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Civil Liability of the Physician Arising from Medical Errors in the Jordanian Law

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Abstract

This study aims to explore the civil responsibility of physicians in the event of medical negligence within Jordanian law, with regard to the definition and categorisation of medical negligence, as well as the responsibilities that physicians have to fulfil. The research employs a descriptive-analytical approach, recognising that establishing the civil liability of a physician requires demonstrating causation between medical negligence and the harm the patient suffers. This proof is grounded on negligence, negligence or omission from recognised medical practices.

The study also highlights the fact that the physician is not solely responsible for the tort, but rather the rest of the medical team, including nurses, anesthesiologists, and other subordinates, all of whom, if involved, may commit an error for which they may be held accountable. The paper emphasises the problems of patient evidence demonstrating medical negligence, issues related to obtaining medical records, and the use of expert witnesses.

The study, therefore, recommends that comprehensive laws and regulations, as well as mandatory insurance policies, be enacted to cover patients affected by medical errors. These regulations would be part of a comprehensive package of legal initiatives that would enhance the Medical Accountability Law, strengthen patient protection, and provide clearer rules for medical accountability.

They are needed to clarify the current legal situation, introduce new changes to enhance the level of protection and restore fairness between patients and doctors in the Jordanian healthcare context.

Keywords: Civil Liability, Physician, Medical Errors, Jordanian Law.

المسؤولية المدنية للطبيب الناشئة عن الأخطاء الطبية في القانون الأردني

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الملخّص

تهدف هذا الدراسة إلى استكشاف المسؤولية المدنية للطبيب نتيجة للإهمال الطبي في القانون الأردني فيما يتعلق بتعريف وتصنيف الإهمال الطبي، وكذلك المسؤوليات التي يتعين على الأطباء الوفاء بها. يستخدم البحث منهجًا وصفيًا تحليليًا؛ حيث يدرك أنه في إثبات المسؤولية المدنية للطبيب يجب إثبات السببية بين الإهمال الطبي والضرر الذي يعاني منه المريض. ويستند هذا الإثبات على الإهمال أو التقصير أو الامتناع عن الممارسات الطبية المعترف بها.

كما تؤكد الدراسة على حقيقة مفادها أن الطبيب ليس مسؤولاً وحده عن الفعل الضار، بل إن بقية الفريق الطبي، بما في ذلك الممرضات وأطباء التخدير وغيرهم من المرؤوسين، جميعهم إذا شاركوا في ارتكاب خطأ قد يُسأل عنه. وتؤكد الورقة على مشكلة أدلة المريض التي تثبت الإهمال الطبي، والمشاكل المرتبطة بالحصول على السجلات الطبية واستخدام شهود الخبراء.

ولذلك توصي الدراسة بضرورة سن قوانين وأنظمة شاملة؛ وسياسات تأمين إلزامية لتغطية المرضى المتأثرين بالأخطاء الطبية. وستكون هذه اللوائح جزءًا من حزمة واحدة من المبادرات القانونية التي من شأنها أن تضيف إلى قانون المساءلة الطبية، وتعزز حماية المرضى، وتوفر قواعد أقل غموضًا للمساءلة الطبية.

وهي ضرورية لتوضيح الوضع القانوني الحالي، وإدخال التغييرات الجديدة لزيادة مستوى الحماية، واستعادة العدالة بين المريض والطبيب في سياقات الرعاية الصحية في دولة الأردن.

الكلمات المفتاحية: المسؤولية المدنية، الطبيب، الأخطاء الطبية، القانون الأردني.

1.Introduction:

Medicine is a vital scientific profession, as it is directly related to the lives and health of people. This profession has principles, rules and ethics that anyone who practices the medical profession must follow to preserve a person's right to his life and not exploit the right to practice this profession by causing harm to the patient's body.

When a patient visits a physician to seek treatment, this creates a legal relationship, and the basis of this relationship is the contract. The contract may be oral or written, and it creates rights and obligations for both parties. In this regard, the physician is committed to his role in caring for the patient, providing appropriate treatment, adhering to the principles and rules of medicine, and exercising due diligence that a regular physician would exercise under normal circumstances. In return, the patient is obligated to follow the physician's instructions and not to withhold information about themselves that affects their treatment and grants them their rights under the contract.

Recent years have witnessed significant scientific and technological advancements in the medical profession across all its fields, making it essential to follow and study these developments and progress. It has become necessary for it to be surrounded by legislative and legal guarantees to ensure that its use is not abused or deviates from the principles and rules required by the medical profession. This is all due to protecting human life and ensuring that he is not deprived of the joys of life.

According to the World Health Organization (2019), four out of ten patients suffer harm while receiving primary and ambulatory care, with most harmful errors related to diagnosis, prescriptions, and the use of medications. Medication-related errors alone cost approximately USD 42 billion annually, while unsafe surgical procedures lead to complications for up to 25% of patients, resulting in one million deaths annually during or immediately following surgery. These statistics underscore the urgent need for legislative and legal safeguards to mitigate these errors and protect patients' rights (World Health Organisation, 2019).

