

Medical Liability of Healthcare Professionals Under Omani Law: A Primer

Nasser Hammad Al-Azri*

Emergency Department, Ibri Hospital, Ministry of Health, A'Dhahirah, Oman

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ABSTRACT

Professionals in healthcare face, not infrequently, medical liability issues in their practice. Worldwide, patient safety has become a major medical, legal, ethical, political, and economic concern. Oman has witnessed a leap in its medical and legal spheres over the last half a century. Developments in healthcare services in the country have taken place in parallel with developments in legal awareness regarding patient safety and bodily integrity. However, many healthcare practitioners remain unaware of medical liability essentials in their daily practice. Neither basic medical education nor professional development education incorporates medical law in general and, specifically, medical liability in their courses and curricula. Hence, this article attempts to present the essentials of medical liability in healthcare practice in accordance with existing Omani legislation. It defines medical liability and identifies four types of liability that healthcare practitioners might be prone to penal, civil, disciplinary, and administrative liabilities. Each of these forms of liability is discussed with examples illustrating it from enacted Omani laws. This paper concludes by recommending a further focus on medical law in basic and professional education of healthcare practitioners in Oman.

Oman is an Islamic country located in the Arab Gulf region in the southeastern part of the Arabian Peninsula. Since 1970, Oman has taken major developmental steps in various sectors such as healthcare, education, law, and other developmental sectors. Oman adopted the UN Sustainable Development Goals (SDGs) in 2015, and the country has devoted major efforts in attaining these goals.¹ Among these SDG's, Oman has made great efforts to achieve the two of them, namely good health and well-being, and peace, justice, and strong institutions.

The Basic Statute of the country promulgated by Royal Decree 101/96 largely codified the legal system in Oman.² There are two types of legislation: primary and secondary. Royal decrees promulgate primary legislations in the country. Secondary legislations are issued mostly through ministerial decisions (Qarar) per the legislative powers delegated to them through royal decrees. In addition to the primary and secondary legislation, there are other regulatory tools in use. These include regulations promulgated through standards of practice, protocols, administrative decisions, and official documents.

Healthcare is one of the social principles of Oman, as stated in Royal Decree 101/96. According

to Article 12 of Royal Decree 101/96: "The State is responsible for public health and the means of prevention and treatment of diseases and epidemics. The State endeavors to provide healthcare for every citizen and encourages the establishment of private hospitals, polyclinics and medical institutions to be under its supervision per regulations determined by the law."

Over the last half a century, healthcare services have witnessed a leap in Oman with modern biomedical services covering the whole of the Sultanate. For a total population of 4 560 000 in Oman in 2017, there were 76 hospitals, 269 other governmental health centers and clinics, and 1215 private healthcare institutions with a total number of healthcare practitioners comprising 9132 doctors, 19938 nurses, and 2445 pharmacists in addition to other healthcare practitioners.³ In 2017, about 10.3 million medical episodes were managed at outpatient clinics, and 338 670 patients were discharged from the Ministry of Health Hospitals throughout the Sultanate.

As healthcare practice is becoming more complex globally with increasing concern for patient safety, issues of medical negligence and liability are brought increasingly to the fore and to public discussions. The World Health Organization 2014 Jeddah Declaration documented that unsafe

*Corresponding author: ✉dralazri@yahoo.com

care is prevalent in Eastern Mediterranean region countries.⁴ A survey of Omani households in North Al Batinah found that the understanding of medical errors correlates inversely with age and positively with family income.⁵ More frequently than previously, local media and social media discuss incidents and cases of medical errors and harm to patients. Recently, the Ministry of Health conducted several seminars to discuss medical negligence and errors. Two significant events took place recently: a symposium on medical errors and justice conducted by the Higher Judicial Institute in December 2018 and a conference on medical liability conducted by the Royal Hospital in April 2019.

However, many healthcare workers remain, at best, ill-informed of the basics of the law regarding their healthcare professional practice. This paper attempts to address the basics of medical liability of healthcare practitioners under Omani law. To contribute to the ongoing educational and awareness activities in this regard, first, this paper will discuss and clarify the concept of medical liability. Then, it will address, at a very basic level, four forms of liability that a healthcare practitioner might face while practicing in Oman namely, penal, civil, disciplinary, and administrative liability. As Arabic is the language of the state in Oman, and all legal transactions are done in Arabic, Table 1 presents a glossary of Arabic legal terminologies and their translations in English that are used in this paper.

