

Ignorance of Health Regulations as A Fundamental Part of the Assignment of Responsibilities in the Medical Act

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ABSTRACT

Health professionals have an obligation to provide assistance and care to people whose lives are in danger; This, taking into account that the supreme purpose of this profession is to preserve human life, which is why the protection of the life and health of the patient, as well as his physical integrity, is under his responsibility; However, in spite of these maxims, it has been unfortunately observed that the actions of health professionals do not always adhere to the rules and procedures established for this matter. Inappropriate or incorrect action on their part is capable of causing harm to the patient, known as medical malpractice. In our environment (public health), there are various justifications for health personnel with which they try to dilute this responsibility assigned in the maxim mentioned above, such as: lack of personnel, lack of therapeutic supplies, lack of adequate instruments, etc.). However, this does not omit the incredible incidence of malpractice that is generated in health institutions, derived mainly from ignorance of current legislation in the medical act. Medical malpractice resulting from negative actions is framed in the modalities of negligence, recklessness and incompetence, which derive in various types of responsibilities that can be imposed on health professionals, whether administrative, civil or criminal, which will be determined according to the damage caused. In this sense, the purpose of this paper is to present the panorama of the responsibility of health professionals in Mexico, which, as will be seen, is not limited to the actions of physicians alone, as is commonly thought, but is extended to nurses, technicians, assistants and practitioners (Undergraduate Medical Interns, Interns in Social Service and Residents of the various specialties) with the sole purpose of raising awareness in this sector and generating greater adherence to the legislation that allows us to practice a safe profession. This paper focuses on an analysis of what we consider to be functions and bibliographic elements that should be fully known by health personnel in order to improve the quality of care and, above all, in order to exercise a safe medical practice based on *lex artis* and *lex artis ad hoc* for each particular case and avoiding the practice of defensive medicine that often conditions the poor decision-making that perpetuates the pathological state of patients.

Keywords

Medical malpractice, Responsibility, Negligence, Professional, Medicine.

Introduction

It is important to note that *"Health professionals have an obligation to provide assistance and care to people whose lives are in danger; This, taking into account that the supreme purpose of this profession is to preserve human life, which is why the protection of the life and health of the patient, as well as his physical integrity, is under his responsibility; However, in spite of these maxims, it has been unfortunately observed that the actions of health professionals do not always adhere to the rules and procedures established for this matter. Inappropriate or incorrect action on their part is capable of causing harm to the patient, known as medical malpractice."* [1].

In our environment (public health), there are various justifications for health personnel with which they try to dilute this responsibility assigned in the maxim mentioned above, such as: lack of personnel, lack of therapeutic supplies, lack of adequate instruments, etc.). However, this does not omit the incredible incidence of malpractice that is generated in health institutions, derived mainly from ignorance of current legislation in the medical act.

Gamboa and Valdez [1] state that *"Medical malpractice resulting from negative actions is framed in the modalities of negligence, recklessness and incompetence, which derive in various types of responsibilities that can be imposed on health professionals, whether administrative, civil or criminal, which will be determined according to the damage caused."* In this sense, the purpose of this paper is to present the panorama of the responsibility of health professionals in Mexico, which, as will be seen, is not limited to the actions of physicians alone, as is commonly thought, but is extended to nurses, technicians, assistants and practitioners (Undergraduate Medical Interns, Interns in Social Service and Residents of the various specialties) with the sole purpose of raising awareness in this sector and generating greater adherence to the legislation that allows us to practice a safe profession.

This paper focuses on an analysis of what we consider to be functions and bibliographic elements that should be fully known by health personnel in order to improve the quality of care and, above all, in order to exercise a safe medical practice based on *lex artis* and *lex artis ad hoc* for each particular case and avoiding the practice of defensive medicine that often conditions the poor decision-making that perpetuates the pathological state of patients. It is necessary to consider various definitions that allow us to consider the Responsibility assigned to health personnel in the event of medical malpractice.

