

## Legal Provisions on Grievances, Denunciations, and Dispute Resolution in Medical Examination and Treatment Activities – Current Status and Some Suggestions for Improvement

Pháp luật về khiếu nại, tố cáo và giải quyết tranh chấp trong hoạt động khám bệnh, chữa bệnh – thực trạng và một số kiến nghị hoàn thiện

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**Abstract:** Currently, the Law on Medical Examination and Treatment has provided specific regulations on complaints, denunciations and dispute resolution in medical examination and treatment activities to serve the timely adjustment of related arising issues. However, besides the positive aspects achieved, there still exist a number of certain limitations and shortcomings, which significantly affect the legitimate rights and interests of relevant entities. This article aims to elucidate the legal provisions on grievances, denunciations, and dispute resolution in medical examination and treatment activities, highlighting the existing limitations and deficiencies in regulations and law enforcement on this matter. Consequently, it proposes some recommendations to enhance the legal framework concerning grievances, denunciations, and dispute resolution in the healthcare sector, thereby contributing to improving the quality of medical services in Vietnam.

**Keywords:** *Denunciations; Dispute resolution; Grievances; Medical examination; Treatment.*

**Tóm tắt:** Hiện nay Luật Khám chữa bệnh đã đưa ra các quy định cụ thể về vấn đề khiếu nại, tố cáo và giải quyết tranh chấp trong hoạt động khám chữa bệnh để nhằm phục vụ kịp thời cho việc điều chỉnh các vấn đề phát sinh liên quan. Tuy nhiên, bên cạnh những mặt tích cực đạt được thì vẫn còn tồn tại một số vấn đề con hạn chế, bất cập nhất định, điều này gây ảnh hưởng không nhỏ đến quyền và lợi ích chính đáng của các chủ thể có liên quan. Xuất phát từ đó, bài viết tập trung làm rõ các quy định pháp luật về khiếu nại, tố cáo và giải quyết tranh chấp trong hoạt động khám chữa bệnh, làm rõ thực trạng hạn chế bất cập trong quy định và thực thi pháp luật về vấn đề này và từ đó đưa ra một số giải pháp kiến nghị nhằm hoàn thiện hệ thống pháp luật về khiếu nại, tố cáo và giải quyết tranh chấp trong lĩnh vực khám chữa bệnh cũng như góp phần nâng cao chất lượng hoạt động này tại Việt Nam

**Từ khóa:** *Chữa bệnh; Giải quyết tranh chấp; Khám bệnh; Khiếu nại; Tố cáo; Tranh chấp.*

### 1. Introduction

In pursuit of providing optimal medical care for citizens, our state has continuously elevated the quality of both physical infrastructure and legal policies pertaining to medical examination and treatment operations. In terms of physical infrastructure, the government has consistently augmented funding for

infrastructure investment, equipment procurement, and healthcare personnel development. Regarding legal provisions, the enactment of the Law on Medical Examination and Treatment in 2023 institutionalized the perspectives of the Party and State on healthcare, accurately assessing the pivotal role of human health in the process of national renovation,

industrialization, and modernization. Nonetheless, in practice, laws governing medical examination and treatment still exhibit certain limitations and constraints. Particularly, legal provisions concerning grievances, denunciations, and dispute resolution in medical examination and treatment activities have not been seamlessly integrated into the lives of the populace. The volume of healthcare-related grievances and denunciations is not substantial, and those filed are often simplistic and straightforward. Despite a declining trend in medical grievances, denunciations, and dispute resolution, the effectiveness of addressing grievances, denunciations, as well as resolving disputes in medical activities, remains inadequate, falling short of practical needs. One of the significant factors contributing to this scenario is the existence of limitations in the laws governing grievances and denunciations, with many provisions lacking specificity, and their practical enforcement is not entirely assured. Consequently, it is imperative and exigent to study, evaluate, and identify the persisting limitations and deficiencies in regulations and law enforcement concerning grievances, denunciations, and dispute resolution in the medical sector and subsequently propose remedies to contribute to the enhancement of the legal framework in this regard, particularly in the current context.

## **2. Overview of Legal Provisions on Grievances, Denunciations, and Dispute Resolution in Medical Examination and Treatment Activities**

### **2.1. Overview of Legal Provisions on Grievances in Medical Examination and Treatment Activities**

The citizens' right to lodge grievances is specifically acknowledged in Article 30, Clause 1 of the 2013 Constitution, which stipulates: "Everyone has the right to lodge grievances and denunciations with

competent authorities, organizations, and individuals regarding illegal acts of state agencies, organizations, and individuals." Under Article 79 of the Law on Medical Examination and Treatment in 2003, the filing and resolution of grievances concerning administrative decisions, administrative acts related to medical examination and treatment will be conducted according to the legal provisions on grievances. Thus, the Law on Medical Examination and Treatment in 2023 does not provide a specific definition of grievances related to medical examination and treatment but merely refers to the legal provisions on grievances. Consequently, based on Clause 1, Article 2 of the Law on Grievances in 2011, a grievance is understood as the act of citizens, organizations, officials, public servants following the procedures prescribed by this law, requesting competent authorities, organizations, or individuals to reconsider administrative decisions, administrative acts of state administrative agencies, persons with authority in state administrative agencies, or disciplinary decisions against officials, public servants when there is evidence that such decisions or acts are illegal, infringe upon their lawful rights and interests.

From the above approach, grievances in medical examination and treatment activities can be understood as the act of citizens, organizations, officials, public servants following the procedures prescribed by the Law on Grievances, requesting competent authorities, organizations, or individuals to reconsider administrative decisions, administrative acts of state administrative agencies, persons with authority in state administrative agencies, or disciplinary decisions against officials, public servants arising in the field of medical examination and treatment when there is evidence that

such decisions or acts are illegal, infringe upon their lawful rights and interests in medical activities.

