

Legal Status and Consequences of Physician-Disseminated Misinformation: A Comparative Study

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Research Question: How do the American and French legal systems differ in their approach to sanctioning or protecting physicians who publicly disseminate medical misinformation in balancing free speech and public health?

BACKGROUND

In March 2020, the World Health Organization declared that not only are we facing a pandemic, but an infodemic characterized by an overabundance of information, both true and false¹. While many people turn to physicians for answers in times of health crises, physicians throughout the world have been implicated in the spread of misinformation and disinformation, but depending on legal, social, and cultural contexts may be subject to sanctions or protection under free speech.

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The *Comité consultatif national d'éthique* (National Consulting Committee on Ethics or CCNE) is a 45-member committee charged with providing opinions on ethics and social questions in the fields of biology, medicine, and health. Founded in 1983, the CCNE is the first ethics committee of its type in the world. The CCNE gives opinions to the government, non-profit organizations, educational institutions, and the general public. Its opinions are not binding but may be incorporated when the Law on Bioethics is updated every five to seven years.

TABLES

	UNITED STATES	FRANCE
Examples of Physicians	America's Frontline Doctors, Robert Malone, Joseph Mercola, Sherri Tenpenny, Jack Wolfson, Thomas Cowan, Mehmet Oz	Dider Raoult, Christian Perronne, Henri Joyeux,
Example of (Vaccine) Misinformation	MMR → autism	Hep B → multiple sclerosis HPV → nervous system disorders
Governance and Principles	Case law: First Amendment	Civil law system: <i>Liberté d'expression</i>
Legal Precedent	<ul style="list-style-type: none"> SCOTUS cases: <i>Jacobson v. Massachusetts</i>, <i>Planned Parenthood v. Casey</i>, <i>NIFLA v. Becerra</i>, <i>United States v. Alvarez</i> Circuit court cases: <i>Conant v. Walters</i>, <i>Pickup v. Brown</i>, <i>King v. Governor of New Jersey</i>, <i>Wollschlaeger v. Governor of Florida</i>, <i>Planned Parenthood v. Rounds</i> 	<ul style="list-style-type: none"> Law of 1881 on Freedom of the Press (including Gayssot's Law) Law No. 2018-1202 on the Fight Against Manipulation of Misinformation Law No. 2017-347 (on misleading dissuasive abortion misinformation) <i>Code de déontologie médicale</i>
Actions	<ul style="list-style-type: none"> Highly variable based on state Multiple state medical boards have adopted a statement suggesting physicians who spread misinformation are subject to license revocation, though few have taken action to date^{2,3} Other states have attempted to protect such speech^{4,5} Certification boards are another means of curbing misinformation⁶ 	Multiple physicians have had their licenses revoked or have been otherwise disciplined for violating certain articles of the <i>Code de déontologie médicale</i> ^{8, 9, 10}

Table 1. Overview of the United States vs. France for relevant questions

METHODS

The project took the form of a review of the literature, including case law and legislation. Search terms included “medical misinformation,” “first amendment AND medical misinformation”, “physician speech,” and similar corresponding terms in French. Following a review of the academic legal literature, applicable court cases and laws were reviewed to determine exact language used. The role of licensing and certification and potential other pathways for limiting speech were explored, as well as the public health implications.

Both countries are facing a crisis of medical misinformation. However, French law is overall better adapted to sanctioning physicians who spread medical misinformation outside the clinic.

DISCUSSION

In both countries, medical misinformation disseminated by physicians have led to public health consequences including extended disease outbreak. In the United States, the First Amendment largely protects freedom of speech for physicians spreading medical misinformation outside the clinic, although certain states medical boards have adopted a statement from the Federation of State Medical Boards condemning such actions. In France, multiple physicians have already been sanctioned under articles of the *Code de déontologie médicale*; Article 13 is particularly well-suited to this goal as it requires that data be confirmed and conveyed with prudence for potential consequences¹¹. However, medical misinformation remains a problem and next steps should focus on how to best combat this issue in both countries.

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