

Medical error and the responsibility of the health institution

الخطأ الطبي ومسؤولية المؤسسة الصحية

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الملخص:

نعيش في الآونة الأخيرة ظاهرة أقل ما يمكن القول عنها مأساوية، كيف لا وهي تمس صحة و حياة الإنسان من خلال الأخطاء الطبية التي يقع فيها الأطباء أو الفريق الطبي أثناء ممارسة مهامهم و التي تعد من أنبل المهام أو المهن، لكن و في بعض الأحيان و نتيجة التهاون أو الإهمال أو التقصير أثناء مزاولة تلك المهمة فقد تتغير الصورة التي قد نكنها لذلك الطبيب أو أي موظف صحي ضمن اختصاصه . فالمرضى حين لجوئهم للمستشفى يضع كل الثقة في الذين يشرفون عليه و يسلم نفسه للطبيب بدون أي تردد بنية العلاج و الشفاء على يديه لكن و للأسف و في بعض الأحيان قد تتدهور حالة ذلك المريض و تسوء أكثر نتيجة خطأ طبي ما .

و في هذا السياق سنحاول من خلال هذا المقال التطرق لمفهوم الخطأ الطبي، و التعرف على مختلف أنواعه و حتى الأسباب المؤدية إلى ذلك مع الإشارة إلى المسؤولية الطبية و من يتحمل نتيجة ذلك الفعل هل هو الشخص المشرف مباشرة على ذلك المريض و المتمثل في الطبيب الذي كلف بمعالجته أو تتوب عليه المؤسسة الصحية الذي يزاول بها وظيفته بصفة التبعية لها مع التركيز على المؤسسة الصحية العمومية.

الكلمات المفتاحية: الخطأ الطبي، الصحة، المؤسسة الصحية، المسؤولية الطبية.

Abstract:

We are currently living a very tragic phenomenon which is known as Medical errors. Indeed, this phenomenon affects the health and life of human beings through medical errors that doctors or medical teams may make while doing their duties. Medicine is considered among the noblest tasks or professions. However, sometime, as a result of negligence, carelessness or defaults while performing this task; the image that we may have of that doctor or any health employee within his jurisdiction may change. When the patient goes to the hospital, he places all his trust in those supervising him and surrenders himself to the doctor without any hesitation with the intention of treatment and recovery. But unfortunately, sometimes the condition of that patient may deteriorate and become even worse as a result of some medical error.

In this context, we are going through this article to address the concept of medical error, and identify its various types and even the reasons leading to it. With reference to medical responsibility and who bears the consequences of that act. Is he the person directly supervising that patient, represented by the

doctor who was assigned? By treating him or representing him by the health institution in which he performs his job as a subordinate to it, with a focus on the public health institution.

Key words: medical error, health, health institution, medical liability.

Introduction:

The progress in medical sciences was accompanied by a change in traditional treatment methods. Modern technical methods appeared that were more effective in diagnosing diseases accurately, treating them, or preventing them. Due to these changes, it was supposed that diagnosing diseases, providing treatment, and performing surgical procedures would become more correct. But reality shows us an increase numberof medical errors. Unfortunately, we usually hear about a doctor who forgets a piece of gauze in his patient's stomach, or an anesthesiologist who makes a mistake in the dose, and the patient pays with his life...etc.

A medical error is an obscene error that is not recognized by the principles of medicine and is not recognized by knowledgeable and professional people with specializations. Resulting from negligence or failure to exercise the necessary care by the doctor or the treating medical team, which results in harm or death.

Medicine is a unique and pioneering profession in its direct dealing with the human body, soul and feelings without an intermediary. Therefore, it is self-evident that the doctor is supposed to be distinguished by distinct and good qualities, as the patient is completely stripped of all the subjective feelings and external veils in front of the doctor, revealing the insides of himself and his hidden beings. Indeed the patient reveals his body cover and its barriers to his doctor without reservation.

Medical error has multiple causes, including ignorance, forgetfulness, negligence, unintentional error, and intentional error.

In general, the doctor performs his therapeutic and medical duties within a health facility represented by a health institution. The latter serves as protection or guarantee for the employee or doctor who works there. When a medical error in any capacity is committed by this doctor. Does the latter bear responsibility for that error alone? Or the health institution to which he belongs shares the result of his action. We will focus here on the public health institution.

