

# Study of Compliance of Disciplinary Procedure in Senegal

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## Abstract

**Introduction:** Law and ethics have largely been blended into common standards of professional conduct. In Senegal, pharmacists must be aware of the Code of ethics rules to be observed and potential consequences, in order to predict what is regarded as unacceptable behavior or not. In the event of non-compliance, pharmacists are brought in disciplinary chambers according to a disciplinary procedure. The purpose of our work was to study the compliance of disciplinary procedure in Senegal, on cases already examined from 2010 to 2015 by the College of Pharmacists. **Methodology:** This is a retrospective and descriptive study of disciplinary cases examined by college of pharmacists, from 2010 to 2015. Existence of a legal and institutional framework organizing disciplinary procedure was assessed. **Results:** Six of the eight cases were examined; only two cases were pending disciplinary procedure which was well framed. Decisions are in compliance with those listed in our text. However, the procedure is obsolete and has limitations, including complaint form, which is not specified; investigational period, notification of hearings, as well as decisions are not respected. Also, sanctions are not subject to any monitoring for decisions enforcement. **Conclusion:** Disciplinary procedure was well framed at the legal and institutional level. However, the college of pharmacy doesn't bring pharmacists to disciplinary chambers, and when it was done, the disciplinary procedure was not in compliance with text. Texts were obsolete and decisions made were not subject to any enforcement.

## Keywords

Procedure, Disciplinary, College of Pharmacist, Council, Complaint, Decisions, Appeals

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## 1. Introduction

In Senegal, pharmaceutical sector progress plays an increasingly role in health

system (André, 1900). Community of pharmacists, regarding their skills and proximity to population, is called upon every day, by thousands of people for advice. They are required to provide support for social medicine services, and to participate in any public service, in order to protect and preserve for public health. They must follow in their professional exercise, the code of ethics, a set of rules of conduct to be respected<sup>1</sup>.

Law and ethics have largely been blended into common standards of professional conduct.

Ethics are principles and values, which together with rules of conduct, and laws regulate a legal profession. They act as an important guide to ensure right and proper conduct in the daily practice of the law. Areas covered by ethical standards include: Independence, honesty and integrity<sup>2</sup>.

In a context with strong financial constraints for State and populations, health and socio-economic difficulties such as illegal practice of pharmacy, counterfeit drugs; pharmacists are exposed and could incur three responsibilities (disciplinary, civil and criminal) that can be undertaken independently, or combined. However, a distinction should be made between criminal misconduct, which constitutes an attack on society or public order, and disciplinary misconduct, which is limited to a lack of professional duties (Fouassier, 2016).

In Senegal, disciplinary action belongs in principle to section councils of College of Pharmacists, which, meet in disciplinary chambers, assess and sanction disciplinary faults during a disciplinary proceeding. Disciplinary procedure plays an important role in maintaining public trust in the pharmacy profession.

However, the College of Pharmacy which has to promote the code of ethics, doesn't make pharmacists aware of the Code of ethics rules to be observed in the event of non-compliance. Therefore, pharmacists are not informed of rules to be observed and potential consequences such as sanctions and disciplinary procedure, in order to predict what is regarded as unacceptable behavior or not (Hattin, 2008).

This aforementioned situation contributes in Senegal law case weakness, observed in disciplinary matters. Our general objective was to study the compliance of disciplinary procedure by Senegal College of Pharmacists, on cases handled from 2010 to 2015. We've first described disciplinary procedure, before elements proceeding to analysis of the aforementioned elements in their application.

## 2. Methodology

### A) Type of study

This is a retrospective study of disciplinary cases handled by College of Pharmacists, over the period from 2010 to 2015. It took place at College of Pharmacists headquarters in Senegal, located at Sicap Mermoz 2<sup>nd</sup> door, building number 7538.

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<sup>1</sup>Decree No. 81-039 of February 2, 1981 on the Code of Ethics for Pharmacists in Senegal.

