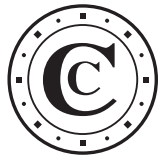
Cour des comptes



ENTITIES AND PUBLIC POLICIES

THE ORDER OF PHYSICIANS

Thematic public report

Summary

december 2019

DISCLAIMER

This summary is intended to facilitate the reading and use of the report of the Cour des comptes.

Only the response of the Prime Minister is provided at the end of the report.

Summary

Introduction

The Order of Physicians is a private body entrusted with a public service mission. It was created in 1945 by an ordinance which, breaking with the organisation of the medical profession introduced by the Vichy regime, laid down the principle that it is the trade unions' responsibility to defend professional interests and the Order's to ensure the profession's discipline. Unlike trade unions, membership of the Order is compulsory, as is payment of the membership fee (the unit amount is €335 in 2019). With over 300,000 doctors registered, the Order has an annual budget of around €85 million.

Its role is to ensure compliance with the principles of morality, probity, competence and dedication essential to the practice of medicine, and physicians' observance of their code of ethics established by decree.

The Order of Physicians' *Départemental* Councils are responsible in particular for registration on the roll (i.e. on the list of physicians authorised to practice) and organisation of compulsory conciliations when a complaint is lodged against a physician before the Order. Its Regional Councils, which were created 11 years ago, house the disciplinary chambers of first instance (CDPIs) and are the Regional Health Agencies' privileged interlocutors.

Despite an audit by the General Inspectorate of Social Affairs (IGAS) in 2000, an audit by the Cour des Comptes in 2011 and an audit by the Mission for the Inspection of Administrative Courts (MIJA) in 2013, the Order of Physicians only made a few of the changes recommended to it: its management remains characterised by worrying weaknesses, even excesses, its operation has not been sufficiently modernised, important missions justifying its existence are poorly carried out when they are carried out at all, and the National Council only exercises only tenuous control over *Départemental* and Regional Councils. Nonetheless, a good many of the Order's Councillors try to carry out their missions as best they can.

The audit carried out by the Cour des Comptes in 2018 concerned the National Council of the Order of Physicians (CNOM) along with 46 of its 101 *Départemental* Councils (CDOMs), 21 of which were subject to onsite audits and 8 to in-depth audits of documents, and all its Regional councils (CROMs), 9 of which were subject to onsite audits. In 2019, the Court's findings led the Order of Physicians to implement some of the recommendations made following the audit and announce corrective measures.

An Order sociologically unrepresentative of the active medical profession, closed governance

The operation and organisation of healthcare professions' Orders underwent major changes with the 2017 Ordinances, which largely adopted the recommendations made by the Court following it audit of the Order of Dental Surgeons.

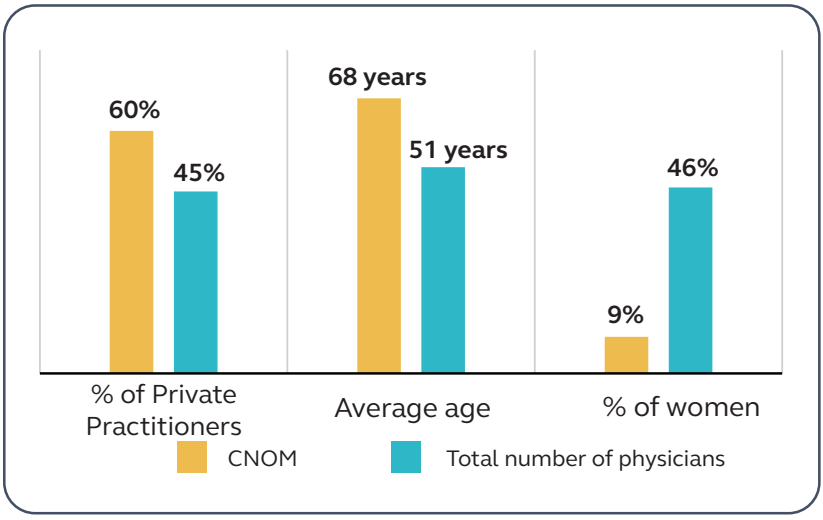
In particular, the Ordinance of 27April 2017 amended procedures for election of Councillors at all levels, in order to achieve parity between men and women through a single-round ballot based on candidacies from parity pairs. However, parity at all territorial levels will not be achieved within the Order of Physicians before 2022, once half of all Councillors have been renewed. Unlike the Order of Physiotherapists, for example, the Order chose not to renew all its bodies at the time of the first elections following the Ordinance's entry into force.

