Comparative Analysis and Study of the Civil Liability of Family Physicians Based on the Obligation of Means in Iranian and English Law

1. Ali Ahmadi : Department of Law, Yas.C., Islamic Azad University, Yasuj, Iran
2. Hamid Reza Rostami*: Department of Law, Yas.C., Islamic Azad University, Yasuj, Iran
3. Ali Pourjaveheri : Department of Law, Yas.C., Islamic Azad University, Yasuj, Iran

*Correspondence: Dr.rostami@iau.ac.ir

Abstract

This study examines and analyzes the theoretical foundations of the civil liability of family physicians toward patients through a comparative approach between the legal systems of Iran and England. The principal research question concerns how the scope and foundations of the civil liability of family physicians in the two legal systems can be explained on the basis of the "obligation of means" theory, and what similarities and differences exist in this regard. The research hypothesis is founded on the assumption that, despite conceptual similarities concerning the obligation to observe the standard duty of care, structural and legal differences in definitions, protocols, and referral systems lead to distinctions in the manner of establishing and applying the civil liability of family physicians in Iran and England. The present study employs a comparative analytical method through the examination of constitutional and superior legal documents, statutes, regulations, judicial precedents, and legal doctrine in both systems in order to comparatively analyze the theoretical foundations of the civil liability of family physicians. The principal findings of this research indicate that, within the English legal system, due to the existence of Electronic Health Records (EHR) and codified clinical protocols, the scope of the family physician's liability within the framework of the "obligation of means" can be defined and established more clearly. In contrast, within the Iranian legal system, ambiguity in defining the "standard duty of care," together with weaknesses in documentation and referral systems, creates challenges in the application of the obligation of means theory and in determining the civil liability of family physicians. Ultimately, by clarifying the distinctions and similarities between the two systems, this study provides grounds for proposing solutions aimed at enhancing transparency and justice in the civil liability regime governing family physicians within Iran's healthcare system.

Keywords: Civil liability, family physician, patient, obligation of means theory.

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1. Introduction

The expansion of macro-level health programs and the movement of healthcare systems toward primary care have given the family physician a special importance in ensuring therapeutic security and preserving public health. The family physician is the first point of contact for patients and is responsible for initial diagnosis, disease control, continuous monitoring of the patient's condition, and, where necessary, referral to specialized levels of care. This central and multilayered position has made the examination of the civil liability of the family physician not only necessary, but also vital for safeguarding patients' rights and improving the efficiency of the health system.

In terms of the nature of professional activity, available facilities, and scope of authority, the family physician differs significantly from specialist physicians. A specialist usually encounters patients who have entered through the referral pathway, has access to more specialized facilities, and performs duties that are more limited and focused; however, the family physician, at the first level of service delivery, faces vague symptoms, early-stage conditions, and the absence of extensive diagnostic tools. This functional difference also makes the legal relationship between the family physician and the patient more complex and causes the determination of the type of obligation—obligation of result or obligation of means—to play a special role in the analysis of civil liability. The main question arises precisely at this point: Should the family physician guarantee the outcome of treatment, or is the physician merely required to exercise reasonable, informed effort in accordance with professional standards?

In Iranian law, the absence of a comprehensive statute on medical liability and the dispersion of regulations, together with the prominent role of general rules of civil liability and certain jurisprudential principles, have created interpretive challenges. On the other hand, judicial practice has rarely addressed the family physician specifically, and this makes it difficult to explain precisely the type of obligation and the limits of liability. By contrast, English law, with its coherent system of tort law, the existence of recognized tests such as Bolam and Bolitho, and extensive case law concerning the performance of general practitioners, provides a clearer framework for determining the standard of care and the type of liability. Comparing these two systems not only reveals similarities and differences, but can also provide inspiring points for reforming and strengthening the medical liability regime in Iran.

The present study analyzes the subject by raising questions such as: "What is the type of obligation of the family physician in the legal systems of Iran and England?", "How is the criterion of fault and reasonable conduct determined in each system?", and "What effect do differences in approach have on the limits of civil liability?" The research hypothesis is based on the premise that, in both systems, the obligation of the family physician is essentially an obligation of means; however, the coherence of criteria for identifying fault and the systematic nature of the standard of care in England make liabilities clearer than in Iran. The innovation of this article lies in combining the theoretical analysis of the obligation of means with a comparative examination of the performance and liability of the family physician in the two legal systems and extracting a model applicable to legal policymaking and the Iranian health system.

The research method is descriptive-analytical with a comparative approach, and the data are extracted from library sources, laws, regulations, and professional standards. The structure of the article is organized as follows: first, the theoretical foundations of civil liability and the position of the family physician are explained; then, the analysis of Iranian and English law is presented; and finally, through a comparative approach, the challenges, differences, and a proposed model for reforming the family physician liability regime are presented.

2. Conceptual Framework and Theoretical Foundations

In this section, the fundamental concepts and theoretical foundations necessary for understanding and analyzing the civil liability of the family physician are examined. This conceptual framework forms the basis of the subsequent arguments in the comparative and analytical sections of the article.

2.1. The Concept and Position of the Physician's Civil Liability

The health system, as one of the most vital pillars of society, is founded on mutual trust between service providers, whether natural or legal persons, and service recipients, namely patients. This relationship, which has both legal and ethical dimensions,

requires the rules of civil liability to be applied in this field with particular precision and delicacy. Civil liability in the health system is not merely a punitive framework; rather, it is a fundamental instrument for ensuring service quality, protecting the established rights of patients, and guiding professional conduct toward desirable standards. The ultimate purpose of imposing this liability is not punishment, but compensation for losses sustained by injured persons and prevention of the recurrence of similar violations. This approach, which is based on the principles of "full compensation for damage" and "deterrence," contributes significantly to ensuring the health and safety of patients in the face of the complexities of the treatment system (Sharifi, 2024).

For civil liability to arise, three essential and necessary elements must exist simultaneously:

Harmful act, fault, or negligence: This element refers to an act or omission that is outside reasonable and legal limits and harms public order or individual rights. In the medical field, a harmful act may include negligence in diagnosis, delay in treatment, surgical error, incorrect prescription of medication, or failure to observe sterilization and hygiene principles. This fault does not necessarily have to arise from malicious intent; rather, fault arising from carelessness, imprudence, or insufficient skill may also constitute a basis for liability (Torabi et al., 2025).

Damage: Damage is an injury or loss inflicted on the legitimate and legal interests of an individual. These interests may be material, such as treatment costs, loss of occupational income, and reduction of earning capacity, or non-material, such as physical and psychological pain and suffering, reduced quality of life, and injury to reputation and dignity. In the health system, proving and measuring the extent of damage, particularly non-material damage, may be challenging and requires precise assessment by experts and judges.

Causal relationship: This element is the connecting link between the harmful act and the damage sustained. It must be proven that the damage sustained was the direct and foreseeable result of the act or omission attributed to the responsible person. In other words, if the harmful act had not occurred, the damage would not have occurred, or at least would not have occurred in this manner and with this degree of severity. Determining causation in medical claims, because of the complex nature of diseases, the course of treatment, and the multiplicity of factors affecting a person's health, often requires referral to qualified medical experts (Ashrafzadeh Farsangi, 2018).

Medical professional liability, due to the sensitive and specialized nature of the medical profession, has unique characteristics that distinguish it from other forms of civil liability:

Obligation of means: The most important characteristic of medical liability is usually the "obligation of means," not the "obligation of result." The physician is obligated to use all reasonable and necessary knowledge, skill, care, and measures in the profession in order to achieve the best possible result for the patient, but does not guarantee a definite and flawless therapeutic outcome. This means that the mere failure to achieve a therapeutic result does not in itself give rise to physician liability, unless it is proven that this failure resulted from negligence or fault in using the means and observing professional standards (Sokout-Arani & Mesri, 2020).

Professional standard of care: The criterion for assessing fault in medical liability is the "professional standard of care." This standard is determined on the basis of the knowledge, skill, and care of a reasonable physician or specialist in the same field under similar circumstances. This criterion goes beyond the conduct of an ordinary person and refers to expectations from a professional in the medical field. Determining this standard is usually done by reference to expert opinions, approved treatment protocols, medical guidelines, and judicial practice.

Consultative and diagnostic nature: Many duties of a physician are consultative and diagnostic in nature. Accurate diagnosis of disease in the early stages, especially in cases where symptoms are vague, may be difficult. The physician's liability at this stage is assessed on the basis of providing the best possible diagnosis according to the available information and using standard diagnostic methods (Afrasiab, 2020).

The role of informed consent: Obtaining informed consent from the patient before performing therapeutic or diagnostic measures is one of the basic professional and legal requirements for physicians. The physician is required to explain the nature, objectives, benefits, possible risks, and alternative treatment options to the patient in understandable language. Failure to obtain informed consent or providing incomplete information may itself constitute a basis for civil or even criminal liability of the physician.

