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The Ruling on Conducting Manual Examination on Patients in Islamic Jurisprudence-A Jurisprudential Study Based on the Purposes of Islamic Law

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Abstract

This study aims to disprove the Islamic ruling on conducting manual medical examinations on patients by examining the texts and principles of Islamic law. The significance of this research lies in its response to the concerns of medical students, who often experience ethical dilemmas during the early stages of their medical practice. The researcher adopts an analytical approach to Islamic legal texts to derive a ruling on this issue. The study concludes that conducting manual examinations on patients is permissible when dictated by necessity or genuine need. This study provides an analytical examination of the Islamic ruling on conducting manual medical examinations on patients, particularly in cases where there is a gender difference between the physician and the patient. Further study should be conducted on the issue of medical treatment in Islamic law, linking it with contemporary medical practices.

Keywords: Islamic Ruling, Manual Medical Examinations, Gender Difference, Ethical Dilemmas and Necessity in Medical Practice

Introduction

All praise is due to Allah, and may peace and blessings be upon the Messenger of Allah. To proceed; Imam al-Shafi'i said: (Knowledge is of two types: the knowledge of the body and the knowledge of religion) He also stated: "I do not know any science nobler than medicine after the knowledge of what is lawful and unlawful" Thus, whoever attains both sciences have acquired an honor and virtue unmatched by others. However, if one cannot master both, a physician must at least have knowledge of what is lawful and unlawful concerning the study and practice of medicine.

Research Questions

The main research question is: What is the ruling on conducting manual medical examinations on patients in light of the Islamic jurisprudential rulings on looking and touching?

Research Objectives

This study aims to disprove the Islamic ruling on conducting manual medical examinations on patients by examining the texts and principles of Islamic law.

Significance of the Study

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According to the divergence in contemporary fatwas, where some adhere strictly to the original rulings, allowing exceptions only in limited cases, while others consider rulings in light of necessity and public interest, medical students and practitioners often find themselves in a dilemma when performing certain medical procedures, including the subject of this study. This highlights the importance of examining the ruling on medical examinations, its legal basis, and its conditions. The study was prompted by discussions with numerous medical students at a medical college: who provided the medical insights included in this research.

Previous Studies

No specialized study on this topic was found. However, there are specific fatwas addressing certain aspects of the issue.

Research Methodology

This study adopts both the inductive and analytical methodologies. It involves surveying Islamic legal texts and the opinions of jurists, followed by analyzing these sources to derive rulings relevant to the research questions.

Research Plan: The study consists of two main chapters; each divided into two sections as follows:

Chapter One: The Importance and Components of Manual Medical Examination

- **Section One:** The significance of conducting manual examinations on patients.
- **Section Two:** The components and procedures involved in manual examinations.

Chapter Two: Detailed Islamic Rulings on Conducting Manual Medical Examinations

- **Section One:** Islamic texts and legal principles relevant to the study.
- **Section Two:** Islamic rulings and regulations governing manual medical examinations.

Chapter One: The Importance and Components of Manual Medical Examination

Despite advancements in medicine and the development of technological tools that aid physicians in diagnosis and treatment, the need for manual medical examination remains essential. This chapter discusses the justifications for conducting manual examinations and their components.

Section One: The Importance of Conducting Manual Medical Examinations

Medical students and practitioners must master manual examination for several reasons:

1. Academic and Professional Integrity

A medical degree certifies a student's proficiency in both theoretical knowledge and practical skill including manual examination. If a student refrains from practicing manual examination, it undermines the legitimacy of their certification.

2. University Examinations and Graduation Requirements

During university assessments, students are required to examine patients, including those of the opposite sex, under official supervision. They cannot request patients of the same gender, and the performance in these examinations determines their academic success or failure. Proper

execution of manual examinations during tests necessitates prior hands-on practice, as it is a practical skill rather than mere theoretical knowledge.

