

ARTICLE

STUDY OF CAUSALITY IN THE LOSS OF OPPORTUNITIES, IN HEALTHCARE TREATMENT

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ABSTRACT

Background: The problem of the loss of time in cure treatment is a subject that has been considered especially recently. This paper, tries to study causality and method of compensation in civil liability arising from the loss of opportunity for the medical staff's treatment according to the importance of time and opportunity for patients with certain conditions or in case of emergency treatment. **Methods:** causality in the law, is one of the causes of liability that is involved compensation in the civil rights and punishment in criminal law. In fact, the issue of causation is considered because it is the cause of the fault and the damage associated with the loss of opportunity to be treated by medical staff; because, sometimes, despite the loss of time and opportunity to cure, may cause damage or injury to the patient not due to this and other reasons have been logged. **Results:** Finally, with regard to the issues raised in this research was seen that waste of time and loss of opportunity for treatment, is one of the losses by the medical staff, can be realized to the patient and this type of loss, could be as independent and definitive loss, which is evidence of loss of profit that should be compensated by using general rules of civil liability.

INTRODUCTION

Medicine and law always been two privileged sciences in human societies and the two have been of importance beyond in modern times so to imagine a society without them, if not impossible, much impossible. Along with new developments in medicine, the development of law and the revision of laws and regulations is inevitable and laws to keep pace with the evolution of new biomedical techniques, are considered as an integral part of society and its attitude to the social order. In Mo'in Persian dictionary responsibility is defined as: "Responsibility means being obliged to do something." So, who is responsible for another's liability, if he/she does not do it, than he/she wanted to do. Civil liability as enforcement of civil rights, plays a vital role in demanding and obtaining rights of individuals, and thus setting of legal and social relations. There is no objective real sense of right without civil liability, and only takes mental aspects. In the meantime, what really brings right from potential to actual and puts it in the hands of the rightful owners tangibly is rules and regulations in the legal system of the countries, including Iran which is included in the framework of different laws. Understanding patients' rights and requirements to deal with patients and given the importance of timely and accurate care to patients, especially patients with certain conditions such as emergency condition is an issue that more and more people have become aware of it recently. According to the complaints against victims of medical errors in hospitals and medical staff to treat and the loss of opportunities for people and even death in some patients reflects the needs of the legal community, to clarify such issues. This paper attempts to study causality and method of compensation in a civil liability arising from the loss of opportunity for medical staff to treat. Causality in the law, is one of the causes of liability that it has been set for it compensation in civil law and penalties in criminal law. In fact, the issue of causation, it is proposed that the cause of the damage, and fault should be related with the loss of opportunity for treatment by medical staff, because, sometimes, despite the loss of time and opportunity to cure, may cause damage or injury to the patient not due to this issue, and there are other reasons.

KEY WORDS

Loss of opportunity, civil liability, compensation, treatment staff, treatment

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RESEARCH'S LITRATURE

Medical malpractice and patients' rights

Patients' rights, is one distinctive thing in standard definition, to impose the rule of clinical services. The patient rights charter, was designed for the first for in Iran time in 2002. Due to the necessity of developing a comprehensive text on the rights of patients, Patient Bill of Rights in Iran, was developed with a view to defining a new and comprehensive health care recipients' rights and the ethical treatment [1]. Based on patient rights, patient has the right to expect appropriate care and treatment as soon as possible, effectively and with full respect regardless of ethnic, cultural and religious factors of the treatment group. What is emphasized here, is the right of treatment as soon as possible and the prevention of loss of opportunity.

There are different opinions, about the definition of malpractice and medical errors. Medical errors are expressed as follows in a denition: Service failures or mistakes in planning and implementing acts that are actual or potential and cause an unintended consequence. Medical malpractice, is a negligence and error that done on mistake and the fault is said to be a deliberate error. Medical malpractice is divided into 4 categories:

- A) Being oblivious
- B) Negligence
- C) lack of skills (which is itself divided into two categories lack of scientific skill and lack of practical skills) and

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D) Failure to comply with government regulations

Causality

Causality in the law, is one of the causes of liability that it has been set for it compensation in civil law and penalties in criminal law. Because causality discussed separately, both in civil law and criminal law, a suspicion has been created that causality in civil law is distinct from causality in criminal law but by studying the principles and provisions of causality, it is quite clear that the nature of them is the same and should not be considered the difference between the two [2].

