

PRE-CONTRACTUAL DUTY OF DISCLOSURE IN PRIVATE MEDICAL SERVICE CONTRACTS (A CONTEMPORARY CIVIL LAW PERSPECTIVE)

DEVER DE INFORMAÇÃO PRÉ-CONTRATUAL NOS CONTRATOS DE SERVIÇOS MÉDICOS PRIVADOS (UMA PERSPECTIVA DO DIREITO CIVIL CONTEMPORÂNEO)

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Ibrahim Ali Hammadi*

*Al-Huda University College, Ramadi, Iraq
ibrahem.ali@uoalhuda.edu.iq

Salman Ali Humadi**

**General Directorate of Education, Anbar Governorate, Al-Garmah Education Department, Al-Anbar, Iraq
SA7872819@gmail.com

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Abstract

This article analyzes an important rule from the sphere of medical civil law, namely the pre-contractual cognitive duty in the contract of private medical services. In view of the rapid advancement in private healthcare, whose orientation is increasingly becoming commercial and investment-driven, the doctor-patient relationship is not merely human anymore. But its contractual character has become more complex and the knowledge of the parties is imbalanced. The study proposes the duty of disclosure as a pre-contractual phase, disassociating it from the obligation to consult a doctor later, and defining its legal basis as good faith and protection of consent. The research also investigates what details must be revealed, such as who the service provider is, what are their total costs, what risks do the service providers pose, and what possible alternatives the users have. In the final segment of the module, the mechanisms for proving compliance and the role of the judiciary in protecting patients from arbitrary conditions and misleading practices are discussed in detail. All this is based on the general principles of civil law and on specific laws on patient protection and healthcare provision.

Keywords: Pre-contractual Duty of Disclosure. Doctor–Patient Relationship. Private Healthcare Contracts. Informed Consent Protection. Medical Civil Liability.

Resumo

Este artigo analisa uma importante norma do direito civil médico, a saber, o dever de informação pré-contratual no contrato de prestação de serviços médicos privados. Tendo em vista o rápido avanço da saúde privada, cuja orientação está se tornando cada vez mais comercial e voltada para o investimento, a relação médico-paciente não é mais meramente humana. Seu caráter contratual tornou-se mais complexo e o conhecimento das partes está desequilibrado. O estudo propõe o dever de informação como uma fase pré-contratual, dissociando-o da obrigação de consultar um médico posteriormente e definindo sua base jurídica como boa-fé e proteção do consentimento. A pesquisa também investiga quais detalhes devem ser revelados, tais como quem é o prestador de serviços, quais são seus custos totais, quais riscos os prestadores de serviços representam e quais alternativas possíveis os usuários têm. Na parte final do módulo, os mecanismos para comprovar o cumprimento e o papel do judiciário na proteção dos pacientes contra condições arbitrárias e práticas enganosas são discutidos em detalhes. Tudo isso se baseia nos princípios gerais do direito civil e em leis específicas sobre proteção ao paciente e prestação de serviços de saúde.

Palavras-chave: Dever de Informação Pré-Contratual. Relação Médico-Paciente. Contratos de Assistência Médica Privada. Proteção do Consentimento Informado. Responsabilidade Civil Médica.



1 INTRODUCTION

Medical service has fundamentally changed in the recent few decades. The profession of law has evolved from the purely humanitarian one which was subject to the professional ethics and medical standards to an activity which has come to be governed by the economic and investment activities and has become subject to market forces and competition and have a substantial cost-benefit analysis (Al-Sanhoury, 2010, p. 23). Health services now according to commercial principles and the doctor-patient relationship in the private sector has become explicitly contractual and not merely professional and ethical, as it was in earlier times. In this sense, complex legal questions arose on the prevention of deception and the concealment of the defect against the weaker party, i.e. the patient, in the pre-contractual phase.

Patients can get the upper hand over healthcare providers thanks to contract law which can prevent providers from monopolising information. Disclosure obligations before contract formation can ensure this. Generally, the patient lacks the technical and medical knowledge necessary to assess the true essential but nonetheless complex and expensive service. Moreover, their psychological and physical state often causes them to become passive and accept the contract terms without real negotiating power. (Abdullah, 2021, p. 18) thus, modern civil law imposes positive obligations on healthcare professionals beyond refraining from fraud and deceitful behaviours. The obligations entail fully and fairly informing the patient of everything substantive that could reasonably be expected to influence the patient's decision with the contract.

2 FIRST: RESEARCH PROBLEM

What is the legal framework applicable to the duty to provide information prior to the conclusion of a private medical service contract, and how can this legal framework be applied and enforced in the absence of widespread specific legislation?

Which result into sub-questions?

- The legal nature of a private medical service contract and how it differs from treatment in public institutions. What is the legal justification behind the existence of the duty to provide information?

