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Legal Conditioning of the Doctor's Professional Error

A Comparative Study

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Abstract:

This study aims to determine the peculiarity of the doctor's error due to his close relationship with the medical work. This latter is not considered like other works in his art and industry. It is a work whose main characteristic is difficulty and complexity because it is related to the most precious possession of a person in his life, which is his body, which requires the doctor to have special knowledge of the medical professional field.

One of the most important results reached is that the doctor has an obligation to take care, and every breach of this obligation constitutes a medical error that raises the doctor's civil liability. Therefore, the doctor must observe the scientific rules in the medical profession.

Key words: Doctor, medical error, breach of obligation, pictures, medical liability.

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Introduction:

After the medical field at one time, did not raise the problem of determining the error or even its existence, given that the prevailing perception at the time, was the infallibility of the medical field, and that the medical act, given the probabilities which govern it, plus the uncertain nature of its results, and the impossibility of holding doctors responsible for medical acts, considering that the profession of doctor is above all, a humanitarian profession, the question is now out of date; and legal liability for damage suffered by others, regardless of the cause of such damage, or the area in which it occurred, has been established[1].

However, medical errors have remained distinct from other mistakes in other fields. They still raise many legal questions about their nature and specificity, especially in the practical applications of medical responsibility. Perhaps the most important evidence of this is the failure of most legislation to regulate the idea of errors in the medical field, and the continuous researches conducted by the legal studies, aiming at establishing a legal system for this type of errors. Perhaps is this, as numerous jurisprudents refer to, due to the mysterious nature of the human body.

The history of medical errors is replete with events, but at the present time, acceptance of the commission of medical errors, which affect human life, is no longer taken for granted by society, after the prevailing idea was (act of God, and that doctors are not responsible). However, under modern laws, the principle of legal accountability for damages has become presently, unavoidable and doctors are chargeable for their errors.

So what is meaning of a medical error? Is medical error subject to the general principles of civil responsibility error?

In order to address the specific aspects of this problem, we decided to address it in an analytical approach that would fit with the nature of the topic, by determining (first), the meaning of the medical

[1]-Mohand Boukoutis, The responsibility of the State in the medical field (An analytical and legal approach in the light of administrative law), Publications of the magazine Al-Manara of administrative legal studies, Rabat, p. 68.

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error creating liability, and (secondly), by examining some images of medical error and its practical applications in the field of medical liability.

First: Determination of the meaning of a medical error establishing liability

At first glance, it may seem that the definition of a medical error does not require much effort, and that it is no more than a type of mistake in the medical field. In fact, it is not so simple. We must acknowledge that It is difficult to define the concept of medical error and grasp its meaning, considering its particular nature, in terms of connection to the human body, and its relation to medical science[2], as a science founded on scientific theories; the problem that has been raised in legal case law. We will define the concept of a medical error that creates liability (1) with its standard statement (2).

1- The concept of medical error:

In fact, the idea of error appeared for the first time among the jurists of the medieval Church. However, the credit goes to the two jurists, Doma and Potier, who clearly highlighted the idea of error. They are the ones who established civil liability in its two forms, tort and contractual, on error. Except that they called for the graduation of the error in contractual liability without doing the same for tort liability; arguing that the obligation of contractual liability is often positive. Unlike the tort liability obligation, which is always negative, based on the notion of "Do no harm», and therefore not gradual[3].

The technical errors that are the responsibility of professionals are not limited to errors that are made through bad intentions, but rather go beyond any behavior considered to be a deviation from the standards known to practitioners, and the care required in the performance or exercise of the profession in accordance with the rules of the art. In this

[2]-Medicine science, like other experimental sciences, is characterized by the property of evolution. Medical theories are unstable and new theories appear every day, according to the emergence of new technologies and in view of the limitless.

[3]-Fatima Al-Zahraa Manar, Civil Responsibility of the Anesthesiologist, Dar Al-Thaqafa for Publishing and Distribution, Jordan, First Edition, 2012, p.208.

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context, Muhammad Shuraim defines professional error as follows: "It is the error that people make in the exercise of their profession by moving away from the well-established principles of a defined professional behavior. This error results of the violation of recognized principles and rules, of a profession. it is: "the seed of evil which gives thorny branches [4].

Which in turn, cover with their shadow the doctor, the patient, the judge and the lawyer without any satisfaction on their part.".

