

PROVISIONS OF CIVIL LIABILITY FOR MEDICAL ERRORS



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Date of submission: 20/07/2025 Date of acceptance: 22/09/2025 Date of publication: 28/09/2025

Revision of the article: Pr./ AKLI Aouine (Univ. of Tizi Ouzou)

Abstract:

One of the most noble human professions, the medical field seeks to maintain human health. The doctor's goal is to treat the human body as a human being with natural dignity. When carrying out medical treatments to cure individuals, a doctor has to act with great responsibility. While carrying out their responsibilities, the doctor is required to be careful, considerate, and attentive to their patients, therefore promising to provide great treatment. A doctor's civil responsibility results from medical mistakes if they neglect to treat patients with the required care. These mistakes either positive or negative actions the doctor performs during the practice of their profession that call legal responsibility under law.

Key words: *Medical Liability; Civil Responsibility; Contractual Liability; Tortious Liability; Medical Errors.*

Introduction:

One of the most essential and noble human professions is the medical field since it demands doctors safeguard people's life and well-being. This profession creates for the physician both an ethical and legal obligation requiring respect for human body integrity and its preservation because of its sanctity.

Accompanied by contemporary inventions and discoveries, the medical profession has developed alongside scientific and technological progress. All these changes have endangered human health and safety, particularly as no legal rules have kept pace with these scientific breakthroughs. This has resulted in responsibility in sectors directly influencing the human body, including the medical field. In their responsibilities, doctors have to be careful, considerate, and diligent; they should give the required degree of care. Neglecting to do so causes civil responsibility.

Therefore, we ask:

What Are the Provisions Regarding Civil Liability for Medical Errors?

We will discuss the legal character of civil liability for medical mistakes and the implications of civil liability for medical errors in order to help us respond to this inquiry.

Section I:

The Legal Nature of a Doctor's Civil Liability

Legal character of a doctor's civil responsibility divides jurists. While others see it as tortious liability in the conventional sense, some see it as contractual responsibility. A modern viewpoint, therefore, sees it as professional responsibility.

A) The Legal Nature of a Doctor's Civil Liability in the Traditional View:

According to the conventional perspective, some people believe that a doctor's liability is contractual in nature, while others see it as tortious.

Given that the contract is the law for the contracting parties, demanding respect for its content and following of its terms, contractual liability is the penalty resulting from the violation of contractual obligations. Whether it involves the creation, transfer, modification, or termination of an obligation, a contract is usually defined as an agreement between two or more parties aimed at producing a particular legal effect, as stated in Article 54 of the Algerian Civil Code.

Martini described the medical contract as a binding agreement between the doctor and the patient in which the former is obligated to provide the appropriate treatment for the patient's condition depending on scientifically founded ideas and the latter, therefore, agrees to compensate the doctor. This definition fits Savatier's perspective of the medical contract as a two-way agreement between the doctor and the patient or their representative whereby the doctor offers treatment and advice to the patient upon request.

Most legal systems and academics seem to agree, given the definition of a contract, that a contractual mistake is the violation of one of the contractual obligations, whether it involves non-performance, delayed performance, or performing obligations in a way that damages the creditor's interest's contrary to the terms of the contract.

Generally speaking, a medical contract is a deal between the patient or their legal representative and the doctor on one side. The patient is expected to closely follow the doctor's orders and pay the recommended fees; the doctor is bound by this agreement to deliver the required treatment and tests. Professor Ahmed Adriyoush defines it, alternatively, as a doctor-patient agreement in which the

doctor promises to give the latter professional services for a charge. Among the professional services the doctor is required to provide are, all in accordance with the accepted standards in the domains of medicine and law, taking care of the patient's health via disease prevention, diagnosis, treatment, or other legitimate medical procedures (Kchida, 2023, p. 100).

1. Considering the Doctor's Civil Liability as Contractual Liability:

The scholar Abdel Razak Al-Sanhouri is one of many jurists who have argued for treating a doctor's civil liability as contractual liability. He highlighted that professionals such as doctors, pharmacists, engineers, lawyers, and others may make mistakes in the course of their work. Because these professionals are typically bound by contracts with their clients to provide their technical services, their liability is contractual rather than tortious. The technical service is assessed and limited to the degree of care mandated by the industry's professional standards (Al-Sanhouri, 2000, p. 930).

