

Legal actions in professional nursing practice: a quantitative approach

Tipos penais no exercício profissional de enfermagem: abordagem quantitativa

Tipos penales en el ejercicio profesional de enfermería: enfoque cuantitativo

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Abstract

Objective: To describe the ethical violations involving legal actions in ethical lawsuits (ELs) judged by the Regional Nursing Council of São Paulo (Coren/SP).

Method: Descriptive study with a quantitative approach. The sample consisted of documents related to 169 professionals tried in 2012 and 2013 at Coren-SP for cases involving legal actions.

Results: Professionals with complete high school were more involved in lawsuits (71%), most professionals were Nursing Assistants (46.12%) and early career professionals. The occurrences described as legal actions were: homicide; bodily injury; abandonment of disabled person; maltreatment; defamation; theft; embezzlement; swindling; abuse of corpse; rape; sexual abuse; sexual harassment; forgery; corruption; counterfeiting; contamination, adulteration or alteration of product intended for therapeutic or medicinal purposes; illegal practice of medicine; forgery of public document; use of false document; identity fraud; peculation; loss, fraud or destruction of a public book or document; and misdemeanors related to the organization of work as an illegal exercise of profession. Most of the occurrences had a procedural nature and resulted in death or bodily injury, with a greater incidence of negligent acts. As for the attitudinal occurrences, the illegal exercise of profession had a higher incidence, followed by forgery of documents. As for the outcome of the trials, 63.3% of the professionals involved were found guilty and the most applied penalty was a warning (21.5%).

Conclusion: The results of the study were extremely important to identify the occurrences involving legal actions and, consequently, the need to deepen the discussion about ethical issues in the daily nursing practice.

Resumo

Objetivo: Descrever as ocorrências éticas de enfermagem envolvendo tipos penais nos processos éticos (PEs) julgados pelo Conselho Regional de Enfermagem de São Paulo (Coren/SP).

Métodos: Estudo descritivo de abordagem quantitativa. A amostra foi constituída por documentos relacionados a 169 profissionais julgados em 2012 e 2013 no Coren-SP por ocorrências envolvendo tipos penais.

Resultados: Profissionais de nível médio foram os mais envolvidos (71%), com maior participação de Auxiliares de Enfermagem (46,12%). Detectou-se maior prevalência de iniciantes no exercício profissional. As ocorrências descritas como tipos penais foram: homicídio; lesão corporal; abandono de incapaz; maus tratos; injúria; furto; apropriação indébita; estelionato; vilipêndio a cadáver; estupro; importunação sexual; assédio sexual; falsificação; corrupção; adulteração ou alteração de produto destinado a fins terapêuticos e medicinais; exercício ilegal da medicina; falsificação de documento público; uso de documento falso; falsidade ideológica; peculato; extravio, sonegação ou inutilização de livro ou documento público e; contravenções relativas à organização do trabalho como exercício ilegal de profissão. A maioria das ocorrências foram de natureza

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procedimental com resultado óbito ou lesão corporal, tendo maior incidência no ato negligente. Quanto às ocorrências de natureza atitudinal, o exercício ilegal de profissão teve maior incidência, seguida de falsificação de documento. Como desfecho dos julgamentos, 63,3% dos profissionais envolvidos foram considerados culpados e a penalidade mais aplicada foi advertência (21,5%).

Conclusão: Os resultados do estudo foram de suma importância para identificar as ocorrências envolvendo tipos penais e com isso, a necessidade de se aprofundar a discussão sobre os problemas éticos na prática cotidiana do trabalho em enfermagem.

Resumen

Objetivo: Describir los casos éticos de enfermería que incluyen tipos penales en procesos éticos (PE) juzgados por el Consejo Regional de Enfermería de São Paulo (Coren/SP).

Métodos: Estudio descriptivo con enfoque cuantitativo. La muestra fue formada por documentos relacionados con 169 profesionales juzgados en 2012 y 2013 en el Coren/SP por casos que incluyeron tipos penales.

