care standards. Resolution of the Government of the Russian Federation dated December 10, 2018, No. 1506 “On the Program of State Guarantees for Providing Free Medical Care to Citizens for 2019 and for the Planning Period of 2020 and 2021” [12] for the first time directly instructs regions to form a list of drugs dispensed to the population free of charge, in the volume not less than the list of essential and most important medicines approved by the order of the Government of the Russian Federation for the corresponding year. Nevertheless, almost everywhere, the executive authorities of the constituent entities of the Russian Federation, due to the lack of funds in regional budgets, deviate from the guarantees established at the federal level and violate the rights of residents of the regions to receive state guarantees of free medical care in the amount determined by the Government of the Russian Federation. Regional lists of drugs, dispensed free of charge, are, in most cases, much less than federal. Such situations become the subject of consideration by the Supreme Court of the Russian Federation, which, as a rule, acknowledges the existence of violations. The Supreme Court of the Russian Federation adopted such decisions in Amur [13], Vologda [14], Bryansk [15], Penza [16], Novgorod [17] Regions, Altai [18], Krasnoyarsk [19] and Perm [20] Territories, the Chuvash Republic [21], and many other constituent entities.

Based on the decisions of the Supreme Court of the Russian Federation, the committed violations of the established federal guarantees of medical care are subject to elimination. At the same time, the judicial practice in many cases proceeds from the fact that the inability to obtain the necessary drug on medical prescription due to the absence of the drug on the Drug List cannot violate the patient’s right to receive the necessary treatment. However, it is necessary to understand that only a small part of legally literate patients, whose rights to receive free drugs were violated, go to court. In practice, even such a limited list of population groups and disease categories does not guarantee the unconditional right of citizens who meet the requirements of these lists to free medicines. The current drug provision system does not comply with Article 41 of the Constitution of the Russian Federation on the right of everyone to free medical care at the expense of the relevant budget, insurance premiums, and other incomings.

According to experts, the introduction of universal reimbursement for medicines to ensure the availability of medicines would make it possible to radically change the situation and shift the focus of state support from the treatment of the late stages of the disease and the prevention of death to the prevention of diseases and the prevention of their development [22].

### **2.3 The right to receive drugs, unregistered in the Russian Federation**

Many drugs that can save the lives of patients or improve their life quality are absent in the territory of the Russian Federation, as they are not registered by the Ministry of Health of the Russian Federation. The use of unregistered drugs is possible in the territory of the Russian Federation subject to the additional rules set out in Order of the Ministry of Health and Social Development of the Russian Federation No. 494 dated August 9, 2005, “On the procedure for using drugs by patients for health reasons” [23], Federal Law No. 61-FZ dated 12.04.2010 “On the

Circulation of Medicines” [24], Rules for the Importation of Drugs for Medical Use into the Territory of the Russian Federation, approved by Resolution of the Government of the Russian Federation No. 771 dated September 29, 2010 [25].

According to the legislation, if a patient has the right to free drug provision and he/she has vital indications for the use of a drug unregistered in the country, this drug shall be provided free of charge. But the procedure for the importation of such unregistered drugs is extremely complex and requires a significant investment of time and money. In this regard, such drugs are practically inaccessible to the majority of patients. And only if the patient has the opportunity to purchase such drugs at his/her own expense, he/she can do this when traveling abroad with the minimum amount of bureaucratic complications.

It should be noted that such a difficult-to-surmount barrier to the widespread use of modern medicines in the treatment of citizens is created by the current rules for registration of drugs in the Russian Federation, which are very complex, opaque, costly, and disadvantageous to foreign pharmaceutical companies. The domestic procedure for registration of drugs is obstructing in nature and leaves some patients with epilepsy, including children, without access to modern medicines. The inaccessibility of modern drugs for some patients with epilepsy and, as a result, the impossibility of obtaining high-quality medical care affects their future social life.

## **2.4 The right to work**

The prevalence of epilepsy in the Russian Federation is 2.98 people per 1000 people of the population [26]. Of all persons suffering from epilepsy, no more than 10% need inpatient care, but the majority (over 90%) are outpatients, of which about 60% of adult patients are able-bodied and work in a team of healthy people [27]. However, the problem of work and employment of this category of citizens remains unresolved. Despite many years of remission (drug or nondrug), these citizens are subject to the same legal restrictions as people with an incurable form of epilepsy [28].

