

Original Article

The Legal Responsibility of Medics and Paramedics in COVID-19 ICUs in Iranian Law

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Article Information

Article History:

Received: 12 February 2023

Accepted: 17 December 2025

Available online: 31 December 2025

Keywords:

COVID-19

Medical Staff

Rule of Necessity

Civil Responsibility

Ethical Duty

Job Contract

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ABSTRACT

After the spread of coronavirus in Iran, the medical staff undertook a relentless fight against COVID-19. Unfortunately, many of the nurses and physicians exposed to the virus at ICUs have caught the disease and some of them have passed away. This brings up the questions of whether the medical staff members have any commitment to staying at work by virtue of their job contracts, how responsible they are legally in this regard and whether they can avoid the potential risks by quitting their job duties based on the rule of necessity. These issues are explored in this study through a descriptive analytical method. As the results of the study suggest, a law in the Islamic Penal Code issued in 2013 rules out the application of the rule of necessity to medical practices at COVID-19 ICUs. However, due to the unpredictability of the disease at the time of signing the contracts and thus, the lack of legal commitment to working in the current pandemic conditions, medical practitioners cannot be compelled to go on with their duties in high-risk wards. Though ethically obliged to offer services to COVID patients, they do not have to do it in legal terms; those at work now were initially employed with no documented intention of dealing with patients in COVID ICUs or in other highly infected wards. In accordance with the laws on professions, when the existence of a job commitment is a matter of doubt, the commitment is assumed to be non-existent. Despite the legal stipulations, any service given to COVID patients should be praised as an act of generosity and sacrifice.

Please cite
this article as:

Jafari N, Kaviar H, Jamali H. The Legal Responsibility of Medics and Paramedics in COVID-19 ICUs in Iranian Law. *Medical Law Journal*. 2025; Special Issue: e3.

<https://doi.org/10.22037/bhl.v5i5.41204>.

Introduction

Medical staff members, including nurses and physicians and other practitioners in the field, are obliged to do their best for the patients regardless of their nationality and race or social, economic and political status. In

this regard, they have to practice within the scope of their official duties as well as vocational obligations and thus, avoid nonfeasance. The medical society in Iran has, so far, made utmost attempts to attend to and treat COVID patients. Despite taking all the safety measures, such as

wearing masks, many medical practitioners have caught the disease due to the close contact with COVID patients. Up to now, more than a hundred medics have passed away in the country.

There are some questions arising about the scope of the official responsibilities and moral obligations of the medical staff in the face of COVID patients. Delving into legal and religious sources can possibly provide answers to such questions as ‘what are the confines of the staff’s duty?’, ‘how long should medics linger on patients?’, ‘can they quit their job in case it leads to their own sickness and thus the spread of the disease?’, ‘can a practitioner curtail his or her duties to keep safe by virtue of the rule of necessity, which is an undisputable precept in the Muslim law?’, what is the role of this rule in judgements on nonfeasance to deal with COVID patients?, ‘Do the self-protection attempts of a physician or a nurse affect his or her civil or legal responsibilities?’, ‘how is the rate of nonfeasance determined in the case of such attempts?’ and ‘what are the legal bases on which The Iranian Medical Council or another prosecuting organization can judge the limits of a medic’s duty or the breach of that?’. The present study seeks to find responses to these questions.

It is to be noted that these questions just regard the physicians and nurses that work in ICUs for COVID-19 patients. In these wards, now exclusively given to acute pulmonary cases, medics have to be in constant close contact with the patients in their service. Undoubtedly, such virus-infested places pose high risks to the medical staff even if every safety measure is taken. In comparison with the treatment of early-stage COVID patients, in which the physician or the nurse can keep safe simply by wearing a mask, working in an ICU involves the critical responsibilities of patient treatment and self-production.

Concerned about their own health, ICU workers presumably ask themselves whether N95 masks can completely shield the virus penetration. They also wonder whether their bored mind would ensure giving no stimulus to their hands to take the mask off unconsciously. The answer is no, there is no guaranty it would never happen. Thus,

they have to make a difficult choice; saving the patients or saving themselves, staying at home or going to work. Despite the hardships involved, nurses and physicians trust in God and choose to make their presence at work to treat their patients at COVID-19 ICUs. Undoubtedly, it is the call of conscience and ethics that pulls them to work every day. Otherwise, they could see a lawyer, get aware of their vocational rights and simply hesitate to go on working.

