

The Impact of the Medical and Health Liability Law under Jordanian Legislation

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Abstract

This research aims to thoroughly explore the impact and practical application of Jordan's Medical and Health Liability Law No. 25 of 2018, critically analyzing its compatibility with existing criminal and civil laws and its effectiveness in addressing medical error cases. Through an analytical methodology, this study delves into the legal texts concerning medical liability, establishing criteria for liability and fault in medical acts. The findings underscore significant insights into the legislative nuances that govern medical practices within Jordan, offering a nuanced understanding of the law's implications for both medical professionals and patients. By avoiding complex terminology and maintaining a formal register, the research elucidates the intricate balance between legal requirements and medical ethics, providing a comprehensive overview of the legal landscape surrounding medical liability. The study's outcomes aim to contribute valuable perspectives to the ongoing discourse on legal reforms in the medical sector, highlighting the necessity for laws that support both patient safety and medical professionals' rights.

Keywords: Medical Liability Law, medical work, medical error, service provider, doctor, and penalties for medical errors.

Introduction

The doctor-patient relationship is based on a humane interaction rather than a legal one. The doctor's primary goal is to alleviate pain and save the patient's life. This interaction is purely human, and medical legislation is not the sole basis for the doctor's actions. Legislation has traditionally focused on regulating the relationship between patients and doctors. However, with the advent of modern medical practices, doctors are often required to take risks while staying within legal boundaries. It is important to ensure that medical professionals do not exceed these limits, especially with the introduction of new methods and medicines. It is important to note that historically, patients were not knowledgeable about the nature of medical practice. However, with the advancement of society and the availability of research tools, any educated person can now use the internet and other electronic means to research their medical condition. Using the scientific name of their disease, patients have access to

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information related to the treatment options, potential complications, and how to manage it through medical or therapeutic means.

Therefore, we can conclude that the legal nature of medical work places a responsibility on doctors and service providers. This responsibility is represented by the doctor's obligation to provide necessary and adequate care. The doctor must be sincere, vigilant, and fulfill the existing circumstances, established scientific principles, and medical rules accepted theoretically and scientifically among doctors with the aim of healing and improving the patient's condition.

Research Questions

The Medical and Health Liability Law No. 25 of 2018 is a controversial draft law in Jordan due to the legal consequences that may fall on doctors and hospitals providing medical services. The reasons for this controversy are numerous and complex. This raises the following question:

1. What are the issues surrounding medical malpractice cases in terms of their occurrence and methods of proof?
2. What is the nature of criminal liability in medical malpractice cases and what are the associated issues?
3. What is the mechanism for filing complaints regarding medical errors committed by service providers according to the Medical and Health Liability Law No. 25 of 2018? How is Medical and Health Liability Law No. 25 of 2018 applied in practice in Jordan, in relation to the criminal and civil laws in force? Has this law affected medical error cases and complemented the general laws?

Research Objectives:

The aim of this research is to present the regulations governing medical errors, as well as the nature of issues related to medical error cases and the mechanism for submitting complaints related to medical errors after the approval of the Medical and Health Liability Law No. In 2018, the law introduced a new method for reporting medical errors through a committee known as the Higher Technical Committee in the Ministry of Health. This committee is responsible for reviewing complaints submitted to it and is appointed by the Minister of Health for a maximum of two years, with the possibility of renewal only once, except for the sixth time.

Research Methodology

In this research, I relied on the analytical method, based on the study and presentation of the provisions of the Jordanian Penal Code and the Medical and

Health Liability Law No. 25 of 2018, through which I addressed the concept of medical error, the issues of medical errors and the mechanism for filing complaints of medical errors after the adoption of the Medical and Health Liability Law No. 25 of 2018, and used the decisions of the Jordanian Court of Cassation to enrich the research from the practical applications of the law before court bodies at various levels.

Earlier Studies

1. Rula Al-Bakhit conducted a comparative study on the element of fault in the civil liability of doctors in Jordanian law for her master's thesis at Al Al-Bayt University in 2021. This study examines the civil liability of doctors under Jordanian law, focusing on the role of medical negligence in determining liability. In the absence of negligence, the civil liability of the doctor is negated for all actions taken in the course of his work. The Jordanian legislator has addressed this issue in the Civil Code. Our study was unique in that it examined the impact of the Medical and Health Liability Law on medical errors and its practical application in the light of the general provisions of the Jordanian Civil Code and the Jordanian Penal Code. It is important to note that the general provisions differ from the Jordanian Medical and Health Liability Law, which was enacted in 2018.
2. WaelKatishat, Limits of Medical Liability. WaelKatishat's article entitled 'Limits of Medical Liability' was published in the Journal of Studies for Sharia and Law Sciences, University of Jordan, Volume 45, Issue 1, in 2018. This study examines medical errors and the establishment of medical liability for doctors under Jordanian law. It focuses on the weaknesses and strengths of the provisions of the law and how they are applied in practice to determine the medical liability of the doctor. Unlike previous studies, it addresses both civil and criminal aspects of medical liability. The study avoids subjective assessments and uses clear, concise language with a logical flow of information. Technical terms are explained when first used and the language is formal and unbiased. The text adheres to style guides and is grammatically correct. This research paper is divided into the following sections.