The entities involved in the grievance process in medical examination and treatment activities include grievants, defendants, and grievance resolution authorities. Among them, the grievant is a citizen, organization, or official public servant exercising the right to lodge grievances. The defendant is a state administrative agency or person with authority in a state administrative agency that issues administrative decisions or administrative acts subject to grievances; an organization or individual with authority to impose disciplinary actions against officials or public servants subject to grievances. The grievance resolution authority is an organization or individual with the authority to resolve grievances. Referring to the spirit of Article 4 of Decision No. 44/2005/QĐBYT (repealed by Circular No. 25/2018/TTBYT and Decision No. 7757/QĐBYT), the competent entities to resolve grievances in medical examination and treatment activities are regulated corresponding to their duties, powers, and scope of management. These entities include heads of departments, units under the Department of Health, the Director of the Department of Health, heads of departments, units under the Ministry of Health, and the Minister of Health.

The subjects of grievances in medical examination and treatment activities are administrative decisions, administrative acts of state administrative agencies, persons with authority in state administrative agencies, or disciplinary decisions against officials, or public servants issued contrary to the law and infringing upon the rights and legitimate interests of entitled entities to lodge grievances in the field of Medical Examination and Treatment.

Grievance content commonly occurs in medical examination and treatment activities, including two main categories of behaviors: (i) Grievances regarding the lack of responsibility in medical examination and treatment, such as compliance with medical ethics regulations, hospital regulations, departmental regulations; performing assigned functions and tasks; (ii) Grievances concerning the implementation of professional regulations in hospitals, such as the implementation of Hospital Regulations; the implementation of hierarchical levels for public hospitals; regarding the scope of practice for private healthcare facilities; regarding the implementation of professional procedures, techniques, and other content.

Regarding the grievance resolution procedure in medical examination and treatment activities, it is fundamentally carried out through the following basic steps: (i) Receiving grievance applications, (ii) classifying grievance applications, (iii) processing grievance applications, (iv) accepting, resolving grievance applications within the jurisdiction, (v) concluding, archiving records.

Regarding the grievance sequence: Currently, the Law on Grievances 2011, Article 7 has detailed provisions, the grievance resolution sequence for the first time is regulated in Section 2, Chapter 3 of the Law on Grievances 2011, and the grievance resolution sequence for the second time is regulated in Section 3, Chapter 3 of the Law on Grievances 2011.

Regarding the grievance time limit: According to Article 9 of the Law on Grievances 2011, the grievance time limit is 90 days from the date of receiving the administrative decision or knowing the administrative decision and administrative act. In case the grievant cannot exercise the right to lodge grievances within the

prescribed time limit due to illness, natural disasters, enemy attacks, business trips, studying in distant places, or other objective obstacles, the time with such obstacles is not counted towards the grievance time limit.

## **2.2. Provisions on Denunciation in Medical Examination and Treatment Activities**

Similar to the grievance activities, denunciation is also a right of citizens stipulated in the Constitution, serving as a tool to protect citizens' rights and legitimate interests and as a means for citizens to participate in state and social management. However, there are fundamental differences in terms of subjects, bases, and purposes.

Under Article 79 of the Law on Medical Examination and Treatment in 2023, denunciation activities in medical examination and treatment are not specifically regulated but will be conducted according to the legal provisions on denunciation; thus, the 2018 Denunciation Law will be applied to resolve denunciations in medical examination and treatment activities. Specifically: "... denunciation and resolution of denunciations of violations of laws on medical examination and treatment shall be conducted according to the legal provisions on grievances, denunciations." According to Article 2, Clause 1 of the 2018 Denunciation Law, "denunciation" is the act of citizens following the procedures prescribed by the Denunciation Law to report to competent authorities, organizations, or individuals about any acts of any organization, individuals that cause damage or threaten to cause damage to the interests of the state, the legitimate rights and interests of citizens, organizations.

Although not specifically regulated by law, denunciations in medical examination and treatment activities can be defined

through common legal principles. It involves individuals, regardless of who they are, who may be directly affected by the violation or become aware of the violation by the reported entity. As analyzed, according to the procedures prescribed by the Denunciation Law, individuals report to competent authorities, organizations, or individuals about acts of any organization or individual that cause damage or threaten to cause damage to the interests of the state, the legitimate rights and interests of organizations, individuals in medical examination and treatment activities.

Regarding the subjects, the subjects of denunciation in medical examination and treatment are also the subjects according to Article 2 of the 2018 Denunciation Law, including the denouncer, the denounced, and the resolver. Specifically, the denouncer is an individual who lodges the denunciation. The denouncer can be someone directly affected by the act or someone who becomes aware of the violating behavior of the denounced entity. The denounced entity refers to the organization, institution, or individual whose behavior is being denounced. Therefore, these subjects are quite broad, but when considering the subjects being denounced in medical examination and treatment, they can generally include workers such as officials, civil servants, and heads of public entities, such as doctors, directors of public hospitals, or the public institutions themselves, which can be the subject of denunciation. The resolver of the denunciation is the competent authority to resolve the denunciation. According to Article 18 of the 2018 Denunciation Law, regarding the authority to resolve denunciations of violations of laws in carrying out tasks and public duties in public entities, the head of the public entity, the head of the state management agency managing the public

entity will have the authority to resolve the denunciation. Specifically, in the field of medical examination and treatment, referring to the hospital regulations issued under Decision No. 1895/1997/QĐ-BYT dated September 19, 1997, by the Minister of Health, the head of the public entity, commonly referred to as the head of the medical facility, will have the authority to resolve the denunciation.

