

## **Legislative Developments of the Consent of Mental Patients In Emergency Treatments; In Fiqh and Iranian Criminal Law**

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### **Abstract**

The right to health is one of the fundamental human rights, and the origin of the obligations of private individuals and governments lies in the domestic and international legal systems of human rights. Taking advantage of the right to health and public health helps to improve the level of health in the society. The description of the patient's awareness in expressing consent to medical interventions includes awareness of several elements: the nature of the medical decision, alternative treatment methods to the intervention method in progress, the risks and benefits of the proposed treatment, and the possible side effects of each treatment method. The way of legislation and regulation in the implementation of the principle of speed and dignity of the patient, in order to intervene in the crisis of the tense behavior of mental patients, is part of a set of challenges in the field of consent and innocence, which in terms of the evolution of the foundations of the civil and criminal responsibility of the doctor in the rights of some Other countries, by the method of theoretical analysis in Iranian jurisprudence and criminal law, have been discussed in this article, and suggestions have been made for reforming the criminal policy governing the "Executive Code of Keeping and Treating the Insane" (enacted in 2018) and related articles in some criminal laws. The content and form of Iran is presented.

**Keywords:** medical rights, consent, acquittal, emergency interventions, treatment of mental patients

## Introduction

Establishing an effective relationship between the doctor and the patient often leads to an increase in the doctor's job satisfaction in addition to helping the patient's recovery. Basically, the relationship between the doctor and the patient in normal and non-emergency cases is formed when the patient consciously requests the doctor's services and the doctor also consciously accepts him as a patient. This mutual and satisfaction-based relationship is often described as a contractual relationship. The formation of this relationship means the imposition and obligation of a series of legal [and ethical and professional] duties and requirements, and therefore understanding the time of beginning and end of this relationship is very important. But in emergencies, the theoretical foundations of doctor and nurse interventions in the patient's body and the territory and conditions and indicators of legal permission of these interventions are different from the contractual interventions based on the patient's informed referral to the doctor, and special legal challenges in these are urgent interventions.

The importance of a proper therapeutic relationship between the doctor and the patient - even in cases of the patient's lack of awareness in emergency situations - can never be ignored. For example, helplessness can have different effects on nurses, patients as well as health systems. Among its effects, we can mention the drop in the quality of care, distrust of the public in the health system, and the abandonment of the profession by nurses.

<sup>1</sup> In the meantime, the drop in the quality of care that directly affects patients is of particular importance. Overcrowding of patients, high nursing workload, insufficient knowledge of the treatment staff about the rights of

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1. Borhani F, Abbaszadeh A, Nakhaee N, Roshanzadeh M. The Relationship Between Moral Distress, Professional Stress, and Intent to Stay in The Nursing Profession. *J Med Ethics Hist Med* 2014; 7(4): p. 8.



patients, the existence of various educational groups and students and their lack of knowledge and sufficient attitude in the field of patient rights and lack of expertise and focus on emergency treatment measures in the framework of emergency medicine. And especially, the mental pressure of doctors and nurses has reduced their work quality, especially in emergencies where the patient's life is in severe danger and therapeutic interventions require very high mental concentration, and the length of the treatment period has increased. Also, medical errors increase. Meanwhile, patients not only do not achieve their health goals, but also distrust the health system.

In general, regardless of focusing on the specific legal status of the therapists' responsibility in medical emergencies, "famous jurists believe that the doctor is the guarantor of the damages caused by the treatment; Even if he is authorized to receive treatment and he is not at fault, and the only way to not guarantee the doctor is to be acquitted with no fault.<sup>1</sup> Against this famous fatwa, a minority of jurists believe that the doctor is not responsible with the above-mentioned conditions. Both groups cited reasons to prove their claims and also answered the other side's reasons.<sup>2</sup> The group that considers permission to be the patient's consent to the treatment by the doctor, which excludes criminal responsibility, but with the acquittal, the doctor absolves himself of the possible damage. Of course, in all cases where acquittal is obtained, it is subject to no fault, and in case of fault, the doctor is a guarantor even if he has been acquitted. If it is discovered that the permission to treat is also the permission to waste, the doctor is not responsible and there is no need to obtain acquittal. A non-

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1. Elahimenes, M. Criminal law and medical malpractice. 6th edition, Tehran: Majd Publications, 2018. P. 109.

