ABSTRACT

Objective: to analyze the lawsuits that involved legal or litigious legal risks in health care. Method: this is a quantitative, descriptive, retrospective study. 1,138 valid processes from the universe of 1,599 were searched. Data collection form was used as well as Excel spreadsheet for the organization and analysis of court proceedings, frequency and reason in public, private and philanthropic hospitals. Results: a higher occurrence of the ratio of processes in private hospitals was found (8.06). The risk of medical error was higher (58.1%) in private hospitals (65.6%), outpatient service (65.0%) and surgical area (58.9%). Conclusion: it is noteworthy that the litigious legal risks in care were more frequent in private hospitals. The assistance provided in quality public hospitals has been shown, and the results are conclusive and revealing. However, it is important to expand this type of study to better characterize the risk profile regarding the type of service and the clientele, generating a parameter for the evaluation of quality of care provided throughout the national territory. Descriptors: Risk; Liability; Legal; Responsability Civil; Delivery of Health Care; Patient Safety; Health's Judicialization.

RESUMEN

Objetivo: analizar las demandas judiciales que envolveran riesgos legales o jurídicos litigiosos en la atención a salud. Método: trata-se de un estudio cuantitativo, descriptivo, retrospectivo. Pesquisaram-se 1.138 processos válidos do universo de 1.599. Utilizou-se ficha de coleta de dados assim como a planilha Excel para organização e análise dos processos judiciais, frequência e razão nos hospitais públicos, privados e filantrópicos. Resultados: revelou-se ocorrência maior da razão de processos nos hospitais privados (8,06). Apresentou-se o risco erro médico com maior concentração (58,1%) nos hospitais privados (65,6%), no serviço ambulatorial (65,0%) e na área cirúrgica (58,9%). Conclusión: destaca-se que os riscos legais litigiosos na assistência foram mais frequentes nos hospitais privados. Mostrou-se a assistência prestada em hospitais públicos com qualidade, sendo os resultados conclusivos e reveladores, entretanto, é importante ampliar esse tipo de estudio para melhor caracterização do perfil do risco diante do tipo de servicio e da clientela, gerando parâmetro para a avaliação da qualidade da assistência prestada em todo o território nacional. Descriptores: Risco; Responsabilidade Legal; Responsabilidade Civil; Assistência à Saúde; Segurança do Paciente; Judicialização da Saúde.

RESUMO

O objetivo: analisar as demandas judiciais que envolveram riscos legais ou jurídicos litigiosos na assistência à saúde. Método: trata-se de um estudo quantitativo, descriptivo, retrospectivo. Pesquisaram-se 1.138 processos válidos do universo de 1.599. Se utilizou o formulário de recopilação de dados, assim como uma planilha Excel para a organização e análise dos procedimentos judiciais, a frequência e a razão nos hospitais, privados e filantrópicos. Resultados: se encontrou uma maior incidência da proporção de processos em hospitais privados (8,06). O risco de erro médico foi maior (58,1%) em hospitais privados (65,6%), serviço ambulatorial (65,0%) e área cirúrgica (58,9%). Conclusão: cabe destacar que os riscos legais litigiosos na atenção foram mais frequentes em hospitais privados. Se haja demonstrado a assistência brindada em hospitais públicos de qualidade e os resultados são concluyentes e reveladores. Sin embargo, é importante ampliar este tipo de estudo para caracterizar melhor o perfil de risco com respecto a tipo de serviço e cliente, gerando um parâmetro para a avaliação da qualidade da atenção prestada em todo o território nacional. Descriptores: Risco; Responsabilidade Legal; Responsabilidade Civil; Prestação de Atenção de Saúde; Seguridade do Paciente; Judicialização da Saúde.