Regarding the objects, according to Article 2, Clause 1 of the 2018 Denunciation Law, the objects of denunciation are acts that violate the law causing damage or threatening to cause damage to the interests of the state, the rights, legitimate interests of citizens, organizations. Specifically, it involves acts that violate the law, causing damage to the interests of the parties involved in medical examination and treatment activities. For example, a respiratory department doctor at a provincial public hospital, for some reason, Mr. B becomes aware that the doctor possesses a fake professional certificate, and using that fake certificate is an act that Mr. B considers illegal, potentially causing damage to the hospital, patients,... so Mr. B proceeds to file a denunciation against the doctor with the Director of the provincial hospital A for resolution. The purpose of individual denunciations is to detect, prevent, and timely limit any acts of violating the law that infringe upon the interests of the state, the rights, legitimate interests of citizens, organizations.

According to the provisions of Article 2, Clause 1 of the 2018 Denunciation Law, denunciation in medical examination and treatment activities will include denunciations of acts that violate the law in carrying out tasks and public duties and denunciations of acts that violate the law in state management in various fields, specifically applied in the field of medical examination and treatment. Denunciations

of acts that violate the law in carrying out tasks, public duties involve denunciations of acts that violate the law in carrying out tasks, public duties of entities such as: Individuals denouncing officials, civil servants, employees; other persons assigned to perform tasks, public duties; officials, civil servants, employees who may be doctors at public hospitals, hospital directors,... involved in actions deemed to be violations. Denunciations of individuals no longer holding positions as officials, civil servants, or employees but have committed violations while in office; individuals no longer assigned tasks, public duties but have committed violations during the time assigned tasks, public duties; may include doctors who were employees at public hospitals and had actions deemed to be violations, but later they no longer work at that hospital, in which case the denouncer still has the right to denounce. Denunciations of organizations and institutions, for example, denunciations of a public healthcare facility with actions deemed to be violations. As for denunciations of acts that violate the law in state management in various fields, it involves denunciations of acts that violate the law in state management in various fields of any organization, institution, or individual regarding compliance with legal regulations, excluding acts that violate the law in carrying out tasks, public duties. Specifically, in the field of medical examination and treatment, individuals may denounce individuals in administrative management agencies in the field of medical examination and treatment, such as the head of the district health department, the director of the provincial Department of Health,... when they engage in actions deemed to be violations.

Regarding the procedure for resolving denunciations: Denouncers wishing to

make denunciations can submit written denunciations and direct denunciations. If submitting a written denunciation, it should be sent to the competent authority. The denunciation must clearly state the name, address of the denouncer, and the content of the denunciation. In the case of direct denunciation, the recipient is responsible for recording the content of the denunciation, the name, address of the denouncer, and obtaining the denouncer's signature. The organization, the individual receiving the denunciation, and resolving the denunciation must keep it confidential for the denouncer. If there are grounds to believe that the resolution of the denunciation is not in accordance with the law or beyond the prescribed time limit, and the denunciation is not resolved, the denouncer has the right to complain directly with the higher-level organization or institution of the resolver.

According to Circular No. 07/2014/TT-TTTP dated October 31, 2014, of the Government Inspectorate regulating the process of handling complaints, denunciations, petitions; upon receiving denunciations, the competent authority will consider whether it falls within its jurisdiction to resolve it. If it does not fall within its jurisdiction, the person handling the denunciation will propose to the head of the agency (director of the public hospital), organization, unit to transfer the denunciation and accompanying evidence, information, documents (if any) to the competent authority for resolution. If the denunciation falls directly within the jurisdiction of the lower level but exceeds the time limit prescribed by the Denunciation Law and has not been resolved, the person handling the denunciation will report to the head of the agency, organization, or unit to issue a written request for the lower level to resolve it.

The denunciation law does not specify a time limit for exercising the right to denounce; therefore, citizens only need to discover any violations by the entities as analyzed and can denounce them to the competent authority to protect themselves and society.

### **2.3. Legal provisions for resolving disputes regarding medical examination and treatment**

Medical examination and treatment are activities directly affecting human health and life and always entail uncontrollable risks. Among the parties involved in medical relationships, there exist differing rights and obligations. Therefore, in many cases, due to the orientation of their rights, they may affect other parties, leading to disputes. Once a dispute regarding medical examination and treatment arises, resolving it is considered a vital need. Resolving disputes aims to address conflicts and contradictions and aims to protect the rights and interests of the parties involved, facilitating the transition of relationships in medical activities from a state of conflict to one of consensus or compulsory agreement. Currently, the parties involved choose the methods of resolving disputes depending on their subjective will. Health laws have provisions on two methods of dispute resolution in Article 80, Clause 2 of the Medical Examination and Treatment Law of 2023, specifically:

"Disputes regarding medical examination and treatment shall be resolved as follows:

- a) The disputing parties are responsible for reconciling the dispute themselves;
- b) If reconciliation is unsuccessful, the disputing parties have the right to file a lawsuit in court according to legal provisions."

Regarding the reconciliation method: Both parties engage in "negotiating to settle the dispute" with the assistance of a

mediator. The mediator can be an individual, organization, lawyer, etc., and their opinions are advisory. The parties choose the reconciliation method due to its expedited procedure, giving the parties decision-making power without affecting their credibility or dignity. This is a dispute resolution method not subject to legal regulation, entirely based on the goodwill of the parties. Agreements resulting from the reconciliation process are not enforceable by coercion but depend on the goodwill and voluntary participation of the parties.

Regarding the lawsuit method: When reconciliation between the parties fails to produce results, the parties have the right to file a lawsuit in court to resolve the dispute. This method involves the participation of the state's authoritative body, namely the People's Court. Therefore, the resolution process must comply with procedural laws. Additionally, the court's judgments and decisions are ensured to be enforced by the state's enforcement agencies. With the lawsuit method, the Medical Examination and Treatment Law of 2023 stipulates in Clause 3 that the time limit for resolving disputes regarding medical examination and treatment through litigation is 5 years from the occurrence of the event. Thus, regardless of how long medical treatment lasts, if it results in consequences, the parties have the right to litigate within 5 years from the date of those consequences.

