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Civil lawsuits against physicians: an integrative review of the literature

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Abstract

This study explored civil lawsuits against physicians in Brazil via an integrative review to identify the main causes, outcomes, and trends in these disputes. Fourteen publications were analyzed in databases such as SciELO, Google Scholar, and the Virtual Health Library, selected after searching for the terms “medical error” and “physician civil liability.” Only studies directly related to the topic were included. The analysis revealed that negligence, communication failures, and the absence of informed consent are the main causes of conviction. Obstetrics and general surgery stood out as the specialties of highest risk. Adequate medical documentation and continuous training were identified as essential measures to avoid litigation. The increase in lawsuits reinforces the need for preventive strategies, such as humanizing care and using informed consent forms, to reduce conflicts, improve medical practice, and ensure greater legal certainty.

Keywords: Medical errors. Damage liability. Health judicialization.

Resumo

Processos cíveis contra médicos: revisão integrativa da literatura

Este estudo explorou os processos cíveis contra médicos no Brasil por meio de revisão integrativa a fim de identificar as principais causas, desfechos e tendências desses litígios. Foram analisadas 14 publicações em bases como SciELO, Google Scholar e Biblioteca Virtual de Saúde, selecionadas após busca com os termos “erro médico” e “responsabilidade civil do médico”. Apenas estudos diretamente relacionados ao tema foram incluídos. A análise revelou que negligência, falhas na comunicação e ausência do termo de consentimento informado são as principais causas de condenação. Obstetrícia e cirurgia geral destacaram-se como especialidades de maior risco. Documentação médica adequada e capacitação contínua foram identificadas como medidas essenciais para evitar litígios. O aumento das ações judiciais reforça a necessidade de estratégias preventivas, como humanização do atendimento e uso do termo de consentimento informado, para reduzir conflitos, melhorar a prática médica e garantir maior segurança jurídica.

Palavras-chave: Erros médicos. Responsabilidade civil. Judicialização da saúde.

Resumen

Procesos civiles contra médicos: revisión integrativa de la literatura

Este estudio exploró los procesos civiles contra médicos en Brasil mediante una revisión integradora para identificar las principales causas, resultados y tendencias de estos litigios. Se analizaron 14 publicaciones en bases de datos como SciELO, Google Académico y Biblioteca Virtual en Salud, seleccionadas tras una búsqueda con los términos “error médico” y “responsabilidad civil del médico”. Solo se incluyeron estudios directamente relacionados con el tema. El análisis reveló que la negligencia, las fallas en la comunicación y la ausencia del formulario de consentimiento informado son las principales causas de condena. La obstetricia y la cirugía general se destacaron como las especialidades de mayor riesgo. La documentación médica adecuada y la capacitación continua se identificaron como medidas esenciales para evitar litigios. El aumento de las acciones judiciales refuerza la necesidad de estrategias preventivas, como la humanización de la atención y el uso del formulario de consentimiento informado, para reducir los conflictos, mejorar la práctica médica y garantizar una mayor seguridad jurídica.

Palabras clave: Errores médicos. Responsabilidad civil. Judicialización de la salud.

The authors declare no conflict of interest.

Research

Civil lawsuits against physicians are increasing every year, highlighting a major shift in patients' awareness and expectations regarding their rights and the vulnerabilities in public and private healthcare systems. Some of the main factors that motivate lawsuits are the absence of good communication between professionals and patients, errors resulting from negligence, recklessness, and malpractice, often associated with deficiencies in communication, a lack of transparent explanation to patients, and flaws or deficiencies in medical documentation, aspects that therefore demand greater attention [1].

High-risk specialties, such as gynecology-obstetrics and general surgery, have been the most frequently sued in medical civil liability cases. Obstetrics, for example, frequently appears among the specialties most involved in the lawsuits analyzed. In addition, failures in communication between physicians and patients, especially regarding the absence or the inadequacy of informed consent forms (ICF), have been identified as a determining factor in convictions [2].

Medical expertise plays an essential role in the outcomes of lawsuits and is practically decisive for the defense of healthcare professionals. Most of the cases deemed unfounded were supported by consistent expert reports that validated the medical conduct. Conversely, the absence of adequate documentation, such as the ICF, considerably increases the risk of conviction, thereby exponentially reinforcing the importance of maintaining accurate and detailed records [3].

In this context, this article aims to conduct an integrative literature review on civil lawsuits against physicians in Brazil in order to identify the main causes, outcomes, and trends in lawsuits involving medical civil liability and, thus, contribute to a broader understanding of the topic and to the development of strategies to improve medical practice and reduce legal conflicts.

