Judicialization of medicine in the access to drugs: bioethical reflections

Thereza Cristina de Arruda Salomé D'Espíndula

Abstract

This article discus about judicialization of medicine in the access to drugs, a persistent health status that causes injuries to the public system of health. We exposed the basic points to such practice to provide a bioethical discussion of the processes, through bibliographic revision and the systematization of the collected material. It is possible to note that the judicialization of medicine has increasingly been taking relevance and it will no longer be able to be supported. The multidisciplinary Bioethics may suggest some solutions. It is concluded that Judiciary decisions would contemplate the complexity of human life, not just assuring drugs. It would be important the communication between health and justice for discussions and opinion elaboration, as well as discussing on the individual meaning of the request and obtaining medications by judiciary means. This could reveal personal issues and quality of life, by preserving both ones.

Key words: Delivery of health care. Quality of life. Ethics. Health vulnerability. Bioethics.

Resumo

Judicialização da medicina no acesso a medicamentos: reflexões bioéticas

O artigo trata da judicialização da medicina voltada ao acesso a medicamentos, situação persistente que causa agravos ao sistema público de saúde. Objetiva apresentar os pontos básicos desta prática realizando reflexão bioética, mediante revisão bibliográfica e sistematização do material levantado. Os resultados mostram que a judicialização da medicina vem tomando cada vez mais vulto e não terá condições de sustentar-se por muito tempo. A bioética, multidisciplinar, pode sugerir algumas soluções. Conclui-se que as decisões do Judiciário deveriam contemplar a complexidade da vida humana, não apenas garantindo medicamentos. Seria importante a comunicação entre a saúde e a Justiça para discussões e elaborações de pareceres, bem como refletir sobre o significado individual do pedido e obtenção das medicações por via judiciária. Isto poderia revelar questões pessoais e qualidade de vida, preservando a ambas.

Palavras-chave: Assistência à saúde. Qualidade de vida. Ética. Vulnerabilidade em saúde. Bioética.

Resumen

Judicialización de la medicina en el acceso a medicamentos: reflexiones bioéticas

El artículo trata de la judicialización de la medicina en el acceso a los medicamentos, situación persistente que causa empeoramiento al sistema de salud pública. Presentar puntos básicos de esta práctica realizando una reflexión bioética mediante revisión bibliográfica y sistematización del material recogido. Los resultados permiten observar que la judicialización de la medicina está creciendo y no tendrá condiciones de sostenerse por mucho tiempo. La bioética, multidisciplinaria, puede sugerir algunas soluciones. Se concluye que las decisiones del Judicial deberían contemplar la complejidad de la vida humana, no sólo garantizando medicamentos. Sería importante la comunicación entre la salud y la Justicia para discusiones y elaboraciones de opiniones, así como reflejar acerca del significado individual del pedido y obtención de las medicinas a través del judicial. Esto podría revelar asuntos personales y de calidad de vida, preservando a ambas.

Palabras-clave: Prestación de atención de salud. Calidad de vida. Ética. Vulnerabilidad en salud. Bioética.

1. **Master** therezapsi@gmail.com – Faculdades Pequeno Príncipe, Curitiba/PR, Brazil.

Correspondence
Avenida Iguaçu, 333 Rebouças ZIP 80230-020. Curitiba/PR, Brazil.

The author declares no conflict of interest.

As a persistent situation in health and cause of injuries to the smooth running of the public health system, the judicialization of medicine, in relation to the access to drugs, presents some important points for discussion. In this particular approach, bioethics, with its multidisciplinary approach, can be of great help in understanding the phenomenon and suggest some solutions.

It was intended to start from the conceptualization of judicialization of medicine as well as a succinct explanation concerning drugs supply through the Unified Health System (hereby SUS – *Sistema Único de Saúde*) and the types of solicitation upheld by the judiciary. Then the actors of this process will be presented, namely, the UHS, law, medicine and users of health services. It continues pointing out some bioethical issues and, from there, a discussion.

Basic Concepts

Judicialization of medicine

The use of expressions *judicialization of medicine* or *judicialization of health* is becoming commonplace as more people go to court to obtain necessary contribution for their treatments. Thus, these expressions point to problems in access to healthcare goods and services, surgeries not covered by the UHS, medical liability, release of beds in intensive care units (ICU), drugs, among many others, through lawsuits . Although questionable, demand was initially based on the Magna Carta, which defines health as a social right in its Article 6 and in its Article 196 ensures equal access for all to health. The Health Law (Law 8.080/90) consolidated in Brazil advocacy for better health and life, based on a public service system with quality and universality [1].

