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The civil liability of physicians and bioethics.
La responsabilidad civil del médico y la bioética

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Abstract:

In December 2024, the Mexican Supreme Court of Justice ruled that a physician working in a public institution may be sued personally for civil liability for negligent or wrongful acts, without excluding the possibility of also taking administrative action against the State. The case, derived from a malpractice suit against a public servant of the IMSS, raised the distinction between the subjective liability of the physician -which requires proving fault- and the objective liability of the State -which is based on the irregular performance of the service. This decision has bioethical and legal implications, as it allows the affected party to choose the way to claim damages, setting a relevant precedent in medical-health liability in Mexico.

Keywords:

Civil liability. Administrative responsibility. Supreme Court of Justice. Law.

Resumen:

En diciembre de 2024, la Suprema Corte de Justicia de la Nación resolvió que un médico que labora en una institución pública puede ser demandado en lo personal por responsabilidad civil por actos culposos o negligentes, sin excluir la posibilidad de acudir también a la vía administrativa contra el Estado. El caso, derivado de una demanda por mala praxis contra una servidora pública del IMSS, planteó la distinción entre la responsabilidad subjetiva del médico —que requiere probar culpa— y la objetiva del Estado —que se basa en la actuación irregular del servicio. Esta decisión tiene implicaciones bioéticas y legales, al permitir al afectado elegir la vía para reclamar daños, sentando un precedente relevante en la responsabilidad médico-sanitaria en México.

***Palabras Clave**:*

Responsabilidad civil médica. Responsabilidad Administrativa.Suprema Corte de Justicia. Ley.

INTRODUCTION

In December 2024, the First Chamber of the Supreme Court of Justice of the Nation issued a decision in an amparo in review, where it analyzed whether the medical personnel of a public institution can be sued for liability in the civil or in the patrimonial liability of the State.

The case refers to a beneficiary of the Mexican Social Security Institute (IMSS), who considered that she had been subjected to deficient medical and surgical care by a person of the medical service of such Institute; therefore, she sued in the ordinary civil proceeding for various benefits for the damages she considered she had suffered. The defendant answered and asserted an exception of lack of jurisdiction, considering that the correct procedural path was the patrimonial liability of the State, in the administrative proceeding, since she was a public servant. The matter was heard in several instances, until it was taken up by the Supreme Court, based on the fact that there was no established criterion regarding the appropriate way to sue physicians who were employees of a social security institution. This case is relevant because the First Chamber of the Court concluded that it is possible to sue a doctor personally, in order to demand his civil liability for negligent or wrongful acts, even when he has been performing functions in a public health institution.

Thus, without leaving aside the possibility of suing the public institution in administrative proceedings for patrimonial liability of the State, the possibility of opting for one or another form of claiming the damages suffered due to the improper actions of the health personnel of a public entity is open.

In this article we seek to know the reasons why the First Chamber of the Supreme Court of Justice of the Nation decided that it was possible to try the claim for damages in civil proceedings, despite the fact that the defendant is a public servant.

This issue is not outside the bioethical implications of medical practice, since when there is a disagreement against the health

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personnel, there is a probable infringement of the principles of beneficence and non-maleficence, since the action did not pursue a good for the patient and the patient's harm was not avoided. This would be the reason for an individual claim and not at the institutional level.

In these terms, a judgment of such scope may generate uncertainty within the health personnel, particularly those who provide medical care, and may generate a practice of defensive medicine, which has been considered contrary to medical ethics.

Therefore, the implications of the matter on bioethical principles, the differences between the civil and administrative routes to claim liability for damages, the arguments of the parties before the courts that heard the case and the considerations of the Court to decide it, finally expressing the conclusions that seem most relevant, will be briefly presented.

THEORETICAL FRAMEWORK/CONCEPTUAL REFERENCE

In order to identify the relationship between medical civil liability and bioethics, the concepts must be approached from a doctrinal and normative point of view.

