

A Guide to Medical Negligence Claims and Liability in the GCC 2018-2019

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MEDICAL NEGLIGENCE CLAIMS AND LIABILITY IN GULF COUNTRIES: A CRITICAL ANALYSIS

Willes. J states, “Negligence is a negative word. It is the absence of such care, skill and diligence as it was the duty of the person to bring to the performance of work, which he is said not to have performed”.

Introduction

The medical profession is known to be one of the most prestigious jobs which deserve appreciation and respect. The relationship between a patient and doctor is based on trust and faith. George Bernard Shaw said, “We have not lost faith, but we have transferred it from god to the medical profession.” There are two essential things that we value namely, life and health. It is the doctors and medical professionals who possess the knowledge and skill that is put into the position which improves our health and vitality. Over the previous couple of decades, we have witnessed a new phase of globalisation, commercialisation and technological advancement in various aspects of our life, the medical profession is no exception to this phenomenon. As such nowadays, the medical profession is becoming more money oriented and because of this reason the claims regarding medical negligence have become a severe issue in today’s era. In earlier civilisations, medical negligence was considered more of a crime rather than a tort. The early tribal and communal law depended on the legal practice and customs for controlling the various activities of the medical professionals. In Yajnavalakya Smriti mentions 100 Pana as the highest penalty for medical negligence.

Medical negligence occurs following a medical practitioner failing to provide proper care and attention and exercise those skills which a prudent, and qualified person would do under similar circumstances. The liability of medical negligence gives rise to both civil as well as criminal liability. In the civil process, the aggrieved person can go civilly by filing a suit or by lodging a complaint to claim his compensation. On the other hand, in criminal procedure, the victim needs to bring a criminal action against the doctor before the police.

Medical Negligence as Tort:

Tort in simple words means a civil wrong. Winfield has defined Tort in the following words:

“Negligence as a tort which is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff.”



It is an act or an omission that gives rise to injury and harm to the victim for which the court imposes liability. Negligence as a tort is the breach of a duty caused by the omission to do something which a reasonable person, under a given set of circumstances, would do or doing something which a prudent and wise man would not do. The doctors have the legal obligation to the patients to adhere to a standard of reasonable care. The medical negligence is provided with the following conditions:

- i. When there is a breach of the duty of care on the part of the doctors to the patients.
- ii. When he has committed a violation of that duty.
- iii. The patient is suffering consequential damage as a result.



*"Whenever a doctor cannot do good,
he must be kept from doing harm."
– Hippocrates*

Medical Negligence as an Occupational Crime:

The term "Occupational Crime" refers to those crimes which are committed mainly within the context of a legitimate occupation. Occupational crimes primarily include those crimes that are related to the occupation, for instance, medical, academic religion, law etc. Professional crimes are generally less visible than any other conventional forms of adverse actions, and as such, in such cases, the offenders often go undetected. Medical Negligence is considered to be a severe form of occupational crime which undermines the integrity and nobility of the profession. Some of the Medical Negligence crimes include a fee-splitting, taking and offering kickbacks, price fixing, fraudulent billing, performing unnecessary surgery, upcoding, misrepresenting services, etc. Doctors and medical professionals engage in various illegal activities to obtain some benefit. It might be tough for the patient to believe that they could be a victim of medical crime and that the doctors whom they trust with their health are criminals.

When Medical Error occurs?

Medicine is considered to be an inexact science, and as such, sometimes a responsible doctor may not give an assurance to achieve a particular result. A medical error occurs when a doctor provides an inaccurate and incomplete diagnosis and treatment of a disease, injury, infection or any other such ailment. There may be multiple factors in the errors in medical treatment. It is very common that even after adopting all the possible medical procedures, a qualified doctor may be subject to medical error. As per the various legislations in the UAE and other Gulf countries, it is established that a doctor and a medical professional may not be liable for medical oversight.

This omission of liability remains even when some errors are committed in his/her practice as long as he/she is adhering to professional procedures. As per Article 6 of Federal Law Number 4 of 2016 of the UAE, a medical error is an error committed by a practitioner due to the following reasons:

- i.* If there is any ignorance of the technical matters that are supposed to be known by any practitioner of the same degree and specialisation.
- ii.* If there is any non-compliance with the recognised professional and medical principles.
- iii.* When the practitioner is not exercising due diligence.
- iv.* When there is negligence on the part of the physician, and he/she is not paying attention to the treatment.

The new UAE medical law (Federal Law Number 4 of 2016) provides numerous cases which excepts medical liability. Some of these cases are:

- i.* If any of the reasons do not cause the harm, set out in the Article 6 of this legislation.
- ii.* If the damage is caused by the patient's action or his refusal of the treatment or his failure to follow the medical instructions given to him by those responsible for his treatment.
- iii.* If the physician uses a particular therapeutic method in the treatment contrary to those of the other physician in the same specialisation so long as such way confirms to generally accepted medical principles.
- iv.* If known or unseen therapeutic effects and complications in the field of medical practice take place but are attributable to the medical error.

