



MEDICAL MALPRACTICE AS THE SUBJECT MATTER OF THE INSURANCE CONTRACT

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Abstract:

Medical malpractice as the subject of an insurance contract represents a significant legal issue due to its impact on both patients and medical professionals. Insurance contracts provide coverage for non-intentional medical errors committed during professional practice, subject to specific terms and limitations. This type of insurance aims to ensure fair compensation for injured patients while reducing the financial burden on physicians, thereby achieving a balance between professional liability and the patient's right to compensation.

Keywords: Medical Malpractice, Insurance, Damages, Liability.

Introduction

Physical integrity is a legally and religiously protected right, as well as an individual interest safeguarded by jurisprudence and judicial practice across various legal systems, international legislations, and divine religions. These systems seek to protect the human body in all its organs and functions and to relieve physical pain through treatment, which is exclusively carried out within the medical profession by a qualified individual known as a physician. The medical profession fundamentally aims to serve humanity and alleviate the suffering and pain of individuals. Accordingly, a physician is presumed to possess a high level of competence and to remain abreast of the latest methods and means of treatment.

However, while practicing medicine-whether through treating a patient or performing surgical intervention-a physician may engage in acts that affect the integrity of the patient's body, impair health or

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biological functions, mistakenly remove an organ, or administer an excessive dosage of medication that may harm the patient's health. In all such cases, the treating physician is exposed to the possibility of error, which may endanger the patient's life.

An erring physician may therefore face multiple forms of liability. If the act is legally characterized as a crime, the physician is subject to criminal liability. If the act results in material or moral damage to the patient requiring compensation, civil liability arises.

In recent decades, legal accountability of physicians has expanded in developed countries due to increasing public awareness, as evidenced by the growing number of liability claims filed against practicing physicians and both public and private hospitals. Patients now demonstrate heightened legal and scientific awareness, often seeking to establish medical fault and, consequently, the physician's civil or criminal liability.

It is essential to define the scope of this study. This article focuses exclusively on medical error as the primary element for establishing civil liability.

Accordingly, the principal objectives of this study are:

1. To highlight the legal provisions that establish physicians' liability in cases of professional errors resulting from negligence or lack of due care toward patients.
2. To review legal provisions concerning patients' rights, enabling them to claim such rights and overcome the fear often associated with confronting medical professionals.
3. To provide researchers with relevant legal insights that may support their academic pursuits.

Given the nature of the research, the inductive method has been adopted in examining various aspects of medical error, alongside the analytical method in analyzing its manifestations. The comparative method is also employed to present juristic opinions and relevant legislative frameworks.

Every scientific study is grounded in a research problem aimed at analyzing and interpreting a given phenomenon, identifying its causes and effects, and anticipating its future implications. In light of the foregoing, the central research question is:

What constitutes medical error within the scope of an insurance contract?

Accordingly, the study is structured into two main sections:

The first section addresses the concept of medical error, while the second examines the standards for assessing medical error. The conclusion summarizes the findings and presents a set of recommendations.

1. The Concept of Medical Error

The tremendous scientific and technological developments in all fields of life have made it imperative to ensure legislative safeguards that protect human dignity and integrity under all circumstances. Modern medical sciences provide distinguished services to humanity and have become more effective and ambitious than ever before. Yet, like any scientific advancement, they have also become more hazardous.

1.1 Definition of Medical Error

The medical profession, by virtue of the authority it grants physicians over the human body under regulatory legal frameworks, is fundamentally a noble humanitarian mission aimed at serving mankind. Subjecting physicians' conduct to scrutiny under legislation, Islamic law, judicial precedent, and legal doctrine does not diminish this mission. Physicians cannot be exempted from liability if they harm patients through negligence or error.

The Algerian legislator has not provided a specific definition of "fault" within the general rules of civil law, leaving the matter to jurisprudence and judicial interpretation. Since the promulgation of the Napoleonic Code, legal scholars have endeavored to define fault.

Regardless of the definition adopted, legal doctrine agrees that fault consists of two elements: deviation (or misconduct) and awareness (or discernment).

Medical error is considered a specific manifestation of general fault.

Some jurists define medical error as the physician's failure to fulfill professional obligations imposed by the nature of the profession (Bellah, 1984). Others view it as failure to comply with professional obligations derived not from the general legal duty to avoid harming others but from professional standards governing medical practice. A third perspective defines medical error as a breach of both general and professional obligations (Raïs, 2007). It is also described as the



physician's omission of duties required by medical science, professional rules, and established technical standards, or exceeding their limits.

Accordingly, practicing medicine requires specific expertise and professionalism. A physician is obliged to know the principles and scientific foundations of the profession; ignorance thereof constitutes fault (Penneau, 1996).

