

BALANCING PRIVACY AND PUBLIC INTEREST: A PROPOSAL FOR A DUAL INFORMING SYSTEM IN PREMARITAL MEDICAL EXAMINATION ORGANIZATIONS

Bo-Lin Ke^{1*}, Zhi-Zhuang Duan², Rui Zheng³

¹Zhejiang Normal University Xingzhi College, Zhejiang, China

²Doctor of Law, Associate Professor of Zhejiang Normal University Xingzhi College, Master Tutor, China

³Graduate School, St. Paul University Philippines, Tuguegarao City 3500, Philippines

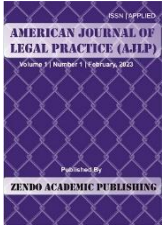
Abstract: This paper examines the issue of whether premarital medical examination organizations should have the obligation to inform parties about abnormal test results, especially in cases of infectious diseases that may endanger public health. The study focuses on Article 1053 of the Civil Code of the People's Republic of China and the classification of premarital medical examinations in the Maternal and Infant Health Care Law. The paper proposes the establishment of a dual informing system, where personal information and medical examination organization information are combined. In addition, the study suggests that premarital medical examination organizations should be required to inform the parties about infectious diseases that could harm the public interest, and the doctor should advise the parties to voluntarily seek secondary information. The paper argues that this system would balance the right to privacy and the right to know of the parties involved and promote public health.

Keywords: premarital medical examination, privacy, right to know, Civil Code, infectious disease

INTRODUCTION

In January 2016, a piece of news spread widely across the media—a man injected HIV three months after his marriage because the Premarital Medical Examination Organization had not informed him that his wife was suspected of having AIDS. The discussion about the right to privacy and the right to know in the System of Ante-marital Check-up had been carried out again [1].

According to the obligation of notification stipulated in Article 1053, Paragraph 1 of *the Civil Code of the People's Republic of China*, if one of the parties suffers from a serious disease, the other party should be truthfully informed of such disease prior to marriage registration, and there is a large space for the Premarital Medical Examination Organization to participate in the notification obligation [2]. However, the law does not stipulate that the Premarital Medical Examination Organization has the obligation to inform the other party, and unauthorized notification may infringe the privacy of the parties. Thereupon, this situation has triggered people to consider that what role should the Premarital Medical Examination Organization play in the conflict between the right to privacy and the right to know if the results of the examination are abnormal and the person does not voluntarily fulfill the obligation to inform, and whether the notification clause of *the Civil Code* needs the intervention of other subjects to guarantee its implementation effect.



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In *the Civil Code*, the definition of "serious disease" required to be notified is broader than "diseases which are regarded by medical science as rendering a person unfit for marriage" stipulated in *the original Marriage Law*. In addition to the serious diseases that have been listed as prohibited or postponed from marriage, other serious diseases that may affect the quality of life are also included. With the development of modern medical technology, certain diseases that endanger the health and fertility of the person concerned have gradually been controlled (such as leprosy), and with the rise of the "Dink concept", marriage and fertility are no longer closely linked. The premarital medical examination system also gradually completed the transformation from compulsory to voluntary.

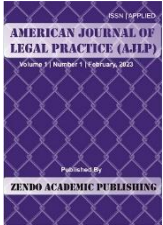
In order to protect privacy, if the other party is willing to bear the corresponding consequences, other subjects have no right to interfere since marriage and procreation are individual freedom. However, the premise of such "willingness" is that the other party should be informed. In order to realize the freedom of marriage and voluntarily choose to bear the corresponding consequences, the parties should first make the other party have a certain understanding of their physical health condition which should be limited to matters that may affect whether the intention to marry is true and complete.

Referring to Article 8 of *Law of the People's Republic of China on Maternal and Infant Health Care*, the items that may affect the personal intention to get married include three categories: target infectious diseases, genetic diseases of a serious nature and relevant mental diseases. If the parties suffering from the latter two diseases do not give birth, it will not directly affect the substantial interests of both parties, but the target infectious diseases (such as AIDS) will directly endanger the life and health of the other party and even the public interests (when HIV is spread). Therefore, the derogability of one party's right to privacy makes it necessary to yield to the other party's right to know [3].

