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Council of State

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Litigation Section

Mr. Martin, President

Mr. Yves Struillou, Rapporteur

Mr. Keller, Government Commissioner

SCP [Civil Law Partnership] PIWNICA, MOLINIE; SCP [Civil Law Partnership] BOUTET, attorneys

Wednesday, January 12th 2005 Reading

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

Considering the summary request and the statement of supplementary grounds, registered 11 April and 11 August 2003 at the litigation secretariat of the Council of State, presented for Mr. Gilbert X, remaining ...; Mr. X requires from the Council of State:

1°) that it annuls the decision of 11 February 2003 of the Social Insurance Section of the National Council of the College of Physicians;

2°) that it renders its judgment on the merits, rejecting the complaints of the Bouches-du-Rhône Health Insurance Primary Fund and of the medical officer;

Considering the other case file materials;

Considering the Public Health Code;

Considering the Social Security Code;

Considering the n°95-1000 decree of 6 September 1995;

Considering Law n°2002-1062 of 6 August 2002;

Considering the Code of Administrative Justice;

After having witnessed during a public hearing:

- the report of Mr. Yves Struillou, Counsel
- the observations of the SCP [Civil Law Partnership] Piwnica, Molinié, attorney representing Mr. X and the SCP [Civil Law Partnership] Boutet, attorney representing the medical officer of the Bouches-du-Rhône Health Insurance Primary Fund,
- the conclusions of Mr. Rémi Keller, Government Commissioner;

Considering that to inflict on Mr. X, by its decision of 11 February 2003, the sanction of prohibition of the right to dispense healthcare to those insured under social security for a four months period, during which one month includes the benefit of suspension, the Social Insurance Section of the National Council of the College of Physicians has detected violations of the provisions of the Code of Conduct and a disregard for the general nomenclature of professional acts;

On the violations of the provisions of the Code of Conduct:

Considering, firstly, that as provided by article 8 of the Code of Conduct: Within the limits of the law, the doctor is free to decide on his prescriptions, which will be those that he estimates are the most appropriate for the circumstances. / He shall, without neglecting his moral assistance duty, limit his prescriptions and his acts to what is necessary for the quality, security and efficiency of the health care. / He must consider the advantages, the inconveniences and the consequences of the different possible investigations and therapeutics. ; that after having estimated, by a sovereign appraisal, that on numerous occasions Mr. X had evaluated ultrasounds lacking a medical justification and prescribed dosages which were not medically indicated, the Social Insurance Section of the National Council of the College of Physicians has found, without committing an error in legal characterization, that those behaviours constituted a violation of the provisions of article 8 of the Code of Conduct;

Considering, secondly, that as provided by article L. 145-1 of the Social Security Code, the Social Insurance Section of the National Council of the College of Physicians has the authority to address the misconduct as well as any facts relating to the exercise of the profession found against a doctor; that as provided by article 32 of the Code of Conduct, the doctor commits to personally ensure health care that is conscientious, dedicated and based on scientifically acquired data to the patient (...); that the Social Insurance Section of the National Council of the College

of Physicians, without committing an error in legal characterization, has estimated that Mr. X hadn't considered the scientifically acquired data when dispensing health care to his patients, as resulting in particular from the good practices recommendations elaborated by the national agency for the development of evaluation in medicine, and by the national agency for health accreditation and evaluation, by refraining from prescribing the systematic screening for cervical cancer to his female patients aged 25 to 65 years old and the renewal of this test every three years, and that he thus violated the provisions of articles 8 and 32 of the Code of Conduct;

On the disregard for the general nomenclature of professional acts:

Considering that the Social Insurance Section of the National Council of the College of Physicians, which was not tasked with researching whether the disregard for the general nomenclature of professional acts of which Mr. X is accused were intentional or not, has found, without committing an error in legal characterization, that this disregard could constitute a misconduct which could justify a disciplinary sanction;

On the mean relative to the application of the Amnesty Law of 6 August 2002:

Considering that by ruling that the facts of which Mr. X is accused constituted a disregard for the probity and honour and shall subsequently be excluded from amnesty, the Social Insurance Section of the National Council of the College of Physicians applied exactly the provisions of the Law of 6 August 2002 granting amnesty;

Considering that it results from the preceding that Mr. X does not benefit from sufficient grounds to require the annulment of the 11 February 2003 decision of the Social Insurance Section of the National Council of the College of Physicians, which is sufficiently reasoned;

DECIDES:

Article 1: Mr. X's request is rejected.

Article 2: This decision will be notified to Mr. Gilbert X, to the National Council of the College of Physicians, to the chief of service medical officer for the Bouches-du-Rhône Health Insurance Primary Fund, and to the Minister of Solidarity, Health and Family.