The current legislation of the Russian Federation does not regulate the procedure for the removal of the diagnosis of epilepsy, and this diagnosis remains with the person for life. A history of diagnosis of epilepsy gives rise to a large number of problems for citizens in the enjoyment of their social rights.

The right to work is one of the basic human rights playing an important role in the life of everyone, since most people meet their vital needs in connection with their work activities. That is why ensuring equal access to work is at the center of social and economic policies throughout the world.

However, the analysis of the norms defining the legal status in the sphere of labor of citizens suffering from epilepsy suggests that not all the issues have found normative consolidation and legal regulation. Thus, given the above constitutional norms that establish binding requirements, the current labor legislation is so ambiguous about the establishment and regulation of rights guaranteed by the Constitution of the Russian Federation, which suggests its discriminatory nature in relation to citizens diagnosed with epilepsy. In modern society, discrimination is one of the most common signs of regression. It is based on unlawful comparisons among people, nonobservance of the Constitution of the Russian Federation, and disregard for the principles of equality and freedom. There is no doubt that when hiring it is necessary to adhere to such parameters as education, qualifications, experience, skills, and abilities. No other reasons can serve as justified grounds for refusing an employee to provide a workplace [29].

Essential characteristics of labor freedom, reflecting the modern needs of society, have been consolidated in the regulations of the new generation. It is



no coincidence that the slogan of Part 1 of Article 37 of the Constitution of the Russian Federation “labor is free” is developed by the principal clause “everyone has the right to freely dispose of their abilities to work”, and only then the right to choose his/her occupation and profession follows” [30]. According to Part 4 of Article 15 of the Constitution of the Russian Federation generally recognized principles and norms of international law are an integral part of the legal system of the Russian Federation [31]. Article 23 of the Universal Declaration of Human Rights enshrines the right to work, including free choice of work, fair and favorable working conditions, protection from unemployment, and receipt of fair and satisfactory remuneration ensuring a decent life for himself/herself and his/her family.

Articles 6, 7 of the International Covenant on Economic, Social and Cultural Rights [32] enshrine the right to work, including the opportunity to earn a living by freely chosen labor in fair and favorable conditions that provide a satisfactory remuneration for the workers themselves and members of their families. Clause 5 of Resolution of the Plenum of the Supreme Court of the Russian Federation “On some issues of the application of the Constitution of the Russian Federation by courts in the administration of justice” No. 8 dated October 31, 1995, explicitly states that the courts shall be guided by the provisions of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. Since the Constitution of the Russian Federation establishes the unconditional priority of international conventional rules over the rules contained in domestic legislation [33], the determination of the right to work in the territory of the Russian Federation shall be guided by the listed international norms. In accordance with Part 3 of Article 37 of the Constitution of the Russian Federation: “Everyone has the right to work in conditions that meet the requirements of safety and hygiene, to remuneration for work without any discrimination and not lower than the minimum wage established by federal law, as well as the right to protection against unemployment.”

These constitutional provisions were developed in the Labor Code of the Russian Federation (hereinafter referred to as the Labor Code of the Russian Federation). Article 2 of the Labor Code of the Russian Federation establishes the principle of equal rights and opportunities for workers. This is one of the basic principles of labor law, in which “principles of a higher (constitutional) level were embodied, which, from the point of view of content, express rights and freedoms in the field of labor and thereby directly condition the basic rights and freedoms of an employee” [34]. Application enshrined in Article 2 of the Labor Code of the Russian Federation, the principle of equal rights and opportunities for workers, excludes the possibility of presenting different requirements to persons performing work functions of the same content. The establishment of any restrictions is permissible only when it is due to the specifics and characteristics of the work performed, and the differences in the legal status of workers shall be based on their belonging to categories that are different in terms of conditions and type of activity [35].

Article 2 of the Labor Code of the Russian Federation prohibits discrimination in the field of labor. What is meant by discrimination is specified in Article 3 of the Labor Code of the Russian Federation: “Everyone has equal opportunities to exercise their labor rights. No one can be restricted in labor rights and freedoms or receive any benefits regardless of gender, race, color, nationality, language, origin, property, family, social and official status, age, place of residence, attitude to religion, political beliefs, affiliation or non-affiliation with public associations, as well as of other circumstances unrelated to the professional qualities of the employee” [36]. Resolution of the Constitutional Court of the Russian Federation No. 19-P dated December 27, 1999, (clause 4) states that “the freedom of labor involves the



provision of everyone with the opportunity to enter into labor relations on equal terms with other citizens, realizing their abilities to work” [37].

