



THE MECHANISM OF COMMITMENT TO DISCLOSURE IN THE CONSUMER AND MEDICAL FIELDS ACCORDING TO ALGERIAN LEGISLATION

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ARTICLE INFO

Article History:

Received 08.04.2024
Accepted 25.04.2024
Published 30.06.2024

Keywords:

Commitment to Disclosure,
Physician, Professional, Patient,
Consumer, Liability

ABSTRACT

This study addresses the mechanism of the commitment to disclosure. Both professionals and physicians bear the crucial responsibility of providing information that is not only accurate but also understandable and appropriate for the intended patient or consumer. By mirroring its international counterparts, Algerian law mandates this duty, attaching legal consequences for its breach. Before any medical intervention, a doctor must obtain the patient's consent, fulfilling an essential preliminary step. Likewise, before initiating a sales process, a professional must inform the consumer about all necessary details regarding the product or goods.

This paper delineates the extensive aspects of this obligation, including its defining features, evidentiary requirements, and the nature of the resultant damages from non-adherence. The aim is to recalibrate the balance of power within medical and consumer interactions, thereby augmenting the safeguarding of patients and consumers. This duty is considered one of the fundamental rights of patients and consumers, linked to ethical and humanitarian responsibilities, and is a precursor to obtaining consent.

INTRODUCTION

The rapid pace of scientific and technological advancements across various sectors necessitates keeping up-to-date, particularly in the health and consumer domains. This urgency has underscored the obsolescence of antiquated legislative texts, which are inadequate in addressing contemporary risks and innovations. Consequently, legislative bodies have periodically intervened to enact specialized regulations, embedding constraints and protective measures.

The commitment to disclosure is central to these protective measures, which is paramount in the medical and consumer sectors. This principle garners attention from international and national entities, representing a pivotal right for patients and consumers, underpinned by ethical and humanitarian obligations and forming the cornerstone of informed consent.

The legal and judicial landscape of the commitment to disclosure has evolved significantly, particularly since the landmark Teyssier ruling on January 28, 1942,¹ which asserted that consent must be sufficiently informed to be considered valid. Before any medical procedure, obtaining the patient's informed consent is a prerequisite and a critical component of the process.

Neglecting this duty is deemed negligence, leading to medical accountability. Algerian legislation has encapsulated this requirement in Law No. 18-11, pertaining to health care.² Similarly, professionals are obligated to furnish consumers with comprehensive information about products or services before concluding a transaction, as mandated by Algerian Law No. 09-03 on consumer protection and fraud prevention.³

Consequently, this study raises the following query:

- How has Algerian legislation orchestrated the commitment to disclosure within the ambit of consumer protection and health law?

1. COMMITMENT TO DISCLOSURE IN THE CONSUMER FIELD

The origins of consumer protection can be traced back to the United States in 1962, following a seminal speech by President John F. Kennedy to the Senate on March 15, 1962. In this address, he delineated four fundamental consumer rights: the right to safety, the right to be informed, the right to choose, and the right to be heard.⁴

1.1 Definition of Commitment to Disclosure

The commitment to disclosure is designed to empower consumers, enabling them to make informed and judicious decisions regarding acquiring products or services. This obligation emerges from legal statutes, similar to other duties borne out of legislative mandates.

The obsolescence of Law No. 89-02 in addressing contemporary consumer needs led to its replacement by Law No. 09-03 on consumer protection and fraud suppression. This newer legislation accentuates the importance of disclosure, specifically dedicating a section to "mandatory consumer information." Algerian legislation has thus developed a framework of statutes governing this disclosure commitment.

Effective disclosure equips consumers with the knowledge to make enlightened choices, steering them towards products and services that balance quality and price harmoniously.⁵ Recognized nationally and internationally, this commitment is a pivotal instrument that aids consumers in forming a comprehensive understanding of market offerings before their purchase decisions.

