

*The foundations of the criminal liability of the pharmacist in
Algeria*

أسس المسؤولية الجنائية للصيادلة في الجزائر

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Abstract:

According to law n ° 18-11 relating to health, the pharmacist is responsible for the delivery and manufacture of medicines. The pharmacist in particular, is bound to a set of bonds. He is the one who performs medical prescriptions and according to the products he delivers and the advice he gives, he is exposed to risks and this inevitably generates, a presumption of responsibility, disciplinary or civil, but also criminal.

Keywords: Pharmacist - Obligations - Medication delivery – Poisonous substances - Offenses - Criminal liability.

المخلص:

وفقاً للقانون رقم 18-11 المتعلق بالصحة، فإن الصيدلي مسؤول عن إصدار وصرف الأدوية وتصنيعها. الصيدلي صاحب الصيدلية على وجه الخصوص، مرتبط بمجموعة من الإلزامات. كونه الشخص الذي يقوم بتنفيذ الوصفات الطبية ووفقاً للمنتجات التي يصرفها ويصدرها والنصيحة التي يقدمها، فهو معرض لمخاطر وهذا يؤدي حتماً إلى مسؤولية قانونية، تأديبية أو المدنية، وحتى جنائية.

الكلمات المفتاحية: صيدلي - التزامات - تسليم الأدوية - مواد مخدرة - جرائم -

مسؤولية جنائية.

1-Introduction :

Health is our most precious good, we have to take care of it. In its second article, law 18-11 relating to health, stipulates that the good care of the person

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through the safeguard of their mental and physical health, contributes to their personal development, and represents an essential factor of social promotion¹. It therefore appears that the importance of good health is an individual but also collective responsibility because it would contribute to the development of all of society.

In this heavy task, the individual is accompanied by specific people, they are health professionals. These propose to teach the rules of life by empowering the population in relation to their deficiencies in a role of protection and prevention.² Without forgetting the health care, fundamental duty of the practitioner. In addition to doctors and dentists, pharmacists are full of this category even if this has not always been the case.

The delivery and manufacture of drugs were first of all medical competence. It was not until the 7th century in the Mesopotamia of the Abbasid caliphs that the pharmacy *stricto sensu*, was born³. Surveillance and inspection of pharmacies were ensured by *muhtasibs*⁴. They controlled the apothecaries and signaled the possible deceptions. They were assisted in their tasks by assistants, the assisted *arif*s of an *arif*-apothecary which inspected the pharmacies of the drug merchants.⁵

Nowadays, this control still exists but in much more strict aspects. The exercise of the profession of pharmacist, whether it be the manufacture or issuance of drugs, remains very legally supervised because the pharmacist is considered to be a guarantor of public health. These duties or obligations are to be interpreted in mirror of the rights which are conferred to it arising from the pharmaceutical monopoly. The pharmacist therefore accumulates, many charges. To disciplinary and administrative responsibilities, it is necessary to add civil liability which materializes in the event of a fault committed, without forgetting a criminal responsibility if necessary.

This polymorphic responsibility makes the pharmacist a "safeguard". Because being responsible for the quality of the product he makes or distributed, this inevitably generates a presumption of responsibility. But how can we make a person responsible for use by another person, for a product that is *a priori* consumed legally? Conversely, is it possible to have a health system without responsibility?

We have chosen to develop during this study, the criminal responsibility of the pharmacist who is responsible for the issuance of drugs and which is in direct contact with the population of patients. According to descriptive and analytical models in order to highlight the prevalence of the study of the

¹ Law 18-11 of July 2, 2018 relating to health, JO 46 of July 29, 2018.

² These people are cited in art. 165 of law 18-11. These are people working in a health establishment and who through their functions contribute to the realization of the health provision, as well as the people charges of missions in the epidemiological field, or control and inspection.

³ Fillon M., The responsibility of the pharmacist responsible within the pharmaceutical company: state of play in 2013 and impact of regulatory developments, thesis for a doctorate in pharmacy, Faculty of Pharmacy, Univ of Lorraine, Switzerland, 2013, p.52.

⁴ GARDERT L., The Muslim City, Vérin, Paris, 1969, pp. 72-73.

