

Federal Decree Law No. (4) of 2016 on Medical Liability

We, Khalifa bin Zayed bin Al Nahyan, the President of the United Arab Emirates,

Having reviewed;

- The Constitution;
- The Federal Law No. (1) of 1972 on Functions of Ministries and Powers of Ministers, as amended;
- The Federal Law No. (7) of 1975 on Practice of Human Medicine, as amended;
- The Federal Law No. (8) of 1980 on Regulation of Labor Relations, as amended;
- The Federal Law No. (28) of 1981 on Quarantine and Treatment of Mental Patients ;
- The Federal Law No. (4) of 1983 on The Profession of Pharmacy and Pharmaceutical Institutions;
- The Federal Law No. (5) of 1984 on Practice of Some Medical Professions by People other than Physicians and Pharmacists,
- The Federal Law No. (5) of 1985 on Issuance of Civil Transactions Law, as amended;
- The Federal Law No. (3) of 1987 on Issuance of the Penal Code, as amended;
- The Federal Law No. (10) of 1992 on Issuance of Law of Evidence in the Civil and Commercial Transactions, as amended,
- The Federal Law No. (35) of 1992 on Issuance of the Criminal Procedure Code, as amended,
- The Federal Law No. (15) of 1993 on Regulation of Transplantation of Human Organs,

- The Federal Law No. (20) of 1995 on Drugs and Pharmaceuticals Derived from Natural Sources,
- The Federal Law No. (28) of 2005 on Personal Status Law,
- The Federal Law No. (6) of 2007 on Establishment and Regulation of Work of Insurance Authority;
- The Federal Law No. (10) of 2008 on the Medical Liability;
- The Federal Law No. (11) of 2008 on Licensing Fertilization Centers in the Country;
- The Decree under the Federal Law No. (11) of 2008 on the Human Resources in the Federal Government, as amended;
- The Federal Law No. (7) of 2012 on Regulation of Expertise before the Judicial Bodies;
- The Federal Law No. (14) of 2014 on Communicable Disease Control,
- The Federal Law No. (2) of 2015 on the Commercial Companies,
- The Federal Law No. (4) of 2015 on the Private Health Facilities; and
- According to proposal of the Minister of Health and Prevention, and approval of the Cabinet;

Have issued the following Decree:

Chapter 1
General Provisions

Article (1)

The following words and phrases, wherever used in this Decree, shall have the meanings ascribed thereto hereunder unless the context otherwise requires:

The State: United Arab Emirates (UAE),

The Ministry: the Ministry of Health and Prevention,

The Minister: the Minister of Health and Prevention,

The Health Body:

the Ministry or any governmental, federal or local body concerned with the health affairs in the State,

The Profession:

A medical profession or the professions associated thereto as defined under a decision issued by the Minister,

Practice of Profession:

practice of a medical profession or the professions associated thereto as defined under a decision issued by the Minister,

Sex change:

to change gender of a person whose sexual category, whether man or woman, is clear and whose sexual bodily features match with their physiological, biological and genetic characteristics, and that there is no suspicion about their sexual category (man or woman). It also means the deviation in the process of sex correction inconsistent with the sexual quality established in the medical analyses.

Sex Correction:

the medical intervention with the aim of correcting the gender of the person whose sexual category is vague, where such person's gender is doubtful, for example, they have sexual bodily features inconsistent with the physiological and biological and genetic characteristics of a person, like those whose features indicate they are males, but in fact they are females, and vice versa.

Human Cloning:

to form a human being by transferring a nucleus from human

somatic cell to an enucleated oocyte, where the cell resulting from this process grows to form a fetus that is identical to the owner of somatic cell.

Article (2)

The provisions of the Decree shall apply to all those who practice the Profession in the State.

Article (3)

Practitioners within the State shall discharge their duties with accuracy and honesty as dictated by the Profession, and according to the established scientific and technical principles while affording patients due care. They may not exploit their patient's needs for the purpose of unlawful gains, whether personal or otherwise, nor may they discriminate among patients.

Further, all practitioners shall comply with the applicable legislation of the State.

