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CIVIL LIABILITY FOR INFRINGEMENT OF PATIENTS' RIGHTS AS A RESULT OF THE ACT OF CHANGE: A COMPARATIVE STUDY

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Abstract:

The topic of "Civil liability for violations of patients' rights due to the actions of others" is of great importance. This importance stems from the fact that it balances two interests. The first is the patient's interest in protecting him/her and obtaining appropriate compensation for him/her. The second is the patient's interest in controlling his/her relationship with others. There does exist cases where a medical provider uses other people to do medical work. This happens either because the medical work is dangerous, or because of the necessary need to benefit from a specific medical specialty required by the type of medical work to be done. Liability for the act of a third party in the medical context means the liability of the medical provider due to the damage caused to him/her by the auxiliary doctors, nurses and other members of the medical staff. So, we will discuss the liability arising from the actions of third parties on the basis of the rules of contractual liability and on the basis of the rules of damage through two sections.

Keywords: Patients' rights, healthcare provider, third-party act, compensation, medical error

1. INTRODUCTION

1.1 Introducing the topic of research and explaining its importance

When the health situation of the person deteriorates, the medical service provider is resorted to in order to provide assistance. As a relationship between the patient and the medical service provider is formed, leading to the establishment of fundamental rights for the patient. These rights are related to the patient's will, treatment or patient privacy. However, the rights of patients may be violated. One of the most important forms of violation of patients' rights is that that arise as a result of the actions of others who help the attending physician in medical work. These others include the assistant doctor, nurse and others. Hence, the role of civil liability for violating patients' rights as a result of the actions of others, which are considered one of the main legal topics. The violation of patients' rights leads to civil liability. Civil liability as it is known, is either contractual, or negligent, when violating a legal obligation. The importance of research lies in the legislative treatment of civil liability for infringement of patients' rights as a result of the act of others, and its adequacy in order to protect the patient when harm is caused as a result of the infringement of his/her rights. In addition, the existence of legal texts does not necessarily mean that they are free from deficiency or ambiguity, which requires treatment. This is especially since the subject of research is in continuous development as a result of the development of medicine, after the development that has been introduced in this field. This may lead to that some laws are shrouded in ambiguity in application or lack of coverage, which requires review, in order to maintain the legal status of the patient.

1.2 The Problem Of Research

The Iraqi legislature did not regulate the provisions of civil liability for the violation of patients' rights as a result of the act of others in a special legal organization. They refer to the general rules in the civil law when the rights of patients are violated as a result of the act of others. This led to the difference in jurisprudential views and judicial trends regarding them. There is a trend that takes contractual responsibility. There is another trend that takes tort responsibility.

1.3 Research methodology

We will follow the analytical approach, by presenting the jurisprudential orientations that dealt with the subject of the research. We will analyze them and weight one's opinion when disagreeing with the statement of our opinion on the matter. We will also apply the general rules on the subject of the research with a statement of the privacy enjoyed by the research. We will state the judicial rulings received regarding the subject of the study. We will follow the comparative approach by stating the position of Iraqi law and comparing it with the UAE and French law. This is with

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the aim of highlighting the strengths and weaknesses in our laws and recommending their treatment. We will propose legal texts that address the subject of the research.

1.4 Research Plan

The research needs to be divided into two main sections as follows

The first is contractual responsibility for the violation of the rights of patients as a result of the act of others. The second is negligent responsibility for the violation of the rights of patients as a result of the act of others. Conclusion: Results and Recommendations

2. Contractual liability for infringement of patients' rights as a result of the actions of third parties

Contract liability happens when someone isolates a contract. This occurs in the case when a party fails to do what they promised to carry out. The person who breaks the agreement becomes responsible for not abiding by the rules set out. They must face the consequences of their breach accordingly. (Aliwi & Hamad, 2012, p. 142).

To take note of the subject, we will talk about it through the following paragraphs:

2.1 Conditions of contractual liability for the act of third parties

The following conditions must be met to achieve contractual responsibility for the act of others. These conditions are as follows:

1 / There is a valid contract between the doctor and the patient. If the contract is void, there is no contractual responsibility. There is a default liability for it.

2/ The assistant must intervene at the request of the doctor (Ali, 2018, p. 65).

