

# Research on the Legal Issues of Doctor-patient Relationship Under the New "Law on Protection of Rights and Interests of Consumers"

Pengfei Zhang  
China Jiliang University  
Hangzhou, China

**Abstract**—Whether the doctor-patient relationship can be included in the adjustment of "Law on Protection of Rights and Interests of Consumers" is a controversial topic in the legal circles and judicial practice in recent years. In other words, whether the doctor-patient relationship in the main medical and health undertakings of the state can also apply to the adjustment of "Law on Protection of Rights and Interests of Consumers" has become a focus topic. Although some scholars define hospitals as operators and patients as consumers, there are no corresponding provisions in the "Law on Protection of Rights and Interests of Consumers". Relevant medical malpractice treatment regulations can only protect the interests of patients who suffer personal injury due to medical malpractice, while patients can't take up the weapon of "Law on Protection of Rights and Interests of Consumers" to safeguard their rights and interests due to the inadequate medical services of medical institutions. The author believes that using the "Law on Protection of Rights and Interests of Consumers" to adjust doctor-patient relationship provides a new way to resolve doctor-patient disputes, which is conducive to protecting patients' rights, promoting the reform of medical system, and building a harmonious social atmosphere.

**Keywords**—doctor-patient relationship; living consumption; right of health and safety

## I. INTRODUCTION

In 2013, China amended the "Law on Protection of Rights and Interests of Consumers", strengthened the obligations of operators, and paid attention to the protection of consumers' rights and interests. Financial services, automobile and other services were included in the protection scope of "Law on Protection of Rights and Interests of Consumers". However, there are disputes about whether the "Law on Protection of Rights and Interests of Consumers" protecting the doctor-patient relationship. Some scholars believe that the "Law on Protection of Rights and Interests of Consumers" has a protective effect on the adjustment of doctor-patient relationship, while some scholars believe that doctor-patient relationship does not fall within the scope of the "Law on Protection of Rights and Interests of Consumers". In this case, the adjustment of "Law on Protection of Rights and Interests of Consumers" on the doctor-patient relationship has become an important discussion item in the legal field. Studying the adjustment of

the new "Law on Protection of Rights and Interests of Consumers" on the doctor-patient relationship can not only standardize the doctor-patient relationship, but also have profound significance for the protection of patients' legitimate rights and interests.

## II. DIVERGENCES ON THEORY

Whether the scope of "Law on Protection of Rights and Interests of Consumers" should cover the doctor-patient relationship, there are great differences in theory and practice. There are three mainstream views: affirmative view, negative view and compromise view.

### A. Affirmative View

The main support of affirmative view lies in the following. In the aspect of local legislation, most provinces in China have incorporated the doctor-patient relationship into "regulations on protection of rights and interests of consumers" or "implementation measures", and recognized "patients are consumers" in the way of local regulations. Zhejiang province, Fujian province, Guangxi province and Sichuan province have been included in the scope of protection to varying degrees when formulating or revising the relevant matching of the "Law on Protection of Rights and Interests of Consumers", recognizing that medical services belong to the relationship of operation and consumption.

Scholars who hold the affirmative view believe that: (1) in the doctor-patient relationship, patients pay a certain consideration for the services they receive when they receive medical services. The paid medical service received by patients is just a kind of consumption behavior for the purpose of achieving health, which should be protected by the "Law on Protection of Rights and Interests of Consumers". [1] In the whole process of medical service, the hospital is in a comparative advantage, and it needs special protection for patients with the "Law on Protection of Rights and Interests of Consumers". (2) The nature of hospitals should not be distinguished. Under the condition of socialist market economy, medical units have the characteristics of general operators. The distinction between public hospitals and private hospitals is not obvious, and the profitability of

some large public hospitals is more obvious. (3) Treating patients as consumers is beneficial for patients (including those who have not yet suffered injury) to safeguard their rights (including public interest litigation) by means of consumer associations. On the other hand, it can force medical institutions to improve medical quality.

However, it should be noted that although most provinces have enacted "regulations on protection of rights and interests of consumers" or "implementation measures". In most of local legislation, there are only one to three short provisions, and a few general provisions. There are no special provisions on medical services, nor exclusion or restriction provisions of some special problems in the doctor-patient relationship. Therefore, not all doctor-patient relationship can be included in the "Law on Protection of Rights and Interests of Consumers". For example, in the event of a major disaster, the hospital will provide relief for patients based on humanitarianism and compulsory treatment for patients with certain infectious diseases. Under these circumstances, the services provided by medical institutions should not be the object of the protection of the "Law on Protection of Rights and Interests of Consumers". [2] In these two legal relationships, patients do not voluntarily accept medical services for the purpose of living consumption. This is a public service provided by medical institutions for the implementation of state functions. If the "Law on Protection of Rights and Interests of Consumers" is applied in this respect, these institutions and personnel will be afraid of hands and feet, and can't guarantee that they dare to undertake the public functions entrusted to them by the state.

