

**Civil liability arising from errors in medical career in the republic Islamic of Iran**Amir Ahmadi (M. A)<sup>1</sup>, Yoseph Niazi (M. A)<sup>2</sup>, Alireza Shakarbigi (M. A)<sup>3</sup> Qaeme Naderi<sup>4</sup><sup>1</sup>Department of law, Payame noor University, Iran  
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**Abstract:** Medical practice, based on past experience and professional practitioner's innovation and perfection is not there and like the rest of mankind may affect your physical and spiritual and spiritual issues of race and academic experience and. error, and probably will deviate from the straight path. In this study, the first to treat the three conditions mentioned in the penal code. The legal elements of accountability and more responsibility has been studied, which included responsibility for contractual and extra – contractual, ethical, and legal liability, criminal liability, civil liability or professional disciplinary, is physician responsibility in the Shiite jurisprudence and opinions of Shiite jurisprudence is discussed—so your commitment in principle commitment by focusing attention and diligence in the way of healing the sick, but you know the type and scope of the grant, the research examines physicians civil liability, lawyers who can help in the formulation of appropriate laws and our legal system seems to be in the system of civil liability, should be a system of compensation for medical accidents occur.

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**Introduction**

The word “responsible” in the word refers to a person who is responsible for reprimanded and asked her to ask questions. The term has also been a source of meaning in the concept of responsibility. In relation to community life, the sense of responsibility or liability means that each person should be held accountable for their actions and the results of, so in each case, the person is required to provide additional compensation to say he is a civil liability. civil liability is a legal responsibility and moral responsibility is different (in order of moral responsibility that humans have committed against god or our own conscience error response).

**Physician commitment is generally divided in to two types:**

Some commitments, obligations related to public health spending and some doctor's. In other words, the doctor sometimes civil liability for non – compliance of technical and professional standards, and sometimes for non – compliance and public and humanitarian issues between doctor and patient, each of the above topics will be a separate room; One of the conditions we treat here at the law.

**Triple treat conditions allow the penal code**

Article 59 of the penal code, under the circumstances, the three physicians in the treatment granted:

**The first condition:** is allowed and a state legislator, the public authority to protect the welfare of the community physician is authorized to perform medical procedures to be followed, even though the result.

**Second condition:** patient satisfaction is an important element of the right doctor and the right treatment, your doctor will treat the property rights of each person on your body is refreshed.

**Third condition:** besides these two conditions, another factor is necessary, and it is intended to improve the health of the patient and the doctor cannot perform actions that aim to patient health. So if the three conditions is not a mistake if the doctor has no criminal liability but only civil liability is also excluded.

**Statutory elements responsible**

Article1 of the civil liability Act, anyone without a license to practice law or to the life or health or property as a result of recklessness or freedom or dignity, or reputation, experience or any other right of

the law for the damage caused, which shall be responsible for any loss, material or moral damages resulting from their actions.

Article 60 of the penal code, getting innocent;

Article 319, including the civil liability permission;

Article 321, including the civil liability permission;

Article 322, including the presumption of innocence disclaimer.

## **Types of responsibility**

### **1-contractual and extra –contractual liability**

It is a commitment which will result in a violation of a private contract for parties comes and responsibilities outside of the contract, it is plain that there is no agreement in the case of an act or omission caused by error or deliberately harm the other carries out. Requires no contractual obligation to seek damages from the damaged area and are committed to responsible contractors; and as commitment. For the failure to perform or delay in fulfilling a commitment is a commitment. The responsibility of the person has committed a public or statutory violation has been hurt (Katouzian, 1996).

### **2-ethical and legal responsibilities**

Moral responsibility is not responsible for the way against the law the only guarantee is the only face internal and moral responsibility to god person or his or her conscience and does not warrant legal enforcement. for example, someone who has witnessed the drowning swimmer can help, not help here's just a shame the conscience and no legal responsibility legal responsibility, do harm verb and pictures, have a responsibility to fulfill the condition that it is contrary to the moral responsibility of legal liability and warranty matters stated in the law (criminal and civil) is a common face in the criminal and civil court, charging breach of contract and will be (Katouzian, 1996).

### **3-civil and criminal liability**

Criminal liability is that the law is a crime. responsibility for this type of crime you will be responsible for planning. The causality between the act and the crime committed and the damage that can be done to be attributed to him. Person in charge, in addition to compensation for the legal punishment is required. civil liability is the obligation and commitment to another person to offset losses what losses will depend on the person or persons to act for him or property owned or occupied by him. Every person is responsible for the compensation we have civil liability (Katouzian, 1996).

### **4-disciplinary or professional responsibility**

The responsible person in accordance with contracts, professional associations and unions and like – minded organization, and their own guild. Violation of these rules to violate the security and administrative violations of the medical council, doctors say such deals.

