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## **The doctors responsibility to inform the patient of medical risks and its effect in denying medical responsibility**

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### **ABSTRACT**

This paper dealt with the issue of The doctors responsibility to inform the patient of medical risks and its effect in denying medical responsibility here, at which we dealt with the nature of the doctors responsibility in informing the patient about medical risks in the first part of it, then we shed the lights on the medical responsibility and its role in inducing the doctor to inform the patient and acknowledge him, the statement of problem stated the sufficiently of legal articles here in terms of doctors responsibility to inform the patient of medical risks and its effect in denying medical responsibility here, at the same time there was a discussion of the reason behind this was sufficient to be regarded as a prosecution or a legitimate cause that the doctor can rely on in freeing himself from any medical responsibility in the case of any health complications for the patient after that, the findings showed that doctors responsibility for informing the patient about risks of the medical measures taken is regarded as one of the major responsibilities of the doctor according to medicine ethics and legislations, and his commitment to it doesn't make exempt him from any medical responsibility based on the occurrence of any medical negligence or underperformance.

### **Keywords:**

Informing, patient's satisfaction, diagnosis stage, medical responsibility, public health law.

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### **Introduction:**

Based upon the priority and holiness of humans lives protected by the laws and legislations, there was a need for providing legal articles that organize medical activities in all of its types and majors, so the Jordanian legislature, and based upon the sacredness of humans life and protecting it, the medical legislations stated that every medical act or measure must be based upon the absolute patients interest , and necessary according to his satisfaction or his custodian in the case of being a minor or in coma.

In general, any medical measure or operation made by the doctor has its major risks or complications, so that the patient could be hurt whether the measure was operational or as a treatment, do that these conditions can be unexpected, as it's the case, the issue of doctors responsibility to patient information about any complications of any treatment or operational measure taken with the need to recognize the patients psychological condition that can lead to any complications here, hence the doctors responsibility to inform the patient about any risks and uncertainties, keeping away any irrelevant medical details that the patient is not in need to know but the risks and complications that can be expected here.

Based upon the past words, the Jordanian legislature had put forward a special act regarding the medical responsibility in a way to organize the issue of the doctors responsibility and the need to inform the patient about the risks of medical measure taken, as its stated as follows : “ the service provider must adhere to the laws and standards and special measures followed in the profession according to its responsibility and level with detailed documentation in the patients file in specific as it follows (informing the service client with the complications of the diagnosis, treatment, or surgical measures taken before applying it and shedding the lights on it first, if it is possible).

So, this paper will deal with the doctor's responsibility to inform the patient of medical risks and its effect in denying medical responsibility based upon the medical or surgical measures taken

### **Study significance:**

As its indicated that the responsibility of the doctor to inform the patient is one of the doctors duties, according to Jordanian legislature regarding the medical responsibility, so the study significance is represented by shedding the lights on the sufficiency of such legislations with regards to The doctors responsibility to inform the patient of medical risks and its effect in denying medical responsibil-

ity of the medical or surgical measures taken here from one side, and the case of freeing the doctor from such responsibility in the case of informing the patient about such risks or complications, hence the study significance is embodied in the following:

**First:** theoretically: this paper, as the researcher hopes, will settle the controversy of this problem based on the findings and recommendations of the questions answered here according to the laws, legislations and instructions applied here and the jurisprudential views from one side, and that most of countries are working on developing such laws and legislations regarding the medical responsibility due to the vitality of humans lives from the other side.

**Second:** practically: is of the major importance of such issue for the lawyers and people working in the judicial system like doctors, lawyers or judges by the findings and recommendations made at this paper.

### **Objectives:**

The study objectives are represented by shedding the lights on the sufficiency of legal articles regarding the medical responsibility for doctors and informing the patient about medical responsibility of risks, and freeing him from any responsibility in the case of informing the patient about the medical risks of the medical measures taken here, and to know if such legal acts must be amended or not.

### **Statement of problem:**

When the legal acts and legislations were put forward, the objectives of it were to create a peaceful and safe environment of the people working in any sector and the community at the same time, there was a need to put forward some acts and articles to organize the medical activities, and the legislature found it necessary to limit those legislations regarding doctors responsibility here, as it is put forward to save humans lives and the prevention of any negligence in medical operations and measures, out of all this the statement of problem of this paper included the sufficiency of legal articles organizing this issue from one side, and to know if the case was here, it can be from the defenses that the doctor can use in order to free himself from any legal responsibility in the case of any medical complications happened to the patient from the other side, with the following questions put down related to it, as follows:

1-What's meant by the responsibility of informing by the doctor?

