

Cases of Forfeiture of Permission in Medical Work, Legislative and Legally

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Abstract

Medical work is directly related to the patient's body, which is considered his property, and no one has the right to touch it without his permission. Medical permission is considered one of the legalization origins of medical work, and its role is important in lifting the responsibility of the doctor, but some cases require the fall of the medical permission to preserve the human soul from death or damage to the organs, which this research deals with and clarifies it according to legislation and law.

Keywords: *medical work, legalization and law .*

Introduction

Praise be to God, we praise Him, we seek His help and forgiveness, and we seek refuge in God from the evils of ourselves and our bad deeds, and then:

The issue of permission in medical work is one of the important issues in the life of the patient and the doctor, so that each party knows the extent of his authority in deciding to authorize medical work, and each one bears responsibility for his work.

Treatment, especially in necessary and urgent cases, requires the permission of the patient or his guardian to the doctor for surgical intervention to preserve and protect the human soul from destruction. Some cases may call for the medical permission to be revoked, so the doctor intervenes to aid the patient so that his condition does not worsen, causing damage to an organ or loss of life by delaying or making it impossible to obtain permission. In this research, the researcher reviews the foregoing according to Legislation and the Emirati law.

Research problem:

The research problem lies in the presence of patient cases that require immediate intervention and in which it is impossible to obtain medical permission that permits medical work for various reasons.

Research importance:

Preserving oneself is one of the objectives of the universal Legislation, and a patient who needs quick or emergency medical intervention to preserve himself is different from another patient who does not need emergency medical intervention. The obligation to take written medical permission from the patient in general, without exception, will cause him embarrassment or may cause him harm based on his medical condition, so taking into account some cases by exception and revoking the medical permission, in this case, achieves the goal of protecting oneself from death or harm.

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Previous studies:

In what the researcher has seen, he has found research in the field of medical permission in urgent surgeries from the legal point of view, such as:

- Examination of Permission in Urgent Surgical Operations, Idris, Abdel Fattah Mahmoud, and Ahmed, Magda Mahmoud.
- Provisions of medical surgery and its consequences, Al-Shanqeeti, Mohamed bin Mohamed Al-Mukhtar.
- Research on permission for urgent surgical operations, Pasha, Hassan Shamsi.
- Permission for urgent medical and surgical operations, vaccinations, Hani Suleiman.

However, in this research, the cases of permission being forfeited in Legislation and law will be clarified.

Research Methodology:

The research requires the use of the comparative method in explaining the sayings of the jurists on the issue of the origin of the permissibility of medical work and comparing the opinion of the law with the Legislation on the issue of the forfeiture of the medical permission, in addition to the inductive method to reach the cases of the forfeiture of medical permission.

Research Plan:

The research was divided into an introduction and two requirements as follows:

- The introduction
- The first requirement: is the origin of the legalization of medical work.
- The second requirement: is medical permission projections.
- Conclusion
- List of sources and references

This is what God has enabled the researcher to achieve, and he asks God for more of His success. May God's blessings and peace be upon our Prophet Mohamed and all his family and companions.

The first requirement: the origin of the legalization of medical work.

The practice of medical or surgical work requires compromising the safety of the human body, and the act is considered a crime if it is done without permission or authorization. This is because the human body is based on the principle of sanctity that can be excluded within the limits of what is required by the interest, and treatment and the need for it is a necessity and interest that justifies that action .

Therefore, the law considers it permissible for a doctor or surgeon to perform his work and is not subject to accountability if he performs the work according to certain conditions. So, what is the basis of the permissibility of medical work?

The jurists differed regarding the basis for permitting medical work, despite their consensus on the legality of medical work, as the Hanafi school of thought said that the reason for permissibility is due to two things: the first is the necessity of medical work and the community's need for it, as through it the patient's life is protected and his health is maintained, and the second is the permission of the patient or his guardian if he was a minor, so by combining these two previous matters, medical work is permissible in the Hanafi view.

The Shafi'is held that the reason lies in the permission of the patient or guardian, in addition to the intention of treatment, avoiding danger from the patient and not harming him, and the Hanbalis agree with them on that.

As for the Malikis, they argued that the reason for its permissibility is due to the permission of the Sultan and then the permission of the patient, through which medical work is legitimate.

Despite this disagreement, there is a similarity between some of the reasons mentioned by the jurists. They can be combined and the basis for permitting medical work becomes due to: the permission of the Sultan, then the permission of the patient or his guardian if he is a minor, and the necessity of medical work.

The second requirement: medical permission projections.

Permission for medical work is one of the important matters that must be taken into account by both the doctor and the patient before starting any medical work. As for the patient, the importance of permission is evident because it is considered one of the foundations of the permissibility of medical work, in addition to the fact that it exempts the doctor's work from the quality of assault. If the doctor has medical permission, he will not be charged with assault, and he will not be accused by his family or subject to legal accountability.

However, there are some cases in which the doctor is allowed to carry out medical work and surgical intervention, without having to obtain permission from the patient, as an exception to the principle that requires this to be taken into account. Medical permission may be revoked in special cases, as follows:

1. Cases of first aid for the injured in accidents that result in serious injuries that threaten to damage the injured person's organs or life if he is not treated immediately, and the case of urgent necessary surgeries .