However, it is noted that issues related to medical accountability are increasing due to the rise in medical errors that cause harm to individuals, which may affect the way they live their lives or even result in their loss. Patient harm is now recognized as the 14th leading cause of the global disease burden, comparable to diseases such as tuberculosis and malaria (World Health Organization, 2019). According to the World Health Organization (2019), four out of ten patients suffer harm while receiving primary and ambulatory care, with most harmful errors related to diagnosis, prescriptions, and the use of medications. Medication-related errors alone cost approximately USD 42 billion annually. At the same time, unsafe surgical procedures lead to complications for up to 25% of patients, resulting in one million deaths annually during or immediately following surgery".

This occurs either because the physician misused their authority to practice their profession or failed to adhere to the principles of medicine and general rules or due to a compelling circumstance that arose during treatment, which forced the physician to resort to an alternative treatment method. This is one of the challenges physicians face during the treatment phase. This case is verified through experience to determine whether the physician is liable for this harm or not. Therefore, another physician of the same level is sought or consulted in the same circumstances (the standard of a regular physician). Suppose it is determined that the violation did not occur during the practice of the profession and that there was no negligence,

carelessness, or lack of caution. In that case, the physician will not be liable. However, if any of the above becomes apparent, the physician will be liable and obligated to pay the appropriate compensation, as decided by the court. In most cases, the error is not on the part of the physician himself but rather an error made by one of the people in the medical team, such as the nurse, anesthesiologist, or the person responsible for sterilizing the instruments and ensuring their accuracy, work and productivity and that of other medical staff, or even the fault of the hospital or health institution for which the physician works.

1.1 Research problem:

The study's problem lies in identifying the various texts that discuss the physician's civil liability for medical errors, as these texts are characterised by ambiguity and incompleteness. Therefore, it was necessary to shed light on this topic, and it is essential to discuss this deficiency and shortcomings in legislation precisely.

"Studies in Jordan reveal that up to 81.2% of outpatients experience at least one medication-related error, further highlighting the gaps in healthcare systems (AbuRuz, Falah, Jarab, & Muflih, 2022) ."

1.2 Research questions:

1. What is the civil liability of a physician?
2. What is the concept of medical error, its degrees and its criteria?
3. What are the types of medical errors and liability?

1.3 Research Significance:

The issue of medical error within the scope of the physician's civil liability is gaining significant importance nowadays, as it relates to two important matters: protecting the human body in the event of illness from errors that physicians may make as a result of their treatment, as they may hurt his life, and secondly, that the matter of treating the patient relates to the human aspect of the medical profession. Hence, medical error has a specificity that distinguishes it from other ordinary errors that can be corrected.

"Patient safety is a major global concern. In Europe, medical errors and related incidents occur in 8-12% of hospital admissions, with healthcare-associated infections affecting 1 in 20 patients annually. These errors, if left unchecked, can lead to significant economic and health impacts, such as 95,000 deaths and over 3.2 million lost hospitalization days annually (World Health Organization, n.d.)."

1.4 Research objectives:

"This research aims to explore the urgent need to reduce healthcare-associated harm. Patient safety statistics, such as the annual 750,000 preventable errors in the EU, demonstrate the scale of the challenge (World Health Organization, n.d.)."

This research aims to:

1. Identify the concept and nature of the physician’s civil liability.
2. Explain the concept of medical error, its degrees and criteria.
3. Identify the types of medical errors and liability.

1.5 Limitations of the research:

The issue of medical errors is comprehensive and complicated. Therefore, this research research addresses a part of this topic, specifically the physician's civil liability for medical errors. It is partly related to the issue of medical errors. However, it is essential because the physician is the primary focus of this process since he is the one who carries out the medical work.

2.Research Methodology:

The study employs a descriptive and analytical approach to describe and analyse civil error in light of current texts that identify the nature of medical error, its most essential forms and applications, and how to prove it.

3.Previous studies:

Al-Jarrah (2017) conducted a study on the civil liability of physicians resulting from medical errors under Jordanian and Egyptian laws. The research revealed the civil liability of physicians resulting from medical errors under Jordanian and Egyptian laws. It included two subtopics. The first topic addressed the nature of the physician's civil liability, including both contractual and tortious liability, as well as the definition of medical error in the field of medical liability. The second topic revealed the harms resulting from medical errors and compensation for them, including the definition of medical harm and compensation for medical harm. The results of the research confirmed that medical errors occur as a result of a lack of experience or competence on the part of the treating physician or his assistant or as a result of an emergency that requires speed at the expense of accuracy in the event of a rush to perform an emergency surgical operation, as a result of a newly experienced method of treatment, or as a result of incorrect treatment being prescribed by the treating physician. The error is not limited to the treating physician only but also includes the assisting medical team from various specialities. The research recommended that legal scholars reconsider the elements of medical liability and work to develop them, given the difficulty of proving medical error by the affected party. This is due to the specific nature of medical work, which exposes patients to the risk of loss.

Saleh (2019) conducted a study on the development of civil liability in the medical field. This study examined the framework of general rules regarding the development of civil liability, whether contractual or negligent and the nature of the physician's obligation in general, specifically whether it involves a responsibility to exercise care or achieve a specific result. In this respect, the current study aligns with the aforementioned study in that the nature of physician commitment is one of the issues it addresses. However, it differs from the former in that this study will not address the general rules of civil liability for medical errors and their traditional treatment within the framework of the pillars of civil liability, as this is outside its framework. Instead, it addresses the nature of the obligation in light of the commitments added by the Medical Liability Law, including, but not limited to, documentation of medical history, medical procedures and the responsibility to obtain informed consent. These and other obligations were not addressed in the study above.

