MALPRACTICE OF ENGINEERS, LAWYERS AND DOCTORS UNDER BAHRAIN LAWS

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ABSTRACT: The relationship between professional persons and their clients has a special nature which requires legal protection to the latter. The client lacks the knowledge in the specific area which the professional person has, that what pushes the client to deal with the professional person and trust on her/his work. Malpractice can be defined as a wrong act committed by a professional person during practicing her/his profession which is considered as unfamiliar attitude violates the rules of the profession. Every wrongful act caused a damage to someone the wrongdoer must compensate for such a damage. Based on this general principle, when the professional person committed malpractice she/he shall compensate her/his client for the damage she/he suffered. Beside the wrongful act principle, the profession person is also responsible for breaching her/his obligations of the agreement with the client. Moreover, malpractice may in some cases raise criminal and disciplinary liabilities beside the civil one. This paper consists of two parts. The first part will focus on the civil liability of doctors, engineers and lawyers and as these are the most prominent professions in the Kingdom of Bahrain, therefore, this part will concerns the Decree Law No. 7 of 1989 on the Practice of Medicine and Dentistry, the Law No. 51 of 2014 on Practicing Engineering Professions and the Law No. 26 of 1980 on issuing the Lawyering Law. The second part will discuss the professional persons’ criminal liability under the laws of Bahrain mainly the Law No. 15 of 1976 on issuing the Penal Law.

KEYWORDS: professional, rules of profession, damage, malpractice, responsibility

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1. THE PROFESSIONAL PERSONS’ CIVIL LIABILITY FOR MALPRACTICE UNDER THE LAWS OF BAHRAIN

1.1 Medical Malpractice

A doctor is not requested to heal patients, healing is related to a foreign or potential factor, the doctor commitment is a duty of care by using her/his best efforts and not a duty of achieving a specific result. Therefore, if the doctor neglect in performing her/his duty in

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a way causes harms to the patient, she/he will be responsible for such harms and will have to compensate the patient.

However, the doctor’s commitment in some circumstances could be a duty of achieving a result. In the case of cosmetic surgeries, the doctor commits to achieve a specific result as long as this kind of surgeries is not necessary for the person health. The cosmetic surgeries shall not agree to do such a surgery if there are serious risks might happen on the person health.

The law on the Practice of Human Medicine and Dentistry\textsuperscript{1} states in Article 27 the definition of doctors’ responsibility and when their liability arises, “A doctor shall not be responsible for the condition that the patient has reached, if it has been proved that she/he has exerted the required care and used all means by which anybody in her/his circumstances, can diagnose the disease and treat the patient. A doctor shall be responsible for the following cases: If she/he has committed a mistake that led to harming the patient as a result of ignorance of technical and practical matters that any doctor is supposed to be aware of; If she/he harmed the patient as a result of the doctor’s negligence or her/his failure to take care of the patient; If she/he performs scientific experiments or researches on her/his patients that are not certified by the Ministry of health and have harmed the patients. The Committee referred to in Article (5) of this law shall decide on the occurrence of the above mentioned mistakes”.

In the above mentioned article, the Bahraini legislator defined the nature of doctors’ commitment and the type of mistakes they responsible for. The article also specified the competent authority concerned of deciding whether a wrongful act establishes malpractice or not. This authority is a committee appointed by the Health Minister and it consists of eight members, one of them is a legal consultant and the rest are doctors. The decisions of this committee are binding to courts.

From a legal point of view, authorizing this committee the power to determine the doctors’ mistakes is criticized for the following reasons:

1. It is usual to happen in practice that professional persons in the same sector have the feeling of what so called “Joint Hands”. A wrong thought that they have to protect each other toward any issue against anyone of them.

2. The determination of whether an act establishes malpractice or not is a work of courts not anyone else. Therefore, it is preferable to reform the competent of the committee to be an advisory opinion only without being binding to the courts.

Keeping the situation as it is at present, will waste the rights a lot of patients who suffered from medical malpractice which is some cases led to death or sight loss. In most cases, the committee decision is that the doctor used her/his best efforts and paid the required care, so the liability case will be dismissed.

According to article 27 of the law on the practice of medicine and dentistry, the doctor is not responsible for the condition of the patient if it is proved that due diligence was used by the doctor and all facilities which she/he can to diagnose the disease or give the necessary treatment. She/he will be responsible if she/he committed a mistake that caused damage to the patient because of her/his ignoramus of technical matters or neglect and negligence in patient care. Reporting of the occurrence of these errors allotted to the

\textsuperscript{1} The Decree Law No. 7 of 1989
committee provided in Article 5 of the law. The justice of the Court of Cassation had been on that this committee is the only competent side for this matter, addition to the competence to issue licenses to practice the profession.