Miguel Angel Fuentes (2006) points out that Van Resselaer Potter used the term Bioethics in his book Bioethics: A bridge to the future, in the context that man has broken the natural equilibrium, so it is necessary to build a bridge between science and values. Wilhelm Reich, in his dictionary of bioethics, defines it as the systematic study of the moral dimensions of life sciences and health care, using a variety of ethical methodologies in an interdisciplinary context (Casado, n. d.). Another definition is the analysis of the ethical, legal, social and political aspects of the impact of biomedicine and biotechnology, within the framework of respect and promotion of recognized human rights (Casado, n.d.). With the above definitions it can be affirmed that bioethics studies the ethical and normative implications applied to biological sciences and their development, to safeguard the dignity of the person.

Now, the question arises as to what is civil health liability. In the doctrine, Pina de Vara points out that it is the obligation that a person has with respect to another person to repair the damages and compensate for the harm that one has caused as a consequence of his own or another person's act or due to the effect of things or inanimate objects or animals (Pina, 2005). In his work Derechos de las Obligaciones, Gutiérrez y González (1990) provides that it is a conduct consisting of restoring things to the state they were in and if not possible in the restitution of the property damage, generated by an action or omission of the person who committed it, by himself, by persons under his care or things he owns and that generated with it the violation of a legal duty or a prior obligation. It can be seen that civil liability is the legal consequence of causing damage to a person's property. In the health field, civil liability may arise when the physician is liable for the culpable damages he causes in the performance of his profession (Acosta, 1990).

MEDICAL CIVIL LIABILITY. ELEMENTS THAT MUST BE PROVEN, DEPENDING ON WHETHER THE OBLIGATION IS ONE OF MEANS OR ONE OF RESULTS.

The damage can be pecuniary or moral, although both types can concur when produced by the same event, for example, in case of physical injuries, and its accreditation requires, in the case of medical civil liability, the proof that the injuries were produced and it was the injurious behavior of the medical professional that caused the violation to the physical integrity, that is to say, the existence of a causal link between one and the other. Thus, the general rule that governs in this matter is applied, enunciated by the doctrine and the first part of article 1910 of the Civil Code for the Federal District, whose text shows the behavior, when referring to the wrongful act, the damage and the causal relationship, when pointing to the person responsible for the damage and the conduct of the latter as the cause of that affectation. If these three elements are not met, the claim for civil liability, whether contractual or non-contractual, for damage arising from the exercise of the medical activity can in no way be successful. The demonstration of these elements does not escape the general rules of evidence provided for in Articles 281 and 282 of the Code of Civil Procedures for the Federal District. Thus, the plaintiff who claims that the damage was caused by the doctor must prove the damage and the fault of the professional, as well as the causal link between the two. However, the particularities of the practice of medicine and of the civil liability derived therefrom require clarifications on evidentiary matters. As a general rule, the obligation of the medical professional is one of means and not of results. The first type of obligation means that the professional is not obliged to achieve a specific result, but to display diligent conduct, the assessment of which is based on the so-called lex artis ad hoc, understood as the criterion for assessing the correctness of the specific medical act performed by the medical professional, which takes into account the special characteristics of its author, of the profession, of the complexity and vital importance of the patient and, where appropriate, of the influence of other endogenous factors -state and intervention of the patient, of his relatives, or of the health organization itself-, in order to classify the act as conforming or not to the normal technique required, according to the doctrine. In such a case, the lack of diligence and negligence of the medical professional will have to be proved. It is different when the obligation is one of result, which in the case of medicine can occur, among other cases, in the practice of dentistry, in which case the plaintiff patient must only prove that the result was not obtained.

