

Types of medical error and its forms

Medical error is divided into two types: material error and professional error, and on the basis of these two sections the doctor's responsibility is determined (1) .

Jurisprudence has divided the doctor's work while practicing his work into two types of work:

A) Physical works that are not related to the art of the profession.

b) Medical works related to the art of the profession.

It follows that the doctor, while performing the work assigned to him, may commit two types of errors: material error, which is outside the profession (2) , he professional error, which is at the core of his profession, is determined by reference to the scientific and technical principles and rules of the medical profession. Egyptian jurisprudence differentiated between professional error and material error, and decided that the doctor is responsible for his serious professional error, not the minor one, and subjected his error, which is not related to the principles of the profession, to the general rules regarding responsibility for the error (3).

And a side of the French jurisprudence goes to the necessity of distinguishing between deeds or deeds that are issued by any ordinary person and there is no matter in which the description of the doctor, which is "material deeds", and the medical works that are issued by the one who is responsible for On the work Material only, not artistic works. However, the principle of the doctor's responsibility for his technical work has not been generalized, since in the medical profession there are basic principles and established scientific facts that are unanimously agreed upon and recognized, and violating them or making a mistake in applying them is considered a serious mistake that is comparable to bad faith in that it is not permissible to be forgiven and that it inevitably leads to responsibility. However, on the other hand, they said that the doctor is responsible for every error in his physical work, just as he is responsible for his technical work if he makes a serious error in it. These jurists relied on a ruling issued by the French Court of Cassation on July 21, 1862, which stated: "These two articles (1382, 1383 French Civil) established a general rule, which is the rule of the necessity of attributing fault and compensating for damage that arises from human action, or even from mere negligence or failure to do so." His insight, and that this rule applies to all people, regardless of their position and industry, without exception, except in cases specifically stipulated by the law, and there is no exception of this kind with regard to doctors, and that there is no doubt that the court requires

(1) Dr. Hassan Zaki Al-Ibrashi: Criminal Liability of Doctors, University Press House, Egypt, 1989, Dr. Saleh bin Ghanem Al-Sadlan: previous reference, p. 39, Dr. Sharif Ahmed Al-Tabbakh: Medical Error Crimes and Compensation for Them, previous reference, p. 14 et seq. .

(2) Dr. Ahmed Mahmoud Saad: previous reference, p. 373.

(3) Dr. Hosseini Ibrahim Ahmed: previous reference, p. 282.

The judge should not delve into examining medical theories and methods, and that there may be general rules dictated by good foresight and sound taste, which must be observed in every profession, and that doctors in this regard are subject to public law like other people”.

The jurists concluded from this ruling that it distinguished between technical works, so judges were forbidden from delving into them, and ordinary works, so doctors were treated like all other people (4).

Some people explain their position rejecting this distinction by saying: “The distinction between material error and technical error in practicing the profession, in addition to being inaccurate in some cases, is unjustified. Rather, the doctor or other client is in need of protection from technical errors. What must be taken into consideration is The artistic man is responsible for his professional error, just as he is responsible for his ordinary error, so he is asked about this or that, even for a minor error. What has introduced confusion regarding professional error is that the standard by which this error is measured is also an artistic standard - which is the standard of a person from among artistic men - which is not permissible. He may make a mistake in what the established principles of art are, and the established principles of art are what are no longer a subject of discussion among the men of this art. Rather, the majority of them accept them and do not accept controversy over them. Therefore, departing from these established principles seems an unforgivable mistake. An artistic error is essentially almost... To come into contact with a grave error and be mixed with it, but it must be noted that deviating from these established principles - whether this departure is serious or minor - is considered a professional error that requires responsibility " (5) .

We, in turn, support this jurisprudential opinion. This is because the principle that considers that only a serious mistake is responsible, not a small mistake, but this opinion has become a thing of the past, and it cannot be relied upon in light of modern developments that have included all aspects of life, including medical inventions, and in light of the difficulties in distinguishing between the two types. The error, due to the absence of legislative texts that distinguish between a minor error and a serious error.

To distinguish between these two types of errors - the material error and the doctor’s professional error - we present them in two sections, the first: the material error, and the second: the doctor’s professional error.

(4) Referenced to Dr. Hosseini Ibrahim Ahmed: previous reference, p. 283.

(5) Dr. Al-Sanhouri: The Mediator in Explanation of Civil Law, Part One, The Theory of Commitment in General, Sources of Commitment, Arab Heritage Revival House, Beirut, 1952, paragraph 548, p. 823.

See also: Dr. Suleiman Markus, The Doctor’s Responsibility and the Hospital Administration’s Responsibility, Journal of Law and Economics, 1937, p. 155 et seq.

