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Mexican Bioethics Review ICSa

Biannual Publication, Vol. 6, No. 12 (2025) 01-11

Mexican Bioethics Review ICSA

ISSN: 2683-2062

Types of liability in the exercise of the medical act.

Tipos de responsabilidad en el ejercicio del acto médico

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Abstract:

In Mexico, being a health personnel and practicing the medical act entails the obligation to care for people seeking to protect their health, whether by preventive, curative, or palliative care actions, taking into account that the supreme purpose of the medical act is to preserve human life. Therefore, the possible malpractice results are generated by acting with negligence, imperfection, and imprudence. The consequences range from a reparation of the damage in civil matters, a corresponding sanction in jurisdictional aspects, and the imposition of penalties in criminal liability. It is relevant to determine malpractice to identify the classification of obligations that health personnel must assume. As medicine is a profession with technical preparation, it has rules for its practice that, under the state of knowledge of that science, set the guidelines within which health personnel must perform, and this is what is known as the lex artis.

Keywords:

Act,liability, health personnel,medical practice

Resumen:

En México, pertenecer al personal sanitario y ejercer el acto médico, conlleva la obligación de atender a las personas que busquen proteger su salud, ya sea por acciones preventivas, curativas o de cuidados paliativos, teniendo en cuenta que el fin supremo del acto médico es preservar la vida humana. Los posibles resultados de una mala práctica, se generan al actuar con negligencia, impericia e imprudencia, y las consecuencias van desde una reparación del daño en materia civil, alguna sanción correspondiente en administrativo y a la imposición de penas en responsabilidad penal. Para determinar una mala práctica es necesario identificar el tipo de obligaciones que asume el personal de salud. La medicina por ser una profesión con preparación técnica, cuenta para su ejercicio con unas reglas que, en consonancia con el estado del saber de esa ciencia, marcan las pautas dentro de las cuales ha de desenvolverse el personal de salud, y es lo que se conoce como la lex artis.

Palabras Clave*:*

Acto médico, responsabilidad médica, personal de salud, práctica médica.

Introduction

Pope Francisco once said " Not all that is technically possible and feasible it is" .As a result, it is ethically acceptable.This means that health personnel always have as main purpose the patient's beneficence,that means doing the right,acting in benefit of each patient.Pope Francisco once said, " Not all that is technically possible and feasible it is". As a result, it is ethically acceptable. This means that health personnel always have as their principal purpose the patient's beneficence, which means doing the right, acting for the benefit of each patient. Zeron (2019) claimed that doing all that is required to have healthy patients, such as healing damage and encouraging well-being.

The Mexican health right makes rules to have control of public health since, throughout history, the topic of health has been a problem in the country. Thus, there is always the fear that the physician will not save the patient, and if it is true, how to punish the responsible for it. Nowadays, in Mexico, the profession of medicine contains peculiar characteristics, and it is the one with more risks. This article explains that. Not only

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Received: 11/10/2024, Accepted: 15/10/2024, Published: 05/01/2025.

DOI: https://doi.org/10.29057/mbr.v6i12.14163

for the person who receives the services but also for the legal properties of great value like dignity, life, and personal integrity.

For instance, the health professionals of medicine, odontology, nursery, psychology, and gerontology, precisely to mention, must attend to people who look to protect their health due to preventive or curative actions and palliative care, taking into consideration that the predominant goal of the medical act is to preserve human life. According to Casabona (1981), the medical act is any surgical intervention or testing whose fundamental diagnosis or research prophylactic, therapeutic, or rehabilitative purposes are carried out by a physician. However, these activities are well performed by a doctor. Moreover, they are their medical care and provided not only by one physician but also by the health personnel. Because of that, it is essential to the following article since the type of responsibilities medical care might have, how to avoid it, and whether it is necessary to dialogue with the patient to reach an agreement that benefits both sides.

Due to the complexity of medical care, its interventionist nature, and inaccurate activity, adverse events might emerge since it is complex or a malpractice of health personnel. Inadequate or incorrect acting from the health personnel can cause damage to the patient, known as malpractice. Presently, malpractice or medical malpractice is a national issue. Thus, it results in negligence, imprudence, or inexperience from health personnel, resulting in the responsibility of civil, administrative, or criminal aspects to repair the damage or unlawful act. In medical professional responsibility, unlawful acts may not be related to malice due to the physician's acts to preserve the patient's life; nevertheless, his behavior can be affected to a fault degree. All these obligations are legally regulated within the Mexican health regulations explained in the present article. In the noteworthy words of Pacheco Gómez (2011), the policy has classified the obligations into media, results, and security.

Hernandez (2001)defines bioethics based on three predominant aspects such as beneficence, non-maleficence, justice, and autonomy, in other words, acting with moral awareness. Among the social, professional, and human relationships, the doctor-patient relationship is one of the most complicated and intense. For this reason, the article must analyze that this relationship is based on ethics and deontology. In addition, all actions or omissions have responsibilities to face.