METHODOLOGY

A jurisprudential analysis seeks to reflect on a judgment, in this case of the highest court in the country, to inquire about the arguments that served as a basis for responding to the problem posed, thus allowing to reach certain conclusions about the criteria to be faced in similar situations. This analysis will investigate the argumentation made by the judges when faced with a certain problem, which allows the researcher or the lawyer to draw conclusions about how the courts are solving such problem (Coral-Díaz, 2012), until a different criterion is generated.

While it is true that there are various criteria on medical liability and the possibility of generating claims for damages for malpractice, this ruling raises as a novelty the generation of a criterion on the possibility of taking to court a person who provides medical services, in particular, even if she is a public servant.

The analysis will focus on the arguments proposed by the Court for the legal problem consists of analyzing whether it is possible to sue a doctor personally to demand his civil liability for his

negligent or negligent actions, without being prevented by the fact that he works in a public health institution or whether in this scenario the claim must be made through administrative channels. In addition, as to whether this decision would again open the possibility of resorting to the figure of indirect state patrimonial claims, first suing the public servant in civil proceedings and, in the event of his insolvency, suing the State (Amparo en Revisión [AR], 2024).

CASE ANALYSIS/DEVELOPMENT.

According to the judgment under analysis, a natural person, a beneficiary of the Mexican Social Security Institute, as a patient, acts as plaintiff in the natural lawsuit against a public servant of said institute who provided medical and surgical care, due to poor care.

The judicial matter began in the year 2021, where the beneficiary sued in the ordinary civil proceeding for various benefits for damages for what it considered to be improper medical and surgical care provided by the public servant; the controversy was heard by the Sixty Ninth Civil Court of Written Process of Mexico City.

When the defendant answered, it denied the benefits claimed and raised several defenses, among them that of lack of jurisdiction, since it considered that the controversy should be substantiated in administrative proceedings, as a patrimonial responsibility of the State, since it was a public servant and the claim came from a person entitled to the benefits. An exception of this nature implies that an opposition is raised prior to the initiation of the process, considering that the court before which it is presented does not have jurisdiction to hear the case due to the subject matter, territory or amount (Diccionario Usual del Poder Judicial - Diccionario - Excepción de Incompetencia, n. d.).

The exception of lack of jurisdiction was resolved by the Third Civil Chamber of the Superior Court of Justice of the Judiciary of Mexico City, considering it unfounded and determined that the Judge would continue to hear the case. In response to this resolution, the public servant filed an indirect amparo proceeding, in which a judgment was issued denying the requested amparo, which led the plaintiff to file an appeal for review, which was heard by the Fifth Collegiate Court in Civil Matters of the First Circuit.

The Collegiate Circuit Court requested the Supreme Court of Justice of the Nation to exercise its power of attraction, which consists of the request made to this High Court because it considers that its intervention is necessary for the resolution of a matter that due to its special characteristics is of interest or transcendence for the legal order of the country (Frequently Asked Questions - Request to Exercise the Power of Attraction - Portal de Estadística Judicial @Lex, n. d.).

It is important to note some of the reasons on which the Court based its decision to attract the case, since this is what allowed the First Chamber to analyze the case

(...) whether it is possible to sue a doctor personally in order to demand his civil liability based on his negligent or wrongful acts, without the fact that he works in a public health entity being an obstacle; if so, to establish whether the suitable way for such purpose is civil or administrative; and, whether or not this would imply opening the possibility of establishing a system prior to the constitutional reform published.... on June fourteen, two thousand two, where article 113 (currently provided for in the last paragraph of article 109) of the Constitution was amended to introduce a direct and objective patrimonial liability of the State; in other words, if this establishes the possibility of demanding the patrimonial liability of the State under an indirect scheme, where the public servant must be sued first and once his subjective liability and insolvency is demonstrated, the State can be sued (AR 971/2023, 2024).