The first section

The concept of medical error

First of all, before delving into the concept of medical error, we must stand on the concept of medical work that gives rise to medical error, as the French and

Egyptian legislations differed on the concept of medical work and some of them included medical diagnosis within the system of work covered by medical error, and what concerns us is that the Jordanian law in Article 10 of the Law of the Order of Physicians No. (13) of 1972 indicated that medical work includes diagnosis and treatment as the article stipulates that the doctor is prohibited from resorting to methods that can abuse the medical profession, especially those that fall into the category of fraud, falsification or claiming to discover a method of diagnosis or treatment (Al-Husseini, 1999). Article (13) of the Jordanian Public Health Law No. (21) of 1971 is clearer in defining the concept of medical error, which stipulates that the Ministry of Health is responsible for all health affairs in the Kingdom, including: -

- 1- Providing preventive and therapeutic medical services.
- 2- Combating communicable diseases.
- 3- Spreading health awareness and medical culture by the means available to it.

Error is defined linguistically: Some have defined it as a deviation in behavior that cannot be committed by a person in the same circumstances as the person who committed the error, and defines medical error: (a breach by the doctor of his duty to exert care consistent with the principles of the profession established in the science of medicine) (Shadifat, 2011, p. 11).

As for medical error, the Medical Liability Law No. 25 of 2018 defines it as "medical error: Any act, omission or negligence committed by a service provider that is inconsistent with the prevailing professional rules within the available work environment and results in harm.

A part of the French jurisprudence distinguishes between the physical works performed by the doctor and commits mistakes while practicing it, and these mistakes are called ordinary mistakes, and technical works practiced by medical professionals, and they commit mistakes while practicing them, called professional mistakes (Abu Khatwa, 2007, p. 38).

They defined an ordinary error as: What is issued by a doctor during the practice of the profession without being related to professional technical conditions, and the doctor is accountable for these errors, regardless of their degree, such as the doctor forgetting scissors or a piece of cloth in the patient's abdomen or performing an operation while under the influence of alcoholic beverages (Al-Sarayrah, 2007, p. 53).

As for the professional (technical) error: The error committed by professionals during the practice of their work, which deviates from the professional behavior according to the established technical conditions where no

professional can perform such behavior if he exists in the same circumstances for this person, such as what happens from the doctor if he violates the rules imposed on him by the medical profession, for example, the error in diagnosis (Alajaj, 2011, p. 59).

Some jurisprudence has divided medical errors into material or ordinary errors and technical or professional errors in order to determine liability (Al-Shawarby, 1998), and has also divided medical errors into serious and minor errors (Hegazy, 2008). According to this view, the doctor is liable for ordinary and material errors regardless of their seriousness, while professional errors, the doctor is only liable for serious errors (Al-Tabakh, 2005).

As for the Jordanian judiciary, it did not directly address the issue of the hierarchy of medical error but settled on establishing the responsibility of the perpetrator of the error from the Jordanian Civil Code (Al-Awden, 2004).

Therefore, the Jordanian legislator did not successfully define the concept of medical error within the provisions of the Medical and Health Liability Law No. 25 of 2018.

- 1- Has the doctor made sincere efforts to provide care that is consistent with the existing circumstances?
- 2- Were the medical procedures and work performed in accordance with established scientific principles and recognized medical rules with the aim of healing the patient?
- 3- Did the physician who performed the work do so within his or her area of expertise?
- 4- Did the doctor consider using specialists during surgical interventions to prevent the need for additional therapeutic surgical interventions or complications? It is important to note that determining whether or not a medical error occurred is a technical issue that is decided by the court through expert testimony from knowledgeable and competent doctors.

Furthermore, the Jordanian legislator was unsuccessful in providing a clear definition of 'medical complication' in Article 2 of the Medical and Health Liability Law No. 25 of 2018. Instead, the definition of 'medical error' was limited, along with other definitions (Mamoun, 1986). This creates ambiguity in determining whether the doctor's actions constitute a medical complication resulting from medical or surgical intervention, or a medical error.

Article 2 of the Medical and Health Liability Law No. 25 of 2018 includes the medical service provider and the place of medical service under the medical error umbrella. The law provides a definition for each of them, defining the service provider as any natural or legal person who practices a medical or health profession and performs or participates in the performance of a service in

accordance with the provisions of applicable legislation. The place of service is defined as the location authorized to provide medical or health services to the recipient.