4.The civil liability of the physician:

There has been disagreement and various attitudes regarding the nature of a physician's civil liability when they commit an error or when a medical error occurs while practising their professional medical work, whether it is contractual liability or tort liability. Therefore, this controversy will be discussed in relation to the nature of the physician's civil liability, examining both medical contractual liability and medical tort liability.

The debtor must compensate for the harm resulting from his breach of an imposed on him (Al-Sadda, 1979, p. 512). It is either a legal obligation, which is a harmful act, or a contractual obligation. Some believe that the medical responsibility towards the patient is a matter of applying the available medical knowledge and not solely the responsibility of recovery (Al-Arboush, 1992, p. 32). Regarding the civil liability of the physician, the physician must compensate the patient for any harm caused during the patient's treatment by that physician (Al-Arboush, 1992, p. 12).

Medical civil liability can be either a contractual liability arising from a contract or agreement between the patient and the physician or a tort liability, as some have adopted this approach in the absence of a contract. However, others hold the opinion that it is a contractual liability, and the contract, even if it is not in writing, is equivalent to an oral agreement, which will be discussed further in the following discussion.

4.1The concept and elements of medical contractual liability:

Liability is defined as compensation for harm resulting from a breach of an obligation established by the liable person. The source of this obligation may be a contract, so the liability is contractual, governed and determined by the contract on the one hand, and the rules specific to contractual liability on the other hand. However, if the source of the obligation is the law, then the liability is a tort, and the law is independent in ruling on it and determining its scope (Al-Zahra).

Contractual liability is defined as the penalty for breaching the obligations arising from a contract, failing to implement them, or implementing them in a defective manner, which requires compensation for the harm resulting from non-compliance with the contract and its terms.

The Jordanian Civil Law clarifies the definition of contractual liability from a legal perspective as the liability that results from failing to fulfil the obligation arising from the contract in the manner agreed upon (Jordanian Civil Law No. 43, 1976).

Contrastingly, contractual liability is defined as the physician’s obligation to compensate for the harm resulting from his breach of one of the obligations arising from the contract between him and his patient, whether it is a written or oral contract, as the physician undertakes under the contract to commit to exercising due care and providing appropriate treatment. In return, the patient undertakes to pay the necessary fees for treatment.

Contractual liability generally arises when the debtor breaches their obligation under the contract or performs it in a defective manner, causing harm to the creditor. This requires the existence of a valid contract from the beginning (Assaf, 2008, p. 6.(

A valid contract, as stipulated in Article (167) of the Jordanian Civil Law, is a contract that is legitimate in terms of its origin and description, such that it is issued by its parties, added to a subject which is subject to its rule, has an existing, valid and

legitimate purpose, its descriptions are correct, and no condition is attached to it that invalidates it (Jordanian Civil Law No. 43 of the year 1976.(

It is customary for there to be an implicit (unwritten) contract between the physician physician and the patient, as it is communicated verbally between them, specifying the wage wage and work, leaving the specifications and conditions of the work to the principles, rules, rules, customs and traditions of the medical profession to which the physician belongs (Al-Hiyari).

First: Contractual medical error:

An error is generally defined as a deviation in behaviour that a normal person would not commit. Therefore, it is the contractor's behaviour that contradicts what he committed to in the contract (Assaf). This means that the error is the physician's breach of a contractual obligation under the contract between them, whether it is an oral or written contract. A medical or professional error is an error committed while a physician is practising their profession, i.e., an error related to the profession through the violation of professional medical principles. Since it is a contractual medical error, it is an error resulting from the physician's failure to implement the contract between them or execute an obligation in a defective manner, which leads to harm to the patient. Therefore, the physician is liable for any harm resulting from his professional error and breach of his contractual obligations.

Article (288) of the Jordanian Civil Code stipulates in paragraph 1/b states that "No one shall be responsible for the actions of another. However, the court may, upon the request of the affected person, if it deems it justified, pay the guarantee imposed on the person who caused the harm. Whoever has actual authority over the person from whom the damage occurred in controlling and directing him, even if he was not free to choose it, if the harmful act was committed by the subordinate while performing his job or because of it (Jordanian Civil Law No. 43 of 1976), the affiliated physician and the perpetrator of the harm (the affiliated) are jointly and severally liable. This is what Article (265) of the Jordanian Civil Code stipulates:

…"If there are multiple persons responsible for a harmful act, each of them shall be liable in proportion to his participation in committing the harm, and the court may rule equally or jointly and severally between them…" (Jordanian Civil Law No. 43 of 1976.(

In civil liability, the physician is liable for the error, regardless of its degree, based on Article (256) of the same law (the Jordanian Civil Code), which stipulates that "…every harm to another obliges the perpetrator, even if he is not mature, to guarantee the harm"…

Second: Harm:

Harm, according to general rules, is a violation of the affected person's interest (Essam, 2006, p. 178). It is not possible to hold a person liable or award them compensation unless they cause harm and the causal relationship between the two parties is established. Significantly, the harm doesn't need to affect the rights of the affected party, but it is sufficient that it involves a legitimate interest that does not violate the law (Assaf, p. 93.(