In practice, these provisions are not always implemented. First of all, labor law provides for restrictions related to harmful and dangerous working conditions. Harmful production factor by virtue of Article 209 of the Labor Code of the Russian Federation is a production factor, the impact of which on an employee may lead to his/her illness. According to clause 4 of Article 14 of Federal Law “On Special Assessment of Working Conditions” No. 426-FZ dated December 28, 2013, [38] harmful working conditions are working conditions under which the levels of exposure to harmful and (or) hazardous production factors exceed the levels established by standards (hygienic standards) of working conditions. Article 213 of the Labor Code of the Russian Federation states that harmful and (or) dangerous production factors and work, during which mandatory preliminary and periodic medical examinations are carried out, the procedure for which is determined by the federal executive body authorized by the Government of the Russian Federation. In pursuance of the provisions of Article 213 of the Labor Code of the Russian Federation, the Ministry of Health and Social Development of the Russian Federation by Order No. 302-n dated April 12, 2011, approved the “List of harmful and (or) occupational hazards and works that require mandatory preliminary and periodic medical inspections (examinations), and the Procedure for conducting compulsory preliminary and periodic medical inspections (examinations) of workers engaged in heavy work and work with harmful and (or) dangerous working conditions” [39]. According to subsection 2 of clause 3 of Annex 3 to the order of the Ministry of Health and Social Development of the Russian Federation No. 302-n dated April 12, 2011, periodic medical examinations are carried out in order to identify diseases that are medical contraindications to continue work related to exposure to harmful and (or) hazardous industrial factors. According to clause 31 of the same order, at the end of the periodic inspection, the medical organization draws up a medical report.

The list of works that require mandatory preliminary and periodic medical inspections (examinations) of workers includes work at height, maintenance, and repair of existing electrical installations, work in specific geographic regions with significant remoteness of work sites from medical institutions, work directly related with the maintenance of pressure vessels, work directly related to the use of flammable and explosive materials, work in militarized security services, special communication services, collection apparatus, banking structures, other agencies, and services that are allowed to carry and use weapons, work performed by the gas rescue service, militarized mining and mine-rescue services of ministries and departments, and fire protection, work performed by emergency rescue services for the prevention and elimination of natural and man-made emergency situations, etc.

Clause 48 of section IV. Medical contraindications for admission to work of the “Procedure for conducting compulsory preliminary (when applying for a job) and periodic medical inspections (examinations) of workers engaged in hard work and work with harmful and (or) dangerous working conditions,” approved by the same order of the Ministry of Health and Social Development of the Russian Federation No. 302-n dated April 12, 2011, indicate that workers (persons entering the work) are not allowed to perform work with harmful and (or) dangerous working conditions, as well as work that require the conduct of preliminary and periodic medical inspections or examinations (that is, all of the above types of work) in order to protect public health and prevent the occurrence and spread of diseases, if there are legally established general medical contraindications, which include diseases accompanied by consciousness disorders: epilepsy and epileptic syndromes of various etiologies and syncopal syndromes of various etiologies.

At the same time, there is no indication in the document that epilepsy ceases to be a medical contraindication to performing work with harmful and (or) hazardous working conditions after stopping dispensary observation due to persistent long-term remission (recovery). On the one hand, this can be seen as a concern for legislators about the health and well-being of citizens with epilepsy, but in practice, this means a lifelong ban on many professions and a narrowing of life horizons, regardless of the actual state of health, the duration of remission with or without medication.

Similar contraindications also exist for other works.