According to Cortés [2] *"Medical act is the process in which the doctor-patient relationship is concretized, it is a special form of relationship between people; In general, one of them, the patient, goes motivated by an alteration in his health, to another, the doctor, who is able to guide and heal, according to his abilities and the type of disease that the first presents. The physician undertakes*

to use all the means at his disposal to carry out a procedure (medical or surgical), acting with the support of his knowledge, his technical training and his diligence and personal care is to cure or alleviate the effects of the disease, without being able to guarantee the results, after warning of the possible risks and complications inherent to it." taking for granted the implications that this has, Cortés also states in his analysis that *"Four main characteristics distinguish him: Professionalism, since only the medical professional can perform a medical act. Typical execution, i.e. its execution in accordance with the so-called "lex artis ad hoc", with accepted standards, interpreted in accordance with the circumstances of manner, time and place. Purpose: cure or rehabilitation of the patient Lawfulness, i.e. its conformity with legal norms."*

According to the review by Gamboa and Valdes in 2015, it is necessary to consider the different concepts that they explore in the text in order to make medical practice more efficient:

"Profession: Etymologically, the word profession comes from the Latin *professio*, -ōnis, employment, faculty or trade that each one has, and exercises publicly. And according to the Dictionary of the Spanish Language, it implies the action and effect of professing. Employment, faculty or trade that someone exercises and for which he receives remuneration. For his part, Choy García points out that it implies: employment or work that a person carries out and that usually requires theoretical studies. And as a synonym: activity, art, career, occupation, trade. He explains that it specifically means the continuous exercise of a human activity, and therefore of a work activity. It also points out that in all languages it has the same meaning: a) The exercise of a discipline, an art, a work or productive activity with relative continuity. (b) The regulation of a particular work or business activity. In addition, it distinguishes the term profession from that of the liberal profession, defining the latter as one that involves a career followed in universities or colleges. And in this regard, Choy García points out that we speak of a liberal profession when man allows his intelligence to intervene in the exercise of a professional activity, which implies not being so linked to predetermined forms and professional parameters."

According to Carrillo Fabela, the profession can be defined as "a qualified capacity with which the person through his activity carries out his vocation within a chosen job, which determines his participation in society, serves as a means of subsistence and at the same time values him positively in the country's economy.

Professional

The Dictionary of the Spanish Language indicates several meanings for the term professional, as follows: Belonging to or related to the profession. Said of a person: Who exercises a profession. Said of a person: Who habitually practices an activity, even a criminal one, from which he lives. Made by professionals and not amateurs. A person who exercises his or her profession with relevant ability and application. It is also defined as belonging to the profession or teaching of sciences or art. It is said of a person

who performs his work for remuneration. Choy García points out that in order for a person to be considered a professional or to acquire professionalism, he or she must have as a characteristic the development of an activity with continuity and that it is not required that it be intensive, in favor of third parties and with the purpose of obtaining a profit.

Physician

The Dictionary of the Royal Academy that has been cited indicates that it comes from the Latin *medicus*, and defines it as: Pertaining to or relating to medicine. A person legally authorized to profess and practice medicine.

Medicine

It is defined as the science and art of preventing and curing diseases of the human body. Profession that is constituted by the set of techniques aimed at recovering and preserving the health of man in its organic and mental aspects.

Liability

Debt, an obligation to make reparation and satisfaction, by oneself or by another person, as a result of a crime, fault or other legal cause. A moral charge or obligation that results for someone from a possible mistake in a given thing or matter. The capacity of every active subject of law to recognize and accept the consequences of an act carried out freely. In classical Roman law, the obligation (*obligatio*) is the institution conceived as "the legal bond by virtue of which a person (debtor) is constrained vis-à-vis another (creditor) to perform a certain service". In this regard, it points out that liability consists of two elements: debit and liability; the duty to perform the service and the liability arising from the breach. The Mexican Legal Dictionary states that an individual is liable when, in accordance with the legal order, he or she is liable to be punished. Therefore, responsibility presupposes a duty (for which the individual must be held accountable).

Professional Responsibility of Doctors

It has been defined by various authors and in this sense it has to be defined by Jorge Alberto Riu quoted by Choy García as: "the obligation that every professional of the art of healing has, to respond before justice for the damage resulting from his professional activity". Carrillo Fabela points out that medical professional responsibility means: "The obligation that doctors have to repair and satisfy the consequences of voluntary and involuntary acts, omissions and errors, and even, within certain limits, committed in the exercise of their profession." It also points out that the health service provider has other types of responsibilities derived from the exercise of the profession, such as moral responsibility, which is activated when he commits or carries out a fault, infraction or illegal act and to which he is obliged to respond before his own conscience, thus acquiring great importance ethics. From this perspective, principles and values are brought into play that professionals incorporate and apply through their behavior.