Regarding all of the above, we find that the issue of medical errors has become one of the topics that calls for research and study in depth, as this phenomenon of medical error is constantly evolving and is widely spread, and the victim is the sick person. This is a great responsibility and it is not permissible under any circumstances to be tolerated.

In order to get closer to the topic of the concept of medical error, its types and causes, and the responsibility that falls on that error. We are going to discuss these elements in detail in this article.

First: Definition of medical error:

To determine the reality of medical error, this requires exposure to the concept of error in general from a linguistic and jurisprudential perspective. Then, we can extract the concept of medical error, and through these concepts we can determine the reality of medical error.

1. Language:

"Mistake" lexically is the opposite of "right" and "intent". According to Ibn Mandhur: "the mistake and the mistaken: the opposite of the right. Be mistaken. And in the holly coran: (And there is no blame upon you for that in which you have erred but [only for] what your hearts intended. And ever is Allah Forgiving and Merciful) [al ahzab : 5]. To be mistaken is to take the wrong path intentionally and unintentionally. It is said: he was wrong, and was mistaken. The former is intentionally, and the latter is unintentionally.

Based on the last statement, the author of Mukhtar al-Sihah distinguished between the two meanings, saying: "The mistaken is the one who wants what is right then turns to something else. The one who is wrong is the one who intentionally does what is not appropriate."

2. Contextually:

Fundamentalists have many definitions of mistake, although they all focus on "lack of intent," including these 1-2- Conventionally

Fundamentalists have many definitions of error, although they all focus on "lack of intent." Among these definitions we have:

- To do an act that he did not fully intend.
- Al-Zarkashi said: That the action occurs without intention.

Accordingly, a mistake is something that is done without will and without intending to do so.

3. Definition of medical error from a jurisprudential perspective:

The jurisprudential treatment of the doctor's error was based on the general principle in determining the error. IbnAbd al-Barr said: "They unanimously agreed that the error is what the perpetrator did not intend, and wanted someone else, and the traitor and the doctor did in this sense." It is known that the doctor intends to Healing the sick person, is it a mistake if his action fails to achieve this goal?

The truth is that not every medical procedure that does not lead to recovery for the patient can be considered a medical error. The medical action may fail to achieve the goal of recovery for the patient and there is no error, as medical work has a special nature that emerges from its legal description and the nature of the obligation in it.

It is agreed upon in Shariaa law that studying medicine is an obligation of sufficiency, given that the doctor is a social necessity needed by the group. From this standpoint, Islamic law has considered practicing the medical profession as an obligation of sufficiency, and it may be reversed in kind at other times. This means that the doctor is not held accountable for his duties. The results of his action.

In this regard, Abdel Sattar Abu Ghada says, "Considering medical care as a competent duty requires that the doctor is not responsible for what his work leads to in fulfilling his duty."

The doctor's work upon permission for treatment or upon permission to request treatment which is considered obligatory. The rule is that the duty is not bound by the condition of safety. Rather, performing his duty is left to his choice alone and to his scientific and practical diligence.

The obligation that falls on the doctor is an obligation to provide care, not to achieve an end. The medical work that is absolutely committed to is: to provide the necessary care, not to achieve the goal of healing.

The obligation that falls on the doctor is to make sincere and vigilant efforts that are consistent with existing conditions and established scientific principles, with the aim of curing the patient and improving his health condition. The doctor must take adequate care of the patient, but he does not oblige the patient to be cured, nor does he prevent the development of the disease or tolerate it. The responsibility of dangers and accidents, as the duty imposed on the doctor is to exercise adequate care and prescribe for him the means of treatment that will hopefully cure him of his illness. To take into account the duty of conscience and commit to caution and scientific follow-up. Every breach of this obligation constitutes a medical error that raises liability of the doctor.

Medical error is based on the presence of a group of elements represented by failure to observe the principles and scientific rules recognized in medical science, breach of the duties of caution and failure to exercise the care that the doctor could have done.