- When does the period before a contract start? Does it also include advertising and medical offers on social media?
- What data and information must the healthcare provider make available before the contract is concluded? Does this just cover medical information or does it cover administrative and financial data too?
- What criteria is used to measure the appropriateness of the disclosure? Is it a fair measure that relies on the average person; or is it a subjective measure and considers the patient?
- What evidence would demonstrate the satisfaction of a duty to inform by the physician or a healthcare institution? Who takes the burden of proof in the dispute? What is the efficacy of the existing legal mechanisms in safeguarding patients against arbitrary and coercive clauses in standard contract for medical service?

3 SECOND: THE SIGNIFICANCE OF THE RESEARCH

The Importance of the present research is attributable to many scientific and practical dimensions.

- 1) Importance of theory (Legal and Jurisprudential)
 - This study helps to fill a significant void in both legislation and case law, which is found in the public medical field in most Arab laws, where there are no explicit provisions that regulate the pre-contractual information obligation in detail. This means that we must apply the principles of civil law and consumer protection law generally (Faraj, 2020, p. 40);
 - The research output here possesses a contemporary civil law specification that is apt to the evolution of global law, particularly in European systems that have developed sophisticated concepts for the defence of the weaker party in the consumer contract;
 - The research outputs here have been firm to the distinction between the concept of contractual disclosure before the conclusion of the contract vis-à-vis the concept of informed consent in medicine, thus eliminating a widespread misunderstanding in jurisprudence.

2) Practical Significance

- This research deals with a frequently occurring problem that concerns many thousands of patients. This is the financial surprises and withholdings, which arises after treatment starts, and which is responsible for an increasing number of lawsuits (Al-Jamal, 2019, p. 55);
- The findings will assist judges and other legal practitioners to guide their assessment of disclosure disputes as well as provide objective standards to evaluate the parties' conduct;
- The research helps private healthcare providers and physicians understand their legal duties which will help them not to commit any mistakes that will incur civil and criminal liability;
- The research backs up the attempts of consumer protection organizations and regulators to set out clear parameters for the monitoring of advertising and marketing practices in the private health care sector.

3) three social and ethical importance

- According to Sarhan (2017, p. 90), research can maintain balance in doctor-patient interaction and strengthen the basic principle of trust, which is the cornerstone of medical practice;
- Through research, the most vulnerable groups (elderly, illiterate, and patients with severe mental illnesses) in society are protected from exploitation.

4 THIRD: RESEARCH OBJECTIVES

The scientific and practical objectives are aimed at this research in particular.

1. Establishing the legal basis for the disclosure obligation: Defining the legal basis for the disclosure obligation in a private contract for medical services based on the principles of good faith, protection of consent and consumer protection (Amer, 2018, p. 95);
2. The date from which such obligation shall apply b. The data and information to be disclosed 3. Whether there would be a cap on the damages;

3. It is important to set out the criteria (objective and subjective) on the basis of which it can be assessed whether the disclosure will be sufficient and will serve its purpose;
4. The various forms of disclosure (oral, written and electronic) will be examined along with clauses establishing rules of evidence and burden of proof in disputes (Qassem, 2018, p. 220);
5. Abdul-Razzaq stated that common and abusive clauses in medical service contracts would be analyzed critically in order to clarify the limits of invalidity or unenforceability against the patient;
6. Creating practical and legislative proposals for legal and legislative solutions that improve legal protection of the patient in a phase prior to the conclusion of the contract.

5 SECTION 1: CONCEPTUAL FRAMEWORK AND LEGAL SYSTEM OF PRIVATE CONTRACTS FOR MEDICAL SERVICES

Private contracts for medical services are among the most commented types of contracts due to their dual professionalism and humanity nature together with their contractual and economic dimension. REWRITE THIS SENTENCE: To understand the disclosure requirements prior to the entry into a contract, it is first necessary to define the nature and legal character of such a type of contract.

5.1 First prerequisite: nature and civil law character of the private medical services contract

A private medical services contract can be defined as the agreement through which the medical service provider (physician or private medical facility) agrees towards the patient to provide him with the necessary medical care, following established scientific and technical principles, in exchange for a fixed fee (Al-Sanhuri, 2010, 45). This is a consensual contract, which binds both the parties and is based on the principle of exchange. Physician's private opinion is often considered more important than evidence.

Legal scholars may not all agree on the specific legal nature of this contract. In one sense it is an agency contract in another it is an employment contract. According to Zaki (2014, page 35), most people opine that medical personnel should be treated as a special character like a service contract. However, the only difference is that the subject matter here is not the performance of an act but providing professional medical service to the patient. This dispute has repercussions for the characterization of the physician's duty: what do we understand the physician's duty as being: the duty to exercise due care or the duty to produce a particular outcome? In general, a duty to exercise due care forms the basis of medical contracts. Exceptions exist in limited situations as medical tests and some simple cosmetic procedures, where the physician has the duty to achieve a result (Amer, 2018, p 98).

