

# **Exploring Ways to Resolve the Contradiction between Doctors and Patients from the Perspective of Law and System Reform**

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**Abstract:** The contradiction between doctors and patients has always been one of the main problems in the hypertension medical industry. During the newly closed epidemic, the shortage of medical resources made this problem more prominent. And reasonable laws and regulations. In the face of the development of the times, new systems and mechanisms continue to emerge, such as the family doctor system, the use of Internet big data, and it is very important to find an outlet to resolve the contradiction between doctors and patients under new challenges to improve the status of medical treatment.

## **1. Introduction**

Doctor-patient contradiction refers to the contradiction and disagreement caused by the attitudes and information asymmetry of the two sides during the medical activities of both sides. It is also one of the main problems that have long existed in my country's medical industry. During the period of epidemic prevention and control, due to the fragmented legal system to deal with major emergencies, the joint prevention and control mechanism of the epidemic is not sound, and the uncertainty in the treatment of new coronary pneumonia, there are more serious potential doctor-patient rights in my country's medical industry. conflict. In addition, although the reform of the medical system is a historical factor leading to conflicts between doctors and patients, with the emergence of new medical systems in the medical industry, new types of contradictions between doctors and patients are constantly evolving; for example, the care of family doctors outside the hospital and doctors are sometimes not equal See it. Therefore, it is very important to discuss how to resolve the existing doctor-patient contradiction in terms of system reform and legal system.

The thesis will start with the causes of the contradiction between doctors and patients and explore why the contradictions between doctors and patients exist for a long time and are difficult to cure. The second is the analysis of the contradiction between doctors and patients from the perspective of civil punishment, starting from tort liability and criminal liability respectively, and exploring the advantages and disadvantages of the current system and system in conjunction with law and judicial practice. Finally, according to the analysis of the first two points, the possibility of solving the contradiction between doctors and patients under the new system is discussed, which mainly involves the family doctor system, the hierarchical diagnosis and treatment system and the use of the Internet.

## **2. Causes of Conflicts between Doctors and Patients**

### **2.1 The Shortage of Medical and Health Resources is the Root Cause of the Contradiction between Doctors and Patients**

The results of the sixth census show that my country has a population of approximately 1.4 billion. Faced with such a large population, the pressure on my country's medical system is enormous. At the same time, compared with the increasing social medical demand, my country's medical and health resources are growing slowly and are in a serious shortage.

From the patient's point of view, it is difficult to find the No. 1 expert clinic, and the problem of “difficult to see a doctor” has become a common phenomenon. As far as the medical side is concerned, the third-level and second-level hospitals are full of registrations, the medical staff is overloaded for a long time, and it is still difficult to meet the needs of the patients. Attitude will inevitably decline.

Higher-level hospitals have arduous tasks, and community grassroots medical institutions can play a limited role because they are not trusted by patients. For a long time, the supply of medical and health resources has been the most fundamental reason for the contradiction between doctors and patients.

## **2.2 The Lag in the Reform of the Medical System is the Cause of the Long-Standing Contradiction between Doctors and Patients**

From a macro point of view, the medical and health service management system does not meet the requirements of the times, the public medical security system is not perfect, and the medicine circulation system is not perfect, which leads to the interests of the government, medical insurance institutions, medical service institutions, pharmaceutical companies, patients and other stakeholders. Conflict is the root cause of long-term conflicts between doctors and patients. [3]

In the past 40 years of reform and opening up, my country's medical and health sector has been carrying out gradual reforms of “crossing the river by feeling the stones”, generally reducing the institutional arrangements of the planned economic system and promoting the role of the market economic system. The incomplete and imperfect medical system reform and exploration have left the problems of “non-discrimination of medicines” and “medicine supplements” unresolved for a long time. The problem of “expensive medical treatment” for patients is still the key crux of the medical field. In the allocation of resources in the medical and health field, the two phenomena of insufficient play of the decisive role of the market and excessive marketization of medical and health services are the core reasons for the long-term tension between doctors and patients and the contradiction between doctors and patients.

