

The compliance's role in the mitigation of judicial demands

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The Constitution of the Federative Republic of Brazil in 1988 established health as a fundamental right, a right of all citizens and a duty of the state to guarantee it. In addition, it brought the creation of the Unified Health System (SUS)¹.

Guaranteed in Article 196 of the Federal Constitution, Brazil's Unified Health System (SUS) is the only public health system in the world that serves more than 190 million people, 80% of whom depend exclusively on public services for any healthcare².

The Federal Constitution attributed to the state the guarantee of health, which, when interpreted singly, leads to the belief that the state must provide health in an unrestricted way (physical, mental, and social well-being, at all levels of care), that is to say, not just the absence of disease; thus, public health users have sought this constitutional guarantee through judicial means, which has substantially increased the number of lawsuits, pleading in court the most varied objects, including treatments that are not provided by the SUS and that are available in the private network, medications, appointments, and procedures³.

When the claim is taken to the court, the judge will freely form his or her conviction, judging each claim individually, often without considering the social consequences collectively. Spending on lawsuits in health consumed 1.3 billion BRL in 2016; the ten most expensive drugs were responsible for 90% of this value⁴. The money ends up coming out of people's health programs and from several segments of the budget.

The public service has a general character, as it must ensure the supply of the basic needs of society without distinction. With the multitude of clinical protocols and the incursion of new technologies in health, there is consequently an impact on the budget of public entities, leading managers to equalize health resources for the collective good to the detriment of individual situations.

Faced with this scenario, it is essential to analyze the causes and seek a solution to the litigation relief.

JUDICIAL CLAIMS AGAINST THE CLINICS HOSPITAL OF THE FACULTY OF MEDICINE OF THE UNIVERSITY OF SÃO PAULO (HOSPITAL DAS CLÍNICAS DA FACULDADE DE MEDICINA DA UNIVERSIDADE DE SÃO PAULO, HCFMUSP)

In the year 2021, 10,371 lawsuits were filed against the State of São Paulo requesting non-standardized medicines by the Unified Health System (SUS); from January to October of the following year, there were 9,170 actions dealing with the same issue⁵⁻⁷.

Specifically, against the HCFMUSP, 111 civil lawsuits were filed from January 2017 to August 24, 2022, with 104 discussing civil liability and only seven for supplying medication. Of these lawsuits, only two had unfavorable final court decisions, and the rest of the actions are in progress or had decisions favorable to the Autarchy. Considering the thousands of outpatient visits, hospitalizations, and surgical procedures performed every year in this institution, the number of lawsuits against the State of São Paulo is considered low when compared to other public institutions. Thus, this relevant fact must be analyzed with care and attention.

COMPLIANCE'S ROLE IN THE PREVENTION OF LEGAL DISPUTES

The word compliance is derived from the English verb "to comply", which means to act according to an order, a set of rules, or a request. In the corporate environment, compliance is related to conformity or even corporate integrity, aligned with the company's rules, which must be carefully observed and complied with.

Since 2018, the HCFMUSP has a Compliance Board, having been the first public hospital in Brazil to have this type of care. Its purpose was to serve as an information disseminator

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Conflicts of interest: the authors declare there is no conflicts of interest. Funding: none.

Received on December 17, 2022. Accepted on January 02, 2023.

in order to raise awareness of all professionals through training, educational guidance, and support related to issues involving the behavior within ethical and bioethical principles, conflicts of interest, and possible legal and administrative consequences derived from actions in the performance of its voluntary functions, thus for the maintenance of quality in the attendance to the users, fair application of the medical resources, and, at the same time, the observance of the principles of public administration⁸.

Also, as a complement to its functions, the HCFMUSP Compliance Board, together with the institution's Law Center, provides support in the validation and preparation of documents and conducts protocols.

For all the above, it should be noted that, through this action, the Compliance Board plays an important role in mitigating

individual and institution risks and in reducing lawsuits filed against public entities, precisely what has been observed in recent years. For this reason, it is desirable that other health institutions adopt this policy, which would certainly greatly benefit the entire population that depends on public resources for their well-being.

AUTHORS' CONTRIBUTIONS

FRC: Conceptualization, Data curation, Formal Analysis, Investigation, Methodology, Project administration, Resources, Software, Supervision, Validation, Visualization, Writing—original draft, Writing—review & editing. **GSABD:** Conceptualization, Data curation, Formal Analysis, Investigation, Software, Writing—original draft.

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