Apart from the aforementioned features, private medical contracts have other particularities which distinguish them from other civil law contracts. They are established on a trust that is mutually inherent between doctor and patient and establishes legal obligations as well as ethical and professional duties. Moreover, they are usually unenforceable, since you cannot force a doctor to operate. In the end, these contracts are also subject to strict professional oversight by medical associations and health authorities in addition to judicial review (Al-Shawarbi, 2016, p. 78).

The civil law nature of this contract can be identified by distinguishing it from other relevant legal systems. Contracts for treatment made in public institutions are subject to administrative law since the relationship between the parties is more regulatory than purely contractual. On the contrary, private medical contracts are governed by private law (civil law) and fall under civil courts' jurisdiction (Amer, 2018, p. 112). In addition to this, they differ from tort liability or an obligation that arises without the benefit of a prior contract. The obligation of the self-employed physician to his patient arises essentially from the contract itself. However, in some legal systems, both are linked to a medical accident.

The contracting parties usually include the patient who is the receiver of services and the contractually weaker party and the medical facility or physician who is the professional being an expert and experienced person. A third party (insurance company) could act as guarantor for cover costs. This evades disclosure of means and increases need for clarity before treatment (Al-Jamal, 2019, p.78).

The issue of joint venture brings about serious practical problems. A private hospital can enter into a contract while the treatment is being offered by an independent physician practicing there. We must ask whether the hospital is a mediator or a contracting party. In particular, it is not the individual doctor but rather the healthcare institution who contracting entity and bears contractual liability the acts and omissions of the doctors who carry out their work under the directions and in the name of the healthcare institution, whether own or non-own (Bakr, 2016:145). The patient could also be a minor or legally incompetent. In this scenario, a legal guardian or conservator signs the contract on behalf of the minor, mentally incompetent, or under legal disability. As well, this is in accordance with the rules regarding guardian and conservators. Further, especially in the case of serious surgery requiring court approval.

Health insurance companies are also playing an increasingly complex role. Hospitals can negotiate agreements with the insurance company before entering into a contract and set rates for covered services. A complex triangular relationship arises for the patient in such a case. The patient will have to pay the co-payment, meaning the payment which is not borne by the insurance company. The bulk of it will be paid by the insurance company.

Sometimes, the insurance company refuses to pay for a certain treatment which puts the patient in a difficult situation. As such, the hospital must make it quite clear right from the start that what the limits of the insurance coverage are and what co-pay the sicker must make to avoid any unpleasant financieras surprises (Qasim, 2018, p. 195).

5.2 The second requirement: the legal basis for the duty of disclosure prior to the conclusion of a contract

The duty of disclosure did not spring forth out of nowhere. It was based on the established modern civil law. Contract negotiations should contain the principle of good faith in order for a contract to be valid. This principle requires the party that possesses essential information that is unknown to and cannot be readily obtained by the other party to reveal that information so that the other party can enter upon an agreement with full knowledge. Medical contracts, for instance, place the physician in a monopoly position with specialist knowledge, thus creating a positive duty of disclosure (Faraj, 2020, p. 55).

The modern civil law principle of good faith has transformed from being merely a moral principle to a legally binding rule Arab civil codes including Article 150 of Iraqi Civil Code and Article 148 of Egyptian Civil Code as well as Article 202 of Jordanian Civil Code expressly state that the contract must be performed in accordance with the provisions and requirements of good faith. The pre-contracting stage is included under this principle and both parties shall be frank and honest (Al-Sanhuri, 2010, p. 415). The Egyptian Court of Cassation, in several rulings, states that “malicious conduct at the negotiation stage vitiates consent and opens the door to the annulment of the contract if affecting the behaviour of the party to the contract” This means failure to divulge important information may be considered malicious conduct and may give rise to liability (Omar, 2015: 285).

In this regard, the pre-contractual information obligations principle is a relatively new comparative law principle, especially in France, which has invented the “pre-contractual liability” (*la responsabilité précontractuelle*) theory. French case law indicates that a party who negotiates in bad faith or conceals critical information must compensate the other party for the damages caused in the event that the contract does not come to fruition. Business non-disclosure principles compel people to disclose relevant, market-sensitive facts. In a highly competitive environment, people enjoy misrepresenting facts about their product or service. One misrepresentation can destroy an otherwise promising project. Critical facts like old patents, testimony, and product usages must be disclosed (Faraj, 2020, p. 202).

Disclosure also relies on the principle of shielding the weaker party. A patient has a relationship with a healthcare professional somewhat like that of a consumer with a healthcare professional, but the patient will be at an even higher risk due to ill health and need of treatment. Consequently, contemporary law sees patients as “consumers” of health services, making provisions of consumer protection applicable with an obligation to disclose information and transparency prior to the conclusion of a contract (Abdullah, 2021, p.30).

