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Distinguish Patients' Rights According to the Provisions of the Vietnamese Law on Medical Examination and Treatment and the European Charter

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Abstract:

Patients' rights are an essential and fundamental part of human rights. Patients' rights are widely acknowledged around the world to various degrees, depending on specific national conditions. Within the scope of this study, some differences in the rights of patients have been illustrated between the Vietnamese Law on Medical Examination and Treatment and the European Charter on Patient Rights as well as some regulations related to these rights within the two legal systems. These findings may contribute to legal amendment and supplementation to best protect patients' rights and benefits in accordance with international trends.

Keywords: *Patients' rights, right to free choice in medical examination and treatment, right to medical examination and treatment with high standards*

1. Rationale

According to United Nations (1948) if human rights are recognized as unalienable rights and the basis of freedom, justice, and peace in the world, patients' rights also play an essential role in those human rights. (World Health organization, 2019) This fact is the reason that not only the European Union but also many countries around the world attach great importance to patients' rights. However, according to Active Citizen Network (2002) patients' rights are different from one place to the other depending on various factors such as economic and cultural development, medical progress, practitioners' professional competence, medical examination, and treatment, etc., leading to regulatory differences between countries. The scope of this study is to distinguish the difference between patients' rights in Vietnamese law and the European Charter of Patients' Rights, focusing on identifying the Vietnamese legal gaps on patient rights that need to be supplemented and improved. As a result, the legal rights and benefits of patients in Vietnam would be progressively enhanced to world standards.

2. Distinguishing Patients' Rights under the European Charter of Patients' Rights and Those in the Law on Examination and Treatment of Vietnam

Officially recognized in 1948, the Universal Declaration of Human Rights recognizes the unalienable rights of humans (Humanism, 1948). Based on these fundamental rights, the rights of patients are developed and acknowledged. The European Union countries adopted the European Convention on Human Rights in 1950 (Encyclopaedia Britannica, 1950). Patients' rights are recognized as a special right in the European Union. Specifically, the member states of the European Union have adopted the Declaration on the Promotion of Patients' Rights in Amsterdam in 1994 and the European Charter of Patients' Rights (2002). Among the adopted patients' rights regulations, the European Charter of Patients' Rights is the fundamental declaration of the fourteen (14) important rights of patients. Patients are entitled to the following specific rights: the right to preventive measures, the right to information, the right to counseling, the right to free choice of medical services, the right to privacy and confidentiality of personal information, the right to respect of personal time, the right to medical examination and treatment according to quality standards, the right to safety, the right to access to medical innovation in examination and treatment, the right to avoid unnecessary pain in medical examination and treatment, the right to personalized treatment, the right to complain and the right to compensation (McAuley et al., 2005). According to Active Citizen Network (2002) the European Charter of Patients' Rights is increasingly strengthening the level of protection of patients' rights in countries with different contexts and harmonizing different health care systems. In this Charter, Article 51 provides that members of the European Union must comply with the provisions of the Charter of Patients' Rights even if the laws of those member states do not provide for the rights of patients as set out in the European Charter.

One of the basic human rights related to patients' rights is also recognized in Clause 1, Article 38 of the Vietnamese Constitution:

'Everyone has the right to protection, health care, and equality in the use of medical services and is obliged to comply with the regulations on medical prevention, examination, and treatment' Vietnamese Constitution (2013).

This right is stipulated in more detail in the Law on Medical Examination and Treatment (Law on Medical Examination and Treatment, 2009) from Article 7 to Article 13. These articles are related to the right to quality and suitable conditions for medical examination; the right to privacy and confidentiality; the right to honor, respect and health protection in medical examination and treatment; the right to free choice of medical examination and treatment; the right to access to information on medical records and examination and treatment costs; the right to treatment refusal and discharging medical examination and treatment facilities; the rights of patients losing civil act capacity, having no civil act capacity or limited civil act capacity, or minors aged between 6 and under 16 (involving guardian in these cases).

Thus, upon a comparison of the patients' rights under the European Charter to the Law on Examination and Treatment under Vietnamese Law, it is deduced that there are some similarities and differences between the two regulatory systems related to patients' rights. In general, both of the above-mentioned regulations recognize the rights of each patient to taking medical examination and treatment according to specific standards, the right to access to the information on medical records, the right to privacy, and confidentiality. However, there are also striking differences between the two systems of law. These differences are stipulated in some provisions of the European Charter but not in the Law on Medical Examination and Treatment of Vietnam:

2.1. Right to Free Choice of Medical Examination and Treatment Services

According to Article 5 of the European Charter of Patients' Rights, each patient has the right to choose physicians and medical facilities from primary care to specialist care and make payment according to the European Union's Law on Insurance, not based on the physicians or medical facilities' choice. For instance, Belgium's health system is based on the principles of equality and free choice of insurance services. Accordingly, the patients' medical examination and treatment costs are paid under the compulsory national health insurance (Dominique, 2009). According to Cruppera and Geraedts (2017) the free choice of health care providers, especially of hospitals, is a declared health policy objective in Germany. The reasons for promoting free choice of providers are varied. In market-oriented health systems, the free choice of health care providers is considered as a competitive mechanism that improves quality and reduces costs. Compulsory health insurance is combined with a separate healthcare providing system based on independent medical practice and free choice of service providers. Meanwhile, the right to free choice of medical examination and treatment is limited in Vietnam. This right is stipulated by the Law on Health Insurance. As per the Law on Health Insurance (2012). Specifically, in some clauses of Article 22, the level of health insurance coverage is stipulated as follows:

'3. In case the holder of a health insurance card takes medical examination and treatment bypassing to a higher level, their medical cost shall be paid by the insurance fund with the coverage prescribed in clause 1 of this Article at the following rates, except for the case specified in clause 5 of this Article:

- *At any central hospital, 40% of the cost of inpatient treatment;*
- *At any provincial hospital: 60% of the cost of inpatient treatment, from the effective date of this Law to December 31st, 2020; 100% of the cost of inpatient treatment from January 1st, 2021 nationwide;*
- *At any district hospital, 70% of medical examination and treatment costs, from the effective date of this Law to December 31st, 2015; 100% of medical examination and treatment costs from January 1st, 2016.*

4. From January 1st, 2016, health insurance participants who register for primary medical examination and treatment at any commune health stations, general clinics, or district hospitals are entitled to take medical examination and treatment with health insurance at the commune health stations, general clinics, or district hospitals in the same province under the coverage level specified in clause 1 of this Article.

6. From January 1st, 2021, the health insurance fund shall pay for inpatient treatment according to the coverage levels specified in clause 1 of this Article to health insurance participants who take medical examination and treatment bypassing to a higher level at provincial medical examination and treatment facilities nationwide.'

Thus, the right to free choice of medical examination and treatment under Vietnamese law is limited compared to the European Charter as well as the provisions of the national regulations in the European Union. While the patients of European Union countries have the right to free choice of any unlimited facilities and physicians of medical examination and treatment, patients in Vietnam can only obtain choices limited by the levels of the medical facilities.

2.2. Right to Medical Examination and Treatment under the Best Conditions

Concerning the European Charter's (Article 10, European Charter of Patients' rights, 2002) right to medical examination and treatment with advanced methods, each individual is entitled to choose advanced medical examination and treatment methods in accordance with international standards without depending on the individual's financial capacity. Health services are responsible for promoting and sustaining research in the field of medicine, focusing especially on rare diseases. Research results must be fully disseminated to patients. Moreover, regarding this right, the European Charter of Patients' rights also includes another relevant regulation. In particular, each individual has the right to avoid as much suffering and pain as possible in each stage of his/her illness. Health services must be committed to taking all useful measures for this purpose, such as providing palliative and simplified treatment procedures for patients to access those methods. (Article 10, European Charter of Patients' rights, 2002)

Meanwhile, in Vietnam's Law on Medical Examination and Treatment, no provision is completely similar to the right to medical examination and treatment with advanced methods as stipulated in the European Charter. However, this right has been mentioned in the Law on Medical Examination and Treatment of Vietnam, (Law on Medical Examination and Treatment, 2009)i.e., the right to medical examination and treatment with quality suitable to actual conditions:

- 'To be consulted and explained to about the health status, treatment methods, and medical examination and treatment services suitable for the disease.
- To be treated with safe, appropriate, and effective methods according to professional and technical regulations.'

Compared to this right as stipulated in the European Charter, the right to medical examination and treatment 'in actual conditions' is limited in Vietnamese Law. No additional definition or explanation for 'actual conditions' has been provided in the Law on Medical Examination and Treatment. However, within the framework of this research, the 'actual conditions' can be inferred, including some domestic factors such as the level of medical science development at the time of assessing medical examination and treatment, the condition of medical equipment of the examination and treatment facilities, the professional proficiency of the medical examination and treatment physicians, the level of the health insurance coverage, the patients' financial capacity, etc. Meanwhile, patients in countries that are members of the European Charter have the right to medical examination and treatment without such limitations. In particular, according to the European Charter, the most advanced medical examinations and treatments are carried out according to the international standards without any limitations on insurance coverage and the dependence on the victim's financial capacity.

3. Conclusion

Basically, the Law on Medical Examination and Treatment of Vietnam and the European Charter of Patients' Rights includes contents aiming at safeguarding patients' rights, specifically the right to safe medical examination and treatment, the right to information provision, the right to respect, etc. However, the two provisions mentioned above differ in some ways. The most obvious one is the right to free choice of medical examination and treatment services and the right to medical examination and treatment with the most advanced methods. The differences between the above rights in the European Charter and the Law on Medical Examination and Treatment of Vietnam is the legal progress of Europe. As a result, Vietnam has a basis for reference, amendment, and supplementation of rights in its laws. Europe's legal progress is also associated with several other factors including the level of development in economics, the level of development in the field of medicine, the professional capacity of the medical staff, equipment at medical examination and treatment facilities, etc. Therefore, patients' rights in Vietnam should be adjusted and enhanced in the context of the above factors in order to achieve the highest possible efficacy.

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