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Moral deliberation of nurses regarding hospitalization by court order

Deliberação moral de enfermeiros frente à internação por ordem judicial

Deliberación moral de enfermeras sobre la hospitalización por orden judicial

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Abstract: **Aim**: to analyze the ethical problems experienced by intensive care nurses in situations of hospitalization by judicial order in the perspective of moral deliberation. **Method**: qualitative research carried out between January and December 2016, through semi-structured interviews with 42 intensive care nurses from South and Southeast regions of Brazil. Interpreted through Discursive Textual Analysis. **Results**: the analysis resulted in three categories that present in their content the priority of deliberation, the moral suffering of nurses and the nurse's advocacy. **Final considerations**: health judicialization brings significant changes in social and institutional relations. Nurses must realize that, facing the different possibilities of decision-making in the face of ethical problems, important moral values are in conflict.
Descriptors: Critical Care; Ethics, Nursing; Judicial Decisions; Nursing; terminally ill

Resumo: **Objetivo**: analisar os problemas éticos vivenciados por enfermeiros intensivistas em situações de internação por ordem judicial na perspectiva da deliberação moral. **Método**: pesquisa qualitativa entre janeiro e dezembro de 2016, mediante entrevistas semiestruturadas com 42 enfermeiros intensivistas das regiões Sul e Sudeste do Brasil. Apreciada por meio da Análise Textual Discursiva. **Resultados**: a análise resultou em três categorias que apresentam como conteúdo a prioridade da deliberação, o sofrimento moral dos enfermeiros e a advocacia do enfermeiro. **Considerações finais**: a judicialização da saúde traz alterações significativas nas relações sociais e institucionais. Os enfermeiros devem perceber que, frente às diferentes possibilidades de tomadas de decisão diante dos problemas éticos, valores morais importantes encontram-se em conflito.
Descritores: Cuidados críticos; Ética em enfermagem; Decisões judiciais; Enfermagem; Doente terminal

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Resumen: **Objetivo**: analizar los problemas éticos vividos por las enfermeras de cuidados intensivos en situaciones de hospitalización por orden judicial, desde la perspectiva de deliberación moral. **Método**: investigación cualitativa, desarrollada entre enero y diciembre de 2016, por medio de entrevistas semiestructuradas, con 42 enfermeras intensivas de las regiones sur y sureste del Brasil. Los datos fueron analizados por análisis textual discursiva. **Resultados**: del análisis emergió tres categorías que presentan el contenido como prioridad de la deliberación, el sufrimiento moral de las enfermeras y la defensa de la enfermera. **Consideraciones finales**: la judicialización de la salud presenta cambios significativos en las relaciones sociales e institucionales. Las enfermeras deben observar que, en relación a las diferentes posibilidades de la toma de decisiones sobre problemas éticos, valores morales importantes están en conflicto.
Descriptores: Cuidados Críticos; Ética en Enfermería; Decisiones Judiciales; Enfermería; Enfermo Terminal

Introduction

The right to health is considered a universal, social and human right, belonging to the list of those related to the existential minimum due to what it represents for the life and survival of every individual.[1] In Brazil, the population demand requires that the Unified Health System (SUS) is efficient and readily available, so that when individuals need it, it is present. The theory differs from reality in this respect, with emphasis on insufficient resources in relation to population care. In this context, a movement arises in Brazil in which the individual no longer appeals directly to the SUS for the realization of their rights, but to the judiciary, in order to guarantee their rights through judicial protection.[2]

The growth of judicial demands in health care area is a matter of great relevance to both the health system and the judiciary.[3] However, identifying the limits of judicial activity and the possibilities for control over political activity is an arduous and controversial task.[4] The litigation for the right to health in Brazil highlights the dispute between different actors from the public and private sectors in the health judicialization process. These actions provide access to thousands of people, albeit provisionally, generating multifaceted sociomedical realities, as well as important administrative and fiscal challenges that may increase inequalities in the provision of health services, such as access to Intensive Care Unit (ICU) beds[5]

