Civil Liability of Cosmetic Surgeons
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ABSTRACT

Background and purpose: Cyclophosphamide is an anticancer drug that passes through the blood-brain barrier. Turnip extract contains some antioxidants such as flavonoids, vitamin C and many others, and eliminates free radicals produced from the metabolism of other compounds in the body. The purpose of this study was to evaluate the antioxidant and protective effects of turnip roots on the liver and on changes in liver enzymes of rats undergoing chemotherapy with cyclophosphamide. Materials and methods: In this study, 36 laboratory rats (200 g of the Vistar race) were divided into six equal groups. The control group did not receive any solvent or drug. The sham group received 0.2 ml of the drug solvent by intraperitoneal injection. The experimental group I received the hydroalcoholic extract of turnip with the dose of 250 mg/kg/B.W. by gavage. The experimental group II was given cyclophosphamide with the dose of 5 mgs/kg/B.W. and the experimental groups III and IV cyclophosphamide with the dose of 5 mgs/kg/B.W. by intraperitoneal injections and 125 and 250 miligrams per kilogram of body weight of turnip extract, respectively, by gavage for 21 days. Results: Concentrations of the enzyme alanine aminotransferase (ALT) in the experimental groups II and III, and of the enzymes aspartate aminotransferase (AST) and alkaline phosphatase (ALP) in the experimental group II increased significantly compared to the control group (p<0.01). Moreover, serum protein in the experimental groups II and III and serum albumin in the experimental group II significantly increased compared to the control group at the five percent probability level. Conclusions: Turnip extract has antioxidant properties and somewhat decreases the negative effects of cyclophosphamide. Therefore, it is recommended that turnip extract be used to reduce toxicity resulting from the administration of cyclophosphamide to cancer patients.

KEY WORDS: turnip, cyclophosphamide, liver enzymes, antioxidant.

INTRODUCTION

The word “liability” means reprimanding and accountability, and a “liable” person is one who is asked and accountable for something (Dehkhoda, 1373). Liability as a legal term is the same and any person shall be held responsible for his/her deeds and consequences. The main task of law in the society, in all schools, is preventing from commitment of harmful acts and adopting the necessary measures to offset the damages caused by it. Depending on the type of accountability, the type of liability will differentiate; if accountability is a matter to the sight of God or it takes place before the conscience, it is called “moral responsibility”, and if accountability is a matter of statutory law, it is called “legal or lawful liability” (Shojapoorian, 1389).

First Topic – Types of Legal Liability:

The legal liability is divided into two types: (a) criminal liability and (b) civil liability.

A) Criminal liability is the obligation of the responsible person to undertake the individual and social detrimental consequences concerning the criminal act which is done or left (Saleh Vlidi, 1373). Concerning the criminal liability, in addition to a private person, directly damaged by the consequences of the committed detrimental acts, the society may be damaged by the detrimental acts or generally, the damage aims the society and the private persons affected by it.

B) Civil liability: where and individual has to compensate damages caused to the others, it is said that he/she has civil liability against the other (Katoozian, 1378). In civil liability, a private person is incurred by the losses. The civil liability in such a meaning, in comparison to the criminal liability consists of a contractual liability and non-contractual (forcible) liability. Contractual Liability: the task, which shall be undertaken due to any violation of contractual obligations, and compensation for damages caused by the infringement (Shahidi, 1382). Anyone who does not fulfill his/her obligations in a contract and incurs damages to the other party, he/she shall
be responsible for the incurred damages. The pledge which shall be undertaken by the offender, with respect to
the root of the principal obligation, is called “contractual liability” (Katoozian, 1391).