Causality, is any means that that make human being reach his/her goal [3] and according the principles of jurisprudence, it is the thing that if it does not hit an obstacle to the existence of something, cause existence of it, for example the fire is burning [3]. Causality is used against the steward to be handled, and stewardship means that crime is made directly by the person himself, in other words he/she is not a mediator between action and damage. on the other hand in contrast, in causality person provides the foundation for efficiency of cause and damage but not to directly committed the crime [2]. However, it should be noted causality does not occur unintentionally and sometimes causer, intentionally causing buildup. Like someone who does not have the ability to deal with other, he dug a well on track and cover it in order to the person fall in and die, Or deliberately into a deadly poison contaminating other food to eat it and die. Or deliberately into a deadly poison contaminating other food to eat it and die. Therefore, this statement can not be admitted that for granted that in causality, the origin of the action is not directed to the detriment of the agent by itself, but due to his fault or negligence and neglect, harm others, as if not tightly chained dogs and dogs being abandoned to attack a passers-by [4]. However, causality, both in civil and criminal matters, can be defined as harmful act or criminal offense indirectly [2].

For liability of waste of causality mentioned conditions in some legal sources, including the causer action should be outside the scope of his/her property, not eligible legal issues and rational deemed and according to custom, seen forcible [5]. The meaning of aggression, something that is not legally permitted to do by causer such as digging wells on the property of another, or lay a stone in a public road, that if lead to waste, necessitate liability, But dig a well on another property with his permission, or in public places despite the general goodness, if lead to the waste, does not guarantee. Also, in many of the provisions of causality, proof of liability, subject to wastage (causing negligence in performing his duties), so that is allegedly related to him/her. Like fire in his/her property likely to spread to adjacent property, a short wall repair damaged homes and neglect in the keeping of animals. So, in the causality, unlike involvement, omission could also lead to a liability. In accordance with Article 331 of the Civil Code of Iran "Whoever causes monetary loss, he/she should be like or give it back, and if the defect or flaw it should handle its deficit deal price".

The important point in the discussion of causality, it is that being responsible for causer, subject to conditions that include the cause is guilty. For example, Article 334 of the Civil Code of Iran says: "The owner or possessor of the animal is not responsible for damage done by animals unless the fault is in keeping animals ...". Similarly, Article 335 of the Civil Code of Iran relating to the collision of the two vehicles, says a party is responsible who committed the fault and error and if both sides are at fault in an accident, the responsibility will be the responsibility of both.

Article 333 of the Civil Code also states in this regard: "The owner is responsible for damages of wall or building or factory enters its deterioration, provided that the damage is the result of a wrong result, the owner Get over it, or the lack of care he is sure" and promiscuity that is mentioned in the last article, ie a fault and failure to inform the property in his care of his property to prevent damage means the fault.

Article 516 is also about the obligations of transport operators, states if the goods which they have been entrusted, lost, will not be responsible, because they are trustees unless it is proven negligence and abuse. The responsibility for transport operators is also subject to obtaining their fault.

Article 666 of the Civil Code says: "If the lawyer's fault, damage to client notice that the Gnostics considered causative agent, will be responsible for. So, the responsibility of a lawyer who has caused damage to a client, is also subject to proving his fault.

Finally, Article 7 of the law of civil liability related to damage caused by a minor or insane, that if the fault cause can not be proved, he would not be the responsible of damage.

The second condition is the responsibility of the causer, in causing harm or loss of the opportunity [6], as Article 331 of the Civil Code of Iran, knows responsibility, subject to loss or damage to property.

The third condition of proving the causer responsibility, is that if in addition to the causer, there is a steward, the causer should be the stronger. Article 332 of the Civil Code states: "If one could create financial losses and other loss of the property becomes steward, the steward is responsible, not the cause unless the cause is stronger...". To take steward's responsibility, and impose to the cause, steward would be stronger than cause.

The fourth condition is that, damaged in damages against him is not parabola, in this case, the responsibility is not on the doer. Because it is possible to consider the responsibility of another related to his/her action against him/her. Fault element plays an effective role in strengthening or weakening the cause of responsibility, for example, a child committed a harmful act, and an adult is effective in it in the meantime, and forced the child to commit the act, responsibility of the responsible perpetrator is removed and placed the responsibility of the motivator person [7].