Exercise of medical act

Before getting into the principal subject, it is relevant to define the fundamental concepts of medical professional responsibility. Fortunately, in Mexico, there are many policies related to the topic, which include the health personnel creating obligations and responsibilities to exercise their profession.

(Mexican Legal Dictionary, t. VIII, Rep-Z)a person is susceptible to being sanctioned when responsible for any unlawful act. In other words, he evades the moral value that characterizes the capacity of the person to act correctly under any circumstance of norm and compromises with set purposes.

On the other hand, a person is considered professional when he continually functions in an activity in favor of others to obtain an economic earning. In the same way, a medical career is formed by a set of techniques focused on recovering and preserving human health in their organic and mental sectors.

García Villarreal (2022) considers that a medical act is all the treatment given, surgical intervention, or performing tests whose diagnoses or research have prophylactic, therapeutic, or rehabilitative purposes carried out by a professional of medicine. The medical act in Latin is conditio sine qua non for all the medical-legal responsibility.

Referring to medical professional care, in general, unlawful acts are not linked with malice. In other words, health personnel do not act to damage the patient's well-being. Therefore, the previous concepts understand that medical professional care is the obligation that physicians have to repair and satisfy the consequences of the acts, omissions, and voluntary or even involuntary mistakes within certain limits committed in the exercise of their profession.

The medical professional responsibility is the consequence of the fault. There is no guilt of illicit responsibility without the act of fault. This has three possible conditions such as:

– Negligence.
– Inexperience.
– Imprudence.

García Villarreal (2022) defines negligence as when a physician, knowing what he has to do, stops doing it or does the opposite. In the words of Pacheco Gómez (2011) states that negligence is the omission of the duty of care. Talking about inexperience is when the doctor ignores or is not trained to perform the indicated therapy. Imprudence is when there is no care by the physician during exercising his profession. The three are equally classified under the medical malpractice concept, so they are subject to medical professional responsibility.

Iatrogenic

(Spanish Language Dictionary, 2023)states that the term iatrogenic refers to all alterations of the patient's state produced by the doctor. Casa Madrid Mata (1999) states that iatrogenic is directly linked with the term malpractice, which concerns the negative aspects produced by physicians, which means iatropathogenic, a term that is similar to the Mexican health law.

Montejano (2015)alludes that iatrogenic produces two results, the negative and the positive. First of all, adverse iatrogenic clinical types are subdivided into necessary and necessary. On one side, necessary iatrogenic apply with the damage of medical actions since their commission or omission that provoke to the sick person. However, they are carried out with full knowledge of risks and possible effects. On the other side, unnecessary iatrogenic mentions that medical actions are the cause of the sick person because of the unacceptable ignorance from the health personnel. An example of this classification of unnecessary iatrogenic is done when a procedure or treatment of the patient because of a poorly elaborated diagnosis.

Obligations of health personnel towards the relationship doctor-patient

Within human relationships, the relationship between patients is one of the most complicated and intense because both patient and physician depend mutually on knowing about the other, their desire to heal, and their compromise in the therapeutic process.

As far as it does, health personnel, the bundle of rights and obligations, originates in a set of ethical duties considered from the Hippocratic oath until clinical bioethics- from life protection and health recovery, reflecting on standards of good medical practice. Since the scientific and ethical basis that regulates the techniques, procedures, and medical knowledge, particularly the adequate practices of health personnel, emerges the lex artis ad hoc. The relationship between physician and patient also is called the relationship between provider and user. Not only is medical care provided by the doctor, but also by other health professionals. It constitutes a legal relationship, from which rights are obligations released for the members. Firstly, when recognized as a patient's right, it is an obligation to health personnel. In other words, the patient will have the right to demand the fulfillment of this obligation to those who give medical care services.

Sordini (2000) explains that to identify the demandable behavior from health personnel, it is mandatory to allude to the compulsory framework. The policy has been classified into diverse criteria. One of them is well used to determine civil responsibility. Additionally, it is sustained in the content of obligations and refers to media, results, and security obligations. The first ones are those in which the debtor is obligated to fulfill an activity, disregarding the performance of a specific purpose. On the contrary, the second ones are those in which the debtor is forced to do an indisputable purpose, disregarding the performance of an instrumental specific activity. To conclude, the last ones consist of giving the necessary measures by the debtor to the tasks that have suitable security conditions.

The physician must provide careful medical care. Nonetheless, there are two obligations of a general nature, like pieces of advice and care.