The judicialization of medicine – which in this article is limited to obtaining drugs – ultimately generates a network of tension between the judiciary, executive and legislative powers. The judiciary, because it has the function of enforcing the laws and in this case, to perform the access to requested drugs; the Executive, because it establishes and implements policies to ensure compliance with laws; and the Legislative, which emanates laws that allow everyone's access to Pharmaceutical Care (PC). Drugs requests via judiciary have swelled, creating difficulties in management as the purchase, as well as any expense, shall accompany a budget and financial execution of the ministry to which it is linked (in this case, the Ministry of Health).

With an infinite demand for health care and finite resources, judicialization of medicine, regarding drugs requests, has imposed certain lawlessness to users in a parallel structure, with a view to increasing monetary disbursements in order to meet their demand; difficulties to perform services; irrational allocation of resources and even possible damage to patient health.

UHS public policies are easily damaged by these unplanned expenditures [2]. To allocate a quota for PC, the system cannot predict how many lawsuits will be met, either the monetary value to cover this demand. So if these drugs represent a very high percentage, other resources will have to be delayed or canceled. However, in places where political PC is not present as expected, the judicialization of medicine can pose a legitimate way to claim rights of users.

A court order for the supply of drugs can be beneficial or not. With no time for prior assessment of the real need, the judge ends by releasing the pleaded drug, and may or may not contribute to an improved quality of life of the applicant in particular and the assisted population in general. As a positive result it induces programs and therapeutic practices protocols to update. As a negative result, in many cases, there is an early incorporation of drugs in order to reduce lawsuits, sometimes without adequately meeting the criteria of efficacy, safety and health priorities.

Supply of drugs via UHS

Ensuring access to essential medicines, provided by the National Drug Policy (NDP) [3], raises the debate on the essentiality concept. This concept involves scientific and technological development, drugs production, checking its quality, health regulations, PC's reorientation and the development and training of human resources for better access to drugs. Drugs listed in PC are assessed for efficiency and effectiveness purposes, in addition to cost-effectiveness, safety and public relevance; it involves drugs selection, planning, procurement, storage, distribution and use (prescribing, dispensing and use).

The World Health Organization (WHO) states that each country shall develop its own list of essential drugs to meet the needs of the population. There must be criteria such as effectiveness and safety of drugs, thus minimizing the use of unproven efficacy drugs, which can pose risks. It is also intended to avoid duplication of drugs for the same clinical indication. On this basis, the PC program advocates a form of assistance aiming equity. In addition to the

essential drugs, there are those exceptionally dispensed and drugs distribution programs for specific diseases (tuberculosis, malaria, diabetes etc.), in order to meet different demands of health.

The supply of drugs is a responsibility of municipalities, states or Union and its management should facilitate their acquisition. However, often the drug claimed does not integrate UHS's lists [4] or even received the National Health Surveillance Agency (ANVISA) approval for sale. This fact suggests key questions: are the UHS's lists deficient, as they ignore the need to include certain drugs? Would the pharmaceutical industry be interested to rapidly incorporate new drugs on those lists? Would doctors ignore what has been normalized by PC? Anyway, it seems to be attributed to the UHS the mere function of drugs supplier, when its role should be to integrate medical and pharmaceutical care.

Drugs listed in the UHS

As stated by Medeiros, Diniz and Schwartz (2013), it would be three main reasons why a drug is not part of the UHS's regular dispensary. The first relates to management and storage problems; the second relates to drugs not included in the lists of dispensing *either because it is not scientifically recognized the therapeutic efficacy of the drug or because, despite the scientific recognition, the processing of authorization by the system health surveillance has not been completed. The third reason is the refusal of the distribution due to the existence of potential substitute drugs with a better cost-effectiveness (therapeutic efficacy), known as the theory of rationality in health* [5].