ICU hospitalization has specific criteria, which aim to prioritize care in the screening process, i.e., the hospitalization of patients who will benefit most from intensive care. However,

when access to health services occurs with the intervention of the judiciary, these observances that discipline access to health are ignored and, consequently, may compromise the legal organization of SUS.[6]

While some patients have access to the treatments needed to recover from life-threatening illnesses through private health insurance, most need to rely on the protection and access to which they are entitled, but which are limited due to the scarce resources and limitations of the system, and therefore need to make appeals for the judicialization of health.[5-6]

Nurses who work in the ICU must question hospitalizations by court order in relation to how to act in these cases, raising complex positions and ethical deliberations, coping with conflict, as often, the care you provide is different from the one you would like to give, which causes distress.[3] Individual ethical responsibility is the heart of clinical competence for all who care for sick people.

Despite the advances made in disease prevention and treatment, it is ~~paradoxically~~ possible to find several failures in clinical practice, especially regarding health professionals dealing with subjective phenomena of the person in need of care. Therefore, nursing professionals are vulnerable to value crises related to a decline in the quality of their work, and tend to face problematic situations related to hospitalization by court order in the ICU, and in relation to decision-making regarding their actions with ethical implications for their care, themselves, the patients, the staff, and the hospital institution.[7]

Nurses need to develop the necessary ethical competence to deal with ethical problems in the process of caring for ICU patients. A proposal that can help nurses make decisions is based on the situation analysis, using it as a tool for moral deliberation. This is a complex action that is involved not only by technical-scientific knowledge, but also by subjective elements, beliefs, principles and values, and often the decision taken is not the best option when evaluated under anything other than those used by the person who analyzed the conflict.[8-9]

This study highlights the importance of using moral deliberation as a tool in the situation analysis and decision-making process in the search for concrete and prudent solutions, as it enables nurses to highlight gaps in the understanding of an ethical problem and to perceive the differences in values and duties among those involved. To answer the research question: what are the ethical problems experienced by intensive care nurses in situations of hospitalization by court order from the perspective of moral deliberation? The objective was to analyze the ethical problems experienced by intensive care nurses in situations of hospitalization by court order from the perspective of moral deliberation.

Method

Analytical exploratory research with a qualitative approach, developed with nurses working in an adult ICU in the Southeast and South regions of Brazil, totaling 42 nurses; The number of participants was decided by the theoretical repetition of the data. These regions were chosen as study sites because they comprise 68% of the ICU beds in the country. The inclusion criteria were: being a nurse and working in an adult ICU, regardless of age, gender, working hours, from public or private institutions.

Participants were selected by non-probabilistic snowball sampling; This method is used due to its characteristic of being applicable when the focus of study is a sensitive problem, dealing with a particular theme, needing the help of knowledgeable people on the subject.[10] Thus, the starting point of the study took place in the capitals of the seven states, forming seven simultaneous "snowballs". The contact with the first participant of each capital was made by the authors of the research, due to their network of contacts with many colleagues in this area. The next participant was chosen followed by the first participant, and so on.

Data collection occurred through face-to-face interviews, on the day, place and preferred time of the participants, guided by a semi-structured script with an average duration of 45 minutes; and by email where it was possible to answer the questions online. The collection period took place from January to December 2016 because it was an intentional search and encompassed a variety of professional experiences, focused on experiencing the situation of unviable ICU beds and hospitalization by court order in different hospital contexts.

The analysis took place through elements of Discursive Textual Analysis, organizing their arguments around four focal points: disassembly of texts; establishment of relationships; capture of a new emerging; and relocation of findings in a self-organized process.[11] ATLAS-Ti software was used for data organization and management.

The research was conducted in accordance with the ethical principles required by Resolution No. 466/2012 of the National Health Council and was approved by the Research Ethics Committee of the Oncology Research Center on October 3, 2014, under Certificate for Ethical Appreciation Presentation No. 36739514.2.0000.5355. To ensure anonymity, participants were coded with the letters that identify their states, followed by the cardinal number in the order in which the interviews took place at each location, age, time since graduation and ICU practice.

