

# Medical Mistakes through The Islamic Sharia' and Law

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## ABSTRACT

Some people may be surprised by combining the status of a doctor and a legal one, but I think from a deep point of view that the two should meet in order to be in front of a proper medical work that protects the actor, the recipient and even the place of his practice. A doctor who knows that he or she is practicing his work according to legal and legitimate principles and regulations, will give everything he has to become a doctor who is committed to the provisions of the law according to the technical assets he has learned in his work. Also, the patient, when he realizes that there is a law that protects his rights in case of negligence of the doctor or the hospital, he goes for treatment without fear or hesitation, and all these things motivated me to look into the criminal responsibility of the doctor for medical mistakes that committed by him intended or not intended. It is often not intended to be deliberately retaliating against the person of the patient, but the intent in the medical sense that we legally mean is negligence, recklessness, indifference to the patient's life and failure to take matters seriously into the legally and medically required manner. This is what was explained in this survey by dividing it into two topics in which firstly addressed the medical error and its types while in the second addressed the criminal responsibility of the doctor for his mistakes, in order to reach results and make some recommendations.

**Keywords:** Medical Errors - Criminal Responsibility - Medical Work - Guarantee

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## INTRODUCTION

We often hear about medical mistakes and do not know what these mistakes are and are they considered as a violation of the legal provisions established to punish the wrong person, regardless of his person. We also find that many are unaware that a doctor or technician who makes mistakes in surgery or a prescription can be punished like others for not realizing what he is doing or indulging some of the instructions that pose a risk to human health and his clinical rights.

The right of a doctor to exercise his medical duties freely in the treatment of patients has been recognized by various countries. And we all know that medicine, like other sciences, is constantly evolving, and the doctor has to follow up on everything that is new in his field of work. There is no doubt that the criminal responsibility of medical works is one of the most common and at the same time one of the most ignorant things for the people, especially the public, who do not realize the extent of the punishment imposed on the doctor who is negligent in his work. All these reasons motivated me to write this humble research in your hands in order to clarify the meaning of medical error and its images highlighting what it is and its definition in the first research and then in the second research clarifying the criminal responsibility for medical errors, referring to some results which have been reached.

### Study's Problem:

Each research has a problem that is the main reason for writing the topic and the problem of research lies in the following:

1. The doctor's reliance on the scientific certificate without looking for ways to develop his knowledge to keep pace with the development occurred in other sciences.

2. The ignorance of some people about the legal matters that may constitute a barrier in completing their medical profession in case they violate their duties.

3. The emergence of some jurisprudential divergences that determine the responsibility for the medical error or not.

### Previous studies:

Dr. Jamal Mohammed Baraka, Criminal Responsibility for Doctor's Fault, Ph.D., Arab Research Institute, 2001.

Dr. Mansour Al-Maaita, Civil and Criminal Liability in Medical Errors, Riyadh Arab Journal of Security Sciences, First Edition, 2004.

Dr. Nael Saleh Abdel Rahman, Criminal Responsibility for The Doctor in Jordanian Law Research published in the Journal of Yarmouk University, Jordan, Magazine (20), first issue 1998.

Dr. Abdullah Salem Al-Ghamdi, Doctor's Professional Responsibility of, Jeddah, Al-Andalus Green Publishing House, 11, 1997.

### Study's Plan:

#### First Topic: What is the medical error and its types.

❖ First requirement / Definition of medical error.

- Section 1 / Clarification of Medical Error.
- Section II / Definition of Medical Work.

❖ Second requirement / types of medical work.

- Section 1 / Therapeutic Medical Work.
- Section II / Preventive Medical Work.

#### Second Topic / Criminal Liability for Medical Errors.

❖ First requirement / Absolute exemption from criminal liability.

❖ Second requirement / Implementation of criminal liability.

#### Conclusion.

#### Results.

#### Recommendations.

#### References.

#### First Topic

##### What is the medical error and its types?

To look at the meaning of the medical error and determine its types, in which the topic is divided into two requirements; The first to identify the medical error and the second to determine the types.