Material error

It is an error that results from a breach of the general duties of caution and caution that everyone, including the doctor, is obligated to do within the scope of his work. Some believe that : “ Breach of the obligation imposed on all people to take the necessary care when carrying out a certain activity or performing a certain act, in order to avoid the unlawful result that this behavior may lead to, and this error is not subject to the technical aspects of medical science, and is not due to the principles ” recognized therapeutic treatment (6) .

Physical works are those that are issued by an ordinary person and are not related to his professional capacity, and medical physical works are those that are not related to the technical principles of the medical profession, and are issued by a doctor and are not related to his capacity as a doctor (7).

Examples of a material error for which a doctor is accountable include: The doctor performing surgery while intoxicated, or performing surgery while injured, or neglecting to sterilize surgical instruments. Also including: Leaving some instruments in the patient’s body. This is also considered a type of error. The materialism of the doctor: The refusal of a government hospital doctor to treat a patient without justification or to order the removal of a patient from the hospital despite his poor condition or before he has completed his treatment. This also includes the doctor’s failure to observe the rules of hygiene during his work.

Disagreement or controversy does not arise in jurisprudence about holding a doctor accountable for the material error he commits in all its degrees and forms, as is the case with the average person (8) .

Some courts in Egypt differentiate between ordinary doctor error and professional error (9) .

(6) Dr. Saleh bin Ghanem Al-Sadlan: previous reference, p. 39, Dr. Ahmed Mahmoud Saad, previous reference, p. 372, Dr. Mustafa Muhammad Abdel Mohsen, Medical and Pharmaceutical Error, without a publishing house, 2000 edition, p. 45. See also:

Ethan D Grober and John M.A. Bohnen Defining medical error, canadian Journal of surgery, in:
<https://www.ncbi.nlm.nih.gov/pmc/articles/pmc3211566>.

(7) Dr. Alaa El-Din Khamis, previous reference, p. 140.

(8) Dr. Suleiman Markos: The responsibility of the doctor and the responsibility of hospital management, previous reference, p. 157 et seq.

(9) Ruling dated January 26, 1935, Law Journal, vol. 15, issue 6, p. 471.

Professional error

Professional error means the professional's failure to fulfill the special duties imposed on them by their profession. Responsibility for this error is considered a contractual liability if a contract binds the professional to the injured person (10) .

Some believe that : " The deviation of a person who belongs to a specific profession from the principles that govern this profession and restrict its people when practicing it is a violation of a special duty imposed on a limited group of people who belong to a specific profession, such as doctors " (11).

An aspect of jurisprudence in Lebanon defines professional errors committed by professionals while practicing their professions, in which they deviate from customary professional behavior in accordance with established principles (12) , What is meant - in general - is the deviation of a person belonging to a certain profession from the principles that govern this profession and restrict its people when practicing it (13) , t is a breach of a special duty imposed on the category of doctors in our case, and it is related to violating the principles of the medical profession and the rules that govern it. If a doctor violates these rules and principles established in medical science, he is considered to have committed a professional-technical error. Examples of these errors include the doctor making a mistake in diagnosing the patient or in the treatment he administers to him, prescribing an inappropriate medication, not performing medical tests, negligence in monitoring, supervising and following up on the patient, and there are many examples that cannot be enumerated . The professional physician's error is minor in most cases, and may be serious in some cases. A serious error is defined as: "An error resulting from blatant ignorance of the basic principles of medical science, fraud, violation of agreed-upon sound rules, or definite neglect of the duties of the profession " .

(10) Dr. Sharif Ahmed Al-Tabbakh: Medical error crimes and compensation for them, previous reference, p. 14.

(11) Dr. Munir Riad Hanna: previous reference, p. 44, Dr. Hamdi Abdel Rahman, previous reference, p. 18, Dr. Abdel Moneim Muhammad Daoud, the legal responsibility of the doctor, without a publishing house, 1988 edition, p. 18.

(12) Dr. Abdul Latif Al-Husseini: Civil Liability for Professional Errors, previous reference, p. 73.

(13) Dr. Saleh Al-Sadlan: previous reference, p. 40. See also:

jean Penneau, responsabilité du Médecin Dalloz 1996 P. 230.
v.aussi, Mme/Domitille Durval- Arnould La responsabilité civile des Professionnels de santé et des établissements de Sant privés êã lumi laère de la loi du 4 mars 2002, Sur: Courdecassation. Fr.

See in detail: Dr. Asmaa Ismail, previous reference, p. 94.

