

Assessment of Legal Obligations of Physicians from Emergency Physician Perspective

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ABSTRACT:

Assessment of legal obligations of physicians from emergency physician perspective

Objective: To assess whether the emergency physicians are aware of legal obligations and responsibilities, and their point of view and knowledge levels on this topic.

Material and Methods: The study was conducted among emergency physicians as a face-to-face survey by giving verbal information, from different emergency departments of Turkey who attended the 4th International Euroasian Congress of Emergency, where 600 participants participated between 13-16 November 2014. All of the questions were organized in relation to the legal obligations of the physician.

Results: A total of 124 physicians participated in the questionnaire. Their mean age was 29.13±13.10, their medical experience was 29.13±13.10 years, and their mean emergency experience time was 7.17±4.90 years, and mean time after emergency residency was 2.96±4.00 years. It is striking that 43 (34.7%) of the participants answered the question "what is the most important legal responsibility of emergency physicians?" as "to pay attention to patient care". 116 (93.5%) of participants stated that handcuffs had to be removed during medical examination of the prisoners and detainees, and 100% of them reported that the patient's privacy should be respected.

Conclusion: We think that physicians must be well-educated on legal issues during their undergraduate education to learn and apply the legislation about medical practice, and various courses and symposiums should be organized within the framework of in-service training.

Keywords: Emergency service, medical law, physician's obligation

ÖZET:

Acil hekimlik perspektifinden hekimlerin hukuki yükümlülüklerinin değerlendirilmesi

Amaç: Acil tıp alanında çalışan hekimlerin; hukuki yükümlülükleri ve sorumlulukları hakkında bilgi sahibi olup olmadıklarını irdelemek ve hukuki yükümlülükleri konusunda bilgi birikimlerini ve bakış açılarını değerlendirmektir.

Gereç ve Yöntem: Çalışma, 13-16 Kasım 2014 tarihleri arasında acil tıp alanında düzenlenen 600 katılımcının yer aldığı uluslararası 4. Avrasya Acil Tıp Kongresi'ne Türkiye'nin farklı acil servislerinden katılan acil hekimlerine; sözel olarak bilgi verilerek yüz yüze yapılan anket çalışmasıdır. Soruların tamamı hekimin hukuki yükümlülükleri ile alakalı olarak düzenlenmiştir.

Bulgular: Anket çalışmasına 124 tıp doktoru katılmış olup, çalışmaya katılanların ortalama yaşı 29.13±13.10, mesleki icra süresi 9.06±5.60, acilde çalışma süresi 7.17±4.90 ve uzmanlık süresi 2.96±4.00 yıldır. Hekimin en önemli yükümlülüğü sorusuna katılımcıların 43'ünün (%34.7) özen yükümlülüğü cevabı dikkat çekicidir. Katılımcıların 116'sı (%93.5) hükümlü ve tutukluların muayenesi esnasında kelepçelerinin çıkarılması gerektiğini, %100'ü ise hasta mahremiyetine saygı gösterilmesi gerektiğini ifade etmiştir.

Sonuç: Hekimlerin sağlık alanını ilgilendiren yasaları öğrenmesi ve meslek yaşamlarında uygulayabilmesi için tıp fakültesi eğitimi boyunca hekimlere hukuki konularda temel düzeyde de olsa eğitim verilmesi ayrıca bu eksikliğin giderilmesi için acil hekimlerine yönelik, meslek içi eğitim çerçevesinde çeşitli kurs ve sempozyumların düzenlenmesi gerektiğini düşünmekteyiz.

Anahtar kelimeler: Acil servis, tıp hukuku, hekimlerin yükümlülüğü

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INTRODUCTION

In 1992 in the 44th General Assembly of World Medical Association malpractice was defined as “the physician not applying the practice of the current standard treatment, incapable, or harming the patient as a result of a treatment”, and drew attention to the legal framework of the medical profession (1). Obligations and legal responsibilities of physicians have increased significantly in our country after the “Compulsory Financial Liability Insurance Regarding Medical Malpractice” was published in the Official Gazette (OG), 2010 and the Turkish Penal Code (TPC) published in 2004 (2,3).

