

Significant Developments: UAE Medical Liability Law

Ahmed Allouz - Partner, Regional Head of Litigation - Litigation / Family Business
a.allouz@tamimi.com - Dubai International Financial Centre

Omar Khodeir - Senior Counsel - Litigation
o.khodeir@tamimi.com - Dubai International Financial Centre

Introduction

The awaited Cabinet Resolution No. 40 of 2019 ('Resolution') was recently issued to expand upon the provisions of the Federal law No. 4 of 2016, concerning Medical Liability ('Medical Liability Law'). This article considers the key considerations arising from this important development.

Background

The Medical Liability Law referred to the issuance of a resolution, which would elaborate upon different points addressed in the Medical Liability Law, including the definition of 'gross medical error'[\[1\]](#). The Resolution has now been issued, which provides this important clarity.

To provide the necessary context, Article 6 of the Medical Liability Law states that:

*"A medical error is an error committed by the practitioner of the profession (practitioners of any of the medical professions or related professions set by a Ministerial Resolution as defined by the Medical Liability Law) ("**Practitioner()**") for any of the following reasons:*

- 1. His ignorance of the technical issues that every practitioner of the profession of the same degree and specialization is supposed to be aware of.*
- 2. Failure to follow the recognized professional and medical standards.*
- 3. Failure to act with necessary due diligence.*
- 4. Negligence and failure to act carefully and with precaution.*

The Executive Regulations of this Decree-Law shall set the standards of gross medical errors."

Prior to the issuance of the Medical Liability Law, Practitioners who committed any medical error were also potentially criminally liable.

After the issuance of the Medical Liability Law and Resolution, which includes the definition of 'gross medical error', only those Practitioners who are determined to have committed 'gross medical error', and not merely an 'error', can be held criminally liable.

Defining 'Gross Error'

The Resolution came into force to clarify any ambiguity around the definition of 'gross medical error'. An English translation of Article 5 sets out scenarios and criteria wherein medical malpractice shall be considered as 'gross medical error', as follows:

1. *Medical malpractice shall be deemed of a gross nature if it leads to the death of the patient or fetus, eradication of a human organ by mistake, loss of organ function, or any other serious damage, in addition to the availability of any of the following criteria from which the medical malpractice:*
 1. *Unpardonable unfamiliarity with the well-established medical standards according to the level and specialization of professional practitioner.*
 2. *Adopting a medically unrecognized method.*
 3. *Unjustified deviation from medical standards and rules for practicing the profession.*
 4. *The doctor is under the influence of alcohol, drugs or psychotropic substances.*
 5. *Gross negligence or clear lack of perception upon taking well-established medical actions; e.g. leaving medical equipment in the patient's body, giving him/her an overdose of medicine, failure to operate a medical device during or after the surgical operations, resuscitation or childbirth, failure to give the patient medically appropriate medicine, or any other act classified as gross negligence.*
 6. *Practicing the profession deliberately beyond the scope of specialization or clinical privileges conferred upon the doctor under the professional license.*
 7. *The doctor's use of diagnostic or therapeutic means, with no prior practice or training, and without medical supervision.'*
2. *The Committee and the Supreme Committee, each within the area of its competence, shall consider the complaints and grievances relating to the medical malpractice, and determine the following:*
 1. *The criterion relied upon to classify the occurring medical malpractice of gross nature.*
 2. *Identifying the elements contained in the file and confirming the existence of a gross medical malpractice.*
 3. *Identifying the type of damage and error.*

Moreover, the above Article notes that the Medical Liability Committee ('Committee') and the Supreme Committee of Medical Liability (as referred to in the Resolution and Medical Liability), within its functions, shall examine all complaints and grievances related to the alleged medical error and identify the following:

1. the criterion relied upon to classify the occurring medical malpractice of gross nature;
2. identifying the elements contained in the file and confirming the existence of a gross medical malpractice; and
3. identifying the type of damage and error.

Medical Liability Committee

Additionally, Articles 9 to 15 of the Resolution provide detail regarding the formation of the Committee along with the rules and procedures that the Committee must follow.

Formation & Membership



Article 9 of the Resolution provides that at each health authority being the Ministry of Health & Prevention (**'Ministry'**), or any federal or local government authority concerned with health affairs in the UAE) (**'Health Authority'**), the Committee shall be established by way of a resolution issued by the Minister or the Head of the Health Authority. The membership of the Committee shall include physicians and specialists as determined by the Health Authority. The resolution issued in this respect shall appoint a chairman of the Committee, his deputy, members, rapporteur, and also specify the term of membership.

Technical Committee(s) and Administrative Tasks

It is provided also under Article 9 of the Resolution that the Committee may establish one or more technical committees which shall consist of specialist physicians to seek their opinion on the file, without having counted votes on the Committee decision. Additionally, the Health Authority shall assign or establish an organisational unit for the purpose of assuming administrative tasks related to the Committee's activities.

Meetings and Quorums

Article 11 of the Resolution regulates how the meetings of the Committee are convened and how opinions are issued. It provides that the Committee is convened by an invitation from its chairman, or his deputy in the event that the chairman is absent, so as to examine the cases referred thereto. The quorum of a Committee meeting is achieved when two thirds of the members are in attendance, and provided the chairman or his deputy is among them. The Committee's opinion based on the majority vote of members who are present. In the event of a deadlock, the Chairman will have the casting vote. Agreement of two thirds of the present is required if the medical error is to be categorised as 'gross'.