This issue has served as an impetus for this paper to aim at the rule of necessity, its terms and tenets and the way it delineates the responsibility of medics under emergency conditions.

1. Adaptation of the Rule of Necessity to the Task of COVID-19 Treatment

The word ‘necessity’ imparts a sense of compulsion and applies to acts that are done out of desperation or force. Its Arabic equivalent, sometimes used in Hadiths, is ‘*IZTIRAAR*’ derived from ‘*ZORR*’, meaning desperate need or compulsion (1-2). The word is, indeed, defined differently, but it mainly refers to a tight or threatening situation to get rid of which may entail a kind of nonconventional action (3).

The application of the rule of necessity is an issue discussed in the penal code about job responsibility. Practiced since long, the decrees on necessity suggest that a crime is not to be punished if it is committed to avoid an impending danger or a significant oppression (4). Thus, from a legal point of view, the rule of necessity is a situation-induced license to commit an illegitimate act or to quit something obligatory (5). This has been encoded as principle 152 in the Islamic penal code enacted in 2013. By virtue of that principle, an obliged person can evade his or her obligation. The provision is stated as “An act defined as a crime is not to be punished if done to save one’s own or someone else’s life or property”. The law can be interpreted in connection to medical practitioners. As it appears, they are legally allowed to avoid fulfilling their organizational duty if it involves a risk to their own health. This duty evasion is, thus, not considered as a criminal act and the nurse or the physician cannot be held responsible for a possible harm or damage.

It is to be noted that practicing the rule of necessity depends on certain conditions or circumstances. That is to say, the mere existence of this rule as a license does not mean to dodge whatever duty associate with a sort of danger.

2. The Conditions for Practicing the Rule of Necessity

The first condition, which gives a license for quitting a job, duty or responsibility, is the impendency of a danger. That is, if a given danger is real and seems sure to happen, the practitioner is allowed to evade his or her duty; however, in case the danger is merely potential or likely to happen, there is no license for nonfeasance or anything illegitimate (4). Accordingly, the validity of the rule of necessity depends on the rationality of the fear for risks.

Regarding the medical work at COVID-19 ICUs or the other wards where COVID patients are kept, one can somehow assume an impending risk facing the medics; they are highly exposed to real risks although some of them have not caught the disease yet.

In this regard, the Islamic jurisprudence is of authority. As it holds, one cannot, for example, drink wine just on the account that he or she might die of severe thirst. The same sense of likelihood holds true about medical practices. Medics are not allowed to desert their work in COVID 19 wards simply because they might catch the disease and die.

As the case is, in healthcare centers, medics face two circumstances. On the one hand, the chances are so high for them to catch the disease from their patients and die. On the other hand, the risk is not very likely but is based on a mere guess. In certain cases, avoidance of treating a patient on the purpose of self-protection will definitely lead to the aggravation of his or her conditions and then death. However, as the truth is, some of the medics who dodge their duties run chances to get the disease and risk their life elsewhere. It implies that giving medical services at COVID wards is not inherently associated with the risk of life or loss of property; rather, it is simply beset with a rational conjecture of risks.

The second condition for the avoidance of fulfilling one's duty is the magnitude of the risk

involved. In case a task is so risky as to threaten the practitioner's life or body parts, it is permissible to quit (4). In contrast, slight hazards and tolerable hardships involved in a task do not serve as a good excuse for nonfeasance. As for the current corona-stricken conditions, although the chances are high to catch the disease in COVID 19 ICUs, one cannot safely claim that giving services to the patients there surely leads to contagion. The conditions are definitely hard but indeed, capable of being controlled and tolerated.

3. Conditions for the Implementation of the Rule of Necessity

One is permitted to do something illegitimate if it is the only way of evading a danger or avoiding damage. In other words, the license for illegitimacy or leaving legitimacy comes only from a tight situation. Finding a way out of this situation, therefore, would mean that the license for compelling criminal acts is not relevant anymore (6-7).