⁵ LAFONT O., Dictionary of the history of pharmacy, From the origins to the end of the 19th century, the *saydalî*, Pharmathèmes editions, 2nd edition, 2013, page 425.

pharmacist's responsibility and his impact on the regularity of his main task: issuance. During our analysis we will distinguish the pharmacist from other categories of pharmacists (first chapter). We will then deal with his criminal responsibility (second chapter)

Chapter 1st Pharmacy and Pharmaceutical Duties

Medicines are intended for public health. They can therefore be dangerous if they are not manufactured and distributed by people who are qualified and authorized by law.¹ The profession of pharmacist has long been regulated in order to limit any unhealthy use of products supposed to relieve evils. In the eyes of the law, who is the pharmacist from whom we buy our drugs and what are his essential prerogatives?

Section 1st The categories of pharmacists

The pharmacist of the Radical Greg Pharmakon which means medication, is the one who exercises pharmacy, who prepares and who sells medicines². The pharmacist is a health professional, trained to prepare and put pharmaceutical products, medicines. Formerly prepared and delivered by the same person, drugs today are manufactured industrially and distributed to other establishments that make it the delivery.³

Several categories of pharmacists can be cited here⁴, we will study them successively.

1st subsection: The hospital pharmacist

Defined in articles 246 and 247 of law 18-11, the hospital pharmacy is managed by a graduate pharmacist. It is attached to a public health establishment like a hospital, or private like a clinic, and can only have its services to the patients treated in the structure to which it is attached.⁵ Certain prerogatives are specific to him, such as clinicians, the supply of pharmaceutical treatments and products, or the handling of products for strictly hospital use, such as the preparation of chemotherapy⁶.

2nd subsection: The pharmacist biologist

He is a person specializing in medical biology. He practices in analysis laboratories and is attached to the laboratories of Anatomico-Cytopathology and Medical Biology. Its role is to take exams and samples from the patient, in order to help establish a diagnosis and subsequently, contribute to the treatment of the patient.⁷

3rd subsection: The industrial pharmacist

¹ HALLOUCHE F-A, Spotlight on self-medication in Algeria, International Journal of Legal and Political Research, 2023, Vol. 07, N°: 01, p. 7.

² FAURE O., Pharmacists and medicine in France in the 19th century, BONAHE Ch., RAMUSSEN A, History and mediation in the 19th and 20th centuries, Paris ed. Glyphes, 2005, p. 66.

³ It should be noted that the profession of pharmacy preparer has disappeared in Algeria, while it remains present in other countries.

⁴ Even if the vast majority of them are heading for the pharmacy.

⁵ Art. 246 and 247 law 18-11.

⁶ Art. 248 law 18-11.

⁷ Art. 251 law 18-11.

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This is the first link in the chain. He takes care of the design, production, manufacturing, and medication delivery. As a result, his profession requires rigorous regulations. Administrative drastic and also security checks are taxed at all stages. On the use of plants, especially those with hallucinogenic properties, as well as on the packaging of drugs. On the use of plants, especially those with hallucinogenic properties, as well as on the packaging of drugs.¹ Importing drugs or exports, marketing, as well as distribution are procedures that require very special interest on the part of the authorities concerned.

4th subsection: The cummunity pharmacist

According to health law, the pharmacy is the establishment that is primarily detailed by pharmaceutical products and incidentally, parapharmaceutical products. So this is the place where we buy our medication. The pharmacy is the place specializing in the execution of medical prescriptions, in the preparation of certain products, and undoubtedly, in the retail sale of pharmaceuticals.²

The professional is the person who performs medical prescriptions. He advises and informs the patient about the treatment to be followed, ensures the compatibility and conformity of drugs with the patient's profile. It also gives indications on the dosage. He can also advise by himself on the taking of certain lesser gravity pharmaceuticals allowing personalized medication.

On the other hand, when he believes that one or more drugs are not suitable for a medical prescription, he may refuse to deliver them and must notify the prescribing doctor. He can and even, refuse to issue a prescription medication. Having the possibility of making pharmaceutical preparations, it can also refuse to do so.³

The pharmacy is a "micro business". The necessarily owner pharmacist owner of his pharmacy, performs administrative tasks, holds the accounting and manages the team of sellers who work under their orders. He must work in accordance with the orientations of the health insurance funds.⁴

Being responsible for the products he delivers to customers, he is imperatively control the validity of each medication. He must check the expiration date and ensure the conditions of their conservation. He must also be informed of the authorities as well as his colleagues on all updates concerning the products marketed in his establishment.