2. Hosseinpour, K., (et al). Doctor's guarantee from the perspective of Imami jurisprudence. Iranian and International Comparative Legal Research Quarterly, 2017, 10, (36), p. 99.

famous person who does not need to be acquitted also considers permission in the sense of permission to waste.

"The non-fault-based physician responsibility system that is being implemented in the Scandinavian countries is based on the pure responsibility of the health system for any harm caused to the patient during medical interventions. The analysis of fault-based and non-fault-based medical responsibility systems from the point of view of the principles and values of medical ethics, leads to the conclusion that the medical responsibility systems tend more and more towards the direction where the element of fault is weak in them. Moreover, they have a greater impact on creating an atmosphere of ethics and virtue in the medical community."<sup>1</sup> Such a change - the transition from "theory of fault" and "theory of error" to "theory of guarantee of right" in the Scandinavian legal system - has created a fundamental change in the subsets of this theory - including the concept of consent and acquittal - and the challenges of doubt in Acknowledgment of acquittal and satisfaction is generally left to the history of advanced Scandinavian law.

However, these challenges continue in most other legal systems, including Iran, and other challenges also continue; including the challenge of coercive and authoritative control of mental patients or their aggressive companions in emergency rooms and the issue of criteria and scope of deviation from consent and innocence in therapeutic intervention on psychiatric emergency patients and companions. Despite the many researches that have been done in the field of risk factors that cause aggressive situations, a limited number of researches have emphasized the effect of the effective results of psychiatric nurses following aggressive situations and their preventive measures in acute mental situations or They have presented a special tool in this case. Also, some studies indicate that

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1. Bahmani, F. Assessment of Medical Liability Systems with More Emphasize on Ethical Challenges. *Ethics in Science and Technology*, 2015; 9 (4), p. 6.



investigating and predicting aggressive behavior is an essential factor in preventing violence. However, specific studies on the description of the optimal guidelines for the prevention of aggressive situations have not yet been published in Iranian research.

In addition to the above-mentioned necessity, the existence of guidelines for the prevention of aggressive situations - which is required by the medical staff in the country for highly nervous, emotionally disturbed, insane and dangerous emergency patients - in addition to the fact that it can be effective in preventing aggression. and help to standardize the management of physical violence crisis in emergency rooms, it will clear the ambiguities about the special regime of consent and acquittal of the therapists in controlling the possession of the eyes of aggressive patients and the subsequent therapeutic interventions in their body and mind or from ambiguities will be reduced; In particular, "in Iranian hospitals, despite the high incidence of aggressive situations and the constant concern of nurses about the impulsive behavior of patients and their families, especially in emergency departments and psychiatric hospitals, there is no criterion and There is no standard for predicting and effective nursing measures in preventing aggressive situations that disturb the health and safety of patients and the treatment staff and the peace of mind of emergency and psychiatric centers.<sup>1</sup> Despite the fact that studies show that "96.5% of nurses want to provide a training program to control violence in health and treatment centers",<sup>2</sup> there is still no documented program to raise awareness and empower the medical staff to control common aggressions in the emergency room. and other departments of medical centers do not exist.

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1. Alipour, S. Physician's civil responsibility towards emergency patients, Tehran: Shahid Beheshti University of Medical Sciences Publications, 2016, p. 107.

2. Rahmani A , Bakhshian A, Dadashzadeh A, Namdar H, Akbari MA. Physical violence at work from the perspective of emergency medicine personnel in East Azerbaijan province. Iranian Journal of Nursing Research. 2009; 3(10-11): 31-39.

## 1- The Conceptual Evolution of Patient Consent from Simple Consent to Informed Consent

"Consent is necessarily related to awareness; because the validity of consent depends on the information that is available.<sup>1</sup> The doctor must provide the patient with the information he needs to make the right decision; Often, the phrase obtaining informed consent is used to express this legal duty, i.e. disclosure of information related to the nature, risks and possible benefits of treatment. Informed consent is the consent that is obtained as a result of providing a specific field of information about the type of treatment and its consequences to the patient, and "in medical law, this type of consent is effective. In other words, true satisfaction is achieved when the patient is fully aware of the desired procedure. On the contrary, consent that is based on ignorance and incomplete or wrong information will lack the necessary validity. The task of informing patients in legal writings and medical ethics has been emphasized under different headings such as information disclosure, disclosure, truth telling, etc., and what the study of these writings clearly reveals is in recent decades<sup>2</sup>, in the field of medical ethics, the category of informing the patient has gained a special place and importance. This progress, with the motive of preserving the patient's right to autonomy in treatment matters, is due to a different view of the human being, as an independent being, having authority and ruling over his own destiny.

