

Review Article

Procedural Protection from Damages Resulting from Medical Errors in the UAE

Mahmoud Fayyad^{1*}, Sayed Ahmad²

¹Associate Professor, College of Law, University of Sharjah, UAE

²Professor College of Law, University of Sharjah and Ain Shams University, UAE

Article History

Received: 16.02.2023

Accepted: 20.03.2023

Published: 26.03.2023

Journal homepage:

<https://www.easpublisher.com>

Quick Response Code



Abstract: This study examines recent procedural protection for damages caused by medical mistakes. Under the Federal Regulation No. 33 of 2020, numerous fundamental changes were made to increase the level of protection offered to those who have been injured. Numerous topics relevant to the study's topic, the descriptive and analytical methodology for those modifications, and numerous recent judicial judgments made by high courts in the UAE were discussed. The research examined legal protections before making specific recommendations for changes to these rules.

Keywords: Damage Protection Act, Medical Liability, Medical Damages, Health Law.

Copyright © 2023 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution **4.0 International License (CC BY-NC 4.0)** which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

1. INTRODUCTION

Throughout ancient times, one of the highest human vocations has been medicine. The physician is admired for his moral character, upright conduct, and dedication to preserving people's bodies and souls. Medical liability disputes and claims from those affected for compensation for the damages they have suffered as a result of medical errors during the practice of the profession have increased due to the development of medical services and the proliferation of their tools to treat many patients or even for non-therapeutic purposes like plastic surgery [1].

One of the nations with independently created laws that specifically govern the delivery of remote medical services is the United Arab Emirates. The four procedural safeguards (urgent, objective, executive, and Wallaeyya) apply to the civil liability case before the

Emirati civil judiciary recognized by the UAE Civil Procedures Law and its successive amendments. Judicial procedural protection are: (1) urgent protection when there is a fear of passing the time on the interest or right that has been assaulted; (2) objective protection to cure or compensate damages; (3) Wallaeyya protection related to the interest of an incompetent person or whose will is legally limited; (4) executive protection when a person does not obtain his right established in the executive document in his hand.

Until the time of authoring this study, Regulation No. 33 of 2020, which modified Regulation No. 57 of 2018, revising the Civil Processes Law, was the most recent. Regarding procedural matters, the UAE is one of the few nations that have differentiated itself by organizing remote litigation and electronic justice from 2014 through 2017, as well as Law No. 18 of 2018. Regulation No. 260 of 2019, Regulation No. 57 of 2018, and Regulation No. 33 of 2020 are the first regulations governing this [2].

¹ For more details about the development of means used in medical services, see: Bruno Peyrou, Jean-Jacques Vignaux, and Arthur André, "Artificial Intelligence and Health Care" 31 (2019): 29–40, https://doi.org/10.1007/978-3-319-98216-8_3; Mary Law Review and Tyler D Wolf, "Telemedicine and Malpractice: Creating Uniformity at the National Level," *William & Mary Law Review* 61, no. 5 (2020): 1505–37.

² Cabinet Resolution No. (33) of 2020, amending Resolution No. (57) of 2018 regarding the organizational regulations of Law No. (11) of 1992 regarding the Civil Procedures Law. Federal Decree-Law No. 18 of 2018 amending some provisions of the Civil Procedures Law promulgated by Federal Law No.

Given recent changes to the law and the judiciary, what effect have recent changes had on expanding the protections offered to those hurt by medical mistakes, and are any legislative changes being considered? The study aims to concentrate on and clarify the approach taken by UAE law in defining the scope and components of medical errors, the procedural safeguards authorized by national law for those affected by medical mistakes, and the views of jurisprudence and the judiciary on these safeguards.

