

Forensic Medicine

Medical rubber stamp: a legal necessity or an informal imposition?JÚLIO CÉSAR FONTASA-ROSA¹, FERNANDO JORGE DE PAULA², MÁRCIA VIEIRA DA MOTTA³, DANIEL ROMERO MUÑOZ⁴, MOACYR DA SILVA⁵¹ M.D., Professor of the Forensic Medicine, Medical Ethics, and Social and Work Medicine Department of Faculdade de Medicina, Universidade de São Paulo, São Paulo, SP, Brazil² Ph.D. in Odontological Sciences - Professor of Universidade Santa Cecília, São Paulo, SP, Brazil³ Ph.D. in Preventive Odontology - Professor of post-graduation in Forensic Medicine of Universidade de São Paulo - USP, São Paulo, SP, Brazil⁴ Professor of the Forensic Medicine, Medical Ethics, and Social and Work Medicine Department of Faculdade de Medicina da USP, São Paulo, SP, Brazil⁵ Professor (retired) of the Social Odontology Department of Faculdade de Odontologia da USP, São Paulo, SP, Brazil

Received from Faculdade de Medicina, Universidade de São Paulo, SP, São Paulo, SP, Brazil

Correspondence to: Fernando Jorge de Paula - Instituto Oscar Freire - Rua Teodoro Sampaio 115 - São Paulo, SP, Brazil - CEP: 05405-00

In medical practice, there are several situations, such as diagnosis, treatment, communication, and follow-up, that the professional is required to sign documents, giving them legitimacy and validity.

In those situations, placing the stamp with one's professional data, and not his personal data, is done to identify the physician, whose signature is not always legible, in a document, oftentimes institutional.

However, along the years, a culture of valuing the medical stamp in medical documents in general, especially prescriptions, has been created. Many times, patients cannot buy the medication prescribed due to the conviction of the pharmacist that, whenever a prescription does not contain the physician identification stamp, it might not be authentic or legal, even when it clearly has the name of the professional and his/her registration number at the Conselho Regional de Medicina (CRM).

Communications, exams, and other medical documents are not forwarded due to lack of knowledge of professionals who provide a service or manage health services. Some mention the legal need, others mention professional rules, and yet others believe that the historical Brazilian red tape is responsible for the "culture of the stamp".

Without a doubt, our bureaucratic tradition, along with the migration of physicians from private offices to private clinics or other types of institutions and associations, so documents started to bear the identification of the institution and not of the professional, has contributed for this scenery. Thus, the use of the medical stamp was spread to facilitate the identification of signatures in all medical documents, therefore, speeding up their conclusion.

To understand how this culture was established, we will make a brief historical consideration of doctrine, legislation, and the deontologic context on the matter.

In 1987, Reale¹ mentioned that *"the physician who prescribes drugs for a patient, practices an act of science, but also a legal act. He might not see, nor have the consciousness of it, nor is it necessary to have the perception of the Right he is practicing. However, in reality, the physician who writes a prescription is exerting a profession guaranteed by*

the laws of the country since he holds a diploma that gives him the right to examine someone and tell him the way to reestablish his health. Another man who intends to do the same without having the same qualities, will be practicing Medicine illegally." Indirectly, this author stresses the forensic phenomenon of human relationships.

Several legal experts who doctrine on legal principles, mention the Federal Constitution in their arguments, which establishes that "no one is under the obligation of doing, or not doing, something, unless the Law says so"²⁻⁴. That is to say that, in individual relationships, the principle of autonomy of the will, which allows anyone to do anything under the Law, is applicable^{5,6}.

Based on this, we can deduce that the physician, as any citizen, is allowed to practice that which is not prohibited by law or that do not have a special way of being done. Thus, writing a prescription without using one's medical stamp should be considered illegal, unless there are rules that prohibit or regulate it.

Indeed, there are several norms on the subject. In the national arena, the main rules, in chronological order, are Decree # 20931/32⁷, Law # 5991/73⁸, Decrees # 74170/74⁹, 793/93¹⁰, and 3181/99¹¹, Administrative Rule SVS/MS # 344/98¹², and the Medical Ethics Code¹³.

The need of identifying a professional on the prescriptions was initially established by Decree # 20931/32, which regulates and oversees the medical practice⁷. However, only in 1973 the matter was better specified (Law # 5991/73)⁸:

"Article 35 - A prescription will only be filled if it:

a) is written in ink, in Portuguese, and legible, observed the official nomenclature and weight system;

b) contains the name and address of the patient, and the way of using the medication is clearly expressed;

c) contains the date and signature of the professional, the address of his office or residential address, and his/her registration number in the professional Council."

