

## Error and Fault

**Speakers:** **Éric CHENUT**, President, Mutualité Française | France; **Jean-Pierre THIERRY**, Senior Medical Advisor, France Assos Santé | France; **Audrey UZEL**, Lawyer, KOS Avocats | France; **Éric VIBERT**, Liver Surgeon – Chairman of BOPA, Hôpital Paul Brousse - AP-HP | France

**Led by:** **Didier BAZZOCCHI**, President, Aetas

### What is the difference between “error” and “fault”?

Error implies the idea of making a mistake once while fault implies that the error did not occur only once and could therefore have been avoided. Error stands within common law whereas fault is a legal term that can lead to a court decision. There is no exact definition of fault according to case law and therefore the responsibility falls to the judge to define the fault. Fault is defined as a failure to comply with a rule that has been set. To distinguish error from fault, the judges will rely on available data (existing protocols, scientific data, ...) and check that healthcare professionals did not breach the rules leading them to commit a fault. In the field of health, the issue of fault as far as diagnosis is concerned is a problem. Can we consider that a doctor making a false diagnosis is committing a fault? In such cases, jurisprudence is rather favourable to physicians: clinical symptoms presented by patients do not always allow for a clear diagnosis to be made.

### Beyond the legal aspects, trust between health professionals and patients seems necessary

The patient/carer relationship is based on mutual trust. The generalisation of medical information is a valuable means to inform the population. Nevertheless, this transmission of knowledge needs to be supervised in order to prevent misunderstandings (e.g. by confusing information and opinion). To address this issue, it is necessary to reflect on how to effectively disseminate scientific knowledge in order to build a solid and sustainable patient/carer relationship. Additionally, communication enables the physician to understand patient's concerns and vice-versa.

### How to make progress on medical hazard?

According to the World Health Organisation (WHO), preventable serious adverse medical events are between the 3rd and the 10th mortality cause in terms of epidemiology. These events are the consequence of a succession of errors among which the most preventable is medication error.

A reduction in medical errors can be achieved in a qualitative way through improvement of interactions between the practitioner and the patient. Generally, practitioners do not communicate enough with patients. Patients gain reassurance by being informed of his/her care pathway. The precautionary principle also needs to be invoked: there can be hazards without faults as medicine is not an exact science.

Therapeutic hazard was introduced as a legal basis for compensation for a patient's loss in the absence of identifiable fault. However, its definition has to be examined, taking into account that the key point lies in the decision-making process: have we made an error or not?

In case of an unprecedented situation, a bad decision can be qualified as an error but if that error is being made in similar situations, it can be qualified as a fault. On top of this, there is a distinction between preventive and curative actions. Curative action aims at providing compensation to the patient for a justified damage. Compensation is difficult to evaluate in France.

### The reduction of medical errors through digital assistance and improved patient-carer communication

The Chair in Augmented Operating Room Innovation (BOPA) has been created to improve patient safety in the operating room. It relies on the conceptualisation of information transmission and the decision-making process in operating room. Surgical reports (traditionally drafted by Surgeons) can be replaced by information derived

from technology recording all aspects of the operation. The challenge consists in getting surgeons to accept the use of this technology without compromising their surgical flair. These tools are also helping the decision-making process: in the case of an unprecedented event, the surgeons can rely on digital support or surgical expertise through telemedicine.