

# Medical Expert Evidence in UAE Criminal Prosecutions

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In the UAE, victims of medical malpractice can pursue complaints against healthcare professionals and hospitals in three different ways:

1. Filing a medical complaint at the appropriate healthcare authority.
2. Filing a civil case before the UAE court.
3. Filing a criminal complaint before the police or public prosecution.

These options can be pursued at the same time or sequentially, although proceedings before the criminal court will usually stay any civil case. Whichever option is chosen expert medical evidence will be needed, but filing a criminal complaint is the only option which is driven not by the victim, but by the state (i.e. the state prosecutor, who is responsible for deciding whether charges are laid). The purpose of this article is to provide an overview of the options available to victims, with a particular focus on the special role expert medical evidence has in criminal prosecutions.

## COMPLAINTS BEFORE THE HEALTHCARE AUTHORITIES

The Dubai Health Authority, the Dubai Healthcare City Authority and Abu Dhabi Health Authority (the "Healthcare Authorities") are the health regulators responsible for reviewing medical complaints against healthcare providers and medical practitioners in Dubai and Abu Dhabi. The Dubai Health Authority deals with medical complaints against healthcare providers and medical practitioners in the public and private sectors in Dubai, whilst the Dubai Healthcare City Authority is responsible for investigating medical complaints against healthcare professionals and hospitals within the healthcare city only. The Abu Dhabi Health Authority investigates medical complaints against healthcare providers and professionals in the Emirate of Abu Dhabi.

Medical complaints before the Healthcare Authorities can be filed by patients, their families or someone acting on behalf of the patient (provided that the patient's consent is obtained). The Healthcare Authorities will investigate the complaint and determine whether or not a healthcare professional committed any medical errors. The objective of the Healthcare Authorities' investigation of medical complaints is to ensure patients receive the best quality of healthcare and deter physicians from committing the same medical errors in the care and treatment of patients.

The Healthcare Authorities will investigate complaints and assess whether or not the appropriate medical professional standards were met. If a physician is found to be negligent, the Healthcare Authorities are empowered to take the following disciplinary actions:

1. Reprimand the healthcare professional or institution.
2. Impose further training for the physician and supervision by another licensed healthcare professional.
3. Suspend the physician and hospital's license (temporarily or permanently depending on the nature of the medical error/s).
4. Fine the healthcare institution.

## THE HIGHER COMMITTEE FOR MEDICAL LIABILITY

The Higher Committee for Medical Liability, located at the Ministry of Health in Dubai is the supreme committee of medical experts in the UAE (the “Supreme Committee”). It was established under Cabinet Resolution No. 6 of 2012 to provide its technical opinion in medical malpractice cases. The Committee members identified in the Resolution are consultant physicians from different medical specialties.

The Supreme Committee is responsible for investigating medical malpractice cases upon the request of the public prosecutor and the UAE courts (the “Judicial Authorities”), or the health authorities.

Healthcare professionals and institutions that are subjected to legal proceedings for malpractice also have the right to request the Higher Committee to review and investigate medical claims filed by patients, provided that the permission of the court or public prosecution is obtained.

## CIVIL CLAIMS

Patients approach the civil courts to claim monetary compensation against healthcare providers and professionals for material, moral and psychological damages. There are no precedents on the figures awarded by the courts in medical malpractice claims. The amounts vary from case to case and in the discretion of the judge, who assesses the level of damages suffered by a patient following a review of the evidence, which usually includes an expert medical report.

## CRIMINAL CASES

Unlike the common practice in the West, doctors in the UAE can be subjected to criminal liability and convictions for professional negligence under the UAE Penal Code (Federal Law No. 3 of 1987). This can result in a prison sentence of at least one year and/or a financial penalty not exceeding AED 10,000 depending on the extent of harm suffered by a patient. If the injury results in permanent disability a prison sentence of two years may be applied (see articles 342 and 343 of UAE Penal Code). If there are aggravating circumstances (such as the involvement of alcohol or narcotics) the maximum available prison term increases to five years.

The fines imposed by the criminal court are payable to the UAE government. They are not compensation for the victim, nor do they indicate the level of compensation to be afforded to the victim in any civil claim.

## LIABILITY OF HEALTHCARE PROFESSIONALS

The duty of a doctor under the UAE Medical Liability Law (Federal Law No. 10 of 2008) is not to achieve an end result (i.e. to cure or to guarantee a successful operation) but to use the degree of care and skill that is expected of the average qualified practitioner taking into account the customary standards of the profession and accepted scientific principles.

The Medical Liability Law (article 14) provides other instances where doctors will not be held liable for medical negligence:

1. If the damage was sustained due to the action of the patient (i.e. refusing to receive treatment, failing to follow the medical instructions provided by persons supervising the patient’s treatment or due to an external cause).
2. If the physician followed a certain medical method which, although not the generally accepted method, a method which followed recognized medical principles.
3. If the medical side effects and complications are known in the medical practice.

