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Participation of local self-government bodies in licensing of individual entrepreneurial activities in the healthcare sector

Ruslan Dyomin*

Postgraduate Student

Academy of Labor, Social Relations and Tourism

03187, 3-A Kiltseva Road, Kyiv, Ukraine

<https://orcid.org/0000-0002-9430-3058>

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Abstract

Political process management in the healthcare sector is one of the main factors influencing the economic, social, and cultural development of a country, its international prestige and competitiveness in the world, and requires constant development in search of new ways, mechanisms, and methods of improvement. The study aims to reveal and deepen the scientific, theoretical, and methodological foundations of licensing, and their role in the organisation of local self-government in terms of implementing the State policy in the healthcare sector. The object and subject of the study were selected using the dialectical method substantiating its purpose and objectives; the methods of analysis and generalisation were used to provide the necessary justifications for defining the essence and content of the State healthcare policy, clarifying the competence of public authorities and local self-government bodies about compliance with healthcare requirements, considering the powers of public authorities and local self-government bodies in the field of public healthcare, and considering the focus and specific features of the State healthcare policy in the field of healthcare. The problem of the issue has been studied and conceptual directions for its solution have been built by filling the relevant gaps in the legislative

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*Corresponding author

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framework. Several Laws of Ukraine and resolutions of the Cabinet of Ministers of Ukraine regulating the management of the political process in the healthcare sector are analysed. The tendency of changes in legislation to ensure proper control over the quality of healthcare services is revealed. The author identifies several restrictions in the list of bodies authorised to issue relevant licences for individual entrepreneurial activity in the healthcare sector. The author outlines the structure of the system of regulatory management on the issue of exercising the constitutional right of citizens to independent individual economic activity. The author proves that licensing is a necessary instrument of state control over the quality of medical services and patient safety. The author proposes to grant representative local self-government bodies the right to consider and make decisions at their meetings on issuing or refusing licensing documents in the field of economic activity related to healthcare. Based on the results of the study, the author identified gaps in the current legislation of Ukraine relating to public health protection and formulated relevant recommendations for its improvement

Keywords: public protection; competent authorities; entrepreneurship; individual activity; private entrepreneur; political management system; legal documents; local authorities

Introduction

The implementation of entrepreneurial activity in Ukraine is a hot topic due to the existing international and domestic factors influencing the country's economic well-being. In particular, it is worth noting the actualisation of the processes of forming small and medium-sized businesses to support the country's economy, which is in a state of forced active hostilities and, therefore, needs additional capital to expand the state's priority areas. Accordingly, the development of entrepreneurs and individual entrepreneurship is vital at the current stage of Ukraine's formation as a sovereign state with a focus on the European path of development in all spheres of society. According to the current trend, for the country to support individual economic activity, an important issue is strict observance of the constitutional right of citizens to implement their economic direction within the framework of established legal and regulatory norms (Oliynyk, 2020). Here, it is necessary to focus on the compliance of the authorised bodies with the system of legal regulation of

relations in the field of healthcare in a democratic society, as well as fair and equal treatment of all parts of the implementation of such a norm. Regular critical analysis of the legal framework governing the exercise of the right to economic activity makes it possible to correct the shortcomings as soon as possible. From the point of view of S. Ishchuk (2018), dynamism, as one of the factors of such a system of regulatory and legal regulation of economic activity, requires systematic analysis and review of the main postulates, which will allow maintaining the fair exercise of the constitutional rights of Ukrainian citizens.

As part of a systematic study of the legal regulation of entrepreneurial activity, A. Nemchenko *et al.* (2020) defined the healthcare sector as the state's guarantor of the constitutional right to healthcare, medical care, and insurance. Alongside, according to N. Baldych *et al.* (2019), the implementation of public economic activity in the medical sphere is an important aspect of ensuring the integrity and sustainability of the national

security construct of Ukraine and the health of the population, which is its direct component. In this regard, O. Muzyka-Stefanchuk *et al.* (2020) note that the licensing process for such activities is critical to the exercise of the state's right to sovereignty and protection of the population in the provision of healthcare services that meet quality standards. This issue, according to M. Godun (2020), should also be considered in terms of studying the processes of national economic stability and the relationship of an open legislative process to the exercise of the public right to economic activity, including in the healthcare sector.

According to M. Durman (2020), following the trend of the domestic political spectrum of decentralisation and changes in the relationship in the system of power of public administration, it is worth highlighting the aspect of the participation of local governments in several differential processes of public opinion. Thus, in line with the expansion of the competence of local self-government bodies, it is necessary to analyse the place of these structural elements of the exercise of power within the framework of the formation and regulatory regulation of business in Ukraine. As noted by V. Ivanenko and V. Kurepin (2022), following the outlined trends in the factors influencing the economic situation in the country, it is necessary to analyse the regulatory framework of the Ukrainian legal system following the martial law and the variability of the expansion of powers of local authorities during this period. Given the analysis of these publications, the current legislation of Ukraine does not provide for several force majeure circumstances such as martial law or armed aggression by neighbouring countries, and thus this area requires detailed research.

