DOI: 10.1590/1807-57622016.0314

The judicialization of Health in the perception of physician's prescribing

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This paper analyzes the possible interference of the pharmaceutical industry in prescriptions drugs used in lawsuits against the Brazilian National Health System (SUS). It presents the survey used to build the database with lawsuits by drugs, procedures and equipment for the treatment of various diseases against the State of Minas Gerais. It is the analysis of the perception of the prescribers in order to know their respective positions in relation to the theme of the interference of the pharmaceutical industry in decisionmaking relating to lawsuits. The theoretical model and methodology used highlights the profile of the interviewees. Finally, it exposes in detail the analysis of the perceptions of prescribers, correlating them with the topic of the influence of the pharmaceutical industry in the current growth of lawsuits.

Keywords: Judicial decisions. Physicians. Drug industry.

Introduction

In Brazil, the judicial implementation of the right to health has led to an increasingly complex debate. Following the expansion of the judiciary in recent years,



the National Council of Justice began in 2010 to formulate strategies and guidelines for judicial lawsuits in health, foreshadowing an unprecedented "judicial policy" in the sector1. Judicial decisions seek to ensure compliance with the law and citizens' needs, but interfere with the allocation of resources, contradicting the principle of equity in health^{2,3}. Conflicts become more serious considering that at the apex of such decisions there is a medical prescription^{4,5}. The medical knowledge that underlies the diagnoses that support the judicial decisions is associated with numerous specialties, which makes even more complex the universe through in which the judicialization of health takes place.

The volume of processes and the expenditure of public resources, especially for states and municipalities brings into play actors still scarcely examined like the doctors, magistrates and the industry of drugs and medical equipment^{6,7}. Asensi and Pinheiro1 analyzed many of the lawsuits executed in Brazilian states in depth in a multicenter study in which they explained the expansion of the judiciary in six Courts of Justice in 2011 and 2012. Based on these state configurations, the authors highlight "the intensification of the role of the Judiciary in health effectiveness", identifying its presence either in small judicial district of the countryside or in the Supreme Court.

This article is part of a study on the judicialization of health in Minas Gerais, which identified lawsuits against the state between 1999 and 20098. During this period, there were 6112 lawsuits that demanded different treatments and equipment for various diseases. A total of 6601 diagnoses were identified to clarify which problem patients sought access by judicial means to medicines, equipment or treatments. Among the processes, 568 originated from rheumatology, endocrinology (377), psychiatry (348), urology (336), oncology (277), cardiology (267), neurology (256), pneumology (153), hematology (132) and pediatrics (122). The prescribers were: 206 endocrinologists, 12 cardiologists, 6 surgeons, 4 surgeons, 4 infectologists, 2 pulmonologists, 2 anesthesiologists, as well as an oncologists, angiologists, geriatricians, gynecologist, ophthalmologist, ear, nose and throat specialists, pediatricians and psychiatrists, that presented one prescription.



Although all lawsuits have an impact on public health policies, in this study the qualitative phase was initiated in cases involving exclusively diabetes mellitus, since it is a disease with important advances and achievements in the last twenty five years in Brazil⁹, involving medicines and monitoring freely available by the public sector to all patients with the disease. Precisely for this reason access to treatment, hypothetically, should not be subject to judicial decisions.

In contrast, 422 lawsuits involving patients with type I, II or gestational diabetes mellitus were detected in the State of Minas Gerais. The data did not clarify what would have motivated the lawsuit. What would have led doctors to initiate lawsuits? Would it be the interests of the pharmaceutical industry? Other factors?

Theory and Methodological Procedures

The subjects of the research, collection instruments and analysis instruments were chosen in three stages. In the first, the complex universe of lawsuits and specialties led us to select two endocrinologists (M1 and M2), considering that this is the medical specialty most present in the lawsuits of patients with diabetes. It was supposed that they would already have knowledge of the public policy for the disease. The sex difference and the number of lawsuits they attended were prioritized. M1, female, had a small number of lawsuit (6). M2, male, had the largest number within the entire database (38). Another criterion was the relationship with the academy, as both are teachers and researchers.