2. Urgent and Objective Protection of the Rights of the Victim of Medical Errors

The person affected or injured by medical errors may resort to the urgent judiciary to protect his rights temporarily (part one) or resort to the objective judiciary to obtain both protections (part two) as follows:

2.1 Urgent Protection of the Rights of the Victim of Medical Errors

Urgent protection is intended to avoid the fear of running out of time in protecting private interests or rights by ruling on a binding temporary procedure to maintain the existing conditions, respect the apparent rights, or safeguard the interests of the parties to the conflict. According to the last paragraph of Article 18 of the Medical Liability Law No. 4 of 2016, "A claim for compensation that is filed due to medical liability shall not be accepted until after resorting and submitting it to the medical liability committees per the provisions of this Decree-Law." Article 28 of the UAE Civil Procedures Law states that: "1. A judge shall be assigned at the headquarters of the Court of First Instance to rule temporarily, without prejudice to the right, in urgent matters that are feared of running out of time. 2. The trial court shall have jurisdiction over these issues if they are raised to it. 3. Outside the city where the headquarters of the Court of First Instance is located, this jurisdiction falls to the court" [3].

For the urgent protection to be achieved, several conditions are required, including:

A. The Availability of the Element of Urgency or Danger

Such as the fear of the passing of time, that the threat is imminent to the rights or interests intended to be preserved. It is available whenever there is a

11 of 1992. Ministerial Resolution No. 260 of 2019 regarding the procedural guide for regulating litigation using electronic means and remote communication in civil procedures. The jurisdiction is local to the judge whose provisional procedure is requested, or the defendant's domicile is in his jurisdiction (Article 38 of the Civil Procedures Law).

³ The jurisdiction is local to the judge whose provisional procedure is requested, or the defendant's domicile is located in his jurisdiction (Article 38 of the Civil Procedures Law).

situation where the lapse of time results in damage that cannot be remedied or repaired. The fear of running out of time is represented either in the disappearance of traces, such as proving the condition of the wound to the patient as a result of the operation to rely on in the request for compensation in the future, or the fear of losing rights or missing out on interest in the event of a medical error that resulted in the patient's immobility, which led to his disruption of work and missing out his right to pay.

Urgency also arises from the nature of the disputed right or the circumstances surrounding it, neither from the will of the litigants or their desire to obtain a speedy judgment nor from their agreement on the jurisdiction of this summary judgment on the one hand. On the other, if the reason for urgency is removed during the case consideration, there is no justification for this protection.

B. That a Temporary or Precautionary Measure is required

By the injured person requesting temporary compensation, proving the condition of the wound, seizing the surgical tools, or hearing a witness. The summary judge can also turn the objective request into an urgent request so that he does not rule that there is no jurisdiction and referral by making the objective compensation request a request for temporary compensation so that the patient receives cash from the doctor by which he can pay for his treatment temporarily.

C. The Decision in the Summary Case shall not Prejudice the Origin of one of the Rights Claimed by the Injured

Not to prejudice the origin of the right is done by superficially examining the documents without going in-depth because the judge's decision here is not decisive, that is, according to the expression of the Egyptian Court of Cassation, "he is sensitive to the documents, that is, he examines them accidentally. The summary judge must not base his reasons on proving or denying the truth but must be limited to weighing the possibilities without defining an opinion on the origin of the truth. Otherwise, his ruling will be based on a false basis for exceeding the limit of his jurisdiction. For this reason, the reasons for summary judgments are often repeated in the phrases: "Since it appears..., since it has been proven from...". Otherwise, he has infringed on the jurisdiction of the objective judge. Therefore, the validity of the summary judgment is temporary and changes with the change of circumstances and conditions. It is also relative and does not affect the trial court's ruling. It is also not permissible for him to assert the substantive right in the utterance of his judgment, whether it exists or not, to be judged by a temporary measure only.

This temporary measure, ruled by it, remains temporary, even if it results in permanent or irreversible harm. It follows that the summary judge may not decide to refer the summary case to an investigation, that is, to hear witnesses. Nor may he pass a decisive oath or investigate an allegation of forgery. For this reason, the summary judge may not issue preliminary rulings. Still, it always ends with the judiciary with a temporary procedure according to a ruling that concludes the case without being preceded by preliminary rulings. Rather, the summary judgment was permitted to order an inspection or to appoint an expert if this procedure would verify the availability of the element of urgency for the availability of jurisdiction or to estimate temporary compensation. These conditions must be met together.