As has been indicated, the defendant asserted lack of jurisdiction, which was decided by the Third Civil Chamber of the Superior Court of Justice of the Judiciary of Mexico City, denying the claim and determining that the civil proceeding was appropriate. Therefore, in the amparo lawsuit against said decision, the doctor planned that the Chamber violated constitutional articles 14, 16, 17 and 116, section V, to her detriment, since in her opinion the claim should have been made through administrative channels and not civil, as resolved by the responsible court.

The administrative remedy that the plaintiff in the amparo proceeding claimed as appropriate refers to the patrimonial liability of the State, which according to the Constitution consists of the liability of the State for the damages caused by its irregular administrative activity to individuals in their property or rights, which shall be objective and direct; and the right of the individuals to receive compensation. Such direct liability arises when the State, in the exercise of its functions, causes damages to individuals in their property or rights, for which they may sue the State directly, without having to prove the wrongfulness or malice of the public servant who caused the claimed damage, but only the irregularity of his actions, and without having to previously sue such public servant. While the strict liability is the one in which the individual does not have the duty to bear the economic damages caused by an irregular activity of the administration carried out in an illegal or abnormal manner (P./J. 42/2008).

From the various arguments of the appellant, some references to criteria of the First Chamber of the SCJN itself stand out, arguing that when dealing with public servants, the claim for their irregular actions should be followed by the State's patrimonial liability. However, the Collegiate Circuit Court, in the reasons for requesting the attraction of the High Court, noted that after the criteria indicated by the appellant, there were others that stated that it is possible, exceptionally, to initiate a civil action against a public servant personally, even if he had worked for a public social security institution.

In the section on the study of the specific case, the First Chamber limited its analysis to three aspects:

a) To define whether it is possible to sue a physician personally, in order to demand his civil liability based on his negligent or negligent actions, carried out in the exercise of his functions within a public health agency.

b) Establish whether the appropriate remedy for such purpose is the civil or administrative remedy.

c) Determine whether or not this would imply opening the possibility of establishing a system prior to the 2002 constitutional reform that introduced the direct and objective patrimonial liability of the State.

In the body of the judgment, the First Chamber discusses the evolution of the patrimonial liability of the State and its current constitutional model; the objective and direct liability of the State; the right of the affected persons to have the State compensate the damages generated by the negligent actions of the medical personnel working in the public health institutions; the procedural path through which the reparation of damages

can be demanded from the State; the civil liability; the path to demand subjective liability; and concludes in the resolution of the specific case.

It is not the subject of this article to develop each of these points, but it is important to emphasize, among other aspects, that for the Court the term strict liability provided for in Article 113 of the Constitution cannot be understood in the same sense as that attributed to strict civil liability, but refers to a liability derived from an irregular act of the State. The strict civil liability is a legal conception to force a person to repair a damage, regardless of whether he acted with fault or negligence, based on the risk generated by his activity or the handling of dangerous objects (Contradiction of Criteria 100/2022).

He goes on to say that even when it is necessary to prove irregular state action or the provision of a deficient public health service, it should not be understood that civil action should be taken, since the defendant is not a private individual, but the State as the entity responsible for the adequate provision of public services in its charge. Hence, in the medical-health liability, it may well be appropriate to the patrimonial liability of the State, without it being necessary to prove the fault of a public agent in particular, but rather the irregular performance of the agency.

The First Chamber emphasizes that

(...) the irregular conduct of the State is not only based on the failure to comply with the legal duties of public officials, established in laws or regulations, but, in the case of the medical function in their charge, it also arises from the failure to comply with the prescriptions of medical science at the time of the performance of their activities, that is, for not having complied with the medical or scientific techniques required for them -lex artis ad hoc-, or the duty to act with the diligence required by the lex artis (AR 917/2023, 2024).