1 Civil Court (1942, January 28). Civil Court Ruling.

2 Law No. 18-11 (2018, July 2). "Law related to health".

3 Law No. 09-03 (2009, February 25). "Law on consumer protection and fraud suppression".

4 Boulaheya, A. B. B. (2002). General Rules for Consumer Protection and the Resulting Liability in Algerian Legislation. Algiers. p. 14.

5 Calais, J. & Steinmetz, F. (2006). Consumer Law. (7th ed.). Dalloz, Paris. p. 44.

1.2 Conditions of the Commitment to Disclosure

1.2.1 Information to be disclosed

The commitment to disclosure encompasses all information pertinent to the contract's critical elements. Nevertheless, the breadth of information required under this commitment varies across different sectors, presenting a challenge in specifying the information to be disclosed. Scholars and legal authorities have debated the criteria for determining necessary disclosure. French jurisprudence, for example, suggests a broad criterion that encompasses any facts significant enough to influence the creditor's decision to the degree that their prior knowledge might have prevented the contract's formation.⁶

According to Article 17 of Law No. 09-03, all parties must provide consumers with comprehensive product information. The data and information relayed to consumers must be exhaustive and detailed, highlighting the product's characteristics, components, and potential risks.

1.2.2 Conditions specific to the parties involved in the commitment

These conditions include:

Conditions pertinent to the debtor: A party bound by the commitment to disclose must be aware of the information related to the contract and its importance to the creditor. Common understanding holds that information should be reciprocally exchanged in a sales agreement, as dialogues regarding the product's attributes and qualities are crucial for securing the buyer's informed consent.

The creditor's unawareness of the contract-related information: Legal consensus maintains that a contracting creditor cannot assume a passive stance based on presumed ignorance. In practice, each party is expected to seek information to the extent of their capability. A creditor's plea of ignorance is deemed valid only when rooted in legitimate and insurmountable reasons.⁷

Although Algerian legislation broadly asserts the consumer's right to information, it remains

6 Hadouch, K. (2011-2012). The Commitment to Disclosure within the Framework of Law 09-03 on Consumer Protection and Fraud Suppression. Master's Thesis, Faculty of Law, University of Boumerdes. pp. 18-19.

7 *Ibid.*

ambiguous whether this right extends to pre-contractual or contractual phases, as indicated in Article 17 of Law No. 09-03 on consumer protection and fraud suppression.

1.3 Nature of the Commitment to Disclosure

In consumer law, many scholars view the commitment to disclosure as a duty to produce a specific outcome. It is not enough for a producer to simply demonstrate that they have attempted to convey the necessary information and data to the consumer; these are mandatory disclosures enforced by legislative and regulatory provisions.

Yet, this is not an absolute principle; if a professional must ensure a particular result, they must exert the utmost effort to shield consumers from potential harm. Despite being aware of the legal repercussions, many professionals overlook this obligation. Conversely, a producer's responsibility may also encompass due care, which entails facilitating the consumer's ability to purchase products and services safely, thereby offering goods that align with established standards and expectations.⁸

The consumer's right to information has been solidified in international legislation, often underscoring the imperative to honour this right, thus empowering consumers to protect their interests more effectively, free from the producer's influence.⁹

1.4 Means of Implementing the Commitment to Disclosure

According to Article 17 of the Consumer Protection and Fraud Suppression Law, the execution of the commitment to disclosure is achieved through:

1.4.1 Labeling:

This encompasses all forms of data, inscriptions, signals, emblems, characteristics, images,

8 Arezki, Z. (2011). Consumer Protection under Free Competition. Master's Thesis in Law, Professional Liability, Faculty of Law and Political Science, University of Tizi Ouzou. p. 121.