Complexity of proving causation: As noted, proving the causal relationship between medical fault and the damage sustained, particularly in chronic diseases or conditions in which multiple factors affect the patient's condition, is highly complex and often requires in-depth specialized and expert examinations (Babaei & Abbasi-Nia, 2022).

Accurate understanding of these elements and characteristics provides a necessary basis for analyzing the civil liability of physicians, including family physicians, in different legal systems, particularly in comparative analysis.

2.2. The Family Physician: Function, Role, and Scope of Authority

In the health system of the Islamic Republic of Iran, the family physician is defined as the "first-line provider of health and treatment services." These physicians, who generally have specialization or related training courses in family medicine, are responsible for providing comprehensive, continuous, and ongoing services to individuals and families within a specified geographical area. According to the policies communicated by the Ministry of Health and Medical Education, the family physician is responsible for identifying the health and treatment needs of the covered community, providing preventive services, diagnosing and treating common diseases, referring patients in need to more specialized levels, and following up on their health status. This approach has been implemented with the aim of improving the efficiency of the health system, reducing costs, and increasing equitable access to services (Mahmoudi, 2018).

In England, the general practitioner, who is equivalent to the family physician, is the most important part of the National Health Service. General practitioners in this country are the first point of contact for patients with the health system and provide a wide range of diagnostic, therapeutic, and referral services. The GP system in England is based on the "obligation of means" and "comprehensive and continuous care." General practitioners are responsible for the initial management of a broad range of diseases, performing necessary screenings, vaccination, health counseling, and referring patients to specialist physicians in hospitals or other specialized NHS services. The ownership structure of GP treatment centers in England is diverse; some clinics are public and part of the NHS, while many others operate privately but under contract with the NHS (Pirmohammadi & Kounani, 2014).

The family physician in the health system undertakes broad duties and powers that are defined within specified legal limits. In the area of duties and powers, the family physician is responsible for providing comprehensive health and treatment services. These services include prevention, diagnosis and treatment of common diseases, management of chronic diseases such as diabetes and hypertension, provision of maternal and child health services, vaccination, and counseling in the field of mental health and promotion of a healthy lifestyle. Another key duty is screening and early diagnosis of diseases through periodic examinations, diagnostic tests, and precise review of the individual and family medical history. The family physician also plays a vital role as the "manager of the health record"; the physician is responsible for coordination among various treatment services that the patient receives from specialized levels and for ensuring continuity of care. In cases requiring more specialized care, the family physician is required to refer the patient correctly and in a timely manner to relevant specialists or treatment centers and to provide the necessary clinical information. In addition, providing health education and counseling to patients and their families concerning diseases, methods of prevention, and health promotion is an inseparable part of the physician's duties (Tabesh, 2016).

However, these duties and powers are exercised within specified legal limits. From a legal perspective, the family physician is primarily "obligated by means," meaning that the physician is required to apply professional knowledge and skill, not to guarantee a definite therapeutic result. There is also a limitation regarding the scope of specialization; family physicians are authorized to provide only services that fall within the scope of their knowledge and skill, and where more specialized services are needed, they are required to refer the patient. The activities of these physicians are subject to professional laws and regulations, including medical council regulations and guidelines issued by the Ministry of Health in Iran or the NHS in England. Documentation requirements, including accurate recording of history-taking, examinations, diagnoses, therapeutic orders, and referrals in the patient's file, are considered another legal and professional duty. Finally, structural limitations of the health system, such as the general structure of the health system, service tariff policies, access to diagnostic and therapeutic facilities, and macro-level health policies in both countries, affect the scope of authority and manner of performance of the family physician (Tariverdi & Sadeghi, 2024).

The English health system, with a long history of implementing the family physician model and universal financing through the NHS, is considered a successful model in providing comprehensive primary care and reducing the burden of disease on the specialist system. GPs in this system have strong authority and a well-established position as the principal coordinators of patients' health and treatment care. By contrast, implementation of the family physician program in Iran, although an important step toward improving the referral system and equitable access to services, faces numerous structural, financial, and executive challenges that require continuous attention and investment in order to achieve the desired goals. Differences in the legal basis of liability, namely jurisprudential and civil foundations in Iran versus case law in England, also create different approaches to medical claims in the two jurisdictions.

2.3. The Theory of Obligation of Means and Its Position in Professional Liability

In the legal system, and particularly in the evaluation of professional liabilities, understanding the concept of "obligation of means" is highly important. Obligation of means is a legal principle according to which the obligor, here the physician, is merely required to exercise utmost care, skill, prudence, and reasonable and ordinary effort in performing professional duties, not to guarantee the achievement of a specific or definite result. This obligation is based on appropriate effort and observance of the standard of care.

This legal principle, which forms the basis of many evaluations related to professional performance, especially in fields such as medicine, indicates that the obligated person is merely required to use utmost care, skill, prudence, and ordinary and reasonable effort in performing duties, not to guarantee the attainment of a specific or definite result. This obligation, rooted in the concept of "appropriate effort" and the necessity of observing the "standard of care," provides a logical framework for assessing liability in circumstances where the final result is affected by multiple factors (Davarzani et al., 2023).

The key elements constituting the concept of obligation of means are as follows:

Good faith and reasonable effort: This element requires the obligor to perform duties with complete honesty and by using measures that would be expected from a reasonable and experienced person under similar circumstances. This means that the individual's effort must be sincere, logical, and within the framework of professional custom.

Observance of professional standards: In medical professions, this principle means an obligation to adhere precisely to the latest findings of current knowledge, the necessary specialized skills, approved treatment protocols, and valid and common diagnostic and therapeutic methods in the professional medical community at the time of service provision. These standards are constantly evolving and being updated.

Use of appropriate tools and facilities: This part of the obligation includes the necessity of using diagnostic and therapeutic tools, equipment, and techniques that, according to custom and accepted professional standards, are considered necessary and required for the correct, effective, and safe performance of the duty.

Foreseeability and precaution: The obligor, especially in medical professions, is required to foresee, to the extent reasonably and ordinarily expected, the possible risks associated with the diagnostic, therapeutic, or care process and to take necessary measures to prevent damage or unwanted complications. This requires precise assessment of the risks and benefits of each measure (Ahmadi et al., 2015).

The prominent characteristics of the obligation of means provide a clear picture of its nature:

No guarantee of result: The most obvious and fundamental characteristic of this obligation is the absence of any guarantee regarding the final and desired outcome. Success in treatment or achievement of an ideal result is complex and multifaceted and is affected by numerous factors, including the nature and severity of the disease, the patient's unique biological and physiological responses, environmental conditions, and even genetic factors that are not always fully under the obligor's control.

Reliance on process and method: The main focus of this theory is on the "manner" of performing the duty, that is, the correct, precise, principled, and current-knowledge-based execution of the diagnostic, therapeutic, and care process. This principle gives priority to the process over the result, because ensuring the correctness of the process provides the best chance of achieving the desired outcome (Davarzani, 2017).

Custom-based criterion of assessment: Evaluation of the obligor's adherence to this principle is carried out solely by comparing the obligor's conduct with the conduct of a "reasonable obligor" who is in the same circumstances, with the same

level of knowledge and similar facilities. This means that judgment is based on standard measures expected from a professional in that position, not on unrealistic or subjective standards.

Fundamental distinction from obligation of result: Opposite the concept of "obligation of means" is the "obligation of result." These two concepts have fundamental and determinative differences in defining the scope of liability. In an "obligation of result," the obligor guarantees the achievement of a specific and definite result. If this expected result is not achieved, the obligor is held liable, regardless of the extent of effort, care, or good faith exercised. A classic and illustrative example of this type of obligation is a contract of carriage; in this type of contract, the obligor guarantees safe and timely delivery of goods or passengers to the destination, and any failure in this regard, regardless of its reasons, directly leads to liability. Understanding this distinction is vital for precisely defining the limits of liability in contracts and professional relationships (Meslahi, 2015).

The theory of obligation of means plays a fundamental role in analyzing and determining liability in the field of medical errors. The reasons are as follows:

The complex and uncertain nature of medicine: Medical science, especially in diagnosis and treatment, involves many uncertainties. The human body is a living and dynamic entity, and its responses to treatments are not always predictable. Many diseases are complex or progressive in nature, and even with observance of the highest standards of care, the desired result may not be achieved, or the patient's condition may even worsen.

The need to encourage innovation and acceptance of reasonable risks: If physicians were required to guarantee the result, they would avoid accepting reasonable therapeutic risks and using new methods that may initially be accompanied by uncertainties. This could prevent the advancement of medical science and the provision of the best possible care to patients.