Forsible liability is a task, which due to performing or non-performing an action, shall be undertaken by a
person in law. The origin of this agreement is not between the agent of loss and the loser, but the violation from
legal obligations which shall be fulfilled by all persons and the enforcer of forscible liability is seeking to balance
the freedom among the persons (Katoozian, 1391). The origin of the physician’s liability, regardless of the rare
exceptions such as emergency cases, depends on the consent of the contracting patient who needs medical
treatment, so that it can be said, without a contract for medical treatment, there is no obligation. Some part of
physician’s obligations may not come to the mind of either parties to a medical treatment contract, particularly
between a physician and a patient. On such an assumption, by virtue of Article 10 and 219 of the Civil Code, the
said contract and the obligations therein, shall be obeyed by the contracting parties: however, both parties
shall/can not foresee and predict all detailed problems and obligations in the contract and it is sufficient to agree
on main issues of contract and leave the rest to the legal system (Shojapoorian, 1389).

Second Topic: Medical malpractice and errors in the legal perspective

From a legal perspective, malpractice and error in medicine are different. Medical error is an unintended
action that does not lead to a desired outcome in medical practice. On the other hand, medical malpractice or
negligence refers to those errors that 1. Caused any loss or harm; 2. This harm is caused by the negligence or
fault of the physician.

1) Nature of Civil Liability of Physicians and Surgeons:

One of the features of professional liabilities is two-dimensionality. When a physician does not observe the
academic and technical standards during the medical treatment of his/her patient and bring harm to the patient,
this physician has not fulfilled his/her contractual obligations and therefore, he/she is responsible for contractual
liability; on the other hand, the physician’s action shall also be considered a violation of jobs regulations
(Article 3 of disciplinary by-law to medical trade and professional misconducts), and probably, the forscible
liability may be prosecuted as a criminal liability. It seems that the essential duties and obligations of a
physician or surgeon during medical practice is the same; whether there is a contract between them and the
patient or the patient in anesthesia by is brought to emergency ward by an anonymous person (Babaei, 1382).

2) Civil liability of physicians in the Islamic Penal Code:

As mentioned above, the important issue which the Iranian Civil Code and the Civil Liability Act is silent
about it, but in the Islamic Penal Code, approved in 1996, some Articles with this regard can be taken into
account. Some Articles related to the above Code are as follows:

- Note 2 of Article 59 of the said law states: any type of medical or surgical operation which is legal and
  being performed upon the consent of a person, his/her parents or guardian or legal representatives, observing
  the academic and technical standards and governmental systems, regarding the urgent cases, obtaining the consent
  is not required for the physician.
- Article 60 of the above Code refers to the fact that: “if the physician, before commencing the treatment or
  surgical operation, has acquired innocent from the patient or his/her parent, he/she is not responsible for
  financial loss or fatality or injury and maim; and in urgent cases, where permission may be possible, the
  physician is not guarantor”.
- In Article 319 reads: a competent physician shall be guarantor, during his/her personally conducted medical
  treatments, or regarding those treatment prescribed by the physician, even if it is performed by the patient’s or
  his/her parent’s permission, whenever it causes financial loss or fatality or injury and maim.
- In Article 320, the legislator, even a skillful, shall be guarantor in case of occurring a crime or damage.
  Subsequently, the Articles 321 and 322 are assigned to the veterinarian and states: a veterinarian, even a
  specialist, shall be guarantor, if he/she incurs damages to the animal during the treatment, even it occurs by
  acquiring the owner’s permission. In Article 322 it is noted that: “if the physician or veterinarian and the like,
  before commencing the treatment, acquires innocence from the patient, or the parents or the owner of animal,
  he/she shall not be responsible for the incurred loss and damages.
- Now, with regard to those Articles of the former Islamic Penal Code, expressed above, related to the civil
  liability of the physician, it sounds that the principle of sole liability or fault-free liability of a physician, has
  been accepted following a group of Imamah (Shia Twelver doctrine) and it is critical. Although the above
  principle has bed adjusted through the innocence of the guarantor, having studied the new Islamic Penal Code
  and examining the related items, we could observe the legislator has departed the former principle and has
  accepted the basis of fault in the liability of physician. An assumed fault means that the law assumes
  responsibility for the physician, unless the contrary is proved and physician’s lack of fault to be verified.
- By admitting the theory of fault about the civil liability of the physician, the law’s approach toward this
  matter is that the physician’s commitment should be considered as undertaking an action, not commitment to
  results; that is, the physician, by virtue of a contract or law, undertake to remedy the patient, observing the
medical standards and do his/her best with this regard, however, the definitive treatment of the patient is not in authority and commitment of the physician.