9 Guyon, Y. (1996). Business Law. (9th ed.). Economica, Paris. p. 949.

figures, or symbols related to a product, which may appear on its packaging, documents, signs, features, stickers, cards, seals, or any indicative element of the product's nature, irrespective of its format or basis.¹⁰

Per Article 18 of the same law, labelling information must primarily be in Arabic, with the option to include more easily understandable languages. The purpose of Labeling is twofold: to ensure consumers are adequately informed, as Labeling is often the first aspect noticed by consumers, and to facilitate sales, as mandated by Article 2/2 of Executive Decree No. 90-367 regarding the labeling of food products, as amended and supplemented.¹¹

Concerning the general regulations or principles related to Labeling, Article 13 of Law No.09-03 mandates that no sign, mark, or fictitious designation should be employed in a manner that unjustly differentiates a particular product from its counterparts. It also forbids preventive or therapeutic benefits claims, except for natural mineral water and specific dietary products. For instance, IFRI mineral water is labeled as appropriate for low-sodium diets and is recommended for pregnant women and for preparing infant formula.¹²

1.4.2 Price Disclosure and Sale Conditions:

Article 4 of Law No. 04-02 outlines the rules governing commercial practices, stipulating that "sellers are obligated to inform customers of the prices and rates for goods and services, along with the conditions of sale".

The prices disclosed must correspond to the total amount consumers are expected to pay to acquire a product or service, as delineated in Article 06 of the same law. With respect to sale conditions, Algerian regulations require professionals to provide consumers with detailed information about these terms, as per Article 8 of Law No. 04-02.

This provision mandates that sellers must, pri-

or to completing a sale, furnish consumers with accurate and truthful information regarding the product or service characteristics, applicable sale conditions, and the expected scope of contractual liability related to the sale or service.

1.4.3 Advertising:

Advertising encompasses all forms of communication designed to directly or indirectly promote the sale of goods or services, irrespective of the medium or location used¹³. The goal of advertising extends beyond merely satisfying consumer expectations to influence their purchase decisions; it also aims to safeguard the interests of the involved parties by promoting products and stimulating increased consumer consumption.¹⁴

1.5. Liability Arising from Non-Compliance with the Commitment to Disclosure

The Algerian legal framework holds individuals accountable for failing to adhere to the obligation of disclosure. The professional's negligence in this regard incurs various forms of liability, which can be:

1.5.1 Civil Liability:

This encompasses contractual liability emanating from violating a contractual duty, such as failing to deliver pre-contractual information. The sanctions for such breaches focus on clarifying the consumer's intent during the contracting process, influencing the party's consent, and potentially leading to the annulment of the contract.¹⁵

This may result from errors, where misconceptions distort the individual's understanding of reality, or deceit, characterized by employing fraudulent tactics to persuade the consumer into a contract agreement. Additionally, if the disclosure obligation is breached during the contractual phase, it entitles the consumer to insist on fulfilling the contract as originally stipulated.

10 Article 17 of Law No. 09-03.

11 Chaabani, N. H. (2012). *The Stakeholder's Commitment to Ensuring Consumer Safety in the Light of the Consumer Protection and Fraud Suppression Law*. Master's in Legal Sciences, Faculty of Law and Political Sciences, University of Tizi Ouzou. p. 79.

12 Kalem, H. (n.d). *Consumer Protection*. Master's Thesis, Faculty of Law, University of Algiers. pp. 22-23.

13 Article 3/3 of Law No. 04-02.

14 Jebali, W. (2006). *Diet of Consumer Consent through Information*. *Critical Journal of Law and Political Science*, Issue 02, Faculty of Law, University of Tizi Ouzou, Algeria. p. 25.

15 Hadouch, K. (2011-2012). *Op. cit.* p. 113.

Often, in commercial advertising, consumers initiate legal action for specific performances to compel advertisers to honour the promises made in their promotional campaigns. Besides contractual liability, civil liability also encompasses tort liability, stemming from the breach of a legal duty, which arises among individuals who lack a direct contractual relationship.¹⁶

When the prerequisites for civil liability, including fault, damage, and a causal link, are established, the consumer is entitled to reparation for the injuries incurred due to the debtor's non-fulfilment of the disclosure duty.¹⁷

