



Major Theoretical Issues of Law Enforcement on Patient Information Confidentiality in Medical Examination and Treatment Activities

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ABSTRACT

In this article, the author mainly clarifies the theoretical issues of law enforcement on patient information confidentiality. This is a significant foundation for the author to analyze and evaluate the current situation of law enforcement on patient information confidentiality, to make recommendations to improve relevant legal provisions, and to propose solutions to ensure the enforcement of the law on patient information confidentiality in medical examination and treatment activities in Vietnam.

Key words: law enforcement; patient information confidentiality, medical examination and treatment activities

1. The concept of law enforcement on patient information confidentiality in medical examination and treatment activities

Law-making is a complex activity consisting of successive and closely related acts performed by many subjects with different positions, functions and powers to transform the will of the ruling class, of the people into legal rules and forms¹. Thus, law-making is a collective activity with the joint efforts of many subjects such as the agency summarizing the practice of applying legal documents, the unit drafting and giving opinions on the law project, subjects affected by legal documents and subjects voting through legal documents. Meanwhile, law enforcement can be seen as the process of applying legally effective regulations to the reality of social life. We should also note that the process of applying legal provisions must be carried out by all subjects in a country because this is not merely the role of agencies in the state apparatus. It can be seen that many factors can affect law enforcement: the completeness of the legal system, the role and location of measures to support the law enforcement process, the effectiveness of sanctions and the legal consciousness of subjects. Thus, law enforcement is the activity of implementing and enforcing the law of all subjects in a country². Along with "law-making", "law enforcement" is one of the central missions of the country's management.

In essence, law enforcement is the legal act of the subjects. These subjects are the ones directly affected by legal documents and related state agencies. For example, enforcing the law on confidentiality of patient information will always be a lawful act of health care providers, patients and the Ministry of Health. Specifically, this is a legal act of the Ministry of Health in helping health care workers and patients understand and apply the law on patient information confidentiality. In addition, law enforcement is the systematic and purposeful process to transfer the legal provisions on paper into practice. Thus, law enforcement corresponds to law performance when they are considered in terms of the mode of execution of legal acts. In addition, the concept of law enforcement can also include aspects of subjects and measures to ensure law enforcement.

2. Contents of law enforcement on patient information confidentiality in medical examination and treatment activities

2.1. Subjects and methods of law enforcement on patient information confidentiality.

Firstly, law enforcement on patient information confidentiality of the state management agency in charge of health, medical examination and treatment activities

¹ Nguyen Minh Doan (2011), *Build and improve the Vietnamese legal system in the context of building a socialist rule of law state*, National politics publisher, Hanoi, p.13.

² Trinh Anh Tuan, *Solutions to improve the efficiency of Vietnam's competition law enforcement*, Doctoral Thesis in Economics, Commercial Research Institute - Ministry of Industry and Trade, Hanoi, 2015, p.27.

The goal of law enforcement on patient information confidentiality of state management agencies is to develop a legal framework for patient information confidentiality and to apply measures for strengthening the enforcement of the law on patient information confidentiality in medical care activities. Therefore, the main methods of law enforcement on patient information confidentiality in medical examination and treatment activities of the state management agencies in charge of health and medical activities are promulgating legal documents and implementing solutions during performing management roles.

Secondly, law enforcement on patient information confidentiality of subjects who directly hold patients' information

Medical staff, managers and operators of health care providers are the subjects that come into contact with and have direct relationships with patients. Therefore, these subjects will hold the patients' information. Therefore, these subjects will have to enforce the law on patient information confidentiality through their compliance with legal regulations on patient information confidentiality. In other words, the above subjects do not act and do not agree on illegal basis; do not commit to implement contents not permitted by law; have the self-consciousness not to violate the law on patient information confidentiality during the process of law enforcement.

In addition, health care providers need to proactively enforce legal regulations on patient information confidentiality through the issuance of internal documents such as medical examination and treatment manuals, clearly stipulating this obligation in model contracts, contracts between health care provider and patients.

Thirdly, law enforcement on patient information confidentiality of the relevant third parties

Not only the health care provider holds the patients' information, but other subjects can also get the patients' information. These are subjects permitted by law to request patients' information from healthcare providers, subjects authorized by the patients, subjects performing professional activities... For example, individuals authorized by patients to request information within the scope of authorization, judicial authorities entitled to request information to perform their duties such as police, procuracies, courts, and other subjects permitted by relevant laws. Therefore, in order to enforce the law on patient information confidentiality, these subjects have to comply with the obligation to keep the patient information collected through carrying out professional activities, public services, and authorized work secret.