European consumer protection methodologies contributed to this trend. The European Union has already issued several directives for the member states to impose certain duties on providers of professional services including health services. These rules require appropriate information to be given to consumers before entering a contract,

including the total costs, risks and alternative options available. Some Arab legislators have embraced this philosophy as they enacted consumer protection laws needing to apply to the service sector like private medical services (for instance, Egyptian Law No. 67 of 2006 and Jordanian Law No. 7 of 2017 (Qasim 2018, p. 62)).

We must understand that limitations of doctor-patient relations are not a result of a lack of medical knowledge alone; there is an interplay of various factors. First, cognitive weakness due to the monopoly of knowledge in the hands of the physician. Second, the state of psychological weakness due to health and emotions of the patient. Economic weakness when the patient finds himself in need of urgent treatment and is without negotiating power. The contracts are often standardized and pre-printed by the hospital thus the patient has no choice (other than to accept or reject) but to accept them. (Abdullah, 2021, p. 45) Due to these factors, the legislators and the judiciary need to step in to reinstate the equilibrium in contracts.

Here it is important to distinguish “contractual disclosure” from “informed medical consent.” The first one is a pre-contractual legal obligation as to the terms, deadlines, costs, and general nature of the service, so that a patient can be satisfied thereat from the legal and financial aspect. According to Sarhan (2017, p. 150), the latter (informed consent) is a medical duty that relates to the technical elements of the treatment and its immediate physical dangers and obtains permission for an intervention on the patient’s body. Pre-contractual informed consent, whilst partly overlaps, goes further in providing greater information including administrative and financial elements which may affect a patient’s decision to contract with that provider.

To define this difference more precisely, contractual disclosure has answered the question like doctor, etc. What experience and requirements do they have? What kind of service is being offered? What Do The Exact Costs? Can you tell me about the payment and cancellation terms? Is This Covered By Insurance? Informed medical consent, on the other hand, includes answering questions like: What are the medical risks of the procedure? What is the rate of success? What problems may arise? How long will it take to recover? (Al-Shawarbi, 2016, p. 104).

A number of court rulings have revealed that the information obligation breach before the conclusion of a contract brings about other effects than those of a medical advisory breach. If there is a breach of the duty to give information, consent becomes

incapable of being given and may justify the cancellation or termination of the contract; if there is a breach of the duty to give advice, one is liable for bodily harm from a medical procedure without the proper consent (Bakr, 2016, p. 155). It is, therefore, not merely a difference in legal theory; it has direct implications on the penalties we can impose for these breaches.

5.3 Third requirement: scope of the disclosure obligation in the private medical sector

The obligation's temporal and substantive scope raise similar questions. At what point does the pre-contractual period occur for medical services? As per the prevailing legal view, the doctor-patient relationship starts from the first contact made by the patient with the service provider (whether by telephone, via the website, or in person at the clinic reflects, for example the presence of the doctor at the clinic)²⁰³ (Al-Shawarbi, 2016, p. 90).

Offers and advertisements relating to medicines are also required to disclose. Due to the growing use of digital marketing measures in healthcare, ads have become public offers or calls to action and must therefore state the true nature of the service offered as well as not mislead the customer. Digital before-and-after images or 100% success guarantees are breaches of the duty of honest pre-contractual disclosure (Mansour, 2022, p. 210).

The first consultation, which may be free or charged, schedule, deposit payment, etc., also falls under this phase. Before a patient makes a payment or an appointment, they must be adequately informed to make an informed decision. It is a material breach of duty to withhold information about deposit refund or cancellation policies at this stage (Al-Najjar, 2019, p. 145).

We have witnessed in more recent times that technological advancement has broadened the scope of disclosure obligation significantly. Many challenges have arisen from online appointment booking apps, hospital comparison sites and using social media as a marketing tool in healthcare. According to Saleh (2022, p. 110), anything posted on a hospital's social media pages (Facebook, Instagram) is part of the pre-contractual negotiation phase, and the hospital is liable for its correctness and veracity. Several courts

have stated that hospitals can be held responsible for false advertising by their own accounts, notwithstanding that a standard contract is subsequently entered into with the hospital.

There is also a legal question about whether a doctor or hospital is required to dispel any myths a patient has about treatment where the patient was not actually asked. Studies show that where a doctor is aware that a patient is choosing treatment based on erroneous information, there exists a duty to assist the patient in ‘correcting obvious misconceptions’ (Zaki, 2014, p. 195). If, for example, a patient mentions that an operation will leave no scars to the doctor, the doctor should correct the patient’s understanding if the patient believes this. And if the doctor does not do this before the conclusion of the contract, the doctor will be negligent with regard to his informing duty.

6 SECTION TWO: CONTENT AND STANDARDS OF THE PRE-CONTRACTUAL DUTY OF DISCLOSURE FOR PRIVATE MEDICAL SERVICES

Simply recognizing there is an obligation to disclose information is insufficient; we must specify the “subject matter” of this obligation. Before entering a contract, what information needs to be provided by the hospital or physician to the patient?