Loss of opportunity of treatment and causation

Sometimes a person is in a position to enable a profit in the future or has the opportunity to prevent the occurrence of damage or at least to prevent it from spreading. For example, for the treatment of patients still opportunity and take the necessary steps, but if this opportunity is lost due to the negligence of medical staff the loss of opportunity can be raised. Such that: a sick person refers to a physician, but the doctor due to negligence or error, does not recognize the correct or timely disease or type of it, however, later when the diagnosis was wrong and if not medical malpractice, etc., should be correctly diagnosed the disease or type of it and there was the possibility of disease, whereas now the possibility has been ruled out [8]. In these cases, what is considered a loss and its debatable potential compensation is the missed opportunity itself not the final loss such as the death or disability of the patient and the ultimate benefit of the patient that there be the possibility of it but, in fact, has been lost by the fault or error of the doctor. Thus, the lost opportunity should not be confused with the expected benefit and it is considered one of the ultimate losses caused by the loss of opportunity, [9]. It can not definitely be said that if the patient was treated, she/he was treated and was improved but there it is only likely [10]; but it is certain that such an opportunity is missed because of the fault of the owners of the medical professions. In the case that someone will suffer losses caused by others, apparently no doubt in fulfillment of its definitive loss; since the loss, actually performed. This is common in medical errors. For example, as a result of physician negligence, if a treatment opportunity is lost and the patient dies or becomes disabled, however, it can be proved that if the doctor did not make a mistake and the patient was treated almost certainly with effective treatments and, ultimately, death or disability does not take place. Therefore, in such cases, due to the existence of doubt in causality the liability of the defendant is doubtful and we can say that to solve this problem (proof of causal relationship), especially in the medical rights issues, have raised the theory of loss of chance [8].

What is common in the various definitions of causality is that the operation can be attributed as cause, which at least it is necessary for the realization of losses. According to this concept of causality, in the case that a person loses the opportunity to avoid the loss, can not clear the causal relationship to be established between medical staff faults and losses. Because it was not proven that if a doctor guilty of negligence (lack of cause), the patient did not die or be disabled (no reason), it seems almost impossible.

Some lawyers to solve this problem have tried to offer a new concept of causal relationship that is a combination of causality and probability and the details of it are beyond the scope of this article [11].

Types of losses in the treatment opportunity loss

A- bodily injury

The human being whose life was in danger and not be able to fix it, refers to the medical staff and the trust that they can fix it. The medical staff can take timely action and use their expertise to prevent the realization of the damage to him/her in this situation. However, they may refuse any intervention or help and deal with this issue recklessly. So, in this case, the first damage that is likely to enter into victims, is damage to his physical integrity and the possibility of severe bodily injury and death is very high. That's why it was said, to the special character of our assumption, the most common damage, is this type of injuries.

In the event of these kind of injuries, their assessment facing the challenge for two major reasons. First, most of the damages come from the injuries, realized in the future and the possibility of speculation in them is very high. For example, it is difficult to be convinced that what will be the complications of a broken bone or brain trauma or how much it costs to take their treatment or how much is the amount of damages caused by their disability [12]. Thus, the detection of the exact amount of compensation that can eliminate all traces of such injuries, is not possible. Moreover, how can the amount of money no matter how much to pay, claiming that damages caused by death, was compensated to the victim or essentially can the death of a human being be evaluated by money? Jr. [13]. Second, due to the dual face of this type of injury and its relation to moral damages, the difficulty of assessing this type of damage, it also spreads to them. However, since the amount of compensation paid to the injured and compensation for losses sustained minor though it is better than having no compensation, a way to evaluate this type of losses, is the amount fixed by law for any injury as a floor of damage which must be paid by the agent of harm, to the victim or his heirs. Wergild in our legal system has this role. However, legal precedent, shows resistance but accepted that doctrine is accepted properly that wergild is a given compensation [12]. Along with the expected entry of injury to the victim, is more than other types of losses, the possibility of damage to his spiritual is imaginable.

B- Spiritual detriment

Spiritual detriment may be due to loss of possessions that a person is dependent on them or he is associated with intellectual property rights, such as his business reputation or come from the factors that directly affect the interests and physical integrity of a person's character. Among the most significant spiritual events that damages arise when the rights and obligations and moral aggression would be severely compromised.

Another important point is the spiritual damage, is that it is not limited to the injured or the victim of the accident. And may even, others because of their relationship with the aggrieved due to irreparable damage

to his body and spirit suffer from mental impression and pain. The most significant of these individuals, are the family and the victim's heirs [12]. Thus in our assumption, if the victim died or suffered of severe physical injuries, his relatives could also claim compensation for injuries their spiritual.

