

# Civil Liability of Doctor and the Medical Staff

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**Abstract**—Nowadays, one of the important problems of law is tort of treatment system which civil law and tort of 1339 are quiet towards it. whereas, respect to patient and defense of human rights at the time of sickness and medical urgencies, has been known as the charter of patient rights without paying attention to age, gender and financial discrimination. Contemporary, if any fail in service or any mistake in planning or implementation causes unintentional consequence and damages, undoubtedly such an action is not appropriate to the patient's expectation. We have reviewed the mistakes that come from deception or ignorance of scientific principles will lead to the responsibility of the medical and therapeutic staff in this research and we have received special attention to the situation of diagnosis and treatment.

Also, the process of producing and distributing drugs is different from other commodities. Therefore, care should be taken in applying the general rules and regulations regarding them.

As we have reviewed, there are relatively comprehensive and comprehensive laws in our country, but there are also mistakes in this area that result is civil liability for culprits. Because in Iran's law, the basis of civil liability arising from medicinal activities is a fault that proof it, will be difficult for the lost.

However, it can be said that it is possible to cite contractual liability to compensate for medical and medical personnel mistakes. Because other pharmaceutical products are often sold to the patient or consumer at pharmacies or by professional vendors, apart from medications that are given directly to the patient in hospitals or taken by a doctor. Therefore, contracting responsibility can be considered as one of the main principles of the claim for damages caused by pharmaceutical products. In the following, efforts have been made to explain the necessity of changing the medical civil liability system and approving special rules in Iranian law and establishing a special system of compensation for medical accidents.

**Keywords**—Tort, Treatment system, Medical error, Damage compensation.

## I. OBSERVING HUMAN HEALTH ISSUES

In the face of technical errors that arise from breaches of professional and occupational rules and provide civil liability for doctors and other health care providers. There are other errors that are not related to the principles of medicine but relate to the nature of the relationship between the doctor and the patient and lead to the civil liability of the doctor. The general rule is that commitment to the doctor is a commitment by means of something. Some medical practices have gain a status as a result of scientific achievements, which is a definite result, and failure to realize the result means that the practice is not properly executed and is in itself responsible for the failure of the physician's commitment. In such cases, the doctor's commitment is a commitment to the output and is considered as an exception to the principle.

### *Detection stage*

The first phase of the examination after the diagnosis and treatment and medication may be required at this stage determined, the most sensitive stage of treatment. Patient rights must be respected and protected by medical staff and physician assignments and their breach will lead to their responsibility.

### *Observe legal fees and usual expenses*

Under Article Ten of Law Enforcement Code, in investigation of guilty violations in trade regulations and the medical profession and related professionals:” Medical practitioners and health care-related tariffs approved by the Ministry of Health and Medical Education shall be observed. In accordance with Article 4 of the Government Toll Law, additional payments from the announced rates of the Ministry of Health and Medical Education are considered as

criminal offenses and are subject to review by the Specialist Medical and Pharmaceutical Branches of the State Organization of Public Injuries.

According to Article 7 of the Law Enforcement Code of Practice, consideration of professional and professional misconduct is prohibited in imposing unnecessary expenses on patients. In France, the doctor concluded with a laboratory to send his patients to that lab and it had to give the doctor an amount of its wages. France's court declares the contract is contrary to public order, because the existence of this contract encourages the physician to introduce patients to the laboratory and to issue a few unnecessary tests to the patient which will force him to pay unnecessary expenses (Dr. Katouzian, Naser, Praise Contract or Contract Office, Journal of Faculty of Law and Political Science, University of Tehran, 52, p. 132). This action will be caused that doctor legal liability and civil liability. More sadly, it has been seen that physicians who are physically motivated with the aim of obtaining surgical wages, while being treated with medication and physiotherapy, have forced him to accept surgery and tolerate it. (Ghasemzadeh, Seyyed Morteza, Relationship of Pride and Fault, Quarterly Journal of Legal Views, No. 11-10, p. 73)

In this regard, in order to justify the custody of the doctor, which leads to deceiving the patient and bearing additional costs on him. In fact imposing these costs on the patient is incorrect Prescription and causing responsibility for the relevant physician.