#### *B. Negative View*

Negative view holds that patients are not consumers and medical institutions are not operators from the perspective of the subject of legal relationship. In the theory of law of protection on the rights and interest of consumers, consumers and operators are a pair of concepts with specific meanings. Consumers refer to individuals or units that purchase or use goods and services for the needs of daily consumption. Operators refer to producers, sellers and service providers who provide goods and services for consumers. Consumers are the main body of living consumption. Natural people become consumers only when they are engaged in living consumption. When they are not engaged in living consumption, they are not consumers. The so-called saying of "everyone being a consumer" is correct in the sense that everyone must live and consume. Without living consumption, the saying of "everyone being a consumer" can't be established. Patients receiving medical services from medical institutions because of illness are not consumption in daily life, and cannot be equal to consumers in the law of protection on the rights and interest of consumers. Operators are the main body of business activities which provide goods or services. The purpose of business activities is to make profits. It belongs to the category of business subjects or businessmen in commercial law. The profitability of an operator refers to the profitability of the purpose set by the operator, rather than the paid and actual profit of the service

provided by the operator. Even if the operator provides goods and services (such as giving samples) free of charge or incur losses in the operation, the profitability of the organization will not be affected. Whether public or private medical institutions, they are set up for the purpose of "saving lives, helping the wounded, preventing diseases, curing diseases, and serving the health of citizens", rather than for profit. [3]

Scholars who hold negative views believe that there are some drawbacks in incorporating doctor-patient relationship into the scope of "Law on Protection of Rights and Interests of Consumers". First, from a judicial point of view, it is not conducive to the maintenance and development. Before the promulgation of Tort Liability Law, relevant medical institutions will use different laws to remedy the impacts and damages caused in medical activities to patients. Second, it is not conducive to the establishment of correct medical concepts. To some extent, medical disputes are not conducive to the establishment of correct medical concepts after the application of the "Law on Protection of Rights and Interests of Consumers", which will mislead people to accept that medical services are equivalent to consumption services. With the continuous improvement of people's consumption consciousness, it is very likely that the consumption concept of "customer being God" will be rooted in the medical disputes in the future. This is a very dangerous thing. If the patient's thought is not changed in time, the whole medical cause will become a consumption mode. For the development of medical cause, rescuing the dead and helping the wounded is the top priority of medical cause. The improvement of doctor-patient relationship and the resolution of medical disputes are the good prospects for the development of medical cause.

#### *C. Compromise View*

The compromise view believes that the nature of medical institutions should be distinguished. As medical institutions are divided into profit-making medical institutions and non-profit medical institutions, non-profit medical institutions are not operators because of lacking the profit-making. The relationship between the hospitals and patients does not constitute a consumption relationship, and is not applicable to the "Law on Protection of Rights and Interests of Consumers". However, profit-making medical institutions apply to the adjustment of the "Law on Protection of Rights and Interests of Consumers" due to the profit-making. [4]

### III. RATIONALITY OF ADJUSTING THE DOCTOR-PATIENT RELATIONSHIP BY THE "LAW ON PROTECTION OF RIGHTS AND INTERESTS OF CONSUMERS"

Those who oppose the adjustment of doctor-patient relationship by the "Law on Protection of Rights and Interests of Consumers" hold that hospitals are not profitable and are not operators. However, it should be noted that the "Law on Protection of Rights and Interests of Consumers" does not explicitly stipulate the concept of operators, and hospitals do implement medical practices for consumers, which is consistent with the content of Article 3 of the "Law on Protection of Rights and Interests of Consumers".

According to the Consumer Law of China, even if the seller provides free service without profit, it is still bound by the "Law on Protection of Rights and Interests of Consumers", and is an operator in the sense of the "Law on Protection of Rights and Interests of Consumers". Once the service causes damage to consumers' body or property, the seller is still responsible. Therefore, it is wrong to use profitability as a yardstick to measure whether a hospital is an operator or not. As long as in the process of medical service, the hospital provides medical equipment, medical medicines commodities and treatment behavior to patients, and the hospital is the operator.