It is noted that the jurisdiction of the summary judgment in urgent matters is considered specifically related to public order. It does not arise from the parties' will to the case but rather from the nature of the litigation or dispute and the procedure required. Summary justice may be resorted to before the summary judgment or, by extension, before the trial judge, based on Article 28 of the UAE Civil Procedures Law, in a paper or electronic journal that is deposited and recorded in the case management office. Then, it is announced to the defendant, traditionally or electronically, in a session set for that, where each of the parties presents his defense and argument, and each of them reads and discusses the documents of his opponent, or he can view and discuss them. Then, the lawsuit ends with a reasoned traditional or electronic judgment. This preliminary ruling is subject to contestation by appeal within ten days from the day following its issuance (Article 159, Civil Procedures) before the Court of Appeal. The latter may also be appealed to the Court of Cassation [4] within sixty days (Article 176 Civil Procedures).

The summary judgment shall also be issued, including the self-executing immediately without guarantee in accordance with Article 786/1/a of the UAE Civil Procedures Law amended by Regulation No. 57 of 2018. The court may also, in urgent matters or cases where the delay is harmful, order, at the request of the concerned parties, the execution of the judgment without notification and without placing an executive formula on it [5].

The question that arises in this context is: Does the text of Article 18 of the Medical Liability Law, by first resorting to the Medical Liability Committee, restrict resorting to urgent justice directly? The researchers believe the answer is no because this text restricts resorting to the trial court to claim

⁴Article 173 of Civil Procedures Code.

⁵Article 76 of Regulation No. 57 of 2018 amending the UAE Civil Procedures Law.

compensation and does not restrict the urgent judiciary to temporary compensation since the required is a temporary measure, not a right, and has no authority. Still, its authority is temporary and changes if circumstances or conditions change.

2.2 Procedures of Objective Protection for the Rights of the Injured in Medical Errors

The purpose of objective protection is the recourse of the injured in medical error to the trial judge of the court to protect his substantive right when he is attacked or threatened with assault by the doctor [6]. Follow the procedures contained therein for the original claims for compensation in kind or cash or even the occasional compensation increase during the litigation before the competent court [7].

The defendant shall also have the right to present his defense or defenses before a court of first or second instance [8]. He also has the right to appeal the judgment issued against him, whether before the ordinary court of appeal or before the extraordinary court of appeal [9] or submitting forms in the implementation in accordance with Articles 103 to 105 of the Civil Procedure Code.

The compensation claim may be heard before the specialized partial circuit formed by a single judge if the value of the compensation claimed is within five hundred thousand dirhams in one session only (Article

⁶Article 2 of the Civil Procedure Code.

⁷Article 18 of the Medical Liability Law No. 4 of 2016 states that: "an expertise committee of doctors specializing in all medical specialties is established by a decision of the minister or the head of the health authority, as the case may be, called the Medical Liability Committee. The executive bylaws specify how it is formed and the rules and procedures of its work. These committees are exclusively competent to consider complaints referred to them by the health authorities, the public prosecution or the court and determine the extent of the medical error, whether or not and how serious it is, and in the case of multiple liability, the percentage of participation of everyone who participated in this error with an indication of its cause, the damage caused by it, the causal relationship between the error and damage and the percentage of disability in the affected member, if any, and the committee may use experts and whoever it deems appropriate to carry out its tasks. The provisions of the Federal Law No. 7 of 2012 referred to herein shall apply in this committee, if they do not contradict the provisions of this Decree-Law. A compensation claim filed due to medical liability shall be accepted only after recourse and presentation to the medical liability committees in accordance with the provisions of this Decree-Law".

⁸Articles 84 to 93 of the Civil Procedure Code.

⁹Articles 150 to 188 of the Civil Procedure Code.

