



# Medico-legal aspect to medical malpractice

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# Outline:

- Definition
- Classification
- Medical negligence
- System of compensation
- **Professional misconduct**

# The medical malpractice

- is professional negligence by act or omission by a health care provider in which the treatment provided falls below the accepted standard of practice in the medical community and causes injury or death to the patient

# Malpractice Classifications

- **Criminal Malpractice**
  - Assault + Battery (ضرب و اعتداء)
  - Mercy Killing (“Angel of Death”) (قتل الرحمة)
- **Civil Malpractice**
  - Practice falls below “Standard of Care”
- **Ethical Malpractice**
  - Violations of professional ethics

# What influences patients to make malpractice claim?

1. A poor relationship with healthcare provider before the suspected injury
2. Television advertising by law firms
3. Financial concerns
4. Explicit recommendation by health providers or professionals to seek legal advice

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- Malpractice can be divided into two broad types:

- 1- Medical negligence – where the standard of medical care given to a patient is considered to be inadequate.

- 2- Professional misconduct – where the personal, professional behavior falls below that which is expected of a doctor. Out of medical ethics.

# Medical Negligence

o Is doing some thing wrong or the failure to do some thing that an ordinary physician would do under *similar circumstances.*

o Before a patient can succeed in a civil action for negligence against a doctor, it must be established:

1. That the doctor had a duty of care towards the patient.
2. That there was a failure in that duty of care (breach of duty).
3. That this failure resulted in physical or mental damage.

# Duty of Care

- Once it is established that there is a duty of care, the doctor must then provide both diagnosis and treatment at a reasonable ‘standard of care’ that is consistent with the doctor’s own experience and training.

- It is accepted that doctors cannot be expected to know the details of every single recent advance in all areas of medicine, but the patient can expect a doctor to have kept up to date with major developments in his own and in closely related fields, now often referred to as Continuing Professional Development (CPD).



# Keep in mind

يحق للمريض اختيار طبيبه ويحق للطبيب اختيار مريضه  
عدا بالحالات الطارئة فانه مجبر وبعد زوال الحالة الخطرة يحق  
للطبيب رفض علاجه

- Doctors can refuse to accept a patient for personal reasons or if they and the patient disagree over treatment. But doctors who accept a patient must give that patient proper medical care

# Breach of duty



For negligence to be established, there must be a 'breach' of this standard of care, either by:

- omission (failing to do something he's supposed to do).
- commission (doing something wrong).

# Damage



Even if a patient can prove the presence of a duty of care and that a breach of the standard of care has taken place, he cannot succeed in any legal action unless he can also show that he has suffered physical or mental damage.

# Test of negligence

We test negligence by checking if an average doctor of the same experience placed in Identical circumstances would have done the same.

Negligence can occur if there is error in:

1. Diagnosis.
2. Treatment.
3. Management.

*You should refer the patient to a specialized doctor if you can't give the proper treatment to him.*

# System of compensation

- *The “fault” system*

The policies underlying a “fault” approach to medical malpractice are:

- appropriate compensation for the victim.
- deterrence of future incidents of malpractice by punishing the party at fault.

In the “fault” system, there are three elements to recover damages:

- the medical professional owed a duty to the patient.
- the duty owed to the complaint was breached.
- the medical error or omission caused injury.

Expert medical witnesses are employed to provide evidence regarding whether the defendant breached a duty of care.

# System of compensation

- *The “no fault” system*

The “no fault” systems, in contrast, are only involved with appropriate compensation for the injured patient.

Punishment for medical errors and deterrence of improper medical practices under no fault systems are the responsibility of government regulators, licensing bodies and professional organizations.

The test for compensation is not the presence or absence of the doctor’s negligence, but rather the patient’s needs.

# Compensation & Damage

The applicant damages may include compensatory and punitive damages. Compensatory damages are both economic and non-economic.

**Economic damages** include:

- Financial losses such as lost wages (sometimes called lost earning capacity).
- Medical expenses and life care expenses.

**Non-economic damages** are assessed for the injury itself:

- Physical and psychological harm, such as loss of vision, loss of a limb or organ.
- The reduced enjoyment of life due to a disability or loss of a loved one.
- Severe pain and emotional distress.

**If death has occurred:**

The dependent relatives (if there are any) will receive **compensation for the loss of salary of the family breadwinner.**

# Types of medical negligence



1. Obstetrics & Gynecology
2. Orthopedics & Accident Surgery
3. General Surgery
4. General Medicine
5. Anesthesia



# Obstetrics & Gynecology



- Brain damage in the newborn due to hypoxia from prolonged labor.
- Failed sterilization by tubal surgery resulting in unwanted pregnancy.
- Complications of hysterectomy, such as ureteric ligation and vesicovaginal fistulae.