Fourthly, law enforcement on patient information confidentiality of the patients

The patients are the owners of their own information. Therefore, law enforcement on patient information confidentiality of the patients will also be different from the law enforcement of the others. Specifically, the patients use the right to disclose confidential information or agree on which information should be kept confidential. At the same time, patients have the right to complain and sue for violations of the obligation to keep patient information confidential. However, the patients themselves are also obliged to keep their information confidential.

The author of this article believes that the patients' usage of the right and performance of the obligation to keep patient information confidential have direct and profound impact on the effectiveness of law enforcement on patient information confidentiality in medical examination and treatment activities. The patients are the direct subjects of medical examination and treatment, so the patients will be the first subjects to have the obligation to keep their own health status and private life confidential. We can assume that the patients themselves do not strictly perform their own confidentiality obligations, the patients' information will be widely and quickly disclosed. Besides, the patients must consider the use of their rights relating to patient information confidentiality. For example, Mr. X is the owner of a private enterprise and he is receiving treatment at Y hospital. Due to difficulty in mobility, he authorizes Ms. Z (his employee) to keep the medical records and to carry out the hospital transferring. Therefore, in this case, Mr. X needs to be careful in giving all medical records to Ms. Z because Ms. Z may intentionally reveal his confidential information. At this time, the effectiveness of law enforcement on patient information confidentiality will be seriously reduced. In short, the patient must be fully aware and proactive in keep their own information confidential.

Thus, law enforcement on patient information confidentiality is the enforcement of regulations on patient information confidentiality of the health care providers, the patients, the relevant third parties and state management agencies. These entities must simultaneously enforce legal provisions in different forms with the nature, scope and extent corresponding to each form.

2.2. Measures to ensure law enforcement on patient information confidentiality

Measures to ensure law enforcement on patient information confidentiality are methods and procedures that relevant entities must implement to ensure law enforcement on patient information confidentiality effectively. These followings are the measures to ensure law enforcement on patient information confidentiality in medical examination and treatment activities:

Firstly, they are the measures that encourage subjects who directly hold patients' information to fulfill their obligations to keep patient information confidential. Specifically, in order for health care providers, medical staff, operators and managers to effectively enforce the law on patient information confidentiality in medical examination and treatment activities, legislators and regulatory agencies also prescribe additional measures to encourage health care providers to concretize legal regulations, to use technical tools to protect patient information for enforcing the law on patient information confidentiality.

Secondly, they are the preventive measures for ensuring law enforcement on patient information confidentiality. The Ministry of Health conducts periodic and irregular inspection to review and evaluate the law enforcement on patient information confidentiality in medical examination and treatment

activities at health care providers. Thereby, the Ministry of Health identifies inadequacies in management, policies and laws in order to propose suitable solutions and improvements. In short, this measure prevents and promptly handles violations of the law on patient information confidentiality. Since then, the law on patient information confidentiality in medical examination and treatment activities has been strictly enforced by health care providers.

Thirdly, sanctions for handling violations of the law on patient information confidentiality in medical examination and treatment activities are applied as a measure to ensure law enforcement on patient information confidentiality. In the practice of medical examination and treatment activities, health care providers and other relevant entities commit acts of violating the law on patient information confidentiality accidentally or intentionally. This violation not only negatively affects the patient's right to privacy, but also affects the respect for the law in general. Therefore, violations must be strictly handled and sanctions are applied as a deterrent. From this, the situation of violating the obligations of patient information confidentiality will also be effectively prevented and limited.

3. Factors affecting the law enforcement on patient information confidentiality in medical examination and treatment activities

Firstly, political orientation and legal system

Political orientation on patient information confidentiality is the relationship between the patients' right for patient information confidentiality and the limits or exceptions of the obligation to keep patient information confidential in accordance with the interests of the parties in this legal relationship.

The legal system on patient information confidentiality includes rules of behavior and conduct to help subjects to perform their rights and obligations regarding patient information confidentiality. Thus, these entities will be able to effectively and seriously enforce the law on patient information confidentiality in medical examination and treatment activities if the legal framework on patient information confidentiality is clear, specific and feasible.