To reveal and deepen the scientific, theoretical and methodological foundations of licensing and their role in the organisation of local

self-government in the implementation of the State policy in the field of healthcare, the following tasks are to be addressed: definition of the essence and content of the State policy in the field of healthcare; clarification (allocation) of the competence of public authorities and local self-government in the field of healthcare; consideration of the powers of public authorities and local self-government in the field of public healthcare; coverage of the direction and peculiarities of the state policy in the field of public health at the local level.

Materials and Methods

The integrity of the methodological basis of this scientific study is substantiated by the use of a synthesis of qualitative and quantitative methods within a single scientific paradigm. Since the study is based on the analysis of the texts of legal acts regulating relations within the framework of participation of local self-government bodies in licensing individual entrepreneurial activity, the research is based on logical and historical methods of cognition, which allowed to form a critical vision of the evolutionary path of regulation of the legal framework of the study. Moreover, the methods of systematisation, generalisation and formalisation were used to form the content of the research work and the stages of analysis of legal facts and norms.

Based on the scientific and critical interpretation of the research sources, the author analysed the main postulates related to the topic of the study and applied the method of data analysis. The methods of induction, deduction, and scientific abstraction were used to formulate a causal relationship between the basis of the study, i.e., regulatory texts, and the academic literature. Thus, a critical view of the research topic was formed and, using the method of abstraction, the main areas of the study were outlined, and the necessary facts were highlighted, which further

helped to describe the research results. To study such a multi-component phenomenon as the system of legislation of Ukraine, a structural-functional method was used, becoming the basis for studying this structure by dividing it into systemic components.

The study's aim and objectives were based on the legal acts that are part of the legal system for the implementation of the rights and freedoms of Ukrainian citizens and are directly related to the subject matter of the study, namely, outlining the factors of individual entrepreneurial activity in the healthcare sector and the possibility of licensing such activities by local governments. Thus, the study analysed numerous Laws of Ukraine and resolutions of the Cabinet of Ministers of Ukraine regulating the above provisions. Constitution of Ukraine (1996), Law of Ukraine "On Fundamentals of the Legislation of Ukraine on Health Care" (1992), Law of Ukraine "On Local Self-Government in Ukraine" (1997), and Law of Ukraine "On Licensing of Economic Activities" (2015) were included into study basis.

At the same time, the studies of I. Demchenko (2019), A. Nemchenko *et al.* (2020), and O. Muzyka-Stefanchuk *et al.* (2020), highlight the construction of systematic and thorough legal regulation of business activity in Ukraine and the process of exercising the constitutional right to freedom of economic activity, were addressed. To formulate the content of the research work and the stages of analysis of legal facts and norms, the systematisation, generalisation, and formalisation methods were used.

Results and Discussion

The healthcare sector in Ukraine is regulated by the relevant legal acts that form the system of state legislation of the relevant sector of political administration. As noted by A. Nemchenko *et al.*

(2020), this systematic construct includes five levels of legislative regulation, namely:

- ✓ the inalienable right to healthcare, medical care and medical insurance recognised by Article 49 of the Constitution of Ukraine (1996);
- ✓ regulations that reflect the specifics of healthcare regulation following a particular area of law: Civil Code of Ukraine (2003), Code of Ukraine on Administrative Offenses (1984) etc.;
- ✓ The baseline law regulating the fundamentals of healthcare activities, namely the Law of Ukraine "On Fundamentals of the Legislation of Ukraine on Health Care" (1992);
- ✓ regulation of certain areas of medical activity in Ukraine through the approval of special regulations;
- ✓ acts that fall within the competence of central and local state executive authorities (approved by the President of Ukraine, the Cabinet of Ministers of Ukraine, etc.).

I. Demchenko (2019), referring to several academic studies in the field of identification and formation of the modern classification of healthcare legislation, emphasises that there is currently no single generally accepted systemic view of the problem for several reasons. First of all, there are several factors and legal acts that affect the extensive system of medical activity in Ukraine. This, in turn, is prompted by a wide range of features and contradictions of the system itself, as it is branched and rather complex, which makes its regulation multicomponent and its implementation multilevel.

According to the outlined system of regulation of the healthcare sector in Ukraine, the issue of participation of local self-government bodies in licensing individual entrepreneurial activity in this area is multicomponent due to the multi-level governance, as noted by S. Dubinsky (2016). The priority is to identify the main legal

acts regulating the competence of local self-government bodies and their place in the process of licensing entrepreneurial activity.

The basis of the regulatory framework for the healthcare sector is the Law of Ukraine “On Fundamentals of the Legislation of Ukraine on Health Care” (1992, November), last amended on 27.10.2022, which identifies several specific definitions and norms that allow for a thorough legal analysis based on the official legal framework. The Law regulates the concept of a healthcare institution, forming a definition based on the legal understanding of a legal entity of any form of ownership that carries out activities in the field of healthcare, providing healthcare services to the population. Such activities must be officially registered and authorised under a licence issued to the person.

