



Characterization of judicialization for medical error in the state of São Paulo: a documental study

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Introduction

The number of medical professionals has been growing substantially in recent years, according to a medical demography study released by the Regional Council of Medicine of the State of São Paulo (CREMESP) in 2018, the growth percentage of this population was 5.4 times higher than the general population [1]. Along with the growing number of medical professionals in the labor market, there is a substantial increase in lawsuits for medical errors [2].

The Federal Council of Medicine (CFM) defines medical error as “damage caused to the patient by the action or inaction of the physician, in the exercise of the profession, and without the intention of committing it” [3].

There are three possibilities to cause damage and reach the error, being through recklessness, malpractice, or negligence [3]. Having knowledge of the errors that happen can help in the search for a patient safety culture that prioritizes the opportunity to learn from failures and improve health care to prevent incidents and adverse health events [4]. To characterize the processes for medical errors available on the website of the Court of Justice of the State of São Paulo.

Methods

Descriptive, retrospective (2019), documentary study, carried out in a database available for public consultation on the website of the Court of Justice of the State of São Paulo. The search took place in a procedural search for jurisprudence in the period from December to August 2021. As it is publicly available data on an internet site, this study follows CNS Resolution No. 510 of April 7, 2016, having been approved by the Research Ethics Committee with Paracer nº 4.370.821 and CAAE

39506720.0.0000.8083. The Processes that had the medical professional as the defendant and that they resulted from medical errors recorded in the year 2019, found through the descriptors Medical Error And Negligence And Recklessness And Malpractice And Medical Errors And Negligence And Recklessness And Malpractice. 1446 cases were available, after applying the inclusion criteria to the sample, 502 cases corresponded. Which were presented using basic descriptive statistics. To classify the type of error, a national study was used that analyzed notifications of incidents related to patient safety [5], classifying them into errors related to medications, related to surgery, related to infection, related to identification, and related to devices and equipment. And for the type of damage, the taxonomy of the World Health Organization was used, classifying them as no damage when the consequence to the patient is asymptomatic or without detected symptoms and does not require treatment, mild damage when the consequence to the patient is symptomatic, with mild symptoms, loss of function or minimal or intermediate damage of short duration, without intervention or with minimal intervention required, moderate damage, when the consequence on the patient is symptomatic, requiring intervention, severe damage, when the consequence on the patient is symptomatic, requiring intervention to save life or major medical/surgical intervention, shortens life expectancy or causes major permanent or long-term damage, or loss of function, or damage that results in death, in the balance of probabilities, death was caused or anticipated in the short term, by the incident [6].

To define the causes, a national study was used, which aimed to discuss the need and importance of knowing medical error in Brazil from the victims' discourse, classifying them as malpractice, which can be

understood as the situation in which the doctor performs a procedure for which he is not qualified, corresponding to technical and/or practical unpreparedness due to insufficient knowledge, imprudence that is represented when the medical conduct involves risks to the patient, without scientific support for its procedure, or negligence that is the failure to provide the care necessary to the patient, suggesting inaction, passivity or omission.

Results

Among the 502 processes that were part of the study sample, 288 (57.4%) were from female patients (author) and 109 (21.7%) were male. Regarding the sex of the judicialized physician (defendant), 349 (69.5%) were male and 95 (18.9%) were female. As for the physician's specialty, 296 (59.0%) were surgical clinics, 195 (38.8%) medical clinics and eight (1.6%) had specialists from both areas. 153 (30.5%) Processes identified the sub-area that the professional exercised, 158 sub-area were identified, among these 76 (48.1%) was gynecology and obstetrics, 23 (14.6%) of orthopedics, 21 (13, 3%) plastic surgery, 11 (7.0%) pediatrics, other areas had lower values.

Among the processes, 254 (50.6%) took place through assistance in the Unified Health System, 127 (25.3%) through assistance in health insurance, and 47 (9.4%) through private assistance, 74 (14.7%) did not specify the type of service. Among the most common errors, 277 (55.2%) were errors related to surgery, 172 (34.3%) related to patient identification, and 12 (2.4%) related to medications, other errors were identified on a smaller scale. As for the potential damage of these errors, 264 (52.6%) were moderate, 140 (27.9%) caused death, 54 (10.8%) mild and 44 (8.8%) severe.

The generating act of these errors, 466 (92.8%) resulted from recklessness, negligence, and malpractice, 26 (5.2%) only negligence, eight (1.6%) only malpractice, and two (0.4%) only recklessness. Finally, 386 (76.9%) were dismissed, 67 (13.3%) partially justified, and 37 (7.4%) justified, other outcomes appeared on a smaller scale.

Conclusion

There is a large number of lawsuits against medical professionals, the plaintiffs are mostly female and the defendants are male. There is a predominance of the surgical specialty, especially gynecology and obstetrics, most of the judicialized care took place in the Unified Health System. The main types of errors were surgical with moderate damage and most of the actions resulted in unfounded. The characterization of legalizations for medical errors made it possible to identify their profile,

which favors the implementation of a culture of patient safety and fair culture. Since it serves as a situational diagnosis to direct medical error prevention strategies focused on the main problems.

Keywords: Medical Errors. Health's Judicialization. Patient Safety.

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Data sharing statement

No additional data are available.

Conflict of interest

The authors declare no conflict of interest.

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