3. Practical Training over Theoretical Knowledge

Merely learning the theory behind manual examination or observing it being performed does not replace direct practice. Many examinations require hands-on experience to achieve accurate result Furthermore; sensory responses in physical examinations often vary between genders, making direct training indispensable.

4. Hospital Policies and Workplace Realities

Physicians do not always have the option to choose the gender of their patients, particularly in hospitals where policies do not allow such preferences. As a result, doctors inevitably treat a significant number of patients from the opposite sex. Refusing to perform manual examinations in such cases compromises the physician's ability to fulfill their duties, potentially leading to misdiagnoses or medical errors that could harm or even endanger patients' lives. This also raises ethical concerns about the legitimacy of the physician's earnings in such cases.

5. Clinical Training in Medical School

During clinical rotations, supervising doctors may require students to conduct manual examinations or provide examination results. Refusing to comply can lead to academic penalties, including reprimands or lower grades, affecting the student's overall academic performance.

6. Reliance on Medical Devices vs. Manual Examination

While many doctors rely on medical devices (such as imaging techniques), neglecting manual examination is considered a professional shortcoming. These devices serve as supplementary tools and can sometimes produce errors. A thorough patient assessment should integrate medical history, manual examination, and laboratory or imaging tests. In critical situations, such as emergencies or severe complications, a manual examination can be the decisive factor in saving a patient's life.

7. Shared Medical Responsibility

In some cases, a physician of the same gender as the patient may be available to perform the examination. However, in other situations, medical responsibility is shared, and a physician of the opposite gender may also be required to conduct the examination.

Section Two: Components of Manual Medical Examination

Manual medical examinations can be categorized into two main types:

First: General Routine Examination, this includes the following procedures:

1. Physical Exposure - Examining any part of the patient's body, including:

(Face and neck, Arms and hands, Chest and abdomen, Thighs, legs, and feet)

Private areas (though generally not included in routine examinations)

2. Visual Inspection; Observing and monitoring specific body parts for signs of disease.

3. Pulse Palpation; Feeling the patient's pulse at various points, including:

(Wrist, Neck, Groin (inguinal region), Behind the knee, Ankles and Top of the foot).

4. Percussion-The physician taps on certain body areas while placing a finger on them to assess the resonance, which may indicate specific medical conditions. This is performed on:

(Abdomen, Chest and Back).

5. Auscultation (Using a Stethoscope) - Listening to internal body sounds, particularly from:

(Chest, Abdomen and Neck).

6. Palpation (Superficial or Deep Pressure) - Applying manual pressure to assess underlying structures, particularly on:

(Abdomen and Legs and feet).

Second: Specialized Examinations for Specific Conditions

1. Leg Elevation Test; Raising the legs for a period before lowering them (typically used to assess vascular conditions in the legs.)

2. Digital Rectal Examination (DRE); Inserting a finger into the rectum to check for prostate enlargement or cancer in men.

3. Gynecological Examinations-Including: (Vaginal Examination and Breast Examination). These procedures are typically performed by an obstetrician-gynecologist (OB/GYN) and are rarely conducted by other physicians.

Chapter Two: Detailed Rulings for Conducting a Manual Examination on the Patient in Light of the Texts and Principles of Shariah

Section One: The Texts and Principles Underpinning the Research Components

From the Holy Quran:

- **Allah Almighty says:** (And why should you not eat of that upon which the name of Allah has been mentioned while He has explained in detail to you that He has forbidden you, excepting that to which you are compelled. And indeed, do many lead [others] astray through their [own] inclinations without knowledge. Indeed, your Lord - He is most knowing of the transgressors.) (Surah Al-An'am: 119). The lawful is clear, and the unlawful is clear. If necessity or need arises, a concession is granted, permitting an originally prohibited action. However, exceeding the limits dictated by necessity constitutes transgression and falls into prohibition.