Harm is considered a result of a breach of obligation. In the case of contractual medical liability, the harm caused to the patient is a reason for the physician to fail in his obligation and to deviate from the rules and principles of the medical profession. If this is proven through

experience and the causal relationship is established, the physician will be liable and obligated to compensate; that is, they are obligated to compensate for the harm, whether physical or moral. Bodily harm is the violation of the financial interest of the affected person (as treating the patient entails financial expenses). In contrast, moral harm refers to the harm inflicted on the patient's emotions and feelings, as well as their psychology, in addition to social harm, which affects their social standing in the eyes of others due to a mistake committed by the physician as a result of their violation. A contractual obligation towards the patient during treatment. These harms may cause a disability, whether temporary or permanent, that affects his ability to live or work or moral harm that harms his reputation or raises doubts about his professional ability. The guarantee for moral harm was mentioned in the text of Article (267) of the Jordanian Civil Code.

One of the conditions for harm to be established is the violation of a right or a legitimate interest protected by law, meaning that the harm has affected the patient's interest and requires compensation. This is stipulated in Article (3/1) of the Code of Civil Procedure, as no request or payment shall be accepted in which the party does not have an existing interest recognized by the law (Jordanian Code of Procedure, No. 24 of 1988.(

The types of harm are represented in the following points:

-Future harm: This type of harm is the harm that all or part of its effects are projected into the future. This type of harm falls under the category of actual harm (Al-Zahra, p. 247). The physician may commit an error that causes harm to the patient, the effects of which may be felt in the future. He is obligated to compensate for this effect if the causal relationship between the physician's error and future harm is established.

-Contingency harm: It is harm that has not yet occurred but may occur in the future. That is, it may happen in the future, and it cannot be compensated because it has not yet occurred. It is considered hypothetical harm and differs from future harm in that future harm is sure to happen, while hypothetical harm is likely to occur (Al-Zahra, 248.(

Third: Causal relationship:

The link or causal relationship between harm and error is a fundamental pillar for the occurrence of civil liability. The physician or the debtor is not obligated to compensate for harm that is not linked to a causal relationship with an error he committed. That is, if there is no causal relationship between the harm caused to the patient and the error committed by the physician, then civil liability is lost. Here, the physician is not obligated to compensate for that harm, and the affected person or the harm claimant must prove this causal relationship between the error and the harm caused.

There is often confusion between the development of the patient's condition and the effects of medical errors. The basis of this dispute is whether or not to prove the causal relationship between the personal harm and the medical error.

Due to the complex nature of the human body, the multitude of factors influencing it, the numerous hands working together, the various members of the medical team, and the external factors affecting it, there is difficulty in proving a causal relationship between the medical error and the harm caused.

To verify and ensure whether a causal link exists, experts are sought to carry out the legal requirements through those with experience, knowledge, and familiarity with this subject and to identify the causal link between the harm caused and the harmful act or medical error resulting from a breach of a contractual obligation.

Therefore, for the contractual civil liability of the physician to be achieved, it is not not sufficient for the harm to occur and the existence of the medical error. Instead, the occurrence of this harm to the patient (the creditor) must be due to a contractual error resulting from the physician's or a member of the medical team's failure to comply with the obligation arising from the contract between them and the patient. The burden of proving the causal relationship falls on the affected creditor (patient), as it is their responsibility to confirm that the harm caused to them is due to the physician's breach of their contractual obligation. Likewise, if the physician wants to deny the causal relationship, they must prove it (Assaf, p. 104.(

This is based on what Article (261) of the Jordanian Civil Law stipulates: "...if the person does not prove that the harm arose from a cause beyond disaster, a sudden accident, force majeure, the act of a third party, or the act of the affected party, he is not obligated to compensate..." (Jordanian Civil Law, p. 261).

4.2 Medical tort liability and its elements:

Tort liability is defined as the liability that arises from a breach of a legal obligation as outlined in the law. It is the responsibility of the liable person to compensate the affected person, even in the absence of a contractual relationship between them (Jordanian Civil Law, p. 261.(

Besides, tort liability means that the liable person bears the consequences of the harmful act resulting from negligence, carelessness, or lack of caution that may cause harm to another person, which requires the liable person to compensate for this harm as compensation for the harm that befell the affected person.

Contrastingly, medical tort liability is defined as the physician’s deviation from the principles and rules of the profession while practising their profession, which causes harm to the patient who has resorted to them for treatment. The behaviour of this physician, in this case, is not the behaviour of a normal physician under normal circumstances of the same level. This is the measure and standard adopted by the Jordanian courts to measure the behaviour of the responsible physician.

First: Elements and establishment of tort liability:

Tort liability does not occur unless the three pillars are met:

1- Error.

2- Harm.

3- Causal relationship.

Tort liability is similar to contractual liability, except that the harm resulting from an error in tort is based on a breach of a legal obligation rather than a contractual one. That is, the contract excludes tort liability, and its basis is a harmful act resulting from negligence or carelessness rather than a breach of contractual terms signed between the parties.