The second section

Problems of medical malpractice cases in terms of occurrence and methods of proof

Human life and physical integrity are fundamental rights protected by legislation. Penalties are in place to deter those who cause harm to others. The doctor-patient relationship is both humanitarian and legal, imposing responsibility on the doctor (Al-Saeed, 1990). I will not delve into the legal concepts, both civil and criminal. However, it is important to distinguish criminal responsibility for medical errors, which is represented by negligence, lack of precaution, and committing an act prohibited by law, resulting in a penalty (Mohsen, 1993).

Civil liability is a result of a contractual obligation between the responsible party (the doctor) and the injured party (Abdulmalek 1989). The liability arises from the breach of the obligation by the doctor performing their duties without negligence. The basis of civil liability is Article 256 of the Civil Code, which states that any damage to third parties requires the perpetrator, even if they are not distinguished, to guarantee it (Al-Hyari, 2008, p. 112).

Note that in its decision No. (968/2007) dated 3/9/2007, the Jordanian Court of Cassation distinguished between criminal liability and civil liability. It stated that for the existence of criminal liability, there must be a serious or intentional error in the behavior of the treating physician. On the other hand, for the existence of civil liability, negligence, negligence or lack of vigilance is required. The referred discriminatory decision No. (968/2007) stated the following:

The doctor's civil liability does not necessarily end with the requirements of criminal liability. If criminal liability requires gross error or deliberate behavior, civil liability is sufficient for negligence, lack of precaution, or negligence. Our court supports the jurisprudential trend of rejecting the theory of equality of the two faults (criminal and civil) in the doctor's behavior (Muhtaseb Bellah, 1984). The existence of criminal liability results in the imposition of a deterrent penalty, even if it is represented by the recent trend of imposing financial fines instead of imprisonment. This is due to the status of the doctor and their humanitarian role (Jordan. Cassation Court Decision No. 968, 2007).

First requirement

The Nature of Criminal Liability in Medical Malpractice Cases and Its Issues

In Jordan, medical errors fall under the purview of the special medical and health liability law No. 25 of 2018, as well as the general provisions outlined in the Jordanian Penal Code. These provisions cover a range of scenarios, from simple harm to causing death due to negligence, lack of caution, or disregard for laws and regulations. The penalties for those responsible can include imprisonment for a period of six months to three years.

According to Article 344/2 of the Jordanian Penal Code, unintentional harm is punishable by imprisonment for a maximum of six months or a fine of up to ten dinars.

The Jordanian Penal Code includes provisions that address certain crimes for which a doctor may be held liable in the absence of a medical liability law (Al-Sheikh, 2002, p. 112). Therefore, if a doctor commits a medical error and its seriousness is determined through a medico-legal report prepared for this purpose at the time of prosecution, they may be held liable for these crimes. The doctor, hospital or medical staff accused of a crime must be proven guilty by the public prosecution or the representative of the complaining party according to general criminal rules. This is necessary to prove the elements of the crime attributed to them. For instance, if the crime is harm, it must be proven beyond reasonable doubt (Srouf, 1985). Furthermore, additional legislation can subject doctors to legal liability, such as the Jordanian Doctors Association Law, which imposes disciplinary penalties, including suspension from practicing the profession.

The practice of medicine requires adherence to scientific rules and principles of expertise and art. Any violation of these rules can result in criminal accountability for the doctor's mistakes (Youssef, 2007). For example, if a doctor uses non-sterile instruments during surgery, inadvertently leaves a surgical tool in the patient's body, or performs the operation while under the influence of alcohol and fails to comply with technical rules, they can be held accountable for their actions (Jbour, 2012, p. 179).

The researcher argues that medical errors should not be subject to the same rules as general criminal law. Despite the adoption of the Medical and Health Liability Law No. 25 of 2018, they suggest that its provisions should be amended to become more comprehensive and specialized. This is because medical errors are a unique type of error, particularly for the following reasons:

- 1- The human body is the object of criminal protection in medical works and must be preserved and not harmed (Al-Jumaili, 2011).
- 2- The medical profession is entitled to privacy in preserving secrets, as disclosure of these secrets harms the social interest and public decency.
- 3- Criminal liability of doctors is based on the gravity of the consequences of the error, rather than the gravity of the error itself (Ben, 2023).

- 4- Link the error that requires the doctor's accountability to the harmful criminal outcome, regardless of whether the error is technical or ordinary.
- 5- Make the doctor criminally liable not only for breaching the special rules of caution imposed on them by the principles of their profession but also for breaching the rules of caution imposed by the law on everyone.