Medical error is a general form of error, and we find it useful to include some jurisprudential definitions of medical error.

Munthir Al-Fadl for instance, defines the medical error as follows: "It is a breach by the doctor of his duty to give lively emotional care, corresponding to established scientific facts[5]. " Or it is a failure of the doctor's conduct, not by a vigilant doctor who finds himself in the same external conditions as a responsible doctor[6].

These definitions show that medical error is manifested in the deviation from established scientific principles of medicine science. whether in the failure to perform the contract of hospitalization or its flawed execution of the contractual liability[7] or in the breach of a general obligation imposed by law on the medical profession not to harm the patient in dereliction of responsibility.

As for the concept of error before the legislation, and by reference to the provisions of the Algerian Civil Code (articles 172-176) on the provisions of liability, and articles 124-140 bis1, on the provisions of liability, it is clear that the Algerian legislature has made the error the

-[4]- SHERIM Muhammad Bashir, Medical errors between commitment and responsibility, Cooperative Press, Jordan, 2000, pp. 159, 161.

[5]- Al-Fadl Munthir, Medical Responsibility. A research published in the Journal of Law, Amman, Jordan, 1995, p.13

[6] - Abu Jamil Wafa Helmy, The Medical Error (a jurisprudential and judicial analytical study in France and Egypt), Dar Al-Nahda Al-Arabiya, Cairo, 1987, p. 41

[7] - Mohamed Al-Hajouji, Civil Responsibility for Private Clinics in Morocco, Al-Omnia Press, Rabat, First Edition, 2013, p.208.

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basis of civil liability in general. While the error in article 124 is limited to: "Any act whatsoever committed by the person in his own fault and causes harm to others shall be subject to compensation[8] by the person who caused it ".

It is also clear that the tort error in Algerian legislation is based on two elements: The first is a material element of abuse, and the second is a moral element of awareness and discernment. There is no fault of unawareness in Algerian legislation, except in the case of the Algerian[9] Civil Code, article 125, paragraph 2, which establishes non-discernmentory liability for error, if the victim is unable to obtain compensation from the perpetrator.

It should be noted that most legislations do not provide a definition of medical error, except for a few. The Libyan legislature came up with an integrated[10]legal system through which it defined the parameters of medical liability. The medical error is defined in the text of article 23 of the Code as follows: "Medical liability for every professional error resulting from the exercise of a medical activity causing harm to others. An Professional error is considered to be any breach of an obligation imposed by the legislation in force or by the established scientific principles of the profession, all taking into account the circumstances and the means put in place available.

[8] - And the legislator tends to replace the word (work), meaning (error), and this is what has been stated in the text of Article 124 in French language.

[9]-ontrary to the text of Article (278) of the Jordanian Civil Code, which states the following: "If a discerning boy or a non-discerning boy or their rulers destroys someone else's money, he is obligated to guarantee his money." This article did not consider the responsibility of the indiscriminate as a permissible liability similar to Article (125/2) of the Algerian civil legislation, but rather made it obligatory, and the Algerian article is from the Civil Code of 1975 (Ordinance No. 75/58). It is worth noting that it was amended in 2005. (Law No. 05/10), and we do not find an example of this paragraph in the new amendment.

[10]- Law N°. 17 of 11/24/1986 related to medical liability, J.R. No. 28, twenty-fourth year, issued on December 31, 1986

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Is also considered as a presumption of error or breach of obligation, the creation of the damage "The UAE[11] legislator also defined the medical error as follows: "The error due to ignorance of technical matters that everyone in the same medical profession is supposed to know about, or due to negligence or lack of due care.

The Saudi[12] health professions practice system, tried to give a definition of professional medical error, limiting it to seven cases, most of which were medical errors. Whereas Article 27 of the Code stipulates that: "Any occupational health error made by a health practitioner which results in harm to the patient shall be liable for compensation. It shall be considered as a professional health error:

- Treatment error or lack of follow-up.

Ignorance of the technical matters that one who was in his field of knowledge is supposed to be aware of ...".

On the other hand, we find that the French law relating to patients' rights and the quality of the health [13]system explicitly states the following: Error is the basis of medical liability[14].

