DOI:10.23888/PAVLOVJ2019271107-113

# ВЗГЛЯД НА ПРОБЛЕМУ «КОМПЕТЕНЦИИ» В СУДЕБНОЙ МЕДИЦИНЕ И В СУДЕБНО-МЕДИЦИНСКОЙ ЭКСПЕРТИЗЕ

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В статье впервые рассматривается проблема, связанная с понятием «компетенция» применительно к судебной медицине как учебной дисциплине и судебно-медицинской экспертизе – самому распространенному виду судебной экспертизы. Даны современные представления о роли права для судебной медицины, а также о предмете этой области медицинских знаний и возможностях судебно-медицинской экспертизы. Автор делает заключение, что на сегодняшний день вопрос о «компетенции» судебной медицины, к сожалению, все еще относится к разряду дискуссионных. Данное обстоятельство не позволяет согласиться с получившим определенное распространение мнением о завершении формирования судебной медицины как научной дисциплины, а также имеет негативные последствия в первую очередь для деятельности правоохранительных органов, связанной с расследованием уголовных, рассмотрением гражданских дел, дел об административных правонарушениях, т.к. сама по себе «компетенция» судебной медицины, по сути, определяет и компетенцию специалистов в области судебной медицины. Последняя же, как известно, часто определяет судебное решение.

***Ключевые слова:*** *компетенция, судебная медицина, судебно-медицинская экспертиза.*

# TO THE QUESTION OF «COMPETENCE» IN FORENSIC MEDICINE AND FORENSIC MEDICAL EXAMINATION

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In the article a problem concerning the concept of «competence» in application to forensic medicine as an educational discipline and as forensic examination, which is the most common type of legal enquiry, is first considered. Modern concepts of the role of law in the forensic medicine, of the subject of this medical field and of possibilities of forensic examination are given. The author comes to the conclusion that, unfortunately, nowadays the question of forensic medicine still belongs to the category of debatable questions. This fact does not permit to agree with a widely spread opinion stating that forensic medicine has completed its formation as a scientific discipline, besides, this opinion has negative consequences for the activity of law enforcement authorities first of all the activity associated with investigation of criminal cases, consideration of civil matters, cases of administrative violations, since the «competence» of forensic medicine in itself determines the competence of specialists in the field of forensic medicine. And, as it is known, the latter often determines the court judgment.

***Keywords****: competence, forensic medicine, forensic medical examination.*

DOI:10.23888/PAVLOVJ2019271107-113

The domestic forensic medicine (FM) despite the relatively long history (more than 200 years), is still in the stage of formation, which is evidenced, in particular, by its main entity attributes – the definition, object, content, tasks, used terms, its place in the system of medical and juridical knowledge. Today FM is distinguished not only for the frank selectivity of presentation of issues of the criminal bend, but also for the ambiguous character of some statements that gained a certain spread and determine the so called «forensic medical competence». Here, disputability of these statements not only contributes to the incorrect evaluation of juridically significant facts, but to a certain extent discredits FM as a scientific and educational discipline.

This situation results from the preeminent role of law in establishment of the truth and, as a consequence, from a direct dependence of FM on the law. It was jurisprudents who determined the «competence» of FM. However, if in some cases it is impossible to do without FM in juridical-investigative activity, it is also impossible not to take into consideration its objective potentials. A certain dilettantism of jurisprudents in regard to FM including that arising from the objectively insufficient educational background and often from its absence, is manifested by the so called «wrong» tasks that go beyond the competence limits of specialists in the given field of medicine. Thus, it is known that some time ago, jurisprudents charged FM with such tasks as establishment of the fact of a violated death and determination of its kind (murder, suicide, accident) [1], simulation of a disease, self-injury, sexual assault, pederasty… Nowadays the most significant of these «extra competence» tasks is determination of the kind and extent of harm inflicted on health (according to point 2, Rule 196 of the Russian Federation Criminal Procedure Code).

The «dependence» or «auxiliary character» of FM is reflected in the opinion that exists in «forensic medical community» according to which medicolegists will remain without job (in the sense, they will have nothing to do – *author's note*), if they will stop working to the requirements of jurisprudents, even if they are out of their competence. In this context, the question arises: «Do medicolegists lack the job that is within their competence?» It is not a secret that the absolute «eternity» of law dictates the similar eternal attraction of medicolegists to solution of law problems.

It is obvious that medicolegists themselves contributed to this problematic situation with the «competence» of FM because for a long time they were holding to a conciliatory position and did not trouble themselves with solution of «complicated» questions emerging in the jurisprudence. This is evidenced, in particular, by the name of the discipline – «Soviet Forensic Medicine» [2], and also by the unfailingly observed party principle, and by the content of all published «Soviet» and «post-Soviet» methodical materials on forensic medicine…

The following fact is highly illustrative. Just recently (from September 2001 to September 2008), for determination of the extent of severity of harm inflicted on the health, medicolegists resorted to a «Soviet» source [3] concerning determination of severity of bodily harm [4].