The connection of the work practiced by the doctor to the principles of medical science and art is the criterion for distinguishing between material errors and technical errors of the doctor. The doctor's error is divided according to the direct connection of his work with the technical principles of the medical profession. If the work is like that, it is artistic. If it does not relate to these principles, it is materialistic. The importance of distinguishing between a doctor's ordinary error and his professional error is due to the fact that the judge may decide on the issue of ordinary errors on his own initiative and based on his discretion. As for deciding on the doctor's professional errors, the judge may not be subject to them, because they are technical issues that are difficult to decide unless the judge seeks help. With technical experience (14) . The American judiciary also differentiated between physical works and technical works. The New York court went on to distinguish between two types of errors in view of the nature of medical work: "(The first type): errors resulting from undertaking administrative work, and the hospital is responsible for these errors because they are administrative works. (The second type): Errors resulting from undertaking medical work. These errors are technical medical work, for which only those who perform them should be held accountable (15) . The Egyptian judiciary believes that : " The doctor's responsibility is subject to general rules whenever the error is confirmed, regardless of its type, whether it is a technical error or non-technical error, serious or minor. Therefore, it is correct to judge the doctor who commits a minor error, even if this error has a clear medical tinge " (16) .

There is a jurisprudential opinion that contradicts this distinction in this regard : " This call to adopt a distinction between an ordinary error and a technical error is a call dictated by the desire of some jurists to prefer one class over another, and it is a call that is no longer acceptable in light of the dominance of democratic ideas and principles that refuse to accept or Approving such special treatment, which entails class or professional privileges, has no place at all, and this is what the French judiciary quickly and fully realized " (17) . Despite the validity of this opinion, we disagree with it in terms of the necessity of this specific division of medical error and the doctor's professional error specifically, despite the ease of distinguishing between the two types of error in some cases, including: the incident of the doctor asking the patient to return early without performing the procedure. Medical

(14) Dr. Hamdi Abdel Rahman Ahmed: The infallibility of the body, previous reference, p. 19.

See also: Dr. Alaa El-Din Khamis, previous reference, p. 143.

(15) See: Dr. Mustafa Adawi, Civil Breach, Tort Liability in American Law, 1994 edition, p. 34.

(16) Egypt Court of Appeal, January 2, 1936, Law, s. 16, q. 334, p. 713.

(17) Dr. Hassan Ali Al-Dhanoun: Al-Mabsoot fi Civil Liability, previous reference, p. 580.

necessary to treat her, despite the availability of all the necessary machines and equipment in the hospital to receive such cases, which resulted in missing the opportunity to perform surgery on her in a timely manner, which caused her some damage (18) .

This also applies to the case where the doctor leaves the hospital immediately after completing the surgery, neglecting to follow up on the patient's condition, which revealed the occurrence of blood bleeding that led to her death (19) ; This is because the judge cannot rule on the responsibility of a doctor, and therefore award compensation to the injured party unless he is able to seek the assistance of expertise of the same rank, qualifications and experience as the doctor to determine the extent of this doctor's responsibility towards the damage resulting from his error on the patient, and thus award appropriate compensation.

This distinction was not established for a long time, as both French and Egyptian jurisprudence abandoned it. The French Court of Cassation ruled that " all errors made by the doctor establish his responsibility without requiring that they reach a certain level of seriousness " (20) , The Egyptian judiciary, in turn, decided that "the doctor who makes a mistake is responsible for the outcome of his mistake without distinguishing between a minor and serious error, nor between technicians and others. As for what the majority of French jurists and their followers have agreed upon, there are few rulings regarding the distinction between a doctor's mistake related to his profession and his violation of the rules " The technical error of medical science, which is expressed in the error of the profession, and the material error related to the doctor violating the rules of precaution required of him when performing his work, and the statement that the doctor should not be held accountable in the event of a professional error except for his grave mistake and not the minor one. This statement was the subject of objections because of the difficulties in distinguishing between the two types of error, and because The text of the law that regulates the responsibility of the wrongdoer for his mistake was general and unrestricted, and did not distinguish between a minor and serious mistake, nor between technicians and others " (21) .

Finally, we conclude that jurisprudence and jurisprudence have established that : " The doctor is responsible for his error, whatever its type, whether it is a technical or material error, serious or minor. A doctor does not enjoy any exception, and the judge must verify the existence of this error, and that this error is It is sufficiently proven for him, and he must seek the advice of experts. If he describes the " doctor's error " that exceeded the permissible number in x-ray sessions as a minor error, then he is responsible for it according to the general rules, and he is responsible for every negligence in his medical conduct that did not occur from a doctor who was attentive to it. His professional level was established in the same external circumstances that surrounded the responsible doctor, and he is also accountable for his ordinary mistake, whatever it may be.

(18) Criminal cassation in Appeal No. 31881 of 69 BC, session of December 20, 2006, Technical Office Group, of 57, p. 1001.

(19) Criminal cassation in Appeal No. 26137 of 67 BC, session of December 18, 2006, Technical Office Group, of 57, p. 984.

(20) Cass. Civ. 1re, 30 Oct. 1963, R. Dalloz 1964, P.81 J.

(21) Alexandria Civil Court ruling, session of December 30, 1943. See also, Dr. Asmaa Ismail, op. cit., p. 97 et seq.