In the early 20th century, the judiciary also gave careful consideration to separating medical liability from general liability principles, rejecting the temporary use of tortious liability for physicians. This is demonstrated by the well-known ruling of the French Court of Cassation on May 20, 1936, which upheld the existence of a legitimate contract between the patient and the physician, according to which the physician is not required to ensure the patient's recovery but rather must make earnest, committed efforts motivated by conscience, leading to attentiveness and care (Belmekhtar, 2022, p. 768).

For the establishment of the doctor's contractual liability, the following conditions must be met:

Existence of a legitimate medical error: When all of the components of the medical contract between the patient and the physician are present, the contract is deemed valid. A legitimate medical contract is one in which the patient and the physician declare their mutual intentions, the contract's subject matter is legal, and it does not contravene public morals (Baddour, 2014, p. 17).

Damage influencing the contracting patient: This situation results from the idea that, in keeping with the relative effect of contracts, the consequences of a contract are confined to the parties concerned. So, for example, if the doctor injures one of his assistants, his responsibility in such a situation would not be contractual but rather tortious. The same holds true should the doctor's conduct cause harm to a patient visitor.

The doctor's liability is also tortious because the medical treatment contract between the patient and the doctor does not include such obligations (Belmekhtar, 2022, p. 769).

The damage has to come from the doctor's violation of his contractual obligation: The doctor's contractual responsibility can only come from a fault assignment resulting from his failure to fulfill an obligation under the medical treatment contract. But, if the doctor's fault is not related to a breach of a contractual duty, the liability in this case will be tortious rather than contractual. Under the system of contractual responsibility, the doctor is usually required to act carefully, which calls for caution when treating the patient in line with the medical treatment contract established between them (Baddour, 2014, p. 18).

A contractual error in the area of medical liability is only recognized should the treatment contract be breached, therefore requiring the validity of a medical contract. Contractual liability cannot be addressed without a medical contract.

"A medical contract is a contract between a doctor and a patient or their legal representative whereby the doctor agrees to provide the required treatment and examination in exchange for the patient's promise to strictly follow the doctor's instructions and pay the required fee.

The medical contract has to be valid between the harmed patient and the treating physician. According to the general rules, the Algerian legislator has specified in the second section of Chapter Two of the Civil Code the criteria for a contract including consent, subject matter, and cause. Treatment started by the doctor without a contract between them nullifies the contractual responsibility (Ben Sghir, 2017, pp. 146–147).

2. Considering the Doctor's Civil Liability as Tortious Liability:

Usually in situations outside the range of a contract, tortious responsibility develops; the law is the source of the duty. A person who acts in a way that harms someone else is legally required to compensate them. It is founded on a violation of a single, constant legal duty: the duty not to harm others (Al-Ali, 2021, p. 18).

Some legal theory maintains that tortious responsibility is the liability resulting from errors made by the physician that harm the patient. This liability is founded on the duty demanding everyone to act carefully and prudently toward others. Whether in the activities of ordinary people or in the activities of professionals, these rules apply to any harm resulting from recklessness, negligence, or lack of foresight. Proponents of this perspective base their case on several reasons, the most significant of which are:

- The lack of a contractual relationship between the doctor and the patient, especially in cases when the patient is unconscious or unable to express their will.

- Because medical professions are purely technical, patients lack the knowledge necessary to discuss or evaluate them. Since only doctors understand medical professions and the nature of their responsibilities do not fall under the purview of the doctor-patient contract, it is unfair to treat them as a matter for contracting. The doctor is the only one with medical knowledge; patients are ignorant of these issues and have very little knowledge of them.

- As a general rule, the doctor's obligation is one of diligence, based on the need for the doctor to exercise the necessary care.

- Claiming civil compensation under the rules of tort liability ignoring the terms of contractual liability in instances of fraud or misrepresentation by the doctor or when the doctor commits an error qualifying as a criminal offense (Al-Ali, 2021, pp. 362-363).

- Considering human life as a matter of contract is unrealistic since putting the patient under the doctor's authority to act with their body as they choose is not

acceptable. The law and public policy safeguard the patient's life and safety; any departure from this makes the doctor responsible under tort liability rules.

- The sign at the entrance of the doctor's office indicates an invitation to contract since the terms of treatment are not decided upon until after discussions and negotiations between the parties and prior knowledge before the contract is finalized. Any other scenario ignores and infringes the doctor's liberty; emergency situations come under tort responsibility.

