Short Report

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Physician Responsibility from the Perspective of Islamic Jurisprudence in Iran

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ABSTRACT

BACKGROUND AND OBJECTIVE: Life is the ultimate divine blessing, and medicine seeks to save the lives of individuals in danger. Despite the efforts of physicians, some medical interventions may lead to morbidity and mortality in the patients. Physician responsibility has been a matter of debate among lawyers and jurists. This study aimed to evaluate physician responsibility and effect of consent and presumption of physician innocence on the treatment of patients.

METHODS: In this qualitative study, viewpoints of lawyers and jurists regarding physician responsibility and effect of consent on medical interventions were reviewed using a library method.

FINDINGS: Based on the consensus of Islamic jurists, the physician will be liable in case of failure in the treatment or diagnosis of patients. However, if informed consent is obtained from patients, and standard medical interventions incidentally lead to death, the physician is not held accountable. According to the latest version of the Islamic Penal Code (2013), if a physician performs a standard medical procedure with the permission of patients or their legal representatives, s/he will not be held accountable for possible damages, except for the cases where medical malpractice is involved.

CONCLUSION: According to the results of this study, obtaining informed consent from the patients or their legal representatives dismisses physician liability. Therefore, guaranteed treatment of patients is considered as the conditional commitment of physicians. If medical malpractice is confirmed, the physician must be held accountable.

KEY WORDS: *Physician responsibility, Presumption of innocence, Islamic Penal Code, Malpractice, Patient satisfaction.*

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Introduction

Organic life, especially in humans, has always fascinated scientists and researchers. Life has been bestowed upon living creatures by God and it is to be taken by the hand of the Almighty. As such, the Islamic justice has been established to compensate for possible damages to human life. Medical professionals attempt to save human life, and despite their efforts and good intention, some interventions may lead to the death of the patients. In such cases, the Islamic law has to be executed for the physician at fault.

In the Islamic point of view, medical interventions are legitimate manipulation of human body; so, these actions are only allowed in conditions that have been legally proposed by a legislator. Recent advancement in diagnostic and therapeutic services in Iran has urged Iranian scholars to add an accurate, comprehensive definition of physician responsibility to the national official act in accordance with Shia jurisprudence (1).

Method

This study aimed to explore the concept of physician responsibility as elaborated in the fields of jurisprudence, medicine and legislation using a library method. Researchers attempted to provide a comprehensive explanation regarding the medical responsibility of physicians in accordance with the latest version of the Islamic Penal Code (IPC) established in 2013.

Results

In the viewpoint of Islamic jurists, if physicians fail in the treatment or diagnosis of patients, they must be accountable in the event of morbidity or mortality, even if patient consent has been obtained. On the other hand, there is disagreement among some scholars in case the standard practice of a physician leads to morbidity or mortality when medical interventions are authorized with patient consent (1). Before further elaboration on the subject, a few concepts need to be clarified, as follows:

Permission: Permission is defined as the consent or agreement of an owner or his/her legal representatives for the execution of a legal action. Permission could also be provided with the approval of an individual authorized by the law. From the legal perspective, the term “permission” applies to situations where a certain action or intervention has not yet been carried out (2, 3). For instance, open abdominal surgery is not allowed without prior consent of the patient, and if permission for operation is not obtained, the intervention is illegal and considered as malpractice. Therefore, patient consent is inherent to conducting medical procedures.

Authorization: Authorization is defined as the permission granted by an individual whose consent is legally required for the formal establishment of a process issued by another individual. In the principles of legislation, “authorization” refers to the approval granted after the issuance of a contract, whereas “permission” refers to the consent given before the contract (3). Therefore, authorization occurs when the patient gives consent after an intervention. It is also noteworthy that authorization does not dismiss responsibility, but rather, it leads to penalty mitigation.

