

## LEGAL UPDATE

### **Criticism of mandatory coronavirus vaccine and compliance with the medical standard: incompatible?**

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The amount of astonishing case law directly related to coronavirus politics is gradually increasing. The best known example is the interim relief judgment regarding the curfew (which was subsequently [set aside](#) on appeal). But even in a GP practice, emotions surrounding the coronavirus can run so high that the matter has to go to court, as evidenced by a recent [judgment](#) that was handed down by the District Court of the Northern Netherlands. In that case, the dispute was about whether the political views of a GP's spouse could affect that GP's medical performance. In other words: did the court find that political views play a role in proper professional practice?

#### **The history**

A male GP and a female GP ran a practice in the north of the Netherlands on the basis of a partnership agreement. In the spring of 2020, the female GP's spouse made some bold assertions on YouTube, for instance that the government was aiming for 200,000 coronavirus deaths and as much chaos as possible. According to the District Court, he also believed that coronavirus was a perfect reason to destroy small to medium-sized enterprises, but also to do away with 'expensive' elderly patients and make vast profits for the pharmaceutical industry. The local daily *Dagblad van het Noorden* covered this vlog and it ruffled some feathers among the GP practice's staff. The male GP was also put out and asked his partner to publicly distance herself from her husband's views. The fact was that he found the content of the statements inappropriate because they "were diametrically opposed to the nationally agreed policy [...] and were highly insulting to anyone fighting the crisis." His colleague refused, however. She took the view that she was not responsible for her husband's statements in his capacity as philosopher-cum-journalist and that they had nothing to do with her professional situation. That led to discussions and lawyer's letters, with tensions running high, but to no avail. The male GP let his colleague and staff know that he wanted to terminate the partnership.

#### **Politics in the courtroom**

The female GP rejected her partner's proposal to take over her goodwill and to terminate the joint lease of the practice premises. The male GP then applied to the Interim Relief Court, claiming interim relief denying his colleague access to the practice premises. Alternatively, he asked for his colleague to be ordered to refrain from contacting the staff and patients of the practice. The court interpreted his claims as an immediate termination of the partnership, based on his submission that he no longer had faith in his partner applying the medical standards, because she had refused to state her position on them or "her position in the social debate." The fact was that the female GP had also made critical statements about possible mandatory vaccination. But the court did not see the connection between political views and medical professionalism. Admittedly, the partnership agreement stipulated that both partners act in accordance with the professional standards of *inter alia* the Royal Dutch Medical Association (KNMG) and the National Association of General Practitioners (LHV) and that non-compliance was a ground for termination, but the court did not deem it proven that the female GP was not adhering to those standards. At the court hearing, she declared her adherence to the standards and that she would not advise her patients against getting a vaccination. The claims were therefore dismissed.

#### **Medical performance versus partnership performance**

What is striking about this case is that the claimant tried to obtain a ruling about his partner's medical merits on political grounds. The court found, however, that he had failed to submit objective evidence that she no longer held a medically sound position due to her political views. It would be very interesting

to know whether the judgment would have been different if the claim had not been based on the defendant's alleged medical underperformance but rather on the potential consequences of her political views on the partnership's economic performance. After all, it is not inconceivable that patients would give a wide berth to a doctor who refuses to distance herself from her husband's political statements (or who has her own explicit views). If documents had been filed to substantiate this, e.g. ones showing that patients were leaving the practice, it could well have served as a ground for contractual termination which the court might have agreed with. The claimant did not rely on Article 7a:1684 of the Dutch Civil Code either, which allows the court to terminate a partnership for serious cause. The apparent irreparable breach of trust that had occurred between the two GPs would undoubtedly have constituted serious cause. But the claimant was forced to climb down because the court refused to link purely political ideas to the question of whether a doctor is still applying sound medical practices.

Does this judgment serve as a licence for doctors to speak up about such a loaded topic as coronavirus policy in their consulting rooms? Further 'coronavirus case law' may well show us. It is prudent, in any event, to disentangle heated political emotions from legal positions that prove to be successful (or not) in court.

This is a Legal Update by Roland Bertens.

For more information, please contact:

Roland Bertens  
+31 30 25 95 553  
[rolandbertens@vbk.nl](mailto:rolandbertens@vbk.nl)