<sup>2</sup><https://bartleylawoffice.com/useful/what-is-the-relationship-between-ethics-and-the-law.html>.

## **B) Data collection and analysis**

We have taken advantage of disciplinary cases communicated to us by an adviser to the Order. Also, we had interviews with certain advisers of College of Pharmacists, to complete and validate the information collected.

We also checked existence of a legal and institutional framework, described disciplinary cases handled, checked the disciplinary action and the disciplinary body.

Data exploitation was illustrated in the form of tables and figures, and carried out by Microsoft Excel, software version 2017. Data collected was analyzed in comparison with disciplinary procedure of France College of Pharmacists.

## **3. Results**

### **A) Legal and institutional framework**

Legal framework consists respectively of laws relating to pharmacy, and Senegal Order of Pharmacists. Also, there is a decree of application of the law creating by College of Pharmacists, and Code of ethics.

At institutional level, we have Ministry of Health and Social Action, Ministries of Interior and Labor intervene. There are also other structures such as Department of Pharmacy and Medicines, College of Pharmacists of Senegal.

### **B) Disciplinary cases**

Disciplinary procedure framework, facilitated to Council of section B of College of Pharmacists, treatment of eight (8) disciplinary cases, from 2010 to 2015. Cases examination of the said cases, made possible to describe elements of the procedure applied, from disciplinary action (C), to proceedings (D).

### **C) Disciplinary action**

It is triggered following introduction of a complaint, and motivated by a disciplinary fault against a pharmacist.

#### **1) Disciplinary misconduct**

It is characterized during a disciplinary proceeding. The following faults identified in the course of our work are distributed as follows (**Table 1**).

In our study, most frequent faults were related to illicit drugs trafficking, refusal of contributions and transfer of pharmacies without authorization (**Figure 1**).

#### **2) Complaint filing**

Disciplinary action can only be initiated against a pharmacist through a complaint introduced by authorized persons. In our study, people listed on (**Table 2**), filed a complaint to trigger disciplinary action.

Out of eight disciplinary cases handled, six complaints were brought by President of National Council of the College of pharmacy, *i.e.* (75%). The other two complaints were introduced at 50% by the Minister in charge of Health and the President of Section B Council of the college of Pharmacy (**Figure 2**).

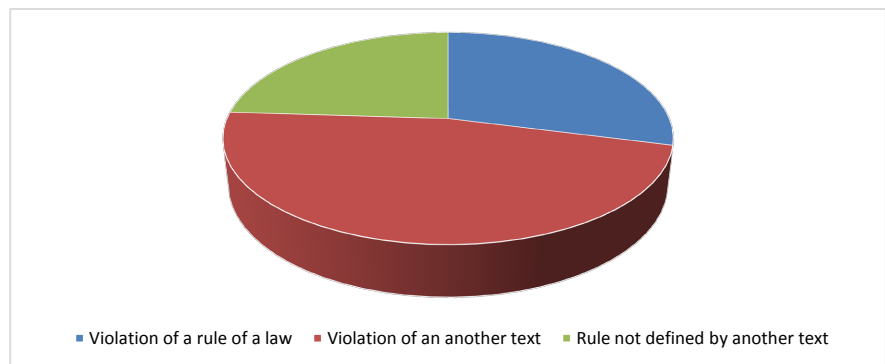
### **D) Disciplinary body**

#### **1) Disciplinary case investigation**

**Table 1.** Faults distribution according type and frequency.

Types of disciplinary faults listed	Numbers	Frequency
Illicit drug trafficking	4	23%
Refusal of annual contribution	3	18%
Transfer of pharmacy without authorization	2	11%
Private deposit facility	1	6%
Sale of medicines without market authorization	1	6%
Doubtful supply	1	6%
Expired drugs	1	6%
Medicines withdrawn from the market	1	6%
Break in the cold chain for vaccines and serums	1	6%
Absence of turnover declaration	1	6%
Accumulation of function	1	6%
Total	17	100%