The UHS essential drugs' list [4] includes high, medium and low cost drugs, not being tied to monetary values. Of course, while encompassing large quantity and variety of drugs, it does not cover absolutely every need. When it is necessary to resort to drugs missing from the lists, the scientific evidence supporting the use shall be checked and, only if positive, provide them. It should also be checked if there is no therapeutic alternative. There are missing drugs in hospitals and other healthcare institutions, possibly by management failures in PC. It is also possible that there is a lack of knowledge regarding those official lists of drugs.

Drugs registration in Brazil follows a series of rules imposed by ANVISA, regardless of whether the product has been registered in other countries or not. Among those norms it can be highlighted the presentation of technical reports with detailed data on the results of clinical trials; the evidence of efficacy and safety; the price in the country where the product is already negotiated; registration in the country of origin; and others, that, if not presented, delay or hinder the approval [1].

Drugs not approved by ANVISA

Requests for drugs without registration at ANVISA or whose registration is pending may cause problems, with a view to greater difficulty in the acquisition and the risk to the users' health. It is also necessary to consider the assumption that there can already exist in the market other drugs with the same indication.

Unregistered drugs requests may also indicate some kind of pressure from the pharmaceutical industry, since the UHS is a huge client. Many repeated actions to acquire the same drug without registration may force ANVISA releasing it quickly, without the necessary inquiries. Once released, the pharmaceutical industry could easily expand their profits.

Actors involved

The Unified Health System

The management of health is the noblest mission of democratic governments and its recognition as a right brings an ethical and legal responsibility to implement policies and actions that will ensure the population shares of health care. However, there is the possibility of the citizen when feeling passed over by these policies to recourse to public power in order to enforce the obligation of the state and guarantee their right to health.

Health officials have mobilized to better understand and assess this phenomenon, mainly due to the financial impact that such actions cause, so that measures to reduce lawsuits are taken [6]. Thus, it necessary to prepare studies, elaborate monitoring indicators, perform the time tracking of those indicators and also make comparisons at different locations.

Decisions in healthcare are complex, since they involve from the financing to the rational use of resources, requiring good preplanning for management actions. Technical regulations, protocols and scientific and epidemiological criteria will make big difference in defining the best health policy. The judicialization of medicine interferes directly to that organization, undermining the rational allocation of resources and planning of health, which advocat-

ed the universality, integrity and equity. Ultimately maximize differences, considering situations in which the individual possibly does not belong to the most vulnerable population, as clarification and economic power are enough to pay for the intervention of a lawyer [2].

When chronic diseases occur, often requiring huge resources and drugs to be used in the long and medium term, the lawsuits are even more frequent, as shown by the literature [1,2,6-9]. This fact, by itself, may represent the option of hiring a lawyer since obtaining the drug represents financial benefit that is able to supplant expenditures on legal fees.

We must constantly update the lists of drugs to ensure increasingly access to drugs for everyone, safely and effectively guaranteed, as well as a way to combat the continuous and intense judicialization of medicine. Actions and judgments are the result of maturation in the organization of society on one hand and, on the other, of the deficiencies in public administration. In an attempt to prevent further lawsuits, the incorporation of drugs to the public health system should be better understood, as well as improved and speeded up [1].

Doctors and medicine

Also under the pressure of capitalism and the consumer society, doctors consult specialized publications and attend scientific meetings. But they need to be aware of the media actions in favor of the pharmaceutical industry, which is usually behind this dissemination of knowledge, almost always interested in commercializing therapeutic innovations, culminating to exercise some influence on their prescribing patterns.

Prohibitions and limitations imposed on the recent advertisements of new drugs have generated alternative forms for the pharmaceutical industry to promote their products. The media and medical conferences as well as articles related to this class have been excellent and efficient ways of working to achieve their goals. Also, there are plenty invitations to the media to give voice to these strategies, making scientific innovations reach the population.

Also the lack of knowledge about the NDP and their lists of drug can lead to hasty action, looking for a non-standard product, "last generation", but still no evidence for the prescription or use. Studies conclude that most prescriptions arriving to justice is derived from university hospitals, which tend to evaluate new technologies and treatments [7-8].

Patients with chronic diseases tend to turn to the courts on an individual action rather than facing a collective issue. The medical profession emphasizes the criteria of priority right to health, ignoring the fact that health involves social, economic and environmental factors in addition to actions and integral services of promotion, protection and recovery, which makes it essential the effective control of information brought by the pharmaceutical industry as well as the correct evaluation of the pathological condition of the patient, leading to proper prescription of drugs and order tests.

