



## The Ethical and Criminal Responsibilities of Medical Doctors: A Perspective from Afghanistan Laws and the International Islamic Charter of Health and Medical Ethics

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### ABSTRACT

Medical doctors have the responsibility to observe all medical ethical principles during the treatment of patients to ensure their rights and strengthen trust in the medical sector. Some non-observance of these principles remains in ethical responsibility and some of them bring under criminal responsibility due to their high value. Whereas, if these principles are not observed, the medical sector will face serious challenges. This study discusses the ethical and criminal responsibilities of medical doctors, which are listed in the laws of Afghanistan and the International Islamic Charter of Medical and Health Ethics, and the causes which the thorough observance of these responsibilities has faced challenges. The study aims to inform medical doctors about their ethical and criminal responsibilities and to understand responsible organizations about the causes of the scarce care to it. The study is qualitative in nature and employs an analytical-descriptive research design. Secondary sources such as books, laws, regulations, online journals, scientific articles, and the International Islamic Charter of Medical and Health Ethics were utilized, and any terms requiring definition and clarification were provided after each main paragraph. The finding of this study shows that if medical doctors do not care about those responsibilities which include the laws of Afghanistan, the violator of ethical principles will be disciplined according to the regulation of medical ethics, and those who act against the penal code, will be punished accordingly. Moreover, the consideration of limited action as a crime in the penal code caused scarce care for the complete observance of those responsibilities. In the law of Afghanistan, medical doctors have a series of obligations in addition to their rights, such as respect for the patient, compliance with clinical standards, providing appropriate facilities, accurate diagnosis and treatments of the patient and so on that should be followed.

**Keywords:** Medical ethics, Criminal responsibility, Forensic prosecution, Penal code, Patient

## INTRODUCTION

Medicine is a pure and sacred profession that ensures the health survival and growth of human society. To achieve these goals, it is necessary to maintain the sanctity of this profession. The purest it remains, the better the goals can be achieved. However, the more the sanctity is tarnished, the more difficult it becomes to achieve these goals. The question then arises: How can this profession remain sacred? In answer to this question, it can be said that the observance of medical ethics and the proper discharge of professional responsibilities by doctors can guarantee the sanctity of medicine.

Medical ethics is a systematic set of evaluations of actions in terms of merits, and social responsibility in the field of medicine (Nazari Tavakoli, & Nejdarsari, 2013). Such as respect for human dignity, upholding principles of justice, acting with benevolence (Hamdil Saddiqi, 2010), protecting the secrets of the patient, prescribing appropriate medicines, offering sympathy and reassurance to patients, and actively listening to them, etc. Advocates for the ethical purpose of punishments argue that individuals who violate ethical principles are primarily ethically culpable and responsible for their actions. As a result, they are considered to be both criminally guilty and responsible for their actions (Danish, 2020).

Due to the continuous instability in the country and the weakness of the governments, various institutions of the Afghan society have suffered, and unfortunately one of these institutions is the medical one. To restore this trust and strengthen the country's medical sector, it is most important to make special attention to the observance of medical ethics and responsibilities by medical doctors and institutions. This study was conducted for the better observance of medical ethics and responsibilities that are directed to medical doctors, to be analyzed in detail according to the laws of Afghanistan and the International Islamic Charter of Medical and Health Ethics, and it should also be clear that due to what factors the medical sector in Afghanistan is weak the observance of these responsibilities.

To discuss the main topic it is important to illustrate the rights and obligations of medical doctors for further information and well-known first. It is worth mentioning to know that the term doctor means medical doctors in this study.

### **1. Rights and obligations of a medical doctor**

To clarify the rights and obligations of a medical doctor, first, we explain the rights and obligations, separately below:

#### **1.1. The rights of medical doctors**

According to the regulation of medical ethics, the doctor has the right to be respected by the patient and the Caregiver of the patient, Governmental, non-governmental, and private health centers are obliged to take necessary measures for good and balanced nutrition for medical doctors and health workers. Additionally, Governmental, non-governmental, and private health centers are obliged to establish capacity building programs in cooperation with the medical council to ensure the professional competence of medical doctors and health workers (regulation of medical ethics, 2020).