The Jordanian Civil Law dealt with the harmful act resulting from tort liability in its third chapter in the texts of Articles (256 - 257 - 258 - 261 - 262 - 263 - 264 - 265 - 267 - 270). These articles stipulate the obligation of compensation for the harmful act, whether it results from a positive or negative harmful act, as Article (256) of the Jordanian Civil Law stipulates that "every harm to others obliges the perpetrator, even if he is not mature, to guarantee the harm" (Jordanian Civil Law)

The Jordanian Court of Cassation also stipulated in its decision No. 931/2015 11/16/2015 that: "...and since the party did not provide proof of the existence of the elements of tort liability (error, harm, and causation) ..." (Decision of the Jordanian Court of Cassation - Civil - No. 931/2015).

Thus, we examine each element of medical tort liability in the following.

4.3 Negligent medical error:

It is a harmful act committed or refrained from by a physician resulting from negligence, carelessness, and deviation from the principles and rules required by the medical profession. The behaviour of the physician who committed the medical error is not similar to the behaviour of a regular physician in the same external and surrounding circumstances. This is the standard that the Jordanian Court of Cassation adopts in its decisions when ruling on compensation for medical civil liability.

Article (265) of the Jordanian Civil Law stipulates multiple liability for a harmful act: "...if there are multiple persons responsible for a harmful act, each of them shall be responsible in proportion to his participation in it. The court may rule equally or jointly and severally among themselves..." (Civil Law Jordanian.(

The harm may be caused by a harmful act committed by more than one person. He is often a member of the medical team. In this case, each person is jointly and severally responsible for their action if the causal relationship between the result (the harm) and the committed error (the harmful act) is proven. A negligent act is a harmful act committed as a result of a breach of an obligation originating in the law.

In civil liability, compensation is required whether the error is minor or severe. Since civil liability for the harmful act or, in this case, medical error exists regardless of the type of error committed, I will mention some types of errors that may be committed by the physician or members of the medical team.

4.3.1 Harm resulting from negligence:

The harm resulting from a negligent medical error is represented by the fact that it is the consequence of an action that the physician performed or failed to perform during the treatment process, which led to harm to the patient's interests. Either harming his psychological health is moral harm, or harming his social status, which is social harm, or harming his money or body, which is financial harm. Suppose harm results from a medical error, and the causal relationship is proven. In that case, the wrongdoer of the harmful act is obligated to compensate, regardless of the degree of the error or the seriousness of the harm, whether the harm was direct or caused.

Article (257) of the Jordanian Civil Law stipulates in its first paragraph that: "(Harm shall be caused by directing or causing)" (Jordanian Civil Law).

Direct harm refers to harm that is a natural consequence of a breach of a legal obligation, whether resulting from a failure to implement or a delay in implementation.

An example of this is missing the opportunity for treatment or abstaining from treatment for non-medical purposes. In tort, the perpetrator of the harmful act is liable for expected and unexpected direct harm. Contrastingly, contractual liability implies that the physician is only liable for the harm that is reasonably foreseeable during the contract. The perpetrator of the harmful act is also liable for future harm that may result from the harmful act committed by the person who violated the legal obligation if the causal relationship between the future harm and the physician's error is proven.

4.3.2 The causal relationship between the negligent error and the harm:

It is known that the presence of the harmful act or the occurrence of harm is not sufficient for tort liability to be binding on compensation. Instead, the cause of the harm that befell the creditor must be due to the negligent error (harmful act) committed by the debtor. The burden is on the affected party (the debtor) to prove that the harm he suffered was due to a breach of a legal obligation. This is called the establishment of causality. The physician must deny this causal link by proving that the error had not been caused by him but was due to an external cause, thus denying the breach of obligation.

Second: Results and compensation for tortious liability:

Tort liability exists if the causal relationship linking the error to the harm is proven. The affected party must prove this causal relationship between the harm caused and the error committed by the debtor (the physician) to oblige him to pay appropriate compensation. This liability may not be exempted.

Article No. (270) of the Jordanian Civil Law stipulates, "…Any condition requiring exemption from liability resulting from a harmful act shall be null and void…" (Jordanian Civil Law). Such a condition can be envisioned for exemption from contractual liability.

4.4 Compensation for tort liability:

Compensation within the scope of tort liability extends beyond compensation for expected and unexpected direct harm.

The basis of compensation in the French Civil Code, as stipulated in Article 1383, is "…every person is responsible for the harm he causes, not only as a result of his act but also as a result of his negligence or lack of commitment…", as it can be imagined that the harm required for compensation would occur as a result of his negligence and lack of commitment (not taking care of it). Estimating compensation is a matter left to the court, but with regard to the time of estimating compensation, there has been disagreement among jurists over the time of estimating compensation, as some of them went to adopt stopping the occurrence of harm (Al-Shawabkeh, 2016, p. 87hhjj

Others went to estimate compensation on the day the ruling was issued, whether the harm was greater or less.

As for the Jordanian legislator, Article (363) stipulates: "…if the guarantee is not stipulated in the law or the contract, the court shall estimate it equal to the harm caused when it occurred…" (Jordanian Civil Law.(

To estimate compensation in a fair and just manner, an expert procedure is used to determine the value of both moral and material harms.

