

Civil Provisions Of Medical Liability In The Jordanian Law

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Abstract

This research investigates civil provisions of medical liability in the Jordanian law. It is motivated by the necessity to protect the patient's rights and advance the medical profession in Jordan, given the recurrence of various medical errors, such as medical error in diagnosis, medical error in the treatment prescribed to the patient, and medical error that is very effective in surgical operations. It discusses and states the rights and duties of the patient and the doctor as they are stipulated in the Jordanian law. Therefore, the current research dealt with the doctor's civil liability, in both its contractual and negligence parts, and the opinions of jurisprudence, law, and the Jordanian judiciary in dealing with medical liability compared to some Arab countries. The descriptive approach is used and the findings revealed that Jordan issued the Jordanian Medical Liability Law after a long wait. However, it is still bellow the required level, hoping that this research will help in explaining the said law at its application phase.

Key word: Medical Liability, Civil Law, Civil Liability.

Introduction:

Jurists have been much concerned with the idea of medical liability. Some jurists have completely rejected any liability on the doctor. They believe that the doctor performs the work of an assistant, while the ordinary doctor provides assistance to the patient by diagnosing and providing a medical prescription or performing a necessary operation that the patient needs (Manar, 2018, p.4).

Others focused on the personal liability of the doctor and the assessment of responsibilities according to the doctor's work. They

believe that the doctor is only responsible for his personal work and the work of the medical team supporting him. This implies that the doctor provides therapeutic services based on exerting effort and not achieving a result. Those who hold this opinion believe that cosmetic operations do not fall within the scope of these liabilities because (cosmetic operations) must achieve a complete result; achieving the goal of beautification and not accepting mere care, but achieving a result (Husni, 1975, p.1).

There is a third opinion that views normal and cosmetic medical operations as part of the doctor's responsibility (everyone who performs work on the human body). Holders of this opinion also distinguished between normal medical operations and plastic surgeries. They also distinguished between the contractual liability of the doctor and his negligence liability (Ammar, et al., 1970). The current paper supports this opinion because it relates to the doctor's practice of his work. Furthermore, it is hoped that the Jordanian legislator, through the Medical Liability Law No. 25(2018), would elaborate this issue in a better way than its current form. In this respect, the current study aims to shed light on the Jordanian Medical Liability Law No. (25) of 2018, the applications of this law, the adequacy of its provisions, people's knowledge of its provisions, the extent to which it can be applied to the civil liability of the doctor, and whether it is sufficient to determine medical liability, or should one refer to the provisions of other Jordanian laws.

Research Problem:

The provisions of the Jordanian Medical Liability Law No. 25 of 2018 do not clearly outline its application. Therefore, there is a need to have a roadmap to determine civil liability in the event of a medical error. It is also needed to know how to deal with medical liability and issues of compensation for medical errors, in a comprehensive and clear way, according to the Jordanian Medical Liability Law.

Research Significance:

This research gains its significance from the lack of previous studies on the topic of medical liability in the Jordanian context. There is a lack of research on this subject in accordance with the new Medical Liability Law No. 25 of 2018. Therefore, the current research will be a basis for future studies. It will enlighten other researchers to conduct further research on similar topics.

Objectives of the study:

- 1- To highlight the limits of the doctor's liability in accordance with the Jordanian Medical Liability Law No. 25 of 2018 and other Jordanian laws concerned with medical liability.
- 2- To highlight the procedures for filing a civil liability lawsuit against the doctor and the types of that liability.

Research Questions:

1. Are the provisions of the Jordanian Medical Liability Law sufficient to determine whether or not the doctor is medically liable?
2. What are the provisions of the Medical Liability Law, and how can the doctor and the affected person benefit from them?
3. What are the types of civil liability for the doctor and how to prove it?

Research Methodology:

The descriptive, analytical and comparative approaches are used in this study. These approaches are used to describe the provisions of Jordanian law, compare the Jordanian law with other laws and analyze them according to the international jurisprudential opinion on civil law.

The Concept of Medical Liability in the Jordanian Medical Liability Law:

It has previously been indicated that the Jordanian law did not regulate medical liability in an integrated law, as many countries did. In 2016, the Council of Ministers submitted to the House of Representatives a medical accountability bill, but it was protested by the Doctors Syndicate and returned for study. Then it was issued again in Law No. 25 of 2018.

