



*Prof. Alessandro Marroni  
President, DAN Europe*

## TRAVELLING DIVERS PREVENTION AND SAFETY TIPS

*Dear DAN Europe Members,*

This issue of Alert Diver is dedicated to medical matters and concerns of frequent and common interest for safe and aware divers.

These are of particular importance for travelling divers as well as for divers concerned about specific conditions and ailments affecting them and their impact on the safety of diving.

You will find two articles on Eye conditions and diving, dealing with two relatively common conditions – Glaucoma and Macular Degeneration.

Of equal importance and frequency is the matter regarding Depression and Diving: this is becoming more and more frequent, both as a question and as a condition, and more and more divers have to confront themselves with the dilemma whether it is safe or not to dive if suffering from depression and taking specific medication. We are dedicating a special report to this important issue.

The travelling diver is frequently confronted with questions and doubts about the safety of certain diving destinations, the possibility of contracting infectious diseases, the efficacy and safety of prevention measures and the potential risks of remote diving environments. You will find useful information and answers in the articles about Dengue, Lariam and the beautiful, but deadly, Blue Ringed Octopus.

Last, but not least, a matter of common concern and a frequent request by diving centers and schools, particularly in certain areas, such as Egypt for instance, is the medical certification of Fitness to Dive and its validity. Our legal consultant and DAN Member François Jaeck, offers a legal view point about this frequently controversial matter. Enjoy reading!

**Clear Waters to all of you!**

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## THE OPINION OF THE DIVING LAWYER WHAT IS THE MEDICAL CERTIFICATE WORTH?

*By François JAECK, Avocat à la Cour, DAN Member*

In order to undertake scuba diving as part of an organised body, whether associative or commercial, the presentation of a medical certificate, attesting to the absence of medical contraindications to this activity, has become incontrovertible.

However, although divers as well as professionals obtain them, the expectations of everyone are different.

The divers see a key with which to reach the underwater world; but management and insurance companies see in it both the respect of a legal obligation and a means to prevent accidents, but especially the hope of exonerating themselves of liability should an accident however happen.

But there is an abyss between the simple declaration of good health that one still encounters sometimes and the draconian ministerial decrees adopted by certain countries that set both the nature and the periodicity of medical examinations required as part of the medical supervision of sporting candidates of a high level.

The divers and the associative or commercial bodies that organise the practice and teaching of diving turn therefore to the doctor, the expert and guardian of medical knowledge. In the absence of strict rules imposed on the doctor by the legislation of his/her country, it is up to him/her to understand the nature of the examinations to be carried out before issuing the precious "key".

It would be tempting thus for the diver as well as for the associative or commercial body, to try to hold the doctor responsible for an accident that arose as a result of medical reasons.

That would be to forget that a medical certificate can only have real legal value on the condition that all those involved, not only the doctor who delivers it, but also and especially the diver who requests it and the associative or commercial organisation to which

he belongs, acts in a responsible way. The diver firstly for his/her part, knows about the risks associated with scuba diving from the training that he/she received. He/she must know the legislation applicable as regards the activity in his/her country, and the rules of his own federation, or of the organisation that issued his/her diving certificates.

It is therefore up to the diver to choose the doctor from whom he/she requests a medical certificate in a responsible way, for the case in question at least a sports doctor, or if not available an ORL specialist, or even a doctor specialising in hyperbaric medicine.

If the diver knowingly consults a doctor whose activity has nothing to do with diving, he runs the risk of being legitimately found in a court of law to have been careless, something that could, at least in part, be judged as having contributed to the realisation of the damage.

Likewise, it is the duty of the diver to inform the doctor whom he consults of the specific regulations to which he knows he is bound, such as the indicative lists of medical contraindications issued by certain federations, so that the doctor who is consulted can effectively question his patient, and carry out suitable examinations.

The diver cannot in fact consider that it is the responsibility of his/her doctor solely, to inform himself/herself... if the diver knows specific information that is relevant, he must inform his/her doctor... unless he/she wishes not only to take a vital risk for himself but also undergo the risk of being held by a court of law to have withheld information from the doctor, reticence that would exonerate the doctor even more so.