Information that must be made available before the conclusion of the contract.

The identity of the healthcare provider is very important. Patients need to know who their treating physician is. It covers the facility's official licenses, the physician's specific specialty (differentiating between a generalist and a specialist), their professional experience and their academic qualification. Deceiving the patient by passing off a certificate of attendance for a physician's continuing medical education course as proof of the physician’s foreign specialist qualification is misrepresentation which adversely affects the patient’s ability to consent (Hilal, 2018, p. 67).

It should also disclose the kind procedure of the treatment. Terms like “cosmetic surgery” do not suffice; the different surgery types, laser or conventional surgeries, processes and durations must be described clearly.

Additionally, the location of the facility and its safety equipment, especially during surgery on one-day patients, is important. Patient should be made aware of the

availability of facilities at the clinic, whether or not there is an intensive care unit available, and the treatment plan in case of medical emergency if shift is required to another hospital. This disclosure has a strong impact on the decision by the patient to accept the risk. According to case law, a patient has a right to know if the surgeon will provide aftercare or whether they will be referred to another doctor. A plastic surgeon was ruled against by a French Court in a case involving a patient whose aftercare was to be conducted by another doctor the patient was not informed of, as was the fact that he would be leaving the country immediately after the operation. Failing to disclose the treating physician constitutes a breach of duty (Amer, 2018, p. 130).

The accreditation and international certifications of the healthcare facility are equally important. The fact that a hospital is accredited by Joint Commission International (JCI) attracts patients, which is important information. Offering misleading information means if the accreditation has expired and the website isn't updated. Some Arab countries have already fined hospitals that continued to advertise with expired international accreditations (Qasim, 2018, p. 175).

The second one asks for the disclosure of risks, options and prices.

This requirement is critical to contractual protection. The first issue pertains to foreseeable risks, which should not be limited only to medical risks (like bleeding), but should also include contractual risks, for example, that the cosmetic procedure may not provide the desired result and will require additional costly corrective procedure (Omar, 2015, p. 302). The information should be delivered in a way that does not overload or overwhelm the patient with unmanageable medical terms that may cause panic.

Second, you have the right to be told about other treatment alternatives before entering the contract. It may be less costly or less risky alternatives; these may be available at other facilities. A trusted physician will recommend the best option for the patient's condition rather than their budget (Khalil, 2021, p. 115).

In third place, very important in the private sector: the total cost. Most complaints arise from financial disputes. The healthcare provider is required to reveal the expected overall price. Costs for examinations and scans, accommodation costs, as well as costs for medical supplies, physician fees, and hospital costs. It's essential to reveal all later "hidden" costs – processing fee, tax and cancellation and rescheduling costs, for instance.

Before the service begins, the price should be clear and transparent. (Al-Maghribi, 2019, p. 190).

The right to a proforma invoice detailing all expected expenses in advance, granted to patients by the Egyptian Court of Cassation. Costs which were not previously disclosed to the patient by the medical practitioner can be classified as a breach of contract. In such a case, the patient has a right to object and may even reduce or terminate the contract (Omar, 2015, p. 318). This means that the financial burden must be known and specified before treatment, not after.

One of the more complex issues is the disclosure of potential chargeable additional procedures. As an illustration, a patient may initiate a straightforward cosmetic procedure, only to uncover, during or after the procedure, that the outcome necessitates a second corrective procedure. Under these circumstances, the doctor must inform the patient of the possibility and probability of this type of procedure from the outset, allowing the patient to decide. This obligation breaching by the physician may entail corrective procedure free of charge or a deduction of a reasonable quantity from the cost by the physician or the hospital (P. 102, Salama 2020). When it comes to health insurance, the disclosure must show what is covered and which is not. People are often surprised to find that their insurance only covers a fraction of the costs and that insurance won't pay for some treatments. Hospitals must check insurance coverage beforehand and inform the patient of out-of-pocket expenses before treatment starts, not only after treatment (Al-Jamal 2019, p. 165).

The final requirement: the 'norm' standard and the 'reasonable patient' standard in assessing adequacy of disclosure.

How does one establish whether a doctor has successfully respected the duty to inform? Legal scholars discuss two criteria in question. The objective criterion evaluates the standard of informed consent through a critical lens. What information would a "reasonable person" or "normal patient" need in the circumstances? The criterion is stable and easy to use, according to Zaki (2014, p. 220).

The current trend is to use the personal criterion, which takes into account the distinctive conditions of the individual patient known to the doctor. To illustrate, if a patient is a pianist, we have to inform the Pianist about a small risk to finger dexterity, which would otherwise be harmless to the ordinary man. Informed consent should be

appropriate to the age, education level and psychological status of the patient, and provided in a language that they understand (Al-Adawi, 2023, p. 50).

