HOSPITALIZATION BY COURT ORDER: ETHICAL DILEMMAS EXPERIENCED BY NURSES

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ABSTRACT

A qualitative study aimed at describing the situations experienced and the ethical dilemmas of nurses in the process of referring and receiving hospitalized patients by court order who require admission to the Intensive Care Unit (ICU). A partially structured interview was conducted with 10 nurses who worked in the ICU and 10 who worked in the Emergency Room (ER) in public and private hospitals in the metropolitan area of Porto Alegre, Brazil. The data was analyzed following the Semantic Analysis. The results indicated that nurses experienced ethical dilemmas associated with problems of overcrowding in emergency rooms and ICUs, poor specialized technology and orientation as to the benefits provided by law. We concluded that it is essential for nurses to participate in discussions that allow the planning of the different instances that have been promoting this often chaotic situation.

Descriptors: Nursing. Delivery health care. Ethics. Intensive care units. Hospitalization.

RESUMO

Pesquisa qualitativa, cujo objetivo foi descrever as situações vivenciadas e os dilemas éticos dos enfermeiros no percurso de encaminhamento e recebimento, por ordem judicial, de pacientes com indicação de internação em Unidade de Terapia Intensiva (UTI). Foi efetivada entrevista parcialmente estruturada com 10 enfermeiros, que atuam em UTI e 10 que atuam em emergência de hospitais públicos e privados da região metropolitana de Porto Alegre, Brasil. Os dados foram submetidos à análise temática. Os resultados indicam que os enfermeiros vivenciam dilemas éticos consequentes aos problemas de superlotação das UTI e das emergências, da precária tecnologia especializada, da orientação quanto ao benefício concedido pela lei. Concluiu-se que é fundamental a participação dos enfermeiros em debates que possibilitem mapear as diferentes instâncias que têm promovido esta situação, muitas vezes caótica.

Descritores: Enfermagem. Assistência à saúde. Ética. Unidades de terapia intensiva. Hospitalização. **Título:** Internação por ordem judicial: dilemas éticos vivenciados por enfermeiros

RESUMEN

Investigación cualitativa cuyo objetivo fue describir las situaciones vividas y los dilemas éticos de los enfermeros en el transcurso del envío y recibimiento por orden judicial de pacientes con indicación de internamiento en la Unidad de Cuidados Intensivos (UCI). Se realizó una entrevista parcialmente estructurada con 10 enfermeros que actuaban en la UCI y 10 que actuaban en Emergencias de hospitales públicos y privados de la región metropolitana de Porto Alegre, Brasil. Los datos fueron analizados según el Análisis Temático. Los resultados indican que los enfermeros experimentan dilemas éticos consiguientes problemas de hacinamiento en emergencia y UCI, especialista en tecnología pobre, la orientación en cuanto a los beneficios establecidos por la ley. Se concluye que es fundamental la participación de los enfermeros en debates que posibiliten mapear las diferentes instancias que han promovido esta situación muchas veces caótica.

Descriptores: Enfermería. Prestación de atención de salud. Ética. Unidades de cuidados intensivos. Hospitalización. **Título:** Internación por orden judicial: dilemas éticos vividos por enfermeros.

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INTRODUCTION

The Intensive Care Unit (ICU) is a specialized unit in the care of patients with severe or potentially critical conditions, which relies on a continuous medical and nursing assistance and specialized equipment for such differentiated treatment⁽¹⁾.

The census conducted by the Brazilian Society of Critical Care Medicine (BSCCM), in 2009, refers to the Ministry of Health recommendations, which indicates the need for 4 to 10% of ICU beds of total hospital beds (which corresponds to 1-3 ICU beds for every 10,000 inhabitants). Brazil has 25,367 ICU beds distributed in 2342 ICU, in 403 cities, but this distribution is uneven. The result is an insufficient coverage ratio of ICU beds versus population in 51.9% of federal units (less than 1 ICU bed for every 10,000 inhabitants). In the state of Rio Grande do Sul there is 1.7 ICU beds for every 10,000 inhabitants, however, 39.5% of ICU are in the private sector, 33.5% in philanthropic hospitals and 25.2% belong to public hospitals⁽²⁾.