Article (4)

Without prejudice to the obligations set out in the applicable legislation, a physician shall:

- 1- Comply with the rules, regulations and procedures of practicing the Profession, as per his grade and specialization.
- 2- Record the patient's health condition and the medical and family history, prior to diagnosing or treating the case.
- 3- Use available diagnostics and treatment tools necessary for the case.
- 4- Use necessary medical tools and equipment carefully in diagnosing and treating the patient according to the recognized scientific principles.
- 5- Inform the patient of the available options of medication.
- 6- Prescribe to the patient a clear, legible written prescription that may be, or is determined to be, necessary.
- 7- Inform the patient of his illness, the nature of the patient's condition. The patient shall be informed in writing:
 - a. If the patient is a minor, give the patient's personal information to be informed.
 - b. If the patient is a minor, give the patient's personal information to be informed.
- 8- Inform the patient of the possible complications that may arise from the intervention, the remedial action, and the patient's condition.
- 9- Cooperate with the patient's treatment, provide the patient with the necessary information and the course of treatment, and consult a specialist when necessary.
- 10- Cooperate with the patient's condition of the patient's condition.
- 11- Inform the patient about the communication of the legislation.

- 6- Prescribe treatment and determine the quantity and usage in legible writing including the name, signature and date on the prescription; and advise the patient or his family, as the case may be, of the importance of adhering to the method determined for medication.
- 7- Inform the patient of the nature and degree of seriousness of his illness, unless it is not in the patient's interest to do so, or the patient is not psychologically prepared to be informed. The patient's next of kin, relatives or fellows shall be informed in the following two cases:
 - a. If the patient is totally or partially incapacitated
 - b. If, given his medical condition, the patient cannot be personally informed, and he has not determined a person to be informed.
- 8- Inform the patient or his family of the complications that may arise from diagnosis, medical treatment or surgical intervention, and control such complications and provide remedial action where possible.
- 9- Cooperate with other physicians involved in the patient's treatment, provide information on patient's medical condition and the course of treatment whenever requested to do so, and consult a specialist colleague if the case so requires.
- 10- Cooperate with the practitioners involved in the medical condition of the patient.
- 11- Inform about suspicious people infected with any communicable disease according to the procedures set out in the legislation regulating communicable disease control.

Article (5)

A physician shall not:

- 1- Administer treatment without the patient's consent except that cases that require immediate medical intervention where consent cannot be obtained for any reason whatsoever, or where the patient has a contagious disease which represents a threat to public health and safety. However, as for examination, diagnosis and administration of the first dose of medication, consent of incapacitated patient is considered, provided that the patient's relatives or fellows should be informed of the plan of such medication.
- 2- Refrain from treating a patient in an emergency or discontinuing treatment in all cases, unless the patient has violated the physician's instructions, or if such refrainment or discontinuation is attributable to reasons beyond the physician's control, subject to the provisions of Articles (9) and (10) of this Decree.
- 3- Refrain from treating a patient or relieving an injured person unless the case does not fall in his specialization. In such a case, a physician shall provide the patient with the first aid and then to transfer him to the medical specialist or the nearest medical facility if he wishes so.
- 4- Use unauthorized or unlawful means in the treatment of the patient.
- 5- Prescribe any treatment before administering clinical examination to the patient. The health authorities may develop a system to provide distance-health services according to the controls and conditions set out in the implementing regulations of this Decree.

- 6- Disclose patient's secrets that become known to him in the course of or due to the practicing of the profession, whether such secret disclosed by the patient or otherwise brought to physician's attention, except in the following cases:
 - a. If disclosure is upon the request or approval of the patient.
 - b. If disclosure is in the interest of the spouse and is made to such spouse personally.
 - c. If disclosure is made in an attempt to prevent or report a crime, in which case disclosure shall be made to the competent authorities only.
 - d. If the physician is assigned as an expert by a judicial or official investigative authority in the State, or if he is summoned by either one as witness to an investigation or a criminal case.
 - e. If the physician is assigned to perform an examination by an insurance company or an employer, within the scope of assignment.
 - f. If disclosure is made upon request of the health authority with the aim of protection of the public health according to the conditions and controls set forth in the implementing regulations of this Decree.
 - g. If the purpose of disclosure in order for the physician to defend himself before an investigation authority or any judicial body as the need of defense may require.
- 7- Clinically examine a patient of the opposite sex without presence of a third person and without the patient's prior approval, unless it is necessary to do so.
- 8- Room patients in places not prepared for this purpose, except in emergencies.
- 9- Perform sex change operations.
- 10- Perform unnecessary medical actions or surgeries to the patient without the patients informed approval.