- Sudden patient injuries can leave the patient unconscious or in a coma, which makes it impossible for a contractual relationship to exist between the patient and the doctor since the patient cannot communicate consent or denial. In such situations, the lack of a contractual relationship renders the doctor's mistake a tort.

- The doctor's neglect of the duty to treat the patient constitutes a legal breach. The judge does not read the common environment between the parties when questioning the doctor; rather, they decide on medical duties, professional rules, and their relationship to medical ethics and knowledge. The contract between the doctor and the patient does not cover these duties; hence, tort responsibility should be set (Assaf, 2008, p. 18).

Emphasizing the kind of tort liability in instances of mistakes made in public state hospitals, the judiciary underlines the violation of a general legal duty not to harm others, as defined in Article 124 and following articles of the Algerian Civil Code. The Supreme Court decided that negligence and failure to check on the victim the night of the suicide caused the hospital to be civilly liable for the suicide of a mentally ill patient. His condition mandated constant patient monitoring (Al-Ali, 2021, p. 363).

This fits with Algerian law, where the Supreme Court decided: "Since the victim was under the hospital's care when he passed away, tort liability is established; the appellant's mistake is demonstrated by his failure to uphold the duty of care and protection, which means he must pay for the damages brought on by the deceased M.M."

Aiming especially at mistakes made in public state hospitals, Algerian law supports the tortious character of medical liability, so complementing the view of legal scholars. The court's rulings depend on legal clauses holding the doctor responsible for not meeting their duty of vigilance and foresight as well as for established negligence or carelessness. Among them are Articles 11, 14, and 17 of the Medical Ethics Code, Article 239 of the Health Law, and Article 124 of the Algerian Civil Code (Ben Sghir, 2017, p. 145).

B) Considering the Civil Liability of the Doctor as Professional Liability According to Modern Trends:

According to contemporary legal trends in medical jurisprudence, professional error is the foundation for a doctor's civil liability. There are different types of this liability, and certain requirements must be fulfilled.

1. The Medical Civil Liability Based on Professional Error:

Medical liability extends beyond instances of general duty violations, such as the failure to act with caution, care, and foresight, or violations of the contractual obligations outlined in the doctor-patient agreement. Liability instead results from breaking professional duties that include the medical profession's values and regulations, which act as a guide for these professionals' duties. Consequently, based on the idea of professional error, their liability is professional.

Any mistake pertaining to one's profession while practicing it that shows up as a departure from the accepted norms and principles of the profession is considered a professional error. Therefore, a professional error occurs when a professional deviates from the standard professional conduct based on established principles while practicing their profession. Because of this, the doctor is accountable for any errors made in the course of their work, which is a violation of their duty of care (Belmekhtar, 2022, p. 775).

A medical error occurs when a physician deviates from the standard procedures and standards of their profession, which they must follow, and causes harm to the patient.

It is also described as an action taken by a doctor in the course of their work, whether positive or negative, that has detrimental effects on people's safety and health. This mistake is not made by a watchful physician among his peers, who are in the same external situation as the doctor being questioned, and it is carried out in a way that is contrary to medical guidelines, standards, or procedures (Aajabi, 2022, p. 04).

2. Conditions for Professional Error:

The following requirements must be fulfilled in relation to medical errors in order for medical liability to be established:

- According to Article 166 of the Algerian Health Law, the individual making the mistake must be a medical professional who satisfies the requirements to practice medicine.

- Additionally, according to Article 353 of the Algerian Health Law, the medical error must occur while the practitioner is practicing medicine or in connection with it.

- According to scientific standards, the medical error must be obvious, proven, and indisputable.

- When performing medical procedures, the physician and the medical staff under their supervision must depart from the accepted medical scientific principles mandated by the profession.

- Failure to use required medical equipment and a violation of the duty of caution and vigilance; taking into account the external circumstances surrounding the doctor when determining their obligations, such as the treatment location and available resources.

3. Types of Medical Errors:

The following are examples of medical errors:

- The doctor's error during the medical exam: The doctor starts the first stages of treating the patient by means of a medical examination after obtaining the patient's medical complaint and history. The doctor's neglect and responsibility for any damage or complications resulting from his failure to perform preliminary and supplementary medical examinations—including death—is clear given that these examinations are required before medical treatment or surgical intervention (Boukhers, 2011, p. 81).