These suggestions are based on following considerations.

- 1- Practical consideration: It is difficult to establish a criterion to distinguish between minor and serious errors, which makes it challenging for judges to determine the criminal liability of doctors. This is because they cannot assess whether an error is minor or serious without consulting experts in the field. Additionally, it is challenging to differentiate between ordinary and technical errors, as well as to establish specific criteria for the internal and external circumstances of the doctor who is being held accountable.
- 2- Theoretical consideration: Medical devices must keep pace with scientific and technological developments to avoid errors that could harm patients.
- 3- Legal consideration: Doctors have an obligation to follow general rules of prudence and caution (Lafi, 2009, p. 233).

Second Requirement

The mechanism for filing medical error complaints if committed by the service provider according to the Medical and Health Liability Law No. 25 of 2018

It is necessary to shed light on the mechanism for submitting complaints of medical errors if committed by the service provider according to the Medical and Health Liability Law No. 25 of 2018, as the law stipulates that medical errors are committed either by the service provider (hospitals) or the doctors or medical staff working for them, so that complaints of medical errors or regarding the violation of the provisions of this law are submitted by the recipient of the service or his/her heirs, guardian or trustee either to a fair and impartial judiciary with general jurisdiction. According to the provisions of Article 9 of the Medical and Health Liability Law No. 25 of 2018, a committee called the Higher Technical Committee, which is formed by the Minister of Health for a period of two years, renewable for one time only except for the sixth.

It consists of:

1. Five specialized physicians who have been practicing the profession for at least ten years.
2. Two dental specialists who have been practicing for at least ten years.
3. A pharmacist who has been practicing for at least ten years.
4. A nurse with a minimum of ten years of practice.

5. A representative of the health professions nominated by the Minister who has at least ten years of practice in the profession.
6. Legal counselor at the Ministry.

Regarding the working mechanism of this committee, it operates in accordance with the following:

- This committee must make its decisions on complaints referred to it by the minister or the concerned syndicate or provide technical expertise to the court within a period not exceeding three months from the date of submission of the complaint or request for technical expertise.
- The complainant or service provider has the right to object to the decision of the Higher Technical Committee within 30 days from the date of its issuance to another sub-committee to study the objection, and if the results of the decision of the two committees differ, the two committees shall meet to adopt one of the two reports.
- The work and procedures of the committee are confidential under penalty of legal liability.
- The service provider may not be arrested during the investigation and trial phases (Article 12 of the Medical and Health Liability Law of 2018).

Conclusion and Recommendations

At the end of this research, we concluded a number of important findings and recommendations that we hope the Jordanian legislator will take into consideration when amending the Medical and Health Liability Law No. 25 of 2018 and the extent of the impact of this law when applied in practice in light of the existence of general rules in the criminal and civil laws in force in Jordan, and whether this law after its adoption affected medical errors cases as its adoption came in a complementary manner to the general laws. The researcher found that applying the Medical and Health Liability Law No. 25 of 2018 in practice complemented the general rules in criminal and civil laws and cannot be applied to eliminate It did not include clear and specific definitions of the concepts of medical error and medical multiplication. The researcher found that the activation of alternative penalties within the Medical and Health Accountability Law, including the replacement of the penalty of imprisonment and its exclusion, is a departure from the general rules in the Jordanian Penal Code, because, as mentioned above, bad faith in its concept does not exist for the doctor or medical service provider, but they provide treatment for the patient in good faith and with the aim of treating and healing him, God willing, and this recommendation does not include purely criminal cases, even if issued by doctors if the criminal intent

(moral element) is proven in accordance with the penal concept. The doctor must explain the patient's condition to him, what the treatment methods are, the chance of success, the risk ratio and alternative methods, and give the patient advice about the method that suits his condition and understand it, and take written consent from the patient for all medical procedures (medical works) that the doctor will perform after the patient understands them and their nature, noting here that when the patient is admitted to the hospital to receive treatment, he is under the supervision of the specialist doctor who entered on his name and is responsible for his safety and the safety of the medical procedures that were performed for him.

The researcher recommends the following to the Jordanian legislator:

- Adopting the so-called description system, which includes a description of medical procedures and scientific and technical assets that are internationally recognised to be a reliable basis for determining the existence of medical error or not, and this is what is in practice in some countries of the world.
- Amending the Medical and Health Liability Law of 2018 to include a clear basis for determining the medical liability of the doctor and its limits between it and the treating body providing medical services in terms of the basis on which the doctor will incur liability and determine his offence and the commission of medical error.
- There must be a comprehensive insurance system to cover medical errors in conjunction with the risk fund that includes service providers in order to cover multiple forms of medical errors such as the doctor's error in his clinic and the pharmacist's error in his pharmacy.

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