

## CRIMINAL LIABILITY OF VIOLATING MEDICAL MYSTERIES IN IRAN'S LAW

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**Abstract:** The concept of privacy is an essential and important need for human and has various physical, psychological, social and informative dimensions. With a long history, medical confidentiality is one of the most important tasks in field of medical ethics and laws that has a broader range than "confidentiality of information". About the relationship between doctors and medical staff, on one hand and the relationship between patient and his relatives, on the other hand, one of the arisen issues is patient's medical mysteries. The patient has the right to determine how and when to give information to others or hospital organizations. He is entitled to identify nature of his personal thoughts that gives to others, who can receive the information and how to use it.

**Keywords:** doctor, medical staff, secrets, sick, criminal liability

### 1. Introduction

The doctor-patient relationship, patient and physician tone and bring their lives into their professional services offerings, and patients of medical professionals, but his body is what he puts as a matter of treatments. In Islam, mystery and confidentiality are in a special position so that Iranian legal system emphasizes on the need to consider all material and moral aspects of secrets' rights. Undoubtedly, some affairs are considered as secrets and privacy, so people have the right to hide that aspect of their lives. Keeping medical secrets of patients is one of the fundamental ethical principles of medical profession; therefore, physician is obliged to act as an honest depositary and refrain from disclosing it. Consequently, if some people access and disclose others' secrets due to his job, his action will be immoral and legislator should criminalize such acts. Disclosure of medical secrets is considered among issues of ethics and medical law that its subject is to study desirable and undesirable customs and behaviors that it should be considered and observed by medical business owners (Fazeli and Mozafar, 2012). During diagnosis and treatment of various diseases, many information and secrets of private life of patient are provided for physicians and medical staff, due to professional conditions that should be maintained as secrets. Accordingly, confidentiality is a fundamental principle in the relationship between doctor and patient that provides personal interests and social welfare (Lrijani et al., 2004). Undoubtedly, disclosing medical secrets causes different damages such as job loss, damage to reputation and physical injuries for patient. Consequently, there will be suggested the discussion of responsibility of disclosure of medical secrets. Article 648 of the Islamic Penal Code, Sanctions Section reveals that "if doctors, midwives and pharmacists, who are confidant because of their occupation or profession, disclose people secrets illegally, they will be condemned in prison from three months and one day to one year or pay cash punishment from 1,500,000 to 6,000,000 Rials". Criminalization philosophy of disclosing medical secrets is to defense and protect secrets and privacy of individuals who in some cases, they have to tell those secrets. Ethical norms of physicians and medical staff as well as their commitment to protect patients' privacy caused that confidentiality of medical information of patients is considered as the primary and inalienable right; consequently violator of this basic right should be accountable for violating the expected norms in the society. Disclosure of medical secrets is an intentional crime and the legislator has predicted legal sanctions for disclosure of medical secrets. Therefore, in case of violating the law of medical secrets there will be damaged to privacy and material and spiritual reputation of people. However, main issue of this research is that what penal sanctions have been imposed for disclosure of medical secrets by Iranian legislator? Therefore, this matter will be investigated by organizing the future four main topics.