The definition of liability is defined as “the obligation, to carry out a mandatory work or a work which is mandatory” in the Turkish Language Institution (TLI) dictionary. Responsibility is defined as “a person to undertake the responsibility of his or her own behavior or the consequences of any event falling within the person’s jurisdiction” (4). Therefore, the physician must be aware of the work he has done and the consequences he has caused and behave accordingly.

The duties and responsibilities of the emergency physician increases, as they start medical treatment immediately considering the medical priority and the cases are usually judicial, before having sufficient history and performing advanced examination (5-8). Within the Turkish legal system; Turkish Penal Code, Article 280, which imposes direct responsibility for health professionals, stating “the obligation to report a crime detected by a health professionals” (3); careful obligation (9) under the Article 506/2 of the Code of Obligations, and many other laws, regulations, directives and generalities, legal responsibilities and obligations of the physician are included.

The aim of our study is to evaluate the understanding of legal obligations and responsibilities of emergency physicians and to evaluate their knowledge of the legal obligations and their perspectives.

MATERIAL AND METHOD

The study group was formed from subjects (physician, emergency medicine residents, specialists,

assistant professors, associate professors and professors) whose verbal consents were taken and who accepted to participate in the study, within emergency professionals who attended the International 4th Eurasian Emergency Medicine Congress, organized between November 13-16, 2016, including 600 participants. All individual respondents were accompanied during the survey and explanation has been made on unexplained matters. The questionnaire was filled using face-to-face interview technique.

Socio-demographic data were added to the end of the previously prepared questionnaire. There is a total of 20 questions in the questionnaire, all related to the legal obligations of the physician. When the content is examined in detail, the preliminary plan aims to raise the awareness of the duties and obligations of the physician and the knowledge about the legislation concerning the medical profession has been evaluated.

Statistical Analysis

Mean, standard deviation, frequency and percentage values were used in the descriptive statistics of the data. SPSS 20.0 package program was used in the analysis of the data.

RESULTS

A total of 124 medical doctors participated in the questionnaire and the mean age of the participants was 29.13 ± 13.10 years, the professional performance period was 9.06 ± 5.60 years, the period of working at the emergency department was 7.17 ± 4.90 years, and the duration of being a specialist was 2.96 ± 4.00 years. Table 1 shows the participants’ demographic data and whether they were educated in medical and/or health law areas.

When asked about their responsibilities and obligations as a physician, 92 subjects (74.2%) were aware of their obligations and 96 subjects (77.4%) of their responsibilities. The answers to the question of the most important obligation of a physician are given in Table 2, and the answer to the obligation of care from a total of 43 (34.7%) subjects (39% (31.5%)

Table-1: Participants' demographic data and law education status

	n	%
Gender		
Female	47	37.9
Male	77	62.1
Academic Title		
Physician	4	3.2
Resident	61	49.2
Specialist	31	25
Asst. Prof.	12	9.7
Assoc. Prof.	13	10.5
Professor	3	2.4
Institution		
State Hospital	16	12.9
Training and Research Hospital	58	46.7
University	47	38
Private Hospital	1	0.8
Other	2	1.6
Medical and Health Law Education		
Yes	24	19.4
No	100	80.6
Place where medical and/or health law education is received		
Seminar	7	5.6
Congress	4	3.2
Conference	3	2.4
Seminar, congress	4	3.2
Seminar, congress, conference	2	1.6
Seminar, congress, conference, graduate program	1	0.8
Other	3	2.4

and 4 (3.2%) within other answers) is remarkable.

When asked what is involved in the legislation that deals with the profession of medicine; 12 subjects (9.7%) stated that all the options mentioned in the answers (Law of obligations, Law of medical deontology, Law on the practice of medicine and its branches, Constitution, Patient rights regulation, Medical profession ethics code, Turkish penal code), 10 subjects (8.1%) stated that all answers except Law of obligations, and 1 subject stated that legislations in the options were not related to the medical practice.

