

Criminal Liability Of Hospitals For Physician Error

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Abstract

Hospitals of both types, whether public or private, bear criminal and civil responsibility when the doctor commits a medical error, especially if this mistake leads to the death of the patient.

There are many trends in determining the criminal and civil liability of a legal person. One of them sees his responsibility as the Jordanian law, as Iraqi and Emirati law considers that this responsibility is not fulfilled. Therefore, all existing laws must be activated and new laws should be introduced to tighten control over hospitals, especially private hospitals, to reduce the error of doctors inside those hospitals.

keywords: Criminal liability, Civil liability, Public hospitals, Private hospitals, Doctor's mistake, Legal persons.

Introduction

There is no doubt that there are responsibilities on the shoulders of doctors for their mistakes during operations, as they work for their own account in most cases, but what about the extent to which the hospitals in which they work bear responsibility as a result of their mistakes, and for that we must differentiate between public hospitals and private hospitals, because public hospitals are public interests, their funds are public funds, their employees are public employees, and the bodies that manage them are administrative bodies, so their responsibility is affected by the rules of public law.

On the contrary, private hospitals, although they are recognized as legal personality, and even if placed under the auspices of the State, remain a private institution that is not integrated into the administration or one of its branches, as its funds are private funds, its employees are private employees and the bodies that manage it are private bodies, and therefore their responsibility is directly subject to the provisions of private law. But it arises, to what extent are hospitals responsible for the doctor's fault and the basis for this responsibility? Is the responsibility of the hospital in this case administrative, criminal or civil? What kind of penalties are imposed on hospitals?

Accordingly, this topic will be addressed through two requirements as follows:

The first requirement: the legal basis for the establishment of criminal responsibility of legal persons.

The second requirement: the responsibility of public and private hospitals for the doctor's error.

First Requirement

The legal basis for the establishment of criminal responsibility of legal persons

The natural person is criminally responsible mainly for the crimes committed, and the interpretation of this is on the one hand that the criminal law does not direct its orders and prohibitions except to those who are able to understand and abide by it, which is the human being, and on the other hand, it is not criminally responsible except for those who commit the crime, and the crime is not complete unless all its elements are available, including the moral element, which is based only on a legally considered will, that is, distinctive, aware and chosen, and these are available only to humans and this rule is considered a basic principle in felony legislation.

It should be noted that the liability of legal persons(1), Criminally, it currently represents an important point in the development of criminal law and jurisprudence, because this criminal responsibility of legal persons is the result of the changes imposed by the progress of civilization that covered all aspects of social and economic life. (2) that the basis for the accountability of the legal person is a path of controversy and disagreement between jurisprudence,(3). It is agreed in jurisprudence and jurisprudence that legal persons are civilly liable for their acts that cause damage to others.(4), But it is the criminal responsibility of these persons that has caused great controversy in jurisprudence.(5), Two trends have emerged: First, it is believed that these people cannot be held criminally accountable, and this is the old trend,

The second trend sees the need to recognize this responsibility and this is the new trend. Accordingly, we will address these trends through two sections:

Subchapter I: The inadmissibility of criminal accountability of the legal person.

Subchapter II: The permissibility of holding the legal person criminally accountable.

Section I

Inadmissibility of criminal accountability of a legal person

Proponents of this trend reject the criminal accountability of the legal person for the crimes committed by him, by his representatives, in the course of carrying out his work, and argue that the only one who is punished in this case is the representative of the legal person for the crimes he commits.

