

Analysis of ethical issues: criminal acts in nursing practice

Análise de processos éticos: tipos penais no exercício da enfermagem
Análisis de procesos éticos: tipos penales en el ejercicio de la enfermería

Fabiola de Campos Braga Mattozinho¹  <https://orcid.org/0000-0002-3084-6897>

Genival Fernandes de Freitas¹  <https://orcid.org/0000-0003-4922-7858>

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Corresponding author

Fabiola de Campos Braga Mattozinho
E-mail: fabiolacb@hotmail.com

Abstract

Objective: To identify criminal acts in nursing practice and the existence of factors related to professional behavior in ethical issues involving crime, based on the analysis of testimonies contained in ethical lawsuits judged by the Regional Nursing Council of São Paulo (Coren/SP).

Methods: Exploratory descriptive study with a quantitative and qualitative approach, analyzing ethical lawsuits containing ethical illicit acts considered criminal acts. Data were collected in the ethical-professional nursing lawsuits judged by Coren/SP in 2012 and 2013.

Results: The criminal acts evidenced in the analysis were: abandonment of disabled person; embezzlement; sexual abuse; swindling; criminal impersonation; illegal practice of medicine; identity fraud; loss, fraud or destruction of a book or document; forgery of document; counterfeiting, contamination, adulteration or alteration of product intended for therapeutic or medicinal purposes; theft; bodily injury; maltreatment; peculation; drug trafficking; use of false document and abuse of corpse. The testimonies gave rise to seven thematic categories: Repentance for the past; Perception of the illegal act; Factors related to working conditions; Psychological and/or social factors; Financial factors; Non-admission of liability; with responsibility and Duality between perception and fact.

Conclusion: The results of the study were extremely important to identify the occurrences involving criminal acts and demonstrate the need to broaden the discussion on ethical issues in daily nursing practice. In this perspective, the study demonstrates the need to invest in better working conditions and quality training for nursing professionals in their daily lives, valuing them and encouraging them to have an ethical and humane practice towards the other and themselves.

Resumo

Objetivo: Identificar tipos penais no exercício da enfermagem e a existência de fatores relacionados a conduta profissional nas ocorrências éticas envolvendo tipos penais a partir da análise de depoimentos contidos nos processos éticos julgados no Conselho Regional de Enfermagem de São Paulo (Coren/SP).

Métodos: Estudo exploratório-descritivo de abordagem quanti-qualitativa, nos processos éticos contendo ilícitos éticos considerados tipos penais. Os dados foram coletados nos processos ético-profissionais de enfermagem julgados pelo Coren/SP em 2012 e 2013.

Resultados: Os tipos penais evidenciados na análise foram: abandono de incapaz; apropriação indébita; importunação sexual; estelionato; exercício ilegal de profissão; exercício ilegal da medicina; falsidade ideológica; extravio, sonegação ou inutilização de livro ou documento; falsificação de documento; falsificação, corrupção, adulteração ou alteração de produto destinado a fins terapêuticos ou medicinais; furto; homicídio;

¹Escola de Enfermagem, Universidade de São Paulo, São Paulo, SP, Brazil.

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lesão corporal; maus tratos; peculato; tráfico de entorpecentes; uso de documento falso e vilipêndio a cadáver. Dos depoimentos emergiram sete categorias temáticas: Arrependimento Posterior; Percepção do ato ilícito; Fatores relacionados às condições de trabalho; Fatores Psicológicos e/ou sociais; Fatores Financeiros; Inobservância da responsabilidade e Dualidade.

Conclusão: Os resultados do estudo foram de suma importância para identificar as ocorrências envolvendo tipos penais e com isso, a necessidade de se aprofundar a discussão sobre os problemas éticos na prática cotidiana do trabalho em enfermagem. Nessa perspectiva, o estudo denota a necessidade de se investir em melhores condições de trabalho e na formação qualificada dos profissionais de enfermagem no seu cotidiano, valorizando-os e incentivando-os à prática ética e humanizada do outro e de si.

Resumen

Objetivo: Identificar tipos penales en el ejercicio de la enfermería y la existencia de factores relacionados con la conducta profesional en los casos éticos que incluyen tipos penales a partir del análisis de declaraciones en procesos éticos juzgados en el Consejo Regional de Enfermería de São Paulo (Coren/SP).

Métodos: Estudio exploratorio y descriptivo, de enfoque cuantitativo y cualitativo en procesos éticos que contienen ilícitos éticos considerados tipos penales. Los datos se recolectaron de los procesos ético-profesionales de enfermería juzgados por el Coren/SP en 2012 y 2013.

