Medical Responsibility – Perspectives and Civil Law

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Responsibility - Perspectives

• Historical Perspective

• Ethics and Moral Perspective

• Legal Perspective
Historical Perspective

20th Century

Medical responsibility little discussed

Assymetry physician - pacient
Historical Perspective

20th Century

Increasing number of legal procedures against Physicians

Increased socio-economic and cultural level of the population

Awareness of Patient’s Rights
Ethics and Moral Perspective

- General Duties
- Patients

Portugal

- Health Law
- Hospital Statutes
- Another Health Diplomas
- Charter of Rights of Patients
Ethics and Moral Perspective

Physicians

- Duty of preparing and perservere the clinical file of the patient

- Duty of information and duty to obtain informed consent

- Duty to protect the patient
Ethics and Moral Perspective

**Sources of Law**

- Statute of Medical Association
- Ethical Code
- Medical Disciplinary Statute
- Public Administration Disciplinary Statute
Legal Perspective

- Acts that might be a crime: Penal Code
- Medical Association: Statute and Ethical Code
- Civil Code
- Public Disciplinary Statute
Legal Perspective

Civil Law
Article 433.º n.º 1 Civil Code

Obligation to repair the damage – physical and moral damage

Compensation of the victim
Legal Perspective

Portuguese Civil Code \(\rightarrow\) Personal Responsibility

Responsibility

Conditions:
- Fact
- Ilicit
- Guilt
- Damage
- Causal Connection
Legal Perspective

Discharge of Medical Responsibility – Civil Law

Damage

Medical Conduct

Causal Connection

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Intent or Negligence?
Legal Perspective

**Contractual Responsibility** – contract for services between a physician and a patient in a Private Hospital

The physician must prove that he acted without fault

**Aquilian Responsibility** – when a physician works in a Public Hospital (Portugal – Nacional Health Service)

The victim must prove the guilt of the physician
Legal Perspective

**Contractual**
- Obligation of means vs Obligation of results
- Private – Contract for services
- Article 798.º Civil Code

**Aquilian**
- Circumstantial
- Public
- Article 483.º n.º 1 Civil Code
Legal Perspective

Assistants ‘Acts

Article 800.º n.º 1 Civil Code
The physician is contractually responsible for the acts of people who used in carrying out their obligations as were practiced by himself.

It is recognized that the anesthesiologists are autonomous and that the surgeon is not responsible for the acts they commit.
Legal Perspective

The Measure of Damages

Article 564.º Civil Code

The duty to compensate includes not only the injury, but also the benefits that the victims no longer obtain because of the results of the injury.
Case Law

• In 2005, A. made a devitalization in the clinic C. to the lower jaw. Lately the tooth cracked.

• A. went back to the clinic and the physician told her that she have to had a surgery.

• After surgery, A. began to feel much pain and the physician told her to stay at the clinic and begin phisiotherapy and ultrasonic sessions.
But the treatment had no positive results and the physician told her to consult a Public Hospital.

A. made an appointment to the Hospital and the physician there told her that she have to had a surgery again.

The physician concluded that there was a nerve that could not be repaired.
Case Law

So, A., because of the pain and the difficulty to eat and talk and so because of all mental schok, asked an order to the clinic C. to pay her a compensation:

€70,000.00 (€2,500.00 for property damages and €67,500.00 for moral demages)
Case Law

- The Court consider that:

Between A. and the clinic C. was celebrated a medical contract for services (article 1154.º Civil Code) – Contractual Responsibility

And

For the obligation to compensate someone it’s necessary that the physician required an illicit and fault act appropriate to cause damages to the patient.
Case Law

• In order to Article 799.º, n.º 1 Civil Code, the physician must prove that the lack of compliance or defective compliance of the obligation is not of your fault.

• The patient must prove the existence of the contractual relation and all the facts demonstrating a failure.

• The burden of proof stay with the physician.
Case Law

• The Court decided:

According to the facts, and because of all the injuries of the patient A., was decided that the compensation is fair.

In Acórdão do Tribunal da Relação de Lisboa, 09th of March 2010
Conclusion

• In conclusion, means aren’t easy for physicians to understand the specifics of the law, which define various forms of responsibility, including civil responsibility.

• In deciding to become a physician, it is assumed the commitment to serve all the patients who seek for them, providing them with their experience and with the resources they have at their disposal, the best that science recommends.
Thank you for your attention.