2- Medical error standard:

The doctor shall exert honest and vigilant efforts that are consistent with existing conditions and established scientific principles in order to cure the patient and improve his health condition. Violation of such a obligation constitutes a medical error that raises the responsibility of the

[11] -Article 27 of the UAE Federal Law No. 10 of 2000 regarding medical liability and medical insurance

[12]- The Saudi Health Professions Practice Law issued by Royal Decree No. M / 59 dated 11/04/1426 AH.

[13]-French Law No. 2002-303 of March 4, 2002, relating to patients' rights and the quality of the health system, JR, No. 54, p. 4118

[14]- Article L.1142-1: "health professionals as well as any establishment, service or organization in which individual acts of prevention, diagnosis or care are carried out, are not responsible for the harmful consequences of acts of prevention, diagnosis or treatment, only in the event of fault.

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doctor[15]. Therefore, we shall clarify the criteria for such violation, such as:

A. Personal standard: It is understood by the personal or realistic criterion, the obligation to which the doctor is subject to exercise what he is accustomed to in vigilance and foresight, so that if it appears that he could have avoided the wrongdoing which was imputed to him and that his conscience gnawed at him for his actions, he would then be considered at fault. On the contrary, if a doctor cannot avoid the harmful act attributed to him after he has done what he is used to in his vigilance and foresight, he is deemed not to be wrong. This led some scholars and some judges to adopt this standard, which takes into account that the doctor has the ability to pay the damage, and that is commensurate with his medical and cultural qualifications and the means at his disposal. He cannot be forced into something that he is incapable of, and that he cannot bear. and on the basis of the foregoing, reaching the truth according to this standard inevitably requires observing the doctor's movements and identifying his behaviors, What the judiciary has difficulty in proving and identifying. In addition, a personal assessment would make an error purely personal, so that the

Error can be attributed to a doctor, whereas it cannot be attributed to another, although both doctors followed the same path and have done the same behavior and were in the same circumstances. so that a doctor accustomed to vigilance and perspicacity, who would come to commit the same act, is liable for said act, therefore he is held to account for at least a lapse of judgment. Whereas a doctor who commits the same act of negligence, is to be rewarded by neither

[15]-There are those who believe that this criterion is the standard of a good professional person, that is, a middle-aged and alert person who practices the same profession. A person who professions a certain profession must fully prepare himself for this profession. On this basis, he is held accountable and accountable. The same profession may have many levels that make it natural to take into account the professional level of the person making the mistake when assessing the error: Rais Mohamed, (Towards a New Concept of Medical Error in Algerian Legislation), Supreme Court Journal, Issue Two, 2008, p.72.

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holding him responsible nor accountable for his act, unless his behavior reaches a certain degree of carelessness and recklessness. The criticism with this criterion is the fact that it requires an assessment of the error according to the behavior of the doctor himself, and in light of the scientific and medical training obtained, given that it is difficult to touch on these kinds of questions, in most cases.

B. Objective criterion: And it is the average[16] middle person's behavior which is observed and taken as a landmark, in judgment of the behavior of the person who made the mistake, taking into account the external circumstances surrounding him. If his behavior is outside the norm of the ordinary person, he is then, considered to be at fault[17]. And given that one expects from a doctor, more than one expects from another person, the doctor must therefore, provide sincere and vigilant efforts in his work, and during the care given to his patient, and he is being compared to the middle doctor in the same discipline[18]. In other words, the general criterion for measuring error is an objective standard based on the familiar behavior of the average person, or by measuring the behavior of the perpetrator of the wrongdoing by that behavior, taking into account the surrounding external circumstances.

If this deviates from the behavior of the ordinary man, this is considered a fault, and the same way, the doctor's error is measured, namely in the light of the behavior of an ordinary doctor of the same level and under the same circumstances. The scientific standard that can be adopted to measure the behavior of a doctor, is the standard of the behavior of a good physician who is considered competent, experienced, insightful, and accurate on average, and belongs to the same class and the same specialization, and with the same

[16]- Muhammad Hussein Mansour, Medical Responsibility, New University Publishing House, Alexandria, 1999, p. 18.
[17] -Wael Tayseer Muhammad Assaf, Doctor's Civil Liability (comparative study), a memorandum for obtaining a master's degree in private law, Palestine, 2008, p.67
[18]- Achouch Karim, The medical contract, Dar Houma, Algeria, 2007, p. 173.