As the law enacted on the issue postulates, "a criminal act is licensed only if it is inevitable as well as proportionate to the risk involved". On this basis, the inevitability of nonfeasance under corona conditions may be eased simply by taking such safety measures as wearing a mask or a shield. Such being the case, medical practitioners have no right to avoid treating COVID patients. Briefly speaking, despite the safety measures taken in ICUs, working in close terms with COVID patients there may entail risks or losses; nevertheless, dodging the duty of offering medical services to the patients is not the only way of shunning the dangers.

Under compulsion, another condition for quitting a duty or committing an illegitimate act is the proportionality of that act to the toughness of the situation. That is, what a compelled person decides to do should be based on how severe the conditions are (4). For example, if a house fire can be extinguished just with water or suds, one cannot tear the whole house or a part of it down on the fire to quench it. In cases such as this, the rule of necessity is applied but quite considerably. In fact, this rule stems from the notion 'compulsion justifies the breach of scruples', but it is also based on the rational

principle ‘push it as much as needed’. So, a compulsion-induced act can be carried out as far as the emerging situation demands. This proportion is of relevance to the treatment of COVID patients too. Those that are urgently in need of treatment should be given the service they need. Any malpractice or hesitation by the physician on the grounds of self-protection leads to a loss of life.

Generally, from the point of view of Islam, the rule of necessity originates from the leniency of God toward His servants. It has been intended to ease certain tough situations or to find a way out of them. There are, however, exceptions to it, which have to be taken into account especially where important affairs may be disordered or a part of a system may fail to function (8). Those exceptions include: 1. illegal killing of a person; 2. interference of necessity with criticality, i.e. when doing an important act disturbs or bars a more important task like leaving a prophet alone amidst a war to save one’s own life or deprive a patient of a medical service to protect oneself from the disease (9).

Accordingly, those involved in medical practices are not entitled to a right to get their job responsibilities off their shoulders.

4. Commitment to Working in COVID-19 ICUs under Official Contacts

Another condition makes it possible to benefit from the rule of necessity. If a person is not legally or religiously committed to an organization, he or she can disengage from the place and stop fulfilling the due tasks or services whenever a compulsive or a risky situation emerges (4). If one is able to help a person at risk but the saving would potentially endanger the savior, he or she can withhold the help by virtue of the rule of necessity. Of course, the rule applies as long as there is no official contract by which the practitioner has to fulfil certain duties. As the article of principle 152 in the Islamic penal code remarks, “Those who are legally obliged to do a risky job are not allowed to refuse their assignments”. In other words, the existence of a job contract vetoes the application of the rule of necessity. For instance, an employed firefighter is not legally allowed to let down his duty of

extinguishing a fire by the excuse that he might die or be harmed when doing the service. As another example, a police officer cannot evade his duty of facing a criminal for self-protection.

In spite of the clarity of the law in this regard, the issue is not without controversies. For instance, it is of concern if a lifeguard or a firefighter can sacrifice himself to save somebody else’s life either by force or on his own free will. In such cases, what is the place of self-sacrifice and the logic for and against it? To respond to this question, Ayatollah Golpayegani, an eminent Shia jurisprudent, believes that sacrifice would not be logical if it leads to the loss of the savior’s life. This opinion is disputable because it is not applicable in some cases. Once an individual is caught between two choices, saving himself or another person, the choices should be weighed up. If the choice is between oneself and a prophet, for example, self-sacrifice is plausible. However, if one’s own self outweighs the other one’s self, one has to save himself. If there is no supremacy or preference, the savior has a religiously justified right of choice between himself and the other one. Self-sacrifice in this case would be considered as a moral issue.

The question arising here is whether medical practitioners are vocationally considered like firemen and policemen and whether the article of principle 152 in the Islamic penal code concerns their job too. At the first sight, one may argue that medical practitioners have to carry out their duties based on the job contract that they have signed up with the hospital, making no distinction between COVID and non-COVID patients or contagious and non-contagious diseases. Therefore, just like firemen and policemen, nurses and physicians are not allowed to abstain from their services.

As it seems, however, the afore-mentioned penal statement just relates to such fields as firefighting and police where tackling with dangers is an inherent feature of the tasks. This is while a medical job is not inherently entangled with dangers; medics are concerned with the treatment of diseases, most of which are not contagious. As a result, the application of that law to medics is ruled out.