#### First Requirement

##### Medical Error

#### Section 1: Definition of Medical Error

First: In language

Ibn Manthoor said: (Mistake and Mistaken: Against the right and he has made a mistake. and he made a mistake if he deliberately did it. and he is mistaken if he did it unintentionally.)<sup>1</sup>

Second: In term

(This is known as the doctor's repudiation of fulfilling his obligations to his patient, which represented by providing the medical care that is required by the origins of his profession and specialization and does not take into account the established scientific principles.)<sup>2</sup>

The medical error, as defined by article 27 of the Saudi health professions practice system issued by Royal Decree No. M/ 59, dated on 11 April 1426 A.H.

(It is every health professional error issued by the health practitioner, which has resulted in harm to the patient and is obliged to compensate.)

#### Section II / Definition of Medical Work.

Some have described the definition of medical work as "A set of practices that are being developed to maintain and recover health through prevention and treatment from the disease, and contemporary medicine applies on health sciences, medical and bioresearches, in addition to the medical technology for diagnosis of the disease, and its treatment report."<sup>3</sup>

It is also mentioned as:

"Every action that refers to human body or his soul in consistent by its nature with the established principles and rules which are theoretically and scientifically collaborated in medicine, and executed by a legally licensed doctor to handle this work with the aim of detecting, diagnosing and treating diseases to achieve healing, or reducing the patient's pains by reducing or preventing them, and aims to maintain the health of individuals or achieve a social interest, conditioned by the acceptance of those who are under this medical work."<sup>4</sup>

It can be noticed that most of the laws did not provide a clear and explicit definition of work.<sup>5</sup>

Legislations are usually not concerned with defining the topics it organizes and leaves these matters to the

specialized jurists in law, including French, Egyptian and Jordanian.<sup>6</sup>

The Encyclopaedia Britannica has defined medicine by its general sense, "It is a set of knowledge and procedures related to the disease and its treatment for humans."<sup>7</sup>

All of the previous definitions indicate a difference in terms and a union in meanings that medical error is a failure, violation and negligence of the profession duties by its practitioner, in which tampering with it leads to consequences that consider as a crime in the eyes of the law and a violation of human rights in general and the rights of the patient in particular.

#### Second requirement

##### Types and stages of medical work

In order to achieve the goal of practicing his work, the doctor have to go through several stages and use various methods and means to get to treat the patient in a way that suits him and pushes him towards healing<sup>8</sup>.

#### SECTION 1: Types of medical work

##### First: Traditional medical work

These are the certain works of the profession which are a set of routine procedures that everyone used to do from diagnosis, description of treatment, sessions, examinations and analyses<sup>9</sup>.

All of this is written in the prescription and follows up the patient's condition by reviewing and visiting the private clinic or the governmental hospital<sup>10</sup>.

As well as regular surgery where the usual surgical instruments, known by everyone without exception, are being used<sup>11</sup>.

Medical works can be divided from a legal perspective to; Material works, which is not related to the technical assets of the medical profession like someone who is performing a surgery and his hand has a disability that prevents movement, and Technical works that are related to the technical assets of the medical profession such as diagnosis and treatment<sup>12</sup>.

##### Second: Modern medical works

Modern medicine began to take care of the human psychology in general and the psychology of the patient in particular. There has been a lot of research on therapeutic methods to get rid of genetic diseases through genetic engineering<sup>13</sup>.

These works are characterized by their accuracy and reliance on modern and accurate technology devices and due to the difficulty of performing them and their serious effects, not everyone who has a license to practice the profession can perform them but must have an experience and practice in these fields (e.g., artificial insemination)<sup>14</sup>.

<sup>1</sup> - Ibn Manthoor, Tongue of the Arabs 1/65-66, page. 33.

<sup>2</sup> - Dr. Mansour Omar Al-Maaita, Civil and Criminal Responsibility in Medical Responsibility, Second Edition Center for Studies and Research, Riyadh, 2004, page. 44.