Justice in compensation: Obligation of means provides a fairer approach to compensation for medical damage. Liability is imposed only in cases where the physician has departed from professional standards and committed a fault, not merely because of failure to achieve a therapeutic result that was outside the scope of the physician's fault (Rostami et al., 2022).

Basis for determining fault: This theory provides the main basis for assessing "fault" or "negligence" in medical cases. Courts and expert boards compare the physician's conduct with that of a "reasonable and skilled physician in the same field and circumstances" to determine whether the standards of care have been observed.

For several reasons, the family physician essentially operates within the framework of the "obligation of means," and this is accepted in various legal systems:

Comprehensiveness and generality of duties: The family physician faces a wide range of diseases and health problems at different stages of presentation, from acute and common diseases to the management of chronic diseases and the provision of preventive services. The scattered and unpredictable nature of these duties makes guaranteeing a specific result for all of them impossible.

First-line and screening role: A major part of the family physician's duties includes initial assessment, diagnosis of vague symptoms, and referral. At this stage, the focus is on using knowledge and skill to arrive at a probable diagnosis and timely referral, not guaranteeing a definitive diagnosis or final treatment.

Management of chronic diseases: Diseases such as diabetes, hypertension, or heart disease are chronic in nature and require long-term management. The purpose of the family physician in these cases is disease control, prevention of complications, and improvement of the patient's quality of life. Achieving complete control or eradicating the disease, which is impossible in many cases, cannot be regarded as a guaranteed result (Sharifi, 2024).

Complexity of the referral system: The family physician often plays the role of a gatekeeper and refers patients to specialists. The physician's liability in this regard consists of timely identification of the need for specialized care and correct referral. Whether the patient receives the desired result from the specialist after referral does not necessarily indicate negligence by the family physician, unless the initial referral was incorrect or delayed.

Standards of care in general practice: Standards of family medicine are based on general medical knowledge and skills and the ability to manage the most common health problems. Expecting the family physician to possess the specialization and skill of a subspecialist in all fields of medicine is neither logical nor fair. Therefore, the physician's performance must be assessed on the basis of standards related to general practice.

Accordingly, the dominant approach in medical law, both in Iran and England, is that the family physician, like other physicians, is primarily subject to the "obligation of means." Liability is established only if it can be proven that the physician failed to exercise reasonable professional care, skill, and knowledge and that this failure caused damage to the patient.

3. Comparative Analysis of the Civil Liability of the Family Physician in Iran and England

After examining the theoretical foundations of physician civil liability and the special position of the "obligation of means" in this field, it is now time to assess these concepts within the legal systems of Iran and England. Comparative analysis is a powerful instrument for deeper understanding of the challenges, strengths, and weaknesses of legal and judicial approaches in both systems.

Iran, as a country with a legal system based on Islamic jurisprudence and civil law, and also as a country implementing and developing the family physician program, faces unique challenges in the field of physicians' professional liability. Understanding these challenges requires examining how general rules of civil liability correspond to the specific requirements of the health sector and the medical profession (Mousavi et al., 2022).

England, with a long history in developing the universal health system and the family physician, or GP, as its most important pillar, and also relying on case law in determining standards of care, offers a different model. Recognized legal tests such as Bolam and Bolitho have provided a specific framework for determining physicians' liability (Brazier & Cave, 2016).

This section has been developed with the aim of achieving a more comprehensive understanding of the following matters:

Explaining the legal and procedural framework: examining the laws, regulations, and judicial practices related to the civil liability of the family physician in both countries. Identifying key concepts: analyzing concepts such as "standard of care," "medical fault," "causal relationship," and "obligation of means" in each legal system. Examining challenges and points of distinction: identifying fundamental differences in approaches, theoretical and practical bases for determining liability, and extracting existing challenges in each system. Using experiences: benefiting from the successful experiences and lessons learned from the English system for the possible improvement of legal and executive mechanisms in Iran. Responding to fundamental questions: attempting to answer whether the family physician in Iran is "obligated by means" or "by result," how this obligation is assessed in practice, and what differences and similarities this approach has with England.

Through a precise comparison of these two systems, we can achieve a deeper understanding of the complexities of the civil liability of the family physician and identify potential areas for improving the legal and professional system in Iran.

3.1. Civil Liability of the Family Physician in Iranian Law

Examining the civil liability of the family physician in the Iranian legal system requires careful analysis of laws, regulations, fundamental jurisprudential principles, and identification of existing challenges and gaps. The family physician, as the first-line provider of services in the health system, plays a vital role in diagnosis, guidance, and follow-up of treatment, and any negligence or departure from professional standards may lead to civil liability.

The civil liability of the physician in Iran, in the absence of a comprehensive and independent law governing the medical profession, is based on general rules of civil law and jurisprudential principles. The following laws and foundations play a central role in this field:

The Civil Liability Act of 1960: This statute establishes the general basis of civil liability in Iran on the foundation of "fault," meaning a harmful act. Article 1 of the Act provides: "Anyone who, without legal authorization, intentionally or as a result of carelessness, infringes upon the life, health, property, freedom, dignity, commercial reputation, or any other right created by law for persons shall be liable to compensate the resulting damage." In the medical field, "fault" may include negligence, carelessness, lack of skill, or failure to observe technical and scientific standards.

The Islamic Penal Code, especially Articles 492 to 499: These provisions examine the criminal aspect of medical error. Although the main focus of this section is punishment, proving the occurrence of "error" within this framework may also constitute a basis for bringing a civil liability claim. Cases such as "involuntary homicide arising from fault" or "unintentional bodily injury," if they occur during the treatment process, fall within these laws (Ahmadi et al., 2015; Alipour, 2015; Mousavi Bojnourdi & Davarzani, 2015; Tabesh, 2016).

Regulations and rules of the medical council: The Medical Council Organization, by issuing various regulations and guidelines, determines the professional and ethical standards governing the medical profession. Violation of these regulations, especially those directly related to the manner of service provision and observance of therapeutic principles, may be invoked as evidence of fault in civil liability claims.

The Islamic no-harm principle: This fundamental jurisprudential principle negates any unjust harm and constitutes a basis for compensating damage sustained by the injured person. In medical liability, whenever damage is inflicted on the patient as a result of physician fault, this principle requires compensation for the damage.

The principle of precaution: Where there is uncertainty between the physician and the achievement or non-achievement of a result, the principle of precaution requires the physician to observe caution and refrain from performing an act that carries a greater probability of harm, or to adopt the necessary precautionary measures. This principle is particularly important in diagnosis and therapeutic decision-making that involve uncertainty.

The principle of causation: Although the Civil Liability Act emphasizes "act," in jurisprudence and judicial practice, causation is also recognized as a factor effective in producing damage. In the medical field, actions by which the physician indirectly causes damage to the patient, such as prescribing the wrong medication or making an incorrect referral, may fall under this principle (Sokout-Arani & Mesri, 2020).

The principal obligation of the family physician, according to theoretical foundations and practical procedure, is an obligation of means, not an obligation of result. This means that the physician is required to exercise all reasonable and necessary care, skill, and measures within the framework of professional duties, but does not guarantee a definite result, such as the patient's complete recovery. The scope of these obligations includes the following:

Diagnosis: The family physician is responsible for diagnosing the patient's disease or condition through examination, careful history-taking, and, where necessary, requesting preliminary laboratory tests and imaging. Correct primary and differential diagnosis is the first step in providing appropriate care.

Referral: One of the most important duties of the family physician is to identify cases that are beyond the physician's field of expertise or available facilities and require referral to higher levels or specialist physicians. Timely, correct, and complete referral, accompanied by the provision of necessary information to the specialist physician, is one of the principal components of this obligation. Failure to refer in a timely manner or incorrect referral is one of the most common instances of medical negligence.

Treatment follow-up: After diagnosis or referral, the family physician has the duty to follow up on the patient's treatment process, especially in chronic diseases managed by the physician, ensure the patient's adherence to therapeutic instructions, and, where necessary, make the required interventions or adjust the treatment process.

Finding numerous explicit judicial decisions that directly address the "civil liability of the family physician" is difficult. This is mainly due to the following factors:

Lack of specialized distinction in claims: Many claims concerning medical error are brought generally and without precise distinction between the role of the family physician and that of the specialist physician.

Referral of cases to medical boards: A major portion of disputes and complaints against physicians are first referred to the medical commissions and disciplinary boards of the Medical Council Organization, and the results of these boards' examinations, which are mostly disciplinary in nature, may not be independently reflected in judicial practice.

Nature of the "obligation of means": Proving fault in the "obligation of means" system is complex and requires establishing breach of reasonable standards, which often demands precise expert opinion.