Therefore, a licence to carry out medical activities is a necessary prerequisite for the implementation of any type of medical treatment that has a direct impact on public health. The Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Accreditation of Healthcare Institutions” (1997, July) as amended on 28.04.2023 provides a clear understanding of the accreditation process, which is defined as the provision of official regulatory recognition of the right to conduct medical activities to a healthcare institution and its compliance with all legal requirements. O. Muzyka-Stefanchuk *et al.* (2020) describe a fundamental difference between the concepts of licensing and accreditation, based on the existing legal framework, and define licensing as the process of identifying a legal entity as fully ready to carry out relevant activities in a particular area. This means that the registration has not revealed any regulatory deficiencies or violations that could prevent state registration. Moreover, accreditation has a wider range of requirements and norms and therefore means a process of

deeper verification of a legal entity’s compliance with certain quality standards of services provided by the state.

According to Art. 17 of the Law of Ukraine “On Fundamentals of the Legislation of Ukraine on Health Care” (1992, November), economic activity in the field of health care directly depends on the availability of a licence for such activity, and therefore licensing is the basis of any medical practice in Ukraine. At the same time, the Fundamentals of the Legislation of Ukraine on Health Care is the fundamental legal act that regulates and classifies medical care and forms the basis for understanding medical activities as a business practice in Ukraine. In addition, this law forms an understanding of the political management of the healthcare sector and regulates such state activities as financial and logistical support of healthcare, state control and supervision, privilege policy, etc.

Given that the above-mentioned legal acts completely regulate the state provision of certain types of healthcare facilities with the necessary material, technical and financial resources, the regulation of the healthcare sector in Ukraine is multi-level, and therefore involves public authorities and their respective structural units. This applies to both public and private healthcare facilities, as they are equally subject to regulatory checks for compliance with state standards. To understand the role of local self-government bodies in the healthcare system, in particular in the process of licensing individual entrepreneurial activity, it is necessary to formulate the structure of power within this topic.

N. Tkachova (2018) notes that the health care system, given its social function, is a social need and is characterised by several approaches to its understanding. Public administration in the healthcare sector can be identified using a dichotomous approach, i.e., divided into interrelated

characteristics, namely the mechanism for exercising the right to power and the form of such activity to govern society. At the same time, the management of such structures is aimed at implementing the internal management component, namely, the organisational structure of a medical institution, which is both a static and a dynamic phenomenon. According to the topic of the study, namely, the regulatory regulation of individual entrepreneurial activity, it should be noted that the medical system is divided into areas of interconnection, namely, the structure that provides for the process of information exchange between its subjects, which are public administration bodies and business.

Public administration in the field of healthcare is a set of measures aiming to ensure accessibility, quality, and effectiveness of medical care to the population of the country, carried out by the state based on legislation and healthcare strategy. According to the Constitution of Ukraine (1996, June), such activities can be identified as the focus of the state and its structural units on preserving public welfare through the realisation of the individual's right to adequate medical care, health insurance and health protection. Such activities to provide society with an adequate level of medical services are manifested in the regulatory regulation of all public and private medical institutions and especially individual entrepreneurial activity in the field of healthcare.

The specifics of public administration in the healthcare sector in Ukraine are characterised by several factors that depend on the political will of the state, the public vision of the healthcare sector, the country's foreign policy (and thus the adaptation of state regulation of certain areas of society to international standards), as well as several domestic features and unforeseen situations (for example, the COVID-19 pandemic or special natural phenomena that can have a massive

impact on public health). Ukraine has been gradually implementing a range of policy decisions related to the decentralisation process, which involves the transfer of most powers from the central level of government to local authorities, but this is not enough. The healthcare sector is also affected, requiring more efficient and transparent management and better-quality healthcare on the ground.

The main goal of the decentralisation reform was to improve the effectiveness of the implementation of social rights and freedoms of citizens, and thus support the development and well-being of the country's living environment. An important aspect of the reform of the country's power system was the transfer of several powers from central to local authorities, which allowed for faster and more efficient decision-making. This was possible for several reasons: local authorities' understanding of regional issues, which was limited at higher levels of decision-making; and the actual acceleration of the exercise of power, as decisions on changes and implementation of proposals within the region are considered locally and, accordingly, adopted much faster. The reform allowed local authorities to exercise their powers more effectively and enabled society to form its vision of the region's existence (Law of Ukraine No. 562-IX... (2020, April)).