<sup>3</sup> - c ullifo rd larry (December 2002) spirituality and clinical care (Editorial). British Medical Journal 325 (7378)1434

<sup>4</sup> Saudi Arabia's Riyadh Newspaper, Issue 14218, May 29, 2007

<sup>5</sup> - Dr. Sahib Obaid Al-Fatlawi, Health Legislation, Amman, Cultural Publishing House, 1997, p. 157

<sup>6</sup> Dr. Abbas Ali Mohammed, Pharmacist's Responsibility for His Professional Mistakes, Amman, House of Culture and Publishing, 11, 1999

<sup>7</sup> Shaalan Suleiman, Scope of Criminal Protection for Modern Medical Works, Ph.D., Mansoura University, 2002, p. 90

<sup>8</sup> Dr. Essam Mounir Abdeen, Penal Medical Responsibility, Master's Thesis, Islamic University, Lebanon, 1999, p. 58

<sup>9</sup> Dr. Wajih Mohammed Al-Khayyeh, Criminal Responsibility of the Doctor in the Saudi System, Riyadh, Hawazin Library, 11, 1966, p. 91

<sup>10</sup> Dr. Mohammed Hussein Mansour, Medical Responsibility, Alexandria, University Thought House, 2006, p. 72

<sup>11</sup> Dr. Shaalan Suleiman, Scope of Criminal Protection for Medical Works, Previous Reference, p. 107

<sup>12</sup> Dr. Mohsen Abdul Hamid, A Recent Look at the doctor's Fault for Civil Responsibility, Mansoura, New Al-Jala Library, 1993, p. 13

<sup>13</sup> Dr. Abdel Fattah Bayoumi Hijazi, Medical Responsibility, Alexandria, University Thought House, 2008, p. 27.

<sup>14</sup> D. Malicier, Amaires, Le Respon sabilite medical. 1992, p.31

There are also some risks if the doctor neglects in using them and does not follow their guidelines.<sup>1</sup>

## SECTION II

### Stages of medical work

The medical work by its nature goes through different stages, and the doctor is committed to follow those stages accurately and sequentially so as not to entail criminal liability.<sup>2</sup>

These stages can be divided into two phases:

**The first:** the stages of treatment and of course start from the beginning of the medical work to the end and include:

#### I. Medical examination

It is the first work performed by the doctor to detect the patient's status and it is often clinical and with simple devices such as a stethoscope, thermometer and blood pressure device.<sup>3</sup>

#### II. Diagnosis

This is the most accurate stage the doctor goes through in order to draw logical conclusions from the symptoms made by the patient and on the basis of which, the next procedure is determined.<sup>4</sup>

Some define it as "The analysis of the physiological and chemical causes of the disease or condition."<sup>5</sup>

#### III. Treatment

It is often difficult to separate the stage of diagnosis and treatment because they are related to each other and this is for the benefit of the patient.<sup>6</sup>

It is known that when the doctor prescribes the treatment and determines the method of taking it, he commits to a specific result which is healing of the patient.<sup>7</sup>

The doctor shall not refuse to treat a particular case, such as providing first aid for a patient.

#### IV. Medical prescription

It is the document that the doctor writes after completing the examination and diagnosis. It must contain primary and essential information such as date, doctor's name, specialty and address, and signed by him.<sup>8</sup>

### Second: Preventive phase

Prevention is an important stage of medical work.<sup>9</sup>

After the great spread of the scientific progress, the role of the doctor became both therapeutic and preventive at the same time, so vaccinations that prevent a person from contracting the disease or infection, for example, have been spread before the disease can conquer the human body.<sup>10</sup>

Many Islamic legislations have provided for disease prevention<sup>11</sup> and they made some of them mandatory, like vaccination.<sup>12</sup>

Islam has mentioned disease prevention since more than fourteen centuries.<sup>13</sup>

And it didn't stop at the point of medicine, but Allah has ordered us to maintain health and don't eat more than the amount that benefits our health. (eat and drink: But waste not by excess, for Allah loveth not the wasters.)<sup>14</sup>

Also, the prophet Mohammed -Peace be upon him- said: (Whosoever begins the day feeling family security and good health; and possessing provision for his day is as though he possessed the whole world)<sup>15</sup>.

