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Review article

Criminal liability of doctors

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ABSTRACT

Duties and that, in any profession exists to some extent by the guild system, and is determined partly by public opinion, including the professions, the medical profession, for one, is a certain moral teachings, that public morality different, and in general, higher and deeper it is, the medical profession, as one of the most important jobs in all communities has been popular, and even save the lives of patients who are known, so that a heavy responsibility towards the people and society, so that legislators, not just medical ethics, public safety and physical and mental health, individual rights, and restore order and social peace, the rules governing criminal responsibility of doctors, have predicted. Doctors, their actions, their criminal liability according to law, and if the violation or abuse of their jobs, are guaranteed. In this study, the fundamental principles of criminal responsibility, physicians are interested desired, so that, in addition to criminal liability, police liability, for whom it is intended. The former Penal Code, 1991, at the General Debate, which was referred to the medical procedures, the Penal Code, adopted in 2013, was repeated in the same way, the discussion of the term, the criminal responsibility of a physician, is recognized as the best in debate provided, and the furtherance of abortion, the physician's responsibility to have stabilized, as well as articles 495 onwards, civic responsibility and liability doctors perform screening may be causing damage to recognized that these issues in this study is investigated.

1. Introduction

Today, human knowledge, science, and particularly in the treatment of diseases, and prevention of infectious diseases, has progressed substantially, and the range - wide scale has been particularly wealthy, high elevation view of human life, reduce mortality UNICEF division looking disease, anxiety in psychology person has penetrated, and respond to danger, unknown, inward and pressing (Kaplan, 2011) today, advances in the field of raising age, cancer, AIDS, organ transplantation, indicating advanced knowledge of mankind, and the heavy responsibility of this person 's physician, on the other hand, sometimes negligence, and inattention to duty, context provides individuals with forgery as of poverty and ignorance, people abuse, and physical and mental health, and even endanger their reputation, the criminal responsibility of the physician, and dates back to say, it can be examined from a historical perspective, the ancient Egyptians, who rules prescribed by the doctors, the Bible was written, and the doctor was required to follow the rules, as opposed to the penalties associated with it, be safe, so if the rules did not oppose, no punishment, although the outcome of treatment, contrary to the will of the doctor, if the patient dies, or physically hurt him to enter, and if you disagree with these rules stood, his punishment was the penalty kill (Mobarak and Mohammed, 2005). In Iran, especially after the revolution, was a significant advance medical knowledge, and the crimes and violations of laws were codified, regulated, important issues, the Penal Code, in relation to the criminal responsibility of a physician, was considered, thus was described in terms of criminal responsibility falls physician and surgeon to the act of self-management, responsibility as a physician to the patient's damages, whether physical or financial, treat that person does, or it shall issue an order, condition of acceptance of responsibility for physician and surgeon, rather than treatment-related crimes, and crimes foreseen by the doctor, in connection with their job may be committed. (Amoozegar, 2009).

2. Literature

Criminal liability of doctors in different countries of the world today, has been discussed, and the responsibility to identify and Institutionalized which, in this case, specifically Legislation Iran to rule on criminal liability of the physician, considered to as follows.

Act: Act as the main source of governing, the rules of criminal liability of doctors, is so powerful it with other sources, it should be against the Law, that is the set of rules, with the formalities prescribed in the constitution, the state legislature, or of a referendum to split, passed, in this regard, the following laws : law on the prevention of sexually transmitted diseases, and infectious diseases, solar Act 1941, provisions of law relating to medical and pharmaceutical, and food and beverage, adopted in 1965, and the Penal Code, Act 129, the controversial term, referring to the medical crimes.

Jurisprudence: Jurisprudence in the general sense, is a series of votes on similar issues, the courts, especially the Supreme Court issued subsidiaries, medical issues, often lower ratings, with respect to the criminal responsibility of the physician to eat.