Decentralisation, and thus the empowerment of local authorities, as enshrined in the current Law of Ukraine "On Local Self-Government in Ukraine" (1997, May) with the current version of 31.03.2023, has several strategic advantages for the current healthcare system and legal entities licensed to operate in this area. Primarily, this means bringing the political decision-making body in the region closer to the public, which means improving the quality of healthcare services for the population, being able to regulate such activities and making regulatory approval of certain issues available to businesses, i.e. solving

important problems on the ground. An important element of decentralisation is local financial support, which brings many benefits. This means that public healthcare institutions will have more funding opportunities, and as a result, the technical base and qualification level of doctors will increase. The main factor of positive changes in the context of decentralisation of entrepreneurial activity of individuals may be an increase in the efficiency of decision-making systems and thus a reduction in bureaucracy. In addition, decentralised funding allows local governments to make decisions quickly and efficiently at the local level. Another beneficial element of decentralisation is the improvement of healthcare facilities through the development of local infrastructure, urban development through new buildings and the opening of potential medical practices to private entrepreneurs.

Determination of the regulatory framework for the establishment of individual entrepreneurial activity in Ukraine provides for the implementation of the constitutional freedom of a citizen and the right to engage in a certain type of activity. S. Ishchuk (2018) notes that civil society in Ukraine is not complete without the implementation of freedom of entrepreneurship and a clear regulatory framework for the establishment of such a legal entity in public relations. Considering the abovementioned, the peculiarities of the regulatory law on economic activity in Ukraine provide for clear signs and actual requirements for the process of exercising the right of a person to entrepreneurial activity, namely:

- ✓ regulatory and legal consolidation of the rights and freedoms of a person in the field of civil activity related to the realisation of relevant benefits;
- ✓ the presence of a material and spiritual component of the existence of goods that involve the performance of a certain type of work, sale or production of products, etc;

- ✓ free access to the described benefits and the possibility of using them following the law;
- ✓ fixed standards of requirements from a person in this area;
- ✓ consolidation of the state's responsibilities in the economic sphere and business practices in particular (Oliynyk, 2020).

According to the aforementioned regulations and studies, individual entrepreneurial activity is a type of economic activity that involves the independent conduct of economic activity by an individual entrepreneur to make a profit. In other words, an individual entrepreneur is a person who independently manages a business, engages in entrepreneurial activity, does not have the status of a legal entity, and bears certain responsibility for actions and financial obligations. Individual entrepreneurial activity may include various types of activities, such as trade, services, production, transportation, provision of medical services, etc. The activities of an individual (private) entrepreneur are fully regulated by the state, namely the current Law of Ukraine "On Entrepreneurship" (1991, February) with the current version as of 11.02.2022. This law defines entrepreneurship as an independent activity for which the entrepreneur is fully responsible by the individual entrepreneur who carries out such practice by manufacturing or selling products, providing services, performing certain works, etc.

Individual entrepreneurial activity is defined by law and regulated by the state policy of Ukraine. State authorities and, following the increasing decentralisation trends, local governments, can partially influence individual entrepreneurs by introducing several policy instruments through the exercise of their powers. For example, state authorities may establish and amend business rules and obligations of such entrepreneurs, as well as control their activities after approval of a licence. Local governments may

manage individual entrepreneurs by providing appropriate conditions for their activities, developing, and implementing programmes for the development of small and medium-sized businesses at the local level, providing consulting and information services, etc. However, the management of individual entrepreneurs should not result in excessive administrative pressure or corruption schemes. The regulation of individual entrepreneurs should be based on the principles of democracy, the rule of law and the protection of the rights and interests of citizens, as enshrined in the Constitution of Ukraine (1996, June).

When considering the licensing of individual entrepreneurial activity in the field of healthcare, the Law of Ukraine "On Licensing of Economic Activities" (2015, March) as amended on 31.03.2023 and the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Licence Terms for Conducting Business Activities in Medical Practice" (2016, March) as amended on 29.04.2023 will be the most important legal acts. First of all, it is worth noting that, according to the above-mentioned regulations, medical activity is an economic activity that involves any sale of services, products, trade, or performance of certain types of work. Therefore, medical activity is the implementation of the licensee's ability to carry out one of the described activities following the current legislation of Ukraine. The licensee here is a business entity that has received a relevant document on the regulatory framework for conducting business activities, i.e. a licence (Law of Ukraine No. 222-VIII... (2015, March)).

The Law of Ukraine "On Licensing of Economic Activities" (2015, March) forms the basis for the practice of licensing several activities in the country that require regulatory approval. According to Art. 3 of the Law, the state policy in the field of licensing has its fundamental principles, namely the existence of a unified system of licensing

approvals, a consolidated list of types of economic activities for which a licence is required, an exhaustive list of documents for legal licensing and a list of specialised state authorities designated by the Cabinet of Ministers of Ukraine that may conduct licensing. Following Article 7, paragraph 15 of the Law, medical practice is a sphere of economic activity that is subject to licensing.

According to the Law of Ukraine "On Licensing of Economic Activities" (2015, March), licensing activities for individuals and legal entities are carried out by an executive body designated by the Cabinet of Ministers of Ukraine or a specially authorised executive body of local councils for licensing certain types of economic activities. Under the current system of public administration in Ukraine, there is no single authority responsible for issuing licences for all types of business activities. This is partly because each of these activities is quite specific and requires special skills and abilities, and therefore, the decision to issue licences should be made by a body competent in a particularly narrow area of social relations.

