

RESEARCH
ARTICLE**The Criminal Liability of Physicians and Pharmacists for Offences
Related to Narcotic Drugs and Psychotropic Substances****Bentaleb Ahcene**

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Abstract

Physicians and pharmacists are permitted to handle and use narcotic drugs and psychotropic substances to treat patients or for other legitimate medical and scientific objectives under specific legal conditions. Failure to comply with these conditions results in the criminal liability of each party for the offences stipulated in Law No. 04–18 concerning the prevention of and fight against the illicit use and trafficking of narcotic drugs and psychotropic substances, as amended and supplemented by Law No. 23–05 dated 9 May 2023. This article examines the most significant new provisions on criminalisation and punishment introduced by the Algerian legislature in the aforementioned law, as well as in other regulatory texts governing and controlling the prescription of narcotic and psychotropic medications by physicians and their dispensation by pharmacists.

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Introduction

Addiction to medication resulting from its misuse is considered one of the most dangerous forms of addiction. This occurs when a patient consumes quantities of medicine that exceed the prescribed dose or takes it for a duration longer than advised by the physician. In some cases, individuals may take medications without any medical consultation whatever.

The situation becomes even more grave and perilous when the party facilitating the addiction to medicines with narcotic or psychotropic properties is the very physician entrusted by the legislature with safeguarding the patient's health, granting him alone the authority to issue medical prescriptions containing such substances. Equally concerning is the role of the pharmacist, to whom the legislator has granted exclusive authority to dispense medications, including those containing narcotic drugs or psychotropic substances.

This liability arises when the physician or pharmacist fails to adhere to the legislator's intent in permitting their handling of narcotic or psychotropic substances, which is strictly limited to therapeutic or legitimate medical and scientific purposes. In such instances, their actions revert from the realm of lawful practice to that of criminal offense, thereby invoking their criminal liability for offences related to narcotic drugs and psychotropic substances, by Law No. 04–18 of 25 December 2004 on the prevention of and fight against the illicit use and trafficking of narcotic drugs and psychotropic substances. This law was recently amended by Law No. 23–05 dated 9 May 2023, which notably revised provisions criminalising the conduct of physicians and pharmacists. What, then, are the significant developments introduced by Laws 23–05 concerning offences committed by physicians and pharmacists related to narcotic drugs and psychotropic substances?

To address this issue, we employed an analytical method to examine the legal provisions related to offences committed by physicians and pharmacists concerning narcotic drugs and psychotropic substances. We have also utilised descriptive methods to define specific terms, such as "medical prescription," "narcotic drug," and "psychotropic substance."

Section One: The Criminal Liability of Physicians for Offences Related to Narcotic Drugs and Psychotropic Substances

This liability is embodied in a single offence stipulated under Law No. 04--18, namely, the offence of facilitating the use of narcotic drugs and psychotropic substances. We address the elements of this offense in the first subsection and examine the penalty prescribed for it in the second.

Subsection One: Elements of the Offence of Facilitating the Use of Narcotic Drugs and Psychotropic Substances

Paragraph 1 of Article 16 of Law No. 04--18 states the following:

"Shall be punished by imprisonment from two (2) to ten (10) years and a fine ranging from 200,000 DZD to 1,000,000 DZD anyone who:

- Knowingly prepares a fictitious medical prescription containing narcotic drugs or psychotropic substances, or who does so as a favour, or in violation of the specifications defined in the applicable regulations."

This paragraph was amended by Article 9 of Law No. 23--05 of 9 May 2023, which modifies and supplements Law No. 04--18 of 25 December 2004 concerning the prevention of and fight against the illicit use and trafficking of narcotic drugs and psychotropic substances. Upon analysis of this provision, it is evident that the offense consists of the following elements:

Subsection One: The Presumed Element

This element is represented by a physician licenced to practice the profession, as he is the sole individual authorised by the legislature to prescribe medications containing substances classified as narcotic drugs or psychotropic substances. Article 3 of the Ministerial Order dated 29 June 2013 stipulates that drugs classified as narcotics shall be prescribed by physicians within the scope of their practice.¹ Likewise, Article 15 of Executive Decree No. 19--379 states that physicians should also prescribe medications with psychotropic properties. Furthermore, psychotropic substances with therapeutic use and restricted prescription must be prescribed by a specialist in psychiatry within the hospital facility where they practice, as set out in Article 21 of the same executive decree.²

This element is established regardless of whether the physician is a specialist or general practitioner employed by the state or in private practice. However, if the individual is permanently banned from practising the profession, this specific offence does not apply.³ Instead, a different offense arises, namely, the unlawful practice of medicine, as stipulated in Article 416 of the Public Health Code, which refers to Article 243 of the Penal Code.⁴

Subsection Two: Material Elements

¹ Ministerial Order of 29 June 2013 laying down the procedures for prescribing and presenting medical prescriptions for medications containing substances classified as narcotics, *Official Gazette*, no. 67, issued 29 December 2013.

