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SOME CHALLENGES IN PATIENTS' RIGHTS PROTECTION IN VIETNAMESE MEDICAL LAW

Nguyen Thi Bao Anh

Can Tho University, Email: ntbanh@ctu.edu.vn

Tran Khac Qui

Can Tho University, Email: tkqui@ctu.edu.vn

In Vietnam, the medical legislation termed "Law on Medical Examination and Treatment" does not link strongly with Civil Law, Criminal Law, and Administrative Law to protect patients. To a large extent, all of these laws don't mention the patients' rights, while ironically, people assume that the medical, legal framework provides strong protection. To their (patients) dismay, it usually becomes impractical to solve suits legally whenever medical malpractice occurs. There are alarming numbers of cases of patients' rights violations year by year due to medical unprofessionalism and weak, overlapping, and contradictory medical law. This has caused mistrust of the medical system leading to the out-flux of Vietnamese patients to neighboring countries to seek treatment. As the violation of the patients' rights occurs, how does the available medical legislation play its role? It's widely documented that there are rampant malpractices-misdiagnosis and wrong treatment caused by non-adherence to medical ethics and the gross shortcomings in the medical legal system. Some medical malpractices are criminalized passively only through administrative penalties at the expense of the patients' dignity. This paper will provide a detailed analysis of the above issues: Vietnamese medical law, its strength and shortcomings, medical malpractices, and how the practitioners live with it and suggest some benchmarks to align the medical law comparatively to other developing or developed countries economies.

Keywords: Medical law, medical malpractice, patients' rights protection, public and private sectors

1. Status of patients' rights protection

Vietnamese parliament met to discuss problems in the Health Sector seriously. [1] Minister of Health indicated some issues such as moral depravity of medical practitioners,[2] lack of up-to-date medical equipment and technology, and poorly trained personnel. Of course, her (minister's) answers did not satisfy the audience because of the many deaths and injuries caused by the above shortcomings. More indicative information is as follows.

- **Government:** Vietnamese Government declared that 7,000 children had been affected by the highly contagious measles virus since it resurfaced in Vietnam in late 2013. At least 127 have

[1]Vietnam's Paliament Meets on April 1st 2014

[2]National Assembly of Vietnam, Law on Examinationd Treatment, 2009, Article 17: Applicants for medical practice certificates: Doctors, Assistant doctors, Nurses,Midwives, Technicians, Herbalists, Owners of family herbal remedies or treatment method

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died—nearly all of whom were in the capital Hanoi and other nearby localities.[3] Social media postings have recently accused authorities of downplaying the severity of the crisis by under-reporting numbers of deaths and refusing to label it an "epidemic" because acknowledging the problem would reflect the lack of efforts to eradicate diseases such as measles in Vietnam by 2017[4] as per government policy.

Although the Vietnamese Government has considerably invested in the Health Sector, service delivery has not significantly improved over time. There is an increased overall health care cost while placing a substantial burden on households and exacerbating income inequality. Moreover, corruption, defined as the abuse of entrusted power for private gain, is a major threat to health system performance. To get good timely medical services, patients have to be corrupt. Because of that, conflicts of interest occur when a medical practitioner is induced financially to save life or provide health care services.

- **Hospitals and clinics services**: There has been widespread cases of mistreatment of patients. For example, mothers and their babies (even in the same hospital) died because the doctors ignored giving timely and correctly treatment[5], a nurse caused three babies death because she negligently injected to babies' body Esmeron instead of hepatitis B,[6] a cosmetic doctor threw his customer dead body to the river after surgery,[7] and another doctor wrongly removed the kidney of the woman[8], etc.

The above issues demonstrate what some patients go through.

2. Causes

'2.1. Half-baked' health workforce

According to the World Health Organization, the "health workforce" includes all health staff, either government employees or contractual staff in the public sector (including armed forces), educational institutions and scientific medical/pharmaceutical research institutes, and everyone involved in the management and provision of human health services (private workers, health volunteers, traditional healers, and traditional birth attendants). While developing and implementing training plans, we should cover all those belonging to the "health workforce" mentioned above.[9]

[3]AFP, April 18th 2014, Vietnam measles outbreak kills more than 100 people, mostly children. Retrieved from http://www.smh.com.au/

[4]AFP, April 18th 2014, Vietnam measles outbreak kills more than 100 people, mostly children. Retrieved from http://www.smh.com.au/