The doctor's work is legitimate even if the patient's condition worsens, but if this work is accompanied by an error for which the doctor will be held unintentionally responsible. Failure of treatment itself is not considered evidence of the doctor's error, as treatment may fail despite the doctor's commitment to scientific rules and principles. The process is due to his profession, as well as his commitment to the duties of caution. In many cases the patient or his family has a role in creating the

error without the doctor's knowledge or intervention. This is either due to emotion, ignorance, or the doctor's confusion.

Second: Types of medical error:

Medical error has been divided into types according to its nature and degree

1. Types of medical error in terms of the nature of the work:

Two types of medical error have been distinguished: material error and technical error

1.1. Material error: It is also called an ordinary error because it is outside the scope of the profession practiced by the person who makes that error. It is represented by legal and legal violations that have no connection to the technical principles of the medical profession.

There are many examples of this, such as a doctor performing a surgery while drunk, or forgetting some of the surgical tools in the patient's body, etc.

1.2. Technical or professional error: This is the error made by the doctor by violating the rules and principles imposed on him by the medical profession. Such as making a mistake by the doctor in giving a prescription for a medication that is not appropriate for the patient's condition. Or an error occurs in the diagnosis in the manner in which the doctors agreed on a specific diagnosis.

In terms of the distinction between what is considered a material error by the doctor and what is considered a technical error by him, Dr. Al-Sanhouri says: "The distinction between a material error and a technical error in practicing the profession, in addition to being accurate in some cases, is not justified. If the doctor or other client is in a need for protection from technical dangers. So it is necessary to consider the technical man as responsible for his professional error as for his ordinary error. Thus, he should be asked about this or that, even for a minor error. Because in fact, the errors that are attributed to the doctor in most cases inevitably include a technical aspect that it cannot be separated from its technical and professional specialization.

2. Types of error according to its degree:

The error is divided according to its degree into a serious error and a minor error.

2.1. Serious mistake: In general, it is a mistake that only comes from the least alert and insightful people. It is a mistake that only a reckless person can imagine, and doctors may make, especially while performing surgical operations, such as removing a healthy kidney instead of a diseased kidney. These are unforgivable mistakes.

2.2. A minor mistake: It is a mistake that an ordinary person would not commit in his care.

Despite these divisions, jurisprudence and judiciary have settled that the doctor is responsible for every harmful act if he commits a mistake. Whether it is serious or minor, and whether it is related to his technical workmanship or to his normal duty and obligation.

Third: Causes of medical error:

The causes of medical error are numerous and cannot be enumerated. Although they can all be attributed to failure to adhere to the principles of the medical profession. The most important of them are listed below, but not limited to:

1. Violation of the scientific principles of the profession: These are the fixed principles and rules that are known theoretically and practically among doctors, and which every doctor must be aware of at the time of performing medical work. They include two types:

1.1. Immutable medical sciences: These are the axioms of medical science. Like the science of anatomy and physiology; for example, the knowledge that the body needs a continuous supply of oxygen and that uncontrolled bleeding leads to death. These are general constants that are known and necessary. Among the special constants there are those related, for example, to the science of surgery, such as how to operate a scalpel in the body and how to control bleeding during surgery. These do not change with the type of surgery, nor do they change with the change of era. These fixed general and specific sciences are considered stable sciences. Anyone who deviates from them is held accountable. They are more like medical rules and certainties.

1.2. New medical sciences: These are the sciences that arise daily. Such as new discoveries or a new treatment theory or their similar. However, those sciences can be considered as scientific principles under two conditions:

- These sciences must be issued by a reputable scientific body.
- That experienced people attest to its suitability for application and practice.

If these two descriptions are combined, a third matter is required of the doctor on his part, which is:

His qualification to apply these new sciences. For example, if it is a new surgical technique, so he should not rush to implement it without supervision or attending a training course that qualifies him to do it. And all this is decided by medical professionals. If the doctor takes these matters into consideration. If the doctor respected those conditions; and he was qualified for the work he does and adhered to the principles followed in it. Then he is absolved of responsibility if a medical error occurs.

2. Breach of the duty of care:

It has been previously stated that the doctor's obligation is to be careful, not to achieve an end. If the doctor and his staff demonstrate something that contradicts this duty, his responsibility is established. And this breach is as follows:

- Recklessness and carelessness:

This means undertaking an act without thinking about its consequences. An example of this is when a doctor performs a surgical operation without seeking the help of an anesthesiologist.