Table-2: Physician's view of the physician's obligations

	n	%
OKR	45	36.3
OC (OD)	39	31.5
OT	15	12.1
ODX	12	9.7
OKR+ODX+OT	3	2.4
All	2	1.6
Other	8	6.4

OKR: Obligation to keep records, OC (OD): Obligation of Care (Diligence), OT: Obligation of treatment, ODX: Obligation of diagnosis

While 25 of the participants (20.2%) had information about the personal performance obligation, 99 (79.8%) stated that they had no information.

Of the 118 (95.2%) participants expressing that they are aware of the obligation to get a accurate anamnesis, 104 (83.9%) stated that an allergy history, a family history, a drug history, smoking status, a history of alcohol or substance use, an additional disease history, and a previous operation history must be completely questioned.

Participants were asked whether they had information about the proxy agreement between the physician and the patient, and 34 subjects (27.4%) had information, and 13 of these subjects (10.5%) stated that in the content of the proxy agreement, diagnosing, treating, performing preventive medicine and using modern diagnostic tools and facilities should be included, while 2 subjects (1.6%) stated that in addition, it is necessary to fully heal the patient.

Of the participants, 116 (93.5%) stated that the handcuffs had to be removed during the examination of convicted and arrested persons.

The statements of the attendants related to diagnostic obligations of the physicians are given in Table 3.

Table-3: Physician's view of obligation of diagnosis

	I know very well n (%)	I know well n (%)	Not bad n (%)	I know little n (%)	I don't know n (%)
Diagnosis concept	7 (5.6)	53 (42.7)	38 (30.6)	11 (8.9)	15 (12.1)
Types of diagnosis	6 (4.8)	44 (35.5)	42 (33.9)	15 (12.1)	17 (13.7)
Diagnostic liability content	4 (3.2)	27 (21.8)	39 (31.5)	28 (22.6)	26 (21)
Prohibition of remote diagnosis	10 (8.1)	19 (15.3)	27 (21.8)	31 (25)	36 (29.3)
Obligation of prenatal diagnosis	4 (3.2)	12 (9.7)	34 (27.4)	31 (25)	43 (34.7)
Obligation of notification of diagnosis	8 (6.5)	31 (25)	30 (24.2)	29 (23.4)	26 (21)
Obligation of control of diagnosis	5 (4)	27 (21.8)	30 (24.2)	30 (24.2)	32 (25.8)

Table-4: Physician's view of treatment and judicial situations

	Yes		No		I don't know	
	n	%	n	%	n	%
Can the physician refuse to treat the patient?	84	67.7	27	21.8	13	10.5
Can the patient refuse the treatment of the physician?	116	93.5	5	4.0	3	2.4
Is the physician responsible for terminating the treatment in accordance with the request of the patient?	90	72.6	17	13.7	17	13.7
Does the physician have an obligation to keep secrets?	122	98.4	2	1.6	0	0.0
Should the patient's privacy be respected?	124	100.0	0	0.0	0	0.0
According to the legislation, must the death examination be performed at the emergency service?	20	16.1	72	58.1	32	25.8
According to the legislation, should the forms of informed consent be filled in emergency situations?	67	54.0	45	36.3	12	9.7

Table-5: Obligation of prescribing

	True n (%)	False n (%)	I don't know n (%)
The physician has the freedom to choose the drugs.	120 (96.8)	2 (1.6)	2 (1.6)
The physician should inform the patient about side effects that may occur.	116 (93.5)	5 (4)	3 (2.4)
The prescription means that the patients is diagnosed after the examination.	122 (98.4)	2 (1.6)	0 (0.0)
Reçete yazılması muayene sonrası teşhis konulduğu anlamına gelir.	46 (37.1)	71 (57.3)	7 (5.6)

Other questions asked to the participants are summarized in Table 4.

