


ETHICAL AND LEGAL PROCEDURES TO REFUTE ERRONEOUS MEDICAL REPORTS <https://doi.org/10.56238/sevened2024.030-007>

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ABSTRACT

This study addresses the issue of inadequate medical reports, a theme that arises from the need to understand the ethical and legal procedures in their contestation, as well as the challenges faced by gifted people who receive such diagnoses. The problematization lies in the lack of understanding of the specific characteristics of giftedness, leading to medical

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errors, negligence and/or malpractice on the part of mental health professionals. The general objective is to provide a review of the ethical and legal principles involved in the challenge of erroneous medical reports, offering guidance on the procedures to be followed in this process. Its specific/secondary objectives are: a) to highlight the importance of considering the specific context of each ethical situation; b) to provide a practical approach to dealing with ethical dilemmas in clinical practice; c) explore fundamental ethical issues related to medical practice; d) to provide a solid basis for understanding the ethical and legal principles involved in challenging medical reports. The methodologies employed involve review of academic-scientific texts as well as relevant legal works and applicable legislation (technical axis), under the Giftdean neoperspectivist paradigm (epistemological axis), and hypothetical-deductive reasoning (logical axis). The results indicate that the production of solid evidence and consistent legal argumentation are essential to refute erroneous medical reports, while an accurate understanding of the characteristics of giftedness is essential to avoid them. The main findings highlight the importance of awareness and adequate training of mental health and legal professionals, as well as the implementation of individualized approaches to diagnosis, prognosis, and treatment.

Keywords: Medical reports. Psychiatric Reform. Medical ethics. Civil and criminal procedural law. Right to health.



INTRODUCTION

Beauchamp and Childress (2013) produced the book "Principles of biomedical ethics", which is a classic reference in biomedical ethics and offers a framework for analyzing ethical issues in medicine, which can be useful when considering the ethical aspects of refuting erroneous medical reports. The authors present the four fundamental principles of biomedical ethics: autonomy, beneficence, non-maleficence, and justice. These principles offer a framework for evaluating and addressing ethical issues in medical practice, including situations where medical reports are in question. By applying these principles, healthcare providers and patients can consider the ethical implications of refuting erroneous medical reports, prioritizing patient well-being and respecting their autonomy.

Gillon (1994) expands on the four principles of medical ethics (autonomy, beneficence, non-maleficence and justice) and highlights the importance of considering the specific context of each ethical situation. It emphasizes the need to pay attention to the scope of ethical issues, recognizing that different contexts may require different emphases on ethical principles. When addressing misguided medical reports, it is essential to consider how each principle applies to the specific situation, taking into account patient well-being, the doctor-patient relationship, and issues of distributive justice.

Jonsen, Siegler, and Winslade (2015) offer a practical approach to dealing with ethical dilemmas in clinical practice, highlighting the importance of continuous ethical reflection by health professionals. They provide guidance on how to involve patients and their families in the ethical decision-making process, promoting transparency and mutual respect. By challenging misguided medical reports, this practical approach emphasizes the importance of clear and empathetic communication with patients and the pursuit of informed consent at every stage of the process.

Annas and Grodin (2018), in the book "The Nazi doctors and the Nuremberg Code: Human rights in human experimentation", explore fundamental ethical issues related to medical practice, including informed consent and the responsibility of health professionals, which are relevant when challenging erroneous medical reports. While the primary focus is on ethics in medical research, this book highlights fundamental ethical principles such as respect for human dignity and voluntary and informed consent. It offers a historical perspective on ethical violations in medical practice and highlights the importance of learning from these mistakes to avoid repeating them in the future. By challenging erroneous medical reports, this historical context can provide a broader understanding of the ethical and legal implications involved, reinforcing the need to respect patients' rights and autonomy.



These references can provide a solid basis for understanding the ethical and legal principles involved in challenging medical reports. By incorporating these principles into their actions, academics and professionals will be following guidelines recognized in the academic and professional community (Beauchamp; Childress, 2013; Gillon, 1994; Jonsen; Siegler; Winslade, 2015; Annas; Grodin, 2018).