Article (6)

A medical error is the error committed by a practitioner due to any of the following reasons:

- 1- Ignorance in the technical matters that are supposed to be known by any practitioner of the same degree and specialization.
- 2- Non-compliance with the recognized professional and medical principles.
- 3- Not exercising due diligence.
- 4- Negligence and not paying attention.

Criteria of gross medical error shall be set out in the implementing regulations of this Decree.

Article (7)

Sex correction operations may be made according to the following controls:

- 1- The person's gender is obscure and it is not certain whether he is male or female.
- 2- The person has sexual and physical features inconsistent with his/her physiological, biological and genetic characteristics.
- 3- The provision of Paragraphs (1 and 2) of this Article is proven by medical reports and approval of specialized medical committee formed by the health body with the aim of defining the patient's gender and approving the correction operation. The said committee shall refer the subject to the psychologist to make necessary psychological preparation.

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Article (8)

1. Except the emergency cases that require immediate and necessary surgical intervention to save the patients' life or the fetus, or to avoid gross complications that they may suffer, surgeries may not be made unless:
 - a. The physician who performs the surgery is qualified according to his academic specialization, and his practical experience, and accuracy and significance of the surgery.
 - b. The necessary laboratory tests and analyses are made to ensure that the surgical intervention is necessary and appropriate to treat the patient, and to ensure that the patient's health condition permits performance of the surgery.
 - c. A written approval is taken from the patient if he is legally competent, or from the patient's spouse or a relative to the fourth degree if he is partly or totally incompetent, or if it is not possible to obtain his approval, in order to perform the surgery or any other necessary surgery after being informed of the consequences and potential medical complications of the surgery. Unless being incompetent, every person has completed eighteen years old shall be considered qualified for approval.
 - d. It is not possible to obtain the patient's approval or approval of the patient's spouse or a relative to the fourth degree, a report by the attending physician and other physician from the same health facility and its manager confirming the need to perform a surgery to the patient shall be sufficient unless he is legally competent, as well as inability to have any of such approvals.
 - e. The surgery is performed in a health facility that is well prepared to perform the respective surgery.

2. The provision of surgeries in applying the provisions of this Article shall apply to the cases of treatments with special nature set out in the implementing regulations of this Decree, as may be appropriate for such cases.

Article (9)

Without prejudice to the established provisions as to control of communicable diseases;

1. The patient may not be discharged from the health facility unless:
 - a. The patient's health condition permits such discharge according to the recognized medical principles,
 - b. The patient is transferred to another facility to complete his medication, provided that requirements of sound health transfer are fulfilled and the patients are not affected in the transfer process.
 - c. It is requested by the patient if he is legally competent, provided that the patient is informed of consequences of his discharge without medical advice and a written acknowledgment on taking the responsibility is obtained from the patient.
 - d. A written approval from a physician in the facility, if the patient is partly or totally incompetent, under an acknowledgment by his guardian or custodian as to the responsibility for transfer of the patient to another health facility.
2. Without its satisfaction, no person may remain in the health facility without a medical excuse.

Article (10)

1. Patient's life may not be terminated for any reason whatsoever, even at his request or that of his guardian or custodian.
2. Resuscitation equipment may not be removed unless the heart and respiration completely stop, or all brain functions completely stop, according to the accurate medical criteria on which a decision shall be issued by the Minister, and the physicians state that such stoppage is irreversible.

Article (11)

Natural death may be allowed by not doing cardiopulmonary resuscitation to the dying patient, if:

1. The patient is suffering from an incurable disease,
2. All medication methods are used,
3. It is proven that medication is useless in the respective case,
4. It is advised by the attending physician not to do the cardiopulmonary resuscitation,
5. Three consultant physicians at least decide that the patient's interest requires allowing natural death and not to conduct cardiopulmonary resuscitation. In such a case, approval of the patient, his guardian or custodian is not required,
6. However, at an express request of the patient, doing resuscitation may not be prevented even if resuscitation is useless.

