

The New UAE Medical Liability Law: An Analysis

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These changes include the permissibility of: natural death in cases of terminally ill patients; gender re-assignment procedures, subject to certain conditions; and settlements between patients and healthcare professionals in gross medical negligence cases.

The New Law also requires all medical malpractice claims to be referred to a new medical liability committee ('Medical Liability Committee') before they are reviewed by the judicial authorities in the UAE. Further, the law also affords protection and relief to doctors in criminal proceedings by prohibiting their arrest, imprisonment, and investigation before the concerned authorities until the Medical Liability Committee issues a final report. The New Law also introduces stringent penalties against medical practitioners who commit grave medical errors and other key changes, which will be discussed in this article.

Natural Death

The New Law permits healthcare professionals to allow natural death by refraining from performing cardiopulmonary resuscitation ('CPR') on terminally ill or dying patients who are suffering from incurable illnesses, provided that the following conditions are met:

- the patient suffers from an irremediable medical condition;
- all the treatment methods have been exhausted;
- the treatment is proven to be useless in such medical condition;
- the treating doctor advises not to provide CPR to the patient; and
- 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 (In this case, the consent of the patient, his guardian or custodian is not required).

However, resuscitation may not be denied if the patient expressly requests to be resuscitated even if resuscitation is useless for the treatment.

Gender Re-Assignment Surgery

The New Law also introduces the permissibility of gender-reassignment surgeries in cases where the person's sexual orientation is ambiguous and his/her sexual features are different from their physiological, biological, and genetic characteristics. Such permissibility is conditional on the requirement that these facts are confirmed by medical reports and the re-assignment procedure is approved by a medical committee formed by the health authority. This medical committee must also refer the individual to a psychologist to carry out the necessary mental adaptations.

Consent

Save for emergency cases that require necessary and immediate surgical intervention to save the life of a patient or fetus, and to avoid dangerous complications, the New Law introduces a provision which permits surgical intervention in cases where the consent of a patient or his/her spouse or family members, up to the fourth degree, cannot be obtained. Such consent is permitted on the condition that a report from the treating doctor, another doctor from the same hospital, and the director of the hospital is obtained confirming the need for the surgery. This provision only applies in situations where the consent of the patient or his/her spouse or family members, up to the fourth degree, cannot be obtained and will not be applicable if the patient is fully competent.

Disclosure

Provisions pertaining to disclosure were also amended by the New Law to permit the disclosure of patient information upon the request of the health authority for the purpose of protecting public health (subject to the terms and conditions set by the Executive Regulations of the New Law) and if the disclosure was made by the physician in self-defence before the investigation authority or any judicial authority.

The New Law permits healthcare professionals to disclose a patient's medical records to support their defence in legal claims and will safeguard doctors from any liabilities in the event a patient raises arguments pertaining to the prohibition against the disclosure of confidential patient information.

Medical Liability Committee

The New Law states that the new Medical Liability Committee of doctors specialised in all fields of medicine will be formed upon a resolution to be issued by the Minister of Health and Prevention or the health authority. The Medical Liability Committee will be responsible for reviewing medical complaints referred by the health authority, the Public Prosecution, or the courts, and will determine whether or not a medical error has been committed and the seriousness of such error. In cases of several liable parties, the Medical Liability Committee will determine the percentage of every person's contribution to such error and provide the basis for its decision. The Medical Liability Committee will also determine the damages incurred by such errors, the causal link between the error and the damage, and the percentage of disability of the affected organ, if any. The committee may also seek the assistance of other experts and of whomever it deems fit to perform such duties. This Medical Liability Committee will be subject to the provisions of Federal Law No. 7 of 2012 (Regulating the Profession of Experts before the Judicial Authorities) provided that they do not conflict with the provisions of the New Law. The Executive Regulations that will be issued within six months from the date the New Law came into force will provide information on the formation of the Medical Liability Committee and the rules and procedures of its work.

The Higher Committee for Medical Liability ('Higher Committee') established under the Former Law will continue to review medical malpractice claims referred to it by the authorities until the Medical Liability Committee is formed.