1. Duty of advice

Acosta (1990) claims that physicians are committed to supporting the patient or the caregiver. As a result, the fundamental cautions are required to care for their condition. Hence, the doctor stops recommending the patient's hospitalization when it is evident that adequate home assistance cannot be given or treated appropriately, violating his advice obligation, implicit in the medical contract. Similarly, it is pertinent to say that health personnel must warn about the risks of treatment or advocate intervention. The doctor must provide all the explanations that affect the patient and which will be the means to remedy it, existing a tendency of worsening the responsibility when this obligation is not accomplished.

2. Duty of care

Within a medical contract is implied the duty of care, a duty of contract nature, which belongs without the need for an exceptional clause. Alessandri (1943) maintains that a physician is responsible for the damages caused to the patient since abandoning the patient without any motive during the illness or treatment. Planiol-Ripert (1946) considers that the doctor who accepts curing a sick person is responsible if he neglects care when needed". Establishing the relationship doctor-patient is an entirely voluntary decision of the doctor. Although, once the link has been established, the duty of care is absolute. The practitioner will not have any responsibility for abandonment whether the following events happen:

- If the patient has finished the contractual relationship.
- If the physician notifies his decision to interrupt the relationship in advance to look for a replacement.
- If the physician is sick or there is another legally justified impediment.

Obligation and responsibility in each stage of medical act

The following separate thesis 1a. XXIV/2013 Supreme Court of Justice of the Nation indicates the stages that are part of the medical act:

MEDICAL ACT. DIVERSE STAGES OR PHASES ARE PART OF IT TO DETERMINE THE EXISTENCE OF MEDICAL MALPRACTICE.

The medical act is divided into distinct stages or phases. The diagnosis, therapeutic, and recovery stages. Despite this, each phase constitutes the total of the medical act. Therefore, to determine the existence of medical malpractice, the medical act must not be analyzed separately; instead, it must be carried out jointly. Consequently, each of the stages that compose it is linked.

Separating the medical act without taking into consideration all the stages that are part of the medical act as an inseparable set for determination in a concrete case about the existence of

medical malpractice will be inconsistent and illogical since the phases follow a sequence of time.

Protection in review 117/2012. Agustín Pérez García et al. November 28, 2012. Five votes. Speaker: Arturo Zaldívar Lelo de Larrea. Secretary: Javier Mijangos & González.

We have already explained that the physician is committed to prudently fulfilling the medical contract. For this reason, the practitioner will be responsible for medical guilt. It will be necessary to analyze the diverse moments in which a professional can find concerns about his patient and facilitate the exposure that follows a logical and convenient order. At first, analyzing the duties from the diagnosis until postoperative care.

1. Diagnosis

The exceptional doctor reveals a diagnosis since he depends on the treatment to be followed. As a consequence, the healing or deterioration of the patient. According to the Teide Medical Dictionary, the term diagnosed extends to discovering or recognizing the disease through presenting distinct symptoms.

Es menester distinguir diversos tipos de error en que puede incurrir el médico, a objeto de determinar en cada caso si es o no responsable por ello. Se diferencian los siguientes tipos de error:

i. Error due to lack of knowledge

This type of error is also called ignorance error, and it will take place when the physician emits a wrong diagnosis about a disease with pathognomonic symptoms. Based on discovering known or assumed elements. In the words of the Teide Medical Dictionary, pathognomonic symptoms reveal the damage, considering they are exclusive to a unique condition.

ii. Error due to negligence in diagnosis

When the doctor does not proceed to look at all the valuable factors to determine the most accurate result of what disease the patient is suffering, the physician is responsible for it due to negligence. Mazeaud-Tunc (1963) points out that physicians have utilized all the available means to verify the precision of the diagnosis. To estimate that a physician makes a mistake, it must be considered that he is committed to that responsibility from the moment he cautiously contemplates having the same external conditions that the required practitioner. To avoid making this mistake, the doctor must verify his exact diagnosis, using all the necessary means to make a reliable diagnosis. The medical care must be taken based on the medical science principles.

iii. Error due to complexity of clinical conditions or scientific error

The doctor can face the problem of determining a diagnosis when the disclosed indexes of a clinical condition have a relationship with two or more diseases. The clinical picture that the patient has and his complexity can lead to an error. Even though it will not be as appreciated as distinct practitioners. Most of the time, the scientific mistake or error due to the clinical picture does not involve the doctor since it is erroneous to the imperfection of scientific knowledge that has not entirely reached the development to confirm undeniably.

2. Treatment

Treatment is a method employed to cure diseases or defects. Benzo Cano (1944)claims that once the disease is diagnosed, no physician ignores how to develop a suitable plan. The treatment depends on the diagnosis. For this reason, the doctor's reputation as excellent, poor, or terrible is based on his prognosis. The treatment is generally administered to the patient in one or several ways: drug prescription, submission to inevitable medical experiences, or surgical procedures.