However, where a case is brought before public courts, the courts examine the matter by relying on the Civil Liability Act, the Islamic Penal Code, and the opinions of official judicial experts, who are generally university faculty members or experienced and specialist physicians. The principal criteria continue to be based on proving a harmful act, meaning fault, and the causal relationship between that fault and the damage sustained.

Despite the existence of general foundations, the Iranian legal system faces numerous challenges and gaps in the field of the civil liability of the family physician:

Absence of a comprehensive and independent law: The most important gap is the lack of a codified and comprehensive statute that specifically addresses the medical profession and liabilities arising from it. This causes excessive reliance on general rules and multiple interpretations.

Ambiguity in determining the "standard of care": While in advanced systems the "standard of care" is clearly defined through case law, treatment protocols, and clinical guidelines, in Iran this concept does not exist in a transparent and codified form. Determining the "reasonable physician" or "skilled physician" under similar circumstances is often left to the opinion of the expert in the case, which may lead to fluctuations in judgments (Jackson, 2016).

Challenge in proving causation: Proving whether the damage sustained by the patient directly resulted from the physician's fault or was related to the nature of the disease, the patient's physical condition, or other factors has always been one of the most complex stages in medical civil liability claims.

Lack of clarity in the scope of authority and responsibilities of the family physician: Despite implementation of the family physician program, the precise and legal definition of the duties, powers, and responsibilities of the family physician toward patients and the referral system still requires greater clarification. This ambiguity may lead to excessive or insufficient attribution of responsibility.

Influence of jurisprudential principles: Although jurisprudential principles are valuable foundations, interpreting and adapting them to the contemporary needs of the health system and the medical profession is sometimes challenging and requires innovative legal approaches.

Shortage of codified and citable judicial decisions: The absence of a comprehensive database of relevant judicial decisions and their analysis prevents the formation of settled and predictable judicial practice in this field.

Addressing these challenges and attempting to remedy legal gaps will be an essential step toward guaranteeing patients' rights, improving the quality of therapeutic services, and creating transparency and confidence for actors in the health sector, especially family physicians.

3.2. Civil Liability of the Family Physician in English Law

The English legal system, relying on the fundamental principles of tort law and case law, has developed a specific and complex framework for determining the civil liability of physicians, including general practitioners. This framework has been formed with the aim of maintaining a balance between protecting patients' rights and avoiding the imposition of an excessive and unreasonable burden on the medical community (Giesen, 2001).

3.2.1. Principles of Tort Law Related to Medical Negligence

Medical negligence in English law is examined as one of the main subcategories of the tort of negligence. To prove medical negligence, the claimant, meaning the patient or the patient's heirs, must prove three basic elements:

Existence of a duty of care: It must be proven that the physician, or the health service provider, owed the patient a legal duty of care and a duty to provide services according to the required standards. The physician-patient relationship automatically creates this duty.

Breach of the duty of care: The most important and challenging element is proving that the physician breached the duty of care. This breach occurs through failure to observe the standard of care.

Causation of damage: It must be proven that the damage sustained by the patient was the direct result of the physician's breach of the duty of care. This includes proof of both factual causation and legal causation (Jones, 2016).

3.2.2. The Criterion of the Standard of Care

Determining the "standard of care" in medical negligence cases constitutes the core of adjudication in these claims. English case law has developed two key tests for this purpose:

The Bolam test: According to this test, a physician is regarded as negligent when the physician's conduct does not conform to the standards of care accepted by a responsible body of reasonable and skilled physicians in the same specialty at the relevant time. The key point is that the court, instead of making an independent judgment about the correctness or incorrectness of the physician's conduct, relies on the opinion of the majority of the medical community in that specialty. This test emphasizes being in the same field. The Bolitho test complemented and to some extent modified the Bolam test. The House of Lords in Bolitho declared that mere reliance on the opinion of the majority of the medical community is not sufficient. The court must

examine whether the reasons and foundations presented by that group of physicians are logically and scientifically defensible and reasonable. In other words, even if many physicians have acted in a particular way, if that method lacks a logical and reasonable scientific basis, it may still be regarded as negligent. This test considers the "reasonableness" of medical reasons alongside the same-field criterion. The Montgomery test, which primarily focuses on informed consent but also has implications for the standard of care in providing information to the patient, emphasizes that the physician must not only explain medical risks according to the opinion of the majority of physicians, but must also disclose all risks that a reasonable patient in a similar position might wish to know. This test has strengthened the patient-centered approach (Grubb, 2010; Steele, 2014).

3.2.3. Liability in the Field of General Practitioners

General practitioners in England, as the first line of the NHS and the "gatekeepers" of this system, have a vital role. Their civil liability is broadly assessed on the basis of the same principles of tort law and the Bolam and Bolitho criteria. However, several specific aspects are more important in relation to GPs:

Duty of referral: GPs are responsible for identifying emergency or specialist cases and referring patients to hospitals or specialists in a timely manner. Delay or failure in correct referral is one of the most common causes of medical negligence claims against them.

Diagnostic negligence: Because GPs deal daily with a wide range of nonspecific symptoms and common diseases, they may make errors in diagnosing some rare or complex diseases. These errors are assessed on the basis of the ability of a reasonable GP under similar circumstances.

Management of chronic diseases: A significant portion of GP time is devoted to the management of chronic diseases such as diabetes, hypertension, and cardiovascular diseases. Failure to observe treatment protocols, inappropriate prescription of medication, or insufficient follow-up may give rise to liability (Beauchamp & Childress, 2019).

3.2.4. Liability of the NHS and General Practitioners

The National Health Service in England is primarily a system based on public taxation. GPs are either directly employed by the NHS or operate as private contractors under contract with the NHS.

NHS liability: Where physicians work as employees within the NHS, the NHS, as employer, bears legal responsibility for the acts of its staff within the framework of vicarious liability.

Liability of contractor GPs: Even GPs who operate independently, because of the nature of their contract with the NHS and their provision of public services, remain subject to NHS supervision and regulations, and their civil liability is assessed according to similar principles. Many of these GPs have professional liability insurance.

Role of insurance: Professional liability insurance plays a vital role in covering damages arising from medical negligence and assures GPs that, in the event of error, the necessary financial coverage for compensation will be available (Clark & Nolan, 2020).

3.3. Comparison of the Civil Liability Systems of the Family Physician in Iran and England

Comparative examination of the civil liability systems of the family physician in Iran and England not only helps explain more precisely the strengths and weaknesses of each legal system, but also provides a suitable foundation for using successful achievements and proposing evidence-based reforms in health law. Although the two countries differ fundamentally in terms of theoretical foundations, legal structure, and executive approaches, considerable convergence is observed in several key areas in the manner of analyzing and applying rules related to physicians' civil liability, especially that of the family physician.

In both systems, the concept of civil liability is based on the realization of three essential elements: commission of a harmful act, occurrence of damage, and establishment of a causal relationship. These elements constitute the main framework of legal reasoning in claims arising from medical negligence. Moreover, the liability of the physician, including the family physician, is generally interpreted in both countries as an "obligation of means," meaning that the physician is required to observe the standards of ordinary professional care, skill, and knowledge, without having an obligation to achieve a therapeutic result. In addition, the position of the family physician as the frontline provider of health services and the physician's role in managing

the referral system are centrally important in both legal systems, and negligence in timely referral of patients may constitute an independent basis for civil liability. The criteria for assessing the physician's conduct in both countries are also determined on the basis of medical custom and accepted professional standards, and the burden of proving fault rests on the claimant (Katouzian, 2012; Meslahi, 2015; Shafiei Sarvestani et al., 2011).

However, important structural and philosophical differences exist between the two systems. In Iran, civil liability law, in addition to codified laws such as the Civil Code and the Civil Liability Act of 1960, is strongly influenced by Imamiyyah jurisprudence; principles such as no harm, causation, and precaution play a prominent role in judicial reasoning. In England, by contrast, the principal foundation of civil liability is based on common law, historical case law, and principles of tort law. In determining the criterion of the "reasonable conduct of the family physician," Iran relies mainly on the opinion of official experts, the disciplinary boards of the Medical Council Organization, and judicial assessment, and the absence of a comprehensive and integrated statute in the field of medical negligence has created considerable ambiguity. By contrast, the English legal system, by using specific and established criteria such as the Bolam and Bolitho tests, provides a more precise framework for assessing professional conduct and, through the important Montgomery decision, has introduced the concept of "informed consent" as an inseparable component of the standard of care (Clark & Lawry, 2020).

From the perspective of coherence and transparency of laws, the differences are also significant. The Iranian legal system faces dispersed regulations and the absence of an independent statute in the field of medical civil liability, whereas in England, although the common law system is flexible, extensive case law and related legislation such as the Health and Social Care Act have created a relatively transparent, stable, and predictable structure. Moreover, differences in the macro-structure of the health system also affect the manner in which civil liability is applied; Iran faces a primarily public and centralized system and resource limitations, while England, through the NHS model and the established position of the family physician as the gatekeeper of the health system, enjoys greater efficiency in providing primary services and managing resources.