Iatrogenesis

The literature indicates that the term iatrogenesis is not registered

as such in dictionaries, however, the term iatrogenic is contained in the Dictionary of the Spanish Language, it derives from the Greek *ιατρός*, physician, *ἱατο* and *ἱα*, places it as an adjective within the branch of medicine and defines it as "any alteration of the patient's state produced by the doctor." In the Terminological Dictionary of Medical Sciences, cited by Carrillo Fabela, it is defined as "what is produced by the doctor or the medicines". The term iatrogenesis is closely related to the term malpractice which refers to the negative aspects produced by doctors, from the medico-legal point of view, negative iatrogenesis, explains Carrillo Fabela, are known as iatropathogenesis and these refer to any disorder, alteration or damage in the patient's body caused by the professional performance of the doctor. from which derive the types of liability incurred by these and all health professionals. And he adds that responsibility in the medical area is due to situations of action, omission, carelessness, forgetfulness, inadvertence, distractions, unforeseen events, delinquency, apathy, haste, recklessness, etc.

- **Negligence** is the failure to comply with the elementary principles inherent in the art or profession, that is, that knowing what should be done, one does not do, or conversely, that knowing what one should not do, one does.
- **Incompetence** is the lack of basic and indispensable technical knowledge that must be had in a certain art or profession.
- **Recklessness** is the opposite of prudence. It is facing a risk without having taken the proper precautions to avoid it, proceeding with unnecessary haste, without stopping to think about the inconveniences that will result from that action or omission. Therefore, the updating of any of the aforementioned hypotheses in the professional practice of medicine can give rise to various types of liability, which are identified in Mexican legislation.

Types of Responsibilities

Administrative Liability

Administrative liability occurs when the health professional violates any of the precepts established in the General Health Law, its Regulations and other provisions that arise from said law, regardless of whether or not damage has been caused to the patient's health.

This type of liability necessarily presupposes the existence of damage, which can be pecuniary or moral, it can be interpreted from the wrongful act also known as subjective theory that is based on the notion of fault and the objective theory or created risk, which translates into the obligation to respond for the damages caused when a person makes use of mechanisms, instruments, apparatus or substances that are dangerous in themselves, regardless of whether there is fault on the part of the perpetrator of the act. In both cases in which the damage occurs, the obligation arises for professionals to repair the damages caused to their patients, damage being understood: the loss or impairment suffered in the patrimony due to the failure to comply with an obligation and, by damage: the deprivation of any lawful gain obtained with the

fulfillment of the obligation. It should be noted that the damages caused must be a direct and immediate consequence of the failure to comply with the doctor's legal obligation or duty. In other words, there must be a causal relationship or nexus between the fault committed (inadequate medical care or malpractice) and the damage or harm caused (the pathological situation caused to the patient). Likewise, civil liability can be of a contractual or non-contractual nature, which is understood from the moment the patient requires the services of the doctor. In this regard, in the case of a contract, there is an obligation to compensate the person who causes damage due to breach of contract. In relation to the liability derived from a non-contractual situation, this occurs when, without a legal relationship between the doctor and the patient, the former must assume the economic consequences derived from the negative results caused in the latter. There are two ways to resolve disputes arising from civil liability:

- **The jurisdictional route**, through which the dispute will be heard by a civil judge of first instance. Through this channel, the payment of damages caused by medical care and whose result was physical damage or moral damage is demanded and demanded.
- **Through conciliation and arbitration**. This is dealt with by means of a complaint filed with the National Medical Arbitration Commission.

Criminal Liability

Criminal liability occurs when a person, in contravention of the rules that describe criminal conduct, commits intentionally or negligently any of the unlawful acts provided for in these laws. Criminal damage in this sense is considered as an aggression against a high juridical good, an object of value in the integral life of human existence, since the victim is limited in his psychophysical faculties to submit to life in society. Hence, criminal liability goes beyond a pecuniary sanction that is limited only to the reparation of the damage. However, such conduct or aggression classified as a crime may be carried out in a malicious or culpable manner. If the action is carried out with the intention of causing harm, what there is is malice, but if the action is done without foreseeing the results or in the hope that they will not happen, there is fault.