#### **1.2. The obligations of a medical doctor**

The medical doctor and health worker are obliged to observe the following points, taking into account the medical professionalism and medical ethics:

Medical doctors must apply the national medical ethics guidelines and should respect the patient and the personality of the patient. According to the principles of medical professionalism, knowledge, and professional skills should be updated and improved, and he must be ingenious (Competence includes having the knowledge, skill, and independence to perform relevant professional services). In his profession, he should observe the professional standards and ethics of medicine, and the Clinical standards must be followed, including infection prevention standards. Creating suitable and acceptable facilities for patients is his other responsibility. Communicating with the patient and their Caregiver should be in accordance with the pillars/elements of medical ethics. Health services should be provided according to the patient's needs. The doctor should diagnose and treat the patient with full accuracy, while providing health services, and Use available resources to provide equal health services to all patients (Medical Ethics Regulation, 2020). The pillars of medical ethics which have mentioned above are the principles of medical ethics that include patient autonomy, beneficence, non-maleficence, and justice.

## **2. Medical Ethics**

Medical ethics is concerned with the obligations of the doctors and the hospital to the patient along with other health professionals and society (Markose et al.2016). Medical ethics deals with those ethical principles which govern the professional conduct of medicine. Medical ethics implies the obligation of the doctor toward the patient as well as some obligations toward another doctor (Bankowski, 1989). Medical ethics is a systematic set of evaluations of actions in terms of merits, and social responsibility in the field of medicine (Nazari Tavakoli, & Nejadsarori, 2013).

### **2.1. Medical Ethics in the International Islamic Charter of Health and Medical Ethics**

According to the Charter, the doctor should observe the following ethical principles:

#### **2.1.1. Listening to the patient's complaints, sympathizing, and not insulting him**

It is necessary for the doctor to listen carefully to the complaint of the patient and to show sympathy in reducing his pain and suffering. To treat the patient very well and kindly, and in case of encountering the patient, Use gentleness and compassion (The International Islamic Charter of Health and Medical Ethics, 2005).

It is not permissible to consider oneself better than the patient and look down on him or her, even if the patient's academic level or social status is at any level or is attributed to any relationship. The doctor should pay attention to the opinion of the patient, especially to his personal affairs (The International Islamic Charter of Health and Medical Ethics, 2005).

#### **2.1.2. Ensuring justice**

The doctor must pay attention to justice in his behavior and attitude toward the patients and be bound to it. Avoid injustice in medical care due to personal, religious, sexual, and national tendencies and feelings (The International Islamic Charter of Health and Medical Ethics, 2005).

#### **2.1.3. The presence of a *Mahram* or third person During a patient`s check-up**

The doctor should fear Allah for the sake of the patients. At the time of check-up, diagnosis, and treatment, consider the belief, religion, and customs of the patient, and insist that do not commit an illegal act (such as being alone with a *non-mahram* (With Whom Marriage is admissible) person, or inspecting the private parts of the patient more than necessary) and this will also in the presence of a third person after the permission of the patient in case of Sharia necessity (The International Islamic Charter of Health and Medical Ethics, 2005).

#### **2.1.4. Prohibition of additional tests or medications**

The doctor is obliged to carry out the tests that confirm the patient's medical condition and refrain from additional tests. The whole process of diagnosis and treatment of the patient should be carried out transparently, avoiding any unreliable, unusual, or informal treatment or diagnosis method. Also, he is obliged to look at the condition of the patient when prescribing medicine and performing surgical operations and do it accordingly, that is, prescribing medicine and performing surgical operations without the need is against medical ethics (The International Islamic Charter of Health and Medical Ethics, 2005).

The doctor is obliged to give an honest explanation to the patient or the person acting on behalf of the patient about the type of the disease, its causes, its complications, and the benefits of the diagnostic tests and treatment. And considering the physical and mental condition of the patients, to give them a full understanding of the suitable alternatives for diagnosis and treatment in a suitable, transparent, and clear way. Doctors should prescribe medicines, materials, and medical equipment according to medical professional principles and according to the needs of the patient. He should not come under the pressure of any person during treatment, and also he should not accept gifts from any authority (The International Islamic Charter of Health and Medical Ethics, 2005).