Article (12)

- 1- It shall be prohibited to perform human cloning. It shall also be prohibited to conduct research, experiments or applications aiming at human cloning.
- 2- It shall be prohibited to conduct medical research or

experiments on humans unless upon their approval and after obtaining the necessary license from the appropriate body as determined by the implementing regulations and according to the conditions stipulated by such regulations.

Article (13)

Artificial organs may not be planted in a patient's body unless after ensuring that they are suited for the patient and will not harm him, and after preparing his body to accept them.

Article (14)

Assisted reproductive technology may not be performed in a woman or an embryo planted in her womb except from the married couple and with their written consent, provided that this shall occur during the life of their lawful marriage.

Article (15)

No action or intervention may be taken for the purpose of regulating reproduction unless at the request and with the approval of a married couple. No action or intervention may be taken for the purpose of sterilizing a woman unless based on the opinion of a medical specialty board comprising at least three physicians that pregnancy or delivery will pose a definite risk to the mother's life. The wife's written approval shall be obtained and the husband shall be informed.

Article (16)

A physician may not perform any abortion operation or prescribe anything that may induce an abortion except in the following two cases:

- 1- If a continuing pregnancy poses a risk to a pregnant woman's life, and under the following conditions:

- a. There is no other means to save the pregnant' s life except abortion,
- b. Abortion shall be performed by a specialist gynecologist/obstetrician with the approval of the physician who is attending the medical condition giving rise to abortion.
- c. A report shall be written by the concerned physicians indicating the reason for abortion. It shall be signed by the pregnant woman, her husband or guardian - if her consent cannot be obtained - as a proof of consent to the abortion procedure. Each of the concerned parties shall keep a copy of the report. Approval by the husband is not stipulated in the case of emergencies requiring immediate surgical intervention.

2- If it is proven that the fetus is mutilated, and under the following conditions:

- a. Abortion shall be performed at the request of the parents.
- b. The length of pregnancy is shorter than one hundred and twenty days.
- c. The mutilation is proven by a report of a medical board comprising consultants in gynecology, obstetrics, pediatrics and radiology.
- d. The board's report is based on medical examinations and the use of scientifically acceptable technologies.
- e. The fetus is suffering from a serious untreatable mutilation that his life – if born alive – would be bad and painful for him and his family.

Article (17)

Medical liability shall not be established in any of the following cases:

- a. If the harm is not caused by any of the reasons set out in Article (6) of this Decree and the implementing regulations issued hereunder.
- b. If the harm is caused by the patient's action or his refusal of the treatment or his failure to follow the medical instructions given to him by those responsible for his treatment, or if the harm is caused by some external reason.
- c. c- If the physician uses a certain medical method in the treatment contrary to those of other physicians in the same specialization so long as such method conforms to generally acceptable medical principles.
- d. If recognized or unseen medical effects and complications in the field of medical practice take place, but are attributable to the medical error.

Chapter 2

Medical Liability Committees and the Medical Liability Supreme Committee

Article (18)

Upon a decision by the Minister or the president of the health body, as the case may be, a committee called "Medical Liability Committee" composed of the physicians specialized in all medical specializations shall be formed. The implementing regulations shall define how it the said committee is formed and the rules and procedures of its functioning.

These committees shall exclusively examine complaints submitted to them by the health body, public prosecution or the court, and shall decide on occurrence or non-occurrence of the medical error and its severity, and, in case of multiplicity of responsibility, portion of participation of every participant in such error along with its reason, consequential harms, casual

relationship between the error and the harm, and extent of inability in the affected organ, if any. The Committee may make use of the experts and those whom it deems appropriate to perform its tasks.

The provisions set forth in the Federal Law No. (7) of 2012 above shall apply to this Committee unless otherwise provided herein.

The compensation claims filed due to the medical liability shall not be accepted unless after being submitted to the Medical Liability Committees in accordance with the provisions of this Decree.

Article (19)

The complaints on facts related to the medical error shall be lodged or referred to the health body according to the controls set forth in the implementing regulations.