To the question related to a physician's obligation to keep records, 80 (64.5%) participants stated that the physician had the obligation to keep records of anamnesis registration, consent forms, follow-up notes, physician orders, laboratory, consultation and epicrisis reports, while one participant (0.8%) stated that the physician did not need to keep these records. Statements of participants regarding the obligation to write prescriptions are given in Table 5.

DISCUSSION

"Medical Law" is a subdivision of health law, which deals with the rights and obligations of medical personnel stemming from the practice of medicine, legal liability, patient rights, drug law and medical law. Being a multidisciplinary branch of law and because of the existence of constitutional, criminal, administrative and civil law related aspects, it is of importance (10). There are no studies related to the obligations of the physicians in the literature and there are articles in compilation form in the forefront.

19.4% of those who participated in the survey study had been trained in medical and / or health law, and we think that this relatively low number is due to the low awareness of physicians having legal knowledge.

A physician's basic duty is to practice according to ethical and legal rules. Physicians have a lot of obligations arising from both proxy contract and from the practice of the medical profession (11). The most important of these obligations is the obligation of care (diligence da denmek istenmiş olabilir, yazara danışılarak, özen yükümlülüğü geçen yerler diligence obligation olarak değiştirilebilir) (12). The obligation of care is the basis of all obligations. Despite the fact that the obligation of care is the most important obligation, 34% of our subjects has considered this as the most important obligation and this ratio is found to be low. We think that this is caused by lack of information of physicians.

In the legislation dealing with the profession of medicine; law of obligations, code of medical deontology, law on the practice of medicine and its branches, constitution, patients' rights regulation, medical profession ethics code and Turkish penal

code exist. Therefore, the physician must be familiar with the subjects related to the medical profession in these laws (13). In our survey study, 9.7% of the participants stated that they had information about all these legal items. We think that the reason that this number is small is that doctors are not given relevant training to their statutory obligations and responsibilities during their medical education periods.

The obligation of the physician is to carry out the duty of the patient himself to carry out the responsibility of the diagnosis and treatment. The activities of the physician include the activities of persons who are assigned by the physician and who have a responsibility for the physician (14). The fact that 20% of the participants stated that they know the obligation to act suggests that there is an inadequacy in the awareness of the emergency physicians.

In the legal sense, it is emphasized that it is important to have a detailed story as "a good diagnosis for a good treatment, a complete history of the disease for a good diagnosis, that is, anamnesis needs to be taken" (15). 83.9% of the participants showed their awareness, saying that it is important to take a detailed anamnesis.

It is generally accepted that the contract between the physician and the patient is a proxy contract. According to Article 502/1 of the Code of Obligations, "the contract of proxy is the contract that the proxy deems that the proxy has undertaken to see or perform a business" (9,16). The proxy contract starts at the time the patient applies to the emergency service and covers all transactions made until the patient is discharged and leaves the emergency service. In the context of this contract, there is no question that the physician will completely improve the patient (16). 10.5% of respondents who have completed the questionnaire have information about the requirements of the proxy contract. We think that the reason for not having knowledge of this issue among the participants is that the physicians are not informed about the legal issues.

As a rule, according to the law on the enforcement of punishment and security measures, Article 50, during the examination of the prisoners and detainees, the handcuffs should be removed (17). 93.5% of the

participants stated that the handcuffs should be removed during the examination. We think that this awareness is due to 24-hour forensic examination in emergency departments.

The concept of diagnosis is the recognition of the disease, not the precise identification of the disease and its causes. Diagnosis is a medical opinion and evaluation and is essentially relative, that is, the physician tries to diagnose the patient in the light of modern medicine, but may not always diagnose correctly. It should be noted that there is a limited time for diagnosis in emergency cases (11). The vast majority of respondents were aware of their obligation to diagnose and responded that there were awareness of the relevant questionnaire. It is thought that the high awareness is due to intensive education of diagnosis and treatment given during the medical faculty education.