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professional technical level, exerting the necessary care in treating his patient, taking into account stable[19] medical principles.

Every deviation from these obligations constitutes a medical error he is asked about.

In addition, the objective criterion is not absolute, because the judge, to assess the doctor's error, measures his behavior on the behavior of another doctor of the same level and the same specialization. The Algerian legislator has adopted the criterion. objective, through the text of article 172 of the Algerian Civil Code and the judicial power does not take into account, the subjective criterion, where the reference is made to the same person, author of the deviation. Which would make the same act a mistake for one and not for the other.

Second: Certain forms of medical error and their applications in the field of medical liability

Part of the case law is that errors made by a doctor in the performance of medical work engage his civil liability through negligence[20]. They argue that the physician's obligation to treat the patient is an obligation of prudence and care. However, with the publication of the Mercier judgment rendered by the French Court of Cassation on May 20, 1936[21], the meaning of the adaptation of the legal nature of the liability resulting from the commission of any physician error that would harm the patient has changed. Case law and justice now call for the contractual relationship which binds the patient to the doctor. Hence the determination of the contractual liability of the latter. In this

[19]- Muhammad Lamine, The Doctor's Responsibility for the Prescription, Al-Wafa Legal Library, Alexandria, First Edition, 2015, p.150

[20] - Ahmed Hassan Abbas Al-Hiyari, the civil liability of the doctor in the private sector, in the light of the Algerian legal system. House of Culture for Publishing and Distribution, Jordan, 2005, p.19

[21]-Merciers' decision stipulates that a real contract is born between the doctor and the patient, even if the contract includes the doctor's commitment not to treat the patient but to provide him with elaborate treatment, prudent and consistent with the data acquired, and that failure to comply with this obligation, even unintentionally, entails a liability of the same nature, namely contractual liability.

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second aspect, we will approach the determination of the degree of medical error (1) and will explain some of its forms and the medical liability that results from it (2).

1. Determine the degree of medical error:

The explicators of law were divided on the basis to be determined as a reference to establish the responsibility of the doctor. One current advocates the idea of serious error, (a trend known in jurisprudence and the French and Egyptian justice, and calls on justice not to interfere in medical advice and prescribed treatments); but on the other hand calls for the accountability of physicians for serious errors which cannot be committed by less experienced and less intelligent physicians, and would therefore take the judgment of fraud[22].

This tendency, and because of its violation of the provisions of articles 1382 and 1383 of the French Civil Code, forced the French Court of Cassation to intervene, and to deliver on July 21, 1862 a famous judgment, delivered by the applications division. , declaring that the two aforementioned articles decided on a general rule for attributing error, and that doctors are subject to the law like everyone else. -

Demolombe explained this judgment by distinguishing between two types of errors made by doctors, and he called the first (normal) material error, such as forgetting a scalpel in a patient's stomach after surgery or because the doctor performed a medical procedure while he was drunk.

While he calls the second type of error, purely medical technical errors, And takes the doctor responsibile for the first type of error, he excludes all responsibility of the doctor for the second type, except for the violation of the basic principles of medicine and its proven facts, that

[22]-Al-Ghamidi Abdullah bin Salem, The professional responsibility of the physician. Al-Andalus Al-Khadra Publishing and Distribution House, Jeddah, 1997, p. 205

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he includes under the responsibility of the doctor for serious errors[23]. However, the French Court of Cassation did not distinguish between ordinary error and technical error: judges enjoy a great deal of control when examining modern medical theories and methods, without entering into the determination of the degree of error that gives rise to liability[24].

2. Certain forms of medical error and the liability that results from it:

The work of the physician begins in the treatment of the patient and the monitoring of his health after obtaining the consent of the patient or the consent of his legal representative. He thus, proceeds to diagnose the disease, prescribe treatment and follow-up. However, the doctor's work is, at these stages, so difficult that he is obliged to treat and take care of the patient; otherwise, he is considered to have committed a medical error[25].

A- Medical error in the diagnosis:

The diagnosis is an important and highly precise step in medical work, through which the doctor tries to know the disease, its degree of seriousness, its history and its evolution, as well as all the circumstances. surrounding him; whether they are related to the disease or to the patient himself, in terms of his state of health, his medical history[26] and genetic factors which are particular to him.