² Executive Decree No. 19-379 of 31 December 2019 establishing the procedures for administrative, technical, and security oversight of substances and medications with psychotropic properties, *Official Gazette*, no. 1, issued 5 January 2020.

³ Mohamed Lamine Selkh, *The Physician's Liability for His Writings*, Publications of the Research Laboratory on International Legal Transformations and Their Impact on Algerian Legislation, Faculty of Law and Political Science, University of Martyr Hamma Lakhdar - El Oued, Mansour Press, Algeria, 2022, 217.

⁴ Article 243 of the Penal Code states: "Anyone who uses a title connected to a legally regulated profession, or an official certificate, or a status the public authority has defined the conditions for obtaining, or who falsely claims any such title or status without meeting the required conditions for bearing it, shall be punished by imprisonment from three months to two years and a fine ranging from 20,000 to 100,000 DZD, or by one of these two penalties."

The offence of facilitating the use of narcotic drugs is considered a formal offence, established solely through criminal conduct, without requiring the occurrence of a resultant harm. Therefore, the offence is constituted regardless of whether another party obtains the substances or not, as follows:

First - The Criminal Conduct

Criminal conduct may take one of three forms: the preparation of a fictitious medical prescription containing narcotic drugs or psychotropic substances; preparation as a favour; or preparation in violation of the specifications defined in the applicable regulations.

1. Preparation of a fictitious medical prescription containing narcotic drugs or psychotropic substances:

This is referred to, in the repealed Public Health Law under Article 244, as a "false prescription" or "collusive prescription." It denotes a prescription that is contrary to the truth, wherein the physician issues a medical prescription for a person who is not ill or for a patient but for nontherapeutic purposes or prescribes a quantity exceeding what is required for treatment.⁵ Article 11 of the Code of Medical Ethics stipulates that the prescriptions issued by a physician or dental surgeon must be limited to what is necessary and consistent with the effectiveness of the treatment.⁶

Nevertheless, proving the fictitious nature of a medical prescription or the necessity for its issuance is not a straightforward task. The assessment of such matters remains within the discretion of the judge, who must infer it from the circumstances and particulars of the case.⁷

2. Preparation of a Medical Prescription for Favour:

This refers to instances in which a physician issues a prescription containing narcotic drugs or psychotropic substances as an act of courtesy or out of compassion for a patient⁸, for example, when a physician issues a prescription without having personally examined the patient, merely because the individual is the parent of a friend.

3. Preparation of a Medical Prescription in Violation of the Specifications Defined in the Applicable Regulations:

In this context, the applicable regulation concerning medications classified as narcotics is the Ministerial Order dated June 29, 2013, which defines the procedures for prescribing and presenting medical prescriptions for drugs containing substances classified as narcotics. Article 4⁹ This order stipulates the formal requirements that a

⁵ Mostafa Maata Allah, *The Legal System of the Medical Prescription*, Master's Thesis, Faculty of Law and Political Science, University of Abou Bekr Belkaid - Tlemcen, Algeria, 2017-2018, 179.

⁶ Article 11 of Executive Decree No. 92-276 of 6 July 1992, establishing the Code of Medical Ethics, states: "The physician and dental surgeon shall be free to prescribe what they deem most appropriate for the patient's condition. Their prescriptions and interventions must be limited to what is necessary and consistent with the effectiveness of the treatment, without neglecting the duty of moral support."

⁷ Sidahm Mokhtar, *The Criminal Liability of the Physician under Algerian Legislation*, *Journal of the Supreme Court*, Documentation Division, Supreme Court, Special Issue: Medical Criminal Liability in Light of Legislation and Judicial Interpretation, 2011, 41.

⁸ Safwan Muhammad Shdeifat, *Criminal Liability for Medical Acts: A Comparative Study*, 1st ed. Amman: Dar Al Thaqa for Publishing and Distribution, Hashemite Kingdom of Jordan, 2011, 250.

⁹ Article 4 of the Ministerial Order of 29 June 2013 stipulates:

"The physician prescribing medications containing substances classified as narcotics must indicate in full letters the following:

- *The identification of the public or private health institution to which the prescribing physician belongs;*
- *The identification of the prescriber, including the exact job title and registration number on the physicians' regulatory branch list;*
- *The precise identity of the patient: surname, given name, sex, and, if necessary, height and weight;*
- *The identification of the medication(s);*
- *The detailed formula and the number of units or volume in the case of a pharmaceutical preparation;*
- *The pharmaceutical form, dosage, estimated doses, treatment duration, and method of administration;*
- *The number of therapeutic units per single dose;*
- *The number of doses;*
- *The quantity and dosage or concentration of substances in the case of pharmaceutical specialities.*

physician must adhere to when issuing a medical prescription. If the physician fails to comply with the specifications outlined in this order, the offence of facilitating the use of narcotic drugs and psychotropic substances is deemed to have been committed.