# Orthopedics & Accident Surgery

- Missed fractures, especially of the scaphoid, skull, femoral neck and cervical spine.
- Tissue and nerve damage from over-tight plaster casts.
- Undiagnosed intracranial hemorrhage.
- Missed foreign bodies in eyes and wounds, especially glass.
- Inadequately treated hand injuries, especially tendons.

# General Surgery



- Delayed diagnosis of acute abdominal lesions.
- Retention of instruments and swabs in operation sites.
- Operating on the wrong patient.
- Operating on the wrong limb, digit or even organ.
- Operating on the wrong side of the body.
- Unsatisfactory cosmetic plastic surgery

# General Medicine



- Failure to visit a patient on request with consequent damage
- Failure to diagnose MI or other medical conditions
- Failure to refer a patient to hospital or specialist opinion
- Incorrect type or quantity of drug administration
- Allowing suicidal inclined patients to kill themselves
- Toxic results of drug administration

# Anesthesia



- Brain damage from hypoxia
- Neurological damage from spinal or epidural injection
- Peripheral nerve damage from splinting during infusion.
- Incompatible blood transfusion
- Incorrect or excessive anesthetic agents
- Allowing awareness of pain during anesthesia

# General Medical Errors



- Failure to act on radiological or laboratory reports.
- Inadequate clinical records and failure to communicate with other doctors involved in the treatment of a patient.
- Failure to admit to hospital when necessary.
- Failure to obtain informed consent to any procedure.
- Administration of incorrect type or quantity of drugs, especially by injection.

# Professional Misconduct

When professional behavior falls below what to be expected from a doctor and is separated from the civil action of negligence.


Professional misconduct isn't just restricted to patient-doctor relationships, but also towards fellow colleagues and care centers, and the community.

# Examples of Professional Misconduct



- Physical abuse of a patient.
- Inadequate record keeping.
- Not recognizing or acting on a common complaint.
- Drug excessive use without legitimate reason.
- Impaired ability to practice due addiction, physical or mental illness.
- Failing to meet continuing medical requirement (update).
- Dishonesty
- Delegating the practice of medicine to an unlicensed individual





*There is a general level of ethical behaviors, morality and competence that should be subscribed to by doctors all over the world.*

## الأماكن التي يذهب إليها المريض لتقديم شكوى

- المؤسسة التي يعمل بها الطبيب
  - نقابة الأطباء
  - المحكمة

لا يحق للنقابة او المؤسسة التي يعمل فيها الطبيب التحقيق مع الطبيب اذا كانت القضية منظورة بالمحكمة

المادة 45 من قانون نقابة الأطباء الأردنية - كل طبيب يخل بواجباته المهنية خلافاً لأحكام هذا القانون و أي نظام صادر بمقتضاة أو يرتكب خطأ مهنياً أو يقصر بالتزاماته وفق الدستور الطبي أو يرفض التقيد بقرارات المجلس أو يقدم على عمل يمس شرف المهنة أو يتصرف في حياته الخاصة تصرفاً يحط من قدرها يعرض

## المادة 48 من قانون نقابة الأطباء الأردنية

-ينظر المجلس قضايا المخالفات في الحالات التالية

•إذا تلقى طلبا خطيا من وزير الصحة أو النيابة العامة•

•إذا حكم على الطبيب بصورة قطعية بعقوبة السجن أو الحق الشخصي لأمر•  
تمس استقامته أو شرف كفاءته وعلى النيابة أن تخطر المجلس بإيقاع تلك العقوبة.

•إذا وصل إلى علم المجلس ارتكاب الطبيب للمخالفات رغم عدم ورود شكوى•

•بناء على شكوى خطية من أحد الأطباء أو المواطنين•

•بناء على طلب خطي من الطبيب نفسه إذا رأى انه موضع تهمة غير محقة•

المادة 55 من قانون نقابة الأطباء الأردنية

:العقوبات التي يحكم بها مجلس التأديب هي واحدة أو أكثر مما يلي

•التنبيه.

•التوبيخ.

•الغرامة النقدية من (10) إلى (250) دينارا تدفع لصندوق النقابة.

•الحرمان من عضوية المجلس والهيئات المختلفة للنقابة للمدة التي

يقررها

•المنع من الممارسة مؤقتا لمدة لا تزيد عن سنة.

•المنع النهائي من ممارسة المهنة وشطب اسم الطبيب من السجل بعد

إدانته من المحاكم المختصة

## الدستور الطبي يناقش واجبات الطبيب و أدب مهنته ويتكون من : سبع فصول هي

- خصائص الطب البشري
- واجبات الطبيب العامة
- واجبات الطبيب إتجاه المرضى
  - سر المهنة
  - حقوق الزمالة
  - الأتعاب والأجور
- صلات الأطباء بأعضاء المهن الطبية الأخرى

# The General Medical Council (GMC)

- The GMC was set up primarily to allow the public to distinguish between properly qualified doctors and the thousands of ‘quacks’ that existed in the nineteenth century.
- The GMC did this by publishing an annual list, the Medical Register.
- To be included in the register, a doctor had to prove that he had passed reputable medical examinations and so the GMC gained a prime interest in the standards of medical schools and their examination standards.