During the treatment phase, there is an increase in cases of responsibility since the doctor intervenes with the patient. Furthermore, it is so common that mistakes emerge and opposite procedures to fulfill the medical contract. There are revealing facts of error or medical guilt, resulting in physicians being capable of burdening the responsibility:

i. The change without credible reason for a rigorously defined treatment.

ii. Proceeding with a non-urgent surgery, without the needed instruments, having the chance to get it.

iii. Carrying out a treatment without having the needed knowledge.

iv. Failure to comply with the rules of hygiene and asepsis.

v. The health personnel decide to assume the practice of the patient's treatment without consulting a specialist when it is reasonably justified.

vi. If in the treatment, instruments are used that offer risks, the doctor has to warn his patients about them, facing the harmful consequences if he does not do it.

vii. Ignoring therapy when the patient needs it.

3. Intervention

Alessandri (1943) ascertains the doctor's responsibility due to the damage caused to the patient who has hired his contractual services.

Whether the physician does not have enough caution before practicing a surgery or, for example, not assisting with radioscopy when needed to have a better preoperative diagnosis are circumstances that are part of the civil responsibility of the health personnel. Emanating the general obligation of diligence that the physician has to administer the necessary test to surgically intervene because he has availability of medical science and he is a competent professional ordered.

i. Induced or surgical anesthesia

Based on the Taide Medical Dictionary, anesthesia means losing sensibility. Anesthesia is applied superficially, surgically, or pre-operatory. Hence, its administration under certain or determined circumstances can lead to severe damage

to the patient. It is well said that anesthesia is dangerous. Using an anesthetic is something that must be decided by the doctor depending on its convenience or inconvenience.

Palma (1939) concludes that the practitioner must analyze the physical and pathological state of the patient before administering one or other anesthetic. According to the NOM-006-SSA3-2011, there are elemental rules to the practice of anesthesiology when observed by the anesthesiologist in the safekeeping of his responsibility:

a) The risk of the anesthesia must not be longer than the risk of the surgery..

b) It must be an informed consent letter provided by the patient.NOM-006-SSA3-2011 defines it as the written and signed document by the patient, his legal representative, or his closest relative in which he accepts a medical or surgical procedure with diagnostic, therapeutic, rehabilitation, palliative, or research purposes. Once information has been received about the most frequent risks and the expected benefits to the patient.

c) Never administer anesthesia without the presence of the doctor.

d) Pre-anesthetic laboratory and clinical examinations should be performed.

On his behalf, the Chilean physician Juan Eduardo Gutiérrez declared that according to the Medical College, the labor of the anesthesiologist includes three periods:

a) The pre-operatory in which the doctor must evaluate the patient's cardiovascular risk.

b) The surgical period includes all the stages of intervention.

c) The post-operatory in which the anesthetist must worry about controlling the sick person to have a complete recovery from the anesthesia.

The violation of these rules assumes acts of inexperience, negligence, and imprudence until clumsiness, which means the non-compliance of the correct medical act.

ii. Obliterated or forgotten surgery

Frequently, the courts must know causes with the motive of provoking damages by the obliterated or forgotten surgical doctors. For instance, forgetting a compress into the patient's body constitutes a missing that is chargeable to the surgeon. If the surgery has been performed in the correct conditions without any inconvenient act, it is impossible to foresee something that might distract the surgeon during the surgical intervention. The omission is medical negligence. Being careless can be faultlessly avoided by the physician if he has the needed surgical instruments.

4. Informed consent

According to what was disposed of by the National Bioethics Commission in the National Guide for the Integration and Functioning of Hospital Bioethics Committees (2010), informed consent is the tangible expression of respect for people's autonomy in the medical care sector and health research. Informed consent is not a document. Likewise, it is a continuous and gradual process between the health personnel and the patient, and also it is consolidated in a document.

Through informed consent, the health personnel informs the competent patient, in enough quantity and quality, concerning the nature of the disease, the diagnosis and therapeutic procedures that are pretended to be used, as well as the risks and benefits that this leads to and the possible options.

The written document is the safeguard that the medical personnel has informed the patient, and the last one mentioned has understood the information.

Informed consent includes two parts:

• Firstly, the patient has the right to be given all the information, which must be clear, truthful, sufficient, timely, and objective about all with the process of attention, mainly diagnosis, treatment, and prognosis of the disease. In the same way, it is relevant to know the risks, the physical or emotional benefits, the timing, and the options if there would be.

The data must be provided to people who are considered competent in legal terms, who are old enough, and who do not have mental disorders. In the case of incompetent people limited by awareness, reasoning, or intelligence. It is necessary to have the authorization of a legal representative. Nonetheless, having the patient's informed consent is desirable whenever possible.

• After being informed adequately, the patient is emancipated to give or deny the consent to continue with the procedures. It is imperative to privilege autonomy and establish the required conditions to exercise the right to decide.

