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**STUDYING BASIC LIABILITY ACCEPTANCE (PLEDGE) OF GUILTY MEDICS AND
ITS CAUSES FROM JURIDICAL VIEW POINT**

MOHAMMAD ALI GHORBANI

1: Department of Islamic Jurisprudence and Law Introduction Lahijan Branch, Islamic Azad
University, Lahijan, Iran

ABSTRACT

In addition to its moral value, medical practice has a special place among society in all cycles of history and practitioners always accounted as society's privileged classes. Patients always trust their doctors and put their lives on the hand of the practitioner and accept his prescription and other treatments without any questions or conflict and allow him to take any necessary actions. In return, doctors need to be professionally trained to keep their patients away from unfamiliar dangers and hazards and they should always dedicate their honest efforts to patients benefits. Purpose of this research is to study basics of delinquent medical responsibility acceptance and its causes from juridical viewpoints. Method in use for this research is analysis and description based which will discuss legal evidences. This research consists of two major parts: stating fault causes of practitioners and stating medic's fault liability basis.

Keywords: Guilty Medic, Pledge, Responsibility, Professional Medic, Desire for Treatment, Quittance

INTRODUCTION

Doctors are humans and like every other human being might make mistakes. In some cases despite doctor's efforts and lack of any mistakes, medical treatments might lead to patients' compensations and fatalities. Question is in what circumstances the doctor

is responsible for his actions? What are evaluation's standards and scales in this field? Doctors' pledge is one of the biggest concerns of Shia jurists. on this subject, Imams have many narratives and statements. Imam jurists study doctor responsibilities on the term of

'pledge' and divide doctors to groups and present different regulations and according to those regulations ,medic is responsible for any fatality or dismemberment due to his medical treatment. Islam states that many Shia jurists study doctor responsibilities on the term of 'pledge' and divide medics into two groups: 1. Ignorant medic's 2. Dextrous medics. According to Shia scholars, ignorant medic and faulty medics are responsible for wastes and damages caused by their treatments. In this state there's no conflict between scholars that ignorant and guilty medic is responsible and in this article we inquire fault causes on this field.(but for dextrous and professional medics and not guilty medics there are many conflicts, disagreements and arguments that will be discussed in other articles)so we design this article in two parts:

METHODOLOGY

Recognition of guilty medic

Despite clarity of the subject, 'guilty medic's pledge' from Islam juridical viewpoint, better understanding of the situation, offering a definition of medical guilt and discussing basis of this pledge is an necessity.

In definition of guilt it is said that: 'guilt 'is behavioral violation of human standards in accident conditions [1].

So recognition standards of guilt and distinguishing guilty from not guilty are behavior of a cautious and reasonable human in the accident conditions. Jurists stated conditions for medics and question them in some of the cases by referring to those conditions and standards, guilty and not guilty medics can be distinguished from each other. The most important of those issues can be outlined as follows:

1. Ignorant medics pledge

First condition of medical practice is cleverness and knowledge and authority in medical practice without enough and sufficient knowledge might lead to death or dismemberment ,and person is responsible for wergild or damaged bodypart. It is narrated from prince of faithful Imam Ali: "it is obligatory for an imam to imprison lewd scholars and ignorant medics and"

Doctors efforts and all medical services require enough knowledge of what they do. Holy Quran keeps humanity from following what they don't understand [2] and relying on speculation instead of knowledge [3] .according to jurist criteria, narratives and pledge regulation, when an incognizant person ventures medical

services and instead of curing patients causes more suffering, he is consciously and legally responsible for his actions and if those actions lead to death, he is to pay wergild of semi-intentionally murder.

This matter is concluded between all scholars and jurists and there's no conflict on it, alsoseyed Ali Tabatabayi stated in the book 'riad issues': "sentence of an ignorant medic is one of the few subjects that I didn't find any disagreement in." and cited from MaghdadSivari: ((according to Shiajurists, ignorant medic is responsible for damages and wastes caused by histreatment)).bin Adrishali discussed a narrative by imam sadegh about Imam ail judgment which he found an circumciser guilty for cutting a kid's penis and shows that sentencing a guilty medic is an axiom and absolute jurist statement.