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INTRODUCTION

It is known that the quality of medical and hospital services is a goal that transcends the territorial boundaries of nations to become a worldwide aspiration, as it is targeted by various sectors of society and has as its assumptions the reduction of risks that impact cost / benefit of services rendered in relation to corporations and human losses in patients and families. The failures in the provision of health care, reported daily in the press and professionally experienced by the researcher for the choice of this study were boosted. Another relevant factor was the lack of qualified information in the academic world. In this context, we feel the need to better know this reality in order to generate reliable and useful data in the elaboration of public policies to improve the quality of care services provided to society. From this stir arises the theme “Litigious legal risks in health care in São Paulo”.

“Risk is a function of the frequency of occurrence of possible accidents or damage (consequences) generated by unexpected / desired events” 1,77

It is shown that “Legal risk is the measure of uncertainty related to the returns of an institution for lack of a complete legal basis for its operations - or for carelessness or incompetence. Note that Legal Risk is the risk of non-compliance with applicable laws, rules, regulations, agreements, practices or ethical standards, including the risk that the nature of the product / service rendered may make the institution particularly vulnerable to disputes”.2,82

It is understood that the legal risk is subdivided into two species. The first refers to the risk of loss arising from legal proceedings for violations of laws and / or regulations or acts that result in civil liability; the second, in turn, concerns losses arising from technical failures in the way transactions are performed.3,10

It is noteworthy that “legal risk is the measure of potential losses arising from the violation of legislation, the creation of new taxes (or the reinterpretation of existing ones) or the existence of unclear or undocumented contracts, encompassing legislation risk, tax and contract risk”.4,6

It is the risk against the law and the contract “legal or legal risk” which, analyzed in the light of the processes existing in the judiciary, is called “litigious legal or legal risk”.5

Based on the various concepts presented, the risks in health, especially in the medical-hospital environment, are the potential for failures in the provision of health care services, such as medical errors, drop in patient on the stretcher, nosocomial infection, negative medical attention in situations that endanger someone’s life, equipment failures, among others, so as to cause harm to the recipient of the services or his family. From this conceptual evolution, it is possible to define the litigious or legal risks in hospitals as litigations (processes) in the Judiciary against hospitals due to failures in the provision of health care services.

OBJECTIVE

- To analyze the lawsuits that involved litigious legal or legal risks in health care in São Paulo.

METHOD

This is a quantitative, descriptive, retrospective study, approved by the Research Ethics Committee of IAMSPE - Consustantiated Opinion No. 1,594,742, released on 06/16/2016. It was held in a database of the Court of Justice of São Paulo, with the cases distributed from 2008 to 2012. We analyzed 1,138 valid lawsuits against general and specialized, public, private and philanthropic hospitals of São Paulo, capital, Brazil, relating to the provision of health care, of a universe of 1,599. The list of general and specialized hospitals and their nature (type) was extracted from the National Register of Health Facilities (CNES) - sites: http://cnes2.datasus.gov.br/ and http://cnes.datasus.gov.br/pages/estabelecimentos/consulta.jsp. Possession of this relationship, the research was done through the site www.tjsp.jus.br or directly in the file, in loco, collecting the information through the collection form.

Then, an Excel spreadsheet was elaborated with all the data, generating figures and tables that show the analysis of the following aspects: ratio of processes by public, private and philanthropic hospitals in São Paulo, capital; number of valid processes distributed for the purpose of configuring medical error; refusal of medical attention, nosocomial infection and others (various causes); comparison of risks with the public, private and philanthropic hospital nature; comparison of risks with the type of service provided at the hospital, outpatient and emergency room; comparison of risks with clinical and surgical areas of expertise.

The ratio of lawsuits by hospital type was obtained by the number of valid lawsuits distributed against public, private and philanthropic hospitals divided by the number of public, private and philanthropic hospitals in São Paulo. The types of risks were defined based on the researcher’s experience and recurring complaints in the media. The medical error described in the research considered the framing performed in the judicial proceedings. The occurrence of diagnostic error, prescription error, surgical error, medication error, institutional error, among others, were verified. In addition,
the investigated claims made no adequate distinction between medical error itself, its species and other underlying errors.