#### **2.1.5. Referring the patient to another specialist doctor**

The doctor is obliged not to delay or reduce anything in sending the patient to another doctor who is a specialist in this disease or well-equipped, active, and has good and advanced equipment and facilities (The International Islamic Charter of Health and Medical Ethics, 2005).

#### **2.1.6. Not refusing to treat the patient**

It is not permissible for a doctor to refuse to treat a patient unless the condition of the patient is beyond the scope of the competence of the doctor. In emergency and emergency situations, the doctor is obliged to continue treating the patient until the patient's needs are met, or until he/she comes under the care of another doctor (The International Islamic Charter of Health and Medical Ethics, 2005).

The doctor is obliged to reduce the pain and suffering of the patient with the possible therapeutic, material, and spiritual means that he has in his power, and to make the patient understand that the doctor is interested in his health, and he is also obliged to use his skills to comfort the patient and use your skills to reduce the disease (The International Islamic Charter of Health and Medical Ethics, 2005).

The doctor is obliged to inform the patient about the disease in particular and about health in general, and also to give information about hygiene and preventive measures desirably and efficiently (The International Islamic Charter of Health and Medical Ethics, 2005).

#### **2.1.7. Obtaining the patient's consent for treatment**

Treatment without the patient's consent is not admissible, unless the condition of the patient requires medical intervention and it is not possible to obtain the patient's consent, or if the patient's illness threatens the health of other people, or to pollute others. Of course, the intervention should take place according to Islamic laws. In the case of full legal capacity of the patient, consent is obtained based on the express or implied consent of the patient or the consent of the person who legally represents the patient, if the patient is incapacitated, deaf, or has any disability. Or if any condition of legal capacity is less, the agreement should be written, and in clear form and be introduced to operations and surgical interventions (The International Islamic Charter of Health and Medical Ethics, 2005).

During a check-up, it is the duty of the doctor to accurately document and record the patient's health status, disease history, disease type, and relevant family history. The medical examination should be conducted with precision and correctness, allowing for an appropriate amount of time to address the patient's needs. Prescriptions must be written clearly, specifying the dosage and form of medication. In critical situations, doctors should provide important and anticipated information regarding the potential side effects of surgical procedures and medical treatments to the patient or their relatives. These obligations align with the principles outlined in medical ethics, emphasizing the importance of thorough documentation, precise examinations, clear prescriptions, and effective communication of information to ensure patient well-being (The International Islamic Charter of Health and Medical Ethics, 2005).

In the first paragraph, the word full legal capacity means to reach the age of adulthood and mentally being fit, according to Article 39 of the Civil Law of Afghanistan 1977/1355, the age of maturity is eighteen solar years. He is considered to be fully qualified to exercise his rights

#### **2.1.8. Informing about the consequences of not taking treatment**

If the patient does not want to be treated, the doctor is obliged to inform him of the consequences of this action without exaggeration. At the same time, the doctor is obliged to record the patient's words and get his profession, that he does not want to be treated. A doctor and a nurse should be part of the delegation (The International Islamic Charter of Health and Medical Ethics, 2005).

#### **2.1.9. Not ending the patient's life**

It is not permissible for the doctor to end the patient's life, even if it is for the sake of compassion and mercy, but to advise him to be patient. Especially in Intentional murder, where a person wants to end his life by his will, Doctor-assisted suicide, and deliberate killing of a newborn child who is born with a disability, whether this disability is life-threatening or not (The International Islamic Charter of Health and Medical Ethics, 2005):.

#### **2.1.10. Keeping Secret the illness patient**

Whenever the doctor discovers the secret of the patient, he is not allowed to reveal it, but he can in the following cases:

- A: Based on the written request of the patient or if it is in the interest of the patient to disclose this secret.
- B: When the Sharia requires disclosure or the court orders it.
- C: If the secret has been disclosed to avoid harm from the wife or husband, on the condition that both of them will be present.
- D: When the secret is revealed to prevent the spread of diseases.

Doctors and other health workers must try as much as possible to protect the confidentiality of the medical information recorded in the file, including the information recorded on the computer. Regarding the protection and confidentiality of the patient's secrets, the bill of professional workers of mental health clinics has also been emphasized in article 8, paragraph 2, and the mental health manual too.