In these cases, the injured person is often unconscious, or unable to decide because he is incapacitated, or the doctor may discover during the operation the necessity of performing another urgent operation, so it is not possible to obtain his permission, and he goes to his guardian, if any, and his permission is considered, but it is often impossible to obtain permission. From the injured person's guardian either:

- Because of his absence in such urgent emergency cases, it is also difficult for the doctor to identify or reach the guardian of the injured person due to lack of time and the danger that the patient suffers from delay.
- Or because there is no guardian for the patient in the first place.
- Or for the guardian's refusal to issue permission to undertake medical or surgical work, such as in the case of an urgent cesarean delivery when one or both parents refuse to permit, while clarifying the danger of that to the mother or the fetus, or both of them together .

In these situations, either the doctor intervenes without medical permission to save the injured person, or he waits until he obtains permission to proceed, and it is noted that the second option may lead to the death of the injured person or damage to some organs due to the seriousness of the situation. This is what Legislation does not seek, many rules deny harm, including (no harm or reciprocation) and (harm will be removed). As for the other option, it revives the human soul, so the doctor should follow the first option.

The International Islamic Jurisprudence Council of the Islamic Conference Organization, meeting in its nineteenth session in the Emirate of Sharjah, mentioned decisions regarding permission for urgent medical operations, including conditions for medical intervention in urgent cases as follows:

A- The doctor explains to the patient or his guardian the importance of medical treatment, the seriousness of the medical condition, and the consequences of refusing it. If the refusal is insisted upon, the doctor documents this.

b- The doctor makes a great effort to convince the patient and his family to reverse his refusal of permission to avoid the deterioration of his condition.

C- A medical team of not less than three consultant physicians - provided that the attending physician is not among them - is responsible for verifying the diagnosis of the disease and the proposed treatment for it, along with preparing a report signed by the team and informing the hospital administration of that.

d- The treatment should be free of charge, or a neutral party would estimate the cost.

2. Infection with dangerous communicable diseases, the spread of which affects the community .

Medical permission is revoked in the event of infection with serious diseases that spread in society through infection through contact with the patient. In such a case, the doctor must initiate medical and preventive work procedures against this disease to limit its transmission and infection, as the Sunnah came with hadiths indicate the prevention of some diseases. Diseases are like the plague, as the Messenger of God, may God bless him and grant him peace, forbade entering a land if he heard that the plague was spreading there. He also forbade those infected with it to go out so that the disease would not spread , and the serious diseases discovered these days can be measured against that. The interest of the group takes precedence over the interest of the individual, so the individual must be treated and reported when his infection is suspected.

Article 6 of the Medical Responsibility Law states that the doctor must inform the health authority to which he is affiliated, in case he suspects that a patient has contracted a communicable disease that requires quarantine, due to the seriousness of such diseases in society. Here is the text of the article:

"If a doctor suspects that a patient is infected with a communicable disease, he must immediately inform the health authority to which he belongs, and this authority must inform the Ministry within twenty-four hours at most from the time of suspicion to take the necessary preventive measures, and in the event of suspicion that the patient is infected with one of the diseases that require quarantine, which Determined by the World Health Organization, the patient's address must be verified and reported as soon as the case is discovered if it is not possible to keep him in the clinic."

2. Vaccinations imposed by the state on newborns against infectious diseases, and on adults in the event of traveling to some countries to prevent diseases .

The state imposes certain vaccinations against some diseases, such as German measles, polio, and other diseases, from the time the child is born and some when he grows up during the school stage. For these immunizations, the patient or his guardian does not ask for permission when they are given. Rather, permission is waived and the school health doctor performs them because they are imposed by the state and to protect society and prevent it from contracting diseases, it is obligatory.

This is what the Communicable Diseases Prevention Law states in Article 20:

1. Newborns must be vaccinated and immunized during the first year after birth against the following diseases: (tuberculosis, polio, diphtheria, tetanus, whooping cough, measles).

2. The Health Administration issues systems, regulations, and schedules regulating immunization and vaccination against the diseases mentioned in the previous clause.

3. The Health Administration issues rules and regulations for vaccinating children at different stages of life.

4. The health department may add or delete any of the diseases mentioned in Clause 1 of this article.

The UAE law addresses waivers of authorization in Article 5 of the Medical Liability Law, which states: "The doctor is prohibited from doing the following:

- Treating a patient without his consent, except in cases that require emergency medical intervention and in which it is not possible to obtain consent for any reason or in which his illness is contagious or threatens public health or safety."

Likewise, in Article 7 of the same law, the article stipulates that: "Except emergency cases that require immediate surgical intervention to save the life of the patient or the fetus, surgical operations may not be performed except by taking into account the following... D- Written consent must be obtained from the patient...."

It is noted that the UAE law spoke about cases of revocation of permission in two separate articles, as it excluded in Article Five the necessity of the doctor obtaining the consent of the patient to treat him, so it is revoked in emergency cases and in the case of infectious diseases that threaten the safety of society. It also excluded Article Seven emergency surgical intervention from all surgeries that require Written patient permission before the procedure.

Conclusion

After completing the research, the researcher came to the following results:

1. Jurists differed regarding the origin of the permissibility of medical work.
2. There is a similarity in the reasons to which the jurists attributed the basis for permitting medical work.
3. Taking together the sayings of the jurists, the basis of the permissibility of medical work is due to: the permission of the Sultan, then the permission of the patient or his guardian if he is a minor, and the necessity of medical work.
4. Medical work cannot be carried out without obtaining medical permission.
5. There are certain cases in which medical permission is revoked and the doctor begins medical work without considering his practice a crime or an assault on the patient's body.

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