### 2. Privacy and Confidentiality of Medical Secrets and Why to Support it

Medical is a science that human beings always require it. In most societies, doctors are individuals with a privileged status and position because they are associated with human life and health. So there is an especial sensitiveness to choose graduates of medical courses so that there is considered continuous and precise monitoring. Doctor is the only person that we let him voluntarily to relate with our most important element of being, namely our physical and spiritual health. Therefore, it is not surprising that medical profession is strongly correlated with religion and, of course, is consistent with the science of theology. In the distant past, doctor was called "priest" and patients looked for their health in the synagogue so that charmer priest tried to quench anger of gods, which was considered as cause of disease, by mumbo jumbo. By considering this mysterious and sanctity background of medical profession, the relationship between patient and doctor has not been an equal relationship and doctor has had an authoritative and imperative position. In today's world and globalization era, in practice, there has not been left the incantation and the relationship with physician, and there have been obtained great achievements and significant progress for this profession (Shojapoorian, 1994). In Islam, medicine science is valuable as like as religion so that knowledge is divided into two categories: religious knowledge and knowledge of body and its health. Imam Ali (AS) said: "The first attempts to adjust and health of human spirit and the second tries for human health and physical integrity". In an eloquent hadith, Imam Sadiq (AS) believes that people require three groups. He says that people of the Earth do not become free of needs for three groups in the world that they seek shelter them for their affairs in the world and afterworld, and if they don't have them, they will be unfortunate: the virtuous jurisprudent scientist, righteous and obeyed ruler and the skilled and trusted physician. Since medicine deals with treating disease and protecting health of human being, doctor should study characteristics and intricacies of the creation system in body. Therefore, medical profession associates people with God more than other professions (Soori, 2011). The Holy Quran says: "anyone who alive a man, he has given life to all mankind" (Computer Research Center of Islamic Medicine). Nevertheless, it is evident that medical profession is a sacred profession in Islam. About the importance of privacy, it is sufficient to say that it is in the field of law that a person can exert his individuality. Failure to identify privacy for human means destructing his individuality because in this case, conscience loses its effectiveness. By removing the privacy, there is nothing remained, except puppets with human faces. The need to protect right of privacy has been emphasized in international documents. Article 3 of the Universal Declaration of Human Rights (1948) states: "everyone has the right to personal life, liberty and security". About respecting the privacy, Article 18, Paragraph B of the Islamic Declaration of Human Rights, adopted on 14 Muharram 1411 AH in Cairo, states: "every person has the right to be independent in his private life, and it is not permissible spy or monitoring on him and tarnish his reputation and he should be protected against any coercive intervention" (Soori, 2012). The domestic laws have emphasized the need to respect right of privacy, including Articles 4 and 7 of Code of Criminal Procedure, adopted in 1313. In Article 4, Iranian legislator has prescribed that intervening in privacy of persons is not allowed, unless by legal order and in compliance with regulations under supervision of judicial authority. In the following, Article 7 of the law obligate judicial authorities, the judiciary liaisons and other persons involved in judicial process to respect the stipulated citizenship rights in the Act of Respecting Legitimate Freedoms and Protecting Citizens' Rights, adopted on May, 5, 2005.

Confidentiality is a moral and religious duty of every Muslim. Religious doctrines have emphasized on the need for confidentiality (Soori, 2012). According to the nature of

physician job, the ethical obligation is more important for him because patient states his disease and reliefs treatment, due to the confidence. In this regard, Imam Ali (AS) says "if a person conceals hidden aspects of his illness, his doctors cannot treat him". The Hippocratic Medical Oath states: "during my career and even out of it, I will not say whatever I see or hear about lives of people that shall not be revealed because such material should be dismissed in the treasure of secrets". On medical confidentiality, Pandnameh Ahwazi states: "clinician should maintain his patients' secrets and avoid deciphering them for foreigners, relatives and others because many patients keep hidden and concealed their patients from parents and their relatives, but retell it for physician. Therefore, physician must be more careful to conceal the condition of disease than patient (Zeraatkar and Mahmoodian, 2009).

Medical secrets are data that patient does not wish to disclose them. They include all information that the patient may not tell to the doctor personally, but the doctor has understood them whether directly to the bedside, or indirectly, due to exchange of information in room, hallway or elevator in hospital and randomly during diagnosis and treatment. The information is considered as patients' secrets too. In addition to physician access with patient's personal history, confidentiality and privacy have a wider range of "confidentiality of information". There can be identified three different types of personal issues: psychological, social and physical secrets. Psychological secrets include a patient's ability to control emotions, perceptions, exudations, thinking, attitudes, beliefs, values and right of determining the conditions and individual who is entitled that patient reveals his thoughts and feelings with him as the confidential and private information. However, if doctor wants to do effective diagnosis and treatment, it will be inevitable asking personal questions and disclosing confidential data. The patient may consider expanding the relationship between him with physician, more aggressively and strongly controlled, as violation of psychological secrets. Social secrets are beyond psychological secrets and information and include the ability and effort of patients to control social relationships and improve interpersonal relationships. Observance of customs, their official forms, type of personal issues and the spoken language are defined as social secrets. Doctors' behaviors during patient's treatment are affected by social norms. For example, a patient may consider the eye contact as much intimacy in relationships and therefore, it may be considered as violation of norms in the context of medicine. In fact, physical secrets are defined as access to patient (Meghdadi and Delavari, 2014). Obviously, during medical examinations, perfect understanding of patients' physical or privacy secrets is inevitable and necessary. Patients believe that some medical behaviors are violation of physical and privacy secrets such as watching patient while he is ready for the examination, the unexpected touch patient, listening to private conversations or private practice of patients.