What is medical liability?

Different contested terminologies describe unfavorable incidents and mishaps that occur between a patient and health carers during their encounter. A commonly used terminology to describe such unfavorable events, both in public discourses and within the medical field, is 'medical errors'. In contrast, 'medical negligence' and 'medical liability' are terminologies that are commonly used in legal contexts. This paper prefers the term 'medical liability' as it is more inclusive and covers wider aspects of healthcare practice.

The term 'medical' is used here to include all forms of healthcare activities and practices that are regulated by Omani law. Hence, 'medical' includes various professions "practicing medical activities" as addressed by Article 44/b of Royal Decree 7/2018 promulgating the penal law. As defined in Royal Decree 75/2019 promulgating

Table 1: Arabic legal glossary.

English terminology	Arabic terminology
Administrative Liability	المسؤولية الإدارية
Bylaw	اللائحة
Causal Relationship	العلاقة السببية
Child Law	قانون الطفل
Civil Liability	المسؤولية المدنية
Civil Transactions Law	قانون المعاملات المدنية
Contractual Liability	المسؤولية العقدية
Decisions	القرارات
Disciplinary Liability	المسؤولية التأديبية
Harm	ضرر
Law Governing the Practice of the Medical Profession and Allied Health Professions	قانون تنظيم مزاولة مهنة الطب والمهن الطبية المساعدة
Law on the Control of Communicable Diseases	قانون مكافحة الأمراض المعدية
Law on the Control of Narcotic Drugs and Psychotropic Substances	قانون مكافحة المخدرات والمؤثرات العقلية
Law for Regulating Pharmacy Practice and Pharmaceutical Establishments	قانون تنظيم مزاولة مهنة الصيدلة والمؤسسات الصيدلانية
Medical Liability	المسؤولية الطبية
Penal Law	قانون الجزاء
Penal Liability	المسؤولية الجزائية
Primary Legislation	التشريع الأساسي
Public Prosecution	الادعاء العام
The Basic Statute of the State	النظام الأساسي للدولة
Tort Liability	المسؤولية التقصيرية
Secondary Legislation	التشريع الفرعي

the Law for Governing the Practice of the Medical Profession and Allied Health Professions, the profession of medicine includes human medicine and dentistry while paramedical professions include professions related to the practice of medicine such as nursing, midwifery, radiography, physiotherapy, rehabilitation, laboratory technician, dental technician, and other alike professions that are defined through ministerial decisions.

These professions are defined through Royal Decree 75/2019, and Ministerial Decisions 52/98, 52/2006. Box 1 lists these professions. Although this list is restricted to certain professions within healthcare, the regulatory bylaw for the Regulation of Medical and Paramedical Professions issued by Ministerial Decision 16/2014 per the Royal Decree 33/2013 provides a significantly more extended list of professions that are, understandably, healthcare-

Box 1: Healthcare professions as promulgated by Royal Decree 75/2019 and Ministerial Decisions 52/98 and 52/2006.

Healthcare professions include:

1. Doctors
2. Dentists
3. Pharmacists
4. Radiology
5. Physiotherapy
6. Glasses Optometrist
7. Circumcision practitioners
8. Midwifery
9. Nursing
10. Medical Laboratory Technician
11. Dental Laboratory Technician
12. Dietician

related. These include, in addition to the previous list in Box 1, professions such as genetics, optometry, electrocardiography, public health, occupational health, occupational therapy, medical physiology, medical physics, speech therapy, respiratory therapy, electroencephalogram, medical parasitology, health psychology, and sleep therapy. The bylaw addresses these professions as healthcare professions as they are in real-life practice, and it is reasonable to assume that all related medical liability laws address these professions alike.

Liability is defined as: “The quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment.”⁶ Hence, medical liability may be defined as the obligation or accountability before the law that ensues because of, or in relation to, the practice of a healthcare profession or the performance of a medical activity. Presently, medical liability is an area that is hardly absent from the lives of people, whether as a direct first-hand experience or in the surrounding communications and media. Nevertheless, healthcare students and practitioners at different levels of their career lack basic knowledge of medical law and forms of liability.