The term informed consent was used for the first time in the field of medical law, in 1957, by Judge Paul Gebhardt, in a case related to medical malpractice, and the ruling of this case expressed the fact that the patient should be aware of all the important matters in It is effective to obtain his

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1. Larijani B, Abasi M. The rights of patients in Europe: a comparative study. (Translation). Leenen H, Gevers J, Pinrt G. 2nded. Tehran: Legal Publication, 2002, p. 9. 1 Informed Consent.

2. Abbasi, M.. Medical Penal Law, second edition, Tehran: Legal Publications, 2009. p. 28.



consent to be aware so that the expressed consent based on this awareness has a legal effect.<sup>1</sup>

In the definition of the term awareness, it is said that the doctor gives information about the aspects of treatment to the patient so that the patient can decide whether he wants to consent to the treatment under such conditions or not. This process of understanding the risks and benefits of treatment is known as the awareness process, and the decision made based on this awareness is called informed consent. "Informed consent is the free agreement of a qualified person to participate in treatment decision-making after knowing the nature of the goal and its requirements, with the belief in the effect of this participation in choosing the most effective and useful treatment method."<sup>2</sup> Informed consent is a legal process to make sure that the patient or client is aware of all the risks and costs of the treatment.

In the common law system, from the doctor's point of view, the knowledge of the patient means that the doctor makes sure that the patient understands the purpose of the treatment, the benefits of the treatment, the risks of the treatment and other treatment options. Consciousness is a process that allows the patient to participate in his medical choices with an open view and to manage and direct what is going to happen to his body. For this reason, some institutions in some countries - including England - do social activities with the aim of supporting patients to complain due to dissatisfaction with the medical services provided.<sup>3</sup> In this regard, the current methods currently emphasize on providing complete information (detailed knowledge) to the patient, and this has become a single standard.

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1. Vohra H. Ledsham J. Vohra H. Issues Concerning Consent in Patients Undergoing Cardiac Surgery; The Need for Patient-directed Improvements: A UK Perspective, *Cardiovasc Surg*, Vol. 11 ,2003, p. 92.

2. Holmes R. Wills M. CE Improving Informed Consent: Insights from Behavioral Decision Research. *Med Care*. 40(9), 2002, p. 87.

3. Vahabi, Z. (2019). Liability of Physicians in the Light of English Criminal System. *Fares Law Research*, 2(3), p. 118.

In general, it is accepted in the legal systems that the definition of awareness includes the knowledge of the following elements: the nature of decision-making, alternative treatment methods to the proposed method, the risks and benefits of the proposed treatment, and the possible side effects of each treatment method. . Awareness requires the doctor to provide the patient with information related to the type of disease, its nature, proposed treatment method, available alternative methods, risks and benefits of the treatment process, duration of treatment, treatment costs and possible complications.

In the common law legal system, in medical practice, there is a difference between simple consent and informed consent, and informed consent is a more detailed process that must be carried out for high-risk medical procedures and procedures that result in side effects. All medical procedures require the patient's consent before starting. (or someone who is allowed to make decisions instead of the patient). In some medical procedures, the patient simply approves the doctor's plan by taking the prescribed prescription or by giving blood for periodic tests (checkup); This consent is called simple consent, and it is actually consent to a treatment that carries few risks for the patient; But often times when medical procedures carry many risks, such as surgery, a more detailed process called informed consent is required.

Apparently, in Iran, there is not much difference in medical practice between risky and safe practices; In high-risk procedures, which is a clear example of surgical procedures, the patient (or his representative), often, even without establishing direct contact with the surgeon and thus being informed about the procedures, is obliged to, before the surgery, in In the reception section, sign the consent and acquittal forms that are placed in front of him. This procedure shows the amount of value and position we attach to the patient's autonomy and in general the human authority in making decisions related to themselves.