This article was modified by a later decree, which has already been revoked and, therefore, the above mention decree is still in effect⁹⁻¹¹.

Regarding the Medical Ethics Code, it does not contain any articles requiring the use of medical stamps in medical documents¹³.

However, a norm issued by the Health Ministry (Administrative rule SVS/MS 344/98) mentions that the medical stamp is required in specific situations. This administrative rule, still in effect, refers to the Technical Regulation on Substances and Medications under Special Control, and it instructs physicians, dentists, and veterinarians regarding the prescription of controlled medications¹².

It establishes that, regarding the identification of signatures, it is possible to be done only by legibly writing the name of the physician, and, therefore, the medical stamp is not necessary. It means that the medical stamp is dispensable if the professional is careful to write his/her name in the prescription.

However, in order to receive the Narcotic Prescription Notification ("A"), the professional must place its specific, standardized stamp in the "Physician Identification" filed in each page of the receipt book in the presence of the Sanitary Authority. Prescription Notifications are standard documents that accompany prescription of narcotics, psychotropics, systemic retinoids, and immunosuppressors to authorize their sale.

Although psychotropics, systemic retinoids, and immunosuppressors also require the Prescription Notification, they require different forms, blue and white, with the identification of the physician printed and, therefore, this requirement does not apply to them.

Curiously, in the annex of the Administrative rule, in the Model of Prescription Notification Request (Annex VI), and in the Declaration of Responsibility for prescription of Thalidomide (Annex VIII), the field for signature of the professional also requires the medical stamp containing his/her CRM registration number.

Therefore, regarding prescriptions, the Brazilian legislation does not make it obligatory the use of the medical stamp with the name and CRM registration number of the professional. The law determines that they should contain the address of the office or residency of the professional, date, registration number in the professional Council, and his/her signature⁸. Any other demand goes against the law and, under the principle of legality, it is arbitrary.

Indeed, this matter has already been questioned several times in the professional Councils. According to the analysis of opinions available in the site of the CFM, we can observe that, in the decade of 1980, this matter was questioned, and one of the oldest opinions dates back to 1985.

In this opinion, in response to Consultation # 8771/85 of the São Paulo CRM (CRM/SP) on the need of the medical stamp and CRM number of the physician in prescriptions, it was considered that "*if the physician has his/her own prescription pad, which contains this information, this stamp is unnecessary*"¹⁴. On the other hand, the same opin-

ion considered that, regarding a general prescription pad, i.e., destined to more than one physician, the prescription should contain the medical stamp with name and CRM registration number of the signing physician. In practical purpose, it emphasized the essential: prescriptions should contain identifying elements of the physicians – by means of printed data or the medical stamp¹⁴.

In another opinion, referring to Consultation # 33065/95, the counselor emphasized the optional character of the medical stamp when he established that, in the lack of it, the physician should legibly sign the documents and indicate his/her CRM number¹⁵.

Regarding the obligation of the medical stamp in psychotropic prescriptions, the CRM/SP has issued two opinions. In both, the reporters understand that the presence of the medical stamp to identify the professional is necessary; however, their justifications are based on distinct rules^{16,17}.

The first one is based in a national administrative rule, which is not in effect anymore (Administrative rule # 28/86 of the Drug Division, DIMED [from the Portuguese], of the *Agência Nacional de Vigilância Sanitária* – ANVISA)¹⁸, which determines that the prescription should contain the signature and medical stamp of the physician¹⁶. The second refers to a regional rule (Resolution # 145/93 of the *Secretaria de Estado de Saúde de São Paulo*)¹⁹; however, this one also mentions the DIMED Administrative rule # 28/86¹⁷⁻¹⁹.

In summary, both norms have been cancelled by cancellation of Administrative rule # 28/86 of the DIMED¹². Although not mentioned in the opinions of the Regional Councils, a prior rule of the DIMED, Administrative rule # 27 of 1986, was also cancelled by Administrative rule # 344/98. It determined the use of the medical stamp to identify the signature of the professional in prescriptions with carbon copies for substances included in the norm itself (antidepressants, anticonvulsants and antiepileptics, antipsychotics and tranquilizers, neuroleptics, general anesthetics, and anti-cough medications)^{12,20}.

The legality of requiring the presence of the medical stamp has already been focused in an opinion of the CRM of Mato Grosso do Sul (CRM/MS). In this opinion, it is clear that a legal or ethical fundament requiring the need of the medical stamp in medical documents does not exist²¹.

Another situation that also required elucidation by the CFM refers to the professional identification in cases of the certificate used whenever someone needs to be out of work due to illness.