Medications classified as psychotropic substances are regulated by Executive Decree No. 19--379 of 31 December 2019, which sets out procedures for administrative, technical, and security control of substances and medications with psychotropic properties. Article 16 of this decree stipulates that prescriptions for substances and medications with psychotropic properties must be issued in three copies of different colours: white, yellow, and pink. The white and yellow copies are to be handed to the patient, whereas the prescribing physician retains the pink copy. Furthermore, Article 19¹⁰ outlines the formal requirements that the physician must adhere to when issuing a medical prescription containing psychotropic substances.

Second – The Object of the Offence of Facilitating the Use of Narcotic Drugs and Psychotropic Substances

The object of this offense is a medical prescription that contains narcotic drugs or psychotropic substances. Accordingly, it is necessary to define each of the following: medical prescriptions, narcotic drugs, and psychotropic substances.

1. Definition of medical prescription:

The Algerian legislature, like the majority of legal systems, has not defined the medical prescription, merely referring to it in Article 174 of Law No. 18--11 and Article 11 of the Code of Medical Ethics, leaving its definition to jurisprudence. The latter has offered various definitions, all of which revolve around the notion of a document issued by a physician or dental surgeon that includes a list of medications resulting from the personal examination of the patient and the diagnosis of the illness from which he suffers.

There are two types of medical prescriptions: the classical medical prescription, whose contents are defined in the Public Health Law and the Code of Medical Ethics;¹¹ moreover, the medical prescription contains narcotic drugs or psychotropic substances. Owing to its sensitive nature, the Algerian legislature has specifically regulated the content and method of issuing such prescriptions in the Ministerial Order dated 29 June 2013, which outlines the procedures for prescribing and presenting prescriptions for medications containing substances classified as narcotics, and in Executive Decree No. 19--379 of 31 December 2019, which sets forth the administrative, technical, and security procedures for controlling substances and medications with psychotropic properties, both of which have been previously addressed.

2. Definition of Narcotic Drugs and Psychotropic Substances:

The content of the medical prescription constituting the offense is composed of narcotic drugs and psychotropic substances. The Algerian legislature corrected an oversight previously found in the wording of Article 16 of Law No. 04--18, which criminalised the issuance and presentation of prescriptions containing only psychotropic substances, omitting any reference to narcotic drugs. The inclusion of the term "narcotic drugs" ensures that no offender may evade punishment.

Article 2 of Law No. 04--18, amended by Law No. 23--05, defines narcotic drugs and psychotropic substances as follows:

The prescription or delivery of substances classified as narcotics is prohibited when they are not part of a pharmaceutical specialty or preparation."

¹⁰ Article 19 of Executive Decree No. 19-379 states:

"The prescription referred to in Article 16 above must contain the following information:

- *The serial number of the prescription;*
- *The identification of the structure or public or private health institution of the prescribing physician;*
- *The identification of the prescribing physician, including stamp, signature, and registration number in the Medical Ethics Council;*
- *The identification of the patient: sex, surname, given name, age, and address, and, where applicable, height and weight;*
- *The International Nonproprietary Name or, where applicable, the trade name of the product;*
- *The treatment duration using substances and medications with psychotropic properties."*

¹¹ Mohamed Lamine Selkh, *Previously Cited Reference*, 21.

– **Narcotic Drug:** Any substance, whether natural or synthetic, listed in Schedules I and II of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, and any substance classified nationally as a narcotic drug.

– **Psychotropic Substance:** Any substance, whether natural or synthetic, or any natural product listed in Schedules I, II, III, and IV of the Convention on Psychotropic Substances of 1971, and any substance classified nationally as a psychotropic substance.

From the amendments to this article, we observe the following:

The legislature has replaced the term "synthetic" with "compound" in the definition of narcotic drugs and psychotropic substances. Consequently, the definitions now align with those provided in the Single Convention on Narcotic Drugs of 1961¹² and the Convention on Psychotropic Substances of 1971.¹³

The Algerian legislature has also added the phrase "and any substance classified nationally as a narcotic drug or psychotropic substance" to both of the aforementioned definitions. This addition aims to resolve the legal controversy surrounding the criminalisation of certain substances and medications with psychotropic properties, which have been proven to pose significant risks owing to overuse, addiction, or misuse, such as tramadol, pregabalin, and trihexyphenidyl.