- For example, the diagnosis of epilepsy (G40) prevents the admission to the state or municipal service according to order of the Ministry of Health and Social Development of the Russian Federation No. 984n dated 14.12.2009 “On the approval of the Procedure for medical examination by state civil servants of the Russian Federation and municipal employees, the list of diseases that prevent admission to the state civil service of the Russian Federation and the municipal service or its performance, as well as the forms of conclusion of a medical institution” [40].
- In accordance with Resolution of the Government of the Russian Federation No. 733 dated 26.08.2013 “On medical examination of persons for the presence (absence) of a disease that prevents them from entering the service in the bodies and institutions of the Prosecutor’s Office of the Russian Federation and performing the duties of a prosecutor’s office employee” [41] in this case epilepsy is a contraindication.
- Epilepsy and epileptic syndromes of various etiologies are included in the list of diseases that impede the appointment of a judge, approved by Decree of the Council of Judges of the Russian Federation No. 78 dated 26.12.2002 [42].
- Order of the Ministry of Health and Social Development of the Russian Federation No. 989n dated 26.08.2011 approved a list of medical contraindications for work using information constituting a state secret, the procedure for obtaining and the form of a certificate of the absence of medical contraindications for working using information constituting state secret [43]. Epilepsy (G40) is included in this list.
- Epilepsy is in most cases a contraindication for service in the internal affairs bodies and internal troops, in the federal migration service, the federal fire service of the Emergencies Ministry in accordance with Article 21 of the diseases time-table of Annex 1 to the Instructions on the procedure for conducting a military medical examination and medical inspection in the internal affairs bodies of the Russian Federation and the internal troops of the Ministry of Internal Affairs of the Russian Federation, approved by order of the Ministry of Internal Affairs of the Russian Federation No. 523 dated 14.07.2010. The assignment of various categories of citizens to be examined to the relevant columns (I, II, III) of the diseases time-table is regulated by articles 104 – 106 of the specified instructions. If a citizen enrolled in a service (study) has a history of at least one seizure entered into medical records, or there are pathological changes on an electroencephalogram at rest or with functional loads (paroxysmal activity and hemispheric asymmetry), certain categories are considered to be limitedly able [44]. On May 14, 2018, this order became invalid on the basis of Order of the Ministry of Internal Affairs of Russia dated 02.04.2018 No. 190, but the requirements for the state of health of citizens entering the service

of the internal affairs bodies of the Russian Federation regarding persons diagnosed with epilepsy remained the same [45].

Thus, the state of health of an employee directly affects the possibility of concluding an employment contract. If a certain type of work requires undergoing a medical examination, its result is of paramount importance for the conclusion of an employment contract.

The state of health further influences the employment relationship: it can serve as a basis for transfers of both permanent and temporary nature (Articles 72, 254 of the Labor Code of the Russian Federation), for suspension from work, contraindicated for health reasons (Article 76 of the Labor Code of the Russian Federation), and determines the content of the employment contract (reduction of working time for persons with disabilities; conclusion of a fixed-term employment contract with persons who, due to their state of health, are only allowed to work temporarily in accordance with the medical certificate). Finally, it can also play the role of a legal rights-terminating fact (Articles 77, 81, 83, 341 of the Labor Code of the Russian Federation). At the same time and in the case of long-term remission, citizens with a diagnosis of epilepsy in history are subject to the same legal restrictions.

## **2.5 The right to study**

The above contraindications apply not only to labor relations. Resolution of the Government of the Russian Federation dated 14.08.2013 No. 697 approved a list of specialties and areas of training, when applying for which applicants undergo mandatory preliminary medical inspections (examinations) in the manner prescribed at the conclusion of an employment contract or employment-related contract for the relevant position or specialty [46]. This means that since 2013 it is impossible to get an education in the desired profession, if it is included in the established list of contraindications.

## **2.6 The rights of citizens with a diagnosis of epilepsy to be called up to military service**

Another topical issue is the conscription into the armed forces of persons suffering from epilepsy. From the analysis of statistical data obtained during the medical examination of citizens to be called up to military service, it follows that for health reasons in Russia every third conscript is currently exempted from military service and the number of citizens who are to be released from call-up for health reasons continues to grow. According to Article 5.1 of Federal Law "On Military Duty and Military Service" No. 53-FZ dated March 28, 1998, citizens, at military registration, conscription, or entering military service under a contract, as well as those previously recognized as limitedly able to perform military service for health reasons, shall undergo medical examination by medical specialists: a therapist, a surgeon, a neuropathologist, a psychiatrist, an ophthalmologist, an otorhinolaryngologist, a dentist, and, if necessary, doctors of other specialties [47].