Valid juridical jurisprudence: In cases where the laws of one's opinion, there are certain issues. This resource is referenced; it seems the judges to recognize legitimate medical and surgical issues, and resolution of instances of illegal choice but to resort to authentic sources of Islamic jurisprudence, no. In addition to the resources listed, which are the primary sources, secondary sources, such as customs, beliefs and scholars of law, the determination of criminal liability of doctors there. After this discussion, the principles of criminal responsibility physician payment:

medical procedure, or surgery illegitimate: The study of Islamic sources, it becomes clear that, in terms of Islamic law, banning a medical or surgical procedure, there is also an award medicine, and the social and individual interests, but this does not mean that the physician able to perform any kind of surgery or medical act, why do some surgical operations, the Sharia has been banned, so, if their physician

to obtain consent from the patient or guardian, or scientific and technical rules, to surgery unsavory deal, because, in practice no legal standing and is not acceptable in terms of jurisprudence, against it, is known to be responsible, legitimate medical and surgical procedures in Article 158 of the Penal Code in 2013, stated, this article stipulates that a surgical operation must be legitimate and respectful of the law, with all these interpretations, legislative authority, and how to establish the legitimacy of these actions have not mentioned, and the criteria and apply the recognition criteria legitimate from illegitimate, is not explained. But the key to solving this problem, referred to resort valid juridical jurisprudence, so the awareness of the legitimacy and illegitimacy of some medical and surgical procedures by which medical officers, makes it an example of the later jurists vote in relation to some forms of surgery, such as transgender explains:

Sex change male to female and female to male, and join the neutral females, and males with surgery forbidden although today, the Family Protection Law, passed in 2012, the sex with certain conditions, is recognized (Amoozegar, 2009).

Imprudence and recklessness: Warranty doctor's negligence, with the permission of the patient or guardian, have attempted to medical operations, Muslim, Islamic jurisprudence is a theoretical reason for this guaranty, which is a transgressor, a physician has the right to non- valid. Imami scholars, in addition to theoretical reason, the common narrative Does not invalidate fact, too, have used the rights issue, in Article 158 of the Civil Code of Iran (2013), Amendment of Article 336 the Penal Code, and Article 616 of the Civil Code of Iran, including the best -known criminal error, and thus the medicine of imprudence and recklessness caused the murder or mutilation of the patient, from a legal perspective is pursued, in order of recklessness that person regardless of the results, which traditionally is predictable, the acts which led to the murder or bodily injury to, with reference to judicial decisions, we find that the judicial process, without prudential as one of the fundamental principles of criminal responsibility of a physician, is considered, it should be noted that, when the one thing that you should do, not do, and it 's indiscretions, do the necessary tests and routine preoperative it is an example of recklessness (Amoozegar, 2009).

Lack of skills: Medical or surgical procedures, including matters that, it requires a special skill, and having knowledge is not enough, because the job of medicine and other branches of it, without knowing if it is necessary. Only individuals with physical and mental pain do not diminish, but rather enhances them, and sometimes may lead them to death in Iranian law, given that Article 336 BC. BC, and 616 the Penal Code.. Oh, and the former 295, a lack of offense is listed as one of the examples, it can be inferred that, if the physician, and generally people who are doing medical affairs, medical science, and to heal the sick, insufficient skills, and medical action caused injury to the patient to provide criminal cases are fact, some lawyers, the lack of material (including not having enough skill and spiritual (including the absolute lack of knowledge or Relative, about a job), have interpreted (Goldoosian, 2009).

