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JUDICIAL CLAIMS FOR MEDICAL ERROR AND ITS IMPACT ON THE MENTAL HEALTH OF PROFESSIONALS

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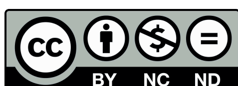

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Abstract: Judicial demands have increasingly become a concern in society, and the medical field is one of the areas that have suffered the most from this increase. This work aimed to review part of the available literature, inquiring, above all, what effects the physician sued for alleged malpractice may suffer, and, at the same time, seeking to elucidate the most affected specialties and the degree of success of litigation. It was found that the surgical areas receive more lawsuits, and that the percentage of convictions has dropped, despite the value of indemnities gradually rising. Whether or not they lose the lawsuits, the majority of physicians suffer psychic, organic and behavioral sequelae. The prospect of becoming the target of a lawsuit causes many professionals, even those not personally reached, to adopt defensive and evasive medicine practices, causing harmful repercussions on the costs of the health system and on patient care in general.
Keywords: Medical errors, malpractice, stress, demand.

INTRODUCTION

There is, in world society, an ever-growing tendency towards the judicialization of conflicts, perhaps a reflection of the decrease in tolerance for what, in other times, was attributed to destiny or considered a product of the will of a creator, perhaps a symptom of an era in which everyone sees themselves, rightly or wrongly, as holders of countless rights, lacking, however, anyone who offers to take the place of a subject obliged to the corresponding duties.

Especially with regard to doctors, the figure of the almost infallible professional, holder of exceptional wisdom and knowledge, has been replaced, in the popular imagination, by that of someone who, generally, is not very skilled and, not necessarily because of his personal capacity, but almost always by luck or indication, he participates in a team, in which he is a mere repeater of behaviors, not always the best ones, decided by more experienced people.

The opposite is also found: a few doctors, recognized by their peers, academia and information networks, have to support an aura of infallibility, sometimes fed by themselves, and, when the expectation is not fully met, the reaction of patients or their families is proportional to their size.

More recently, the evolution of information technology and, in the midst of this, that of search engines, further transformed the doctor-patient relationship, leading to the emergence of supposed specialists, always eager for the latest news on the market and always doubting the doctor's opinion. assistant if it does not converge with that found in the search engine, which, on several occasions, is produced by unknown subjects, with dubious qualifications and without even appropriate scientific training (SANTORO, 2014).

It is in this context that we see an increase in the number of lawsuits for alleged medical errors, much more than proportional to the number of procedures and diagnoses carried out. The trend, however, is not new. Delgado (1993), in a study that investigated the historical trend in the number of lawsuits for alleged medical malpractice, illustrates well how much this trend was already outlined before the advent of information technology as a mass phenomenon. Compiling decisions of the Supreme Court of Spain from 1870 to 1992, he finds that, in the first 100 years, there were 5 civil trials and 16 criminal trials, less than in the last three, between 1990 and 1992, when there were 20 in the civil area and 30 in the criminal area.

As this worldwide phenomenon takes place, it becomes more and more common for professionals to react, when faced with a lawsuit, through a mixture of feelings of

frustration, anguish and anger, which do not always disappear spontaneously, and, if not properly valued, generate anxiety or depression.

The objective here is to understand the level of stress caused by lawsuits arising from alleged errors committed by physicians and the impact on their mental health, assessing the evolution of the problem in recent years.

METHODS

The work proposes to carry out a narrative bibliographical review of scientific articles found in the PubMed database, published between January 2000 and June 2021, in English, Portuguese or Spanish, with full text available, using the keywords "medical", "malpractice", "stress" and "claims". Initially, 24 articles were found, of which 19 were discarded, due to not having a specific connection with the chosen subject or involving only other health professionals, having maintained the original or review articles referring to the analysis of psychological problems or mental disorders associated with claims for alleged medical malpractice. In the elaboration of the text, information from other articles dealing with the subject was added, especially those that contained the expression malpractice litigation stress syndrome, which indicates a very relevant point to consider, in addition to an article, The judicial clinical syndrome, (HOYO et al, 2006) which, although not indexed in Pubmed, but in Lilacs, has great historical magnitude and brings, among its authors, in addition to physicians, a lawyer, leading to a different approach to the subject.