The Law of Ukraine "On Licensing of Economic Activities" (2015, March) stipulates that economic activities can be licensed by both higher and local executive authorities, but their political will varies. Entities licensed by any higher state authority, such as the State Service of Ukraine on Medicines and Drugs Control, which licenses, inter alia, the production of medicines, may operate throughout Ukraine. Licensing by local authorities gives the right to operate only within the competence of these authorities.

Thus, local governments in Ukraine may be authorised to issue licences for business activities within their competence. In particular, such powers may be delegated to the executive committees of city, district and regional councils. Within their competence, they may issue licences for certain

types of business activities that do not require special licensing by the relevant central authorities. Trade and catering commissions may issue licences for trade and catering activities within the relevant regional structure, such as a particular oblast. Land market commissions regulate the issuance of licences for land works and other land use activities. It is important to note that the powers of local governments to issue licences for business activities are limited and defined by law. Local governments may issue licences only for those activities that do not require special licensing by the relevant central authorities and within their competence. However, according to Ukrainian law (Law of Ukraine No. 222-VIII... (2015, March)), the medical and healthcare sector is a special and highly regulated niche in the country's economy, therefore, licences for medical practice must be issued by higher state authorities. Thus, local governments do not have sufficient competence to issue such documents.

According to the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Licence Terms for Conducting Business Activities in Medical Practice" (2016, March), medical practice in Ukraine is a regulated and structured activity. Clause 5 of the General Part of this document clearly states that a licence applicant shall apply for a licence to the licensing authority in the manner prescribed by part one of Article 10 of the Law of Ukraine "On Licensing of Economic Activities" (2015, March). The lawfulness of such actions is also very clearly regulated contains a sample form to be filled in for submitting such an application and a detailed list of all requirements for obtaining a permit to legally carry out medical activities. Currently, there is no single regulatory authority that would issue licences for a wide range of activities, so healthcare activities are very broad and have many different directions. A separate licensing authority with the

authority to approve such activities is appointed for each territory for which a permit is required.

In general, the Law of Ukraine "On Licensing of Economic Activities" (2015, March) stipulates that a person may carry out general or specialised medical practice, as well as dental activities only after obtaining a licence. For these specialities, the licensing authority is only the Ministry of Health of Ukraine, located in Kyiv.

Consequently, local governments are not entitled to grant certain types of licences, including licences to conduct healthcare activities for persons who will carry out direct activities aimed at treating or otherwise interfering with the health of citizens. However, following the Law of Ukraine "On Local Self-Government in Ukraine" (1997, May) as amended on 31.03.2023, local governments are granted a range of powers in the areas of education, sports, and healthcare. According to Art. 32 of this law, local governments have the right to participate in the licensing of individuals and legal entities in the healthcare sector and to submit proposals to the relevant licensing authorities for individual entrepreneurial activity in the healthcare sector. At the same time, regional medical councils may issue permits for certain medical practices, but they will be limited and must be supported by a licence from the relevant higher state authorities.

The licensing issue needs to be amended to eliminate all misunderstandings and conflicts, which in turn are put before the Ministry of Economic Development (Kovbasiuk, 2011). Furthermore, an important aspect is the issuance of licences to legal entities and individuals in the context of the introduction of martial law in the country, which was introduced on 24.02.2022 by the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" (2022, February). According to the legal understanding of martial law, it is a special legal regime applied

to a certain territory or the entire country within the borders recognised by the international community and the Constitution of Ukraine in the event of a full-scale invasion or threat of such an act and is valid for a specified period. Martial law implies a change of political forces in the country, i.e., granting local, regional, and supreme authorities of Ukraine a special status and powers that will be used to preserve the territorial integrity and sovereignty of the country. However, there is currently no regulatory framework for special procedures or instruments that would apply to the issuance of licences under martial law or other emergencies. The Resolution of the Cabinet of Ministers of Ukraine "On the Suspension of the Terms of the Provision of Administrative Services and the Issuance of Permission Documents" (2022, February) is a legal act regulating the terms of provision of certain administrative services, including the issuance of licences. According to this resolution, all terms for issuing licences and submitting reporting documents are levelled out during martial law. Therefore, although the structure of the licence approval system does not change significantly, the timeframe for accepting documents for consideration and approving them or declaring a refusal to issue a licence may be slightly extended by the State Regulatory Service of Ukraine (2022), but the procedure remains bureaucratic.

Thus, the participation of local governments in licensing enterprises operating (providing services) in the healthcare sector will minimise the time required to obtain the relevant licences and ensure closer cooperation on the ground. Achieving a higher level of cooperation between business representatives and local authorities is the key to the development and quality of service provision or implementation of the public healthcare system.

E. Bekirova (2006) studied the legal regulation of certain types of economic activity and

emphasised licences as an element of the legitimacy of the subject of this activity; conditions for conducting independent entrepreneurial activity; grounds for obtaining the right to conduct economic activity requiring authorisation; elements of the mechanism for implementing the constitutional right to conduct entrepreneurial activity; the state instrument for regulating economic activity.