Thus, and one would hope that it would be obvious, it is up to the diver to prove complete honesty to the doctor with regard to the answers that he gives to the questions asked by the doctor, and not to take the unreasonable risk of concealing certain conditions in order to obtain, despite everything, the precious "key".

The associative or commercial body to which the diver presents the medical certificate, would also be wrong to consider that the medical certificate exonerates it ipso-facto of all liability.

In effect whatever the precision of the laws or rules of each country as regards diving, the respect of the letter of the law is not sufficient to exonerate oneself from all liability.

Legal cases, very often, go beyond the specific text, to return to the more general obligation of pru-



dence, the "precautionary principle", the obligation of discernment.

The associative or commercial organisation that organises the diving activities is in effect the last link in the "chain of trust", of which the single objective is to prevent accidents and safeguard the health of the diver.

It is up to it then, to satisfy itself that the doctor, through his qualifications, was, at least apparently able to appreciate the specificities of the medical restrictions constraints associated with the practice of scuba diving.

If the associative or commercial body must in effect rely on the sovereign judgement of the doctor, who is only truly able to appreciate the suitability of the state of health of the diver for the practice of scuba diving, it should in return assure itself of the apparent adequacy of the qualifications of the doctor with the range and accuracy of the certificate that is requested of him... In this way, if it can rely without risk on the enlightened opinion a specialist hyperbaric doctor, it should be more careful with regard to the opinion of a doctor whose speciality does not have anything to do with the sport or diving, unless it is also prepared to undergo the risk of being reproached by a court of law for carelessness, since, for their part, diving professionals cannot ignore the specific details of the risks run.

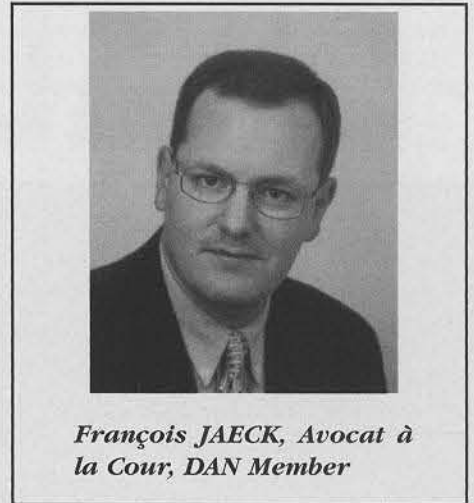
Thus, for example the French courts have recently ruled that *"the medical certificate issued in general terms 9 months before the training course did not provide accurate details on the aptitude of X. to practice night diving and taking account of difficulties that the child had that he (the supervisor) knew of; (the supervisor) could not be satisfied with this vague attestation to authorise the dive (...). (The supervisor) was qualified to the first instructor level in scuba diving (...) (he) was thus in a position to appreciate the risks of this dive"*.

Moreover *"the medical certificate had not been issued by a doctor qualified in sport medicine"*.

This decision is clear... a medical certificate of more than 9 months, and not issued by a doctor qualified in sports medicine, not only has no effect in exonerating responsibility, but can even amount to a fault of imprudence for those who rely on it without discernment.

Based without a shadow of a doubt on the fault of imprudence this decision should be interpreted by the diving world, divers and commercial or associative bodies as a caution.

If the training or the experience of the



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diver who asks for the medical certificate, or that of the organisation that receives it can convince him of the existence of a risk... he is disloyal and illusory, to want to hide behind a medical certificate, even of this latter satisfies the letter of the law.

It is in fact up to everyone to go beyond the specific legal norm...and to return to the more general Obligation of Prudence...

The medical certificate is in this way appropriately replaced.

The doctor, the expert in the field, is certainly at the heart of the system, but the certificate that is asked of him/her cannot have any real legal value unless, upriver, the diver that requests it has revealed everything to the doctor, and if, downstream, the associative or commercial body to which the certificate is presented, does not want to make the certificate say more than it means.

The legal value of a medical certificate is thus subjected to a triple condition:

- The honesty of the person who requests it
- The competence of the person who issues it
- The prudence of those who rely on it

If the principles that are brought to mind by this article are directly inspired by French Law, the universality of the values of honesty, competence and prudence would lead one to think that an absence of these rules of behaviour could, likewise, be sanctioned judicially in most countries.

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