Although these substances are classified as psychotropic under the Joint Ministerial Order dated 11 August 2021, which sets out the list of substances and medications with psychotropic properties confirmed to be dangerous when overused, misused, or abused¹⁴ and by the provisions of Article 16 of Executive Decree No. 19-379, as amended by Executive Decree No. 21-196¹⁵, the Supreme Court issued its Fifth Memorandum on the unification of judicial interpretation by the Misdemeanour and Infraction Chamber on 9 February 2023. Among the subjects addressed was the noncriminalisation of possession of pregabalin, commonly sold under the trade name Lyrica, as a psychotropic substance. This stance was taken because pregabalin is not listed among the four schedules of the Convention on Psychotropic Substances of 1971 or in the national schedules issued by the Ministry of Health under Article 3 of Law No. 04-18.¹⁶

This contradiction may be explained either by the reliance of this judicial interpretation on two court decisions, Decision No. 1340857 dated 20 June 2019¹⁷ and Decision No. 1361312 dated 6 February 2020,¹⁸ both of which

¹² *Single Convention on Narcotic Drugs of 1961*, acceded to by Algeria under Decree No. 63-343 of 11 September 1963, concerning the conditional accession of the People's Democratic Republic of Algeria to the Single Convention of 30 March 1961, *Official Gazette*, no. 66.

¹³ *Convention on Psychotropic Substances of 1971*, ratified by Algeria under Decree No. 77-1977 of 7 December 1977 concerning the ratification of the Convention on Psychotropic Substances concluded in Vienna in 1971, *Official Gazette*, no. 80.

¹⁴ Joint Ministerial Order of 11 August 2021 establishing the list of substances and medications with psychotropic properties proven to pose risks of overuse, addiction, or misuse, *Official Gazette*, no. 61.

¹⁵ Paragraphs 2 and 4 of Article 16 of Executive Decree No. 21-196 of 11 May 2021, amending and supplementing Executive Decree No. 19-379, state:

"However, prescriptions for substances and medications with psychotropic properties proven to pose risks of overuse, addiction, or misuse must contain the information mentioned in Paragraph 1 above and be issued in three copies of different colours (white, yellow, and pink).

The list of such substances and medications is determined by a joint order of the Minister in charge of the pharmaceutical industry and the Minister of Health."

¹⁶ Chamber of Misdemeanours and Infractions, Supreme Court of Algeria, *Fifth Memorandum on the Unification of Judicial Interpretation*, 9 February 2023, Algeria, 9.

¹⁷ The principle from Decision No. 1340857 of 20 June 2019 states:

"Pregabalin tablets, which are a generic of the drug Lyrica and used for pain relief, are not classified as narcotic substances, nor are they listed among the psychotropic substances in the four schedules of the Convention on Psychotropic Substances of 1971.

If such tablets, or their transport or handling, fall under criminal law, trial judges must, under penalty of nullity, reclassify the facts to assign the correct legal description."

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¹⁸ The principle from Decision No. 1361312 of 6 February 2020 states:

"The possession of Pregabalin tablets does not constitute the offence of possessing psychotropic substances for the purpose of sale, as the drug is not classified as a psychotropic substance in the four schedules of the Convention on Psychotropic Substances of 1971, nor in the national schedules of the Ministry of Health pursuant to Article 3 of Law No. 04-18."

were issued prior to the Joint Ministerial Order of 11 August 2021, which classified Pregabalin as a psychotropic substance, or possibly by the courts' strict adherence to Article 2, which had previously confined the definition of psychotropic substances to those listed in the four schedules of the Convention only, without reference to national schedules, in application of the principle of legality. The phrase "and any substance classified nationally as a psychotropic substance" was added to Article 2 of Law No. 04-18 on 9 May 2023, four months after the issuance of the Fifth Memorandum concerning the unification of judicial interpretation by the Misdemeanour and Infraction Chamber. Notably, the Fifth Memorandum explicitly stated that the reason Pregabalin was not regarded as a psychotropic substance was its absence from the national schedules issued by the Ministry of Health, by Article 3 of Law No. 04-18.

Subsection Three: The Moral Element

Since the offence of facilitating the use of narcotic drugs and psychotropic substances is intentional, its moral element is embodied in criminal intent. This offence requires both general and specific intent.

General criminal intent is fulfilled through the presence of two components: knowledge and will. The physician must be aware that he is prescribing medications classified as narcotic drugs or psychotropic substances, which may be administered only in therapeutic contexts. His free and deliberate will must be directed towards committing the act, namely, the preparation of a fictitious medical prescription containing such substances, whether as a favour or in violation of the specified regulations and with the aim of a nontherapeutic purpose.