Responsibility for loss of opportunity for treatment

While discussing this subject independently does not pass a long time Iranian law and consequently no letter of the law and jurisprudence on this issue; but underlying this concept are shown in the Act. Article 565 of the Civil Code is presented on the basis of the remuneration is saying "Presented contract is permissible as long as the operation has not completed any of the parties may refer but if you refer forger During practice should give a reward. " Because the forger is terminated, the opportunity to achieve the desired goal is eliminated and the business value that is missing from this action is a measure of the ultimate loss.

Article 6 of the law of civil liability, to support the affected employees have the right to damages resulting from lost position themselves to take charge of the event, in fact, alimony recipients, have been deprived of the opportunity to benefit in the future. The potential benefits that may be due to other factors, this right was taken away from him/her. However, it is demandable by legislator There are two views in civil law on civil liability and the liability of the coercive: some say it's basis is the fault, and others say loss is liability issue. On this basis, responsibility and interests of human actions is very clear. But about medical errors and medical staff, which is considered as the most obvious example of a lost opportunity, a group of lawyers, with an emphasis on the fact that the lack of responsibility of strengthen opportunities in medical errors, will lead to an unfair result, according to "risk" knows a missed opportunity to be compensated [14], From among jurists who have discussed some of them don't consider loss of opportunity as loss of material, and say it is not dueable [15].

It is worth noting that this category of lawyers, at the same time, by verifying that no admission of liability due to loss of opportunity of treatment in medical errors, resulting an unjust consequences, using the theory of risk in this area of responsibility are considered better [14]. For some lawyers, it is not necessary separation between different alternatives of problem, and in each case the norm, considers "missed opportunity" valueable and that its loss is considered loss (whether material or spiritual), it should be compensated undoubtedly [16]. Finally, it is alleged that the most appropriate way to redress the effects of lost opportunity, is based on the theories of causes of civil responsibility [17]. However, one of compensable damage characteristics, is Certainty of it, in some countries law, loss of opportunity to achieve profits or avoid losses, regardless of the possibility of it have been considered another loss separately [14].

Authorities

For dealing with medical crimes and misconduct in Tehran, District 19 Special Prosecutor is working to handle this type of crime, is working that after inquiries from trusted experts in terms of Forensic Medical Council, a final judicial decision will be taken. Also, pursuant to Article 1 of the Law of Legal Medicine Organization Act of 1991, one of the jobs of the coroner as a public entity with independent legal personality is, commenting on the affairs of Forensic Medicine and Bachelor of autopsy and laboratory and clinical work done on the orders of the judicial authorities.

Iran Medical Council disciplinary regulations based on laws passed by parliament and approved by government deal with the violations of doctors and other members of the organization. According to the specialty in medical diagnosis and requires the use of experts and qualifiers, it seems that the authorities are the most appropriate and reliable references available which utilizes the science of medicine and the power of determining the causes and identify the causes of violations and errors and medical malpractice of medical staff are able to address these important affair. In fact, their expert opinion, if is issued unbiased and professional and objective justice is basic need for justice in this area.

CONCLUSION

The main subject of research is to study the causality in the loss of opportunities, in healthcare treatment. As noted above, one of the most important law issues of today, is civil liability clinical staff that civil law and civil liability law are silent about it. However, respect for the patient and the defense of human rights in times of illness and medical emergencies, without discrimination of age, sex and having financial power, known as patient rights. Unfortunately, despite the increase in medical accident, jurisprudence governing authorities and civil liability insurance, medical and paramedical could not be responsible for damages and given that the Iranian legal system, So far in the field of medical liability except for a few limited material in the IPC - which has been adapted from Islamic jurisprudence - has not adopted a specific law, medical civil liability claims are settled based on the traditional rules.

With consideration of the nature and basis of medical professional liability, we find that although jurists explicitly not raised the idea of losing the opportunity to improve or heal the sick, and they did not consider it, but the context of their statements on the concept of harm and common criteria for assessing the harm that has been predicted for necessary measure the clearly is apparent. With regard that currently, custom considers these valuable opportunities and the loss of it is considered a disadvantage, Therefore, from the

perspective of Islamic jurisprudence in such cases, medical jobs which strengthen the opportunity to improve their patients' health care, will have responsibilities in this respect. This theory can be applied broadly in medical law According to Islamic Countries Law, Common Law system, especially in the French legal system, and several verdict have been issued on the basis of it. So that one of the controversial issues of civil liability is about the relationship between causality and certainty of loss in these cases. Based on the discussions waste of time and loss of opportunity for treatment, is one of the disadvantages that the medical staff can enter patient and this is independent type of the loss and compensation should be according to general rules of civil liability.

CONFLICT OF INTEREST

There is no conflict of interest.

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