In the second stage, regarding the instrument of data collection, the methodological option was Symbolic Interactionism¹⁰. In this design, Denzin and Lincoln¹¹ identified interview techniques that are applied as an instrument of data collection, capable of giving visibility to the representations, descriptions of the routines and meanings that the respondents attribute to their concerns. In this investigation, the choice fell on the instrument that Flick12 calls "problem-focused interview." Following in his footsteps, what he called the "conversational entry" was initially introduced. Then followed the phase of "general and specific injunctions""12. Finally, ad hoc questions were used for situations not considered in the planning of the study arose, but that could clarify aspects of the phenomenon.

At the beginning of the conversation, the researchers explained their view of the current diabetes treatment policy in Brazil, which had progressed in terms of universalization of care, access to medicines and assistance offered by the state and municipal services of SUS.

The "general and particular injunctions" were based on studies dealing with the relationships between doctors and pharmaceutical industries, identifying interests on both sides that could be involved in the increase of lawsuits^{6,7,13}. The studies showed how much the doctors' point of view marked the decision of the magistrates^{1,14}. Some analyzed the links between business, universities and medicine marketing15,16. Because the interviewees were medical teachers, it was considered in the data analysis the way they dealt with the issue "judicialization of health" with their students.

This is a relevant topic because recent studies show that training courses in the health area have an important social role to expand and improve SUS17,18. Barros19 highlights the value of "medical education as a prerequisite for good professional performance" (p. 147), as a way to resist irresponsible medicine advertising, sponsored by the pharmaceutical industry. This seeks to induce future doctors, through drug advertisement, from the very beginning of their university education. Peres e Job²⁰, studying "ethical perceptions" of medical students, identified that 98% of a 100 students sample "knew the influence of the actions of the pharmaceutical industry" (p. 521), although they "ignored certain mechanisms that these companies used" (p.515), thus making them "vulnerable to propaganda in the academic world" (p. 515). Another study showed the position of medical students about the offer of gifts that the pharmaceutical industry made to politicians to attend to their interests, most rejected the idea. However, when talking about the offer of gifts of the same value, but aimed at students, they did not see any impropriety 21 . Faced with this paradox, the authors questioned the role of teachers in the face of the possible interventions that the pharmaceutical industry could play in the behavior modification through courses and



training of students.

Following the methodology, the perceptions of the interviewed subjects are presented in the third stage, highlighting how they interacted with other agents involved in the judicialization. Based on the reports, it was sought, through discourse analysis to understand the meanings they attributed to their own actions and those undertaken by the other agents in the judicialization process.

The precepts for analysis are based on the premises of Blumer¹⁰, adapted to the theme of the judicialization of health and to the historical-social context, in which the role of the Judiciary in the "effectiveness of health" is intensified, always affirming its decision-making in the imperative of medical indication. Although these transformations are indeed happening, the symbolic interactionism premises point out that these changes of meaning do not occur automatically, as they occur in social interactions instead.

We sought to show how prescribers interviewed understood their actions and practices to answer the requested legal demands, by patients or lawyers. What meanings did they attribute to the patient's illness, to the standard treatment offered by the state or to its absence, leading to the lawsuit? How did they describe the medicine or equipment they prescribed? It was interesting to understand what perception they built on the individual rights and the implications of technological innovations for health policy and social equity.

What does diabetes mean to them?

In presenting their positions, interviewees reveal their view of diabetes as a chronic disease. In their descriptions, social representations²² appear built by the pharmaceutical industry on individuals with chronic diseases, with a huge media and propagandist appeal, supported by the media.

Prescribers used the profiles of patients with diabetes, as justification of their acceptance for legal actions. M1 defines diabetes as a syndrome because, the patient



has "a systemic alteration that affects the whole body ... the eyes, the kidneys, the feet, the heart...". The dimension of complexity is incorporated into the concept of diabetes. In addition to affecting the body in its entirety, an enormous process of "slicing" of knowledge was required in the academic world, reflected in different medical specialties.

Regarding this complexity associated with diabetes, M2 not only reinforces it but also incorporates another dimension, facing the fact that is a "silent disease" that has always presented a series of developments requiring lawsuits to be contemplated.