### Second Topic / Criminal Liability for Medical Errors.

To look at this topic, it has been divided into:

❖ First requirement / Absolute exemption from criminal liability.

❖ Second requirement / Implementation of criminal liability.

#### First requirement

##### ❖ Absolute exemption from criminal liability

Supporters of this theory call for the absolute exemption of the doctor from the criminal responsibility for his technical mistakes, which may occur during the practice of the profession, in which their argument is that the doctor did not practice the profession until obtaining an approved legal certificate entitling him to practice the profession.<sup>16</sup>

Also, those who practice medicine must have sufficient freedom to be able to take responsibility, because they have no control but their conscience.<sup>17</sup>

And this theory, although it continues, but it is terminated because it provides a legitimate cover for the ignorant doctor.<sup>18</sup>

#### Second requirement

##### ❖ Implementation of criminal liability

Supporters of this theory go with implementing the criminal responsibility of the doctor and denying what the previous theory stated, they argued that the legislative texts came in general did not differentiate between doctors and others. Therefore, the distinction between them is not appropriate in determining the criminal liability or not.<sup>19</sup>

Similarly, the applied perspective in accordance with the jurisprudence and judiciary that the victim's mistake does not absolve the doctor from responsibility for the

<sup>1</sup> Dr. Shaalan Suleiman, Scope of Criminal Protection, Previous Reference, p. 108

<sup>2</sup> - Dr. Asaad Obaid Al-Jumaily, Civil Medical Responsibility Error, Culture Publishing and Distribution House, Riyadh, 2009, p. 109

<sup>3</sup> - Yahya Ali Mohammed, Criminal Responsibility for Physicians, Master's Thesis, Institute of Research and Arab Studies, Cairo, 2008, p. 60

<sup>4</sup> *in* cincent, Laresponsabilite du medecin, 2002, P.25

<sup>5</sup> The legal and Historical foundations of patients as Medical consumers. Mark A. Hall forth coming, Georgetown Law journal. February 2008, No, 1090 618

<sup>6</sup> Dr. Mohammed Osama al-Qayed, Criminal Liability of Doctors, Former Source, p. 83

<sup>7</sup> Mohammed Sami Shawa, Medical Error before the Criminal Justice, Comparative Study, Cairo, Arab Renaissance House, 1993, p. 39

<sup>8</sup> - Dr. Abdul Moneim Mohammed, Legal Responsibility of the Doctor, Without Publication, 1988, p. 52

<sup>9</sup> Muwaffaq Ali Obeid, Criminal Responsibility for The Disclosure of The Secret of The Profession, Ph.D. Thesis of Ain Shams University, 2002, p. 40

<sup>10</sup> Dr. Mohammed Sami Shawa, Medical Error before the Criminal Justice, Cairo, Arab Renaissance House, 1993, p. 151

<sup>11</sup> Dr. Shaalan Suleiman, Scope of Criminal Protection for Medical Works, Previous Reference, p. 101

<sup>12</sup> Dr. Mohammed Osama al-Qayed, Criminal Liability of Doctors, Previous Reference, p. 96

<sup>13</sup> Issam Munir Abdeen, Penal Medical Responsibility, Former Source, p. 53

<sup>14</sup> Sura al-A'raf, verse 31

<sup>15</sup> Front rest Ahmed, Volume 1, p. 170

<sup>16</sup> - Dr. Mohammed Sami Shawa, Responsibility of Doctors and Their Applications in The Penal Code, Cairo, Arab Renaissance House, 2003, p. 50

<sup>17</sup> Dr. Mohammed Abdul Wahab Al-Kholi, Medical Responsibility, Former Source, p. 138

<sup>18</sup> Dr. Abdul Wahab Hauk, Criminal Medical Responsibility, Law and Sharia, Kuwait Volume 5, Year 1981, p. 155

<sup>19</sup> - Dr. Hassan Zaki Al-Abrashi, Responsibility for Doctors and Civil Surgeons in Comparative Egyptian Legislation, Ph.D., Fouad I University, 1925, p. 197

occurred error, especially if this error does not eliminate one of its pillars.<sup>1</sup>

Also, the current practice of jurisprudence and judiciary is the determination of the criminal responsibility for doctors, especially when it is a deliberate mistake, but the problem arises when his mistake is unintentional and marking the practice of his professional work.<sup>2</sup>

The prevailing view in Egypt and France is to equate the simple error with the serious error in terms of the competence of both of them to implement the criminal responsibility of doctors.<sup>3</sup>

### Third topic

The criminal responsibility for medical errors in Islamic law

#### First Requirement

Doctors' types and their obligations guarantee in Islamic jurisprudence.