2nd section: The obligations of the pharmacist

The exercise of the pharmacy is a liberal profession. However, the author is subject to a number of duties relating to his function. Different of the obligations to which the other categories of pharmacists are, the obligations that the law imposes on the pharmacist of pharmacies mainly concern its relations with

¹ Art. 245 law 18-11.

² HANNOUZM., Element of pharmaceutical law (For the use of professionals in pharmacy and law), OPU, Algiers, 2000, p. 113.

³ GUERRIAUD M., Pharmaceutical law, Elsevier Masson, Paris, 2016. www.elsevier-masson.fr

⁴ CNAS National Social Insurance Fund, CASNOS National Social Security Fund for the Self-Employed.

other pharmacists, its relations with its customers as well as its role in the issuance of products.

1st subsection: Personal and exclusive exercise

According to paragraph 2 of article 249 of the law relating to health¹, the pharmacist must be the owner of his pharmacy and therefore can only enlist his diploma in a single pharmacy. He has the obligation to hold management and administration². Ministerial decree number 67 which sets the requirements for exercising this profession, also specifies that he has personally to exercise his function. He must therefore be present within his pharmacy and carry out pharmaceutical acts himself or supervise their accomplishment if necessary. It is the duty of availability towards customers. It is also required to be present in order to be able to advise and orient patients.

He can nevertheless be helped by assistant pharmacists, but while being present at the pharmacy and while managing his activity himself. Assistant pharmacists will have to exercise their tasks under the strict control of the chief³. In special cases of prolonged absence, the pharmacist can be replaced by another one for a period not exceeding a year. He can also be replaced by a pharmacy student who satisfied the 4th year exams of the diploma, for a period of less than 3 months. As he can also be assisted by pharmacy employees.

2nd subsection: The obligation towards its customers

The practitioner has several duties towards his customers. First, when the patient walks towards the pharmacy, it is to have pharmaceutical advice thinking that the medical diagnosis is not essential, or choosing the ease of access to the pharmacy to the fact of having to make an appointment with the doctor. The pharmacy is therefore a place of listening and comfort in collective conscience. This patient-pharmacy reflex must result in the availability of him. He listens, explains, and directs. For these reasons, he must learn, document himself, and participate in the various scientific events in order to refresh his knowledge.

He is due to professional secrecy⁴ according to article 301 of the penal code. This duty concerns all health practitioners, holders of information likely to be known during a medical consultation or within the pharmacy⁵. This is the formal ban to reveal to third parties, information brought to his attention within the framework of his profession under penalty of sanctions.

Already present in the oath of Hippocrates⁶ and the apothecaries⁷, it has been taken up in the various codes of ethics of health professions and in particular

¹ Art. 249/2 law 18-11.

² Articles 1 and 2 of decree 67 of July 9, 1996 establishing the conditions for the personal exercise of the profession of community pharmacist.

³ Art. 250 law 18-11.

⁴ Himself as well as all the collaborators of the pharmacy.

⁵ Art. 301 of the penal code, order 66-156 of 06-08-1966, amended and supplemented by law 06-23 of 12-20-2006, JO 84 of 12-24-2006.

⁶ Hippocrates' oath is pronounced by medical doctors at the end of their general medicine studies. It is the promise to serve the profession and to submit to its rules.

⁷ Also called the Galien oath, it is an oath inspired by the Hippocrates's oath. It must be recited by doctors in pharmacies upon receipt of their diplomas. The future pharmacists then undertake, to respect the rules and values of their profession.

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in that of pharmaceutical professions as stipulated in article 113 of the Algerian medical ethics code¹.

Professional secrecy covers all the information to the knowledge of the practitioner, that is to say what was entrusted to him by the customer, what he saw, heard or noted concerning the health but also the private life of the latter. The information covered by professional secret may have been transmitted directly by the customer or, for example, be retained from the medical prescription or the type of medication provided.

On another level, and despite the commercial nature of his occupation, he remained limited in his means as to the search for clientele, particularly in terms of advertising and competition. These obligations are cited in articles 127 to 138 of the code of medical ethics².