Medical Malpractice

The types of responsibilities that health professionals can incur through any of its types under the modalities of incompetence, negligence or recklessness are summarized in medical malpractice, which is defined as a violation of fundamental medical principles or the non-observance of the indications of the Lex Artis or "state of the medical art" which is the set of rules or evaluative criteria that the physician, in possession of knowledge, skills and abilities, must diligently apply in the specific situation of a patient and that have been universally accepted by his peers. The lex artis implies the obligation of the health professional to provide the patient with the necessary care to achieve the desired end, through the knowledge of his science and expertise, to act with prudence in order to avoid being responsible for a disastrous outcome of the disease that the patient suffers from or for the non-cure of the disease.

In this sense, the health professional can only be held responsible for his actions when it is proven that he or she was at fault for having abandoned or neglected the patient or for not having diligently used his or her scientific knowledge in his or her care or for not having applied the appropriate treatment to his or her ailment despite knowing that it was the right one, for which the following must be considered:

- a) **Error in diagnosis or choice of therapy**. It is essential to consider the place where the medical care is provided, the personal circumstances of the professional, the causes or facts that may have influenced the outcome.
- b) **Instrumental or technical faults**. Injuries or damages arising from the use of equipment due to technical failures of the operator or the equipment used. Inability to perform a technique that has contributed to the patient's injury or death.
- c) **Missing**, as a result of confusion in the identification of the patient or the diseased organ. In this type of fault, the responsibilities of each of the members of the health team must be delimited.

Development

We consider that a large part of the problem is based on the omissions of some medical personnel to their obligations and duties described in various international and national documents that support this lex artis ad hoc such as: professional secrecy, adequate information and consent, obligation of knowledge, duty of diligence and technique, continuity of treatment, assistance and advice and certification of the disease and the treatment carried out.

You agree with López [3] that "The Hippocratic Oath stipulates: "... Whatever I see or hear in society, during the exercise or even outside the exercise of my profession, I will keep silent, since there is never any need to divulge it, always considering discretion as a duty in such cases..." Medical professional secrecy covers what has been seen, heard or understood by reason of the exercise of the profession and which is not ethical or lawful to reveal, unless there is a just cause and in the cases contemplated by legal provisions."

An example of this is commented by Guzmán and Arias [4] since: "The violation of secrecy is contemplated in the Penal Code: "Anyone who, having knowledge, by reason of his profession, art or trade, of a secret, reveals it without just cause, shall incur arrest from three months to one year and suspension from exercising such profession, taking this into account, there are limitations to professional secrecy, especially in cases of some infectious and contagious diseases, where what is most striking is the contradiction of health regulations. Decree 559 of 22 February 1991, which refers to the prevention, control and surveillance of communicable diseases, especially those related to the human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS), requires notification to the authorities of both AIDS patients and those infected with HIV. Even if they are asymptomatic, under penalty of incurring the crime of violation of health regulations enshrined in the Penal Code.

The notification procedure shall ensure confidentiality.

"Adequate information is equivalent to knowledge of the treatment alternatives and all the possible complications involved in the procedure or therapy to which you are going to be subjected. In this regard, there may be a discussion as to whether the full truth should be reported, because of the repercussions that such information may have on the patient who is not prepared to receive it. It is obvious that at this point you have to be very cautious and careful, because negative effects can depend on the way things are presented to the patient. Some claim that the patient must know the whole truth, in order to settle his family and financial affairs once and for all. Others, on the other hand, think that the patient should not be distressed and rather subjected to treatment without knowing that his prognosis is terrible. "The physician's liability for adverse reactions, immediate or delayed, produced by the effects of the treatment, shall not go beyond the anticipated risk. The doctor shall warn the patient or his relatives or friends about it." Although the physician must always offer some hope to his patient, the present circumstances make it necessary to provide the information in a clear way. In any case, a good practice is to always inform the family about the real situation of the patient and his or her illness, with the vocabulary and at the time that the prudence and good judgment of the doctor advise." [4]. Likewise, according to Guzmán et al. [5] "It is advisable to have a document in which the practice of the medical act is expressly consented, particularly when a risky treatment or an invasive procedure is to be carried out. In cases of extreme urgency, the document can be ignored because the patient's life is at stake, leaving a clear note in the medical record in this regard. Although this document does not exempt the doctor from liability, it is a principle, a pertinent proof that he acted in accordance with the patient's will, in addition to materializing the conditions of the contract for the provision of medical services."

