

**I. M. Sopilko,**

Doctor of Law, Professor

ORCID ID: <https://orcid.org/0000-0002-9594-9280>

**T. M. Yamnenko,**

Doctor of Law, Professor

ORCID ID: <https://orcid.org/0000-0002-9040-2358>

## THE SINGLE MEDICAL SPACE IN THE PARADIGM OF ENSURING THE RIGHT TO PRACTICE IN TRADITIONAL AND ALTERNATIVE MEDICINE

National Aviation University

Liubomyra Huzara Avenue, 1, 03680, Kyiv, Ukraine

E-mails: [sopilko\\_i@ukr.net](mailto:sopilko_i@ukr.net), [tetiana.yamnenko@npp.nau.edu.ua](mailto:tetiana.yamnenko@npp.nau.edu.ua)

**Objective:** to define the term «traditional and alternative medicine», to explore the mechanism of legal regulation of traditional and alternative medicine. **Research methods:** documentary analysis and synthesis, comparative analysis, objective truth, cognitive-analytical, etc. **Results:** the most effective mechanisms for solving problematic issues related to the exercise of the right to practice traditional and alternative medicine are described and revealed. Also, a way to solve problems related to the formation of a single medical space, which should be carried out within the paradigm of medical law of Ukraine. This is important for the single medical space, for the practice of traditional and alternative medicine and for the formation of medical law. **Discussion:** the possibility of applying different doctrinal approaches to the explanation of the concepts of traditional and alternative medicine and the application of the legal mechanism to these concepts.

**Key words:** single medical space; medical law; patient rights; medical reform; the concept of traditional and alternative medicine; healer; doctor.

**Problem statement and relevance.** Despite the dynamic development of medical science, the use of traditional and alternative medicine to maintain health is widespread today. However, Ukrainian legislation does not contain rules on the legal regulation of such relations. Legal uncertainty causes the possibility of exercising rights on the basis of legislation that does not take into account the specifics of such legal relations.

In the conditions of rapid development of medical knowledge and increase in the number of patients' appeals to traditional medicine, it is important to develop mechanisms, on the one hand, to protect the interests of a person licensed to practice traditional medicine (healing).

The need for research into the provision of medical care by doctors of alternative and traditional medicine is driven by the emergence of both ethical

and legal issues for the patient. Advances in the medical field make it possible to offer solutions in almost all medical cases, but sometimes sick patients still turn to doctors of alternative and traditional medicine.

**Analysis of recent research and publications.** In jurisprudence, unfortunately, there are problems with the regulation of medical care with the use of alternative medicine, because they are almost unexplored. Only certain aspects of this problem have been the subject of research by such scientists as E. Maslov, V. Akopov, M. Malein.

**Presenting main material.** It should be noted that one of the key standards in the field of health care should be the principle of a single medical space, which requires equal access throughout the country to state-funded health care, both territorially and economically, regardless of location, the pa-

tient's financial situation or his work. Thus, analyzing the issues of traditional and alternative medicine, it is established that traditional medicine is recognized as a set of empirical knowledge accumulated by the people, which is used to diagnose and treat diseases and passed from generation to generation in each nation. At the same time, alternative medicine is the collective name of methods that claim the ability to treat (or prevent) diseases, the effectiveness and safety of which has not been proven by scientific methods. Typical examples are homeopathy, acupuncture and naturopathy. Alternative medicine is called alternative because it is often used instead of formal medicine.

Current legislation under traditional medicine (healing) means methods of rehabilitation, prevention, diagnosis and treatment, which are based on the experience of many generations of people, based on folk traditions and do not require state registration. Whereas, the World Health Organization understands traditional and alternative medicine as «a set of knowledge, skills and practices based on theories, beliefs and experiences that are an integral part of different cultures, whether they can be explained or not. to maintain health, as well as to prevent, diagnose, alleviate or treat physical and mental illness» [1].

The permitted types of medical activities do not include: treatment of cancer patients; treatment of patients with infectious diseases, in particular, venereal and infectious skin; AIDS; treatment of drug addicts; treatment of mentally ill people who need urgent hospitalization; providing an opinion on mental health; care and treatment of pregnancy complications; surgical interventions; conducting treatment sessions designed for a wide audience with the use of hypnosis and other methods of mental or bioenergetic influence [2]. Thus, in Ukraine, a doctor of traditional and alternative medicine cannot legally treat patients with diseases from this list.

Today, officially traditional and alternative medicine can be practiced by doctors who have mastered the specialization of traditional and alternative medicine and work as a doctor of traditional and alternative medicine in licensed medical institutions, or as private entrepreneurs if they have received a license from the Ministry of Health of Ukraine. The right to practice traditional medicine

(healing) have only those persons without special medical education who have received a special permit to study traditional medicine (healing), issued by the Ministry of Health of Ukraine or its authorized body [3, p. 223].