The slow implementation of these new provisions is reflected in its composition and the low turnover of elected officials, who are hardly representative of the medical profession. The Order has 3,311 Councillors in all, but less than a third of them are women (and only 9% at the CNOM), although they account for almost half of the medical profession and almost 60% of physicians newly registered with the Order[1]. The average age of the National Council's members is 68, as against 51 for active physicians. The abstention rate at the Order's elections (75%) is high and accumulations of mandates frequent.

[1] *Studies and Results* No. 1061, May 2018, DREES.

An Order sociologically unrepresentative of the active medical profession, closed governance

Share of private practitioners, average age and share of women among the CNOM's Councillors and the medical profession



Source: Cour de Comptes, according to CNOM and DREES

Councillors' duties are voluntary but can nevertheless be compensated up to three times the social security ceiling, i.e. €121,572 per year[2].

The spirit of volunteerism supposed to infuse such duties is unevenly present: while some Councillors receive modest compensation, others enjoy very comfortable allowances[3], which may be supplemented by reimbursements of expenses whose justification the Court's investigations showed to be sometimes uncertain or even non-existent.

[2] *Studies and Results* No. 1061, May 2018, DREES.
[3] The sixteen members of the CNOM's Board received a total of over a million euros in compensation in 2017.

Evolution of the gross fixed monthly allowances of the main members of the CNOM's Board

	2011	2012	2013	2014 to 2018
Chairman	€9,582	€9,869	€10,048	€9,177
Secretary-General	€8,211	€8,211	€8,211	€8,211
Deputy Secretaries-General	€7,245	€7,245	€7,245	€7,245
Treasurer	€7,245	€7,245	€7,245	€7,245

Source: CNOM

In 2017, compensation (€10 million) and expenses (€4.1 million) accounted for 17%of the total annual budget for the Order as a whole. In the National Council's budget, communication expenditures and elected officials' compensation and expenses accounted for over a quarter of the expenditures incurred in 2017[4].

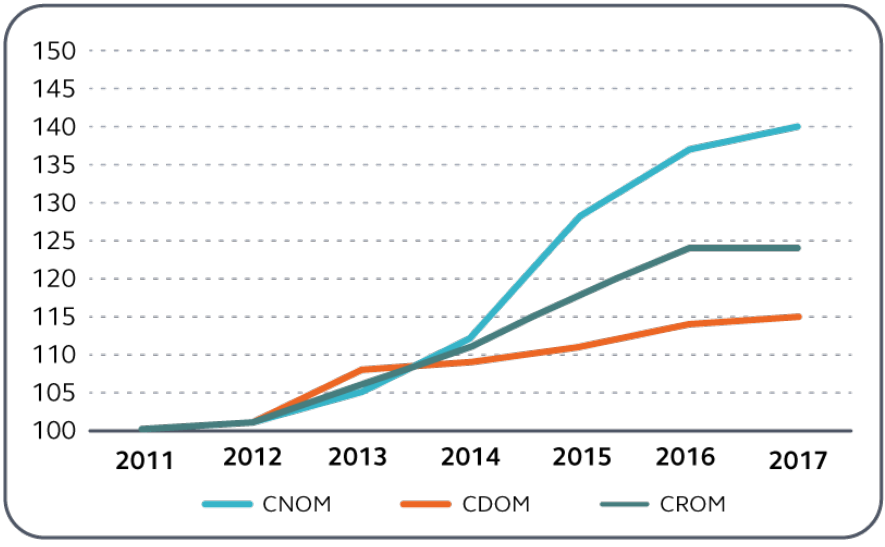
[4] Out of total charges of €29 million, exceptional items for the year (asset disposals and depreciation charges of €15.7 million) were deducted from total expenditures made (€44,788,734).