The druggist should not make commercial advertising, using extraordinary advertising processes not having a scientific or educational character. It is also forbidden to undermine the principle of free choice of the pharmacist by the patients by granting them advantages which would not be explicitly devoted to them. He is finally, bounded in respecting the freedom of the customer as to the choice of the pharmacy

3rd sub-section: The obligation to issue medication

This obligations relate to the execution of the medical prescription on the one hand, and from another to what is called medication.

When he is in the presence of a treatment from the doctor or dentist, he must imperatively check its authenticity, ensuring that the client presents the original prescription, and that the prescriber is well empowered to write it³. He restricts himself to execute the medical instructions recorded on the prescription. It is also required to check whether the directives are adapted according to the age of the patient and his weight. If the he takes another treatment, he ensures that there are no contraindications or drug interactions. If he notes an error, he warn the prescribing clinician. On the other hand, it can in no case modify the prescription itself⁴.

When he finds that the order does not have the stamp of the prescriber or that it has been established by a person who is not authorized to do so, or if it is a copy, he is obliged to refuse his execution Without being punished. Conversely, the pharmacist may in no case refuse to execute a legally issued order. This refusal being likely to engage its responsibility.

¹ Art. 113 of the Code of Medical Ethics, Decree 92/276 of 06-07-1992, JO 52 of 08/07/1992.

² As an example we can cite articles 127 and 131 of the code of medical ethics.

³ The law also allows midwives to draw up orders but only in their fields of specialization, namely the gynecological field

⁴ This is pharmacovigilance. Its purpose is monitoring of the risk of adverse effects resulting from the use of drugs and products for human use, holders of a marketing authorization.

Pharmacovigilance includes the reporting of unexpected undesirable effects and the collection of information concerning them, the registration, evaluation and exploitation of this information for the purpose of prevention, carrying out all studies and all work concerning security medication use, national pharmacovigilance center and materialovigilance, Ministry of Health, Population and Hospital Reform, <https://www.cnpm.org.dz/>

The practitioner also has the possibility of issuing certain drugs without a medical prescription, this is called pharmacy medication. Through an exchange of information between the patient and the pharmacist, he can advise him and offer him an over-the-counter medication not subject to medical prescription while informing him about the dosage and the duration of the treatment. He must also contribute to the fight against sexually transmitted diseases, drug addiction and doping, by raising awareness among customers of the dangers of excessive consumption of certain products or against self-medication that continues to proliferate.¹

On the other hand, the pharmacist has a duty to respect the prices and legal prices.² These prices, which are set by the Intersectoral Committee created with the National Agency, are registered on the stickers stuck on the medication boxes. Any increase or decrease in these prices constitutes an offense with regard to the law because it destabilizes the national economy and generates illegal profit.

Chapter 2nd : Pharmacy offenses

The role of the pharmacist is to ensure in its entirety the act of issuing the medication associating with this, the pharmaceutical analysis of the medical prescription, the possible preparation of the doses to be administered as well as the provision of information and advice necessary for the proper use of drugs.

In general, his responsibility can only be engaged in the presence of a proven fault³. Civil liability is a contractual responsibility insofar as pharmacist-client relations are part of the legal framework of a contract, and the patient must therefore establish a fault against the pharmacist⁴. It should be remembered that the legislator allows in this situation, the latter to exempt himself from the responsibility by proving the foreign cause⁵.

In addition to this civil liability, the practitioner can be prosecuted by the repressive justice for criminal responsibility when he has committed an offense in the exercise of his pharmacy activity. This assumes that a fault has been committed by the pharmacist, because it cannot be a question of without fault, even presumption of responsibility. Many faults can constitute an offense, we will retain attacks that relate to his profession, and others relating to the pharmaceutical act. We will deal with the case of the issuance of narcotic drugs apart from its magnitude and severity, as well as its repercussions on the pharmacist.

Section 1st: The offenses relating to the profession of pharmacist

¹ HALLOUCHE F-A., op. cit, p. 10

² Art. 234 law 18-11

³ PACCIONI J-P., "The pharmacist's responsibility, from the manufacture of the medicine to its dispensation, acting in the patient's interest", Les cahiers de l'ordre national des pharmaciens, n°11, June 2017, p. 4.

⁴ The pharmacist's civil liability was first considered to be of tort and quasi-delictual nature. It is when there is a fault committed by the pharmacist who caused damage to the customer. Nowadays we consider the civil liability of the pharmacist from a tacit contractual relationship.