/ In order to assume the responsibility of the physician for the actions of his/her assistants, the patient must not interfere in the selection of the physician assistant. If he/she intervenes in the selection, it leads to the establishment of a contract between the patient and the assistant. This leads to the latter's responsibility for his/her mistakes on the basis of contractual responsibility and leads to the removal of the doctor from responsibility (Ahmed, 2020, p. 100).

2.2. Basis of contractual responsibility for the act of others

The jurisprudence differs on the basis of the contractual responsibility resulting from the act of others to different opinions, as follows:

First: The responsibility of the health care provider is personal responsibility. This trend sees that the responsibility of the health care provider is not the responsibility of the actions of others, but rather a personal responsibility. The responsibility is assessed on the basis of the supposed error, which is to exempt the affected patient from establishing the pillars of civil responsibility for the breach of his/her rights. The fault of the official is assumed, in order to reduce the burden of proof on the patient and it is his/her responsibility only to prove that the official caused the damage (Al-Badu, 2003, p. 76).

The Iraqi legislator has taken the presumed error and its presumption is simple and can be proven to the contrary with regard to guidance and control of the work of others in tort responsibility. A good source to look at here is Civil Code, Articles 219–220). But in contractual responsibility it is difficult to be taken into account, because the relationship between the official and the third is not dependent.

Second: The responsibility of the health care provider for the action of others. This trend called for the responsibility of the follower on the basis of the work of others, by relying on two theories, namely:

1/ The theory of implied security. In the view of those who have said this theory, the legal texts regulating the liability of the follower specify an objective provision. The follower has inflicted damage. In order to protect the injured person, the legislator has created a means through which the injured person can obtain compensation. This is through the claim of a person other than the follower, who is the follower, which is often more financially capable. The follower has the right to refer to the follower to claim the amount he/she paid as compensation, based on the legal guarantee (Al-Dhannun & Al-Rahho, 2006, p. 61).

2/ Legal solutions theory. This theory means that the follower and the follower become as if they were one person. The error that occurs from the follower is as if it was issued by the follower. The follower is an extension of the activity of the follower (Al-Badu, 2003, p. 76).

We find that there is a dispute in reaching a statement on the basis of the contractual responsibility resulting from the act of others. We, in turn, agree with the view that the contractual responsibility for the act of others is implied and based on the law. The law approved this guarantee for the objectives of social solidarity and facilitating obtaining compensation as a result of the fault of the dependent.

2.3 Scope of contractual liability for the act of third parties

The medical error may be from the healthcare provider itself, or from his/her assistants. So we will look for the contractual responsibility for the personal act and the contractual responsibility for the actions of the assistants.

First / contractual responsibility for the personal act. In practice, the contractual responsibility for the personal act can be observed in the following cases:

The first case / health care provider issues wrong instructions to the assistants(Ahmed, 2024, p. 343). This includes the case of the doctor who writes an overdose of medication for the patient. The assistant nurse implements what is

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stated in the doctor's instructions leading to harm to the patient. The assistant nurse and others can get rid of responsibility if he/she proves that the work he/she did was in implementation of an order issued by his/her boss. This is whenever he/she was obliged to obey this order. This is what is stipulated in Article (215/2) of the Iraqi Civil Code. It stated that "the public employee is not responsible for his/her work that harmed others if he/she did it in implementation of an order issued to him/her by his/her boss. This is whenever obeying this order was obligatory to him/her or he/she believes it is obligatory. The person who caused the damage must prove that he/she believed the legitimacy of the work he/she came to establish as a sponsor in this aspect of caution. His/her belief was based on reasonable reasons."

The second case / if the medical work requires the doctor in charge to monitor the way it is carried out after issuing the instructions. This leads to a state of failure in supervision and follow-up. (Al-Hashem, 2023, p. 201).

The third case / the doctor's choice of the neglected assistant. This happens with the doctor's knowledge of the case of repeated neglect. If the patient suffers harm due to the neglect of this assistant, it leads to the doctor's responsibility. This is given that the doctor knows that the assistant has made previous mistakes. He/she does not perform his/her work as he/she should.

