

# Ethical Conciliation Hearings held by the Regional Nursing Council of São Paulo

*Audiências de Conciliação Ética realizadas pelo Conselho Regional de Enfermagem de São Paulo*

*Audiencias de Conciliación Ética realizadas por el Consejo Regional de Enfermería de São Paulo*

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## ABSTRACT

**Objectives:** to analyze the Ethical Conciliation Hearings held by the Regional Nursing Council of São Paulo. **Methods:** this is a retrospective study, of a quantitative approach, with documentary analysis. To obtain the data, documents related to ethical processes were analyzed. The time frame established for the study was from January 1, 2011 to December 31, 2017. **Results:** 513 Ethical Conciliation Hearings were held and ratified. Nurses represent the category that most denunciate and are most accused. The highest percentages of ethical conciliations were in events related to public and hospital institutions. The Conduct Adjustment Term was the modality with the highest number of agreements. The main reason of conciliation failure was the non-attendance of at least one of the parties. **Conclusions:** the Ethical Conciliation Hearings represent an effective alternative instrument for the resolution of ethical-disciplinary processes in nursing.

**Descriptors:** Code of Ethics; Nursing Ethics; Professional Ethics; Professional Misconduct; Nursing.

## RESUMO

**Objetivos:** analisar as Audiências de Conciliação Ética realizadas pelo Conselho Regional de Enfermagem de São Paulo. **Métodos:** trata-se de estudo retrospectivo, de abordagem quantitativa, com análise documental. Para obtenção dos dados, foram analisados os documentos relativos aos processos éticos. O recorte temporal estabelecido para o estudo foi de 01 de janeiro de 2011 a 31 de dezembro de 2017. **Resultados:** foram realizadas e homologadas 513 Audiências de Conciliação Ética. Os enfermeiros representam a categoria que mais realiza denúncias e mais é denunciada. O maior percentual das conciliações éticas foi em eventos relativos a instituições públicas e em instituições hospitalares. O Termo de Ajuste de Conduta foi a modalidade com maior aceitação de celebração de acordos. O principal motivo para insucesso da conciliação foi o não comparecimento de pelo menos uma das partes. **Conclusões:** as Audiências de Conciliação Ética apresentam-se como um efetivo instrumento alternativo para solução dos processos éticos-disciplinares na enfermagem.

**Descritores:** Códigos de Ética; Ética em Enfermagem; Ética Profissional; Má Conduta Profissional; Enfermagem.

## RESUMEN

**Objetivos:** analizar Audiencias de Conciliación Ética realizadas por el Consejo Regional de Enfermería de São Paulo. **Métodos:** estudio retrospectivo, de abordaje cuantitativo, con análisis documental. Para obtención de los datos, analizados documentos relativos a los procesos éticos. Recorte temporal establecido para estudio fue de 01 de enero de 2011 a 31 de diciembre de 2017. **Resultados:** realizadas y homologadas 513 Audiencias de Conciliación Ética. Los enfermeros representan la categoría que más realiza denuncias y es denunciada. El mayor porcentual de las conciliaciones éticas fue en eventos relativos a instituciones públicas y en instituciones hospitalarias. El Término de Ajuste de Conducta fue la modalidad con mayor aceptación de celebración de acuerdos. El principal motivo para fracaso de conciliación fue la no comparencia de por lo menos una de las partes. **Conclusiones:** audiencias de Conciliación Ética se presentan como un efectivo instrumento alternativo para solución de los procesos éticos-disciplinares en la enfermería.

**Descriptores:** Códigos de Ética; Ética en Enfermería; Ética Profesional; Mala Conducta Profesional; Enfermería.

## INTRODUCTION

In the context of the nursing work process in Brazil, conflicting relationships can occur in the care and/or managerial areas<sup>(1-3)</sup>. In situations of disagreements or discord that allegedly violate the Code of Ethics for Nursing Professionals (CENP), the fact can be informed to the Council through a denunciation, which is the act by which someone commits the practice of ethical or disciplinary infraction<sup>(4)</sup>.

These complaints can be made by patients, family members, patient representatives, health institution administrations, nursing ethics committees, professional practice supervisory boards, public prosecutors, justice agencies, police stations, nursing professionals, other health professionals or members of the Regional or Federal Council of Nursing itself.

