

The liability of medical laboratories before the UAE Courts: A case study

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In this article, we give an overview of the liability of doctors under UAE law and a case note on a malpractice claim for misdiagnosis, which was brought by a patient before the Dubai Prosecution and the Civil Court.

Medical Liability

Doctors practising medicine in the UAE must perform their duties accurately, honestly and in accordance with recognised scientific and technical principles to provide the necessary care for patients, pursuant to article 3 of Federal Law No. 10 of 2008 ("Medical Liability Law").

Article 4 of the Medical Liability Law requires the following duties to be fulfilled by a doctor:

- Adhere to the rules, regulations and procedures related to the practise of the profession according to their grade and specialty.
- Document the health condition of patients and their personal and family medical history before diagnosing and treating them.
- Prescribe the treatment, clearly instruct the patient of the doses and the method of use in writing, mention the name, signature and date in the medical prescription. The physician shall inform patients, or their families as the case may be, to necessarily adhere to the physician's instructions on the method of treatment and the important expected side-effects of such medical or surgical treatment.
- Inform patients of the nature of their illness and its acuteness, unless the interest of the patient requires otherwise or if their mental condition requires them not to be informed, in which case the families of the patients should be informed as follows:
 1. If the patients are incompetent or lack capacity; and
 2. If the patients' health condition does not make informing them in person possible and their consent could not be obtained to inform their families.
- Monitor complications resulting from medical or surgical treatment and treat them as soon as possible.
- Cooperate with other physicians who are involved in the patients' treatment, provide the necessary information on the patients' health condition, the performed treatment methods whenever requested, and consult a specialist if the situation requires so.

The duty of a doctor under the UAE Medical Liability Law 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.

Article 14 of the Medical Liability Law provides instances where doctors will not be held liable for medical

negligence:

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

Case Note

Background:

Al Tamimi & Company successfully represented a hospital in Dubai (the "Hospital") and one of its doctors (the "Treating Physician") in a criminal complaint filed by a former patient for professional criminal negligence.

Case History & Chronology:

On 7 January 2013, the patient visited the Hospital due to symptoms of lymph node swelling above the collarbone and was referred to the surgical department for examination.

The Treating Physician performed an ultrasound and CT-scan and informed the patient that it was necessary to examine a lymph node sample.

On 3 March 2013, the patient visited the Hospital and underwent a lymph node biopsy for the sample to be referred to a specialist laboratory (the "Medical Laboratory").

On 10 March 2013, the test results of the Medical Laboratory confirmed granulomatous inflammation of the lymph nodes suggesting tuberculosis, without the presence of a malignant tumour. Accordingly, the Treating Physician referred the patient to an internal medicine specialist, who commenced treatment with anti-tuberculosis drugs.

The patient visited another hospital due to symptoms of back pain and the doctor who examined the patient decided to take a sample from her lymph nodes for examination by the histology laboratory at the hospital. The test results of the laboratory confirmed the diagnosis of lymphoma.

In May 2013, the Medical Laboratory re-examined the same tissue samples and confirmed the existence of a malignant tumour in the patient's lymph node, contrary to its initial report.

The patient subsequently filed a criminal complaint a few months later and the Dubai Public Prosecution referred the case to the Higher Committee for Medical Liability, to investigate whether there had been an incident of malpractice and, if so, its cause, the resulting damages, and the causal relation between the fault, damages, and the person responsible for the damage.

The Higher Committee for Medical Liability was established under Cabinet Resolution No. 6 of 2012 to investigate medical malpractice cases upon the request of the public prosecutor, the UAE courts, the ministry of health and any other governmental or local health authorities.

Defence:

The Treating Physician and the Hospital, represented by Al Tamimi & Company, filed a response to the complaint and pleaded that the allegation of the antibiotics causing the patient to develop cancer was false, unfounded and contradicted the reports issued by the other hospitals in Dubai after examining the same samples that were examined by the Medical Laboratory. The reports from the other hospitals demonstrated and confirmed the pre-existence of a malignant tumour before the patient started taking the medication prescribed by the Treating Physician. Hence, the reports confirmed that there is no connection

between the antibiotics given to the patient and the development of the tumour.

The result of the initial examination confirmed the absence of a malignant tumour but suggested a diagnosis of tuberculosis. Doctors in such circumstances treat patients according to the diagnosis of medical laboratories and the Treating Physician in the present case accordingly referred the patient to an internal medicine specialist for tuberculosis treatment.

It was evident from the reports of the Medical Laboratory and other hospitals in Dubai, that the Hospital and the Treating Physician were by no means negligent in their management of the Patient and merely treated her in accordance with the findings of the Medical Laboratory.

