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Can an orthopaedic surgeon sue a patient in court ? A case-report and literature review

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Introduction(1)

- **The complaints filed by a surgeon against a patient are quite exceptional: within the framework of the overall care of the patient, the concept of contract and the ethical attitudes in the process of care do not provide for the engagement of a surgeon in this type of legal proceedings.**

Introduction(2)

- **The modalities for the criminal, civil or administrative liability of a surgeon are manifold. If they remain exceptional on the criminal level, they are frequent on a civil or administrative level and are most often underpinned by the claim of damages by the patient / complainant.**

Introduction(3)

- **The main objective of this work is to determine the possibilities for a surgeon to put in charge the responsibility of a patient either on the penal or civil level.**

Material and Methods

- Clinical report
- Study of bibliography :
 - Web of Sciences ,
 - DOAJ®,
 - Westlaw®,
 - Dalloz®,
 - EUR-Lex®,
 - Lamyline®,
 - Doctrinal Plus®,
 - and for French jurisprudence with L exisN exis® and L egifrance®

Prologue : the actors of the drama ...

- **Mr X : the Patient**
- **Pr Y : the Surgeon**
- **Z : the site of the facts**

1992-1995 (act 1)

1° A 58 year old patient (Mr X.) is operated in a public hospital in 1993 for a total hip replacement. He has been operated by a resident helped by a Professor (Pr Y.) in a public university hospital in W. He has a poor result with residual pain and limitation of range of motion due to prosthetic calcifications (stage 2 according to Brooker's classification)

2° The patient is seen again by Pr Y. at 2 months 6 months and 12 months after the surgical procedure

1992-1995 (act 1)

3° Mr X. has a remaining painful hip and limitation of range of motion due to prosthetic calcifications

4° He said to Pr Y. : « *I have hunhing buddies and it will not happen like that* »

1996-2014 (act 2)

- Mr X. is operated in an other institution and the surgeon removes the hip prosthesis ; he said to the patient : « it was an aseptic loosening of your prosthesis ; I removed it and realized a new cemented femoral stem »
- The patient understood « the prosthesis was unsoldered » (misfit between the french words *descellée* and *dessoudée*)
- Unfortunately the result remains very poor : the pains and limitation of range of motion are increased.

1996-2014 (act 2)

Mr X. will send to the Director General of the University Hospital of W. and of the President of the council of medicine doctors of W. and to the general President of the ARS of W. 6 letters in which he writes he was operated « *by a butcher and that Professor Y. was completely drunk at time of the operation ...* »

1996-2014 (act 2)

- He lodges a complaint against Pr Y. and the Administrative Court of Justice of W. It **holds no faults or non-observance in the management of the patient . Mr X does not appeal of the decision of the administrative court and the sentence is final .**
- During this period Mr X. send again about forty letters to the staff of the public hospital (W.) in which it involves the honor and righteousness of the practitioner which had taken care of him initially.

2014-2015 (act 3)

- Mr X sent (august and september 2014) 2 letters to Professor Y's personal home in W.
- *« I know where you live and it will heat up for you*
- *I want you give me a certificate to have a home help because if I'am fucked up it's your fault*

2014-2015 (acte 3)

- *My prosthesis was usolderd when you operated me and you were stuffed when you operated me.*
- *I would comme to see you at home with my hunting shotgun*
- *Doctors and lawyers you're all rotten and fucked persons »*

2016 (epilogue)

1° Pr Y. puts down a criminal complaint against the patient

2° Mr X. was sentenced by the penal court of justice of W. for death threat and he had to pay a fine of 1500 € and to pay also 1000 € in damages to Pr Y. (january 2016).

3° Mr X. does not appeal of the decision of the decision of the penal court and the sentence is final .

Discussion(1)

- 2432 judicial decisions were analyzed .Only two condemnations of a patient following a complaint committed by a surgeon for defamation and threat crimes against persons with order to satisfy a condition was found. In our reported case, the magistrates court sentenced definitively in 2016 the patient for threat of crime against persons with order to satisfy a condition in a 1500€ fine.

Discussion (2)

On the penal plan, the notions of unfair procedure, defamation, insult, slander, are little effective ways so that a surgeon can turn around a patient who launched him in a judicial process in .The surgeon confronted with the questioning of his responsibility but also **his honor** and his skill can present during his implication in a judicial procedure risk of suffering which contributes to the development of a burnout.

Conclusions (1)

1° There are no effective ways on the civil or penal plan for a surgeon to lodge a complaint against a patient who would have pulled him in a process involving his responsibility on the professional level.

Conclusions (2)

2° The resident was never worried by the justice of , and he was not involved in the legal proceedings.

3° The Professor Y. was never helped by the administration of the university hospital

Conclusions (3)

4° The surgeon always develops psychological processes which go against the empathy **and contribute to its professional exhaustion and burnout.**

Thank you for paying your attention...