Method

This work is an integrative literature review of civil lawsuits against physicians. Studies published in the last ten years on the subject were analyzed. Only complete materials directly related to the topic, in Portuguese or English, were included. Duplicate studies or those with incomplete information were excluded.

The searches were conducted in the SciELO, Virtual Health Library, PubMed, and Google Scholar databases. Terms such as "erro medico" and "responsabilidade civil do medico" were used, combined with Boolean operators to refine the results.

The articles underwent three selection stages: title reading, abstract reading, and full-text analysis. Only those that met the established criteria were included in the review. The collected information was organized into tables, including authorship, study title, year of publication, study type, and the main findings of each article.

Results

The literature review identified 14 relevant studies on civil lawsuits against physicians in Brazil, which reveal diverse approaches and methodologies. The reviewed works highlight the complexity of these lawsuits, especially in the context of medical civil liability. For better organization and understanding, the studies were listed in chronological order in Chart 1. The data reveal a significant increase in the number of physician-related lawsuits in recent years. The specialties with the highest risk of lawsuits, such as gynecology-obstetrics and general surgery, account for a large part of the disputes.

The absence or the inadequacy of the ICF has frequently been a determining factor in convictions. At the same time, well-prepared documentation and the performance of medical examinations have been crucial factors in outcomes favorable to healthcare professionals.

The analyzed processes reveal that negligence, recklessness, and malpractice are among the main reasons for filing lawsuits against physicians. In addition, the absence or the inadequacy of the ICF is frequently cited as a critical factor in convictions. Most of the lawsuits analyzed were found to be unfounded, especially when there was adequate documentary support and well-founded expert evidence. On the other hand, cases in which

communication or document preparation failed were more likely to result in a conviction.

Studies show a consistent increase in the number of medical disputes over time. As preventive measures, healthcare professional training, humanization of care, and improvements to medical records, especially ICF, stand out as ways to mitigate conflicts and improve judicial outcomes.

Chart 1. Studies on civil lawsuits against physicians in Brazil

Authorship	Title	Type of study	Conclusion
Spina VPL, Sá EC [1]	Perfil das demandas judiciais cíveis por erro médico em ginecologia e obstetrícia no estado de São Paulo	Study analyzing first-instance judicial processes, with research on rulings from the Court of Justice of the State of São Paulo between June 2013 and May 2014	Sixteen medical malpractice lawsuits in gynecology and obstetrics in the state of São Paulo were analyzed. 69% were related to obstetrics. Only 25% of the cases were ruled in favor of the plaintiffs, and 63% were ruled against them, with compensation ranging from R$ 40,000.00 to R$ 466,500.00.
Carlos Neto D [2]	Erro médico no estado de Rondônia: uma realidade nacional	Descriptive and cross-sectional qualitative-quantitative study, with retrospective evaluation of rulings from the Court of Justice of the State of Rondônia	Fifty-eight judgments from the Court of Justice of the State of Rondônia were analyzed between 2015 and 2018. The most frequently litigated specialty was obstetrics (31% of cases). Only 36.2% of the cases were ruled in favor of the plaintiffs, and 63.8% were ruled against them, with 84.5% of the decisions being upheld on appeal. In most cases involving expert evidence, the plaintiffs were ruled against.
Manzini MC, Machado Filho CDS, Criado PR [3]	Termo de consentimento informado: impacto na decisão judicial	Original article, retrospective study based on the analysis of 70 judicial processes in Brazilian courts, judged between 2014 and 2016	Seventy cases in Brazilian courts, judged between 2014 and 2016, were analyzed. 51% of physicians were acquitted. In contrast, 49% of physicians were convicted; in 50% of these cases, the reason for conviction was the absence of the ICF.
Silva and collaborators [4]	A judicialização no erro médico no Brasil: uma revisão integrativa	Integrative review	Twelve studies published between 2013 and 2023 were analyzed. The most frequently requested specialties were gynecology-obstetrics and general surgery. Most lawsuits were dismissed, resulting in an average 30% reduction in claims.
Feijó CA, Framil VMS, Gianvecchio DM [5]	Dever de informação em medicina: análise de processos judiciais	Descriptive and retrospective study, based on the analysis of rulings from the Court of Justice of the State of São Paulo	Sixty-five judgments from the Court of Justice of the State of São Paulo were analyzed, between July 2018 and July 2019. The ICF was present in 77% of cases, but the absence or the inadequacy of the document accounted for 71% of convictions. The specialties most frequently involved were plastic surgery (18 defendants) and gynecology and obstetrics (14 defendants). Medical expertise was present in 86% of cases.

continues...