Nonetheless, there are limits to this obligation. The physician does not have to reveal information that is commonly known, very rare, unimaginably dangerous or that may cause the patient serious psychological harm (therapeutic exception). In addition, they must not divulge other patients' secrets or make false exaggerated advertising claims (Attia, 2017, p. 175).

With respect to the limitations of revealing lethal information, there is an exception known as the "Therapeutic Privilege." In extremely rare cases, a doctor may withhold information from a patient where revelation will have more harm than benefit. However, this exception must be applied with a great deal of caution and, ideally, noted in the patient's medical record with a justification. If possible, also inform a relative of the patient. The exception should not be used to camouflage monetary or contractual data from the patient (Khalil, 2021, p. 125).

There is a limit to very exotic risks too. A doctor does not have to mention every conceivable risk, no matter how unlikely, as this would make the disclosure upsetting and frightening for the patient. The standard implemented is: Is the risk medically known and does it happen with a reasonable probability that an average patient would reconsider after learning about it? If the response is "yes," disclosure is necessary. However, if it is an infrequent medical occurrence affecting less than 0.1%, the physician is not obliged to disclose the matter in detail unless the patient specifically asks for it or it is the patient's own important personal circumstances (Al-Adawi, 2023, p. 62).

Moreover, it is against the law to share it. A physician may not, under the pretence of full disclosure, communicate secrets of former patients who may be similarly afflicted with the new patient's condition. Due to privacy concerns, the organization may also not disclose the names or identifying characteristics of previous cases. According to Hilal (2018), they report only generic of success and failure rates in statistical terms without naming anyone.

7 SECTION THREE: MECHANISMS FOR IMPLEMENTING, DEMONSTRATING, AND ESTABLISHING DISCLOSURE IN PRIVATE MEDICAL CONTRACTS

The theoretical existence of an obligation is insufficient if there are no practical mechanisms for its implementation and for proving it in court in the event of a dispute.

7.1 First requirement: means of disclosure prior to contract conclusion

Disclosure can be expressed orally, in writing or electronically. Disclosure made orally during the medical consultation remains fundamental because it allows for conversation, discussion, and answering patient questions. One of the drawbacks of the oral tradition is proving the information as well as forgetting them (Bakr, 2016, p. 130).

Consequently, greater importance is given to the written disclosure via information forms, general terms and conditions, and clear price lists. These documents do not substitute oral discussion. Instead, they are documented and supplementary.

Uses of electronic disclosure has increased recently There are different methods of transmitting information Hospital Websites, WhatsApp Messages and Booking Apps. Hospital's official website contains information which is binding on the hospital and forms part of the contract and the hospital is liable for any mistakes or omissions (Saleh, 2022, p. 95).

The online distribution of information has raised new legal issues. If a hospital's website contains inaccurate information, is the hospital liable or the marketing company that manages the website? Usually, the hospital being the owner of the website is primarily responsible, and it has the power to act against the marketing company. Moreover, the information must be updated regularly. For instance, if the prices or name of the doctors change, update the website immediately. Some countries' hospitals have been charged for having outdated information on their website which was there for months after (Mansour, 2022, p. 225).

Furthermore, a WhatsApp chat or an email exchange between the patient and the hospital or between the patient and the doctor before the completion of a contract, comprises negotiations. These will demonstrate disclosure or concealment. As a result,

the physician as well as the hospitals should keep copies of this letter and are advised to accurately document its contents since the information could later be produced in court (Bakr, 2016, p. 148).

Of late, telemedicine consultations are on the rise. Using applications such as Zoom, patients can speak with doctors before an appointment. When this occurs, it is best to get the sessions recorded (by consent) to have a record of the information. The standard position is that, if the sessions are unrecorded, it is for the doctor to prove that he/she disclosed information and not for the patient to prove that he/she won't have. (Shalabi, 2020, p. 325).

7.2 The second prerequisite: the burden of proof and its rules in disclosure disputes

In general, the burden of proof is on the plaintiff under the law. Nonetheless, in the fields of medical malpractice and consumer protection, the case law (particularly France and Egypt) establishes the burden of proof with the medical provider (the stronger party).

It is the responsibility of the physician to establish that they have met their duty to inform and disclose, not the patient who must prove their ignorance (Qasim, 2018, p. 240).

This is where documentation and medical records play a role. A patient signing an informed consent form is strong evidence for the defence that informed consent took place. The courts do not merely shut their eyes to signatures on forms and accept them. They check whether consent was actually given.

Courts may also consider circumstantial evidence, such as ambiguities in the contract and the mismatch between captivating advertising and pain-filled reality, to clear any doubts in the favor of the consenting party (patient). (Shalabi, 2020, p. 310).

7.3 Third requirement: disclosure in standard contracts and unfair clauses

Medical services contracts are concluded in large hospitals as standard contracts. Thus, only pre-printed contracts are signed by patients without a consultation. The danger of such "standard clauses" is precisely here.

