

No 501956

FRENCH REPUBLIC

Ms B...

ON BEHALF OF THE FRENCH PEOPLE

Ms Yacine Seck
Reporting Judge (Rapporteure)

The Conseil d'État, ruling as the Supreme Administrative
Court
(Litigation Section, 4th and 1st Chambers combined)

Mr Jean-François de Montgolfier
Consultant Judge (Rapporteur public)

Based on the report of the 4th Chamber
of the Litigation Section

Session of 6 February 2026
Decision of 27 February 2026

Having regard to the following proceedings:

Ms A... B... lodged a complaint against Ms C... D... with the Seine-Saint-Denis Departmental Council of the French Medical Association (*Ordre des médecins*), which referred the complaint – without endorsing it – to the Ile-de-France Disciplinary Chamber of First Instance of the French Medical Association. By a decision of 30 October 2019, the Disciplinary Chamber of First Instance dismissed her complaint.

By an second-instance decision dated 6 August 2020, the President of the National Disciplinary Chamber of the French Medical Association dismissed the appeal lodged by Ms B... against that decision.

By a decision of 20 December 2022, the Conseil d'État, ruling on an administrative claim, quashed this order and remitted the case to the National Disciplinary Chamber of the French Medical Association.

By a second-instance decision of 3 April 2024, the National Disciplinary Chamber of the French Medical Association dismissed the appeal brought by Ms B... against the decision of 30 October 2019 of the Ile-de-France Disciplinary Chamber of First Instance of the French Medical Association.

By a short-form appeal and a supplementary statement of case, registered on 26 February and 25 May 2025 with the Litigation Secretariat of the Conseil d'État, Ms B... requested that the Conseil d'État:

(1) quash this decision;

(2) ruling directly on the merits of the case, uphold her appeal;

(3) order Ms D... to pay the sum of €3,500 to SCP Buk Lament-Robillot, her counsel, pursuant to Article L. 761-1 of the French Code of Administrative Justice and Article 37 of the Law of 10 July 1991.

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Having regard to the other evidence adduced;

Having regard to:

- the French Social Action and Family Code;
- the French Public Health Code;
- French Law no 91-647 of 10 July 1991;
- the French Code of Administrative Justice;

Having heard, in open court:

- the report by Ms Yacine Seck, First-Level Member of the Conseil d'État,
- the legal opinion of Mr Jean-François de Montgolfier, Consultant Judge;

SCP Buk Lament-Robillot, counsel for Ms B..., and SARL Matuchansky, Poupot, Valdelièvre, Rameix, counsel for the National Council of the French Order of Physicians, having addressed the court after the legal opinions;

Whereas:

1. The evidence submitted to the lower courts shows that, on 28 June 2017, Ms B..., a recipient of State Medical Assistance (aide médicale de l'État), accompanied her daughter to the surgery of Ms D..., a specialist doctor qualified in ophthalmology, who refused to carry out the requested consultation. By a decision dated 30 October 2019, the Ile-de-France Disciplinary Chamber of First Instance of the French Medical Association dismissed Ms B...'s complaint against Ms D.... Ms B... lodged an appeal against the decision of 3 April 2024 by which the National Disciplinary Chamber of the French Medical Association dismissed her appeal against that decision.

2. On the one hand, under Article L. 251-1 of the Social Action and Family Code, in the version applicable to the dispute: *“Any foreign national who has been residing in France continuously for more than three months, without meeting the lawful residence status requirement set out in Article L. 160-1 of the French Social Security Code, and whose resources do not exceed the ceiling specified in Article L. 861-1 of that Code, is entitled to State Medical*

Assistance for themselves and for: / 1° The persons referred to in points 1° and 2° of Article L. 161-1 of the Social Security Code (...), i.e., in particular, dependent minor children. Article 251-2 of this same Code provides as follows: *“Coverage, including exemption from advance payments of costs for the portion not covered by the beneficiary’s contribution, applies to: / 1° The costs defined in points 1° and 2° of Article L. 160-8 of the Social Security Code (...)*”, including the costs of general and specialist medical care.