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2-What are the limits of such responsibility? And what are the cases that exempt the doctor from doing so?

3-Can the medical responsibility of the doctor about any medical complications of such measures, if he was able to prove the information act done by him?

### **Methodology:**

The researcher will apply the following in order to answer the study questions:

1-The descriptive: by describing the problem under study.

2-The analytical: as its done in discussing the legal acts and legislations followed related to the case and comparing it to the jurisprudential views and courts.

The first section: The definition of doctor's responsibility of informing

Legal legislation essentially aims to create a safe legal environment for those dealing with it, as this achieves stability in society and instills reassurance in the souls of members of society, it was necessary for the legislator to regulate all aspects of civil liability, which includes what is known as medical liability.

As we have seen in the past discussion that the Jordanian legislature had shed the lights on doctor information about the medical risks of the operations or medical measures taken to treat him, based on the doctor best performance according to the profession code of ethics and standards as its indicated in the court of cessation as it follows: "The responsibility medical and health responsibility of the service provider and rendering of such service adherence of professional standards related to it as the place of this service, the special codes before and during this service and the medical measures taken by the service provider here, as he must adhere to the profession standards, neatness and principles followed here in a way that achieves the clients interest according to the legislations included in article. of the code of medical responsibility no.( 25 for 2018)."

There is no doubt that patients satisfaction is highly related to his medical situation and assessment in order to be able to make up his mind about the medical measure that he must follow in the treatment process, And that the doctor must have the patient consent about it before doing or performing any measure as it is an ethical principle and professional organized or supported by the legislations related to it , There is no doubt that every human being has the right to health, which falls within the framework of human rights, as human health is considered one of the highest goals that must be preserved, and therefore legal rules have emerged that will guarantee this right by regulating what is known in some countries as a law, medical responsibility, which means that the doctor must practice his profession

in accordance with what is required by the principles of the profession and does not infringe on human health, and he must inform him of the risks of the medical procedure in all its forms, and at the same time he must inform him whether there are many medical treatments proposed. ) (

The doctor responsibility of informing the patient about the medical risks of any measure or operation as its included in doctors information about any risks possible of this medical measure negatively or positively, upon that the patient can determine what necessary measure and performing it by the doctor as its planned. ) (

Based upon that, the information issue is the determinant of the rejection or acceptance of him for the medical measure taken by the doctor, as the doctor will provide the patient with all information about his medical condition in a reasonable way in order to help him in taking the best decision about the case, The doctor got no right to impose anything on the patient about the medical measures as its regarded as a breach for the satisfaction principle since its related to the humanitarian issue here, which states that the patient got the right to accept or reject any medical measure or operation suggested by the doctor or surgeon as he will be responsible about it in the case of informing the patient about it by the doctor.

The issue of informing the patient in jurisprudence indicates that providing him or her with detailed information about the medical measures will help the patient to make his mind about the medical measures, so that he will be able to estimate the things, the risks and the benefits, and the doctor has no right to convince the patient about any measure unless the patient wants and know everything. ) (

About this principle, this commitment is part of the doctor's responsibility as the doctor got the right to inform the patient about his haasty condition, not to diffuse or spread his secrets, to inform him about the risks and to take his consent about any medical measure or operation to be taken, unless it was something urgent which help him in his condition as the patient must determine what to do. ) (

The issue of information provision for the patient is something crucial and part of the doctors responsibility, as there were many cases of health crisis and mistakes of not informing the patient here about the risks, so as more and more doctors must inform the patients about the real condition here, there will be more and more of the patients who depend on it in determining what to do and choose the best plan for his condition. ) (

Out of that, the doctor responsibility about informing the patient about the risks is not only the important thing, as he must inform him about the different treatment plans besides its cost at the same time, to make the patient completely informed

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and to choose the best alternative for the patient and the less risky according to his condition.

As its stated in the jurisprudential review, the doctor is responsible about any risks here whether it was in the diagnosis stage in terms of the surgical measure and the conditions about it, or un the treatment process as there are measures taken, besides any medicines that can limit his suffering and this is done based on information about the risks and the costs provided to him. ) (

Therefore, we find that the meaning of the doctor's obligation to inform the patient of the potential risks resulting from the medical procedure is essentially a moral obligation before it is legal, given that the doctor is required to have professionalism and integrity due to the nature of his dealings with human souls, which are considered among the holiest creatures of God Almighty, On the other hand, the doctor must inform the patient of all the risks, mention to him the available options, and give him the freedom to choose the procedure that is compatible with his health and psychological condition so that the doctor guarantees the best results in the future.