Forms of medical liability under Omani law

Article 25 of Royal Decree 101/96 guarantees the right to litigate in cases of dispute: “Litigation is a

protected right, and it is guaranteed to all people”. Practicing medicine in Oman is considered an exercise of a right granted by the law in consonance with Article 44 of Royal Decree 7/2018 which states: “There shall be no crime if the act is committed in good faith in the exercise of a right or in the performance of a duty prescribed by law”, with “medical activities” stated as an exercise of a right. However, we must note that Article 44 requires that certain conditions be fulfilled for the exercise of this right, including:

1. Be performed in good faith, which translates in medicine to practice for the purpose of healthcare, not otherwise.
2. Be performed in accordance with scientific principles commonly agreed upon.
3. Be performed by licensed medical professions.
4. Be performed with the express or implied consent of the patient or his representative (except in law-exempted circumstances).

The distinction between the different forms of liability lies not in the act itself but in the legal procedures that are likely to follow the act. In other words: “The true distinction [between criminal and civil wrongs] resides, therefore, not in the nature of the wrongful act but in the legal consequences that may follow it.”⁷ Hence, the wrongdoing of a healthcare practitioner may lead to one or more liabilities. In Oman, and regarding medical law, three forms of liability may arise from the technical work of healthcare practitioners: penal, civil, and disciplinary liabilities. Besides, public sector healthcare employees are prone to administrative liability. The forms of liability discussed here are with specific reference to the medical activities of healthcare practitioners. However, these practitioners might be prone to other forms of legal liabilities as they are also general members of the public.

Penal liability

Penal liability concerns wrong acts that the law prohibits as they are considered offences against society or state as a whole.⁸ The purpose of public law is to deter people from committing these wrongful acts and punish those who commit them. In Oman, the public prosecutor (PP) “acts as a deputy and a representative of the society in different types of cases in accordance with the fundamentals

Table 2: Examples of penal wrongs related to medical activities under Omani law.

Legislation	Penal Wrongs
7/ 2018 Article 44	Practicing medical activities while lacking one of the four qualities: 1. Practicing with good intention, solely for the purpose of healthcare. 2. In accordance with scientific principles commonly agreed upon. 3. Licensed medical professions. 4. Patient (or his guardian's) express or implied consent except in law-exempted cases.
7/ 2018 Articles 304 – 305 75/2019 Article 24	Assisting suicide.
7/ 2018 Article 311	Unintentional manslaughter.
7/ 2018 Articles 316 – 317 – 318 – 320 75/2019 Article 36	Illegal abortion.
7/ 2018 Article 321	Willfully causing the transmission of AIDS to an uninfected person.
7/ 2018 Article 186 75/2019 Article 19	Issuing a forged certificate or statement concerning pregnancy, birth, sickness, disability, or death.
7/ 2018 Article 226 75/2019 Article 16	Willfully refraining from rendering assistance to person in danger threatening them without an acceptable reason.
7/ 2018 Article 227	Not notifying a case of death with a suspicion of crime.
75/2019 Article 7	Practicing a healthcare profession without an authorization from Ministry of Health.
75/2019 Article 33	Breaching patient confidentiality.
75/2019 Articles 42 – 43	Medical negligence.
75/2019 Article 17	Using unauthorized means for diagnosis, treatment or rehabilitation.
75/2019 Article 22	Human cloning research and practice.
75/2019 Article 29	Assisted reproduction except under conditions stated in the Law.
75/2019 Article 30	Birth control without the consent of the person concerned.
75/2019 Article 31	Sterilization, except under conditions stated in the law.
75/2019 Article 32	Transsexualism procedures except in exempted cases.
75/2019 Article 35	DNA fingerprinting except on court order.
73/ 92 Article 19	Not notifying a notifiable communicable disease according to the list included in the law.
22/ 2014 Article 20	Performing traditional practices that are harmful for a child.
22/ 2014 Article 56	Organ transplantation from a child.
35/ 2015 Article 36	Practicing as a pharmacist or a pharmacy assistant without authorization.
17/ 1999 Article 52	Breaching patient confidentiality of drug addicts.

and requirements of the Omani law.⁹ In doing this, the PP needs to prove the case beyond a reasonable doubt.

