

The New Cabinet Resolution No (40) of 2019 concerning the UAE Federal Law on Medical Liability (Law No. 4 of 2016): An Analysis

Mohamed Al Marzouqi - Regional Co-Head of Litigation - Litigation / Legislative Drafting
m.almarzouqi@tamimi.com - Abu Dhabi

Clare Heaney - Associate - Corporate / Mergers and Acquisitions / International Litigation Group / Litigation
- Abu Dhabi



The long-awaited Cabinet Resolution No (40) of 2019 (the 'Resolution') issued on 3, July 2019 provides the necessary detail to implement the provisions of Federal law No (4) of 2016, concerning Medical Liability (the 'Law').

Article 34 of the Law introduced stringent penalties for medical practitioners who commit a 'gross medical error' to include imprisonment and a fine. The issuance of the Resolution helpfully now clarifies the circumstances in which a medical practitioner is considered to have committed a gross medical error, which will be discussed in detail in this article.

Further, Article 18 of the Law requires all medical malpractice claims to be referred to a New Medical liability Committee (the 'Committee'). The Resolution provides clarity regarding the formation of a Committee and outlines the rules and procedures each Committee must follow.

For the purposes of this article, we have provided a summary of the key provisions of the Resolution as follows:

Article 5 (Gross Medical Error)

Article 5 of the Resolution sets out the circumstances in which a medical practitioner is deemed to have committed a 'gross medical error'. Before the issuance of the Resolution, a gross medical error was not defined and therefore a practitioner who committed any malpractice (whether gross, or not) could be held criminally liable. In accordance with Article 34 of the Law, only medical practitioners who have committed a gross medical error will be held liable for criminal medical negligence. As a gross medical error is now defined by Article 5 of the Resolution, we consider there will be a decline in the number of malpractice cases referred to the criminal court.

The new Resolution provides the circumstances in which gross medical negligence occurs as follows:

"1. A Medical error is considered 'gross' if it causes a death to a patient (including a fetus), loss of a limb, impairment to a bodily function, or any other gross damage, including but not limited to the following:

- 1. extreme ignorance of the recognised medical code of practice, as per the degree and specialisation of the profession practitioner;*
- 2. following a method not medically recognised;*
- 3. unjustified deviation from the medical rules and code of practice in practising the profession;*
- 4. the physician is under the influence of alcohol or illegal substances;*
- 5. gross negligence or lack of clear attention in following the standard procedures, such as leaving medical tools inside a patient's body, giving a patient the incorrect dosage of medicines, failure to switch on medical equipment during or after the surgical operations, resuscitation, delivery or not giving a patient the medically appropriate medicine or any other acts that may considered as gross negligence;*
- 6. intentionally practise the profession out the scope of the specialisation or clerical privilege enjoyed by the physician under his/her licence; or*
- 7. the physician, without medical supervision, issues a diagnosis or administers treatment in which he/she is not qualified or trained to do.*

Articles 8 - 15 (Medical Liability Committee Rules and Procedures)

Articles 8 -15 of the Resolution provide the necessary detail regarding the formation of the Committee and the rules and procedures each Committee must follow. In the first instance, all medical liability cases must be referred to a Committee for determination. The existing Supreme Committee will act as an Appeal Committee only. In accordance with Article 20 of the Law, the complainant and the medical practitioner can file an Appeal with the Supreme Committee within 30 days of receiving the Committee's report. Before the issuance of the Resolution, the Supreme Committee reviewed all complaints and its decision was final.

Article 4 (Medical Research on humans)

Article 4 relates to the prohibition of medical research and experiments conducted on human beings unless his/her consent is obtained as well as from the competent authority. We expect the Minister of Health will issue future guidance regarding the controls, rules and procedures regulating the conduct of medical research and experiments on humans.

Appendix to the Cabinet Resolution No. (40) of 2019 concerning the Executive

Regulation

The appendix to the Resolution sets out the terms and conditions for the provision of Remote Health Services. Previously, Remote Health Services were prohibited in the UAE. Patients, therefore, were required to visit their Medical Practitioners in person.

Key definitions of the Remote Health Services as per the Resolution are as follows:

- **Remote Medical Consultancy:** Consultancy by using the information technology and telecommunication, to provide advice on the best ways to deal with the medical case between a physician and another one or between the physician and the patient, in the care in which the patient and physician are not in the place.
- **Remote Treatment Prescriptions:** The physician shall describe the treatment in the cases when the physician and the patient are not in the same place, by using the information technology and telecommunications after the remote diagnosis without clinical examinations of the patient, or remote prescription based on the conventional clinical examination.
- **Remote Diagnosis:** To identify the disease or the medical condition of the patient by using the information technology and communication with the medical service provider.
- **Remote Medical Monitoring:** To obtain all the vital signs and monitor the patient condition by using the information technology and tele-communications from the health service provider.
- **Remote Medical Intervention:** Any remote medical intervention by using the information technology and telecommunications.

Conclusion

The issuance of the Resolution provides much needed clarity regarding the implementation of the Law. It is expected that the Law and the Resolution will improve the quality of healthcare in the UAE and streamline the manner in which malpractice claims are managed. The Resolution helpfully clarifies the definition of the meaning of 'gross medical error' and outlines the rules and procedures regarding the formation of a Committee. Medical practitioners and patients will now have greater protection, as appeals can now be heard through the Supreme Medical Committee.

Al Tamimi & Company's [Litigation team](#) regularly advises on legal and regulatory matters pertaining to healthcare litigation. For further information, please contact [Mohamed AlMarzouqi](#) (m.almarzouqi@tamimi.com).