The degree of its seriousness, as failure to transfer the patient to the specialized medical department in a timely manner constitutes a gross error that requires the doctor's responsibility. He is also responsible for his mistake of injecting the patient with an anesthetic without looking at his bottle and verifying whether it was the anesthetic he requested, and the judiciary decided that it must be an error. Clear and fixed, conclusively and not probabilistically " (22) .

Pictures of medical error

We note that the forms of medical error are many and numerous, and are increasing in number due to the multiplicity of relationships between doctors and patients. Therefore, the forms of medical error are many and cannot be limited to (23) , In order to determine the best way to investigate these medical errors, the relationship between the doctor and the patient must be traced from the stage of detection, inspection, and expressing an opinion until the stage of treatment, follow-up, and supervision to which the patient is subjected. Through this, we note that these images are not limitable, and we mention them - but not limited to them. Failure to inform the patient, errors in inspection and examination, prescribing treatment, negligence and negligence, surgical errors, dental prosthetics errors, including: radiology, anesthesia and laboratory errors. There are many others, and we will present the most common and important ones, which are diagnostic errors (the first branch) and treatment errors (the second branch) .

Misdiagnosis

Jurisprudence and jurisprudence have established that a mere error in examining the patient and diagnosing the ailment or disease from which the patient suffers does not raise the doctor's responsibility, unless the doctor's error in diagnosis involves ignorance of the scientific and technical medical principles that are established, stable and recognized in medical sciences. Failure or failure to diagnose The cause of an illness being correctly diagnosed is not in itself evidence of negligence. In order for the doctor to be liable, the patient must prove that the inaccurate and incorrect diagnosis was due to a failure or failure to exercise unacceptable skill and care " (24) .

(22) Dr. Sharif Ahmed Al-Tabbakh: Medical Error Crimes, previous reference, p. 20.

(23) Dr. Asaad Obaid Al-Jumaili: Error in Civil Medical Liability, previous reference, p. 238.

(24) Look:

Leahy Taylor, the Doctor and the Law, second edition, London, MB.BS.DMJ, MRCGP, the medical protection society Limited, London, 1982, P.118.

Referenced to: Dr. Asaad Obaid Al-Jumaili, previous reference, p. 240.

In this regard, the Cairo Court of First Instance stated in its ruling issued on January 27, 2011 that: "An error is every breach of a public legal duty coupled with awareness of the breach of this duty, and it is also a deviation from normal, familiar behavior. If it deviates from this behavior that others expect and they base their actions on... Based on his observance, he made a mistake, and after that, it was intentional or negligent. They are equal in terms of the availability of civil liability" (25).

The doctor's efforts in treating the patient begin with diagnosing the disease, and this stage is preceded by the patient's examination stage, so the doctor begins to know the patient's medical history either through him or through the patient's family and relatives, and this stage is called CVPatient, and then performs the necessary medical examinations and analysis, including biological and clinical examinations, and performs All types of radiology, in order to form the doctor's belief in arriving at a correct diagnosis of the nature of the disease. These examinations include:

First: Pathological chemical examinations or analyses:

There are multiple tests, including clinical chemical tests, as follows:

- 1) Acid phosphatase: Acid phosphatase is taken from blood serum for the purposes of examining prostate cancer, Gaucher's disease, hemolytic diseases, broken blood platelets, Paget's disease, and bone tumors, especially in women.
- 2) Albumin: Albumin is taken from blood serum for the purposes of conducting tests for malnutrition and malabsorption, which causes an increase in this substance. Its increase causes liver disease, kidney disease, thermal burns, cancers during chemotherapy, and hereditary hypoproteinemia.
- 3) Calcium: Calcium is taken from blood serum.

An increase in calcium levels occurs in some cancerous tumors, when the parathyroid glands are hyperactive in sarcoidosis, and when pathologically high vitamin D occurs.

See also: Muhammad Hussein Mansour, *The Responsibility of Physicians and Surgeons*, op. cit., p. 271.

(25) The ruling of the North Cairo Court of First Instance in Case No. 804 of 2007, Circuit (7), Compensation, session of January 27, 2011, a scanned copy of the ruling. The facts of this case are that the patient (...) underwent surgery to remove her right breast as a result of what was revealed by the examination. The pathology revealed the presence of individual, third-degree cancer cells. However, after the surgery, a sample was taken from the part that was removed and analyzed, and it was concluded that there were no cancerous cells at all, and that what the patient is suffering from is nothing more than a chronic chest infection as a result of a fat analysis, which... It led her to hold the pathologist accountable for his error in diagnosing her condition.

Calcium deficiency: occurs in cases of poor activity of the parathyroid glands, vitamin D deficiency, chronic kidney failure, and alcoholics.

Examples of hormone tests include:

4) Alpha Fetoprotein: AlphaFetoprotein (AFP) is taken from blood serum and is used as a detector for some cancers. This hormone is elevated in testicular cancers, liver cancers, and gastrointestinal cancers when there is or is not an outbreak of the liver.