Others argue that the consumption in the doctor-patient relationship is not living consumption. The consideration paid by patients does not accord with the market price. Hospitals do not have much right to price independently. They cannot price according to the law of market price fluctuation like other living consumption. Moreover, they must follow the instructions of the government, which makes them less profitable. Living consumption is also a kind of service that enables consumers to enjoy themselves physically and mentally. When patients get medical services, they are forced to do nothing; otherwise they will not go to the hospital. Professor Wang Liming put forward the standard of living consumption. "First, the subject of using commodities or receiving services is a person or a unit; second, the operator forms a kind of contract relationship of sale and service; third, if there is no contract relationship, whether a certain commodity or receiving a certain service is legal and practical; fourth, whether buying commodities and receiving services is for the purpose of commodity trading activities; whether it is for the purpose of satisfying living consumption or production consumption to buy a commodity". [5] According to the above viewpoints, we can determine that medical service is living consumption. Because the main body of using medical commodities or receiving medical services is an individual. The contractual relationship was established when the patient was registered. Patients receive medical services not to resell medicines, but to meet their own rehabilitation needs.

#### A. *The Advantages of "Law on Protection of Rights and Interests of Consumers" in Adjusting Doctor-patient Relationship*

Consumer associations play an important role in protecting the rights of consumers of vulnerable groups in market economy. Consumer associations, as the spokesman of consumers, are independent social organizations that can really protect the legitimate rights of consumers. Their existence makes patients not isolated when they confront the legal organization of hospitals. In hearing such cases, the courts also have the basis of the "Law on Protection of Rights and Interests of Consumers". Consumers and operators have unequal consultative status, because consumers are in a weak position. Therefore, to fully exert the functions of associations, we encourage damaged consumers to sue for acts that damage consumer' legitimate rights, expose and wholesale them through mass media. It is beneficial for the realization of social essential justice to

supervise the behavior of medical units in reality. Moreover, it is also beneficial for the hospital to carry out the middle function of the consumer association. If patients do not take public remedies and seek the help of the court in the case of doctor-patient disputes, it is likely that they will carry out "private remedies" in the hospital and "medical disturbances" will occur. This has seriously affected the hospital's daily work order, reduced the enthusiasm of staff, and affected the social harmony. Therefore, when patients can seek help, the heart is no longer in a helpless situation, and there is a third-party coordination, which can greatly ease the direct opposition between patients and doctors.

#### B. *Promoting the Reform of Medical System*

Article 49 of the "Law on Protection of Rights and Interests of Consumers" clearly defines the liability for personal injury, and Article 55 clearly defines the increase of compensation and punitive damages. If the "Law on Protection of Rights and Interests of Consumers" can be applied to the medical field, it will certainly make the hospital more self-disciplined. This view has been debated in academia. Opponents' views are as follows:

It is against introducing punitive damages into the doctor-patient relationship. It is considered that the medical industry is a highly dangerous industry. Human complexity may sometimes have unpredictable accidents even if treated by reasonable no-fault method. If this kind of compensation is used, the responsibility of the hospital will be greatly aggravated and the hospital can't afford it. In fact, Article 33 of the Regulations on the Treatment of Medical Accidents defines six situations that do not belong to medical accidents. With the above exceptions, we can change the situation that all risks are assigned to the doctors, which is obviously unfair. After all, sometimes even if the medical staff are loyal to their duties and do their best in the process of treatment and adjustment, the unexpected factors still make the patients encounter more severe adverse results, which is the result that the medical staff do not want to see.

The occurrence of these conditions is an unforeseen event that modern medical science cannot discover in advance, avoid completely or conquer unconquerably. Therefore, in the application of punitive damages under the "Law on Protection of Rights and Interests of Consumers", we can change the unfair situation according to remove the six cases which do not belong to the medical malpractice stipulated in the "Regulations", the whole responsibility can't be attributed to the hospital. As operators, the hospitals should abide by the responsibilities of operators. Under the deterrence of the "Law on Protection of Rights and Interests of Consumers", hospitals will take off their sacred clothes, and better fulfill their duty of saving lives and injuries.

### IV. CONSUMER' RIGHTS ENJOYED BY PATIENTS

According to the provisions of the "Law on Protection of Rights and Interests of Consumers" of China, the rights enjoyed by consumers mainly include the right of life and health, the right to know the truth, the right to choose independently, the right to claim, the right of fair trade and

so on. Since patients are special consumers in the relationship between doctors and patients, the rights mainly include the following aspects:

#### A. Patients' Right of Health and Safety

According to Article 7 of the "Law on Protection of Rights and Interests of Consumers", consumers have the right of body and property security without damage when purchasing, using commodities and receiving services. As a special consumer, patients have the right of health as well as the general right of safety. The purpose of patients visiting hospitals is to eliminate pain, regain health or prolong the vitality of life and organism. Therefore, medical institutions should first protect the safety of patients' body and property. Unless there is any harm that cannot be predicted by the medical knowledge or technical level at that time, they should provide regular qualified drugs and medical services that can reasonably be expected to enable patients to obtain health and prolong life.