1.2 Engineers/Architects Malpractice

The Bahraini legislator paid the most attention to the Architects as the most important category of engineers and devotes a separate law organizing their profession. In regards of their liability for malpractice, the architects are subject to a number of laws; the law of practicing engineering professions (2014), the building organization law (1977) and the civil law (2001).

The law of practicing engineering professions (2014) provides definitions of the engineering professions and organizes the rights and obligations of the architects as follows:

- **An Architect:** Any natural person holding a license to practice an engineering profession issued according to this law.
- **An Engineering Firm:** Any establishment holding a license to practice one or more of engineering professions.
- **An Engineering Profession:** working in an engineering activity in any of the engineering sections that contains; making graphics, schemes and designs; consulting; working on studies, researches and examinations; setting specifications and supervising on execution, maintenance and operation; estimating costs and calculating quantities; executing and managing engineering projects.\(^2\)

The law prohibits commencing any projects without obtaining the required designs and schemes signed and certified by a governmental body or engineering firm.

On the other hand, the law obliges the licensee (Architect and Engineering Firm) to have a written agreement between him and each of her/his clients clarifies the rights and obligations of both parties and their liabilities in case of breaching the agreement.\(^3\)

The old law of practicing engineering professions (1982) stated in article 18: “The architect is responsible for malpractice and the negligence in the profession standards, and the clients or third party may sue him for compensations.” However, this article does not exist in the new law (2014) which came silent in this issue.

The architect’s liability differs depending on the type of her/his commitment whether it is a duty of care by using her/his best efforts or a duty of achieving a specific result as follow:

- **Consultations** is a duty of care where the architect has to follow the profession standards and use her/his best efforts to provide the client with a coherent opinion by clarifying all risks and prospects and provide her/his opinion in a good faith.

- **Engineering designing** is a duty of achieving a required result. Therefore, the architect’s liability will depend on her/his role in the project as clarified in the civil law: "If the architect undertakes only the preparation of plans for the buildings or erections or part thereof, he shall only be liable for the defects which are attributable to his plans but not for the defects which are due to performance. If the employer assigns him to supervise

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\(^2\) Article 1, the Law No. 51 of 2014 on Practicing Engineering Professions

\(^3\) Article 18, ibid
execution or part thereof, he shall be liable for the defects attributable to performance he was assigned to supervise”.

Executing the construction is a duty of achieving a specific result that is completing and handing over the building to the client in a statute compatible with the agreed specifications and eligible for the desired purpose.

The law assumes the architect’s liability for the constructions she/he constructed or supervised, which continues for a period of ten years from the time of completion; “The contractor and the architect shall be liable, for a period of ten years from the date of completion of building or construction, for any total or partial demolition or defect occurring on the buildings they have constructed or permanent constructions they have erected, subject to the provisions of the following Articles. However, if it is established that the contracting parties’ intent was for such buildings or construction to last for less than ten years, liability shall be for the period intended. Liability shall cover collapse of buildings, even if it is due to a defect in the ground itself, or even if the employer has authorized the construction of the defective work, and shall include defects in construction and erection which pose hazard to the strength and safety of the work”.

The architect’s liability for construction is not limited to her/his client but it is extended to third party and to the adjacent buildings, as provided in the Building Organisation Law: “The project owner, the architect and the contractor are fully responsible for the constructions in a perfect way. The architect and the contractor are the main responsible for observing the borders and altitudes. They also responsible for the construction safety during the execution time and for the next five years, and their liability is extended to the adjacent buildings and public annexes in case of any damage accrued to them because of the construction”.

According to the above, the architect’s liability could be either contractual or non-contractual based on her/his relationship with the injured. In the case no. 381/2002, the Cassation Court says: “The understood from article 13 of building organisation law is that the project owner, architect and contractor are responsible for the construction safety during the period of execution and for at least the next five years later. Which means that the legislator imposed an obligation on all of them to guarantee the safety of the construction during the mentioned period towards anyone injured because of breaching this obligation, whether under a contractual or non-contractual relationship”.

One may notice the conflict between the building organisation law and the civil law in regards of the period of the liability, where the former states on five years and the latter says ten. This conflict is not exist from the point of view of legal practitioners because the civil law overrides the building organisation law in case of any interfere between their provisions, as the civil law which was issued in 2001 is newer than the building organisation law which was issued in 1977.