Presumption of physician innocence: From the legal perspective, “innocence” is defined as lack of fault, whether to be responsible or released of responsibility after a legal action. For instance, if a patient grants consent for a surgical procedure and deposes the responsibility of the physician in case of morbidity or mortality, the surgeon is assumed to be innocent for the possible misconduct while his actions are in accordance with the verification of scientific and technical performance standards stipulated in Article-495 of IPC (4). In other words, permission is defined for the initiation of an intervention, while presumption of innocence applies to the outcome of the intervention.

According to the Muslim scholar Ibn Idris, if patient consent has been obtained and technical standards have been respected, the physician is not liable for possible morbidity or mortality. Therefore, the physician must take the most effective professional actions in the treatment of the patient. This signifies the fact that the physician only attempts to provide the most appropriate interventions and cannot guarantee the final outcome (5). Otherwise, it is likely that the physician refuses to perform medical practices. It should be noted that the physician benevolently attempts for the improvement of the patient, and in the Islamic point of view, good intention and benevolence must not be punished. In this regard, the Holy Quran says: "There is no punishment against the righteous" and "Is there any reward for good other than good?”. Therefore, it could be concluded that the physician cannot be held accountable when patient consent has been obtained for performing legitimate medical

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interventions (5). On the other hand, many jurists believe physicians to be responsible for possible morbidity or mortality since these outcomes are the direct consequences of the physician's practice. In the opinion of these scholars, permission granted by the patient only applies to the success or failure of treatment, not the mortality and morbidity caused by the treatment procedure. As a result, patient consent does not dismiss the responsibility of the physician. Consensus has been reached on this issue regardless of the viewpoint of Ibn Idris (6). In agreement with jurists, the legislator also holds the physician accountable for paying the blood money or atonement in case of therapeutic or diagnostic failure (7).

If medical intervention is limited to recommendations for the patient (e.g., drug therapy or general medical advice) without formal prescription, the physician is not responsible for the actions of the patients or their guardians for a medical condition. This is because the patient has trusted the professional advice of a physician, and recommendation of a drug is not considered as medical malpractice (7). However, if the physician formally prescribes a certain medical therapy, which leads to mortality, s/he will be responsible for the subsequent outcome. Evidently, the physician must be held accountable for the complications or damages caused by that recommended treatment. Therefore, if the performance of a physician does not lead to defects in the patient, and the medical error is related to factors such as the occurrence of other diseases or injuries, liability of the physician is disregarded. One of the examples in this regard is the disagreement between Islamic jurists about the responsibility of the physician in the process of circumcision. Some scholars believe that if circumcision, as other medical actions, leads to injuries in the patients, the physician is responsible even though s/he is not charged with abuse or negligence in medical performance (7). On the other hand, some scholars are of the opinion that if the circumciser exceeds the standard limit, s/he is responsible for the possible injuries. Otherwise, unlike other medical actions that hold the physician accountable in case of malpractice, the circumciser is not considered to be at fault (6). Therefore, in the absence of abuse and negligence by the physician, if the patient suffers damages after circumcision, the physician is not liable (6). In this regard, Ayatollah Khomeini said: "Despite his/her expertise, the circumciser is responsible if s/he exceeds the standard limit, causing the circumcision process to harm the infant" (8). It is noteworthy that these rules apply to the damages caused by the practices of veterinarians as well.

In addition to the opinions of Islamic jurists, the concept of physician responsibility has been further elaborated in the new version of IPC adopted in 2013. According to paragraph C of Article-158 of IPC, surgical or medical interventions conducted with the prior consent of the patients, their relatives, legal guardians or representatives, and with observance of all professional procedures, are not punishable by the law if they lead to morbidity or mortality.

This article denotes the conditions of manipulation, such as medical interventions focusing on the concept of medical practice regardless of the possible outcomes (9). Therefore, surgical and other medical procedures, which are performed without error with the obtained consent of the patients or their guardians, are not considered as malpractice or felony. However, in the absence of the aforementioned circumstances, the physician will be responsible for the treatment and its outcomes. Patient consent exclusively guarantees the legitimacy of the physician activities and does not concern the incidental outcomes caused by the medical practice. One of the exceptions in this regard is abortion, which is considered illegal under all circumstances. In cases where surgical or other medical interventions are essential for the health of the patient, the treatment process could only be initiated if the patient consent has been obtained. If consent is not obtained from the patient, the physician is not permitted to carry out the intervention and will be held accountable for the damages even if the intervention is assumed to be necessary.

