Braz J Cardiovasc Surg 2006; 21(2): 230-231

Letters to the Editor

RBCCV 44205-825

Medicine based on evidence

Dear Dr. Wilson Daher,

Congratulations for your editorial in the BJCVS 21.1. I considered your article very important as it elegantly dealt with a controversial subject in a very firm and absolutely pertinent manner.
I appreciate this theme and am very happy to see that there are colleagues who understand it so well.

Sincerely,

Fabio Jatene
São Paulo-SP

Convicted without being guilty

The health service in Brazil was taken by surprise by the evolution of the obligation to repair damage caused to third parties. The judicial power at the end of the 20th century and the start of the 21st century, with all the social conquests and the evolution of basic rights and the so-called Citizen Constitution (1988), started to count on protective micro-systems, where the consumer was protected – Law 8078/90. Consequently, it created casuism and paternalism using the justification that it was a biased law devised to deal with inequalities.
All the protective structure (inversion of the onus of proof – moral injury – presumed guilt - interpretation favoring the consumer, etc) started to be utilized in the doctor-patient relationship, as it became understood that this was a contract of sales. Thus, all the protective system would be used to guarantee the dignity of humans, both the patient and the physician and, never, as the judicial power comprehended, promoting an old aphorism by which the righteous person is condemned by the sinner.
In judicial textbooks we have defended the opposite position, but with the awareness that 'we are swallows but we do not make summer'. However, the argument of all law professors in the country is to respect the fundamental rights (Article Number 1 of the Constitution), that is, the dignity of the people, something which everyone must all agree with totally. The truth is that we have forgotten that the physician is a human being.
The new Brazilian Civil Code has already evolved in terms of ethics and offers numerous resources so that those involved in the case can be punished for behavioral deviations. But, it is too early for great changes.
The court appointed justice without proof has created an "industry of injury" established in Brazil in detriment to the ethical Aesculapius. But, the truth, investigated in the registration books by a judge from Paraná, shows that 80% of the processes against physicians are considered unfounded. However, this is only decided after years of suffering moral and psychological harm during the judicial process, without considering the costs and without possibility of compensation because the supposed victim is "protected" by the Consumer Protection and Defense Code. Furthermore, the High Court has already decided that the physician can not put on trial the supposed victim, even after winning the legal action in which he was the defendant, because the victim has a constitutional right to invocate the judicial assistance.
There is a device in the Code for the Protection and Defense of the Consumer that determines that for all cases against self-employed professionals, guilt must be verified. A priori in which we would feel more tranquil that possible negligence, imprudence or lack of skill would be investigated, but in reality an isolated allegation against the physician is almost never verified, as there is always a hospital, clinic, laboratory or private healthcare plan that is involved in the accusation that can be condemned without guilt.
The economic world of the health system revolves around the insured of the supplementary heath system, which has approximately 36 million members, so it is easy to imagine that all the other citizens, around 140 millions, dependent on the government healthcare plan, can potentially take legal action for compensation against the physician and the system in general.

So, under these excessive restrictions physicians are driven to a state of insecurity but surely the judicial power is already ready to better investigate petitions of privilege in justice, even within the law with the truth that there are shortcomings of the system both for the self-employed and companies.
This explanation is complex for the layperson and we apologize for the intensity of the text and the way of transmitting the judicial reality of the doctors' and hospitals' responsibility. However, it is important to make it clear that we are fighting the good fight to make the national code on health viable, in which all these distortions will be restricted.

Antônio Ferreira Couto Filho
President of the Biolaw Commission of the IAB – Institute of Brazilian Lawyers and juridical counselor of the Brazilian College of Surgeons

Preoperative information and its effects on the postoperative pain

Dear Editor,

We congratulate the authors of the article "Effectiveness of a preoperative physiotherapeutic approach in myocardial revascularization" (Brazilian Journal of Cardiovascular Surgery 2005; 20(2): 134-141) for this work. Pain was evaluated by the authors and the results indicate that it is an important aspect in the postoperative evaluation with implications in the postoperative quality of life and prognosis.
Preoperative counseling on pain helps to prepare the patient for the postoperative functional and psychological changes. Pain is acute and often affects the pulmonary function [1]. The randomized study by Judy Watt-Watson et al. [2] proposed preoperative counseling and analyzed the repercussions in patients after surgery. This work showed that counseled patients presented with less pain when they performed day-to-day activities.
Our group is evaluating pain in the postoperative period of heart surgery and its influence on the pulmonary function. We are employing the visual analogous scale and a drawing of the human body divided into anatomical regions [3]. Patients with pain near to the sternotomy on the first postoperative day were selected for this study. On average they reported a moderate pain (5.7) which became mild on the second day. Table 1 illustrates the pulmonary function. These results show the effect of pain on pulmonary function of patients in the postoperative period. Pain management can be advantageous for rehabilitation [4] but this seems to be underestimated. Hopefully the aforementioned publication may be a start to valorize this aspect in the postoperative period.

Table 1. Pulmonary function of patients from the preoperative period to the fifth postoperative day

	FEV_1(L)				
Patient	pre	1st PO	2nd PO	3rd PO	5th PO
1	2.09	*	0.99	1.41	1.75
2	3.08	*	0.86	0.84	1.62
3	3.69	*	0.69	1.06	2.12
4	1.34	0.55	1.24	1.42	1.24
5	2.6	0.52	0.39	0.88	0.67
6	2.18	0.49	0.55	1.08	*
7	2.57	0.76	1.02	1.82	2.28
8	1.14	*	0.22	0.44	0.3
9	2.07	1.19	1.72	1.43	1.74
	FVC(L)				
Patient	pre	1st PO	2nd PO	3rd PO	5th PO
1	3.05	*	1.3	1.51	2.16
2	4.16	*	1.41	1.13	2.03
3	4.37	*	0.78	1.22	2.51
4	1.41	0.66	1.41	1.66	1.5
5	3.63	0.71	0.59	1.16	0.99
6	2.51	0.69	0.64	1.25	*
7	3.66	1.05	1.16	2.31	2.69
8	1.69	*	0.3	0.54	0.44
9	3.47	1.68	2.02	1.76	2.14

**maneuvers not performed for pain. FVC (forced vital capacity). PO (postoperative day), pre (values obtained in the preoperative period), FEV1 (forced expiratory volume in the first second).*

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