### *Commitment to inform the patient about diagnosis*

Disclosure of information for the patient should be considered as a process rather than a periodic event. The first step is to inform, is to inform the patient about the diagnosis of

the disease, after obtaining medical examinations on the patient. In this step, doctor can examine and touch and have simple ways to hear the patient heart rate and measure blood pressure. With the help of simple equipment, such as a handset, blood pressure measuring devices and thermometers, etc. which once were the main means for diagnosis. With the development of technical means and the Genesis of new diseases, Diagnosis of a lot of diseases through examination of simple primary is not possible and your doctor have to use new devices in detecting, such as x-rays, CT scans, gamma scan and biochemistry, microbiology tests and so on.

The courts blame the doctors who are not resorting and using new medical devices and methods to discover the diseases, especially in the face of the experts, this commitment is intensified. In addition, the rules of professional ethics emphasize the commitment of physicians and require doctors to use all the necessary means to ultimately be accurate at the diagnosis stage. It is essential to devote the necessary time to recognize the disease and resort to appropriate scientific materials and to consult with those with a higher level of expertise or expertise. (Articles 5 and 19 of the Code of Practice on Professional and Professional Violations of Medical Professionals).

Since the use of new scientific means for diagnosing a disease may lead to risks, the physician is required to inform the patient of the risks, so that the patient can, with the knowledge of the benefits and risks, decide on the acceptance or rejection of the use of the equipment which will be suggested to diagnose the disease. (Mousavi, Seyed Masoud and Jalali Jahromi, Maryam, 2002, Studying the Attitudes of Faculty Members and Clinical Assistants of Shiraz University of Applied Sciences regarding Discrimination in Untreatable Patients, Forensic Medicine, p. 27, p. 34)

When doctors diagnose certain receipts, it is necessary to inform and explain that medical information in terms that are understandable to the patient, explain and summarize the progress of treatment. If the disease is not treated it must be described to patient. Awareness of the diagnosis may be necessary on its own and regardless of satisfaction with medical treatment. For example, in work hygiene, which the practitioner's physician regardless of treatment and satisfactory accommodation acts, Diagnosis is only mentioned to prevent and correlate between the state of health of the worker and the work environment. Physicians are required to inform workers of their physical state in the diagnosis step. The same is in school health. In sports medicine, physical examinations are conducted before participating in sports competitions, in order to identify the players at risk and the players who must be excluded from the competition. If the physician team determines wrongly the physical condition of the athlete, is responsible in front of all the situations that the athlete loses as a result of this mistake. It is not enough to inform the patient of the diagnosis of the disease for informed consent, but the doctor should inform the patient about the treatment he or she intends to do. (Aghaei Nia, Hossein, 2000, Civil Liability in Sport, Judicial Publishing, Third Edition, p. 116)

## II. TREATMENT STAGE

After proper diagnosis of the disease, the doctor and other members of the medical staff are seeking treatment. Here, the doctor is required to continue treatment completely till complete recovery. He does not hesitate to do any work. In fact, each medicine has a commitment to treat and treat the patient to recovery. A commitment to continuing the treatment is an obligation that is rooted to the contract directly in the will of the parties, and in the event of silence, in order to complete the will of the parties, the law, has given the physician a commitment to treat the patient until recovery. Also, as with the diagnostic stage, the patient should be informed of the treatment and the treatment steps have to be explain to him.