The Higher Committee for Medical Liability:

The Higher Committee reviewed the patient's medical files, as well as the reports on the results of the biopsy performed on the tissues samples taken from the patient. A technical sub-committee comprising members of the Higher Committee and outside specialists was set up to investigate the case.

The Higher Committee was of the opinion that the biopsy report prepared by the Medical Laboratory clearly failed to diagnose the lymphoma and attributed the changes in the lymph nodes to tuberculosis. Based on that result, the Treating Physician who ordered the biopsy referred the patient to an internal medicine specialist for tuberculosis treatment, which is sound medical procedure.

Subsequent re-examination of the patient and the lymph nodes revealed lymphoma and re-testing of the samples previously tested at the Medical Laboratory confirmed a diagnosis of lymphoma from the outset.

The pathological changes in the lymph nodes were correctly diagnosed around one and a half months after the initial examination. The treatment plan was then adjusted accordingly.

After reviewing all of the above, the Higher Committee for Medical Liability established that:

- The responsible histopathologist at the Medical Laboratory ("Pathologist") committed medical malpractice when examining the lymph node samples and failing to diagnose lymphoma, resulting in an unnecessary treatment plan for tuberculosis.
- More than a month later, the patient underwent a proper re-examination and diagnosis and the treatment plan was adjusted. The earlier treatment (against tuberculosis) did not cause any complications for the patient other than prolonged suffering and medical costs.
- There was no negligence on the part of the Treating Physician or the doctors involved in the patient's treatment at the Hospital. The medical malpractice is confined to the Pathologist at the Medical Laboratory.

Prosecution's Decision:

Based on the Higher Committee's findings, the Prosecutor accordingly dismissed the case against the Treating Physician and the Hospital for lack of evidence.

Dubai Court Civil Action:

The patient filed a civil action against the Pathologist ("First Defendant") and the Medical Laboratory ("Second Defendant") before the Dubai court seeking judgment against them, jointly and severally, for AED 2 million for failing to diagnose lymphoma and consequently causing the initiation of an unnecessary treatment plan for tuberculosis, which prolonged the patient's suffering and increased treatment costs.

As to the merits, the court ruled that the duty of a doctor is to use the degree of care and skill that is expected of the average qualified practitioner under similar circumstances, taking into account the customary standards of the profession and accepted scientific principles to the exclusion of matters on which professional opinions may vary among practitioners in the field. Failure to follow this standard of

care constitutes error for which the doctor is liable to the injured patient for damages and the lost opportunity for treatment.

The court ruled that for a claim to be accepted as medical error there must be a causal link between the treatment and the injury. In determining liability, regard must be had to the action that proximately caused the injury and not to any action that cannot reasonably be expected to have led to the injury.

The court concluded that the First Defendant, made the mistake of failing to diagnose lymphoma, which led to the consequent prescription of an unnecessary treatment plan for tuberculosis. After more than a month, the patient was re-examined and correctly diagnosed and the treatment plan was revised, although the previous treatment for tuberculosis did not cause any complications for the patient other than prolonged suffering and increased cost of treatment.

Hence, the First Defendant was held liable for failing to exercise the degree of care and skill that is expected of the average qualified practitioner. Based on the evidence and the documented facts of the case, the court found that the First Defendant committed an error which led to the prescription of a treatment plan for tuberculosis from which the patient was not suffering and caused her to incur medical costs in adhering to the plan based on an incorrect diagnosis.

In light of the foregoing, the First Defendant's error caused damage to the patient in terms of the above medical costs incurred unnecessarily, material damage which should be made good by payment of compensation to the patient and moral damages for the patient's suffering during the period of treatment.

Concerning the Second Defendant's liability, it is settled according to Article 313(1) of Federal Law No. 5 of 1985 ("Civil Transactions Law") that an employer shall be liable for compensation awarded against its employee subject to two conditions: (1) the existence of a master-servant relationship with the master having actual authority to supervise and direct the subordinate and (2) damage caused by the subordinate to a third party in the course of and by reason of performance of his duties.

The Second Defendant was held to be vicariously liable for the First Defendant's error, which makes them jointly liable for payment of compensation to the patient.

Conclusion

This case indicates that doctors are unlikely to be held legally accountable for treating patients according to the diagnostic test results produced by medical laboratories, provided that:

- The examination of patients is in accordance with acceptable and recognized medical standards.
- Due care and skill is exercised in the surgical procedure for taking the tissue samples that require investigation by histopathologists, and
- The treatment provided did not cause any complications for the patient.

The case further demonstrates the importance of medical expert evidence in legal proceedings and the UAE judicial authorities' reliance on expert evidence when assessing whether or not a doctor committed medical errors and whether there exists a causal link between the error and any harm suffered by a patient.