By reading the aforementioned law, it has become obvious that it does not include the features of a modern law with regard to preserving the medical professions, the reputation of medicine in Jordan and the Jordanian hospitals. Furthermore, when referring to the Jordanian Medical Association Law, the Jordanian Medical Constitution, and the new Medical and Health Responsibility Law, it becomes obvious that the Jordanian Law on medical liability is not sufficient to regulate medical liability at the level reached by many countries in the world, even those that are medically backward or below the Jordanian level in medicine.

For the purposes of demonstrating the positive outcomes of these legislations, medical liability lies in many considerations, the most important of which are:

- Maintaining a high medical level in diagnosis, treatment and surgical procedures.
- Confidence and credibility in medical work that does not focus on profit and loss but on the noble principles for which the medical profession was found.
- Improving the level of the doctor, his follow-up of modern technical developments, his liability for the medical team and the tools and devices that he uses.
- Providing the best possible medical care to the recipients of medical services.
- Reducing medical errors to limits that do not affect human life.
- Protecting the weak party; the patient, in all stages of receiving treatment (Al-Sanhuri, 1983, p.1138).

If the Syndicate and government medical institutions are satisfied, it is expected that they will be given a sufficient period to study and revise the draft law and produce it in a proper and sound manner that serves doctors and patients together and helps in advancing medicine in Jordan.

By studying the Jordanian law, especially the Law of the Medical Association and the Jordanian Medical Constitution, it becomes obvious that there are some means to reach doctors' accountability for their medical errors. This point makes it urging to investigate the subject of applying the law of medical liability and the proposed amendments to this law by comparing it with other laws.

The liability of the doctor (team head) according to the general rules for his medical team:

It is not possible, in the absence of a comprehensive legal legislation specific to medical liability, to talk about the liability of the doctor being the head of the medical team. However, this seems possible by defining the doctor's liability according to the contractual or negligence liability, as we indicated previously. In this respect, it is hoped that the Jordanian legislator in the new medical liability law would work to allocate legal

rules for the head of the medical team, especially if he is the contracting party with the patient or his family, so that this precise liability would be included within clear legal rules. For example, in the case of the doctor heading the medical team, he is the one who often contracts to provide treatment or perform the surgery, and he is also the one who chooses the members of the medical team on his own responsibility, away from any pressures and based on technical knowledge and sufficient experience in the method of selection. This does not mean that the medical team should be large or small in number, or formed permanently or temporarily, but rather they are a group of professional people who help the head of the team to conduct medical operations, specializing in fields that serve the operation that needs to be performed for the patient. Thus, this liability is a contractual liability between the head of the medical team and the patient or his family, as the case may be.

The relationship is also contractual between the head of the medical team and the members of this team. Consequently, the case of the patient or his family differs in the event that the medical error is proven by the head of the team himself or by his staff, so that the head of the team is directly asked about his medical errors in front of them. In this respect, the members of the medical team are indirectly asked about their mistakes, according to the principle of the follower and the followed, as we imagine in this case. In this case, the lawsuit is not filed against them. Rather, it is filed against the team head and by extension the member of the team who committed the medical error out of negligent, according to what is stipulated in Article (1/288/b) of the Jordanian Civil Law No. 43/1976: "The one from whom the error occurred is an authority, and he must control and direct the team, even if he is not free to choose, if the harmful act was issued by the subordinate in the case of performing his job or because of it".

An actual application to the head of the medical team is noticed in this law. This is because the member of the medical team works under his supervision and directives, while the head of the team is the one who chose him for this work and therefore has actual authority over him. This is supported by the decision of the Jordanian Court of Cassation: "It is determined according to Article (288/1/b) of the Civil Code that the head is liable for the error caused by his subordinate...", and that is according to the following:

- Control and direction (actual authority) whereby the head has the authority to issue orders to his subordinate that he directs him to do

in his work, even if it is a general directive, and to have control over him in the implementation of orders.

- The dependency relationship is associated with the consent of supervision and guidance. If the head does not have full authority to supervise and direct, the dependency relationship ceases, and jurisprudence have settled on this opinion.

Thus, the affected person, whether the patient himself or his family, returns to the head of the medical team directly without the need to know who the members of the medical team are and who is the person who committed the error that caused the harm, as it is sufficient to identify and prove the harm so that the responsibility is established towards the head of the medical team directly. This is the shortest way for them to get compensation and faster than looking into the mistakes of team members accurately.

The researcher would have liked to see better judicial applications in the Jordanian Medical Accountability Law of 2018, which deals with the responsibility of doctors, the objects and devices used and their liability for them.