Penal wrongs related to the practice of medical activities are found in several Omani laws, including:

1. Royal Decree 7/2018 promulgating the Penal Law.
2. Royal Decree 75/2019 promulgating the Law Governing the Practice of the Medical Profession and Allied Health Professions.
3. Royal Decree 35/2015 promulgating the Law for Regulating Pharmacy Practice and Pharmaceutical Establishments.
4. Royal Decree 17/99 promulgating the Law on the Control of Narcotic Drugs and Psychotropic Substances.

5. Royal Decree 22/2014 promulgating Child Law.

6. Royal Decree 73/92 promulgating the Law on the Control of Communicable Diseases, and related amendments promulgated recently by Royal Decree 32/2020. Table 2 lists some examples of these penal wrongs.

In spite of lists of criminalized actions, the role of penal law in medical liability is usually limited and is commonly made relevant in cases of gross negligence.¹⁰ Penal wrongs are punished with various principal or complementary and ancillary punishments. According to Article 53 of Royal Decree 7/2018, principal punishments include the death sentence, imprisonment, and fines. Complementary punishments include deprivation

of some rights, ban from professional practice, license revocation, assignment to perform public service, and publication of the sentence. Hence, a healthcare practitioner needs to be aware of and avoid all the acts that Omani law considers as penal wrongs.

Civil liability

Civil liability is concerned with wrong acts that harm another individual in the society. The purpose of civil law is to remedy the harm that an individual has suffered.⁸ In such an instance, the claimant sues the defendant in court, and the claimant must prove his case on the balance of probabilities. Under Omani legislation, Royal Decree 29/2013 promulgating the Civil Transactions Law is the law concerns forms of civil liability.

Civil medical liability can be one of two major types: contract or tort liability. Whenever a contract exists, then the contract forms the basis for assessing the medical liability of the practitioner and any related legal consequences. However, in the absence of a contract between the parties, tortious liability becomes the basis for assessing the claimed harm. A tort entails the breach of a duty that is imposed by the law. The presumed duty here is the healthcare activity that the claimant seeks. In cases of civil tort liability, the Supreme Court asserted in one of its principles (1325/2014civ) that a triad of three conditions must be fulfilled:

1. A legal error must be established;
2. Actual harm to a person must have ensued; and
3. There must be a causal relationship between the error and the resulting harm.

While commonly civil liability arises because of harm caused directly by the act of a person (the defendant), there are occasions when harm results from actions of faulty machinery, for example, yet the defendant might still be guilty. An instance of this is the act of a machine the defendant is expected to guard or take care of as stated in Article 199 of Royal Decree 29/2013. With technologies encroaching all aspects of modern healthcare, this has important implications for healthcare practitioners. Operators and users of machines and similar things are expected to ensure their safe use for patient care, and they are accountable for this use. A faulty machine reading or using a machine for patient care which is condemned and out of service that results in harm may incur civil

liability on the person expected to guard or take care of the machine at work.

Moreover, although civil liability is usually the responsibility of the person who committed the wrong, the superior of that person can also be vicariously liable: natural persons such as supervisors or artificial persons such as employing institutions. A court appeal (364, 368 and 369/2006civ) decided that the administration is accountable for the actions of the public employee within his work activity when harm is committed to another. Since most healthcare professions adopt a hierarchical supervisory structure, healthcare practitioners must pay satisfactory attention to and provide adequate supervision for their subordinates and their activities.

As civil liability mainly concerns indemnity for the harm, restitution is made commonly through financial compensation. For healthcare practitioners in government institutions in Oman, the Fund for Medical Negligence Compensation is responsible for such financial compensation whenever a court rules, as stated in Article 2 of the Royal Decree 21/2012.

Although it is impossible to list all forms of how civil medical liability might arise, it might be useful to list some court cases as illustrative examples of civil medical liability:

- A. Appeal 294/2006civ: the court ruled that compensation is warranted for a case of breast surgical operation as the surgery was wrong and without benefit despite the surgery being technically successful.
- B. Appeal 277/2014civ: the court ruled that a legal wrong which implies a tort is the one that involves a breach of a legal duty to act with caution and vigilance to avoid harm to another person, such as the act of negligence from a doctor who calculated wrongly the date of conception in pregnancy.
- C. Appeal 725/2015civ: the court ruled that expected side effects and complications of radiation therapy are not a form of medical negligence.