#### Criminal liability for medical errors in Islamic law

This study aims to explain the Islamic provisions resulting from the doctor's error and its guarantee in Islamic law and the extent of the guarantee for medical errors that occur from the doctor, the negative effects of a doctor's work during surgery or treatment.

The theory of guarantee in Islamic jurisprudence, which looks at ensuring selves and money because of deliberately or unintentionally assaulting them, is a sufficient answer to all questions that revolve around the guarantee and inclusion in Islamic law.

#### The meaning of guarantee, in language and terminology

The guarantee in language comes in the sense of sponsorship, obligation and fines. The guarantor is in the sense of the sponsor, the committed and the fine.

Guarantee in terminology: The guarantee in the term of jurists has several meanings: It is called self-sponsorship, the guarantee of money for the public, and the guarantee of money and its obligation to a contract and non-contract. It's also called for getting a hand on money fairly or not in general. And called for guarantee of a fine for the damaged, the injured, imperfections and emergency changes, as it is called on what should be obliged to the street because of assaults such as blood money, indemnity, expiations and others.

What we're interested in from these callings is that for the fine for injured, damaged and imperfections as well as what should be obliged to the street Because the guarantee in it means the responsibility of the person who caused the damage, defect, or the imperfection, this is consistent with what we are addressing.

#### Doctors' types and their obligations guarantee in Islamic jurisprudence.

##### I. The Smart Doctor

What is meant by the smart doctor: is the skilled one who has attained a degree of science and knowledge of medicine qualifies him to look at the human bodies and medicating them, not his reality, that who is superior to their peers and is distinguished from them, in which if we stipulate this condition, many doctors cannot reach him, and doctors would become a rarity in society, and people would have fallen because of that in a very critical situation and embarrassments.

Therefore, there is no guarantee for the skilled doctor even if the patient has been harmed by the treatment as

long as the doctor is authorized to treat him, and there was no abuse during treatment and surgery, but damage or death was caused by something that could not be expected or avoided.

##### II. The Ignorant Doctor

The ignorant doctor has made a grave mistake, one of the most heinous obligations of responsibility after the mayors, because he has gone with the bodies and souls of the patients, including endangerment and risk, thus committing a forbidden matter in Islamic law. So that when the Islamic law permits medical work, it permits it if the doctor is professional in his work and able to treat the disease but when this restriction is absent, the provision of treatment remains in its origin, which is the prohibition<sup>4</sup>, Because of what in the treatment of actions towards the souls and exposing them to dangers.

Islamic scholars have arranged for the ignorant doctor, blood money<sup>5</sup> or to compensate for the patient's damage, and there is no dispute that if the therapist goes beyond the patient's damage, he will be a guarantor.

It must be said that there is a consensus and agreement from the scholars to include the ignorant doctor for what he caused to be destroyed, as a result of his ignorance, his illusion and his endangerment with the patient.

##### III. The wrong doctor

The error does not deny the eligibility, because the act is based on the error, and the prophet -peace be upon him- said: (Allah, the Highest, has overlooked my follower's mistakes and forgetfulness, and what they are forced to do against their will.<sup>6</sup>) The error is an incident of eligibility incidents, and an excuse of the legitimate excuses that removes the sin from its owner.

In the rights of the people, the blood money must be punished by manslaughter, because the blood money is instead of the damaged, which is financial compensation for the harm done to the deceased.