Concluding from all the views of Shia jurists, medic is responsible for his failures. Medic according to medical practice, from the beginning of referral to all the diagnosis and treatment efforts, should use all academic standards for patients improvement and if patient is likely to

be damaged financially, physically or morally, the medic is responsible unless treatment is done with patient or his/her parents' permission and acquaintance was confirmed before treatment.

2. illegitimate treatments or surgeries

By studying Islamic resources it is confirmed by Islamic sharia jurists that there are no prohibition in medical treatments or surgeries also medical practicing is an accepted action and will guarantee both individual and social profits. Biography and life of Imams shows that these great ones not only were not ignorant to medical treatments and medic's actions, but also cared and valued this matter.

Our great prophet had his own specific and special methods in treatments that are known and collected as "nabi medicine" one of his holiness remarks are: ((god didn't send any disease only with its cure))

Also there's another saying of his holiness which orders people to understand contagious diseases like plague and find ways of prevention:

Which means: ((plague is a disaster sent to Israel and its previous

relatives. so when you are informed that there's a plague in a place, never enter that area and if you are in a plagued place, never leave that area.))

According to explanations above, medical practice is a permissible act in Islamic sharia, but it does not mean that medic is allowed to perform any kind of treatments or surgeries because some medical and surgical treatments are prohibited by Islam. These prohibitions called by sharia jurists 'deference' define absolute forbiddance and leaving of some affairs.

Deference in Islamic sharia is defined like this: ((extreme hatred of a committed person from an affair to a level that he will never accept to perform or leave that affair, is called deference.))

Illegitimated medical operations can be discussed in fields mentioned below:

a) Sharia deference of committed action

In Islam religion, some actions are sharia prohibited. Committing these actions, called by sharia 'deference' will cause medic interpellation. Imam Khomeini in "tahrir al vasile (means to edit)" stated that a man is responsible for doing actions in contrast with sharia. About autopsy of a Muslim he states:

((Autopsying of a dead Muslim is not permitted and if someone performs it he must pay discussed wergild of a decapitation or dismemberment of body parts)) [4, 5]

It should be noted that consent of patient or his/her parents and also observance of all technical and medical regulations will not relieve the guilt of an illegitimate medical treatment or surgeries because action committed is without religious prestige. Therefore venturing to this illegitimated treatments or surgeries is one of the sharia basics of medic responsibility and accusing .

b) Un-authorized treatment and cure

From an rational inherence we can say: if without warrant or owner's permission ,one cannot conduct on someone's property then for treatment in which the doctor is about to encroach all of patients body ,patient's permission is necessity.

On the same basis if doctor attempt to treat a patient without his own or his parents' permission and thus damage is caused by this treatment, doctor will be guilty. Guilt of an un-authorized medic is so vast that many imam jurists declared that in this particular

matter there are no disagreement and in some points there are claims of consensus. Un-authorization of a medic will result in his guilt and he is to pay wergild of oneself or bodyparts. Researcher Hali in book ‘‘sharaye Islam’’ states:

((medic is pledged to what he depredates by his, treatments ,if he is short ,which means not expert and curing a child or an insane without permission of parents or and mature that did not permit treatment)) [6]

Imam Khomeini in this context believes that:

((if medic performs treatment without permission ,even if he is professional and has skills in medical science, he is pledged in what he depredates.)) [7].

Also Ayot Allahkhuyi in book ‘‘takalamaalmenhaj (basis of complementation of curriculum)’’ states that:

((medic is pledged to what is wasted on his treatment, or treating a kid or an insane man without parental permission or a mature man without his permission)) [8]. According to what stated above, we can claim that Imam Jurists believe that patient’s lack of permission or his will is cause of medic’s pledge. Lack of patient or his legal parents’

consent is one of the many basis of medic responsibility and pledge.

c) **lack of medic obligation compurgation**

Another basis of illegitimized treatment and pledge acceptance is lack of obligation compurgation from patient or his parents before starting the treatment. Many of shia jurists believe that if a medic is acquitted by patient or his parents he is relieved of criminal charges and is not pledged to what is damaged or wasted during his treatment .apparently the main evidence for shia jurists is a narrative from Imam sadegh which he himself quotes from Imam Ali:

((person who intent to cure people or animals, he should acquitted by patient’s parent or he is pledged.)) [9]

First martyr from book ‘damascene shine’ believes that:

((if a patient (before accident) acquit the medic ,the quote is correct)) [10]

In this matter Second martyr in book ‘sharhlama (describe to him)’ says:

((if patient before act of treatment, aquits medic of accidents, the clearance is defined correct))

He believes needs and necessity’s of this matter and also a speech from Abi Abdullah

are reasons. also it should be noted that at the end of the discussion he deviated from his own belief and said: ((because evidence are ,as written, weak and not trust-worthy, Ibnadrīs changes his vote and declare inaccuracy of Acquittance before crime and from our perspective, we embrace this vote as an acceptable and great declaration.))

Ayatollah Mousavi in the book 'complement the curriculum' about this matter exalted: ((of course this verdict (medic is pledged) is for the time when medic did not receive any compurgation from parents or animal owners but if he receive it then he will not be pledged.))

Therefore if medic, without receiving permission from patient or his parents and having observance of technical and medical regulation ,because the act doesn't have religious prestige's, its not accepted by jurists and medic is pledged.

d) Disobedience of medical rules and regulations

Some of jurists state that medical regulations violation are like violation of religious laws and regulations and say:

((as one can't disobey juridical laws ,he cannot disobey medical laws and regulations. Therefore as its essential for jurist to not violate juridical laws

for understanding and diligence, medics likewise must follow rules and regulations that other medics have consensus in them.))

By many jurist belief correspondence of medics action with medical profession is cause of his responsibility and pledge fall. So by referring to matters discussed above, we can claim that illegitimate medical treatments or surgeries are one of the basis of medical liability in Islamic jurists.

RESULTS

Imprudence and Recklessness

Ignorant and reckless Medic, even with permission of patients or his parents, ventured in medical operations, his pledge is from Islamic jurist certainties. Reason of this interpellation is the medic's transgression on other people's rights and any transgression oath will cause the subject's pledge [11]

Imam jurists, in addition to theoretical reason, citrated to many narratives of the massage "does not invalidate blood of a Muslim man" [12].

Imprudence means that one operates without any attention to results of predictable operations and thus, cause body damages and fatalities and reckless is someone who never thinks about results of his actions and if he

would thought about results of his acts, he would never attempted any operation .

Intestinal perforations in belly surgeries, misplacing surgery utensils or bands inside the body of patients ,any inappropriate manipulation of organs near the organ under the surgery, mistakes in connecting oxygen sources or other gasses used in surgical operations , injecting medicines that have internal muscular use into the vein and shining too much rays that have therapeutic use are common examples of medical imprudence and recklessness [13].

Imprudence just like recklessness will lead to pledge. juridical texts mentioned above confirm this claim.imprudence is opposite of recklessness and that is when one does not do what he should have done .imprudent person ,just like reckless one ,will cause damage from his actions to others and without doubt leads to committing crimes. Not doing essential experiments before the surgery, performing radiography , examining heart, removal of ECG before anesthesia, embedding special tubes in special circumstances to derive blood and secretions-which is a perfect tool for awareness of bleeding or secretions in the place of surgery and accessing the place operated-performing allergic tests for drugs that might lead to allergies, shocks or death are examples of

imprudence [14] for recognizing whether a medic has done an act of imprudence, like recklessness we should refer to experts.

Lack of skill

Medical skills are one of affairs that performing them requires special skills and substantial knowledge, because practicing medicine or any medical branches done without knowledge, not only they won't reduce society physical and mental pains, but also it might even lead to death.

In Islam because of validation of humans soul and blood, not only interference of unwise-those that don't have any medical knowledge-has been prohibited, but also prohibited from those who lack medical skills and its from pledge essentials and exposition punishments have been predicted for this matter.