Proposed amendments to the Jordanian legislation on medical liability:

There are various legislations related to the medical field in Jordan. These include the Jordanian Medical Association Law, the Medical and Health Responsibility Law, the Medical Constitution and other laws related to the duties and responsibilities of the doctor and the hospital, and the regulations and instructions related to medical and health care. Therefore, it is urging that the Jordanian legislator will collect these laws related to medical and health liability in a single and independent law so that it will be a single and comprehensive reference for challenging medical liabilities. This would facilitate and help in clarifying the rights and duties of the doctor and those of the weak party; the patient. It would advance the medical work to the highest level and achieve the best degree of preservation for the advanced medical professions in Jordan. Much emphasis is made on the importance of this law being comprehensive and detailed, and covering the public and private sectors.

Determining liability shows the type of liability involved; negative or contractual, the time of implementation of each of them, the implications of negligence and contractual liability, and clarifies the patient's rights to compensation in a clear manner. In this regard, the law should be comprehensive in stating the liability of the doctor at all stages of providing the service; diagnosis, treatment or surgical procedures. It

is also recommended that pure and non-therapeutic cosmetic operations be separated from medical surgeries, so that the commitment is to achieve a result and not to provide cosmetic care. Furthermore, adequate and comprehensive penal, administrative and civil penalties should be included, and that the competent court be identified, so that it is either with the court of first instance or the creation of a special court for medical liability.

The liability of the medical team and its head necessitates keeping pace with the development taking place in the various medical fields, such as performing surgeries via the Internet, cloning, organ transplantation, or the use of modern technical devices, methods of conception through vaccination, and other modern medical developments, and leaving space for flexibility by introducing operations, devices, and medical things.

It is urging to specify the doctor's liability for medical devices and things used in medicine away from the law that was issued in 2018, which defines the doctor's responsibilities clearly and conclusively. Therefore, there is a need not only to provide the solution of these matters and their reference to the general rules in the Jordanian civil law, but rather to show that they are subject to a law of their own.

Thus, real and effective participation by the Jordanian Medical Association and professional associations with specialization is needed. Moreover, it would be preferable to introduce other responsibilities in this field, such as the responsibility of the pharmacist, nurse and midwife, so that the law regulates the medical sector comprehensively.

The doctor's liability for his personal mistakes:

This part deals with the civil liability of the doctor. In this respect, the laws for determining these errors are represented in the Jordanian Medical Association Law No. 13 for the year 1972 and the Jordanian Medical Constitution, and the System of Professional Titles and Specialization for Doctors No. 79 for the year 2013. The Medical Association Law specified the errors, that can be committed by the doctor, in Article (45), which stipulates that: "Any doctor who violates his professional duties contrary to the provisions of this law and any regulation issued pursuant to it, or commits a professional error, exceeds his rights, falls short of his obligations according to the medical constitution, refuses to abide by the decisions of the council, performs an act that is not the principle of the profession, or acts in his private life

an act that degrades its value, exposes himself to disciplinary action before a disciplinary council.”.

Thus, a large number of irregularities and an understanding of what medical errors and violations are in a rigid and non-detailed manner, as well as a commitment to matters found in the Jordanian Medical Constitution or in any special regulations issued based on this law. They are scattered texts and not accurately specified, and this is what we investigate through this study. It is hoped that the violations would be regulated by legal articles that are very similar to what is found in the penal laws, so that each violation or even an error, or a violation of the medical constitution, has an independent legal article, and its penalty is added to it in a specific and precise manner.

What concerns us is that this article has dealt with the medical error and indicated the competent authority to determine it, which is the Disciplinary Council, as Article (46) of the aforementioned law indicated how to form this council. However, these articles have enumerated the violations and errors, but are not limited to them. Therefore, we can measure and expand on it. Even if a separate law of medical liability is established, it is not possible to limit all medical violations and errors that doctors can commit.

The liability of the doctor for his mistakes is at the center of the issues of medical liability in its general form, whether it is a criminal, administrative or civil liability. Therefore, medical liability, from a civil point of view, requires the availability of its elements, whether contractual or negligent, which are:

First: The Medical Error:

A medical error can be defined as any act of a physician towards a patient. There are many forms of this error, depending on the stage of treatment provided, starting with diagnosis and ending with surgical operations, and the violation of proven scientific medical principles, according to the Jordanian Civil Code and Article (62) of the Jordanian Penal Code, which states: “The act permitted by law is not considered a crime, including surgical operations and medical treatments applicable to the principles of art...”