In addition to the aforementioned provisions on dispute resolution methods, the Medical Examination and Treatment Law also includes procedures to be followed when there are requests to settle disputes regarding medical examination and treatment resulting in complications for the patient. According to Article 73, Clause 1, a medical practitioner is determined to have professional technical errors if they commit one of the following:

violating responsibilities in patient care and treatment, violating technical and professional ethics, or infringing on patient rights. These technical errors are considered violations of professional obligations during medical activities and must be determined by the expert council stipulated in Articles 74 and 75 of the Medical Examination and Treatment Law of 2023. Within 30 days of its establishment, the expert council must convene and invite relevant parties to the dispute to participate in some meetings and conclusions.

When resolving disputes regarding medical examination and treatment, the parties must comply with relevant legal provisions on dispute resolution besides the provisions in medical laws. The responsibility to compensate for damages is a significant focus during this process. To apply the liability for compensation for damages in medical examination and treatment, four factors stipulated in the Civil Code must be demonstrated: actual damages incurred, violation of obligations, fault, and causal relationship between the violation of obligations and the actual damages.

Dispute resolution in medical examination and treatment activities in court is carried out according to general regulations in the Civil Procedure Code. Accordingly, the entities stipulated in Article 80, Clause 1 of the Medical Examination and Treatment Law have the right to litigate lawsuits themselves or through legal representatives to file lawsuits in courts with jurisdiction. The plaintiff submits a lawsuit and accompanying documents and evidence to the competent court, pays court fees, and completes the lawsuit according to the court's requirements. Once the court has jurisdiction and handles the case, it will conduct mediation for the parties to reach an agreement on resolving the case. This is

a mandatory stage in the process of resolving civil lawsuits chaired and conducted by the court itself, which is different from the pre-litigation mediation. If mediation succeeds, the court will make a mediation record, and if within 7 days the parties do not change their opinions, the dispute officially ends. If mediation fails, the court will decide to proceed to trial. Even during the trial, the parties can still reach an agreement on resolving the case, and if they disagree, they have the right to appeal according to the appellate procedure.

### **3. Legal situation regarding grievances, denunciations, and dispute resolution in medical examination and treatment activities**

#### **3.1. Situation of grievances, denunciations, and dispute resolution in medical examination and treatment**

In recent years, the situation of grievances, denunciations, and dispute resolution has been relatively stable in the healthcare sector in general and the field of medical examination and treatment in particular. Most grievances and denunciations concerning medical examination and treatment are usually singular in nature and not overly complex. After collecting information from the monthly Health Work Reports of the Ministry of Health, it becomes increasingly evident that the trend of grievances, denunciations, and dispute resolution in medical examination and treatment is gradually decreasing. Specifically, in November 2019, the Ministry of Health received 64 letters of grievances, denunciations, and reflections from citizens regarding healthcare-related areas (21 letters of recommendation/reflection, 19 grievances, 24 denunciations); the content of grievances/reflections related to medical examination and treatment (23 letters), administrative affairs and anti-corruption (33 letters), pharmaceuticals (08 letters)

[1]. However, in February 2021, the Ministry of Health received only 43 letters of grievances, denunciations, and reflections from citizens concerning healthcare-related areas (22 letters of recommendation/reflection, 06 grievances, 15 denunciations); the content of grievances/reflections related to medical examination and treatment (17 letters), administrative affairs and anti-corruption (22 letters), pharmaceuticals (04 letters) [1]. Part of this decrease can be attributed to the complex developments of the Covid-19 pandemic, which has led to a significant reduction in grievances and denunciations compared to previous years, as many localities have had to implement social distancing measures, resulting in fewer citizens going to state administrative agencies to lodge grievances and denunciations. According to statistics from the healthcare inspectorate in 2020, due to the impact of the COVID-19 pandemic, the healthcare inspectorate reviewed and adjusted the 2020 inspection plan to limit unnecessary inspections. Specifically, the healthcare inspectorate conducted 14 inspections, including 03 inspection teams responsible for enforcing laws on resolving grievances and denunciations and 10 inspection teams to verify the resolution of grievances and denunciations [2]. It can be said that the Ministry of Health has effectively handled citizen reception and grievance resolution. The majority of grievances have been resolved without being prolonged into the following year.

As society develops, the demand for quality healthcare services continues to rise. However, in reality, the healthcare sector still fails to fully meet these needs, leading to dissatisfaction and resulting in numerous negative feedback in the field of medical examination and treatment. The recent trend of grievances, denunciations, and dispute resolution mainly involves:



Firstly, reflections on management operations. The healthcare system, especially at lower-tier hospitals, has become overloaded, affecting efforts to improve and enhance quality. The situation where two or three patients share the same bed or even have to lie on the floor or chairs has become quite common. The deterioration of hospital infrastructure, inadequate specialized equipment, and overworked physicians have deprived citizens of their rightful minimum entitlements. Every patient should be entitled to receive full information and advice on their medical condition, be treated in good condition, and receive comprehensive, timely care.

Secondly, concerning the professional activities of the medical team. Alongside highly qualified, enthusiastic physicians dedicated to their profession, there are still many doctors with limited expertise. The lives of patients depend significantly on the skill and ability of doctors, and even minor mistakes by doctors can pose risks to patients. Every year, there are still cases where doctors leave surgical instruments such as gauze, scalpels, or forceps inside patients or prescribe the wrong medication, resulting in unforeseeable consequences.