It was understood that the document should be written in a paper containing physician identification, and the use of the medical stamp was considered optional²². The CRM/CE adopted the same position regarding the identification of physicians in prescriptions²³. The optional use of the medical stamp was based on the recognition of a

lack of legal or ethical obligation on the subject; however, it recognized the duty of the professional to provide legible personal and professional identification²³.

This position was corroborated by a resolution of the CRM/PR, which stated that the signature of the physician, as well as his/her identification, may it be by the medical stamp or writing his/her name, is necessary in medical documents, i.e., prescriptions, exam request forms, health certificates, evolution and prescription forms, ultimately all documents that requires a physician to be executed or interpreted²⁴.

The question remaining refers to the need of validating the signature in prescriptions by the medical stamp or writing one's name. Will the discussion regarding a way to legitimate the signature of a professional will make us look more like the Americans than Russians in the space race, when the first ones invested millions of dollars investigating a pen that would write in space, while the Russians, more practical, adopted the pencil as the writing instrument, therefore resolving an issue and not wasting time in the wrong debate?²⁵

If the importance of the signature of a physician as a means of validating a document is unquestionable, according to the law, there is an inversion of values in the Ruling/Consultation # 33065/95, which understands that *"in the absence of the medical stamp, the physician should sign his/her name legibly and write his/her CRM number"*²⁴.

According to the norms mentioned, the use of the medical stamp is aimed at identifying the professional in documents. Among the arguments favorable to its use, the main one would be that the medical stamp would guarantee the "veracity" of the prescription, making it difficult for someone, without premeditation and a certain effort, to falsify a medical document, since, currently, they can be easily made in personal printers. The forger would need only to know the identification data of the professional and insert them in the document.

However, this thought is not unquestionable. It is possible for any person the order a medical stamp for the price of a cup of coffee, without the need of proving any data in the stamp. For the individual who intends to falsify any medical document, including prescriptions, the first concern would be to acquire a medical stamp or falsify one by simply manipulating the digital image of documents.

Thus, the explanations presented here are aimed at orienting physicians about their rights to defend ethics and the legal order, therefore avoiding constraints in specific situations due to arbitrary demands that are not foreseen in the law.

CONCLUSION

We conclude that it is necessary to understand the debate on the use of the medical stamp in all medical documents. Under the ethical and legal point of view, the use of the

medical stamp is not mandatory. The exception is the use of the medical stamp in specific situations, such as Prescription Notification for narcotics (standardized medical stamp on the "Physician Identification" field), Prescription Notification requisition forms, and in Informed consent for Thalidomide¹².

According to the law, for simple prescriptions, personalized or not, the signature of the professional and his inscription number at the professional Council are mandatory. On a technical opinion, the CRM/SP established the need of writing the name of the physician legibly; however, as observed, it is a requirement not foreseen in the legislation¹⁶.

Prescriptions for medications in the "C1" (other substances subjected to especial control) ad "C5" (anabolic-androgen steroids) lists, and annex of "A1" (narcotics), "A2", and "B2" (psychotropics) lists, foreseen in the Administrative rule # 344/98 and its actualizations, can only be sold when prescribed by qualified professionals and, once their data is printed in the prescription, he/she only has to sign it. In case the professional belongs to an institution or hospital, he should identify his/her signature manually, legibly, or with the medical stamp, as well as his CRM number.

REFERENCES

1. Reale M. Lições preliminares de direito. 15ª ed. São Paulo: Saraiva; 1987.
2. Lima JF. Curso de direito civil brasileiro. 3ª ed. Rio de Janeiro: Forense; 1957.
3. Mezger E. Derecho penal: libro de estudio. Finzi CA, translator. Buenos Aires: Bibliográfica Argentina; 1958-1959. v. 1, p.141.
4. Jesus DE. Direito penal. São Paulo: Saraiva; 1995.
5. Di Pietro MSZ. Direito administrativo. 17ª ed. São Paulo: Atlas; 2004.
6. Brasil. Constituição da República Federativa do Brasil [citado 5 out 1988]. Disponível em: http://www.senado.gov.br/legislacao/const/con1988/CON1988_05.10.1988/CON1988.pdf
7. Brasil. Decreto nº 20.931, de 11 de janeiro de 1932. Regula e fiscaliza o exercício da medicina, da odontologia, da medicina veterinária e das profissões de farmacêutico, parteira e enfermeira, no Brasil, e estabelece penas. Disponível em: http://www.planalto.gov.br/ccivil_03/decreto/1930-1949/D20931.htm
8. Brasil. Lei nº 5.991, de 17 de dezembro de 1973. Dispõe sobre o controle sanitário do comércio de drogas, medicamentos, insumos farmacêuticos e correlatos, e dá outras providências. Diário da República Federativa do Brasil, 19 de dezembro de 1973.
9. Brasil. Decreto nº 74.170, de 10 de junho de 1974. Regulamenta a Lei número 5.991, de 17 de dezembro de 1973, que dispõe sobre o controle sanitário do comércio de drogas, medicamentos, insumos farmacêuticos e correlatos. Diário da República Federativa do Brasil, 11 de junho de 1974.
10. Brasil. Decreto nº 793, de 5 de abril de 1993. Altera os Decretos nº 74.170, de 10 de junho de 1974 e 79.094, de 5 de janeiro de 1977, que regulamentam, respectivamente, as Leis nº 5.991, de 17 de janeiro de 1973, e 6.360, de 23 de setembro de 1976, e dá outras providências. Diário da República Federativa do Brasil, 6 de abril de 1993.
11. Brasil. Decreto nº 3.181, de 23 de setembro de 1999. Regulamenta a Lei nº 9.787, de 10 de fevereiro de 1999, que dispõe sobre a Vigilância Sanitária, estabelece o medicamento genérico, dispõe sobre a utilização de nomes genéricos em produtos farmacêuticos e dá outras providências. Diário da República Federativa do Brasil, 24 de setembro de 1999.
12. Secretaria da Vigilância Sanitária do Ministério da Saúde (SVS/MS). Portaria nº 344, de 12 de maio de 1998. Disponível em: http://www.anvisa.gov.br/legis/portarias/344_98.htm.