- **Allah Almighty says:** (So keep your duty to Allah and fear Him as much as you can; listen and obey; and spend in charity, that is better for yourselves. And whosoever is saved from his own covetousness, then they are the successful ones.) (Surah At-Taghabun: 16). The unlawful may sometimes be intertwined with the lawful in a way that a person cannot entirely avoid. In such cases, the ruling on prohibition is lifted as it falls beyond one's capacity or involves matters that cannot be wholly avoided or are extremely difficult to evade, and **Allah Almighty says:** (Allah does not burden a soul beyond its capacity). (Surah Al-Baqarah: 286).

- **Allah Almighty says:** (Indeed, Allah commands you to render trusts to whom they are due) (Surah An-Nisa: 58).

The concept of trust (Amanah) encompasses three key aspects:

1. The integrity of the trustee, refraining from what is not rightfully theirs.

2. Fulfilling all obligations and duties owed to others.

3. Maintaining confidentiality and safeguarding entrusted information with a deep sense of responsibility and seriousness (A Group of Authors, Nadrat Al-Na'eem, 3/509). All three principles are essential in the practice of medicine and medical education.

From the Noble Sunnah:

1. **Abu Said Al-Khudri**, narrated from his father, that the Messenger of Allah (ﷺ) said: (A man should not look at the 'awrah of another man, nor should a woman look at the 'awrah of another woman. A man should not be under the same cover with another man, nor should a woman be under the same cover with another woman.) (Sahih Muslim, Hadith No. 338). This ruling applies in normal circumstances when there is no necessity or urgent need that would permit otherwise.

2. Anas ibn Malik reported: (The Messenger of Allah (peace be upon him) used to take Umm Sulaym and some women from the Ansar with him when he went on military expeditions. They would provide water and treat the wounded.) (Sahih Muslim, Hadith No. 1810). This hadith indicates that it is permissible for a non-mahram woman to treat an injured man when necessary. However, direct physical contact should be minimized when alternatives are available, as stated (Al-Shawkani in Nayl Al-Awtar, 7/282).

3. Jabir, narrated that "Umm Salamah sought permission from the Messenger of Allah (peace be upon him) for cupping (Hijama), so he instructed Abu Taybah to perform cupping for her." (Sahih Muslim, Hadith No. 2206). Cupping (Hijama) is often performed on various parts of the body; particularly the back. This narration indicates the Prophet's (peace be upon him) permission for exposure in a medical context when required, including both looking and touching, as necessitated by the procedure.

From Jurisprudential Principles:

- (Necessities permit prohibitions, but necessity is limited to its extent), (Al-Suyuti, Al-Ashbah wa al-Nazair, p. 84).

- (Need is treated as necessity, whether it is general or specific), (Al-Suyuti, Al-Ashbah wa al-Nazair, p. 88).

- (Preserving human life takes precedence over preserving religion), (Al-Amidi, Al-Ihkam, 4/276). Al-Amidi examined in detail instances that demonstrate that preserving religion is more important than life preservation, and life preservation outweighs religion protection. Religion prevails above life in most circumstances, according to consensus. Certain rulings made for travelers and ill patients showcase life preservation above religious propriety, yet this does not signify a preference for personal health over religious principles but instead represents the selection of particular religious laws above others. Following rigid Sharia teachings is the definition of preserving religion according to this study, even though it focuses on specific rules from the category of 'azā'im (strict rulings). The concept excludes basic religious beliefs together with core principles taught in religious law. The implementation of dispensations (rukhsah) rules constitutes an essential part of Islamic law because these exceptional rulings assist individuals when facing necessary or difficult situations. Religious scholars developed the principle to warn about strict interpretation in religious affairs that would cause hardship even though it involved following specific laws.

- (Whatever is necessary for fulfilling an obligation becomes obligatory itself), (Al-Zarkashi, Al-Bahr Al-Muhit, 1/296).

