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Feasibility of physician's legal immunity in non-contractual emergency relations (comparative study in Iranian and American law)

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Abstract

The importance of taking action to save another person's life outside medical settings—especially by physicians, because of their skills and training—is evident. However, these individuals often refrain from intervening to help and save a patient due to the potential liability that such actions might create for them. For this reason, various countries have adopted measures to increase rescue efforts. One such measure is imposing a legal duty to assist and criminalizing its abandonment. Some states in the United States have used this approach.

According to this rule, in American law, there is no general duty to assist or rescue another. Most American states adhere to the principle of no affirmative duty to help, and this has been reiterated numerous times in court decisions. This rule is also recognized in the Third Restatement of Torts. There are three exceptions to this rule, recognized in most American states: 1- The existence of a special relationship between the plaintiff and the defendant, such as the relationship between a store owner and a customer, or an employer and an employee. 2- The creation of a dangerous situation by the defendant or those for whom they are responsible, such as minor children, animals, etc. 3- Abandoning assistance after initiating aid; although there is initially no duty to help another, once a person begins to help and attempts to rescue another, they cannot leave the scene unless they determine that the harm of continuing assistance outweighs its benefit, or another person assumes responsibility for providing the service. Also, in cases where a person has created the impression in another that they will take action to protect and rescue (while essentially having no such duty), they will be liable if they abandon it. However, criticisms were leveled against this rule, stating that even if the duty to help another limits an individual's freedom, it is obvious that preserving the health or life of another has a higher value. Some also believe that the freedom to refuse to assist in emergencies granted to ordinary citizens should not apply to professionals such as firefighters and physicians. According to these

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critics, because physicians possess unique medical skills, a duty to assist in medical emergencies should be imposed on them. Following these criticisms, some states enacted statutes indicating an affirmative duty to render assistance and prescribing punishments for failure to provide aid. Nevertheless, these laws have not been widely enforced, and there is little prosecution for violations in the case law. The inability to identify defendants in such cases has meant that these laws lack practical effect in increasing assistance. For this reason, most states remain committed to the rule that there is no legal duty to assist another person.

However, in Iranian law, the legislator, in line with the religious obligation of treatment for physicians in non-contractual situations, has addressed the issue of averting life-threatening dangers to others and has, under certain conditions (life-threatening danger to the individual, the injured person's request for help or need of help, the absence of danger to the rescuer and others, the ability of the offender to provide help), criminalized the refusal to help injured persons and a heavier punishment has been considered for physicians due to their specialization and the fact that they have greater responsibility for the lives of individuals than others due to their scientific ability and mastery. However, this single article, given the difficulty of proving its conditions, has also become a neglected law and, as a result, does not effectively increase assistance.

Given that healthcare professionals refrain from intervening to help and save a patient's life in emergencies due to potential liability, the United States has attempted, by enacting Good Samaritan laws, to grant immunity to those who voluntarily come forward to help injured persons for harms arising from their assistance; research has shown these laws have an encouraging effect.

However, in Iran, despite the necessity for physicians to intervene in non-contractual relationships to save patients' lives, no such laws exist. Therefore, this article examines the necessity or lack thereof for the adoption of laws similar to the Good Samaritan law in Iran.

After examining the elements that must be present for immunity to be granted under the Good Samaritan laws (first, an emergency must exist such that there is a risk of loss of life or limb; second, there must be no physician–patient relationship; third, the care provided must be gratuitous; fourth, the care must be performed in good faith; fifth, immunity applies only to ordinary negligence. All states exclude willful and gross negligence from legal protection; sixth, there must be implicit or explicit consent to act to rescue; if the victim is unconscious or unresponsive, consent is presumed; and if the person is conscious and can respond reasonably, a rescuer must first obtain permission to be subject to the Good Samaritan laws), it becomes clear that the corresponding institution in Iran's legal system is the rule of benevolence (ihsan). Most of its conditions (intention of benevolence and good faith, absence of a legal duty, being free of charge) are similar to the Good Samaritan laws. However, it appears unable to serve an incentivizing function

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	because under the rule of ihsan—regardless of the current interpretation of "good action"—if fault is proven, regardless of its degree, the person is not considered a benefactor and is liable for the damages caused. As a result, even if a responder physician need not prove compliance with scientific and technical standards to be considered a benefactor and be exempt from liability, if negligence—even ordinary negligence—is proven, they are liable. Whereas under Good Samaritan laws, to encourage physicians to assist in emergencies, liability arises only in cases of willful misconduct or gross negligence. Therefore, it is desirable that Iranian laws also provide the necessary immunity for physicians to encourage them to engage in voluntary activities.
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