


### Is the Professional Responsibility Board A True Lightning Rod in Malpractice Cases?

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#### To the Editor,

I am Dr. Ali Saridas, an emergency medicine specialist. The increasing number of medical malpractice cases in Emergency Departments is a complex issue, involving the examination of mistakes and omissions made by physicians and other healthcare professionals during the practice of their profession. The intricate structure of healthcare services suggests that alleged errors and omissions should not only be evaluated in terms of individual responsibilities but also through the processes of healthcare service delivery. Therefore, in crowded places like Emergency Departments, it is essential to adopt a broader perspective when assessing medical malpractice cases, rather than solely focusing on the actions of physicians (1). In recent years, the number of criminal and compensation lawsuits filed against physicians and other healthcare professionals in Emergency Departments has rapidly increased, making it one of the chronic issues of the healthcare system in Emergency Departments. Due to the increasing number of lawsuits, prosecutors and courts in our country cannot perform a thorough investigation into medical malpractice cases, leading to the neglect of many important factors (2). For this reason, new legal regulations are being introduced to resolve disputes related to medical malpractice. One such regulation is the addition of Article 18 to the Health Services Basic Law by Law No. 7406, published in the Official Gazette on May 27, 2022. This article established the “Professional Responsibility Board” (MSK) within the Ministry of Health of the Republic of Turkey, enabling the investigation of disputes arising from medical activities performed by healthcare professionals working in both public and private

healthcare institutions and foundation universities (3). The MSK consists of seven members, including a deputy minister and various healthcare administrators appointed by the Minister of Health. However, the presence of only two physicians in this board makes it difficult to make accurate decisions in a multidimensional event like medical malpractice. The absence of forensic medicine experts and relevant specialists in the board increases the likelihood of erroneous decisions (4). In the Supreme Court decisions, failure to obtain a report for investigation permission from the MSK is considered a reason for annulment. Searching for the key phrase “Professional Responsibility Board” on the official decision search site of the Supreme Court, “<https://karararama.yargitay.gov.tr/>”, the following example decision is found on January 31, 2025:

#### Decision

In the case of a patient who presented to the emergency department of a private hospital in Mersin with complaints of pain in the knees, shoulders, and arms, it was found that the patient was examined by the doctor in charge, given painkillers in an intravenous drip, kept under observation for one hour, and then discharged. Shortly after returning home, the patient became ill and was taken to another private hospital in Mersin where they died from cardiac and respiratory arrest. Since no autopsy was performed on the deceased, the cause of death could not be determined. According to the reports from both the Forensic Medicine 1st Specialization Board in Istanbul and the General Board of Forensic Medicine, it was considered a

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**Received:** 31.01.2025 • **Revision:** 12.03.2025 • **Accepted:** 10.04.2025

**DOI:** 10.55994/ejcc.1630862

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Available online at <https://dergipark.org.tr/tr/pub/ejcc>

**Cite this article as:** Saridas A. Is The Professional Responsibility Board A True Lightning Rod In Malpractice Cases? Eurasian Journal of Critical Care. 2025;7(1): 47-48

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medical shortcoming that an ECG was not performed after the initial examination. However, since the cause and mechanism of death were unknown, no assessment could be made regarding whether the failure to perform the ECG affected the outcome or whether the patient's fate would have changed if the ECG had been performed. The court accepted that there was a shortcoming in the doctor's duty but found no concrete and convincing evidence that would lead to the conclusion that the doctor's actions caused the death by negligence. Therefore, the defendant was acquitted of the charge of negligent manslaughter. In the reasoning and decision, following the crime date, Article 18 was added to the Health Services Basic Law by Law No. 7406, published in the Official Gazette on May 27, 2022. According to this article, "EXTRA ARTICLE 18 - Except for those subject to the investigation procedure defined in Article 53 of the Higher Education Law, investigations regarding medical procedures and practices performed by physicians, dentists, and other healthcare professionals in public or private healthcare institutions and foundation universities are governed by the provisions of Law No. 4483 on the Prosecution of Civil Servants and Other Public Officials." Investigation permission is granted by the Professional Responsibility Board, which can assign local health directorate presidents or deputies for preliminary examination in private healthcare institutions and foundation universities. The periods defined in Article 7 of Law No. 4483 for granting investigation permission will apply doubled. Decisions made by the Professional Responsibility Board may be appealed to the Ankara Regional Administrative Court." As per this regulation, the decision made by the Mersin 13th Criminal Court without requesting investigation permission from the MSK is unlawful, and as a result, the ruling was overturned unanimously on March 20, 2024. The case file was referred to the Chief Public Prosecutor's Office of the Court of Cassation for review (5). These deficiencies also appear in the decisions of the Supreme Court. The Constitutional Court, in its decision dated November 30, 2023, ruled that the establishment of this board, created with the article added to the Health Services Basic Law, is incompatible with the financial and administrative autonomy of universities (6). Furthermore, a regulation published on March 1, 2024, will require state universities to evaluate whether a healthcare professional acted in violation of their professional duties based on the MSK decision and, if applicable, the

result of the criminal trial. After a final court decision, the administration will fulfill the compensation obligation (7). Another important institution in resolving medical malpractice cases is the Forensic Medicine Institution (ATK). This institution issues expert opinions on medical malpractice claims through the 7th and 8th Forensic Medicine Specialization Boards. The 8th Board deals with errors that result in death, while the 7th Board deals with errors that do not result in death (8). Reports obtained from the ATK play a crucial role in identifying medical practice errors. However, cases without investigation permission from the MSK are returned to the Public Prosecutor's Office (9). In conclusion, the current legal regulations are not sufficient for the fair resolution of medical malpractice cases in Emergency Departments. More effective involvement of emergency medicine specialists and relevant medical fields in malpractice cases in Emergency Departments could result in more accurate and timely decisions. Additionally, addressing deficiencies in the judicial process and creating a more transparent procedure will ensure the effective resolution of medical malpractice cases.

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