Resultados: Profesionales de nivel intermedio fueron los más involucrados (71 %), con mayor participación de Auxiliares de Enfermería (46,12 %). Se detectó una mayor prevalencia de iniciantes en el ejercicio profesional. Los episodios descritos como tipos penales fueron: homicidio; lesión corporal; abandono de incapaz; malos tratos; injuria; hurto; apropiación indebida; estafa; profanación de cadáver; violación; hostigamiento sexual; acoso sexual; falsificación; corrupción; adulteración o modificación de producto destinado a fines terapéuticos y medicinales; ejercicio ilegal de la medicina; falsificación de documento público; uso de documento falso; falsedad ideológica; malversación de fondos; pérdida, apropiación o inutilización de libro o documento público, e infracciones relacionadas con la organización del trabajo como ejercicio ilegal de la profesión. La mayoría de los episodios fueron de naturaleza procedimental con resultado de fallecimiento o lesión corporal, con una mayor incidencia en el acto negligente. Con relación a los episodios de naturaleza actitudinal, el ejercicio ilegal de la profesión tuvo una incidencia mayor, seguida por la falsificación de documento. Como resultado de los juzgamientos, el 63,3 % de los profesionales involucrados fueron considerados culpables y la pena más aplicada fue advertencia (21,5 %).

Conclusión: Los resultados del estudio fueron de suma importancia para identificar los casos que incluyen tipos penales y, por lo tanto, también lo es la necesidad de profundizar la discusión sobre problemas éticos en la práctica cotidiana del trabajo de enfermería.

Introduction

Ethical violations in nursing have a huge impact on the daily life of the profession, since risks and damages associated with negligence, malpractice or recklessness impair the provision of safe care to citizens.

However, despite the excessive portrayal of ethical infringements and violations involving nursing professionals in written or broadcast media, there is still a scarcity of studies on the issue and the topic is rarely addressed in national and international literature.⁽¹⁾

This article addresses ethical violations involving legal actions, which are usually not expected from nursing professionals, as they are acts reprimanded by society. However, they do happen, and must be analyzed without sudden judgment.

A criminal action is the description of a fact that is characterized as a legal action and that implies a punishment, which is one of the defining elements of a crime. A legal action besides being previously defined, must be illegal and culpable. The definition of legal actions that can occur in the professional practice of nursing can be found in special legislation, for example, the article 99 of the Statute of the Elderly defines the crime of exposing an older adult to danger that can affect their integrity and physi-

cal or mental health when obliged to do so. Other examples are the article 147 of the Law of Legal actions (LCP) and several articles from the Criminal Code of Brazil (CPB).⁽²⁻⁴⁾

In criminal liability, restrictive punishments have a direct impact on the occurrence of crimes in professional practice, since the temporary interdiction provided for in Article 47 of the CPB stipulates the prohibition of the exercise of a profession that requires a license or authorization from a public authority, as is the case of regulated professions, whenever there is a violation of their duties, as provided for in article 56 of the same code.⁽⁴⁾

The liability of the professional who has committed an act classified as a crime in the exercise of the profession can be in the criminal and/or ethical scope, and if the professional is responsible for actionable damage, they can also be liable in civil court. It should also be noted that decisions are not legally binding, as they will depend on the investigation of each court, according to the precepts for analysis established in each code (ethical, penal, civil), so, for example, the professional can be liable in the criminal law, but not in ethics and vice versa. It is important to note that ethical liability is independent of criminal liability, except when the defendant is acquitted in the criminal court due to the definitive proof that the fact did not occur or

was not done by the defendant, pursuant to Article 126 of Law No. 8.112/90.

Regarding the investigation of ethical liability, the analysis of violations of professional ethics begins with an alleged non-compliance with the provisions of the Nursing Professional Code of Ethics (CEPE), currently reformulated by Resolution COFEN 564/2017,⁽⁵⁾ which encompasses all the relationships involving the professionals registered in the Nursing Councils. The CEPE is an instrument that guides professional nursing practice with general rules and principles.

Regarding crimes and misdemeanors, Article 9 of Resolution COFEN 311/2010, in force at the time of the cases analyzed, established that professionals are forbidden to commit and/or connive at a crime or criminal misdemeanor, demonstrating that criminal offenses are relevant in the analysis of ethical-professional conduct, as they have a negative impact on the image and credibility of the profession.⁽⁶⁾

The current CEPE has included another article on the topic, describing in article 70 the prohibition of “using nursing knowledge to commit acts defined as crime or criminal misdemeanor, both in settings where the profession is being exercised and in those where it is not”, in addition to article 72, which forbids “committing or conniving at a crime, criminal misdemeanor or any other act that violates ethical and legal regulations in professional practice”.