Civil Claims

The New Law provides that civil claims filed due to medical malpractice will not be accepted unless the medical claim has been referred to the Medical Liability Committee. Hence, patients can only pursue civil claims for monetary compensation after their medical claims have been brought before the appropriate health authority, referred to the Medical Liability Committee, and a final report is issued.

Under the Former Law, patients who filed claims for monetary compensation directly before the court, without going through the health authority, had their cases heard by the court without any restrictions or prior requirement for the medical claims to be filed at the health authority and reviewed by a medical committee.

It is not clear whether this new mandate extends to the filing of claims before the Settlement Centre of the Dubai Courts for the appointment of medical experts. However, we are of the view that such required

referral to the Medical Liability Committee is only limited to compensation claims before the civil courts.

Criminal Medical Negligence Claims

The New Law permits patients to file medical malpractice complaints before the Public Prosecution and requires the prosecution to refer medical malpractice complaints directly to the competent health authority to take the necessary actions. The New Law also prohibits the investigation of healthcare professionals, and their arrest or temporary imprisonment, until the health authority provides a final medical report confirming gross medical error on the part of the involved physician.

This provision affords protection to doctors in criminal proceedings and will ensure that they are not taken into custody, questioned, investigated, and arrested unless it has been determined through a final report issued by the Medical Liability Committee or the Supreme Committee, defined herein, that they committed a gross medical error. In addition, this provision appears to be limited to cases where doctors commit grave professional errors which amount to criminal offences under UAE law and does not extend to civil liability for medical malpractice. Hence, if the Supreme Committee or Medical Liability Committee determines that a doctor is not liable for gross medical negligence, then the involved medical professional may not be held liable for criminal medical negligence.

Referral of Medical Complaints to Health Authorities

The New Law requires all medical malpractice complaints to be referred to the relevant health authority and the authority will assign the complaints to the Medical Liability Committee. The Medical Liability Committee will issue its opinion in all medical malpractice cases following its review of the facts, medical files, investigations, and other facts and information available to the Medical Liability Committee. The Medical Liability Committee will provide the health authority with its opinion within 30 days from the referral date. Such period may be extended to a similar period(s) subject to the approval of the health authority following the Medical Liability Committee's request.

It is pertinent to mention that, prior to the enactment of the New Law, patients had the right to pursue medical malpractice complaints before either the appropriate healthcare authorities or the judicial authorities at any time; however the New Law strictly requires all medical malpractice claims to be referred to the Medical Liability Committee before they are reviewed by the judicial authorities. In this respect, patients must first file medical complaints before the relevant health authority and the authority will in turn assign the complaints to the Medical Liability Committee.

We are of the view that these provisions could expedite the duration of medical malpractice cases before the judicial authorities and possibly discourage patients from proceeding with legal proceedings against healthcare professionals if the Medical Liability Committee finds that the involved physician(s) did not commit medical malpractice.

Grievances Before the Medical Liability Committee

Healthcare professionals and complainants are permitted to challenge the report of the Medical Liability Committee before the appropriate health authority within 30 days from the date they are notified of the committee's decision. The health authority will refer the grievance, the committee's report, and all relevant documents related to the complaint to the Supreme Committee for Medical Liability (the 'Supreme Committee').

The Medical Liability Committee's decision will be deemed final if no grievances are filed within the above mentioned time-frame of 30 days, after which the parties will not have the opportunity to challenge the committee's report before any other authority.

Supreme Committee for Medical Liability

The New Law sets out the formation of a new Supreme Committee responsible for reviewing grievances filed by healthcare professionals and patients against reports issued by the Medical Liability Committee. The Supreme Committee's tasks will be set out in the resolution to be issued by the Minister of Health and Prevention.

The Supreme Committee's findings are deemed final and will not be subject to any appeals or grievances before any authority.