When it is a procedure of higher risk, the consent must be expressed and proven in a written way, though a document signed by the patient and his doctor to be part of the medical record. According to the Official Mexican Standard of the Clinical Record, NOM-004-SSA3-2012, the situations in which written informed consent is required are the following:

I. Hospitalization in psychiatric patients due to a court order, urgency, danger to those who live with them, and risk of suicide, among others.

II. Surgical intervention.

III. Procedures for fertility control.

IV. Participation in research protocols.

V. Diagnostic or therapeutic procedures that imply physical, emotional, or moral risks.

VI. Invasive procedures.

VII. Procedures that cause physical or emotional pain.

VIII. Procedures are socially invasive or that lead to exclusion or stigmatization.

When there is a medical urgency, and not only is it impossible to contact the relatives nor obtain the patient's authorization, the physician must act based on his therapeutic privilege until the patient is stabilized and then inform him or his relatives. This situation must be well supported in the medical record.

Professional responsibility of the physicians

The Hammurabi Code is considered one of the most ancient legal systems, and it is a principal background about the norms of doctors' professional responsibility.

Regarding Carrillo, Fabela, in his book "Professional Responsibility of the Physician in Mexico", points out that the medical professional responsibility is a duty of repairing and satisfying the consequences of the acts, omissions, and voluntary or involuntary errors made in the exercise of their professions.

On the contrary, Vilalta & Mendez (2003) pointed out that medical responsibility demands the concurrence of the following elements:

- Act or medical omission.
- Material damage or personal to life, health, or physical integrity.
- Relation of causality.
- Omission of diligence.

Types of responsibility

•Administrative Responsibility

It emerges when the health personnel violate any established precepts in the General Health Law, its Regulations, and other dispositions derived from that law.

•Penal Responsibility

It comes out when a person commits malice or guilt of any unlawful acts provided for in the legal system. Whether a person desires to cause damage, what exists is malice, but if he omits the forecast of the results, there is guilt. García (2002) concludes that blame is a factor present in exercising the medical act since the health personnel must make many errors while practicing.

The objective attribution is not textually foreseen in the regulatory framework as in the principle of legality in Article 14 of the Constitution, which forces the judge to qualify an action as a felony from the typical description. Consequently, in the words of Daza(2017), the theory of objective attribution does not contain or order the explicit requirements of the legislator. On the contrary, the elements that integrate it result in dogmatic elaboration.

The objective attribution in the Mexican legal right finds its basis in the Political Constitution of the United States within Article 134 through a system of freedoms and responsibilities. That attribution will be conditioned by the elements that are part of the guilt, defined as voluntary omission of diligence in calculating the possible consequences and foreseeable to the fact:

1. Act voluntarily
2. Do not foresee the negative consequences.

Guilt is an intermediate-term between malice in which there is the intention, deliberation, and complete responsibility, and a fortuitous event that includes strange acts that can be seen as acts of imputability. Not only is the responsibility limited to professional doctors, but it is also extensive to institutions, technicians, or assistants of health disciplines.

The medical-surgical treatment of that professional activity of a doctor is directed to diagnose, cure, or relieve a disease to preserve health and improve the aesthetic aspect of a person.

Healing medical-surgical treatment is characterized by the overcoming of diseases. The main objective consists of giving back to the person who suffers those perturbations to a similar health state that was formerly at the beginning of the pathological process or to the optimal state possible in a concrete case or to conserve the existing.

Casabona (1981) distinguished as principal aspects the objective and the subjective, breaking them down in the following way:

1. The purpose of treatment must be directed to have an improvement in the patient's health.
2. The objective therapeutic suitability is based on the current state of the science and the probable results derived from the intervention or treatment to perform referring to the patient's benefit.
3. The existence of a patient to whom is directed the administration of these means.

On behalf of the exposed by Thesis 1ª.4º.A.91. A (10th) of the Judicial Weekly of the Federation (2016), to have a medical-surgical treatment that can be healing from an objective perspective, its performance or implementation must be adapted to the rules of medical care. Moreover, it is about the duty of the physician to act with lex artis , which is known as the set of norms or valuative criteria that the doctor whose knowledge, abilities, and skills must carefully apply in the concrete situation needed by the patient and that has been universally accepted by his colleagues.

In Mexico, practicing medicine is a means of obligation, not a means of results. As formerly mentioned in the introduction of this article, the duties of results are those that the debtor compromises to obtain a specific result. While means of obligation are those in which the debtor only compromises to use prudence and needed diligence to fulfill the purpose followed by the provided.

The Judiciary of the Federation, in its Thesis 1ª.4º C39 C (2012), states that the obligation of means assumes that the professional is not committed to achieving an objective result, and the obligation of results; nevertheless, it provides other cases in which the patient only has to prove that result was obtained according to the required regular technique.

Charles Vilar (1974) claims that the physician has an obligation of the means when providing attentive and thoughtful care, with exceptional circumstances, based on the lessons acquired from the science. Consequently, the patient is the one to mention that the doctor has violated this obligation. All the aforementioned concludes that the physician can not and must not guarantee a priori result.