non-compliance with state: Some jurists, military and health violations, including violations of legal rules listed, and they say it can not be opposed by religious laws, regulations and rules, as well as medicine, can not be opposed, non-compliance with state in Iranian penal code, as well as the basis for criminal responsibility of physicians, as has been opposed to this concept of Article 158 of the Civil Code of Iran (2013), will gather. The term does not define state, and a criterion for the detection and identification of its instances, and leave no discretion, but it can be, in a sense, to include all regulations and the ratification of the law in the proper sense (common law), who finds out, according to this definition, all approval letters, regulations, manuals, circulars, and finally all government regulations, and issued by the competent authority under this title are. (Jafari Langroodi, 2006). State error due to non-compliance, medical affairs, independent of recklessness, imprudence and lack of skill, though it may, in some cases, a physician, is guilty of recklessness and lack of skill, and had violated government regulations if paragraph (c) of Article 158 of the Civil Code of Iran (2013), and the amendment of Article 336, the state of non-compliance, the error is considered criminal, thus violating the state system alone, is sufficient to fulfill the doctor's criminal responsibility, and failure to comply with the state office of district physicians, need to prove he is not from recklessness and imprudence. This criterion gentleman, that the doctor has been accused of state failure, whether or not the court (Amoozegar, 2009). Not the norm in here as an instance of non-compliance with state of the blame for the physician to note:

If the doctor or dentist, unlike the Medical Council resolutions, the office, the action may perform general anesthesia, and in this way, the patient comes to harm, the state does not respect, and unlike

them behave Therefore, according to Article 59 am to Section II In 1991 (paragraph (c) of Article 158 Civil law of Iran. 2013), are responsible for, and is punishable (Shahidi, 2001)

Authoritative lack of action to treat and cure: If you leave without permission of the owner, not the property of anyone captured in this treatment, the patient 's permission, for the body is changed, it is necessary for the former, the this basis, if the physician wants, without the permission of the patient or guardian, to treat, and treatment by a physician Losses be achieved, and toggle will be known physician, the Imami jurists, doctors Authoritative not cause his responsibility, and required him to pay, and the blood, breath or blood members have condemned Imam Khomeini also Editing means that, if a physician without permission to pay for medical treatment, even if the medicine skills must also ensure that the waste would be The issue of Iran's rights, oppose the concept of paragraph (c) of Article 158 civil law of Iran. (2013), the deterioration of conditions for penal responsibility of the physician, obtain consent from the patient or the parents or guardians or legal representatives, as is, can be deduced, if the physician or surgeon, the consent referred to in Article 158 of the Civil Code of Iran has refused, in spite of possessing criminal acts, and is legally acceptable Commentary, in other words, without the consent of the patient, he can be a legal parent, as a basis, along with other principles of criminal responsibility doctor be regarded (Amoozegar, 2009). It should be noted, the physician undertaking the legal system of Iran, based on the vehicle because of his commitment, supervisory care, and performance of conventional techniques, and attempts at treatment (Goldoozian, 2008)

In the following discussion, the medical charges paid: Medical crimes, which are crimes, committed by the doctor, and discuss the criminal liability he has raised, and will be divided into two categories. His categories: crime is caused by medical procedures, in these types of crimes, harmful actions should be considered a medical practice, examples of which include: committing intentional homicide, physical injuries during medical procedures. In this case, the question arises murder, in Article 290 civil law of Iran, Or 2013, as it has been, and murder, must act intentionally and knowingly, without lawful authority, a man who somehow ended the death of another human being, to be considered, many experts believe, murder, leaving the verb takes place (Goldoozian, 2008), according to the above, if the physician or surgeon during treatment, one of the forms mentioned in Article 290 of the Civil Code of Iran, to kill the patient, his act is intentional, and is punished On the Deliberate physical injury, the situation is similar.

murder., And delivered a sub- intentional bodily injury: Here too, the doctor for the treatment of criminal responsibility should not be considered prior to treatment in non- emergency cases, the case may be sick or guardians or legal representatives, permission to take all the technical standards, respects.