Among other challenges of satisfaction and innocence in medical emergencies and emergency treatment cases is the use of artificial intelligence capabilities such as evolutionary calculations, fuzzy logic and neural networks, which go beyond "telemedicine", therapeutic interventions by It has provided artificial intelligence systems.<sup>1</sup> Just as "artificial intelligence in criminal sciences is busy with measuring the capacity to repeat crimes and repeat victims of crime and a wide range of criminal calculations" much more than criminal sciences<sup>2</sup>, in medicine it is busy with therapeutic interventions on emergency patients and the challenges of satisfaction and He has been acquitted.

## 2- Jurisprudential Foundations of Doctor's Guarantee in Medical Emergencies

Ibn Fahd<sup>3</sup>, Shahid Thani<sup>4</sup>, Sahib Javaher<sup>5</sup>, Sahib Riaz<sup>6</sup>, Mohaghegh Thani<sup>7</sup>, as well as Mohaghegh Ardabili<sup>8</sup> and Mohaghegh Sabzevari<sup>9</sup>

1. See: Sadoughi, F., & Sheikhtaheri, A. (2011). Applications of Artificial Intelligence in Clinical Decision Making: Opportunities and Challenges. *Health Information Management*, 8(3).

2. Sohrabi Asamrood, M. From mathematics to criminal statistics: an introduction to the role and place of criminal statistics in the management of the risk of crime and victimization, in: a group of researchers [by Maryam Abachi], "Encyclopedia of Mathematics and Criminal Sciences", first edition, Tehran: Mizan Publications, 2021. p. 298.

3. Al-Hali, A. Ibn Muhammad Ibn Fahd. Mahdab al-Bara' Vol. 4, the research of Sheikh Mojtaba al-Iraqi, Qom: Al-Nashar al-Islami Institute, 1412 AH. P. 295.

4. Shahid Thani, Zain al-Din bin Ali al-Amili. Description of the lick. Volume 7, Al-Sayyed Mohammad Kalantar's research, Qom: Dawoodi Publications, 1410 AH. P. 67.

5. Al-Najafi, M.. Jawaharlal Kalam Volume 38, Qom: Al Al-Bait Institute, 1412 AH. P. 150.

6. Tabatabai, S.. Riyad al-Masal Volume 2, Qom: Al-Bayt Institute, 1404 AH. p. 323.

7. Mohaghegh al-Kurki, Nuruddin Ali bin Hasan. Jame Al-Maqasid Volume 6, Qom: Al-Bayt Institute, 1410 AH. P. 97.

8. Moghaddis A., Ahmed bin Muhammad. Assembly of Al-Faidah and Al-Barhan. Volume 10, Qom: Al-Nashar al-Islami Institute, 1412 AH. P. 392.

9. Mohaghegh Sabzevari, Mohammad Baqer (Beta). Sufficient authority. Isfahan: Sadr Mahdavi School, stone print, p. 234.



have also emphasized the importance of saving the lives of people in danger. Jurisprudents such as Shahid Thani, Sahib Javaher and Sahib Riaz have made clear, repeated and explicit emphasis on this ruling. . However, the responsibility and status of leaving this duty is still unclear in most jurisprudence books, and they have not mentioned the criminal and civil liability of leaving. However, from the study and examination of various examples and theories, it appears that according to the opinions of Turkish "Imami jurisprudents", responsibility is created when the action is possible and there is a legal (Sharia) and customary duty in that context.<sup>1</sup>

#### **2-1- The Rule of Self-preservation**

According to the legal rules, where the probability of loss increases, a lower loss should be chosen. Now, the doctor has to choose between saving the patient's life and obtaining consent, and it is his duty to save the patient's life. Therefore, in this case, he cannot be held responsible. What, the main purpose of religion is to support human life; To the extent that being disappointed in God's grace and mercy and choosing death is considered one of the great sins and deserves a fierce eagle. Although in jurisprudence, there is no rule under the title of self-preservation rule. But among the different chapters of jurisprudence, there is a lot of emphasis on respecting the right to human life.<sup>2</sup>

#### **2-2- The Rule of Benevolence (EHSAN)**

This rule is adapted from the verse of Karima "Ma Ali Al Mohsenin Man Sabil"; It means that there will be no blame on the one who does good deeds. At the same time, according to most jurists, the rule of benevolence does not apply in cases of waste. The jurisprudential rule of waste refers to

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1. Ghaffari Farsani, B. Civil liability resulting from saving another's life. Tehran: Mizan Publications, 2007, p. 261.

