

JUDICIALIZATION OF MEDICINE IN THE SCOPE OF ULTRASONOGRAPHY

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ABSTRACT

INTRODUCTION: In the last 10 years there has been a considerable increase in the number of lawsuits for damages, some jurists use the term "damage industry" to characterize this situation. Unfortunately, this paradigm shift in the Judiciary is also present in the doctor-patient relationship. The number of claims for damages is skyrocketing against doctors. For this reason, we sought through this work to carry out a discussion about the Judicialization of medicine in the scope of ultrasonography.

OBJECTIVE: to analyze the current situation of increasing lawsuits, involving physicians, especially in the ultrasound specialty.

METHODS: Bibliographic review.

RESULTS: Bringing the discussion of judicialization into the scope of ultrasound, the professional who performs the exam is subject to making an error, either by the use of very old equipment or by the rush to perform the exam, or even for not having scientific knowledge to perform the exam. This method of examination has led many doctors to lawsuits due to some erroneous results, which end up causing medical errors. Most of the time, this occurs because the device is not in good conditions of use, or even because of the incompetence of those who use it. Discussion of communication between doctor and patient is very important. With regard to the ultrasound examination, the physician has the obligation to perform the imaging examination properly and must be trained to perform the examination, in addition, the professional must issue the examination with his diagnostic impression. Knowing the various causes of medical judicialization, maximum care must be taken so that errors do not occur, not only because of legal proceedings, but mainly to avoid causing harm to the patient.

CONCLUSION: After reviewing the judicialization of medicine within the scope of ultrasound, considering the studies carried out by several authors on the subject. It is considered that in order to have a reduction in lawsuits marked by the relationship between doctor and patient, it is necessary to invest more in communication and the health professional must keep in mind the responsibility that the doctor has towards human life that goes beyond the medical diagnosis.

KEYWORDS: JUDICIALIZATION IN MEDICINE, PROTOCOLS IN ULTRASONOGRAPHY, MEDICAL LAW, BIOETHICS

INTRODUCTION

In the last 10 years there has been a considerable increase in the number of lawsuits for damages. Some jurists use the term "damage industry" to characterize this situation.

Unfortunately, this paradigm shift in the Judiciary is also present in the doctor-patient relationship. The number of claims for damages is skyrocketing against doctors. For this reason, we sought through this work to carry out a discussion about the Judicialization of medicine in the scope of ultrasonography. The research was based on the following problem: What is the reason for the growth of lawsuits for damages against doctors in Brazil?

The theme of this work is of great importance, because through studies we will analyze which are the most common issues that lead the patient to seek justice to resolve issues in the field of medicine.

It was noted that imaging tests such as ultrasound that serve to complement the diagnosis of patients have been

one of the reasons for lawsuits due to erroneous results, often causing medical error.

The relevance of this work is due to the social contribution that information on the judicialization of medicine in the scope of ultrasound brings to both the population and the medical teams.

It is known the importance of early diagnosis for the treatment of any disease, and ultrasound has been one of the most used methods due to its accuracy, but errors can occur in its results, whether due to the device used, negligence, recklessness or even malpractice. who handles it, bringing negative consequences for both patients and doctors.

METHODOLOGY

The qualitative theoretical approach consists of a scientific study method that values the subjective aspect, being possible to evaluate the position of some scholars, giving an opinion on the impressions of each one.

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In the field of Medical Law, in which the main theme is inserted, there are several scholars with vast theoretical knowledge on the subject addressed.

The bibliographic research will be deepened with the research of several scientific articles related to the legal issue. For example, the burden of proof in the characterization of medical errors will be analyzed in Brazilian legislation.

MEDICAL LAW AND BIOETHICS: CONCEPTS / CONTEXTUALIZATION

The term medical law can be understood as being a recent branch of legal science, a set of norms that regulate the relationships between doctors and patients, comprising not only the direct relationship between both parties, but also the relationship with institutions (for example, hospitals) and management companies (for example, health plans). Some scholars also use the term biolaw to define this branch of law.

Clinical bioethics, considered as the branch of bioethics that deals with the relationship between patient and health professional, has shown great development, speaking and proposing guidelines for ethical dilemmas, which are increasingly frequent today. The use of the doctor-patient relationship for therapeutic purposes has existed since the beginning of the history of medicine. The comprehensive use of this relationship requires certain knowledge and skills from the physician. It is worth mentioning that knowledge of behavioral sciences, especially with regard to the practice of medicine, is very relevant ¹.

Bioethics can also be defined as the study of human relationships, mainly involving ethical and moral aspects. With the development of biotechnologies, ethical limits must be respected, always seeking to preserve human life and dignity.