22/1 of Regulation No. 33 of 2020) [10]. The case management office must prepare the case and determine the first session before this Department within maximum of fifteen days from the date of registration of the initiatory pleading. It may be extended for one similar period only by the decision of the supervising judge. If the expert is delegated, the first session shall be determined within three days from the date of receiving the expert's report therein. Apart from that, all the rules, provisions, and procedures stipulated in Articles 16, 17, 20, and 21 of these regulations [11] shall apply to preparing the case before these circuits. The supervising judge in relation to this department has the competencies stipulated for him in clauses 4, 5, 6, and 8 of Article 17 and Article 33 of these regulations [12].

The entire circuit, composed of three judges, is concerned with a compensation claim with more than one million dirhams or an unassessed claim [13]. It is also permissible, in accordance with Article 30 bis of the Civil Procedures Law, for the Minister of Justice or the head of the local judicial authority, each according to his competence, to refer all or some of the cases about the entire circuit to one or more circuits headed by an individual judge assisted by two local or international experts. Judgments are issued with the same procedures and controls set out in Chapter One of Chapter Nine of this Law. The judge shall sign the judgment individually. The experts sign its draft in accordance with Article 30 bis/1 of the Civil Procedures Law. The provisions of this circuit are appealed to the appellate circuits stipulated in this Decree Article 30/bis/2 of the Civil Procedures Law.

The debtor shall be charged with payment within five days at least until he obtains a payment order from the judge of the court in whose circuit the debtor's domicile is located or the court in whose circuit the agreement was made, or wholly or partly executed, or the court in whose circuit the agreement was implemented [14]. The payment order is issued based on an electronic or paper petition, as the case may be, submitted by the creditor, to which the debt deed and what proves the commission of its payment must be attached. The case management office shall keep the submitted petition until the time for appeal has passed [15]. The petition includes the data of the claim

statement in accordance with Article 16 of the Regulations (Article 63/2).

The order is issued within three days at most from the submission of the petition. It indicates the amount to be paid of the movable amount ordered to be paid, as the case may be (Article 63/4). The petition is considered to produce the effects of filing the lawsuit from the date of its submission, even if the court was not competent. The judge shall decide on the request, accepting it or rejecting it in whole or part. If he issues his decision of acceptance or rejection, this decision must be justified [16]. The debtor shall be notified of the order issued against him to pay in accordance with the provisions and methods outlined in these regulations. The payment order issued by the debtor shall be considered void if it is not notified within three months from its issuance [17], the date on which the decision was issued for the creditor. The grievance shall be considered before the competent performance order judge according to the usual procedures for filing the lawsuit [18]. The rules and procedures followed before the court shall be considered when considering the grievance. It shall be decided by a final judgment that terminates the litigation. It is not subject to appeal, and its reasons shall be deposited in the same session [19].

¹⁶Article 64 of the Regulations No. 57 of 2018 and amended by Regulation No. 33 of 2020.

¹⁷Article 65/2 of the Regulations No. 57 of 2018 and amended by Regulation No. 33 of 2020.

¹⁸ Sayed Ahmed, *The Principles of Litigation in Civil and Commercial Cases* (Cairo: Dar Al-Nahda Al-Arabiya, 2009).

¹⁹ The judgment issued on the subject acquires the authority of the judicial order and fulfills the jurisdiction of the judge. Compensation is the legal means by which the injured person can obtain compensation by resorting to the judiciary to claim it through a lawsuit filed before the competent courts, any other civil lawsuit or by claiming the civil right before the criminal judge in cases where the error constitutes a crime, where this lawsuit is defined as " the judicial means by which the injured person can obtain from the official compensation for the damage he suffered if the injured person does not acknowledge it by agreement," Solomon Mark, full explanation of the civil law, and in the obligations in the harmful act and civil liability, P.569. Both the doctor and the patient may agree on the estimate of compensation for the physical damage suffered by the patient until a final judgment is issued, as here the injured person does not have to claim damages outside the scope of the agreement or the judicial judgment issued unless things actually arise that were not stipulated in the agreement, The doctor's civil liability for medical errors in the field of his profession, *Ibid.*, p. 97. The compensation claim in terms of its acceptance or not is subject to the second article of the UAE Civil Procedure Law, as well as to Article 18 of the medical liability law, the matter is submitted in

¹⁰ Except for cases in which the state is a party, summary cases and performance orders, and with due regard to the provisions of Clause 1 of Article 30 of the Law and Article 23 of these Regulations.