5) Hematology tests

completeBloodcount (CBC) is taken from a whole blood sample. Reason for taking the sample: To examine the number and shape of red and white blood cells and platelets.

6) The rate of sedimentation of red blood cells: The rate increases in cases of infection, inflammation and cancers.

7) Coagulation tests: Bleeding time, a percentage different from the normal percentage indicates a defect in platelet function, and is used in diagnosing Vonwill disease, when there is a decrease in the number of platelets, and with long treatment with aspirin, the bleeding time increases.

There is no doubt that blood tests and the blood transfusion process require a specialized doctor or technician to supervise this process (26) , A doctor or technician may be a worker in a hospital, or he may be a worker in a blood transfusion center. The doctor's responsibility is if he makes a mistake or causes harm to others, because he failed to fulfill his obligation to achieve a result, which is to ensure the safety of the blood transfused to the patient (27) .

8) Tissue and cell examinations: Histopathology & Cytopathology

Example: Breast secretions: To determine the presence of abnormal or cancerous cells, the sample is taken by a cytology technician.

9) Immunology tests: Immunology & Serology

(26) Dr. Hamad Suleiman Al-Zyoud: Civil Liability for Contaminated Blood Transfusion, Dar Al-Nahda Al-Arabiya, Cairo, 2009, p. 268.

(27) Sarah Danon: The Civil Liability of the Doctor, Master's Thesis, Faculty of Law and Political Science, University of Qasid Merbah, Algeria, 2013, p. 55.

Example of insulin antibodies: They are taken from the blood serum, and they are either present or not, and their presence means the presence of type 1 diabetes, and determining their percentage helps in treatment " (28) .

We conclude from the above that laboratory results are subject to errors, and that measured results always differ from real results. If a particular result is re-measured using the same method of work, we will notice a difference, no matter how small, between these results. Therefore, repeating measurements for the same measured values is a necessity in order to Accurate results can be obtained.

The sources of errors in chemical analyzes can be identified through two basic types: "determinate errors" and " indeterminate errors These are often called random errors. Non-specific errors are defined as those errors that cannot be identified and defined, and do not have a measured value. Specific errors contain: Personal errors such as negligence or inability to distinguish colors, as well as mechanical errors and errors resulting from the chosen analysis method " (29) .

Second: Clinical examinations: Physical examination

These are the examinations that the doctor conducts for the patient by looking at the patient and noting his general condition, good or poor, and the pathological signs, such as: skin color, weight estimation, and behavior, using his senses and the power of observation. He may also use simple equipment such as a stethoscope and a blood pressure measuring device, and then Conducting a physical examination by feeling the patient's body, such as: feeling the pulse, moving the limbs, etc (30) .

Supplementary examinations are conducted for the patient according to the type of disease or surgery that will be performed on him. For example, if the surgery is to remove a tumor, a pathological analysis of a sample of the tumor must be performed before and after surgery, and various types of plain or color x-rays must be performed, or an endoscopy must be performed. To examine the internal body systems, such as the digestive system, for example, and the urinary tract, each doctor performs the complementary examinations he needs. While conducting examinations, the doctor must take into account the rules and principles of the profession, and avoid haste and negligence.

(28) Laboratory Tests Guide: Princess Iman Bint Abdullah II Center for Research and Laboratory Sciences, second edition, 2011, pp. 21 et seq.

(29) Muhammad Magdy Abdullah Wasel: Foundations of Analytical Chemistry, Part Two, Dar Al-Fajr for Publishing and Distribution, Egypt, without a year, p. 35 et seq.

(30) English- Arabic Dictionary- LDLP- Libraire Du Liban publishers
Last viewed on 12/27/2016, available on:

<https://ar.wikipedia.org/wiki/فحص>

The doctor's negligence in conducting these examinations may raise his liability, because a mistake in biological and clinical examinations is considered a medical error, as conducting preliminary medical examinations for the patient is necessary before performing surgery or implementing treatment, and the negligence of the surgeon or physician to conduct such necessary biological and clinical examinations for the patient constitutes An error on the part of the doctor is made by his responsibility (31) .

The Court of Appeal When the operation was performed, the patient had an intestinal obstruction that led to her death. When this ruling was appealed in cassation, the court rejected the appeal and upheld the ruling (32).

Third: Radiology tests

Radiology is one of the important scientific discoveries that plays a prominent role in diagnosing and discovering diseases. Despite its effectiveness, its use may lead to some damage due to the incorrect method of using it, or due to the patient's condition and physical conditions. If the patient develops an ulcer as a result of the doctor's negligence in taking the necessary precautions to avoid this danger or exceeding the time required to take the image, he will be responsible (33)

The prevailing tendency is to assume that the doctor made a mistake as soon as damage occurs as a result of the use of x-rays, and this is in view of the great technical progress that science has brought about in this field by improving x-ray devices (34) , Ensure its efficiency and provide it with the necessary capabilities to prevent harm to the human body (35) .

