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An overview of medical malpractice in the UAE

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In the UAE, the standards to be observed by medical practitioners are specifically outlined in the Medical Liability Law issued on 16 December 2008, which makes it compulsory for all institutions providing healthcare services to have malpractice insurance. The Medical Liability Law and its Regulations are wide ranging and contain provisions that apply not only to liability for medical errors, but also deal with doctors' responsibilities, mandatory procurement of insurance, the investigation and disciplinary process in circumstances of alleged malpractice and penalties for violation of the law.

In light of these recent legislative and regulatory developments, and with an increasing focus on regulation and reforms by local health authorities, there is evidence of a more litigious approach developing in the area of medical malpractice. Damages awards which have historically been low, are now on an upwards trend.

The legislative basis for medical liability claims

The doctor/patient relationship is recognised by UAE law as a contract whereby the doctor (or health institution) undertakes to treat the patient and, consequently, medical negligence claims can be brought on the grounds of breach of contract

due to the doctor failing to provide due care and attention and thereby breaching his obligations to provide a level of service that could have been expected at the time of contracting. Claims can also be brought under the UAE equivalent of tort, which requires 'acts causing harm' to be made good, in the form of damages.

The Medical Liability Law now specifically provides that doctors will be liable in the event they commit a “*medical error*”, which in broad terms is regarded as being a deviation from what a competent practitioner would have done in similar circumstances.

The definition of a “*medical error*” is set out in article 14 of the Medical Liability Law. Article 14 provides that a medical error “*is an error occurring due to lack of knowledge in the technical matters customary in the profession or due to negligence or not paying due attention.*”

At a most basic level the Medical Liability Law requires three elements to be proved in order to find liability. These elements are (a) a “*medical error*” that (b) causes damage to the claimant and that (c) as result of such damage the Claimant suffers a loss.

Under the UAE Civil Code there is also a general theory of tort / delict in that a person who commits a “*harm*” will be responsible for the loss caused by the said “*harm*” whether for personal injury or damage to property. It is therefore not uncommon to see claimants relying on tortious / delictual principles, rather than a contractual basis for claims or specific provisions of the Medical Liability Law, when commencing proceedings, which would be more specific to these types of claims. For claims based on tort / delict the preconditions to awarding compensation are fault, damage, and a causal link between the fault and damage. Our experience is that UAE Courts do not place as much weight on issues of causation as other jurisdictions do. It is often sufficient to show that fault and damage has occurred.

Litigation culture in the UAE and the Court’s approach to awarding damages

As a general statement, the UAE is not as litigious as more developed jurisdictions such as the UK or USA. There is, however, an increasing tendency to resort to litigation, and there is evidence of an upwards trend in damages awarded. At present, UAE law does not specify specific criteria for assessing the damages to be awarded.

When assessing a Claimant’s case for loss, a court will in the first instance award damages for material and emotional damage. The difficulty is, however, that when assessing damages the court is not bound by any specific formula and method of calculation. The courts are also not bound by precedent and, in the circumstances; it is often difficult to accurately assess a defendant’s likely exposure to an adverse finding.

With regard to the levels of awards, claims are often inflated, but will typically lack evidence in substantiation. This often makes it very difficult to anticipate the damages that may potentially be awarded to a claimant. Although

litigants pursuing a claim in the civil courts often claim for loss of earnings or economic loss, in addition to claims for physical injury, significant awards for these claims have been few and far between. The UAE Courts do not take a forensic approach to loss of earnings (even when presented with the figures) in the same manner that a UK or USA court might (using current earnings and a taking into account loss of potential future earnings). It is fair to say that the UAE Courts may be slightly more generous when considering the position of the main breadwinner in a family.

Historically, the level of damages awarded has also been influenced by the statutory Diya and Arsh levels. Diya (literally ‘*blood money*’) refers to the level of damages prescribed for wrongful death; Arsh is the level of damages (typically expressed as a percentage of Diya) which are prescribed for bodily injury. Damages for Diya and Arsh are required to be based on a finding of fault usually established by way of criminal prosecution (although in instances we have seen civil courts apply such principles too). An individual or organisation found to be criminally liable for the death of a person will be punished by the court ordering it to pay Diya to the beneficiary of the deceased. The amount of the payment is presently set by statute and is AED 200,000. Arsh is similarly payable based on the loss of a specific body part with the amount payable for such a part being prescribed by law. The award of Diya and Arsh ought to have no impact on the value of damages claimed in a civil claim, but the manner in which litigation has been conducted in the past has tended to ensure these are linked.

In recent years we have seen an increase in the amounts awarded to claimants in personal injury type matters. Unfortunately, as judgments are not published, it is difficult to accurately gauge trends in awards. Although larger awards are starting to be seen, from our experience the UAE courts are still far more conservative in awarding damages than may be the case in more developed jurisdictions. Until 2012, the largest award we were aware of was for AED 3 million awarded by the Abu Dhabi Courts to the family of a woman who was left in a permanent vegetative state following treatment.

In 2012, the Abu Dhabi Courts awarded AED 7 million in punitive damages to the family of a 12-year-old boy who suffered brain damage following an overdose of anaesthesia. In addition the Courts also ordered the payment of AED 200,000 blood money and the hospital to pay AED 10,000 in fines. Initially the Public Prosecution looked into the case and referred both the doctor and hospital responsible to the Abu Dhabi Court of Misdemeanours which sentenced the doctor to a one-year jail term, while clearing the hospital of any charges.

In recent years regulators have taken a very strict line with healthcare practitioners following patient complaints. The effect is that claimants are often assisted in their court actions by the regulators already having made a finding regarding conduct on the basis of such a patient complaint. The lack of uncertainty regarding damages and the uncertainty connected with the regulator's investigations, including the outcome means that there is a greater litigation risk here compared with other regions. On balance however, awards here have normally been lower, when compared with other jurisdictions.

Further information

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