Every doctor is required, to well examine the patient, far from any rush or negligence; and it is more necessary if the patient is visiting him for the first time, and he has never known him before. It is also the doctor's duty to try to apply his knowledge and the rules of his art correctly, to avoid any error in diagnosis. He is also obliged to take note

[23]- Dawoud Abdel-Naam Mohamed. Legal responsibility of the physician, Cultural Dissemination Library, Alexandria, 1988, P.18
[24]- Fatima Al Zahraa Manar, previous reference, p. 214.
[25]- Khaled Daoudi, The Medical Error, Dar Al-iisar Al-Al ilmi for Publishing and Distribution, Jordan, first edition, 2018, p.77
[26] - Samira Agrorou, Criminal liability of physicians in the light of modern scientific development (comparative study), An-Najah New Press, Casablanca, first edition P. 22

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of the guarantees that science places at his disposal. He must also draw on the opinions of specialists in every case where the diagnosis becomes more accurate.

He is even obliged to observe examination methods, including analyzes and radiology, whenever the patient's health and condition so require. Yet, a doctor may be wrong in diagnosing the disease.

Is he responsible then? To what extent? What is the legal description to apply to a doctor in such a case?

The answer requires a distinction between two situations:

1-The simple mistake does not require the doctor's responsibility:

A doctor relies on his natural ability and his own force of intelligence and intuition in observation and deduction. These talents and abilities differ from one doctor to another. It is known that these talents and abilities differ from one doctor to another, so while some of them have a high degree of talent, we find that others are less talented. Therefore, the doctor can not be held accountable on this basis; especially since the law does not impose on him an infallibility or health obligation. His commitment, as it is known, is an obligation to exercise due diligence, not to achieve or guarantee a specific[27] result. The misdiagnosis, unless it is the result of clear ignorance or gross negligence, does not require the responsibility of the author. That was the rule that has been approved since the beginning of comparative jurisprudence in medical affairs, and recently settled by the French judiciary, as long as the doctor has done his duty to the best of his ability[28].

Likewise, the responsibility of the doctor or surgeon does not arise if the pathological symptoms are similar and differ to the point where the reality of the disease does not appear, even for the most experienced and

[27]- Samira Agroru, ibid., 230

[28]-That the diagnostic error attributable to an anesthesiologist - resuscitator and a surgeon was not due to ignorance or negligence in the preoperative examinations ... .. deduced that the parties concerned were not at fault". Crim. Nov 3, 1988. Bull.Crim N°366 Rev.Sc.Crim. 1990.71.P: 315.

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knowledgeable doctors of the profession's origins and rules; Which was confirmed by the French judiciary in many of its decisions[29].

Likewise also, the doctor is not responsible if the error in the diagnosis is due to the patient's misleading of the doctor by providing wrong data about the symptoms of his illness or concealing data related to him[30].

If the doctor proves that, he performed his duty to the best of his ability and still misdiagnosed, then he is not mistaken. But he is considered so, if his error constitutes a clear ignorance of the elementary principles of medicine, which are considered to be the minimum that are consistent with the fundamentals of medicine.

We have to be firm and strict with the specialist doctor, and not accept any excuse for a medical error committed, such as is the case with a general practitioner[31]. Because estimating the doctor's error in the diagnosis, is made by referring to his level on the one hand and his specialty on the other hand. It is obvious that the specialist's mistake is considered more accurate than the general practitioner's mistake, and we do not ask the specialist about his mistake in identifying a disease that does not fall within his jurisdiction.

2-The mistake that leads to take the responsibility of the doctor:

There are many causes of misdiagnosis. Some of them are due to incomplete or hasty examination, and some are due to the lack of use of new exploratory methods, and reliance on what has been scientifically and practically overlooked, and some of them are also caused by the absence of one or more basic scientific elements to prepare a correct diagnosis. However, a misdiagnosis becomes a mistake that necessitates

[29]- For a diagnostic error not constitutive in itself of a criminal offense punishable by reason of the complexity and ambiguity of the symptoms, as well as the difficulty of their observation and interpretation ". Crim. 17 Jan 1991. Rev.Sc.Crim.1992.78.obs.Levasseur.
[30]- Muhammad Husayn Mansur, previous reference, p. 44.
[31]-Khaled Daoudi, previous reference, p. 81. .