According to the definitions and classification of the four types of physicians have a responsibility to be because they have a duty and responsibility as a large community of people and cannot act like a normal person. Where a normal person in society of often blamed in front of god and his or her society considers responsible; The doctor could not dying of disease or injury can go a lot further argue that moral responsibility is the color second of all civil liability rules based on their religious or professional misconduct and police abuse, a physician, or his purpose, and the failure to perform the act or duty and leave treatment, abuse of sick leave fraud, abuse of illegal medical practice unconventional relationship with a patient, and abusing professional expertise in addition to providing moral responsibility, both civil and criminal liability has in each case in accordance with its terms, and legal and professional associations are traceable it is based on sharia law and no one is immune from prosecution because of his recession as and is not based on principles such as kindness and charity that the doctor was immune from liability. According to article 1 of the civil liability act and other laws and regulations, 'lazarar' should be compensated for all damages. Also a violation of the law on criminal liability or be weak or medical institutions (medical organization cases stated by law) there is no criminal liability in criminal law of mass action is not considered counted unless the act is considered a crime (Mahmoud Rezaei, 1994).

The discussion also bear criminal liability criminal legal penalties should be seeking compensation. with regard to getting the attention of lawmakers and the acquittal is based on the well – known scholars in the absolute resolver civil and not criminal liability. Because the legal regulation and professional associations, and caution should be absorbed However acquittal after premising of the patient and the attending physician provided no fault of medical knowledge of all regulation and is otherwise responsible. Doctor pick up his patients right to treatment that is free and the choice of their treatment are owned and provided that the treatment that is based on accurate scientific because it does not fit together, static fully sick and need a doctors skill and experience of the freed on to be themselves (Lyon, 1898, said: doctor Al-johar).

### Physician obligation in Shiite jurisprudence

Definitely one specific group of doctors to the doctor is not. Physicians obligation discussion, particularly surgeons, or general practitioners or psychiatrists or not veterinarians, not responsible for any of actions and the human and financial compensation is required, this means that if the evidence responsibility doctor was used, it does not matter who caused the loss impairment of a drug prescribed by a doctor is sick or a surgeon specializing in heart surgery or brain ...; The loss of that person or of mental power to a few sessions, or administering medication to the patient, the patient is ill or to kill him or veterinary treatment of their animals will die, will be guarantor.

However, a number of scholars from Shiite principle of presumption of innocence does not know the proper treatment. in this regard, there are two theories are discussed.

### Famous for Shiite jurisprudents

Shiite scholars believe that despite being well qualified and skilled technical standers, despite the state despite treatment with the patients permission, obtaining not guilty if before treatment, doctors would be ensured. They leave in treatment the permission is not wasted and sick leave and asked her to seek treatment in the death or injury is not a defect (Al-amoli, 1996); Renowned Shiite scholars to prove his claim to have evidence that it clings to the reasons mentioned.

### Discussion

1-The Shiite jurisprudence is the responsibility of the physician, the majority of scholars believe that the two major theories of liability, even if the physician is not our fault, as the famous documentary evidence and proof of courage is not the responsibility of the physician and the absence of minority jurists who believe in responsibility and the requirements and interests of the community physician logic compatible.

2- Penal code follows the famous theory of jurists responsibility of the treating physician and the specialist with the permission of the patient is made ;is accepted by a doctor are mistreated and intestine. It is against the law forecasts if the physician who treated the patient prior to harvest cannot be responsible for damage arising.

3- In most cases, medical liability, and contractual liability by contract physicians treat their patients is associated with a case, however, there is also the responsibility of enforcement.

4-Contract beyond specified contract treating in any of the examples is articling 10of the civil code.

5-Pillars of medical liability, whether contractual or enforcement responsibility, the pillars is threefold

responsibility include: medical errors, from the treatment Causality relationship between treatment and harm, sense of medical error and the assessment and grading criteria and how to prove it error as well as examples of Islamic criminal law and various alternative Cause relationship.

6-Different faces in obligations and responsibilities of the various violations ranging from failure to observe the technical and professional standards in the diagnosis treatment and surgery and anesthesia, radiology and surgery, beauty and human issues such as refusing medical treatment, lack of patient consent, medical practices, medical opinion lies.

The doctor also noted that disclosure of professional secrets and not just responsible for their actions but civil liability actions assistants, nurses and technicians and doctors actually"command the power of giving "has them.

7-Medical error is required to compensate for the damages and the restoration of the former or to his heirs, it is the monetary equivalent. however. it is possible that contracts to limit liability, physicians cure before the contract is signed this contract is valid and should not be done until they are resisted with public order.

8-Some doctors have civil liability insurance, errors and their career and in order to prove fault and responsibility of doctors, insurance will attempt to pay damages. it is fitting that this important industry (professional liability insurance )to strengthen the country.

9-To Address police misconduct and doctors preformed the necessary expertise for the authentication of medical error is active. In this study, elements of organization and procedure violations by the police and the agency examined.

10-"The legal basis of loyalty to the public interest "and relevant regulations on this basis, it is further demonstrates the importance of the day if necessary and appropriate authorities in regard to this issue, and the proven ability to control the growth of Islam in the world new problems, we will.

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