[5]THANHNIENNEWS, October 27th, 2012, Vietnam reports sixth maternity death in fortnight, October 27th 2012. October 22nd 2013
http://www.talkvietnam.com/

[6] Life and Law, The deaths of three injected the poison: scene faked
http://www.doisongphapluat.com/

[7]Tuoitre,October 22nd 2013, Vietnamese doctor throws customer's body into river. Retrieved from http://tuoitrenews.vn/

[8]Vietnamnet, November 11th 2011; Doctors blunder in Can Tho hospital, remove both kidneys of patient, http://www.vietnambreakingnews.com/

[9]Ministry of Health of Vietnam, Hanoi December, 2009, Joint Annual Health Review 2009, Human Resource for Health in Vietnam

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In Vietnam, the health workforce has increased, especially the number of doctors, pharmacists, nurses, and medical technicians. The network of medical workforce training institutions has been expanded. Overall, the quality of the health workforce has been improved.[10] However, the health system has to solve the following weaknesses:

- The imbalanced structure and distribution of the health workforce are important challenges. After graduating, trainees try to hold on working in big cities, yet remote areas lack basic health services. The unattractive remuneration mechanism causes this imbalance. Moreover, the migration of the health workforce to the private sector[11] has led to personnel shortages in public hospitals.

- Heath workforce qualifications are low.[12] The proportion of health workers with university qualifications and higher is below 30% of total health workers in the public sector. Most nurses and technicians have junior college qualifications. [13] It means that what they are trained in the college is not sufficient for the requirements of a medical career.

- The private sector is developing and posing great pressure on demand for health professionals. Public health professionals moving to work in private health facilities have become more predominant, especially highly qualified health workers. Income and working conditions are the major drivers driving to work in the private sector. As a result, there is a fewer human resource in the public sector, yet more than 40% population use public health services.[14]

2.2. Lack of Ethics in health workers

In Vietnam, we say, “Physicians are like benevolent mothers.” The medical profession is highly valued and respected in society because its goal is to treat illness, save lives, protect life, and improve people's health.[15] However, nowadays, many health workers fail to follow medical ethics. Health workers make professional and ethical errors.[16] They receive bribes -“envelops-as it’s called in Vietnam” from patients in return for “good services,” which patients should have without such kind of “envelopes.” Over the years, it has become a material-based service, and now it is like a transaction in the market economy.[17] If patients cannot manage “envelops,” their lives are put at high risk.

2.3. “Loop sided’ policies for health providers

Graduate doctors, medical technicians, and nurses get very low salaries as per government's salary structure. For example, a graduate doctor working in a public hospital receives the basic wage of 2.457.000 dong/month (117 dollars/month), nurse: 1.953.000 dong/month (93

[10]Ministry of Health of Vietnam, Five – year Health Sector Development plan 2011 - 2015
[11]Ministry of Health of Vietnam, Five – year Health Sector Development plan 2011 - 2015
[12]Ministry of Health of Vietnam, Five – year Health Sector Development plan 2011 - 2015
[13]Ministry of Health of Vietnam, Joint Annual Health Review 2009, Human Resource for Health in VN, Hanoi December, 2009
[14]Ministry of Health of Vietnam, Five – year Health Sector Development plan 2011 - 2015
[15] Ministry of Health of Vietnam, Joint Annual Health Review 2009, Human Resource for Health in VN, Hanoi December, 2009
[16]Thanh Quang, October 25th 2013, Howare“Doctor is a beloved mom” now in Vietnam? Retrieved from http://www.rfa.org/vietnamese/
[17] Ha My, BBC, July 10th 2013, Why do Vietnam’s patients bride their doctors? Retrieved from http://www.bbc.com/news/

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dollars/month).[18] Accompanying with basic salary, a healthy workforce may have extra allowances such as function, seniority, and working in a noxious environment, and their lives could not meet the standard.

We can understand more about this situation through the random surveys from typical hospitals in Vietnam. At first, the salaries of 57 doctors and nurses of Xanh Pon Hospital (Hanoi) show that: the highest is 3.9 million dong/month (equal to 186 dollars/month). This amount includes other allowances. Other doctors earn 1.3- 1.5 million dong/month (equal to 61 – 71 dollars/month). Not many doctors and nurses get beyond 3 million dong/month (142 dollars/month).