This article determines that regardless of the location of the act, if the knowledge acquired in nursing practice is used, the professional can be liable for acts classified as criminal offenses. Some examples are death caused by the administration of anabolic steroids by a nursing assistant and theft of personal belongings of family members of a patient assisted at home by an independent professional.

The procedure for investigating ethical violations in the field of Nursing occurs as described in the Professional Code of Ethical Procedures, current COFEN Resolution 370/2010.⁽⁷⁾

Therefore, the present study aims to broaden the debate on ethical violations involving legal actions, and, consequently, to encourage this discussion in

professional practice, with the objective of providing a more humane, safe, and risk-free care.

Given the above, this study aims to describe the ethical violations involving legal actions in professional nursing practice based on ethical lawsuits judged by Coren-SP.

Methods

This is a descriptive document analysis quantitative study, carried out based on the content of the ELs judged in 2012 and 2013. In the period established, occurrences classified as legal actions involving 169 professionals were analyzed. Data were collected in the archives of Coren-SP after formal authorization, using a collection instrument prepared by the author and composed of the following variables: nature and type of occurrence, professional occupation and time of training, outcome and punishments applied. Then, data was organized and stored in a spreadsheet in Microsoft Excel® and statistical treatment was applied. The variables were organized according to absolute, relative and cumulative frequency. The article is part of the author's thesis. The project was submitted to the Research Ethics Committee for approval, as provided for in CNS Resolution No. 466/2012, protocol 3.389.575, due to the handling of data and information of professionals tried in the ELs, in compliance with national and international ethical standards in research involving human beings.

Results

Professionals with complete high school were more involved in lawsuits, as nursing assistants and technicians together accounted for 120 (71%) lawsuits, while nurses, who are professionals with a higher education, were involved in 49 (29%) lawsuits. When considering only the occupation, there was a predominance of nursing assistants, 83 (49.1%). Another variable in the study was the time of training of each professional involved in the lawsuits. The majority, 73 (43.2%), had 0 to 5 years since training

was finished, followed by 44 (26.0%) with 6 to 10 years, 26 (15.4%) with 11 to 15 years, 12 (7.1%) with 16 to 20 years, 7 (4.1%) with 26 to 30 years, 5 (3.0%) with 21 to 25 years and 2 (3.6%) with 31 to 35 years. As for the nature of the occurrences, they were classified as attitudinal or procedural. Table 1 shows the attitudinal occurrences, according to the topic of the complaints and the existing documents, based on the ethics lawsuits analyzed:

Table 1. Classification of the attitudinal occurrences observed

Topic	Legal actions	
	No.(%)	Cumulative frequency %
Abandonment of disabled person	1(1.4)	1.4
Embezzlement	1(1.4)	2.8
Sexual harassment	1(1.4)	4.2
Sexual abuse	1(1.4)	5.6
Swindling	1(1.4)	6.9
Rape	1(1.4)	8.3
Criminal impersonation	11(15.3)	23.6
Illegal practice of medicine	9(12.5)	36.1
Criminal impersonation and identity fraud	1(1.4)	37.5
Loss, fraud or destruction of a book or document	1(1.4)	38.9
Identity fraud	8(11.1)	50.0
Forgery of document	17(23.6)	73.6
Counterfeiting, contamination, adulteration or alteration of product intended for therapeutic or medicinal purposes	1(1.4)	75.0
Theft	3(4.2)	79.2
Defamation	1(1.4)	80.6
Maltreatment	7(9.8)	90.3
Maltreatment and indecent assault	1(1.4)	91.7
Peculation	1(1.4)	93.1
Peculation and drug traffic	1(1.4)	94.4
Use of false document and illegal practice	1(1.4)	95.8
Abuse of corpse	3(4.2)	100.0
Total	72(100.0)	100.0

Regarding the procedural violations, the following procedures that led to death or bodily injury were considered: fractures from falling out of bed, falls on the same level, patient found in rigor mortis, parenteral administration of enteral nutrition, nebulization via tracheostomy, parenteral administration of breast milk, burn caused by phototherapy, burn in the shower, burn in immersion bath, brachial plexus injury due to immobilization and medication administration errors (route, technique, medication, patient and dose). The occurrences were classified according to their type, as following: malpractice or recklessness; negligence; medication administration error and blood product administration error. Table 2 shows the number of procedural occurrences.