Right to health

The judiciary has the characteristic of acting only by provoking individuals or legal persons interested in claiming something. This claim is individually so as to allow only one side to be victorious. Conflicts of distributive nature, involving property such as the right to health, are being brought to Justice, but these are collective issues too complex to be addressed by the organs of Justice, traditionally accustomed to dealing with criteria and mechanisms for deciding on bilateral disputes which are appropriate to the exercise of commutative justice, and not appropriate to the exercise of distributive justice and, as such, should not be applied to decisions on properties and goods provided by the state.

Put another way, when the question issued is about health, especially with regard to the supply of drugs, the gain of some people may mean immediate injury to others. The result would be a loss or a gain for society; it is the allocation of scarce or indivisible resources and no remuneration or compensation between the two parties. Health is a common good, a social right and should be treated collectively when it involves the equitable distribution of resources [9].

So, treat it as if it were a matter between two parties, when in fact, the conflict will reach the community, is one of the limits to judgments dealing with commons [9]. It would be necessary to go beyond the legal relationship, not just a bilateral opposition patient-State, but also involving the market for drugs and the scientific community. It is vital that the government pursues a distinct role regarding those issues, since social demands are dynamic and the conflicts require solutions oriented to the future. This requires the exercise of long-term vision, which perhaps is not a usual practice [9]. Furthermore, the judicialization of medicine may not turn out to be a major concern than the actual services' effectiveness.

The quick way with which this kind of conflict has led the government to often adopt a deferral position comes to show that there was not enough time, on its part, to better prepare themselves against these new criteria of judgment. Without knowledge of the elements contained in public policies on drugs, there is no way to guarantee universality and equity, which would lead to both effective and safe health care for every citizen.

Remember that emergency acquisitions by courts may also encourage fraud. Drugs without proper registration at ANVISA or out of the PC's lists may indicate veiled pressure, camouflaging interests other than truly regain population's health. However, in cases of lack of drugs and/or non-compliance with clinical protocols, judicialization is the most agile way for the effective implementation of this right.

Although many of the actions indicate failures of the Union itself as a provider of care, they tend to be stimulating medicalization, failure in rational use of drugs and an obstacle to the efficiency of PC. It is essential that the judiciary observes and takes into account the existence of public health policies in each case, which establish rights broadly, linked to economic and social policies. It would be necessary, then, that the government should adopt measures to protect the population's health to which it is directed. In the case of a requested drug that is not listed in the UHS, other parameters should be adopted, such as the indispensability of the drug for the individual's survival and medication options with equal efficacy and lower cost.

The overwhelming majority of those who hold the power to decide on drugs requests are in favor of granting them, in view of overlapping the right to life and health to other arguments. They choose to protect life and thus confirm the expectation that the lawsuits have favorable opinions, often through injunctions granted for no longer delay, which is not a safe situation for the patient. These injunctions tend to be met for a long time not making a proper assessment of the case [1].

In view of the judiciary to preserve the integrity appears to be associated with the notion of consumption, since several demands related to drugs supply have been deferred, without considering the promotion and prevention of diseases and injuries. In view of the individual who requests the drug, the dismissal of the lawsuit may sound like an inhuman act, as a denial of his/her right to health. However, there is no way to verify, in space and time, research with drugs regarding the theoretical aspects of medicine, the variability of medical practices or the survival rate of patients, since lawsuits abstract the complexity of conflicts, reducing the discussion to rights and duties.

It would also be important to check whether the doctor who prescribes the drug integrates the local public health care system, otherwise we would be reversing its logic and favoring the acquisition of drugs by those patients who do not use the system. The right to health cannot be understood only as supply of drugs on the market: it must also consider the entire structure of public policies on health care, how this health is produced and symbolically interpreted (as a right, good, property, economic value or social value). Perhaps there is no other means of securing the right to health for the entire population except through these policies.

It must be feasible to increasingly enable broad and well-structured communication between legal and health areas, so that formal spaces for dialogue and developing effective public policies can be created, in order to reduce lawsuits and ensure better PC.

Users

For those who need the medicine, Justice is just a faster or more efficient way to get it. For the UHS and the Union, states and municipalities, this form may not be appropriate, in view of the details surrounding it. Currently, users are acquiring greater power of organization, participating in groups, associations, NGOs and others, able to exert greater pressure on the achievement of their rights.