There is something that Villegas [6] calls "Obligations" and assures that:

- **Obligation of knowledge:** It is essential that the doctor's training and knowledge is adequate and up-to-date. To achieve this requires many years of study and practice. The doctor is trained in the medical schools approved for this purpose by the government of the respective country. Learning is, in essence, establishing new interneural connections to elaborate and store portions of knowledge that, once assimilated, becomes part of the individual structure in the response to questions, problems and behavior analysis. In the medical training period, we try to accumulate as much experience and learning as possible in order to be able to form a basic criterion for managing problems in the shortest possible time." In this period, one does not learn through passive or theoretical attitudes based on dogmas or arbitrary precepts, but through the exercise of a creative and disciplined mind.
- **Duty of care and technique:** This is linked to the previous one. The doctor must place the utmost diligence and use his skills to the fullest to care for his patient. The health professional

must therefore have a basic skill, based on the science of his or her trade, a disposition of mind and clear knowledge, to be able to use the brain, hands and instruments for the purpose of modifying or eliminating organic disease or malfunction, to prolong life and improve its quality and dignity. For the practice of each specialty, the physician must be an expert in the handling of the corresponding tools, equipment and machines.

- **Obligation of continuity of treatment:** Once the doctor establishes a professional relationship with his patient, the therapy must continue until the patient heals, voluntarily changes doctors, or is referred to another specialist. However, there is the area of institutional medicine, where, for reasons of bureaucratic organization, the patient must be controlled by the doctor on duty. In this case, the doctor-patient relationship, which has already been altered by the type of exercise, also changes a little due to the "depersonalization" in the management of the patients.
- **Obligation of care and advice:** medicine is by essence a humanistic career and aims to support the patient at all times. Suffice it to recall again the famous phrase: "To heal sometimes, to relieve often, to console always." The doctor must act as a counselor, always seeking the decision that is most convenient for his patient.

In this regard, it is important to mention the rights and obligations of patients; which, according to the General Health Law [7]:

Article 51. Users shall have the right to obtain timely and appropriate quality health care and to receive professional and ethically responsible care, as well as respectful and dignified treatment from professionals, technicians and assistants.

Users will have the right to choose, freely and voluntarily, the doctor who attends them from among the doctors of the first level of care unit that corresponds to them per home, depending on the working hours and the availability of spaces of the chosen doctor and based on the general rules determined by each institution. In the case of social security institutions, only insured persons may exercise this right, on behalf of themselves and their beneficiaries.

Article 51 bis 1. Users shall have the right to receive sufficient, clear, timely, and truthful information, as well as the necessary guidance regarding their health and the risks and alternatives of the procedures, therapeutic and surgical diagnoses that are indicated or applied.

Article 51 bis 2. Users have the right to freely decide on the application of the diagnostic and therapeutic procedures offered. In case of urgency or if the user is in a state of temporary or permanent disability, the authorization to proceed will be granted by the accompanying family member or their legal representative; If this is not possible, the health service provider will proceed immediately to preserve the life and health of the user, leaving a record in the clinical file.

Likewise, the Government of Mexico has published information called "10 general rights of patients" [8] which says:

1. *Receive proper medical care.*
2. *Be treated with dignity and respect.*
3. *Receive sufficient, clear, timely and truthful information.*
4. *Decide freely about your care.*
5. *Whether or not to give your validly informed consent.*
6. *Be treated confidentially.*
7. *Have facilities to get a second opinion.*
8. *Receive medical attention in case of emergency.*
9. *Have a medical record.*
10. *Be attended to when you are dissatisfied with the medical care received.*

It should be noted that the National Medical Arbitration Commission [9] states that *"Informed consent is, therefore, not only a fundamental right of the patient, but also an ethical and legal requirement for the physician."* by means of which they may or may not give their validly informed consent for the performance of medical treatments or procedures once they have received sufficient, clear, timely and truthful information.

