

Guide to *Laws on Medical Negligence* in the Middle East 2020-2021

STA



A Guide to Laws on Medical Negligence in the Middle East

Since the middle of the twentieth century, the medical profession has demonstrated an increase in the incidence and severity of medical liability lawsuits. Some are of the opinion that the rise in litigation is useful as learning from errors makes healthcare safer for the community and aids in holding physicians accountable for their actions. The opponents, however, believe that litigation is unnecessary to maintain health standards, asserting that nothing could be more damaging to the future of medical care than the suggestion that patients sue their doctors. Medicine, unlike other professions, relies on humans (physicians), rather than machines, to make complicated decisions that may have potentially severe and lifelong consequences. Adverse outcomes are often an inherent risk of medical care and do not necessarily reflect poor treatment. How is medical malpractice dealt with in the following Gulf countries?

Saudi Arabia

Health Care Services in Saudi Arabia has shown a great evolution over the past two decades in both governmental and private sectors. This development in health care was the result of the upgraded technology at the facilities as well as the training and improved experience of the medical practitioners. However, the increasing number of the population, together with the increased awareness about health matters resulted in a growing trend of medical practice litigations. In Saudi Arabia, the number of medical malpractice complaints filed against medical practitioners increased by 37 percent, from 2,002 complaints in 2011 to 3,178 complaints in 2016.

The legal system of Saudi Arabia is based on the principles of **Sharia law**. The Higher court decisions in Saudi Arabia are not binding but are persuasive.

The **Sharia Medical Panel (SMP)** considers medical malpractice claims in Saudi Arabia. The *Law of Practising Healthcare Professions (2005)* ("The 2005 Law") lays down for professional liabilities. **Article 34** of the *2005 Law* sets out that the **SMP** shall have the following jurisdictions:

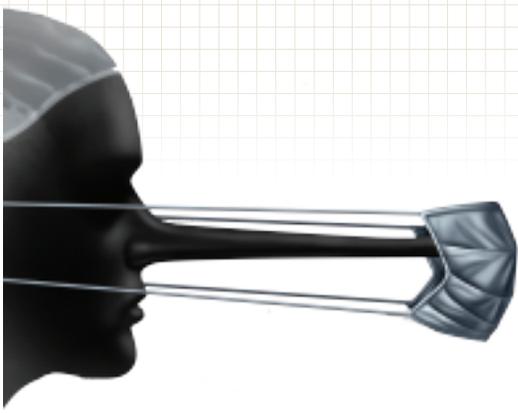
- I. In considering the claims of medical malpractice cases brought before it regarding private rights ("diyah", indemnity or compensation).
- II. In considering cases of medical malpractice leading to death, damage or loss of total or partial use of an organ, even in the absence of a claim for a private right.



Article 27 of the *2005 Law* deals with Civil Liability and states that any healthcare professional who is committing malpractice, causing harm to a patient shall be held liable for indemnification. The **SMP** shall determine the amount of such indemnification. The following shall be deemed as malpractice:

- I. Error in treatment or inadequate follow-up.
- II. Lack of skills and knowledge that can be expected from others in a similar profession.
- III. Performing unprecedented and experimental surgery, in violation of the relevant rules.

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*"All medicine is made to make you better.
If it did the opposite, it would be malpractice."*

– Chael Sonnen

- IV. Conducting scientifically unestablished research or experiments on patients.
- V. Administering medications to patients on an experimental basis.
- VI. Using medical equipment or instruments without adequate knowledge of its use, or failing to take any appropriate precautions to prevent the damage arising from such use.
- VII. Failure in providing adequate monitoring or supervision.
- VIII. Failure to consult of whom the consultation is necessitated by the condition of a patient.

The provision limiting the liability of a healthcare professional or holding him accountable shall be deemed invalid.