Article of Art. 74-1 of the Law of Ukraine «Fundamentals of the legislation of Ukraine on health care» [2] defines the right to practice traditional medicine (healing), which belongs to persons who do not have special medical education, registered in the manner prescribed by law as natural persons-entrepreneurs and received a special permit for practicing traditional medicine (healing), issued by the Ministry of Health of Ukraine. Information on persons who have received a special permit to practice traditional medicine (healing) (phytotherapy, chiropractic, bioenergy information therapy, acupressure, etc.) is included in the register of special permits and presented on the official website of the Ministry of Health of Ukraine.

Thus, we note that the right to practice traditional medicine and healing can be granted to a person who is registered in accordance with the procedure established by the current legislation as a natural person-entrepreneur and who is not required to have special medical education. That is, the lack of special medical education is not an obstacle to obtaining the right to medical practice in this area, which is a key point.

But this does not mean that the issue of education in this case is closed, because in the future, namely in the process of drawing up documents for classes in traditional medicine (healing), you will need to provide copies of such documents: certificates, certificates, diplomas and other documents issued in accordance with the established procedure by higher medical educational institutions of Ukraine of different levels of accreditation, institutions of advanced training and training or equivalent, which have the right to issue state documents on the sample in accordance with current legislation. They certify the level of education required for traditional medicine, which is a general requirement, and consist in mastering medical knowledge within the requirements, programs approved by the Ministry of Health of Ukraine, basics of medical knowledge

and methods of traditional medicine, as well as improving knowledge at scientific events (conferences, symposia, etc.) and courses.

It is important that the permit for a person to practice medicine in the field of traditional medicine is not a license, but a special permit to practice traditional medicine (healing).

In general, there are three reasons for deciding to engage in the activities of a traditional healer:

1) initial inclusion in the healing tradition through place of residence or family ties. In this case, existing techniques and skills are inherited, and obtaining additional education and state registration is often associated with the expansion of professional activities and the need to legalize it;

2) a sharp change in worldview that occurred as a result of psychological or physical trauma, which led to a feeling of unusual abilities. On the basis of this experience, one's own health and worldview system is created, from others only methods are borrowed that are consistent with the healer's own concepts;

3) own rehabilitation and creation on this basis of a health system [4, p. 91].

At the same time, the legislation of Ukraine determines certain conditions for obtaining a permit to practice traditional medicine (healing).

First, the right to practice traditional medicine (healing) can be granted to a person in the case of state registration of a healer as a natural person-entrepreneur.

Secondly, the activity of a traditional healer is carried out within a specific place of practice of traditional medicine (healing) with a special arrangement of such premises and obtaining a positive conclusion of the state sanitary-epidemiological examination.

Third, access to medical practice in traditional medicine (healing) can be obtained by a person who, according to medical criteria, is able to engage in relevant health activities and has received the appropriate certificate, as well as a certificate of psychiatric examination.

Fourth, the applicant must have a sufficient level of knowledge required for practicing traditional medicine (healing), as evidenced by documents issued in courses on the basics of

medical knowledge and methods of traditional medicine that meet the requirements of programs adopted by the Ministry of Health of Ukraine. In addition, the required level of knowledge of the applicant is established as a result of successful completion of the certification, which is the basis for further examination.

Fifth, the condition for obtaining a permit is an expert assessment of the applicant's healing abilities, depending on the methods of traditional medicine used by him. In turn, the «clinical stage» of testing the applicant's abilities takes place in the clinical departments of the Institution. At this stage, the traditional healer is obliged to provide the specialist of the Institution with an explanatory note describing and explaining the methods he will use [4, p. 91].

Qualification requirements for persons engaged in traditional medicine (healing), the procedure for practicing traditional medicine (healing), the procedure for issuing and revoking a special permit for practicing traditional medicine (healing) are determined by the Ministry of Health of Ukraine. A special permit for practicing traditional medicine (healing) may be revoked by a decision of the body that issued it, or by a court decision.

According to the order of the Ministry of Health of Ukraine «List of medical positions in health care institutions» from 28.10.2002 № 385, the position «doctor of traditional and alternative medicine» is included [5]. Thus, the main purpose of postgraduate training of doctors in this specialty is the training of highly qualified personnel who can combine in their practice methods of treatment of official medicine and traditional and alternative medicine.

Doctors who have already received postgraduate training in basic medical education, with at least 3 years of practical experience after completing the relevant internship (specialty «Medical Affairs», «Pediatrics») have the right to study at the specialization courses in «Traditional and Alternative Medicine». However, with the individual permission of the Ministry of Health of Ukraine). For doctors who have received basic higher medical education and postgraduate training, work experience is not taken into account.