2. Soltani, A.; Karachian Thani, F. jurisprudential and legal proof of the rule of "Necessity of self-preservation" in Islam, Jurisprudence Research Quarterly, 2012, 9(3), p. 85.

the guarantor of the waste and includes the benefactor and non-benefactor.<sup>1</sup> Although some groups believe that if there is a conflict between the rule of "waste" and "benevolence", the conflict can be removed; With the justification to say that someone who is benevolent may actually and creatively cause waste, but we should not regard him as a wasteful worshiper and we should consider kindness as a priority over waste.<sup>2</sup>

### 2-3- Government Order

Due to the existence of interests, the government has obliged doctors to take measures for emergency people. It is a clear ruling of the law that doctors are not responsible in emergency cases where it is not possible to obtain consent and acquittal from the patient. Therefore, if they are not at fault, they will not be held responsible. We can consider these cases because of the precedence of government rulings over other rulings.<sup>3</sup> Most of the jurists do not hold the doctor responsible for the resulting damages in such cases, because they have considered the permission and above all the requirement of the legislator as governing the permission of the patient, and in such cases, the permission of the law actually replaces the permission of the patient. Because the preservation of society depends on such actions.

The purpose of Article 497 of the Islamic Penal Code is to mention urgent cases, in fact, the law stipulates to put them in a state of necessity or emergency, in which delay in obtaining the consent of the patient or his guardian will cause irreparable harm. Therefore, it is wise to treat such people as soon as possible, otherwise the doctor's action is a crime and causes liability.

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1. Mousavi Bojanvardi, S. The rules of jurisprudence. Tehran: SAMT Publishings, 2002. P. 228.

2. Lotfi, Asadullah. "Ehsan rule". Jurisprudence and Law Quarterly, No. 4, 2007, p. 5.

3. Al-Johari, M. Medical responsibility in the Penal Code. Cairo: Dar Al-Johari, 1970. P. 270.

### 3- The Challenge of Consent in The Forced Control of Attacks by Mental Patients in The Emergency

Consent and acquittal are not raised only when the patient arrives at the emergency room unconscious or is a minor or insane; Moreover, patients suffering from traumatic mental disorders who commit violence against the treatment staff are also the subject of the special challenge of satisfaction and acquittal from another perspective. The explanation that, "the high prevalence of aggressive situations and its negative results on the health and safety of employees and patients is one of the main concerns of the care and treatment staff of mental hospitals and emergency departments of normal hospitals"<sup>1</sup>; This necessitates the need to strengthen and continue the education of emotion control and aggression through written training courses for everyone, especially the treatment staff.

The best preventive measure against violence is to predict aggressive situations, which can be reduced by effective nursing measures and social skills training and effective communication with the patient, if possible. . Therefore, strengthening the skill of predicting the violence of patients and their companions in the emergency room by the treatment staff, as well as countermeasures of the treatment staff in order to protect themselves and the patient, is a new field against the classic concept of consent and Creates innocence. Considering that the reduction of the conditions that can predict aggression, anger and finally aggression in psychiatric departments and in all emergency rooms and through curbing the critical phase of violence against the treatment staff, the amount and method of physical control of the patient or Perhaps, he explained the other aggressive people in line with their interest and the interest of the treatment staff and turned it into behavioral guidelines in the position of behavioral crisis management and became enforceable.

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1. Forster JA, Petty MT, Schleiger C, Walters HC. Know Workplace Violence: Developing Programs for Managing the Risk of Aggression in The Health Care Setting. The Medical Journal of Australia. 2005;183 (7): p. 359.