### 3. Principles to Protect Medical Secrets

The secret among three persons is a public secret. This interpretation has been quoted by Marzine, French lawyer, on the need to protect confidential information. Secrets' value depends on their confidential description and this feature allows owner to exploit the secret; it also justifies deterring others to the unauthorized access, use or disclosure the secrets. Legal laws and procedures have always insisted on protecting valuable information, however, some believe that protecting secrets should be very limited because it is a great obstacle to achieve the free flow of information. In addition, it imposes unreasonable restrictions on the possibility of moving employees, has adversely effects on promotion of innovation and finally, stifles the principle of free competition in its seed. This opinion is not acceptable and as we will see, the proposed arguments in the form of concerns about legitimacy to protect medical secrets remove these doubts largely (Rahbari, 2009). Lawyers have always considered observation of ethical issues in patient-physician relationship. Honorable and honest behavior requires to refrain all forms of immoral behaviors such as misrepresentation, fraud, espionage, theft, misuse, undue

acquisition of confidential information, breach of obligations and whatever else that is contrary to consent of holder of secrets. Removing protection rules will lead to allow immoral acts and purification of illegal equipment's that opportunists take their advantages for illegal acquisition of secrets; it is a matter moral has never submitted and does not give permission to use others' secrets. It may be argued that the ground is not relied on legal considerations, but it is simply considered as a moral advantage that cannot justify support of secrets in legal frameworks. While it must be remembered that many legal rules are rooted in moral foundations and in their evolution, many ethical implications have put on more obligatory clothes, in terms of social necessities; therefore, courts consider the supportive principle (Sharppin, 2004.). In medical jobs, observing ethical and professional principles has been seriously recommended and considered as the most important feature for physicians and doctors. Accordingly, on Islamic and Iranian literature and documents, there have been suggested various features as ethical culture in medicine such as the relationship and remember of God, trust in God, confidentiality, good humor, promising, appropriate communication and behavior with patients and good beliefs. What caused that angels worship human being was not his earth body, but his gifted nobleness by the Spirit of God. Preserving and promoting the dignity is the main task of every human being and the key reason for success to carry out the divine duty is to adorn the beauty that the Holy Prophet (PBUH) introduced it as the reason of completing his mission and indeed, this beauty is respects of ethics. Among different branches of professional ethics, medical ethics have a unique importance because its subject matter is the noblest creator of existence, namely human being. Medical ethics has always been associated with medicine and great physicians have emphasized and considered it during different periods. Meanwhile, the golden pages of Persian literature contain recommendations that can strength belief, trust and confidence in medical community and enhance a way to communicate with patients and their family (Eslami, 2009). It can be accepted that disclosing professional secrets is against with ethics and legality of its criminalization can be inferred from the Penal Code. Finally, every man is obligated to keep secrets of himself and others, especially about doctors because in addition their belonging to this class and their swear that they have concluded a contract with patients or organization; they are obligated to the matter. Privacy is a valuable moral act, but more important issue is that observing confidentiality by doctors means respect to the principle of human freedom and independence. On the other hand, people have fundamental right on their information that allows them to monitor or use and prevent the unauthorized disclosure the information. Thus, if others can access their information in the name of freedom of information, which medical secret is one of its kinds, it means ignoring this fundamental right. Of course, secret protection is not an obstacle to develop valuable information.

### 4. Criminal Liability

Generally, it should be said that individual's obligation to respond any aggression to others is brought up under the title of "criminal liability" or "penal liability", whether it is carried out to protect individual rights or defense of community (Ardebili, 2014). However, none of Criminal Codes, both past and present, has expressed a clear definition for the legal nature and criminal liability. Criminal liability is a personal obligation to respond the adverse effects of criminal phenomena or crime.