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the responsibility of its author, whenever it arises from lack of caution, gross negligence or clear and gross ignorance on the part of the doctor. Conducting a thorough and complete examination to reach a correct diagnosis is a legal duty imposed on the doctor. This is what was confirmed by Article 36 of the French[32] Medical Ethics Code, which states the following: "The doctor must always prepare his diagnosis with all accuracy and allocate sufficient, and seek help, to achieve this, by every possible means and appropriate scientific methods, and to take the precautions when necessary, by calling on insightful assistance".

The medical liability arises as well, if the error in diagnosis is due to the doctor's use of surpassing methods that have ceased to be practical.

This requires constant keeping up by the doctor of every new thing related to his profession. Accordingly, some French courts have convicted a doctor for using ancient medical methods to examine a pregnant woman, especially, since these methods would harm the fetus[33].

Consequently, the strictness in assigning responsibility to the doctor is achieved, when his mistake in diagnosis is gross or results from clear ignorance of the profession's priorities, or gross negligence of what the profession requires as precautions. This cannot be accepted or excused, especially if we consider the dangerous consequences of this ignorance or neglect for the patient. The medical responsibility is undoubtedly fulfilled, and the doctor cannot reject it, except in cases in which the apparent pathological symptoms do not help him to reveal the truth of the disease. Such as the presence of infections with which, it is difficult to know the source of the wounds or the presence of the disease in its initial stages.

B- An error in using radiation:

[32]-Decree 95-1000 of 06/09/1995 containing the French Code of Medical Ethics, G.R. No. 209 .

[33]-Civ.9 juill1963BC.In 378-paris 13 avril 1964.D1964.64-paris8juill1970.GP.1971.2.80.Civ1juill 1958.D.1958.P: 600 .

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Radiology is one of the most recent methods of detecting and treating diseases. In addition to the many advantages, they offer in this aspect, x-rays can pose real risks if used incorrectly. They should therefore, only be used when the patient's condition requires exposure to such a risk[34]. Their use forces the doctor to be careful and cautious in processing, and control their effects. The responsibility of the specialist in this is greater than that of the ordinary physician[35]. He is obligated to read it carefully, and every wrong interpretation or incorrect reading of its requirements demands responsibility[36].

The French judiciary has subjected x-rays, since their inception, to general rules governing medical responsibility. In this regard, he required the responsibility of the radiologist for any negligence or lack of precaution in the performance of his task. He decreed the responsibility of a doctor who neglects to place the filter for the x-ray machine, causing him to suffer burns. The Paris[37] court also convicted a doctor of negligence and lack of precaution, as a result of rounding the device tube too much, to the patient.

And the judiciary in Egypt, too, did not deviate from the general rules in its decisions on radiation errors. In 1936, one of the Egyptian[38] courts ruled that a doctor was responsible for radiotherapy, which resulted in the patient's injury to a sore on his neck, as a result of the doctor's mistakes

represented in assigning a nurse instead of him, to practice some sessions on the patient, as well as the presence of an error in placing the patient, by bringing too close, the distance between the tube and the skin, in addition to exceeding the number of Sessions..

[34]-Abdel Hamid Al-Shawarby, Civil, criminal and disciplinary liability for doctors, pharmacists, and hospitals. Knowledge facility, Alexandria, 2004, p. 223.
[35]- Muhammad Husayn Mansur, previous reference, p. 56.
[36]-Montpellier. 29.5.1934. D. 1934. 453.
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In view of the great technical progress that has become known in the field of radiology, whether in terms of improving devices, or in terms of raising the level of those in charge, some have assumed that the doctor's mistake is merely a damage that occurred as a result of the use of radiation[39].

C- Medical error at the anesthesia stage:

Anesthesia is a medical necessity in surgery. This need, which has increased thanks to progress in surgery in general, and to the improvement of means of anesthesia in particular; by improving its material and human potential; has played a fundamental role, facilitating operations that require complete inactivity of the patient, and also helps reduce pain during operations. Thing that helps - Inevitably, to preserve the patient's abilities during certain operations.

Despite the many advantages that this science has come to achieve, death may occur for reasons that probably, related to the drug used, its amount or percentage, and the extent of its interaction with the patient's health condition. The reason may also, be outside this framework. So it cannot be scientifically estimated or predicted. Hence, the accuracy in the anesthesia procedure, whether comprehensive (general anesthesia) or partial (local anesthesia), is required.