Major accounting and management problems

The Order's resources are mostly derived from the subscriptions paid by physicians. Each subscription is divided between *Départemental* Council, Regional Council and National Council.

The National Council's resources grew significantly faster than those of the Order: + 40% over the period compared to + 24% for the Order as a whole, due to a change in the subscription rates allocated to the various territorial levels.

Evolution of national, *départemental* and regional subscriptions received (base 100 in 2011)



Source: Cour des Comptes, based on CNOM data

The Order, which does not yet keep combined accounts[5], does not have an exhaustive knowledge of its resources, assets or reserves. With the exception of the National Council, no Council draws up a balance sheet or income statement in accordance with the standards of the general accounting plan. 33% of the *Départemental* Councils and 14% of the Regional

[5] They become mandatory as of financial year 2019.

Major accounting and management problems

Councils audited were unable to communicate all the accounting documents requested by the Court. Several *départements*' accounts had not been kept for several years and one of them had been destroyed before the Court's visit.

Physician's subscriptions are subject to irregular and incomplete accounting, reflecting on the honesty of the accounts audited. The annual accounts drawn up by the National Council only show the national share of subscriptions; subscriptions are recorded when they are received rather than when they requested, which is not in compliance with the principle of accrual accounting and results in underestimation of income; a fraction of the subscription is recorded directly in the reserves account on the balance sheet, without going through the profit and loss account, which reduces the amount of income from subscriptions by almost 7%.

As well as being incompletely listed, the assets recorded in the Order's accounts are undervalued, due in particular to the existence of some ten non-trading real-estate companies (SCIs) created, financed and held by *Départemental* Councils for the sole purpose of replacing the Order itself in ownership of the head office, whose value consequently does not appear in the Order's accounts. Accounting entries are often approximate and may be flawed or even deliberately distorted, as the Court sometimes noted.

Evolution of National Council resources

In thousands of euros	2011	2012	2013	2014	2015	2016	2017	2011-2017
Subscriptions	20,953	21,767	22,155	24,227	27,201	29,342	30,788	+47%
Financial products	49	111	163	1 420	173	315	140	+186%
Qualifications	111	129	122	116	209	161	138	+24%

Source: CNOM ledgers 2011-2017

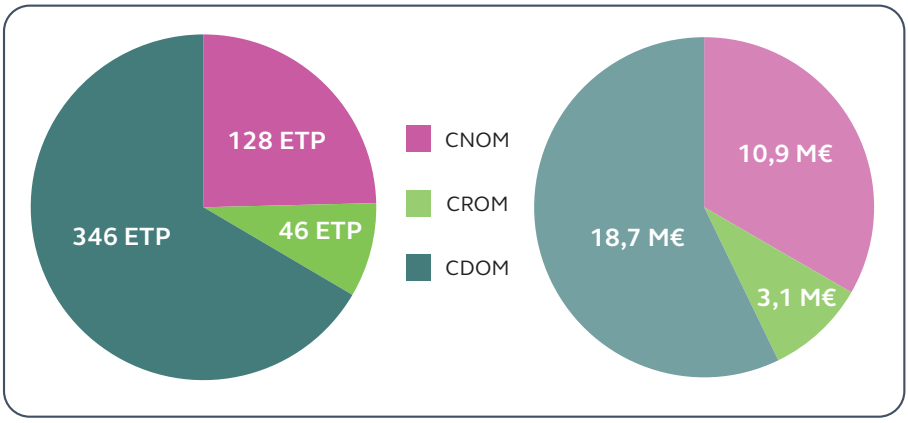
The National Council is failing in the task of monitoring territorial Councils and managing the Order's assets entrusted to it by the legislature. It does not have an internal control or risk management system. Deployment of the same accounting software at all levels of the Order, which the Court had already called for during the 2011 audit, had not yet been completed in 2018. Without a professional management control service, creation of which had nevertheless been recommended by the Court in 2011, the Order submits départements' accounts to a Control Committee composed of elected officials who are sometimes themselves responsible, for disorders and even irregularities at the local level.

