Proof of patient information: Analysis of 201 judicial decisions

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Résumé en anglais	INTRODUCTION: The ruling by the French Court of Cassation dated February 25, 1997 obliged doctors to provide proof of the information given to patients, reversing more than half a century of case law. In October 1997, it was specified that such evidence could be provided by "all means", including presumption. No hierarchy in respect of means of proof has been defined by case law or legislation. The present study analyzed judicial decisions with a view to determining the means of proof liable to carry the most weight in a suit for failure to provide due patient information. MATERIAL AND METHOD: A retrospective qualitative study was conducted for the period from January 2010 to December 2015, by a search on the LexisNexis JurisClasseur website. Two hundred and one judicial decisions relating to failure to provide due patient information were selected and analyzed to study the characteristics of the practitioners involved, the content of the information at issue and the means of proof provided. The resulting cohort of practitioners was compared with the medical demographic atlas of the French Order of Medicine, considered as exhaustive. RESULTS: Two hundred and one practitioners were investigated for failure to provide information: 45 medical practitioners (22±3%), and 156 surgeons (78±3%) including 45 orthopedic surgeons (29±3.6% of surgeons). Hundred and ninety-three were private sector (96±1.3%) and 8 public sector (4±1.3%). Hundred and one surgeons (65±3.8% of surgeons), and 26 medical practitioners (58±7.4%) were convicted. Twenty-five of the 45 orthopedic surgeons were convicted (55±7.5%). There was no significant difference in conviction rates between surgeons and medical practitioners: odds ratio, 1.339916; 95% CI [0.6393982; 2.7753764] (Chi test: p=0.49). Ninety-two practitioners based their defense on a single means of proof, and 74 of these were convicted (80±4.2%). Forty practitioners based their defense on several means of proof, and 16 of these were convicted (40±7.8%). There was a significant difference in conviction rate according to reliance on single or multiple evidence of delivery of information: odds ratio, 0.165; 95% CI [0.07; 0.4] (Chi test: p=1.1×10). DISCUSSION: This study shows that surgeons, and orthopedic surgeons in particular, are more at risk of being investigated for failure to provide due patient information (D=-0.65 [-0.7; -0.6]). They are not, however, more at risk of conviction (p=0.49). Being in private practice also appeared to be a risk factor for conviction of failure to provide due information. Offering several rather than a single means of proof of delivery of information significantly reduces the risk of conviction (p=1.1×10). LEVEL OF EVIDENCE: Level IV: Retrospective study.
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