

MEDICAL ERROR IN THE COURT OF JUSTICE OF THE STATE OF ACRE

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Abstract: Introduction: The increase in medical malpractice lawsuits has been growing epidemically. Several studies have shown this trend, most of them involving the South and Southeast regions. With this, it is essential to study the interdisciplinarity between medicine and law and the analysis of data referring to this issue throughout the Brazilian territory. **Goal:** To analyze the lawsuits involving medical errors in the Court of Justice of Acre, carrying out a survey of data on the subject of processes both in the civil and criminal spheres. **Method:** A keyword search was carried out in the jurisprudence area of the TJAC website with the term “medical error” without a date, with the deadline of 03/08/2017. **Result:** 22 judgments were found, 9 of which were excluded for different reasons and 13 remaining that respected the analysis criterion. The first case found with this theme was in 2007. The absolute majority (92.31%) refers to cases in the civil area. There was a predominance of cases involving the medical specialties Gynecology-Obstetrics and Orthopedics. Cases that had a doctor on the defendant’s side had lower conviction rates than those involving the State or hospitals. **Conclusion:** The physicians most exposed to medical error are the surgical specialties, probably due to the higher rate of complications associated with the procedure and the habit of synthesizing information in medical records. **Keywords:** Medical Law, Civil Liability, Medical Liability, Medicine, Law.

INTRODUCTION

Nowadays, an epidemic phenomenon of increase in lawsuits concerning the so-called medical error has been observed.^{16,22} Several seem to be the causes for this growth, highlighting: the lack of professional commitment, structural problems of our

health system, deterioration of the doctor-patient relationship, lack of continuing education, lack of working conditions, inadequate filling of medical records, patient abandonment, false guarantee of results and, finally, the lack of an informed consent form¹².

Medical error is described as the harm engendered in the patient by the doctor by his act of doing or not doing something, in the exercise of his profession, even if the intention to commit it is absent, configuring, by definition, in a professional conduct, inadequate due to non-compliance with a technical rule, that is: through incompetence, recklessness or negligence⁶.

The analysis of this transgression called medical error lacks, above all, considerations concerning several details, among which stand out: ethics, the repercussion in the media and the law¹³. This last item makes evident the importance of studying the interdisciplinarity between Medicine and Law¹⁴. Thus, the incorporation of human sciences in the field of health relativized the biological discourse focused only on diagnosis¹⁵.

Issues related to interdisciplinarity between Medicine and Law have already been studied in the Brazilian scenario^{1,4,9}, but still without expressiveness in the states of the North region, and there is no such study in Acre. In fact, there are no official government statistics on the total number of medical malpractice lawsuits in Brazil.¹² Therefore, the present study proposes to analyze the lawsuits involving medical errors in the Court of Justice of Acre (TJ-AC).

GOALS

GENERAL GOAL

To conduct a data collection on the subject of criminal proceedings involving doctors in the Court of Justice of Acre.

SPECIFIC OBJECTIVES

- 1) Establish the frequency of processes involving doctors in the TJ-AC;
- 2) Establish the quantitative difference between civil and criminal proceedings;
- 3) Check the frequency of convictions;
- 4) Check the crimes doctors are accused of;
- 5) Check the specialties in which the defendant acted in the case of the process;
- 6) Check which procedures and diagnoses are related to the case;
- 7) Evaluate the temporal distribution of demands;
- 8) Check who is in the passive pole of the demand (defendant).

METHODOLOGY

A keyword search was carried out in the jurisprudence area of the website of the Court of Justice of the State of Acre²¹ with the following search term “medical error”, without date determination. The search limit was 03/8/2017, the day on which the data were obtained. The fields {Medical Error} contained in the areas of moral and material damage of Civil Liability were selected as subject; {Medical error} contained in the area of moral and material damages due to medical error contained in the Management Liability; and {Criminal Law}.

The following fields were selected: 1. origin of the process: high school and appeal classes; 2. type of decision: Judgments.