- The doctor's error in identifying the illness: Diagnosis is the process of identifying the characteristics, causes, and symptoms of a disease the patient is suffering from. Therefore, it is the first stage in therapy where the physician shows their scientific skills. The doctor has to rely on the fundamental medical tools and techniques authorized and routinely used by all physicians as well as show the required care, sufficient skill, and time allocation.

As long as a doctor of the same specialty could not have made the mistake under the same conditions, it is known that any diagnosis error, no matter how small, carries medical liability. Consequently:

- A doctor will be responsible for a diagnostic error if it stems from a blatant ignorance in the foundations of medical practice.

- The doctor, though, won't be responsible for a diagnostic error if it relies on diagnosis differing viewpoints.

- Should the need for such assistance—such as a radiologist, laboratory tests, or an anesthesiologist—the doctor is also responsible if they neglect to consult another specialist for diagnosing the condition (Hadi, 2015, p. 384).

C) Error in prescribing and administering treatment:

Following the diagnosis phase, treatment is the process of deciding the suitable course of action for the patient. Defined as the medicine or technique the doctor feels appropriate to heal the patient. Whenever feasible, its goal is to investigate possible and accessible techniques to bring about the recovery of the patient. Should they neglect to follow the guidelines set on them, the doctor could mistake either in prescribing treatment or in carrying it out (Koussem, 2021, p. 08):

- The treatment method must be based on sound scientific principles.
- One must follow the guidelines of caution and care to guarantee the patient is not subjected to unwarranted risks depending on their condition.
- Even if the patient asks for it, balancing the patient's mistakes will help to prevent harm or danger.

A doctor's error can result from failing to fulfill the obligation of informing the patient, which may occur through the doctor's refusal to provide information or by

delivering information in a flawed manner, such as hiding certain details or giving false information.

Hiding information from the patient: Providing accurate information is crucial for the patient, as it respects their right over their body and their ability to make decisions about their future. Information must be complete, accurate, and truthful.

Withholding information constitutes a failure in a doctor's obligation to inform. For example, the Paris Court decided a doctor had violated their duty of disclosure if they failed to inform the patient that the pain they were feeling resulted from metallic supports left for therapeutic reasons. Withholding information erodes the confidence between the patient and the physician and keeps the patient in the dark about the actual character of their disease and the treatment being used.

Giving the patient incorrect information: This refers to the doctor hiding positive information or favorable results from the patient, or exaggerating the risks of the disease and the urgency of medical intervention to persuade the patient to undergo surgery, for example. The French Court of Cassation verified this by ruling that the doctor erred seriously causing civil liability by changing the lab test findings to coerce the patient into consenting to treatment (Aishaoui & Aishaoui, 2021, pp. 1112–1113).

Missed Healing Opportunity: This is the inability to attain some benefit. The French Court of Cassation first adopted this idea in the medical sector in its 1965 decision declaring the existence of substantial, exact, and consistent evidence showing the patient's damage was directly caused by the doctor's mistake, even if the causal link between the doctor's error and the resulting harm was not categorically proven. The court mandated the judge to evaluate an appropriate partial compensation. In the framework of neglecting the responsibility of notifying the patient, the lost opportunity for the patient is the missed possibility of recovery and evading risk, particularly if there were more efficient substitute therapies accessible (Aishaoui & Aishaoui, 2021, p. 1113).

Though the physician is in charge of not notifying the patient, there are situations when the patient could be free from this obligation. Legitimate reasons allow the doctor or dentist to hide the diagnosis of a serious illness from the patient; Article 5 of the Algerian Medical Ethics Code says they must evaluate this with total honesty and sincerity.

The situations that exempt the doctor from the obligation to inform the patient are as follows:

- The doctor's obligation to notify the patient is waived if a risk endangers the patient's life. In such situations, the doctor must act right away to save the patient; notifying the patient about this intervention would waste time and endanger their life. Here, the only way for the patient to survive is through the doctor's intervention (Asafra, Mahmoud, & Laloush, 2021, p. 1322).

This is highlighted in Article 52, paragraph 2 of the Algerian Health Ethics Code, which reads as follows: "The physician or dentist is required to treat the patient in an

emergency. If the competent adult patient is able to voice their opinion, the dentist or doctor must take that opinion into consideration as much as possible."