### *Commitment to continuing treatment*

Lawyers have been less discussed the subject of doctor's commitment to continuing the treatment of the patient and, basically, have not the notion of such an obligation or responsibility for doctors. The general belief is that the physician at any time can leave the patient at any stage of the treatment process and the patient can only refer to another doctor, but this belief is not consistent with the construction and appearance of the relationship between the physician and the patient, since the principle is that any illness that comes to the doctor and a medical contract is formed contractor is meant for the patient to receive full healing and treatment. When the doctor accepts the patient's invitation for medical treatment and the medical contract is concluded, the physician must complete his commitment and cannot refrain from continuing treatment (post-operative care). Failure to perform part of the contract or the incomplete execution of the contract is subject to the failure to execute the contract and shall oblige the person responsible for the compensation. In accordance with Article 19 of Iran Penal Code "The physician is responsible for continuing the treatment of patient illness unless the patient or his relatives are willing to do so." Thus, the doctor's commitment to the continuation of treatment has both a contractual origin and a legal assignment. It is a law that constitutes a contractual obligation under article 220 of Iran the Civil Code. However, the doctor will start treating the patient and he cannot leave his patient as long as the patient needs care and attention. He cannot abandon him, he has violated his contractual obligation and is responsible. The French Supreme Court upheld the physician's commitment to continuing the patient's treatment: "The medical practitioner who refuses to treat her ill when she requests to be treated and treatment has been neglected, especially since the patient's life is due to the physician's refusal was at risk. (Judgment of the Supreme Court of France July 23, 1835). While the element of trust has the same role in the construction of the medical contract, and the physician cannot leave his patient even when lost his trust for any reason to the patient and is responsible for leaving, but, the same patient should be able to terminate the contract unilaterally, but his power in termination is limited to Certain cases. The cause should be sought in the nature of the treatment contract. This contract is made to obtain the health of the body and the soul, and there is no possibility of

balancing between the parties and it is different from conventional contracts that are aimed at solving ordinary needs and that the parties to the contract must balance. If a physician has the right to terminate due to the loss of confidence of acting freely and use this right inappropriately, it causes irreparable damage, so the legislator will impose this restriction on the physician's right. In addition, the parties did not have the same conditions at the moment of concluding a medical contract, and as the patient is in danger of illness, concluding a medical contract in his request, so if a balance is struck at the implementation stage and this compensation is compensated, justice is not far off, and this complex nature of the medical contract has led some to believe that this contract is out of the scope of certain contracts and is among the indeterminate contracts.

The medical contract is a continuous contract, which means that medical examinations and treatment, and the length of treatment, depending on the circumstances and take a short or long time and the physician will take two basic points to make his commitment to continuing the patient's treatment Must adhere to;

1- The treating physician should treat the patient to a satisfactory and conventional outcome and take care of the patient according to the circumstances and necessity and the nature of the illness and progression. For example, a medical doctor who has undergone a surgical operation and whose surgery has also been successful. He cannot stop his actions by sending a patient to the ICT, but he has a duty to take care of him until the end of the patient's admission, and even if necessary, after the discharge of the patient, he issued the necessary instructions and required the referral. (Abbasi, Mahmoud, Forensic Medicine, former, p. 96)

2- A person who is referring to a medical clinic for treatment and the necessity of pursuing his treatment is inevitable, it is necessary to remind him of the necessity of his recapitulation.

#### *Commitment to inform the patient about the treatment*

The physician's freedom to choose a treatment is one of the traditional principles of the relationship between a doctor and a patient. But this freedom does not necessarily mean that a doctor can impose certain treatment on his patient. The patient must accept the treatment principle and, if there are many ways to cure, has the right to choose one of them. This will not be achieved unless the physician fully informs the patient about what is relevant to the proposed treatment. Therefore, it is necessary for the physician to inform the patient of the nature of the treatment and practice, as well as explain its predictable outcomes to the patient, and explain the ratio of the probability of achieving the result and the possibility of failure in practice. It is necessary the patient becomes aware if the benefits of cure are temporary or achieved over time and of the need to repeat it. In addition, it is imperative that the patient is surrounded by the risks of treatment or surgery, as well as the risks of non-treatment and abandonment, in order to balance and adapt between the risks of treatment and treatment cessation. Risk values are expressed as percentages, for example, multi-percent success and side-by-side risks. These proportions should be means of explanation and should