Medical responsibility is an important issue to be analyzed in the field of bioethics, in the doctor-patient relationship, the absence or stain of the trust that is inherent to it. Likewise, it is a topic in bioethics surrounded by the legal field, as it touches the material and procedural legislation of countries when questions or lawsuits arise in them. This reflection is increasingly present in everyday life in the medical field, allowing its framing in the field of everyday bioethics or, as bioethics of persistent situations.²

The main similarity between the terms is the approach to the right to life. While bioethics uses ethics itself so that biomedicine and biotechnology are correctly applied in people's lives, biolaw will regulate whether this application is coherent and acceptable by the legal system.

According to the constitutionalist Barroso, the phenomenon of judicialization has several causes. One of the important reflections on bioethics and law is the redemocratization of the country, which contributed to the enhancement of the feeling of citizenship. Providing a greater level of information and awareness of rights to broad segments of the population, who began to seek the protection of their interests before judges and courts. This situation is similar to the process of questioning science, he had experience during the struggle for human rights. ²

Biolaw does not allow biomedicine or biotechnology to be used in uncontrolled or undisciplined ways, as the right to life, in addition to being an inviolable asset, is still protected by Brazilian law. From this perspective, the medical professional must work respecting the Code of Medical Ethics, which was established by resolution number 1931 of the Federal Council of Medicine.

There are many authors who have addressed the issue of the judicialization of medicine, whether due to medical error or even the lack of dialogue between doctor and patient. The medical professional activity is characterized by having, in the provision of service, a succession of care and not care as a consequence of the provision of service. In the practice of medicine, the established contract is not characterized as "give me a service: take care of me!", but rather "you took care of me, then you provided me with a service". ³

In this way, entering the practical field of Medical Law, medical liability can be defined as the civil, criminal or administrative obligation to which doctors are subject, in their professional practice, when a harmful result occurs to the patient, due to imprudence, malpractice or negligence.

The question to be asked is when and under what circumstances will the normative device for reversing the burden of proof be used to ascertain the desired balance between the parties involved in the litigation and under what circumstances this same device, within the limits intended by the Justice, will bring greater collective harm than individual gain.³ According to the author, it is necessary to verify to what extent the litigation is contributing to resolve the issues between doctor and patient in order to turn harmonious this relationship that is so important in solving the patient's problem. In this way, given the complexity in this relationship, normative application is only possible after a conflict situation has arisen.

According to França ⁴, "At the present time, there is no other profession that is more targeted than Medicine, being one of the most difficult to exercise from a legal point of view." Undoubtedly, the number of lawsuits involving doctors is growing incoherently. The reversal of the burden of proof is a legal institute that contributes to this excessive increase in lawsuits, given that it transfers to the doctor the obligation to prove the absence of guilt in their conduct.

According to Murr³,

Given the complexity of the doctor-patient relationship, it is only possible to dictate the rules for the application of the normative device for reversing the burden of proof after the relationship and the conflict has been established. Under this approach, it is strange to establish medical civil liability as being of an objective nature, as a general rule, for some specific cases [...]. It sticks to the traditional understanding that the judge will strive to discern exceptions and identify gross errors. Objectivity is not a sufficient condition for the truth, even though it is essential to law in fulfilling its function in contemporary democratic societies with complex organization: balancing conflicting interests.

It is interesting to point out that the main difference be-

tween the two types of liability is the need to prove fault so that the person causing the damage has a duty to indemnify. If it requires guilt it is subjective, otherwise it is objective. By law, the rule is the application of subjective liability, that is, the need to prove guilt. However, the law provides for some exceptions, such as the Consumer Protection Code, regarding the strict liability of the supplier of services or products, when characterized as a consumer relationship.

Medical liability can be defined as the civil, criminal or administrative obligation to which physicians are subject, in their professional practice, when a harmful result occurs to the patient, due to imprudence, malpractice or negligence. This responsibility is based on the principle of fault, in which the agent causes damage, without the due care that he is normally obliged to take, whoever acts without the necessary precaution is culpably guilty.

If the obligation is not fulfilled, legal liability arises. Thus, the legally responsible doctor is the one who made a mistake; who, more precisely, acted with guilt, whether characterized by malpractice, recklessness or negligence, and who has a duty to answer for such behavior. In this work, the expression medical responsibility will be restricted to legal semantics, so that the doctor whose duty to indemnify has been proven will be responsible.²

In this way, when the doctor's obligation is not fulfilled and causes harm to the patient, it is necessary to verify if there was negligence or even malpractice during the care or treatment. The legal device has been widely used to resolve these issues between doctor and patient. It is important to emphasize the positive gains of this practice, since the State, through legislation, guarantees some rights to the individual. An injury to a legal asset constitutes a crime.