The denunciation initiates the ethical-disciplinary procedure that is handled in the light of the Code of Ethical-Disciplinary Process. Following this, the investigation is established, which consists of an administrative procedure whose purpose is to investigate any indication of possible irregularities<sup>(4-5)</sup>.

After the investigation, if the denunciation meets all the admissibility requirements, an ethical-disciplinary process is instituted, which is an administrative process under the competence of the Nursing Councils, used to ascertain the correct application of CENP<sup>(5)</sup>.

In these situations, conciliation has been highlighted as an important tool for the quick and peaceful resolution of conflicts and the outcome of ethical-disciplinary processes. This method is classified as a self-arbitration or extrajudicial agreement, the result of which the parties act to reorganize the standing of one party alone or of the two parties together, establishing a response to the conflict<sup>(6)</sup>.

The stimulus to conciliation, in addition to inciting the parties to a procedure that is less stressful and faster than the full process, aims to provide a solution to the crisis of Brazil's justice administration. However, the implementation of this procedure faces cultural challenges resulting from the deep-seated and distorted perception built on the consensual means of resolving disputes<sup>(7)</sup>.

The ethical conciliation hearing is a procedure provided for in the code of disciplinary ethical process of the nursing councils, which can occur at any stage of the process by direct expression of the parties, enabling the filing of the denunciation<sup>(4)</sup>.

Due to the need to improve the procedural and processual rules of nursing professionals' ethical processes, the Federal Nursing Council (COFEN) reformulated the procedure and established that ethical reconciliation can be carried out in situations where the fact is limited to the denunciator and the accused party and does not result in death<sup>(4)</sup>.

The *Conselho Regional de Enfermagem de São Paulo* (Coren-SP) [São Paulo Regional Nursing Council], was a pioneer in the implementation of the ethical conciliation hearing, having held it since 2011. Despite this, there is a lack of production and data analysis related to these audiences, thus justifying the development of this study.

## OBJECTIVES

To analyze the Ethical Conciliation Hearings held by Coren-SP.

## METHODS

### Ethical aspects

The study was carried out in accordance with the ethical principles that govern research involving human beings, as determined by the National Health Council's Resolution No. 466 of December 12, 2012<sup>(7)</sup>.

Data collection started after approval from the Research Ethics Committee with human beings and authorization from Coren-SP, with the express commitment of confidentiality and maintaining the privacy of the data related to denunciators, accused parties, and workplaces.

### Study design

This is a quantitative approach, retrospective study, with a document analysis design. The STROBE instrument was used to guide the methodology.

### Scenario

The study was carried out at the headquarters of Coren-SP, in the municipality of São Paulo (SP).

### Data source

To obtain the data, all documents related to the administrative investigation processes, ethical-disciplinary processes, records of ordinary and extraordinary plenary meetings, obtained from the Coren-SP collection, were analyzed.

The time frame established for the study was from January 1, 2011 to December 31, 2017. The choice of the initial date was due to the approval of the Code of Ethical Process of the Nursing Councils, which became effective in 2011<sup>(4)</sup>. The final milestone of the time frame is justified by the fact that, at the time of data collection, the processes subject to analysis were concluded, until that date, of all procedural phases and administrative requirements related to the ethical conciliation hearing.

### Variables

The analyzed variables were: complaints received, Ethical Conciliation Hearings that were held and ratified, year, phase of the ethical-disciplinary procedure, professional category of the reporting counselor, denunciator, denunciator's sex, professional category of the accused party, accused party's sex, type of institution where the events took place, ethical conciliation hearing outcomes, self-arbitration modality accepted by the parties, reasons for conciliation failure, and time between the stages of the conciliation.

### Data collection

Data collection was carried out from March to August 2018, through the Web-Coren-SP System, and began after the request for authorization from Coren-SP, with the express commitment of confidentiality and maintaining data privacy concerning denunciators, accused parties, and workplaces.

The data collection instrument was developed by the authors, consisting of three parts: the first, related to the identification of the administrative investigation process and parties involved; the second refers to the data pertaining to the actual denunciations; the third concerns the ethical conciliation hearing.