It is the Supreme Court of Justice of the Nation that allows us to appreciate "that some of the obligations of the doctor are to diagnose, inform and obtain informed consent from the patient; collect and properly interpret data on your symptoms and compare them with other pathological conditions; inform the patient of all the contingencies and risks that may occur due to the treatment and, finally, apply the treatment due to the patient. However, it is necessary to specify that in order for the doctor to be able to provide his services adequately, the patient must provide all the information, data and background necessary for the formation of the clinical file, since it is essential for the doctor to be able to make an accurate diagnosis. Likewise, the patient must comply with the therapeutic plan established by the treating physician to guarantee its effectiveness, without prejudice to the patient's ability to seek second opinions."

Likewise, it should be stipulated that according to the Supreme Court of Justice of the Nation:

All patients, to the extent of their abilities, have the following responsibilities.

- A. *Patients should lead healthy lifestyles. To ensure this, patients should follow a nutritious diet, get adequate rest, and exercise regularly. At the same time, they should avoid behaviors known to be harmful to health such as smoking, excessive drinking, and drug use.*
- B. *Patients should be informed about their health coverage plans. Patients should read and familiarize themselves with the terms of coverage, provisions, regulations, and restrictions of their health plans.*
- C. *Patients should be actively involved in decisions about their health. Patients should have an annual medical exam, as long as this is recommended for their age. Likewise, they must provide professionals with accurate and accurate information*

when preparing their medical records. They should facilitate an effective exchange of information when asking questions of service providers

- D. *Patients must cooperate in carrying out the treatment mutually agreed upon by the patient and the medical professional. Patients must cooperate with medical professionals to comply with the treatment agreed upon by both parties. This obligation implies a duty to report regularly on the progress of treatment. If severe side effects, complications, or a detriment to the patient's condition occur, they should notify doctors immediately.*

Likewise, the doctor-patient relationship should be characterized by giving the patient greater responsibility for his or her medical treatment, since he or she must be informed of his or her health condition and must promote an effective exchange of information between the parties to ensure that the treatment chosen is optimal for his or her health condition as practiced in the U.S. health system.

Conclusion

Once the above points have been analyzed and in accordance with what has been seen in daily medical practice in Mexico, it is important to highlight the following aspects and conclusions based on Mexican legislation:

Everyone has the right to health protection. The law shall define the bases and modalities for access to health services and shall establish the concurrence of the Federation and the states in matters of general health, in accordance with the provisions of section XVI of article 73 of this Constitution. The Law will define a health system for well-being, in order to guarantee the progressive, quantitative and qualitative extension of health services for the comprehensive and free care of people who do not have social security [10].

In other words, the right to health protection of the Mexican population is a maxim that depends on the guidelines of the health institutions for one of its members in the cases of social security (IMSS, ISSSTE, PEMEX, etc.); as well as the obligation of the population to exercise this right by joining the welfare system. In such a way that it is not only their right but also the obligation to comply with the requirements of each insurance modality and the co-responsibility of health self-care stipulated in the General Health Law [11], article 52 and the Regulations of the General Health Law on the Provision of Medical Care Services, Articles 13, 14, 15 and 49.

According to the Regulations of the General Health Law on the Provision of Health Care Services [11]:

General Provisions.

Article 21. In establishments where health care services are provided, sufficient and suitable personnel must be available, in accordance with the corresponding official Mexican standards.

Article 22. Personnel in health disciplines who are not duly

authorized by the competent educational authorities may not be hired by health care establishments or by professionals who independently provide their services. Article 24. Those in charge of establishments where health care services are provided are obliged to keep an up-to-date file containing the documentation of professionals, technicians and auxiliaries of health disciplines who provide their services in a subordinate manner, which must be exhibited to the health authorities when requested.

In the sense of responsibility (administrative, civil and/or criminal) to which we can be assigned to workers in the health area, it is important to consider the previous articles since, as mentioned, it is important to designate specific positions to the corresponding specialty in a timely and complete manner, since we are currently living in a situation of impressive absenteeism of specialist doctors, since it is not profitable to work for an institution of In a health system in which there are more and more demands with fewer supplies, what determines the decision of graduates is to look for job opportunities, especially at the private level.