Thirdly, regarding the attitude of service towards patients, The relationship between patients and treating physicians involves a significant power imbalance. Physicians represent a scientific discipline related to human life. Patients must accept a dependent relationship to seek treatment, care, and health recovery. However, inadequate staffing, infrastructure, and equipment, coupled with excessive patient intake, often lead to conflicts between physicians and patients, causing both parties considerable pressure and disadvantage. Although the healthcare sector always endeavors to fulfill its mission of caring for and protecting the

health of the people, there are still manifestations of favoritism, lack of responsibility, insensitivity to patients' pain, or a focus solely on medical expertise at the expense of medical ethics and uncivil behavior towards patients and their families [3].

Fourthly, hospital administrative procedures are also a frequent source of complaints between hospital leaders and patients in monthly forums. These administrative procedures are also the root causes of patient grievances and denunciations against hospitals. According to many studies, the level of patient satisfaction with administrative procedures, reception, and guidance from hospital medical staff remains relatively low, reaching only average levels. A typical example is the complex implementation of health insurance, which causes difficulties and inconveniences, leading to delays in patient treatment. Regulations regarding health insurance payment for patients still face numerous obstacles, resulting in patients' rights not being adequately ensured.

Fifthly, the hygiene, security, and order issues in hospitals have not been adequately emphasized. To ensure the quality of medical examination and treatment and maintain a comfortable, optimistic environment for patients, hospital facilities need to provide a clean, ventilated environment, with patient rooms kept tidy, and operating rooms adhering to sterile principles to reduce the risk of infection. However, with the large influx of people into hospitals, ensuring safe hygiene in hospital environments is practically challenging and can lead to cross-infection.

Therefore, we can see that many factors contribute to patient dissatisfaction, which leads to state regulatory agencies continually addressing grievances,

denunciations, and disputes in the field of medical examination and treatment.

In recent times, numerous incidents affecting patients' lives have occurred repeatedly in medical facilities, causing many people to feel alarmed and fearful. For example, in 2015, there was widespread concern when it was reported that Nguyen Viet L., born on January 2, 2014, residing in Ba Dinh district, Hanoi, died after being treated at Hong Ngoc Hospital and then transferred to the National Children's Hospital for treatment. On February 22, 2015, the child had a high fever, and despite reassurances from doctors that the child's lungs were fine, the diagnosis was acute pharyngitis with fever, and there was no recommendation for hospital transfer. However, later that day, the family noticed rapid breathing in the child, and at this point, the hospital concluded that the child had pneumonia. Subsequently, the family requested that the child be transferred to the National Children's Hospital, where doctors made completely different diagnoses from those at Hong Ngoc Hospital. Despite being diligently treated, the child died about 13 hours after being transferred. According to the conclusion of the National Children's Hospital, the cause of death was severe pneumonia, septicemia, multiple organ failure, and septic shock [4]. The child's father filed a complaint with the competent authority, accusing the hospital of his son's death due to indifference, lack of responsibility, inadequate professional competence, incomplete medical examination and treatment, inaccurate patient assessment, untimely hospital transfer, subjectivity, and lack of seriousness in adhering to professional regulations, especially the consensus rule; limited pediatric consultation skills at Hong Ngoc Hospital. The case was referred to the Healthcare Inspectorate, the Department of Health Inspectorate, and the

Hospital Management Bureau (Ministry of Health). Subsequently, the hospital proactively contacted the patient's family to reconcile the dispute, listened to their suggestions, and shared their sorrow with the family. The hospital representatives acknowledged their mistakes, took responsibility, and apologized to the patient's family. The family accepted the reconciliation, and the complaint was withdrawn.

Regarding the resolution of grievances, denunciations, and disputes in medical examination and treatment, the Ministry of Health stated that the establishment and operation of the Expert Council also faced certain difficulties due to unclear, specific regulations. Many disputes and complaints have been prolonged due to disagreement with the conclusions of the Expert Council. The Expert Council is comprised of professional experts and lawyers established to resolve disputes with the input of experts [5]. Currently, there is no specific sanction or oversight mechanism, so some hospitals have used their own Scientific and Technical Councils instead of establishing an adequately constituted Expert Council to resolve disputes. Disputes are rarely fully resolved at this level after the Expert Council's conclusion. If the parties disagree with the conclusions of the local-level Expert Council, the Ministry of Health will establish a Ministry-level Expert Council. This is the authority responsible for making the final conclusions on technical errors [6]. Thus, resolving grievances, denunciations, and disputes has become more challenging, and if grievances are not adequately addressed, patients or their representatives may initiate legal proceedings in court.

### **3.2. Addressing grievances, denunciations, and disputes regarding medical examination and treatment in practice**

In 2015, a dispute related to medical examination and treatment occurred, specifically, Judgment No. 02/2019/DSPT dated 23 January 2019 of the People's Court of Quang Ninh Province regarding the "Dispute over medical examination and treatment" between the plaintiff, Mr. Dang Van L, and the VNTD Hospital. The case details are as follows:

On July 10, 2015, pregnant woman Nguyen Thi A (wife of Mr. Dang Van L) was admitted to VNTD Hospital referred by the Than M K Health Center, U District, Quang Ninh Province, with a diagnosis of 37 weeks pregnant, second delivery/C-section scar. After examination, diagnosis, delivery, and treatment, on August 5, 2015, Ms. Nguyen Thi A was discharged from the hospital with her child (Mr. Dang Cong T). Later, it was discovered that Mr. Dang Cong T had congenital glaucoma, inflammation of the fetal chorionic membrane (an eye condition), and required ongoing treatment. Mr. Dang Van L believed that the hospital's errors during the obstetric procedures for Ms. Nguyen Thi A and the treatment of Mr. Dang Cong T led to his son's glaucoma and continued need for treatment. Mr. L filed a complaint with VNTD Hospital requesting compensation for the health damage to Mr. Dang Cong T. The hospital established a base-level expert council and worked directly with Mr. L's family, offering support of 10,000,000 VND. Mr. L accepted the money but later returned it to the hospital.