For specific criminal intent, most studies conclude that it is not necessary to facilitate the use of narcotic drugs and psychotropic substances. They argue that the general intent sufficiently covers the intent to facilitate use, as it involves the perpetrator's will being directed towards achieving a specific result. However, we contend that the specific intent to facilitate the use of such substances must be present, as it adds a layer of culpability to the general intent. This position is supported by the fact that the Algerian legislature employed the phrase "knowingly" ("an qasd") in Paragraph 1 of Article 16, both before and after its amendment. It is widely accepted in legal drafting that when the legislator wishes to require specific intent, terms such as "deliberately," "knowingly," or "with the aim of" are used to indicate that special intent is a necessary component. When such terms are absent, the offence is understood to be purely intentional, relying solely on general intent.

Furthermore, the motive behind the act does not affect the establishment of the offence or the determination of the penalty, whether it is for financial gain or merely as a favour. Nonetheless, the motive of profit can play a significant role in facilitating the proof of the offence, serving as a presumption.¹⁹

Subsection Two: Prescribed Penalty for the Offence of Facilitating the Use of Narcotic Drugs and Psychotropic Substances

We first address the principal and supplementary penalties applicable to a natural person, followed by the principal and supplementary penalties applicable to a legal person. Finally, we examine the special provisions related to mitigating circumstances and grounds for exemption from punishment.

Subsection One: Penalties Applicable to a Natural Person

These include both principal and supplementary penalties, as follows:

First – Principal Penalty:

The principal penalty consists of imprisonment from two (2) to ten (10) years and a fine ranging from 200,000 DZD to 1,000,000 DZD. Prior to the amendment of Article 16 by Law No. 23-05, the penalty had been imprisonment from five (5) to fifteen (15) years and a fine ranging from 500,000 DZD to 1,000,000 DZD.

Although the penalty for this offence, even after amendment, remains severe in comparison to the punishment for ordinary misdemeanours, which do not exceed five years of imprisonment, reducing both the minimum and maximum limits of the custodial sentence has made it equivalent to the penalty for the offence of unlawfully

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¹⁹ Safwan Muhammad Shdeifat, *Previously Cited Reference*, 248-249.

delivering or offering narcotic drugs or psychotropic substances to others for personal use, as committed by an ordinary individual. Previously, the offender's status as a physician served as grounds for aggravating the penalty, owing to the greater potential he possesses to commit the offense, given the trust placed in him and the legal authority he holds to prescribe such substances. This power enables him to issue prescriptions that facilitate the acquisition, possession, and transport of these substances legally, efficiently, and without arousing suspicion or facing legal scrutiny.²⁰

Second – Supplementary Penalty:

The supplementary penalties are stipulated in Article 29 and include the deprivation of political, civil, and family rights for a period ranging from five (5) to ten (10) years. In addition, the court may impose the following:

- Prohibition from practising the profession in connection with which the offence was committed for no less than five (5) years;
- Banishment, by the provisions of the Penal Code;
- Withdrawal of a passport and driving licence for no less than five (5) years;
- Prohibitions from possessing or carrying a licenced weapon for no less than five (5) years;
- Confiscation of objects used in, intended for, or resulting from the commission of the offense;
- The medical clinic was closed for a period not exceeding ten (10) years.

Third – Provisions Concerning Mitigating Circumstances and Legal Grounds for Exemption from Punishment

The Algerian legislature has established specific provisions regarding mitigating circumstances and legal grounds for exemption from punishment applicable to all offences under Law No. 04–18, including the offence of facilitating the use of narcotic drugs or psychotropic substances, as follows:

- **Mitigating Circumstances:** These do not apply to the physician due to his status as a healthcare professional or, where applicable, his status as a public official if employed by the state, according to Article 26 of Law No. 04–18.
- **Legal grounds for exemption:** The Algerian legislature has revised its penal policy concerning grounds for exemption from punishment. Previously, Article 30 exempted from punishment any person who informed the administrative or judicial authorities of the offence of facilitating the use of narcotic drugs or psychotropic substances prior to their execution or attempted execution. However, the amendment introduced by Law No. 23–05 has adopted a more lenient and encouraging approach to reporting, aiming to reduce the risks associated with this offence. The revised provision exempts from prosecution, not merely punishment, any person who has committed or participated in the offence and reports it to the administrative or judicial authorities.

With respect to the mitigating excuse for punishment, although Article 31 concerning this matter was amended by Law No. 23–05, the offence of facilitating the use of narcotic drugs or psychotropic substances was not affected by the amendment. The mitigating excuse remains as follows: the penalties incurred by the perpetrator or their accomplice shall be reduced by half if, after the initiation of public prosecution, they assist in the apprehension of the principal offender or other accomplices in the same offence or other offences of a similar nature or equal severity.

Subsection Two: Penalties Applicable to Legal Persons

Article 25 of Law No. 04–18 stipulates the following:

²⁰ Mohamed Lamine Selkh, *Previously Cited Reference*, 216.

"Without prejudice to the penalties applicable to natural persons, a legal person committing one or more of the offences stipulated in Articles 13–17 of this law shall be punished with a fine equal to five (5) times the fine prescribed for a natural person.