Resultados: Los tipos penales encontrados en el análisis fueron: abandono de incapaz; apropiación indebida; hostigamiento sexual; estafa; ejercicio ilegal de la profesión; ejercicio ilegal de la medicina; falsedad ideológica; pérdida, apropiación o inutilización de libro o documento; falsificación de documento; falsificación, corrupción, adulteración o modificación de producto destinado a fines terapéuticos o medicinales; hurto; homicidio; lesión corporal; malos tratos; malversación; tráfico de estupefacientes; uso de documento falso y profanación de cadáver. De las declaraciones surgieron siete categorías temáticas: Arrepentimiento posterior; Percepción del acto ilícito; Factores relacionados con las condiciones de trabajo; Factores psicológicos o sociales; Factores financieros; Incumplimiento de responsabilidad y Dualidad.

Conclusión: Los resultados del estudio fueron de suma importancia para identificar los casos que incluyen tipos penales y, por lo tanto, también lo es la necesidad de profundizar la discusión sobre problemas éticos en la práctica cotidiana del trabajo de enfermería. Bajo esta perspectiva, el estudio denota la necesidad de invertir en mejores condiciones de trabajo y en la formación calificada de los profesionales de enfermería en su cotidianidad, además de valorizarlos e incentivarlos a una práctica ética y humanizada del otro y de sí mismo.

Introduction

When analyzing professional practice in the national scenario, we can find several studies related to errors and damages resulted from malpractice⁽¹⁻³⁾, but little is said about damages or risks resulting from criminal acts. In this context, it is necessary to address this aspect, as well as to investigate the factors that may lead the professional to commit an act considered harmful to society and to the image of the profession.

Professionals must be aware of their own skills and limitations and act according to the ethical and legal guidelines of the profession, as ethical practices lead to balanced relationships and the law, when recognizing a profession, defines the limits of their work. In addition, the professional is not only bound by professional legislation; their practice must be in line with other laws, and non-compliance can make them liable in the civil, administrative, ethical-professional and criminal spheres.

A study on medical errors cited a 2015 news story about the incidence of lawsuits for medical errors at the Superior Court of Justice-STJ, highlighting the 160% increase in the number of lawsuits compared to previous years. The same study

also mentions an article from another region of the country that brings the information that, in Brazil, in the previous 10 years, there was an increase of 1600% in lawsuits for medical errors and 180% in the condemnations of medical professionals compared to previous years.⁽⁴⁾

These data cannot be disregarded, since the media and general doctrines tend to associate medical errors with errors made by health professionals. Health professions are mistakenly related to the practice of medicine, regardless of having their own legislation and professional autonomy.

In the legal scope, we must be aware of the possibility of increasing the punishment, as provided for in the Brazilian Penal Code (CPB), if the crime results from failure to follow the technical guidelines of the profession, such as the criminal acts of bodily injury and homicide. Still, restrictive penalties have a direct impact in professional practice, such as temporary interdiction, which is the prohibition of the exercise of a profession that requires a license or authorization from public authorities, as is the case of regulated professions. This penalty can be applied for every crime committed in the exercise of the profession, whenever there is a violation of inherent duties.⁽⁵⁾

However, regardless of criminal liability, the professional can still face ethical liability for occurrences related to criminal acts in professional practice. The analysis of ethical liability was carried out according to the provisions of the Nursing Professional Code of Ethics (CEPE), currently reformulated by Resolution COFEN 564/20173,⁽⁶⁾ which encompasses all relationships involving professionals registered in the Nursing Councils.

On the topic of crimes and misdemeanors, the current CEPE describes in article 70 the prohibition of “using nursing knowledge to commit acts defined as crime or criminal misdemeanor, both in settings where the profession is being exercised and in those where it is not”, and, in article 72, the prohibition of “committing or conniving at a crime or criminal misdemeanor”.

Given the above, this study aims to analyze the content of the testimonies of nursing professionals who were ethically liable for ethical occurrences involving criminal acts in the ethical lawsuits judged by Coren-SP.

Method

This is an exploratory descriptive study with a quantitative and qualitative approach, analyzing the documents in the ethical lawsuits (EL) related to criminal acts judged in Coren/SP. Quantitative data collection and analysis was followed by qualitative data collection and analysis. The time frame was the years 2012 and 2013, as it was the period analyzed in the researcher’s dissertation, which motivated the present study.