Table 1. Continuation

Authorship	Title	Type of study	Conclusion
Pereira ASN, Porto CC, Almeida RJ [6]	Erro médico e seu potencial iatrogênico: uma revisão sistemática	Systematic review of scientific literature published between 2015 and 2019 that addressed medical error, iatrogenesis, and patient safety	Eleven articles published between 2015 and 2019, focusing on medical error, iatrogenesis, and patient safety. The study concludes that medical error is a public health problem and recommends greater investment in patient safety and improving the working conditions of healthcare professionals.
Freitas BC, Fonseca EP, Queluz DP [7]	A judicialização da saúde nos sistemas público e privado de saúde: uma revisão sistemática	Systematic literature review	The authors analyzed 34 scientific articles from 2004 to 2017, which revealed that 69.56% of lawsuits involve access to medication.
Conselho Nacional de Justiça [8]	Judicialização da saúde no Brasil: perfil das demandas, causas e propostas de solução	Descriptive and exploratory research with a qualitative and quantitative approach	Between 2008 and 2017, the number of health-related lawsuits increased by 130%, while the total number of lawsuits increased by 50% during the same period. Most of the claims involve medication.
Braga and collaborators [9]	Responsabilidade civil nas acusações de erro médico de ortopedistas	Descriptive and retrospective study analyzing judicial processes in the Court of Justice of the State of Rio de Janeiro, covering cases between 1975 and 2015	Nineteen lawsuits against orthopedists in the Rio de Janeiro Court of Justice between 1975 and 2015 were analyzed. Six were selected for analysis. Of these, 83% were dismissed. Medical expertise was requested in all cases, and there was 100% agreement between the expert report and the judicial decisions.
Batistella and collaborators [10]	Lawsuits in health: an integrative review	Integrative review of primary studies on the health judicialization published between 2007 and 2017	Thirty primary studies published between 2007 and 2017 that focused on the health judicialization were reviewed. In Brazil, 74% of the analyzed actions were related to medication requests.
Braga IFA, Vieira KO, Martins TGS [11]	Responsabilidade civil do médico oftalmologista no Tribunal de Justiça do Estado de São Paulo	Original article, retrospective study based on the analysis of judicial processes in the Court of Justice of the State of São Paulo until 2016	Twenty-nine lawsuits against ophthalmologists in the São Paulo Court of Justice up to 2016 were analyzed. Of the cases analyzed, 72% were dismissed. Expertise identified medical malpractice in only 10% of the cases. The study showed an increase in lawsuits between 2000 and 2015, as well as the importance of expert testimony.
Gomes TR [12]	Análise idiossincrática dos discursos proferidos nas decisões judiciais sobre erro médico no TJDFT: um estudo qualitativo	Original article, qualitative study with idiosyncratic discourse analysis, based on 204 processes from the Court of Justice of the Federal District and Territories, analyzing decisions made between 2013 and 2015	204 cases in the Court of Justice of the Federal District and Territories were analyzed, of which 57% were dismissed. The study concluded that it is essential to promote more humanized health practices and to train both health and legal professionals to address issues of medical malpractice.

continues...

Table 1. Continuation

Authorship	Title	Type of study	Conclusion
Borges GS, Mottin RW [13]	Erro médico e consentimento informado: panorama jurisprudencial do TJRS e do STJ	Original article with retrospective analysis of jurisprudence in the courts of the Court of Justice of the State of Rio Grande do Sul and the Superior Court of Justice	Twenty-six rulings from the Rio Grande do Sul Court of Justice (2003-2015) and four from the Superior Court of Justice (2002-2012) related to informed consent and medical liability were analyzed. In the Rio Grande do Sul Court of Justice, 12 cases were successful, and 12 were unsuccessful, with no physician convicted when informed consent was properly recorded. In the Superior Court of Justice, 75% of convictions resulted from a lack of informed consent.
Yamauti K, Zerbini T [14]	A oftalmologia no tribunal: avaliação das sentenças judiciais no âmbito do Tribunal de Justiça do Estado de São Paulo	Retrospective study with a survey of jurisprudence	Fifty-five rulings from the São Paulo Court of Justice related to medical errors in ophthalmology between 1997 and 2014 were analyzed. Of these, 81.8% were unsuccessful, while 9.1% were successful and 9.1% were partially successful. Medical expertise supported 86% of the decisions.

Discussion

The growth of civil lawsuits against physicians in Brazil is an indisputable and growing phenomenon. This growing trend in demand is not limited to increased lawsuits: it highlights profound issues related to the lack of preparedness of some professionals, their teams, facilities, etc., which are frequently identified as predominant causes in lawsuits [1]. The literature review shows that medical civil liability has become a central theme in health judicialization, especially in highly complex areas such as gynecology-obstetrics and general surgery, which were the most litigated areas in the studies evaluated [2].