#### **2.1.11. No false advertising and propaganda**

It is not permissible for a doctor to present misleading and distorted information in health advertisements or the media, hide the side effects of drugs or treatment, or present issues that are against public ethics to the public (Islamic Charter of Medical and health ethics, 2005). For example, a doctor who has gone to a foreign country for a seminar, should not write on the board or card that higher education in the foreign country.

The doctor should also refrain from the following actions (Islamic Charter of Medical and health ethics, 2005):

A: Using illegal means to attract patients.

B: Using his/her name to advertise the sale of medicines and other medical materials for commercial purposes.

C: Demanding or accepting a fee for sending a patient to another clinic or institution (including a pharmacy, laboratory, or a center for selling medical equipment and accessories) or for prescribing any medicine, and more.

#### **2.1.12. Conditions for sending the patient to another health institution**

If the doctor sends the patient to any other health institution where the doctor is a partner, is obliged to consider the following points (The International Islamic Charter of Health and Medical Ethics, 2005):

A: This organization should provide excellent services, which are not less than others in terms of quality and type.

B: The patient should be sent when there is a need for him and he has better chances of treatment compared to the first doctor.

#### **2.2. Medical Ethics from the Perspective of the Laws of Afghanistan**

Medical doctors are not allowed to provide health services contrary to established principles and standards, perform medical procedures in abnormal environments, or exhibit prejudice or discrimination based on linguistic, sexual, ethnic, religious, social, political, or cultural factors. Additionally, they must not abuse their functional and professional authority or engage in excessive physical, verbal, or non-verbal closeness with patients beyond what is professionally necessary. The use of outdated diagnostic and treatment methods is discouraged, as is prescribing tests and medicine that patients do not require. Negligence and carelessness in medical practice are strictly prohibited, as is the cessation of health services for patients in need. Doctors must avoid causing harm to patients in physical, psychological, economic, or social realms, and they should always ensure proper diagnosis is made through available means. Inappropriate and abusive behavior towards patients and caregivers is deemed unacceptable, as is using diagnostic tools beyond the level of knowledge of medical professionals and health workers. By adhering to these regulations, medical doctors aim to prioritize patient well-being and maintain the highest standards of ethical care (Medical Ethics Regulations, 2020).

If we look here, a series of actions are mentioned that are against ethical principles, and the medical doctor should keep himself from it. However some of the important ethical principles which our society has been in trouble with it, and the International Islamic Charter of Medical and Health Ethics has also mentioned them, they have not been mentioned in the regulation of medical ethics. Such as, Except for the emergency need, there should be a *Mahram* present with the patient during the checkup, also the doctor should show his sympathy for the patient and not insult him in any way.

In addition, if a doctor does not have enough knowledge about the illness of the patient, he should refer him to another related specialist, moreover, the doctor has not been obliged to write the condition of the patient, history of the disease, recommended tests and other necessary information in the prescription. Apart from this, it does not exist in terms of ethical principles that the doctor should not advertise falsely to deceive the public. Many doctors who have gone abroad for a seminar have written on their billboards, that (higher education in London, India and so on).

In public hospitals, the patient should not be invited to the private clinic by doctors. In Afghanistan, a problem that the author has faced many times is that when a patient undergoes an operation or other treatment in a government hospital, the doctor requests that the patient should come to his private clinic for the rest treatment.

If the patient does not take it serious and comes back to the hospital, He does not pay attention to him, from the sincerity of his heart.

### 3. Disciplinary proceedings

According to the regulation of medical ethics, in case of violation of the provisions of this regulation, the doctor is disciplined according to the circumstances by recommendation, written notice, a cash fine of five thousand (5,000) to fifty thousand (50,000) Afghani depending on the circumstances, and cancellation of the activity license (regulation of medical ethics, 2020).

### 4. Criminal responsibilities

A medical doctor is subject to forensic prosecution after an investigation by the Medical Council in the following situations (Medical Ethics Regulation, 2020). Forensic prosecution is the pursuit of a criminal incident and its perpetrator, which includes the discovery process and the investigation of the crime, trial, and execution of the order (Criminal Procedures Law, 2013). The whole process until the implementation is called forensic prosecution.

Firstly, In the case of medical and duty negligence, indifference, imprudence, non-observance of medical regulations, or refusal of treatment due to which physical or mental harm is inflicted on the patient.

