



The first question of Fatwa no. 10890

Q 1: How can a doctor compensate a patient if he causes him physical disability in spite of taking great caution to avoid this? What will be the case if he commits a mistake, but without causing any harm to the patient? A doctor diagnosed a patient advising that an operation was needed to remove the appendix, but when he operated on the patient, he found the appendix healthy. Nonetheless, he removed it then discovered that the patient was suffering from acute renal colic. Doctors said that this is a common error that many doctors make. Removing the healthy appendix will get him in trouble with the patient, because he must inform him that it is healthy and that he has not removed it.

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This will cause him many problems such as being sued and tarnishing his reputation. On the other hand, if he does not inform him, the patient may develop an infection and go to another doctor who will see the surgical scar. He will not think that he is suffering from an infected appendix and the patient might die as a result of concealment of the truth about the previous surgery. Therefore, he must do one of two things: Either inform him or remove it. If he removes it, is he entitled to take the fees agreed upon? This is just one problem we face in our job and if we treat this matter outside the Shari'ah (Islamic law) - just as all doctors do - there will be no problem but we need to apply Shari'ah on ourselves. Kindly advise.

A: First: If doctors perform what is required of them and they are skillful in their work, know the exact condition of the patient they operate on and do not go beyond this, no compensation is to be paid if they commit a mistake. They also will not be liable for resulting death or physical disability, because they have performed what they are authorized to do according to Shari'ah. This is analogue to a Muslim ruler when he cuts the hand of a thief, or has done some permissible act which he is authorized to do according to his duties. However, if the doctor is not skillful, it is not permissible for them to perform the surgery; rather, it is forbidden for them to perform it. If they have done it, they must pay compensation for any error and will be liable for ensuing harm. The same will be the case if they are skillful, but they overstep the limits of the operation, has used an inappropriate instrument that causes pain, has chosen a wrong time for surgery, or has operated on another organ etc.

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They must pay compensation in these cases and will be liable for ensuing harm, because it is impermissible - rather it is forbidden for them to perform it.

Second: A doctor must be accurate in their diagnosis, consult with their colleagues before doing the surgery, use modern equipment as much as possible in diagnosis, and not rush to operate before making sure of the diagnosis. If any mistake occurs after these steps, the doctor must confess the mistake done to the people they are responsible before. They must not conceal the truth or deceive them. They must write this down in the patient record for fear of Allah's Punishment and to fulfill the duty of behaving honestly. They must give priority to the interest of the patient over self-interest. They must avert any adverse impacts that concealment and trickery may have on the health of the

patient. They are not entitled to take fees for the surgery in which they committed a mistake as mentioned in the above example or other cases. May Allah grant us success! May peace and blessings be upon our Prophet Muhammad, his family and Companions!

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Source: Fatwas of the Permanent Committee