In addition to costly purchases made without calls for tenders, such absence of control at *départemental* and national level alike, has led to condonement of frequent expenditures outside the Order's missions.

In 2018, the Order of Physicians had 583 employees (up by 10% in 7 years) representing 520 full-time equivalents (FTEs):128 work at the National Council, 346 in the *Départemental* Councils and 46 in the Regional Councils.

The average annual cost of an FTE is around €85,000 at the CNOM, €67,000 in the CROMs and €54,000 in the CDOMs.

Weight of CDOMs, CROMs and the CNOM in FTEs and staff costs



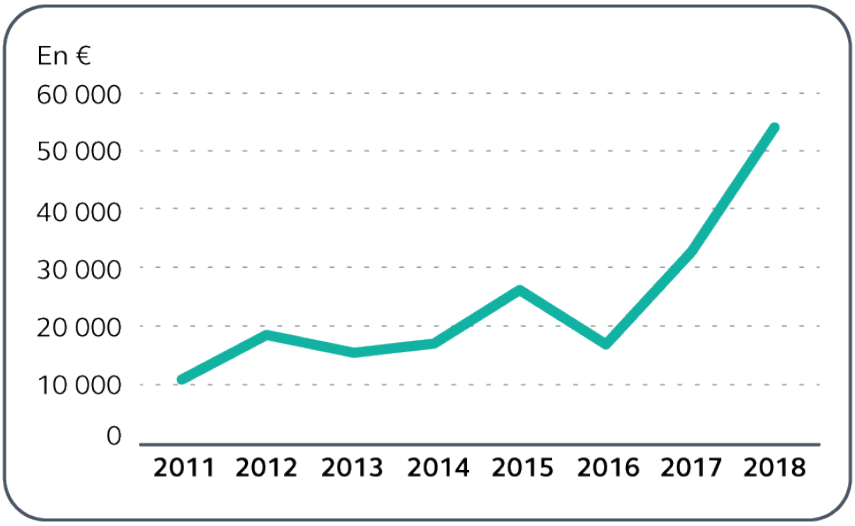
Source: Cour des Comptes, according to CNOM (2018 for FTEs and 2017 for payroll)

The National Council's Staff costs increased by 58% between 2011 and 2017. Its wage policy is particularly advantageous: salaries and bonuses are high.

On the other hand, in some *Départemental* Councils, remuneration may be lower than the CNOM's recommendations.

Major accounting and management problems

Evolution of CNOM bonuses between 2011 and 2018

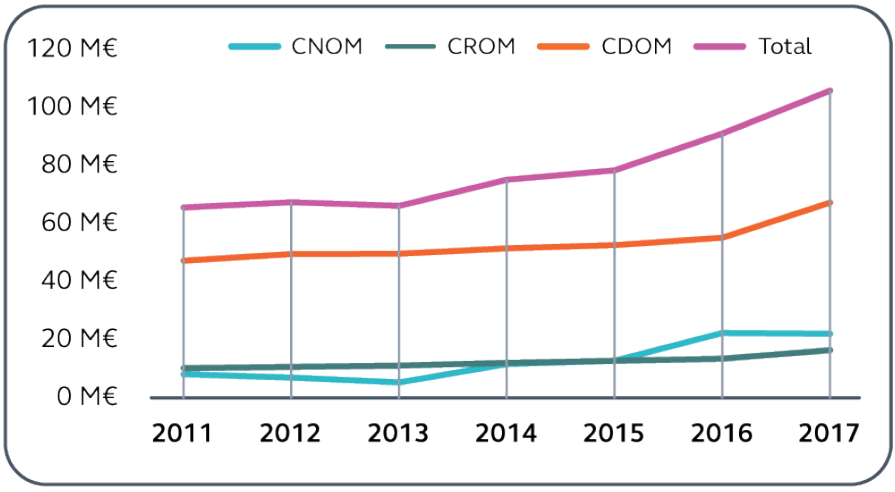


Source: CNOM, graph Cour des Comptes

LHuman resources management must be professionalised, given the wide disparities in pay and social benefits. An end must be put to recruitments based on family ties.

