



Legal action in sleep medicine: new alternatives need to be sought!

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In this issue of the *Jornal Brasileiro de Pneumologia*, the article by Pachito et al.⁽¹⁾ raises the discussion of an increasingly common approach in Brazil, as well as in other countries, which is taking legal action for access to medical procedures and treatments.⁽²⁾

The evolution of knowledge in health care has introduced more sophisticated diagnostic methods and therapeutic options, and, consequently, costs have increased. However, many of these methods and treatments are not covered by the *Sistema Único de Saúde* (SUS, Brazilian Unified Health System) or private health insurance plans, which, based on the premise that health is a universal right, makes legal action an alternative, with all the complexity that this approach imposes.

From the perspective of sleep medicine, there is a great lack of public services that offer specialized care in this area. A recent study has identified the presence of 36 specialized centers in Brazil, with a great asymmetry in terms of geographic distribution, and 44% of those are concentrated in the southeastern region of the country (personal information). Regarding diagnosis, sleep laboratory beds accredited to perform tests by the SUS are a minority, totaling only 28 centers throughout Brazil (personal information). On the other hand, the use of portable polysomnograms, which are less expensive and dispense with sleep laboratories, still requires improvements in both logistics and operationalization.

In addition to diagnostic limitations, we have an even greater challenge when we address issues related to treatment. The main treatment for moderate and severe obstructive sleep apnea is the use of a device that generates CPAP in the upper airways. It is a high-cost piece of equipment that is included neither in the SUS nor in most private health insurance plans. In our daily practice at a public tertiary university hospital, we have observed actions that aim to fulfill this need at the municipal level; however, these actions are generally restricted to patients with more severe disease and are concentrated in larger cities, closer to capitals.

The magnitude of the problem, therefore, is directly related to the prevailing socioeconomic reality in our country and the limitations arising from an area of medicine that is still being consolidated, especially in the public sphere, as well as to a highly prevalent medical

condition (approximately 30% of the adult population),⁽³⁾ whose consequences have been widely documented in the literature.^(4,5)

One of the concerns pointed out in the article by Pachito et al.⁽¹⁾ is the high economic costs that the growing practice of legal action in sleep medicine imposes. The study presents an additional cost estimate of 588% for diagnostic tests and of 21.7% for treatment with CPAP. These values are substantially higher when we compare the public health care system with the private health insurance plans.

The theme takes on an even more relevant and worrying role considering that the number of lawsuits identified in the manuscript seems to be underestimated. The authors performed an analysis based on information extracted from the judicial system database over a period of five years and identified only 1,462 lawsuits, that is, approximately 292 cases/year. Considering the already mentioned high prevalence of obstructive sleep apnea in a country with an estimated adult population of 159.2 million individuals,⁽⁶⁾ the number of patients who would potentially seek public health care assistance should be much higher. Another aspect that deserves attention is the decrease in the number of lawsuits between 2017 and 2019 reported in that study.⁽¹⁾ This finding differs from our experience in a public hospital. In recent years, with the deepening of the socioeconomic crisis in Brazil and the consequent decrease in income, making it difficult to maintain a private health insurance plan and to acquire a CPAP device, we have observed a substantial growth in the number of patients referred to our sleep outpatient clinic.

As it was already pointed out by the authors,⁽¹⁾ the need for public policies that include the training of physicians to care for those patients, the dissemination of diagnostic methods, a detailed review of health care staff wages, and the establishment of partnerships is vital in order to improve the offer of CPAP treatment. It is also necessary that these patients have access to follow-up by a qualified medical team in the various regions of the country.

Definitely, legal actions regarding sleep medicine are far from being a solution. They should be an exception, and it is urgent that we seek new alternatives!

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