And another is at Bach Mai hospital- there was only one doctor who reached the amount 5.2 million dong/month (248 dollars/month), included other allowances. The remaining people were also lowly paid, from 1.1 to 3.4 million dong/month (52 – 162 dollars/month)

More sadly that each surgeon is paid around 35 thousand dong (1.7 dollars) (every day they perform from 3 to 7 operations) and 3000 dong (0,14 dollars) per patient for examination. That is very high work pressure for less salary[19]. With very low honor to health providers, they may not devote themselves to their profession. Many problems have occurred because of this situation, and the system has rampant corruption, negligence, and work overload.

2.4.Inadequate medical equipment and technology

Although Government has tried to improve medical equipment and technology in recent years, some problems are still there.

- Most of the medical equipment is very old, outdated, and inefficient. In some localities, especially in rural and mountainous areas, the number and type of medical equipment are below standards to serve the locals. Besides that, there is neither a standard design for hospitals nor necessary equipment to match health care needs. Most of the equipment is not durable and unreliable.[20]

- Maintaining, repairing, and upgrading medical equipment is not given much attention. Quality controls and inspections, measurements, and calibrations of imported equipment and domestic devices are not strictly conducted. In addition to this, human resource to deal with medical equipment is far below expectations. [21]

[18]Decree 204/2004/ND-CP about Regulations of wage for officals and armed forces issued on December 12th 2004
Decree 66/2013/ND-CP about Regulations of basic wage for for officals and armed forces issued on June 27th 2013

[19]Vo Xuan Son, April 5th 2014,Why it is difficult for a doctor becomes a virtuous mother? Retrieved from
http://vnexpress.net/

[20]Ministry of Health of Vietnam, Five – year Health Sector Development plan 2011 - 2015

[21]Ministry of Health of Vietnam, Five – year Health Sector Development plan 2011 - 2015

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2.5.Weakness or lack of medical legislation

2.5.1. Medical Examination and Treatment Law

Article 1 of the Law on Medical Examination and Treatment affirms the scope of the Law, including the rights of patients: "This Law provides the rights and obligations of patients, medical practitioners, and medical examination and treatment establishments."[22] The Law also has regulations about patients, such as ensuring equality, fairness, and non-discrimination, keeping confidential information and privacy of patients indicated in their case history dossiers, etc.[23]

Then there is a more detailed Section with several articles- describing the patients' rights. For example, the right to respect in medical examination and treatment[24], choice in medical examination and treatment[25], etc.…

It looks rather adequate rights of patients prescribed in this Law. However, the Law faces some challenges in the following areas to determine mistakes or violations.

- *Violating regulations on responsibilities for care and treatment of patients;*
- *Violating professional and technical regulations and professional ethics;*
- *Infringing upon the rights of patients.*[26]

In these regulations, we do not see the scope of the violation. What constitutes a violation? Does it have meanings related to medical malpractice that many countries are using? Besides that, there is no standard of care, proof of breach, or defenses to determine "violation."

This Law mentions responsibilities for care and treatment, but it does not rule out the duties of each medical practitioner in the Law. Hence, when a mistake occurs, they will shift the blame onto somebody, although the Law lists medical practitioners. This also doesn't show that the activities of the practitioners are not only care and treatment but also diagnosis and advice.[27] However, this law does not define diagnosis and advice's activities and responsibilities.

A watch dog-professional Council has been constituted to determine whether medical practitioners breached a duty or not. Most of the Council members work in the same place as the violators, hence shielding their colleagues when scrutinizing medical unprofessionalism. The role of patients to provide the proof as a third party becomes dim, and they could not independently be part of the council. It is easy to save health workers from responsibilities and blame with these regulations. Moreover, no article describes the standard of professional ethics, so it looks very equivocal. With those problems, among many others existing in this Law, patients' rights

[22]National Assembly of Vietnam,Law on medical Examination and Treatment, 2009, Article 1. Scope of Regulation

[23]National Assembly of Vietnam,Law on medical Examination and Treatment, 2009,Article 3. Principle for Medical practice

[24]National Assembly of Vietnam,Law on medical Examination and Treatment, 2009, Article 7: Rights to medical examination and treatment with quality suitable to actual conditions?

[25]National Assembly of Vietnam,Law on medical Examination and Treatment, 2009, Article 10: Rights to c hoice in medical examination and treatment

[26] Law on medical Examination and Treatment – 2009 – Article 73

[27]Emily Jackson,Medical Law – Texts, Cases and materials,– Oxford University Press, p 105 - 150

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protection is only on paper. In other words, the Law on Examination and Treatment is not strong and adequate.