Disciplinary liability

Modern professions depend largely on professional and ethical codes of conduct in organizing their people within an acceptable mainstream of conduct. Disciplinary liability arises when a worker breaches

the rules of conduct of the profession by an act connected to the profession that is “likely to harm the honor and prestige of the profession”.¹¹ Unlike penal and civil liabilities that are presented before courts, disciplinary liability is usually investigated and penalties executed by professional bodies.

Disciplinary liability is judged against the standards set in primary and secondary legislations in addition to other regulatory documentations issued by professional bodies. Article 10 of Royal Decree 75/2019 lists the duties and rights of medical and paramedical practitioners. In addition, Article 4 of Royal Decree 75/2019 authorizes the Minister of Health to form a technical committee(s) to preserve the level of medical and paramedical practice in the Sultanate and the commitment to the principles of the profession. This technical committee is authorized to investigate violations of practitioners with reference to this law and its related bylaw and decisions.

Articles 52, 53, and 54 of Royal Decree 75/2019 detail the procedures to be followed by the technical committee in investigating violations and misconduct. If the doctor or healthcare practitioner is convicted, one of the following sanctions may apply: warning, financial fine, temporary suspension from the practice, or revocation of license. This Committee was formed recently by Ministerial Decision 42/2020.

Secondary legislations that refer to disciplinary liability and sanctions include the regulatory bylaw for the Occupants of Medical and Paramedical Professions. Other regulations that involve codes of professional conduct in Oman include the Code of Professional Conduct for Doctors,¹² Principles of Code of Professional Conduct for Nurses in the Sultanate of Oman,¹³ the National Document of Patient Rights and Responsibilities,¹⁴ and Guidelines for Responsible Conduct of Clinical Studies and Trials.¹⁵ Examples of professional codes of conduct in these regulations include issues of privacy and confidentiality, dignity and respect, accountability, consent, trust, conflict of interest, and the personal behavior of the practitioner.

Administrative liability

In the public sector, administrative liability regulates the relationship between employers and employees. Usually, this type of liability is not part of the discussion on medical liability for healthcare

practitioners. However, it is discussed here briefly to provide awareness to healthcare practitioners because some of the administrative wrongs committed during practice may entail, alone or in addition to other liabilities, administrative liability before the law. Sources of administrative law in Oman include primary legislation and secondary legislation. Administrative litigation in Oman is done before the Administrative Court. Primary legislation includes Royal Decree 101/96, Royal Decree 26/75 promulgating the Administrative System Regulation Law, and Royal Decree 120/2004 promulgating the Civil Service Law.

The regulatory bylaw for the Occupants of Medical and Paramedical Professions issued by Ministerial Decision 16/2014 per Royal Decree 33/2013 provides also some administrative regulations for healthcare practitioners in Oman. Section 12 of this bylaw includes medical and paramedical professionals' duties and prohibitions. Listed duties include, for example, punctuality, honesty, cooperation with colleagues, avoiding conflicts of interest and declaring them whenever to exist, and adhering to professional code of dress. Prohibitions in this bylaw include negligence, disobedience to stipulated laws and regulations, verbal or physical assault of colleagues or clients, use of illegal or psychotropic drugs or substances, breach of confidentiality, protesting at the workplace, work strike, or smoking in any of the unit premises.

Besides, the Civil Service Council in Oman issued lately its Decision 7/2019 on Professional Code of Conduct for Civil Service Employees in the Omani Administrative System. This Code urges employees to adopt attitudes of diligence and perseverance, impartiality and fairness, compliance with laws, integrity and unbiasedness, confidentiality, avoiding conflicts of interest, duties toward superiors, subordinates and clients, financial disclosure, protection of public funds, and decent use of technology.

CONCLUSION

Both law and medicine seek to preserve the sanctity and integrity of the human body, though from different angles. The increasing complexity of healthcare services and the significant concerns for patient safety have resulted in an associated increase in the liability of healthcare providers. Due to the

minimal structured awareness and education on medical law, this paper attempted to introduce healthcare practitioners to the different forms of medical liability under Omani law. The paper defined the concept of medical liability. After that, it introduced different forms of medical liabilities concerning healthcare practice under Omani law at a basic level in order to introduce these forms to healthcare practitioners of different backgrounds and levels of knowledge. Further focus on medical law education and awareness will likely improve patient safety and provide a safer working environment for healthcare practitioners in Oman.

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