Results

Three categories were identified based on the analyzed discourses: 1) "Sofia's choice"? deliberation about who will be prioritized 2) The moral suffering experienced by the nurse regarding hospitalization by court order in the ICU and 3) Nursing advocacy in the face of society's demands in the fight for life through advances in technology.

"Sofia's choice"? deliberation on who will be prioritized

The expression “Sofia's Choice” was used because it is understood as a synonym for a decision that is almost impossible to make. A situation experienced by the nurses in this study faced with ethical dilemmas, regarding the decision to "discharge" a patient "less" serious or perhaps unable to be discharged and admit the patient who comes by court order, which imposes a process of moral deliberation. The perception of the existence of ethical dilemmas and the exercise of moral deliberation are depicted in the following statements:

> *Sometimes it's a dilemma, but I think most of the time it's a problem. The issue of people's health and rights is very complex, it is like a blanket covering one side and leaving the other side uncovered.* (PR1, 35 years old, 10 years experience, 8 years in ICU)

Moral deliberation happens even in the face of something imposed such as hospitalization by court order, as it can serve as a basis for the definition of who leaves the ICU:

> *I think it's another ethical dilemma, because if I don't have a vacancy, I have a number of defined beds in the ICU and if I have to put someone in a bed, I'll have to take someone out. When there was an extra bed, I would put one more bed and that's it! We would fight and obey the judge's order because we have to abide by it. We had problems getting court orders, it was not a matter of a vacancy, we put in an extra bed, we were used to working with extra beds, but the problem was not having respirators. So to receive a patient who needs a respirator meant that we would have to take another patient off the respirator, so who decides that?* (RS2, 57 years old, 33 years experience, 33 years in ICU)

The nurses also show the anguish related to the knowledge of early discharge and recognized the responsibility for the patient:

> *I experienced a case of hospitalization by court order that happened in a unit that had beds blocked by staff and they still had to admit a patient from the countryside. In this case the on-call doctor expedited a discharge for a postoperative neurosurgery patient who was in the ICU [intensive care unit] for less than 12 hours.* (MG4, 28 years old, 5 years experience, 4 years ago in ICU)

> *The problem is when the ICU is at full capacity, and a hospitalization by court order request comes in and even if there is no bed, we need to get one.* (MG5, 34 years, 1 year experience, 1 year in ICU)

The moral suffering experienced by nurses faced with hospitalization by court order in the intensive care unit

This category portrays the health environment as an emotionally charged place for patients, families, and care providers, creating fertile ground for people to disagree about what is "right" and what is "morally right." Thus, the nature of nursing practice can be a potential generator of moral distress.

In addition, ICU hospitalization is in itself a stressful and physically and emotionally destabilizing event for the whole family, and resorting to the judiciary is the only way that patients and family members can get a place.

> *Patients without clinical conditions being transferred from the ICU to an "intermediate care" place in order to vacate the ICU bed, you know that the patient is young and has a good chance of getting better, and having to transfer him so that another patient gets the bed is also a very bad situation, everything you learn and believe goes with the patient who was transferred early.* (RJ3, 29 years old, 7 years experience, 4 years in ICU)
>
> *Having a crowded unit with patients who don't have the conditions to be discharged and being unable to resolve this situation is complicated. I understand the problem of why the person had to file this request in order to be admitted, but you have a crowded unit that can't just take someone out [...]You have to bring the patient in. (*PR2, 52 years old, 30 years experience, 20 years in ICU)

Nursing advocacy in the face of society's demands in the struggle for life through advances in technology

Health advocacy is necessary when faced with legal demands not justified by the ICU, but by family expectations who fight for the life of their loved one and fearful for the treatment resource available, in an attempt to protect the dignity of the patient. Socially considered an unwelcome place and often associated with death or serious illness, and on the other hand, related to comprehensive care, recovery and reunion with life, the ICU needs responsible professionals, as it necessarily implies the consideration of values, beliefs and the life of each

person, and the professional needs to understand the different value systems, cultural, religious and family patterns of each user.