The judgment recalls that in other cases, the First Chamber established that the ordinary civil proceeding was not suitable to sue the patrimonial liability of the State derived from the health services provided by any of its federal institutions, since such proceeding became obsolete with the emergence of the constitutional reform on the matter and the repeal of article 1927 of the Federal Civil Code. But also that the ordinary lawsuit proceeds to sue the doctor in particular, because his liability is based on the damage caused to the patients, which could give rise to a subjective liability, being necessary in this case to prove the fault or negligence of the doctor, either by an inexperience, negligence or a conduct against good customs; or, if the affected person decides so, he can go to the administrative channel to process before the public instance the claim appeal and its result, to be challenged through administrative appeal or through the courts.

The sentence continues with an analysis of civil liability, medical-health civil liability and medical-health subjective liability.

Starting from a distinction between contractual and non-contractual liability. For contractual liability to exist, it is sufficient that the agreed obligation is not fulfilled, while non-contractual liability can be objective or subjective liability, the latter based on an element of a psychological nature, because there is an intention to harm or because there is carelessness or negligence. On the other hand, in strict liability the subjective element, i.e., fault or negligence, is absent.

According to the Court, in Mexico, medical-health liability can have a contractual origin, through a simple doctor-patient agreement, or derive from a state provision, such as administrative liability, where the State is liable for the negligent actions of its agents.

However, the liability of medical-health professionals does not only stem from the contractual issue, but also from being obliged to act within the standards of their profession, such as the normative provisions, the lex artis ad hoc, or simply the lex artis of their profession, since from there the existence or not of liability for the damages generated in their patients can be determined, and it must also be proven whether it is of a subjective or objective nature.

Thus, the First Chamber determines that it is possible to sue a doctor personally, to demand his civil liability based on his negligent or negligent actions, carried out in the exercise of his functions within a public health agency.

Regarding the appropriate remedy, the Court considers that it is the choice of the affected party to file a civil or administrative claim, taking into account that in the latter case the claim is directed directly to the State, not in a subsidiary or joint and several manner with a claim against the public servants who have performed or materialized the harmful administrative activity, as was contemplated in a subjective and indirect system, based on the theory of fault and regulated by the civil codes. In the administrative route, the subject that can be sued is not the physician personally, but the State as the entity responsible for the adequate provision of the public services in its charge and, consequently, the requirements of the medical-health liability should be transferred to the scheme of patrimonial liability of the State, without being necessary to prove the fault of an agent of the State in particular, but the irregular performance of the defendant agency.

Now, in the opinion of the First Chamber, the ordinary civil proceeding is only applicable when the doctor is sued individually if the patient considers that he acted negligently, regardless of whether he works in a public entity. Same case if the defendant is a private institution. In this case the liability is based on the damage caused to the patients, which could give rise to a liability of a subjective nature; therefore, in order for such indemnity to be applicable, it is necessary to prove the fault or negligence of the physician or private company to whom the damage is attributed.

It also emphasizes that the object of proof in one or the other route is different, since while in the administrative route the irregular administrative activity must be proved; in the civil route, the liability is based on the damage caused to the patients, which would give rise to a liability of a subjective nature, in which the fault or negligence of the responsible physician would have to be proved.

Finally, the judgment determines that at present, the liability of the State can only be asserted in administrative proceedings, as it is objective and direct, although it is possible to sue the State in civil proceedings for patrimonial liability under an indirect scheme, where first the public servant was sued and, once his subjective liability and insolvency had been demonstrated, the State could be sued.

CONCLUSIONES.

According to the First Chamber of the SCJN, it can be considered that

a) a) Medical liability, whether objective or subjective, allows the affected person to claim compensation for the damages caused.
b) b) If the medical-healthcare personnel are part of the public health system and acted within the scope of their activities as public servants, it is possible to claim the damages through administrative channels through the State's patrimonial liability.
c) c) However, if the medical-healthcare personnel acted negligently, they can pursue their claim through civil channels, as subjective liability.
d) d) However, if the latter option is chosen, there is no possibility of claiming indirect liability from the state authority in the event of the insolvency of the medical-healthcare personnel, as this provision has been superseded by the constitutional reform on the State's patrimonial liability.

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