⁵ LALLOUCHE S., The distribution of liability for things in private hospitals, Algerian Review of Legal and Political Sciences, Vol. 85, No. 03, 2021, p. 445.

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These are offenses that are de facto on the pharmacist because of his profession. This is the breach of the duty of professional secrecy, rescue abstention, and the illegal exercise of the pharmacy.

1st subsection: The violation of professional secrecy

The discretion obligation requires not to disclose information concerning persons, entrusted or acquired. This means that health professionals must not reveal the facts or information from which they take note of in the exercise or during the exercise of their functions and which are confidential¹.

This obligation not only covers the diseases from which the client suffers, but also his physical, psychological and also psychic state. It also covers the information contained in the directories or the registers allowing to keep the pharmacy of prescriptions and deliveries, such as handwritten or computer orders appearing in the pharmaceutical file. The offense is therefore constituted when the pharmacist informs others of the information and actions of which he became aware during the practice of his activity or those which he was required not to reveal.²

The foundations of non-disclosure are therefore essentially the obligation of discretion and confidence.³ The pharmacist cannot discuss in public questions relating to the diseases of his customers or the other reasons which pushed them to present himself to his establishment. He is also forbidden to discuss the case of his client with the wife. This restriction goes hand in hand with the very nature of a healthcare professional custody the duty of listening and support.

This duty of discretion imposed on the Practicen continues throughout the duration of the exercise of his profession, and even beyond after his resignation, when he came out, and even if he has been removed from his functions for each reason.

Nevertheless, certain derogations from non-remedies are allowed. These are epidemic or contagious diseases, mental disorders which the patient would have reached and which could be dangerous for himself or for society, for example, cases of non-prescriptions of certain drugs that can be consumed as narcotics, or products used to practice clandestine abortions.

The violation of professional secret in any way whatsoever, even the simple allusion to facts relating to the sick, constitutes an offense within the meaning of article 301 of the penal code. It is a crime punishable by a prison sentence that can go from one month to six months as well as a fine ranging from twenty thousand to one hundred thousand dinars. This transgression is also sanctioned by article 113 of the code of medical ethics. Article 114 of the same ethical code details the magnitude of the confidence by including in addition to the pharmaceutical act, any event that takes place within the pharmacy.⁴

Finally, the offense of revelation is a voluntary offense which requires a guilty intention, that of revealing personal information of the patient.

¹ KHADIR A., Medical responsibility for the use of medical and legal practitioners, Houma edition, 2nd ed., Algiers, p. 188.

² Art. 113 decree 92-276.

³ PORTES L., In search of medical ethics, Masson editions, 1954, p. 131.

⁴ Art 114 MDC.

2nd subsection: Rescue abstention

The pharmacist is above all a local character both on a geographical level, and personal and human¹. As a result, he must respond to the distress of his customers. We can therefore speak of rescue abstention, when it comes to the pharmacist, not to assist a person in danger. This differs from the refusal to give care in a so-called normal situation or in emergency cases that are duties that are incumbent on doctors.²

According to his knowledge, he must help the patient in danger, by himself or by involving third parties, in the event that medical care cannot be administered immediately.

Two notions challenge us. The concept of emergency, danger, and that of the absence of a doctor that can provide the necessary care. As a result, the abstention of the pharmacist who is a professional with medical knowledge, to help a person in danger to whom it was humanly possible to remedy is an offense within the meaning of article 182/2 of the PC, This assistance being subject to the absence of risks for the pharmacist intervening and for third parties if necessary³. The offense is also formed even if the person has survived the danger despite the faulty omission.⁴

The law does not tell us about the nature of the danger to which the pharmacist must face, nor on its degree of seriousness. It only demands that the danger be imminent and constant and that it requires immediate intervention, and that those who are able to do so must help to ward it, in this case, the pharmacist⁵.

3rd subsection: The illegal exercise of the pharmacy

Article 185/1 of the law relating to health, prohibits the illicit practice of one of the health professions. If the individual falsely claims to be a pharmacist or if he is under the effect of a ban on exercising.⁶ The criminal law considers, precisely, claiming to be a title linked to a legally regulated function, constituting a crime⁷.