It is known that there will always be a small portion of users who, for health needs, medical status, resistance or intolerance to available drugs, require the prescription of newly launched drugs or not yet available for sale [1]. However, in doing so, those users implant difficulties in the management of PC and other sectors of the UHS (such as reforms in health care facilities, hiring staff, purchasing equipment etc.).

The pleasure and well-being of a few should not supplant the many others. Thus, citizens – professionals and users – should think together about the allocation of resources, even relegating personal desires to the second place. Effective and appropriate actions of the judiciary and health sectors are also required so that they can, together, overcome their limitations (as much as possible), responding appropriately to their demands.

Bioethics Discussion

Bioethics deals with interventions that health and life sciences, as we call them, cause on human life. It could be said that, as stated by Sanches [10], bioethics studies *the moral behavior of human beings faced with all intervention of biotechnology and health sciences over life in all its complexity.* It has as one of its objectives the pursuit of benefits and ensuring the integrity of the human being, based on the defense of human dignity [11].

In such a complex subject as the judicialization of medicine, one realizes that there are quite a few dilemmas. There are questions about the fact of providing or not drugs and the doubt about how the government should position itself, among others. The commitment to life is stimulates such issues, but it is known that the interest of pharmaceutical companies also influences this perception, as the wage a daily war to gain greater market share and make more profit, making use of what is available in the current capitalist and globalized world in order to impose each new drug – which has generated growing concern about ethical issues related to strategies directed to physicians and health institutions, groups representing patients, managers, politicians and media.

Labs often justify their aggressive *marketing* efforts by high costs embedded in the development of new drugs, which would be reflected in increased price of medicines in retail. So that they would need to enhance their marketing strategies often indirect, subtle and sophisticated, which are not always characterized by the direct link between prescribing and use. These are friendly pressures and games of influence that have long become part of the marketing culture of drugs in an *almost* trivial relationship with the medical profession, that feels with such harassment difficulties to keep away from the sales representative or promotional material or to stop paying attention to articles and advertisements, present even in conferences.

To control such power, bans are not enough, we must establish enforcement and control procedures, performed by competent organs and class councils to monitor and identify carefully and clearly the strategies of direct and indirect *marketing.* It is also necessary to implement strategies to avoid negative outcomes, punishing those who are outside the ethical boundaries [1].

According to the capitalist conception, profits ensure continuity of research and are secured by the discovery of new drugs or improvement of existing, especially when related to diseases that mobilize users to claim for drugs capable of providing greater benefit and/or controlling the disease worsening in the short term – as in the cases of AIDS and various types of cancers – showing that the market is prone to technological innovations. The relentless pursuit of profit can also generate omissions by the pharmaceutical industry before identified adverse effects, since between human life and the right to use brands it ends up often choosing to protect the latter.

Brazil, with its policy of universal access to health treatments is a potential consumer market. Additionally, the costs for performing local research are relatively low, even considering the rigor of standards for research involving human subjects[12]. The high ethical standards of research in the country aim to bring improvements to science and obtain more information regarding the effectiveness of drugs and health treatments.

It can be assumed that physicians who have acted as researchers of a new drug may prescribe it, generating lawsuits to request the new drug's acquisition, which in this case denotes the credibility and trust that these professionals have acquired in the product whose research they have followed. Even in such cases, the conduct should be discussed ethically, considering the possibility of conflicts of interest [1].

The dismissal of a lawsuit regarding certain drug can be interpreted as a denial of the right to health imposed on the citizen. Perhaps this approach may be misguided as the right to health cannot be restricted to the supply of drugs policy, a reductionist vision which would see the disease as a focus of curative actions and palliative care. The existence and activity of the UHS is intended to go further by offering treatment to people at different levels of complexity. Promotion and prevention actions, for example, are more focused on campaigns, with the use of drugs mostly restricted to the actions of health care [2].

Thus, maintaining the equity and integrity of health may be seen by the government as drugs were the only way to fight against diseases and disorders, without considering the public health policies involving social rights. They might be deciding only politically and thereby inhibiting equity. Furthermore, these demands, without time or structure to assess the case in details before deferral, create difficulties for the UHS management. If the assumption is to meet forthwith to court proceedings, the right to health will be guaranteed, but public health policies will be relegated to a second place.