not be exaggerated and cause fear of the patient or loss of his hope of healing. Now, the question arises as to whether there are different ways to treat, whether the physician is required to inform the patient about the ways of treatment and alternatives, and then the type of treatment that the patient chooses, or whether the choice of method Treatment is a doctor's exclusive right? Some believe that the choice of treatment is right for the patient and, consequently, requires the physician to expose his patient to possible ways of treatment and alternatives, the risks of each choice and the means of differentiating them simply and without the complexity and technical terms, then the choice of the way in which the treatment is to take place is left to the patient.

Some courts have accepted this analysis. The French Supreme Court ruled about a doctor who did not inform the patient about two methods of treating the patient's right foot fracture, have, and lonely chose a method that led to the cut off the patient's leg and recognized him guilty. Also, in another case in one of the American hospitals, the patient stomach was pierced through the examination of the endoscopy, and as the patient was given a general consent before the surgery and conducting the examinations and preparing him, which the physician had recommended. The court argued that the consent was not acceptable or not actually obtained, since it was not suggested and explained to the patient in the event of other consequences. Another theory is that the physician is free to choose the method for treatment, provided that the doctor's choice is in line with the science and experience of the medical day and that there is a despicable way that is inappropriate for the patient. Proponents of this theory have said that patients are in a state of health who often refrain from a dispute with the doctor in the treatment or are not aware of the technical details of surgical removal, and that the reason is sufficient to give them to the doctor. His science and experience are trusted to choose the way that he is capable of. Some of the French court sentences have ruled this theory. The appellate court ruled that a medicine that has the practical credibility of a dangerous operation would have the freedom to choose the right tools for doing so. It seems that in the case that there is a possibility of different choices in the treatment for the doctor, for example, the illness, the possibility of treatment through medicine or surgery, the physician must provide all the methods of treatment to the patient and each of the ways of the benefits and explain the risks and costs. Then leave the patient with his understanding and choice to choose the method of treatment. Because the patient has a right on the body that owns it and has the authority to choose the method of treatment.

In the context of a contract, the patient not only takes into account the outcome, but also the means of achieving the result is considered, may be less risky or less painful or even less costly than the other, so if the physician is not committed to the outcome, at least the patient is free to choose a therapeutic treatment that he hopes for. Because the patient has a right on the body that owns it and has the authority to choose the method of treatment; the acceptance of such a right is due to the fact that the patient is voluntarily compelled. When the physician provides different ways of treatment there



are two assumptions about the patient's choice and the choice of the patient;

First, the paths available to the doctor are the same, and none of them is preferable to them, and all of them are available for the patient's existing recovery. In this case, the physician leaves the choice to the patient and, after choosing, he starts treatment in the chosen manner.

Second, the physician prefer one route to another, in this case he will explain in detail the reasons for his preference to the patient, and if the patient accepts the proposed method of the physician, otherwise, the physician is permissible in the exceptional and necessary non-state of the continuation of the treatment of the excuses. As the patient's reluctance to tolerate treatment that he does not want, the doctor may not be forced to undergo treatment in a way that he does not believe.

### III. POST-TREATMENT STAGE

The commitment of the physician and other members of the treatment does not end after the patient's treatment, and the assignment is still on their side. In fact, it is not supposed to be that doctors are not only obliged to treat the patient and have no other duties to him. One of these tasks is the commitment of the doctor and the treatment staff to the secrecy and to preserve the secrets of the patient, as well as his awareness that some issues should be addressed in the post-treatment period.