> *I think the nurse should not question the patient who is admitted to the ICU. We have to treat everyone the same, regardless of how they arrive. For us as nurses, it will not change much, in fact, nothing changes.* (SC1. 38 years old, 13 years experience, 1 year ago in ICU)

In the ICU, humans are exposed to a multitude of sophisticated and complex devices that can determine, for example, ventilatory patterns, vital signs and hemodynamic values. Thus, there is concern about the use of technology as an end in itself, rather than as a means to ensure the quality of care.

It is observed that the technical-scientific progress in health not only increased the hope of living longer and better, but also generated difficult and complex situations that brought deep ethical questions urging us to advocate responsibly, respecting life and honoring human dignity.

> *A patient without clinical conditions for high complexity cardiac surgery, family, although guided by the entire team, including nursing, behind court order, imposed the procedure that resulted in the patient's death.* (ES2, 54 years old, 28 years experience, 27 years in ICU)

> *I believe that the nurse who really advocates for the patient, when he has and uses the right arguments, is able to indicate and convince family and staff about ICU admission or not without the need to appeal to a court decision, which I think is fairer and more ethical than forcing hospitalization over others.* (SP6, 33 years old, 8 years experience, 7 years in ICU)

The ICU has an operational dynamic and a very different environment from other hospital services. A series of criteria are adopted for the admission and discharge of intensive care patients; These criteria were created to allow the rational use of these beds in order to allow patients to be kept there only when their health requires it, and the imposition of a hospitalization by court order weakens such process.

> *I had a patient who was hospitalized for a long time, and was being discharged and the family, despite being financially able to care for the family member at home, did not want*

> *to take her home. This prolonged hospitalization made it difficult for others. We need to make the court order for her to leave. The son argued that she was always a state teacher; now the state takes care of her now since she needs it*. (PR2, 52 years old, 30 years experience, 20 years in ICU)

The SUS and Health insurance dichotomy raises numerous issues between health professionals and those seeking care. The growing technification of health, with state-of-the-art devices, exams and medicines, combined with the ideology of perfect health and the consequent cultural tendency to identify health with consuming products that sell health, lead to a gradual increase in spending induced by this trend that the public budget will not be able to supply.

Many people are unable to afford the best treatment due to the sheer costs. Therefore, the law should be exercised by professionals:

> *We have patients here who have health insurance, and here everything is SUS. And they are not transferred to hospitals because there are no vacancies, but he as a citizen is entitled, because he is a user of SUS, so I cannot force the patient who has health insurance to leave, he is in his right.* (RS2, 57 years old, 33 years experience, 33 years in ICU)

> *Even patients entitled to hospitalization in a private institution because they have private health insurance, do not always get ICU vacancy. I have already experienced that a lot. They are waiting in the emergency for some situation and sometimes the family members threatens court orders and then follows through with it [I have experienced patients asking for judicial help to be hospitalized in ICU even when they have private health insurance].* (PR1, 35 years old, 10 years experience, 8 years in ICU)

Discussion

ICU hospitalization is preceded by critical condition which are both present and potential and that endanger the life of the human being. As a result, care is focused on the physical-organic/organic/ biological aspects, such as the control and maintenance of vital functions, with emphasis on the use of technology and the application of technical-scientific knowledge, aiming at the maintenance of life. The emergence, immediacy and dramatic nature of the situations experienced in the ICU makes the ethical problems in these places often more

evident, severe and significant.[12] From this perspective, is it investigated to what extent can nurses deliberate? We highlight here the importance of this practice, even if it cannot be implemented, for the development and strengthening of the ethical competence of this professional.