## **3. The Problem is Raised and Solved**

### **3.1 Doctor-Patient Conflicts Are Related to Tort Liability**

Medical tort refers to the act of a medical institution or medical personnel infringing on the personal rights of the patient in the implementation of medical activities, and the medical institution or medical personnel shall bear civil liability in accordance with the law. [4] To build a harmonious doctor-patient relationship, it is necessary to explore the tort liability relationship related to medical disputes, reveal the elements that lead to the responsibilities of each party, and reveal the underlying causes of medical disputes.

## **4. Liability for Fault**

Regarding the determination of medical fault, in the theory of tort liability and Article 1221 of the “Civil Code”, it is defined as “failure to fulfill the obligation of diagnosis and treatment corresponding to the medical level at the time”. However, “medical care duty” is a broad concept, and my country's laws and judicial interpretations have not been further clarified and detailed. In judicial practice, judges are often masters according to specific circumstances, so there are large differences. [6] Article 1218 of the “Civil Code” determined that medical damage is a general tort, and the principle of liability for fault is widely used. The obligations of medical institutions and medical personnel are mainly derived from specific regulations such as laws and regulations. Article 1222[7] stipulates three situations that violate this specification. At this time, it is presumed that the medical institution is at fault, and the medical institution One party must prove that he has no fault in order to be exempt. Taking into account the high-risk and professional characteristics of current medical activities, patients often do not have professional medical knowledge and skills, and they know little about the specific operations of medical activities. Therefore, when a medical

dispute occurs, the patient appeals to the court. , Often do not have the ability to provide more comprehensive evidence, and at the same time, because the courts also lack the corresponding professional medical knowledge, it is difficult to start such cases, so the appropriate use of the principle of presumption of fault is of significant significance in resolving medical infringement disputes. [8]

## **5. No-Fault Liability**

No-fault liability medical damage mainly refers to medical product damage, that is, medical institutions or medical personnel use defective medicines, disinfection products, medical equipment defects, and unqualified blood input in the medical process, resulting in the consequences of patient damage. Under the background of the lack of a trust mechanism for doctor-patient communication at this stage, the outbreak of remote problems such as drug quality is concentrated in hospitals, magnifying the consequences of damage to medical products without fault liability. Although the hospital can claim compensation from the remote responsible party after compensation, the uncoordinated understanding of no-fault medical damage liability has further intensified the contradiction between doctors and patients, triggering more medical disputes. [10]

### **5.1 Doctor-Patient Contradiction and Criminal Responsibility**

In order to further protect the legitimate rights and interests of medical staff, the 15th meeting of the Standing Committee of the 13th National People's Congress voted and passed the Basic Medical Hygiene and Health Promotion Law. Responsibilities, and clearly stipulate the content of protecting the legitimate rights and interests of medical and health personnel. Taking into account the principle of modest restraint of the criminal law, violent medical treatment does not necessarily lead to penalties in the criminal law, but when the violent behavior reaches a certain level, the criminal law will intervene to protect the legal rights of the doctor.

## **6. Intentional Homicide**

Article 232 of the "Criminal Law of the People's Republic of China" (hereinafter referred to as the Criminal Law)[12] stipulates the penal and punishment methods for the crime of intentional homicide. The legal interest of the crime of intentional homicide infringed on the object is the right to life of others. If the perpetrator deliberately commits the homicide of intentional homicide with subjectiveness, it can be found that the crime has been convicted.

## **7. Crime of Intentional Injury**

The crime of intentional injury is stipulated in Article 234 of the Criminal Law[13]. The legal interest of the crime is the right to health of others, and it has carried out an illegal infringement of the body of others objectively, with subjective intention. The difference between this crime and the crime of intentional homicide is that the perpetrator's subjective purpose is different. Intentional injury subjectively hopes to cause harm to others, but there is no hope or let the death result occur, and the perpetrator of intentional homicide has already had the behavior when performing the act. The expectation of the outcome of the death.

