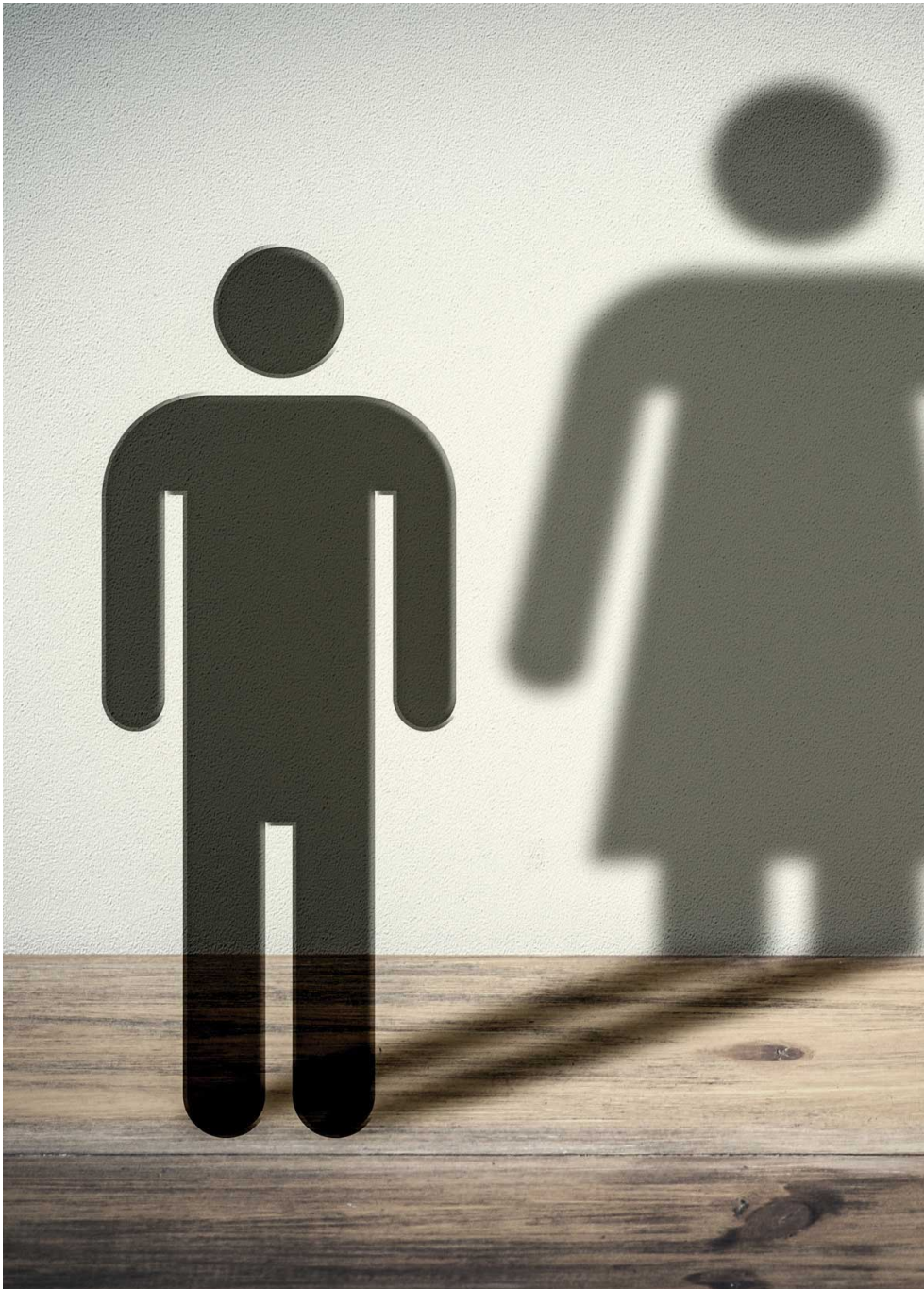


Introducing a Medical Liability Law in Jordan in an Attempt to Regulate Medical Negligence Claims

Hala Qutteineh - Senior Associate - Litigation
- Amman



Although generally, laws differ significantly between nations, medical liability laws are somewhat similar in application.

The government of Jordan recently published the Medical and Health Liability Law No. 25 of 2018 ('Medical Liability Law') which was published in the Official Gazette late in May 2018 and eventually came into force on 31 August 2018.

In the past, and prior to the enactment of the Medical Liability Law, issues relating to medical negligence and medical malpractice were governed by miscellaneous legislation including the Medical Constitution, Doctor's Obligations and Professional Conduct of 1989 ('Medical Constitution'), the Health Law and the Penal Code. The Medical Liability Law combined all of the provisions relating to medical liability, and codified the same to produce the Medical Liability Law. The objective of the Medical Liability Law is to enhance the provisions relating to the liability that falls upon medical professionals who are negligent.

Duty of Care and Medical Negligence

It is human nature that professionals are bound to make errors in judgment. However, health practitioners, in particular, are expected to meet a higher standard of 'duty of care' and are required to have a specific, fair, reasonable and competent degree of skill when providing any sort of medical care to a patient. Article 5 of the Medical Liability Law illustrates that Service Providers ('SPs') are required to perform services subject to the requirements of the morals, accuracy, loyalty of the profession and they must also be in line with the established scientific standards which are required to provide the necessary care to a patient. SPs are defined under the Medical Liability Law as 'any natural or juristic person carrying out any profession related to medicine or health...'. Under the Health Law these include, doctors (including orthodontists), nurses, anaesthesiologists and psychologists.