Doctors' responsibility for anesthesia's errors is also linked to the general rules of medical liability, in terms of negligence and failure to take the necessary precautions and caution, according to the rules of medical art. As a result, the physician must not expose his patient to an investigated risk of anesthesia that is not commensurate with the degree of injury he is complaining of[40]. Before carrying out anesthesia, he must perform the necessary examinations before this stage, including an examination of the blood circulation and an examination to confirm the condition of the heart and an examination of the extent to which

[39] -Muhammad Husayn Mansur, previous reference, p.57 .
[40]-Abdul Hamid Al-Shawarbi, previous reference, pg. 224.

anesthesia can be tolerated, while taking the necessary precautions imposed by the art of medicine in this field[41]

Thus, there is no blame on the doctor if the use of the drug results in the death of the patient, for reasons beyond the appreciation of knowledge, as long as he has taken all the necessary precautions imposed by the field at this stage; and this is the principle that was established in the French judiciary, since the first case on the subject was brought before it in 1853. The patient's condition and heart must also be monitored during anesthesia, so that he is not administered an amount of anesthesia beyond his tolerance.

Therefore, it became necessary to seek the assistance of an anesthesiologist, or at least, an assistant who is familiar with, and experienced with it, during the procedure, to assess the patient's need for first aid when his health[42] condition requires it.

In addition, since the surgeon is responsible during the operation, for any error that occurs from him, with regard to his assistants, and the nurses who work under his supervision, he is then, responsible for the result, if the person who administered the anesthesia was not a doctor. Because choosing the type of drug and the method of administering it is the work of the surgeon in particular after a careful examination of the patient's condition[43].

D- Medical error in blood transfusions:

[41] - CA. Paris, 20ème ch. B. 23 juin 1995. (clinique de N. Civilement responsable, juri-DATA. N ° 0022281). (Appel C / TGI Bobigny, 15 ch. 22 juin 1994). V: juri - classeur, Droit. Pén. 1995. no 187.p: 6. Voir aussi: Cass. Crim. 16 fév. 1997.n ° 96 - 82 - 377.
[42]-Abdul Hamid Al-Shawarby, previous reference, p. 223
[43] -Samira Agroru, previous reference, p. 248

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Scientists have long studied the possibility of transferring blood[44] to humans to cure certain diseases, or at least, help him heal, as they believe that if blood transfusions were possible for the patient, the patient would in many cases, be cured and would recover health and strength.

The importance of blood transfusion has increased over time and as its importance as a motor and driving force for humans and their cells, was consolidated. Research and related experiments have multiplied and spread all over the world. It has become also, possible to separate all of

[44]- Blood is that red liquid that is found in the blood system of the body, and fills arteries and veins and runs in the veins of all living vertebrates, including humans, and is characterized by being renewed, and blood consists of elements of various shapes that circulate in a specific fluid called plasma, which is a fluid in which blood elements move on A method that allows it to carry out its multiple functions in the human body.
And blood contains all the means of life that the body requires, so it carries the hormones and vitamins necessary to activate it, and blood consists of two main parts: plasma and cells. As for blood cells, they consist of three groups:
A - Red blood cells. They are small cells that are not seen with the naked eye, and are seen under the microscope as they swim in a transparent yellow liquid (plasma).
B - White blood cells are larger in size than red cells, but they are less than them in number. White blood cells are considered the body's first line of defense as they play a defensive role against any intruder.
C- Platelets, which are very small and delicate bodies, and their primary role is to contribute to the process of blood clotting, freezing it and stopping bleeding after wounds.
As for blood plasma, it is a transparent, yellow-colored liquid, and its primary role is to transmit various stimuli and transmit various signals in a chemical manner between the organs and the brain.
The first attempt at blood transfusion was for Pope "Attusent III" in 1492 AD, and it ended in failure. In 1616 AD, the English scientist William Harvey discovered the blood circulation after it was discovered by the Arab world Ibn Al-Nafis in the third century AD.
In the year 1667 AD, Dr. Denis, the private physician of King Louis 14 of France, carried out a blood transfusion from an animal to a young boy who complained of an incurable fever, and the boy died at the same moment. In 1817 AD, French doctors succeeded for the first time in transfusing human blood to a patient in France, and this was done without regard to the type of blood group, because blood types were not discovered at that time, and they were not discovered until 1900 AD, when the main specific elements were discovered Of three blood groups by the Austrian scientist Landsteiner, the fourth type was discovered in 1902 AD by the worlds von de Castello, (1940. RH) and Storley, and the two scientists Laundsteiner and Weiner also managed to discover the so-called factions.