Up to now many statements of the forensic medical science came from the «past», they were not subject to any revision, to any changes and, in result, they do not stand up to any serious criticism. Thus, it seems frankly inexpedient to continue using the term «certification» in FM [5], although the latter appears in the form of a kind of «medical certification» in the Federal Law of RF №323-FL of 21.11.2011 «On the Basics of Health Protection of Citizens of the Russian Federation» (point 5 part 2 Rule 65) [6].

«Certification» in FM is understood both as a «medical examination conducted with the aim of expertise (military medical examination, forensic medical examination, etc.)» [6], and examination of medical objects [7], performed by «a doctor or a forensic medical examiner on the written request of investigative or juridical authorities for solution of special questions: determination of the character and extent of bodily harm…» [8].

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As it is known, certification is only a crime investigation procedure related to preliminary investigation (Rule 179 of CPC of RF). There is no «forensic medical certification» as such. In cases the certification is conducted by a medicolegist (in the law it is said – «a doctor») without an investigator (point 4 Rule 164, point 1 Rule 168 of the RFCPC), it means that he is attracted by the latter as a specialist (point 5 Rule 164, point 1 Rule 168 of the RFCPC) and helps the investigator to present the conclusion in medical terms.

A statement that forensic medical examination (FME) is nothing else but application of medicolegal knowledge for solution of issues of inquiry, investigation, court, is still universally accepted in FM. However, it is difficult to agree with such interpretation: this application of medicolegal knowledge also implies forensic medical examination, participation of a medicolegist in investigatory activities, consultation on FM questions, and educational training in FM. FM and forensic medical examination are not synonyms. If FM is a section of medicine or an educational discipline, FME (which does not exist as such, there is a concept «forensic examination» [9]) is an exclusively procedural action envisaged and carried out within the frames of law. Such understanding does not permit to agree with the name of the discipline «forensic medical examination» [10]. Good for replacement may be, for example, the term 'forensic medicine' that completely satisfies all the requirements to the name of the mentioned specialty.

Besides, forensic medicine (FM) is understood as a system of scientific knowledge, and forensic medical examination is a practical application of this knowledge. One more variant of interpretation of FME: it is a section of forensic medicine. In the educational literature on forensic medicine the authors practically do not distinguish between «competence» of FM and «competence» of FME. Thus, in the textbook on FM by G.B. Deryagin, in the section «Competence of Forensic Medicine» the following is said: «The competence of FME includes:

1. Examination or expertise of corpses in cases of violated death…

2. Examination or expertise of corpses on suspicion of violation, in ambiguous circumstances...

3. Examination or expertise of living individuals…

4. Examination or expertise of material evidence…

5. Expertise on the basis of materials of criminal and civil cases…» [12].

Unfortunately, such understanding of the competence of FM is very widely spread not only among medics, buy also among jurisprudents. This is unlikely to be associated solely with insufficient theoretical preparation of the mentioned specialists. But, on the other hand, medicolegists are responsible for their profession both from the point of view of theory and from the point of view of practice. Does the authority of the mentioned specialists not depend on the correct understanding of certain statements and on the exactness of used formulations?

Resting on the literal understanding of «competence» as «a range of questions of which a person has a good knowledge; a range of a person's authorities and rights» [13], or «a range of authorities of a person or an organization, a cluster of questions in which the given (competent) person has experience and knowledge» [14], the concept «competence» can be rather conventionally applied both to FM as to a system of scientific medical knowledge or an educational discipline and to FME as a procedural action.

The range of questions that determines the field of knowledge termed «forensic medicine» can be more exactly expressed by the concept of a «subject» of FM. The latter is understood as a range of questions studied within the frames of the subject. Actually, these «subject' questions are that what determines competence of specialists in the field of FM. Hence, the concepts of «competence of forensic medicine» and of «competence of FME» are rather conventional. The exact terms for them are «*a subject of forensic medicine»* and «*possibilities of forensic medical examination*», respectively.

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In modern textbooks and guidebooks on FM the issue of its competence either is not considered at all, or is given without elucidation, like in G.B. Deryagin's textbook, since information given in this book, does not permit to obtain a necessary idea on this issue [12]. By the way, V.L. Popov in his book «Forensic Medicine: Competence, Ethics» also leaves its title without elucidation, and considers FM exclusively as FME and its place in the structure of social institutions [15].

But in the meanwhile, «competence» of FM is the main question of forensic medical science and practice that determines its possibilities and significance for law. This «competence» actually defines the competence of specialists in the field of FM, and, if to continue further – the correctness of taken juridical decisions since everything that is most important in any profession or specialty, is based on the full-scale theoretical preparation. The quality of this preparation primarily determines success in any activity. A special attention should be given to this understanding of competence in such a specific discipline as FM.

In educational literature the subject of FM is traditionally presented as «theory and practice of FME» [16], but one may also encounter such unusual interpretation as «specific application of medical and juridical knowledge in jurisprudence and healthcare» [17]. The latter interpretation of the subject of FM could be regarded as «non-serious» and «unworthy of attention». However, this understanding appears in a textbook for students of higher educational institutions that for more than ten years has been used for preparation of specialists in the field of «forensic expertise»...

