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**Ebelerde Malpraktis ve Etik**

**Malpractice and Ethics in Midwives**

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**Abstract**

The acts of midwives, who have undertaken important roles in the execution of health services in the field of obstetrics, during, before and after medical practices, such as not complying with medical standards, not showing the necessary attention and care, exceeding authority, any failure or negligence they have experienced, may cause violation of ethical principles and also cause legal problems within the scope of malpractice claims. Today, midwives face the responsibility of punishment and compensation in many cases in terms of medical errors and ethical violations. The purpose of this article is to frame and raise awareness of the legal responsibilities of midwives due to the damages caused to the patient as a result of violations of ethics and medical errors during medical practices. In this study, the examination method of higher court decisions, scientific publications published abroad and domestically, and legal regulations were used.

**Keywords:** Midwifery, Malpractice, Ethics, Legal Responsibility

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## **Introduction**

Legal regulations regarding the midwifery profession, qualifications of midwives, midwifery practices, powers and duties of midwives are specified in the legislation. In addition to these duty, authority and responsibilities, it has various obligations in terms of medical interventions and ethical principles, according to the bound institutions and legal regulations (Patient Rights Regulation, TCK etc.).

## **Ethic and Malpractice (Medical Error)**

Basic principles in ethical codes related to midwifery practices; It can be summarized as “respect for human dignity, non-harm / benefit, equality, justice, righteousness, respect for human autonomy, respect for privacy and confidentiality, informed consent” (TED, 2020). Fulfilling these ethical duties is also legally important in terms of preventing malpractice (Durgun et al., 2018: 219).

Malpractice concept; It is the situation where the person receiving the service is harmed as a result of the wrong and bad practices of the health professionals working in the fields of medical science, and the unreasonable lack of skills and care (Büken and Büken, 2003: 141). At the same time, if the health professional hesitates to intervene in the patient, and as a result, if the patient is harmed, it is also considered as malpractice (Hakeri, 2019: 233). Medical errors can occur for many reasons. According to Akalın (Akalın, 2005: 143), the main causes of medical errors are; human factors, organizational factors and technical factors. As a result of the examination of the case files (Durmuş and Özbay, 2016: 357,358) and the studies made (Tuncer, 2014: 34-36), these errors can be defined as; problems related to injection, mixing of babies, insufficient follow-up of delivery and labor, not taking care of the pregnant until the moment of delivery, not informing the physician in case of risk, pregnancy and newborn miscarriages, lack of communication, exceeding the authority limits, writing false report-prescription, undertaking failure, illumination and consent, drug administration and blood transfusion errors, deficiencies in anti-infection practices, failure to comply with physician orders, violation of privacy, recording errors, failure to report obligations, injury in the newborn due to the use of vacuum/forceps or cutting-piercing tools under inappropriate conditions ,forgetting a foreign object in the patient, aesthetic deterioration as a result of faulty episiotomy repair, lack of attention and care.

## **Legal Responsibilities of Midwives Due to Medical Errors and Ethic Violation**

Midwives have criminal, compensation and disciplinary liability for medical errors and ethical violations.

*Criminal Liability:* It is the responsibility of midwives arising from causing injury or death of the patient through intention, negligence or recklessness, insufficient control. Neither in Turkish Penal Code(TCK) nor in other public and private laws, the criminal liability of health personnel is well-arranged. It is possible to apply some articles of TCK within the scope of "liability arising from malpractice" for healthcare professionals. Frequently encountered in indictment referral items; "TCK Art. 85: Murder by Negligence" "TCK Art. 89: Injury by Negligence" and "TCK Art. 257: Abuse of Duty" crimes in terms of public officials. In addition to the actual punishment, fiscal punishment can also be demanded as "Article 53 of the TCK: Prohibition of Performing the Profession for a Certain Period." The penalty is judged according to the occurrence of the fault, damage and causal bond conditions (Özkaya and Elbüken, 2018: 119). However, TCK Art.134: Violation of the privacy of private life, TCK Art.135: Recording of personal data, TCK Art.136: Unlawful giving or obtaining data, TCK Art.204: Forgery in the official document, TCK Art.205: Damaging, destroying or hiding the official document, TCK Art.258: Disclosure of the secret of the duty, TCK Art.280: The crimes of not reporting the crime by the healthcare professionals can also be listed as crimes that can be applied to midwives. In terms of crimes specified within the scope of criminal liability, midwives may be tried in courts, and may face criminal sanctions such as imprisonment, judicial fines and restrictions from working for a certain period of time.

*Compensation Liability:* Compensation liability of midwives is the responsibility based on the purpose of compensation for the damage caused by the midwife due to an unfair, unlawful and faulty act. Within the scope of the Law of Obligations (TBK, art 53-56), the discretion of the material and moral compensation is made by the courts. In case of damage in the form of death or injury, compensation items differ. A lawsuit is filed against the medical practices carried out in private health institutions against the relevant personnel and the legal entity of the health institution. In the public institution, lawsuits are brought against the administration on the basis of service fault in accordance with Articles 125 and 129 of the Constitution, and if the administration pays compensation to the patient, it can recourse to its own personnel at the rate of its fault. (Constitution Articles 125 and 129).

*Administrative Liability:* The responsibility of midwives in terms of disciplinary law differs due to the legislation of the institution. "Disciplinary Liability of Public Employees" is stated in the Law No. 657 on Civil Servants (DMK) 125 et al. "Disciplinary Responsibility of Employees in Private Health Service Providers" is not regulated since it is not a legal obligation to establish a disciplinary board in private workplaces. For healthcare professionals working in

private; Disciplinary penalties such as written warning, deduction of wages and dismissal without compensation are applied. It is possible to appeal to the Disciplinary Boards against these penalties, and to file an annulment action in the administrative court (DMK Art. 125-136). Professional disciplinary responsibility that binds physicians, dentists and pharmacists registered to professional associations does not apply to midwives who do not yet have a chamber.

### **Result**

Most of the practices that are under the duty, authority and responsibility of midwives are risky practices. This situation causes legal, criminal and administrative liability due to malpractice and facilitates ethical violations. Therefore, regarding the medical interventions to be performed, the midwife should have both professional and material equipment and should know the limits of her own responsibility. During the training of midwives both in school and post-graduation, it is valuable to convey their duties, authorities and responsibilities in detail for preventing legal and ethical violations, both in terms of protecting the midwives themselves and preventing the patient from being harmed.

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