Compared with the notification clause of "expost relief", it is more reasonable to adopt the "prior regulation" that Premarital Medical Examination Organization directly and forcibly informs the target infectious diseases. On the one hand, as the primary Organization that knows the examination results of the parties, if the Premarital Medical Examination Organization assumes the obligation of informing the target infectious diseases, it can not only protect the right to know of both parties, but also limit the "invasion" of the privacy of the parties to the minimum (compared with the CDC). Specific information can refer to the AIDS spouse notification system in some regions, and then establish a system of notification of target infectious diseases by Premarital Medical Examination Organization [4].

In the case of the detection of the target infectious diseases, Premarital Medical Examination Organization should have the right to make mandatory notification. For serious genetic diseases, relevant mental diseases and other diseases that do not directly infringe upon the other party's right of life and health, the doctor may suggest that the party take the initiative to inform the other party.

In addition, it is also necessary for public health participants to strengthen publicity and education to improve social inclusion. Toward this goal, (a) strengthen publicity and education, implement the spirit of *the Civil Code*, and encourage the parties suffering from serious diseases to voluntarily fulfill the duty of notification. (b) encourage voluntary premarital examination, strengthen the responsibility of the



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government, and transform the current voluntary free premarital examination into a guided free premarital examination [5]. (c) clarify the legal concept of major diseases as soon as possible, so as to better adapt to the notification system of target infectious diseases.

It is worth noting that the Premarital Medical Examination Organization shall not maliciously exercise the obligation to inform, the above obligation of notification is not easy to overcorrect. The privacy of citizens, such as their less influential sexual life history or information that has nothing to do with the content of the premarital examination, should be absolutely protected while the information related to the content of the premarital examination should be classified reasonably. It is recommended that the parties take the initiative to inform the other party and shall not tamper with or defraud them with false information.

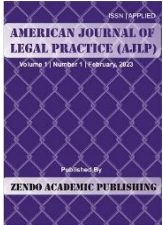
If the Premarital Medical Examination Organization has reached the above requirements, it has fulfilled the notification obligation, and the parties' right to know has been guaranteed. At this time, if both parties are still willing to enter into marriage, the subsequent related torts have nothing to do with the Organization.

CONCLUSION

To reconcile the conflicting rights and interests of both parties in marriage system, the legislators should consider building a dual notification system which connects individuals and Premarital Medical Examination Organization, centering around Article 1053 of the *Civil Code*. Nevertheless, the legislators should also take the differences of regional customs and practices into consideration. Because of regional differences, it is still difficult to build a unified premarital check-up system across the country. The legislator can firstly define the notification obligation of the premarital examination institution as a legal provision, and then each region can issue corresponding policies according to the actual local conditions. However, it should be noted that the dignity of law lies in stability. In this process, the lawmaker should always adhere to the *Civil Code* as their guideline and strictly abide by the "law-custom" hierarchy and application relationship established by the *Civil Code*, complying with public order and morality as their bottom line, and responding to the people's most fundamental interest demands.

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2. The first paragraph of Article 1053 of the *Civil Code of the People's Republic of China*: "Where one of the parties suffers from a serious illness, he or she shall truthfully inform the other party before marriage registration. In the case of failure to do so, the other party may make a request to the people's court for annulment of marriage."
3. Zhang, H. (2016). Substantial Introduction to Personality Rights (pp. p447). Beijing: Higher Education Press.
4. The second paragraph of Article 20 of the *Regulations of Yunnan Province on the Prevention and Control of AIDS* stipulates: "Infected persons and patients shall promptly inform their spouses or sexual



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partners of the fact that they are infected with HIV. If the one does not inform them, the medical and health institutions have the right to do so.”

5. Zhang, Z. Y. (2007). Change of System, Conflict of Interests and Restructure of Regulation : Observation—on Regulation Evolution of Ante— marital Check—up. *Jurists Review*, (06), 107-117.