An Overview of Medical Negligence Legislation and Various Regulatory Authorities in UAE:

Over the prior two decades, we have seen an enormous expansion in the healthcare sector in UAE. The medical

*"Medical profession is a feat, it requires self-sacrifice,
purity of soul and purity of thoughts*

– Anton Chekhov



liability law in UAE now specially provides that the medical professionals will be liable in the event they commit any medical error with an intention and motive of any profit-making activity or other benefit. In the UAE Civil Code, there is a general theory of tort that a person who commits harm to others will be responsible for the loss or injury to the claimant.

Article 389 of the Civil Code states:

“The criterion for an aggravated party to be entitled to compensation is that the damage should have been suffered directly as a result of the default and that it has already happened or will happen in the future. The potential damage that is not ascertained will happen in the future is not the subject of mandatory compensation unless it has happened.”

Medical Liability Legislation in UAE:

The new medical liability law passed in 2016 (Federal Decree Law 4 of 2016) has brought about various changes to the medical law in the UAE. As per the legislation, all the medical practitioners within the state should discharge their duty with accuracy and honesty as dedicated by the profession. (Article 3). As per the law, it is required that all the medical professionals should comply with the rules, regulations and procedures of practising the profession. As per Article 8, it is necessary that the physician who performs the surgery is qualified according to his academic, and his practical experience and accuracy, and significance of the operation. Every doctor and physician must take a written approval from the patient and the patient’s relatives. Again, the new medical law in UAE permits the medical professionals to allow natural death by refraining from performing cardiopulmonary resuscitation of the dying, if:

- II. The patient is suffering from a disease deemed incurable.
- III. All the medications methods are used.

IV. It is proven that medication is useless in the respective cases.

V. It is advised by the attending physician not to do the cardiopulmonary resuscitation.

VI. At least three consulting doctors decide that the patient’s interests require that the natural death is allowed and that CPR should not be provided.

Penalty:

As per the new medical legislation in the UAE, whoever violates any provisions of Articles 1/12 and 14 of this Decree shall be sentenced to not more than five-year-imprisonment, and shall be not less than two-year-imprisonment and shall be fined not less than AED 200,000 and not more than AED 500,000 or either of these two penalties.

Whoever violates any provisions of Articles 12(2) and Article 15 of this Decree shall receive at minimum six months of imprisonment, and which shall be not less than two-year-imprisonment and shall be fined not less than AED 100,000 and not more than AED 200,000 or either of these two penalties.

Whoever violates any provisions of Articles 13 of this Decree shall be sentenced to not less than three months imprisonment, and shall be not more than two-year-imprisonment and shall be fined not less than AED 50,000 and not more than AED 100,000 or either of these two penalties.

Regulatory Authority in UAE in the Field of Healthcare

Basically, at the federal level, the UAE operates within a constitutional framework that makes various provisions for health care and safety of the UAE population. But although there is the healthcare sector at the federal level in UAE, certain Emirate states have established their health authorities. Such health authorities have their local policies, rules and various codes of practice.



HAAD (Health Authority of Abu Dhabi)

The Emirate of Abu Dhabi has established the Health Authorities of Abu Dhabi (HAAD) to provide primary health care services to the residents of Abu Dhabi. It has various types of master plans for the delivery of health-care services to the people in Abu Dhabi. HAAD was established according to Abu Dhabi Law Number. 1 of 2007. HAAD is responsible for licensing, quality control, and regulating all of the health care facilities and health professionals in the Emirate of Abu Dhabi. The other responsibility includes monitoring various healthcare facilities so that high-quality health care services are delivered to its population under the best international practices and quality standards.

DHA (Dubai Health Authority)

Again, there is the Dubai Health Authority (DHA) which was established according to Dubai Law Number. 13 of 2007. It operates the public health care facilities and health care insurance in the Emirate of Dubai and specific free zones. It is the regulating authority which gives license to the various private sector hospitals, home health care facilities, dental laboratories, school clinics, and such other various alternative medicine centres. DHA has approved the licences for more than 20 health care centres and clinics around the Emirate that provides the various primary health care services.

Sharjah Health Authority:

There is the Sharjah Health Authority which was established by Sharjah Emiri Decree No. 12 of 2012. It regulates the Sharjah health care system.

UAE Judicial Approaches in Awarding Damages For Medical Negligence:

In the recent years, there has been a notable increase in the number of awards awarded to the claimants in the matter of personal injury. In 2012, the most

"A man without ethics is a wild beast loose upon this world."

– Albert Camus

substantial successful claim of AED 3 million was given by an Abu Dhabi court to a family of a woman who was left in a permanent vegetative state following the treatment.

Again in 2012, the Abu Dhabi Court awarded AED 7 million in punitive damages to the family of a 12-year-old boy who suffered brain damages following an overdose of anaesthesia. Again, the courts also ordered the payment of AED 200,000 blood money, and the hospital to pay AED 10,000 in fines.