Those who previously signed up a contract to work in a hospital undertook a series of duties but

never at the time of signing intended to work constantly in high-risk wards, as with COVID-19 patients. In other words, since the employee or the employer, obliging the employee to, did not agree the constancy of work in such places, where disease transmission is very likely, on work regardless of the risks would be against the terms of the contract. So, the recruits in healthcare centers cannot be considered like police and fire station employees, who take dangers for granted. Nurses and physicians are committed to the treatment but not of numerous patients nor for a long time without breaks.

Obviously, those who are newly employed on the condition of working with COVID or any other contagious disease cases, with the condition stated in their job contract as a term, are not legally permitted to dishonor their contract under the pretext of self-protection. On the other hand, the physicians who were employed in public or private healthcare centers before the spread of coronavirus under a job contract with no such strict terms of commitment may be considered differently; they agreed to work with no perspective of the current emergency conditions.

To settle the problem, the job contracts of nurses and physicians should be examined and interpreted from the legal point of view. This is conducted to discover the intentions of the two parties of the contract, i.e. the employer and the employee. Muslim jurists believe that the validity of a contract depends on the sincere or true intention of the two parties; if a contract is signed up but without such an intention, it is not valid and dependable (9). Juristically speaking, if the medics have to work in risky situations, both contract parties, i.e. the hospital as the employer and the nurse or the physician as the employee, seem to have intended a kind of work in normal conditions rather than under compulsion. However, things are different about the contracts with a clearly stated condition of work in the current emergency situation or other similar situations. Briefly, a contract is not valid if the intentions documented in it are not realized and if what is realized has not been intended (10).

It is to be noted that Muslim law and jurisprudence postulate a hypothesis with which

such issues as discussed above can be resolved. This is a 'null hypothesis'. According to it, when there is a doubt about the very existence of an entity or the association of an attribute with that entity, one should assume or hypothesize a null existence or a null attribute for it (5). Null judgements are made on entities that have already been missing. Consequently, it seems that the medics recruited before the current pandemic had no intention of working with COVID-19 patients. They can, of course, stay at work voluntarily or come to a new agreement with their employers for modified pays or benefits. If they do not agree to stay at work voluntarily, the employers can make them go on working only through new contracts. Previous contracts were signed up before the pandemic and included different terms of work and payment. Working in new conditions is highly threatening for those practitioners, as many of their colleagues have already caught the disease. It is incomparably more critical and harder than before and does not match the terms of contracts by which recruitments were made. Besides, based on the Islamic precepts of self-protection and harm prevention, employers and employees are obliged to have mutual respects and understanding. Regardless of contracts and legal issues, any medical service in the current hard circumstances is to be admired and rewarded as an act of generosity and sacrifice.

Conclusion

In this study, through the exploration of the rule of necessity, it was found that the use or implementation of this rule by medical staff members in COVID-19 wards is based on certain conditions. As it emerges, the risk of catching the disease in such places is merely a matter of rational possibility rather than something sure to happen. Admittedly, dealing with this disease is hard and associated with severe risks, but it manageable and necessarily not intolerable.

Besides, taking resort to illegal acts by a person under compulsion is plausible only for certain reasons, mainly to save a life and prevent a loss or a detriment. It seems that nonfeasance is not the only way to get rid of the disease risk; what medics may do should be proportionate to the risk

magnitude. The rule of necessity cannot be applied for personal safety once there is a more important case to care, such as a prophet's life, which should be preferred to one's own. By and large, the rule does not serve as a license or an excuse to dodge the duty of treating patients. Medical practitioners may quit their duties only if they have not documented a vow or a commitment in their job contracts.

Examining the job contracts signed by the medics employed before the pandemic, one comes across neither an explicitly stated commitment nor an implicitly made promise or pledge to work under the current emergency conditions. This means they have had no intention of dealing with COVID cases. In legal terms, a contract is of no validity when what is worded in it does not correspond to what is actually intended. Besides, in logical terms, when there is no clearly stated intention, it is assumed to be non-existent. As the circumstances demand, nurses and physician may go on working but voluntarily. In this case, the employers are morally obliged to modify their payments or fringe benefits.

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