Mr. Dang Van L filed a lawsuit against VNTD Hospital demanding compensation of 85,494,066 VND (eighty-five million, four hundred ninety-four thousand, sixty-six dong) for the health damage to Mr. Dang Cong T and requested the hospital to provide monthly support of 3,000,000 VND starting from December 2017 until Mr. Dang Cong T reaches 18 years of age.

During the trial, the first-instance court concluded that this was a dispute related to medical examination and treatment. The court determined that Mr. Dang Cong T's illness was congenital, not the fault of VNTD Hospital. The court did not accept all of Mr. Dang Van L's claims for compensation. Mr. L appealed the decision, arguing that (i) the nature of the dispute was compensation related to medical examination and treatment activities and (ii) VNTD Hospital should be obliged to provide the support as initially requested. The appellate court rejected Mr. Dang Van L's appeal and upheld the original judgment.

Through studying this case, it can be observed that in practice, healthcare providers tend to have a "weaker" position compared to healthcare facilities in addressing grievances, denunciations, and disputes regarding medical examination and treatment. According to current legal regulations, patient complaints are still somewhat vague and may not be adequately, openly, and transparently resolved by healthcare facilities. For example, in this case, the primary basis for the court's decision to resolve the medical examination and treatment dispute was the documents and records related to the medical treatment process provided by the healthcare facility. However, these documents were entirely supplied by the healthcare facility, making it difficult for the court to have an accurate and impartial view of the case. Some other aspects, such as verbal agreements between treating physicians and patients, are not clearly documented, making it challenging to establish the existence and reality of these agreements. This somewhat contributes to patients' difficulties in proving objective circumstances and protecting their rights and interests during the trial process. Moreover, healthcare providers may lack sufficient medical knowledge to promptly

identify and correctly assess illnesses' causes and actual conditions, leading to inaccurate complaints and wasting time and resources for all parties involved. As for healthcare facilities, the medical examination and treatment processes are still largely internal matters of the facility. Furthermore, verifying the accuracy of these documents often takes time, creating difficulties in the trial process. There are often exchanges, consultations between treating physicians and patients, the existence and accuracy of which are challenging to determine. Based on the practical study and analysis above, it can be concluded that in the current trial practice of disputes related to medical examination and treatment, there is still a rigid approach, lacking flexibility in trial proceedings. The courts primarily rely on the documents and records provided by the healthcare facilities, without adequately recognizing other aspects of the case, such as the exchanges and consultations between treating physicians and patients. This could lead to various shortcomings in addressing grievances and conducting trials related to medical examination and treatment.

### **3.3. Persisting shortcomings in addressing grievances, denunciations, and disputes regarding medical examination and treatment**

On November 23, 2023, the National Assembly passed the Law on Medical Examination and Treatment. The enactment of this law has created a critically crucial legal framework for state management in the medical examination and treatment field. During its implementation, the 2023 Law on Medical Examination and Treatment has revealed numerous loopholes, with some provisions no longer being suitable. Specifically concerning grievances, denunciations, and dispute resolution regarding medical

examination and treatment, the following shortcomings have been identified:

Firstly, regarding the right to complain of healthcare recipients within the healthcare service contract. Everyone has the right to complain and denounce to competent authorities, organizations, or individuals about illegal acts of agencies, organizations, or individuals. This is one of the fundamental rights of citizens recognized by the Constitution. However, currently, the 2023 Law on Medical Examination and Treatment does not address the right of patients to complain about errors, service quality, or attitudes of healthcare staff. Instead, this law only focuses on regulations regarding complaints and resolution of complaints regarding administrative decisions and actions regarding medical examination and treatment. Reporting and resolving medical examination and treatment law violations are conducted according to legal provisions on complaints and denunciations. The application of the law shows that the right to complain and denounce of patients has been "forgotten" and is "adding fuel to the fire" in cases of accidents due to professional errors, where the damage falls on the patients or their loved ones. This can lead to irrational conflicts because, at this point, the loved ones of the patients lack the means and tools to complain to healthcare facilities when severe harm occurs. It can be seen that this is a significant flaw in the construction of the 2023 Law on Medical Examination and Treatment. This deficiency is one of the important issues highlighted by the Ministry of Health during the 9-year review of the implementation of the Law on Medical Examination and Treatment (on July 29, 2019, in Ho Chi Minh City) chaired by Deputy Minister of Health Nguyen Viet Tien.

Many suggestions have been made to supplement regulations on the right to file lawsuits, seek compensation, and indemnify when patients are victims of professional errors. This law has a separate chapter (specifically, Chapter VII, Section 1) on professional errors, but it only regulates the roles and responsibilities of management agencies and medical practitioners. Meanwhile, the law does not address patients who suffer direct losses due to professional errors. From a civil perspective, the healthcare service contract is a civil contract, so the service user has the right to complain about the service provider's quality and errors in providing services. If complaints are not satisfactorily resolved, the service user has the right to initiate a lawsuit in court according to civil procedural law [7]. On the other hand, according to the Ministry of Health's assessment, the issue of complaints and denunciations in the field of medical examination and treatment, as applied in practice, also faces many obstacles in determining which unit has jurisdiction over the case. Currently, the submission of incorrect complaints or denunciations to the competent authority occurs quite frequently, as evidenced by the following figures: From December 16, 2017, to March 15, 2018, the Ministry of Health Inspectorate received a total of 186 complaints and denunciations, of which 183 were not under its jurisdiction. Complaints accounted for 21.50%, and denunciations accounted for 31.70% [8]. From January 18, 2021, to February 17, 2021, the Ministry of Health received 43 complaints and denunciations from citizens related to healthcare; however, none of the letters fell under the jurisdiction of the Ministry of Health. Among the 43 letters, there were 06 complaints and 15 denunciations, addressing issues related to medical examination and treatment (17 letters),...

Due to the lack of letters falling under its jurisdiction, the Ministry of Health classified and transferred 25 letters within the jurisdiction of other localities, ministries, or sectors, and kept 18 letters [9].