In this connection, "Instructions for specific terms and conditions of rehabilitation and treatment centers for chronic patients (Non-governmental daily training and rehabilitation of chronic patients)" (approved in 2016) was issued by the country's welfare organization<sup>1</sup>, part of which is under the title "Instructions for specific terms and conditions" Rehabilitation and Treatment Centers for Chronic Mental Patients (Non-Governmental Daily Educational and Rehabilitation Center for Chronic Mental Patients)", in 2016, with 9 articles for people with mental disorders, in which the chronic mental patient, the conditions of the place of residence, the method of admission, the location conditions; He has explained the duties of the treatment staff of these centers.

Among other laws that can include people with mental disorders due to the definition of disabled in that law; "The Law on the Protection of the Disabled" consists of ten chapters and 34 articles, which was approved on 12/20/2016.

The "Executive Regulations on the Maintenance and Treatment of the Insane", which was approved by the judiciary on April 2, 2018 with 12 articles, is also related to the maintenance of people with mental disorders in hospitals and medical centers. As seen in this regulation; There is a criminalistic view of these patients. Also, in articles 5 to 9 of this regulation, it is also about sending people with mental disorders to care and rehabilitation centers, which must be under the supervision of the prosecutor and under the responsibility of judicial officers, and "it cannot be said that a supportive approach has been considered for these patients; Rather, the criminalistic view attracts more attention."<sup>2</sup>

Finally, the non-comprehensive and flawed bill entitled "The Bill for the Protection of the Rights of People with Mental Disorders" with 38 articles,

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1. <https://www.behzisti.ir/news/23951>

2. Khaghani Esfahani M, Bateni R. Necessity of Decriminal Labeling on Mental Patients and Family Facilitators, in the Criminal Policy Approach to "Social Emergency Service". Health Law Journal. 2023; 1 (1): p. 14.

which was prepared and approved by the government board with a criminalistic view, and was delivered to the Islamic Council in 2019, in which there are no measures for referral A person suffering from a mental disorder to the hospital in such a way that his human dignity is respected; It is not specified. In Article 4 of this bill, the same criminalistic view of people with mental disorders is evident. It is stated in this article: "The beginning of the necessary hospitalization process is done by one of the methods of referring a person by a psychiatrist or the order of a judicial authority or the method listed in Article 8 of this law." It means that people with mental disorders are referred to the hospital or self-referred when the patient is in a state where he voluntarily goes to the hospital and is hospitalized, and if the patient does not cooperate to go to the hospital during the recurrence of the disease; The mechanism of referring him to the hospital should be provided through the complaint of the patient's guardian and the judge's ruling.

This process is clearly stated in Article 6 of the aforementioned bill, and in Article 14 of it, criteria have been established regarding the discharge of the disease that is subject to Article 6. In articles 7 and 8 of the aforementioned bill, the hospitalization of a patient referred by the judicial authorities or self-referral is subject to the opinion of the hospital psychiatrist, and in article 9, the necessity of reporting the hospitalization of a patient whose parents' consent is not available; It is mentioned. Also, in Article 11, it is stated that the continuation of hospitalization of a person suffering from a mental disorder for more than two months in the hospital must be done with the opinion of the judicial authority and the confirmation of the forensic medicine.

Article 17 of this bill is about the discharge of homeless patients from the hospital, who must be introduced to the judicial authorities. As mentioned in Article 22 of this regulation, instead of creating the necessary mechanism to preserve the human dignity of these patients, the simultaneous presence of the police force along with the social emergency has been mentioned.



In its article 23, although sending welfare auxiliary forces to the place is considered; But since these forces do not act without permission; Sending them to the place will not be useful either. Articles 24 to 31 are also related to the complaints of these patients, who deal with legal authorities in all cases, and article 35 is about humiliation and insults to people suffering from mental disorders, while the mechanisms of transferring the patient to the hospital in this regulation are one It is one of the ways that the sick person or the family ridicules and stigmatizes him.