# The General Medical Council (GMC)

*When a complaint is made to the GMC, it is initially reviewed by a medically qualified screener who will assess:*

- 1- How serious the matter is.**
- 2- If the GMC has any other information or complaints about the doctor involved.**
- 3- What evidence is available about the event.**

# The General Medical Council (GMC)

*The medical screener may reach one of a number of decisions :*

- 1- They may decide that no further action should be taken, in which case the complaint is reviewed by a lay member of the GMC and, if both agree that no further action is to be taken, the case is dropped, but if they disagree, the complaint will pass to the Preliminary Proceedings Committee (PPC).
- 2- They may consider that there is no evidence of serious professional misconduct but may still find that the professional performance of the doctor has been seriously deficient and refer the complaint to the council's Fitness to Practice Committee (FTP).
- 3- They may consider that the complaint does relate to the conduct of the doctor and may refer it to the PPC.



# The General Medical Council (GMC)

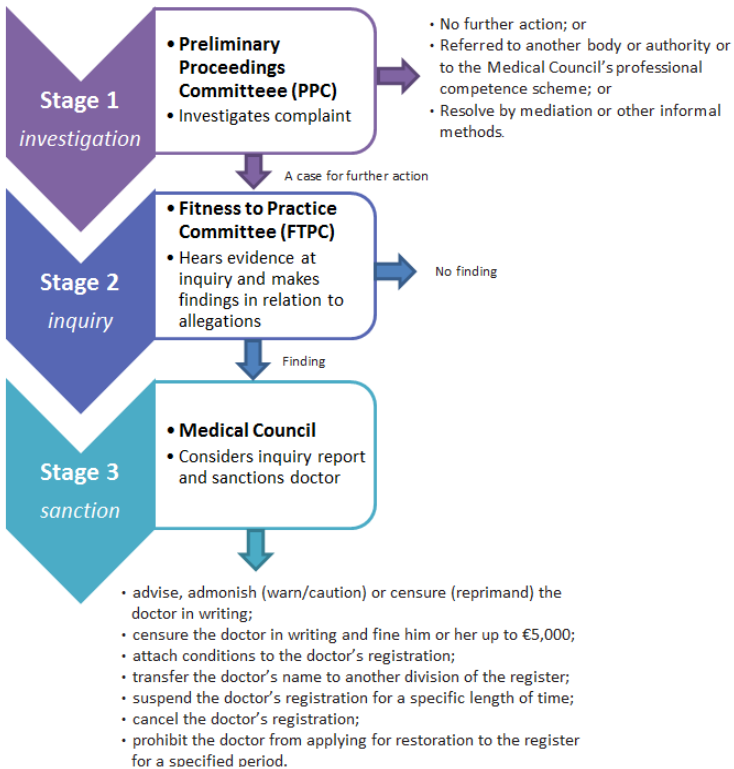
The PPC may take one of four decisions:

- That no further action is necessary.
- That the complaint needs to be referred to another body or authority.
- That the doctor should be referred to the Council's performance procedures and activities (referral to the Fitness to Practice Committee) for an assessment of their knowledge and skill.
- That mediation if deemed appropriate could resolve the complaint and restore the doctor/patient relationship.

# The General Medical Council (GMC)

## One of many conclusions may be reached:

- to admonish/advise the doctor.
- to postpone a decision in order to collect more evidence.
- to censure the doctor in writing and fine him/her up to 5,000£.
- to attach conditions to the doctor's registration.
- to transfer the doctor's name to another division of the register.
- to suspend the doctor's registrations for a specific period of time.
- to cancel the doctor's registration.
- to prohibit the doctor from applying for restoration of the registration for a specific period of time.



# How to prevent medical malpractice



- Doctors must keep in mind that they have the duties of disclosure.
- Doctors must check the medical records fully to prevent genetic or allergic diseases.
- Pay attention to the patients and keep good communication with them.

# References

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- <http://www.jma.ps/wp-content/uploads/2016/10/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D9%86%D9%82%D8%A7%D8%A8%D8%A9-%D8%A7%D9%84%D8%A7%D8%B7%D8%A8%D8%A7%D8%A1-%D8%A7%D9%84%D8%A7%D8%B1%D8%AF%D9%86%D9%8A%D8%A9-2015.pdf> (قانون نقابة الأطباء الأردنية)
- <https://www.medicalcouncil.ie/Public-Information/Making-a-Complaint-/What-happens-when-a-complaint-is-made-/> (medical council of Ireland)
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