It is necessary to clarify the choice of using the English word "claim" in the search. Its technical-legal meaning is very close to questioning, or demand, whether judicial or not, while the judicial process, in its strictest sense, would be translated as "lawsuit". It was decided to use "claim" to indicate the applicant's intention to be against the scenario to which he is submitted during or at the end of the treatment administered to him or to whom he represents, even without reaching the Judiciary, considering the whole as a single group, having in common the irresignation of a patient or his representative in the face of the unexpected outcome of a medical intervention.

RESULTS

SPECIALTIES MOST AFFECTED AND PROBABILITY OF SUCCESS OF DEMANDS

Surgical specialties, logically, are more affected than clinical careers, as they involve more radical interventions on the body, and, in the case of plastic surgeries, form a set-in which expectations and reality mix with maximum force.

A study with data from 1991 to 2005 (JENA et al, 2011), of claims against physicians linked to a large US insurance company, covering 40,906 professionals from 25 specialties, shows that the five most popular careers were, in descending order, neurosurgery, thoracic surgery and cardiovascular surgery, general surgery, orthopedic surgery and plastic surgery. The numbers relating to gynecology and obstetrics were tabulated separately, which, if added together, would occupy one of the top three places.

The five least affected, considering only those specified in the text, were psychiatry, pediatrics, family medicine, dermatology and pathology, with the exception that, in third place, there would be an undetermined set of other specialties.

Even in areas considered to be low risk, however, the probability of being the target of at least one lawsuit throughout their career is very high, around 75%, while in high risk areas it is practically 100%, based on professionals aged 70. Even the youngest, however, are

already confronted with a high proportion of litigation: 36% of those who work in low-risk specialties and 88% of those who work in high-risk specialties respond to the first lawsuit before the age of 45.

Another very relevant study (SHAFFER, 2017), also focused on the United States of America - USA, but somewhat more complete, includes a large volume of data, obtained from the National Practitioner Data Bank (NPDB), between 1992 and 2014, involving approximately 19.9 million years of medical work.

It analyzes all demands from that period, judicial or extrajudicial, which generated payment, updating the values for 2014. While there was a decrease of 55.7% in the rate of loss of lawsuits by physicians, there was, at the same time, a strong increase in damages greater than US$ 1 million.

32.1% of payments were made in cases of patient death, but the most commonly mentioned problem was misdiagnosis, in 31.8% of cases, a rate close, however, to the other two most commonly found, errors in

The statistical distribution was similar to that of the first study, with neurosurgery, plastic surgery, thoracic surgery, gynecology/obstetrics and orthopedics being more affected by order. Taking into consideration, that there was no discrimination between gynecology and obstetrics, the main difference is the absence of general surgery, which can be explained by the separation, as a separate category, of colon and rectum surgery.

As for the five specialties with the least litigation, there is identity in three, psychiatry, pediatrics and pathology, and, again, one of the places on the list is occupied by a group of unspecified careers. The areas that are found in this part in only one of the studies are, on the one hand, family medicine and dermatology, and, on the other hand, neurology and internal medicine, essentially clinical segments.

Analysis of the characteristics of professionals most likely to have to pay compensation for malpractice among those linked to the main medical insurance company in Catalonia (GÓMEZ-DURÁN, 2018) reveals an 87% higher relative risk for those already convicted in the past, and the risk increases even more after the second indemnity, so that 0.3% of these account for 13.8% of payments. Among the specialties, using the average of non-surgical ones as a reference, the highest relative risk was in plastic surgery, 2.28, followed by general surgery, 2.12, and traumatology and orthopedic surgery, 2.11.

In that region of Spain, the most affected specialties are gynecology and obstetrics, with 20.4%, and traumatology and orthopedic surgery, with 17.5%, followed by plastic surgery, 10%, and general surgery, 9.7%. Surgical areas, as a whole, represented 81% of the set, reaching 6% of the surgeons. In non-surgical specialties, the physicians involved were 1% of the total.