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From the above analysis, violent medical treatment can be deterred to a certain extent by the crime of intentional homicide and intentional injury, but it seems that it is not enough to protect the legal rights of the doctor. The author suggests that it should be used in the crime of intentional homicide and intentional injury. This object of medical staff is used as an aggravating plot for sentencing, so as to better restrain the vicious acts of violent wounded doctors. In the legal sentencing scenarios, repeat offenders, principal offenders, surrendering and meritorious service are all serious or lighter sentencing scenarios. It can be seen that violent wounded doctors are not stipulated in the legal sentencing scenarios, but violent wounded doctors can be included in the discretionary sentence in the sentencing plot. If there is a vicious subjective purpose, it can be regarded as a confrontation between an illegal act and a legal and just act, and then the act of violent medical treatment can be regarded as a serious plot.

## **9. Resolve the Contradiction between Doctors and Patients through the Legislation of the New Medical System**

From the perspective of family doctors in the prevention and control of the epidemic, this article aims to combine the advantages of hierarchical diagnosis and treatment and two-way referral of the family doctor system, and make full use of the convenience of the Internet to explore possible measures to solve the contradiction between doctors and patients in our country.

### **9.1 Family Doctor Background and Concept**

Family doctors originated in the United States. The American Association of Family Physicians (AAFP) formally established the term “family doctor” in 1971. [15] In my country, family doctors evolved from general practitioners, and their training programs are similar to those of general practitioners, and they are positioned as general practitioners who provide basic medical services to individuals and families; [16] At the same time, they are also committed to helping patients understand, prevent and manage diseases, achieve the effect of maintaining health, and adopt personalized service methods to provide personalized treatment plans for different patients. [17] In addition, family doctors in my country also have the following characteristics: First, it is the main responsibility to conduct the first diagnosis and referral to qualified patients; second, to assume the responsibility of the health gatekeeper of the community residents. And give full play to the role of optimizing the supply and demand structure of medical resources; third, strictly abide by the signed contracts, provide professional and service medical services, and optimize the doctor-patient relationship. However, there are still differences in the family doctor system between my country and European and American countries. Family doctors in my country are not completely equivalent to private doctors. Every resident in the community is the target of community family doctors.

### **9.2 Advantages of the Family Doctor System and the Possibility of Resolving Conflicts between Doctors and Patients**

## **10. The Family Doctor System Itself Has the Main Advantage of Optimizing the Allocation of Medical Resources**

Family doctors, based on their role as residents' medical gatekeepers, combined with two-way referral, hierarchical diagnosis and treatment and other mechanisms to provide a basis for optimizing medical resources.

Compared with the transportation costs on the way to city-level and (district) county-level hospitals, the time cost of waiting in line for diagnosis and treatment, and the high medical costs, the basic medical and health services provided by family doctors are generally distributed in the community health services of residents. Stations and other grassroots areas can provide patients with discounts on registration fees and diagnosis and treatment fees. After the community signs a contract with family doctors, patients can also enjoy medical insurance discounts. Through policy

support and grassroots implementation, it can help residents save medical care at lower prices. cost. It has the characteristics of high-efficiency, convenient and accessible, and low medical expenses. Under the principle of voluntary contract, the service team signs a service agreement with the family to establish contact. Contracted services are mainly for pregnant women, patients with chronic diseases and the elderly in the community. The service content includes community diagnosis, public health, risk assessment, basic medical care, family health care and health management. It can help residents to treat common and frequently-occurring diseases while formulating personalized disease prevention plans for residents, providing basic drugs and non-basic medical insurance. Drug use consultation and medical examination services.