The Order has very large reserves (€152 million, including €106 million in liquid assets), representing almost two years of subscriptions from all physicians.

Evolution of the Order's liquid assets 2011-2017



Soure: Cour des Comptes according to CNOM data

The Order is characterised by a weak and partially opaque management of the funds entrusted to it by subscribing physicians, even though it is insufficiently involved in its most essential missions.

Administrative missions unequally carried out

Maintenance of the register (i.e. the list of doctors authorised to practice) is carried out by *Départemental* Councils under correct conditions but using tools that are now outdated. This is an essential mission as no one can practice as a physician unless he or she is registered with the Order. Likewise, recognition of qualifications[6] is closely monitored by the Order. The educational effort undertaken by the National Council – with publication of job descriptions on its website – is to be commended.

However, other important missions have serious shortcomings. The Order does not monitor practitioners' compliance with Continuing Professional Development (CPD) obligations. This mission, which aims to ensure the quality of care, has largely been lost sight of, by *Départemental* Councils and by the National Council alike.

Regional Councils' mission of detection of and provision of assistance to practitioners whose professional inadequacy or state of health makes the practice of medicine dangerous, suffers from approaches that vary too greatly from one Council to another. The regulatory framework is inadequate and must evolve.

Monitoring of physicians' compliance with the ethical rules of the profession, which is the Order's raison d'être, is not carried out satisfactorily: agreements that physicians conclude with the pharmaceutical industry, and which must be communicated to the Order's *Départemental* Councils, are not examined by the latter. Nor are they used for statistical or control purposes, while the cumulative amounts received by practitioners under the agreements they have concluded are not calculated and therefore never checked. For example, between 2016 and 2018, 82 agreements were signed for services provided by Professor X, a full-time head of department in a university hospital, for a total of €726,000 , while a pulmonologist participated in eleven international congresses, invited by companies specialising in respiratory medical devices. These examples underscore the problems arising from absence of any comprehensive picture of the advantages received by practitioners in order to assess risks of loss of independence incurred by physicians.

[6] Any physician listed on the register may compile a file requesting qualification as a specialist, which is examined by the Order's national qualification committees.

Administrative missions unequally carried out

As a result, up until 2018, the Order's monitoring of such agreements was largely ineffective, despite the National Council's strong public positions for a more demanding system. Since January 2019, the mission of monitoring agreements has been taken over by the National Council, which should ensure greater rigour and consistency in the processing of cases.

In addition, all contracts of any kind concluded by physicians, and whose communication to the Order for opinion is required by law, are examined by *Départemental* Councils in highly heterogeneous fashion. Most of the Order's *Départemental* Councils do not possess the necessary legal skills. Management of requests for replacement doctors, which must be submitted to the Order, is time-consuming and causes delays and must be simplified.

The National Council must issue precise directives to the various *Départemental* Councils in order to avoid any inequality of treatment between professionals.

Neglecting its core missions, the Order is also increasingly involved in defending the profession's interests, whereas the legislative rules that have governed its action since 1945 require it to ensure that physicians respect the profession's ethics, honour and independence, and prohibit it from interfering in trade unions' missions.