From criminal perspective, commit a crime or any violation of the Criminal Codes and Procedures does not lead alone and itself to criminal liability, but if we want to consider a person as responsible and punishable to commit a crime morally and socially, there should be available conditions including occurring criminal behavior that is originated from desire and will of its perpetrator and determine his manner of thoughts, deeds and decision; the realized criminal act in the outside world by thought, intention and desire of the perpetrator should be caused by bad intention of the perpetrator or his mistake and error; if we want to account a person in commit crimes, there should be a

relationship between the committed crime and its subject, in addition to the will and bad intention or criminal fault. In general, anyone who commits in a crime with knowledge and information is not necessarily accountable, but he must be qualified with common individual characteristics, in addition to realize the will and bad intention or criminal fault; in this case, occurring the crime can be attributed to him. As a result, a person is liable when he can be criminally responsible for an accident; namely the accident can be attributed to him. Therefore, criminal liability is the consequence of assignment and attribution capability. The purpose of attribution capability is that it is determined for the judicial authorities that in terms of physical, mental and will power as well as authority, perpetrator of the offense has the capacity so that it can be defined a causal relationship between the carried out crime and its perpetrator. In fact, the crime liability is obtained from direct results of attributing the crime to its perpetrator. In this case, it can be briefly said that criminal liability is attributable and documentable to criminal acts. Basically, the penal codes cannot create rights for all people, but force people to respect the rights and values. For this reason, the penal codes are called "law of values" too. The obvious feature of penal (criminal) code is its severe sanction. This is punishment and penalty that has changed penal code to a repressive discipline, compare to other trends. As this tool is available only to ruler, criminal law is considered as a branch of public law. Dr. Hassan Emami has sometimes used the term of punishment instead of sanction. To define of this term, he said: "punish consists of the prescribed conclusion in the rule about violating from legal law. In other words, punish is the reaction of non-compliance with law by individuals and it is against violators of law that is imposed on offender by the public forces in cases of violation" (Emami, 1986). Criminal regulations and laws impose obligations and duties on individuals that are related to maintain important values of society. The person is called to account for violating one of these duties and punishment in criminal liability is a defensive reaction that society indicates against criminals and therefore, the purpose of penalty cannot be limited to maintain private rights (Ibid).

After victory of the Islamic Revolution and in direction to implement Article 4 of the Islamic Republic of Iran's Constitution Law (yazdani, 2007), there was changed criminal liability resulting from medical procedures. According to regulations of the Islamic Penal Act, approved on Oct. 13, 1982, the doctor actions were considered allowable, if medical necessity would approve its carrying out and it would be done for treatment. However, after approving the Islamic Penal Act on 1991, there were predicted more coherent and complete rules about medical procedures and responsibilities of medical professionals; for example, it ignored being essential condition for surgery operations in all cases. About getting letter of satisfaction, Paragraph C of Article 158 of the Islamic Penal Code, approved 2013, states that any legitimate surgery or medical operation should be done by consent of person, parents or legal guardians and in conformity with technical and scientific and governmental systems; however, in urgent cases, taking consent is not necessary. In Articles 495-497, legislator has identified toggle and acquittal dimensions for doctors.

In the Islamic Penal Act 2013, the first season of the fourth part for conditions of criminal liability, paragraph C of Article 158, provides: in addition to the mentioned cases in previous Articles, conducting behaviors that are legally crime, are not punished in the following cases: .... (c) any legitimate surgery or medical operation should be done by consent of person, parents or legal guardians and in conformity with technical and scientific and governmental systems; however, in urgent cases, taking consent is not necessary. Another important approved law on medical affairs in this period was the Governmental Suspended Health and Treatment Affairs, approved by the Expediency Council at Feb. 13, 1989. The law consists of 44 articles that include regulations about the following cases: 1) establishing the unauthorized medical institutions by ineligible persons; 2) establishing medical institutions by qualified persons without obtaining a license; 3) refraining hospitals to accept and provide basic services for emergency patients; 4) employing medical and

paramedical professionals and owners without legal authorization; 5) appointing medical and paramedical professionals in the unauthorized places; 6) creating and providing redundant services to profit; 7) leaving medical institution by technical authorization in the defined hours; 8) procuring and providing medicines from illegal sources and providing medicines without a prescription; 9) employing the unqualified professionals in medical institutions; 10) absence of pharmacist authorization in the defined hours; 11) managing drugstore without presence of technical authorization; 12) establishing pharmacy without obtaining a license; 13) supplying medicine without authorization from the Ministry of Health; 14) the unjustified closing medical office or medical institutions without notification to the medical system; 15) increasing the official rate of medicine and overcharging; 16) refusing to supply medicine; 17) refusing pharmacy to supply medicine and services in the defined hours. The State Punishment Organization is responsible to investigating all the mentioned crimes.