In accordance with Clause 4 of Section 1 of the Regulations on Military Medical Examinations, medical inspection refers to the examination and assessment of the state of health and physical development of citizens at the time of inspection in order to determine their suitability for military service, training (service) in certain military occupational specialties with a written opinion [48]. Doctors managing the work on medical inspection of citizens, according to the results of a medical inspection, give an opinion on the suitability of a citizen for military service in the following categories:



- A—able to perform military service
- B—able to perform military service with minor restrictions
- B—limitedly able to perform military service
- G—temporarily unable to perform military service
- D—unable to perform military service

With the presence of a diagnosis of epilepsy, according to Article 21 of the Diseases Time-Table in the Annex to the Regulations on the military-medical commission, citizens, when initially undergoing military registration and military service call-up, with epileptic seizures with a frequency of five or more times a year fall into category D (unable to perform military service). In the presence of epileptic status, with a confirmed permanent diagnosis of epilepsy, citizens fall into category D, regardless of the frequency of epileptic seizures.

With a single epileptic seizure in a history of the last 5 years or rare epileptic seizures with a frequency of less than five times a year, citizens fall into category B (limitedly able to perform military service). In cases when medical documentation confirms the established diagnosis of epilepsy in the past, but over the past 5 years epileptic seizures have not been observed, citizens fall into category B, regardless of the results of electroencephalography during the inspection.

In epilepsy, which comes out only in simple partial epileptic seizures or epileptic seizures that develop only in sleep, citizens also fall into category B, regardless of the frequency of seizures. According to Part 1 of Article 23 of the Law “On Military Duty and Military Service,” citizens who are recognized as being limitedly able to perform military service for health reasons are also not subject to military service and are exempted from military service.

With a single epileptic seizure in history (more than 5 years) or the presence of epileptiform activity, identified by the results of electroencephalography (peaks, sharp waves, all types of peak-wave complexes, polyspikes, and photoparoxysmal reaction) without clinical manifestations, citizens, at initial military registration and military service, fall into category B-4 (able to perform military service with minor restrictions and can serve in the guard and defense units of combat missile systems, communications units, radio engineering units and other units of the armed forces of the Russian Federation, other troops, and military formations).

It should be noted that Article 21 of the Diseases Time-Table does not take into account whether remission occurs on the background of continuous drug therapy or in its absence.

The presence of a seizure shall be confirmed by medical supervision, and other medical documents confirming an epileptic seizure can also be taken into account. To confirm the presence of an epileptic seizure, written evidence from eyewitnesses can be taken into account, if the description of the seizure gives grounds to consider it epileptic. At the same time, the authenticity of the signatures of eyewitnesses for epileptic seizures shall be notarized.

Article 21 of the Diseases Time-Table does not include seizures associated with the cancelation of alcohol, developed immediately after (up to 10 weeks) a brain injury caused by a brain tumor, drugs or other chemical agents, caused by somatogenically caused metabolic encephalopathies, encephalopathies caused by effects of adverse physical factors, and febrile seizures.

## 2.7 The right to driving vehicles

The state of health affects almost all aspects of human life. One of the consequences of the diagnosis of epilepsy is **a ban on driving vehicles**. According to clause 1 of Article 23 of Federal Law “On Road Safety” No. 196-FZ dated December



10, 1995, medical inspection of candidates for vehicle drivers is mandatory [49]. The receipt, replacement, and restoration of driving licenses are performed only if there is a medical certificate, which is issued after passing a medical examination in a licensed medical institution.

The presence of documented epilepsy is a medical contraindication to driving a vehicle. According to clause 1 of Article 23.1 of the Law “On Road Safety,” medical contraindications to driving a vehicle are diseases (conditions), the presence of which impedes the ability to drive a vehicle. The “List of medical contraindications to driving a vehicle,” approved by Resolution of the Government of the Russian Federation No. 1604 dated December 29, 2014, states that epilepsy is a disease of the nervous system, which is a contraindication to driving a vehicle. At the same time, this List does not indicate that epilepsy does not cease to be a medical contraindication to driving a vehicle even after termination of dispensary observation due to persistent remission (recovery) [50].

In accordance with order of the Ministry of Health and Social Development of the Russian Federation No. 302-n dated April 12, 2011, diseases accompanied by disorders of consciousness (epilepsy and epileptic syndromes of various etiologies, syncopal syndromes of various etiologies, etc.) are contraindications for admission to work related to driving a vehicle.