Health professionals experience in their every-day life that the demand for ICU beds is much greater than the supply, which makes the care of critically ill patients increasingly distant from a humanized care of excellence. Humanize, in this case, is to effectively assist critically ill individuals, following the premise that every patient has the right to a qualified care, personal dignity and clear information⁽¹⁾.

The growing infeasibility of providing technology to the service of life and health of clients of the public health system is an important form of dehumanization⁽¹⁾. The consolidation of the principles of the Unified Health System (UHS) is procedural, continuous and a major challenge which is related to the achievement of ethical principles associated to its operating principles⁽³⁾.

Articles 196 and 197 from the Brazilian Constitution of 1988 states that health and recovery is equally guaranteed to all citizens, which should be guaranteed by the State and the Union through UHS⁽⁴⁾. Therefore, in case of unavailability of hospital beds in the public sector is the responsibility of the health manager to provide a hospital bed, through the UHS, in the private sector, thus ensuring the right of citizens to recover their health. For that reason, policies and strategies were created so that they could cover both the issue of state regulation of hospital beds, with Hospital Bed Zero and

Hospitalization by Court Order policies, for the purpose of reducing and assisting in the search for hospital beds⁽⁵⁾.

Hospitalizations by court orders occur when the city or the state have no means or conditions to ensure adequate assistance to the patient with a severe condition or critically ill patients, in situations of urgency/emergency which represents life risk for this individual. In this circumstance, aware of how critical the patient's condition is, and his/her need for an ICU bed in another center, the family rely on their lawyer or State Public Prosecutor to make or grant an injunction. This is an action against the city and the State forwarded to the State Central of Hospital Beds, seeking an ICU bed⁽⁶⁾.

The demand of society and health professionals for more ICU beds in health institutions is not a recent event and also affects health professionals. The severity of patients awaiting a hospital bed in the ICU requires professionals to make fast and accurate decisions to prevent sequels and improve survival of these people, besides that, this constantly raises ethical dilemmas.

Ethical dilemmas occur when there are different perceptions of the same situation that put the individual between two opposing propositions. Normally in these situations there are moral conflicting values involved and the decision by one of them makes the other option invalid⁽⁷⁾.

Acknowledging the dilemmas is an important step in building ethical individuals, because usually, problems, conflicts and doubts are not even perceived. Actually, they stop seeing, and frequently, they become indifferent to the problems experienced in daily life⁽⁸⁾.

However, the action of nurses in professional practice must be founded in ethical reflection, as ethical action contemplates practical, technical, theoretical knowledge. Thus, working in the ICU, requires not only technical-scientific skills and competencies, but also emotional, relational, ethical and political skills and competencies⁽¹⁾. In this perspective, it is considered that the relevance of this study focuses on the ability to visualize the hospitalization by court order as one of the instances that require nurses to face ethical conflicts and complex problems. The aim of the study was to describe the situations experienced and ethical dilemmas of nurses in the process of referring and receiving, by court order, patients who require ICU hospitalization.

METHODS

Qualitative study, exploratory and descriptive, extracted from a thesis⁽⁹⁾ performed to obtain the title of Certificate Specialist in Critical Care Nursing. The sample was composed of 10 nurses who work in ICUs and 10 who work in the Emergency Room of private and public institutions in the metropolitan region of Porto Alegre, in the morning, afternoon and evening shifts. The 10 nurses who work in Emergency Rooms are those who experience the condition of referring patients; and the 10 nurses who work in ICU experience the condition of receiving patients who were hospitalized by court order in their institutions. The sampling was established by the network strategy, allowing participants to name other participants for the study, provided they did not exceed the amount of two participants located in the same health institution.