### Statistical methods

The data were tabulated in a Microsoft Excel® spreadsheet, and a descriptive analysis was performed using the Statistical Package for the Social Sciences (SPSS®) program.

## RESULTS

In the period from 2011 to 2017 (Table 1), Coren-SP received 2,663 ethical complaints. From these, 513 Ethical Conciliation Hearings were held and ratified.

**Table 1** – Conciliation hearings and ethical complaints received by São Paulo Regional Nursing Council

Year	Denunciations Received		Ethical Conciliation Hearings			
	n	n	%	n	%	
2011	317	7	1.4	7	1.4	
2012	352	28	5.5	25	4.9	
2013	327	94	18.3	85	16.6	
2014	363	56	10.9	56	10.9	
2015	412	74	14.4	72	14.0	
2016	394	88	17.2	86	16.8	
2017	498	60	11.7	60	11.7	
Not Identified	0	106	20.6	122	23.7	
Total	2,663	513	100%	513	100.0	

Source: São Paulo Regional Nursing Council.

Table 2 presents the characteristics for the identification of ethical conciliations. The hearing phase at the time of approval was mainly investigative (94.2%), and the predominant professional category of the reporting counselor was that of nurses (63.0%).

**Table 2** – Distribution of Ethical Conciliation Hearings according to the characteristics of the event

Variable	n	%
Phase in which the ECH* occurred		
Investigation	483	94.2
Ethical-disciplinary process	30	5.8
Professional category of the reporting counselor		
Nurse	323	63.0
Nursing technician	91	17.7
Nursing assistant	8	1.6
Not identified	91	17.7
Total	513	100%

Note: \*ECH – Ethical Conciliation Hearings.  
 Source: São Paulo Regional Nursing Council.

Table 3 presents the characteristics of the denunciators and the accused parties. It is observed that nursing professionals were the majority reporting agents (54%), being that the representation of this participation in the filing of denunciations included nurses in 24.4% of cases, nursing assistants in 16.2%, and nursing technicians in 13.4%. In 63.4% of the events, there was a female

participation in the authorship of the denunciation. Professional category of the accused parties: nurses were the most frequent, involved in 49.8% of denunciations. In 74.8% of the events, there was a participation of female professionals as the subjects being reported. The total number of denunciators and defendants exceeds the number of 513 (n of the survey) because there was more than one subject in some complaints.

**Table 3** – Distribution of Ethical Conciliation Hearings according to characteristics of the denunciator and the accused

Variable	n*	%
Person/Institution - Denunciator		
Nurse	147	24.4
Nursing technician	81	13.4
Nursing assistant	98	16.2
Nursing Ethics Committee	56	9.3
Other health professionals	30	5
Coren-SP**	7	1.2
User/Family member	49	8.1
Institution	60	9.9
Others	10	1.7
Not identified	65	10.8
TOTAL	603	100
Sex of Denunciator		
Male	107	17.7
Female	382	63.4
Not identified/Not applicable	114	18.9
TOTAL	603	100
Professional category of the accused		
Nurse	327	49.8
Technician	106	16.2
Assistants	120	18.3
Not identified	103	15.7
TOTAL	656	100
Sex of Defendant		
Male	156	23.8
Female	491	74.8
Not identified	9	1.4
TOTAL	656	100

Note: \*Total differs from n = 513 because at times there are more than one denunciator and accused party in the same hearing; \*\*Coren-SP – São Paulo Regional Nursing Council.  
 Source: São Paulo Regional Nursing Council.

Regarding the characteristics of the institutions where the events took place, the highest percentage of ethical reconciliations occurred in events related to institutions with a public administrative sphere (49.9%), followed by those in the private sphere, with 23.8%, and 16.4% not identified.

The Ethical Conciliation Hearings according to the characteristics of the location where events took place are distributed in hospital institutions (52.4%), followed by places with an unidentified type of institution (16.4%), Basic Health Units (8.6%), and Emergency Care (6.2%).

Table 4 shows the Ethical Conciliations Hearings according to the characteristics of the type of outcome. In 46.6% of the cases, there was an agreement to sign the conciliation term; in 35.7%, there was no agreement; and, in 17.7%, there was no record of this information. Among the 239 hearings where there was an agreement to sign the conciliation term, the self-arbitration most frequently accepted by the parties was the Conduct Adjustment Term (69.5%) and the Conduct Adjustment Term with Retraction (18.8%). Among the 183 cases in which there was no agreement on the signing of the conciliation term, the most

frequent reasons were the non-appearance of the denunciator (25.7%) and the refusal to accept the conciliation on the part of the denunciator (21.8%).