In their view, a legal person does not really exist, as it is merely a legal presumption made by the legislator.(6), Therefore, the lack of management and discrimination of the legal person makes it impossible to attribute the crime to him, and therefore the inability to impose punishment on him.(7), It cannot be said that the commission of crimes falls within this end, in addition to that the imposition of punishment on him will lead to injury to the natural persons constituting him, without distinguishing between those whose will tended to commit the crime, and those who did not want it, and this contradicts the principle of the personality of punishment, which stipulates that only the person who committed the crime, or assisted in its commission, is criminally liable(8), In addition, most of the penalties are not applicable to the legal person, some of which are negative for the right to life, such as the death penalty, and others are negative for the right to liberty, such as imprisonment and imprisonment.(9). Section II

The permissibility of holding the legal person criminally accountable

The proponents of this trend believe: the legal person must be held criminally accountable along with the natural person who committed the crime while exercising his work for the legal person.(10), They believe that the legal person is a legal fact that does not need to be proved, and has become like natural persons a criminal fact that does not accept doubt, as it can commit the material element of many crimes such as breach of trust, fraud, tax evasion and forgery, violation of labor laws and others.

This collective will includes deliberations, meetings and voting in the Board of Directors, which means that the moral element of the crime is assumed to be available to the legal person.(11), In addition, there are many penalties that can be applied to the legal person, which are consistent with its nature, such as financial penalties - such as fines and confiscation - and criminal penalties that limit its activity, such as depriving it of practicing a specific activity, or preventing it from practicing the activity for a specific period, but the penalty can affect the legal person in its legal existence, as a solution, as well as this person has the right to honor and consideration, and the penalty can be imposed on publishing the conviction issued on him, and these penalties would Prejudice to his honor(12), I agree with modern criminal jurisprudence in establishing the criminal responsibility of legal persons, with the need to stipulate that responsibility, and to determine the procedures of the trial and penalties that correspond to the nature of the legal persons, in addition to the responsibility of the natural person, if it can be identified and the elements of the crime are available against him, because this is in line with the social and economic developments that occur in this era, and in establishing this responsibility to protect society from the damage caused by those crimes committed by these persons.(13), It is possible to establish legal persons with the aim of committing illegal acts, and disappear under the guise of a fictitious project, and the criminalization of legal persons achieves public and private deterrence, so imposing punishment on the legal person who committed the crime, achieves private deterrence for the legal person himself, and general deterrence for the rest of the legal persons and those in charge of them.

Second Requirement

Responsibility of public and private hospitals for the doctor's fault

The responsibility of hospitals for the doctor's error is classified according to the distinction between the hospital as a public hospital provided by the government from its public funds and private hospitals run by private bodies and awareness of this we will address this through two branches as follows:

Subchapter I: Responsibility of public hospitals for the doctor's error.

Subchapter II: Responsibility of Private Hospitals for Doctor's Error.

Section I

Public Hospitals Responsibility for Doctor's Fault

Many operations arise in public hospitals, criminal(14), civil and administrative liability for these operations(15). The liability of public hospitals is linked to the

occurrence of an error, and a distinction has been made in liability for the fault of public hospitals, between responsibility for medical work and responsibility for organizing and facilitating a medical facility, as it is a public facility.(16).

If the doctor's error in the hospital can be qualified as a repairman or facility error, related to the work of the public facility, the jurisdiction in it belongs to the administrative judiciary, while the doctor's personal error and medical errors that constitute crimes are the jurisdiction of the ordinary judiciary to deal with the civil and criminal settlement for this error in accordance with the following:

First: Civil Liability:

The patient who suffered damage during surgery or one of his relatives - in the event of his death - may claim compensation for the damage he suffered, by filing a civil lawsuit against the doctor as he is directly responsible for medical liability, and because the doctor is affiliated with the hospital, the latter is also responsible for the damage resulting from the doctor's error.

Of course, the determination of the hospital's responsibility for this error in the conduct of operations requires the availability of the elements or elements of this responsibility, which is the occurrence of an error as a result of the doctor's actions during the course of his work or because of it.(17), The doctor-patient relationship in the public hospital is that of a person entrusted with the performance of a public service, and is determined by the regulations governing the activity of the health facility managed by the hospital, it is not a contractual relationship, but of an administrative or regulatory nature, and therefore the responsibility of the hospital cannot be based on that contractual liability.(18)

As for the doctor's relationship with the general hospital, the doctor is considered subordinate to the hospital in which he works, and the relationship of dependence between the doctor and the hospital, even if it is an administrative relationship of dependence, is sufficient for the hospital to be responsible for the doctor's error.