4.5 The concept of medical error, its degree, standard, forms of medical error, and type of obligation:

Physicians or technical professionals often commit technical errors while their profession. The reason for this is a deviation from the principles and rules of the to which they belong or a lack of experience, which leads to harm being caused to others results in civil liability.

4.6 The concept of medical error, its standard, degrees, and type of obligation:

There was disagreement among jurists not only about the nature of the physician's liability but also about the type of the physician's obligation, as well as the extent or scope of the physician's liability, whether a medical acknowledgement or medical contract exists or not.

A professional error for a physician is a deviation from the principles and rules recognised in the medical profession and behaviour that is contrary to the behaviour of a physician with the same speciality in the same circumstances surrounding them. The usual medical professional error, often resulting from a physician's lack of knowledge and experience, is a common occurrence in the treatment process. Therefore, we find that the criterion for medical error is the average behaviour of physicians at the same level and in the same speciality under the same external circumstances surrounding the responsible physician. This is known as an objective standard.

The Jordanian Court of Cassation stated in its decision No. 1112/13 (a five-member body) dated 8/26/2013 that "… since the criterion for medical error, according to what jurisprudence and judiciary have held, for which the physician is accountable, is the behaviour of the average physician at the same level at the same time." When assessing the physician's error, their level of expertise should be taken into account, considering whether they are a general physician or a specialist, as well as the stable medical habits surrounding their work (Sharaf Al-Din, p. 16.(

The standard is verified by seeking expertise from individuals with relevant knowledge and experience. The Jordanian Court of Cassation stated in the same decision that the standard for proving error is an objective standard.

A professional medical error may be considered positive in that it involves a physician performing work that could cause harm to the patient, such as an error committed during surgical operations, a misdiagnosis, or an incorrect treatment. A negative medical error involves abstaining from or delaying treatment.

The ordinary (material) error is the error made by the physician when he is practising without being related to the principles and rules of the profession and constitutes its commission by the negligent and negligent physician—for example, forgetting a piece of cloth inside the patient's body or a sharp instrument, or performing a dry operation while in a state that does not allow him to act.

4.7 Degrees of medical error and type of commitment:

The general rule adopted by jurisprudence and judiciary in determining the standard by which a physician’s error is measured is the standard of behaviour of an ordinary physician in the same circumstances surrounding the responsible physician and that the physician’s obligation is an obligation to exercise care. The content of this

commitment requires the physician to make efforts and take actions consistent with the professional principles of medicine. When reviewing the decisions of the Jordanian Court of Court of Cassation, we see that it did not address the seriousness of the error and did not not stipulate the serious error for the establishment of medical civil liability as long as the harm the harm caused is the result of an error that fulfils the necessary conditions for its occurrence occurrence and is verified and is linked to the harm through a proven causal relationship.

The degrees of error in terms of its nature are divided into:

(a) Intentional error: It is the intention and action to violate a contractual or legal obligation to harm others. It is not sufficient for this error to occur for the act to occur; rather, it is necessary to have the will to cause harmful results. Therefore, intentional error consists of two elements: the material element, which is the breach of an obligation and duty, and the second is the moral (will) to harm others (Al-Zahra, 216 p.). An example of an intentional error is the physician's abstention from treatment or treatment for a purpose other than recovery.

(b) Negligence error: It is the breach of a legal or contractual obligation without intending to harm others. It is performing an act without intending to cause harm and is usually due to a departure from the principles and standards of the profession.

4.8 Type of obligation in medical liability:

The Jordanian Court of Cassation has ruled in its decisions that the physician's obligation is an obligation to exercise care and not to achieve a result. However, there has been disagreement among some jurists regarding the physician's obligation as an exception to the general rule, which is an obligation to achieve a result. The disagreement was in the Jordanian Court of Cassation's decision No. 1112/2013 dated 26 /8/2013, when it stipulated "...it may be plastic surgery, the purpose of which is not to treat a disease but rather to remove a deformity in the body. Therefore, some jurisprudence has considered that the surgeon's obligation is an obligation to achieve a result..." However, the judiciary decided The commitment is a commitment to exert care, not to achieve a result, and that the care required is greater than in other surgeries, considering that this surgery is not intended to cure the patient but rather to repair a disfigurement that does not endanger his life (Decision of the Jordanian Court of Cassation (Rights) No. 11122013).

Development exists to serve the human interest and address problems and diseases in a more precise and reliable manner. Therefore, some specialities in the medical profession require that the physician achieve a specific result, and it is not enough for the treatment to be limited to providing care only, especially if the treatment intends to achieve a specific outcome. It is possible to imagine the physician's obligation to achieve a result by not showing up at the appointment, in addition to the obligations of the dentist, the anesthesiologist, and the plastic surgeon. There is no doubt that, in reality, without confusion or ambiguity, it must be recognized that there are obligations which the physician is required to achieve a result in addition to the necessary care. This is the best way to achieve a balanced relationship between the physician and the patient (Al-Banna, 1993, p. 247). In determining the necessary diligence, jurisprudence is based on the criterion of (probability). If the diligence of the obligation is not certain to occur or is probable, the obligation is always to exercise all possible diligence (Hayari, 2015, p. 43).

