

## The Lifeboat Offered by the New Medical Liability Law

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The healthcare industry is booming around the world, and the UAE is no exception. With no shortage of hospitals and medical care providers, patients have access around the clock. Although physicians and patients are bound by a common goal, the treatment and recovery of the patient, medical errors are always a possibility. Medical malpractice and negligence can turn things upside down as medical errors can cause serious personal injury, or even death. The question from a legal perspective is how to reduce and

compensate for such errors in order to secure the integrity of the healthcare industry, and protect medical practitioners from false lawsuits at the same time?

The UAE is working to build one of the world's best healthcare sectors. This is being achieved by creating a stable and secure environment for healthcare providers, while ensuring the well-being, safety and integrity of its patients. Recognising the need for a legal framework to govern the medical profession and health care sector, Federal Law No. 7/1975 on the Human Medicine Practice and subsequent laws and regulations have been implemented. Most recently, Medical Liability Law No. 4 of 2016 (the "New Law") was introduced to define medical malpractice and specify the rights and responsibilities of healthcare providers. According to the New Law, medical malpractice is defined as an error made by a physician due to the lack of medical knowledge required of a reasonably competent physician; the failure to treat a patient in accordance with the professional standards and the recognised medical practices; the failure to fulfil the duty of care; or the failure to use reasonable care and diligence in the treatment of a patient.

While a physician is not required to guarantee the recovery of a patient, they must use reasonable care and diligence in their treatment. Additionally, a physician is answerable for injury to a patient resulting from an error or omission to fulfil their duty of care. Both the treating physician and the affiliated healthcare facility are liable for an alleged medical malpractice. As a result, the injured patient has the right to claim damages through the newly introduced procedures. The New Law goes further to set out the procedures of how medical liability lawsuits can be brought before the court. For instance, cases of medical malpractice must be presented to the Medical Liability Committee before it can be submitted to the court.

The New Law also sets out criminal penalties which can be imposed on a medical practitioner in the case of a proved medical malpractice, without prejudice to the right of the injured party to recover financial damages from healthcare facilities or practitioners. Noteworthy, the insurance company will be liable, on behalf of the insured healthcare facilities and medical practitioners, for the payment to the injured patient of such compensatory damages as might be awarded for medical malpractice.

Undoubtedly, the New Law covers all areas needed to best serve the needs of the healthcare sector in the UAE, to keep up with global standards and encourage improvements in the level of services provided, while ensuring the safety of patients. Legally speaking, however, the New Law falls short of a very important matter, the prescription period for medical liability actions. It could have been more desirable if the New Law defined a short time limit (as short as one year) within which the injured patient may file a complaint before the relevant authority. It is advisable that the prescription period be shorter than that of such actions for compensation of damages as defined in the Civil Code. Medical liability actions should be time-barred after the lapse of a period of time sufficient to ascertain whether or not there is a malpractice on the part of a medical practitioner. Thus, there could be a clear-cut distinction between the medical errors and naturally occurring complications and physicians can feel more confident and empowered while performing their jobs that they may not be subject to criminal prosecution in relation to old forgotten cases. In addition, the shorter prescription period would prevent the accumulation of complaints and lawsuits brought before the relevant committees and the courts.

Doctors are entrusted with the lives and health of patients and are therefore legally, and ethically, required to honestly and diligently exercise care in the provision of a medical service. On the other hand, doctors need to be protected from false and malicious complaints and lawsuits. Hence, the New Law offers a lifeboat to healthcare facilities and physicians so that they can provide the highest quality health care service possible.

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