The Algerian ethical code explains pharmaceutical activity. This consists of preparing, controlling, regulating and distributing pharmaceutical products. It also requires controlling these acts if they are carried out by its employees.⁸

In addition, the apothecary cannot replace the doctor, particularly in the issue of drugs without a prescription and ensure that medical consultations are not given within the pharmacy by anyone.

2nd section: Increases relating to the pharmaceutical act

¹ Humbert Xavier, Jacquot Julien, Alexandre Joachim et al., Informativeness of pharmacovigilance declarations in general medicine in France, Public Health, 2019, Vol. 31, No. 4, p. 561.

² The pharmacist who does not have the same duties as the doctor, the latter being trained in order to be able to assist in an emergency to a person in distress

³ Art. 107 of the MDC.

⁴ Art. 182 of the PC.

⁵ KHADIR A., op. cit, p. 105.

⁶ HANNOUZ M-M., HAKEM A-R., Summary of medical law for the use of practitioners of medicine and law, OPU, Algiers, 2000, p. 88.

⁷ Art. 186 law 18-11.

⁸ Article 243 law 06-23.

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These are bodily integrity attacks that result from the exercise, the pharmaceutical act. The latter is exercised for therapeutic purposes, with the consent of the customer. When one of these two components is missing, the offense is formed.

1st subsection: Euthanasia

It is to voluntarily shorten a person's life, especially when they have serious suffering or an irreversible handicap, for which no improvement is possible. Euthanasia then allows, in a way, an end of life without suffering.

When the patient requires palliative management, the professional plays a role of listening and support during the treatment of end-of-existence orders. This is called pharmacovigilance or pharmacological vigilance¹. Because of its proximity to products that can lead to death if their use is diverted, the pharmacist as the doctor, can be requested in such situations². Yielding to a request made by the patient or his relatives, he can take action, pushed by an "honorable" motive such as pity³.

But since it is a question of voluntarily shortening life, this act constitutes an offense⁴. In view of the Algerian attack, this constitutes an assistance to suicide, an offense punishable by imprisonment of one to five years.⁵

2nd subsection: Abortion

Abortion is stopping before the end of the gestation process. Pregnancy can be voluntarily interrupted for medical reasons, the act is then legal. It is practiced by a doctor. When there is no medical reason justifying this interruption, we are faced with non-therapeutic abortion, prohibited in Algeria and punished criminally.⁶

The termination of gestation is a voluntary offense. It implies knowledge of the author of the gravidity state and the intention to stop it. He can be done with the agreement of the pregnant woman, he is then voluntary. As it can be forced, without its consent or without its knowledge.

When practiced by health professionals, in this case, druggists, this act is severely repressed and the sentence is brought to double⁷. It is accompanied by the ban on exercising the profession⁸. If it results the death of the woman who

¹ Art 115 DMC.

² Fabre-Pailloux Lucille, Community pharmacist: new companion at the end of life? Sciences du Vivant, 2021, p. 34. <https://dumas.ccsd.cnrs.fr/dumas-03626486v1/document>

³ It should be noted that in some Western countries, particularly in Belgium, a "euthanasia kit" is available for sale in pharmacies. Family doctors wishing to perform euthanasia at home can order this kit from a pharmacy and have it within 24 hours. Nau Jean-Yves, "Euthanasia kit" in Belgian pharmacies, new law in France, Revue Médicale Suisse, 2005, n° 19, p. 1317. https://www.revmed.ch/view/609775/4770873/RMS_19_1317.pdf

⁴ Doucet Hubert, The debate on euthanasia and the experience of dying, Frontières, Erudit, 2003, Vol. 16, n° 01, p. 22. <https://www.erudit.org/en/journals/fr/2003-v16-n1-fr05692/1073757ar.pdf>

⁵ GARZEND M., Euthanasia, a crime?, Epistemology of social sciences, Aix-Marseille university, 2015, p. 4.

⁶ Art. 273 PC.

⁷ Art. 304 PC.

⁸ The Algerian legislator by making the quality of the author, in this case the pharmacist, an aggravating circumstance, wanted to highlight the facility available to the pharmacist in order to

suffered abortion, the sentence will be raised to imprisonment in time ranging from ten to twenty years¹.