According to A. Kashpersky (2011), licensing has an administrative and legal nature, which provides special legal capacity by legitimising the capacity of business entities in the field of local prohibitions, as it has its principles of organising managerial influence and is carried out through the organisation of administrative approvals using administrative procedures. According to I. Pastukh (2005), licensing should be introduced as a system of legal procedures for legally established types of economic activity, thus establishing legal boundaries for its implementation, providing for control over this activity and the need to terminate it on certain grounds by the competent authorities. V. Siverin (2010) emphasised that many services in public places are related to the need for security, so it is appropriate to call them permissive, and licensing was called permissive services, which he proposed to classify as a legislative act (licence) that has legal consequences.

When analysing the licensing studies of Ukrainian scholars, it should be noted that their work is based on the now-invalid Law of Ukraine III "On Licensing of Economic Activities" (2015, March), but the individual aspects covered by them still require attention currently. The foregoing shows that researchers focused on the licensing of economic activities in the healthcare sector and tried to distinguish it as a separate branch. However, they did not consider the issue of empowering local governments to license such types of economic activity. This is understandable, since

at the time of these studies, the issue of decentralisation of power in Ukraine was not considered at all. As practice shows, several conceptual aspects for the development of the procedure for licensing individual entrepreneurial activity by local authorities can be distinguished from the global procedure of decentralisation of power.

B. Panda *et al.* (2016) note that decentralisation is the process of transferring power, authority, resources, functions, and responsibilities for service delivery from the central government to lower-level institutions in the political-administrative structure. Power is the ability to influence people, while authority is the power that is granted for a specific purpose. In the context of public health governance, the latter is more commonly mentioned than the former. Decentralisation or local decision-making, is often understood to be an important means of improving service delivery. Increased efficiency and effectiveness, accountability, responsiveness, community participation, integration of services and intersectoral coordination are considered key benefits of decentralisation. In addition, it is argued that co-management will be knowledge-based, promote decision-making at the point of service delivery, improve direct communication between clients and decision-makers, and ensure accountability.

The search for affordable solutions, as expressed by I. Khozhylo *et al.* (2020), for local authorities to exercise their powers in the healthcare sector should aim to reform the conditions of decentralisation of power. The network of reformed financial institutions owned by local governments currently stands at around 10,000 across Ukraine, and structural and functional changes will need to be implemented in stages. As almost 80% of healthcare services are provided at the local government level, the powers of local governments (own and delegated) need to be expanded.

Thus, the issue of licensing economic activities in the healthcare sector has been studied and improved over time. The Law of Ukraine "On Licensing of Economic Activities" (2015, March) is the current document regulating, in particular, the licensing of individual entrepreneurial activity. However, this document does not contain any information on local self-government bodies as the ones that grant the right to conduct economic activities in the healthcare sector.

Given that the role of local governments in the implementation of healthcare policy has changed significantly since the start of decentralisation and healthcare reform. Local governments are the guardians of healthcare networks, which now improve the quality and accessibility of healthcare services. At the same time, the transition to new healthcare models did not happen overnight, and this process is ongoing. Therefore, allowing representative bodies of local self-government to consider and make decisions at their meetings on the issuance or refusal to issue licensing documents in the field of economic activity related to healthcare will significantly improve the level of healthcare services. After all, the public health system carries out the main activities in the field of healthcare and is aimed at preserving both the population as a whole and the individual health of individuals.

Conclusions

The structure of the existing system of regulatory management of the issue of exercising the constitutional right of citizens to independent individual economic activity was outlined in the study. The algorithm of management of such a system and the corresponding hierarchical division of state regulatory legal acts regulating the study topic were identified. The author emphasised the importance of obtaining relevant documents and obtaining a licence from the authority authorised in

a particular field of activity within the framework of conducting independent activities which have an impact on the life and health of society. A positive aspect of the study of the influence of local governments on obtaining a licence was the process of decentralisation and expansion of powers of local authorities within the state system of governance. Participation of local governments in licensing individual entrepreneurial activity in the healthcare sector was found to be an important element of regulation of this sector in Ukraine. Licensing is a necessary instrument of state control over the quality of medical services and patient safety. At the same time, it is important to consider that the involvement of local governments in licensing should be properly regulated by law, as well as ensure transparency and accountability of the authorities to citizens. In this regard, to ensure the effective participation of local governments in licensing, it is necessary to ensure an adequate level of funding and staff qualifications, as well as to conduct continuous monitoring and evaluation of the results of the work of local governments in this area.

The study of local self-government bodies in the course of exercising their powers in the

healthcare sector has established the need to provide them with the opportunity to consider and make decisions at their meetings on the issuance or refusal to issue licensing documents in the field of healthcare-related economic activity. The processes of interaction of subjects in the course of licensing should be enshrined in laws and regulations to implement and control the state policy in the field of healthcare.