2.5.2. Administrative Law-Case study

Administrative violation is an act committed by an individual or organization in violation of the state management law. Still, it does not constitute a crime and, therefore, must be administratively sanctioned following statute. The sanctions are caution, fine, deprivation of the right to use licenses or practice certificates for a definite time or suspension of operation for a substantial time, confiscation of material - collectively referred to as 'material evidence' and means of administrative violations. Additionally, we can find more sanctions in the Decree of Regulations on handling administrative violations regarding medical examination and treatment. To protect patients, the administrative framework also has regulations to monitor the mistakes of medical practitioners. For example, refund the fee, give an apology publicly, compensation for the body, and dignity damage.[28] Moreover, each hospital has its working regulations. For example, penalties depend on the seriousness of violations so that health practitioners would have their salary or bonus cut, demotion, or/sacked.[29]

Law authorities prefer using administrative regulations to deal with medical malpractice errors, even though those mistakes should be judged by Criminal Law. For instance, there was a case where a doctor practiced illegally in his private clinic. He was required to close after he caused a death of a baby. However, he did not obligate, and then he continued to cause another death of a boy aged 16 years old. Besides that, he committed another mistake by selling medicine to his patients (doctors are not allowed to sell drugs). The punishments for him were cutting his bonus in his official hospital and stripping him of his professional certificate, although he had not yet given conclusions about his mistakes.[30] This case is just one among many instances with unreasonable judgments preferred to uphold medical practitioners' interests more than patients' legitimate rights. Law Enforcement officers have underrated victims' lives.

3. Solutions

3.1. Standardization in the health sector

The government needs to gradually develop the health sector both in quantity and high quality and balance the structure and distribution of the health workforce. It is very important to balance between the public and private sectors. Besides that, government needs to make more investments

[28]National Assembly of Vietnam,Decree of Regulations on Handling of Administrative Violations about medical examination and treatment, 2011, Article 3: Forms of adminstrative sanctions and remedial mesuares

[29]Nguyen Thuy, April 4th 2014, Thanh Hoa: Many pediatric doctors are deciplined. Retrieved from http://dantri.com.vn/

Trong Phu, July 29th 2005, Hai Phong: Deciplined 8 doctors delalyed to treat the patient. Retrieved from http://www.ykhoa.net/index.htm

[30]Hong Hai,November 21th 2013, Hanoi was embarrassed to punish the doctor cause two young deaths. Retrieved from http://dantri.com.vn/

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in technology and capacity for each heath cadre, standardize training outputs;

- Strengthen domestic production of medical equipment, invest in advanced technologies to produce medical devices;

- Reform policies of income for the health workforce. [31]

3.2. Adhere to medical ethics

"It would not be correct to say that every moral obligation involves a legal duty, but a legal duty is founded on a moral obligation."[32] It is quite right. Right now, Vietnam needs to realign medical ethics behavior to reflect the principle of respect for individual autonomy, beneficence, non-malfeasance, and the focus on justice.[33]

3.3. Strengthen the medical law framework

Disseminating medical regulations to medical practitioners to make them understand deeper their professional and ethical responsibilities is more important than always thinking to strengthen the punishments. In-depth scrutinizing of the medical law framework is necessary because we can find overlapping and weakness in the laws. In addition, establishing an organization/forum where patients can ask for help whenever they believe their rights are infringed is real.

Do more studying about Medical Law from developed countries to learn advanced regulations. This way, Vietnam can achieve its development agendas in the health sector within its policy time frame.

4. CONCLUSION

Patients' rights protection in Vietnam is still facing many challenges. These challenges are not only in a single field but in the whole system of management, policy, health workforce, education, and medical legislation. Giving priority to some issues, such as medical legislation to protect patients' rights. By adopting the right legal legislation and realizing it, the current shortcomings and weaknesses can be slowly stopped so that the patients ultimately would enjoy their rights as dignified human beings.

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[31]Ministry of Health of Vietnam, Five – year Health Sector Development plan 2011 - 2015

[32]Lord Chielf Justice Coleridgein R v Instan (1983) 1 QB at 453

[33] Masson and McCall Smith's, Law and medical Ethics, Seventh Edition 2006, Oxford University; 1.10

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