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its components separately, and it has become possible to transfer one or some of these components to the patient according to his needs[45].

Thanks to this development, blood transfusions spread, and became an essential and indispensable element in the daily medical work. Indeed, the need for it has increased today for many reasons, the most important of which are:

- The large number of victims of accidents and collisions.
- The large number of major surgeries (such as heart surgeries and organ transplants, for example).
- The spread of some serious disease cases that require rapid and immediate blood transfusions, such as cases of severe bleeding due to a lack of platelets, for example.

If blood transfusions often save many patients from certain deaths or degenerative health, they may be in turn, the direct cause of some infectious diseases, resulting from defective or contaminated transferred blood. Moreover, this has led to increased attention in terms of examining it, and to ensure that it is free of any pollution or infectious disease.

Therefore, various comparative legislations stressed the need for blood transfusions, to be carried out in all stages, under the supervision of a competent doctor. He is the most capable person to pursue this process on the one hand, and to ensure a rapid and effective intervention, in the event of any error in this process, on the other hand. He's also responsible for blood examining, and also verifying its suitability, so that it does not harm the patient's health. That is what the French Public Health, Art. 1221.3[46], has confirmed.

Jurisprudence and the (comparative) judiciary have also confirmed this condition. Some French jurisprudence even made the doctor's obligation in this regard, in order to achieve the result, to transfer

[45] -Samira Agroru, previous reference, page 253.
[46]- The blood test can only be done… by a doctor or under his direction and responsibility. “ .

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blood an identical blood to the patient, free of diseases and infectious viruses. The judiciary[47] upheld that doctrine in some of its provisions, especially since blood type verification and the extent of infection, and virus-free status are now possible and even easy, thanks to the development of screening mechanisms and capabilities. This is another reason to tighten the doctor's responsibility in this regard, without the need to prove his neglect and recklessness. It is further, because, a medical contract in the case of blood transfusion requires the investigation and even the guarantee of the patient's safety, not just the care.

E- Medical error in obstetrics:

There is no doubt that the responsibility of the obstetrician is certain for all damages to the pregnant woman or her newborn, as a result of negligence or failure to implement the rules and regulations of this field, such as neglecting to tie the umbilical cord to the child, or causing a disability to the newborn child, as a result of the amputation of one of his organs due to a lack of skill. Or as neglecting to seek the help of the anesthesiologist in cases that require this, such as Caesarean sections, and performing the anesthesia by himself, causing harm or death to the pregnant woman. If the responsibility of the obstetrician may not be established, except from the date of the start of the obstetric process, on the other hand. If the obstetrician is responsible for following up the pregnancy from its inception, he will be responsible for every drug or treatment that causes the fetus to abort or affect its health or the health of its mother.

And if the responsibility of the obstetrician may not be established before the date of the start of the birthing process, he is, on the other hand, responsible for any drug or treatment that causes a miscarriage of the fetus or affects his health, or that from the mother; whether he is responsible for monitoring the pregnancy from the start.

[47]-Trib.Civ.Toulouse. 14 dec.JCP.1960.2.204. Savatier notes

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Conclusion:

We have concluded through this study, that the profession of a doctor requires continuous effort. Because the issue is very difficult, and requires a lot of accuracy and vigilance. In addition to the fact that the doctor's obligation, in principle, is an obligation to exert care and every breach of this obligation constitutes a medical error that raises the doctor's civil liability.

To this end, we propose a set of recommendations, the most important of which are the following:

- The establishment of a legal system related to medical errors, in health legislation and the laws of medical ethics
- The doctor must take into consideration the scientific rules and principles of the medical profession.
- Continuous improvement of the carrying through of medical work, in order to avoid the multiplication of medical errors.
- Take care of the patient's person and seek legal means that ensure his protection against the dangers of modern technology.
- Continuous training of general and specialized doctors, in order to acquire competence and skill.
- Take into consideration the external conditions of the medical profession, as being the true standard, by which medical work is observed.

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