The responsibility of the General Hospital as a legal person for the work of its subordinates of doctors and their assistants, etc., is held when the medical intervention of the therapist - medically or assistant - during the performance of the job or because of it, and this is the test that links that responsibility, where the patient - if the doctor makes a mistake in his work and results in damage to the patient - the right to file a compensation claim against the erring doctor and the hospital, as a legal person and a debtor full and able to pay, if the hospital pays, it has the right to refer to the doctor. The one who is at fault, insofar as she has paid is responsible for not with him.(19),

Second: Criminal Liability:

Most comparative legislation has differed regarding the criminal responsibility of hospitals for doctor's crimes, in three directions:

First direction:

It stipulates that the hospital may be held criminally accountable for the crimes of the doctor, by means of fines and preventive measures (such as dissolution and suspension), which is the position of Jordanian law.(20).

Second direction:

It establishes the criminal liability of the hospital for the doctor's error, by fine, whether original, and did not put a limit on its amount, leaving it to the judiciary according to the ability to pay and the return from the violation, or in solidarity with the erring subordinate, as is the case in Italian law. (21).

Third direction:

This trend does not consider the criminal liability of legal persons, either in criminal law or in special laws, as in German law.(22), As for the legal person, it is not conceivable that he commits the crime or that the principle of criminal responsibility of legal persons is invoked, but it has not been adopted absolutely, (23)but has limited it to private legal persons without the public(24), as is the case in Iraqi, Emirati and Emirati law.

Section II

Private Hospitals Responsibility for Doctor's Fault

A private hospital is any treatment institution in which the art of medicine is practiced – legally permissible – in accordance with legal conditions.(25),

A private hospital is a legal person that carries out the purpose for which it was established, through natural persons, who act on behalf of the legal person and represent it legally. (26)

Criminal civil liability arises as a result of medical error when performing medical operations, which we explain as follows:

First: Civil Liability:

The civil liability of private hospitals means the obligation of these hospitals to make reparations for the damage suffered by the patient as a result of treatment there, thus giving the injured patient the right to claim compensation covering the damage suffered.(27)

The civil liability of private hospitals is divided into contractual liability and tort liability, and the first is achieved if one of the parties to the contract breaches one of the obligations created by the contract on him, and the second: it is achieved when the hospital breaches the general legal duty not to harm others, meaning that the private hospital exercises the utmost caution and the highest degree of caution, when exercising its professional duty so as not to cause harm to others.

The private hospital is committed to providing the inpatient with a number of treatment services, such as surgical tools, medicines, and materials that must be available in order to complete the process of Medical Care Process(28).

It is noted that the responsibility here has arisen due to the existence of professional error - which does not change in the nature of the contract or legal obligation - in undertaking operations that the patient does not need, and which causes serious damage to him.(29).

Second: Criminal Liability:

The private hospital shall be held criminally liable if any doctor who practices unnecessary operations for the patient inside the hospital is covered up.

The private hospital shall be punished for the crimes assigned to it by a penalty corresponding to its nature, but if the penalty originally prescribed for the offence is not commensurate with its nature, it shall be replaced by a penalty commensurate with its nature.(30).

Accordingly: Private hospitals in which unnecessary operations are performed as a private moral person, and criminal penalties consistent with their nature shall be subject to a fine and suspension, and the penalty of confiscation and dissolution may be imposed.

Since criminal responsibility can only be determined by a legal text, the development of existing penalties to suit the nature of the person concerned or the creation of modern penalties requires this text, as there is no need to disagree about the determination of the criminal responsibility of these persons.(31). It is necessary to develop and update the penalties that can be imposed on the legal person to conform to its special nature, and when some of them cannot be applied, the precautionary measures can replace them, and provide other solutions to face the risks that may result from the deviation of the legal person in the exercise of his activity.(32), There are many penalties and measures that can be imposed on the legal person, including financial penalties, considering that it has an independent financial liability, namely confiscation and fine, and some of them affect its existence and activity, such as the dissolution of the legal person, deprivation from practicing its activity for a certain period or suspension in whole or in part, and some of which affect its reputation, such as the publication of the conviction.(33).