However, it is necessary to analyze that the excess of medical judicialization brings harm to society. The investigation regarding the medical procedure is extremely important to know whether or not there was a non-compliance with the responsible medical activity. In this way, legally, it is possible to investigate the situation in a different way, which arises from the failure to comply with a previous obligation - to do or not to do. In the specific case of the doctor, it refers to the circumstance of necessary finding of guilt that will generate, therefore, the duty of reparation.²

When the error is found, the proper repair will be made to the doctor. The patient will be entitled to only one allegation, without the need for immediate proof regarding an alleged medical error. Currently, the patient is seen by most judges as hyposufficient in the doctor-patient relationship.

In Brazil, there has been a substantial increase in cases in which the responsibility of physicians is discussed regarding the duty to indemnify or not, that is, in which the occurrence or non-occurrence of a medical error to be repaired is debated. It is important to point out that there is due repair, it is necessary to verify the medical responsibility that gives rise to the repair, for this it is important to have three constitutive assumptions: the conduct, which is observed in action or omission; the causal link, which is configured in the

connection between the conduct and the possible loss; and the damage, which must necessarily be effected.²

Considering that the doctor-patient relationship is of great importance for the resolution of ethical dilemmas that have become a constant nowadays, the discussions around this topic are based on the opinion of different authors about the responsibility of the medical professional in the face of different situations. However, for the damage to be configured, the effective loss must exist. In this way, civil liability is associated with the existence of culpable behavior. If the professional commits a medical error for not having certain technical knowledge that is sufficient in a given procedure, he will commit malpractice. However, if the medical error was due to lack of attention to procedures that required caution, he would have been negligent.

Vasconcelos² adds the following to this discussion:

One of the great stimuli for the production of public policies in favor of the debate in the field of bioethics also for health issues was the edition, in 2005, of the Universal Declaration on Bioethics and Human Rights, approved in a session of the General Conference of Unesco - which brought about fifteen guiding principles consensually constructed and discussed by several countries, mostly focused on ethical issues involving medicine.

It is important that ethical issues are discussed in all social spheres. In Medicine, the need to discuss ethical and bioethical issues is fundamental, since the direct work with human life requires expressive care.

The search for an understanding of the contexts in bioethical analysis based on its principles legitimately and internationally reached, and the appreciation of the roles of the patient and the physician as active subjects in the attempt to reach consensus, have contributed to the reduction of the filing of avoidable lawsuits. The issue under discussion is the valorization of these people, analyzing them as possessing the right to decide based on the freedom that is proper to knowledge, potential conductors of knowledge and, together with it, of power, both by the effective reflection in the social environment on the subject and in the substantial increase in the bioethical discussion in the course of medical education.²

Knowing that the detention of knowledge brings with it a certain power in the face of knowledge, with regard to this study the issue involves medical law and bioethics, it is important to point out that the conflicts arising from this relationship have brought judicial consequences for the professional of health. In this way, communication is essential so that there are no doubts about the diagnosis and even the treatment, since there are issues that do not demand litigation.

MEDICAL RESPONSIBILITY IN THE DOCTOR-PATIENT RELATIONSHIP

This responsibility is based on the principle of fault, in which the agent causes damage, without the due care that he is normally obliged to take, whoever acts without the necessary precaution is culpably guilty.

In this sense, Galvão⁵ states that:

Negligence is characterized by the omission or non-adoption of recommended technical standards for each case. Recklessness occurs through intrusion, that is, performing procedures that the professional is not prepared for or does not know how to execute. Malpractice is characterized by the inability of the professional to perform a task that, by training, he would have the obligation to know how to perform.

The claim, arising from the imbalance in the professional relationship, will characterize accountability. In fact, liability for damage or injury could arise from any social relationship, however, this study is restricted to the relational reality between doctor and patient. In the legal context, responsibility implies the duty to indemnify the damage, as a way of restoring the lost balance in the social or professional relationship. The concept of responsibility is, therefore, a watershed between the layman's notion of what he says is a medical error and what is justified under that name.³

The characterization of guilt or willful misconduct requires that there is damage and a cause and effect relationship between the professional's action and the damage claimed. José de Aguiar Dias³, exemplifies the requirements for the characterization of guilt or willful misconduct applicable to the professional doctor-patient relationship, which imply the responsibility of the professional: ¹) it is necessary to prove the occurrence of damage or loss, regardless of its nature: material, moral or other. ²) there must be a causal link between the action performed by the doctor and the damage attributed; ³) force majeure or the exclusive fault of the victim nullifies the claim to hold the doctor civilly responsible, as it suppresses the causal link; ⁴) judicial and administrative authorizations do not relieve the doctor of responsibility.