Jena et al (2011), in the aforementioned study, clarify that, although professionals lose about a third of the processes, the global proportion, considered throughout their career, is much higher, so that approximately 20% of those who work in low-risk specialties and 70% of those in high-risk specialties will have paid at least one severance pay at the end of their careers.

The concept of high-risk specialties is variable, but, as a rule, primarily encompasses surgical areas, and, among these, those in which more serious patients are treated or, on the other hand, those in which a bad outcome is always catastrophic, by unexpected, as in obstetrics and plastic surgery (SCHAFFER et al, 2017).

MALPRACTICE LITIGATION STRESS SYNDROME

Hoyo apud Hoyo et al (2006, p. 10) defined

what would be, in his view, a Judicial Clinical Syndrome, as the set of changes, physical, psychological or moral, in the health of an individual due to submission to a process, whether they occur during or after the end of the litigation, with the possibility of causing injuries of varying degrees and duration, and leading the affected professionals to adopt defensive medicine.

In the most recent work, Hurtado Hoyo and the other authors develop the idea, stating that the judicial clinical syndrome would be a particular case of a reaction, common to human beings, to everything that is unknown or unexpected, affecting, above all, doctors with high stress level and little social support, with poor working conditions and high workload, or receiving responsibilities for which they are not properly prepared, and without a good relationship with patients.

The authors make an interesting practical summary of the types of guilt found in the legal system and indicate, as another of the potential origins of demands, the non-performance of the medical act, without this being passively accepted (HOYO et al, 2006, p. 9):

> too much medicine (imprudence), too little medicine (negligence) or poorly done medicine (malpractice), configuring the conflict of legal responsibility (bad practice). It must also be remembered that the non-practice of a medical act may not be accepted, generating the figure of abandonment. (Our translation).[1]

They emphasize that, in the process for medical responsibility, the harmful factor is a word, given as an intention to harm and capable of causing serious psychological or organic injuries, such as asthma, heart problems, digestive problems and immune disorders, eventually very serious, causing changes in behavior, from changes in relationships with patients to conduct disorders and drug abuse, legal or illegal.

We express the scholars, in sequence, the opinion of being wrong on the premise that doctors would be the only victims in litigation for liability, mentioning their own lawyers (HOYO et al, 2006, p. 15), " For starting a process without justification (imprudence), do not accompany it as it must (negligence) or for losing due to cause (lack of expertise)" (our translation), and, furthermore, criticizing legislators and members of the executive for prejudicial actions against the population with their laws and decrees, and saying that judges must be weighted to decide.

We conclude by stating that, if health is a basic human right, one must also think of the rights of the health team, with identical importance to two rights of the patient.

In a letter published on the Internet in 2011, Young et al (2011) cite the definition and evaluation that have not had an expressive change in the table at that time. They report that one in every five two Argentine doctors responds by mistake, understanding that, even though only 6% of the complaints end in conviction, the percentage is enough to feed an industry of lawsuits, because there would be abuse of the right to gratuitous justice.

Complementing the reasoning of the work by Hoyo et al (2006), it is noted that certain expressions, such as "culpable homicide", are overly aggressive when directed at those who have the mission to cure, and the authors try to go further, assuring that There will always be some degree of irreversibility in the losses suffered by the accused.

Commenting on this letter, Agrest (2012) makes some considerations about the fate of two medical errors, which, before, were known, but will become discussed and

1 *"medicine in excess (recklessness), medicine in less (negligence) or poorly done medicine (imprudence), configuring the conflict of legal responsibility (malpractice). It must also be borne in mind that a medical act not performed may not be accepted, generating the figure of abandonment.".

controversial, much because of the current distrust of the patients regarding the capacity of their attending physicians.

A response that he presents probably configures his greatest contribution to the debate: the objection to the use of the term "syndrome", since the triggering cause of two symptoms is well defined, which reason would he prefer (AGREST, 2012, p. 184) to expression " clinical-judicial disorder" (translation performed by us)[2].