The study of the existing legislative framework in this area revealed certain conflicts of legal acts that may serve for a more detailed and thorough study of licensing in the healthcare sector provided by local governments, to further develop methodological recommendations for its improvement and bringing it in line with the current legislation of Ukraine. The simplified procedure for obtaining a licence by entities operating in the healthcare sector during military aggression by neighbouring countries should be further studied.

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Conflict of Interest

None.

References

- [1] Baldych, N., Hnydiuk, N., & Trutkovsky, Ts. (2019). *Educational research needs of representatives of local self-government bodies of Ukraine: Analytical report*. Strasbourg: Council of Europe.
- [2] Bekirova, E.E. (2006). *Legal regulation of licensing of the certain kinds of commercial activities*. (PhD thesis, Institute of Economic and Legal Research of National Academy of Sciences of Ukraine, Donetsk, Ukraine).
- [3] Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.
- [4] Code of Ukraine "On Administrative Offenses". (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.
- [5] Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.
- [6] Decree of the President of Ukraine No. 64/2022 "On the Introduction of Martial Law in Ukraine". (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/64/2022#Text>.

- [7] Demchenko, I.S. (2019). Classification of health care legislation. *Scientific Notes of Taurida National V.I. Vernadsky University. Legal Sciences*, 30(6), 7-13. doi: [10.32838/2707-0581/2019.6/02](https://doi.org/10.32838/2707-0581/2019.6/02).
- [8] Dubinsky, S.V. (2016). [Problems of ensuring the quality of medical services industry of Ukraine](#). *European Vector of Economic Development*, 1, 51-59.
- [9] Durman, M.O. (2020). Regulatory instruments of local government. *Scientific Bulletin: Public Administration*, 1, 84-96. doi: [10.32689/2618-0065-2020-1\(3\)-84-96](https://doi.org/10.32689/2618-0065-2020-1(3)-84-96).
- [10] Godun, M.O. (2020). [Administrative and legal regulation of entrepreneurial activity](#). (Master's thesis, Sumy State University, Sumy, Ukraine).
- [11] Ishchuk, S. (2018). Specific constitutional frameworks for the functioning of civil society in Ukraine: Freedom of enterprise activity. *ScienceRise: Juridical Science*, 1, 11-17. doi: [10.15587/2523-4153.2018.127354](https://doi.org/10.15587/2523-4153.2018.127354).
- [12] Ivanenko, V.S., & Kurepin, V.M. (2022). [Local authorities under martial law: Powers and cooperation of military administrations with local governments](#). In *Legal basis for the organization and exercise of public power: Collection of theses of the 5th international scientific and practical conference, dedicated to the bright memory of Doctor of Legal Sciences, Professor, Academician-Founder of National Academy of Sciences of Ukraine, the first Chairman of the Constitutional Court of Ukraine Leonid Petrovych Yuzkov* (pp. 148-149). Khmelnytskyi: Leonid Yuzkov Khmelnytskyi University of Management and Law.
- [13] Kashpersky, A.V. (2011). [Administrative and legal status of the subjects of licensing of economic activity in Ukraine](#). (PhD thesis, Kharkiv National University of Internal Affairs, Kharkiv, Ukraine).
- [14] Khozhylo, I., Nadyuk, Z., Antonova, O., Tarasenko, T., & Serohina, T. (2020). [Local self-government in the focus of the medical reform in Ukraine: Analysis of powers](#). *Theoretical and Empirical Researches in Urban Management*, 15(2), 22-38.
- [15] Kovbasiuk, Yu.V. (Ed.). (2011). [Encyclopedia of public administration](#) (Vol. 1). Kyiv: National Academy of Public Administration, Office of the President of Ukraine.
- [16] Law of Ukraine No. 222-VIII "On Licensing of Economic Activities". (2015, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/222-19#Text>.
- [17] Law of Ukraine No. 280/97-VR "On Local Self-Government in Ukraine". (1997, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>.
- [18] Law of Ukraine No. 2801-XII "On Fundamentals of the Legislation of Ukraine on Health Care". (1992, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/222-19#Text>.
- [19] Law of Ukraine No. 562-IX "On Amendments to Certain Laws of Ukraine on the Definition of Territories and Administrative Centers of Territorial Communities". (2020, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/562-20#Text>.
- [20] Law of Ukraine No. 698-XII "On Entrepreneurship". (1991, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/698-12#Text>.
- [21] Muzyka-Stefanchuk, O.A., Otradnova, O.O., Danchenko, T.V., Muzyka, L.A., & Savenkova, V.H. (2020). Public administrative services in the field of health care. *Zaporozhye Medical Journal*, 22(2), 261-266. doi: [10.14739/2310-1210.2020.2.200634](https://doi.org/10.14739/2310-1210.2020.2.200634).
- [22] Nemchenko, A.S., Nazarkina, V.M., & Kurylenko, Yu.Ye. (2020). [Legislation in the health care system](#). Kharkiv: National University of Pharmacy.