In all cases, the dissolution of the institution or its temporary closure for a period exceeding five (5) years shall be ordered."

- **First – Principal Penalty:**

Stipulated in the first paragraph of Article 25, the principal penalty applies when the offense is committed in the name of a legal entity, such as a medical clinic or healthcare institution. The penalty consists of a fine equal to five (5) times the amount prescribed for a natural person.

- **Second – Supplementary Penalty:**

As outlined in the final paragraph of Article 25, the supplementary penalty consists of the dissolution of the institution or its temporary closure for a period exceeding five (5) years. This is a mandatory supplementary penalty.

Section Two: Criminal Liability of the Pharmacist for Offences Related to Narcotic Drugs and Psychotropic Substances

The Algerian legislature has authorised pharmacists to handle narcotic drugs and psychotropic substances for medical or scientific purposes. However, a set of legal regulations has been established that must be strictly observed. Any breach thereof entails the pharmacist's criminal liability for one of the offences related to narcotic drugs and psychotropic substances, as outlined in Law Nos. 04–18 on the prevention and fight against the illicit use and trafficking of narcotic drugs and psychotropic substances, particularly in Articles 13, 15, and 16.

These offences are categorised into misdemeanours and felonies, each of which shall be addressed in a separate subsection.

Subsection One: The Misdemeanour of Delivering Narcotic Drugs or Psychotropic Substances Without a Medical Prescription or Under a Prescription that Violates the Specifications outlined in the Applicable Regulations

This offense is stipulated in Paragraph 2 of Article 16 of Law No. 04–18, as amended by Law No. 23–05, which provides the following:

"Shall be punished by imprisonment from two (2) to ten (10) years and a fine ranging from 200,000 DZD to 1,000,000 DZD, anyone who:

- Delivers narcotic drugs or psychotropic substances without a medical prescription or under a prescription that violates the specifications outlined in the applicable regulations."

This offence may be constituted by either of the following acts: delivering narcotic drugs or psychotropic substances without a prescription, which will be addressed in the first subsection, or delivering them on the basis of a prescription that violates the regulatory specifications, as per the same article, which will be examined in the second subsection.

Subsection One: Delivering Narcotic Drugs or Psychotropic Substances Without a Medical Prescription

This act is realised through the violation of specific legislative and regulatory provisions established by the legislature, including the following:

- **First**, the Violation of Article 179 of Law Nos. 18–11 on Public Health stipulates *that "the pharmacist may not provide pharmaceutical substances except on the basis of a medical prescription."*

- **Second:** Violation of the provisions of Executive Decree No. 07--228 of 30 July 2007, which sets out the procedures for granting authorisation to use narcotic drugs and psychotropic substances for medical or scientific purposes, in particular Article 9. This article obliges the pharmacist to prepare an annual report specifying, for each narcotic drug or psychotropic substance, the quantity received; the quantities used for production or transformation, along with the nature and amount of the resulting product; the quantity transferred and its destination; and the year-end stock, including substances in the process of transformation. This report, covering the preceding year, must be submitted to the Minister of Health no later than 15 February of each year.²¹

That is, the pharmacist is required to submit an annual report detailing every narcotic drug or psychotropic substance handled. Should there be any unaccounted decrease in quantity, the pharmacist may be prosecuted under Paragraph 2 of Article 16 of Law No. 04--18.²²

- The third is Violation of Executive Decree No. 19--379 of 31 December 2019, which sets forth the procedures for administrative, technical, and security oversight of substances and medications with psychotropic properties.²³ In particular, Paragraph 1 of Article 26 stipulates:

"Medications with psychotropic properties shall be dispensed under the responsibility of the pharmacist or assistant pharmacist, and it is mandatory to present both the white and yellow copies of the prescription..."

Thus, the criminal liability of the pharmacist or assistant pharmacist for the offense of delivering narcotic drugs or psychotropic substances without a medical prescription arises when either dispenses substances or medications with psychotropic properties to a patient without a valid prescription. The remainder of Article 26 obliges the pharmacist, when dispensing a complete course of treatment, to retain the yellow copy of the prescription and provide the white copy to the patient. In public and private health institutions, the hospital pharmacist retains the white copy, whereas the yellow copy is handed to the patient.

Moreover, Article 36 obliges the technical director pharmacist of the pharmaceutical establishment, as well as pharmacists, assistant pharmacists, and hospital pharmacists in both public and private health institutions, to report and justify any discrepancies identified during the physical inventory of substances and medications with psychotropic properties, which must be conducted every three (3) months. These discrepancies must be reported to the competent provincial committee referred to in Article 38, which is in turn responsible for notifying the national committee specified in Article 37 of the same executive decree.