After conducting the previous examinations and analyses, the doctor's efforts begin to diagnose the disease to find out the treatment

(31) See: Dr. Alaa al-Din Khamis, previous reference, p. 158.

(32) Dr. Alaa El-Din Khamis: previous reference, p. 159.

(33) See: Dr. Muhammad Hussein Mansour, Medical Responsibility: Doctor, Surgeon, Dentist, Pharmacist, Nursing, Clinics and Hospitals, Medical Equipment, New University House, Alexandria, 2011, p. 58.

(34) An example of this is: For more, please see the following link:

<https://ar.wikipedia.org/wiki/>

(35) Savatier, Op. Cit., p.47.

See also: Dr. Muhammad Hussein Mansour, previous reference, p. 59.

appropriate for his condition, and this stage is considered one of the most important and dangerous of the various stages of treatment, as the doctor tries to identify the nature of the disease, its degree of seriousness, its history and development, and to know the patient's general health condition, any history of illness, if any, and genetic factors, if any as well, and then decides based on what he has collected. From all of this, the type of disease that the patient suffers from and the stage he has reached, and the doctor should not be hasty or negligent in this matter, and should try to apply his knowledge and the rules of his art according to what science and medical art have reached (36) .

The doctor should also not be embarrassed to consult other specialists if he cannot be certain of the nature of this disease, or if he is confused about something. He is also committed to resorting to all scientific methods, such as analyses, examinations, and modern devices whenever that is necessary to verify the condition and the correctness of his assessment. If he neglects, then he does so. He will be responsible for all damages resulting from his error in diagnosis.

The doctor's responsibility for an error in diagnosis arises if the error constitutes clear ignorance of the basic principles agreed upon in the principles of the medical profession, or if the error involves clear negligence on the part of the doctor that is inconsistent with what has been practiced in such cases. The doctor is also liable for the error in diagnosis. If he uses outdated means and methods that are no longer recognized, or if he does not consult his colleagues who are more specialized, experienced and knowledgeable, the same applies if he insists on his opinion despite his discovering through the opinions of his colleagues the nature of his error in diagnosis . The court convicted the doctor who traveled after performing the operation and left the patient in the care of colleagues who found out that the diagnosis was wrong. Upon his return, he did not share the opinion of the colleagues. It should be noted that diagnosis is a purely technical issue that the judge cannot decide on without consulting experts. Some also believe that a mistake in diagnosis does not necessarily constitute a medical error, unless it is made out of gross ignorance, or negligence in the examination, such as if it is done in a superficial, quick, and incomplete manner (37) .

However, a misdiagnosis results in a medical error. Its natural consequence is the prescription of inappropriate treatment, the possibility of exacerbation of the disease, and the possibility of exposing the patient to the loss of his life (38) .

In application of this, the French Court of Cassation ruled on 12/14/1965 that the Court of Appeal, after carefully reviewing the experts' opinions and stating that the doctor's errors may be proven once and for all, concluded from the documents submitted to it that there was enough evidence to say that the child's disability was a result

(36) Dr. Muhammad Faiq Al-Jawhari: p. 394 et seq. Referenced to: Dr. Sharif Al-Tabbakh, previous reference, p. 37.

See also: Dr. Muhammad Hussein Mansour: previous reference, p. 48, Dr. Alaa al-Din Khamis, previous reference, p. 162.

(37) Dr. Sharif Al-Tabbakh: previous reference, pp. 38, 39, Dr. Muhammad Hussein Mansour, Medical Liability, previous reference, pp. 48 et seq.

(38) Dr. Al-Sayyid Muhammad Al-Sayyid Imran: The physician's commitment to respect scientific data, Faculty of Law, Alexandria University, 1992, p. 40.

For the error attributed to the doctor, the facts of this case are summarized in that: "A doctor treated a child for a fracture he sustained as a result of a fall, and the doctor made a mistake in the diagnosis, and thus in the treatment, and this matter became clear after the sick child was presented to several other doctors, and when the liability claim was considered " Which was filed against the doctor, the court of first instance referred the matter to an expert, and the court concluded, after reviewing the expert's report, that the doctor had committed an error in the diagnosis that led to an error in the treatment to be followed " (39) .

But the French judiciary did not settle on this situation, so it held that a mere error in diagnosis does not raise the doctor's responsibility. Medical error in the field of diagnosis is not every breach of the doctor's obligation to make a correct diagnosis, whether minor or serious. The error in diagnosis that raises the doctor's responsibility is only the apparent error. The obvious (40).

In application of this, the courts in France ruled that: "A mistake in diagnosing a disease is not considered an error that necessitates the doctor's responsibility, except that the matter is different if the mistake was inexcusable " (41) , and the Lyon court also ruled that: " A mistake in diagnosis is not in itself considered a punishable criminal error " (42) .