The lex artis ad hoc is an undetermined legal concept that must be set in each case in which the doctor deliberates and applies the measures of prudence to a concrete clinical situation and the extent of the prevailing conditions. Concluding, in the la lex artis ad hoc, an antithesis of medical malpractice.

All medical acts imply a risk. Because of that, the health personnel must be regulated under the lex artis and, due to the previous, reducing the risk of responsibility. The purpose of the medical act must support the patient based on universal scientific recommendations.

•Civil Responsibility

In the words of the minister, Sánchez Cordero (2001) assumes necessary the existence of damage that can be patrimonial or moral. Similarly, this element constitutes a requirement for its setting. Three elements must exist:

1. That the damage is provoked.
2. That someone has caused that damage using malice or only guilt.
3. That mediates a causality relationship within the determined fact of the damage.

Civil responsibility arises from an unlawful act, known as the subjective theory, whose basis is in the created risk. The professionals' obligation to repair damages and prejudices caused to their patients. Those damages must be the direct or immediate consequence of the lack of fulfillment of the medical-legal duty.

This responsibility can be contractual or non-contractual, which is comprehended once the patient requires the medical services. Regarding the contractual case, the obligation of repairing the damage by default of the contract emerges. Concerning non-contractual care that occurs without mediation, a legal relationship between the doctor and the sick person, the first one has to assume the economic consequences due to the patient's negative results.

There are two possible ways to resolve disputes arising from civil responsibility. In the first instance, the jurisdictional route, in which a civil judge will hear the case . It is a way to demand the payment of damages caused by medical attention. The second way is through conciliation and arbitration, by filing a complaint before the National Commission of Medical Arbitration.

Medical malpractice

The National Bioethics Commission points out that the classification of responsibilities that health professionals might incur might be summarized as medical malpractice. The fundamental medical principles of the Lex Artis are being violated.

In the words of Bañuelos Delgado (2015), the lex artis implies a health professional's obligation to provide the patient with the necessary care to fulfill their desired goals. The health personnel can be responsible for his acts only when it is demonstrated that guilt occurred due to being abandoned or carelessness of the sick person or not carefully applying his scientific knowledge.

Malpractice is shown when damage occurs, affecting the well-being of a person. As a result of medical practice due to imprudence, inexperience, negligence, or not correctly fulfilling the respective legal norms. The minister Olga María Sánchez Cordero (2001) states three hypotheses under which a health professional is committed to responding to the damage caused:

- According to Ramirez (1990), negligence means that the physician evades his knowledge or does the opposite of it. The forgetfulness and surgical forgetfulness are typical acts of negligence.
- Inexperience occurs when the physician does not have the training nor the elemental and required knowledge to carry out the indicated therapy. We can also call it inexcusable ignorance since it implies the lack of experience that a person who has done special medical studies is supposed to know.
- Imprudence happens when the doctor is not careful and hastily intervenes without measuring the consequences of his actions.

In this matter, Bañuelos Delgado (2015) states that medical malpractice under the three previously mentioned modalities is located in three groups of faults in the process of medical care:

- Diagnosis error or choice of the therapy.

- Missing instrumentals or techniques.
- While identifying the patient or the sick's organ, the confusing result.

Alfredo Bullard G, from a Health Law point of view, explains that this is interpreted through the res ipsa loquitur Theory. Hence, it refers to the policy or "the thing speaks for itself" utilized for those cases in which there is no proof of what was the cause of the damage due to the circumstances in which it has occurred. We can infer that it has been a negligence product or action of a specific person. It is relevant to clarify malpractice from the elements that support it:

- The act cannot caused by an accident
- It must be the result of inexperience, negligence, or malice.
- The acts in favor of health are not penalized.
- The adverse effect must not be attributed to the patient's idiosyncrasy.

Ramirez (1990) says that " when any of the previously stated malpractices happened, the physician can be susceptible to civil, penal or administrative action. In Mexico, quilt or demand can be imposed based on conciliation and arbitration through the National Commission of Medical Arbitration (NACOMED) or jurisdictional route through a public ministry".

The most effective way to defend a lawsuit is through the medical act with the current guidelines for clinical practice. Villareal (2022) claimed that the guides do not suppose any obligation; however, three aspects show the contrary:

1. The physician is committed to knowing the guidelines as part of his constant five-year renewal of his knowledge certification employing organisms, such as the National Commission of Medical Specialties.
2. The Health General Law disposes of Mexican Official Standards, which are obligatory and renovated every 5 years.
3. Implementing these guidelines to clinical practice is a warranty that the physician is applying his obligation of means, but not the results.