Second / contractual responsibility for the work of the assistants. Figh believes that the contractual responsibility for the work of the assistants is not a dependent relationship. It is a collective work for the purpose of providing the best possible medical service to the patient. The responsibility of the head of the medical team for the work of his/her team is not a relationship of the follower and the follower. The head of the medical team is responsible to the patient. If a member of the medical team issued a mistake and caused harm to the patient, this does not relieve the head of the medical team from responsibility. This is even if he/she did not commit any mistake personally.(Abdulilah, 2009, p. 174).

However, the third party who caused the breach of the contractual obligation is the real official who bears the consequences of the contractual civil liability. This is a fair result, because the liability was originally established because of the fault emanating from it. (Jaafar, 2011, p. 71).

3. Default liability for infringement of patients' rights as a result of the actions of third parties

In the absence of a contract between the medical service provider and the patient, and the patient is exposed to damage as a result of the medical error of the assistants, here we are not in front of the contractual responsibility for the actions of others because of the lack of the contract. We are in front of the tort responsibility for the actions of others, as we will address it through the following paragraphs:

3.1 Conditions of tort resulting from the errors of the followers

In order to achieve default responsibility for the mistakes of followers, the following conditions must be met:

First, there is a subordinate relationship between the follower and the subordinate. This is represented by supervision, guidance, supervision of the work of the subordinate and issuing orders to him/her. The Iraqi Court of Cassation ruled that the surgeon is responsible for the actions of his/her subordinates in the case of a nurse who neglected to remove a piece of gauze from the patient's body. The ruling stated that "the surgeon is responsible for performing the operation and following up on the good conduct of it, supervising it, tightening control and control over its procedure to avoid the occurrence of error." (Iraqi Court of Cassation, 2002, as cited in Ali, 2010, p. 57).

In practice there are two types of dependency, namely (Badawi, 2023, p. 234; Al-Hashem, 2023, p. 159):

- 1 / Technical dependency: It is the dependency in which the follower is subject to the instructions of the follower and under his/her orders regarding the technical aspect of the medical work. The follower is technically specialized, which enables him/her to be able to control, supervise and guide. That is, the follower is aware of the origins of the follower's technical work.
- 2/ Administrative dependency: It is the subordination of the subordinate to the supervision and guidance of the follower with rgard to the administrative side, without regard to the technical side.

In the medical field of a doctor there are two types of dependency:

1/ The original dependency, such as the nurse's dependency on the doctor he/she works with in his/her private clinic. 2 / Accidental dependency, such as nurse dependency to the doctor during the surgical procedure in a private hospital. Second: Issuing the fault of the subordinate when performing his/her job, based on Article (219/1) of the Iraqi Civil Code, which stipulates that "the government, municipalities and other institutions that perform public service and every person who exploits an industrial or commercial institution is responsible for the damage caused by their employees. This is if the damage arises from a violation that occurred from them during the performance of their services." (Iraqi Civil Code, Article 219/1; UAE Civil Transactions Law, Article 313; French Civil Code, Article

It should be noted that the Iraqi legislator in the civil law included the concept of the follower exclusively, and did not expand it. It would have been better to expand the concept of the follower to include any person, whether natural or moral. It would have been better to use the term "follower" instead of "governments, municipalities and other institutions that perform a public service", in order to ensure the damage caused by his/her followers. The Emirati

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legislator stipulated in Article (313) of the Civil Transactions Law that "no one is asked about the act of another, however, the judge, at the request of the injured person, must oblige any of the aforementioned, as the case may be, to perform the guarantee imposed on the person who caused the damage: b/ The person who was the victim of the damage had actual authority to control and direct him/her. This is if he/she was not free to choose him/her if the harmful act was issued by the follower in the event that he/she performs his/her job or because of it.

The French civil law Article 1242 of the Code stipulates that: "A person shall not only be asked about the damages caused by his/her actions, but also about the damages caused by the actions of the persons he/she sponsors or about the objects placed under his/her guard. Employers and followers shall also be asked about the damages committed by their followers in the framework of the actions in which they used them. Teachers and craftsmen shall be asked about the damages committed by their students and trainees during their period under their supervision." In this text, we note the comprehensiveness, as it included teachers, craftsmen and their students. Through this, medical students and trainees can be included under the doctor's supervision, during the period of their training, as long as they are under the supervision of the doctor.