- Therefore, the physician shall be condemned since his/her conviction. In Article 495 stipulated in the new Islamic Penal Code, the legislator lays down: “when the physician causes damage or loss, he/she shall pay atonement, otherwise, his/her action are in compliance with the medical rules and technical standards; or he/she has exonerated before treatment and he/she has not committed to an offense. If exoneration is not valid due to patient’s immaturity or insanity, or exoneration due to anesthesia or the like is not possible, the exoneration shall be obtained from the patient’s parents”.

- According to the last Article, the basis of assumption of a fault, or in other words, the conviction shall be deducted. This is to say that, it is not necessary to convict for liability, however, the physician can prove his innocence, that is, if he/she proves that he has observed all medical rules and technical standards and he was not imprudent and that he has exonerated from the patient or his/her parents, the physician shall not be responsible with this regard and conviction shall be verified by the patient.

Third Topic – Cosmetic Surgery:

Cosmetic surgery is known not as a surgery with the goal of healing of the patient, but for correcting a deformity that does not put the patient’s life in danger. The legitimacy of cosmetic surgery is questioned. The Sunni Jurisconsults, by virtue of the saint verse “I will bid them so that they shall alter Allah's creation” and Mohammed prophet’s narration and prohibition of guile and some other religious jurisprudent reasons, has prohibited cosmetic surgery (Ayat Allah AsefMohseni, 1382).

In Shiite jurisprudence, cosmetic surgery is permitted, provided that it does not have significant risk of harm (MakaremShirazi, 1365). In France, in the beginning, cosmetic surgery was viewed with skepticism and the Appeal Court resolved in 1913 that cosmetic surgery intended for aesthetic and beauty purposes is not permitted and therefore, the physician shall undertake all the incurred damages to the patient (FaeghAljowhari, 1950).

In Germany, cosmetic surgery is absolutely permitted (ManzarAlfazl, 2000). In England, cosmetic surgery is permitted and anyone in society has the right to benefit from cosmetic surgery in an acceptable, attractive and handsome figure, with no creational imperfection with no limitation.

1) Cosmetic surgery is divided into two categories:

a) Cosmetic plastic surgery: due to natural hazards and disasters, it is possible some changes happens in natural physical appearance of a human and it causes to refer to a physician to get treatment for incurred damages and wounds and mends frature. Plastic surgery hereto, is considered as a medical treatment. Every year, thousands of patients, who are burnt, offenders and people with disabilities caused by car accidents and work related events, those who suffer from incurable wounds and malignant tumors and benign tumors in body and the likes, are treated by a plastic surgeon and are founded normal by the society. In such cases, the cosmetic surgery is promoted to medical treatment surgery and the physician does his best to correct and improve the patient’s condition and offer medical cares. The physician’s obligation in this condition is obligation to limitation of his/her potentiality (MostafaAloji, 2004).

b) Cosmetic fantasy surgery: the goal of this surgery is not treatment and recovery, but, it is an attempt to remove a creational imperfection, such as nose size reducing, remove facial wrinkles, get rid of cellulite, transplant artificial hair and eyebrows, skin whitening, additional finger amputations, hair peeling and removing unwanted hair. The physician’s obligation in this state is obligation to the result (EsmaeiliAbedi and Jafaritabar).

It is difficult to differentiate between plastic surgery and fantasy surgery. If a girl suffering from mental and emotional anxiety drives to suicide due to the left hair on her chin, in such a case, it is not clear that the surgical operation for removing her unwanted hair shall be considered as a plastic and medical surgery or it shall be regarded as a cosmetic fantasy surgery and just for fun. Therefore, it seems that today the thought of disease has developed it does not only lead to physical illness and includes mental states. The cosmetic surgery is considered as a subcategory of medical treatment surgery and obeys the general regulations. Therefore, the plastic surgery may not require the obligation to obtaining the results. Although the cosmetic plastic surgery aims to meet the results that is beautifying in a definite point of patient’s body any surgical operation performed on a live human’s body is risky and it probably meet the result. The verdict passed in French courts has approved this idea (the verdict passed by first branch in the Supreme Court of France, 1992).