**RESULTS**

The results show that the litigious legal risks in the provision of health services in the city of São Paulo are recurrent and that their highest concentration is in the private care sector (Figure 1).

![Figure 1. Reason of processes researched by public, private and philanthropic hospital in São Paulo, capital. São Paulo (SP), Brazil, 2008-2012. Source: São Paulo Court of Justice (TJSP) and National Register of Health Facilities (NRHF).](image1)

Among the researched risks, medical error was the most frequent in health care services in the state capital (Figure 2), and the other risks are statistically insignificant and do not have relevance to the results.

![Figure 2. Distribution of valid processes according to the types of risks / causes. São Paulo (SP), Brazil, 2008-2012. Source: São Paulo Court of Justice (TJSP).](image2)

The information in table 1 is shown to be consistent with the data in figure 1 and the risk of medical error was more frequent in private hospitals.
Table 1. Comparison between the risks (causes) and the hospital nature of the valid researched processes. São Paulo (SP), Brazil, 2008-2012.

<table>
<thead>
<tr>
<th>Type of Hospital</th>
<th>Public N</th>
<th>%</th>
<th>Private N</th>
<th>%</th>
<th>Philanthropic N</th>
<th>%</th>
<th>TOTAL N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical error</td>
<td>202</td>
<td>27.4</td>
<td>484</td>
<td>65.6</td>
<td>52</td>
<td>7.0</td>
<td>738</td>
<td></td>
</tr>
<tr>
<td>Service Negative</td>
<td>28</td>
<td>24.3</td>
<td>83</td>
<td>72.2</td>
<td>4</td>
<td>3.5</td>
<td>115</td>
<td></td>
</tr>
<tr>
<td>Hospital infection</td>
<td>7</td>
<td>25.0</td>
<td>21</td>
<td>75.0</td>
<td>0</td>
<td>0.0</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>Others</td>
<td>30</td>
<td>8.3</td>
<td>326</td>
<td>90.1</td>
<td>6</td>
<td>1.7</td>
<td>362</td>
<td></td>
</tr>
</tbody>
</table>

Source: São Paulo Court of Justice (TJSP) and National Register of Health Facilities (NRHF).

Table 2 indicates that the legal risk of medical error is more frequent in the outpatient service; however, the result is very close to the other services analyzed (emergency and hospitalization).

Table 2. Comparison of risks (causes) with the type of service provided. São Paulo-SP), Brazil, 2008-2012.

<table>
<thead>
<tr>
<th>Type of service provided</th>
<th>Hospitalization N</th>
<th>%</th>
<th>Ambulatory N</th>
<th>%</th>
<th>Emergency N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical error</td>
<td>470</td>
<td>55.8</td>
<td>130</td>
<td>65.0</td>
<td>87</td>
<td>62.1</td>
</tr>
<tr>
<td>Service Negative</td>
<td>63</td>
<td>7.5</td>
<td>30</td>
<td>15.0</td>
<td>18</td>
<td>12.9</td>
</tr>
<tr>
<td>Hospital infection</td>
<td>25</td>
<td>3.0</td>
<td>0</td>
<td>0.0</td>
<td>3</td>
<td>2.1</td>
</tr>
<tr>
<td>Others</td>
<td>284</td>
<td>33.7</td>
<td>40</td>
<td>20.0</td>
<td>32</td>
<td>22.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>842</strong></td>
<td></td>
<td><strong>200</strong></td>
<td></td>
<td><strong>140</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: São Paulo Court of Justice (TJSP).

Table 3 shows the most frequent medical error in surgeries, following the worldwide trend. However, clinical data is very close.

Table 3. Comparison of risks (causes) with the area of expertise. São Paulo, Brazil, 2008-2012.