Some Restrictions on Members of the Committee

Article 12 of the Resolution is an important addition as it imposes some restrictions on members of the Committee. It states that none of the members of the Committee may attend its meetings and give an opinion on any subject presented thereto in any of the following cases: (i) if the member is a relative (up to the fourth degree) of any of the parties to the complaint; (ii) if he/she works under the management or supervision of one of the parties to the complaint ;(iii) if he/she previously consulted with or treated the patient for the same medical condition which forms the subject matter of the complaint; or (v) if there is another relationship that constitutes a conflict of interest and questions the ability of the Committee member to be impartial when considering the complaint.

The foregoing prohibition shall also apply to anyone of whom the Committee seeks assistance in performing its functions.

Delivery of Reports

Article 15 of the Resolution regulates the delivery of the report prepared by the Committee in a given complaint. It provides that the Health Authority shall submit a copy of the Committee report to all parties to the complaint by any of the following means:

1. *personal delivery, provided that the recipient shall sign an acknowledgment of receipt, with mention of the date of receipt and capacity of the recipient;*
2. *ordinary or registered mail with receipt acknowledgment requested; or*
3. *fax or e-mail if either is available at the Health Authority.*

Obligations and Rules in Providing Medical Services

Article 2 of the Resolution expands on the obligations and rules to be followed by whoever practises the profession during the course of his/her work, without prejudice to the duties provided for in the Medical Liability Law, such as:

1. *To perform his / her work in strict compliance with the principles of professional practice in general, and with the scientific and practical principles of the specialisation practiced in particular, in accordance with the protocols and rules approved by the Health Authority;*
2. *To exercise the necessary care for providing and following up on the health service vigilantly and watchfully, in accordance with the standard of practice of his/her average colleagues in terms of experience and qualification, and to carefully review the patient's medical history, unless he / she fails to do the same for circumstances beyond his / her control or due to the patient's own act;*
3. *To document in the patient's medical file each action taken, including its type, date and time; and*
4. *Not to discriminate between patients or colleagues on the basis of religion, ethnicity, social standing, gender or nationality.*

Surgical Operations

Article 3 of the Resolution further elaborates on the rules and procedures that need to be satisfied before conducting surgical operations such as:

1. to follow a certain process in taking written consent after informing the patient, or the person whose

- approval on his/her behalf is acceptable, of the nature of the operation, success percentage and potential complications (as further detailed in paragraph 3 of Article 3 of the Resolution);
2. the health facility conducting the surgery must be sufficiently equipped in a manner that is suitable to the type of surgery, in terms of the medical and nursing staff, medical equipment and its necessary items, their quality and safety and all the requirements for conducting such surgery and that would deal with any other complications or repercussions.
 3. evaluate the medical condition by employing the necessary diagnostic checks to ensure that the patient's health condition allows the surgical operation to be conducted.

The Medical Liability Law had previously provided that cases of treatment of special nature (to be outlined in the Resolution) shall be treated as surgical operations. Article 3 of the Resolution now provides that the rules and procedures in the preceding paragraph would apply to cases of treatment of a special nature, which include:

1. chemotherapy;
2. radiotherapy; and
3. any other therapy named by the Minister in co-ordination with the competent Health Authorities.

Disciplinary Actions

Article 18 of the Resolution addresses disciplinary actions. It notes that in the event of violations of the Resolution, and without prejudice to any provision in the Resolution or civil and criminal liability (and unless there is a specific provision in the laws related to the disciplinary regulations of the Health Authority), the disciplinary actions of the following laws shall apply:

1. *for private health facilities, disciplinary penalties provided in the Federal Law No. 4 of 2015 Concerning the Private Health Facilities;*
2. *for professional practitioners at private health facilities; and more precisely doctors, disciplinary penalties provided in the Federal Law No. 5 of 2019 concerning the Practice of Human Medicine;*
3. *for professional practitioners at private health facilities, other than doctors and pharmacists, disciplinary penalties provided for in the Federal Law No. 5 of 1984 regarding the practice of some medical professions by pharmacists and non-physicians;*
4. *for pharmacists and assistant pharmacists, the provisions of Federal Law No. 4 of 1983 concerning the Profession of Pharmacy and Pharmaceutical Institutions;*
5. *for the professional practitioners at the Health Authorities, disciplinary penalties prescribed by such authorities shall be applied in a manner that does not contradict the provisions of the Decree law and this Resolution; and*
6. *as for Professional Practitioners at the Federal Government, the provisions of Federal Decree Law No. 11 of 2008 on Human Resources in the Federal Government.*

Conclusion

The Resolution is welcomed as it provides the necessary details to allow effective interpretation of the Medical Liability Law and assessing and implementing the rules and procedures that need to be adhered to by health facilities, Practitioners and by the Committee in determining whether these standards have been met.

In particular, by defining 'gross medical error', the Resolution provides more clarity on the risk of criminal liability that Practitioners may face. Consequently, there may potentially be a reduction in the number of

malpractice criminal complaints brought before the courts as the legal parameters are now much more clearly laid out.

Al Tamimi & Company's [Healthcare Practice](#) and [Litigation team](#) regularly advises on criminal and civil liability in connection with medical malpractice. For further information, please contact healthcare@tamimi.com.