Situations that release from liability to health personnel

Montejano (2015) states the causes by which health personnel be released from liability:

1. A fortuitous event exists when there is a default of the obligation by the debtor. In other words, when the physician does not perform the necessary proceedings that are part of his nature.
2. An excusable error implies the lack of guilt and the existence of an admissible reason to wander, neither can be qualified as a fortuitous event.
3. A sick person's behavior can be the cause of release from liability of a doctor when the patient changes or does not follow the medical indications.
4. Failure of treatment arises due to an incorrect diagnosis or a precise treatment that does not cause the desired effects because of medical external factors.

5. A need state, regardless of the patient's consent, is when there is an emergency case and due to the impossibility of giving the patient his consent for the treatment required, the health professionals decide to save his life.

Legal Framework

The Office of the United Nations High Commissioner for Human Rights states that health rights are inclusive and comprehend an extensive set of factors that lead to a healthy life, safe drinking water, adequate hygiene, safe food, and healthy working conditions, among others.

In Mexico, there is an extensive legal framework in which the health right is recognized and allows the State to guarantee the fulfillment of this objective, having mechanisms or instruments that clarify the existing responsibility, or it is derived from malpractice.

Among the principal legal systems that regulate the protection of health rights and the responsibilities of professional doctors:

I. Political Constitution of the United Mexican States

Article 4 of the Constitution establishes in its third paragraph that "...Every person has the right to health protection. The Law will define the bases and modalities for access to health services and establish the concurrence of the Federation and the federative entities in matters of general health, as provided by the provisions of section XVI of article 73 of this Constitution. The Law will define a health system for welfare, to guarantee the progressive, quantitative and qualitative extension of health services for the integral and free attention of people who do not have social security...".

Article 73, section XVI, grants the Congress of the Union the power to issue laws on health matters "...To issue laws on nationality, legal status of foreigners, citizenship, naturalization, colonization, emigration and immigration and general health of the Republic...".

II. General Health Law

This law regulates the right to health protection established in Article 4 of the Mexican Constitution and also establishes the modalities for access to health services, as well as the concurrence of the federation. Article 2 defines the purposes of the right to health protection:

i. The physical and mental well-being of the person to contribute to the complete exercise of his capabilities;

ii. The prolongation and improvement of the quality of human life;
iii. The protection and enhancement of the values that contribute to the creation, preservation, and enjoyment of health conditions that contribute to social development;
iv. The spreading of solidary and responsible attitudes of the population in the preservation, conservation, improvement, and restoration of health ;
v. The enjoyment of health and social assistance services that effectively and timely satisfy the population's needs. In the case of individuals lacking social security, the free provision of health services, medicines, and other associated supplies;
vi. The knowledge for the adequate use and utilization of health services;
vii. The development of teaching and scientific and technological research for health and
viii. Health promotion and disease prevention.

Article 51 mentions that users of health services have the right to quality health care, professional and ethically responsible care, and respectful and dignified treatment in any of the three sectors.

Within the Law, there is a chapter regulating the exercise of professions, technical and auxiliary activities, and health specialties. Likewise, there is the National Regulatory Committee of Medical Specialties Councils to correctly supervise the training, abilities, skills, and qualifications of expertise required for certification in the different specialties of medicine. (Montejano, 2015).

III. Organic Law of the Federal Public Administration
Article 39 mentions:
"...VI. Plan, regulate, coordinate, and evaluate the National Health System and provide for the adequate participation of the public agencies and entities that provide health services to ensure compliance with the right to health protection. Likewise, it will promote and coordinate the involvement of the social and private sectors in said system and will determine the policies and actions of agreement between the different subsystems of the public sector;

VII.- To plan, regulate, and control the medical care, public health, social assistance, and sanitary regulation services corresponding to the National Health System;
VIII.- To dictate the technical norms to which the rendering of health services in matters of General Health, including those of Social Assistance, by the Public, Social, and Private Sectors shall be subject to and to verify their compliance;
IX.- To organize and administer general sanitary services throughout the Republic;
X. To direct medical-sanitary inspection actions, except for agriculture and livestock, except in the case of preserving human health;
XI. To direct actions of special medical sanitary inspection in ports, coasts, and frontiers...".

IV. Federal Civil Code
Health personnel may incur civil liability, regulated in the Federal Code. Article 1910 states in general terms that whoever, acting unlawfully or against good customs, causes damage to another is obligated to repair it. Similarly, Article 1915 indicates that such reparation consists of reestablishing the previous situation or paying damages.

Under all legal logic, it can be seen that the damages caused must be a direct and immediate consequence of the failure to comply with the obligation or legal duty of the health professional, which implies acting or exercising the profession with responsibility, expertise, and prudence.

V. Federal Criminal Code
The liability of health professionals can be framed within criminal types since the action or omission of the health professional, which causes harm to the patient, brings legal consequences that give rise to the establishment of liability and, therefore, a sanction.