The end

After studying the issue of criminal responsibility of hospitals for the doctor's mistake, we have reached a set of results and recommendations, which we show as follows:

First: Results:

- 1- Many responsibilities fall on the shoulders of hospitals, both public and private, as a result of the doctor's error, including criminal and civil liability.
2. There are trends with regard to the criminal responsibility of legal persons, one of which considers the issue of the legal person inadmissible, while the other view is that the issue of the legal person is criminally permissible.
- 3 - Different trends with regard to the criminal responsibility of private hospitals for the fault of the doctor, where he sees the direction of the hospital's private criminal responsibility and punishment within the framework of the fine and preventive measures and takes this direction Jordanian law and there is another trend that is not restricted by criminal responsibility, such as Iraqi and Emirati law.
- 4- The responsibility of the private hospital for the doctor's error includes criminal and civil liability and in some directions includes administrative responsibility such as closing the hospital temporarily or permanently.

Second: Recommendations:

- 1- The need to activate the responsibility of legal persons in general and the extension of that responsibility to the administrative authority, such as closure, to achieve the element of deterrence.
- 2- Ascertaining the reality of the legal person and legislating new legal texts that prevent the establishment of a hospital as a legal person contrary to reality in order to evade criminal responsibility.
- 3 - Activating the legal provisions regarding the responsibility of the follower for the act of his subordinate so as to exclude the criminal, civil and administrative punishment of the legal person if required.
- 4- Strict control over public and private hospitals with regard to the efficiency of doctors working in hospitals, especially private hospitals, even if it requires the formation of committees to determine the efficiency of doctors on an ongoing basis.

Margins

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2. (Abdel Fattah Al-Saifi, General Provisions of the Criminal System in Islamic Sharia and Law, Dar Al-Nahda Al-Arabiya, Cairo, 2001 AD, pg. 445.
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4. Fatouh Abdullah Al-Shazly, Explanation of the Penal Code - General Section - Book Two, Dar Al-Huda, Alexandria, 1997 AD, p. .
5. Muhammad Zaki Abu Amer, Penal Code - General Section - p. 196, Ahmed Fathi Sorour - Mediator in the Penal Code, General Section, 6th Edition: 1996, p. Publication, p. 371.
6. Ahmad Shawqi Omar Abu Khatwa, Equality in Criminal Law, a comparative study, 2nd edition, Dar Al-Nahda Al-Arabiya, without a year of publication, p.217 .
7. Muhammad Eid al-Gharib, Explanation of the Penal Code, Wahba Hassan Sons Press, Cairo, without a year of publication, p. 888.
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11. Sherif Sayed Kamel, Criminal Responsibility of Legal Persons, previous reference, p.
12. Abdul Tawab Moawad Al-Shorbaji, Lessons in Penal Law, General Section, 2001, pg. 437.
13. Mohamed Abdel Qader Al-Aboudi, Criminal Responsibility of Legal Persons in Egyptian Legislation, "A Comparative Study", Dar Al-Nahda Al-Arabiya, 2005, pp. 44-45.
14. Considering that the hospital is a public facility and an administrative body whose administrative responsibility arises from the damages that befall people while performing its services, the injured party may resort to the administrative judiciary to claim compensation for the damage he suffered, by filing an administrative case, and the compensation is not claimed unless the plaintiff proves all the elements of responsibility .
15. Maryam Bakri, Hospitals' Responsibility in the Field of Medical Error, Master Thesis, Faculty of Law and Administrative Sciences, Abd al-Rahman Mirah University, 2015, p. 54.
16. Muhammad Muhammad Abd al-Latif, Problems of medical liability before the administrative judiciary, Journal of Legal and Economic Research, Faculty of Law, Mansoura University, Issue 36, for the year 2004, pp. 57-58.
17. Abd al-Razeq al-Sanhouri, The Mediator in Explanation of Civil Law, Part One, Dar al-Nahda al-Arabiya, Cairo, without a year of publication, pg. 1014.
18. Muhammad Hussein Mansour, Medical Responsibility, New University House, Alexandria, 2001, p. 113.
19. This is what Articles 174 and 175 of the Egyptian Civil Code stipulate, Appeal No. 4954 of 69 BC, session 11/27/2001.
20. That Article (36) of the Jordanian Penal Code: legalizes suspension and dissolution, then the legislator expanded the reasons for the punishment of dissolution, and was not satisfied with this, but rather granted the Minister of Health the right to suspend any hospital or administratively dissolve it or any section therein when it deviated from its legal objectives And that is according to Article 11 of the Public Health Law No. 47/2008 AD. Abd al-Wahhab Omar al-Batrawi, Criminal Research Comparative to Islamic Jurisprudence, Research (The Legality of Transplanting Human Organs, A Comparative Study, 4th edition: (1999 AD), p. 16.
21. The joint fine here means: the hospital is not obligated to pay unless the doctor is insolvent. Article 197 of the Italian Penal Code requires: "A legal person, other than the state, provinces, and districts, shall be held accountable for misdemeanors against the performance of its followers, as well as misdemeanors related to breaches of obligations." Here, the legal person is obligated to pay the amount of the penalty adjudged when the subordinate is insolvent, and Article 197 has been expressed by the word misdemeanor, because this law does not define felonies, as it only knows misdemeanors and violations, and that is in Article 29 Penalties. Abd al-Wahhab Omar al-