Secondly, concerning the method of resolving disputes related to medical examination and treatment. According to Article 80 of the Law on Medical Examination and Treatment 2023, when the parties have a dispute regarding medical examination and treatment, they are responsible for resolving the dispute content through mutual agreement; if conciliation fails, the disputing parties have the right to file a lawsuit in court according to the law. However, this provision still has shortcomings, especially regarding disputes concerning medical complications as seen today in our country. Medical complications in medical examination and treatment are consequences that cause harm to the health and life of patients due to technical professional errors in medical examination and treatment or unintended risks during medical examination and treatment, although practitioners have complied with technical professional regulations [10]. The resolution of disputes arising from complications, in particular, and disputes concerning medical examination and treatment, in general, still largely remains administrative in nature due to the involvement of the Ministry of Health, the Department of Health. Additionally, when requested to resolve disputes, the establishment and operation of expert councils also encounter certain difficulties due to unclear and specific regulations. Many disputes and complaints continue due to disagreement with the conclusions of the expert council.

According to Article 73 of the Law on Medical Examination and Treatment, technical professional errors must be

determined by the expert council specified in Articles 74 and 75 of the Law on Medical Examination and Treatment. The head of the healthcare facility establishes this council within 05 working days from the date of receiving the request to resolve the dispute. If unable to establish it, the competent state management agency in health shall be requested to establish the expert council directly. However, the question that many people are concerned about is whether the expert council established by the hospital is truly objective in evaluation. Currently, there are no specific sanctions or inspection regulations, so hospitals use this council for evaluation, and the evaluations can be controversial. Therefore, the mechanism of the expert council still has certain shortcomings, as follows:

(i) Evaluation by the Council, if the patient does not accept it, will result in a grievance or denunciation to the Department of Health, and if not resolved, the matter will be brought to the Ministry of Health. However, the Ministry of Health is not the dispute resolution authority in medical examination and treatment. Patients who do not file grievances or denunciations have the right to sue in court for resolution. The current healthcare law still lacks provisions for dispute resolution, with only two forms available: self-resolution and resolution through the court system, while the role of the expert council remains unclear.

(ii) The expert council is responsible for its conclusions, but the law lacks mechanisms for challenging these decisions. Patients would have to sue in court for professional malpractice rather than challenging the council's decision directly, and the role of the council in legal proceedings is not guaranteed. In some countries like the United States, grievances against hospitals or physicians using Medicare are referred to the Beneficiary

and Family-Centered Care Quality Improvement Organization (BFCCQIO) [11]. In the UK, grievances or denunciations are sent to the National Medical Council. These councils, whether the National Medical Council in the UK or the BFCCQIO in the US, operate independently as professional associations responsible for certifying practitioners, guiding and managing professional activities, and resolving patient grievances against practitioners to protect members' legitimate rights and ensure quality healthcare for patients. Additionally, their activities are more impartial and professional not being state regulatory bodies.

Taking into account the current situation and practices in other countries, Vietnamese law has been adopted and learned from the model of the National Medical Council. In early 2021, Vietnam officially established the National Medical Council [12]. According to Decision No. 956/QD-TTg dated July 6, 2020, the National Medical Council has two main tasks: (i) Developing professional competency standards for healthcare professions for submission to the Ministry of Health for approval; participating in monitoring and evaluating compliance with professional competency standards by certified practitioners according to proposals from state health authorities and legal regulations. (ii) Preparing necessary conditions for organizing competency assessments for healthcare professions as required by law: building and testing a question bank for competency assessments, establishing criteria for organizing competency assessment institutions, and building a national information system and database on competency assessment [13]. However, based on Decision No. 956/QD-TTg dated July 6, 2020, and draft laws as well as government proposals on the Medical

Examination and Treatment Law 2021, it is observed that the National Medical Council still lacks the authority to resolve disputes, grievances, or denunciations regarding medical examination and treatment.

From the aforementioned limitations, it is evident that the provisions regarding grievances, denunciations, and dispute resolution in the 2023 Medical Examination and Treatment Law still have some shortcomings. Therefore, to address these limitations effectively, it is necessary to identify the underlying causes and take a broader perspective to address these shortcomings at their roots. The following reasons can be cited:

Firstly, there is a limited legislative, and technical capacity in the field of medical examination and treatment. Achieving a high level of legislative capacity requires significant contributions from legal experts, especially those knowledgeable in medical law, as Vietnam is currently in the process of international integration. Therefore, the number and quality of legal experts researching medical law are still limited. Medical examination and treatment law is a specialized legal field regulating healthcare, requiring a high level of expertise and understanding of specialized knowledge during law development. The shortcomings in the provisions for grievances, denunciations, and dispute resolution in the 2023 Medical Examination and Treatment Law indicate gaps and failures to anticipate real-world scenarios. Thus, when applying the law in practice, patients' democratic rights to grievances and denunciations regarding medical professionals' attitudes, care, and treatment quality are still not fully encompassed, leading to potential impacts on patients' rights and democratic participation in the medical examination and treatment process. This requires legislative bodies to observe, recognize,

and provide clearer and more consistent regulations.

Secondly, some provisions lack uniformity, consistency, feasibility, and suitability with Vietnam's practical conditions. This situation arises not only from adjustments in a single legal document like the 2023 Medical Examination and Treatment Law but also from coordination in implementing guiding regulations and legal interpretations from subordinate legal documents. Alternatively, it involves coordination with other legal fields within the legal system, such as those regulating the right to grievances and denunciations as stipulated in Article 79 of the 2023 Medical Examination and Treatment Law, which are interpreted and applied according to the 2011 Grievance Law and the 2018 Denunciation Law. Moreover, dispute resolution between parties outside the scope of Article 80 of the 2023 Medical Examination and Treatment Law can still be resolved under other specialized laws, such as criminal, civil, and procedural laws, leading to inconsistencies and overlaps in regulations due to different drafting authorities and entities.