Subsection Two: Delivering Narcotic Drugs or Psychotropic Substances on the basis of a Prescription That Violates the Specifications Outlined in the Applicable Regulations

Previously, Paragraph 2 of Article 16 held the pharmacist liable for delivering psychotropic substances without a prescription or when aware of the fictitious or favour-based nature of the prescription. However, following its amendment by Law No. 23--05, the Algerian legislature removed the pharmacist's liability for fictitious or favour-based prescriptions, thereby placing full responsibility on the physician who issued the prescription.

Nonetheless, this conduct still constitutes an offense when it involves the violation of specific legislative and regulatory provisions, including the following:

²¹ Article 9 of Executive Decree No. 07-228 states:

"Persons who have obtained authorisation must prepare an annual report specifying, for each narcotic drug or psychotropic substance:

- *The quantity received;*
- *The quantities used in production or transformation, including the nature and quantity of the resulting product;*
- *The quantity transferred and its destination;*
- *The year-end stock, including that relating to products still transforming.*

This report, which covers the previous year, must be submitted to the Minister of Health no later than 15 February each year."

²² Najat Ben Mekki, *Previously Cited Reference*, 562.

²³ Executive Decree No. 19-379 of 31 December 2019 establishing the procedures for administrative, technical, and security oversight of substances and medications with psychotropic properties, *Official Gazette*, no. 1.

- **First:** Violation of Article 5 bis 7 of Law No. 04--18 on the prevention of and fight against the illicit use and trafficking of narcotic drugs and psychotropic substances, introduced by Law No. 23--05, which states the following:

"The pharmacist must immediately notify the regionally competent health authorities of any prescription that does not comply with the specifications defined in the applicable regulations."

"The pharmacist concerned shall be exempt from criminal prosecution if the notification produces no result."

This provision both obliges pharmacists to report irregular prescriptions and provides legal protection from prosecution, conditional upon the absence of consequences from the unreported prescription.

- **Second:** Violation of Article 7 of the Ministerial Order dated 29 June 2013, which sets out the procedures for prescribing and presenting prescriptions for medications containing substances classified as narcotics. This article states:

"In accordance with the applicable legislation and regulations, the pharmacist must retain a copy of each medical prescription that includes one or more medications containing substances classified as narcotics, or subject to narcotics-related legislation and regulations, accompanied by the information specified in Article 4 above. These copies must be presented upon request by the supervisory authorities."

This means that a pharmacist may not dispense any narcotic drug or psychotropic substance unless the prescription complies fully with the requirements outlined in this ministerial order.

Subsection Two: Felonies Committed by Pharmacists as Provided for in Law Nos. 04--18

These include the felony of unlawful dealings in psychotropic substances, stipulated in Article 17 of Law No. 04--18, and the felony of importing or exporting narcotic drugs or psychotropic substances, as outlined in Article 19 of the same law.

Subsection One: Felony of Unlawful Dealing in Narcotic Drugs or Psychotropic Substances

Paragraphs 1 and 2 and the final paragraph of Article 17 of Law No. 04--18, amended by Law No. 23--05, are as follows:

"Shall be punished by imprisonment from ten (10) to twenty (20) years and a fine ranging from 5,000,000 DZD to 50,000,000 DZD anyone who unlawfully produces, manufactures, sells, offers for sale, obtains, possesses, displays, purchases with intent to sell, stores, extracts, prepares, distributes, delivers by any means, brokers, ships, transports in transit, or otherwise transfers narcotic drugs or psychotropic substances."

"The acts referred to in the above paragraph shall be punished by temporary imprisonment from twenty (20) to thirty (30) years if the offender is a public official whose position facilitated the commission of the offense, or a health professional, pharmacist, pharmaceutical industry employee, staff member of an addiction treatment institution, or member of an association involved in the prevention of drug and psychotropic substance abuse and trafficking."

"The acts referred to in the first paragraph above shall be punished by life imprisonment when committed by an organised criminal group."

The wording of this article was revised by reordering the listed acts and placing *sales* and *offerings for sale* before *possession* and *display* to clarify that the *possession* referred to in this article is not possession for its own sake or for personal use, which is criminalised under Article 12, but rather possession with the intent to carry out one of the acts stipulated in Article 17,²¹ such as selling, storing, extracting, preparing, distributing, delivering (in any capacity), brokering, shipping, transporting in transit, or transferring narcotic drugs or psychotropic substances.

²¹ Lahcen Ben Cheikh Ath Mlouya, *Possession of Narcotic Drugs about Article 17 of Law No. 04-18 of 25 December 2004 on the Prevention of and Fight Against the Illicit Use and Trafficking of Narcotic Drugs and Psychotropic Substances*, *Journal of the Supreme Court*, Documentation and Legal and Judicial Studies Division, Supreme Court, no. 2, Algeria, 2014, 51.