1.2 Elements of Medical Error

Medical error is a distinct category of fault (Castelletta, 2004). In addition to the general elements of fault—namely deviation and discernment—modern legislation considers departure from established medical rules and principles as a key element in establishing medical error.

Modern legal systems require individuals to refrain from acts that may cause harm to others. Violation of this duty resulting in damage constitutes the material element of fault, which applies equally to physicians. Medical fault is based on deviation from proper conduct, whether through wrongful action or omission (Yaken, n.d.).

The moral element of fault is awareness or discernment. A physician's liability arises only if he or she is aware of failing to comply with professional obligations. Physicians are presumed to possess sufficient knowledge to practice their profession and to exercise vigilance and prudence consistent with its sensitive nature. Therefore, no fault exists without awareness.

Discernment is linked to legal capacity as defined by general legal rules. Under Article 125 of the amended Algerian Civil Code, liability arises only if the person causing harm is capable of discernment. Article 42 of the same Code sets the age of discernment at thirteen years, although practically it is implausible for a physician to fall within such an age bracket given the duration of medical training.

Comparative health legislation requires physicians to adhere strictly to established scientific and professional standards; deviation therefrom constitutes medical error giving rise to civil liability (Al-Hiyari, 2005).

Algerian legislation also defines medical ethics as the set of rules and customs binding on every physician in the practice of medicine, as

stipulated in Article 1 of the Executive Decree concerning the Code of Medical Ethics.

Legal doctrine defines medical principles as the established scientific rules recognized by specialists and which must be known and observed during medical practice. Judicially, these principles are those acknowledged by the scientific community and not tolerated if ignored or violated (Marouk, 1997).

2. Standards for Assessing Medical Error

Fault generally exists when a person acts in a manner inconsistent with that of an ordinarily prudent person exercising due care. However, if a physician expressly undertakes to achieve a specific result rather than merely exercise due diligence, such an obligation becomes binding.

Determining fault in medical treatment contracts is particularly complex due to varying circumstances surrounding medical practice.

2.1 The Subjective Standard

The subjective standard assesses whether the physician exercised the degree of vigilance and prudence personally expected from him or her. The inquiry focuses on the individual physician's conduct and whether the harmful act could have been avoided. If avoidance was possible, fault is established; otherwise, no fault exists (Raïs, 2007).

This standard is criticized for requiring examination of each physician's personal circumstances and conduct, which is difficult in practice.

2.2 The Objective Standard

In response to criticism of the subjective approach, the objective standard emerged. It compares the physician's conduct to that of an average physician of similar professional standing. The benchmark is neither an exceptionally brilliant physician nor a negligent one, but an ordinarily competent practitioner.

This standard emphasizes external circumstances—time, place, emergency conditions—rather than internal personal attributes. Exceptional circumstances may mitigate obligations otherwise applicable under normal conditions, though they do not necessarily negate fault; rather, they influence judicial assessment.



Critics argue that the objective standard lacks a solid legal foundation (Raïs, 2007) and cannot be applied absolutely without considering certain internal circumstances (Talat, 2004).

2.3 The Mixed Standard

The mixed standard combines the objective benchmark with consideration of certain internal circumstances affecting the physician's conduct (Raïs, 2007). Conduct is measured against that of a prudent physician placed under similar circumstances, taking into account whether the physician is a general practitioner or specialist and the prevailing medical customs.

Proponents justify this standard on:

1. **Theoretical grounds:** Ensuring patient protection in light of rapid medical and technological advancements.
2. **Legal grounds:** Requiring physicians to adhere to standards of prudence, vigilance, and caution consistent with professional rules to uphold justice and equality before the law.

Conclusion

Medical practice, though involving intervention in bodily integrity, remains among the most essential sciences and is legally and religiously permissible when conducted in accordance with established scientific principles.

This study addressed medical error within the scope of insurance, as a fundamental element of civil and criminal liability of physicians and hospitals. The topic is of paramount importance given rapid developments in medicine.

The study also aims to promote patient legal awareness to encourage accountability and demand professional, careful, and accurate medical care.

To achieve a balanced environment wherein physicians can keep pace with medical advancements while patients understand their rights, the following recommendations are proposed:

1. The Algerian legislator should follow comparative legislations by enacting comprehensive legal provisions that strengthen patient confidence and regulate medical practice to ensure adequate healthcare and bodily integrity.
2. Establishing a mandatory insurance system whereby insurance institutions compensate victims of medical accidents and non-

intentional medical errors—excluding intentional acts—has become necessary to ensure optimal medical practice.

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