¹¹ Article 22/3 of Regulation No. 33 of 2020

¹² Article 22/3 of Regulation No. 33 of 2020.

¹³ Article 25/1 of Regulation No. 33 of 2020.

¹⁴ Article 63/1 of Regulation No. 57 of 2018 and amended by Regulation No. 33 of 2020.

¹⁵ Article 63/2 of Regulation No. 57 of 2018 and amended by Regulation No. 33 of 2020.

The performance order may be appealed, subject to Clause 1 of Article 66, which exceeds the Court of First Instance's final quorum within fifteen days per the procedures established for appealing judgment. The court shall decide on an appeal within one week of the appeal being registered, and it may set a session to consider the matter if necessary. The rules for expedited enforcement shall apply to the payment order in accordance with the provisions of Law or Regulation No. 67 of the Regulations. If the creditor, according to the provisions of Article 62 of these Regulations, wants to seize something for the debtor with a third party, the normal procedures to sign the seizure shall be followed [20]. It has to be noted that the compensation claim arising from the tortious liability harmful act shall be forfeited with the lapse of three years from the day the injured became aware of the occurrence of the damage and the person responsible for the illegal activities as well [21]. However, if the criminal case is still heard, the guarantee claim expires fifteen years after the act occurred.

Compensation may be by restoring the situation to what it was before the tortious liability occurred and removing the damage. This is the best way to compensate or guarantee. For a doctor who makes a mistake in performing the artificial insemination process, and his mistake results in a miscarriage of the wife, the judge can compel the doctor to perform a new insemination process for the wife. It is also required that the judgment for compensation in kind be possible; otherwise, the judge will award monetary compensation. For example, specific performance is impossible if withdrawing ovaries from the wife

advance to the medical liability committees before resorting to the judiciary. The lesson in assessing the value of the lawsuit is not as the Egyptian legislator went to the time of injury and the occurrence of damage, but rather the lesson according to the UAE legislator at the time of the verdict or its pronouncement, considering that the judgment is considered revealing the right to compensation and not the originator of it, and that until the verdict is issued, the right to compensation is.

²⁰Article 64 of the Regulations No. 57 of 2018 and amended by Regulation No. 33 of 2020.

²¹Article 62 of this regulation, as amended by Regulation No. 33 of 2020, states that " an exception to the general rules in filing a lawsuit, starting to follow the provisions contained in the following articles, if the creditor's right is fixed in writing-electronically or in document - and in the case of performance, and all that is claimed by a debt of money is a certain amount or movable of a certain type and amount. The provisions of the preceding paragraph shall be followed if the financial claim is replaced by the enforcement of a commercial contract, or the right holder is a creditor of a commercial paper ".

resulted in uterine rupturing or cutting the ovulation channels.

The Higher Committee for Medical Liability is exclusively competent under Article (16) of Federal Law No. (10) of 2008 to determine the presence or absence of a medical error. For this purpose, it has the right to form specialized sub-committees among its members or others to express a technical opinion on a specific issue. It is an independent body not affiliated with the Ministry of Health. It consists of nine consultant doctors in various specialties. It is a high medical committee entrusted by the Medical Liability Law with detecting medical errors and deciding their severity. It is a technical committee composed of doctors from various medical specialties.

The jurisdiction of the Higher Committee for Medical Liability is limited to what is referred to it by the competent court. It is discretionary for these authorities and not obligatory if they consider that there is a technical issue that they cannot judge or that it requires special expertise. Therefore, the trial court is not obligated to refer everything presented regarding the doctors' errors to this committee. Still, it has the discretion in that it considers the evaluation of the referral to this committee dependent on its evaluation. The committee has a technical notion in which the opinion is referenced by a competent court which must judge in accordance with what was decided by Law 10/2008.