Based on the results of this study, one of the first issues addressed is,for nurses - and the other professionals - to consider that they are faced with an ethical problem. In this case, the nursing team approaches the patient to help him in the treatment and with this the bond between them begins. The ethical dimension of work tends to go unnoticed by many professionals, who repeatedly go through relevant ethical issues, but have difficulty identifying these situations.[13]

Additionally, a study indicates that, usually, several situations experienced by professionals are merely identified as institutional non-conformities and/or relationship problems in the nursing and health team. In other words, they are related to management, managers, patients and family members and not as moral problems or conflicts. They arise when there is heterogeneity in understanding some situation, which cannot be adequately communicated, understood or resolved.[14] However, contrary to this premise of not identifying the ethical problem, the meanings that emerge from the discourse of the participants of this research is that the different experiences with hospitalization by court order are immediately recognized as an ethical issue.

Another aspect evidenced in the participants' discourses addresses situations that enable the expression of moral distress due to the instability of patients who need to be admitted to the ICU but there is no available bed and those who need to leave but are not stable enough. In professional practice, these conflicts are experienced in situations that make it impossible to provide technology for health, as well as the fulfillment of the court order regardless of the

agreement with the content of the sentence. To deal with these issues, professionals use different coping resources that can be positive when they lead to dialogue and reflection, and can be negative when they make the professional accept and conform to reality, experiencing difficult, unsupported ethical situations on their own without support from colleagues or the institution which can predispose them to experiencing moral suffering.[15-17]

The ability to make decisions regarding ethical issues in nursing becomes increasingly necessary, exemplified in the participants' statements, which is closely related to advances in science and technology, the increasing complexity of health/disease situations and a greater autonomy of nurses. Therefore, moral deliberation is expressed in the professional's need to problematize, to question himself with daily situations, with established relationships, considering the understanding established by and in the community.[8]

Regarding the decision on who enters and leaves the ICU, one study discusses, among other issues, the occupation of an ICU bed by a patient who no longer needs intensive care, related to treatment decisions, more specifically the decision to start or stop treatment. The different nature of the role of nurses and doctors in patient care leads to differences in the way they perceive and deal with ethical issues. The results reveal that respondents indicated that there is a clear difference between those who take part in the decision-making role - physicians, who have a "cure" perspective and whose indications are expanded through a mechanism of "what is possible should be done", and those who have caring role - nurses, who because of their proximity to the patient and their family can provide valuable information about a patient's treatment and can provide a counterbalance to overtreatment on the grounds that they worry because patients are often subjected to futile therapy.[18]

Given this, it often becomes necessary and desirable to pursue advocacy activities and skills on behalf of the patient as a process of moral deliberation. It is an activity that goes

beyond clinical intervention and tends to go beyond the limits of the health sector, being an element especially equipped to better identify and understand the particular situation of vulnerability presented by the patient and his family environment.[19]

In this sense, advocacy can also manifest itself when the nurse is facing the issue of whether or not the patient remains in a place of restricted technology, lack of physical structure and human resources necessary to maintain the patient's life.[7] The ICU capable of meeting the needs of this type of patient often faces the situation of overcrowding and, by court order, must decide on whom to prioritize access to these limited vacancies, as care and protection of one life can mean death or complications for another person's health.

A study of 1,521 patients reporting ethical dilemmas in the ICU regarding the last bed or its absence determines the frequency of unscheduled discharge and assesses the relationship between early discharge and hospital mortality. In the total sample, the mortality rate was 11.6% (176 patients); of those who died, 52 were discharged early, revealing that unscheduled discharge significantly contributes to post-ICU mortality, and this includes the impact of one patient's early discharge to allow another to be admitted.[20]

The judicialization of health triggers successive dilemmas that consolidate a current way of experiencing the stress of day to day stress in health institutions. Given these dilemmas, both the direct and indirect participation of nurses in the process of choosing between those who leave and those who stay in the ICU, according to the research results, exposes anguish based on the knowledge that early patient discharge can result in severe complications. Thus, moral deliberation is also linked to the full recognition of the responsibility of the patient, the zeal for their physical integrity, their treatment, care and well-being, as provided for in the Code of Ethics of Nursing Professionals in its fundamental principles ensuring the quality of the services provided.