#### B. Patients' Rights of Fair Trading

Article 10 of the "Law on Protection of Rights and Interests of Consumers" stipulates: "Consumers have the right of fair dealing". When purchasing a commodity or receiving a service, a consumer shall have the right to fair trading conditions, such as quality assurance, reasonable price and correct measurement, and shall have the right to reject a compulsory trading act by a business operator. The patients' right to fair medical treatment refers to the patients' right to receive diagnosis, treatment and care fairly and reasonably. No patient is different because of nationality, sex, age, occupation, status, property status and other factors. The diagnosis, treatment and nursing services that any patient receives should be reasonable, and the patient's payment should receive the amount of service quality corresponding to the price. Article 58 of the Drug Administration Law of the People's Republic of China also stipulates that: "Medical institutions shall provide patients with a list of the prices of medicines used. The designated medical institutions of medical insurance shall also truthfully publish the prices of their commonly used medicines in accordance with the prescribed measures.

#### C. Patients' Right to Know

Article 8 of the "Law on Protection of Rights and Interests of Consumers" stipulates that: "Consumers have the right to know the true situation of the goods they purchase or use and the services they receive. The right of informed consent of patients refers to the right of patients to know their own condition, medical institutions and medical staff, to choose medical institutions and medical staff, and to decide on the final diagnosis and treatment plan proposed by doctors.

#### D. Personal Dignity Right and Personal Information Protection Right of Patients

According to Article 14 of the "Law on Protection of Rights and Interests of Consumers", when purchasing and using commodities and receiving services, consumers enjoy

the right to respect their personal dignity, national customs and habits, and the right to protect their personal information according to law. As operators, it requires medical institutions not to lack good service attitude, to respect the personal dignity of patients and their families and patients' privacy, not to be rough, or forcibly dominate the will of patients because they have absolute advantages of medical expertise and medical skills, and patients do not have the same professional medical knowledge. The convenience of medical profession makes it easy for medical staff to know a lot of patients' privacy. Medical staff must respect the patients' privacy. Only when they have a real need for diagnosis and treatment can they know the patients' privacy. Moreover, medical staff can't unnecessarily divulge the patients' information due to diagnosis and treatment to others.

#### E. Patients' Right to Claim for Damage Compensation

According to Article 11 of the "Law on Protection of Rights and Interests of Consumers", consumers who suffer personal or property injury as a result of purchasing or using commodities or receiving services enjoy the right to get compensation according to law. In the practice of medical service, besides some known invasive and harmful factors brought about by unavoidable medical behavior and the difficult problems that can't be solved by current medical technology, it often happens that doctors harm patients' interests for various reasons, such as improper use of drugs, inappropriate use of drugs, inappropriate operation plan or so on. When a patients' right to health or even life is violated due to improper use of drugs, failure to inform the correct method of taking drugs, improper operation plan or medical accident during operation, the patient and his family members (when the patient is a person with no or limited capacity or dies) have the right to claim damages against the doctor.

### V. CONCLUSION

In a word, paying attention to the rights and interests of consumers and actively guaranteeing them are an indispensable part of the reform of socialist market economic system. To straighten out the doctor-patient relationship under the condition of market economy, treat patients as consumers, and bring them into the category of "Law on Protection of Rights and Interests of Consumers", fully conforms to its legislative purpose and spirit. The right to life and health is the starting point and foothold of all civil rights. If this right can't be guaranteed, other rights will be difficult to realize. Because of the specialty and particularity of medical behavior, it is negated as consumption behavior, thus excluding patients from consumers and making them unable to apply the "Law on Protection of Rights and Interests of Consumers" to protect their rights and interests, which not only can't be established in theory, but also will greatly infringe on the legitimate rights and interests of patients. To adjust the doctor-patient relationship by applying the "Law on Protection of Rights and Interests of Consumers" can promote medical institutions to enhance their competitive awareness, strengthen the construction of medical ethics and style, improve service attitude, improve



the quality of medical services, engage in medical activities with caution and diligence, and maximize the safety of patients' living and health. This is not only the gospel of patients, but also a powerful guarantee to reduce doctor-patient disputes, consolidate social stability and build a harmonious society.

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