The Islamic jurisprudence did not take the wrong rule as a general law of civil responsibility arising from the harmful act, but it's taken the rule of "The practitioner is guarantor, even if he doesn't go beyond.<sup>7</sup>", In other words, the person who is doing the act is a guarantor of what he has damaged by his act, if he is transitive in it, and even if he does not deliberately corrupt, Because the mistake removes the sin of the act, but does not remove the guarantee of damage because he transitive by his act. Anyone who causes harm to others is a guarantor, whether wrong or not, distinctive or not.

There is no dispute in Islamic jurisprudence about the doctor's civil responsibility and obliging him to guarantee if he violates the principles of the medical profession, or he makes a mistake in medicine, which is familiar with what the scholars of the medicine say, resulting the harm or death of the patient.<sup>8</sup>

What must to do with the doctor's fault:

1. Blood money for rational.
2. Treatment costs.

The scholars stated that the wrong doctor, if his mistake leads to damage and damage, must pay the blood money

<sup>1</sup> Dr. Mohammed Osama al-Qayed, Criminal Liability, Former Source, p. 224

<sup>2</sup> Veto 26/12/1981, Veto Set, S.3, No. 211, p. 980

<sup>3</sup> - Dr. Mohammed Zaki Abu Amer, Penal Code Explanation, Special Section, Alexandria, New University Publishing House, 1996, p. 577

<sup>4</sup> Al-Ghazali, Abu Hamed Muhammad bin Mohammed al-Tusi (t. 505 A.H).

<sup>5</sup> Al-Bahnessi, Ahmed, Diya in Islamic Law, T4 (1988), Dar al-Shorouk, p. 56-67

<sup>6</sup> Al-Albanian, Muhammad Nasser al-Din, The Small Mosque and Its Increments (The Great Conquest), Islamic Bureau, Beirut, C1, p. 659. Number 3515

<sup>7</sup> For Landwe, Ali Ahmed, Jurisprudence, I4, (1998) p. 85

<sup>8</sup> Al-Kasani, the masters of the manufactures in the order of the canons, C7, p. 305

only, because medical error is a felony of error. The evidence for this what Allay says: (It is not for a believer to kill a believer except (that it be) by mistake. and whosoever kills a believer by mistake. (it is ordained that) he must set free a believing slave and a compensation (blood money. i.e Diya) be given to the deceased's family) [92: An-Nisa']

Where the verse indicates the obligatory of the blood money on the one who damaged a self by mistake, and the verse is general and comprehensive of the error resulting from doctors or others<sup>1</sup>.

And for the jurists, it is not right to support him, because his mistake was not intentional, and he has no choice to be disciplined, but it is enough to pay the blood money by his blood relatives, but they advised that he should not be disciplined.

#### **Treatment costs:**

If the doctor makes a mistake during the practice of his profession, and his mistake leads to harm the patient, he is not entitled to the wages resulting from the medical contract, but he should get back what he took from the patient, because what he did, didn't achieve the benefit for the patient. In addition, he bears the other medical expenses resulting from the attempt to remove the damages that the patient has exposed to. And the prophet -peace be upon him- said: (There should be neither harming nor reciprocating harm)<sup>2</sup>.

#### **The doctor's error in Islamic jurisprudence**

##### **Conditions for the legalization of medical work in Islamic jurisprudence and law**

The practice of medical work is legal, if certain conditions are met, and the practice entails no criminal, civil or disciplinary liability.

Islamic jurisprudence and statutory law have agreed on the legitimacy of the medical work once the following conditions have been met:

**First:** The existence of a legal license to practice the medical work, or from an Islamic perspective that the doctor is licensed by the authorized government, so it is forbidden to practice any medical profession without a license.

This condition is expressed in Islamic jurisprudence with the permission of the Islamic law, by obtaining the doctor's medical licence from a scientific institution specialized in teaching the medical sciences.

**Second:** Patient's acceptance of treatment: Since the integrity of the body is a personal right, it is a must to obtain the patient's acceptance for the medical intervention. It is forbidden to practice the medical work without the consent of the patient or the consent of the person responsible for him legally if he is not an adult.

The intervention of the doctor must be by the patient's permission, if he is an adult, or if he is a minor, unconscious, insane or a person in his judgement.

