

**Court of Cassation**

**First Civil Chamber**

**Public hearing of Tuesday 6 May 2003**

**Appeal No.: 01-03259**

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**Rejection.**

**Mr. Lemontey, president**

Mr. Renard-Payen, contributing advisor

Mr. Sainte-Rose, general advocate

SCP Waquet, Farge and Hazan, lawyer(s)

**FRENCH REPUBLIC**

**IN THE NAME OF THE FRENCH PEOPLE**

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THE COURT OF CASSATION, FIRST CIVIL CHAMBER, rendered the following judgment:

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

Whereas the Polyclinic Languedoc company (Polyclinic) complains that the judgment (Montpellier, 9 January 2001), which said that prohibiting Mr. X...and Y from practicing their specialty of pediatrics within its establishment when the woman giving birth so requested it violated the legal regulations then in force, according to the appeal;

1. That Polyclinic could, without fault or affecting the free choice of doctor by the patient, impose both pediatricians attached to the establishment for the examination of newborns, so the appeal court violated Articles 1134 of the Civil Code, L. 1111-1 of the Code of Public Health and L. 162-2 of the Social Security Code;
2. That the Court of Appeal violated the texts themselves by deciding that Polyclinic refused the right to free choice of doctor to expectant mothers while noting, without drawing the legal consequences, that the printed information that was intended to be given to them stated that the examination of a newborn would be done by a Polyclinic pediatrician;
3. By not looking into, as it was invited, if the organization of care within the organization did not warrant the exclusive collaboration of two qualified doctors in pediatrics, the Court of Appeal lacked a legal basis for a decision under Articles 1134 of the Civil Code, L. 1111-1, L. 611301, L. 2322-1 and following of the Code of Public Health and L. 162-2 of the Social Security Code;
4. That the Court of Appeal did not respond to the conclusions of Polyclinic arguing that it was legally prohibited under Article L. 462 (now L. 4113-9) of the Code of Public Health from letting practitioners who have not entered into a written contract from practicing in the establishment, so that in the absence of an agreement signed with Mr. X and Y... it was right to refuse their free access into its establishment;

But whereas the Court of Appeal held exactly that the right of a patient to free choice of doctor is a fundamental principle of health legislation and that, under the terms of Article 11 of the decree of 7 August 1975, a doctor qualified in pediatrics, which must have an establishment or delivery section, is responsible for the medical examination of the newborn and the establishment of a mandatory health certificate “except at the plea of the woman for another practitioner”; it has in this way, without having to respond to conclusions consequently ineffective, legally justified its decision.

It follows that the appeal cannot be accepted;

FOR THESE REASONS:

REJECT the appeal.

Order the Polyclinic Society of Languedoc to bear the costs;

Done and judged by the Court of Cassation, First Civil Chamber, and pronounced by the president and in his public hearing of 6 May 2003.

**Publication:** Bulletin 2003 I No. 109 p. 85

**Challenged decision:** Court of Appeal of Montpellier, 9 January 2001

**Titling and summaries:** MEDICAL AND PARAMEDICAL PROFESSION – Doctor surgeon; Doctor’s office – Sale – Customer transfer – Validity – Conditions – Safeguard freedom of choice of the patient. If the assignment of medical clientele, on the occasion of the constitution or transfer of a liberal fund of professional practice that is not illegal, it is on the condition that the freedom of choice of the patient be safeguarded. In this regard, it is in the exercise of its sovereign power that an appellate court holds that in this case the freedom of choice of the patient was not respected.

Article 11 of the decree of August 7 1975 explains that a doctor qualified in pediatrics, which must have an establishment or delivery section, is responsible for the medical examination of the newborn and the establishment of a mandatory health certificate, “except at the plea of the woman for another practitioner.” Consequently, Polyclinic cannot deny access to its premises to pediatricians not attached to the establishment when a patient uses the services of the practitioner.

MEDICAL AND PARAMEDICAL PROFESSION – Pediatrician – freedom of choice of the patient – Infringement – Care facility – Access refused to outside practitioners

**Jurisprudential precedents:** IN OPPOSING SENSE: First Civil Division, 1998-11-03, Bulletin 1988, I, No. 302, p. 206 (rejection).

**Applied Texts:**

Decree 1975-08-07 art. 11