DISCUSSIONS

Basics of accepting pledged medic's guilt

After stating causes of guilt in medical treatments, we must note that medic, either expert or unwise, can be guilty or not guilty if his treatment does not have expected results and damages patient. Therefore we study basics of accepting pledged medic's guilt

After understanding the definition of medic's guilt and its cause, basics of its acceptance will be analyzed below. Moghadasardebili in the book 'compound interests and facts' writes:((if a medic fails at his duty he is

pledged whether he is professional in medical science or not ,whether his treatment is done under permission of patient or his parents also there's no conflict in this matter))

Decedent Mohammad Hussein najafi writes: ((according to Shia jurist's consensus, when a wise doctor with enough medical knowledge and skill makes a medical mistake caused by his recklessness and hurts patient, he is pledged. even if the treatment was done with permission of patient or his parents.)) [15]

Imam in 'tahriralvasile (means to edit)' about guilty medic's responsibility writes:

((medic that performs circumcision if he cuts more than he should, even if he is skilled in his profession, he is pledged.)) [16].

binAdrishali discussed a narrative by imam Sadegh about Imam Ali's judgment which he found a circumciser guilty for cutting a kid's penis and shows that sentencing a guilty medic is an axiom and absolute jurist statement [17].

Verses and narratives of Shia and Sunni and Jurisprudential arguments show inadmissibility of medical practice and liability for an ignorant and transgressed medic. We refer to some of these verses below:

1. Verses

Quran verses consecutively prohibits Muslims from performing acts that

they are not acknowledged with especially big matters like human lives .it is clear that according to prohibitions of interference ,creates pledge tendency in other words, interference of people in the affairs that they are not acknowledged in it will result in pledge:

((Probability does not sing the right thing)) ((Do not stand for what u are not aware of)) ((And those with wisdom will question those that do not know))

2. Narratives

Liability of an ignorant doctor is so critical and serious that Imams have statements about this matter:

A. **commander of faithful Imam Ali in a narrative exalted:**

Meaning: it is obligatory for an Imam to lock away three groups in society: unfaithful scientists, ignorant doctors and tenants of transportation means that they are indigent.

B. **Muslim's great prophet Muhammad spoken:**

Meaning: one who performs medical treatments and before that, he didn't have any medical knowledge, he is pledged.

C. In another narrative from god's prophet it's been said:

Meaning: one that practices medicine without its knowledge and hurts someone in process, he is pledged.

3. Jurists words and consensus about ignorant and guilty medic's liability

According to Islam laws and regulations, when an unprofessional man (ignorant) intend to perform medical treatment or surgery and hurts patients mind and body, he is pledged. In this matter scholars have consensus and commented <<no dispute>>.even second martyr in the book 'sharhalamah (caption his light)' stated that main reason of doctor liability and pledge is consensus.(sharhalamah, volume 2) Owner of the book 'javaheralkalam (jewels of speech)' writes: ((in relation to responsibility of an ignorant doctor, there seem to be no disagreement and even in some juridical books (altanghih (revision) and alriaz) there's a consensus in this matter)).he believes that if a doctor does not have sufficient medical knowledge and skill ,even with patient's permission, if he causes wastes, he is pledged because defined

evidences on liability and pledge are dominant on this matter, especially if there's fatality, moreover because treatment is done by unprofessional doctor therefore authorization in the treatment is non-juridical and doctor is responsible for what is lost [18].

Researcher Hali believes that doctor, if imprudent and not wisdom in his treatment, he is pledged for what he wastes [19].

Ayatollah khuyi exalted in the book 'takamalaalmenhaj(complement the curriculum)' :

Meaning: ((when a doctor, treats a child or an insane man without permission of their parents, or when he treats an adult man without his permission ,he is pledged for what is wasted because of his treatment and when he commits a mistake, even if he wasauthorized, verdict is still the same, meaning the doctor is pledged²⁰Imam Khomeini also believes that: ((if a doctor fails at his knowledge and duties, even if he'sauthorized, he is pledged to anything wasted due to histreatments.)) [21].

CONCLUSION

According to all Shia jurists and based on past documents and evidences, if a doctor commits a mistake during his treatments or fails at curing the patient he is pledged and responsible. Doctor, according to medical

regulation, from the visit to all the procedure of diagnosis and treatment, is bound to use all his medical knowledge and skill to improve patients' wellbeing otherwise if patient suffers any financial, physical, moral and mental losses, in spite of treatment performed under permission of patient and before doctor being acquitted, Doctor is responsible and pledged.

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