Article 28 of the *2005 Law* deals with Criminal Liability and states that any person committing any of the following:

- I. Practicing healthcare without a license;
- II. Providing false information or using unlawful means to obtain a license to practice healthcare;
- III. Using means of advertising leading the public to believe in his eligibility to practice healthcare, contrary to fact;
- IV. Unlawfully claiming a title associated with healthcare professionals;
- V. Possessing equipment or instruments usually used in the practice of healthcare professions without having a license to practice such professions or a legitimate reason for such possession;
- VI. Unjustifiably declining to treat a patient;
- VII. Trading in human organs or performing human organ transplant knowing that the organ in question has been obtained by means of trade;

shall be subject to imprisonment for a period not exceeding six months and a fine not exceeding SAR 100,000, or either punishment.

The **SMPs** were given the authority to apply disciplinary liability on practitioners who violate ethical standards as indicated in **Articles 31 and 32** of the *2005 Law*. Disciplinary actions can start with a warning letter, to a fine, not exceeding SAR 10,000, reaching to the revocation of the license to practice as a health care professional. In case the license is revoked, reapplication for a new license cannot be filed before the lapse of two years from the date of revocation.

The **SMP** headed by a judge includes three physicians (one medical teaching staff from a medical school and two physicians from the **Ministry of Health (MOH)**), as well as a legal expert. In the case of a malpractice suit against a pharmacist, the committee also has two pharmacists, one of whom is a teaching staff of a pharmacy college and the other a pharmacist nominated by the **MOH**. The **SMP** is allowed to consult any expert in the field of specialties related to the case under scrutiny. Blood money paid only in the event of death is the highest compensation, whereas other categories of compensations for the loss of an organ or its functions. The **SMP** makes its decision on majority votes provided that the judge is a part of this majority. The decision of the **SMP** is independent, final and can be appealed through the Council of Governance within 60 days of its issue.

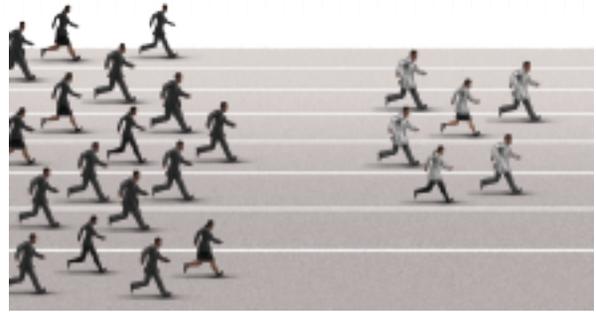
Kuwait

Article 13 of *Law Number 25/1981* on the practice of the medical profession reads: *"The doctor is not liable for the patient's condition if it is established that he has taken all due care and used all methods possible under the circumstances to diagnose and treat the patient. However, the doctor shall be liable in the two following cases:*

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"I think we are faced in medicine with the reality that we have to be willing to talk about our failures and think hard about them, even despite the malpractice system. I mean, there are things that we can do to make that system better."

– Atul Gawande



- i. *If he commits an error as a result of ignorance in technical issues that all doctors should be aware of, whether in regard to diagnosis or prescribing the appropriate treatment, and such error caused damage to the patient.*
- ii. *If he performs unapproved experiences or scientific research on patients, causing damage to them. "*

The medical professional's liability could be Error in medical practice or Intentional fault and fault due to omission.

I. Error in medical practice

This is the failure of a medical professional to satisfy the liabilities of their profession. The liability of this error will be considered a tort. However, where there is a contract between the medical professional and the patient, it will be considered as contractual liability.

II. Intentional Fault and Fault due to Omission

This is the failure of a medical professional to comply with an associated legal liability for causing damage to the patient. This is a civil crime and primarily contains an act or failure to act in violation of legal liability. However, it is mandatory for the failure to be accompanied by the intention or willingness to cause damage to the patient. Fault due to omission is a semi-civil crime and is the failure of the medical professional to comply with legal liability, provided the perpetrator was aware of such failure, and the occurrence of the fault was due to his omission.