## **11. Hierarchical Diagnosis and Treatment System Design**

### **11.1 The Concept of “Graded Diagnosis and Treatment”**

The “graded diagnosis and treatment” system currently implemented in our country is based on the severity, severity, slowness, emergency, difficulty, and ease of grading, gradually realizing the transition from general medical procedures to professional medical procedures. Help big hospitals “lighten the burden”: hospital certification enables secondary hospitals to improve the quality of diagnosis and treatment of existing diseases, rather than challenging difficult diseases; for tertiary hospitals to set up difficult diseases, and evaluate the quality and effectiveness of diagnosis and treatment ; Grassroots or community health service centers are responsible for the diagnosis and treatment of common and frequently-occurring diseases and the management and rehabilitation of chronic diseases. The system is classified according to the severity of the disease and the difficulty of treatment. Medical institutions of different levels undertake the treatment of different diseases, gradually realizing the medical process from general medicine to professional. Help grassroots hospitals train talents, and ultimately form a complete medical service system.

Two-way referral is a subordinate concept of hierarchical diagnosis and treatment. In order to establish a medical pattern of “minor illness in the community, serious illness in the hospital, and recovery back to the community”, two-way referral came into being. Under this mechanism, community health service institutions and higher-level hospitals can achieve benign interaction; after the first diagnosis, community health service institutions usually transfer patients with difficult, severe, and critical illnesses to higher-level medical institutions for further treatment. Treatment; and after referral, patients who are treated in a higher-level hospital whose condition has been stabilized can be re-referred and returned to the community health service institution in their place of residence for follow-up rehabilitation and maintenance.

### **11.2 Advantages of the Hierarchical Diagnosis and Treatment System and the Possibility of Resolving Conflicts between Doctors and Patients**

At present, the country has clear policies and paths, and has established a relatively complete evaluation system and indicators. There are relatively good policies and strategies in all parts of the country. While improving the health of residents, divert patients and rationally allocate resources, which undoubtedly brings opportunities to primary medical institutions. When the condition is beyond the scope of the family doctor's diagnosis and treatment and further deteriorates, the family doctor can submit the patient's clinical symptoms, medical records and other basic information to the upper-level hospital through the electronic information system, and the upper-level hospital will further diagnose and treat the patient.

The hierarchical diagnosis and treatment system has perfected my country's three-level health service network, rationally dividing the responsibilities and positioning of medical institutions, and comprehensively giving play to the synergy advantages of all parties. In addition, the use of an electronic information platform for cooperation and sharing between primary medical institutions and higher-level referral medical institutions has realized the collection, storage, and transmission, processing and utilization of patients' past medical information, and realizing mutual examination of patient medical records. The establishment and improvement of the electronic system can better

promote the improvement and further implementation of the two-way referral system. What we need more is to strengthen the cooperation of all parties on the basis of the standardized referral system, formulate unified referral standards, clarify the diseases, time and direction of referral, and achieve the continuous effectiveness of two-way referrals.

## **12. The Combination of the Internet and Family Doctors Provides New Ideas for Resolving Conflicts between Doctors and Patients**

### **12.1 The Background of the Rise of “Internet + Medical”**

The combination of the Internet and medical care is a boom that has only emerged in recent years. Following the State Council’s Guiding Opinions on Actively Promoting the “Internet +” Action issued by the State Council in 2015, in 2018, the “State Council on the Promotion of “Internet + Medical Health” Opinions on Development” further promoted the integration of the Internet and the health and medical field. Facing my country’s medical supply-demand mismatch and high demand-side pressure, “Internet+” has great feasibility in solving the problems of shortage of medical resources and uneven distribution in my country, and it is also necessary to resolve the contradiction between doctors and patients. Very prominent.