Secondly, awareness of the right on patient information confidentiality and the mechanism to ensure the patients' right to keep information confidential³

In a market economy, the patients are the users of medical examination and treatment services and the health care providers are the service providers. In other words, the patients are the customers in the medical examination and treatment relationship. At the same time, medical providers must satisfy the patients if the health care providers want the medical treatment to be successful and attract more and more customers (patients). Therefore, patients have important rights regarding patient information:

(a) Right to be notified. This right is extremely important and necessary because not all patients can be self-aware of the confidentiality provisions in medical examination and treatment activities. In other words, in addition to providing information about the services in the medical examination and treatment activities, the health care providers are also obliged to clarify all the terms of confidentiality for the patients before the patients and the health care providers start the contracts on medical examination and treatment activities.

(b) The right to be assured of safety when using medical examination and treatment services. This means that health care providers must comply with legal provisions and internal regulations to ensure a safe medical environment for patients' property and health during medical examination and treatment activities.

(c) Right to be kept patient information confidential⁴. Medical staff, health care providers are obliged to keep patient information confidential and are not allowed to provide patient information to third parties (except in cases permitted by law). In addition, health care providers are also obliged to ensure that the patients' information is not illegally exploited by a third party.

(d) *The right to claim compensation for damage, initiate lawsuits, make complaints and denunciations or request social organizations to initiate lawsuits to protect their interests in accordance with legal provisions⁵.*

Patients must be aware of the above rights while using medical examination and treatment services and actively use their rights if health care providers commit violations. At the same time, the legal system needs to ensure the implementation of mechanisms so that patients can complain and initiate lawsuits if the patient's rights have been violated.

Thirdly, the awareness of responsibility of health care providers, managers and medical staff in ensuring patient information confidentiality⁶

Patient information confidentiality is both a professional responsibility and a legal obligation for health care providers and medical staff⁷. Therefore, these subjects must be aware of the patient information confidentiality when performing medical examination and treatment activities. That awareness is expressed through the commitment to patient information confidentiality. Therefore, if these subjects lack awareness, lack of responsibility and commit

³ Tran Thi Hong Cam (2017), *Evaluation of patient satisfaction about using medical examination and treatment services at some public hospitals*, Doctoral thesis in Sociology, HCMC National Academy of Politics.

⁴ Article 10 of the Vietnam Law on Medical Examination and Treatment (2023) and Article 6 of the Vietnam Law on Protection of Consumer Rights (2010).

⁵ Clauses 6 and 7, Article 8 of the Vietnam Law on Protection of Consumer Rights (2010).

⁶ Tran Thi Hong Cam (2017), *Evaluation of patient satisfaction about using medical examination and treatment services at some public hospitals*, Doctoral thesis in Sociology, HCMC National Academy of Politics.

⁷ Clause 5, Article 3 and Article 10 of the Vietnam Law on Medical Examination and Treatment (2023)

acts of violating the patient's confidentiality, the patients' trust will be lost. Once the patients have no confidence in the health care providers and medical staff, the medical examination and treatment activities of the health care providers will be adversely affected and the effectiveness of state management in the field of patient information confidentiality will also decrease. Therefore, strengthening the awareness of responsibility of health care providers, managers and medical staff plays an important role in law enforcement on patient information confidentiality. Since then, the competitiveness in the business of health care providers and effectiveness of medical examination and treatment activities will be improved.

Fourthly, inspection and handling of violations of the law on patient information confidentiality

Inspection and handling of violations of the law on health and medical treatment are the responsibility and powers prescribed by the Inspection Law and related legal documents for the Inspectors of the Ministry of Health, the Inspectors of the Department of Health, and the other organizations and agencies assigned to perform the specialized inspection function⁸. Vietnamese laws stipulate the inspection function for the above subjects in order to help health care providers operate safely. Vietnamese laws also create a mechanism to protect the legitimate rights and interests of patients in medical examination and treatment activities. From there, the patients' trust is maintained and the effectiveness of state management in medical activities is improved. Violations in the field of medical examination and treatment activities are also sanctioned depending on the seriousness and consequences of the acts⁹.

Thus, law enforcement on patient information confidentiality in medical examination and treatment activities is the implementation of the law on paper documents into law in practice of all relevant subjects in the legal relationship on patient information confidentiality. It can be affirmed that enforcing the law on patient information confidentiality is a complex task because it involves many subjects and depends on many conditions.

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⁸ Articles 4 and 5 of Decree 122/2014/ND-CP, Article 15 of the Vietnam Law on Inspection (2022).

⁹ Decree 117/2020/ND-CP on sanctioning of administrative violations in the health sector. In particular, Articles 38 to 50 of this Decree focus on penalties for administrative violations in the field of medical examination and treatment.