- [23] Oliynyk, A.Yu. (2020). The concept of realization of the constitutional freedom of a person to engage in entrepreneurial activity in Ukraine. *Law and Society*, 2(2), 98-103. doi: [10.32842/2078-3736/2020.2-1.16](https://doi.org/10.32842/2078-3736/2020.2-1.16).
- [24] Panda, B., Zodpey, S.P., & Thakur, H.P. (2016). Local self-governance in health: A study of it's functioning in Odisha, India. *BMC Health Services Research*, 16(6), article number 554. doi: [10.1186/s12913-016-1785-8](https://doi.org/10.1186/s12913-016-1785-8).
- [25] Pastukh, I.D. (2005). *Organizational and legal bases of licensing of the economical activity in Ukraine*. (PhD thesis, National Academy of State Tax Service of Ukraine, Irpin, Ukraine).
- [26] Resolution of the Cabinet of Ministers of Ukraine No. 285 "On Approval of the License Terms for Conducting Business Activities in Medical Practice". (2016, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/285-2016-%D0%BF#Text>.
- [27] Resolution of the Cabinet of Ministers of Ukraine No. 765 "On Approval of the Procedure for Accreditation of Healthcare Institutions". (1997, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/765-97-%D0%BF#Text>.
- [28] Resolution of the Cabinet of Ministers of Ukraine No. 165 "On the Suspension of the Terms of the Provision of Administrative Services and the Issuance of Permission Documents". (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/165-2022-%D0%BF#Text>.
- [29] Siverin, V.I. (2010). *Administratively legal principles of concession of permission services by the subjects of public administration*. (PhD thesis, Kharkiv University of Internal Affairs, Kharkiv, Ukraine).
- [30] State Regulatory Service of Ukraine. (2022). *Position of the SRS on certain issues of licensing and issuance of permits in the field of economic activity under martial law*. Retrieved from <https://www.drs.gov.ua/press-room/pozytsiya-drs-shhodo-okremykh-pytan-litsenzuvannya-ta-vydachi-dokumentiv-dozvilnogo-harakteru-u-sferi-gospodarskoyi-diyalnosti-v-umovah-voyennogo-stanu>.
- [31] Tkachova, N.M. (2018). *Directions of reformation of state policy in the sphere of health care*. *Investytsiyi: Praktyka ta dosvid*, 8, 83-86.

Участь органів місцевого самоврядування в ліцензуванні індивідуальної підприємницької діяльності у сфері охорони здоров'я

Руслан Володимирович Дьомін

Аспірант

Академія праці, соціальних відносин і туризму

03187, Кільцева дорога, 3-А, м. Київ, Україна

<https://orcid.org/0000-0002-9430-3058>

Анотація

Управління політичним процесом у сфері охорони здоров'я – один з основних чинників, що впливають на економічний, соціальний і культурний розвиток країни, її міжнародний престиж

і конкурентоспроможність у світі та потребують постійного розвитку в пошуках нових шляхів, механізмів і методів удосконалення. Мета роботи – розкрити і поглибити наукові та теоретико-методологічні засади ліцензування, їхню роль в організації місцевого самоврядування в частині реалізації державної політики у сфері охорони здоров'я. Діалектичним методом обрано об'єкт і предмет дослідження, обґрунтовано його мету та завдання; методами аналізу та узагальнення здійснено необхідні обґрунтування у визначенні сутності та змісту державної політики в галузі охорони здоров'я, уточнення компетенції органів державної влади та місцевого самоврядування щодо дотримання вимог охорони здоров'я, розгляд повноважень органів державної влади та місцевого самоврядування у сфері охорони здоров'я населення, розгляд спрямованості та особливості державної політики у сфері охорони здоров'я громадян на місцевих рівнях. Вивчено проблематику поставленого питання та побудовано концептуальні напрями її вирішення шляхом заповнення відповідних прогалин в законодавчій базі. Проаналізовано низку Законів України, а також постанов Кабінету Міністрів України, які регулюють управління політичним процесом у сфері охорони здоров'я. Розкрито тенденцію змін в законодавстві щодо забезпечення належного контролю за якістю надання медичних послуг. Визначено низку обмежень в переліку органів, уповноважених видавати відповідні ліцензії на індивідуальну підприємницьку діяльність у сфері охорони здоров'я. Окреслено структуру системи нормативного управління питанням реалізації конституційного права громадян на незалежну індивідуальну економічну діяльність. Обґрунтовано, що ліцензування є необхідним інструментом державного контролю за якістю медичних послуг та безпекою пацієнтів. Запропоновано надати представницьким органам місцевого самоврядування право розглядати та ухвалювати на власних засіданнях рішення щодо видачі або відмови в ліцензійних документах у сфері господарської діяльності, що стосується охорони здоров'я. За результатами проведених досліджень виявлено прогалини в чинному законодавстві України, що стосується охорони здоров'я населення, та сформульовано відповідні рекомендаційні матеріали щодо його вдосконалення

Ключові слова: сфера забезпечення захисту суспільства; компетентні органи; підприємництво; окрема діяльність; приватний підприємець; система політичного управління; правові документи; місцеві органи влади