- (Every individual is entrusted with what they claim to own or have lawful access to; thus, their statement is accepted.), (Ibn Farhun, *Tabsirat Al-Hukkam*, 1/354). If a physician asserts that an accurate diagnosis is only possible through manual examination, their statement should be accepted.

- (Anything unavoidable is excused). (Ibn Taymiyyah, *Fatawa Ibn Taymiyyah*, 21/592). If a diagnosis cannot be performed without a manual examination, then looking and touching are excused.

From the Texts of the Four Schools of Jurisprudence:

- **Hanafi School (Ibn Najim):** Ibn Najim states: (The physician may look at the area of her illness... This is permissible only if no female doctor is available. If a female doctor is available, it is not permissible for a male physician to look for the gaze of one gender towards another, which is less severe. The physician should teach a woman, if possible, and if not, he should cover all parts of her body except for the area of illness. Then he should focus only on that area and lower his gaze from other parts, if possible, for what is permitted due to necessity should be limited to the extent of necessity." (Ibn Najim, *Al-Bahr Al-Roiq*, 8/218). This text indicates the permissibility of the physician's actions, especially the teaching of a female physician, who may be required to look at and potentially touch the area in question.

- **Maliki School (Ubayd):** The Maliki scholars state: (An individual must cover their private parts in front of anyone who is not allowed to see them, except for necessity, such as medical treatment. In such cases, it is permissible to uncover only to the extent of necessity.), (Fig. *Al-Ibadat Al-Maliki*, p. 142).

- **Shafi'i School (Al-Khatib Al-Sharbini):** Al-Khatib Al-Sharbini writes: (The physician may look for medical treatment, such as bloodletting, cupping (Hijama), or treatment, even in the private parts, but only in the areas that require it. This is because prohibiting it would cause hardship. A man is allowed to treat a woman, and vice versa... It is required that no woman who can perform the same treatment is available. Al-Mawardi conditions that there be no fear of temptation and that only the necessary area should be uncovered. This is similar to the case of a circumciser viewing the private parts of the one they are circumcising or a midwife viewing the private parts of the woman they are delivering.), (*Al-Iqna*, 2/406).

- **Hanbali School (Ibn Muflih):** Ibn Muflih states: (The physician may look at and touch what is necessary for diagnosis and treatment, even inside the private parts, because when the Prophet (peace be upon him) appointed Sa'd to judge the Banu Qurayza, he uncovered their private parts as it was necessary for the judgment.) (*Al-Mubdi*, 6/87).

Section 2: The Legal Rulings and Sharia Guidelines for Conducting Physical Examinations on Patients

In this section, I will review several issues that may arise for medical students or doctors that might create a sense of unease or hesitation while clarifying the legal rulings for these matters in light of the previously presented Sharia texts and legal principles.

Issue 1: The Ruling on a Physician Performing a Physical Examination on a Patient of the Opposite Gender by Hand, in Cases of Necessity or in Cases Where There is No Necessity, but the Physician Requires the Skill for Future Use.

According to Sharia principles, objectives (goals) can only be permitted under necessity, while means (methods) are allowed under need. The prohibition on sight and touch is a means of falling into immoral acts, so the need allows these actions (Al-Zarkashi, Al-Mansoor, 2/317-319). Furthermore, what is necessary for fulfilling an obligation must itself be obligatory. A student will not be able to master the skill required in the future without practicing it beforehand; thus, this practice becomes obligatory. The general principle of permissibility is that what is allowed due to necessity should be limited to the necessity itself. Therefore, only the area that needs to be examined should be uncovered, with due respect for the patient's privacy and dignity, ensuring the examination takes place in an appropriate, private setting without the presence of others.

Issue 2: The Ruling on a Physician Examining a Patient of the Opposite Gender by Hand Without Necessity, but for the Benefit of the Patient (for example, because the Physician is the Most Skilled Available), or for an Insufficient Reason

A second medical opinion request stands valid for patient benefit when the patient has pursued multiple doctors without seeing any improvement in their condition. The physician must not delve into the patient's intentions yet still needs to give medical help based on what medical expertise dictates.