In the context of talking about the subject of civil liability, it is also known that civil liability in general is regulated by statutory legislation with the aim of organizing society, and this in turn inevitably leads to the progress and effectiveness of society, given that all members of society know their rights and obligations) (, and after we talked in this section about the subject of commitment, The doctor informs the patient of the risks of the medical procedure, In the second section, we will move on to talk about the scope of the doctor's medical responsibility and the possibility of paying it if he fulfills his obligation to inform the patient of the risks surrounding the medical procedure taken.

The second Section: The medical responsibility and its role in doctors commitment about informing and clarification

As we said earlier, the Jordanian legislature has put forward the legislations organizing the medical responsibility in the medical responsibility act issued in (2018), so there is no doubt that any profession or job must have ethics that organize its performance and make the principles and basics of it clear, which is what's followed in courts and schools of law here, as any job or profession must have risks and that's what's has been known as civic responsibility, and the medical responsibility is of the same kind) (, hence the doctors must be acknowledged about the codes and ethics of medicine profession in order to make it clear for all in the case of any harm happening to the patients.



There is no doubt that the doctor commitment here is embodied by the doctors best performance here, so this responsibility doesn't include the patients healing, but to adherence to all standards and codes of this job in order to best save humans lives, besides the doctors alertness during the treatment process.

Doing his best in order to or as in the code of ethics of the profession without guaranteeing the healing, and this commitment doesn't include cosmetic surgery, as the surgical operations taken by the doctor in cosmetic or plastic surgery us made in order to achieve such results otherwise he will be responsible about it. If the Jordanian civil law was included, we find that the Jordanian legislature had determined the general rule for civil responsibility regardless of its origin, whether the hurt or tort is resulting from any medical fault, negligence or underperformance, as this is the case, the doctor will be responsible for about this hurt or tort as its included as follows:” every tort for others, the person responsible will be liable even if he is not acknowledged about it”.

It's generally known that the doctor responsibility about providing fair medical service is something contractual, which means that providing such service is in the domain of contractual responsibility as the doctor will be responsible about or for providing the best medical services for an agrees upon wages, but the controversy was about defining the nature of such contract but it was agreed upon to have a medical contract as a contractual contact, so any breach of it will make the party liable for or to compensate or guarantee such harm or tort of the other party. Including most of the elements of the contractual responsibility, so these elements include the contractual fault, the tort, the reciprocal relationship between the contractual fault and the tort, so we will take these elements in more analysis based upon the fact that the relationship between the doctor and the patient is contractual.

The contractual fault is defined as: the debtor default of rendering the contract made with the other party regarding his duties included in the contract.

#### First: The Contractual Fault

The contractual fault is regarded as one of the most important elements of the contractual responsibility in both cases, so if such act is not regarded as fault, then there won't be any contractual responsibility here, so the other party default doesn't mean that contractual responsibility is applied here, as the default must be based on a fault or mistake, with the need to differentiate between the commitment of rendering services and commitment for definite results, so in the first case the liable party must achieve the results determined as in the case of delivering

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the goods safe and sound without delay. originally speaking, we must realize that the liable party will be responsible if any fault happened, so that the other party won't be obliged to prove it, but the right of defending such responsibility will be legal and protected here as in the case of default due to force majeure, while the other type is related to the care and treatment, as the party won't be committed to all things except rendering service with care so if he was able to render it, then no liability will be here.

If the results were taken into account here, as in the case of cosmetic surgery, then the liable party default will be sufficient to achieve the act or case of contractual fault without proving it, but the liable party can prove that such default was a result of exogenous reason and no relation was for them here like in the case of force majeure or any emergency that breaches such responsibility.

Relating this to our subject, we can say that the doctor commitment is generally committed to care about the patient in order to heal him, which is what the patient hopes in contrast to the cosmetic surgeon, who must achieve what is agreed upon, and that the doctor must do his best in order to revote best service for the patient.

So the contractual fault or tort comes in different ways, as it can be on purpose or by mistake, so the first is a result of any change that happens to the agreed upon behavior or activity, but the second is the result of the act of negligence or unknowledgeable person.

But we can say that the type of the fault or mistake is not important in the contractual responsibility, as the fault happens and other elements of contractual responsibility, the mistaken person is responsible here, so the act of not rendering whether it was on purpose or not, makes this kind of fault responsible here.