Data were collected through a partially structured interview, between the months of September and October of 2010. The interviews were conducted in a place which was previously determined by the study participants and recorded (audio). The researchers contacted by phone, email or in person the nurses who expressed interest in the topic. The project was approved by the Research Ethics Committee (REC) of the University of Vale do Rio dos Sinos, under protocol n. 10/090. The participants of the study were requested to sign a Consent Form, confidentiality and secrecy of the information was guaranteed. The statements are identified by the letter E, followed by a number from 1 to 20. Analysis of the data follows the model of semantic analysis.

PRESENTATION AND DISCUSSION OF RESULTS

The results of the interviews allowed the semantic analysis to be divided into two categories: "Ethical dilemmas given the referral of a patient to ICU by court order" and "Ethical dilemmas of nurses who experience hospitalization by court order."

Ethical dilemmas given the referral of a patient to ICU by court order

Currently, ethic has been a constant increasingly concern in society, especially in healthcare, where modifications related to the manners of intervention and care occurs rapidly and significantly.

For this reason, nursing seeks to qualify their ideas and questions concerning their own practice, resulting in ethical dilemmas experienced in everyday life. These professionals need to implement collective efforts to find solutions for better patient care, also because they are the ones who stay alongside patients for long periods⁽¹⁰⁾.

When it comes to ethics, several approaches are possible due to the magnitude of the situations experienced by professionals in practice. An important aspect of this issue is the protection of bioethics in its commitment to public health. In its operational sense refers to clarify what must be protected, who should protect what and for whom protection is addressed. In particular, the population (or population groups to be protected for their specific needs) should be informed about the protective measures to avoid being perceived as arbitrary, making them ineffective⁽¹¹⁾.

Caring ethically is an attitude that leads to reflection. In this situation, the act is present every time it is recognized that the patient needs the most complex and advanced technology care⁽⁸⁾. This is why one should have everything one can possibly have to preserve life.

The nurse must act with ethical and social responsibility and commitment to citizenship, promoting a holistic care of the patient. However, ethical dilemmas and conflicts with reality restrict the possibilities for better performance and autonomy of nurses and often lead to the gap between what should be done and what is possible to be done in a given situation⁽¹²⁾. The statements below indicate the dilemmas experienced by nurses in relation to the lack of adequate conditions to provide patient with a dignifying care.

We have a demand for critically ill patients far greater than we have capacity for providing appropriate assistance (E 13).

We are in a difficult situation, in a stalemate, on one hand the family is pressuring us for a definition, on the other hand it is your role as a human being, they are patients who are going to die if we stand still (E 16).

We have an obligation to preserve the life of the patient (E 18).

These nurses show situations of ethical dilemmas, translated in the contingency of having or not technology, physical infrastructure and human

resources needed to sustain the life of this patient. Most of time nurses know what it takes to provide care that respects the right to health guaranteed by the Federal Constitution.

The disappointment and frustration experienced by nurses may go unnoticed in its moral dimension, as they face a constant conflict between what the nurse considers ideal and what actually is reality⁽¹³⁾. However, it is pertinent to remember that such conflicts can be characterized as problems, which is evidenced in the statements of participants E13 and E16. That is, often they are not only faced with two opposing and conflicting propositions. Rather, they are facing problems. In this sense, the problems are open questions that we do not know whether or not they will be solved and how. The solution is not presented from the beginning and therefore the issue is not the choice between two or more possible answers but in finding an appropriate and proper response. The mindset problem always starts from the assumption that reality is much richer and more complex than anything that can be conceived, and that, therefore, there is a basic mismatch between reality and reasoning. Nothing can encompass all the richness of the simplest reality⁽¹⁴⁾.

The situations in which nurses experience the need for patient referral indicate ethical dilemmas expressed in the statements below:

When I see that the patient needs the ICU, and we do not have one, I advise the family to seek for the prosecution (E 11).

I advised, thinking of the only way to save this patient's life (E 13).