The development of science and the accretion of knowledge in the course of medical evolution are identified as positive in proportion as they bring benefits to the maintenance of life and the restoration of health. However, it is valid to point out that not having exactly a negative restraint does not matter the inexistence of an indirect impossibility of the will of others by the acceptance of truths caused by the ignorance of the other.²

It is known that medicine as a science has evolved a lot in recent times. Along with this evolution, methods and mechanisms, which contributed to the improvement in the diagnosis of many diseases, emerged.

Specifically in this work, a research and discussion was carried out about the judicialization of medicine in the scope of ultrasonography. Ultrasonography is a method widely used today to diagnose diseases, due to its diagnostic accuracy, the ease of performing the exam as well as the low cost. However, there have been many lawsuits due to medical errors, errors that often start in the diagnosis. Evolving technologically and scientifically as happens with medicine is, as a rule, positive; negative would be the occurrence of this evolution in disrespect for the ethics necessary for human relationships, for the valorization of subjects, regardless of their circumstance in this relationship or condition of detention of

knowledge. The need to find a balance in relationships goes back to the idea that the practice of science and ethics can and should walk together.²

Therefore, the relationship between doctor and patient needs to have an ethical basis to avoid gaps and conflicts in relationships. This relationship has already been part of the therapy of many patients.

However, Brazil in recent years has had many lawsuits due to medical errors. The reversal of the burden of proof has been much debated, since the changes that existed in the legislation from the 1988 Constitution, presenting gains in the political, legal and social spheres. With regard to the ethical-professional point of view, this normative device has directly interfered in the social sphere which should be preserved, that is, in the relationship between doctor and patient. The doctor is not only considered a service provider, legally and technically qualified, but he has a social role that goes beyond the practice of medicine.³

Therefore, thinking about the doctor-patient relationship addressed issues of valuing roles that involve trying to reach consensus in an attempt to reduce the social demands arising from this relationship. For this reason, ethics has been so debated when it comes to issues of medicine and the treatment of the human person.

JUDICIALIZATION IN THE RELATIONSHIP BETWEEN DOCTOR AND PATIENT

Medical liability has been a much discussed topic in Brazil today. This is due to the growth of lawsuits by patients against doctors. In this sense, Vasconcelos² says the following:

Medical liability has been a much discussed topic in Brazil for some years, especially after the increase in the number of lawsuits involving doctors in ordinary courts. There has also been an increase in the number of cases in the ethical-disciplinary administrative scope before the regional councils of medicine.

An extremely important aspect is communication with the patient to avoid doubts and possible divergences in the doctor-patient relationship. When this dialogue does not occur, these differences can turn into legal proceedings. This is what has happened in Brazil, a considerable increase in patients seeking justice due to issues of miscommunication and even medical error.

Foucault⁶ also adds that,

The power relationship is articulated to discourse, configuring an underlying dimension of communication between people. It is a relationship between power and knowledge inherent to the discourse itself, in which the fact that someone carries the knowledge raises him to the condition of power in a given environment that thus recognizes it.

Although it cannot be said that medicine maintains a repressive power, it must be admitted that the relationship between doctors and patients undergoes an increasing evolution in search of the emancipation of subjects in hegemonic social environments, such as that established in communication. with the doctor, who seeks to promote the good for

the patient through the use of his knowledge.²

According to the author and the studies carried out, it was noted that the evolution of the subject as an active being in society also brought changes in the relationship between doctor and patient. Many times this relationship has resolved issues in a harmonious way, but the number of lawsuits due to conflicts and even medical errors has also increased, which often causes harm to patients who end up seeking judicial support.

Some legal institutes such as the reversal of the burden of proof (transfers to the doctor the obligation to prove the absence of guilt in their conduct) end up leaving the doctor more vulnerable. If the subject addressed is the reversal of the burden of proof in the specific case of its application to the context of medical malpractice in Brazilian legislation, the first thing to be discussed will be the one without which medical malpractice would not be mentioned: the presumption that someone has suffered damage arising from the action or failure to act on the part of a medical professional. So that the damage regardless of its moral or material nature generates an imbalance³. In Brazil, there has been a considerable growth in cases in which the responsibility of physicians is debated regarding whether or not to indemnify the patient, verifying whether or not there was a medical error to be repaired.

Vasconcelos² adds the following information:

While morally the diligent doctor can be classified as responsible, legally, the negligent doctor can also be classified as responsible for negligence. This antagonistic polysemy stems from the substantial semantic differentiation that common sense and the legal field give to the term: as the socially established vocabulary is used, the morally put meaning is used to conceptualize a responsible individual as one who acts with zeal, wisdom, moderation, expertise.