**Table 4** – Distribution of Ethical Conciliation Hearings according to type of outcome

Variable	n	%
Result (agreement to sign the conciliation term)		
Yes	239	46.6
No	183	35.7
Not Identified	91	17.7
Total	513	100.0
Modality (self-arbitration accepted by the parties)		
Conduct Adjustment Term	166	69.5
Conduct Adjustment Term with Retraction	45	18.8
Retraction	5	2.1
Not identified	23	9.6
Total	239	100.0
Refusal (reason for conciliation failure)		
Denunciator did not attend	47	25.7
Denunciator declined conciliation	40	21.8
Reported did not appear	30	16.4
Not identified	25	13.6
Both refused	15	8.2
Both did not attend	10	5.5
Other	8	4.4
Hearing canceled	4	2.2
ECH* was not performed	4	2.2
Total	183	100.0

Note: \*ECH – Ethical Conciliation Hearings.  
 Source: São Paulo Regional Nursing Council.

With regard to the time elapsed between the date of the event and the opening of the protocol, it is observed that this information was available in 364 events (71%), with an average of 5.6 months (SD = 10.5 months), with a median of 1.4 months, and ranging from 0.0 to 91.5 months. For the time elapsed between the opening of the protocol and the holding of the ethical reconciliation hearing, this information was available in 406 events (79.1%), with an average of 9.4 months (SD = 9.2 months), with a median of 6.5 months, and ranging from 0.0 to 59.3 months. For the time between the occurrence of the event and the approval of the conciliation hearing, this information was available in 316 events (61.6%), with an average of 17.4 months (SD = 14.8 months), with a median of 12.4 months, and ranging from 1.5 to 86.1 months. The information on time between the opening date of the protocol and the approval (closing) of the case was available in 408 events (79.5%), and the average was 11.6 months (SD = 9.9 months), with a median of 8.4 months and ranging from 1.3 to 62.8 months.

## DISCUSSION

Table 1 shows the information of the volume of ethical complaints received and the Ethical Conciliation Hearings carried out and ratified. The presented data shows that there is a prospect of growth in the holding of and approval of hearings, although within the years 2014 and 2017 there is a decrease, which corresponds exactly to the last three years of Coren-SP management.

This growth of Ethical Conciliation Hearings happens at the same time that a policy of approximation of Coren-SP with the nursing professionals is developed, culminating in the increase in the number of Ethics Committees in Nursing within the institutions,

greater clarification of these professionals in relation to the Nursing Professionals Code of Ethics and, consequently, an increase in the number of denunciations<sup>(8)</sup>.

The number of Ethical Conciliation Hearings held and ratified would be expected to increase as the number of denunciations increased. However, this growth was not consistent. In this way, it can be identified that there is an influence of obstacles to the holding of hearings. Examples of these obstacles would be the non-attendance of those involved, non-valid subpoena, address changes, among other factors.

As for the characteristics of the Ethical Conciliation Hearings, shown in Table 2, it was evidenced that, in 94.2% of the cases, the hearing took place while the denunciation was in the investigation phase, that is, the facts were still being investigated for later decision as to proceed or not with an Ethical Process. It is also observed that, in 63% of the hearings, the reporting counselor was a nurse, a fact related to the need for the reporting counselor to be in the same professional category as the accused<sup>(4)</sup>.

Regarding the characteristics of the denunciators, shown in Table 3, it is noted that nursing professionals are responsible for approximately 54% of denunciations (24.4%, nurses; 16.2%, nursing assistants; and 13.4%, nursing technicians). This result reveals the conflict situations experienced by nursing professionals with their own peers<sup>(9)</sup>.

If, on the one hand, it is made clear that the professional is aware of their rights and seeks the class body in an attempt to assess, with a view to penalizing the accused colleague, on the other hand, this action can be understood as a demonstration of immaturity and lack of competence in managing situations of conflict<sup>(10)</sup>.