Health care should be performed to allow everyone to have their autonomy respected, which requires critical and ethical reflection about the available resources. We must remain mindful that personal vulnerability will not become social vulnerability – the latter containing factors that lead to decrease everyone's well-being, exposing families and communities at risk. We cannot forget that the citizen's right to guarantee access to drugs may also be also a control tool over the State, avoiding negligence.

If the judiciary defers the supply of drugs listed on the UHS's lists, because they are not available in health facilities or in hospital pharmacies, it constitutes a fully relevant demand. However, the same does not occur in the case of missing drugs from those lists or even some without registration at ANVISA, situation in which side effects have not yet been assessed and often the user himself is unaware of the risks to which he is subject. In summary, knowledge about the selection criteria of drugs contained in the PC, as well as the health care system, should be disseminated among health professionals and members of the judiciary, recognizing that the society cannot wave their rights guaranteed.

But it is necessary that the paradoxes involving lawsuits related to the acquisition of drugs are indicated. Knowledge and awareness of professionals could help reducing litigation without compromising the right to health. A major dialogue between health departments and courts would allow a rich exchange of information that is beneficial to all, facilitating the actions of the first regarding drugs dispensing and the last, as to the lawsuits.

Society often appears more likely to go to the court than aware of the UHS's responsibilities. The citizen goes in search of equity, but this issue is related not only to him but also to all users of the system, simultaneously, in a continuous quest for social cooperation among all, in their capacity as free and equal. If the citizen is entitled the right to obtain a certain drug, for this equity to be granted it would be required to meet the needs of everyone who needs the same prescription; even more, it would be necessary to meet all drugs requests, even without the intervention of the judiciary. So, we must be very cautious so that this judicialization of medicine will not extend the dimension of social conflicts already underway.

Drugs targeted to terminal patients – which are not the ones who claim the most – require special attention to possible side effects and drug interactions. The terminal patient, for his/her own health condition, is already in a clear condition of vulnerability and therefore efforts to keep the patient under physical and emotional comfort conditions, considering the irreversibility of the case, must be made.

Continuing with this reflection, it shall be considered the fact that health sciences are not yet able to conquer death, but only to postpone it. One dies because is mortal and not because he got sick. By resorting to the judicialization of medicine, this act should be coated with the highest compassion for the one whose life is about to end, not submitting this patient to invasive and painful procedures, which are not necessary only to postpone a death foretold. Terminal patients need special care, rather than surgeries, showing the team's respect and affection with him and his family. If in those parameters judicial intervention is viewed as a superfluous procedure, it should be avoided to minimize the emotional distress of those involved. In cases of chronic or acute diseases in which it makes use of the judicialization of medicine, other factors must be considered.

Biotechnological power is making a rapid progress, imposing its conditions to everyone; the power exercised by healthcare prevails before the general public. Prior to the approval or dismissal of the suit, it is necessary to realize that the judicialization of medicine acts in accordance with the so-called "medicalization of health" – a phenomenon in which drugs can be seen as a commodity and its consumption as a supposed form of happiness and health [13]. In the health-disease process, this materializes the capitalist desire to apply a solution for everything – if it is possible, even to death.

In today's society, people talk about health everywhere: in search of a satisfaction that is based primarily on models aired by the media, the human being is exposed to bistouries, food, treatments, exercises and cosmetics, at the endless desire for happiness and well-being [14]. In a society that lives with a youthful appearance denying its biological age, health becomes a means and an end in itself; pain, suffering, happiness and death undergo radical changes, not always positive; people become accustomed to make use of drugs by absolute intolerance to frustration, to address the most basic situations that were once resolved simply letting emotions to surface. If before pain was accepted naturally, today we must exile it at any cost; it is necessary not to be depressed, anxious or carry strong emotions and to disengage from pain, which often involves the use of drugs that "normalize" behavior and eliminate symptoms of suffering, without seeking their meaning.

In a society identified by analgesia, pain is often divested of its subjective dimension; suffering is divested of its intimate and personal dimension and transformed into a technical problem, the patient is turned into a healthcare consumer without any major concerns with their psychological distress [15]. Thus, it is necessary medicalization following the diagnosis so that any pain is no longer felt, even imposing methods of analgesia increasingly powerful and invasive, often capable of causing increasingly adverse effects. Medications such as consumer goods are treated under the business logic. Medicalization of the existence turns life into a disease and it consumes what is being offered, not necessarily solving the problem. In this context, the call for health care is confused with a consumer appeal, whereof we are all victims. Medicalization turns health into *a commodity* like any other and the pharmaceutical industry acts like any other industry, placing their products on the market with the intention of profit.