Under the Former Law, the Higher Committee was established to provide its technical opinion in medical malpractice cases upon the request of the Public Prosecution, the UAE courts, or the health authorities. Healthcare professionals and patients also had the right to request the court or the Public Prosecution to refer medical malpractice cases to the Higher Committee in legal proceedings. However, the position under the New Law has changed by introducing the new Medical Liability Committee to review and opine on medical malpractice cases before they are heard by the judicial authorities, and a Supreme Committee whose role is primarily to review grievances filed by both patients and healthcare professionals.

Penalties

The New Law also introduced penalties against physicians who commit the following offences:

- a prison sentence of not less than 3 years and not more than 10 years to any physician who conducts sex-change procedures on patients.
- physicians who refrain from treating patients in emergency cases or interrupt their treatment, if the violation affects the safety of the patient's body, will be subject to a fine of not less than AED 10,000. The same penalty is also applicable to doctors who conduct unnecessary medical or surgical procedures on patients without their informed consent.
- imprisonment for a period of not more than one year and/or a fine of not more than AED 200,000 to medical practitioners who commit gross medical errors. If the gross medical error results in death, the penalty will be imprisonment for not more than two years and /or a fine of not more than AED 500,000, and can extend to imprisonment of not more than two years and a fine of not more than AED 1,000,000 if the gross medical error was committed under the influence of alcohol or drugs.

These penalties will supersede the ones set out in any other legislation following the publication of the New Law. However, the disciplinary penalties found in other laws shall apply to violations for which no penalty is set under the New Law.

Settlement

The New Law permits patients, their heirs, or attorneys to settle with medical practitioners before the health authority in cases where gross medical errors are committed, and the authority will refer the agreed settlement to the Public Prosecution. In addition, the agreed settlement can also be filed or submitted before the Public Prosecution, and at any stage of the complaint, regardless of the status of the action, and after a judgment becomes final.

The settlement between the parties will result in the forfeiture of the criminal action and suspension of the penalty, even in circumstances where reconciliation is reached during the execution of the penalty. However, the reconciliation between both parties will not prejudice the victim's right to resort to the civil courts to claim compensation.

This settlement provision introduced a drastic change to the Former Law where no such settlement mechanism was available. In the past, even if the patient and the medical practitioner settled the case between them, the Public Prosecutor could still move forward with a criminal charge on the basis of public interest.

The reconciliation provision will encourage patients, or their family members, to settle with doctors in medical malpractice claims and may safeguard doctors from being subjected to criminal liability for committing gross medical negligence. The reconciliation between the parties even extends to cases where final verdicts have been issued by the criminal court and penalties have been imposed against healthcare professionals. The effect of the reconciliation will result in the withdrawal of the criminal case against the implicated healthcare professional.

Nonetheless, the settlement between the parties before the health authority or in criminal proceedings will not prevent the victim from pursuing civil proceedings for compensation against the healthcare professional. Despite the above mentioned reference in the New Law, the parties can agree on settlement terms which extend to the waiver of civil actions against the involved healthcare professional.

The Previous Medical Liability Law

The Former Law will be repealed by the New Law while the Cabinet Resolution No. 33 of 2009, regarding the Executive Regulations of the Former Law, and the resolutions issued by virtue of the said law will remain in force until the Executive Regulations of the New Law are issued, without prejudice to the provisions thereof.

Conclusion

The procedures established in the New Law will ensure that healthcare professionals accused of malpractice are not prosecuted until the Medical Liability Committee or the Supreme Committee issues a final report, and will mandate that patients submit their claims to the health authority to be reviewed by the Medical Liability Committee in order for civil claims for compensation to be admissible to the courts. The New Law also clarifies the events under which CPR may be withheld, gives patients the right to undergo gender-reassignment procedures (subject to certain conditions), and prohibits physicians from undertaking unnecessary medical or surgical procedures on patients without their informed consent. The Law also provides a grievance process that protects both patients and doctors by affording them with the right to have their appeals thoroughly reviewed by the Supreme Committee.

The changes in the New Law safeguard the legal interests of both patients and doctors. Consequently, the New Law is expected to enhance the quality and delivery of healthcare in the UAE and the manner in which medical malpractice cases are managed before the judicial authorities.