The variables analyzed were:

1. Sphere (Civil or Criminal);
2. Specialty in which the defendant(s) was working;
3. Conviction in the first instance (Yes or No);
4. Year of share distribution;
5. Penalty type;
6. Passive pole in the civil process;

The data used were all public and available on the internet and did not involve research on human beings.

The authors declare no conflict of interest.

RESULTS

22 judgments were found. Of these, four were excluded because they were repeated. Two were not used because they were traffic crimes wrongly classified as medical errors and two because data were not available because they were legal secrecy. Finally, one was excluded because it dealt with the illegal practice of medicine.

There remained, therefore, 13 processes to analyze.

The first year in which we observed the distribution of processes on this topic was 2007, with one process. The rest of the temporal distribution occurred as follows: 2008 (2); 2009 (3); 2010 (1); 2012 (1); 2013 (3); 2014 (2).

Regarding the distribution between the civil and criminal spheres, we found, respectively, 12 (92.31%) cases in the first against only 1 (7.69%) in the second, dealing with the crime of homicide.

Regarding the passive pole of the demand, that is, who is processed, we found the following data in the total of processes: 7 (53.85%); 1 (7.69%) involved the State of Acre and the hospital; 2 (15.39%), Fundação Hospital do Acre (private legal entity providing public services); 1 (7.69%), the hospital; 3 (23.08%) only the physician.

Most cases resulted in convictions in the passive pole, 8 (61.54%) against only 5 (38.46%) acquittals, among which the aforementioned process in the criminal sphere is included. When we consider only cases involving doctors as defendants, that is, 3, being 2 in the civil sphere and 1 in the criminal sphere, 2 (66.67%) were acquitted in the first instance, against only 1 (33.33%)

being condemned. In the 6 cases that involved the state of Acre in the defendant's position, 5 (83.33%) were convicted in the first instance.

The value of 3 (23.08%) cases referred to clinical cases, against 10 (76.92%) surgical cases.

Among the specialties involved, only 1 (7.69%) case occurred in the clinical specialty, in a case of diagnosis of the wrong subtype of malaria. The remaining 12 (93.31%) specialties involved were eminently surgical, of which: 4 (30.77%) in gynecology-obstetrics (GO); 4 (30.77%) in orthopedics; 2 (15.38%) in plastic surgery, one of them in the criminal sphere; 1 (7.69%) in ophthalmology; 1 (7.69%) vascular surgeon.

Regarding the procedures involved, 1 (7.69%) involved liposuction; 4 (30.77%) childbirth; 1 (7.69%) clinical treatment of fungal keratitis that progressed to blindness; 1 (7.69%) surgery for amputation by crushing the leg to knee level; 1 (7.69%) application of polymethylmethacrylate on the right hemiface; 1 (7.69%) case of diagnosis of the wrong subtype of malaria; 4 (30.77%) orthopedic cases, of which: 1 (7.69%) fracture diagnosed as tendinitis; 1 (7.69%) placement of pins due to fracture in the tibia and fibula; 1 (7.69%) had no hip surgery and 1 (7.69%) had a knee fracture.

DISCUSSION

Firstly, we observed a large loss in the total number of processes. This is partially due to the error in the classification of processes in the system. Two cases that dealt with the theme of traffic crime had been wrongly classified as medical error. This data raises a question about the possibility of having processes classified in another area involving our theme. The repetition of processes is probably due to the fact that many resources are possible for the same process. Some data were also lost because we did not have

access because it was a legal secret. Data from the Court of Justice of Acre in 2016 showed a contingent of 68 judges, among these 56 judges and 12 judges; 18 counties, 3 chambers and 49 courts. Nevertheless, there is a congestion rate in the knowledge phase of 79.3% in the 1st grade and 47.8% in the 2nd grade.²⁰

As for the case excluded due to the illegal practice of medicine, we chose to exclude it because it is not a medical case or even an exclusive medical crime, since we cannot speak of medical error when dealing with a layman who, without conditions to do so, illegally practices this medicine. activity.