3.4. Comparative Analysis of the Criterion of "Reasonable Conduct of the Family Physician"

Comparative analysis of the criterion of "reasonable conduct of the family physician" in the two legal systems of Iran and England is not merely a comparison of two methods for evaluating the physician's professional conduct, but an examination of two entirely distinct models in understanding the nature of civil liability, the purpose of the health law system, and the regulation of the physician-patient relationship. This criterion, which plays a fundamental role in medical negligence claims, determines the level of information, skill, care, precaution, and professional action at which the family physician must operate in order to be exempt from civil liability. Therefore, differences in the theoretical foundations and methodology of determining this criterion have direct and profound consequences for the predictability of the physician's conduct, the legal security of health service providers, and the patient's confidence in receiving standard care.

In Iran, the criterion of the reasonable conduct of the family physician is formed within a context that is, on the one hand, influenced by the general rules of civil liability in the Civil Code and the Civil Liability Act of 1960, and, on the other hand, rooted in jurisprudential principles such as no harm, destruction, causation, and precaution. This framework has a reactive and largely case-centered character, because the legislature, unlike in some countries, has not codified precise and systematic criteria relating to the physician's professional conduct and has left determination of this criterion to medical custom, the opinion of the disciplinary boards of the Medical Council Organization, and the assessment of official judicial experts. Thus, in each claim, the criterion of reasonable conduct is determined through case-by-case analysis and in light of the specific circumstances of the case.

Although this structure has considerable flexibility and enables adaptation of the criterion to specific clinical situations and therapeutic necessities, it also suffers from important weaknesses. Heavy reliance on expert opinion, which sometimes lacks coherence, stability, or explicit and predictable criteria, means that the reasonable conduct of the family physician in Iran is not predetermined and reliable. As a result, at the beginning of service provision, the physician cannot precisely assess the limits of duties and scope of liability, and legal certainty is relatively impaired. In addition, the Iranian judicial system relies more on fault-based liability, and the criterion of fault is extracted by experts on the basis of the conduct of the reasonable physician; however, the dimensions of this fault in the medical field, especially in general practice and family medicine, have not been explained in codified laws, and this creates room for different and sometimes conflicting interpretations.

By contrast, England, with a long history in developing rules of civil liability in the form of tort law, has built the criterion of reasonable conduct of the family physician on a judicially centered, systematic, and preventive framework. The Bolam test of 1957 and the Bolitho test of 1997, as two basic pillars of this framework, have provided a relatively clear, predictable, and generally applicable standard in medical negligence claims. According to the Bolam test, the conduct of a physician is acceptable when it conforms to the practice of a responsible body of physicians possessing similar skill. This test, which is based on professional custom and norms, provides an important point of reference for judging "acceptable professional conduct" (Clark & Lawry, 2020).

However, English case law took this criterion a step further by adding the Bolitho test and established that the opinion of a group of specialists is valid only when it has a scientific, logical, and defensible basis. This development has effectively deprived physicians of the possibility of defending themselves on the basis of outdated, unscientific, or logically unsupported customs and has brought the relationship between professional standards and current scientific criteria closer. Later developments, such as the Montgomery decision of 2015, also extended the scope of the reasonable conduct criterion to the field of "information disclosure" and "informed consent" and created a legal obligation for the family physician to act in accordance with current standards not only from a technical and diagnostic perspective, but also from an ethical and communicative perspective (Baker, 2015).

A noteworthy point is that the criterion of reasonable conduct in England is not merely a reaction to the emergence of disputes, but also has a norm-setting and guiding role. Physicians are trained according to these tests, clinical guidelines are formulated, and therapeutic practices are modified on their basis. The result is that the family physician in England, before entering into the therapeutic relationship, has a clear picture of professional requirements and knows which criteria the court will rely on in the event of a dispute; this feature may be referred to as "legal predictability."

In summary, it can be said that Iran has a flexible but dispersed, incoherent model dependent on experts' ex post facto determinations, whereas England, with its practice-based, scientific, and evolved criteria, has provided a transparent, predictable, and preventive system that both supports the patient more effectively and guarantees a higher level of professional security for physicians. This comparative analysis shows that, in order to improve the civil liability regime of the family physician in Iran, there is a need to codify legal or quasi-legal criteria, strengthen clinical guidelines, and reduce absolute reliance on expert opinions; this can lead to increased public trust, reduction of conflicting claims, and improvement in the quality of primary healthcare services.

3.5. The Position of the Theory of "Obligation of Means" in Each Legal System and Its Practical Effects

In the Iranian legal system, although the concept of "obligation of means" is not expressly mentioned as a technical term in codified laws, a set of principled, procedural, and jurisprudential foundations move coherently toward accepting this theory. From a jurisprudential perspective, principles such as "non-guarantee of result in contracts," "dominion," "respect for property and life," and the distinction between "cause" and "direct actor" all indicate an orientation that regards the physician as required only to provide "reasonable means" and "necessary measures," not to guarantee the therapeutic result. At the level of judicial practice as well, courts, by relying on expert opinions and professional medical custom, generally analyze the liability of the family physician within the framework of the obligation of means; accordingly, the criterion of liability is not failure to achieve treatment, but establishment of failure to observe precaution, imprudence, carelessness, or failure to comply with governmental regulations.

In terms of practical effects, acceptance of this approach means that the burden of proof largely rests on the patient. The patient must prove that the family physician, despite reasonable access to medical facilities, refrained from taking reasonable measures in diagnosis, treatment, monitoring, or timely referral. For this reason, mere failure of treatment or continuation of disease cannot by itself indicate fault. Although this situation creates a form of structural protection for physicians and supports their professional security, at the same time, because of the absence of explicit and coherent legal criteria, the concept of "reasonable means" is ambiguous in many cases. This ambiguity leads to extensive reliance on expert determinations in each case and may potentially result in different, sometimes conflicting, and unpredictable outcomes.

In English law, the theory of "obligation of means" has a much stronger theoretical and procedural foundation in the form of the "duty of reasonable care." This obligation falls within the general framework of civil liability in tort law and has been

established through the gradual development of case law. The Bolam test, as a historical turning point, provides that the physician's conduct falls within the framework of the duty of reasonable care when it conforms to the conduct of a responsible body of qualified physicians. The complementary Bolitho test further developed this criterion and requires courts not to be satisfied merely with professional custom, but to examine whether the opinion of the group of specialists has scientific logic, internal coherence, and defensibility. Thus, the obligation of means in England is not a formal criterion, but a rational-scientific standard that links medical custom to legal requirements and science-based principles (Mason & Lowry, 2017).

The practical effects of this structure in England are multidimensional. First, the absence of a guarantee of therapeutic result protects the physician from strict liability, but, on the other hand, the obligation to observe precise scientific, diagnostic, communicative, especially after Montgomery in the field of informed consent, and documentation standards increases professional liability in its qualitative dimension. The family physician must show that every clinical action or decision has been taken on the basis of valid and defensible scientific principles. The Bolitho test plays a particularly elevating role in this regard, because the physician cannot defend merely by referring to the existence of a group of supporting specialists, but must show that this group opinion is also rational and evidence-based from the court's perspective. The practical result of such an approach is increased transparency, strengthened patient trust, and improved quality of primary healthcare, without requiring the physician to guarantee the result (Jackson, 2016).

3.6. The Position of the "Obligation of Means" in the Civil Liability of the Family Physician in the English Legal System

It is certain that the civil liability of the family physician, or GP, in the English legal system is, in practice and from the perspective of theoretical foundations, analyzable under the heading of "obligation of means." This theory requires the physician to exercise utmost reasonable and ordinary professional care, skill, and effort in providing diagnostic, therapeutic, counseling, and referral services, not to guarantee the achievement of a specific therapeutic result.

The reasons and practical indicators of this approach are as follows:

The principle of non-guarantee of therapeutic result: The English legal system recognizes the probabilistic and uncertain nature of medical acts. There is no guarantee of achieving complete recovery for the patient, and even with full observance of professional standards, unfavorable results or failure to achieve the desired therapeutic outcome may occur. Consequently, courts do not hold a GP liable merely because the patient did not achieve the desired therapeutic result, unless this non-achievement resulted from breach of the "duty of reasonable care."

Centrality of process and conformity with standards: In claims concerning medical negligence, the main focus of courts is on "how" the physician performed the duties, not on the "result" achieved. The fundamental questions are: Was the GP's conduct assessed according to the Bolam and Bolitho criteria, which will be discussed further? Was necessary and sufficient information provided to the patient? Was the process of referring the patient to higher levels of care carried out in a timely manner and on the basis of clinical necessities? Answers to these questions form the basis for determining liability.