In the Cassation Appeal No. 69/2014 (Abu Dhabi Cassation Court), the Cassation Appellants faulted the contested judgment citing violation and misapplication of law, overlooking documented facts, faulty reasoning, and inadequate grounding.

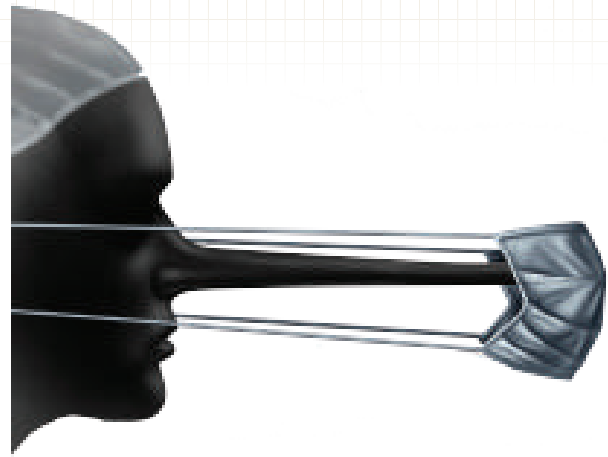
Criminalisation of Medical Negligence in Saudi Arabia

Over the past two decades, the healthcare services in Saudi Arabia have significantly evolved and as such, the clinical errors, and medical negligence claims are also increasing to a greater extent.

The Process of Litigation Regarding Medical Claims in Saudi Arabia:

The health authorities in Saudi Arabia formed various committees to investigate the matters related to medical negligence. There is the Primary Investigation Authority, which is composed of three members which are a physician, a legal expert and another physician of the speciality. The main task of the committee here is to interview both the plaintiff and the defendant, and to investigate all the medical records, and then to find out the real cause of the medical error. The committee then makes the suggestions to both the parties. Again, if the aggrieved parties are not convinced, the case is then directed to higher authorities.

*"Good health and good sense are two of life's greatest blessings."
– Publilius Syrus*



The Minister of Health and further ministers who provide health services under their authority in Saudi Arabia have formed another committee which is known as Medical Violation Committee. The committee consists of three physicians and a legal expert. These committees investigate various medical negligence suits.

The Medical Jurisprudence Committee is the highest committee which investigates the medical negligence suits. The committee looks after various medical negligence claims for compensation.

Criminalisation of Medical Negligence in Bahrain:

Over the last few years, the Kingdom of Bahrain is experiencing new standards in the field of health care. The National Health Regulatory Authority in Bahrain investigates and takes various actions against medical professionals for medical negligence. The National Health Regulatory Authority (NHRA) in Bahrain ensures a high quality of medical care and assistance to the patients. The NHRA investigates various issues and complaints related to medical negligence. Multiple kinds of disciplinary actions are taken against the defaulters by NHRA. At the beginning of the year 2017, NHRA took stringent action against 53 medical practitioners.

NHRA mainly targets various goals which are:

- i.* NHRA maintains and holds all the health care facilities accountable. NHRA ensures all the medical facilities meet the required standards of licensing.
- ii.* NHRA aims to support safe and trusted healthcare facilities throughout the country.
- iii.* NHRA seeks to preserve the various rights of the patients and provide them with the safety.

Criminalisation of Medical Negligence in Oman:

Over the last 50 years, Oman has invested hugely in the field of health and medical sector. Now Oman has a

relatively modern healthcare system and facilities. As per the Human Development Report made by United Nations in the year 2010, Oman has been listed in the tenth (10th) position amongst the world's leading countries that have made the most significant advancement in the field of medical and healthcare. Oman has engaged with health development planning since 1975. The whole country now has 67 modern hospitals with various modern healthcare facilities. In Oman, the health making policy is very complicated. Because Oman is a welfare state, HM the Sultan accorded the highest priority in the educational and health sector. The people of Oman are assured with the fundamental right of health. If there occur any medical issues and negligence, the people of Oman can file the complaint before the Royal Oman Police. The Royal Omani Police and the public prosecutor usually investigate the matters and cases in the first instance.

Criminalisation of Medical Negligence in Kuwait:

In Kuwait, the health care system is undergoing a rapid change. In Kuwait, both the public sector and private sector provide health care services. All Kuwaitis can access the primary health care services. Generally, the people in Kuwait file a complaint before the judiciary and the police when the medical professionals and doctors violate their health care services.

Conclusion:

Doctors and the medical professionals are subject to the negligence rule of liability. In order to come out on top, the victim or the claimant must show the sustained damages which were caused by the failure of the physician to take due care. The increasing number of medical negligence cases raises the concern about the efficacy of law in settling the medical negligence issues and awarding the compensation and damages.

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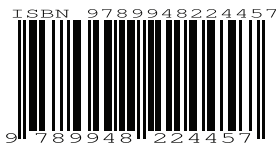
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