Table 2. Types of procedural occurrences resulting in death or bodily injury

Type of occurrence	Death or bodily injury n(%)
Malpractice, recklessness	36(37.1)
Medication administration error	17(17.5)
Blood product administration error	5(5.2)
Negligence	39(40.2)
Total	97(100)

Therefore, based on the data related to attitudinal (n=72) and procedural (n=97) occurrences, and the corresponding legal actions, crimes and misdemeanors were classified according to the CPB and LCP. Chart 1 shows the legal actions as described in the law and the corresponding articles.

Chart 1. Legal actions defined according to the law

Crimes against the person	Homicide (Article 121) Bodily Injury (Article 129) Abandonment of Disabled Person (Article 133) Maltreatment (Article 136) Defamation (Article 140)
Crimes against the property	Theft (Article 155) Embezzlement (Article 168) Swindling (Article 171)
Crimes against religion and respect for the dead	Abuse of corpse (Article 212)
Crimes against morality	Rape (Article 213) Indecent Assault (Repealed) Sexual Abuse (Article 215-A) Sexual Harassment (Article 216-A)
Crime against Public Security	Counterfeiting, contamination, adulteration or alteration of product intended for therapeutic or medicinal purposes (Article 272) Illegal Practice of Medicine (Article 282)
Crimes against Public Trust	Forgery of Public Document (Article 297) Identity fraud (Article 299) Use of false document (Article 304)
Crimes against Public Administration	Peculation (Article 312) Loss, fraud or destruction of a book or document (Article 314)
Criminal Misdemeanors Related to the Organization of Work	To exercise a profession without fulfilling the conditions required by law (Article 47)

As for the outcome of the lawsuits, 107 (63.3%) professionals were found guilty and 62 (36.7%) were found not guilty. The most applied punishments were warning 23 (21.5%), censure and fine 22 (20.6%), fine 20 (18.7%), censure 16 (15.0%), warning and fine 13 (12.1%), suspension 7 (6.5%), cancellation of license (4.7%) and suspension and fine 1 (0.9%).

Discussion

As presented above, there was a higher number of occurrences involving professionals with complet-

ed high school – nursing technicians and assistants (70.1%). Regarding occupation, there was a predominance of Nursing Assistants (46.1%). This data is in agreement with data presented by Mattozinho and Freitas in the State of São Paulo, in a study that analyzed ethical occurrences and presented the factual description of data related to 399 professionals judged by COREN-SP, with 184 (46.12%) Nursing Assistants, 142 (35.69%) Nurses and 72 (18.30%) Nursing Technicians. Similarly, a study by Schneider and Ramos in the Regional Council of Santa Catarina analyzed 128 ELs involving 172 professionals and found that the majority, 66 (38.4%), were nursing assistants, followed by 61 (35.5%) Nurses.^(8,9)

Nursing assistants perform several activities and are in constant contact with the patient. However, they often do not have the necessary training, not only due to a limited training workload, but mainly because they perform activities that should be done by Nursing Technicians and Nurses, such as more complex care in Intensive Care Units. A study on this theme highlights the performance of complex activities by nursing assistants, who are often unprepared to perform them.⁽¹⁰⁾

The data related to the time of training of the professionals revealed the predominance of professionals with up to 05 years of training (42.6%). The same time of training was found in a study carried out in Mato Grosso do Sul analyzing the time of professional practice and ethical breaches. This study showed that the knowledge of ethical values and principles that guide professional practice is insufficient and that there is a constant need for training and improvement of personnel.⁽¹¹⁾

Table 1 shows a higher incidence of illegal practice of a profession, summing the illegal practice of medicine and of nursing (27.8%), followed by forgery of documents (23.6%), which involve falsification of medical reports, medical records and declarations. In an analysis of Ethical Lawsuits in the State of Santa Catarina, the crime Illegal Practice of a Profession corresponded to 20.9% of the ethical violations committed by the professionals of that state from 1999 to 2007, being surpassed only

by iatrogenesis resulting from negligence, malpractice and recklessness, with an incidence of 21.5%. Likewise, a study related to ethical lawsuits in the State of Ceará found that illegal practice of the profession had a higher frequency, followed by irregular practice of the profession.^(9,12)

Table 2 shows that the most frequent occurrences of deaths or injuries were related to negligence in care, with 39 records (40.2%). A study by Freitas and Oguisso points out negligence as the main cause of the occurrences, appearing in 57.33% of the 114 violations perpetrated by nursing professionals.⁽¹³⁾ A study published in the Journal Med Ethics, of the University of Manchester highlights crimes related to negligent care of doctors and nurses assisting mental health patients.⁽¹⁴⁾

A recent study on adverse events portrayed by the media showed that, in relation to the intensity of the damage caused by adverse events, severe injuries and death were present in 73.4% of the occurrences.⁽¹⁵⁾

Chart 1 shows the legal actions found according to the legal definition and corresponding articles, aiming to present the crimes as they appear in the law. The analysis of the articles showed no specific citations of the correlation with criminal law, which is why this form of presentation was deemed more convenient.