The criterion of medical error in jurisprudence, which the doctor is asked about, is the behavior of the average doctor of the same level and medical rank in the same surrounding external circumstances. Therefore, when estimating the error, the doctor's level should be taken into

account in terms of being a general practitioner, specialist, or consultant, with what surrounds the work of stable and acceptable medical habits (Jordanian Court of Cassation Ruling No. 626, 2006).

We find that the criterion for knowledge and assessment of medical error is an objective criterion. Thus, it is necessary to conduct medical expertise to find out, confirm or deny medical error, or negligence.

And based on the text of Article (62) of the Jordanian Penal Code referred to above, the operations related to rest and treatment are not considered a crime, provided that:

1. The principles of medicine are applied.
2. The consent of the patient or his legal representatives, except in cases of necessity.

Medical intervention is required, but conditions must be met so that it does not result in criminal, administrative or civil liability.

Second: Affect:

It is understood from the text of Article (256) of the Jordanian Civil Code that the act (medical error) be harmful in order to necessitate the guarantee and its entitlement. Thus, the Jordanian law focused on the occurrence of harm and not on the commission of error only, in contrast to the Egyptian civil law in Article (167) which made the error the main pillar for the establishment of responsibility and guarantee, and its consequences, regardless of the harms that resulted from it. By comparing the two previous texts, we find that the text of the Jordanian legislator was more comprehensive than that of the Egyptian legislator in this case. This indicates that there is no need, according to the Jordanian text, to prove that a medical error was committed, but rather it is sufficient to prove that the harm occurred.

The harm may be material or moral. In the context of medical errors it is material if it results in death or disruption of any of the body's functions, or to the amputation of any of the patient's organs without a medical need for that (Jordanian Court of Cassation Ruling No.1824, 2022).

The moral damage is the infringement of others' freedom, honour, dignity, reputation, social status or financial consideration in accordance with what was decided by Article (267) of the Jordanian Civil Code.

There is no doubt that moral harm has loose meanings and terms, as it sometimes includes the psychological pain of the patient or his family. If the harm does not occur due to the doctor's error, the harm is not compensated in this case, as the harm must exist in order to establish medical liability, and the absence of harm leads to its non-existence in the first place.

It is imagined that the psychological harm will only occur in cases of medical liability, such as disclosing the patient's secrets and information to others. The burden of proving the harm occurred is on the affected party, whether the patient or his family, depending on the situation and degree.

The Jordanian Court of Cassation confirmed the stability of the court's judgment not to award compensation for moral harm in contractual liability, since the subject of compensation for it is found only in the (negligent liability) (Jordanian Court of Cassation Ruling No. 2816, 2005).

Third: the causal relationship:

Evidence of the causal relationship between the error and the harm in the medical liability is an essential element of the establishment of the medical liability. The doctor is not liable for an ordinary relationship, whether the harm to the patient is not caused by his act, medical error, or negligence, but is due to the act of a third party, the patient's own fault, or due to force majeure.

The doctor is not responsible for these cases because there is no causal relationship between them and the patient's harm. The judge is considered the one with the authority to hear the case, and he is the one who adjusts and estimates the availability of the elements of medical liability based on the medical expertise presented to him. The Jordanian Court of Cassation indicated that the necessary technical expertise must be available by appointing an expert - a doctor - to say his opinion in the case. Because of not following this procedure, the decision of the court of first instance must be rejected, with which the papers must be returned to their source (Jordanian Court of Cassation Ruling No.839, 2022).

Conclusion and recommendations:

It is found that the Jordanian Medical Liability Law No. (5) of 2018 is not sufficient to govern relations in the civil liability of the doctor. Rather, it is necessary to refer to the Jordanian Civil Law, the laws of the Jordanian

Medical Association, the Public Health Law and other laws so that we can apply the provisions of relations in Medical liability on the doctor and medical errors.

We recommend to our Jordanian legislators more careful legal study and the acquisition of accumulated experience from the Jordanian judicial rulings on this subject. As in this research, we will rely on the general rules in the Jordanian civil law and other laws to collect the elements and pillars of medical liability, judge its existence, verify and judge compensation whether we are lawyers or judges.

It is also recommended to make medical liability issues of various subjects, starting with the doctor, pharmacist, nurse, and private and government hospitals in one law, so that we have a comprehensive health liability law, and classify the responsibilities of the doctor, medical team, hospital, and nurses accurately and clearly.

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