## **2.8 Medical secrecy**

### *2.8.1 Medical secrecy and concealment of the diagnosis*

In view of the above, a question arises about the consequences of concealing the diagnosis of epilepsy. The following should be answered in this regard:

- By virtue of Article 92 of Federal Law No. 323-FZ dated 21.11.2011 “On the basis of health protection of citizens in the Russian Federation,” personalized accounting for medical activities is the processing of personal data about persons receiving medical services. Information about persons, who receive medical services, is classified as restricted access information and is subject to protection in accordance with the legislation of the Russian Federation.
- In accordance with clauses 1 and 2 of Article 13 of Federal Law No. 323-FZ dated 21.11.2011 “On the basis of health protection of citizens in the Russian Federation” information about the fact that a citizen applied for medical care, his/her state of health and diagnosis, other information received at his/her medical inspection, and treatment constitute a medical secrecy. The disclosure of information constituting medical secrecy, including after the person’s death, by persons to whom it became known during training, working, and performing professional, official, and other duties is not allowed.
- According to Article 9 of Law of the Russian Federation No. 3185–1 dated 02.07.1992 “On psychiatric care and guarantees of the rights of citizens when it is provided” [51] information about the fact that a citizen applied for psychiatric care, his/her mental health and the diagnosis of mental disorder, and other information received during the provision of psychiatric care constitute medical secrecy protected by law.

Thus, the constituent elements of the above medical secrecy are the fact and date of application for medical care, diagnosis, treatment, status, history of the disease, information about associated diseases (sexually transmitted infections, HIV

infection, infertility, other gynecological pathology, genetic abnormalities, etc.), and history of life (adultery, homosexual orientation, sexual perversions, abortion, the concealment of true paternity in legal marriage, suicide attempts, etc.). The disclosure of this information can not only degrade the honor and dignity of patients and contribute to their discrimination in society but also cause auto-aggressive reactions (suicides). Similar consequences may also occur due to the disclosure of other diagnoses, for example, cancer and neurological, in particular epilepsy.

It should also be noted that the disclosure of information constituting medical secrecy is the basis for bringing to administrative and criminal liability. According to Article 13.14 of the Code of Administrative Offenses of the Russian Federation, disclosure of information, access to which is restricted by federal law (except for cases when disclosing such information entails criminal liability), by a person who has obtained access to such information in connection with the performance of official or professional duties shall be subject to an administrative fine of citizens in the amount of from 500 to 1000 rubles and of officials from 4000 to 5000 rubles [52]. In accordance with clause 2 of Article 137 of the Criminal Code of the Russian Federation [53], illegal collection or spreading of information about the private life of a person which constitutes his personal or family secret, without his consent, or the distribution of this information in a public speech, in a publicly performed work or in the mass media, committed by a person using his/her official position, shall be punishable with a fine in the amount of from 100 thousand to 300 thousand rubles, in the amount of the wage or salary, or any other income of the convicted person for a period of from one to two years, or by deprivation of the right to hold specified offices or to engage in specified activities for a term of from two to five years, or by forced labor for a term of up to four years accompanied by deprivation of the right to hold specified offices or to engage in specified activities for a term of up to five years or without such, or by arrest for a term of from four to six months, or by deprivation of liberty for a term of up to four years accompanied by deprivation of the right to hold specified offices or to engage in specified activities for a term up to five years.

Thus, a doctor who made and/or supervises a patient with a diagnosis of epilepsy does not have the right to disclose the diagnosis, except in cases established by the Law (such a case would be, for example, a request from a prosecutor or a judge in a specific criminal or administrative proceeding).

A different matter is the concealment of the diagnosis by the doctor who participates in mandatory preliminary and periodic medical inspections when admitting to various types of work and driving a vehicle, where he/she is individually responsible for the decision made. Here, the responsibility for concealing a diagnosis is directly proportional to the consequences of a given violation.

#### *2.8.2 Medical secrecy and a regional fragment of a unified state information system in the field of healthcare*

Issues of disclosure of medical secrecy have been developed with the introduction of a regional fragment of a unified state information system in the field of health care due to its inconsistency with the norms of modern legislation of the Russian Federation (RMIS).

RMIS as an element of the national information system created to ensure effective information support for bodies and organizations of the health care system, as well as citizens in the framework of health care management processes and its direct receipt. The development of the system is governed by the Concept of creating a unified state information system in the health sector, approved by order of the Ministry of Health and Social Development of the Russian Federation No. 364

dated April 28, 2011 [54], as well as a number of guidelines and functional requirements for individual components of the system, which are annexes to the order.

According to Article 23 of the Constitution of the Russian Federation, everyone has the right to privacy, personal and family secrets, and protection of his/her honor and good name. Everyone has the right to confidentiality of correspondence, telephone conversations, and postal, telegraph, and other communications. Under personal privacy, the Constitution of the Russian Federation and federal legislation imply noninterference in privacy, the inviolability of personal and family secrets (privacy secrets). Restriction of this right is allowed only on the basis of a court decision.