The committee also has the right to convene and decide on the required reports without summoning all the parties to the litigation, especially the doctor. In this regard, the Court of Cassation acknowledges that: Because the expert did not invite the litigants before starting work, his report was invalid according to Article 81 of the Evidence Law. There is no reason to invite the litigants to attend before him, such as delegating the forensic doctor to sign a medical examination for the aggrieved or injured patient [22]. So, inviting the patient or injured to be medically examined without the doctor is sufficient. Also, the committee must draw up a justified report for the investigated case, so it is authorized to invite to attend whomever it deems necessary to direct the question to or hear his testimony [23]. It also has the right to review what it deems appropriate of papers and documents within the limits of the goals it seeks, and it is also free from the application of Article 81 of the Civil Procedures Law because it is subject to the law of medical responsibility

²² Munir Hanna, *The General Theory of Medical Liability in Civil Legislation and Claims for Compensation Arising from It* (Alexandria: Dar al-Fikr Al- Arabee, 2011).

²³ Ashraf Jaber, *Civil Liability Insurance for Doctors* (Cairo: Dar Al-Nahda Al-Arabiya, 1999).

and the decision of the Council of Ministers to form the committee.

It has to be noted that the court is not obligated to rule in the light of the committee's report; it may take or leave what it is comfortable with from the experts' reports submitted to it [24]. Although the trial court may be independent in evaluating the report of the delegated expert in the case, it must, pursuant to Article 90 of the Evidence Law, if it decides on the case contrary to his opinion, indicate the reasons that led it to not take this opinion in whole or in part.

Finally, reconciliation between the aggrieved party and the erring doctor may be made in accordance with the provisions of the Civil Transactions Law (Articles 772 to 741) [25], whether it is done inside or outside the Judicial Council. The two parties may also agree to settle the dispute between them over the contractual medical liability through the rest of the alternative means of the judiciary, such as negotiations, mediation, conciliation, or arbitration in accordance with Law No. 6 of 2018 UAE, whether these means are traditional or through electronic means. It is permissible for the doctor and the patient to agree in the medical contract between them to exempt the doctor from responsibility in whole or in part, except for serious professional error or fraud. In all cases, the debtor remains liable for fraud or serious error. Also, every condition providing an exemption from liability arising from the harmful act (Article 296 UAE Civil Transactions) shall be null and void.

3. Wallaeyya and the Executive Protection of the Rights of the Victim of Medical Errors

A person who is injured or affected by medical errors resorts to the *Wallaeyya* judge to protect his rights arising from them. After obtaining an executive document against the erring doctor, he resorts to the execution judge or the execution department when the debtor doctor or the hospital affiliated with him does not voluntarily implement it. These two methods will be the subject of detailed research in two separate branches.

²⁴ Ismail Khraisat, "The Doctor's Civil Responsibility Resulting from Artificial Vaccination" (University of Jordan, 2011).

²⁵ Article 722 of the UAE Civil Code stipulates that "conciliation is a contract that removes the dispute and ends the dispute between the conciliators by mutual consent." Article 741 of the same law states that "With due regard to what is stated in Articles 734 and 735, the conciliation shall settle the dispute permanently, and the plaintiff's lawsuit shall not be heard after him, even if he establishes evidence on what he claimed or on the previous acknowledgment of the denial."

3.1 Wallaeyya Protection of the Rights of the Victim of Medical Errors

The injured in a medical error resorts to requesting *Wallaeyya* protection of his rights towards the doctor. This mean of protection does not exist in the Common Law System. It means that the judge is a representative of the governor in maintaining public order in the state and therefore has the right to take temporary decisions without summoning the defendant, provided that they do not resolve the issue of the dispute [26].