**Third:** In order for medical work to be permitted for the doctor, the work must be in accordance with the scientific rules that recognized medically. In doing his job, the doctor must be careful and adhere to the recognized scientific assets. If the doctor neglects to abide by the established scientific assets and causes harm to the treating person, the medical practitioner is held responsible for his or her mistake. So, this is considered

as a mistake that entails the doctor's responsibility to breach a commitment imposed by the established scientific assets of the profession.

Therefore, the doctor is not considered wrong if he adheres to the established medical habits and rules in the course of his work.

#### **Second Requirement**

##### **The basis of responsibility in Islamic jurisprudence and law**

##### **The basis of responsibility in Islamic jurisprudence and law**

Islamic jurisprudence has arranged that the doctor, considering that he treats the patient, is not a subject of what he does to the rule of: The practitioner is a guarantor, even if he caused a harm as long as there is no mistake in the origins of the medical profession according to the rule of: The legitimacy contradicts the guarantee, and rule of: Performing the duty does not comply with the safety condition, and because what can be reserved of, has no guarantee. Hence, we note that the Islamic law requires for the responsibility of a civil doctor: Making a mistake in treating the patient which causes a harm for the patient, and the mistake being a reason for this harm which means the relationship between the mistake and the harm shall be causal.

The statutory law is consistent with Islamic jurisprudence in terms of the doctor's irresponsibility for any harm to the patient if the doctor adheres to the established or well-known principles of the medical profession and was authorized by the State and the patient or his or her responsible person, or without their permission in cases of urgency and danger.

#### **CONCLUSION**

Through what was mentioned earlier to know what the medical error is and addressing all kinds of it, then indicating the jurisprudential differences discussed by the jurists revolve around determining the criminal responsibility of doctors or not. So, we noticed the preponderance of the side that decided to implement the criminal responsibility on the doctor.

After this brief clarification, we reached some results after the end of the research, which are:

1. Islamic law is the first to establish laws that protect human rights in the safety of his body, his life and even his psychology, and as prescribed in the Shariah, the self is for self, which is known as retribution. (And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous)<sup>3</sup>. As well as the blood money system in case of self-destruction and damage of any organ of the body, so if the countries abide by Islamic law, we would not be confused in some cases before the judiciary, and being unable to give a legal solution to the incident exposed before it.
2. None of us could deny the great benefit of the medical work, which is in the interest of the human being, although in its appearance shows as an assault on the patient's safety and health.
3. The medical development has two aspects, it is, on the one hand, improving, providing and developing modern methods that work to help the doctor in finding the appropriate solution for cases that were previously considered a medical disability such as artificial insemination and cosmetic surgery, but at the same time,

<sup>1</sup> Al-Shangiti, Muhammad al-Mukhtar bin Ahmed, provisions and effects of medical surgery (1993), printing of the Library of Siddiq, Taif, p. 508.

<sup>2</sup> The ruler, the correct one, the Book of The Book of Revelation, C2, p. 58. The governor said: This is a true talk, attributing it to a Muslim condition and they did not get it out. Ibn Majah, Sinan, The Doors of Judgments, p. 335. It was directed by Imam Malik in Al-Muta'a, The Book of The Districts, The Door of the Judiciary with The Facilities, C2, p. 745. Number 1234.

<sup>3</sup> Sura al-Bakra verse 179.

it is a sword on the neck of the ignorant doctor who does not keep up with the medical development.

4. It is not permissible to intervene in the human body in his life and after his death except by taking a written consent from the owner or his family at the time of his death.

5. That the doctor is criminally responsible for his mistake, whatever it may be, as long as his mistake caused a health problem for the patient, even if it was minor because of his negligence and lack of interest in the medical assets.

**The most important recommendations:**

1. There should be a special legislation to provide the necessary protection for doctors when treating their patients, and to protect the patient himself from mistakes committed by the doctor.

2. The need to form special criminal courts that are concerned with medical cases and have medical and legal committees to study each case in detail.

3. It should be an annual follow-up to doctors in how to develop himself and his competence and this affects his promotion if he is a public servant when he is not committed to development and keeping up with it.

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