Finally, the Rouen Court concluded: "What is meant by forgivable scientific error in a case, in which the dispute was related to a doctor who confused pregnancy with fibroid tumor, on April 21, 1923, and the facts of this case are summarized in that a woman complained to a doctor about pain in her abdomen, so he examined her and decided She suffers from a fibroid that must be removed immediately.

While the operation was being performed, he appeared to be removing the fibroid tumor, which he claimed was a mistake in the diagnosis, and that the woman was pregnant and did not have a tumor, so he immediately proceeded to cut open her abdomen and extract her fetus alive. But on the evening of the same day, the woman suffered from bloody bleeding, accompanied by complications that claimed her life. The court decided that the error in diagnosis was what led to a surgical operation that killed the woman, and this does not in itself necessitate the responsibility of the doctor or surgeon, because it is certain that it is due to the difficulty of diagnosis and the inability to reach the truth " (43).

(39) Dr. Hamdi Abdel Rahman: previous reference, p. 40.

(40) Dr. Alaa El-Din Khamis: previous reference, p. 165.

(41) Paris, 19 mars 1971: J.C.P. 1975. 18046.

(42) Lyon, 1 Dec 1981: D. 1982. I. p. 276.

See also: Dr. Suhail Sweis, previous reference, p. 115.

(43) Dr. Alaa El-Din Khamis: previous reference, p. 165.

The truth is that what the French judiciary has decided in this regard cannot be said at the present time, given the development of medical art and the emergence of modern and advanced devices that have a great impact in detecting diseases and diagnosing them correctly. Therefore, the doctor must be held responsible if he makes a mistake in the diagnosis. An example of this in our case is the recent decision of the Rouen Court, as the doctor could have diagnosed the patient's condition with complete ease using the Ultra Sound imaging device (44) , He discovers that the patient is pregnant and does not have fibroid tumor as he thought.

One of the applications of the English judiciary is that: If an error in diagnosis occurs in good faith during treatment, the doctor's responsibility does not arise, and the doctor's error in diagnosis is presumed to be negligence, and to negate this presumption, the dispute must be referred to an expert to determine whether there was negligence on the part of the doctor or not. For the doctor to be freed from responsibility, certain conditions approved by the Anglo-Saxon judiciary must be met. These conditions are:

- 1 -The doctor must possess a degree of skill and knowledge that is usually possessed by other doctors practicing the same specialty.
- 2 -The doctor must exert his effort and care in the diagnosis process.
- 3- The doctor must carry out and carry out care and treatment in accordance with the honest belief that what he did was correct in the circumstances known to him at the time (45) .

Bad information is also one of the most important reasons that lead to error in diagnosis. For example, X-rays are not taken in the appropriate manner, and doctors have learned not to accept bad information, and yet some of them do so sometimes. For example, in the coronary angiography process that used Anyone looking at it can be sure whether the patient actually has coronary artery disease

(44) (Ultra Sound): It is an ultrasound imaging device. This device is used to obtain an image of the child before its birth, and to determine how the pregnancy is progressing. This device is also used to diagnose some types of birth defects, such as spinal cord anomalies, and this device works remotely By directing very high-pitched sound waves towards the tissues in the abdomen, for example, then these waves are bounced and translated visually into a drawing of illuminated areas, and these waves create an image on the screen.

See the following link: entitled: (Ultrasound imaging in pregnancy):

<https://www.medlineplus.gov/ultrasound.html>

(45) by Grad Wohl: Forensic Medicine, p. 422.

See: Dr. Asaad Obaid Al-Jumaili, previous reference, p. 256.

Or not, and doctors should not accept this type of (bad information), because it could lead to a huge difference, and thus make an error in the diagnosis process.

We conclude from the above that diagnosis is a thorny and complex task. Points of view differ among doctors, despite the availability of modern devices and equipment that help in accurate diagnosis, as the doctor finds himself in a thorny situation if the symptoms of the disease are not clear in a way that is difficult to diagnose, especially since the symptoms of the disease are sometimes not clear, and the symptoms of the disease are not clear in a way that is impossible to diagnose. The disease does not appear in reality as a literal expression of what is found in scientific books, and the diseases are very similar to two or more diseases at the same time, for example: (the symptoms experienced by the patient who suffers from irritable bowel syndrome, and the symptoms experienced by the patient with heart disease and angina). bra

However, the doctor will be held accountable if evidence is established that the error he committed could have been avoided if he had resorted to another method of examination that does not carry any harm or danger to the patient. Likewise, the doctor is exposed to responsibility if he ignores the basic principles that the science of the causes of diseases requires of him (46) .