Furthermore, surgical and medical procedures must be performed in accordance with technical standards, official regulations and instructions proposed by the Iranian Ministry of Health. This is due to the causal relationship between non-compliance with governmental protocols and higher morbidity rate in patients (10). Exceptions in this regard include the patients with emergency conditions, difficulty in communication and without companion at the time of admission. Only in such situations, if the diagnosis of the physician necessitates invasive interventions, patient consent is not required (11).

In both genders, the legal age for obtaining consent is 18 years old. Moreover, permission for surgical operations and physician innocence for physical or financial damages is obtained from the legal guardian

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of non-adults (e.g., father, grandfather or the guardian appointed by these individuals) and incapable patients. In case of orphans, permission and presumption of physician innocence could be obtained from the legal guardians at the age of 18 years old. As for disabled patients who are classified in the comprehensive law of the protection of persons with disabilities rights (February 16, 2004), permission and presumption of physician innocence must be obtained from the National Welfare Organization until a legal guardian is appointed by the court (12). The necessity of obtaining physician unaccountability has not been proposed in paragraph C of Article-158 of IPC (2013). However, the physician is responsible in the event of abuse, negligence or medical malpractice according to the first note of articles 495 and 496 of IPC. On the other hand, according to Article-60 of the former version of IPC, if the presumption of innocence for a physician is not confirmed in elective cases, the physician remains liable, even in the absence of medical malpractice. Furthermore, the new version of IPC dictates that if the physician benevolently attempts for the treatment of the patient and his/her practices lead to morbidity despite the observance of technical standards, the physician has no responsibility. According to Article-495 of the new version of IPC, the physician is considered to be at fault by the legislator if the medical performance causes morbidity or mortality of the patient unless the physician pleads innocent or in case the presumption of innocence has been confirmed before initiating the intervention (13). It is noteworthy that in the aforementioned cases, responsibility of the physician is not dismissed, and s/he is considered at fault only if the patient be able to prove his/her medical malpractice (14).

Discussion

According to several Islamic jurists, if physicians perform conventional interventions or prescribe certain treatments for patients, they are held accountable in case of mortality and morbidity. In this regard, Ayatollah Khomeini said: "If non-intermediary treatment is conducted by a physician, even if the physician conducts conventional interventions based on common practices, s/he might be held accountable even if s/he does not directly participate in the process of treatment. Otherwise, if the physician only recommends a certain drug therapy without formal prescription, the physician would not be held accountable. Conventionally, felony is defined with the practices of the physician even if s/he is not directly involved in the process of intervention".

The concept of physician responsibility has been the matter of extensive debate over the years. According to the Islamic legislation, physician accountability is a conditional commitment, and if no medical malpractice is authenticated, physician responsibility is dismissed. With respect to the necessity of patient consent and presumption of physician innocence, the latest version of IPC (2013) dictates the following:

1. In addition to the presumption of innocence, the physician must obtain permission from patients or their legal representatives. In such case, the physician will have no criminal liability due to the absence of fault, and the responsibility would only be considered civic.
2. If the physician obtains consent from patients or their legal representatives only, s/he has no criminal liability, while his/her civic responsibility remains indefeasible. Furthermore, permission to initiate treatment authorizes the physician to perform medical interventions as long as they do not lead to morbidity and mortality in the patient.
3. If permission of the patient, his/her guardians or legal representatives has not been obtained for medical action, the physician will be held accountable in case of mortality or morbidity. Under such circumstances, civic responsibility of the physician is established in the absence of malpractice and negligence even if the presumption of innocence has been confirmed.
4. If the physician has not obtained permission from the patient, his/her guardians or legal representatives, or the presumption of innocence has not been confirmed, liability of the physician is proven according to the IPC legislation.

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