It is also worth mentioning the theory of the loss of a chance, characterized by the fact that due to an illegal conduct (action or omission), the possibility of the occurrence of an event that would bring a future benefit to the victim or avoid the risk of injury disappears. a certain loss. Thus, the theory of the loss of a chance is based on the idea of probability that, if a certain event had occurred or had been avoided, there would have been an improvement situation for the victim or at least a greater loss would have been avoided.⁷

Given this reality, greater care is needed when performing, for example, an ultrasound study. A wrong test result can cause damage / medical error (a wrong diagnosis of gallstones can lead to unnecessary surgery, for example), causing greater harm to the patient and becoming a lawsuit.

When there is evidence of harm to a patient in the professional relationship, legal, administrative and even disciplinary sanctions can be triggered. However, in order for a medical professional to be held responsible for medical error, that is, to have the obligation to indemnify the patient, certain criteria are necessary for him to be charged with guilt or intent³.

So, for it to be considered guilt or intent, there must be damage, as well as a cause and effect relationship be-

tween the action of the health professional and the damage of the defendant.

The practice of medicine has undergone major changes in recent years. Technological advances in the area of diagnoses, the arrival of IT and the intermediation of medical work are some of the factors that had a strong impact, with profound changes in the doctor-patient relationship, modifying it and often bringing difficulties to both sides of this relationship¹.

All this advance in medicine does not diminish the importance of the relationship between doctor and patient, since it is this contact that makes the individual feel confident in the diagnosis of the health professional. When there is any doubt in this relationship, the first attempt to solve the problem is dialogue.

In this way, Vasconcelos² brings the following position:

It is possible to reflect on the attempt to overcome asymmetry in the relationship between doctors and patients, based on the enhancement of patient autonomy, especially through information and clarification free of coercion. In this regard, it is necessary to remember that in the context of the increase in avoidable litigation in the relationship between doctors and patients, the difficulty in reaching consensus, or the previous difficulty in dialogue, may result, precisely, from the asymmetry in power, from the passivity imposed on the social patient. and historically.

However, when the patient's autonomy is compromised, understanding becomes difficult in the face of issues that can be reached through communication. The search for conflict resolution between doctors and patients has been very common within the Judiciary. According to the constitutionalist Barroso, the phenomenon of judicialization has several causes. One of them is the redemocratization of the country, which has increased the feeling of citizenship. Bringing important information and making the population aware of the right to seek protection of their rights in the courts².

In this context, in which positive aspects can possibly be found, to medicine that represents the increase of citizenship in the search for access to Justice, there may also be negative aspects when the number of issues that could be resolved through dialogue are indicated to the courts causing an excess in the judicialization of medicine.

The interest of the medical act in the form of law is part of the understanding not only of professional competences, but also with regard to the rule of law to protect valuable legal assets to society: life and health. However, this understanding of medicine and the medical professional, in its meaning and institutional role, does not seem to be very solid not only by society but also by health professionals in general³.

It is noted that both Vasconcelos and Murr bring an approach to the judicialization of medicine in a peculiar way to current events. Due to the lack of dialogue and understanding between doctor and patient on some issues, the search for courts has become increasingly common. The positive side is that people have assumed their citizenship and sought to protect their rights, but the excess of medical processes has undermined this much-needed relationship between

doctor and patient.

In this way, we sought through this work to bring discussions about the phenomenon of judicialization of the relationship between doctor and patient that has grown excessively in Brazil. It was noted during the research that many cases that are transformed into processes could be resolved more harmoniously through dialogue.

Vasconcelos² brings the following statement in relation to the judicial litigation:

A legal dispute presupposes the occurrence of effective damage, recoverable through a process that is justified in terms of the classifications already identified. However, it can also presuppose a conflict that occurred due to a previous failure in communication between the litigants, which is an avoidable legal demand, since the act in question could have been preceded by a satisfactory dialogue to understand the facts or, even, by consensus between the parties as to the situation and its possible consequences.

According to Vasconcelos, the failure in communication between doctor and patient has generated conflicts that could be resolved without a lawsuit. But this would require a consensus between the parties. Marques Filho addressed the issue of difficulty in this relationship due to changes in medicine.

MEDICAL JUDICIALIZATION IN THE FIELD OF ULTRASOUND

Ultrasonography has played an increasingly important role in clinical diagnosis. Overall, clinicians have demonstrated skill in obtaining images that allow them to answer simple questions. The integration of these images into the clinical history and physical examination results has improved the management of patients by their clinicians.

Ultrasonography is part of the medical specialty field of radiology. This specialty has historically developed in a way that has increasingly alienated the radiologist from the patient. Ultrasonography has been incorporated into the evaluation of patients in different areas, in traumatology, nephrology, to check for renal pathologies. This assessment instrument determined a change in the diagnostic management of polytraumatized patients, for example⁸.