### **12.2 Family Doctors Provide a New Mode of Medical Treatment under the Internet System**

The Internet + family doctor's contract service has shown innovations on the doctor, hospital and patient side. In the group of doctors, doctors can monitor the health data of patients through mobile phone software, and use big data to professionally evaluate the data uploaded by patients, and then use the system to generate feedback reports with images and texts to provide timely improvements to patients The healthy way. [18] In terms of hospitals, upper and lower hospitals can share information through the Internet to realize the effective distribution and flow of patients between cooperative hospitals, so as to achieve the best match between doctors and patients, which is also conducive to the further implementation of hierarchical diagnosis and treatment. [19] On the patient side, patients can use mobile phone software to make appointments, check electronic medical records and other activities, and can also realize online drug delivery, which greatly reduces the time cost spent offline. In the long run, it is more reason to choose as much as possible See a doctor online. [20]

### **12.3 Possibility of Resolving Conflicts between Doctors and Patients under the Internet System**

The combination of the Internet and family doctors with its own advantages can alleviate the current doctor-patient conflicts in my country from two aspects: the uneven distribution of medical resources and the conflicts between doctors and patients. First of all, Internet healthcare can alleviate the uneven distribution of medical resources to a certain extent. Some hospitals provide online consultation services in addition to online registration. Generally, doctors and patients can make appointments in advance and perform online diagnosis within the agreed time. In this case, even if they live in remote areas Residents can also enjoy medical services from higher-level hospitals. Of course, this service is also limited to some mild patients. For diseases that require emergency treatment and diagnosis with the help of medical equipment, patients still need to go to the hospital for offline diagnosis and treatment. Therefore, this service can only target the more common mild cases, and its impact is to divert mild patients in the top three hospitals, so that lower-level hospitals can receive more basic patients.

In addition, the doctor-patient relationship can be further improved with the help of the Internet platform. Nowadays, more and more hospitals will provide medical assistance to attending physicians, help doctors complete the writing of medical records, guide patients to seek medical treatment in an orderly manner, and even complete some simple diagnosis and treatment. Most of this series of activities can be carried out online with the help of mobile phones. This method increases the communication time between doctors and patients, and effectively reduces

doctor-patient conflicts caused by poor communication. Not only that, the hospital system can automatically save electronic information, such as electronic medical records, etc. after the hospital visits. On the one hand, it is helpful for doctors to use big data to monitor the health of patients and provide timely health advice. At the same time, they can also share data for the next step. Provide reference data for one visit.

The “Internet +” medical model can solve the problems that existed under the traditional model in the past. From the causes of the above-mentioned conflicts between doctors and patients, it can be seen that the main reasons for the intensification of conflicts between doctors and patients in our country are the shortage of medical resources and the excessively high medical expenses. Under the original medical system, on-site consultation will not only increase the congestion of the hospital and reduce the patient's medical experience, but also cause the cost of patients in remote areas to go to the higher-level hospital to greatly increase. Under the Internet system, it will become easier and more affordable for patients to seek medical treatment.

### 13. Summary

The problem of doctor-patient contradiction can easily induce serious social problems, cause malignant incidents, and undermine the harmonious development of society, which cannot be ignored. The root of the contradiction between doctors and patients lies in the insufficient medical and health resources, and the long-term reason lies in the imperfect legislation of the medical system. Starting from the current legal system, reforming the medical system, and using the Internet, this article explores a reasonable solution to the problem of doctor-patient contradiction and insufficient medical and health resources. The tort liability system adopts no-fault liability doctor-patient disputes to resolve doctor-patient disputes reasonably and fairly, and provide a solution for doctor-patient contradictions; but it does not prevent doctors from assuming excessive tort liability, and this imputation system cannot be expanded indefinitely. On the other hand, the confirmation of criminal responsibility plays a vital role in curbing the outbreak of conflicts between doctors and patients. It prevents and severely punishes the occurrence of malignant injuries by increasing the cost of illegal injuries for patients or their families. Discussed the feasibility of treating medical practitioners as a statutory penalty promotion condition to further curb violent medical injuries. In terms of systems, the family doctor system and the hierarchical diagnosis and treatment system can more effectively allocate medical and health resources, and alleviate the shortage and uneven distribution of medical and health resources. The “Internet +” system is conducive to reducing the cost of patient consultation, improving patient experience Harmonious development of doctor-patient relationship. Therefore, the current contradiction between doctors and patients in our country has been improved to a certain extent, but in order to cope with the new problems raised by the development of the times, further improvements and innovations in laws and systems are needed.

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