- Batraveen, Criminal Research Comparative to Islamic Jurisprudence, Research (The Criminal Responsibility of Doctors, a Comparative Study), p.46.
22. Article (14) of the German Penal Code: It states that: "If a crime is committed within the actions of the legal person, the natural person who committed it shall be responsible for it."
 23. That Article (80) of the Iraqi Penal Code No. 111 of 1969 AD stipulates: "Legal persons, except for government interests, are criminally liable for crimes committed by their representatives, directors, or agents on their behalf or in their name, and it is not permissible to judge them other than a fine, confiscation, and precautionary measures." prescribed for the crime by law, and if the law prescribes for the crime an original penalty other than a fine, it is replaced with a fine, and this does not prevent the perpetrator from being personally punished with the penalties prescribed for the crime in the law.
 24. Article (65) of the Federal Penal Code: which stipulates that legal persons, except for the interests of the government and its official departments, public bodies and institutions, are criminally liable for crimes committed by their representatives, managers or agents for their account or in their name, and they may not be judged except by a fine and confiscation. and the criminal measures prescribed for the crime by law. If the law stipulates for the crime an original penalty other than a fine, then the penalty shall be limited to a fine whose maximum limit does not exceed fifty thousand dirhams, and this does not prevent a disabled person from The perpetrator of the crime is personally subject to the penalties prescribed for it in the law.
 25. Ahmed Mahmoud Saad, The responsibility of the private hospital for the mistakes of the doctor and his assistants, Dar Al-Nahda Al-Arabia, Cairo, 2007 AD, p. 32.
 26. Luqman Omar Fadl Al-Karim, The Legal Responsibility of Hospitals - A Comparative Study - PhD Thesis, Faculty of Sharia and Law, Omdurman University, Sudan, 2011, p. 369.
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 29. Osama Ali Sharif Ali, The Responsibility of the Private Hospital for the Medical Error, PhD thesis, Institute for Research and Studies of the Islamic World, Omdurman University, Sudan, 2008, p. 368.
 30. Luqman Omar Fadl Al-Karim, Legal Responsibility for Hospitals, previous reference, p. 362.
 31. Muhammad Abd al-Qadir al-Aboudi, Criminal Responsibility of Legal Persons, previous reference, p. 39.
 32. Futouh Abdullah Al-Shazly, Explanation of the Penal Code, General Section, p. 38.

33. Ibrahim Ali Salih, Criminal Responsibility of Legal Persons, previous reference, p. 223; Sharif Syed Kamel. Criminal responsibility of legal persons, previous reference, pp. 26-27.

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