This restitution encompasses compensation for physical harm, such as fatalities, illnesses, and injuries, as well as material damage, which impairs one's legal rights, assets, or vested interests. The tort liability of the producer is invoked when the aggrieved party is a third entity, not engaged in a contractual relationship with the professional (producer), yet they are still entitled to compensation. Examples include family members, friends, and guests of the purchaser.¹⁸

1.5.2 Criminal Liability:

In line with prevailing legal standards, the Algerian legal framework provides for criminal sanctions to supplement civil penalties, obliging professionals to disclose pricing information as dictated by Articles 4 and 5 of Law No. 04-02 on commercial practices, with the failure to disclose prices being a misdemeanour as per Article 31 of the same statute.

Moreover, the omission of sale conditions constitutes a punishable act under Article 32 of Law No. 04-02. Supplementary penalties, such as confiscation, are delineated under Law No. 09-03, where commodities confiscated due to breaches of commercial practice regulations are transferred to the state property administration for disposition.

16 Boudali, M. (2005). *Product Liability for Defective Products: A Comparative Study*. Al-Fajr Publishing and Distribution, Egypt. p. 40.

17 Civil Court (1983, October 11). Civil Court Ruling.

18 Hadouch, K. (2011-2012). *The Commitment to Disclosure within the Framework of Law 09-03 on Consumer Protection and Fraud Suppression*. Master's Thesis, Faculty of Law, University of Boumerdes. pp. 18-19.

2. THE COMMITMENT TO DISCLOSURE IN THE MEDICAL FIELD

Article 23 of Law No. 18-11¹⁹ on health stipulates that every individual must be apprised of their health condition, requisite treatments, and associated risks. This obligation is further emphasized in Law No. 18-11 concerning health, as elaborated and supplemented by Articles 23, 25, and Article 343, which pertains to organ transfer and transplantation.

Additionally, the commitment to medical disclosure is underscored in Algerian decree No. 92-276, embodying the code of medical ethics, with Article 43 explicitly stating that a physician or dentist is compelled to furnish clear and accurate information to their patient regarding the rationale behind each medical procedure.

The imperative for medical disclosure, a right endorsed by French jurisprudence and codified into law, seeks to legally uphold human dignity, especially following its infringement. The ethos of medical disclosure is anchored in the principle of bodily sanctity, safeguarded by the Algerian constitution, which forbids any form of physical or psychological abuse, penalizes torture, cruel, inhumane, or degrading treatment, and outlaws human trafficking, as per Article 39.

2.1 Concept of Patient Information Commitment

The obligation to inform encompasses the provision of a comprehensive and accurate account of the patient's health status, empowering them to make an enlightened choice regarding treatment acceptance or refusal. It is incumbent upon the physician to elucidate the nature of the ailment, the proposed therapeutic measures, alternative treatment options, and the financial implications of each, employing clear and simple language.²⁰

Furthermore, the physician is obligated to delineate the potential risks involved. The terminol-

19 Law No. 18-11 related to health.

20 Abbachi, K. (2011). *Medical Damage in the Medical Field*. Master's Thesis in Professional Liability Law, Faculty of Law and Political Sciences, Mouloud Mammeri University of Tizi Ouzou. p. 60.

ogy to describe this obligation varies among academics, with some preferring “disclosure” while others opt for “enlightenment.”

2.2 Content of the Commitment to Disclosure:

Disclosure of Diagnosis: This duty is incumbent upon the physician from the outset of the medical assessment, whether it involves physical examination or the application of various imaging modalities.

Disclosure of Treatment: Informed consent for treatment is predicated on the patient’s understanding and agreement to the therapeutic approach, necessitating the physician to provide comprehensive details about the treatment, its nature, and its objectives.

Post-treatment Disclosure: Physicians are mandated to apprise patients of any occurrences during the treatment and subsequent outcomes, in addition to advising on preventive measures to avert future complications.²¹

Obligation to Disclose Medical Risks: It is crucial for the physician to alert the patient about the potential risks associated with the proposed treatment.²²

2.3 Forms of Disclosure:

Verbal Disclosure: The intrinsic trust in the physician-patient relationship typically facilitates the conveyance of information verbally, leveraging the established rapport between the two parties.