Faced with this type of circumstance, the pharmacist must therefore refrain from advising, helping or issuing substances facilitating the interruption of pregnancy, even with the consent of a pregnant woman or his family because it does not rule out his responsibility Criminal².

3rd subsection: Homicide and involuntary assault

Involuntary damage to bodily integrity constitute most of the infractions broken to pharmacists. These are homicide and injuries caused by his unintentional fault³. This fault can relate to the nature, the properties or the dosage of delivered drugs. It can take the form of recklessness in the development of the diagnosis, or in reading the medical prescription⁴. It can also be characterized by negligence in carrying out the treatment when he must be prepared for the patient, or by poor advice provided by beyond the limits set by the regulations.

On the other hand, given that in matters of criminal responsibility, there is no presumption of fault, proof of it must be provided and the causal link highlighted. Consequently, the author cannot be held responsible for death or injuries caused by the content of pharmaceutical preparations, which normally sold under their original conditioning. In addition, in procedural matters the instruction is often necessary given the usual complexity of this type of business.

3rd section: The delivery of narcotic products

This is the responsibility of the druggist in the act of dispensing certain so -called psychotropic products. It may result from an inattention, a lack of advice, or an offense to the regulation of the poisonous substances.

1st subsection: Poisonous substances

Most often, the practitioner provides pharmaceutical specialties. This dispensation may be the execution of a doctor's prescription or be the satisfaction of a request made by the consumer of the drug. The drugs are classified according to the prescription rules, which even vary according to the dangerousness of the drug, its effects on the human body, or according to the establishment responsible for its delivery⁵. The delivery of these drugs requires the presentation of a prescription because they contain one or more poisonous substances.

Article 244 of the law relating to health, lists drugs containing poisonous substances according to three main categories⁶.

practice this gesture. Indeed, the pharmacist has direct access to products and drugs with a very sharp scientific knowledge.

¹ Art. 305 and 306 PC

² Art 304/2 PC.

³ KHADIR A., op. cit, p. 124.

⁴ Articles 288 and 289 of the Penal Code.

⁵ The pharmacist must not modify a prescription without the prior agreement of the prescribing doctor. If he cannot contact it, he must refuse to deliver the medication. A forgetfulness on his part constitutes a punishable fault.

⁶ Depending on whether it is a hospital pharmacy, in which case drugs are for hospital use only. It can be a pharmacy pharmacy, so the list of authorized drugs is more restrictive.

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First there are drugs listed according to two lists. List 1 includes drugs with high toxicity. Their administration requires medical supervision. List II drugs have lower toxicity. Their administration can accommodate less narrow medical supervision¹.

Then there are narcotics which are substances likely to cause drug addiction. They are listed in a list which can be supplemented by the competent authorities.

Psychotropes constitute the third category. These are substances acting on the psyche. They are subject to special regulations concerning their manufacture, trade, detention and use, this is the executive decree fixing the methods of administrative, technical and safety control of substances and drugs with psychotropic properties².

In addition to continuing to keep special registers on which he registers information concerning the customer,³ the prescribing doctor (medical specialty and contact details), as well as information on the product issued, the pharmacist must comply with new measures set by the Decree 19-371. They are as follows⁴.

- The order of substances or drugs with psychotropic properties must be formulated separately, on an order form comprising the signature of the pharmacist, his claw, as well as his serial number;
- He must check, each time he receives products and treatments with psychotropic properties, that the invoice corresponds to the order form he had Émi. It also controls the lot of lot, the tax given, as well as the expiration date. He must then transcribe the mention "Service done", on the invoice by affixing his signature and his claw on the document.

Article 16 of the same text requires that the prescriptions in terms of narcotic drugs be written on a dresses order in three copies of distinct colors: white, yellow, and pink. The doctor keeps the pink copy, the other two are given to the patient. During the issuance of drugs⁵, the pharmacist keeps the yellow copy, after checking that it contains the following elements⁶:

- The serial number of the order;
- The identification of the prescribing doctor (claw, evolving, and registration number at the Council of Medical Ethics) and of the establishment to which it belongs;
- Information allowing the identification of the patient;
- Chemical designation or international common name of the product;

¹ The poisonous substances are substances, natural or chemical, dangerous that can be toxic, harmful, corrosive, irritating, carcinogenic, teratogenic or mutagenous .
Art. 244 Law 18-11.