3.2 Multiple officials responsible for illegal work

The Iraqi legislator stated in article 217 (1) of the Iraqi Civil Code that "if there are multiple officials responsible for an illegal act, they are in solidarity in their obligation to compensate the damage without discrimination between the original perpetrator, the partner and the perpetrator". (It corresponds to Article 291 of the UAE Civil Transactions Law and Article 1310 of the French Civil Code).

Solidarity liability is defined as "multiple debtors with a debt that is divided in nature and each of them is obligated to perform the whole debt." (Al-Dhannun, 1976, p. 413). Solidarity liability is the case in which the patient has more than one debtor, and each of them is obligated to perform the whole debt. This happens when the doctor issues a wrong diagnosis and the nurse neglects to follow up the patient's health condition and the pharmacist's error in dispensing medication. In such a case, the doctor, nurse and pharmacist are jointly responsible for the damage caused to the patient, which led to the violation of his/her rights. In joint liability there are several persons from whom the error was made. It is not to be determined if the person responsible for the harm to the patient is one person. Also the error issued by the members of the medical staff must have led to joint damage, and there is a causal relationship between the error and the damage.

Concerning joint liability, it is "the multiplicity of its sources as much as the number of debtors, and the independence of each source in relation to each debtor". (Raslan, 2023, p. 110).

This is the case of a patient who visits more than one doctor for the purpose of treating the same pathological condition. The difference between solidarity and solidarity responsibilities lies in the following (Abbas, 2015, p. 81):

- 1/ The solidarity obligation comes from an agreement or law based on the established rule of solidarity "solidarity is not assumed". The solidarity obligation comes from multiple sources because the nature of the same things is imposed by it.
- 2/ The solidarity obligation has one source of debt and therefore there is mutual prosecution. In the solidarity obligation, the prosecution is not because its sources are multiple.
- 3/ The debtor is obligated to confront the creditor with something similar. In the debtor's obligation the debtor cannot pay something similar unless the creditor is satisfied with it.
- 4/ The solidarity obligation can refer to the debtors. Whoever has fulfilled the debt to the creditor can refer to the others each as much as his/her share. In the solidarity obligation, return depends on the nature of each case of solidarity and is not a general principle.

4. CONCLUSION

At the end of our research, we review our conclusions and proposals, as follows:

4.1 Conclusions

- 1/ Responsibility for the act of others in the medical context means the responsibility of the medical service provider due to damage done by his/her assistant from the assistant doctors, nurses and other medical staff. The treating doctors are not only responsible for what they do during the medical work. They are also responsible for the people they use to accomplish the medical work.
- 2/ Patients' rights are a set of ethical principles and legal rules recognized by the law for patients. This is to ensure that they receive high quality health care in accordance with the established scientific principles in medicine, in line with the human status and dignity. Several parties overlap to achieve these rights, such as the doctor, pharmacist, nurse and others.
- 3/ There is no special law in Iraq that regulates civil liability when the rights of patients are violated as a result of the actions of others. This leads to the judiciary resorting to the application of general rules in the civil law. This has led to different provisions, because the treatment of others is not the same as the obligations that fall on them. The comparative laws were keen to legislate special laws in the medical field.

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4.2 Recommendations

1/ In order to achieve stability in judicial rulings, we call on the Iraqi legislature to legislate a law that clarifies the rights of patients. This law should regulate civil liability resulting from the action of others when these rights are violated. Organizing such a law is not just a legal treatment for an increasing real issue. It is a fundamental starting point for raising and improving the medical care system. On the other hand, issuing such a law gives confidence to individuals in medical work. When the patient knows that there is a law regulating his/her relationship with the members of the therapeutic institution, then he/she feels safe in receiving treatment.

2 / The establishment of a national academy equipped with the latest science and technology, in which medical care providers are trained. This should include the best trainers and provide the necessary support to them. This matter we see that there is no difficulty in achieving it if there is a real awareness of its importance and a real will to do it.

3/ Adopting the principle of solidarity in the medical field between the medical service provider and the third party that caused harm to the patient, in order to increase the effectiveness of the patient.

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