Written Disclosure: The necessity for written disclosure is underscored in Article 49 of the medical ethics code, particularly when a patient opts against treatment after being apprised of the associated risks by the physician. The law mandates that the patient provide a written declaration of their refusal.²³

2.4 Liability for Failing to Fulfill the Commitment to Disclosure

The essence of the commitment to disclosure lies in providing patients with a truthful and comprehensive understanding of their health condition, enabling them to make informed decisions about accepting or declining treatment while fully aware of the potential repercussions.²⁴

This commitment forms part of the contractual obligation arising from the professional relationship between the patient and the physician, marked by a disparity of knowledge, as it juxtaposes a patient, often unacquainted with medical intricacies, against a professionally qualified physician.

The onus is on the physician to bridge this knowledge gap, thereby fortifying the trust endowed by the patient. This obligation is legally and professionally mandated by the regulatory and guiding frameworks governing the medical profession.²⁵

Pursuant to Article 267 of Law No. 90-17, as revised by Law No. 85-05, non-compliance with the disclosure obligation by the physician results in:

2.4.1 Civil Liability:

In medical disclosure, the physician must furnish all pertinent information to the patient, facilitating well-informed and voluntary consent at the onset of the medical engagement.

French legal precedents underscore the importance of patient information to assure voluntary, informed, and enlightened consent. The physician’s liability may be contractual, anchored in the medical contract between the patient and the physician, or tortious in cases devoid of a contractual nexus:

Contractual liability:

Contractual liability necessitates the presence of fault, damage, and a causal connection

21 Jerboua, M. (n.d). Modern Obligations of the Doctor in Medical Practice. Doctoral Thesis in Law Sciences, Faculty of Law, University of Algiers 1, Youssef Ben Khedda. pp. 267-268.

22 Mamoun, A. (2008). Patient Consent in Medical and Surgical Acts. University Publications House, Alexandria, Egypt. p. 130.

23 Jerboua, M. (n.d). Modern Obligations of the Doctor in

Medical Practice. Doctoral Thesis in Law Sciences, Faculty of Law, University of Algiers 1, Youssef Ben Khedda. pp. 267-268.

24 Mamoun, A. (2006). The Right to Consent to Medical Acts. Renaissance Publishing, Cairo. p. 140.

25 Boukhers, B. (2011). Physician Error During Medical Intervention. Master’s Thesis in Law, Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi Ouzou. p.

between them. The physician's negligence in fulfilling the informational duty manifests in two distinct manners:

- The physician's failure to inform the patient results in a breach, triggering their contractual liability to the patient.
- The physician imparts information to the patient, who then consents; however, this consent is marred by a lack of free and enlightened will, often compromised by misunderstanding, deceit, coercion, or exploitation.²⁶

An interpretation of Article 23 of the Health Law suggests that the Algerian legislature acknowledges the contractual dynamic between the patient and the physician. Typically, when a physician treats a patient under conventional circumstances, it is predicated on a tacit agreement, establishing a contractual bond between them, usually not formalized in writing.²⁷

Tortious Liability:

The physician's liability under tort law emerges from breaching a legal duty to avoid causing harm to others. Article 124 of the Civil Law states, "Any act, irrespective of its nature, if executed by a person through their fault that inflicts harm upon another, compels the wrongdoer to compensate for the resultant damage." The negligence associated with the physician's failure to fulfil the information obligation can manifest in two ways:

- The physician neglects to inform the patient.
- The physician provides information but fails to meet the necessary conditions, such as delivering inaccurate information, leading the patient to consent to the medical procedure.²⁸ Should this result in harm, the patient is entitled to pursue legal action and demand compensation.

2.4.2 Criminal Liability:

The act of withholding information from the patient may be construed as an infringement on their physical integrity, subjecting the physician to potential criminal prosecution under Article 264 of the Penal Code, which venerates human sanctity, dignity, and the right to physical integrity. This article prescribes penalties for anyone who deliberately causes injuries or perpetrates acts of violence or assault.

