

**Court of Cassation**

**First Civil Chamber**

**Public hearing of Tuesday 25 February 1997**

**Appeal No.: 94-19685**

Published in the bulletin

**Appeal.**

**President: Mr. Lemontey, president**

Advisor: Mr. Sargos, contributing advisor

General advocate: Mr. Roehrich, general advocate

Advocates: SCP Peignot and Garreau, SCP Coutard and Mayer, Mr. Le Prado, lawyer(s)

**FRENCH REPUBLIC**

**IN THE NAME OF THE FRENCH PEOPLE**

On the only ground of appeal, taken in its last two parts:

Reviewed Article 1315 of the Civil Code;

Whereas one who is legally or contractually bound to a particular disclosure obligation must prove the fulfillment of that obligation;

Whereas, on the occasion of the colonoscopy for the removal of polyps performed by Dr. X..., Mr. Y... suffered intestinal perforation; in support of his action against this doctor, Mr. Y...argues that he had not informed him of the risk of perforation during such a procedure; the Court of Appeal dismissed the claim and rejected Mr. Y's action on the grounds that it was up to him to prove that the doctor had not warned him of this risk, and he did not produce any evidence to support his claim;

Whereas, in so ruling, the doctor holds a special obligation of informing his patient and that the onus of proving that he has performed this obligation, and the Court of Appeal violated the aforementioned text;

FOR THESE REASONS, and without any need to rule on the first two parts of the claim:

NULL AND VOID, in all its provisions, the judgment delivered 5 July 1994 between the parties, by the Court of Appeal of Rennes; call, therefore, the case and the parties in the state where they were in before said judgment, and, to be done right, return in front of the Court of Appeal of Angers.

**Publication:** Bulletin 1997 I No. 75 p. 49

**Challenged decision:** Court of Appeal of Rennes, 5 July 1994

**Titling and summaries:** CONTRACTUAL LIABILITY – Duty of disclosure – Surgeon – Failure – Evidence – Burden – Burden on the doctor.

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One who is legally or contractually bound to a particular disclosure of information must present proof of performance of the obligation. Thus, it is the doctor, having taken on a particular information obligation to his patient, to prove that he performed this duty.

MEDICAL AND PARAMEDICAL PROFESSION – Surgeon – Contractual liability - Obligation to provide information – Failure – Evidence – Burden – Burden of proof on physician (general rules) – Burden – Various applications – Surgeon – Obligation to provide information – Failure – Doctor.

**Jurisprudential precedents:** CLOSER: Civ., 1951-05-29, Bulletin 1951, civil section no. 162, p. 125 (appeal), and the cited decision; First Civil Chamber, 1966-05-17, Bulletin 1966, I, no. 298, p. 228 (rejected); First Civil Chamber, 1995-04-04, Bulletin 1995, I, no. 159 (2), p. 114 (rejected), and the cited decision.

**Applied Texts:**

Civil Code 1315