#### 4.1 Basis for Doctor Criminal Liability in Violating Medical Secrets

If in the field of criminal laws, it is asked that what criminal liability and why criminal liability is related with doctors, the overwhelming answer will be that because he has committed in a crime. If we ask what crime is, its answer will be that crime includes any action that law prohibits and punishes it. Therefore, if the law does not prohibit act or omission in a special meaning, and there is not identified punishment for it, meaning that legal prohibition is not sufficient, its committing cannot be the basis for criminal liability, in any way. In criminal laws, legislators are difficultly committed to the principle and prohibit any extended interpretation of the criminal provisions that extends the concept of crime and punishment (Sanei, 1997). Perhaps this principle in the field of criminal liability has caused that persons who has considered criminal liability among triple legal liabilities, and it is just condemned to the above principle, consider morality range beyond the law. While, neither law is equal with statute or civil liability is confined to criminal liability. It is only in criminal liability that we can rely on the above-mentioned principle and it should be considered that implementing this principle in criminal laws is an aspect of implementing the moral and intellectual principle of the unexplained punishment ugliness (Baheri, 2001). It is certain that although violating moral standards, especially in professional morals, cannot be considered as doctor liability, but its punishment will be determined according its degree of unfavorability in the community. However, it is condemned to moral judgments, but it is not restricted by the judgments (Farahbakhsh, 2013). There is the same basis for criminal liability and why one is considered as a guilty person. The person has or has not committed an act that has been prohibited and punished by law.

The clear and decisive basis for criminal liability of a doctor and why he is faced with criminal liability is that has committed in a medicine crime. The offense should be determined and punished by the law. Therefore, thousands of legal texts (in general) that prohibit the physician from doing something or obligate him to do something does not mean determining the crime and violation of these rules will not lead to criminal liability. As seems to be more accurate, any act or omission that leads to physical injury of patient cannot be considered as a crime, unless the act or omission is considered as a crime under other criminal title. It seems that it can be said that atonement means are not considered as crimes automatically. Atonement is essentially a financial liability and effect of civil liability and should follow a civil liability system. To explain liability of doctor and its lapsing, the jurists have indicated that are loyal to the literature of civil liability. Articles 59, 60 and 319 of the former Islamic penal code had shown that despite raising the issues as crime following the crimes against life and limb, it follows the principles of liability. However, obligation to shape and plan, which it was originated from the detailed jurisprudence books and bring up atonement issues with retaliation subjects, cause to keep distance fundamentals of doctor guarantee from its

components. Accordingly, the formalism dominated on realism. By considering the matter that atonement is one of effects of civil liability, not criminal liability, we believe that only physical damage to the patient, an act or omission cannot be considered as the physician's criminal act, but the act or omission should contain triple pillars of a comprehensive crime to be the basis for criminal liability (Sadat akhavi, 2015).

## 4.2 Constituent Elements of Violating Medical Secrets

Disclosing medical secrets was one of the stipulated offenses in the former Penal Code that was approved by adapting Article 378 of the France Penal Code (The French Punishment Law) on January, 13, 1926 by Iran legislation, and was amended on May 28, 1973. Article 220 of the Act provided that "doctors, surgeons, midwives, pharmacists and all those who are confidant due to their job or career, whenever disclose secrets of people, except in cases that they are obligated by law, they will be sentenced from one month to one year in punitive imprisonment, and pay 25-200 Tomans as compensation". With a few changes on 1982, this Article became to Article 106 of law of sanctions that there was predicted 74 lashes as punishment of the offender. In May 17, 1976, the legislator amended the Article by changing the mentioned penalties in the above article, and now disclosing secrets is legal element of the crime. The Article text is as follows: "doctors, surgeons, midwives, pharmacists and all those who are confidant due to their job or career, whenever disclose secrets of people, except in cases that they are obligated by law, they will be sentenced from three months and one day to one year in prison or a fine of one million and five hundred thousand to six million Rials".