13. Conselho Federal de Medicina. Resolução nº 1.931, de 24 de setembro de 2009. Aprova o Código de Ética Médica. Diário da República Federativa do Brasil, 6 de abril de 1993.
14. Conselho Regional de Medicina de São Paulo (CRM/SP). 1985. Consulta nº 8.771 de 25 de dezembro de 1985. Disponível em: http://www.portalmédico.org.br/pareceres/crmisp/pareceres/1985/8771_1985.htm
15. Conselho Regional de Medicina de São Paulo (CRM/SP). 1995. Consulta nº 33.065 de 16 de outubro de 1995. Disponível em: http://www.portalmédico.org.br/pareceres/CRMSP/pareceres/1995/33065_1995.htm
16. Conselho Regional de Medicina de São Paulo (CRM/SP) 1993. Consulta nº 2.816 de 31 de maio de 1994. Disponível em: http://www.portalmédico.org.br/pareceres/CRMSP/pareceres/1993/2816_1993.htm
17. Conselho Regional de Medicina de São Paulo (CRM/SP). Consulta nº 9.147 de 3 de abril de 1996. Disponível em: http://www.cremesp.com.br/library/modulos/legislacao/pareceres/versao_impressao.php?id=4335
18. Agência Nacional de Vigilância Sanitária (ANVISA). Divisão Medicamentos (DIMED). Portaria nº 28 de 13 de novembro de 1986. Diário Oficial da República Federativa do Brasil, 18 de novembro de 1986.
19. Secretaria de Saúde do Estado de São Paulo. Resolução nº 145, de 7 de maio de 1993. Diário Oficial [da] República Federativa do Brasil, 8 de maio de 1993.
20. Agência Nacional de Vigilância Sanitária (ANVISA). Divisão Medicamentos (DIMED). Portaria nº 27 de 24 de outubro de 1986. Diário Oficial da República Federativa do Brasil, 3 de novembro de 1986.
21. Conselho Regional de Medicina do Mato Grosso do Sul (CRM/MS). Parecer nº 14, de 21 de março de 2003. Conflito entre pareceres do CRM/MS e do CFM. 2003. Disponível em: http://www.portalmédico.org.br/pareceres/crmms/pareceres/2003/14_2003.htm
22. Conselho Federal de Medicina (CFM). Processo-Consulta CFM nº 3.208 de 17 de agosto de 1999. Disponível em: http://www.portalmédico.org.br/pareceres/cfm/1999/44_1999.htm
23. Conselho Regional de Medicina do Ceará (CRM/CE). Parecer nº 10, 17 de maio de 2004. Disponível em: http://www.portalmédico.org.br/pareceres/CRMCE/pareceres/2004/10_2004.htm
24. Conselho Regional de Medicina do Paraná (CRM/PR). Parecer nº 1.998, de 14 de outubro de 2008. Disponível em: http://www.portalmédico.org.br/pareceres/CRMPR/pareceres/2008/1998_2008.htm
25. Curtin C. Fact or fiction?: NASA spent millions to develop a pen that would write in space, whereas the Soviet Cosmonauts used a pencil. Scientific American [serial on line] 2006. [cited oct 2010]. Available from: <http://www.scientificamerican.com/article.cfm?id=fact-or-fiction-nasa-spen>.