#### *1- Not disclosing the secrets of the patient*

Trust is the main element of the relationship between the doctor and the patient. The patient will physically keep his or her own secrets in order to maintain his health and expects the physician to respect these secrets. Confidentiality is rooted in religion and ethics, and secrecy is always considered a worthwhile and valuable act. In all legal systems of the world, the refusal to disclose the secrets of patients has been accepted as a general rule. Some lawyers believe that this commitment is rooted in a contract and likened it to a deposit. The patient gave his confidentiality to the doctor, and the doctor did not have the right to disclose these secrets, even if he was in the care of the insurance department or workshop for a medical examination, the doctor is not entitled to disclose the secrets he received during treatment. This theory has been severely criticized, because the contract is a royal bond, the subject of which is the property of the property, whether immovable or immovable, Walsh is not considered to be a material property and is spiritual. In the contract, the objects of the contract can be refunded, but the medical head does not have the ability to refund. The trustee is required to reject the deposit item, but the physician is not required to reject his head as the secrets are in it! Civil law emphasizes the two elements of the transfer of property, and the illusion of the objectivity of the deposit has been raised. While in the relationship between the doctor and the patient, the secrets that the doctor knows is not based on delivery, and in most cases the patient himself is not aware of the existence of the head. In cases where there is no certainty that there is an agreement between the doctor and the patient, such as emergency cases and the prison doctor and the physician of the armed forces, the preservation of professional

secrets is the responsibility of the physician and the presence or absence of a contract does not affect the physician's commitment. The results of this study suggest that the doctor's commitment is a relative commitment and is not absolute; the consent of the owner is enough to disclose it, and the patient is entitled to give the physician permission to secrecy. Instead, he cannot allow a physician to disclose his secrets even before a court. As a result of the inadequacy of the doctrine of the contractual nature of the doctor's commitment and its criticisms, another theory has been put forward that the doctrine of the physician's commitment to protecting patients' secrecy is public order, that is, in order to realize the general interest, the physician should preserve the secrets of the patient. If doctors are allowed to reveal the secrets of those who come to them, patients are afraid of the scarcity of their illness and the disadvantages of their pride and dignity and the problems that arise in the future. They refuse treatment and harm the community indirectly. The benefit of society is realized when society is as free from any illness as possible. With regard to laws relating to the protection of patients, the British law has not laid down any specific law in this area, but in the UK's moral code of conduct, this right is guaranteed by the patient and every patient has the right to expect that information about her provided to her physician remains confidential. The Iranian legislator has also required physicians to maintain professional secrecy at various occasions, Article 4 of the Law on the Investigation of Violations of Guilds and Medical and Associate Professions approved by the Cabinet of Ministers on 20/4/78 states: "Professionals in medicine and Affiliates have no right to disclose secrets and types of illness except under the law." (Tavistocks axar, 1988, Ethic and members of the medical profession, British medical association, p 15.). In Article 648 Iran civil code this pledge is foreseen for all those who are confessed about their occupation or profession, and stated: "physicians, surgeons and drug dealers, and all those who are keeping secrets because of their professions, whenever they are in non- Legal cases reveal the secrets of people, sentenced to prison from three months and one day to one year or to pay one million and five hundred Rials up to six million Rials of cash." Thus, the doctor's commitment is rooted in law and applies to public order matters, and the patient's illness cannot exclude the doctor from his obligation to maintain his secrets. The physician is required to protect the secrets of his patients and the lack of a contractual relationship between him and the patient does not invalidate his legal duty. However, the doctor's commitment is recognized as a legal consequence of the contract and is discussed as a contractual obligation. The obligation of the physician to preserve his patient's secrets is a type of commitment to the outcome, and his responsibility towards it is absolute, and it is not necessary to prove the guilty person and the physician's accusation, and only the proving of the foreign cause (Cairo's authority) can lead to the dispensation of the medical liability of the medical practitioner.