### 4.2.1 Character of the Perpetrator

In Article 648 of the Islamic Penal Code, legislator has stated that disclosing secrets of patients is a crime, with respect to include character and personality of the perpetrator. In other words, according to the Article, a person who has committed a crime should be an individual who is considered as the confidant based on his professional career, namely in fact, his job and career in such a way that the people tell their secrets to him, according to the special feature to assure him. The legislator has mentioned some people who are the subject of confidant of people, due to their special resolution and features of their professional such as doctors, surgeons, midwives and pharmacists, and then has assigned diagnosis of the issue judgment to the judge, by stating the general expression that "all people who are confidant because of their job or career". Therefore, the legislator has identified some people subject of the legal law in allegory and the judge is responsible to determine other people. Here, the raised question is that by considering the stipulated legal issues in Articles 648 that only include doctors, surgeons and other medical professionals, does the sentence that "all people who are confidant because of their job and career" include other medical professionals such as dentists, nurses, physiotherapists, nutritionists, radiologists, specialists of laboratory sciences and even students of the course as well as other people who work in the field traditionally including bonesetters? Or does the allegorical nature of the included people in the case mean inclusion of other professions and occupations? The legislator or judicial procedure has not demonstrated specific criteria for identifying individuals subject to the law or those who are confidant of people because of their job. On the other hand, the matter can be considered as basis for action that "all people who are confidant because of their job and career" include people who are obligated to maintain the professional secrets in other regulations, due to their job and career and the legislator has only predicted punishment of perpetrators of that crime (Pad, 1973).

### 4.2.2 Secret

Another condition and element of the crime of disclosing secret is that there is a secret between doctors with patients and other owners of professions who they are considered as confidante of

people due to their profession; in other words, there is a subject between them with secret aspect that other people should not be aware of it. In a better definition, the disclosed issue should be known as secret. For example, when a person with the minor talusemia who describes his disease for the doctor, in fact, has brought up his pain with him and has no interest that others are aware from his disease. Here, act of perpetrator is committing a crime, if other legal requirements are available. The legislator has not provided a clear definition of the secret and there is no a case in the judicial procedure that can provide a legal definition on secret. Necessarily, we should consider opinions and statements of lawyers. In the law terminology, there has been stated: "secret includes a matter that typically have a motive to conceal it. Therefore, if people do not desire to conceal a matter and state it in different ways, it will not damage its secrecy nature, namely it does not deny its secrecy nature (Jafari langroodi, 1997). The obligation of owners of some professions to refrain disclosing secrets that have achieved due to their professional activities can be called secret such as lawyers, doctors, pharmacists, secretaries. Violating this obligation, other than those stipulated in the law, is liable to punishment. According to the above definitions, there are gathered two essential points.

Firstly, secret is a matter that typically has a motive to conceal it. Secondly, secret has been obtained as a result of a specific occupation or job. Meanwhile, secrets that the doctor gains from his patient are divided into two categorizations: a kind of secrets relates to the disease itself such as drug addiction, consumption of alcohol or diseases that physician will diagnose during his examination, testing and surgical operations including sexually transmitted diseases; and the second type includes secrets that doctor discovers by discussion and questions from the patient such as the secrets of parasitic diseases or a disease that he will diagnose during his investigation including some congenital defects of the patient. Therefore, secret is a matter that its disclosure will firstly harm the secret owner and secondly, the secret owner does not consent to its disclosure. Although this harm on the secret owner has no impact on crime commitment and criminal liability of perpetrator, namely the court is not obligated to examine harm on the patient for obtaining crime prejudicing, but it should be remembered that prosecute the perpetrator depends on complaint victim of the crime. In addition, to obtain committing in a crime, it is not necessary that patient emphasizes that doctor does not disclose his secrets because the legislator has obligated the doctor for the task and using the penal guarantee, he obligates the doctor to prevent disclosing secrets of patients. On the other hand, it should also be noted that expression of nature of some common diseases, which the society does not consider them as secret disclosure, cannot be realized as disclosing secrets such as notification of the coroner that a patient had died because of the heart attack (Abbasi, 2009). Here, there is raised the question that whether mean of the legislator on disclosing secrets of people or patients is only secrets that the doctor will be informed about the type of disease or it includes all reflected information for the doctor, even information related to the patient's disease that he has no knowledge about them. As mentioned, Article 648 of the Islamic Penal Code, Sanctions Section reveals that "if doctors, midwives and pharmacists, who are confidant because of their occupation or profession, disclose people secrets illegally, they will be condemned in prison from three months and one day to one year or pay cash punishment from 1,500,000 to 6,000,000 Rials". According to this Article, it appears that there should be distinguished between two categories of information that are provided for the doctor or he will notify them:

- Information that the doctor will be made aware because of his job, which they are not related with the patient's disease;
- Information that the doctor will be made aware because of his job, but they are in line with the patient's disease

About the considered information on the first paragraph, it seems that the legislator has not considered any specification for the

doctor and in this case, there is no difference between the doctor and other people of the society. Therefore, if he discloses information that has no relevance with the patient's disease, the doctor will not be included in the Article 648 of the Islamic Penal Code. However, in the second paragraph that act of perpetrator is a crime and criminal prosecution, according to the legislator stipulation that "whenever they disclose people's secrets in illegal cases", it should be identified that whether the provided report for police by doctor and disclosing secrets of patients can be considered as the stipulated subjects in law that exempt the doctor from punishment, or in other words, it can be considered as excusable reasons of crime. Naturally, in the first case, there is no liability for the physician and if the subject is not a legal stipulation, disclosing patient's secrets will be certainly applicable in Article 648 of the Islamic Penal Code (Ibid). As the mentioned issue is included the legal stipulated cases and it is out of the considered exceptions for disclosing patient's secrets and as his remained information is a part of his secret about disease, therefore, the conducted action by doctor will be committing in crime, if there is obtained other legal conditions; so it is considered as one of evidences of disclosing patient's secrets.

#### 4.2.3 Disclosing Secrets

The secret disclosure is material basis of crime that means revealing and informing others about the secret; it is not important that the secret is disclosed as written or verbal, public or non-public and partial or general. The means and how to disclose a secret are not considered as conditions. Disclosing secret in any way shows achieving material element of crime and it will be the subject of Article 648 of the Islamic Penal Code, if there are achieved other requirements. According to the written sentence in the Article, the legislator has expressed secret disclosure absolutely; therefore, in addition to the above-mentioned matters, if the doctor discloses a professional secrets for his wife, put it for another doctor other than in legal and justifiable cases, raises it in interview with magazines, radio, TV or in medical and non-medical seminars or even the patient is one of his relatives, it cannot be considered as cause of removing his liability. Therefore, disclosure of patient secrets in any form represents the realization of material element of crime and by fulfilling other elements of the offense, the perpetrator is responsible and prosecuted.

#### 4.2.4 Criminal Intention

Criminal intention or malice is another element of the crime of secret disclosure. This is an intentional crime. Therefore, for its fulfillment, it is necessary that the perpetrator has the malice intention when committing the crime. The secret disclosure will not be punishable, if the secret is disclosed because of negligence or carelessness of the perpetrator to maintain the secret. However, lack of criminal liability of the practitioner in this case cannot prevent him from civil liability or warrant for damage compensation, if the secret disclosure is led to a loss for the secret owner. Of course, damaging the patient is not necessary condition to commit a crime by doctor that leads to his criminal liability. As we know, malice includes general and individual types. In this crime, general malice means that the doctor take an action by knowledge and intentionally that leads to disclose secret of patients; while in individual malice, the perpetrator wants to realize the crime. In crime of secret disclosure, commissioning to commit a material act is sufficient to achieve it. In fact, its realization is not bound by the result. So if a doctor discloses secrets of a patient with knowledge of confidentiality and the spiritual element of crime is achieved, the crime will be realized.