In the current situation, apart from medical and psychiatric guidelines, there are comprehensive regulations that include a mechanism for identifying, introducing, directing, treating people with mental disorders and protecting their rights against the guardians and the duties they have towards them and on the other hand. Determining the situation of the judicial authorities in facing them, it does not exist or they do not have the necessary comprehensiveness. This bill, if approved, will be a reflection of the legislator's intellectual and legislative evolution in supporting the rights of mental patients and the responsibilities of activists related to their care. In the explanatory introduction of this bill, issues such as the amount of people suffering from mental disorders in the society, social and economic costs, legal gap in the way to identify the sufferers, respecting their rights and comprehensive legislation to support this group are mentioned. "The effort of this bill is to protect the rights of people with mental disorders, as the title suggests, and it is expected that the legislator will deal with them with a protective and protective approach in order to protect the interests of the society and protect individual rights and freedoms. Slow down."<sup>1</sup>

According to Article 5 of the "Executive Regulation on the Maintenance and Treatment of Insane Persons" (approved 1398), which was

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1. Jafari, F., Saheb bayati, S. Legislator's criminal thought regarding patients with mental disorders on the new Bill of the protection of the rights of people with mental disorders. *Journal of Criminal Law and Criminology*, 2023; (2): p.3.

promulgated in the implementation of Note 1 of Article 202 of the Criminal Procedure Law (approved 1392), the sending of insane persons to maintenance and rehabilitation centers or treatment centers, as the case may be, and Care, in the implementation of the prosecutor's order, is the responsibility of the bailiffs. The judicial officers are obliged to reflect the status of their delivery to the mentioned centers by preparing the minutes of the assembly to be included in their judicial record to the investigating judicial authority and to submit a copy of it to the prosecutor. According to Article 9 of the aforementioned regulations, the objection to the implementation of the prosecutor's order regarding the maintenance, care and treatment of insane persons is subject to the provisions of Article 576 of the Islamic Penal Code (Penalties).

By examining the aforementioned articles of the aforementioned laws and regulations, the task of transferring dangerous mentally ill patients to care centers is the responsibility of the police officers, and assigning this duty by some of them to the social emergency personnel is a violation and even a crime as an example of Article 576 of the Islamic Penal Code. (Penalties) is; Because this delegation has no legal authority and it will be an example of preventing the implementation of state laws or the implementation of the orders or orders of judicial authorities or the orders of legal authorities. In addition, it creates risks for the health and safety of social emergency personnel. Of course, it is better for NAJA officers to perform this task in the presence of social emergency personnel, if possible, in order to prevent violent and traumatic behavior by the police against the mentally ill or vice versa. Regarding the fact that paragraph 1 of article 7 "Instructions for general terms and conditions of rehabilitation centers for the disabled, vocational training centers for the disabled, rehabilitation and care centers for the elderly, and rehabilitation and treatment centers for chronic mental patients" (approved by the Welfare Organization in 2016) defines psychosocial rehabilitation as Defines a set of measures that are carried out in order to adapt, return to society and reduce neuropsychological crises



complicated by disability in the affected person and his family, therefore, designing a detailed behavioral protocol for how to treat a dangerous mental patient by Naja officer and social emergency officer, it is necessary to adjust the clinical criminological considerations in the context of a well-considered criminal policy in this field in order to prevent the occurrence of violence between each of the two officers, the mental patient, the family and the surrounding people.

Ignoring the possible violence committed by the mentally ill is similar to ignoring the violence of the social emergency officer and the rescue officer towards the mentally ill. The convergence of authoritarianism in the criminal and medical realms aggravates the resulting crises of the two. The analysis of mutual abuse of criminal securitism and medical authoritarianism from each other, explains that the foundations of social control of crime, which is influenced by the dominant political ideologies, has a significant impact on the strategy of public health policy and providing legal support for health policies and determining the scope of individual freedoms and the territory of government interventions. "Medical authoritarianism, after preparing the support of criminal legal authoritarianism for itself, leads to the development of criminal interventions and the legalization of the government and the indiscriminate use of coercive tools with the claim of controlling social health."<sup>1</sup>

"The process of transferring a person with a mental disorder to the hospital, through the simultaneous action of the judicial system, the law enforcement system, and the emergency department, creates the impression that the person with a mental disorder is a criminal."<sup>2</sup> Therefore, it is necessary to adopt criminal policy measures to eliminate the criminal view of people

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1. Khaghani Esfahani M. Critics on the Co-Emergence of Medical Authoritarianism and Criminal Securityism in Health Policy-Making. *MLJ* 2023; 17 (58): p. 456.