Error in treatment

The treatment stage constitutes the middle stage of the recovery stages, and since this stage is so important, it must receive a lot of care and attention, as it is the effective place and practical application of what the diagnosis has established. Since human nature differs from one body to another in terms of its ability to heal and its speed, the difference between young and old, weak and strong, and in the extent of resistance and endurance, it was necessary for the doctor to take into account the patient's structure, health condition, and degree of endurance and resistance.

This is what the French courts said in their decision issued by the Court of Saint-Cantin, when they said: "The doctor is considered at fault if he orders a treatment that does not take into account the patient's structure, age, strength of resistance, and degree of tolerance to the toxic substances that are presented to him " (47).

(46) Dr. Hassan Ali Al-Dhanoun: Considerations on Medical Liability, paragraph 66, p. 40.

Referred to by: Dr. Asaad Obaid Al-Jumaili, previous reference, p. 135.

(47) M. Bassam Mohtaseb Billah: Civil and Criminal Medical Liability between Theory and Practice, Dar Al-Iman, first edition, 1984, pp. 150-152. See also: Dr. Jihad Muhammad Al-Jarrah, Civil Liability of the Medical Team in accordance with the Provisions of Jordanian Medical Legislation, Amman University for Postgraduate Studies, 2006, p. 100.

This stage begins after diagnosing the disease. The doctor prescribes the medicine and determines the appropriate method for taking it. He is not committed to a specific result, such as the patient's recovery. Rather, all he has to do is exercise due diligence in choosing the appropriate medicine for the patient. To do so, he may consult specialists if he finds himself facing a condition that is beyond his scientific level (48) .

A part of jurisprudence defines treatment as: “ the means chosen by the doctor, which leads to recovery from the disease, reducing its dangers, or alleviating the pain resulting from it, whether by alleviating it or eliminating it ” (49) .

It is clear from this definition that the purpose and goal of treatment is to achieve recovery or reduce and alleviate the patient's pain. Some people criticize this definition because it should have included the quality of the person performing the treatment, the presence of the patient's satisfaction, and that the treatment should be in accordance with recognized medical principles (50) .

It is the doctor's duty to balance the risks of the disease with the risks of treatment. If the disease is mild and there is no danger from it, it is better to use harmless medications. However, if the patient's condition is severe and in its advanced stages, the doctor has the right to use any method to save him, regardless of the risk of treatment. The need to consult other specialists, as we mentioned previously.

The doctor must be careful and vigilant when prescribing and writing the medicine, so that this medicine does not affect other diseases or interfere with them, and thus cause harm that may be more serious than the disease to be treated. It is not permissible to give cortisone derivatives or vesetyl biotazone to a joint patient if he suffers from a stomach ulcer or high blood pressure. The doctor must alert the patient to any side effects or any risks of the drug to be taken, and monitor the patient during the period of taking the drug (51).

We conclude from the above that when choosing treatment the following matters should be taken into account: “The goal of treatment is to preserve and restore health as much as possible, and the doctor should not aim in his work simply to remove the symptoms of the disease without considering the consequences, and if

(48) Dr. Sharif Ahmed Al-Tabbakh: Previous reference, p. 47.

(49) Dr. Osama Abdullah Qayed: Criminal liability of doctors, previous reference, F (36), p. 86.

(50) Dr. Asaad Obaid Al-Jumaili: previous reference, p. 293.

(51) Al-Hakim Raji Abbas Al-Tikriti: Professional Behavior of Doctors, Dar Al-Tarbiyah for Printing and Publishing, Baghdad, third edition, 1987, p. 225, Dr. Suhail Suwais, previous reference, p. 116.

The disease cannot be treated, the doctor refrains from treatment, and finally, treatment must be done in the easiest and easiest way, so one should not move from using the usual simple treatment to complex treatment unless the effect of the first is lost ” (52) .

After verifying that a medical error occurred, as previously explained, whether it was an error in diagnosis or an error in treatment, an important matter must be clarified in order for the doctor to be held contractually liable for the actions of his assistants. This matter depends on the type of obligation that each contracting party has with the patient, and we exclude the treating physician’s responsibility in He has his own clinic for this condition. This responsibility arises in the private hospital, where this obligation is determined according to who is the party that chose the hospital to receive treatment there and contracted with it. If the doctor is the one who chose the (private) hospital for treatment, then the latter is the guarantor of all work related to the treatment from its beginning to its end, including The actions carried out by his assistants or substitutes, and therefore the doctor’s responsibility for the actions of others is fulfilled here. However, if the patient is the one who chose the private hospital for treatment, the treating physician’s responsibility is only for his personal error that he committed during the therapeutic intervention, and the responsibility for the actions of the assistants in this case falls on the hospital, and this is what is imposed by the general rules of contractual liability About the actions of others.

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(52) Dr. Ahmed Al-Saeed: Scientific progress and diligence in the medical field, Journal of Law and Economics, Year 55, 1985, p. 8.