## 2-Commitment to inform the patient about post-treatment issue

The end of treatment or surgery does not end the obligations of the doctor and other members of the treatment staff, and he should provide some necessary information to the patient after treatment, whether medical practice has been successful or failed. Informing at this stage is different from knowing the diagnosis and treatment that aims to clarify the patient's will to obtain informed consent, because it is assumed that the patient has expressed his satisfaction before starting treatment. The purpose is to inform the patient about his health and safety and this will result in scientific coverage of the anticipated effects of the treatment, in order to ensure the necessary precautions in the future, or to endanger the emphasis on the success of the action or the elimination of the consequences of failed misconduct. At the treatment stage, the patient's expediency may require some secret or complete work, but at this stage there is no such requirement, and it is expedient that the patient has all the necessary information to protect himself and to eliminate the adverse effects. The doctor should notify the patient of the outcome of the treatment, whether successful or failing, and if the treatment is unsuccessful, inform the patient of the danger. According to the principle of individual autonomy of the patient as well as profitability, the physician is obliged to state the error. As patients have the right to receive information before undergoing a medical or diagnostic procedure, they are certainly entitled to be informed of the results of that action. Hiding the information from the patient and failing to express the probability of error in treatment procedure is a kind of deception and it reduces the trust of the community in the doctors. The American Medical Association's Code of Ethics states the doctor's commitment to make an error: "In situations where the doctor's mistakes may occur and may lead to significant medical complications for the patient, the physician is legally obliged to provide the patient with all the necessary facts to understand the error may occur. "The most important barrier to express mistakes is the doctors of and health staff's concern against the patients' complaints of them. (Asghari, Fariba Vayvari, Neda, 2005, Medical Error Reporting, Iranian Journal of Diabetes and Lipid, Special Note on Ethics and Medical History, p. 28).

Many doctors doubt whether the provision of the patient's benefit by suggesting the possibility of not achieving the desired outcome of the treatment is worth the enduring of the probable legal grievance against them and the threat to their occupational and subsistence status? However, the less the relationship between the doctor and the patient is weaker and the information provided to the patient is inadequate, the likelihood of a lawsuit filed by the patient increases and patients are upset by the lack of honesty of doctors and the hospital and their apologies. Patients with a false alert will feel

better off of their right to return and the probability of legal pursuit will be reduced.

## IV. CONCLUSION

1) The doctor and other members of the medical staff have duties during the treatment. His main assignments during the course of his professional activity are the same either there was a contract or not. Of course, there may be a contract with the patient in relation to extracurricular activities and the provision of additional services, and the violation would result in their contractual liability, but the treatment cannot be wrong from the case where the contractor was already in place and where there was no contract between them. The contract is not subject to the provisions of the law, the law of the medical staff and the physician in charge of treatment is obligated to observe the care of the patient and the result of the violation of this assignment is also their civil liability. So, in answering this question, what is the relationship between the lacks of a binding law based on the responsibility of the medical staff and how analyze the medical mistakes in drugs and medicine increasing? It should be acknowledged that the lack of law cannot alone increase the error and mistake of prescribing and using drugs, since the general rules of civil liability may be relied on in such matters, also the Islamic Penal Code, in some cases, *Diyah* (compensation) has been foreseen for compensation.

2) When the physician and other members of the staff apply the necessary caution and their behavior implies full caution and uses all the available scientific means in the diagnosis, they are not responsible. The mistake of technical diagnosis does not lead to the responsibility of the doctor and the medical staff, but the mistake that comes from seduction or ignorance is due to scientific principles. The most skilled of these individuals may be mistaken due to the similarity of the symptoms of the disease, and the greatest surgeons are at risk of blame, and the reason for this is the general weakness of mankind.

3) Although they have always called for a doctor's commitment, they should, in some cases, have a commitment to the physician, as well as the medical and pharmaceutical staff. For example, a healthy blood transfusion, consistent with the patient's blood type, is a commitment to the result that the responsible physician and his / her health care provider are deployed. It is also the responsibility of the laboratory physician to provide an experimental test, as accurate as possible.

4) The fault and mistake are not limited to doctors and clinics. The clinics which are usually admitted the emergency patients, must also be equipped with all facilities for the treatment of emergency patients, including physicians, drugs and other devices, because failure to equip itself is considered to be a failure for requesting compensation.