The medical professional is expected to comply with the specified medical and practical standards. Any non-compliance of the same will make the medical professional subject to the criminal liability arising from the intentionally committed act, error, its result and failure to perform the required job.

The standard for estimating the medical professional's error differs according to the nature of work in which the failure occurs. On establishing the degree of due care that should be taken, any failure to take the due care is considered as an error that incurs liability on the failure.

In September 2019, a proposal to form a medical committee was submitted. The medical committee will primarily receive and follow up medical malpractices or errors reported by patients or concerned individuals. The committee is expected to provide recommendations regarding every medical malpractice case to the High Council for Medicine, which will accordingly take the necessary action. This step is to shorten the period for processing such cases and enhance medical supervision.

Oman

Oman passed a new law in November 2019, *Royal Decree 75/2019* governing the practice of medicine and allied health professions, (the "*New Law*"), which repeals the earlier *Royal Decree 22/1996*.

To supervise the medical professions and enforce the Regulations, the Minister of Health will issue a decision to establish one or more technical committees ("**Committees**"). This decision is primarily to ensure that a reasonable standard of practice is maintained. Where there has been a failure to comply with the basic professional standards stated in the *New Law*, sanctions and penalties shall be imposed by the Committees, for instance performing duties accurately and honestly adhering to professional ethics.

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"If people understood that doctors weren't divine, perhaps the odor of malpractice might diminish."

-Richard Selzer

Prior to the *New Law*, the Higher Medical Authority of Oman handled the medical malpractice claims. The *New Law* provides that the medical malpractice claims will be decided by a newly formed **Supreme Medical Committee**. The Supreme Medical Committee has the power to investigate whether malpractice has occurred and to determine the level of compensation payable.

A set of executive regulations by the **Minister of Health** will be issued prior to 6 November 2020, to provide further detail.

Bahrain

Article 27 of Legislative Decree Number (7) of 1989 with respect to the Practice of the Human Medicine and Dentistry Profession ("Human Medicine and Dentistry Profession Law") states the definition of doctors' responsibility and explains when their liability arises- *"A doctor shall not be responsible for the condition that the patient has reached, if it has been proved that he has exerted the required care and used all means by which anybody in his circumstances, can diagnose the disease and treat the patient. A doctor shall be responsible for the following cases:*

- I. If he has committed a mistake that led to harming the patient as a result of ignorance of technical and practical matters that any doctor is supposed to be aware of.
- II. If he harmed the patient as a result of the doctor's negligence or his failure to take care of the patient.
- III. If he performs scientific experiments or researches on his patients which are not certified by the Ministry of Health and have harmed the patients. The Committee referred to in **Article (5)** of this law shall decide on the occurrence of the above-mentioned mistakes."

This article primarily defines the nature of doctors' commitment and the type of mistakes they are responsible for.

The article also specifies the competent authority to decide whether a wrongful act establishes malpractice or not. The Committee's decisions are binding to the courts. In most cases, the Committee decides to dismiss the liability case on concluding that the doctors used their best efforts with due care. The doctor will not be responsible for the patient's condition on proving that the doctor used due diligence.

Legislative Decree Number 21 of 2015 relating to Private Health Institutions (the "New Private Health Institutions Law") repealed and replaced the previous *Law Number 23 of 1986 relating to Private Hospitals (the "Private Hospitals Law")*.

According to **Article (16)** of the *New Private Health Institutions Law*, the *National Authority for Regulation of Health Professions and Services ("NARH")* shall specify the categories and types of the private health institution obligated to have an insurance policy to insure against professional errors or errors made by any of the technical, nursing, or medical team in the institution.



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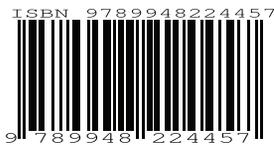
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ISBN 978 - 9948 - 22 - 445 - 7



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