We emphasized that the small number of cases deals with the total universe of our research in this state. The estimated population of Acre for 2016, according to the IBGE⁸, it would be 816,687 inhabitants, with population density data in inhabitants per square km of 4.47. The fact that it is a sparsely populated state may be one of the data that justify this small number of processes in such a grandiose space of time.

We emphasized that most of the studies we found for purposes of comparison with the present do not deal with states in the North region.¹⁸ but the Northeast^{1,2,10}, South^{3,9} and southeast^{5,19}, as well as administrative proceedings within the scope of the Regional Councils of Medicine (CRMs) and not judicial proceedings.

Regarding the temporal distribution, we can say that the information that we did not find cases prior to 2007 in the Court of Justice of Acre, shows that the emergence of legal cases involving medical error is something relatively new. There is, therefore, a tendency towards the growth of processes involving this theme, an idea that is also shared by Udelsman²². However, the small number of processes makes a more refined statistical analysis difficult on the issue of temporality.

We emphasize that the 2nd instance research, the only one available on the website of several state courts, has as a limiting factor the delay in the judgment of appeals by the lengthy Brazilian judicial system, which is why the present study is a reflection of previous years and not a current photo. This may also explain the lack of judgment of appeals in cases after 2014, and there may be more recent medical malpractice cases, but which have not yet had appeals judged and, therefore, are not recognizable in the present research. There is, in our system, a great difficulty in carrying out research on the subject of medical error, as noted by Mendonça¹¹.

The data relating to acquittals, with a discreet majority convicted in the first instance, has a peculiarity, as we include cases in which there were hospitals and public administration entities in the passive pole. Thus, when we consider only cases involving doctors as defendants, that is, 3, being 2 in the civil sphere and 1 in the criminal sphere, 2 (66.67%) were acquitted in the first instance, against only 1 (33.33%) being condemned. Despite the small number, this data is similar to the percentage of convictions in ethical processes in the CRM of Bahia, in which only 23.9% of physicians were found guilty. Spina and Sá¹⁹ also found a percentage quite similar to ours in an analysis of lawsuits related to the area of Gynecology and Obstetrics at the São Paulo Court of Justice, with 63% of cases dismissed.

When we consider the lawsuits in which the State of Acre was the defendant in the lawsuit, the percentage of convictions exceeded 80 percent. This difference in the percentage of convictions probably occurs due to the Brazilian legal understanding in which the State responds objectively, that is, even if it is not exactly the culprit for the damage caused to the citizen, while

the doctor responds subjectively, or that is, he is only sentenced if it is proved that he acted with guilt¹⁷. As there is difficulty in interpreting whether there was guilt and as the understanding of the need for it is different depending on the defendant, this difference is justified. Garfinkel⁵ studied the civil liability cases in São Paulo and also highlighted the number of convictions against the São Paulo City Hall and raised the hypothesis of a higher error rate in the municipality, in addition to the questions related to the evidence already raised above.

The most demanded specialties were GO and orthopedics, followed by plastic surgery, all eminently surgical specialties. A study carried out in the CRM of Goiás⁴ found these same 3 specialties at the top of the complaints. The total number of clinical cases may seem inconsistent with the contingent of surgical specialties, but we consider that surgical specialties can also incur errors in clinical diagnoses. The phenomenon of increased cases involving obstetricians, known in several Brazilian studies^{1,2,4,9}, can also be observed nowadays in the international scenario, with reflections on the values of civil liability insurance⁷.

CONCLUSION

In our study, we showed that cases involving medical errors are still rare in Acre and that the few that exist refer to surgical procedures, probably due to the higher rate of complications associated with the procedure.

We emphasized the difficulty and selection bias inherent in the jurisprudential search method, which ends up showing only part of the problem due to the slowness of the Brazilian judicial system and the enormous demand for judgment of resources present in the legal system.

In view of the growing number of cases on this topic in the country, we suggest, based on

our findings, that the undergraduate course must be more focused on clinical-surgical practice, with more hours of supervised internships and more emphasis on correctly filling out the medical record, with the necessary rigor the concise documentation of the data. Also, avoid the practice of guarantees that do not depend only on good medical practice.

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