From the initial document corpus of 254 cases involving 399 professionals tried in 2012 and 2013, 169 professionals were involved in ethical offenses considered criminal acts, such as: abandonment of disabled person; embezzlement; sexual harassment; sexual abuse; swindling; rape; criminal impersonation; illegal practice of medicine; identity fraud; loss, fraud or destruction of a book or document; forgery of document; counterfeiting, contamination, adulteration or alteration of a product intended for therapeutic or medicinal purposes; theft; ho-

micide; injury; bodily injury; maltreatment; speculation; drug traffic; use of false document and abuse of corpse.

The number of criminal acts was identified through a data collection instrument, containing general data, data from the professionals and data from the lawsuits, which included the testimonies in the phase of investigation (with police or judicial authorities, Nursing Ethics Committee or inspectors) and after the beginning of the ethical lawsuit (with the investigating commission, in the presentation of defense and final allegations, and during trial), highlighting the compliance to COFEN Resolution 370/2010, which establishes the phases of the ethical-disciplinary lawsuit.⁽⁷⁾

For the qualitative analysis, 13 lawsuits in which professionals were found guilty were selected. The lawsuits included were 18 different criminal acts and met the following inclusion criteria: final decision (after the exhaustion of all appeals), lawsuits containing at least one of the criminal acts identified in the cases with liability and institutionalization of the complaint, with documents that prove the initiation of the lawsuit in the criminal (investigation or criminal process) or administrative spheres. Lawsuits in which the professionals were acquitted were excluded from the sample. Therefore, lawsuits related to the following criminal acts were not contemplated: rape, defamation and sexual harassment.

For qualitative data analysis, content analysis was used to collect data, using systematic and objective procedures, indicators that provided knowledge on the conditions of production and reception of messages.⁽⁸⁾ The analysis aimed to provide an objective evaluation of beliefs, values, representations, relationships and human and social actions from the perspective of actors in intersubjectivity.⁽⁹⁾

The texts extracted from “pure” testimonies of the professionals were read, that is, those that came from the professionals themselves and not from their representatives, lawyers, or legal advocates. The ambivalence of the testimonies and the mention of psychosocial and economic factors as justification were important factors that represented the beginning of the division of the thematic groups. The stages of pre-analysis, exploration of material,

analysis of results and interpretation were followed in order to apprehend the cores of meaning, considering the incidence of semantic content and similarity.

Data were collected from the archives of Coren-SP after formal authorization, using a data collection instrument. The present article is part of the author's thesis. The project was submitted for approval in the Research Ethics Committee, as provided for in CNS Resolution No. 466/2012, protocol 3389575, in compliance with national and international standards of ethics in research involving human beings.

Results

The criminal acts listed in the lawsuits analyzed, with the corresponding articles, and the respective penalties were: P1- Abandonment of disabled person and maltreatment (133 and 136 CPB): censure and fine; P2 – Embezzlement and swindling (168 and 171 CPB): warning and fine; P3 – Criminal impersonation and identity fraud (47 of the Law of Criminal Acts and 299 CPB): Cancellation of professional license for 3 years; P4 – Loss, fraud or destruction of documents (314 CPB): censure and fine; P5 – Forgery of public document (297 CPB): fine; P6 – Counterfeiting, contamination or adulteration of product intended for therapeutic purposes (273 CPB): censure and fine; P7 – Theft (155 CPB): verbal warning; P8 – Homicide (121 CPB): Cancellation of professional license for 05 years; P9 – Bodily injury (129 CPB): verbal warning and fine; P10 – Maltreatment and sexual abuse (136 and 215-A CPB): censure and fine; P11 – Peculation and drug trafficking (312 CPE and 33 Drug Law): censure and fine; P12 – Use of false documents and illegal practice of medicine (304 and 282 CPB): censure and fine and P13 – Abuse of corpse (212 CPB): fine.

The testimonies of the professionals gave rise to 07 thematic categories. The professionals are identified in sequential order from P1 to P13 and with the acronyms: Nurse (N) Nursing Technician (NT)

and Nursing Assistant (NA), according to the following excerpts:

Category I: Repentance for the past

The category emerged from the testimonies that showed regret and suffering for the act committed, according to the direct manifestation of the professional:

*NA (P2) "Set fire to all belongings out of **regret** and returned the money after the sentence".*

*NA (P5) "Asking for **forgiveness** would mean nothing given the stupid mistake and the betrayal of my act, I did not think about the consequences".*

*NA (P11) "**What I did was wrong** and I am paying a high price for this act, I lost my job of more than 20 years as a civil servant, I lost the respect of my colleagues, I lost my dignity".*

Category II: Perception of the illegal act

The category was related to the testimonies that recognized the error or expressed guilt for the act committed:

*NA (P2) "Cannot explain why **they committed the illegal act**".*

*NA (P5) "**Claims to be aware that nursing assistants cannot fill out medical certificates or use the stamp of third parties**".*

*NA (P8) "**I am aware of the error** of doing the application".*

*NA (P11) "The referred lawsuit in which I am accused, I would like to point out that yes, **I am guilty** of the fact in question".*

Category III: Factors related to working conditions

The category emerged from testimonies that described the working conditions to which they were exposed, such as double shifts, low wages, work overload and lack of training:

NT (P1) “There was a high **employee turnover, due to low wages and work overload**”.