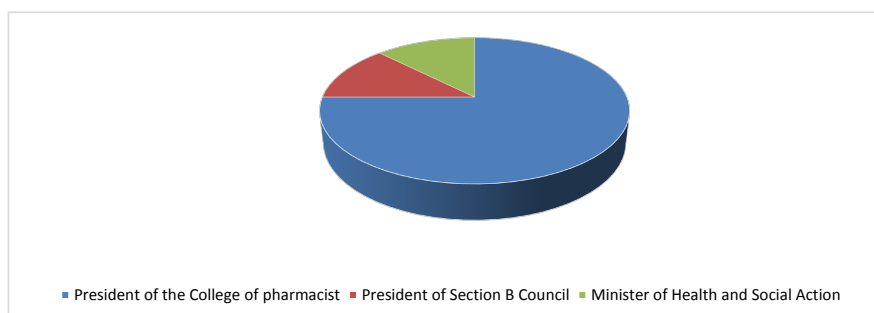
**Source:** Personal work.

**Figure 1.** Faults distribution according type of breach. Source: Personal work.**Table 2.** Breakdown of complaints by person's types and frequency.

People who complained	Frequency of complaints	
	Numbers	Percentage
President of National Council of College of pharmacy	6	75%
President of Section B Council	1	12.5%
Minister in charge of Health	1	12.5%
Total	8	100%

**Source:** Personal work.

The competent Council investigates cases within a given period, before deciding whether or not pharmacist will appear in disciplinary chamber. The processing times for files that have been communicated to us, have been calculated and recorded in **Table 3**.



**Figure 2.** Breakdown of complaints according to authorized persons. Source: Personal work.

**Table 3.** Investigation period of dossiers.

Disciplinary cases	Complaint feeling dates	Report feeling dates	Investigation period
N° 1	December 5th, 2011	27 décembre 2011	21 days
N° 2	January 4th, 2012	15 mars 2012	54 days
N° 3	August 18th, 2011	30 décembre 2011	77 days
N° 4	August 27th, 2010	27 décembre 2011	88 days
N° 5	August 26th, 2011	Not available	Not available
N° 6	August 18th, 2010	27 décembre 2011	96 days
N° 7	Not available	February 16th, 2013	Not available
N° 8	Not available	May 31th, 2013	Not available

Based on reports filed, durations of files examination which were communicated to us, varied between twenty-one (21) and eighty (80) days.

### 2) Appearance in disciplinary chamber

In the first instance, disciplinary chamber is made up by members of Section Councils, and chaired by a judge from judiciary, who only sits during disciplinary proceedings. On appeal, disciplinary Chamber is composed by National Council, where participate an administrative magistrate appointed by Supreme Court.

#### a) Hearing

Dates of appearance in hearing communicated, are different from one case to another, and vary between 5 and 48 months (**Table 4**).

#### b) Sanctions

Decisions rendered led to following sanctions being imposed, classified according to their frequency (**Figure 3**).

Most recurrent sanctions in decisions rendered concerned temporary ban on exercise (37.5%) and warning (37.5%); followed by reprimand with entry in the file (25%). No definitive ban on exercise has been pronounced.