Waiving the patient's right to knowledge: Fear of the unknown—such as knowing the reality of their disease or learning about the possible treatment risks—may affect the patient's confidence in their doctor regardless of the severity of their situation. The patient can choose to accept or reject treatment in accordance with their right to bodily integrity, but they can also choose not to exercise their right to information about the nature of their illness and the risks associated with treatment, allowing the doctor to do whatever they believe is best for the patient's health. This waiver is seen as a legitimate justification for exempting the doctor from the duty to notify the patient. The doctor's respect for the patient's waiver, however, is dependent on two criteria: the first relates to the patient's interest, where the doctor must remain silent in line with the patient's wishes if disclosing the information would compromise their well-being, such as when the treatment involves amputating part of their body. The second criterion addresses the needs of others, such as when the patient has a major disease that might spread to others. In such situations, the duty to notify the patient takes on renewed significance in alerting the patient to the risk to themselves or others (Za'noun, 2015, p. 24).

The doctor is required to tell the patient of all facets of their health condition, the treatment risks, as well as alternative treatment possibilities and their corresponding success or failure rates. Though, given the patient's health and mental condition, the physician might either present some information in a general and non-detailed way or hold it back. Medical ethics underline the need of making sure the patient is in a psychologically stable condition before undergoing surgery (Za'noun, 2015, p. 24).

Section II:

The Consequences of Civil Liability for Medical Errors (Medical Civil Liability Compensation Claims)

The civil responsibility of the doctor has repercussions in the form of a compensation claim that must involve its fundamental participants. Judicial authorities also exist to decide on claims for compensation.

A) Parties to the Medical Civil Liability Lawsuit:

The plaintiff and defendant are the parties to the lawsuit seeking damages for the doctor's civil liability.

1. The Plaintiff in the Medical Civil Liability Lawsuit:

The one who starts a compensation claim before the court is the plaintiff. They are the injured party or the one deserving recompense for medical mistake. The patient harmed by the medical intervention of the treating doctor, whose error caused the damage, is the main party interested in a medical civil liability lawsuit as the plaintiff

since its goal is to remedy the harm and get compensation. From the standpoint of the direct harm experienced by the patient, the latter is the only one who fits the plaintiff under the general rules of lawsuits since there is no lawsuit without an interest, and the harmed patient is the one with a vested interest in suing the treating doctor to pursue compensation for the damage resulting from the doctor's mistake (Baddour, 2014, p. 146).

Should the patient pass away, their heirs inherit the entitlement to pursue civil compensation. The relatives of the injured party may seek compensation the deceased would have pursued should they have stayed alive. The harmed party's creditor may also seek this compensation by means of an indirect lawsuit on their debtor's behalf. The harmed party may also assign their entitlement to compensation to someone else; in that case, the assignee receives this right (Kasmi, 2019, p. 243).

2. The Defendant in Medical Civil Liability:

Usually, the doctor or the medical team is the defendant in a medical civil liability case.

Whether they are responsible for their own conduct, the actions of others, or the objects under their custody, the treating doctor who is at fault and has harmed the plaintiff is usually the defendant in a medical civil liability case (Baddour, 2014, p. 148).

The doctor, though, may be employed by a public or private hospital, thus those helping are hospital staff and the doctor is no longer free to decide who helps them in their medical practice. The doctor in this situation is not responsible for the risks resulting from assistant actions under the doctor's orders and instructions. In such cases, the hospital is still in charge of these risks since it supervises the personnel.

Many people could be accountable for the same mistake, which would create more than one defendant in the case; this is usually true when operating under a medical team (Kasmi, 2019, p. 244).

B) The Judicial Authorities Competent to Settle Claims for Compensation in Medical Civil Liability:

While the ordinary judiciary has exceptional jurisdiction, the administrative judiciary is the primary judicial authority for resolving claims for compensation in medical civil liability cases.

1. The Primary Jurisdiction of the Administrative Judiciary to Settle Claims for Compensation in Medical Civil Liability:

Claims of liability brought against physicians in public hospitals for errors made while practicing medicine are regarded as falling under the administrative judiciary's purview (Fattnasi, 2015, p. 134).

The claim that the administrative judge has jurisdiction over liability claims against public health institutions for medical errors stems from the fact that the only basis for compensation for a patient injured by a medical procedure at a public

healthcare facility is administrative fault. Therefore, whether the organic or material criterion is applied, the administrative judge has primary jurisdiction. According to Article 800 of the Code of Civil Procedure (C.P.C.), administrative courts have the authority to hear cases involving public organizations that perform administrative duties, like public hospitals that offer healthcare services (Kasmi, 2019, pp. 243-248).