Furthermore, the provisions of the Law on Medical Examination and Treatment are not truly harmonized. The lack of coherence among the provisions in the Law on Medical Examination and Treatment of 2023 partly stems from the fact that this law was enacted in 2023, but a new Constitution was introduced in 2013. At that time, the Law on Medical Examination and Treatment of 2023 was based on the 1992 Constitution, so when the 2013 Constitution came into effect, it also contributed to highlighting the inconsistencies in the provisions of the Law on Medical Examination and Treatment of 2023 and the failure to adhere to the contents prescribed by the 2013 Constitution. Specifically, the Law on

Medical Examination and Treatment of 2023 does not address the patient's right to lodge grievances against errors, service quality, or the attitude of healthcare staff. This is one of the rights of citizens recognized by Article 30 of the 2013 Constitution, hence it is necessary to acknowledge that lodging grievances is a right of healthcare service users, not an administrative complaint to be resolved through administrative procedures. Additionally, due to the socioeconomic development planned for different stages, laws may only be suitable for specific periods, which can lead to difficulties in adjusting laws to real-life situations and require updating and revising to align with each stage of socioeconomic development in practice.

Through the process of reviewing the causes of the shortcomings of the provisions on the rights to lodge grievances, denunciations, and dispute resolution in the Law on Medical Examination and Treatment, we can identify the remaining deficiencies and shortcomings. Therefore, reasonable solutions can be proposed to overcome these limitations, contributing to improving the relevant legal framework and enhancing the protection mechanisms, thereby improving the quality of life for citizens when participating in healthcare activities at medical facilities.

#### **4. Some proposed solutions for improvement**

To address the remaining issues and deficiencies related to grievances, denunciations, and dispute resolution in medical examination and treatment activities, several solutions need to be implemented:

Firstly, the Law on Medical Examination and Treatment should supplement provisions regarding the patient's right to lodge grievances against healthcare facilities. The patient's right to

lodge grievances should be based on disputes arising from medical examination and treatment activities, rather than administrative complaints to be resolved through current procedures. The Law on Medical Examination and Treatment should include detailed regulations on patients' rights to lodge grievances and denunciations. For example, they should have the right to lodge grievances or denunciations regarding injuries, disabilities, and damages affecting their health, lives, dignity, or reputation caused by healthcare facilities or medical practitioners. Patients should be able to lodge grievances about errors, service quality, or the attitude of healthcare staff. This recommendation stems from the reality that many healthcare staff exhibit disrespectful attitudes towards patients. This phenomenon is often explained by the high pressure and stressful working environment they face, the overload from patients, long working hours, etc. However, in any legal field, equality in the rights and obligations of all parties is an essential aspect pursued by legislators, and the field of medical examination and treatment is no exception. Patients who use healthcare services have fulfilled all legal obligations but also have rights, among which is the right to be respected in dignity and reputation. It cannot be assumed that patients must tolerate insults, rude service attitudes, or disrespectful behavior from healthcare staff. Specific regulations regarding the right to sue for damages when patients are victims of professional errors should be established, as they are the direct subjects affected by these professional errors. Moreover, appropriate sanctions must also be in place for these regulations to be effectively implemented in practice to ensure patients' right to lodge grievances and denunciations. When healthcare practitioners commit professional errors or healthcare staff



exhibit inappropriate behavior towards patients during medical examination and treatment activities, patients have the right to lodge their grievances with the responsible management authority for resolution. Healthcare practitioners, medical facilities, and healthcare staff should face specific sanctions. Therefore, the law needs to clearly stipulate these provisions most straightforwardly and understandably to rectify misconduct and protect patients' rights.

Secondly, regarding dispute resolution in medical examination and treatment activities, according to Article 80 of the Law on Medical Examination and Treatment, the parties involved are responsible for mediating disputes over the content of the dispute. If mediation fails, the disputing parties have the right to file a lawsuit in court in accordance with the provisions of the law. In addition to the mechanisms for resolving disputes through self-mediation and the courts, there should be an additional method for resolving disputes through the involvement of a third party, such as a medical professional council, as many countries currently employ. Establishing a civil society organization with expertise to directly resolve disputes arising in the field of medical examination and treatment is necessary as it would provide many benefits such as speed, professionalism, effectiveness, and simplification of procedures when this is not a governmental administrative organization. Furthermore, this would help alleviate the burden on the state dispute resolution agency, which is the court.

Thirdly, the National Medical Council's scope of authority should be expanded to resolve medical disputes. Resolving medical disputes by the National Medical Council would be more objective and faster than resolving disputes heavily laden with administrative elements involving the

Department of Health, the Ministry of Health, as is the current practice. Additionally, if the National Medical Council operates independently, it would also ensure its role in litigation activities.

## 5. Conclusion

Based on the analysis of the legal framework regarding grievances, denunciations, and dispute resolution in medical examination and treatment, the provisions in relevant legal documents, and the current practice of resolving disputes, this article has proposed specific solutions to contribute to the improvement of the legal framework concerning grievances, denunciations, and dispute resolution in medical examination and treatment activities. Through analyzing the achieved results, as well as the existing shortcomings and limitations in the process of grievances, denunciations, and dispute resolution related to medical examination and treatment, it can be observed that the situation of grievances, denunciations, and disputes concerning medical examination and treatment activities still persists widely, and the resolution has not yet achieved high efficiency. Therefore, state management agencies in the field of medical examination and treatment are required to improve their work further in resolving grievances, denunciations, and disputes in the future.

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**Ngày nhận bài: 11/3/2024**

**Ngày hoàn thành sửa bài: 23/3/2024**

**Ngày chấp nhận đăng: 25/3/2024**