M1 reports clarify that the technical-scientific knowledge of these differences makes part of the "problem" emerge from the demands of the lawsuit that can be faced, in which the prescriber must justify the demand for a specific drug that is not part of the list of SUS. The issue left in the air by M1 is whether all prescribers are prepared to challenge through the specificities of the disease from their patients and whether the Judiciary has competence in the final decision-making:

> "... a great problem of the question of judicialization (is) precisely because of ignorance of who is on the other side ... the patient said that this is important " or " a certain doctor said that this is important " The judge or the person who will determine does not have the technical condition to assess whether that is important or not. And then he decrees: "It has to be done". (M1)

Other studies had already indicated the absence of specialists in judicial decisions 23. However, this is a partial view. For example, M2, notes that the expertise of other professionals collaborates in lawsuits: "There are some lawyers who work in this area of justice, there are three of them who seem to know the stepping stones. There is a nutritionist who is of the Law area (...)knows how it works. She studied law and she has already specialized herself on it." (M2)

Gradually the reports are composing a scenario with more details about the practices in place with regard to health judicial actions. Lawyers and nutritionists use



in the exercise of their respective functions, effective strategies to achieve success in the corroborated action.

Pharmaceutical Industry and Medicine

Questioning M1 and M2 about the persuasive strategies of the laboratories to be able to impose their medicines on the market, a conflicting scenario was obtained, in which several factors are presented as possible elements that make up this context of the judicialization:

> "The pharmaceutical industry encourages the media to do this. It even offers to the doctor, benefit in some other question, and this is real (...). I live this in my daily life, not in an explicit way (...) I know of people to whom this is explicit. To me, they do not have the guts because I block them. They offer in a way that you may or may not fall into the trap. Depending on your discernment you will or will not do that. I think it has the media question, it has the issue of the patient, it has the issue of ignorance". (M1)

The media and prescribers are placed on the same level of industry stimulus. Differently from the position of the authors previously analyzed 19-21, M1 does not attribute to the media the responsibility of marketing for the sale of drugs, but rather to the industry itself, encouraging the media to present the drugs as a mere commodity. M1 relativizes a slang that penalizes representatives of industries as the sole responsible for introducing their products in the market, coopting the minds of prescribers in their networks. M1 problematizes this image as it puts prescribers in the position of active agents capable of making autonomous decisions and not accepting to participate in the network. But for this it is necessary that they have "discernment", which, for M1, is bound to a certain degree of knowledge about the medicine and/or product they prescribe. What would be the basis of the industry's action to persuade the acquisition of a drug is the "misunderstanding" that M1 exemplifies by questioning



the current use of Wikipedia: "The industry writes the message, the layman who does not know the subject; Thinks that all of that is the absolute truth". Although M1 believes that the industry persuades the patients to consume, and defends that this strategy is not invincible to clarify the patient about the information received by" Google ".

> "(...) one thing I do is ... when they arrive wanting Glargina, I say, 'Let's read?' "'Let's get Dr.Google here?' "Where did you see this? Show me. "Because then I'll be able to understand what he's read and how I can address what he's read."

M2 expresses another version about the interference of the pharmaceutical industry. The central point of his argument lies in one of the dominant paradigms regarding drug policy in the current world context. He argues that "the relationship between medicine and industry is necessary and has to be a harmonious thing". M2 draws on a fairly widespread perspective in Brazil, which tends to reduce criticism of the profit-making of the pharmaceutical industry, emphasizing its scientific role in the first place and then its social function^{24,25}.

Pharmaceutical Industry and Scientific Research

M2 justifies the interference of industry in university nuclei by relying on the production of technical knowledge that is currently making a huge breakthrough. He says: "we need the industry to invest in this (field)". This statement comes from his interactions with researchers at congresses he has attended since the end of his medical residency. M2 claims to have gone to at least one congress in the United States or Europe every year. It is from these experiences that M2 justifies the interference of industry in the production of scientific knowledge:

(...) In a congress I really like to see the posters section. You have there, the people who work with research (...). By the time I get there (and I see that) it is sponsored by some laboratory I already look with a certain suspicion. (But) I'll look, I'll read (if) I like that ethic. The lab can help you, yes, but it will not influence on the results. So you have to look at both perspectives. (M2)

The double view suggested by M2 appears in research that focuses on the physicians' perception of the influence of the pharmaceutical industry on scientific production. In the study of the Regional Council of Medicine of São Paulo (CREMESP)26, 62% of the 600 physicians who responded to the questionnaire positively assess the relationship of the medical professional with the pharmaceutical industry and still recognize it as the locus that provides "good technical service and up-to-date scientific information." These are disseminated mainly in congresses and courses that would not be feasible without the support of the pharmaceutical industries, according to 53% of the doctors who were part of the study.