<table>
<thead>
<tr>
<th>Specialty Area</th>
<th>Clinical N</th>
<th>%</th>
<th>Surgical N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical error</td>
<td>298</td>
<td>57.1</td>
<td>389</td>
<td>58.9</td>
</tr>
<tr>
<td>Service Negative</td>
<td>52</td>
<td>10.0</td>
<td>59</td>
<td>8.9</td>
</tr>
<tr>
<td>Hospital infection</td>
<td>6</td>
<td>1.1</td>
<td>22</td>
<td>3.3</td>
</tr>
<tr>
<td>Others</td>
<td>166</td>
<td>31.8</td>
<td>190</td>
<td>28.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>522</strong></td>
<td></td>
<td><strong>660</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: São Paulo Court of Justice (TJSP).

**DISCUSSION**

It is evident that health care services in the municipality of São Paulo carry many contentious legal risks. The reason for lawsuits by hospital type (nature) is consistent with other research results, showing that the frequency of litigation resulting from failures in the provision of health care in private hospitals is considerably higher than in public and philanthropic hospitals.

The distributed processes are totaled in order to qualify medical error more than half of all studied causes, being statistically significant in relation to the other risks researched and becoming a reference in the analysis of other variables. This information is corroborated, in theory, by data from research conducted with judgments of the Superior Court of Justice (STJ), regarding medical error in normal births in the states of São Paulo, Minas Gerais and Rio de Janeiro, stating that most concentration occurred in private hospitals. The Yearbook on Hospital Safety Assistance in Brazil, published in 2017, contains the following results on medical error / adverse events worldwide: Latin America (Argentina, Colombia, Costa Rica, Mexico and Peru): 10.5% AE (Adverse Events) in hospital care, 60% being preventable United States of America:

https://periodicos.ufpe.br/revistas/revistaenfermagem/index
It is noted that medical error is the cause of the patient to the action or inaction of the physician in the practice of the profession, without the intention of committing it. It is noteworthy that there are three possibilities of causing harm and achieving error: recklessness, malpractice and negligence.

It is noted that the study failed to show relevant numbers in relation to negative hospitals.

According to the Federal Council of Medicine (FCM), it is stated that medical error is the cause of damage to the patient by the action or inaction of the physician in the practice of the profession, without the intention of committing it. It is noteworthy that there are three possibilities of causing harm and achieving error: recklessness, malpractice and negligence.

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(65%), contradicting the global trend (hospitalization), and, in hospitalization, the error doctor was also the most recurrent. The Health Care Safety in Brazil Yearbook, published in 2017, shows the following results on medical error / adverse events in hospitalization worldwide: Brazil: 7.6% AE - Adverse Events (66.7% error) 7 Canada: 12.7% AE in hospital admissions; 7 Australia: 16.6% AE in hospital admissions. 7

It is revealed that medical error was also more frequent in the surgical area, comparing the risks with the area of specialty, although the difference with the clinical area is statistically insignificant. This information is corroborated by data from research carried out with judgments of the São Paulo Court of Justice (TJSP) in a research paper entitled “Civil liability for medical error according to the jurisprudence of the São Paulo State Court of Justice” which, although dealing with medical activity modalities and with greater scope, also concluded that medical error is more frequent in the surgical area. 17

CONCLUSION

The results show that the litigious or legal risks in health care services are still very high, generating several consequences that directly or indirectly compromise the expected quality of these services.

Health care services offered by quality public hospitals are provided, although they are widely criticized in the general media, presenting less risk than services provided by private hospitals.

It is known that the ratio of litigation by private hospital in São Paulo, capital, is very high and should deserve the attention of health managers, since the indemnities arising from convictions for failures in care services have a great impact on the increase of institutional costs.

It would be the deficiency of the public assistance service, it seems, the insufficiency of professionals, especially medical specialists, to meet the great demand of procedures and consultations, generating long lines and prolonged waiting time.

It is concluded that, although the research results were satisfactory and revealing, it is necessary to consider the need to expand this type of study to other regions of the state and even to the country, aiming at a better characterization of the risk profile regarding the type of service, and clientele, with analysis of other relevant variables, such as clinical and non-clinical errors, diagnostic errors, medication errors, institutional errors, among others.

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