There are different qualification requirements for doctors of traditional and alternative medicine of different qualification categories, but common for doctors of all categories is: full higher education (specialist, master) in their field of «Medicine», specialization in internship in one of the specialties «Medical Affairs» next specialization in «Traditional and Alternative Medicine». Higher categories need more work experience and advanced training (improvement courses, internships, etc.) [3, p. 224].

Thus, significant steps have been taken in Ukraine in the field of integration of traditional and alternative medicine with official medicine. To do this, create new medical schools with in-depth study of traditional and alternative medicine and organize special courses in traditional and alternative medicine in educational programs (homeopathy, herbal medicine, reflexology, chiropractic, iridodiagnosics, etc.).

It should be noted that their legal regime in the field of traditional medicine (healing) and alternative medicine should be different, and the conditions of medical care (rights and responsibilities of the healer and his supervising doctor) should be reviewed by means and methods of traditional medicine. Among the above, we draw attention to their requirement that the doctor who monitors their activities of the healer, is obliged to use objective methods of medical control and statistics of analysis of the effectiveness of medical practice in alternative and traditional (traditional but not official) medicine [6, with. 137].

Offices and centers are being set up in which qualified specialists use the methods of traditional and alternative medicine to diagnose and treat diseases. Ukraine will remain one of the leaders in the development of traditional and alternative medicine, which will increase the level of health of the population and lead to further expansion of their use of traditional and alternative medicine in rehabilitation and complex therapy of patients [7, p. 115].

**Conclusions.** Summing up, we can say that traditional medicine is recognized as a set of accumulated empirical knowledge, which is used to diagnose and treat diseases and is passed down from generation to generation in each nation. At

the same time, alternative medicine is the collective name of methods that claim the ability to treat (or prevent) diseases, the effectiveness and safety of which has not been proven by scientific methods. Typical examples are homeopathy, acupuncture and naturopathy. Alternative medicine is called alternative because it is often used instead of formal medicine.

Note that the regulatory and legal support of traditional and alternative medicine in Ukraine includes the following legal acts: Constitution of Ukraine, Civil Code of Ukraine, Fundamentals of Ukrainian legislation on health care, Orders of the Ministry of Health of Ukraine «List of medical positions in health care institutions of health» from 28.10.2002 № 385, The order of issue of the attestation-expert conclusion confirming existence at the person of healing abilities» from 23.09.2013 № 822 in edition from 21.05.2019, «About the organization of work of physical persons – businessmen who are engaged traditional medicine (healing)» from 03.16.2016 № 189, The procedure for issuing an attestation-expert opinion confirming the presence of a person's healing abilities from 23.09.2013 № 822, Qualification requirements for natural persons-entrepreneurs engaged in traditional medicine (healing) from 16.03.2016 № 189, Conditions for practicing traditional medicine (healing) from 16.03.2016 № 189 and others.

It is established that doctors who have mastered the specialization of traditional and alternative medicine and work as a doctor of traditional and alternative medicine in licensed medical institutions, or as private entrepreneurs, if they have received a license from the Ministry of Health of Ukraine for traditional and alternative medical practice.

#### **Reference list**

1. Yevtushenko V.V. Folk medicine as a component of traditional Ukrainian culture. *NAPA Bulletin*. 2019. № 3. Pp. 91–97.
2. Fundamentals of the legislation of Ukraine on health care: Law of Ukraine of 19.11.1992 № 2801-XII (date of update 16.12.2021). URL: <https://zakon.rada.gov.ua/laws/show/2801-12iText>.

3. Pokhmur-Hudym N. Analysis of the legal mechanism of public administration of folk and alternative medicine. *Collection of scientific works «Efficiency of public administration»*. 2015. Vip. 43. Pp. 220-226.

4. Vorontsova K. A person who received the right to practice folk medicine (healing) as a subject of intellectual property rights in the field of health care. *Theory and practice of intellectual property*. 2019. № 1. Pp. 86–93.

5. List of medical positions in health care institutions: Order of the Ministry of Health of Ukraine dated 28.10.2002 № 385 (updated on 10.08.2021). URL: <https://zakon.rada.gov.ua/laws/show/z0892-02?text>

6. Yamnenko T.M., Zhelyak A.A. Folk and alternative medicine in Ukraine: the mechanism of legal regulation. *Scientific works of the National Aviation University. Series «Legal Bulletin «Air and Space Law»*. 2020. № 1(54). P. 135-140. DOI: <https://doi.org/10.18372/2307-9061.54.14551>

7. Dudka V.V. Theoretical basis of the problem of state regulation of folk and alternative medicine in the scientific works of Ukrainian and foreign authors. *Investments: practice and experience*. 2012. № 4. Pp. 111–115.