Regarding the crimes observed in ethical lawsuits in the field of nursing, a study conducted in the State of Ceará presenting the profile of the professionals tried in that State and the subjects of the complaints cited the crimes of illegal exercise of a profession, maltreatment, abortion, theft of patient's belongings, omission of help, slander, libel and defamation.⁽¹²⁾ In the State of São Paulo, a study described ethical breaches directly specifying crimes and misdemeanors.⁽⁸⁾ A study conducted in the State of Santa Catarina mentioned several crimes: diversion of psychotropic drugs, fraud in medical records, baby trafficking, abortion, plagiarism, sexual harassment of patients and sexual harassment of companions. In this article, the author highlights that crime is prohibited by law and generates a punishment, established for the benefit of the community.⁽⁹⁾

In relation to health professionals in general, an article on violence in maternity care mentions the power relationship between physician/patient and the gender violence in obstetric care. The authors point out verbal and physical violence, maltreatment and disrespect for autonomy as common practices that are not always perceived as violent by professionals.⁽¹⁶⁾

Regarding the outcome of the lawsuits against professionals involved in ethical violations involving legal actions in the present study, 63.3% were found guilty and 36.7% were acquitted. However, considering the severity of the occurrences, as they were acts characterized as crimes or misdemeanors, the percentage of professionals acquitted demonstrates a thorough analysis of the cases, examining the conduct and the causal connection, and not only assigning a punishment due to it being a crime, a behavior reprimanded by society.

It should be noted that more than one punishment can be assigned at a time. According to Law 5.905/73, the punishments provided for are: Verbal warning, Fine, Censure, Suspension of professional license and Cancellation of professional license. Of the 107 professionals found guilty after the exhaustion of all appeals, 23 (21.5%) received a warning penalty, followed by censure and fine 22 (20.6%) and fine 20 (18.7%). Maximum punishments are highlighted: there were 5 (4.7%) removals of professional license, which are related to more severe occurrences that lead to prohibition of professional practice for a determined time. Verbal warning was the most prevalent punishment in studies of ethical lawsuits in São Paulo, Santa Catarina and Ceará.^(8,9,12)

Regarding the deontological ethics of the category, an article on the deontological experience of professionals highlights that the limited knowledge of nursing workers on the Professional Code of Ethics can create a gap between the work performed and its ethical and legal principles.⁽¹⁷⁾ A professional will only be ethical when acting according to the principles established in their code of ethics, based on the interpretation and understanding of these principles, and their ethical responsibility, which is

the obligation to answer for the act performed and its consequences.⁽¹⁸⁾

However, we cannot forget that, regardless of the issues related to deontological ethics, there are many issues inherent to the practice of nursing, such as poor working conditions and work overload due to understaffing.⁽¹⁹⁾

Given the above, it is emphasized that regardless of the occurrences involving legal actions in nursing care, each fact must be analyzed based on the norm infringed, the values involved and any intrinsic and extrinsic factors that may have affected the conduct of the professional.

Therefore, we must broaden the perspective of discussions that involve the practice of nursing and expand the discussions on ethical issues, not only during training, but especially in the daily professional practice.

Conclusion

The predominant occurrences in this study point to the importance of discussing ethical liability involving legal actions, as well as criminal liability itself, aiming at more prudent decision-making, with choices based on knowledge about the scope of practice, limits and consequences of actions. Knowledge about legal actions involving nursing professionals is of fundamental importance for training and education, and for the management of health services. The first because training institutions are responsible for the construction of ethical knowledge. And the second because managers of health services must be able to deal with challenging situations involving legal actions in professional practice. The responsibility for ethical violations involving legal actions in nursing practice is not limited to the individuals who commit them. The individual and the social community are both responsible.

Collaborations

Mattozinho FCB contributed to the design of the project, analysis and interpretation of data and

writing of the article. Freitas GF collaborated with the critical review of the intellectual content and final approval of the version to be published.

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