NA (P4) “I just forgot, **due to the overload of working in two hospitals**”.

NA (P9) “Before the facts, the defendant **did not have formal training** on puncture and containment of limbs, was never given a manual of rules and routines, and was not aware of the experience of this document in their unit”.

NA (P9) “The defendant reports that at the time of the facts, she did not feel tired or unfocused, although **the 12-hour shift she had performed in pediatrics was hectic**”.

Category IV: Psychological and/or social factors

The category emerged from the testimonies that showed psychological or social aspects before or after the fact:

NT (P3) “The unfounded accusations that were made caused a **heavy emotional burden, generating significant psychological disturbance**”.

NA (P8) “The defendant **has already attempted suicide several times** as a result of the facts”.

NA (P9) “**The repercussion of the facts was very hard on her personal life**, mainly because her 7-year-old son did not want to go to school and blamed her for what happened”.

N (P12) “Who reported that after the facts were discovered, **the defendant has attempted suicide** and is currently undergoing psychiatric treatment”.

Category V: Financial factors

The category was related to the testimonies that directly or indirectly expressed the commitment of an illegal act due to situations related to financial factors:

NA (P6) “Used to do this type of trade **to increase their income**”.

NA (P7) “Acted out of desperation due to **the debts contracted**”.

NA (P8) “Believe they made a mistake when performing a procedure that was not their competence and **did it for money, for their own support**”.

N (P12) “Accepted the job, as she was unemployed and also experiencing personal, depressive and **financial problems**”.

NA (P2) “Took the CEF debit card in the name of the patient, along with the password, and **made several purchases on the same day**, arguing in stores that the card was from their grandfather”.

NA (P5) “Argued that the certificates were made by her at the request of her husband, as he was in the period of experience in the company and **feared being fired**”.

Category VI: Non-admission of liability

Category VI was related to the testimonies of professionals who explicitly manifested non-admission of ethical or legal liability, related to situations of professional competences, institutional routines and respect and dignity of the human being, since all the lawsuits analyzed are related to non-compliance with ethical responsibilities and in all of them the defendant was found guilty, as already presented:

NA (P8) “**The defendant does not consider themselves responsible for the death**, as the product is applied in the patient inert and always on or over the muscle”.

N (P12) “As she was not a doctor, the defendant took a photocopy of her nursing degree and **altered the title of the copy of the degree by changing the title NURSE to PHYSICIAN**. At that time, the defendant already had a copy of the CRM card of her sister, who is a physician, and **put her name in the copy of this document**”.

NA (P11) “The defendant reported **subtracting medications eventually**, always in ampoules

that belonged to a patient who had died or been discharged”.

NA (P13) *“The defendant informed that, **out of curiosity, she took some pictures of the victim’s body with her cellphone, while the victim was on the bed in the emergency room”.***

Category VII: Duality between perception and fact

Category VII emerged from testimonies that showed contradiction in relation to ethical and/or legal guidelines or that denied the facts, regardless of all the evidence presented:

NA (P6) *“Regarding the other drugs in the defendant’s bag, they say **they buy the drugs in Paraguay for personal use and sometimes provides some of these medications to colleagues”.***

NA (P8) *“**The defendant knew about the risks, but always knew that the PPMA offered very low risks.** After reading a document issued by Anvisa on consultation about the PMMA, the defendant saw that such use is restricted to doctors, a fact that he only learned after the death”.*

NA (P10) *“As for the report of indecent assault, **the professional denies it”.***

NT (P3) *“**The defendant is not the person who committed the crime”.***

NA (P6) *“**Denies selling morphine and Panceron to anyone and also denies having refused medicating any patient who was in pain to keep the medication”.***

Discussion

Ethical issues are not only related to problems in procedures; they can occur in the most diverse relationships, considering the essence of the human being.⁽¹⁰⁾ We cannot forget that, when addressing the occurrence of criminal acts in nursing care, we’ll observe ethical conflicts that involve values, norms

and professional duties, in a profession that is based on contact with human beings.