Strategic role of the Bolam and Bolitho criteria: As noted earlier, the Bolam and Bolitho criteria provide the conceptual framework necessary for determining the "means" or "correct method" in the medical profession. These criteria define the standards of "reasonable care" and assess the conformity of the physician's conduct with these standards, without directly guaranteeing the final result (Brazier & Cave, 2016).

Vicarious liability of the NHS: Where liability is attributed to the National Health Service as the employer of the GP, this liability is ultimately also based on proof of the physician's negligence, that is, breach of the "obligation of means."

Although the principle is based on the "obligation of means," the distinction between this obligation and the "obligation of result" becomes subtle and complex in some practical scenarios. For example, if a GP commits a gross and indefensible diagnostic error in relation to a common disease with obvious symptoms, which clearly constitutes breach of the "obligation of means," and this error results in serious harm to the patient, the unfavorable outcome, such as failure to recover or deterioration of the patient's condition, may be regarded as decisive evidence of defect in the physician's use of the "means." However, the legal basis of liability remains proof of fault in the performance of professional duties, meaning breach of the obligation of means.

4. Evaluation and Foresight in the Civil Liability of the Family Physician

This section has been developed to summarize the discussions raised concerning the civil liability of the family physician in the two legal systems of Iran and England, to provide a comprehensive critique of existing approaches, and finally to propose an operational model for improving the situation in Iran. The ultimate objective is to outline a clear and reasoned path for enhancing transparency, judicial justice, and efficiency in this vital field of the health system.

4.1. Structural Challenges and Ambiguities in the Civil Liability of the Family Physician in Iran

Examination of the civil liability of the family physician in the Islamic Republic of Iran, despite the increasing importance of this position in the structure of health service providers, faces a set of complex legal and operational challenges that require in-depth analysis and innovative solutions. These challenges are mainly rooted in the nature of the Iranian legal system, the inherent complexities of the medical profession, and the general structure of the health system. At this point, the most important of these challenges are discussed in detail:

Dispersion of laws and absence of a codified and integrated framework: One of the most fundamental obstacles to the precise determination and enforcement of the civil liability of the family physician in Iran is the severe dispersion and lack of coherence among related laws and regulations. While advanced legal systems have comprehensive, codified, and integrated laws in the field of medical professional liability, in Iran, dispersed and sometimes contradictory rules are distributed across multiple sources, which itself creates ambiguity and difficulty in citing and applying them:

The Civil Liability Act of 1960: This Act, by providing general definitions of harmful act, damage, and causal relationship, forms the general framework of civil liability. Articles 1 and 2, although general and lacking the details necessary for full adaptation to the complexities of medical error, provide the principal basis for civil liability claims. However, this statute alone cannot cover all specialized dimensions of medical error (Tariverdi & Sadeghi, 2024).

The Islamic Penal Code: Articles 492 to 499 of this Code address offenses arising from fault in medical matters. Although these provisions concern criminal liability, the basis of fault, including carelessness, imprudence, lack of skill, or failure to observe governmental regulations, is common to both criminal and civil fields, and judges and experts use these provisions as a basis for establishing civil fault as well. Nevertheless, the focus of these articles on the criminal aspect is not sufficient to comprehensively cover the dimensions of civil liability.

The Medical Council Act and the establishment of the Medical Council Organization of 1996, with subsequent amendments: This statute primarily concerns the disciplinary and professional aspects of the medical profession. However, the disciplinary review boards of the Medical Council Organization, including first-instance and appellate boards, play a significant role in determining and establishing "medical negligence." Although the decisions issued by these boards do not have independent judicial and civil status, they have considerable effects on the process of civil claims and the determination of fault in courts.

Specific and subsidiary laws and regulations: In addition to the above, decisions of the High Council of Insurance, circulars and guidelines issued by the Ministry of Health and Medical Education, and internal regulations of insurance organizations each affect, in some way, the scope of duties, professional standards, and consequently the scope of liability of physicians, including family physicians (Davarzani et al., 2023).

Jurisprudential and principled foundations: General jurisprudential principles such as the no-harm principle, causation, precaution, and possession are also invoked as argumentative bases in judicial decisions, advisory opinions, and expert views, and in cases where no clear legal text exists, they guide legal inference.

This dispersion of sources and absence of a codified and comprehensive framework leads to ambiguity in determining the precise criterion of the "standard of reasonable care," difficulty in predicting legal outcomes of claims, and the necessity of adopting multiple and sometimes contradictory interpretations by judicial and disciplinary authorities. This situation may potentially undermine the confidence of both parties to the dispute, namely the patient and the physician, in the legal system and in a fair adjudicatory process.

4.2. Difficulty of Establishing Fault in the Role of the Family Physician

The role of the family physician, who acts as the first line of the health system, is very broad and at the same time requires accurate and timely diagnosis. This breadth creates serious challenges in establishing "fault" or "negligence":

Obligation of "means," not "result": As mentioned earlier, the principal obligation of the physician, especially the family physician, is an obligation of "means," meaning the use of reasonable care, skill, and knowledge. Proving breach of this obligation requires showing that the physician failed to observe the necessary professional standards. Unlike an obligation of result, where non-achievement of the result means establishment of liability, this requires proof of a specific act or omission by the physician.

Ambiguity in the "standard of reasonable care": Determining the "reasonable and skilled physician in the relevant field" or the "standard of care" is very difficult in practice. Should this standard be based on the prevailing custom at the time of the incident? Should it follow domestic treatment protocols? Should international standards also be considered? In the absence of codified and comprehensive clinical protocols, reliance on the opinion of medical experts, who may have different views, is inevitable, and this itself leads to lack of uniformity in judicial practice.

Complexity of differential diagnosis: The family physician faces a wide range of nonspecific symptoms that may indicate numerous diseases. Correct differential diagnosis requires experience, broad knowledge, and consideration of all possibilities. Diagnostic error, if it does not result from failure to observe scientific and professional standards, for example where it results from the rarity of the disease or overlap of symptoms, does not necessarily amount to fault (Ahmadi et al., 2015).

Workload and resource limitations: Family physicians often face heavy workloads, numerous clients, and time and resource limitations. Although these factors cannot justify negligence, they must be taken into account in analyzing the circumstances and assessing the degree of expected care and skill.

4.3. The Issue of Referral and Shared Liability with the Specialist

Timely and correct referral of the patient to higher specialized levels is one of the vital duties of the family physician. Negligence in this regard may have irreparable consequences for the patient and lead to a claim against the family physician. However, this issue has its own ambiguities and challenges:

Scope of the duty to refer: When is referral mandatory? Does every doubt in diagnosis or need for specialized examination require immediate referral? What are the criteria for identifying "necessary referral"? The answer to these questions depends on the precise determination of the "standard of care" in the duty of referral.

Shared liability: If negligence in referral is committed by the family physician and the patient suffers damage because of delay in receiving specialist treatment, the family physician will be liable. However, if the specialist physician also commits negligence in diagnosing or treating the patient, liability will be divided between the two. Determining the share of each party in causing the final damage may be a complex issue before the court (Davarzani, 2017).

Effect of an inefficient referral system: In Iran, the referral system is not fully efficient, and patients sometimes have access to specialists without formal referral by the family physician. This situation, while weakening the role of the family physician, may also create ambiguities in analyzing the physician's liability. In the absence of a strong referral system, should expectations from the family physician regarding accurate referral be the same as in codified systems?

4.4. Problems of Proving Causation

The final essential element of civil liability is the causal relationship between the harmful act, meaning fault, and the damage sustained. Proving this relationship in medical claims, especially in the field of the family physician, has always been one of the most difficult stages of adjudication:

Nature of diseases and treatments: Many diseases have a naturally progressive or spontaneously improving course. Moreover, many treatments may have side effects, some of which are unavoidable. In such circumstances, distinguishing between "damage caused by physician fault" and "damage that was part of the natural course of the disease or a side effect of treatment" is very difficult.

Role of multiple factors: Often, damage sustained by the patient is not the result of a single act or omission, but of a set of factors, including the patient's lifestyle, genetic conditions, other underlying diseases, and possible negligence by other physicians at more specialized levels. Determining the share of each of these factors in causing the final damage requires highly precise and complex expert analysis.

Nature of the "obligation of means": Given that the physician's obligation is an obligation of means, proving causation in this field becomes more difficult. Merely proving that if the physician had behaved differently, in accordance with the standard, a better result would have been achieved is not sufficient. It must be shown that this different conduct would certainly have prevented the occurrence or aggravation of the damage (Meslahi, 2015).