The health body shall refer complaints to the said Medical Liability Committee. The said Committee shall issue a reasoned opinion report for each and every case referred to it based on its examination of the case, the review of the medical file and the facts and information that become known to it as a result of its investigations, deliberations and technical study of the case. The Committee must submit its report to the health body within thirty days from the date of referral. This term may be extended for one or more equal terms with the approval of the health body at the Committee's request.

Article (20)

The complainant and defendant practitioner, as the case may be, may challenge report of the Medical Liability Company through a complaint to be lodged to the competent health body within thirty

days from the date on which they have been legally notified of the final report in the manner set out in the implementing regulations.

The competent health body shall refer the report and all documents in connection with the complaint to the Medical Liability Supreme Committee mentioned in Article (21) of this Decree.

The Committee's report shall be final unless being challenged within the period set forth in Paragraph (1) of this Article. In such a case, the challenge to the medical report issued by the Committee shall not be accepted by any other competent body.

Article (21)

A permanent medical technical committee called "The Medical Liability Supreme Committee" shall be formed by a Cabinet decision upon the proposal of the Minister of Health and Prevention after coordination with the other health bodies. The decision shall specify how it is formed, rules and procedures of its function, its membership term and the remunerations granted to its members.

This Committee shall exclusively examine the complaints to reports of the Medical Liability Committees set out in this Decree, and shall submit a reasoned opinion report for each complaint in accordance with the procedures and rules set out in the abovementioned cabinet's decision.

The Supreme Committee may confirm the report and refuse, amended or cancel the complaints, and its report shall be deemed final. No challenge to the medical reports issued by this Committee shall be accepted by any competent body.

Chapter 3
Investigating Practitioners

Article (22)

The Undersecretary or the director of other medical bodies, as the case may be, shall be informed of any investigation conducted with practitioners of any of such bodies as for the facts related to their work regardless of the body conducting such investigation. This shall be performed in accordance with the controls set out in the implementing regulations.

Article (23)

The health body may temporarily suspend the license until the Medical Liability Committee submits its report on the facts related to the medical error. It may also take the same action when investigating any other violation of the provisions of this Decree. The suspension shall be for no more than thirty days that may be renewed for the same periods.

Article (24)

The concerned parties may lodge medical error related complaints with the public prosecution, and the latter shall refer such complaints immediately to the competent health body to take actions as set forth in this Decree. In all cases, practitioners may not be investigated, nor may they be arrested or placed in preventive confinement due to a complaint against them unless the final medical report is provided by the health body stating existence of the gross medical error committed by the defendant.

Chapter 4

Medical Errors Civil Liability Insurance

Article (25)

Practicing of the Profession in the State is prohibited without first obtaining civil liability insurance against medical errors from a licensed insurance company in the State.

A health facility hosting a visiting physician shall be liable for compensating the harmed party for the physician's medical error, without prejudice to its right to recourse against the erring party.

The controls required to enforce the provisions of this Article shall be defined in the implementing regulations to this Decree.

Article (26)

Owners of facilities shall undertake to insure their practitioners against civil liability for medical errors. They shall also undertake to insure their practitioners against Profession risks resulting from practicing the Profession or because of it. In this case, owners of facilities shall bear the full cost of insurance premium in both cases.

Article (27)

The insurance companies shall be legally subrogated to the rights and obligations of the health facilities and the insured.

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Chapter 5
Penalties

Article (28)

1. Whoever violates any provision of Articles (1/12) and (14) of this Decree shall be sentenced to not less than two-year-imprisonment and not more than five year-imprisonment, and shall be fined not less than (200,000) two hundred thousand AED and not more than (500,000) five hundred thousand AED, or to either of these two penalties.
2. Whoever violates the provision of Article (12) (2) and Article (15) of this Decree shall be sentenced to not less than six-month-imprisonment, and shall be fined not less than (100,000) a hundred thousand AED and not more than (200,000) two hundred thousand AED, or to either of these two penalties.

Article (29)

Whoever violates the provisions of Article (13) of this Decree shall be sentenced to not less than three-month-imprisonment, and shall be fined not less than (50,000) fifty thousand AED and not more than (100,000) a hundred thousand AED, or to either of these two penalties.