4.9 Forms of medical error:

It is known that the medical profession imposes rules and principles that physicians must adhere to. It also imposes the principles of medical work, requiring physicians to follow certain behaviours and provide good care.

After discussing the concept of medical error, the levels of error, the type of some forms of medical error, the provisions of the contract, and the medical declaration, should be explained. The treatment process is based on multiple stages, each stage to be carried out by a physician with specialisation, knowledge, and expertise, who also necessary foundations, principles, and rules. Physicians and their patients follow it, and it is possible to imagine a technical or ordinary error occurring in one of these types of medical errors.

First: Error in diagnosis:

The diagnosis is the physician's interpretation of the symptoms that the patient experiences and complains about. It is the first stage of the medical or therapeutic relationship between the patient and the physician, as the diagnosis process is considered the stage that establishes the medical contract.

The diagnosis stage represents the patient's acceptance of the treatment and the physician's acceptance to implement the treatment contract (Assaf, 80).

Diagnosis requires the physician's experience and knowledge. It is also considered one of the precise stages based on which the correct treatment and its method are known. Diagnosis aims to determine what the patient is suffering from by explaining the patient's symptoms and identifying the underlying cause. The patient must disclose to the physician everything they are experiencing without withholding any information, as most medical errors that occur during advanced stages of treatment may be caused by the patient concealing information from their physician and not following instructions carefully. Therefore, this aspect should be taken into consideration. Thus, the diagnosis stage is considered the basis of treatment, and if it is carried out correctly, with thoroughness and frankness, then the rest of the medical work will be accurate. Diagnosis is the basis of treatment. If correct, the therapeutic process is correct, and if any error occurs in it, this exposes the rest of the medical and therapeutic work to error.

The physician may sometimes need to withhold the truth about the patient's diagnosis if the disease is serious for legitimate reasons determined by the physician and in consideration of the patient's condition.

This is stipulated in Article (19) of the Jordanian Medical Constitution: "…the seriousness of the disease may be concealed from the patient, and it is not permissible to reveal to him the likelihood of death except with the utmost care and caution, but the family must be informed about concealing the matter from the patient…" (The Jordanian Medical Constitution).

This article corresponds to Article 15 of the Jordanian Medical Constitution, which is equivalent to Article 15 of the Algerian Medical Code of Ethics, stipulating that the diagnosis of a serious illness may be concealed from the patient for legitimate reasons. Likewise, to treat a patient, the physician must perform medical procedures and examinations before making any decision to diagnose the patient's medical condition, and any negligence on the part of the physician in these matters is considered a mistake in itself (Al-Zahra, p. 225). The physician may consult with specialists and experienced physicians if he believes there is no possibility of explanation. The diagnosis stage

requires the physician to utilise all their information, experience, knowledge, and accuracy in determining what they are facing. The physician also needs to resort to all methods that aid in the diagnosis process, such as radiological imaging, measuring heart rate and pressure, and examining the location of the pain. He must also reach the correct result by conducting some blood or other laboratory tests and consulting specialists and experienced physicians. All of this is considered one of the matters that the physician must resort to because failure to pay attention to it is considered negligence and negligence, which the judiciary takes into account when ruling on the case, especially radiological imaging, as it is considered one of the matters that need to be carefully studied and examined by radiology machines. Many of the medical errors committed during treatment were due to the inoperability of the mechanism, its uncleanliness, its inaccurate operation, or the lack of experience of the physician who interpreted the radiological images. Therefore, attention and vigilance should be paid during the diagnosis process, as it is the basis for subsequent medical work for treatment.

Second: Error in testing and prescribing treatment:

After diagnosis and determining the treatment prescription that the physician deems appropriate for his patient, he writes what is called a medical prescription, which is the official paper or document in which the physician proves what he decided after conducting the examination and diagnosis so that it is distinguished from other papers such as analyses and x-rays, and is considered proof of the relationship between the physician and the patient. (Al-Hiyari, p. 85).

The legislator of the Jordanian Medical Constitution did well when he stipulated in Article (14), previously mentioned in paragraph €, that "…the physician when writing the report, must differentiate between the information he obtained as a result of the examination he postponed and as a result of his observations, and the information that the patient gives." Or any other person, and if he is forced to record a diagnosis or examination in the report, he must record the physician's name and address in the report…" (Jordanian Medical Constitution).

The physician must provide the patient with care of any kind but rather make sincere and vigilant efforts that are consistent with established scientific principles. Accordingly, a physician who employs an ancient art of treatment, with the possibility of using modern medical methods as an alternative, is responsible for the harm that may result from their action.

One of the principles that must be followed, which is considered one of the general rules in the treatment process, is that the physician must inform the patient of the treatment prescription and obtain his approval or the approval of his guardian or guardian, as it is not reasonable to perform any surgical procedure on the patient's body without obtaining permission to do so. The rules of justice require that the burden of proving the patient's consent to treatment and surgery falls on the physician.

Article (2) of the Jordanian Medical Constitution stipulates, "…every medical procedure must be aimed at the patient's absolute interest, must have a justifiable necessity, and be carried out with his consent and the consent of his guardian if he is minor or unconscious…" (Jordanian Medical Constitution0.