The civil law emphasised on the liability issue by not allowing parties to agree on releasing or minimising such liability, as it is illustrated in Article 620: “Any clause

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4 Article 616, The Civil Code (2001)
5 Article 615, ibid
6 Article 13, Decree Law no. 13 of 1977 on Building Organisation
7 Abdulla Ismaeel v Yosif Alyaqobi and Alnoor Consultancy, Bahrain Cassation Court, case no. 381 for the year 2002
relieving the architect or the contractor of warranty or restricting such warranty shall be null and void”. Moreover, claims of warranties does not prescribed only after three years of the injury happen or the discovery of defects, as article 619 states: “Actions for warranties against the architect or the contractor shall be prescribed after the lapse of three years from the date of the collapse of the building or the discovery of the defects”.

The Bahraini legislator, in the contrast of the medical malpractice (as seen in part 1), entrusted the matter of determination architects’ malpractice to the judge without any oblige to take the opinion of any specific committee. However, as the malpractice is a professional matter, judges usually refer to experts in the same area of engineering without being bound by their opinions.

In order to ensure that injured getting their deserved compensation for architects’ malpractice, the law of practicing engineering professions obliged every engineering firm to have an insurance policy against their liability and stipulated that as a requirement of obtaining the engineering license (This does not exist in doctors and lawyers malpractice).³

1.3. Lawyers’ Malpractice

Because of the nature of lawyering profession, lawyers should keep pace with legal developments through the continuous research on changes of national and international laws. Furthermore, lawyers should be flexible and open-mind so she/he can accept others opinion. A lawyer may adopt an argument in one case, the other day in another case she/he may adopt different argument. Therefore, the whole works of lawyers are based on the intellect, opinions and consultations. So the legal nature of lawyers’ obligations falls into the followings:

- A duty of achieving a result: in regards of adherence the formalities, procedures and deadlines of filing and following up the cases.
- A duty of care: in regards of seeking for her/his client rights by using her/his best efforts trying to win the case. As long as it is a matter of giving a legal opinion on a legal issue, the lawyer’s commitment will be a duty of care and not a duty of achieving a specific result.

The Bahraini Lawyering Law states in article 26: “The lawyer is liable towards her/his client for performance the work entrusted to him according to the law provisions and the power of attorney’ terms, the lawyer must give back to the client the money collected on her/his behalf and the original documents”.

The Cassation Court ruled in the case no. 32/2007 that: “The lawyer is not responsible for the mistake in her/his consultation as long as that was in a good faith and she/he proved that she/he used her/his best efforts in reaching such an opinion”. Of course, deciding on lawyers’ malpractice is subject to judges’ discretion without a need for a committee or an expert.

Moreover, the court put a principle to determine whether a lawyer act could be considered as malpractice or not, by stating that: The lawyer is contractually liable towards his client for the mistakes that even an ordinary lawyer does not make them in the same circumstances.⁹

³ Article 5, the Law No. 51 of 2014 on Practicing Engineering Professions
⁹ A v B, Bahrain Cassation Court, Case No. 32/2007, 10 Dec 2007
However, at the end, the cassation court dismissed the case which was filed by a client against her/his lawyer who missed an appeal deadline so the client lose her/his chance to appeal the judgment of first instance. The court justified such dismissal by saying that the appeal was going to be refused by the court of appeal anyways.

It is a bad implementation of the principle, the lawyers’ commitments in regards of adherence the formalities, procedures and deadlines of filing and following up the cases is a duty of achieving a specific result regardless what the court rules are going to be. As long as the client’s desire is to submit an appeal, the lawyer cannot go against this desire. The lawyer could explain the possibilities of making such legal procedure and the expected percentage of success but she/he cannot decide on behalf of her/his client to appeal or not to appeal unless the lawyer opinion was delivered to the clients that the appeal will be rejected.

2. CRIMINAL RESPONSIBILITY FOR MALPRACTICES IN BAHRAINI LAWS

The legislator in Bahrain did not specify particular laws for the criminal responsibility for malpractices of doctors, engineers and lawyers. Therefore, the general rules in the Penal Law are applied to determine such a responsibility as follows:

2.1 Crimes Against Person

The nature of doctor work may raise her/his liability for the wrongful act which leads to patient death or harm her/his body. The same also apply on the engineers/architects, where a building collapse because of the malpractice of the engineers/architect and lead to injuring persons.