On the other hand, it is important to highlight the functionality and representativeness of the Medical Councils to endorse the capacities of specialists, which are endorsed in Mexican legislation for this purpose; However, it is important to highlight the importance of making adjustments in them so that their function is actually guaranteed, since not all specialists are members and the process varies according to each specialty, highlighting the lack of contemplation for specialists with management positions of health institutions that i consider should be considered in the score for recertification.

In addition, The Regulation mentions:

Article 26. Establishments that provide health care services shall have the physical, technological, and human resources provided for in these Regulations and the official Mexican standards issued for this purpose by the Secretariat.

Article 28. The Secretariat shall issue the official Mexican regulations to which, where appropriate, the activity of non-professional personnel authorized by the competent agencies related to the provision of health care services shall be subject, for which purpose the provisions of these Regulations shall be observed.

It is undeniable that for the professional practice of medicine it is necessary to have optimal and relevant medical instruments and equipment; However, these instruments usually have a real life of approximately 10 years, which conditions a frequent breakdown and cessation of their functionality until they are repaired; Although it is true that surrogate contracts are made to avoid this type of conflict, we consider it pertinent to update medical equipment in all health institutions, considering the stipulations of the same Mexican legislation and the various collective bargaining agreements of the Health Institutions, with responsibility of the health institutions in the result of the medical act due to not having the efficient supplies.

There is a vast number of rules, procedures, laws, agreements, etc. that constitute the *lex artis* and *lex artis ad hoc* of the medical act, however they are not generally known by the medical population and health providers derived mainly from two premises that we consider:

1. Lack of training and education in medical legislation
2. Lack of interest in knowledge of these topics

The problem arises from the drafting and conformation of a clinical record since the main basis of the medical act; It is NOT carried out correctly, nor complying with the provisions of NOM-004-SSA3-2012 despite being the basic instrument of care that has been used since the beginning of the teaching of medicine, in such a way that not only is this standard not complied with, but the rest of the normative documents are ignored because they are not considered part of the functions of their action.

In such a way that we consider reliable the document issued by the National Human Rights Commission in its compendium of 2017 regarding the comparative relationship in Latin America between the human right to health and medico-legal responsibility, especially emphasizing the following factors of detachment:

Predisposing Factors

1. *Medicine is a fallible science and art.*
2. *Weakening of biomedical learning and in this sense we dare to ensure the weakening of legal learning of the medical act.*
3. *Monitoring of health systems that favor the depersonalization of patient care and more than systems of institutional idioms assigned by the culture of the organization.*
4. *Oversized expectations about the power of medicine to solve any ailment and, currently, the advent of technology that favors the consultation of pathologies by the community in articles sometimes without scientific support.*

Triggers

1. *Defensive medicine practiced with an overabundance of analysis and sometimes invasive and dangerous practices. They perpetuate the instability of patients, generate longer hospital stays due to the presence of complications and increase the expenditure of health institutions that do not favor the coverage of supplies and sufficient structure.*
2. *A culture of haste in the doctor/patient relationship.*
3. *Unbridled economic ambition for health professionals.*

In this sense, the causes of medical malpractice can result from the following situations:

- *A poorly prepared medical history is what is found in most lawsuit cases.*
- *A professional who has been poorly trained over time, not very up-to-date, who has slept poorly and is even poorly fed.*
- *A poor doctor-patient relationship is the cause of the motivation to sue.*
- *The way the patient is treated is part of the doctor's service.*
- *Error in diagnosis or therapeutic choice.*

- Instrumental or technical faults.
- Abuse due to lack of equipment or equipment in poor condition.
- Mistreatment due to lack of honesty by the professional.
- Mistreatment due to reduction of patient care time.
- Due to lack of records or alteration of records in the medical record.
- Mistreatment of the patient's family member or caregiver.
- Abuse developed by the non-compliance or poor compliance with the prescription by the patient.

This implies what Fuente and Ruíz [12] point out as the main elements to establish malpractice are the following:

- Subjecting the patient to unnecessary risk.
- Worsening or death of the patient due to poor quality care.
- Presence of unwarranted injuries.
- Presence of acts of physical or moral violence.
- Performing medical acts without the prior sanction of commissions and committees (research, ethics).
- Transgression of regulations (e.g., abortion or euthanasia not permitted by law).

