

# Convention on Health Analysis and Management

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### **Lawsuits: business or compensation?**

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Have lawsuits become a business? The judicialization of healthcare is a growing phenomenon. In the United States, court proceedings are conducted in business mode. In France, ONIAM (the national office for the compensation of medical accidents) compensates patients, then turns to the offending healthcare institution to obtain a remedy. The Law of January 26, 2016 introduced a legal framework for class action that may give rise to the multiplication of mass litigation. That being said, the true impacts of this law are as yet unknown.

#### **1. The role of legal experts**

Since judges are not competent to rule on the grounds of a case, they rely on legal experts. To attract the best legal experts, and therefore the best doctors, the justice system attempts to promote the status of this function and has managed to amass a respectable pool of qualified practitioners.

#### **2. The lawyer's role**

A patient having suffered harm must be aided by a lawyer, even in a friendly settlement. Without this support, the patient is very likely to receive insufficient compensation, or even possibly none at all. In France, compensation is the acknowledgement of and remedy for harm. An agreement is reached between the victim and the lawyer which may involve, on top of a flat fee, a success fee. This aspect must be carefully considered. The success fee must match the complexity of the lawsuit while remaining reasonable and compatible with ethical principles.

#### **3. The American model: pure business**

In the United States, lawyers do not hesitate to showcase themselves in advertisements to convince patients having suffered harm to seek them out. This system is 100% commercial and their methods are pure business. For this reason, lawyers prefer lawsuits with the potential to give rise to large compensation amounts.

#### **4. The French model: friendly settlement without assigning blame**

In France, ONIAM operates according to a model which allows for compensation without requiring a practitioner or healthcare facility to be found at fault. This friendly settlement system allows compensation to be obtained while avoiding a lawsuit. The national solidarity fund is drawn on to compensate incidents where no party is to blame. The friendly settlement system is relatively quick and easy, which allows the patient to avoid a long, stressful ordeal.



The victim can still be aided by a lawyer or an association. Finally, even if patients do not wish to obtain the punishment of an offending party, they want an explanation for the incident.

## **5. The class actions made possible by the Law of January 26, 2016**

The French Law of January 26, 2016 introduces a framework for class actions. This mechanism has nothing to do with class actions in the United States; indeed, the legislator has attempted to guard against the abuses seen across the Atlantic. Nevertheless, class actions could be disadvantageous to victims insofar as they require the identification of an error (which the manufacturer or healthcare facility may attempt to hide) or defect (which should never have been allowed to be put to market). This legal principle predates the class action and is not called into question. If a class action demonstrates that an error was committed, it does not necessarily permit a connection to be established between the error and the harm caused to each individual patient in the group. Beyond the group effect, literally speaking, this mechanism does not seem likely to streamline legal procedures.