In the field of ultrasound (USG), the physician has the obligation to perform the exam properly and must be able to perform it, concluding the aforementioned exam with his diagnostic impression.

It is important to highlight that the ultrasound examination has presented numerous advantages for the diagnosis of several diseases, this is because it is an available and relatively low cost method; in addition, it does not emit ionizing radiation, and can be used repeatedly and in pregnant women and children; it also allows the examination in real time, allowing a better interaction with the patient, showing the point of greatest painful sensitivity in the part of the body; has greater mobility, providing the patient with greater mobility in the operating room, in the emergency sector, and even in intensive care.

In most cases the diagnosis will be correct, but in others

there may be diagnostic doubt. The USG exam is “operator-dependent”, that is, the subjective aspect prevails a lot. The ultrasound examination method has limitations. It is interesting to include in the report, in these cases, some recommendation for a complementary exam, for example, computed tomography (CT) or magnetic resonance imaging (MRI) that can prove the diagnostic impression raised in the ultrasound.

In case of doubts regarding the diagnosis, such as the use of the USG exam, the best way is to complement the investigation with other physical exams or even the anamnesis. Because a medical error can have several consequences for both the doctor and the patient, and can even judicialize this relationship that is so important.

Judicializing the dilemmas of the relationship between doctors and patients is a negative measure, but an emergency measure, when necessary. This is an important discussion and emergency measures are agreed in exceptional incidents. As the question of doubt in relation to a diagnosis or even a medical error was mentioned. However, in the face of excessive judicialization as a forcible and mistaken attempt to establish symmetry, while society accepts the overvaluation of the insertion of the Judiciary in the relationship, this emergency measure will become common practice, being distorted in the transformation of the exception into the rule².

However, the lack of preparation of the radiologist or other professional responsible for informing the diagnosis, especially when it is not favorable, as is often the case in an oncology hospital, constitutes a major problem for this specialist. In this way, it is essential to analyze not only the diagnosis made through ultrasound, but also physical and laboratory exams when necessary, talking to the patient about the symptoms, among other measures.

It is important to note that when the medical obligation is breached, legal liability arises. Thus, the legally responsible doctor is the one who made a mistake; who more precisely acted with guilt, whether characterized by malpractice, recklessness or negligence, and who has a duty to answer for such behavior².

It is known that in Brazil, medical responsibility has been a subject much discussed in recent times, and that there is a very large growth of lawsuits involving doctors in justice. Many of these lawsuits could be avoided.

The patient will only be responsible for the allegation, without the need to prove a hypothetical error to initiate a legal process. In this scenario, it is necessary to raise awareness on the part of physicians so that they adopt preventive measures, avoiding any disagreements with patients.

Avoiding excessive judicialization means privileging reflection prior to legal action, not choosing the judicial process as a guide to social uncertainties or a determinant of collective ethical course. Given the certainty that the facts precede the norms, it is not possible to admit that the norms precede the facts, or at least the reflection on the facts. This is true of the market society, which transforms medical care into consumption and induces consumption in health².

In view of this, bringing to the discussion the judicial-

ization in the scope of ultrasound when performing an ultrasound examination, the professional will be subject to committing a medical error, performing an examination in a negligent way (for example, using old equipment, without the proper technical conditions) or acting recklessly (carrying out an examination in a hurry to finish the procedure, without following a protocol) or acting with malpractice (performing a specialized ultrasound, such as in Doppler mode, without proper scientific knowledge).

Regarding the methods used Murr³ says the following:

The private acts of the method used are not restricted to technical competence in a given procedure - which is well exemplified in the fact that even a medical student attending the last year of college is prohibited from acting without legal support from a qualified doctor, it is not enough for him to prove who, after years of internship, considers himself capable of carrying out a given procedure in question.

It is important to highlight in this matter that technical competence is not the only thing to be considered, whether in the case of a student or even a trained professional. Acting without legal support from a qualified doctor violates the law, so the issue of malpractice was mentioned in the use of the device for the ultrasound examination, either by the radiologist or even by the doctor. This also contributes to the growth of lawsuits.

Vasconcelos² highlights the following about science:

The power of science was related to medicine as it participated in the context of technological evolution and came to be seen as something more than a simple executor of discoveries or an implementer of the evolution of scientific practice. In this way, it is observed that, in addition to the power of specific knowledge about the objects of their professional competence, the broader power of scientific truth began to appear in medical practice, encompassing the other areas of biological sciences.

Studies carried out in other countries have shown a variety of opinions from requesting physicians and patients regarding physician-patient communication in radiology, which can be explained by cultural differences. While there is no rule of thumb about the best way to carry out this communication, there are certainly bad ways.