Heavily supported by advanced technology and specialized practices, intensive care medicine is responsible for a specific intensive care routine and considerably extending patient survival. Would the ICU be the door to immortality? One of the difficulties expressed in the participants' discourses refers to the conduct to be taken with terminally ill patients, facing the family pressure that brings the thought that while there is life, there is hope. In this case, the introduction of economic factors, technology, medical specialization, changes in the profile of patients and society, the presence of the judiciary in health, as well as the expectations and demands of patients have interfered in the professional-patient relationship, which leads to a process of frustration, disenchantment and dissatisfaction.[7] Therefore, any moral deliberation considers death-related events to be complex and encompasses numerous ethical and professional problems, which need to be addressed and discussed in light of ethical principles that consider human dignity.[21]

As deliberation is an ethical behavior, there are three distinct moments of deliberative processes: deliberation on facts, deliberation on values and deliberation on duties.[8] These values support this ethical act and are revealed in the participants' statements, translated into: responsibility, autonomy, trust, protection, proper communication, equality, empathy and synergy.

The principles and values of nursing ethics influence ethical decision making: the ethical principles of autonomy, beneficence, nonmaleficence and justice. In addition to external factors, such as organizational characteristics, technological and/or budgetary limitations, communication failures with other professionals, individual factors such as experiences, knowledge and communication which may also influence nurses' ethical decision making.[22]

Regarding health insurance in Brazil, the courts have also been converted into an important space to claim consumer rights, and as a way to demand that gaps between what is stipulated in public policy and what has been implemented be overcome. By understanding the

social and cultural context and people's values and based on scientific knowledge, nurses find a comfortable way to participate in the user's decision making, and even in the construction of their own ethical decision and, through moral deliberation, make careful judgments about the problems experienced, including situations of hospitalization by court order.[23]

The importance of the relationship between the health team and the family is cited by several authors who consider adequate communication, respect and compassion with the patient and their families, as the key determinant for family satisfaction. Communication in terminal situations becomes complex due to the factors involved and is a fundamental part of family care. Therefore, it is necessary to have a multidisciplinary team specialized in the care of this patient in all dimensions, ensuring their well-being and respect for their dignity. However, in these circumstances, the doctor-family relationship faces crucial moments, as both must face the severity of the disease and the limits of treatment, despite all available pharmacological and technological apparatus.[24]

Final considerations

The judicialization of health brings significant changes to social and institutional relations; The Government cannot deny the right to health, as it is a right of all. Consequently, society, the judiciary and the state themselves cannot turn a blind eye to patients lawsuits and deny them the medical care they need. Therefore, a dilemma and a dramatic choice emerges.

The solution is not present from the outset, and therefore the question is not in choosing between two or more possible answers, but in finding an adequate answer. This process can occur from moral deliberation as a way to analyze situations to assist nurses in decision making. In deliberative performance through the development of ethical competence, there is the expectation of being an actor in decision making, which means acting and committing to the care relationship, respecting the wishes and rights of the caregiver.

And finally, the Government needs to implement effective public policies to transform this reality: rationally use public resources to increase investments and increase the number of ICU vacancies in the SUS network and accredit more beds in private hospitals. Thus, the right to health will be offered in a dignified manner, as provided by the law.

The limitations of this study may be related to the method, as it is not possible to determine the selection probability of each research participant and the discussion of the results with the literature. As scientific production on the subject is limited, the research findings were analyzed, considering the details of each result, with current national and international studies. Therefore, the perceptions and particularities of the professional nursing organization and the structure of health systems in the countries of origin of the respective studies also influence the discussion of data. However, it is highlighted that there is an understanding that the demands related to practice in the context of intensive care resemble each other in different countries; What differs from other countries is precisely the question of hospitalization by court order. Therefore, further research is suggested to deepen the issue under study, aiming to analyze the ethical problems experienced by nurses in situations of hospitalization by court order from the perspective of moral deliberation in different scenarios.

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