M2 defends this idea and declares to be a diffuser of the scientific information that laboratories have been producing in recent years. On this subject, he recorded in his testimony elements that are common to the practice of "speakers", a function that he has exercised for some years in the congresses in which he has participated. It has a different interpretation about ethics in the relationship between pharmaceutical industry and medical lecturers. Its concept of ethics rests on two pillars: that of the individual (prescriber) and industry. In relation to the former, M2 defines ethics as follows: "(...) When we talk about ethics, we talk about morals. Ethics is the personal morality of each one. That's what I think. No one is going to change my mind (...) or brainwash me. That does not happen to me".

The interviewee identifies ethics with morality, although the philosophers have distinguished them in their reflections. Nosella, in his work Ethics and Research²⁷ says that:

Ethics means, first of all, the branch of philosophy that scientifically and theoretically grounds the discussion of values, choices (freedom), conscience, responsibility, good and evil, good and bad, etc., while mos-moris refers mainly to habits, customs, the way or way of life. Thus, a certain habit or custom of virtuous or vicious and a certain way of acting or living moral or immoral is qualified. On the contrary, the term ethics, because it refers to the philosophical foundation of one's own morality, generally does not qualify. (p. 256)

Based on the distinction presented above, M2 seems to guide his view of the ethical character of the "speakers' actions", as something related in a certain way to individual (much more moral) action and not to a discipline that underlies the values and/or responsibility of the decision maker. It firmly states that it is no problem at all to be financed by companies to hold conferences on their products. Ensuring that the prescribers do not allow morally to be contaminated by their lucrative interests.

According to M2, those who have to be punished are "the industry people that is ethically uncommitted to their social role." M2 builds a social representation of the pharmaceutical industry as an agent that controls drug prices in the competitive marketplace. Pediatric endocrinologists use strategies funded by business sectors to shape the behavior of children with diabetes in recreational activities. He does not see commercial interests in this gesture. The presence of private laboratories and powerful pharmaceutical networks in their children oriented projects is seen as a philanthropic social action and not as a model of intervention that could influence the families of the children served to file lawsuits against the State to achieve the innovations of the area.

M2 details its understanding of the social role of industry. It shows an image of friendly cooperation that counts on the financing of pharmaceutical companies linked to a private network of drugstores. These are camps held on weekends with diabetic children learning how to use medicines and products for treatment. The team consists of:



" (...) students of fourth and fifth year of medicine, three nutritionists to teach children what to eat (...) four pharmacists linked to a network of drugstores. The objective is that they have personal contact with the children (...) there are also the resident students, taken with the intention of developing a learning and affection with the child and with the diabetic adolescent. We are three endocrinologists, but there are colonies that number four. It has a nurse and two physical educators to teach that diabetes is not just to apply insulin. The camps work more or less like this." (M2)

The strategies are part of an enterprise that needs a great investment. The literature on this topic has already shown that these camps in Brazil were studied since the 80's²⁸. In the example above, we can see the presence of undergraduate and medical students, that is, the proposal is based on university actions.

M1 locates the influence of the pharmaceutical industries on prescribers' perception of market disputes. The interests of the industry appear in the congresses, at the discussion tables. Although the lecturers are careful in avoiding calling the drugs tested in their research with the industry-related name, the conflicts unfold despite all efforts to camouflage them.

M1 exemplifies these conflicts in a national seminar discussing the effects of glargine on pregnant women. Other emerging ethical issues do not coincide with the ones discussed above. They relate to the scientific research, that the researchers need to be careful with the subjects of study. The procedures required in academic research may not be followed by industries outside their home countries. Belief developed from clinical trials turns them into unquestionable evidence. The uncontrollable problem is that adverse effects unpredicted by researchers at the start of their study may appear after a long time of use of the drug.

