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## **Interview of Chairman of the Investigative Committee of Russia Alexander Bastrykin to Rossiyskaya Gazeta**



### **Surgical intervention**

Alexander Bastrykin - about protection of rights of medical personnel and a law about criminal liability of doctors

**In this exclusive interview the Chairman of the Investigative Committee of Russia told Rossiyskaya Gazeta how his subordinates investigate underpayments to doctors and why we need a law on criminal liability of doctors.**

**Alexander Ivanovich, in our difficult times, the most heroic profession was the work of doctors. For their daily and hourly work, the state decided to help them. True, in many regions this could not be done without the intervention of your subordinates.**

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**Alexander Bastrykin:** The work of lawyers and doctors is very similar in many aspects. The focus of our attention is always the highest values: life, health, human rights and freedoms, honor and dignity. We can solve many issues only by interacting.

Indeed, the work of doctors has acquired special significance in the context of the coronavirus reality. Today they save lives every day, being at the forefront of the fight against a new disease for us. Nevertheless, we have to admit that doctors turned out to be the most vulnerable category of citizens.

**Do you mean professionally?**

**Alexander Bastrykin:** This, of course, is primarily due to the fact that doctors risk their own health every day. However, it is strange to imagine how, being in constant stress and providing assistance to the sick, they also need to think about protecting their rights in terms of calculating the due payments.

Medical workers were actually hostages of the situation: they were forced to use almost all communication channels - they contacted through the media and social networks, by telephone hotline, through the Internet reception, at personal appointments.

Somewhere there were facts of complete non-payment of compensations, somewhere partial.

Investigative authorities organized procedural checks on 249 reports, opened one probe into negligence.

**So what happened when the doctors in the regions learned about the help from the media, but in fact either did not receive anything at all, or they were given offensive pennies.**

**Alexander Bastrykin:** Our investigators found that some heads of medical institutions often misinterpreted the wording specified in the government regulations establishing such payments.

We did our best to help the doctors: we constantly monitored the media and social networks for mentions of violations of doctors rights, and systematic work was organized to verify these facts. We see the result of such work: after the measures taken, including by us, the prescribed allowances were paid to doctors, and their violated rights were restored.

**A contradictory picture has developed in relation to doctors in your department. At every personal reception, you listen to complaints about the wrong actions of doctors with a tragic ending. And the Investigative Committee needs to respond.**

**Alexander Bastrykin:** Indeed, the investigative authorities often receive complaints from patients and their relatives, who claim that they were provided poor quality medical care. We have

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announced the recent statistics several times. At the same time, it is important to understand that a complaint itself is a certain signal, a request for help, and here it is very important to understand the essence, the causes of the problem. People lose their loved ones, who are in medical institutions due to certain health problems. It is somewhat predictable that in such a situation, the doctors who were nearby are the first to be hit. In most cases, there is no fault of doctors in tragic situations with patients. But nevertheless, if we receive appropriate appeals, we are obliged to check all the facts, all possible versions.

**And what do the checks of such statements show?**

**Alexander Bastrykin:** In the overwhelming majority of cases, it really turns out that the doctors acted correctly and it was impossible to radically influence the situation. But in order to make sure of this, investigators must strictly follow the mechanism defined in the law. Often, various experts, as well as representatives of the medical community, criticize us for the fact that we initiate criminal cases on the facts of death or damage inflicted to the health of patients. Note: on a fact, and not in relation to a specific doctor! Here it is necessary to understand that it is possible to carry out certain examinations, give a legal assessment of specific facts, establish or refute the existence of a causal relationship between the actions of doctors and the negative consequences for patients that have occurred is possible only within the framework of an initiated criminal case.

**And then what can be called the most important in "medical inquiries"?**

**Alexander Bastrykin:** The most difficult thing in the work of the investigation in this category of criminal cases is to establish or refute this causal relationship. Sometimes even the examinations carried out do not provide answers to all questions. That is why it is important for us to interact with doctors. Their help in establishing the truth in each specific case is simply necessary.

Our joint work is extremely important to establish all the circumstances of accidents in the medical field, their objective and impartial assessment in order to exclude subsequent adverse consequences for both patients and doctors.

**How often are you contacted at personal appointments with complaints, in which they ask you to check the correctness of the provision of medical care?**

**Alexander Bastrykin:** I hold a personal reception session every month, and a significant number of complaints is really connected with incidents in the medical field. People who are crushed by grief come to my receptions, they can no longer return their loved ones, they ask for one thing - justice. Sometimes it takes years to find out the circumstances of specific incidents, and it is very difficult to make a final decision. This is due to both the duration of the examination and the specifics of law enforcement. Let me emphasize that we are not talking about crimes in these cases. Given the great complexity of this topic, the presumption of innocence, it is more correct to talk about a fact as such, without defining it as a crime in advance. Often people just want to find out the truth, and

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investigators cannot find it out for a long time due to objective or subjective reasons. Sometimes the results of examinations are controversial. In some cases, grief-stricken people refuse to admit that their relatives could not be helped, and continue to contact us.

As a result, we have developed an effective mechanism - the most complex cases are transferred to a special department of the Central Office, which specializes in medical topics.