- Lack of precaution:

This when the doctor performs treatment with devices he knows are defective.

- Negligence and lack of attention:

Like leaving a piece of gauze in the patient's stomach.

- Failure to follow the regulations issued by the administrative authorities regulating medical work:

Like refraining from treating a patient that leads to harmful results due to this abstention. Also failure to obtain real approval to treat that patient. Dissatisfaction with the formal procedure of signing a paper expressing submissive consent.

Regarding this, Al-Kharqi says in his summary: "There is no guarantee for cupping, circumcision, or a doctor if it is known that some of them are skilled in their job and their hands are not damaged." Al-Zarkashi said, explaining: "There is no liability for the one mentioned above. Since they committed a permissible act for which they are authorized. Such as the imam cutting off the hand of a thief. But if they did not know about that, then they are liable, because directing it is forbidden for them. But if the circumcision goes beyond to some of the glans, or the doctor cut an item and passed it." He expressed the scientific aspect with skillful craftsmanship, and the practical aspect by saying, "Their hands were not lost."

Fourth: The responsibility of the health institution towards medical errors committed:

According to the saying of the Messenger, peace and blessings be upon him, "Each of you is a shepherd and each of you is responsible for his flock."

According to the noble hadith, the health institution is responsible for all its members who treat patients. Whether they are doctors, nurses, or others.

Any breach that results in harm to patients will be related to the hospital administration or any specific person who is obligated by those administrative bodies

working to care for patients and ensure not to harm them or cause any harm to them. In addition to the responsibility related to that individual who initiated the act resulting from the harm.

Health institutions must bear the mistakes of their employees' doctors as required by the jurisprudential aspect. This is also linked to the rule of all the regulatory texts that establishes the health institution . Which consider it a public institution of an administrative nature.

But this does not mean that the health institution bears the burden of responsibility for the doctor's errors in all their forms, so the doctor remains obligated to his patients.

The doctor's relationship with the hospital or health institution is a subordination relationship that exists whenever the subordinate has actual authority over the subordinate in monitoring and directing.

Article 136 of the Algerian Civil Code, amended by Order No. 5-10, stipulates that "the subordinate shall be responsible for the damage caused by his subordinate by his harmful act. If it is caused by him in the course of performing his job or because of it or on the occasion of it."

The doctor is charged with public service in the health field in accordance with the rules and regulations in force in this field. And the patient does not deal with the doctor as he is charged by the public facility for which he works to treat the public.

Accordingly, the health institution is responsible for what the employee performs in implementation of the directives of the employee or to achieve the goals assigned to him.

Conclusion:

From the above, we conclude that medical error, in its general sense, has controls and standards that can be carefully defined to determine the existence of what necessitates responsibility. Thus, this responsibility has specific effects. In this regard, we note that the principle is that the doctor is acquitted, and that the duty to prove the reason for responsibility lies with the plaintiff, as stipulated in the rule: “The proof is upon the one who claims, and the oath is upon the one who denies.” We must also warn against the consequences of being too ruthless or exaggerating in unjust accountability. Strong evidence or suspicion of its negative effects on society.

On the other hand, there is an emphasis on any mistake committed and accountability for it. And not being negligent in these issues. stop at them to limit them and give everyone his right.

The hospital or public health institution, through the relationship of dependency between it and the doctor, assumes medical responsibility for the medical error committed by the doctor, of course, at the place and time of work and in accordance with the task assigned to it. This is in accordance with the rules and regulations in force to compensate for the damage.

It is worth noting the primacy of Islam and jurists in codifying the conditions and controls for practicing the profession, so that it is noted that the latest contemporary standards for the practice of medicine have been established since ancient times by our jurists, may God have mercy on them, which confirms the breadth and absorption of Islamic law for all emerging calamities in the field of medicine and elsewhere. But this does not mean stopping at Pictures and examples mentioned in jurisprudence books. Rather, efforts must be intensified among doctors, jurists, and jurists in order to develop detailed codes that accommodate the requirements of the era, are based on the principles of Sharia law, and adhere to the law of God Almighty, in order to achieve justice, progress, and civilization in all its religious and worldly dimensions.

In conclusion, we can only hope that we have done even a little to cover this sensitive and serious topic in the life of all societies.

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