2.5 Circumstances in Which the Physician's Liability is Exempted:

Considering the Patient's Psychological State:

Per Article 34 of the medical ethics code, a physician may withhold information regarding the patient's health status or necessary treatments if revealing such information is likely to cause harm to the patient.

Emergency Situations: In exigent circumstances, such as when the patient's condition is rapidly deteriorating, in cases of accidents necessitating immediate medical intervention, or when the patient is unconscious, the physician's urgent action becomes indispensable to saving the patient's life. Under these emergency conditions,²⁹ the physician is relieved from the liability of non-disclosure, confronted with the critical choice between the paramount duty to administer treatment and the secondary duty to inform.³⁰

Patient's Waiver of the Right to Information: The obligation to inform is lifted if the patient consciously relinquishes their right to information, entrusting the physician with decision-making regarding their treatment. In such instances, it is the responsibility of the physician to substantiate that the patient has declined to be fully informed or to provide explicit consent, particularly after being informed of the consequences of such a waiver. This exemption permits the physician to undertake the necessary medical treatment without the need for further consent.³¹

26 Jerboua, M. (n.d). Modern Obligations of the Doctor in Medical Practice. Doctoral Thesis in Law Sciences, Faculty of Law, University of Algiers 1, Youssef Ben Khedda. pp. 267-268.

27 Aichaoui, H. & Aichaoui, W. (2021). Doctor's Breach of the Medical Information Obligation. *Annals of the University of Algiers 1*, Volume 35, Issue 02/2021. p. 1111.

28 Abdel Ghaffar, A. M. (2010). *Civil Liability in the Medical Field (Comparative Study between Sharia and Law)*. Legal Books House. p. 241.

29 Gheish, A. & Boulouar, A. (2008, April 09-10). The Doctor's Obligation to Inform the Patient. National Symposium on Medical Liability, organized by the Faculty of Law, Mouloud Mammeri University, Tizi Ouzou. p. 87.

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CONCLUSION

The commitment to disclosure represents a critical issue that has been progressively addressed by numerous legal frameworks, including Algeria's, which have evolved swiftly to adapt to the practical and economic shifts in society. Despite the passage of considerable time since the inception of the first Algerian laws aimed at safeguarding consumers in 1989 and patients in 1985, the discourse on this matter continues to advance. Our findings are as follows:

- The Algerian legislature has been proactive in formulating regulatory texts to safeguard the interests of both consumers, through Law No. 09-03, and patients, via Law No. 18-11.
- Information conveyed to patients and consumers should be transparent, straightforward, and comprehensible.
- Physicians have a legal mandate to enlighten patients about the medical procedures they must undergo, a requirement underscored by the legal statutes regulating medical practice. Physicians must apprise patients of their health status and the possible benefits and drawbacks of any treatment, with the risk of facing disci-

parative Study. Scientific Publishing Council, Kuwait. p. 177.

plinary, civil, or criminal repercussions for non-compliance. Nevertheless, there are specific, well-defined scenarios in which physicians can be exempted from this informational duty without incurring legal liability, such as in emergencies, considering the patient's psychological well-being, or when the patient voluntarily relinquishes their right to be informed.

- Professionals in the consumer sector must provide consumers with accurate and forthright information before finalizing a sale, including details about the product and service features, pricing, instructions for use, and cautions regarding potential hazards or intrinsically dangerous goods.
- A robust commitment to disclosure within the consumer realm significantly mitigates many risks that endanger consumer safety and economic well-being. In instances of non-compliance, both civil and criminal penalties are applicable and enforceable.

In summation, it is advisable to bolster awareness among both physicians and patients by delineating the rights and obligations of each party. This should be supported by the proactive engagement of civil society through organizations, associations, and conferences dedicated to fostering understanding in this field of knowledge. Haut du formulaire

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