To clarify this issue, we must define and clarify the above terms:

**Medical Negligence:** Medical negligence is the non-execution of assigned duties or inaccurate manner of execution or non-assigned (non-assigned) action by a medical doctor or health worker.

For example, if a doctor is on duty in a hospital at night, a patient comes during his shift and he does not treat him, as a result of which the patient's suffering increases or he dies, the doctor is criminally responsible.

**Imprudence:** imprudence is when a person acts without paying attention to the consequences of that action, which is predictable.

For example, the doctor does not know for himself whether the patient is allergic to the said medicine or not, prescribes medicine to the patient, due to which the patient's condition deteriorates or dies, in this case, the doctor is criminally responsible (penal Code, 2017).

**Negligence and indifference:** It is said that an action that should be done is not done due to inattention or lack of care (penal Code, 2017), such as the doctor should sterilize the operating room, but he does not sterilize it. He performs the operation and traumatizes the patient. In this case, based on the Penal Code of 2017, the medical officer, if due to carelessness, imprudence, or non-observance of medical regulations, makes such a mistake in the diagnosis or treatment of the patient's disease that if the patient suffers physical or psychological harm because of that, he will be sentenced to the punishment of the crime of unintentional (penal Code, 2017).

Secondly, if he/she has violated the standards of medical ethics and caused the death or disability of the patient.

Thirdly, If a person does not follow the prescribed procedures and standards and..., in the case of spreading diseases to other people, he will be sentenced to a short imprisonment (from 3 months to 1 year) and if it ends in his death, he will be sentenced to a long imprisonment (more than 5 years to 16 years) (penal Code, 2017).

Finally, also, if a doctor aborts a woman's fetus (a young human before it is born, especially a human more than eight weeks after fertilization (Oxford advanced learner's Dictionary, 2010) In the dictionary, the same embryo can be hidden or covered, it is called the sperm hidden in the mother's womb is called (Ibn Manzoor, 1955) and it has the same meaning in the term (Durani, 2017). Abortion of the fetus before the term of birth in such a way



that the fetus is not alive, or it is not possible to continue its life (Wasil, 2018.), even if the woman consents to it, he will be sentenced to medium imprisonment for more than two years (penal Code, 2017). But if the doctor aborts the fetus with medicine for rescuing the mother's life, in this case, the doctor is not punished (penal Code, 2017). Before the doctor comes under legal prosecution, the Medical Council should investigate this area (Medical Ethics Regulation, 2020).

## CONCLUSION

In the law of Afghanistan, medical doctors have a series of obligations in addition to their rights, such as respect for the patient and his/her Caregiver, compliance with clinical standards, providing appropriate facilities for patients, accurate diagnosis and treatments of the patient and so on that should be followed. The medical ethics that are listed in the medical ethics regulations, such as providing standard health services in a standard environment, avoiding any kind of prejudice and discrimination, not getting too close to the patient beyond professional need, not prescribing additional drugs and tests to the patient, not treating the patient inappropriately, and not performing medical negligence.

However, some important medical ethics are not listed in the medical ethics regulation, especially those mentioned in the International Islamic Charter of Medical and Health Ethics. It should also be included, such as checking the patient in the presence of a mahram, introducing the patient to another specialist doctor related to the condition of the patient, not avoiding the treatment of the patient, informing the patient of the consequences of not treating the patient, not to advertise falsely and so on.

The main reason for the lack of attention to medical ethics is that only a few and limited medical violations have been brought punishable in the criminal code. Many important ethical principles are not observed seriously, because it does not cause the criminal responsibility of a doctor. Such as not prescribing additional drugs and tests, not treating the patient against the profession, etc. Introducing the expert, not making false advertisements and some other cases do not exist in the penal code of the country.

## RECOMMENDATIONS

1. To know the status of observance and non-observance of ethical responsibilities of medical doctors in society, it is necessary to work on field research to determine the level of attention to ethical responsibilities in the medical sector.
2. The government should launch public awareness programs to make doctors aware of medical ethical and criminal responsibilities.
3. The government should include the necessary ethical principles in the penal law and consider them punishable, which the non-observance of them harms the trust and growth of the medical sector.

## CONFLICT OF INTEREST

All authors express no conflict of interest in any part of the research, manuscript, and submission to the journal.

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