In view of this, he elaborates what would represent a kind of anti-litigation vaccine, which would have its components (AGREST, 2012, p. 184)

> An empathy, or conhecimento e or tempo. Empathy as the ability to feel the pain of the other, respect it and wish to liven it up; Without empathy, you cannot establish a medical care career. Knowledge, with information and experience and knowledge in its application and, in third place, is the time for the doctor to provide information to the patient, reduce their anxiety and make them feel their respect and empathy. You must feel that errors are possible because the forecasts are only statistical and do not necessarily apply to a particular person. (Our translation)[3].

Bourne et al (2015), in a cross-sectional study carried out with 7926 doctors from Great Britain, who answered a questionnaire, verified that doctors subjected to legal claims, due to the great stress experienced, had important alterations in their professional and personal lives. Those with ongoing or recent litigation, when compared to those not reached, were found to be significantly more prone to moderate and severe depression, with relative risk (RR) of 1.77, and moderate and severe anxiety, with RR 2.08, identical number obtained for thoughts of self-mutilation or suicidal ideation.

Women, in the population, are more prone to depressive disorders, and this same tendency is found in the comparison between doctors and doctors who did not undergo the process due to more practice. Among those accused of error, however, we are men who demonstrated greater susceptibility

A significant majority, greater than 80%, reported practicing defensive medicine, with exaggerations, not managing two patients or in research, inasmuch as the goal was avoided by high-risk patients or behaviors known to be problematic, not that it can also be called evasive medicine.

The results indicate that both defensive and evasive medicine are more used by professionals with recent lawsuits, but the analysis carried out assuming the MNAR hypothesis suggests that physicians who had issues resolved more than six months ago were the ones who would most adopt evasive medicine, while those with more recent processes would be the ones who would most willingly turn to defensive medicine.

A worrying finding is that professionals who are not personally affected by demands, end up, in almost equal proportions to the others, by taking a similar position when they observe colleagues who suffer directly from them.

A relevant percentage of physicians expressed feelings of intimidation or believed they were victims in the process, and about a quarter even took leave of absence from activities for at least a month.

Again, in this study, psychological dysfunctions were added to organic symptoms, with a greater chance of appearing, above all,

2 "Judicial clinical disorder".

3 "Empathy, knowledge and time. Empathy as the ability to feel the pain of the other, respect it and the desire to alleviate it, without empathy there is no need to pursue a medical care career. Knowledge, with information and experience and wisdom in its application and thirdly, the time for the doctor to provide the patient with information, reduce her anxiety, and make her feel her respect and empathy. Making them feel like mistakes are possible because the predictions are just statistics and don't apply to any one person."

cardiovascular and gastrointestinal disorders, and behavioral issues, with an impact on relationships. Difficulty sleeping and more frequent headaches were other recurrent problems mentioned.

A question that the authors pose, arising from the study design, seems very pertinent: there is no certainty as to cause and effect, as it is possible that depressed, anxious and suicidal physicians are more likely to assume behaviors and postures more inclined to outcomes unwanted.

Arimany-Manso, Vizcaíno and Gómez-Durán (2018) discuss the same point, the reaction of physicians to malpractice litigation, through a systematic review of the literature in Spanish, French and English, without time criteria, with greater emphasis on in procedures carried out in the judicial sphere, basically focusing on symptoms, prevalence and etiopathology, and, going further, on their prevention and on how to act on their consequences. They warn that, although the available material is scarce, it is of the utmost importance to take preventive and resolving measures for the problem, given its impact on the quality of life of the people affected.

According to his analysis, to the extent that lawsuits entail high financial and personal costs for physicians, they tend to perceive them as threats to their integrity, and this perception leads them to react dysfunctionally.

For the diagnosis of the syndrome, it is essential to establish a cause and effect relationship between the position of the professional as a defendant in a lawsuit for alleged medical malpractice and the symptoms that may develop, whether the case is judged or not, and whether or not not condemnation.

The authors describe some procedural moments that they understand to be fundamental in the development of the syndrome: the beginning, the stage of early production of evidence and the hearing, each with its own factors for inducing the symptoms.

The first phase brings the surprise factor, with the unexpected receipt of the citation, containing an initial petition usually written in legal language and using very strong words, painting the doctor as someone irresponsible, who neglects his work or is completely unprepared to perform it. -It is common for the lawyer to appeal to emotional arguments, sometimes even unrelated to the object of the litigation, and it is usual for the pecuniary claim to be unreasonable, aiming to expand the room for maneuver for a possible agreement.