These statements indicate the ethical dilemma of nurses in their decision whether or not to direct the family about the "real" state of health of the patient. In this perspective, it is known that the information is a means to the patient and their families have to make decisions about their treatment and experienced situation⁽¹⁾.

Communication and orientation are essential to critical ill patient care, because nurses who have an effective communication with family, provide security, identify their problems, provide necessary support, greater confidence and excellence in nursing practice⁽¹⁵⁾.

Currently the family is occupying an important place in the hospital context through laws and

policy guidelines that are increasingly changing the way care is delivered, making the relationship between professionals, patients and families more supportive, pursuing better promotion of health, life and commitment to the rights of all. Therefore, health professionals seek to meet the expectations of the family in relation to the care and treatment of their loved ones⁽¹⁶⁾.

Nurses' statements show that it is important to maintain effective communication, clear and good orientation to patients and their families to seek their rights. These rights are translated into assistance, obtained by free demand or by a court order, in an institution that can assist the emerging needs of the patient.

It is the duty of the State Public Prosecutor to ensure health care of citizens through legal action. Thus, the prosecutor may bring civil actions to look after the interests of people who are incapable of doing it and who are in a severe health situation or anytime one need it⁽¹⁷⁾.

In daily work nursing must, in addition to seeking to promote a care of excellence, optimize the orientation and proper communication with the family, so that patients' rights are assured. It is clear that care is more than an act, attention and dedication are attitudes that generate concern, responsibility and recognition of others as citizens⁽¹⁸⁾.

Ethical dilemmas of nurses who experience hospitalization by court order

We observe daily that many nurses remain silent in the face of actions taken by superiors and by laws which cannot be challenged. As much illness, agony, frustration and death situations are experienced, they feel they are immobilized and suffer from impotence, guilt and fear due to the impossibility to perform what they consider correct⁽¹³⁾. The statements below indicate the thought of nurses who have experienced receiving referrals by court order:

They think it is simply to say: "I want to hospitalize in "that" ICU from "such" hospital, and that is not how it works in reality, for them it is very easy to determine things (E 1).

Sometimes I feel like saying: come and choose which one you will turn off the ventilator, to put this person that you want. I mean, lack of good common sense (E 1).

When I least expected the judge was entering the hospital. Our statement is worthless (E 4).

The action of the nurse must be founded in ethical action. There are numerous situations in which nurses could contribute to the decision for care of patients, since they consider values such as responsibility, tolerance, honesty, understanding and above all solidarity, they face several ethical dilemmas due to the fact they have to comply with the decisions and treatments with which they do not agree⁽¹⁸⁾.

It's a bit annoying to feel your hands are tied and forced to have to do something that you think it is not fair (E 7).

We face ethical, personal and professional conflicts because we want to save lives, but nowadays, due to the large number of patients and the scarticity of ICU beds, we end up selecting who should live and who should not have this chance, this is very depressing because it could be my son, my husband, my mother (E 10).

Ethical dilemmas highlighted in the collected statements show the imbalance in power relations in relation to the care and well-being of the patient. It is a dilemma to participate in the process of choosing between who stays and who leaves the ICU. In these cases, nurses know what should be the correct moral action, proper care and technology needed to provide optimal patient care, but they are unable to act by forces of law and order.

Nurses add that in most cases of hospitalization by court order, judges do not believe in their words, so they go to the ICU to check if the nurses are telling the truth. Making sure, therefore, of the existence or not of the actual conditions and overcrowding of patients who are hospitalized in the unit.

It is clear that the fact of participation of nurses in the process of choosing between who stays and who leaves the ICU cause anguish because they care for the patient's life and know that many are only leaving so that another person, admitted by a court order, may be hospitalized. Therefore, the anguish focuses on nurses' knowledge that often, early discharge of patients from the ICU causes hemodynamic instability and deterioration in their current condition which could lead to serious consequences.