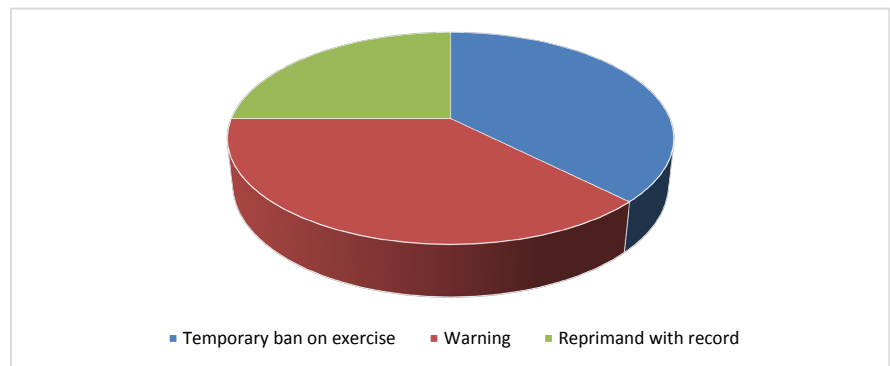
### 3) Appeals

The following figure (**Figure 4**) gathers information relating appeals of first instance decisions, and appeals in cassation. However, it should be noted that out of the four appeals, only one was appealed.

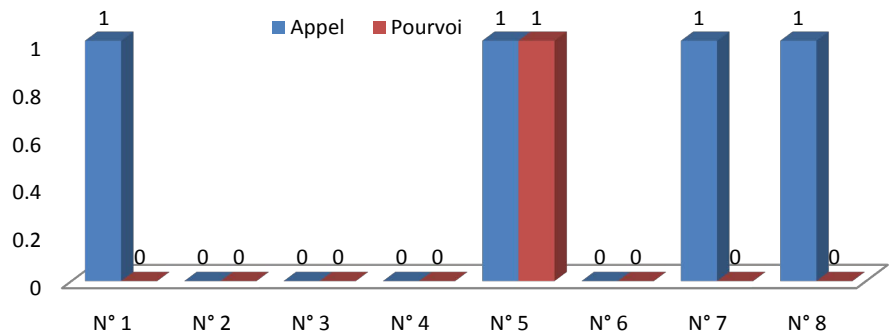
**Table 4.** Notification deadlines for hearings.

Disciplinary cases	Report submission dates	Court dates	Notification deadlines
No. 1	December 27th, 2011	May 5th, 2012	5 months
No. 2	March 15th, 2012	October 5th, 2010	1 month and 25 days
No. 3	December 30th, 2011	April 20th, 2012	36 months and 25 days
No. 4	December 27th, 2011	Not available	-
No. 5	Not available	April 20th, 2012	-
No. 6	December 27th, 2011	May 8th, 2012	48 months and 10 days
No. 7	February 16th, 2013	Not available	-
No. 8	May 31th, 2013	Not available	-

Source: Personal work.



**Figure 3.** Types of decisions rendered. Source: Personal work.



**Figure 4.** Appeal of decisions. Source: Personal work.

### 4. Discussion

Some limitations of this work related to data collection should be noted. The register of decision was not accessible to third parties, and hearings were not public. It was necessary to resort to certain advisers of the Order for interviews. Also, we were unable to examine certain cases. Furthermore, number of decisions used was limited, and we were unable to obtain the opinion of the phar-

macists incriminated to obtain their opinion. However, we were able to discuss results to better understand disciplinary procedure in pharmacy.

### **A) Legal and institutional framework**

Senegal has a legal framework that allows effective functioning of disciplinary chambers. At institutional level, structures involved make it possible to ensure effective management of disciplinary cases, but also execution and monitoring of sentence<sup>3</sup>. This reinforces practice framework of the pharmacy.

### **B) Disciplinary cases dealt with**

The ordinal decisions rendered within the framework of our work were specific to single disciplinary chamber of the Section B Council of the Order. This situation could be explained by evolution of demography of pharmacies in one hand; and in the other hand economic and public health issues faced by licensed pharmacists in performance of their duties.

Furthermore, it appears from disciplinary case number five (5) that a same fact can constitute both criminal and disciplinary offence. This explains the fact that disciplinary sanction cannot be pronounced at this stage of the procedure.

However, any pharmacist registered with the Order could be subject to disciplinary action (C), in the event of disciplinary misconduct, characterized by the disciplinary body (D).

### **C) Disciplinary action**

Disciplinary action is brought in the event of disciplinary misconduct (1), but it is triggered by filing a complaint (2) addressed to the president of the section council concerned.