² Decree 19-371 of 12/31/2019 establishing the procedures for administrative, technical and safety control of substances and drugs with psychotropic properties, JO 01 of 01/05/2020.

³ We hear by client, the person buying the product. Whether it is the beneficiary patient or a person charged by the patient to buy the medication for him, and in both cases the pharmacist must keep the copy of the buyer's identity document

⁴ Article 11 of decree 19-371.

⁵ Art 26/3 decree 19-371.

⁶ Art 19 decree 19-371.

- The dosage, the proportion, as well as the shape of the product; The duration of medication.

In order to control the issuance of substances and drugs with psychotropic properties, cyclical and fortuitous inspections are carried out by the National Agency for Pharmaceuticals. In the event of a fault, it establishes a report which it gives to the National Commission of Substances and Medicines with Psychotropic Properties¹, as well as to pharmacists Inspectors of Public Health, which when they note the violation, establish a report they transmit to the territorially competent wilaya committee.²

2nd subsection: Imputation in the event of deliverance

On the occasion of the issuance of these drugs, the professional can see his criminal liability engaged, especially when he has not respected the rules for the sale and registration of the medication issued, of the quantity served, and of the customer's person.

According to article 16 of law 23-05 on the use and illicit trafficking of narcotics and psychotropic substances,³ the fact of issuing psychotropic substances without a prescription or by knowing the fictitious aspect of an order constitutes an infraction⁴.

Like selling, manufacturing, holding or distributing drugs or psychotropic products is sanctioned by imprisonment from ten to twenty years⁵. The quality of pharmacist will be considered as an aggravating circumstance, when he commits the same facts. The qualification of the offense will change from crime to crime and the penalty will then be raised to imprisonment in time from 20 to 30 years⁶.

Unlike the previous law relating to health protection and promotion, which in its article 192/2 clearly authorized pharmacists, to sell these substances, in compliance with legal restrictions, the current health law, remains general and does not give any indications as to the role of the pharmacist, hence the urgency of setting up regulatory texts, claimed by the pharmacists particularly. Between duty to say yes and obligation to say no, the pharmacist remains torn.

3- Conclusion:

The profession of pharmacist is a noble profession because it contributes to the well-being of the health of citizens. With other health professionals, he can certainly not practice acts on the patient, but he participates in his healing by

¹ Art 37 Dec 19-371.

² Art 14 Dec 19-371.

³ Art 16 of Law 23-05 amending and supplementing Law 04-18 of December 25, 2004 relating to the prevention and repression of the use and illicit trafficking of narcotics and psychotropic substances, JO 32, May 9, 2023.

⁴ It is important to point out that the legislator in its new formulation of article 16 of the new law 23-05, led to the sentence initially provided for in article 16 before its modification. Indeed, the penalty goes from imprisonment ranging from 5 to 15 years to imprisonment from 2 to 10 years. As for the fine, it goes from the minimum threshold of 500 thousand DA to that of 200 thousand DA. Furthermore, this article is expanding the conviction to the consumer who would have been granted amazing substances.

⁵ Art 17/1 law 23-05.

⁶ Art 17/2 law 23-05

The obligations of the pharmacist, from legal duty to criminal accountability

delivering, among other things, the drugs prescribed in particular when it comes to the pharmacist. Faced with the risks involved during the issuance of drugs, particularly substances and drugs with psychotropic properties, the practitioner's responsibility can be engaged. The various laws, in particular, law 18-11 or even decree 19-379, regulate the issuance of drugs, and at the same time provide a guarantee to the pharmacist who exercises his profession in all transparency.

The form required for the prescription, the information and the data it must include, but also the possibility of refusal of issuance which the pharmacist enjoyed, are elements which help him in his daily task. However, it is certain that the consumption of narcotic products is permanent rise and the consumption of drugs with therapeutic vocation for diverted uses is increasing day by day.

For this, the list of sensitive products should be updated more often, and more means of control is made available to pharmacists. In addition, the new law relating to the prevention and repression of the use and illicit trafficking of narcotics and psychotropic substances, even if it has brought some new elements concerning the report of the pharmacist and its staff with the Narcotic products, notwithstanding certain gray areas remain to be lightened. This would allow the pharmacist to exercise his profession in a clearer legal framework, particularly, when it comes to selling psychotropic products to therapeutic indications.

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