Fourth Topic – Prosecution of Medical Malpractice and Crime:

According to Article 24 of Iranian Medical Council Constitution, in order to prosecute the malpractice and crimes of professionals engaged in medicine and affiliated to the Medical Council in the center and provinces, this council includes the Board of disciplinary primitive and supreme which shall be constituted as per the Articles of this law. However, crime, is an action or not take an action where the legislator deserves of punishment for it; that is, prosecuting the medical malpractices by disciplinary primitive boards does not prevent the judicial court from prosecution; because it is possible the physician take an action which is criminal and
whereas this action shall be considered as malpractice, the judicial courts and disciplinary primitive boards may individually prosecute the case.

Regarding the establishment of cooperation between the primitive boards and judicial courts, in Article 27 of Iranian Medical Council Constitution, the disciplinary primitive boards oblige the Council, to prosecute the case and then, submit to the relevant provincial courts, the related expertise, specialized and advisory comments and reports on prosecuting files which are convicted due to the medical malpractice. In note 1 of the last Article, it is observed that authorized provincial public prosecutor’s offices and courts will determine a 20-day deadline for the disciplinary board and the said board shall submit their expertise and specialized comment to the relevant court within the pickup.

In the line with organization of prosecuting disciplinary board, in compliance with Article 25, Iranian Medical Council Constitution, obliged a board consists of:

1) A judge introduced by the Head of Judiciary for Tehran and a judge introduced by the Head of Ministry of Justice for Provinces; 2) in-charge of provincial forensic medicine; 3) three physicians of the province together with a dentist; 4) one pharmacist and one member, holder of PhD in Medical Laboratory Science, to primitive prosecuting and offering consultative and expertise opinions and allocating one of the below disciplinary punishments and submitting to the judicial courts.

Fifth Topic – The Assigned Disciplinary Punishments in Iranian Medical Council Constitution:

According to the above mentioned law, any offenders of the medical practice and the affiliated professions may subject to one of the assigned punishments in this law as follows:

A) Verbal warnings or reprimands at the present of the local board of directors of the Medical Council;
B) Written notification or reprimand, which shall be recorded in the file of medical council;
C) The punishment stipulated in clause B, together with publishing in the medical council or attaching the verdict on the bulletin board of the Medical Council;
D) Deprivation of working in the medical practices and the affiliated professions, from three months up to one year at the site of the crime;
E) Deprivation of working in the medical practices and the affiliated professions, more than three months up to one year all over the Country;
F) Deprivation of working in the medical practices and the affiliated professions, from one year up to five years all over the Country;
G) Permanent deprivation from working in the medical practices.

Regarding the competent authorities, prosecuting the medical crimes, as per amending regulation Act on Medical and Pharmaceutical Affairs, approved on April 13, 1995, in addition to the competency of the public courts and disciplinary boards of the Medical Council, it is necessary to note to the competency of the special court for medical malpractices located in Tehran, dispute settlement councils for medical affairs the Act approved on Sept. 22, 2007) located in the center of provinces, the competency of the revolutionary court (as per amending Act of Article 3 medical and pharmaceutical by-laws approved in 1955) and the competency of Governmental Tazirat Organization (as per the Act approved by Expediency Discernment Council on March 4, 1988), while observing the suited files, the surgeons, plastic & cosmetic specialists and obstetricians & gynecologists have filed the most complaints to the concerned authorities.

Result:

Supporting the health of the society entails the lawmaker as a mediator – involve between physicians and patients and take necessary measures so those physicians do the required care at the time of medical operation in a way that they do not inflict physical loss to their patient. From early establishing of human civilization, the lawmakers proposed some rules and regulations for organizing, regulating and monitoring on practice of physicians and their liabilities for compensation their clients. Forecasting different disciplinary, criminal and civil responsibilities of physicians reveals the critically of the matter in the lawmakers’ eyes.

REFERENCES