

Council of State

N° 315768

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Litigation Division

Mr. Stirn, President

Mr. Philippe Barbat, rapporteur

Mrs. Dumortier Gaëlle, public rapporteur

SCP VIER, BARTHELEMY, MATUCHANSKY, attorneys

Reading of Wednesday, 10 February 2010

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

Considering the claim, registered on 29 April 2008 to the litigation secretariat, presented by Mr. Patrick A, residing ... ; Mr. A asks that the Council of State annul the decision of 8 February 2008 by which the national council of the Order of Physicians did not authorize him to act as a doctor specialized in plastic, reconstructive and esthetical surgery;

Considering the other files of the case;

Considering the Public Health Code;

Considering the decree number 2004-252 of 19 March 2004;

Considering the decree number 2005-777 of 11 July 2005;

Considering the bylaw of 30 June 2004 regulating the qualification of doctors;

Considering the Administrative Justice Code;

After having heard during a public hearing:

- the report of Mr. Philippe Barbat, Master of Requests,

- the observations of the the SCP Vier, Bathélémy, Matuchansky, attorney for the national council of the Order of Physicians,

- the conclusions of Mrs. Gaëlle Dumortier, public rapporteur,

The right to speak once again having been given to the SCP Vier, Barthélemy, Matuchansky, attorney for the national council of the Order of Physicians;

Considering that as provided by article 3 of the decree of 19 March 2004 relating to the conditions under which medical doctors can obtain the qualification of specialist: In order to obtain this qualification of specialist, the doctor must justify that he benefits from a training and an experience which ensure he obtains competences equivalent to those required for the obtainment of the specialized studies diploma or the specialized studies diploma complementary to the solicited specialization. ; that as provided by article 4 of the same decree: The composition of commissions, the procedure to examine files and the list of specialities are set by a decree from the minister (...); that as provided by article 1 of the bylaw of 30 June 2004 used to implement this decree: Are recognized as being qualified the doctors who possess one of the following documents: 1. the specialized studies diploma, 2. the complementary specialized studies diploma so-called of group II qualifying (...). Failure to provide such documents lead to consider the trainings and experience of the interested party (...); that Mr. A asks for the annulment of the decision of 8 February 2008 through which the national council of the Order of Physicians did not authorize him to act as a doctor specialized in plastic, reconstructive and esthetical surgery;

Considering that the file's contents reveal that Mr. A has been practicing baldness surgery for the past 28 years on an independent basis and that he has presented, in support of his qualification request, numerous documents attesting in an undisputable manner the development of surgical techniques recognized at the international scientific level in the field of scalp surgery, as well as his participation in congresses, numerous publications and other actions in this field; that, however, through consideration of the fact that the claimant, even if he demonstrated a training and an experience in the very specific field of scalp surgery, does not demonstrate proof of neither an initial and continuous training in teaching hospital services in general surgery and reconstructive and esthetical plastic surgery, nor of a surgery practice in this specialty, necessary for the granting of the qualification of specialized medical doctor in this same discipline, the national council of the Order of Physicians did not err in law nor in fact, nor did it make a manifest error of assessment in refusing to authorize Mr. A to be qualified as a medical doctor specialized in plastic, reconstructive and esthetical surgery;

Considering that as provided by article R. 4127-69 of the Public Health Code: The practice of medicine is personal; each doctor is responsible for his decisions and his acts. And that as provided by article R. 4127-70 of the same Code: Every doctor is, in principle, qualified to practice every diagnostic, prevention and treatment act. However, he must not, except in exceptional circumstances, nor undertake nor pursue care, nor write prescriptions in fields that surpass his competences, his experience and the means to his disposition; that the appealed decision from the national council of the Order of Physicians, which insists on assessing Mr. A's qualifications, does not circumvent these provisions;

Considering that as provided by article L. 1110-1 of the Public Health Code: The fundamental right to health protection must be implemented by all available means to the benefit of all persons. The professionals, health establishments and networks, medical insurance organizations or any other organization participating in prevention and care, and the sanitary authorities contribute, with the users, to develop prevention, guarantee equal access to each person to the care required by his or her health condition and ensure the continuity of care and the best possible sanitary security; that the refusal to recognize the solicited qualification, if it constitutes an obstacle towards Mr. A obtaining it, with the effects attached to this decision, does not have for consequence nor to prevent Mr. A from practising medicine, nor to infringe upon the principles

of the aforementioned article; that Mr. A cannot neither assert usefully that this refusal would be contrary to the interest of patients, as results from these provisions, nor that it would infringe upon the existence of rights he considers acquired due to his experience;

Considering, finally, that the pleas in law by Mr. A alleging the illegality of the decree of 11 July 2005 in question above, relating, in particular, to the technical conditions for the functioning of esthetical surgery infrastructures and article D. 766-2-14 resulting from it, henceforth codified in article D. 6322-43 of the Public Health Code, as well as the circular of 23 December 2005, relating to the authorization and functioning of the esthetical surgery infrastructures, are inoperative against a decision that denied the interested party, on the basis of article 3 of the decree of 19 March 2004 aforementioned, the possibility of being granted the qualification of plastic, reconstructive and esthetical surgery specialist;

Considering that results from the foregoing that Mr. A's request for annulment of the decision by which the national council of the Order of Physicians refused to grant him the authorization to use the qualification of doctor specialized in plastic, reconstructive and esthetical surgery is unfounded;

On the conclusions applying the provisions of article L. 761-1 of the Administrative Justice Code:

Considering that such provisions impede on the national council of the Order of Physicians, which is not the losing party in the present case, paying Mr. A the amount he is requesting in respect of the fees incurred by himself and not included in the legal costs; that, in the circumstances of this case, there is no reason to impose to Mr. A the amount that the national council of the Order of Physicians requests in the same manner;

DECIDES:

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

Article 2: The conclusion of the national council of the Order of Physicians applying the provisions of article L. 761-1 of the Administrative Justice Code are rejected.

Article 3: This decision will be notified to Mr. Patrick A and to the national council of the Order of Physicians.