Article 8 of the Code states that criminal acts or omissions can only be committed intentionally or negligently. In this sense, Article 9 defines that the person who, knowing the elements of the criminal type or foreseeing as possible the typical result, wants or accepts the realization of the act described by law, acts intentionally, and the person who produces the characteristic outcome, which he did not foresee being foreseeable or foresaw trusting that it would not occur, by infringing a duty of care, which he should and could observe according to the circumstances and personal conditions, acts negligently.

Under the element of negligence, the actions of health professionals are generally framed within the hypotheses of negligence, inexperience, and recklessness. There are several criminal offenses in which the result of the professional practice can be framed, such as homicide, abortion, injuries, omission of assistance, and falsification of documents, among others.

VI. Regulation of the General Health Law on the Provision of Health Care Services.
From these Regulations, the doctor-patient relationship that contributes to the professional practice of health care is derived.

Article 133 Bis 14 strictly states that the physician is responsible for treating and the multidisciplinary team to identify, assess, and attend on time to the pain and associated symptoms referred by the user. Regardless of the different locations or degrees of intensity, indicate the appropriate treatment for each symptom. According to the best medical evidence, they must adhere to the scientific and ethical principles that guide medical practice

without incurring at any time actions or behaviors considered therapeutic obstinacy or that have the purpose of ending the patient's life. It is important to analyze the previous article since it derives rules that must be followed by the treating physician and his team:

i. The exceptional diagnosis for the patient's care according to the symptoms referred.
ii. Adequate clinical analysis to indicate the correct treatment.
iii. Follow at all times the Lex Artis.

VII. Mexican Official Standard NOM-027-SSA3-2023, Regulation of Health Services. Which establishes the criteria for operation and care in the emergency services of health care facilities.
The purpose of this standard is to specify the characteristics and minimum requirements of physical infrastructure and equipment, the criteria for the organization and operation of emergency services in healthcare facilities. As well as, the characteristics of the professional and technical personnel in the health area suitable to provide such service.

Patients' rights are protected under the ethical principles that physicians must follow in the exercise of their profession. Several precepts are highlighted that allow his acts to be performed with responsibility and conscience:

VIII. Hippocratic Oath
It arose in 500 B.C. and established the precepts that would govern the practice of health professionals. The Hippocratic Oath implies a sense of commitment that the physician establishes with himself and his community and an unbreakable, indeclinable obligation that allows the practice of medicine.

IX. International Code of Medical Ethics
It outlines the obligations of physicians. The World Medical Association has developed the International Code of Medical Ethics as a standard of ethical principles for members of the medical profession throughout the world. Consistent with the Declaration of Geneva, the Hippocratic Oath, and the entire body of WMA policies, it defines and clarifies the professional duties of physicians to society.

The physician should be familiar with applicable national ethical, legal, and regulatory norms and standards, as well as relevant international norms and standards.
Such norms and standards should not diminish the physician's commitment to the ethical principles outlined in this Code.

X. General Rights of Patients.

CONAMED offers these precepts so that the patient is aware of his rights and that if they are not respected, they violate the people's warranties who suffer from a disease.
i. To receive adequate medical attention.
ii. Receive dignified and respectful treatment.
iii. Receive sufficient, clear, timely, and truthful information.
iv. To decide freely about your care.
v. To give or withhold your validly informed consent.
vi. To be treated with confidentiality.
vii. To be provided with facilities to obtain a second opinion.
viii. Receive medical attention in case of emergency.
ix. To have a medical record.
x. To be attended to when dissatisfied with the medical care received.
There are also jurisprudential theses issued by the Supreme Court of Justice of the Nation in medical professional liability, malpractice, and medical negligence.

CONCLUSION

In Mexico, practicing the medical act entails a great responsibility since it ignores health laws, and not acting according to the regulatory framework will always generate a liability against the health personnel. Furthermore, it is essential to maintain a close doctor-patient-family relationship and to follow the recommendations of the clinical practice guidelines, as this is the safest way to minimize any classification of medical liability in the event of acting negligently, carelessly, and recklessly in the exercise of their profession. The liability can be of three types: criminal, civil, and administrative, and each of them contemplates a different judicial process in which the physician can be found liable and thus be subject to a penalty of deprivation of liberty, payment of damages, or payment of a fine and suspension or disqualification from his profession, respectively.

Concerning the rights and obligations of physicians and patients, a much more active role is required of the patient since he must be informed about the state of his health, know the costs, as this is an element that constitutes informed consent, and participate in a preeminent manner in the making of the medical decisions that concern him.
In the same way, the Mexican legal system is based on the concept of lex artis ad hoc to determine the existence of responsibility for medical malpractice. Moreover, it is examined with the necessary intervention of experts in the field to determine the existence of medical malpractice because the judges do not always have the technical knowledge to determine whether a medical professional has followed the guidelines established by the same professional members of the community.

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