Third: Error in oversight (monitoring and follow-up):

This stage is continuous throughout the treatment process. Physicians must continue to monitor patients even after they have completed treatment or surgical operations. Surveillance

requires the physician's vigilance, accuracy, as well as honesty and commitment to take matters seriously and consider them thoroughly. Regarding supervision, monitoring, and follow-up on the patient's condition, the anesthesiologist is primarily responsible for initiating the anaesthesia process and is responsible for monitoring the patient's vital functions after the surgical operation, ensuring they return to normal. When discussing the anesthesiologist, jurists differed as to whether their obligation was to exercise care or to achieve a specific result, as the purpose of the anaesthesia process was to achieve a particular outcome, namely to anaesthetise the patient. This requires the anesthesiologist to have knowledge and experience in determining the mechanism of anaesthesia, and its purpose is not to heal or treat but rather to prepare for carrying out the treatment or surgical operation.

Since the medical work is carried out by more than one physician from the medical team, each of them must perform his duty with close supervision and with all caution and vigilance and not assign his role to anyone else except with official documents, and the physician on duty must be registered with the Jordanian Medical Association and licensed to work in the same medical speciality. Article (37) of the Jordanian Medical Constitution stipulates: "A physician may not be temporarily delegated to monitor and treat patients other than a physician registered in the union and licensed to work in the same speciality..." (Jordanian Medical Constitution).

5.Conclusion:

This study addressed the physician's civil liability for medical errors in Jordanian law. At the end of this research, the researcher reached a set of results and recommendations, which can be summarized as follows:

5.1 Results:

1- When reviewing the decisions of the Courts of Cassation, it becomes clear in most of their decisions on this subject that the physician’s obligation is merely an obligation to exercise care and not to achieve a result. It is measured by measuring normal behaviour under the same conditions. This is the approved standard, and it is an objective standard; however, disagreement has been reported about the nature of the commitment of certain physicians, such as plastic surgeons, anesthesiologists, radiologists, dentists, and medical analysis physicians. Some jurists believe that their commitment is a commitment to achieving a result due to the nature of their work and the scientific and technological advancements in the medical profession, which have made it necessary to depart from the principles and rules required by the medical profession in cases involving compensation for tort liability. The burden of proof also falls on the creditor.

5.2 Recommendations:

1- We hope that the civil legislator will clarify how to estimate the value of compensation based on determining the type of civil liability of the physician and determining the principles and controls that govern the physician’s relationship with the patient when practising the profession and purchasing treatment. This law or system shall be part of the integrated system that must be in place when establishing the Medical Accountability Law in order to prevent one party in the relationship from exploiting another who is closer to justice.

2- We hope that the legislator will establish special regulations and guidelines for insurance against medical errors that occur to patients as a result of medical treatment, thereby supporting the medical accountability law and establishing an integrated legal framework.

References:

AbuRuz, S. M., Falah, R. A., Jarab, A., & Muflih, S. M. (2022). Medication errors in Jordan: A systematic review. Journal of Patient Safety and Risk Management, PMC9285130. Retrieved November 20, 2024, from https://pmc.ncbi.nlm.nih.gov/articles/PMC9285130/.

Al-Arboush, A. (1992). A Physician's Error and Its Rulings in Islamic Jurisprudence. Paper presented at the Conference on Medical Errors between Sharia and Law, Jerash University, p. 32.

Al-Bunya, H. (1993). The Physician's Error Leading to Civil Liability. New Galaa Library, Mansoura, p. 247.

Al-Hiyari, A. (2015). The Civil Physician's Foundation. Dar Al-Thaqafa for Publishing and Distribution, Amman – Jordan, p. 43.

Al-Hiyari, A. The Civil Liability of the Physician in Light of the Jordanian Legal System and the Algerian Legal System, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan.

Al-Sada, A. (1979). Sources of Commitment. Dar Al-Nahda Al-Arabi, Beirut, p. 512.

Al-Shawabkeh, T. (2016). Medical Errors and the Physician's Responsibility, Amjad Publishing and Distribution House. Amman, Jordan, p. 87.

Decision of the Jordanian Court of Cassation (Right No. 1112/2013) (five-member panel) dated 8/26/2013, Adalah Center publications.

Fatima, A. (2012). The Anesthesiologist's Civil Responsibility. Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, p. 48.

Ghosn, A. (2006). Medical Error, first edition. Zein Law Publications, Beirut - Lebanon, p. 178.

Jordanian Code of Procedure, No. 24 of 1988. (1988)

Jordanian Court of Cassation Decision - Civil - No. 931/2015, (ordinary panel) dated 11/16/2015, Adalah Center publications.

Jordanian Medical Constitution: Physician's Duties and Professional Ethics of 1989. (1989)

Wael, A. (2008). Civil Liability of the Physician. [Master's thesis, An-Najah National University, Faculty of Graduate Studies], p. 6.

World Health Organization. (2019, September 13). WHO calls for urgent action to reduce patient harm in healthcare. Retrieved November 20, 2024, from https://www.who.int/ar/news/item/14-01-1441-who-calls-for-urgent-action-to-reduce-patient-harm-in-healthcare.

World Health Organization. (n.d.). Data and statistics on patient safety. Retrieved November 20, 2024, from https://who-sandbox.squiz.cloud/en/health-topics/Health-systems/patient-safety/data-and-statistics.