Vasconcelos² also adds that:

These new practices, supported by the new power that science conferred on medical discourse, had direct repercussions on communication with the patient. The medical discourse is the prerogative of saying portrayed by Foucault, which, when functioning as truth before society, imposes itself in the communication of the relationship maintained with the patient. Thus, there would be an overlap of the physician's performance in the relationship, with the patient in an inferior condition before his power of relationship and speech.

Currently, the communication of the radiological diagnosis is carried out predominantly by written reports. Written communication, however, cannot be considered sufficient, and verbal communication is essential for the good performance of the modern radiologist.

Ultrasonography is an imaging method that has been widely used in patients with suspected appendicitis and other diseases, and has had satisfactory results. As ultrasound is easily available, simple and quick to perform, in addition to not emitting radiation or other side effects, it has been widely used recently. However, it is necessary to consider that this method of examination has led many doctors to lawsuits, either because of the wrong test results causing medical errors, which may be due to the misuse of the imaging device, or even the device being very old or due to the incompetence of the person handling it.

Ethical consideration regarding openly rethinking medical practice, in addition to ethical accountability for acts aimed at medical care, represents respect for equality, dignity of the human person and the exercise of their freedom².

DISCUSSION

Ultrasonography is one of the diagnostic imaging methods that has a very significant accuracy in identifying diseases. This is because technology has advanced every day in the improvement of high resolution exams. The integration of images together with the clinical history and the results of physical examinations has improved the management of patients by their clinicians. However, the method has limitations, if there are doubts in the diagnosis, a complementary examination must be requested, as a medical error can have consequences for both the patient and the doctor, which can turn this relationship into a lawsuit.

Judicializing the issues arising from the doctor-patient relationship is negative, however, when necessary, its emergence is fundamental. Because it is an important issue, Vasconcelos² says that the excess of judicialization, in the case of a society that overvalues the insertion of the Judiciary in the relationship, may transform an exception into a rule with regard to emergency measures.

To avoid the excess of lawsuits arising from medical error due to the divergence in ultrasound exam results, the best way is to use a complementary exam, as it is worth noting that when the medical obligation is breached, legal liability appears. According to Vasconcelos², the legally responsible physician is the one who made an error, and this error can be characterized by malpractice, recklessness or negligence.

Bringing the discussion of judicialization into the scope of ultrasound, the professional who performs the exam is subject to make a mistake, either by the use of very old equipment or by the rush to perform the exam, or even for not having scientific knowledge to perform the exam. It is important to point out that medical competence is not the only thing to be highlighted, care and attention are needed in what you are doing as well as using devices in good condition. Medical judicialization has been a subject much discussed in Brazil, for this reason communication between doctor and patient is essential to avoid doubts and possible divergences in this relationship, since the growth of medical judicialization is great in the country.

In order for there to be due repair when there is a med-

ical error, it is necessary to prove the error. In this case, both the action or omission is observed, the causal link, which configures the connection between the conduct and the possible damage; and the damage that must be done².

In view of the discussions by different authors, it was noted the importance of the doctor-patient relationship to resolve ethical dilemmas that have been configured in legal proceedings. Ethics is necessary in human relationships, as well as the appreciation of the subject. In this way, it is necessary to find the point of balance in relationships, since practice and science must walk together.

It is also important to highlight the evolution of the individual as an active being in society and the awareness of his duties and rights as a citizen. This evolution also brought changes in the relationship between doctor and patient, as many conflicts have been resolved nowadays through the judicial process. Some cases need this support, others could be resolved in a less conflicting way to avoid judicial excess with issues that could be resolved through dialogue.

According to Marques¹, technological advances in the area of diagnoses have intermediated medical work, but have also brought major changes in the doctor-patient relationship, bringing difficulties in the relationship on both sides. The search to resolve conflicts between doctors and patients has been common in the judicial power. The phenomenon of judicialization has increased the feeling of citizenship, as the population is becoming aware of the right to seek protection of their rights in the courts.

Murr³, still makes an approach regarding the interest of the medical act in the form of law, which is part not only of professional competences, but also of the rule of law to protect a legal asset that is valuable to society. It is known that this judicialization often occurs due to the lack of dialogue and understanding between doctor and patient. In this way, there must be a measure so that simpler cases do not become a judicial process.

Vasconcelos² attributes that the new practices supported by the new power that science conferred on medical discourse had direct repercussions on the communication between doctor and patient. As is known, there is no technique or rule for how to communicate with the patient, but certainly the right way is one that takes into account ethics and patient care. In medicine there is a need to discuss ethical and bioethical issues since it is a job that deals directly with human life and requires expressive care. The investigation regarding the medical procedure is very important, because only then is it possible to verify whether or not there was a non-compliance with the responsible medical activity. It is known that a medical error can have consequences that compensation is not able to repair and the judiciary system has been widely used to resolve these issues.