Article (30)

Without prejudice to the provisions of the Islamic Law, whoever violates the provisions of Article (10) of this Decree shall be sentenced to not less than ten year-imprisonment.

Article (31)

Whoever violates the provisions clause (9) of Article (5) of this

Decree shall be sentenced to not less than three year-imprisonment and not more than ten year-imprisonment.

Article (32)

Whoever violates the provisions of clauses (2 and 10) of Article (5) of this Decree shall be fined not less than (10,000) ten thousand AED and not more than (100,000) a hundred thousand AED.

Article (33)

Subject to Article (16) of this Decree, every physician intentionally induces an abortion to a pregnant woman by giving her medications, or by using means leading to this end, or directing her to such means whether such abortion at her consent or not, shall be sentenced to not more than four year-imprisonment. However, if abortion causes death of the victim, then a penalty of not less than five year-imprisonment and not more than ten year –imprisonment shall be imposed.

Article (34)

Whoever is proven to commit a gross medical error as set out herein shall be sentenced to not more than one year-imprisonment and shall be fined two hundred thousand AED, or to either of these two penalties. If the gross medical error causes a death of a person, the perpetrator shall be sentenced to not more than two year-imprisonment and shall be fined not more than five hundred thousand AED, or to either of these two penalties. If the crime provided in the first Paragraph of this Article is committed under influence of alcohol or the drugs, then the perpetrator shall be sentenced to not more than Two year-imprisonment and shall be fined not more than a million AED.

Article (35)

The victim or his attorney, and his heirs or their attorney may request a proof for conciliation with the defendant before the health body examining the punishable crimes under Article (34) of this Decree, where such health body shall refer the conciliation to the public prosecution. The conciliation proof may be requested before the public prosecution. In all cases, the complaint shall be suspended according to such conciliation. Conciliation may be performed in any case of the claim, even if the judgment becomes final.

If the conciliation is reached, the criminal case shall be closed. The public prosecution shall order to suspend execution of the penalty if conciliation is reached while it is being executed.

In all cases, the conciliation shall not prejudice the right of the harmed person to resort to the civil court to claim compensation.

The conciliation shall not apply if the acts mentioned in Article (34) of this Decree are re-committed.

Article (36)

The penalties set forth in any other law shall not apply to the punishable acts under the provisions of this Decree.

Article (37)

The practitioners shall comply with the physician's obligations, to the extent applicable to them.

The discipline regulation for medical professions related practitioners shall be set out in the implementing regulations.

Article (38)

The disciplinary penalties established in the applicable legislation shall apply to the violations left without penalty in this Decree. The criminal liability under this Decree shall not prejudice the disciplinary liability to the violating practitioner.

Article (39)

The provisions set out in the legislation applicable to the private health facilities in terms of the disciplinary penalties shall apply to the private health facilities as to the violations of the provisions of this Decree and its implementing regulations committed by such facilities.

Chapter 6

Final Provisions

Article (40)

Officials who are named by a decision of the minister of Justice, in agreement with the Minister or health bodies, shall be designated as investigation officers in relation to proving any occurrences which are in violation of this Decree or its implementing decisions.

Article (41)

The Cabinet shall issue the implementing regulations to the provisions of this Decree within six months as of the date of its publication.

Article (42)

The Federal Law No.(10) of 2008 on the Medical Liability shall be repealed. The Cabinet Decision No.(33) of 2009 on the implementing regulations to the Federal Law No. (10) of 2008 on

the Medical Liability, and the decisions issued thereunder shall remain in full force and effect until the implementing regulations to this Decree are issued consistent with its provisions.

Article (43)

Any provisions contrary or in conflict with the provisions of this Decree shall be repealed.

Article (44)

The Medical Liability Supreme Committee set out in the said Federal Law No. (10) of 2008 shall continue in examining the files referred to it until the date of formation of the Medical Liability Committee. All incomplete files shall be referred to the Medical Liability Committee once it is formed.

Article (45)

This Decree shall be published in the Official Gazette and shall come into force as of the date of its publication.

Khalifa Bin Zayed Al Nahyan

President of the United Arab Emirates

Issued by Us at the Presidential Court in Abu Dhabi

On: 28 Shawwal 1437 H.

2 August 2016