The professional commitment is to care for others without political, social, religious or economic discrimination, not imposing values and criteria, respecting their choices and creating opportunities for them to exercise their rights. The practice of nursing is so varied and consists of numerous details that each professional assumes a unique importance.

We are prepared for a lower socioeconomic level, believing that they are people who really need care, but in most cases we find well-dressed families, well-educated people, who I believe, are not acting in bad faith, but are not willing to bear the costs of a private hospital (E1).

In some cases they are low income families, but there are families from middle to high class, trying to impose hospitalization of their family members (E2).

Patient with minor complications, but because they are influential people in society and have political influence, they end up getting hospitalization, even though for assessment of severity it was not necessary (E5).

Everyone have the right to health without distinction, the sad thing is that the humblest people do not know their rights, and people who have a better economic or cultural condition eventually assert their rights (E10).

Nurses verbalize the ethical dilemmas experienced by them in relation to the relatives of patients hospitalized in the ICU. According to collected data, those with a higher economic condition, political influence, who are knowledgeable of the law and aware of their rights as citizens, end up benefiting when compared to those who are laymen and have no knowledge of their rights. In this case, nurses are frustrated because they know that everyone, rich and poor, have a right to health without distinction, but experience the anguish and despair of people who feel at mercy of their fate, experiencing the possibility of a family member death because they failed to hospitalize him/her in the ICU.

Currently, high-tech medicine is equipped to prevent and cure diseases, in contrast, most of the population cannot afford to pay their high costs⁽¹⁹⁾. While some patients have access to treatments by themselves, required to recover from life-threatening diseases, most must rely on the protection and access that they are entitled, but which are limited by scarse resources and fragilities of the system.

It is noteworthy that ethical values such as equity and justice are violated, not because patients with better economic conditions survived by having access to high technology, but because the economically disadvantaged ones may progress to death awaiting treatment for his/her recovery.

It is in this context that the nurse feels responsible for the patient, responsible for ensuring their physical integrity, by their treatment, care and well-being, as provided in the Code of Ethics for Professional Nursing in its fundamental principles.

Nevertheless, it is pertinent to ask how nurses can be instrumentalized to act critically at different levels of system management. As a result, in order for these professionals to participate in a strategic and effective way of consolidating the organizational and philosophical principles that constitute the UHS, scientific-technical knowledge related to health care and management services, do not seem to be sufficient⁽²⁰⁾.

FINAL CONSIDERATIONS

The result for the semantic category of ethical dilemmas given the referral of a patient to ICU by court order, show that this occurs because some health institutions conditions are still inadequate to provide decent care to the patient. In this direction, the ethical dilemma is expressed when the nurse is faced with the question of whether or not to keep the patient in a location that does not have technology, physical infrastructure and human resources needed to maintain patient's life. Nurses also experience the anguish of family members who require hospitalization in specialized units.

The semantic category of ethical dilemmas of nurses who experience hospitalization by court order indicate, among the results, the dilemma of nurses given their participation in the choice of who leaves and who stays in the ICU. That is, ICUs which are able to meet the demands of this type of patient, often face the situation they are already crowded and, by court order, someone will have to leave. In this sense, the anguish of the nurse focuses on the knowledge that early discharge of patients can result in complications, sometimes severe.

In view of the statements presented by nurses, it appears that their participation is critical in debates involving ethical dilemmas in ICU. It is, also, the professional's responsibility to politically take proposals that seek to map different instances that have promoted this often chaotic situation. The bioethics of protection can subsidize this dis-

cussion emphasizing situations where people are vulnerable or have some vulnerability, who need care to avoid situations that put them at risk and/ or promote disease.

This research reflects a local reality in which there is a greater quantity of philanthropic and private hospitals compared to public hospitals. Thus, it is suggested that this research may be developed in other regions, which present similar or different realities. Still, studies on the topic addressed here are fundamental to support the discussion of ethical dilemmas experienced by many nurses in nursing practice, especially in ICUs and Emergency Rooms.

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