For this reason, Murr³ argues that it is only possible to dictate the rules for the application of the normative device of inversion of the burden of proof after the establishment of the relationship of installation of the conflict. Therefore, medical liability can also be determined as a civil, criminal or

administrative obligation to which doctors are subject, such liability is based on the principle of guilt where the agent causes the damage, without the due care he must have.

Medical law is configured as a set of norms that govern the relationships between doctors and patients, comprising both direct and institutional relationships. For this reason, ethical and moral aspects must be present in these relationships, since ethical limits must be respected for the preservation of human dignity. França⁴ says that at the present time, medicine is being highly targeted, being one of the most difficult professions to exercise from a legal point of view. This is because the growth in the number of lawsuits involving a doctor has grown a lot in Brazil.

In this work, a research was carried out on the judicialization of medicine in the scope of ultrasonography, which is a method of imaging examination widely used today. This is due to the ease of the method, in addition to having no radiation and other side effects, it is a low-cost method. However, this method of examination has led many doctors to lawsuits due to some erroneous results, which end up causing medical errors. Most of the time, this occurs because the device is not in good conditions of use, or even because of the incompetence of those who use it.

Vasconcelos² raises the issue of ethical consideration regarding the reflection on the practice of medicine, in addition to ethical accountability for medical care. It is noted that the excess of judicialization in the scope of ultrasound needs to be reduced. What is currently noticed is a problem in the communication between the health professional and the patient regarding the radiological diagnosis, since the communication is done through written reports, but this communication is not enough, it is also necessary the verbal communication for a good performance of the modern radiologist.

Discussion of communication between doctor and patient is very important. With regard to the ultrasound examination, the physician has the obligation to perform the imaging examination properly and must be trained to perform the examination. In addition, the professional must issue the examination with his diagnostic impression. Knowing the various causes of medical judicialization, maximum care must be taken so that errors do not occur, not only because of legal proceedings, but mainly to avoid causing harm to the patient.

Vasconcelos² also adds that avoiding excessive judicialization means privileging reflection prior to legal action, not choosing the judicial process as a guide to social uncertainties or a determinant of collective ethical course. The patient in this case is only responsible for the allegation, without the need to prove a hypothetical error to initiate a judicial process. It is important to include in the report some recommendation for a complementary exam, as the integration of imaging exams with the clinical history and the results of the physical exam has improved the management of patients by their clinicians.

The doctor is not only a technically and legally qualified service provider, he also has a social role in the practice of medicine. For this reason ethics has been so much debated

in the field of medical work. According to Oliveira et al ⁸, ultrasonography, which is part of the medical specialty field of radiology, has distanced the radiologist from the patient as this specialty developed.

This method of examination has been widely used in different areas of medicine, for this reason the professional must be trained to do so and, in addition, must have a good relationship with the patient. For this reason, clinical bioethics, which is considered the branch of bioethics that deals with the relationships between patient and health professional, has great development nowadays.

CONCLUSION / FINAL CONSIDERATIONS

This work made an approach about the judicialization of medicine in the scope of ultrasound. The research was bibliographical, the discussion was based on medical law and bioethics: concepts/contextualization; medical responsibility in the doctor-patient relationship; judicialization in the relationship between doctor and patient and medical judicialization in the field of ultrasound. The authors mentioned in this research had studies carried out on the subject. The relevance of this work is due to the social contribution that research on the subject brings both to society and to the medical team, since the number of lawsuits has increased considerably in Brazil, especially with regard to the diagnosis of diseases.

It is known that there are medical errors that bring harm to patients, for this reason it is necessary to check the diagnosis thoroughly and if there is any doubt, it is necessary to request a complementary exam to ensure a correct diagnosis. Among the problems that are brought to justice, are the ultrasound exam, which despite being reliable due to its accuracy, can cause problems for being an old device, lack of attention of the sonographer and even inadequate management which may bring divergent results.

In this way, it is noted that many of the errors that occur could be avoided by reducing lawsuits regarding the relationship between doctor and patient. As already mentioned, ethics is an essential element in any type of professional relationship, so if the professional notices that the diagnosis through imaging, which was the main point of this work, leaves room for doubt, the correct thing is to ask for a complementary exam to ensure proper treatment of the patient.

After the discussion about the judicialization of medicine in the scope of ultrasound, considering the studies carried out by several authors on the subject, it is considered that in order to have a reduction in lawsuits marked by the relationship between doctor and patient, it is necessary to invest more in communication and the health professional must keep in mind the responsibility that the doctor has towards human life that goes beyond the medical diagnosis.

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