The clause which releases patients and their family members from any and all liability is particularly dangerous. The medical errors or lapses of some institutions are absolved by pointless clauses in the contract. Under civil law, clauses regarding bodily integrity or gross negligence will be void, and other clauses must not contravene public policy (Abdel-Razzaq, 2015, p. 180).

Be wary of any rules that exclude refunds, dictate arbitration in a foreign country and/or stipulate a court of jurisdiction in a city far from the patient. When all those clauses are not clearly disclosed and brought to patient's attention, the court may declare them invalid or unenforceable against the patient on the basis of consumer protection and contractual justice principles (Morsi, 2021, p. 122).

In some jurisdictions, the case law concerning arbitration clauses indicates that the arbitration clause in a standard contract for medical services will only bind the patient if the patient has been specifically made aware of this clause and the consequences of the same, especially the exclusion of the patient from the ordinary court jurisdiction. An arbitration clause in a hospital contract was ruled invalid by an appellate court in an Arab state. The arbitral clause was printed in small type at the bottom of the contract page. Additionally, the clause was not explained to the patient, nor its meaning and effect. As a consequence, the patient's consent to the clause was flawed (Abdul-Razzaq, 2015, p. 195).

Likewise, if a term specifying local jurisdiction and mandating a patient to litigate in courts far from their residence is included to hinder them from exercising their rights, then it will be treated as unreasonable. In principle, the court at the defendant's residence or the court on the location of provision of the service (the hospital) has jurisdiction. If the arrangement appoints a distant court without adequate justification the judge will ignore this clause and as if it was not there (Qasim, 2018, p. 265)

A further example of an arbitrary condition is refusing the patient their medical records without consent from the hospital or charging excessive fees for issuing copies. This condition violates patients' right to access to their medical records, which is guaranteed under most healthcare laws. According to Al-Shawarbi (2016, p. 210), therefore, this clause is invalid and unenforceable.

Finally, we must consider the conditions which contain a prior waiver of rights, indicating that "the patient waives their right to any compensation for whatever reason".

Such conditions are deemed illegal as they violate the civil liability and encourage negligence. Legal experts and judges determined these illegal acts are entirely nul and void, particularly ones that affect physical integrity and life. (Morsi, 2021, p. 138).

8 CONCLUSION

The findings of this research indicate that the requirement of prior information of a private healthcare contract is not merely a formality. It is in fact an essential principle that ensures a fair contractual relationship and protects the patient as the weaker party. The experiment shows that the effort is not just medical consent, but also financial, administrative, and contractual.

Main discoveries.

1. According to the report, private medical services contracts are of a consumer nature and thus subject to consumer and not only professional measurement. The modern consumer protection regulations with strict obligations for professionals would apply due to the classified nature of this service;
2. The post indicates that there must be a clear differentiation between pre-contractual disclosure (which relates to the terms of the contract, costs and administrative details) and informed consent (which relates to the medical risks of a surgical intervention). While these areas may overlap, each has a separate scope and legal effect;
3. The doctor or healthcare facility has the onus of proof for disclosure, as they are in possession of the information and can substantiate it most effectively. This gives the patient a good procedural protection, as it is not easy to prove a negative fact (not being informed);
4. Financial Transparency as the Core of Protection: Transparency regarding costs and financial risks is the basis of informed consent in its contractual form. During treatment, if a doctor recommends a test, it is natural that he has thought about it;
5. Studies show that electronic disclosure by way of electronic communication channel (website, application, messages), etc has become an integral part of the disclosure. Any information published electronically is legally binding upon the hospital and doctor;

6. Research has shown that unfair clauses in standard contracts (for example, a disclaimer of liability or prohibition of refunds) will be ineffective (not legally enforceable), provided the clause has not been specifically and convincingly brought to the notice of the patient;
7. A dual standard, namely objective and subjective standard to assess whether disclosure is appropriate. First, is an objective standard which relates to what a reasonable person would want to know. Second, is a subjective standard which relates to the individual circumstances of the patient which are known to the doctor.

8.1 Second: recommendations

8.1.1 Legislative recommendations

1. We urge Arab legislatures intervene and enact a law regulating contracts for medical services to be offered in the private sector to be similar to the law of some European countries. To include a dedicated chapter on pre-contractual obligations including the duty to disclose financial circumstances and penalties for non-compliance;
2. The powers of consumer associations should be enhanced to scrutinize the private healthcare sector, initiate action against false advertisements, and lodge class action suits on behalf of affected patients;
3. Private hospitals and clinics should be made legally obligated to publish a detailed and up to date price list on their websites and in their reception areas and make it a point to update it regularly;
4. Consumer protection organizations should be empowered to monitor the private health sector, prosecute misleading advertising, and institute class actions on behalf of the affected patient in order to strengthen their role;
5. The Ministry of Health should create standardized contract templates that will include minimum patient rights, be free of arbitrary clauses, and mandate compliance by healthcare providers to use or comply with such templates;

6. The penalties for misleading medical advertising should be increased. In particular, the fines and/or revocation of licenses for advertising that guarantees results or significantly digitally alters images should be increased.