The Penal Law provides the punishment of imprisonment or a fine for the manslaughter, however, where the crime is committed by a perpetrator who did not comply with the basic rules of her/his profession; the punishment shall be an imprisonment. In case if the crime is committed by a doctor or an engineers and results the death of more than 3 persons, the punishment will be an imprison up to 10 years. The law also states that a crime of assaulting person’s body when committed by a doctor or an architects, the punishment shall be a prison sentence for up to 5 years.  

2.2 Refusing to rescue

The Law of the Practice of Human Medicine and Dentistry obliges doctors to treat the patients whom resort them seeking for treatment. As illustrated in article 24: “Any doctor may not abstain from treating a patient or aid an injured, unless the patient’s case is not within her/his specialization or has had serious reasons and considerations for this abstention. In this case he shall carry out what he sees necessary for first aids, then transfer the patient to the nearest hospital or health centre with a summary report on initial examination results for the patient, treatment or first aids the patients has received”.

Furthermore, this is considered as a crime according to article 305 of the Penal Law which states: “The punishment provided for in the preceding Article – a prison sentence for a period not exceeding 3 months or a fine not exceeding BD 50 – shall be inflicted upon any person who refuses or abstains without a justifiable cause from rescuing anyone in distress or a victim involved in a crime”.

10 Articles 342 & 343, the Degree Law no. 15 of 1976 of issuing the Penal Law
It seems from the above article that it is a crime when someone refuses to rescue another who suffers from a distress or crime only, which means that there is no punishment for doctors refusing to treat patients without a justifiable reason unless in the cases of distresses and crimes. Therefore, it is recommended to Bahrain legislator to criminalize the doctor refusing treat patients in general without limited to certain cases.

2.3 Divulgation of Profession Secrets

The Bahraini Penal Law states: ‘A punishment of imprisonment for a period not exceeding one year or a fine not exceeding BD 100 shall be inflicted on a person who divulges a secret entrusted thereto in his official capacity, trade, profession or art in conditions other than those prescribed by the law or uses it for her/his personal benefit or for the benefit of another person, unless the person concerned with the secret allows the divulgence or use thereof. The punishment shall be imprisonment for a period not exceeding 5 years if the perpetrator is a public servant or an officer entrusted with a public service to whom the secret has been confided during, because or by reason of performing his duties or service’.

In order to protect the privacy of people’s life, the law prevents professional persons from divulgate the secrets of their clients.

This commitment arises as moral and religious duty since the ancient times. Where ‘the father of medicine’ Hippocrates oath states: ‘whatever, in the course of my practice, I may see or hear (even when not invited), whatever I may happen to obtain knowledge of, if it be not proper to repeat it, I will keep sacred and secret within my own breast’.

The oath became a part from the public policy and it is not allowed to be breached except in certain situations provided by the law.

2.3.1 Lawyering Law:

The Lawyering Law emphasis on the honour of the lawyering profession by stating that, ‘a lawyer registered at the law practicing register cannot start the profession unless he swear before the high court as follow: I swear to God to do my duties in sincerity and honour and to protect the profession’s secrets and respect its laws and traditions’.

The law also states that, ‘any lawyer knows information or facts because of his profession is not allowed to divulgate it even after terminating the power of attorney with his clients. An exception to that, where it is necessary to expose these information for a purpose of prevent a crime to happen. Moreover, a lawyer cannot be a witness in a case where he represents a party, unless he got a written permission from his client’.

2.3.2 The Law on the Practice of Human Medicine and Dentistry:

The law guarantee the secret information of patients by stating that, ‘Any doctor may not divulge any confidential secrets that may have come to his knowledge through his profession without obtaining court permission or upon the consent of the patient, or if divulgence of the secret to one of the patient’s immediate family members (husband, wife, father, adult children) is necessary, either because of the seriousness of patient’s

11 Article 371, ibid
13 Article 10, The Law No. 26 of 1980 on issuing the Lawyering Law
14 Article 29, ibid
condition or for other reasons, the treating doctor may consider sufficient for justifying this divulgence. The doctor shall also have the right to divulge this secret with an intention to stop a crime from being committed, divulgence in this case shall be limited to the relevant official authorities'.

2.3.3 The Law of Practicing Engineering Professions

The Law of Practicing Engineering Professions did not clearly state on the profession secrets; however, it states that an architect must practice her/his work in sincerity and honour and to respect the laws and the traditions of the profession, which means in a way to keep the profession secrets.

Article 18: ‘Before the licensee can start his profession, he must swear before the counsel as follow: I swear to God to do my duties in sincerity and honour and to protect the profession’s secrets and to respect the laws and regulations’.