In the lawsuits analyzed, the penalties applied varied from warning to cancellation of professional license, and some lawsuits had more than one penalty. The criminal acts listed in the ethical lawsuits are in line with some studies carried out with ethical lawsuits in the states of Ceará, São Paulo and Santa Catarina.⁽¹¹⁻¹³⁾

As for the analysis by categories, article 16 of the CPB emphasizes that in crimes committed without violence or serious threat to a person and in which there is “repentance for the past”, the penalty can be reduced if the damage is repaired or the thing is returned, by voluntary act of the agent, before receiving the complaint.⁽⁵⁾

It is inferred that, despite the breach of a professional duty and of ethical and legal guidelines, which lead to the ethical liability of professionals, the regret expressed in the testimonies of the lawsuits demonstrates the human fallibility in a specific situation, which is possible when the professional understands that their conduct was not adequate. This fact is associated with a greater possibility of learning throughout the process.

Regarding the category “perception of the illegal act”, there is evidence of the recognition of the error, which demonstrates the importance of stimulating reflection on the mistakes made and the consequent need to acquire knowledge for better decision making, so that the professional can have a better perception about their conduct, duties and eventual consequences of non-compliance with rules.

In the categories “Factors related to working conditions”; “Psychological and/or social factors” and “Financial factors”, the testimonies demonstrate a strong relationship with extrinsic factors that can, in a conscious or unconscious way, influence the choices of professionals when faced with ethical problems.

The problems with insufficient number of nursing professionals in health institutions are associated with work overload, increased working hours, high turnover and difficulties to train health teams.⁽¹⁴⁾

A study highlights that, according to the literature, there are many problems that emerge from nursing practice, such as worrying working conditions and overwork due to insufficient human resources.⁽¹⁵⁾

A study carried out by Fiocruz stated that the income of nursing professionals working in the four major sectors of employment represents a situation of underemployment, with underpayment in public, private and philanthropic services.⁽¹⁶⁾

A study addressing anxiety, depression and social support among nursing professionals found that these workers are among the most susceptible to mental health problems, due to the greater contact with individuals who need help and constant pressure at work, which significantly affects their mental health.⁽¹⁷⁾

The testimonies in the category “Non-admission of liability” demonstrate that the professional consciously does not admit their non-compliance with ethical and legal regulations. However, a professional will only be ethical when acting according to the principles established in the code of ethics of the category, based on their interpretation and understanding, and the concept of ethical liability is the obligation to respond for the act performed and its consequences.⁽¹⁸⁾

Regarding the deontology in the category, an article highlights that the limited knowledge of nursing workers on the Professional Code of Ethics can create a distance between the work actually performed and their ethical and legal competences.⁽¹⁹⁾

The category “Duality between perception and fact” showed defensive statements, that did not associate their conduct to the illicit act presented. The testimonies in this category demonstrated manifestations of lack of empathy, regardless of the extensive evidence that led to the condemnation of the professionals involved after exhaustion of all appeals and respecting the right to a full defense and the right to appeal.

Therefore, in this specific category, given the contradictions in the testimonies and the denial of the fact, personality traits which are difficult to change are more evident, unlike the possibility of knowing competences and learning skills. Health professionals need to develop deliberative habits, skills and competences to increase the quality of health care.⁽²⁰⁾

The testimonies reveal the importance of rescuing the process of humanization, not only in care practice, but in relation to professionals who work

at different levels of health care, throughout their continuing education.

For making these decisions, it is necessary to know the values that motivated and justified the actions. Therefore, to analyze the lawsuits and the outcomes, it is necessary to deliberate on the facts, on the values in conflict and on the duties and responsibilities.⁽²¹⁾

Conclusion

The results of the study were extremely important to identify the occurrences involving criminal acts and to broaden the discussion on ethical issues in daily nursing practice, enabling a more prudent decision making. The professional practice of the nursing team is based not only on the technical and scientific dimension of knowledge and know-how, but also on the ethical dimension, which involves the intrinsic value of relationships (between professionals and with assisted users) and the respect for the dignity of the professional and, above all, for the subject who is on the receiving end of their attention and care. In this perspective, the study demonstrates the need to invest in better working conditions and quality training for nursing professionals in their daily lives, valuing them and encouraging them to have an ethical and humane practice towards the other and themselves.

Collaborations

Mattozinho FCB contributed with the design of the project, analysis and interpretation of data and writing of the article. Freitas GF contributed with the critical review of the intellectual content and final approval of the version to be published.

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