Therefore, and in view of the present documentary review that dates from the nineties and from which the perpetuity of bad practices and attachments on the part of health personnel can be extracted, we consider it pertinent to modify the curricula not only of the career of Medical Surgeon; but, of the specialties themselves, considering not only personalized training and intensive training in medical studies, but in this changing world with a greater number of challenges, consider legal training (health law) that allows health personnel to have an analytical vision and even for audit purposes of their own actions.

We are convinced that this will improve the main errors and omissions in practice, such as the improvement of the doctor-patient relationship, strengthened in codes of conduct and ethics, well-prepared informed consents with the pertinent medical and legal support, with the main task of protecting the integrity of the patient and guaranteeing the aforementioned relationship with empathy.

There is no doubt about the interrelationship between the institutions and their unions, in which the premise must be compliance with the premises contained in the constitution and the General Health Law and its Medical Care Regulations, guaranteeing coverage in personnel, supplies and structures that favor the quality of medical care and the safeguarding of its integrity.

Finally, we consider it important to briefly mention the administrative, civil and criminal considerations contemplated in the law with the sole purpose of raising awareness of the importance of the application of the regulations:

The Federal Penal Code [13] in its latest reform regulates crimes by Professional Responsibility:

Article 228.- Professionals, artists or technicians and their assistants shall be responsible for the crimes they commit in the exercise of their profession, in the following terms and without prejudice to the provisions contained in the General Health Law or in other regulations on professional practice, as the case may be:

I.- In addition to the penalties established for crimes that are committed, depending on whether they are intentional or culpable, they will be suspended from the practice of the profession for a period of one month to two years or definitively suspended in the event of a repeat offence;

They shall be obliged to make reparation for the damage by their own acts and by those of their auxiliaries, when the latter act in accordance with the instructions of the former.

Article 229.- The preceding article shall apply to physicians who, having granted responsibility to take charge of the care of an injured or sick person, abandon him in his treatment without just cause, and without giving immediate notice to the corresponding authority.

Likewise, and to emphasize, the Government of Mexico, through the Ministry of Health (no year) dictates a series of responsibilities of the doctor:

Liability

- *Negligence: An action or omission that causes a harmful consequence: It is the omission of the diligence or care that must be put into business, in relations with people, and in the handling or custody of things.*
- *By incompetence: It is the lack of knowledge of practice that can be required of one in one's profession, art or trade; It's clumsiness or inexperience. Lack of basic and indispensable technical skills or knowledge that must be required in a given profession.*
- *By malice (intent to harm) A scheme or artifice to deceive An intention is required, the will directed to bring about a result; that is, to act with the anticipation of a certain result.*

Civil code

Article 2104.- Whoever is obliged to perform an act and fails to provide it or does not provide it as agreed, shall be liable for damages.

- *Damage: The loss or impairment suffered in the patrimony due to the failure to comply with an obligation. (Article 2108)*
- *Damage: The deprivation of any lawful gain, which should have been obtained from the performance of the obligation. (Article 2109)*

Article 2110.- Damages must be an immediate and direct consequence of the failure to comply with the obligation, whether they have been caused or must necessarily be caused.

Article 1910 – Anyone who, acting unlawfully or contrary to good morals, causes harm to another is obliged to make reparation, unless he proves that the damage was caused as a result of the fault or inexcusable negligence of the victim.

Article 1915 – Reparation for damage must consist, at the choice of the injured party, in the restoration of the previous situation, when possible, or in the payment of damages.

Administrative Liability

This type of responsibility applies only to public servants who work in public institutions that provide medical services (IMSS, ISSSTE, PEMEX, among others). It is governed by the Federal Law on Administrative Responsibilities of Public Servants. Any act or omission that implies non-compliance with any legal, regulatory or administrative provision related to the public service is incurred.

Penalties for administrative offences:

- Private or public reprimand.
- Suspension from employment, position or commission for a period of not less than three days and not more than one year.
- Dismissal from office.
- Financial penalty.
- Temporary disqualification from holding jobs, positions or commissions in the public service.

The competent body to deal with an administrative responsibility is the Secretariat of the Civil Service (at the federal level), through the Internal Control Bodies in the Public Institutions that provide medical services.

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