#### **1) Disciplinary misconduct**

In France, disciplinary misconduct has been defined as "an act or a series of acts which take the form of either a simple material acts or legal operations performed by a subject of law, contrary to his legal obligations, which will provoke against him an individual application of a prior legal status, the repressive status (Fouassier, 2016).

In Senegal, our texts do not define disciplinary misconduct, which characterization is left to discretion of disciplinary chambers. But, in the event of errors or breaches committed by pharmacists, their disciplinary responsibilities may be engaged<sup>4</sup>.

In our study, we identified three categories of misconduct characterized by a violation of ethical rules (29%), a violation of rules written in other texts (47%), and a violation of facts not defined in any text (24%).

This situation could be explained by the fact that disciplinary judge would not have a precise text, but is the one responsible for assessing both fault and penalty which correspond to it<sup>5</sup>.

<sup>3</sup>Decree No. 74-139 of February 11, 1974, implementing Law 73-62 of December 19, 1973 creating the College of Pharmacists.

<sup>4</sup>Art. 15 of Decree No. 81-039 of February 2, 1981 on the Code of Ethics for Pharmacists.

<sup>5</sup>M. TYSSEYRE-BERRY. Liability incurred on the occasion of the drug. Part II: Pharmaceutical disciplinary liability. Compendium of pharmaceutical legislation and ethics. Medicine and the pharmaceutical profession. Mason 3rd Edition. p. 243.

With regard to ethical faults, they are not explicitly specified in our Code of Ethics, but are assimilated to breaches of rules of ethics. Faults related to illicit drug trafficking and installation of a private deposit in a clinic, would be a violation of Code of Ethics. Indeed, illicit drug trafficking is a practice that does not honor pharmacist<sup>6</sup>; and pharmacist must not favor practices against morality<sup>7</sup>. Also, any gossip between pharmacists and doctors is prohibited<sup>8</sup>.

Regarding disciplinary faults listed in other texts (47%), refusal of contribution is taken into account by Rules of Procedure of the College of pharmacy<sup>9</sup>. For accumulation of functions<sup>10</sup>, pharmacy transfer without authorization<sup>11</sup>. And sale of medicines without market authorization<sup>12</sup>, they are recounted in book V pharmacy: Absence of a declaration of turnover is regulated by decree<sup>13</sup>. This situation could be explained by the fact that disciplinary fault covers in addition, breaches of main rules of professional practice in pharmacy<sup>14</sup>.

As for faults not defined in a text, they could be qualified as breaches committed by employees, revealing a lack of supervision on the part of the pharmacist<sup>15</sup>.

## 2) Complaint

Our results show that all complaints were filed by authorized persons<sup>16</sup>. These are Minister in charge of Health (25%), President of the National Council of College of Pharmacists (75%) and President of Section B Council of the College of Pharmacists (25%). However, it is worth noting the low number of complaints during the period, estimated at around one every two years; against 381 complaints filed in France in 2017 alone<sup>17</sup>.

This situation could have several reasons. First, President of the National Council of the College of pharmacy, cannot receive complaints from third parties (Ngom, 2015), unlike Order of Physicians of Senegal, where the Council of Section B can act on the complaint of a third party<sup>18</sup>. Concerning Minister in charge of Health, it would be linked to insufficient inspections by Directorate of Pharmacy and Medicines (Report from Access Finance Gestion, 2018). Finally, most pharmacists are unaware of their rights, remain attached to certain socio-cultural considerations, and resign themselves to suing a colleague in the

<sup>6</sup>Art. 3 of Decree No. 81-039 of February 2, 1981 on the Code of Ethics for Pharmacists in Senegal.

<sup>7</sup>Art. 9. Decree No. 81-039 of February 2, 1981 on the Code of Ethics for Pharmacists in Senegal.

<sup>8</sup>Art 27 decree n° 81-039 of February 2, 1981 on the Code of ethics of pharmacists in Senegal.

