

Investigating the Physician's Criminal Liability in Medical Treatments

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Abstract

The medical profession is historically regarded as sacred in the society. The considerable expansions of medicine in various areas with the aim of fully diagnose and treat people's illnesses have created certain circumstances in such a way that besides positive impacts, some medical practices negatively affect patients' mental and physical health. Thus, it is necessary that the physician be responsible for damages he or she makes to patients' mental and physical status. This research, which is done using analytical-descriptive methodology and collecting library resources, seeks to find answers to the question that: does a physician have criminal liability as well as civil liability in the legal system of Iran. The obtained results show that the lawmaker has acknowledged the criminal liability of the physician if it meets the requirements of the law.

Key words: criminal liability, physician, patient, criminal fault

Introduction

Nowadays, medical sciences have undergone great developments and advancements in science and technology and use of complex techniques has added to this intricacy. However, preserving rights of the patients is highly important, since patient is not in a good health status and is therefore vulnerable. Justice and fairness and fostering sense of sympathy requires that the patient be treated as soon as possible (Amuei, 2008). On the other hand, the physician treats the patient with the intention of helping him or her; thus, identifying the physician as totally responsible is not fair and prevents from treatment. Hence, it is worth asking what legal regulations the liability of the physician is based on in the legal system of Iran. The present research aims at identifying the criminal liability of the physician. It seems that the lawmaker has predicted the medical liability if some requirements are met.

1. The concept of liability of the patient

Liability without fault is not particular to legal affairs. Rather, in the area of crimes we also face criminal liability, though it is not as wide as civil liability without fault. Nonetheless, the aim of such liability is to impose punishment on the physician without considering his or her intention and in general it does not need to be mentally proved (Golkarian, 2005). But in criminal affairs the concept of criminal liability involves commitment to be responsible for acts that disturb order of the society. Moreover, the law should also consider that act as a crime and deserving punishment. In criminal liability, the society as well as the victim is wronged (Khavari, 2005).

2. The physician's criminal liability

For a crime to be realized it is not enough to solely violate the lawmaker's orders; criminal act

must be the result of the intention of the doer. In other words, there must be a relation between material act and mental status of the doer in order to recognize the perpetrator. A crime is committed by displaying malice or the criminal's fault on conditions that we believe that the perpetrator of this act wants or at least speculates and is aware of violating the lawmaker's orders. The intention to commit a crime and criminal intention are required to realize the mental element.

2.1. Criminal intent

Based on the mental element, the crimes in Iran law are divided into intentional and unintentional crimes. The mental element in intentional crimes is criminal intent and in unintentional crimes is criminal fault. By criminal intent we mean the perpetrator's intent to commit a crime as the law has determined, or the offender's awareness of violation of legal prohibitions. In other words, criminal intent means that the perpetrator is aware that what he is doing leads to a result other than what the lawmaker's orders require (Ardebili, 2012). Therefore, if the physician intentionally commits an act, and the criminal result [not treatment] is his or her intention, he or she is criminally liable. He might be sentenced to making intentional injury, or aggression or other criminal titles.

2.2. The physician's criminal fault

As it was mentioned, the unintentional element of the crimes in Iran law is criminal fault. By criminal fault we mean: 1-recklessness, 2-imprudence, 3-unskillfulness and 4-not complying with governmental regulations. Thus, the physician might be sentenced to unintentional crimes' punishments for each or any of the aforementioned reasons.

In criminal lawyers' view, the mental element of unintentional crimes is criminal fault in general (Sanei, 2003). Criminal fault is also based on

recklessness and ignorance which results in punishing the perpetrator. It is mostly considered in unintentional crimes. Justice requires that criminal fault and liability lie upon the shoulders of one who commits the act though he is aware of his criminal result. If he regarded the so-called result as committing or non-committing the act and then did not refrain from doing it, the fault lies with him since the lawmaker has required people to foresight their acts. If they do not observe prudence in their behavior and as a result harms are done to the patient, the physician is liable and faulty because preserving dignity and rights of the patient requires that he or she be treated legally and his or her pain is not intensified due to the physician's fault (Golduzian, 2013).

Conclusion

Harms and damages require treatment for the patient and the physician is responsible for patients' treatment. However, sometimes during the process of treatment, some harm is done to the patient. Iran laws have predicted civil and criminal liability of the physician, but the physician's liability is bound to meeting requirements. Hence, if the physician has intentionally done a harmful act toward the patient or has committed a criminal fault due to recklessness, the physician is proven guilty and responsible for his acts.

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