According to the Medical Liability Law, medical negligence occurs when SPs, are involved in an act or omission, which does not correspond to the standard professional rules resulting in harm to the patient.

Article 7 of the Medical Liability Law imposes certain obligations on SPs relating to the diagnosis and treatment of patients. These obligations include reporting the medical status of patients, clearly informing patients of their diagnosis and of the degree of seriousness of their illness unless, upon the occurrence of certain conditions, it is not in the patient's interest to do so or the patient is not psychologically prepared to be informed.

In addition, the Medical Liability Law explicitly prohibits SPs under Article 8 to perform a number of activities, including:

1. diagnosing or treating the patient without his/her consent except in emergency situations when acquiring prior approval is deemed difficult;
2. failure to provide service in emergency situations unless such failure is due to reasons beyond the control of the SP;
3. using unauthorised diagnostic means or medicines;
4. diagnosing patients prior to examining them;
5. disclosing confidential information of a patient of which the SP became aware as a result of treating a patient. Exceptions to this are where the disclosure was made: (i) with the patient's written consent; (ii) in the best interests of the spouse; (iii) to avoid or report the occurrence of a crime; (iv) as a result of a legal request; or (v) before the Technical Higher Committee. (The Technical Higher Committee is a committee formed by virtue of the Medical Liability Law to investigate complaints raised by patients.);
6. gender change surgeries; and
7. human cloning.

Moreover, if the SP breaches the provisions of Article 7 and some of the provisions of Article 8 of the Medical Liability Law (except for those relating to gender change surgeries and human cloning), then the SP is liable to a fine ranging between Jordanian Dinars 3,000 and Jordanian Dinars 5,000).

“The Medical Liability Law, unlike gender change

surgeries, does not prohibit gender reassignment surgeries.”

Gender change vs gender reassignment surgeries

Unlike gender change surgeries, the Medical Liability Law does not prohibit gender reassignment surgeries where medical interference is needed to alter the gender of the patient and transition individuals with gender dysphoria to their desired gender if the person's gender orientation is ambiguous and his/her gender features are different from their physiological, biological, and genetic characteristics. In other words, the Medical Liability Law permits gender reassignment surgeries but prohibits entire gender change surgeries, which are only carried out without a valid medical reason, and only for the sole purpose of changing the gender. It should be noted that the Medical Liability Law imposes a stricter penalty on SPs carrying out gender change procedures with penalties of up to ten years in prison with hard labour.

Implanting embryos vs birth control

The Medical Liability Law prohibits implanting embryos if such implantation is not from the husband. Written consent of both parties in question is required. It also prohibits carrying out procedures to control birth except with the written consent of the female. The procedure must be based on an opinion issued by a specialised medical committee formed by, at least, three expert doctors. The Medical Liability Law, however, does not impose a penalty in the event SPs breach these requirements. This leaves the patient or the aggrieved party with the option of lodging a complaint with the relevant body as per Article 9 of the Medical Liability Law.

Do not resuscitate

The Medical Liability Law does not allow for the option of 'do not resuscitate' and prohibits SPs from withholding cardiopulmonary resuscitation unless the heart, brain or lungs are completely dysfunctional. It also confirms that ending the life of one's patient is completely prohibited even with the consent of the patient or its legal heirs.

Mandatory insurance

Notwithstanding the above, one of the most important updates incorporated within the Medical Liability Law is the introduction of mandatory insurance. The Medical Liability Law imposes an obligation on hospitals and medical centres to obtain insurance to cover SPs with a view to protecting them against medical malpractice suits. It is believed SPs will feel more secure in the knowledge that another party can cover any compensation imposed on them as a result of a medical negligence claim, and patients will feel more secure knowing that a separate, impartial body can cover their right to damages.

Complaints

Subject to Article 9 of the Medical Liability Law, patients, heirs or family members can now report any alleged malpractice or medical negligence by medical practitioners directly to the Technical Higher Committee. The decisions of the Technical Higher Committee can be appealed to a subcommittee formed by the Technical Higher Committee within 30 days and the decisions of both committees will be discussed internally until they both issue a final binding decision regarding the complaint.

Right of no arrest

Another interesting addition, which serves the Medicine Association well, is Article 12 of the Medical

Liability Law, which confirms that doctors, and other SPs, may not be arrested during the process of an investigation and /or trial involving a medical negligence claim entitling authorities to arrest SPs only upon the conclusion of a court judgment in this regard.

Conclusion

The issuance of the Medical Liability Law and its provisions represent a new milestone in the world of medicine in Jordan. Nonetheless, many aspects are not governed by the said law, the most important of which, is the vague definition of what actually constitutes 'medical negligence' and whether or not harm is a prerequisite for filing a claim. Furthermore, even though the Medical Liability Law forms the Technical Higher Committee to investigate complaints, the complaints and appeals processes have not been clearly established.

Notwithstanding the foregoing, the Medical Liability Law clarifies the obligations and limitations imposed on SPs with penalties imposed in the event of breach of most of such obligations. The Medical Law also ensures that healthcare professionals cannot be prosecuted until such time as a court has so ordered. The Medical Liability Law also clarifies that resuscitation cannot be withheld and gives patients, under certain conditions, the right to undergo gender reassignment surgeries.

The Medical Liability Law aims to safeguard the legal interests of patients and healthcare professionals, with the ultimate view of enhancing the quality of the healthcare sector in Jordan.