Has it ever been that FM – a medical science (without any conventional referrals to medical sciences) – included, besides medicine, also juridical issues? Acceptance of this understanding means that the doctors of the forensic medical expertise are authorized to answer not only their (medical) questions, but also juridical questions. What will remain for judges, prosecutors, investigators? But, besides, in this case the medics will have to get one more higher education – juridical one.

One more question needs discussion – «forensic medical aims» of healthcare. Since the beginning of time both the theory and practice of FM were oriented only on one aim – rendering help to law enforcement authorities. This is evidenced by the history of its formation, development and by the modern condition. All forensic medical activity, without any exceptions, is based on the interests of the court and investigation. If they have a need for forensic medical information, medicolegists will have something to do. If this need will disappear for some reasons, FM in this case will «go the way of the dodo». Healthcare surely may use the results of forensic medical activity, because, like FM, it also rests itself on medical knowledge. However, this healthcare-related use of forensic medical information in no way reflects the above-mentioned aim. FM always has one aim – to provide juridical and investigative authorities with the required forensic medical information.

Not less strange is the fact that a textbook on FM (ed. by Yu.I. Pigolkin) [18] uses the concept «subjects (plural! *author's note*) of forensic medical examination», which implies «theory and practice of forensic medical examination». The presence of several subjects in one discipline is nonsense.

The subject of FM should be understood as different medical data having certain legal significance (conventionally speaking, «for the court»). Thus, this different medical data include: bodily injuries, putrid phenomena, criteria of personal identification, elements of determination of the trauma instrument and of mechanism of bodily injuries. The most important of them are bodily injuries. Legal significance of the mentioned medical data is related not only to the criminal, but to the civil procedure, and also to legal proceedings on administrative violations.

The modern understanding of the subject of FM principally differs from that that for a long time has been existing in the forensic medical literature, in particular, the «entire human in the physiological and pathological condition» [19]. Today the subject of FM does not include problems directly related to the

DOI:10.23888/PAVLOVJ2019271107-113

psychiatric (forensic psychiatric) science [12].

The essence and the subject of the FM were very clearly declared by a maître of FM Eduard von Hofmann early in XX cent. (1901): «Forensic medicine never dissociates itself from the maternal ground of medical science, it is created by it, emerges from it and develops with it; the issues it considers and scientific statements postulated by it, always preserve purely medical character, although it is undoubted that forensic medicine primarily and even exclusively serves juridical goals» [20]. This text hardly needs commenting; it puts everything exactly in its proper place. A different matter is that the modern «innovation» in the theory of FM practically does not base itself on the historical material. Hence, incorrect ideas on the basic questions of the FM field and incorrect approaches to eliciting information of forensic medical character.

It makes a separate sense to dwell upon the ambiguity of interpretations of some concepts of FM. If a concept has several definitions differing in meanings, then how to solve questions requiring interaction of specialists of different fields of science? For instance, for a lawyer FME (correctly, *forensic examination* based on application of knowledge from the field of FM) is a *procedural action*, but for a medicolegist it is: a) a *section of FM* [21], b) *scientific-practical examination* envisaged and regulated by law and undertaken for solution of specific medical issues emerging in investigation of a crime or in suspicion of a crime [22], c) *practical implementation of the knowledge of forensic medicine* [23].

Such uncertainties in the terminology are unlikely to lead to exact understanding of the information provided by medicolegists, since the latter actually perform their activity not for themselves. Very often their activity directly determines the fate of a person (and often not of one person). There exist many examples of the court verdict being determined by a single evidence – by conclusion of a forensic expert…

## Conclusion

Nowadays, as it is seen from the above data, «competence» of forensic medicine is unfortunately still remains a debatable issue. This fact does not permit to agree with the widely spread opinion about completeness of formation of forensic medicine as a scientific discipline [24],besides, it has negative consequences first of all for the activity of law enforcement authorities associated with investigation of criminal cases, consideration of civil matters, cases of administrative violations, since the «competence» of forensic medicine in itself determines the competence of specialists in the area of forensic medicine. And, as it is known, the latter often determine the court judgment.

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DOI:10.23888/PAVLOVJ2019271107-113

**Дополнительная информация [Additional Info]**

**Конфликт интересов.** Автор декларирует отсутствие явных и потенциальных конфликтов интересов, о которых необходимо сообщить, в связи с публикацией данной статьи. **[Conflict of interests**. The author declares no actual and potential conflict of interests which should be stated in connection with publication of the article.]

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**Цитировать:** Бойко И.Б. Взгляд на проблему «компетенции» в судебной медицине и в судебно-медицинской экспертизе // Российский медико-биологический вестник имени академика И.П. Павлова. 2019. Т. 27, №1. С. 107-113. doi:10.23888/PAVLOVJ2019271107-113

**To cite this article:** Boyko IB. To the question of «competence» in forensic medicine and forensic medical examination. *I.P. Pavlov Russian Medical Biological Herald.* 2019;27(1):107-13. doi:10.23888/PAVLOVJ2019271107-113

**Поступила/Received:** 12.05.2018
**Принята в печать/Accepted:** 15.03.2019