A society that is structured that way will never be content to use drugs already enshrined in its effects; it will always be in search of other drugs belonging to the new generation, which are able to make it free from various problems, to bring health and, perhaps, eternal life. Health expenses, thus, will not cease to grow: patients-consumers are showing increasingly intolerance to malaise, while doctors, imbued with knowledge and biotechnological power, are certain that they are offering patients the most powerful drugs, as they were told to believe. Exposed to the same power relations, an obsession with health is created in both, through a technical route.

In fact, it would be necessary a greater care of all towards all, so that emotional pain cease to be reflected in the physical body and can be exposed to the real world. The body, as a focus of continual sacrifices, should receive less massifying and more individualized attention in order to reverse the ongoing and endless avidity for drugs that make it happy. The unwillingness to understand ourselves and the world ends up relegating happiness to abandonment, replaced by a chemical compound, manipulated in the laboratory and sold in pharmacies.

The also effective action of an organ, such as the National Bioethics Committee, could be of paramount importance to the satisfaction of all parties involved, to a balanced budget and a good practice and greater safety in the use of drugs. Such an organ could act with a view to planning problem-situations, which are analyzed jointly in the light of bioethics, the judiciary and the health professions, besides others that might be present.

It shall be clarified here that we are not intended to judge the legitimacy of such practices, but to discuss them, trying to bring them the reason. It is necessary to retrieve values inherent in a good life, the quality of physical, mental and spiritual life, rather than only envisioning the aesthetic appearance of the physical body. A good and decent human life is based in values that go beyond the shelves of medicines and culminates in a broader welfare, in a satisfying social life, and in response to other serious needs that are beyond painful manifestations presented in the body and by the body.

Final Considerations

The process of judicialization of medicine is getting increasingly figure within Brazilian society, taking as a background many factors indicated herein, whether relating to the Judiciary or the UHS, its professionals, users or both. It is expected that the headlong rush to lawsuits for the acquisition of drugs should not be sustainable in the long-term, perhaps even in the medium term; other needs of the UHS's users will probably (increasingly) not be met, which will certainly revert in a negative effect on everyone.

Currently, when the world seems to revolve increasing speed and the events follow one another without any time to review them or reflect on them, humanity becomes increasingly vulnerable and the life of each one of us, meaningless. Is this meaning that is sought by all and everyone, from some point of their lives, particularly in situations of intense suffering and death, leading to questioning and reflection. Those who consciously decide to act according to what makes sense to them will certainly be taking an ethically correct attitude, provided that such attitude will not be detrimental to others [15].

Decisions made by jurists shall de seen the same way: ethical decisions must contemplate the complexity of human life. It is necessary, therefore, that a shared solution is adopted by all. One cannot fail to ensure full attention to the citizen, nor fail to see health as a right.

Likewise, we must ensure that citizen that all drugs used are safe and effective, with favorable cost-effectiveness, according to the best scientific evidence available. Therefore, the discussion of the subject is of utmost importance, maybe creating a channel of communication between health and

justice, perhaps enabling specific technical advice for each case, with efforts from both sides towards viable solutions. It is necessary that the distortions caused by the acquisition of drugs through the courts are minimal, only in situations where there is really no other alternative medication able to benefit that patient, bringing him comfort as well as reducing pain and suffering.

Finally, disentailing only the biological nature of the disease and bringing to light some of the variables of psychological, social and economic developments, it would make it possible to reflect on what it means to each individual applying for and obtaining the medications by judicial means. Thus, important points might be revealed and interesting discoveries should come to light. Personal issues and quality of life could be thus preserved.