The absence or the inadequacy of the ICF is a recurring issue in the reviewed studies, being identified as one of the main factors associated with convictions [5]. The ICF is an essential instrument for protecting both patients and professionals, as it ensures that patients are fully informed about risks, benefits, and treatment alternatives. However, flaws in the preparation or absence of this document have significantly contributed to unfavorable court decisions for physicians.

Among the specialties most frequently involved in litigation, obstetrics stands out for its sensitive nature, as it encompasses complex deliveries and obstetric emergencies. Studies show that this area accounts for up to 31% of lawsuits against physicians in some regions, which denotes the complexity of its practice [2]. In addition, general surgery, another high-risk specialty, is frequently cited in lawsuits related to technical failures or postoperative complications [1].

Communication between physicians and patients plays a crucial role in legal proceedings. Failures in this aspect not only harm the physician-patient relationship but also increase the likelihood of litigation, especially when the patient feels that their concerns or needs have not been met [3]. Lack of clarity in explaining procedures and risks is often interpreted as negligence, even when the medical conduct was technically adequate.

Another factor that stands out in the analysis is the importance of medical expertise in civil proceedings. Expertise usually determines the outcomes of lawsuits, i.e., it serves as a basis for validating or refuting medical conduct. Studies show that, in most unsuccessful cases, expert opinions were fundamental in supporting

the defense of physicians [14]. However, when documentation is inadequate or nonexistent, the physician's position in the legal action becomes more vulnerable, even with a favorable expert opinion.

Furthermore, while the emotional and financial impacts of lawsuits on healthcare professionals are often ignored in the literature, they represent a significant concern. The stress caused by these actions can lead to abandoning the profession or developing insecurities that compromise medical practice. This effect is particularly evident in high-litigation specialties, such as gynecology and obstetrics, where physicians face constant pressure to achieve perfect results [2].

The health judicialization in Brazil also exposes weaknesses in both public and private healthcare systems, including inadequate infrastructure, overwork, and difficulties in accessing essential resources. Many lawsuits reflect not only individual failures of physicians, but also systemic problems that affect patient care [10]. This points to the need for an integrated approach that considers both individual and structural factors.

Hospital institutions are often jointly responsible for lawsuits filed against physicians, whether due to protocol failures or inadequate support for healthcare teams. Creating a safer environment for patients and professionals requires institutional commitment to the quality and safety of care, as well as better training for teams [3]. Preventive measures, such as continuous training for healthcare professionals, the adoption of humanized care practices, and improvements in medical records, are essential strategies to reduce litigation. These measures not only minimize the risk of lawsuits but also promote greater legal security for professionals and higher-quality patient care [5].

Another important aspect is strengthening the physician-patient relationship, which should be grounded in trust, transparency, and mutual respect. Humanizing care and fostering open communication are fundamental to preventing conflicts and promoting a positive patient experience [1]. In addition, the use of tools such as the ICF can reinforce this relationship, as it serves as a safety element for both parties.

Alternative dispute resolution methods, such as mediation, should also be considered to reduce litigation impact. Mediation allows for a more agile and less stressful resolution for all parties involved, thereby promoting a more collaborative and less adversarial environment [10].

The analysis also highlights the need for public policies to reduce litigation in healthcare. This includes investments in infrastructure, improvements in the working conditions of healthcare professionals, and greater integration between the medical and legal fields [2]. In addition, the analysis requires expanding research on the subject, including regional analyses that account for local specificities and examine the social and economic impacts of lawsuits.

Therefore, addressing the challenges related to civil lawsuits against physicians requires a joint effort from managers, healthcare professionals, patients, and the legal system. Only through an integrated approach will it be possible to promote a safer, more ethical, and more efficient environment for all involved.

Final considerations

Civil lawsuits against physicians in Brazil continue to rise, driven by factors like negligence, communication failures, and inadequate informed consent. This study reinforces the importance of implementing preventive measures, such as continuous training for healthcare professionals, humanization of care, and careful preparation of medical records. Furthermore, strengthening the physician-patient relationship, based on trust and transparency, is fundamental to avoiding litigation. New studies exploring the technical, legal, and emotional aspects of litigation can contribute to a more comprehensive and humanized view of medical civil liability.

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Contribution of the authors

André Luiz Ramos dos Santos Gontijo Peixoto: conceptualization; methodology; research; writing; original draft; review. Waldemar Naves do Amaral: guidance; supervision; validation; final review.

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