A lack of rigour in the handling of complaints and a faulty disciplinary system

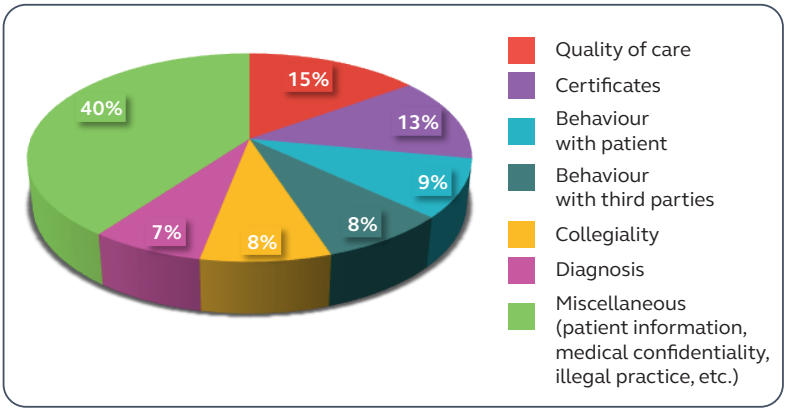
In order to ensure that all its members fulfil their professional duties as set out in the Code of Ethics[7] the Order has disciplinary powers (which do not, however, apply to physicians entrusted with public service missions, hospital physicians in particular), which it exercises via three distinct functions : the handling of complaints and alerts that it receives or may initiate, management of disciplinary chambers and social insurance sections (SASs), both of which are autonomous administrative courts and therefore subject to the Council of State's control[8].

[7] The medical code of ethics is drawn up by the National Council of the Order of Physicians, promulgated in the form of a Decree by the Council of State, and codified in Articles R. 4127-1 to R. 4127-112 of the Public Health Code.

[8] The former assess and sanction physicians' breaches of the Code of Ethics while the latter assess and sanction health-insurance abuses and fraud. The National Disciplinary Chamber (NDC) is the appeal court.

A lack of rigour in the handling of complaints and a faulty disciplinary system

Types of breaches examined by Disciplinary Chambers of first instance in 2017



Source: Cour des Comptes according to CNOM

The main breaches alleged against physicians relate to quality of care, bogus medical certificates and inappropriate behaviour with patients or third parties.

All three missions were audited by the General Inspectorate of Social Affairs (IGAS) in 2000[9], the Court in 2011 and the Council of State's Mission for the Inspection of Administrative Courts (MIJA) in 2013. The three reports note a measure of heterogeneity and occasional shortcomings in the handling of complaints addressed to *Départemental* Councils as well as in the quality of their communication to disciplinary chambers.

Almost twenty years after these initial observations, and despite media coverage of several proceedings in which the Order was called into question for delaying the conviction of offending physicians, the situation has hardly changed. The Order's courts' independence and impartiality are highly uncertain: absence of follow-up of complaints and their consequences at national level, *Départemental* Councils' unfounded distinction between "grievances" and complaints, which leads to the only a minority of patients' reports being communicated to disciplinary chambers, heterogeneous handling of disputes following *Départemental* Council meetings, lack of rigour in management of conflicts of interest on the part of physicians responsible for judging their peers, and breaches of impartiality all testify to the limitations of the Order's judicial activity, even though most of the disciplinary courts' assessor members try to carry out these missions responsibly.

These findings argue for adaptations that can better guarantee the independence and effectiveness of the Order's courts and patients' rights.

[9] Only the processing of disputes by the *Départemental* councils has been controlled.

Necessary structural changes

All the observations on performance of missions show that the patients' interests are often neglected. This is why it would seem useful to draw inspiration from French and foreign mechanisms that, through participation by users and independent individuals, guarantee better health democracy. By following the example of the United Kingdom's General Medical Council (GMC), which is governed by equal numbers of physicians and non-physicians, the Order of Physicians and patients alike would benefit from governance that is open to individuals from outside the medical world.