Additionally, the legislature introduced Paragraph 2, which establishes an aggravating circumstance for this offense on the basis of the status of the offender, specifically including the status of a *pharmacist*. This applies where a pharmacist engages in the acts listed in Article 17 *unlawfully*, meaning without obtaining prior authorisation from the Minister of Health. According to Article 4 of Law No. 04--18, such authorisation is granted only when the use of plants, substances, or preparations is intended for medical or scientific purposes and is contingent upon a background investigation into the applicant's ethical and professional conduct, provided that the applicant has not been convicted of any of the offenses listed in Law No. 04--18.

As a result, the legal classification of this offense, formerly considered an aggravated misdemeanor punishable by imprisonment from ten (10) to twenty (20) years and a fine ranging from 5,000,000 DZD to 50,000,000 DZD, has been elevated to a felony punishable by temporary imprisonment of twenty (20) to thirty (30) years if committed by a pharmacist. The sentence may even reach *life imprisonment* if the pharmacist commits the offense as part of an *organised criminal group*.

Subsection Two: Felony of Exporting and Importing Narcotic Drugs or Psychotropic Substances

This offense is stipulated in Article 19 of Law No. 04--18, which states the following:

"Shall be punished by life imprisonment anyone who unlawfully exports or imports narcotic drugs or psychotropic substances."

The offense is constituted if a pharmacist engages in either the export or import.²⁵ Alternatively, both narcotic drugs and psychotropic substances require prior authorisation from the Minister of Health, as stipulated in Article 5 of Law No. 04--18 and Article 2 of Executive Decree No. 07--228. According to Article 5 of this executive decree, such authorisation, when granted, is valid for a maximum period of three (3) months from the date of issuance.

The legislature classified this offence as felony due to its severity, prescribing the penalty of life imprisonment for natural persons. Moreover, the fine applicable to legal persons in the event of such an offense has significantly increased, as specified in Article 25 of Law No. 04--18, to range between 50,000,000 DZD and 250,000,000 DZD. In addition, the law mandates the imposition of a supplementary penalty, which is either the dissolution of the institution or its temporary closure for a period exceeding five (5) years.

Conclusion

In this study, we have examined the criminal liability of physicians and pharmacists for offences related to narcotic drugs and psychotropic substances, in light of the most recent amendments introduced by Laws No. 23--05, which modify and supplements Laws No. 04--18 on the prevention of and fight against the illicit use and trafficking of narcotic drugs and psychotropic substances. Our findings can be summarised as follows:

- The provisions governing the criminal liability of physicians and pharmacists for offenses related to narcotic drugs and psychotropic substances are dispersed across multiple legislative and regulatory texts, making them challenging to consolidate and study comprehensively.
- Physicians and pharmacists must exercise heightened caution when dealing with medications containing narcotic or psychotropic substances to safeguard the health and safety of patients. This necessitates strict adherence to professional standards and compliance with the legal frameworks regulating such substances.
- Any violation of the legal system governing the handling of medications that contain narcotic or psychotropic substances may give rise to the criminal liability of the physician or pharmacist, by the provisions of Laws No. 04--18 on the prevention of and fight against the illicit use and trafficking of narcotic drugs and psychotropic substances, as amended and supplemented.

²⁵ Article 2 of Law No. 04-18 defines *export* and *import* as follows:

"The physical transfer of narcotic drugs and/or psychotropic substances from one country to another."

- Although tramadol, pregabalin, and trihexyphenidyl have been classified as psychotropic substances under the Joint Ministerial Order of 11 August 2021, which sets out the list of substances and medications with psychotropic properties proven to pose risks of overuse, addiction, or misuse, the Supreme Court still does not recognise pregabalin as a psychotropic substance capable of constituting one of the offences stipulated in Law Nos. 04–18.

On the basis of these findings, the following recommendations may be made:

- Efforts should be directed toward reducing the number of prescriptions that include narcotic or psychotropic substances, as prolonged prescription of such medications is among the leading causes of addiction.
- It is not sufficient to criminalise only the act of a physician issuing a fictitious prescription containing narcotic drugs or psychotropic substances, or doing so as a favour, or in violation of the legally prescribed specifications. The act of delivering narcotic drugs or psychotropic substances by the physician to any person for nontherapeutic purposes should also be subject to specific criminalisation, or the physician's status should be considered an aggravating circumstance in the offence of delivering narcotic drugs or psychotropic substances, as set out in Article 13 of Law No. 04–18.
- It is necessary to criminalise the illicit handling of pregabalin under Law Nos. 04–18, recognising it as a psychotropic substance.

Finally, physicians and pharmacists must uphold the highest standards of integrity, as the medical profession is, above all, a humanitarian vocation, not a commercial enterprise.

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Conflict of Interest

The author declares that there is no conflict of interest regarding the publication of this article.

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