An example reported by M1 was a seminar in which she disagreed with a lecturer who at the time was a reference among endocrinologists for extolling the use of glargine for diabetic pregnant women with the adjectives "good", "wonderful" ". M1 justifies his refusal:



"... the diabetic pregnant women pass me by, people come from the whole state here; We have a specific ambulatory for pregnant women with type one diabetes, type two (...) Glargina can not be used in pregnancy at all29,30,31. And everyone out there is using it indiscriminately. Everyone uses it just like water. I counter-indicate it. But no one listens to me, why? Because the speakers are all bought. I am afraid of them, because many have this issue of being involved with the industry. They are selected to speak at seminars. A little table is passing between us, asking who we would like to talk about Glargina. There they put a number of names (...) and then they go "on that" guy that is the "guy". (M1)

M1 points out that industries not only fund speakers' travel expenses but also use procedures for choosing the names of experts so that they can be pointed out by the possible participants, giving the impression that their names have been selected by those who will be part of the debate and not by the business agents.

M2 in responding to questions about conflicts of interest at these conferences used a common-sense argument to show that their lectures do not reflect their sponsors:

> "I never gave a lecture of Lantus, now, I'm going to (to the congress) to talk about Glargina; You will not hear me speak in the trade name. But, yes, because Glargina is different from NPH ... I heard it there in Europe, I heard it in the United States. I have my opinion in my office, I will share this with my colleagues, with my peers, and then you will have the ethics; it will itself sell for an insulin." (M2)

M2 describes the strategy used by the speakers hiding the name of the industry that produces and sponsors their trip to the congress, however it cannot be ignored that Glargina had this active principle produced by a single pharmaceutical company. All the congress participants realized at that moment, which industry that insulin



belonged to.

M2 makes clear that it opposes the suspicions about Glargina as not recommended to pregnant women, as M1 reported. According to the speakers defending it, scarce studies prove the emergence of cancer. M1 reflects on these insecurities used by the industry to dribble with arguments that the academic world knows and uses very often:

> "The studies that began to appear four or five years ago discussed at congresses exactly the increase in the incidence of malignant cancer with the use of Glargine insulin. And its use determined the growth of some cells, hence, breast cancer, bowel cancer, stomach cancer, in fact, several types of neoplastic types were detected, at a slightly higher incidence in the group that used Glargina, than in the group that did not use it32,33 (...) But about that, the pharmaceutical industry itself started to play it down, "there is no study, there is little time ..." 'for us to talk about the increased incidence of cancer we have to have more time ...' ' And this stayed in the limelight, and when you discuss this, when you go to the congress, that you ask a question to the speaker about this, they disagree ... no, no time limit on this, no time, studies are inconclusive ... " and then nobody argues anymore. " (M1)

The argument that there are no tests to prove that the use of Glargina is an inducer of neoplasms in pregnant women does not affect the lawsuits. The insulin is prescribed without questioning this suspicion. This explains the reasons why this prescriber described the lack of knowledge of the magistrates as one of the problems that affect the topic. M2 understands that this issue has been discussed in the congresses:

> "The people at the Federal University have warned that" this insulin can cause cancer. "A study of type 2 diabetes with a cancer incidence with this insulin came out, and that was discussed at every congress. Because in reality, type 2 diabetics have a better chance of developing cancer, but within the Federal



University they do not prescribe insulin, they prefer to prescribe NPH, which is forty years old." (M2)

Their report shows that the lack of studies affects more type II diabetics who are among those who most file lawsuits to obtain Glargina, intended only for patients with type I diabetes. This justifies, for M2, judicial actions. It reflects the logic that proponents of private initiative present to justify the entry of drugs or equipment into the Brazilian market. An example of this industrial pressure is reported by M2. He presented a large number of lawsuits aimed at the acquisition and inclusion of insulin pumps. When asked about these actions, M2 says:

> "I do not even know how much a pump costs! Thankfully there are two in Brazil today, there should have been five; Competition helps, competition is interesting for everyone. Competition also helps to lower the price of medications, the industry plays a very interesting role from the social point of view; The colony would not exist if it were not for the industry helping me, all the labs, the competitors are together, they are targeting the social issue. " (M2)

The speech of M2 reflects part of the statements defended by representatives of private companies in Brazil and in the world, resuming old topics about market freedom, in which the competition itself would solve the issues of drug consumption, thus mitigating the shortcomings of the public sector. He describes a program in different parts of Brazil to which he provides direct advice:

> "The industry has a program that entrepreneurs have created. They did a pool of laboratories (...) one putting strips cheaper, another putting Glargina, Lantus, that in all of Brazil, 50% cheaper. That is, if they succeed in that program, they sell 50% cheaper, they can sell cheaper to the government as well, that is, why do they not lower the price for the population? (...) industry has this interesting social value. " (M2)



It is clear how the pharmaceutical industries approach prescribers, who open to them to promote their products. They are these direct contributors who promote the necessary speeches that the business world needs to get close to those who are potential claimants of lawsuits, who also favor business interests. To justify its attitude of providing the prescriptions for lawyers to file a lawsuit, M2 says:

> "The world's largest scientists have conflicts of interest with 18 laboratories. Congress has no conflict of interest with anyone (...) I was invited by the laboratory to teach. Let me tell you already that who brought me here was the laboratory X. Stating this, I think, makes people ethical. Which is the best thing in the world. I am invited by competing laboratories, there I will talk about another product that is also a competitor of them. So you're even more comfortable. If several companies are calling me, it should be because I am talking about the studies of that product. Who has to advertise is the laboratory, not the doctor. Now, then this lab called me to talk there, and that does not mean I'm not going to talk about their competitor. It's ethical because there's only one doctor in the room. The discussion becomes ethical, it gets hot, it's good. " (M2)

Pharmaceutical laboratories have been using academics to spread their products. M2 reveals how university researchers are being integrated into drugdelivery actions in the current context. He declares not to be concerned in acting in this way and does not see conflicts of interest in these gestures, not having impediments to file lawsuits, highlighting the copies of the letters sent to justice:

> "They are all here to facilitate me, because I have to do this all the time" is not only because the guy is poor who is there in the SUS, we all have the right, we pay the SUS, why can't I benefit of the medication? One thing is obvious, you will not want to use this for your child? Which medicine is better? We have to think about the collective, that's why I think about the child, I need to give the best medication. Today the doctor has to think and



talk about all this emotional involvement ... and now I have to be a social worker? Prescribe what is there in the SUS and not what is best for him!" (M2)

M2 incorporates a twofold dimension of strengthening pharmaceutical industry researches associated with greater competition for price control and finally indicates the possibility of introducing lawsuits to include the right for all from the perspective of social equity.

Final considerations

In the symbolic interactionist perspective, when investigating the sense and meanings that the doctors interviewed attributed to the prescriptions that supported the processes, it was sought to know how they saw the interference of the pharmaceutical industries. The answers confirmed conflicts of opinions that were recorded by studies related to the judicialization of health. But they also provide details that allow us to visualize in practice the strategies that industries have used to convince patients and/or physicians of the use of drugs or equipment that are not yet standardized in the SUS.

In addition to media advertising strategies, interviewees recorded harassment on the part of the industry, approaching medical students at graduation and during residence with strategies that camouflaged their interests as linked to philanthropic action. There is a practice in Brazil in which the pharmaceutical industry supports community experiences that bring together children and young people with diabetes, pointing to introduce new equipments, such as insulin pumps., Industry interventions may be identified in medical congresses and the interviewees report their participation in these events describing the clashes between representatives that materialize in the speakers' lectures. They record moments in which the doubts about the adverse effects of new drugs based on science are disqualified.

Finally, the prescribers' speech show the way how the subject is treated in the classroom. This timing allows to discuss with students the harassment of industries



and their strategies for linking future prescribers to their products. There were situations of inclusion of the students in the actions promoted by the industries, but also situations in which the presence of the laboratories in the courses and stages was problematized. In the two cases analyzed, it was detected that both are aware of the intervention of the pharmaceutical industry. However, the increase in lawsuits is also due to a lack of public policy or lack of knowledge of the decision maker.

Collaborators

Orozimbo Henriques Campos Neto participated actively in the conception of the article in the definition of the objectives, analysis and discussion of the results, revision and approval of the final version of the work. Luiz Alberto Oliveira Gonçalves participated actively in the conception of the article in the definition of the objectives, analysis and discussion of the results, revision and approval of the final version of the work. Eli Iola Gurgel Andrade participated actively in the discussion of the results, revision and approval of the final version of the work.

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Translated by Felix Rigoli