By virtue of Article 92 of Federal Law No. 323-FZ dated 21.11.2011 "On the Basics of Health Protection of the Citizens in the Russian Federation," personified accounting for medical activities is the processing of personal data about persons who receive medical services. Information about persons, who receive medical services, is classified as restricted access information and is subject to protection in accordance with the legislation of the Russian Federation.

According to Article 9 of Law of the Russian Federation No. 3185-1 dated 02.07.1992 "On psychiatric care and guarantees of the rights of citizens when it is provided," information about the fact that a citizen applies for psychiatric care, his/her mental health and the diagnosis of mental disorder, and other information obtained during the provision of psychiatric care constitute medical secrecy protected by law.

It should be noted that the above program does not provide the necessary conditions for the protection of the information it contains, which creates the prerequisites for violating the norms of current legislation. The RMIS program contains confidential information, namely: the fact and date of applying for assistance, diagnosis, treatment, mental status, history of the disease, information about associated diseases (sexually transmitted infections, HIV infection, infertility, other gynecological pathology, genetic abnormalities, etc.), and history of life (adultery, homosexual orientation, sexual perversions, abortion, the concealment of true paternity in legal marriage, suicide attempts, etc.). The disclosure of this information can not only degrade the honor and dignity of patients and contribute to their discrimination in society but also cause auto-aggressive and aggressive tendencies (including to medical staff). Similar consequences may occur due to disclosure of diagnoses, for example, oncological and neurological, in particular epilepsy.

Moreover, the information contained in the RMIS program is currently not adequately protected and can be changed, replaced, deleted, stolen, and also made public in the media, including the Internet. The presence of an electronic signature in the doctor's account does not eliminate the possibility of such violations. As practice shows, due to insufficient protection of confidential information in the RMIS program, patients repeatedly refused to be examined and withdrew consent to treatment and to the processing of personal data.

Such a discrepancy between the information system and legal requirements violates the constitutional rights of citizens to privacy, personal, and family secrets.

### **3. Conclusions**

In terms of the implementation of social rights of citizens with a diagnosis of epilepsy, there are the following problems:

1. There are no clinical guidelines on the provision of medical care to patients with epilepsy, approved by the Ministry of Health of the Russian Federation,

which makes it difficult for patients with a diagnosis of epilepsy to have access to modern treatment.

2. The current system of drug provision does not ensure the right of people suffering from epilepsy to free modern effective drugs and does not comply with the unconditional right of everyone to free medical care stated in the Constitution of the Russian Federation.
3. In employment relationships, citizens with long-term remission (drug or non-drug) fall under the same legal restrictions as people with an incurable form of epilepsy.

To date, an employer may dismiss or may not hire an employee who has been diagnosed with epilepsy or syncope condition (due to inconsistency with the position held), suggesting to an employee (if possible) employment in an alternative position (which he/she corresponds to). At the same time, contraindications to work with a diagnosis of “epilepsy” according to the list of general medical contraindications for admission to work with harmful and (or) dangerous production factors, as well as to work, during which the preliminary and periodic medical inspections (examinations) of workers are required (state and municipal services, prosecutor’s office employees, judges, etc.) are saved for life not only for patients with epilepsy and epileptic syndromes of various etiologies (G40.0–G40.9) but also for patients with syncope syndromes of various etiology.

4. Since 2013, it is impossible for citizens with a diagnosis of epilepsy to get an education in the desired profession if it is included in the established list of medical contraindications.
5. Military service (including using a weapon) is possible with a single epileptic seizure in history (more than 5 years) or the presence of epileptiform activity detected by electroencephalography, without clinical manifestations.

It is also important that the military-medical examination for epilepsy does not include seizures, which are the clinical manifestation of the acute condition of G40.5 (for example, alcohol poisoning, drugs poisoning, febrile seizures, etc.).

6. The ban on driving a vehicle remains for life, regardless of the severity of the seizures, their number and etiology (G40.0–G40.9), prolonged remission due to drug therapy, or in its absence.
7. Information insecurity in the regional fragment of the unified state information system (RMIS) violates the patients’ rights to privacy and the rights of the doctor to medical activities.

## **Conflict of interest**

The authors declare no conflict of interest.



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