The physician's status as the most skilled medical professional constitutes a valid reason for conducting the examination when the physician also recognizes the training limitations of other staff or remains accountable for the case's outcomes. It remains essential to establish training for additional individuals to prevent the expertise from becoming restricted to one particular person.

If the reason is not strong enough (e.g., a male physician examining a female patient when a female doctor is available), this is not permissible. Necessity should always be limited to its extent. However, if the male doctor needs to examine to acquire or complete a skill, then this is permissible, and the reason is considered legitimate from a Sharia perspective.

Issue 3: The Ruling on Future Medical Students Planning to Specialize in Fields That Do Not Typically Require Physical Examinations, but Who Must Master the Skill for Their Current Studies

It is permissible for medical students to perform these physical examinations to meet their academic requirements, as doctors may encounter situations requiring such exams in emergency cases outside the clinic or hospital or during disasters, wars, etc.

Issue 4: Recommended Actions to Follow or Actions to Avoid, if Possible

Although performing a physical examination is permissible under necessity, there are several factors that medical students or doctors should be mindful of during the examination:

First: Intention (Niyah)

As the Prophet – peace be upon him – said: (Actions are judged by intentions) (Sahih al-Bukhari, Hadith 1). Therefore, the physician or medical student should be conscious of the importance of the work they are performing and its tremendous benefits and should ensure sincerity in their actions while seeking reward from Allah.

Second: Gloves and Modesty

If it is possible to examine while wearing gloves, this should be done. Additionally, if possible, the physician should lower their gaze after identifying the area or part to be examined, as necessity should always be measured by its limits.

Issue 5: Factors That May Affect the Ruling on Physical Examinations by Hand

A. The Age of the Patient or Physician

The ruling does not change based on the age of the patient or physician. Even if a physician is reluctant to treat a younger woman and prefers to treat older patients to avoid potential temptation, the primary consideration in medical work is to provide care to those who need it, regardless of age differences. The Prophet – peace be upon him – indicated the potential temptation of women, even elderly ones, as mentioned in the al-Minhaj by al-Nawawi: "The elderly woman is still a potential object of desire" (al-Nawawi, al-Minhaj, 9/104). In this case, the need for medical care should always take precedence over concerns of personal bias or assumptions about potential temptation.

B. Patient's Awareness and Consent for the Examination

Regarding the patient's consent to treatment and medical procedures, this is generally governed by health regulations set forth by the Ministry of Health and the Medical Association. These instructions are obligatory for the physician and are issued after thorough consultations and expert evaluations, taking into account the welfare of the patient. This aligns with the Sharia principle of adhering to the lawful commands of authorities (i.e., the Wali al-Amr), ensuring the patient's rights and dignity are respected in all medical procedures.

C. The Patient Being a Close Relative of the Physician

Although some scholars have ruled that "it is not permissible for a non-mahram man to treat a woman unless necessary, and only if there are no female doctors available" (Fatwas of the Permanent Committee for (Iftha); Scholarly Research and Issuing Religious Rulings, 24/430), I believe a more detailed approach should be applied. If the area to be examined is like the head, arm, or dental treatment, it may be permissible for a male physician who is a mahram (close relative) to conduct the examination, provided the physician has equal skill to that of a female doctor. However, if the area involves private parts (i.e., sexual organs), the male physician, even if a mahram, should not examine unless it is necessary and only if there is no female doctor available. The rationale for prohibiting a mahram physician from examining intimate areas is based on the potential for harm or moral difficulty, even if the necessity of the case justifies it. In these situations, the necessity allows for the examination by a male physician, whereas if the physician is lewd or untrustworthy, this becomes a separate issue that requires further consideration.