It is noteworthy that female nursing professionals were responsible for 63.4% of denunciations made and involved in 74.8% of reported cases. The high percentage identified can be associated with a greater number of female nursing professionals, as shown by the Nursing Profile Survey in Brazil<sup>(11)</sup>.

In any case, these data are presented as indicators for the implementation of the Nursing Ethics Committee in these institutions, in cases where they do not exist, and can contribute to the development of educational, preventive actions, and the reception and treatment of denunciations<sup>(8,12)</sup>. This understanding corroborates the fact that only 56 denunciations (9.3%) from the Ethical Conciliation Hearings originated from the Nursing Ethics Commissions.

Another important fact in this study is that the user or family member, as a denunciator, represent only 8.1% of the cases. This phenomenon cannot be ignored, since Coren-SP, as the supervisory board for professional nursing practice, has as its premise the representation of interest from society itself, due to the power delegated to it from the State, which confers it the function of supervising and controlling, through parameters of efficiency and quality, the exercise of the activities of nursing professionals and safeguarding it from harmful practices<sup>(13)</sup>.

The significant difference between denunciators from civil society and from nursing points to the need for accurate study and qualitative analysis in order to understand the reasons and motives that lead these professionals to turn to the Professional Supervisory Board to report their peers, as well as the reasons for not doing so through the Nursing Ethics Committee at the

institution itself. If there is a Nursing Ethics Committee at the institution, it becomes questionable whether it possesses the preparation and credibility to handle these demands<sup>(10)</sup>.

It is also noteworthy the low number of cases in which Coren-SP appears as a denunciator (1.2%), since this is also one of the duties of the supervisory body<sup>(13-14)</sup>. This reality could be understood differently if the number of complaints from the Nursing Ethics Commissions were considered, plus the number of complaints from Coren-SP, since the Nursing Ethics Committee represents the board at the health institution where the facts occurred<sup>(12)</sup>.

Regarding the characteristics of the institution where the conciliation hearing event took place, it was found that 49.9% are related to institutions in the public administrative sphere and that 52.4% took place in a hospital<sup>(10)</sup>.

Public institutions can be environments of greater situations of disciplinary ethical conflict due to their working conditions. These conditions were described in the Brazilian Nursing Profile Survey as "regular" or "terrible" in public institutions, when compared to private, philanthropic, and educational institutions<sup>(15)</sup>.

Still, it cannot be ruled out that this result in public institutions reflects underfunding in the health sector<sup>(16)</sup>. Such conditions, isolated or associated with the issues that permeate the worker's health<sup>(17)</sup>, can negatively interfere in the relationships and ethical decision making by nursing professionals<sup>(10)</sup>.

It is undeniable that hospitals concentrate a larger number of professionals<sup>(18)</sup>, as well as demands from users and family members, which may justify the higher percentage of conflicts occurring in this type of institution<sup>(10)</sup>.

As for the outcomes of conciliation hearings (Table 4), it is observed that, in 46.6% of the cases, there was conciliation; and, in 35.7%, there was no agreement between the parties. These percentages demonstrate that the Ethical Conciliation Hearings are presented as an effective alternative instrument for solving ethical-disciplinary processes in nursing.

Regarding the type of conduct carried out as a result of the 239 Hearings for Ethical Conciliation, 69.5% of the cases had the Conduct Adjustment Term (CAT) signed by the parties and 2.1% in the Retraction mode. Although the Code of Ethical-Disciplinary Process does not provide for the association of these modalities, after analyzing the Conciliatory Terms, 18.8% of agreements were identified in an association of the Conduct Adjustment Term with Retraction modalities, which demonstrates the need of constant updating of regulatory legal procedures in view of the conduct actions carried out in practice<sup>(4)</sup>.

It is possible that the accused, when reviewed on the facts presented in the denunciations, does not objectively admit his responsibility for what happened, alleging, among other reasons, that he did not cause the fact or that there is no causal link or evidence of the act, even if he actually was the responsible party<sup>(10)</sup>.

On the other hand, the Conduct Adjustment Term with Retraction proved to be more acceptable, considering that it configures a disposition of commitment and observation to the articles of the Nursing Professionals Code of Ethics described in the Conciliation Term<sup>(10)</sup>.