### References

1. Yevtushenko V.V. Narodna medycyna yak skladova tradytsiina ukrainskoi kultury. *Visnyk NADU*. 2019. № 3. S. 91-97.

2. Osnovy zakonodavstva Ukrainy pro okhoronu zdorov'ia: Zakon Ukrainy vid 19.11.1992 № 2801-XII (data onovlennia 16.12.2021). URL:

<https://zakon.rada.gov.ua/laws/show/2801-12?text>.

3. Pokhmurska-Hudym N. Analiz pravovoho mekhanizmu derzhavnoho upravlinnia narodnoi ta netradytsiinoi medycyny. *Zbirnyk naukovykh prats «Efektyvnist derzhavnoho upravlinnia»*. 2015. Vyp. 43. S. 220-226.

4. Vorontsova K. Osoba, shcho otrymala pravo na zainiattia narodnoi medycyny (tsilytelstvom) yak sub'iekt prava intelektualnoi vlasnosti u sferi okhorony zdorov'ia. *Teoriia i praktyka intelektualnoi vlasnosti*. 2019. № 1. S. 86-93.

5. Perelik likarskykh posad u zakladakh okhorony zdorov'ia: Nakaz Ministerstva okhorony zdorov'ia Ukrainy vid 28.10.2002 № 385 (data onovlennia 10.08.2021). URL: <https://zakon.rada.gov.ua/laws/show/z0892-02?text>

6. Yamnenko T.M., Zhelyak A.A. Narodna ta netradytsiina medycyna v Ukraini: mekhanizm pravovoho rehuliuвання. *Naukovi pratsi Natsionalnoho aviatsiinoho universytetu. Serii «Iurydychnyi visnyk «Povitriane i kosmichne pravo»*. 2020. № 1(54). S. 135-140. DOI: <https://doi.org/10.18372/2307-9061.54.14551>

7. Dudka V.V. Teoretychne pidgruntia problemy derzhavnoho rehuliuвання narodnoi ta netradytsiinoi medycyny u naukovykh pratsiakh ukrainskykh i zarubizhnykh avtoriv. *Investysii: praktyka ta dosvid*. 2012. № 4. S. 111-115.

## ЄДИНИЙ МЕДИЧНИЙ ПРОСТІР В ПАРАДИГМІ ЗАБЕЗПЕЧЕННЯ ПРАВА НА ЗАНЯТТЯ НАРОДНОЮ І НЕТРАДИЦІЙНОЮ МЕДИЦИНОЮ

Національний авіаційний університет  
проспект Любомира Гузара, 1, 03680, Київ, Україна  
E-mails: [sopilko\\_i@ukr.net](mailto:sopilko_i@ukr.net), [tetiana.yamnenko@npp.nau.edu.ua](mailto:tetiana.yamnenko@npp.nau.edu.ua)

**Мета:** надати визначення терміну «народна та нетрадиційна медицина», дослідити механізм правового регулювання народної та нетрадиційної медицини. **Методи дослідження:** документального аналізу і синтезу, порівняльного аналізу, об'єктивної істини, пізнавально-аналітичний тощо. **Результати:** охарактеризовано та розкрито найбільш ефективні механізми вирішення проблемних питань, пов'язаних із реалізацією права на заняття народною і нетрадиційною медициною. Також запропоновано спосіб вирішення проблем, щодо формування єдиного медичного простору, який має здійснюватись у рамках парадигми медичного права України. Це важливо і для єдиного медичного простору, задля заняття народною і нетрадиційною медициною, і для становлення медичного права. **Обговорення:** можливості застосування різних доктринальних підходів до пояснення понять народна та нетрадиційна медицина та застосування до цих понять правового механізму.

Незважаючи на динамічний розвиток медичної науки, застосування народної і нетрадиційної медицини для підтримання здоров'я є поширеним і сьогодні. Проте, українське законодавство не містить норм щодо правового регулювання таких відносин. Правова невизначеність викликає можливість реалізації прав на підставі законодавства, що не враховує особливості таких правовідносин.

В умовах бурхливого розвитку медичних знань та зростання чисельності звернень пацієнтів до народної медицини важливим є розроблення механізмів, з однієї сторони, захисту інтересів особи, що одержала дозвіл на зайняття народною медициною (цілительством).

Потреба в дослідженні надання медичної допомоги лікарем нетрадиційної та народної медицини обумовлена виникненням як етичних, так і правових проблем для пацієнта. Досягнення у медичній галузі створюють можливість запропонувати рішення майже у всіх медичних випадках, проте іноді хворі пацієнти все ж таки звертаються до лікарів нетрадиційної та народної медицини.

**Ключові слова:** єдиний медичний простір; медичне право; права пацієнтів; медична реформа; поняття народна та нетрадиційна медицина; цілитель; лікар.

Стаття надійшла до редакції 23.05.2022