Article 19: ‘The licensee must take into account the sincerity and accuracy during carrying on his profession, and to preserves the dignity, honour, traditions and customs of the profession, and to avoid the conflict interests and to not get works against the laws and regulations’.

The crime of Divulgation of Profession Secrets has four legal elements as follows:

1) The divulaged information must be a secret

The Bahraini legislator did not provide a definition of the profession secret leaving that to the court discretion.

The French courts said: ‘The profession person must keep silent not only for the information given to him but also for everything he sees, hears, understands or concludes because of his profession’. 16

2) The divuluation act

Divulagation means to expose a secret to a third party in whatsoever way was; written or vertical or act, even if such an expose done without exposing the victim’s name.

3) The Offender Aspect

To have a crime of Divulgation of Profession Secrets, there must be a profession person who has a duty according to her/his profession to keep the secrets.

As it illustrated in article 371 of the penal law: ‘.. Who divulges a secret entrusted thereto in his official capacity, trade, profession or art ...’.

Therefore, it is necessary that the secret which has been exposed is related to the profession. So a doctor is liable for exposing the secret which she/he knows because of her/his profession whether through the patient statement or the tests she/he made. A lawyer also is liable for exposing secrets which she/he knows whether her/his client informed him with such information or she/he got them during doing her/his job.

4) The Criminal Attention

The criminal attention as an element of the crime of Divulgation of Profession Secrets consists of two parts; the Knowledge and the Will. The knowledge means that the

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15 Article 26, The Decree Law No. 7 of 1989 on the Practice of Medicine and Dentistry


profession person shall know the confidentiality attribute of the information which she/he have through her/his profession. The will means that the profession person freely chose to expose the information and expect the results for that. As it illustrated in article 371 of the penal law: ‘‘.. a person who divulges a secret ... in conditions other than those prescribed by the law or uses it for his personal benefit or for the benefit of another person.’’.

The punishment of such a crime is an imprisonment for a period not exceeding one year or a fine not exceeding BD 100, the punishment shall be imprisonment for a period not exceeding 5 years if the perpetrator is a public servant or an officer entrusted with a public service to whom the secret has been confided during, because or by reason of performing her/his duties or service.

**The Grounds for non-punishment and The Grounds for non-responsibility:**

1) **The approval of the concerned person**

The profession persons can be exempted from the punishment when the client approved her/his act, as it illustrated in article 371 of the Penal Law: ‘‘.. unless the person concerned with the secret allows the divulgence or use thereof’’.

2) **The Case of Emergency**

The Penal Law clearly states that: ‘‘No liability shall be proved against any person who has committed an act necessitated by the need to protect himself, others, he property or property of others against an imminent danger, which he has not willfully caused and it was not in his power to prevent by way of other means, provided that the act is proportionate to the danger sought to be protected against. A person required by law to counter such danger shall not be deemed to be acting in exigency’’.  

The lawyering law and the law of the Practice of Human Medicine and Dentistry allow exposing the profession’s secrets in case that would help in preventing a crime from happening.

Doctors also can expose the secrets of the patients to their natives: ‘‘... to one of the patient’s immediate family members (husband, wife, father, adult children) is necessary, either because of the seriousness of patient’s condition or for other reasons...’’. The Law on the Practice of Human Medicine and Dentistry also states that, ‘‘If a doctor suspects the contraction of the patient of one of the infectious diseases, he shall comply with the provisions of legislative decree No (14) for 1977 on the health precautions for protection against infectious diseases’’.

**3. CONCLUSION**

As a Bahraini lawyer, I see that it is a necessary to be more strict in regards of the lawyers’ liability, the rights of people cannot be dishonoured for any reason. It is also advisable that changes shall be made to the law on the Practice of Medicine by making the opinion of the committee just a consultative and not binding to the courts; the determination of malpractice must be allocated only to judges. Moreover, in order to protect clients’ right and to ensure they get their damages once courts decide they deserve such compensations, the law must oblige doctors and lawyers to insure against their

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17 Article 34, The Penal Law
18 Article 26, The Decree Law No. 7 of 1989 on the Practice of Medicine and Dentistry
19 Article 20, ibid
liability of profession risks, so injured people can easily get their damages from a wealthy body (Insurance Companies). One may notice that the Bahrain laws do not have clear provisions in regards of criminalization of the malpractice committed by profession persons except in the crime of Divulgation of Profession Secrets. In my opinion, there is a need for the legislator to involve and reform the law of lawyering and the law of Practice of Human Medicine and Dentistry in order to emphasis on the profession persons’ criminal liability.

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