When analyzing the 183 hearings in which conciliations were not accepted, it shows that the reason for conciliation failure was the non-appearance of the denunciator (25.7%),

the non-appearance of the accused (16.4%), and the absence of the denunciator and of the accused (5.5%)<sup>(10)</sup>. The sum of the non-attendance of Council's summoning, in other words, of the non-attendance of the parties at the Ethical Conciliation Hearings, corresponds to 47.6% of conciliation failures, presenting itself as the main reason for the failure of this procedure<sup>(10)</sup>. This data points to the need to understand the reasons behind this, so that strategies are adopted in order to increase conciliations.

The data also show the express will of the parties for refusing conciliation, with 21.8% of denunciators and 8.2% of denunciators and accused. For some defendants, ethical reconciliation in the TAC modality may correspond to a guilty plea<sup>(10)</sup>. Thus, the Conciliatory Terms revealed that the defendants opted for the continuation of the denunciation process, as they had the means to prove that they had not committed the alleged disciplinary ethical infraction<sup>(10)</sup>.

In other cases, the Conciliatory Terms register refusals to reconcile on the grounds that conflicts were also being discussed and processed in the administrative, labor, civil and/or criminal spheres. This means that at least one of the parties awaited this outcome with a fear that an acceptance of an agreement at the Ethical Conciliation Hearing in the Council would compromise the subsequent outcome of a judicial sentence or administrative decision at the institution. This fact seems to demonstrate that ethical conflicts are being judicialized<sup>(10)</sup>.

The search for a judicial sentence in the expectation of pacifying an employment relationship may result in less space for dialogue. However, conflicts are sometimes fueled by judicial decisions themselves, especially those divorced from reality and those that diverge from each other<sup>(19)</sup>.

Regarding the time between the stages of conciliation, despite being tracked, there are currently no studies that serve as a parameter for comparison and analysis of effectiveness, which suggests the need for further research for future comparative analyses, in order to improve the process and speed up this method of conflict resolution.

### Study limitations

The difficulties related to the location and access to the processes, the lack of data or its incompleteness, the number of processes that took more time to read and analyze in view of the limited time available to carry out this investigation, are limitations of the present study.

In addition, when conducting a review of national and international literature to support the present work, it was found that the subject "Hearing of Ethical Conciliation in professional supervisory boards" does not yield other publications. At the same time as this attributes novelty quality to this study, it limits it due to the lack of possibility of comparison and external validation.

### Contributions to the field of Nursing

The results presented can serve as a reference in the area studied and contribute to the development of educational and preventive actions aimed not only at nursing professionals, but also at other professionals and class councils from other health categories,

patients, and family members. In addition, it presents itself as technical-scientific literature for the teaching of procedures in the face of conflicting situations arising during nursing care that have an impact on Ethical Processes and Ethical Conciliation Hearings.

## CONCLUSIONS

The study made it possible to analyze the Ethical Conciliation Hearings held by Coren-SP. It was evidenced that the number of these Hearings is still small when compared to the number of denunciations received. These hearings are more concentrated in the Inquiry phase, which occurs during the investigation of the facts and before the establishment of the ethical-disciplinary process.

Considering the characteristics of the denunciations, nurses represent the category that most denunciate, and is most accused. The highest percentages of ethical conciliations were in events related to public and hospital institutions.

In 46.6% of the Ethical Conciliation Hearings, denunciators and defendants entered into agreements, and the Conduct Adjustment

Term was the modality with most acceptance. The main reason for conciliation failures was the non-attendance of at least one of the parties. The average time between the date of opening of the protocol and its approval (closing) was 11.6 months.

The Ethical Conciliation Hearings are presented as an effective alternative instrument for the resolution of ethical-disciplinary processes in nursing and can serve as references and indicators in the management and control of these processes. We suggest the development of new studies on the theme, with diversified methodologies, in the perspective of having parameters of scientific comparability with the presented data.

Finally, from the development of the study, we present the concept of "ethical reconciliation in nursing" as a voluntary negotiation process, developed by a Regional Nursing Council advisor or a nursing professional referred to as the "impartial third party". The latter, through active methodology, can issue opinions, advise parties, and indicate and provide guidance on the Ethical-disciplinary Process, with a view to encouraging an agreement by means of a Conciliation Term.

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