In the instructional phase that precedes the hearing, the biggest problem is the tension caused by the collection of evidence and the necessary conversations with the lawyers, which keeps the accused's mind immersed in the issue and prevents him from abstracting it and becoming absorbed in his normal routine.

The stage that perhaps causes the doctor the greatest uneasiness is the hearing, where he, not used to the formal environment of the forum and completely out of his comfort zone, is forced to face the attempts of the opposing party's lawyers to discredit him, without having the power to react directly and immediately, because, if you try, your interests may be extremely harmed, or even, by decision of the judge, prevented from pronouncing in the desired way.

Some other elements are exposed in the study that, added to the previous ones, further punish the self-esteem and psychological health of the professional, one of them being the duration of the process, which is usually several years. Even if the end turns out to be favorable, while this final point is not reached, the doctor cannot extricate himself from the shadow of potential defeat.

One must not forget, on the other hand, that at all times there remains the need to lead a life as normal as possible, despite the likely

negative repercussions in the workplace, with colleagues and patients, with professionals having to try to ignore possible comments and face a challenging environment, irremediably linked to the origin of their adversities.

One consideration by the authors seems to be well considered, which is that, although there is great similarity between the concepts of clinical judicial syndrome and those of adaptive reactive disorder and post-traumatic stress disorder, the use of a specific denomination seems appropriate, as it involves reaction own characteristic of medical professionals to a lawsuit, with the need for a differentiated approach in view of the special position in which these professionals find themselves, due to the essentiality of their work for the well-being of society as a whole.

The preventive attitudes listed in the article are not out of line with what common sense says and have been seen in other studies, encompassing a good doctor-patient relationship, compliance with health standards, proper recording in medical records and the creation of risk management units and clinical safety.

DISCUSSION

The worldwide trend towards greater judicialization of conflicts, also seen in Brazil, has led to the fact that more and more physicians have their conduct questioned in court. While some seek to take out insurance and be more careful in their relationship with patients, others, taking this precaution to an exaggeration, practice the so-called defensive medicine, raising the system's costs and the risks of atrogenesis due to excessive examinations or treatments.

It is obvious that, in a democracy, access to judicial or prior instances is unavoidable, but abuses must be repressed, which can lead to a reversal of roles, turning into a victim who, in principle, would be to blame for the damage.

In Brazil, the situation is complicated because the Federal Constitution (BRASIL, 1988) ensures that justice is free to those who show that they do not have sufficient financial resources, and, according to the Brazilian Code of Civil Procedure (BRASIL, 2015), the simple statement in this sense, which leads to the emergence of clearly reckless lawsuits claiming compensation for alleged medical error, in which the risk of the triggering party is practically none, while the professional, who will hardly be able to declare himself poor in the legal sense, will have to bear all the expenses inherent in a legal dispute.

The conditions outlined in the article by Hurtado Hoyo et al. materialize in our country, making them feel justified in reporting the damage caused by excessive judicialization and asking who is really interested in the indiscriminate increase in lawsuits and who would benefit, in the end, for the suffering inflicted on doctors and patients.

The doctors' response to a lawsuit is usually similar to that which arises in any traumatic event, initially going through a phase of denial, and eventually reaching the malpractice litigation stress syndrome, in which, many times, the greatest cost is of an emotional nature, overcoming potential financial losses (TUNAJEK, 2007).

It is not, strictly speaking, a simple variation of a post-traumatic stress disorder, because it derives from a tangible traumatizing experience, usually punctual, whereas in the syndrome in question the origin is a demand, which extends in time and about which the author may or may not be right. Hence, also, the opinion of Agrest (2012) is possibly correct, regarding the fact that the condition is considered a disorder, not a syndrome.

As Hurtado Hoyo et al (2006) and, later, Arimany-Manso, Vizcaíno and Gómez-Durán (2018) said, with great precision, the specific notion of the disorder they call clinical judicial

syndrome is the word, and the words, if used with evil intent, they are never innocuous, attacking the mind and, secondarily, the body of the one to whom they are directed. Being a defendant in a lawsuit is a very tense moment for a doctor, and, most likely, an event that will never be forgotten by him, even if, in the end, he wins (BOOKMAN; ZANE, 2020). When, knowing himself to be innocent, he is still accused, judicial recognition of the correctness of his conduct is not enough to fully restore his self-confidence.