Importance of documentation: The absence of accurate and complete documentation in the patient's medical file, including history-taking, examinations, treatment course, reasons for referral, and consultations, may make proving or refuting causation difficult for both parties to the claim, namely the patient and the physician.

These challenges require the Iranian legal system, with a realistic and scientific approach, to develop clearer legal frameworks, codified clinical protocols, and improved specialized knowledge among experts and judges in the medical field in order to protect the rights of all stakeholders more appropriately.

5. A Proposed Theoretical and Legal Model for the Civil Liability of the Family Physician

Transitioning from the current situation in determining the civil liability of the family physician, which faces numerous theoretical and practical challenges, requires fundamental reconsideration of theoretical foundations and legal and executive reforms. This section, while presenting a theoretical framework, proposes practical recommendations in three main areas: physician obligations, criteria for assessing professional conduct, and structural reforms in the legal and executive system of health.

5.1. Theoretical Explanation of the Obligations of the Family Physician: Returning to the Model of "Obligation of Means"

The firm foundation of the physician's civil liability lies in breach of professional obligations. As emphasized earlier, the fundamental nature of the physician's obligation is defined in the form of the "obligation of means." This means that the physician undertakes to employ all reasonable efforts, including specialized knowledge, clinical skills, necessary care, and professional precaution in diagnostic and therapeutic processes; this does not guarantee the therapeutic result, but focuses on the process of service provision. However, adapting this theoretical concept to practical realities, especially in the special position of the family physician, requires more precise explanation and clarification of its components.

In this regard, to implement the model of "obligation of means" in the field of the family physician, three essential axes require attention and clear definition:

Clear definition of the "obligation of means" in the context of the family physician: The first step is to determine precisely and explicitly the instances of the "means" to which the family physician is obligated. These components must go beyond the physician's individual effort and cover a broader scope. This scope includes adherence to codified and approved treatment protocols, use of current and continuous medical knowledge, possession of the necessary skills in initial diagnosis and treatment, effective and transparent communication with the patient, and correct and timely management of the referral process to more specialized levels.

Distinction between the duties of the family physician and the specialist physician: Within the theoretical framework, a clear and precise distinction between the duties and scope of responsibility of the family physician and the specialist physician is necessary. The duties of the family physician, which include initial diagnosis, screening measures, management of common and chronic diseases, follow-up of routine treatments, and most importantly, timely and correct referral to relevant specialists, must be clearly distinguished from the duties of the specialist physician. The specialist physician is responsible for diagnosing and treating complex, rare diseases and conditions requiring specialized measures. This distinction provides the basis for benchmarking and assessing the "reasonable conduct" of each of these levels of service providers (Rostami et al., 2022).

Identification and explanation of duties and obligations arising from the "law of referral": The duty of referral is itself one of the fundamental and inseparable pillars of the "obligation of means" in the family physician system. It must be clearly specified under what circumstances and criteria failure to refer the patient in a timely manner or incorrect referral will be

regarded as breach of this obligation. This requires developing objective, reliable, and evidence-based criteria for referral decision-making in order to prevent arbitrary determinations.

5.2. Providing Criteria for Assessing the "Reasonable Conduct" of the Family Physician

One of the most complex and at the same time most vital aspects in determining the physician's civil liability concerns the challenge of assessing the physician's "reasonable conduct." To resolve this fundamental ambiguity and create an objective and reliable basis for evaluating the performance of the family physician, it is proposed that the following criteria be considered comprehensively and systematically in the civil adjudication process:

Development of comprehensive and codified clinical protocols: The most fundamental step toward creating an objective criterion is developing codified and comprehensive clinical protocols for common diseases and ordinary conditions that the family physician encounters daily. These protocols, which must be based on the latest scientific findings and evidence-based medicine, should be developed by considering local conditions and the characteristics of Iran's health system, with the active participation of leading clinical experts, jurists specialized in health law, and experts in the health and treatment system. These codified protocols provide a reliable foundation and objective criterion for assessing the "reasonable conduct" of the family physician and reduce exclusive reliance on subjective and case-by-case evaluations (Sharifi, 2024).

Use of the principle of the "reasonable physician under similar circumstances": In cases where no comprehensive codified protocol has been developed for a particular situation, or where full and unambiguous application of the protocol to the patient's unique clinical details is not possible, the principle of the "reasonable physician under similar circumstances" should serve as the criterion for assessing the physician's conduct. This principle requires that the conduct of the physician under review be compared and assessed not against an ideal and abstract standard, but against the conduct of an ordinary family physician who, under the same circumstances, had the same level of knowledge, access to information, diagnostic and therapeutic facilities, and time limitations. This approach, while preserving realism, enables a fairer evaluation.

Central role of specialized expert boards: Determining whether the physician's conduct conforms to professional and customary standards is, by its nature, a matter requiring technical knowledge and expertise. Therefore, ultimate responsibility for assessment and expert opinion on the conformity of physician conduct with "reasonable conduct" should be assigned to specialized expert boards composed of physicians specialized in the same field as the therapeutic area of the physician under review and experienced jurists in medical matters and professional liability. The opinions issued by these boards must be documented, reasoned, and transparently based on approved protocols, current scientific evidence, and established legal and professional principles.

Assessment of timing, prioritization, and emergency conditions: In the process of assessing the physician's conduct, temporal considerations and prioritization of duties at the time of the incident must be considered. For example, in emergency situations, the evaluation should focus on whether the family physician gave priority to vital and life-saving measures or instead focused on completing administrative documentation. Correct understanding of time pressure and the need for immediate decision-making in critical situations is necessary for fair evaluation of physician conduct.

5.3. Proposed Legal and Regulatory Reforms for Systematizing the Civil Liability of the Medical Profession

In order to institutionalize the theoretical framework discussed above and remedy existing legal and executive deficiencies in the field of civil liability of the medical profession, the following fundamental reforms are proposed. Their implementation can contribute to transparency, precision, and justice in this area:

Development of a "Comprehensive Act on Civil Liability in the Medical Profession": The basic priority is to move away from reliance on existing scattered and inefficient laws and to develop a "Comprehensive Act on Civil Liability in the Medical Profession." This statute should, with a contemporary approach suited to modern medical and legal developments, codify precise definitions of key concepts of civil liability, distinguish and explain types of errors, including errors in diagnosis, treatment, drug prescription, and negligence in performing legal duties, determine specific criteria for assessing fault, including intentional conduct, quasi-intentional conduct, and error, establish the manner of precisely assessing the causal relationship between fault and damage sustained, and provide effective and fair compensation mechanisms for injured persons. Such a law would provide a clear and reliable basis for all stakeholders in the health system.

Reform and completion of related executive regulations: Current executive regulations governing the patient referral system, precise determination of the duties and limits of authority of the family physician, and the mechanism for handling patient complaints require fundamental revision, completion, and clarifying reforms. These regulations should be rewritten in such a way as to remove existing ambiguities and provide a clear and operational framework for implementing the relevant laws and regulations. Transparency in these regulations is an important step toward preventing disputes and facilitating judicial and administrative processes (Mousavi et al., 2022).

Strengthening the role and ensuring the independence of expert boards: To improve the accuracy and credibility of specialized authorities in determining the conformity of physicians' conduct with professional standards, it is necessary to devise effective mechanisms for ensuring the real independence and increasing the credibility of official judicial expert boards and the Medical Council Organization. This includes developing transparent guidelines for selecting and appointing board members, creating mechanisms to prevent influence in review processes, and requiring judges to document their decisions on the basis of specialized and reasoned expert opinions. Strengthening the position of these boards will ensure justice in medical cases and reduce exclusive reliance on individual judicial opinion in specialized matters.

5.4. Examining the Adaptability of the English National Health Service Model to the Iranian Health System

The English National Health Service, as a prominent model in providing family-centered health and treatment services based on the central role of the family physician, despite considerable structural, cultural, and economic differences between the two countries, can serve as an inspiring and strategic model for fundamental reforms in the Iranian health system. The adaptability of this model to Iranian conditions can mainly be examined through the following key features:

Emphasis on the central role of the family physician as the "gatekeeper of the health system": In the NHS model, the family physician plays a vital role as the first point of contact and the "gatekeeper" of the health system. This physician is responsible for initial assessment of patients, provision of primary care, and coordination and referral of patients to more specialized levels of the health system. This approach, while preventing unnecessary visits to specialists, significantly helps optimize resource management and improve the quality of continuous care. Adapting this role in Iran requires redefining the position of the family physician and strengthening the physician's powers and responsibilities within the referral system.

Implementation of transparent and supported mechanisms for specialist referral: The referral system in England, by having specific treatment protocols and using electronic support tools, assists family physicians in making informed decisions for referring patients to specialized levels. This system ensures transparency in the referral process and prevents unnecessary referrals or delay in referral. Creating such a codified and technology-based mechanism in Iran, relying on clinical protocols and the electronic health record system, can significantly improve the efficiency of the referral system (Shafiei Sarvestani et al., 2011).