Another point that should be noted is that, firstly, in the name of scientific progress, secrets of patients cannot be disclosed without his permission; secondly, the incentive has no effect to commit this crime; thirdly, serve to others is not a cause to disclose secrets of patients (Saket, 2005). As a result, we can say that character of the offender, secret, secret disclosure and

criminal intention are considered as constituent elements of the crime of secret disclosure; if these elements are achieved, the doctor's criminal liability is realized and he will be sentenced to the defined legal punishment.

#### 4.3 Punishment of Disclosing Medical Secret

As mentioned disclosing medical secrets was one of the stipulated offenses in the former Penal Code that was approved by adapting Article 378 of the France Penal Code (The French Punishment Law, 1810), on January, 13, 1926 by Iran legislation, and was amended on May 28, 1973. Article 220 of the Act provided that "doctors, surgeons, midwives, pharmacists and all those who are confidant due to their job or career, whenever disclose secrets of people, except in cases that they are obligated by law, they will be sentenced from one month to one year in punitive imprisonment, and pay 25-200 Tomans as compensation". With a few changes on 1982, this Article became to Article 106 of law of sanctions that there was predicted 74 lashes as punishment of the offender. In May 17, 1976, the legislator amended the Article by changing the mentioned penalties in the above article, and now disclosing secrets is legal element of the crime. The Article text is as follows: "doctors, surgeons, midwives, pharmacists and all those who are confidant due to their job or career, whenever disclose secrets of people, except in cases that they are obligated by law, they will be sentenced from three months and one day to one year in prison or a fine of one million and five hundred thousand to six million Rials". If crime of secret disclosure leads to material and spiritual losses for the patient, the perpetrator will be sentenced to compensate the losses, according to regulations of civil liability.

Punishment of disclosing medical secrets will not be subject to supplementary and complementary effects, but according to Articles 79-82 of Criminal Procedure Law, there can be suspended prosecuting the perpetrator. In the semi-liberty system, if the court agrees with the orders of judge of carrying out of decree, the judge will issue the court order and inform prison about it, after getting proper securities from the losing party. Article 66 of the Islamic Penal Code suggests that perpetrators of intentional crimes with maximum punishment of 91 days to six months' imprisonment can be sentenced alternative punishment imprisonment.

#### 5. Conclusion

One of manifestations of right is to protect privacy, especially when human beings are inability. Individuals have fundamental right on their information that allows them to monitor or use and prevent the unauthorized disclosure the information. Thus, if others can access their information in the name of freedom of information, which medical secret is one of its kinds, it means ignoring this fundamental right. The concept of privacy is an essential and important need for human and has various physical, psychological, social and informative dimensions. The patient has the right to determine how and when to give information to others or hospital organizations. He is entitled to identify nature of his personal thoughts that gives to others, who can receive the information and how to use it.

One of the raised reasons to justify confidentiality is to respect for patient autonomy. The principle of autonomy emphasizes on the patient's right at all stages of his life. In terms of autonomy, an individual's personal information belongs for him and others should be aware without his consent. In breaching confidentiality, patient autonomy will be eroded too. It must be carefully determined the patient is willing to confidant which his personal information and he is consent to reveal which information. Of course, a consent can be considered as the permission of disclosing patient's secrets that is issued by owner of the secrets (patient or his legal guardian), explicitly or implicitly, without any ambiguity, and continues until disclosing the secret. Thus, the patient has the right that his medical records are maintained in a secure environment that accessible only by

employees who are authorized to use it; even when the patient is out of the relevant sections for care purposes. However, disclosure of personal data can lead to its own legal problems. Limit of medical confidentiality begins since accepting patient for examination without ending, namely it is continued during treatment, after treatment and even after his death.

Confidentiality has a long history on customs, habits, religion and ethics of different societies. It is considered as one of components for patients' rights that there has been considered legal guarantees to prevent its violation. Confidentiality and secrecy of medical records by doctors and health-treatment staff is necessary based on jurisprudence and legal resources, and its disclosure is a committing in crime, unless to continue the patient's treatment or medical research and in cases are allowed by the law. The patient has the right to confidentiality of his identical information about health situation, medical conditions, disease, treatment and other private information, even after his death; the secret information will be disclosed by consent of patient or in cases that have been determined by the law clearly. On the other hand, medical records can be erased and destructed, and determining the duration of storage of medical records depends on the country's policies directly.

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