Proof in Administrative Courts Regarding the Liability of Public Hospitals: Proof before the administrative court in the field of administrative liability of public hospitals is of great importance, especially when it concerns various medical activities. Consequently, the burden of proving medical error falls on the patient or their legal representative. However, the judiciary always seeks to alleviate this burden, particularly the administrative courts, which play a positive role in the case.

Claims for proof in the administrative liability of healthcare institutions face several obstacles, including:

- **Inequality Between the Parties:** The legal status of the plaintiff, namely the patient or their representative, is weaker than that of the doctor, due to the doctor's different scientific qualifications (Othmani, 2014, p. 176).

C) Exceptional Jurisdiction of Ordinary Courts in Deciding Compensation Claims for Medical Liability:

Claims regarding the responsibility of doctors employed by a private hospital or independently can be heard in ordinary courts. Thus, the civil section or the criminal section has jurisdiction to rule on compensation claims for medical responsibility.

1- Jurisdiction of the Civil Section in Compensation Claims for Civil Medical Liability:

Generally speaking, civil medical liability claims are filed in the competent court's civil division within its regional jurisdiction. The injured party, their legal representative, or their heirs may bring the claim as a stand-alone lawsuit against the person who caused the harm—in this case, the doctor. According to Article 40, paragraph 50 of the Code of Civil and Administrative Procedures, this claim must be brought before the court where the treatment was given, which is the judicial authority with territorial jurisdiction. As an exception, though, the court where the defendant resides may also be given local jurisdiction (Baddour, 2014, p. 151).

2. Jurisdiction of the Criminal Section in Medical Liability Claims:

Like any other individual, a doctor could face criminal prosecution while practicing their profession if their behavior qualifies for criminalization. Should the doctor be negligent, careless, or sometimes purposeful in their actions causing harm to the patient and society, this could happen. Such damage can come in many shapes, including direct bodily harm, known as crimes affecting bodily safety, such blood collection, transfusion, or sale, or participation in abortion-related crimes, conducting medical experiments on humans, or removing and transplanting human organs for trafficking. Contrary to the basic values and goals of the medical profession, a doctor may also engage in other illegal and punishable acts not directly impacting the human

body. These acts include the unlawful practice of medicine, forging medical certificates, prescription drug abuse facilitation, denial of help, and disclosure of medical secrets among others not connected to bodily safety (Kchida, 2023, p. 309).

Civil claims for compensation can still be brought before criminal sections of courts, even though they typically deal with misdemeanors and offenses. In these situations, if there is a link between the criminal case and the civil claim, the criminal case is given priority. The connection relates to circumstances in which a criminal act that carries legal penalties is the cause of the harm for which compensation is sought. For instance, a doctor would be guilty of an abortion offense under the penal code if they performed an abortion on a pregnant woman while practicing medicine, which is a misdemeanor. In this instance, the doctor would be held civilly liable for the offense. The victim of this crime has the right to bring a civil claim for damages before the criminal judge, and the case would be tried in the criminal court (Kchida, 2023, p. 152).

Doctor's Liability for a Particular Crime: A doctor is not liable for a particular crime unless they directly caused it, so there must be a causal link between their actions and the outcome. The doctor also has to have the required ability to shoulder the duty, which includes two components: awareness and judgment. This implies that either intentional or negligent causes the doctor's crime. The law does not call for the patient's approval for damage to take place; in fact, harm might not even exist, and occasionally the crime might not even be finished, as in the case of attempted crimes such as abortion or the illegal practice of medicine (Joudi, 2017, p. 79).

Conclusion:

The medical profession is among the most important and respected ones; the medical field is among the most important and respected social domains because of its link to people's safety, life, and health. While carrying out their duty, it is the doctor's responsibility to preserve the patient's health in a way that fits both their ethical and legal obligations.

By blaming doctors for all their mistakes, the Algerian legislator has given patients protection. This has resulted in legal intervention to control these activities and mandates doctors to use the required caution in delivering medical services.

Particularly with respect to the development of its basis, the question of medical civil responsibility creates many legal problems. Under the conventional theory, this responsibility has historically been connected to the idea of contractual or tortious mistake. Health legislation has welcomed the notion of professional error as the foundation for defining a doctor's responsibility, though, as the trend toward adopting a broader notion of medical liability depending on professional error continues. Fundamentally, medical civil liability is based on the doctor's responsibility for mistakes harming the patient, should the patient be able to show the medical error.

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