Other models that are more protective of patients

Country	General Medical Council - United Kingdom	Quebec College of Physicians (CMQ)	National Council of the Order of Physicians, Belgium	CNOM - France
Governance	➢ Joint governance	➢ Mixed governance	➢ Mixed governance	➢ Physician governance
Composition	Joint Council with 12 members: 6 physicians and 6 other appointed members	15-member Board of Directors: 11 physicians and 4 non-physician administrators	16-member National: 10 physicians (elected) and 6 university professors (appointed) The President of the Order is a judge at the Court of Cassation; the two Vice-Presidents are physicians	A National Council is made up of 56 members, all of them physicians elected by *départemental* councillors, plus a member appointed by the Academy of Medicine and a councillor appointed by the Minister of Justice.
Competency assessment	- Provisional registration valid for 3 years - Revalidation process every 5 years - Foreign physicians must work in "Approved Practical Settings" in order to be checked on a regular basis.	- Mandatory participation in 250 hours of training over 5 years - Annual declaration of participation - A specific administrative programme for pathological risks	ND	Absence of monitoring of updating of skills
Disciplinary proceedings	Independent joint body: the Medical Practitioners Tribunal Service - Only authorised to rule on professional incapacity, suspensions and strikings off - Decisions are published on its website	Independent Disciplinary Board of 3 members and auditors - President, lawyer appointed by the Government and two physicians appointed by the Board of Directors of the Quebec College of Physicians - Decisions on striking off published in the Quebec Official Gazette - All disciplinary decisions accessible on a dedicated website	Non-joint disciplinary chamber internal to the Order and not joint No obligation to publish decisions	Non-joint disciplinary chambers internal to the Order and not joint No obligation to publish decisions

Source: Cour des comptes

Necessary structural changes

The excesses observed with regard to allowances, expenses and management make it all the more necessary for the Order to adopt more rigorous management rules and acquire new skills.

The 2017 Ordinances are a first step in this direction, but they will not be enough to bring about the necessary change in the institution, to which the public authorities intended to entrust missions essential to the operation of our health system.

The many shortcomings noted in a significant number of its territorial councils audited leads to worrying conclusions vis-à-vis the Order's operation, management, and performance of the missions entrusted to it by law. There is evident poor management of physicians' subscriptions to the Order.

In its response, the National Council of the Order of Physicians undertook to remedy various of the shortcomings noted during the audit. The Court will check the effective implementation of the corrective measures announced during future audits.

Recommendations

1. Centralise issuance and accounting of calls for subscriptions at national level, for all subscriptions requested *(CNOM)*.

2. Manage the Order's liquid assets at national level (repeated) and use cash surpluses to reduce subscriptions *(CNOM)*.

3. Supervise and harmonise totals of compensation paid to elected officials and make their total public on an annual nominative basis. Adopt a clear framework applicable to all reimbursements of expenses and sanction any discrepancies *(CNOM)*.

4. Set up an internal control and management *control system (CNOM)*.

5. Set up a national system for monitoring and relaunching physicians' declarations of continuous professional development (CPD) (repeated) (*CNOM - Ministry of Health)*.

6. Allow partial practice by physicians suffering from disabilities or illness, as in the provisions applicable to physicians recognised as being professionally inadequate (*Ministry of Health)*.

7. Create a single portal to ensure consistency between the "Health Transparency Health" and «Anti-Gift» information systems (*Ministry of Health)*.

8. Make the fight against discrimination in access to healthcare one of the Order's priorities and provide the «refusal of care» committee with the necessary resources from the Order's budget *(CNOM)*.

9. Amend the Public Health Code to *(Ministry of Health)*:

- provide a legal framework for the handling of grievances»;

- make it mandatory to change venues for processing any reports concerning one of the Order's elected officials until such matters are referred to the disciplinary chamber of first instance;

- extend conciliation committees to third parties outside the Order to deal with complaints from users;

- allow patients to lodge complaints with the Order against any practitioner, regardless of his or her status, with the exception of physicians performing expert-assessment or supervisory missions.

10. Make it mandatory to publish nominative measure of striking-off and suspension from practice, for the duration of the sanction, in order to improve patients' safety *(Ministry of Health)*.

Recommendations

11. Consolidate all strategic decisions in the National Council, which would be the only body with legal personality *(Ministry of Health)*.

12. Involve physicians and non-physicians in the National Council's governance (qualified individuals, judges, representatives of patients' associations and academics in particular) appointed by a body independent of the Order, with a view to achieving parity *(Ministry of Health)*.

13. Limit the number of successive mandates within the same body to two (repeated) *(Ministry of Health)*.

14. Check the Order's elected officials' declarations of interest and publish them on the Order's councils' websites *(CNOM)*.

15. Review the Order's rules of procedure, making it mandatory to change venues for examination of contracts concluded by its elected officials, including those with industry *(CNOM)*.