It is stated that the physician may refuse patients in private or public hospitals for various reasons and in special circumstances. However, this is especially true in outpatient settings. However, it is not possible for the physician to reject the patient in an emergency state (11). Although it is possible to withdraw physician from duty in case of violence in the direction of "Employee Security Circular" issued by Ministry of Health, there are limitations in physician's refusal of patients in case of emergency (18). 67.7% of the participants stated that the physician could refuse to treat his patient. We think that the reason for this relatively high ratio is the selectivity of physicians perceptions due to the increasing incidence of violence against emergency medical staff.

The physician must think "patient-centered" during treatment planning for the patient. Because it is a patient who has a health problem and wants to be treated and it has to be a physician who is obliged to do his/her treatment, the patient can refuse the planned treatment according to his/her own request, and the physician is obliged to cut off a treatment which was started according to the patient's request himself (11). The main duty of the physician is to protect human life, except that in case of life threat, the patient is intervened irrespective of the patient's consent (19). Participants found it appropriate with a rate of 93.5% of the patient to reject the treatment,

and with a rate of 72.6% to cut-off of the treatment initiated with the request of the patient. We think that the high level of consciousness of physicians in these matters is due to the fact that the conditions related to treatment are explained throughout medical education.

The obligation of the physician to keep secrets is a sub-obligation arising from the loyalty obligation of the health care professional (20). In addition, personal data may be shared only with the circumstances foreseen in the law or with the explicit consent of the individual, in accordance with Article 20/3 of our constitution (21). 98.4% of the participants stated that the physician had an obligation to keep secrets.

According to Article 7 of the Administrative Regulation of Inpatient Treatment Institutions, the importance of patient confidentiality is emphasized as follows: "In outpatient clinic examinations, observance of confidentiality principles is essential. Here, the traditions and ethic rules of the society are respected. Patients are examined one by one. During the examination, no one other than medical professionals and assistant health staff should be present in the outpatient clinic room. However, if the patient wishes, a relative of the patient or a friend can be present.". 100% of respondents stated that they should respect patient privacy.

Of the participants, 16.1% stated that the emergency department had to undergo examination of death and 54% stated that in case of emergency, informed consent forms had to be filled in. General Directorate of Primary Health Care Services / The principles to be followed in the execution of the forensic medical services circular (22) explains the need for the forensic examination in emergency services stating "Judicial services will be carried out under the responsibility of forensic medical professionals in inpatient treatment institutions, if not, otherwise, the emergency unit or another unit appointed by the chief physician will be assigned to be responsible for these services at first. It is essential that the judicial services provided by the hospitals are provided not at the branch office outpatient clinic and similar terminal units but at the main service of

the institution.", but in exceptional circumstances, the need for a death examination due to the expertise of the physician in emergency departments may arise. Even "the person's own right to determine his/her own future" (21) which is guaranteed by the Constitution, arises the need for informed consent before the physician touches the body integrity of the patient, this requirement disappears due to the race against time in case of emergency. Participants are thought to answer differently because they are physicians and because they do not have knowledge about legal requirements.

Whether it is in the doctrine or in practice, the agreed subject is to keep a record of the activities of the physicians by themselves (11). It should not be ruled out that the record is a legal obligation, and also an evidence against the allegations against malpractice of the physician (23). 64.5% of the participants stated that the physician was obliged to keep records.

The prescription is an official document organized by the physician himself, that authorizes a patient to be issued with a medicine or treatment. Prescription ordering means that the physician examines the patient and suggests the medication he/she deems necessary (11). The majority of respondents to the study questions related to prescribing responded correctly, and only 37.1% agreed that the prescribing means that examination was performed and the diagnosis was made.

CONCLUSION

In this study, it was concluded that emergency physicians had an idea about their legal obligations but that their knowledge and awareness were not sufficient. We think that physicians should be educated in legal matters at least at the basic level during the medical faculty training so that physicians can learn the laws related to the health field and apply them in their professional lives and that various courses and symposiums should be organized within the framework of in-service training for emergency physicians in order to overcome these deficiencies.

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