8.1.2 Practical and applied recommendations

1. Create a government/semi government electronic comparison platform that will enable patients to compare the prices of medical services across hospitals and view reviews by earlier patients. It encourages open communication and fair prices;
2. Make it mandatory for medical schools and continuing education programs to introduce a course on Patient Communication and Education to train physicians to communicate medical and financial information clearly and understandably;
3. The private clinic/physicians should be required to secure professional liability insurance which will help in providing the patients suffering from doctors negligence compensation;
4. Strengthen professional and ethical oversight of medical associations for transparency and disclosure of practices of their members and to provide sanction against any violation;
5. Organize public awareness campaigns so as to make them aware of their rights at the time of entering into a contract with that/all medical establishments, about the need to verify information and the complainant mechanism in case of violations.

8.1.3 Third: future research prospects

The study opens up further research avenues, which may include: a comparative study assessing the Arab and Western legal systems attuning medical disclosure, research studying the impact of artificial intelligence and medical applications on disclosure obligations, a field study to assess patient satisfaction rating transparency with the private medical sector, and research exploring good disclosure and litigation rates relationship.

All in all, making some medical contracts effective is a matter of the joint effort of legislators, the judiciary, and civil society to create a legal-ethical framework that will

offer protection to the patient without crippling the physician's capacity and to fortify the mutual trust that forms the basis of a health care relationship.

REFERENCES

1. Bakr, Ismat Abdullah. (2016). Provisions of Medical Liability in Civil Law: A Comparative Study. Dar Al-Kutub Al-Qanuniyya.
2. Al-Jamal, Mustafa Muhammad. (2019). Private Medical Insurance and its Disputes. Dar Al-Fikr Al-Jami'i.
3. Khalil, Ahmed Mahmoud. (2021). Ethics of Medical Practice and Legal Liability. Dar Al-Nahda Al-Arabiya.
4. Zaki, Mahmoud Gamal El-Din. (2014). Problems of Civil Liability for Physicians. Cairo University Press.
5. Sarhan, Adnan. (2017). Explanation of Civil Law: Named Contracts. Maktabat Al-Thaqafa for Publishing and Distribution.
6. Al-Sanhuri, Abdul-Razzaq Ahmed. (2010). The Intermediate Guide to Explaining the New Civil Law (Vol. 7). Dar Ihya' Al-Turath Al-Arabi.
7. Salama, Rana Ibrahim. (2020). Civil Liability for Cosmetic Surgery. Dar Al-Jami'a Al-Jadeeda.
8. Al-Shawarbi, Abdul-Hamid. (2016). Civil, Criminal, and Disciplinary Liability of Physicians, Pharmacists, and Hospitals. Al-Maaref Establishment.
9. Shalaby, Muhammad Mustafa. (2020). Evidence in Civil and Commercial Matters. University Press.
10. Saleh, Hala Muhammad. (2022). Electronic Contracting in Medical Services. National Center for Legal Publications.
11. Amer, Hussein. (2018). Civil Liability for Medical Errors. Dar Al-Maaref.
12. Abdel-Razek, Hassan. (2015). Legal Protection of the Patient in Contracts of Adhesion. Dar Al-Adala.
13. Abdullah, Yasser. (2021). Consumer Protection in the Field of Health Services. National Library and Archives.
14. Al-Adawi, Jalal Ali. (2023). Principles of Obligations: Sources of Obligation. Al-Maaref Establishment.
15. Attia, Atef Al-Naqeeb. (2017). The General Theory of Liability Arising from the Act of Things. Al-Halabi Legal Publications.
16. Omar, Nabil Ibrahim. (2015). Court of Cassation Rulings in Civil Matters. Dar Al-Huda.

17. Faraj, Tawfiq Hassan. (2020). *The Medical Treatment Contract and the Physician's Liability*. University Culture Foundation.
18. Qasim, Muhammad Hassan. (2018). *Consumer Protection Law: An Analytical Study*. Dar Al-Jami'a Al-Jadeeda.
19. Morsi, Muhammad Kamil. (2021). *Contracts and Medical Liability*. Law and Economics Library.
20. Al-Maghrabi, Sahar. (2019). *Health Economics and Medical Legislation*. Modern Academy for Books.
21. Mansour, Amjad Muhammad. (2022). *The General Theory of Obligation: Sources of Obligation*. Dar Al-Thaqafa Publishing.
22. Al-Najjar, Abdul Majeed. (2019). *Protecting Consent in Medical Contracts*. Dar Al-Nahda.
23. Hilal, Ibrahim. (2018). *Fraud and Misrepresentation in Medical Transactions*. Dar Al-Fikr Wal-Qanun.

Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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