Use of the Electronic Health Record system for documentation and assessment: The extensive and systematic use of Electronic Health Records in the NHS enables accurate documentation of patients' clinical records and easy and rapid access to their information. This plays a vital role in determining the treatment process, evaluating the effectiveness of interventions, and in legal processes related to determining physician liability. Implementation and development of a comprehensive EHR system in Iran would provide essential infrastructure for improving service quality, increasing transparency, and facilitating assessment and accountability processes (Brazier & Cave, 2016).

Existence of relatively clear frameworks for determining physician liability: Laws and judicial practices in England have developed and implemented relatively clear legal frameworks and professional standards for determining the civil liability of physicians, including family physicians. These frameworks base the evaluation of physicians' performance on reasonable professional standards and the extent to which they are observed. Developing and establishing such transparent and specific legal frameworks in Iran, relying on the earlier discussions of reasonable conduct criteria, will help create legal certainty for patients and physicians.

Successful adaptation of the NHS model to the Iranian health system requires numerous reform and infrastructural measures. These measures include fundamental reconsideration of the payment structure for family physicians in order to create sufficient incentive for their effective performance, substantial strengthening of health information technology infrastructure, especially in the fields of Electronic Health Records and referral information systems, and development of legal and executive frameworks

similar to those existing in England for specialist referral and determination of physicians' civil liability. Only through comprehensive implementation of these reforms can the capacities of the NHS model be used in the best possible way to improve the country's health system.

5.5. Strengthening the Referral System and Medical Documentation: Two Key Pillars in Improving the Civil Liability of the Family Physician

To improve the performance of the health system, reduce challenges related to the civil liability of the family physician, and increase transparency and justice in this field, simultaneous strengthening of two basic pillars, namely the referral system and medical documentation, is necessary and fundamental. Together, these two mechanisms can provide a strong basis for evaluating physicians' performance and guaranteeing patients' rights.

5.5.1. Strengthening and Systematizing the Referral Process

Strengthening the referral system requires the following structural and technological measures:

Comprehensive digitalization of the referral process: Creating and implementing an integrated electronic referral system is a vital step toward facilitating the process of referring patients by the family physician to relevant specialists. This system must also enable the family physician to receive referral feedback and responses so that a complete communication cycle is formed among the different levels of the health system.

Precise definition of service level classification: Determining and clearly explaining service level classification specifies which categories of diagnostic and therapeutic services should be provided at the first level, meaning by the family physician, and which categories require referral to more specialized levels, such as referral centers or hospitals. This prevents unnecessary referrals and allocates specialist resources to cases genuinely in need (Alipour, 2015).

Creation of an effective supervisory mechanism over the referral process: Establishing an efficient supervisory system to ensure the correctness, timeliness, and appropriateness of referrals made by family physicians is necessary. This supervision can help identify weaknesses and provide corrective feedback to physicians.

5.5.2. Requirement of Accurate, Complete, and Standardized Medical Documentation

Accurate and complete documentation of medical records functions as the memory of the health system and plays an irreplaceable role in determining the course of treatment, evaluating physician performance, and creating a legal basis for civil liability:

Mandatory and complete implementation of the Electronic Health Record: Developing and fully and mandatorily implementing the Electronic Health Record for all levels of the health and treatment system, from primary health centers to specialized hospitals, is an undeniable necessity. This system enables centralization of information and integrated access to the patient's records.

Definition and communication of the standard content of the medical file: Developing and communicating a specific content standard for medical files, which determines the minimum necessary information in each examination, diagnosis, and treatment process, is vital. This standard must include the patient's complete history, clinical signs and symptoms, physical examination findings, paraclinical results, proposed differential diagnoses, therapeutic decisions made, drug and treatment orders, and documented reasons for referring the patient to higher levels (Katouzian, 2012).

Continuous and specialized training of physicians in documentation: Holding continuous and targeted training courses for all physicians, with emphasis on the vital importance of correct documentation and the manner of accurately and comprehensively completing medical files, is a fundamental step toward promoting a culture of precision and accountability in this field.

Through comprehensive and all-encompassing implementation of these proposals, it is possible to take an effective and sustainable step toward improving transparency, justice, and efficiency in the civil liability regime of the family physician in Iran and, consequently, to significantly increase public trust in this vital and fundamental part of the health system.

6. Conclusion

Relying on an in-depth and comparative analysis of the mechanisms of civil liability of the family physician in the Iranian legal system and international experiences, this study has sought to identify existing challenges precisely and to provide a comprehensive and operational theoretical and legal model for improving this vital field. The findings of this research provide a reasoned answer to the main question of the article and confirm the initial hypotheses. The practical importance of the results of this research lies in their capacity to guide policymaking and structural reforms in the country's health system, especially in the field of the family physician. The comparative analysis indicates that, despite fundamental commonalities in key concepts of civil liability, such as the principle of "obligation of means" and the need to observe the "standard of reasonable care," substantive differences are observed in the legal and executive approaches of the Iranian system and leading countries. Although the concept of "obligation of means" is accepted in all systems, the main challenge in Iran is the absence of an operational and codified definition of "means" and "standard of care" at different levels of family physician service delivery.

This ambiguity creates a foundation for divergent judicial interpretations and difficulty in establishing fault. By contrast, systems such as England have clearly determined the limits of duties and expected standards through comprehensive clinical protocols, transparent guidelines, and Electronic Health Records. The issue of proving the causal relationship between a possible physician error and the damage sustained has always been challenging in complex diseases with chronic courses. However, in Iran, this challenge is intensified by weakness in the referral system and lack of transparency in determining the limits of responsibility of the family physician and the specialist in the referral process. Successful models have removed these obstacles by digitalizing the referral process, determining precise service level classification, and defining shared responsibilities where necessary. Examination of the English NHS model places special emphasis on the central role of the family physician as the "first point of contact" and "coordinator" of healthcare.

Transparency in referral, full establishment of Electronic Health Records, and clear liability frameworks are among the key components of the success of this model and are adaptable to Iranian conditions. The basic question of this research sought a fundamental answer in the theoretical and legal redefinition of the civil liability of the family physician. The findings of this study show that the existing ambiguity in Iran is not a minor issue, but is rooted in the absence of a comprehensive statute on the civil liability of the medical profession, the lack of comprehensive and operational clinical protocols, and weakness in documentation and supervisory infrastructure. The desirable theoretical and legal model is based on the following foundations: theoretical explanation of the obligations of the family physician through providing a clear and operational definition of the family physician's "obligation of means," distinguishing the physician's duties from those of the specialist physician, and precisely identifying obligations arising from referral law; determining criteria for assessing reasonable conduct through development of evidence-based clinical protocols, use of the criterion of the "reasonable physician under similar circumstances," while considering executive and resource limitations, and determining the role of qualified experts and specialized boards in assessing professional conduct; implementing legal and regulatory reforms through the requirement to develop a "Comprehensive Act on Civil Liability in the Medical Profession," reforming and completing existing regulations, and strengthening the independence and competence of expert boards; and finally, strengthening the referral and documentation system through complete digitalization of the referral process, precise determination of service level classification, mandatory establishment and efficient use of Electronic Health Records, and continuous training of physicians regarding proper documentation. The main hypothesis of the study, namely that "the existing theoretical and legal ambiguities in determining the civil liability of the family physician in Iran are mainly due to the absence of a codified legal framework and sufficient clinical protocols, and that structural and legal reforms constitute an essential solution for overcoming these challenges," has been decisively confirmed. Comparative evidence indicates that advanced legal systems, relying on comprehensive laws, codified standards, and strong supportive infrastructures, have been able to achieve higher levels of transparency, justice, and efficiency in the field of civil liability.

By contrast, the current situation in Iran, by revealing legal and operational gaps, highlights the necessity of a reform-oriented approach. The practical and strategic implications of the results of this research for the development of the health system are multidimensional and profound: increasing social capital and public trust through transparency of responsibilities and guaranteeing patients' rights; improving the quality and safety of services through the development and implementation of codified clinical protocols; optimizing judicial and administrative processes by reducing legal ambiguities; effective

management of resources and the referral system through full establishment of the family physician as the gatekeeper of the health system; and balanced protection of stakeholders' rights by providing a fair framework for assessing physicians' liability and guaranteeing patients' rights. Ultimately, this study emphasizes the principle that achieving an efficient, just, and accountable health system requires adopting a comprehensive and interdisciplinary approach to reforming and redefining civil liability mechanisms, especially in the field of the family physician. This not only helps improve the satisfaction of patients and physicians, but also prepares the ground for achieving macro-level sustainable development goals in the country's health sector.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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