<sup>9</sup>Art 10, para. 3 of Order No. 1603 of February 3, 1981, approving the internal regulations of the College of Pharmacists.

<sup>10</sup>Art L. 579 of law 54-418 of April 15, 1954 bearing Book V Pharmacy in Senegal.

<sup>11</sup>Art L. 570 para. 3 of Law 54-418 of April 15, 1954 on Book V Pharmacy in Senegal.

<sup>12</sup>Art L. 601 of law 54-418 of April 15, 1954 bearing Book V Pharmacy in Senegal.

<sup>13</sup>decree 9089 of December 14, 1998.

<sup>14</sup><http://www.ordre.pharmacien.fr/content/download/123327/645206/version/1/file/120>

<sup>15</sup>CR Paris June 20, 1969, No. 368, Doc. pharm. JP. No. 1657.

<sup>16</sup>Art 19 of law n° 73-62 of December 19, 1973, creating the Order of Pharmacists.

<sup>17</sup>The-chambers-of-discipline.

<http://www.ordre.pharmacien.fr/Nos-missions/Assurer-le-respect-des-devoirs-professionnels/>; consulted on December 28, 2018 (11:55 p.m.), site updated on July 24, 2017.

<sup>18</sup>Art 43 of law 66-67 of July 4, 1966 on the practice of medicine and the College of Physicians.



event of a breach (Diallo, 2015).

Also, disciplinary action does not take into account individuals as in France, where since 2002, they can directly in the event of professional misconduct by pharmacist, seize the competent council (Leca, 2013).

However, in France, in addition to the fact that complaint is lodged by authorized persons, it represents a substantial formality without which the procedure would be flawed<sup>19</sup>. Moreover, in addition to the identification of the applicant and the pharmacist prosecuted in Senegal, complaint must explicitly describe acts denounced, and situate them in time.

## 5. Conclusion

The disciplinary procedure in Senegal is well framed by a legal and institutional system, allowing effective management of disciplinary cases submitted to the College of Pharmacists. However, College of Pharmacy doesn't bring pharmacists to disciplinary chambers, and when it was done, the disciplinary procedure was not in compliance with text.

Also, texts are obsolete and there is a lack of transparency and objectivity on decisions made such as enforcement of sentences. Therefore, it's important for public health reasons, to reform College of Pharmacist law and update its implementing decree, to take into account new developments in this area.

## Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

## References

- André, P. L. (1900). *History of Pharmacy: Origin - Middle Ages - Modern Times*, Octave Doins, Paris (p. 729).
- Leca, A. (2013). *Chapter 048. Pharmaceutical Law (7th Edition). Referral to the Disciplinary Judge. Timeless Collection. Hospital Studies* (p. 134).
- Diallo, M. (2015). *The Civil and Ethical Liability of the Doctor in Senegal* (p. 3). Master's Thesis. Laboratory for Studies and Research in Environmental, Health Policy and Law.
- Fouassier, E. (2016). *National College of Pharmacists. Disciplinary Functions. Chapter I: Disciplinary Courts. Pharmaceutical Law. Fasc. 12-30* (pp. 3-4; 11-12).
- Hattingh, L., Smith, N., Searle, J., & Forrester, K. (2008). Developments in Pharmacists' Disciplinary Processes and Outcomes. *J. Medical Law*, 16, 109-119.
- Ngom, A. L. (2015). *Exercise of Disciplinary Power: Case of the College of Pharmacists of Senegal* (p. 62). State Doctoral Thesis.
- (2018) Report from Access Finance Gestion: Strategic Plan 2018-2022 for the Regulation and Technical Control of the Quality of Essential Medicines and Products (p. 17).

<sup>19</sup>CE, 8 Jan. 1992, n° 19875 and 21978, Devillechaise; JurisData n° 1892-040016; Rec. CE 1982, p. 728; Dr. adm. 1982, comm.