The jurisdiction to issue orders is for the judge because he is one of the guardians - delegated by the ruler in the state - and he has - in this capacity - the right to order, which is matched - on the part of people - with the duty of obedience or loyalty. When the judge does this, he establishes and directs the affairs of the people and orders the taking of measures or control measures that he deems necessary to safeguard their interests, respect their conditions and secure their positions, not based on applying specific provisions in the law for each case - but based on appropriateness and assessment of the resulting circumstances, until the dispute is brought to the substantive judiciary. These orders are temporary and do not aim to settle the dispute or determine the right. Still, rather it is a measure of control or reservation that the judges take until the issue of the dispute is decided upon. Withdraw it if it is based on false information from its provider or if the circumstances that led to its issuance have changed. This matter is recorded in a special record or the minutes of the session (Article 59/2 of the Regulations), and this matter does not have the validity of the res judicata. It does not exhaust the judge's jurisdiction, and he can cancel or amend it as he sees fit [27].

Whoever looks into *Walleeyya* issues in the UAE is not a specialized judge, but the judge of urgent matters is the one who does this in the Court of First Instance or outside. This is to say that the judge of urgent matters in the Emirates performs two functions: looking into urgent and *Walleeyya* matters. The latter is resorted to by a petition to the judge and not by a declaration, so he issues an order on the petition subject to the petition system stipulated in the UAE Civil Procedures Law [28]. Therefore, the injured person can resort to a petition requesting, for example, permission to buy medicines on his account and then refer back to the doctor with the amount paid or authorization for him to perform the surgery by another doctor at the expense of the erring doctor, or order an inspection or reservation of medical materials. The petition may be

²⁶ Ahmed, *The Principles of Litigation in Civil and Commercial Cases*.

²⁷ Articles 59 to 61 of the Regulations No. 57 of 2018 and amended by Regulation No. 33 of 2020.

²⁸ Ahmed, *The Principles of Litigation in Civil and Commercial Cases*.

submitted on paper or electronically according to the data contained in the aforementioned regulation [29]. The judge or the head of the circuit, as the case may be, issues his order in writing on one of the two copies of the petition or electronically on the day following its submission at most. It is not necessary to state the reasons on which the order is based unless it contradicts an order previously issued. Then the reasons that necessitated the issuance of the new order must be stated; otherwise, it will be invalid.

Thus, the *Wallaeyya* request differs from the urgent request in that the first is resorted to by the injured person with a petition and not by a declaration [30]. The judge shall consider it in his privacy without summoning or confronting the opponents and without defense, discussion, or confrontation. Then the judge marks the petition with what he deems appropriate to respond to the request, reject it, answer part of it, or all of that without reasons in a non-public session. The mark to which the petition is appended is not considered a judgment but rather an order issued by the temporary judge based on his jurisdictional authority. While in the urgent request, the other party is notified and passes through sessions with confrontation and discussion that end with a reasoned ruling.

The order is executed by a letter issued by the judge or the head of the circuit to the concerned authority. The petition is kept in the file without an announcement or an executive form. Suppose the implementation is impossible for a reason attributed to a private natural or legal person. In that case, the judge may sentence him to a fine of not less than one thousand dirhams and not more than ten thousand dirhams for each day of delay in implementation. This is done by a reasoned decision that cannot be appealed. The judge or the head of the circuit may exempt the sentenced party from the fine in whole or in part if he gives an acceptable excuse after the execution has been completed. This fine judgment may be executed by its issuer after notifying the sentenced person [31].

The order may also be complained against, in the event of its rejection or issuance, or by those concerned to the judge who issued it or the competent court, unless the law or these regulations stipulate otherwise. The establishment of the original lawsuit before the court does not prevent the complaint to be considered. The complaint must be justified and submitted without specifying a date, independently or in accordance with the original action, by the procedures in which the interlocutory requests are filed. In the

complaint, it is judged to confirm, amend, or cancel the order. This judgment is subject to contestation in the appeal only unless the Court of Appeal issued the judgment in the complaint [32]. The order on a petition is valid for legal urgent execution without a guarantee.