In addition, article 53 of the Penal Code also provides that there is no crime if the act is committed in accordance with the scientific principles generally accepted and applied in licensed medical practice, provided they are performed with consent of the patient or in emergency cases.

## MEDICAL EXPERT EVIDENCE

The Judicial Authorities in the UAE rely heavily on medical expert evidence when assessing whether or not a patient is a victim of medical malpractice. Cases are normally referred to the Healthcare Authorities in the UAE or the Supreme Committee to determine whether or not a doctor committed medical errors in a surgical procedure, diagnosis or treatment of a patient and the causal link between the error and damage suffered due to the actions or inactions of a healthcare professional.

Patient medical records are often of paramount importance because they detail the medical history of the patient and the care provided. It is essential and necessary for all healthcare institutions and professionals to document patients' medical records (particularly consent forms for surgical procedures as this has been a common issue in most cases), not least because they will assist in defending medical malpractice claims before the Judicial Authorities. The Judicial Authorities have dismissed several malpractice claims for lack of evidence even though patients have supported their complaints with investigation reports from the Healthcare Authorities.

## EXPERT EVIDENCE IN PRACTICE

Al Tamimi & Company recently represented a healthcare professional in a case which demonstrates the importance of expert medical evidence and how they are used in criminal cases.

### **Background**

The patient visited a physician specializing in infectious diseases in October 2010 with minor cold symptoms. During this visit, the physician's examination of the patient's chest revealed mild wheezing only. No fever was present and the patient did not report any symptoms.

The patient's temperature, heartbeat, blood pressure and all other vital signs were normal and stable. The physician therefore prescribed medication to treat the patient's cold symptoms.

About 12 hours after the visit, the patient's condition significantly deteriorated with increasing respiratory symptoms. She was admitted to the emergency department of the hospital where the physician was employed, and diagnosed with pneumonia following medical tests carried out in the emergency department.

The patient was subsequently admitted to the Intensive Care Unit ("ICU") of the hospital and was treated by the medical staff in the ICU for one month. The patient was discharged from the hospital in November 2010 at her own request since she was recovering.

### **Medical Complaint Before Health Authority**

A year following the patient's discharge from the hospital, a medical complaint was filed before a health authority in Dubai (the "Regulator") against the hospital and the treating physician for conducting a poor assessment of the patient's condition in October 2010. The Regulator found the physician negligent for failing to perform an appropriate assessment of the patient's clinical condition.

The physician filed an appeal against the decision issued by the Regulator and pleaded that the assessment of the patient's condition at the time was appropriate and in accordance with international medical standards. The Regulator nonetheless sustained its previous decision against the physician.

### **Criminal Complaint**

The patient subsequently filed a criminal complaint before the Dubai police against the physician for professional negligence and the police transferred the case to the public prosecutor.

Since the case contained technical aspects that require expert assessment, the Prosecutor decided to refer

the case to a committee of specialised doctors ("Panel of medical experts").

The Panel reviewed the case and also found the physician negligent for failing to appropriately diagnose the patient's condition.

### **Defence Before the Public Prosecutor**

The physician, represented by Al Tamimi & Company filed a defence before the prosecutor supported by an opinion from an independent medical specialist which explained that pneumonia cannot be predicted as it can progress rapidly, and could not have been diagnosed at the time of patient's visit. Evidence of the patient's condition at the time of the visit and subsequently was set out in her medical file which was also attached to the defence memorandum.

The physician argued that the findings of negligence from both the Regulator and the Panel of medical experts with respect to the physician's assessment of the patient's condition were false and provided no clarification on the necessity or mandatory obligation on the physician to perform additional examinations and tests. The patient did not have a fever, any chest pains or any abnormality in her vital signs which required the physician to carry out additional tests or refer the patient for x-ray. The earlier admission to the hospital was unlikely to change the course of the illness or affect the eventual outcome due to the aggressive nature of the infection.

In addition, the findings of negligence on the part of the physician did not indicate how the physician's management affected the outcome, which further demonstrated that the outcome of both the Regulator and Panel's investigations were not substantiated by any credible evidence.

### **The Higher Committee**

The physician requested that the matter be referred to the Higher Committee for Medical Liability to review the case and determine whether any medical negligence was committed by the physician. The Prosecution accordingly transferred the case to the Higher Committee.

The Higher Committee investigated the case and found that the patient did not suffer from any respiratory distress or fever at the time of the visit, and the physician gave the appropriate treatment according to the patient's existing symptoms. The Higher Committee concluded that the physician treated the patient in accordance with generally recognized medical norms with no default or negligence.

The Prosecution rendered a decision based on the Higher Committee's findings and dismissed the case for lack of evidence.

### **CONCLUSION**

The use of medical expert evidence is usually fundamental in the conduct of medical negligence claims in the UAE. Healthcare professionals and institutions will not necessarily be held liable for malpractice even if there are reports from Healthcare Authorities or medical specialists that prove the contrary, provided that the healthcare professional can demonstrate that he performed his duties in accordance with acceptable medical principles.