D. The Presence of Others in the Room

If the presence of others is not necessary, then the examination should be conducted privately. According to al-Sharbini, "The examination should take place in the presence of a mahram, husband, or a trusted woman if we allow a non-mahram man to be alone with two women, which is the preferred view" (al-Sharbini, al-Iqnaa, 2/406). This means that others may be present, but they should not observe the examination. The key point is the prohibition of seclusion (khalwah) between a non-mahram and the patient, which, in practice, is usually avoided between a physician and a patient.

E. The Ability to Refer the Patient to a Physician of the Same Gender

The physician is not required to refer the patient to a doctor of the same gender if this referral would prevent the physician from acquiring the necessary skills. Women's bodies differ from men's, and a male doctor can't gain the required medical proficiency solely by examining male patients. Thus, medical students and doctors may need to examine patients of the opposite gender to master necessary skills that may be needed in their future practice.

Religious and Professional Commentary

The motivation for this research stems from the hesitation that medical students often experience due to the sensitive nature of the relationship between men and women. In this context, it is essential to emphasize several key points:

1. Chastity Through Self-Restraint: Just as knowledge is acquired through learning and forbearance through practice, chastity is achieved through self-restraint. As narrated by Al-Bukhari (1469) and Muslim (1053), Abu Sa'id al-Khudri (may Allah be pleased with him) reported:

(Some people from the Ansar asked the Messenger of Allah (peace be upon him) for charity, and he gave them. They asked again, and he gave them, and they asked once more, and he gave them, until all he had was exhausted. He then said, "Whatever good I have, I will not withhold from you. Whoever seeks to be chaste, Allah will grant him chastity; whoever seeks self-sufficiency, Allah will make him self-sufficient; whoever seeks patience, Allah will grant him patience. No one is given a gift better and more abundant than patience.)

2. Unintentional Reactions During the Examination: The emotional responses that might accompany an examination that are beyond the physician's control are not held against them. Allah does not burden a soul beyond its capacity, and involuntary actions are beyond human control.

3. Focus and Avoiding Distraction: Allah says in Surah Al-Ahzab (33:4): (Allah has not made for a man two hearts inside his chest.) The focus on diagnosis and examination prevents distraction to anything else. Just as the Shari'a permits looking for educational purposes and testimony, it recognizes that in such cases, the mind is focused on the task rather than any desire. If the physician faces a temptation or distraction, they should focus intently on the examination to ward off any whispers of Shaytaan (devil). Committing to the usual time for completing the examination can help maintain concentration and prevent the mind from wandering.

4. Modesty in Islam, but Not in Knowledge: Modesty is part of faith, but there is no shame in the pursuit of knowledge. Therefore, those studying, teaching, or practicing medicine should feel assured that the preservation of health takes precedence over the preservation of religious practices in certain cases.

Conclusion: Main Findings and Recommendations

Main Findings:

1. Permissibility of Physical Examination Across Genders:

It is permissible to conduct a physical examination on a patient, even if the physician and patient are of different genders, provided there is a necessity or need that justifies it.

2. Examination as an Exception:

The allowance for physical examination is an exception to the general prohibition. It should be carried out with consideration to the extent of necessity or need that justifies it, ensuring that it does not exceed the limits set by Shari'a.

3. Flexibility and Facilitation in Islamic Jurisprudence:

The permissibility of physical examination reflects key principles of Islamic law, such as facilitation and flexibility. These principles allow for exceptions to original prohibitions when adhering to the original rule would result in harm or hardship, ensuring that benefits are maximized for people and harm is minimized.

Recommendations:

1. Study of "The Ruling on Medical Treatment in Islamic Jurisprudence":

Further study should be conducted on the issue of medical treatment in Islamic law, linking it with contemporary medical practices. This study should focus on understanding the objectives (maqasid) that the Shari'a intends to achieve, both in the fixed rulings derived from texts and in the rulings based on scholarly ijtihad (independent juristic reasoning).

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