Compassionate homicide: Means short -term pain, suffering and incurable patients who, based on current medical knowledge, there is no hope for her healing and recovery. And means for the mercy killing, in different legal systems, there are different approaches in this regard, in terms of jurisprudence, the patient's permission to take him to the doctor, although it may, in his judgment to be effective, but in practice he legitimate and lawful to do, and anyway, citing Penal Code murder compassionate, can be attributed to the theory that the legal system of Iran, based on the consent of the murder, the punishment milder than is an intentional killing. In accordance with Article 612 civil law of Iran.. Or (suspended), the intentional killing of a person for whatever reason, not retribution, imprisonment from 3 to 10 years is specified.

In case of miscarriage: Abortion, including crimes that are motivated differently, and the material 622, 623, 624 of the Penal Code (suspended), the penalty prescribed for the person about whom the woman to cause abortion shall be punished by imprisonment from three months to six months, and if the offense is a doctor, and knowingly provide stewardship of abortion, or to advise pregnant women to Salvage, imprisonment from ten to five years, and the money forecast it is. (Amoozegar, 2009). But the conditions for legal abortion punishable by doctors are as follows: Firstly committed these crime healers, midwives, surgeons, drug sales among people who, under the headings medicine, obstetrics and Drug Administration to sell, take action. Secondly, the individuals with positive action, to superintend the abortion.

Thirdly, there is a third condition is knowingly and deliberately commit. (Amoozegar, 2009)

Offenses relating to medical procedures: Some criminal behavior may be seen in the medical profession, although certain medical procedures are not considered, but because the character is done, the doctor, was somehow related to medical procedures, and may include:

Disclose the: Privacy is one of the leading physician-patient relationship, that the time of Hippocrates, physicians generations, it is respected, the main philosophy of professionalism, trust and confidence of the patient, the Penal Code, a controversial term, the Article 628 refers to: physicians and surgeons, and midwives and drug dealers, and all those who celebrate a job or career, are confidants, if not legal, to expose secrets, three months and one day to a year, or one million five hundred thousand to six million Rials fine, are condemned.

First condition: the adjective is committed, the second condition: the secret of what has been disclosed, the third condition, the element of the offense, the action is realized, the fourth condition for the existence of criminal intent of the act is committed, the fifth condition that is, the physician under certain rules, which are not required to disclose secrets, in this case, the criminal responsibility issue raised him (Amoozegar, 2009).

Certification untrue: Medical certificates, the most important and most sensitive day care, in the 539 civil law of Iran The CE has been a healer, unlike the certificate, exemption from military service on the person in official agencies, or military or judicial authorities to submit to the imprisonment of six months to two years, or three to twelve million Rials fine, sentence, and any such certificate, by obtaining property or money has been made, in addition to restitution and record it as Crime the penalty prescribed, to be convicted of receiving bribes. It should be added that, the mass of this article is an absolute offense, and not bound by the result, in other words, when a physician or surgeon, the above-mentioned circumstances, attempt to make a false Certification, crime investigator, and thus does not need to happen is not. In addition to the above, the employment of illegal medical affairs, refused to help the victims can bring instances of criminal responsibility to be a doctor (Noorbaha, 2009).

3. Conclusions and recommendations

the issue of medical liability or responsibility arising from medical practices, from the inception of jurisprudence, Muslim scholars were considered, and in this sense, if the physician is not required to qualifications and academic skills, or the skills without permission and allow the patient or guardian, the treatment plan, is guaranteed.

Penal Code, following the famous doctor of all documented cases of accident, loss of life and injury to the patient care director knows, the legal term basis than the culprit responsible physician, based on the principle of risk is established.

Rights in Iran, the criminal responsibility of the physician, the provisions of the Act have been accepted as a general rule, any injury and other physical and mental harm, without judgment of a competent court, crime, and are guilty of criminal responsibility.

Penal Code, unlike former rules, medical practices, is allowed only if it knows that Sharia is also conducted to verify it.

Commitment doctor, the kind of commitment to results, not by his commitment is a commitment.

It is a worthy addition to authorities investigating crimes and offenses doctors, who are now, the General Court, the government suspended the organization is considered to be other references.

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