2. Rostaie M, Abdollahzadeh Rafi M. The Differential Criminal Policy in Victim's Mental Disorder in Comparison with Offender's; Necessity and Challenges. *Medical Law Journal*, 2021; 15 (56): p. 817.

with mental disorders and to treat these patients like other normal patients. People with mental disorders are among the main groups that welfare should cover these people, who are often its clients, under social emergencies; But it has not done so and the referral of people with mental disorder who usually have high recalcitrance during the relapse of the disease; "In addition to calling the emergency, the police force should also be present at the place, and more importantly, the police force will enter the house only with a court order.

"The social emergency dispatching treatment group includes a nurse, a worker, two human resources to control the patient if necessary and an emergency service officer in uniform after the patient's family contacted the social emergency instead of sending an ambulance and an emergency vehicle at the same time with a court order. be sent to the place and transfer the person to the hospital in case of relapse of the disease, in addition to preserving the human dignity of the patient and his family, prevent the aggravation of the danger to the life of the patient and those around him in sensitive conditions of mental stress and physical bullying of the patient, and remove the stigma of neuroticism and criminality The patient and the family should be prevented. The reduction of administrative-treatment bureaucracy and the agility of the next judicial process chain are among other merits of this proposed solution-oriented hypothesis.<sup>1</sup>

### **Conclusion**

In the Islamic Punishment Law (2012), the legislator has accepted the theory of presumption of negligence and fault by avoiding the theory of risk. In the next step to support the therapists, obtaining the patient's consent is the responsibility of the therapist. In the third step, the knowledge of the nurse or the patient about the wrong treatment order is considered to be the reason of the doctor's responsibility; while in the law

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1. Khaghani Esfahani M, Bateni R. Necessity of Decriminal Labeling on Mental Patients and Family Facilitators, in the Criminal Policy Approach to "Social Emergency Service". Health Law Journal. 2023; 1 (1): p. 2.



approved in 1990, this alone did not relieve the criminal and civil responsibility of the doctor. In Iranian law, the main source of the doctor's obligation to treat and save the lives of emergency patients should be considered as the single article of the Penal Law on Refusal to Help the Injured and Eliminate Life Risks approved by "1354". Although the legislator did not mention the authority of emergency diagnosis, but the results of the investigation show that this important diagnosis is the responsibility of the attending physician; Contrary to the laws of some other successful countries in setting up a medical law system, including England, which judicial practice and court rulings are the most important source of the doctor's obligation to treat and save emergency patients and the courts, which decide whether or not an act is urgent. They get the final one, although we see different judgements about this.

On the other hand, in addition to the diagnosis of urgency and non-urgency, the criminal and civil responsibility of the doctor in the medical misdiagnosis of the disease itself needs to be discussed. Explaining that "any incorrect diagnosis cannot be considered as negligence or responsibility of the doctor; That is, since many factors are involved in the correct diagnosis of the patient's disease, and all these cases are not under the doctor's control, he should not be held responsible just for making a wrong diagnosis; Therefore, it is necessary to distinguish between different aspects, and only if the circumstances of the case show that the incorrect diagnosis is not due to the difficulty of the nature of the disease or the presentation of incorrect information by the patient, but due to carelessness. The doctor and his failure to perform the assigned duties, the doctor was held civilly responsible.

Also, in Iranian law, among the conditions that a doctor is not required to comply with in an emergency, the legislator has explicitly mentioned only the condition of consent. Therefore, there may be an illusion that the doctor must comply with other conditions governing the justification of surgical

and medical procedures in an emergency, otherwise he will be held responsible.

In order to improve the legal system of criminal and civil liability of doctors in Iranian law, first, a clear, up-to-date, complete and comprehensive law should be established according to the existing conditions and developments. Secondly, patients or their families should be aware of their rights, and this awareness should not be limited to placing a patient's rights charter sign in medical centers. Thirdly, the owners of medical and related professions should be informed about their legal, ethical and customary duties regarding this category of patients and understand the sensitivities of the patient's family and society towards patients with serious condition. Fourthly, the need to establish specialized judicial authorities to deal quickly and fairly with medical crimes, especially emergency patients, should be considered. Fifthly, the need to hold mandatory team training programs related to the recognition of emergencies and crises by doctors and nurses in order to increase awareness and self-confidence and raise the level of awareness of emergency situations by using new methods such as simulation and training should be taken into consideration.



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