**You are criticized because of the fact that the Investigative Committee has a specialized unit that investigates "medical" cases. How do you respond to such reproaches?**

**Alexander Bastrykin:** I demand careful examination of each case from my subordinates. Our investigators are primarily aimed at establishing the objective truth and restoring the violated rights of citizens, and not at bringing doctors to criminal responsibility, which we are often accused of. It is confirmed by statistics: in 2019 2 168 probes were launched upon 6.5 thousand complaints, but only 273 probes were sent to courts. In the first quarter of this year 52 probes have been referred to courts to be tried on the merits.

We are trying to develop our cooperation with the medical community in terms of improving the quality and shortening the time for conducting forensic medical examination - the most important instrument of evidence in criminal proceedings. Indeed, the investigator often has a need to conduct additional, repeated and commission examinations, the conclusions of which should form the basis of the accusation and the subsequent court decision. In this regard, back in May last year, I issued an instruction on additional measures to strengthen control over the appointment of forensic examinations in such cases. Investigators are focused on immediate consideration and satisfaction of experts requests for the provision of missing materials and research objects within a period of no later than 14 days.

Another important aspect of interaction with the medical community is to analyze the causes and conditions of accidents and inform health authorities about this in order to further exclude tragic cases.

**Recently, a bill developed by the Investigative Committee on the criminal liability of medical workers has been actively discussed. Why were there such different opinions about him?**

**Alexander Bastrykin:** Here is a small parallel. Remember how many people in our country spoke out in favor of decriminalizing domestic violence? In 2017, instead of criminal liability for beatings in the family, only administrative liability was provided for. Everyone saw a significant increase in such offenses, which was much talked about in public. And children were the first to be affected. The legal qualification of the actions of doctors is, of course, a much more complex area. But the absence of special rules that could regulate such cases, in our opinion, will also lead to the fact that many cases will remain without proper assessment. That is why we have prepared a draft law on amendments to the Criminal Code concerning the criminal liability of medical workers.

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I am convinced that the overwhelming majority of doctors are highly qualified specialists, professionals, selflessly dedicated to their work. At the same time, there are some violations committed by doctors that lead to tragic consequences. The reasons for them are different, and we must certainly find them out, analyze and take measures in each specific case.

## **Who is responsible for the death of a newborn**

**Recently, media attention has been focused on the situation around the criminal case of Kaliningrad doctors Elina Sushkevich and Elena Belaya. They write different things. Can you tell us the essence of the problem?**

**Alexander Bastrykin:** It is a really high-impact situation that raised an active public discussion. Many began to speak out in support of doctors, there were also opposite opinions. I think that it is necessary to analyse everything here very carefully. And the conclusions were drawn very carefully, basing on the factual circumstances of the case and objective evidence, and absolutely abstracting from the emotional component. The investigators carried out a big work on this probe.

The materials they have collected, including the conclusions of the examinations, indicate the presence in the actions of the accused of signs of an especially grave offense - murder. According to the investigation, in 2018, a resident of the Kaliningrad region gave birth to a child - premature, but quite viable. Certain resources were required to maintain the child's life support, and according to the materials of the criminal case, Elena Belaya did not want to spend these resources on the child, assuming that he would die later anyway, which would worsen the statistics of the regional perinatal center, where they had to send the child for further treatment. Therefore, the investigation suggested a version that the doctor decided to commit the murder of the newborn, having registered it as if he died during childbirth.

**How did it all happen and how was this information confirmed?**

**Alexander Bastrykin:** The version of the investigation really caused misunderstanding among the medical community, residents of the region and individual citizens. But, as I said, investigators are always interested in objectivity. Their conclusions about the qualifications were made on the basis of a combination of evidence: the conclusion of the commission of a comprehensive forensic medical examination on the cause of the death of the child, spectrographic and other examinations, testimony of witnesses, as well as on the basis of the aggregate and other evidence collected in terms of the probe. We have no doubts about the objectivity of the examinations, because they were also done by medical experts. Their conclusions made it possible to give a legal assessment to the incident. Based on their conclusions and other evidence, it follows that Sushkevich, at the direction of Belaya, administered a lethal dose of magnesium sulfate, as a result of which the child died.

Experts found that the drug was administered in a known toxic dose, many times higher than the maximum permissible, this naturally led to the death of a newborn from acute poisoning. In addition,

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the use of magnesia was absolutely contraindicated for the child, and the doctors knew about it. Then, according to the data of the investigation, the accused entered deliberately false information in the history of childbirth that there was a fact of fetal death during childbirth.

**What, in your opinion, caused the statements and comments about the innocence of the accused in the crime?**

**Alexander Bastrykin:** Looking at this case only from the outside, without delving into the essence of the issue, not knowing the materials of the criminal case, many are trying to assess what happened and present it as a kind of negative precedent. But we, as lawyers, draw conclusions only on the basis of the factual circumstances of the case, based on the conclusions of experts and the body of evidence. It should be noted that there is no unequivocal position on this criminal case in the medical community. Experts who are directly involved in the examination and are familiar with the materials of the criminal case expressed their opinion, similar to the position of the investigation. Another part of the medical community, not knowing about the objective data obtained by the investigation, refuses to accept this position. But we should all be interested in establishing the truth. It is no coincidence that the founder of Russian military field surgery, Nikolai Ivanovich Pirogov, was one of the first who considered publicizing medical errors to be a professional duty. And such cases, when we are talking about murder, should definitely be in the public domain.

A jury trial is underway, media and social media are used as a tool to speculate on public opinion. I am convinced that it is necessary to give the court an opportunity to objectively assess the available evidence and make a fair decision without interfering with the jurisdiction of the court and without trying to impose some point of view on the jury.

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