References

1. Brasil. Ministério da Saúde. O remédio via justiça: um estudo sobre o acesso a novos medicamentos e exames em HIV/Aids no Brasil por meio de ações judiciais. Brasília: Ministério da Saúde; 2005.
2. Machado MAA, Acurcio FA, Brandão CMR, Faleiros DR, Guerra Jr A, Cherchiglia ML et al. Judicialização do acesso a medicamentos no Estado de Minas Gerais, Brasil. [Internet]. Rev. saúde pública. 2011 (acesso 3 ago. 2011);45(3):590-8. Disponível: http://www.scielo.br/scielo.php?pid=S0034-89102011000300018&script=sci_arttext
3. Brasil. Ministério da Saúde. Portaria nº 3.916, de 30 de outubro de 1998. Política nacional de medicamentos. [Internet]. Brasília: Ministério da Saúde; 1998 (acesso 3 ago. 2011). Disponível: http://bvsms.saude.gov.br/bvs/saudelegis../gm/1998/prt3916_30_10_1998.html
4. Brasil. Ministério da Saúde. Relação nacional de medicamentos essenciais - Rename. [Internet]. Brasília: Ministério da Saúde; 2012 (acesso 15 jan. 2012). Disponível: http://portal.saude.gov.br/portal/arquivos/pdf/CONITECANEXOSRENAME.pdf
5. Medeiros M, Diniz D, Schwartz IVD. Tese da judicialização da saúde pelas elites: os medicamentos para mucopolissacaridose. Ciênc. saúde coletiva. 2013 (acesso 3 jun. 2013);18(4):1079-1088. Disponível: http://www.scielo.br/pdf/csc/v18n4/22.pdf
6. Andrade EIG, Machado CD, Faleiros DR, Szuster DAC, Guerra Jr AA, Silva GD et al. A judicialização da saúde e a política nacional de assistência farmacêutica no Brasil: gestão da clinica e medicalização da justiça. [Internet]. Rev Med Minas Gerais. 2008 (acesso 3 ago. 2011);18(4 Suppl):546-50. Disponível: <http://rmmg.medicina.ufmg.br/index.php/rmmg/article/viewArticle/102>
7. Messeder AM, Castro CGSO, Luiza VL. Mandados judiciais como ferramenta para a garantia de acesso a medicamentos no setor público: a experiência do Estado do Rio de Janeiro, Brasil. [Internet]. Cad. Saúde Pública. 2005 (acesso 3 ago. 2011);21(2):525-34. Disponível: http://www.scielosp.org/pdf/csp/v21n2/19.pdf
8. Pepe VLE, Ventura M, Sant'ana JMB, Figueiredo TA, Souza VR, Simas L et al. Caracterização das demandas judiciais de fornecimento de medicamentos "essenciais" no Estado do Rio de Janeiro, Brasil. [Internet]. Cad. Saúde Pública. 2010 (acesso 3 ago. 2011);26(3):461-71. Disponível: http://www.scielosp.org/pdf/csp/v26n3/04.pdf
9. Borge DCL, Ugá MAD. As ações individuais para o fornecimento de medicamentos no âmbito do SUS: características dos conflitos e limites para a atuação judicial. [Internet]. Rev. direito sanit. 2009 (acesso 3 ago. 2011);10(1):13-38. Disponível: http://www6.ensp.fiocruz.br/repositorio/resource/355560
10. Sanches MA. Bioética: ciência e transcendência. São Paulo: Loyola; 2004.
11. Fischer JK, Araújo LRT, Wiegand SCB, D'Espíndula TS. Cadernos de tanatologia. Curitiba: Unificado: 2007. (Coletânea ConexãoPsi – Série Técnica).
12. Brasil. Conselho Nacional de Saúde. Resolução nº 196, de 10 de outubro de 1996. Dispõe sobre as diretrizes e normas regulamentadoras de pesquisa envolvendo seres humanos. Brasília: Ministério da Saúde; 1996.
13. Barros JAC. Ampliando espaços para a medicalização: instrumento para desfrute de melhores níveis de saúde? In: Caponi S, Verdi M, Brzozowski FS, Hellmann F, organizadores. Medicalização da vida: ética, saúde pública e indústria farmacêutica. Florianópolis: Unisul; 2010. p. 85-9.
14. D'Espíndula TCAS. O paradoxo do cuidado da vida e do controle do patológico em Michel Foucault [dissertação]. Curitiba: Universidade Católica do Paraná; 2011.
15. D'Espíndula TCAS, Santos KS. Dor e sofrimento: uma reflexão bioética [monografia]. Curitiba: Universidade Católica do Paraná; 2008.

Received: Dec 12, 2011
Revised: Feb 26, 2013
Approved: Oct 3, 2013