3. On the other hand, under Article L. 1110-3 of the French Public Health Code: *“No person may be subjected to discrimination in access to prevention or to care. / Healthcare professionals may not refuse to treat a person (...) on the ground that he or she is a beneficiary (...) of the assistance provided for in Article L. 251-1 of the Social Action and Families Code [that is, State Medical Assistance]. (...) / Except in cases of emergency and where healthcare professionals would otherwise fail in their duties of humanity, the principle set out in the first paragraph of this article does not preclude a refusal of care based on an essential and decisive personal or professional requirement relating to the quality, safety or effectiveness of care. Continuity of care must be ensured in all circumstances, in accordance with the conditions laid down in Article L. 6315-1 of this Code (...).”* Article R. 4127-7 of this same Code provides that: *“Doctors must listen to, examine, advise or treat all people with the same conscientiousness, regardless of their origin, morals and family circumstances, their membership or non-membership of a particular ethnicity, nation or religion, their disability or state of health, their reputation, or the feelings they may have towards them. / They must assist them in all circumstances (...).”* Article R. 4127-47 of this same Code provides that: *“Whatever the circumstances, continuity of care for patients must be ensured. / Except in an emergency or where they would be failing in their duty of humanity, doctors have the right to refuse to provide treatment on professional or personal grounds (...).”*

4. It follows from the provisions referred to in points 2 and 3 that healthcare professionals may not, without breaching their ethical obligations, refuse to treat a person on the grounds that he or she is a recipient of State Medical Assistance. In this respect, doctors cannot justify such a refusal on the grounds that they do not have the treatment forms required, under the current administrative arrangements, to obtain reimbursement for the consultation provided without advance payment of costs. The fact that the doctor referred the person concerned to a colleague or a hospital, and that that person’s condition did not require urgent care, does not exempt the doctor from the prohibition on refusing to provide care for a discriminatory reason.

5. As is clear from the terms of the challenged decision, Ms D...’s refusal to carry out the requested consultation was based on the fact that she did not have the relevant treatment forms, without which she could not obtain reimbursement for the consultation of patients in Ms B...’s administrative situation. It follows from what has been stated previously that, in ruling that Ms D... could not be regarded as having committed a discriminatory refusal of care constituting a breach of her ethical obligations by invoking such a ground, and in basing that finding in particular on the dual circumstance that the practitioner had agreed to carry out, free of charge, a brief clinical examination of the child, which had enabled her to rule out the need for urgent treatment, and that she had referred the child to the ophthalmological emergency department of a hospital, the National Disciplinary Chamber of the Order of Physicians incorrectly characterised the facts of the case.

6. It follows from the foregoing that, without it being necessary to rule on the other grounds of her notice of appeal, Ms B... is entitled to seek the quashing of the second-instance decision that she is challenging.

7. The second paragraph of Article L. 821-2 of the French Code of Administrative Justice provides as follows: “*Where the case is the subject of a second notice of appeal against a second-instance decision, the Conseil d’État shall hand down a final ruling on the matter.*” As the Conseil d’État is, in this case, hearing a second notice of appeal to the Cour de Cassation, it is incumbent upon it to rule directly on the case, without referring it back.

8. As stated in point 5, by refusing to carry out the consultation for Mrs B’s child, a beneficiary of State Medical Assistance, on the ground that she did not have in her possession the treatment forms without which she could not obtain financial coverage for this consultation under her social security scheme, Ms D... disregarded the provisions of Articles L. 1110-3 and R. 4127-7 of the French Public Health Code.

9. The breach referred to in the previous point warrants the taking of disciplinary action. Having regard, on the one hand, to its seriousness, but, on the other hand, to its isolated character, given that it is not established that Ms D... would systematically or even habitually refuse to provide care to patients who are beneficiaries of State Medical Assistance, and to the absence of any disciplinary record on her part, it is appropriate to impose the sanction of a reprimand on Ms D....

10. Accordingly, Ms B... is entitled to argue that the Disciplinary Chamber of First Instance was wrong to dismiss her complaint.

11. Under the circumstances of this case, there is no reason to accede to the submissions made under Article 37 of the French Law of 10 July 1991.

OPERATIVE PROVISIONS:

Article 1: The second-instance decision of 3 April 2024 of the National Disciplinary Chamber of the French Medical Association is quashed.

Article 2: The decision of 30 October 2019 of the Ile-de-France Disciplinary Chamber of First Instance of the French Medical Association is quashed.

Article 3: A reprimand is imposed on Ms D....

Article 4: The submissions made under Article 37 of the Law of 10 July 1991 are dismissed.

Article 5: Ms A... B... and Ms C... D... shall be notified of this decision.
A copy thereof shall be sent to the National Council of the French French Medical Association.