### **Second: The Tort**

Tort is regarded as one the basic elements of the contractual responsibility, as there is no compensation as long as there is no tort, it is known that compensation in this area is made based on assessing the tort for the other party, Regarding the proving the tort, the torte party must prove it as a result of the liable person default, and that the contractual fault doesn't necessary mean that a tort had happened to the torte party. ) (

Relating this to our paper, if the patient went to the doctor, so that the doctor informed him about the risks of the medical measures taken and provided the service for him or her, so that a tort had happened to the patient, here we have a tort out of the treatment process, and from our point of view, the doctor information



for the patient doesn't make him free from responsibility as long as negligence was in case and we have a tort that must be solved with all elements of contractual responsibility here.

It must be said that compensation will be for direct tort, and direct tort is defined as: the tort resulting from fault in contractual responsibility, and this tort can be avoided by paying the least efforts, and the indirect tort isn't regarded here, and there is no relation between reciprocity of fault and tort, but causality or reciprocity is a major element in contractual responsibility as long as its necessary for the liability here, and that was regarded by the Jordanian legislature, as he stated that the compensation of these conditions is assessed according to the tort happened to the tort party and it's a result of harmful act.

And that was the case of court of cessation of Jordan: "if the court misjudged or misestimated the value of the tort and did not take into account the other party claim of tort is regarded as a claim of compensation of indirect tort".

### **Third: Causality:**

There is no doubt that there are conditions for the contractual responsibility like the contractual fault and tort resulting from it, and this is known as causality and this fault must be a result of the liable party act, and if there was any exogenous reason, here there will be no responsibility, and if the tort happening to the patient was out of the medical measures taken, and the doctor negligence was present, then responsibility of the doctor will be regarded as that fault was the direct result of tort for the patient.

Summarizing, we can say that the doctor information for the patient about the risks of medical risks is an ethical principle and standard in the code of medicine, so if the doctor did so and a harm or tort happened to the patient, then the doctor will not be liable here, in contrast to the negligence case, so if the doctor didn't apply the codes and standards according to what is followed, then he will be liable for it and the information process isn't enough for defense.

In addition to the civil liability that may be incurred by the doctor in case of a breach of his duty to inform the patient of the medical risks associated with the medical intervention, the Jordanian legislator has, in article (20) of the Medical Liability Act, established penalties for the doctor in case of breach of his duty to inform. The legislature stipulates that: "Anyone who violates the provisions of article (7) and paragraphs (a), (c), (d), (e), (f) and (g) of article (8) of this Act shall be punished with a fine of no less than (3,000) and not exceeding (5,000) Jordanian dinars."

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### **Conclusion:**

At the end of the paper, the researcher had the following results and recommendations, as follows:

### **Results:**

1. The Jordanian legislator, like other legislations, imposed an obligation on the doctor, which is the need to inform the patient of all the medical risks resulting from the medical intervention that the doctor will perform.
2. The Jordanian legislator prohibits the doctor from performing any medical intervention without the consent of the patient himself, his guardian or guardian, except in emergency cases in which the doctor must intervene to save the patient's life.
3. The doctor's duty to inform the patient of all medical risks resulting from treatment does not prevent his responsibility in the event that the medical procedure taken is negligence or negligence or if he does not observe the rules and principles of the medical profession.
4. The nature of the medical treatment contract is basically a contract and therefore the doctor's obligation is that it is an obligation to exert care, so he is only required to do his best to preserve the patient's life and provide him with the utmost care.
5. In the event of a medical error and this is proven by the court, the doctor is obliged to pay the compensation estimated by the experts to the patient based on the rules of civil liability and medical liability.

### **Recommendations:**

1. Forming special medical committees affiliated to the Medical Syndicate or the Ministry of Health, whose main task will be to supervise the extent to which doctors implement their commitment to inform the patient of all expected future risks resulting from medical intervention, and to ensure that doctors give the patient all available options in line with their health and financial condition for treatment.
2. The need to amend Article (7) of the Medical Liability Law, by adding an extensive explanation of the nature of the doctor's obligation to inform the patient of the risks of the medical procedure by indicating that the doctor must inform the patient of all side effects related to medical intervention in the long term and indicate whether there are other options that are less dangerous than the procedure that the doctor will perform, and reformulate this treatment in line with the conditions of medical work for all its stages without exception.

3. Stiffening of the penalties contained in the Medical Liability Law, which relates to the punishment that results from the doctor in the event of committing a serious mistake or negligence or in the event that he follows the principles and rules of the profession, considering that the medical profession is one of the noblest and most sacred professions and that the doctor deals with human souls and therefore must do his job to the fullest and not to be overwhelmed.

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