Complaining about the order does not stop its implementation; the court or the judge may order a temporary stay of execution in accordance with the provisions of Article 84 of these Regulations, i.e., upon the request of the concerned party to suspend the enforcement if they fear that serious harm will occur from the implementation. When the court orders a stay of execution, it may require the submission of a guarantee or order what it deems necessary to protect the right of the person sentenced.

3.2 Executive Protection for Injuries caused by Medical Errors

If the injured person obtains an executive document for his financial right, he can resort to the execution judge at the headquarters of the Court of First Instance to compel the doctor if he does not implement it with his consent. The execution judge orders the forced execution by seizing the doctor's money, then selling it by public auction and distributing the proceeds to the creditors.

Therefore, executive protection is permission for the injured to resort to the execution judge to obtain his right from the doctor in the event of his refusal to pay voluntarily. The execution judge, at the request of the injured, who has an executive document attached to the request, takes direct or indirect forced execution procedures for the injured person to obtain his financial right from the doctor, either directly or indirectly [33].

4. CONCLUSION

This study concluded that the legislative amendments led to a multiplicity of forms of protection granted to the aggrieved person; it has become embodied in four forms: urgent, objective, *Wallaeyya*, and executive orders. These amendments also granted the judge great powers in dealing with urgent cases or cases requiring direct intervention from him without the need to summon the defendant, without affecting his right to reconsider these temporary decisions in his final judgment.

Finally, this research recommended amending the text of Article 18, Law No. 4 of 2016, and deleting the restriction on the right to litigate. It is also recommended to amend the jurisdiction of the medical

²⁹ Article 59/1 of the Regulations No. 57 of 2018 and amended by Regulation No. 33 of 2020.

³⁰ Ahmed, *The Principles of Litigation in Civil and Commercial Cases*.

³¹ Article 59/3 and 59/4 of the Regulation No. 57 of 2018 and amended by Regulation No. 33 of 2020.

³² For more details see; Kholoud Abdel Ghani, "Medical Error: A Study in the UAE Medical Liability Law for the Year 2016" (College of law, United Arab Emirates University, 2017).

³³ Ahmed, *The Principles of Litigation in Civil and Commercial Cases*.

committee to be an administrative committee with judicial jurisdiction that can be resorted to before resorting to the judiciary to reduce the work before the regular courts so that its decisions can be objected to before the regular courts. The formation of the Higher Committee for Medical Liability should include a legal expert familiar with medical law to evaluate the conditions of the medical liability. Finally, it is recommended to establish a specialized department in the courts of first- degree (partial-total) to judge medical liability disputes.

REFERENCES

- Abdel Ghani, Kholoud. "Medical Error: A Study in the UAE Medical Liability Law for the Year 2016." College of law, United Arab Emirates University, 2017.
- Ahmed, Sayed. *The Principles of Litigation in Civil and Commercial Cases*. Cairo: Dar Al-Nahda Al-Arabiya, 2009.
- Hanna, Munir. *The General Theory of Medical Liability in Civil Legislation and Claims for Compensation Arising from It*. Alexandria: Dar al-Fikr Al- Arabee, 2011.
- Jaber, Ashraf. *Civil Liability Insurance for Doctors*. Cairo: Dar Al-Nahda Al-Arabiya, 1999.
- Khraisat, Ismail. "The Doctor's Civil Responsibility Resulting from Artificial Vaccination." University of Jordan, 2011.
- Peyrou, B., Jean-Jacques, V., & Arthur, A. (2019). Artificial Intelligence and Health Care. *Digital Medicine*, 31, 29–40. https://doi.org/10.1007/978-3-319-98216-8_3.
- Mary, L., & Tyler, D. W. (2020). Telemedicine and Malpractice: Creating Uniformity at the National Level. *William & Mary Law Review*, 61(5), 1505–37.

Cite This Article: Mahmoud Fayyad & Sayed Ahmad (2023). Procedural Protection from Damages Resulting from Medical Errors in the UAE. *East African Scholars J Edu Humanit Lit*, 6(3), 149-156.