In parallel with the more directly observed repercussions, such as depression and anxiety, or the feeling of being the real victim, a commonly seen development, as mentioned, is defensive medicine, with the request for an excessive number of tests, the eventual referral for a second opinion, or even unnecessary hospitalization, increasing, with all these measures, the cost of health care (BOURNE et al, 2015).

Evasive medicine, another common reaction, is even more harmful, as it leads high-risk patients to greater suffering, as they have to seek the assistance of several professionals until they finally find, sometimes too late, who will take them in and provide the most appropriate treatment. suitable for your case.

The adoption of safeguards is certainly not the best strategy for physicians to deal with the risk of being sued, not least because, in addition to limiting their professional possibilities, it does not represent good medicine, and it is precisely good medicine that provides the greatest protection against litigation (ELANGO, 2003).

The higher prevalence of psychological and psychiatric problems, as well as those of psychosomatic origin, found by Bourne et al (2015) among professionals sued for alleged medical error, even when the cause ended a long time ago, denotes the chronic nature of the health loss mental health, which may affect them permanently.

Most physicians are afraid of being sued for complications that may occur in the performance of their profession, but this concern, as Arimany-Manso et al (2018) say, is greater in those who have already gone through the experience, and in those, even when guilt is not proven, irreversible damage remains in all planes of its existence.

This state of affairs has led medical associations, linked or not to certain specialties, to deal extensively with the subject in their publications. One example is the American Medical Association (AMA), which, in its AMA Journal of Ethics, addresses the topic at various times. In one of these (KASS; ROSE, 2016), it refers to the four essential elements for the success of a lawsuit for medical malpractice: there was a doctor's duty to the patient; there was an error, due to fault, in the performance of that duty; the patient suffered some damage; it is possible to establish a link between the damage and the action or omission of the professional.

In an article by Charles (2001), in which she specifies some measures to minimize the stress caused by a lawsuit, which would revolve around obtaining social support, including the doctor sharing his feelings and emotions with people from his confidence, restoration of self-esteem and control of your life, and understanding the real meaning of the demand. With this, the negative effects of litigation may be neutralized, allowing the professional to remain in balance.

The medical profession, more than most, demands great personal sacrifice from its practitioners, and, when confronted with what seems to be a great injustice, the physician may feel compelled to cross the border between the two poles of the dichotomy asserted in the aphorism de Dejour (1995), who, with extreme propriety, stated that work is never neutral in relation to health, presenting itself

as an operator of this or the disease.

That's when, from a doctor, he becomes a patient, as described by Santoro (2014), for whom a disturbing fact is that society as a whole, including other doctors, does not show empathy or interest in the fate of the one who is accused, the despite practically never being attributed intentionality in the conduct.

It is forgotten, in this accusatory consensus, that adverse events and sequelae are part of the natural history of diseases, and in a few occasions the triggering factor of misfortune is the incapacity or negligence of the attending physician.

It is worth remembering that Dejour (1995), in the aforementioned work, said that health is not a natural state, but an intentional construction, and compared the pretense of working without suffering to mere utopia.

CONCLUSION

The works analyzed, regardless of the moment of their elaboration, the chosen design or the evaluated group of professionals, were unanimous in evidencing the serious and lasting damages suffered by doctors accused of malpractice and in demonstrating how much the indiscriminate growth of demands has repercussions on the quality of his work, and, at the same time, even on the work of those who, by luck or chance, did not have the same experience.

The malpractice litigation stress syndrome does not only make doctors sick, causing physical, psychological and behavioral disorders, but it also makes the entire health system sick, making it more expensive, less reliable and less effective for patients.

It must be borne in mind, when looking into this entire issue, that, adopting a strict perspective, whoever is a party, plaintiff or defendant, does not really win the process, because, even if he wins, the litigant will have lost at least time, energy, and most of the time, health and money.

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