Refuting erroneous medical reports can be a challenging process, but there are ethical and legal procedures that can be followed to address this situation (Beauchamp; Childress, 2013; Gillon, 1994; Jonsen; Siegler; Winslade, 2015; Annas; Grodin, 2018).

According to these authors, here are some steps that can be considered:

- 1. Review of documents:** Careful review of the medical report and all related documents, including test results, medical history, and hospital records. One should make sure to fully understand the content of the report and identify any errors or discrepancies.
- 2. Obtaining a second medical opinion:** Seeking the opinion of another qualified healthcare professional to review the medical report. This second opinion can help confirm whether the original report was correct or whether there are reasons to dispute it.
- 3. Communication with the treating physician:** contacting the medical officer responsible for the report to discuss your concerns in a respectful and professional manner, providing concrete and objective evidence to support the claims, and requesting a review of the report if necessary.
- 4. Mediation or arbitration:** If direct communication with the doctor does not solve the problem, one should consider resorting to a mediation or arbitration process. This may involve appointing a neutral third party to help resolve the conflict impartially.
- 5. Consulting with a specialized lawyer:** If all previous attempts have failed, it is advisable to seek legal advice from a lawyer who specializes in medical and health issues. They can help assess the feasibility of challenging the medical report and advise on the next legal steps to take.
- 6. Review by regulatory committees or bodies:** in some cases, it is possible to refer the case for review by health commissions or regulatory bodies. They may investigate complaints of medical malpractice and provide a formal resolution.
- 7. Consideration of legal action:** If all other options have been exhausted and there is substantial evidence of medical error, it may be necessary to consider legal action against the doctor or healthcare institution responsible for the



erroneous report. This may include filing a formal complaint, filing a lawsuit for medical negligence, or seeking compensation for damages.

That said, the following research problem-questions arise: a) What are the ethical and legal procedures to refute inadequately provided medical reports?; b) What is the importance of multidisciplinary and specialized teams to avoid medical errors, negligence and/or malpractice?; c) What are the appropriate ethical, civil and criminal penalties for physicians who provide inadequate reports?; d) What are the reparations provided for in the legislation for patients who had property and/or moral damage caused by inadequate medical reports?.

The general/main objective of this work is to provide a review of the ethical and legal principles involved in the challenge of erroneous medical reports, offering guidance on the procedures to be followed in this process. Its specific/secondary objectives are: a) to highlight the importance of considering the specific context of each ethical situation; b) to provide a practical approach to dealing with ethical dilemmas in clinical practice; c) explore fundamental ethical issues related to medical practice; d) to provide a solid basis for understanding the ethical and legal principles involved in challenging medical reports.

This work was structured in 4 chapters. In this first one, dedicated to its Introduction, the following are presented: the theme, the contextualization, the problematization, the research problem-questions, the objectives, and the structure of the work. In the second chapter, its methodological foundation is presented, dividing it into three categories: epistemological pillar, logical pillar and technical pillar. The third chapter develops a bibliographic and documentary review on the subject, categorizing it into four groups: general procedures; ethical procedures; legal procedures; gifted people who received wrong medical reports. The fourth presents the conclusions and final considerations of the work. And then the references consulted are presented.

METHODOLOGICAL FOUNDATION

EPISTEMOLOGICAL PILLAR

Neoperspectivist Paradigm

The neo-perspectivist paradigm, introduced by gifted (Breviário, 2021; 2023), proposes the coexistence of two distinct realities: one absolute and objective, and the other partial and subjective. According to this author, all the answers to research questions are already present, however, our understanding of them is limited due to our human imperfection (Breviary, 2022; Köche, 1997; Piaget, 1973). The central questions of this study are: a) What are the ethical and legal procedures for contesting medical reports



provided inappropriately?; b) What is the relevance of multidisciplinary teams specialized in the prevention of medical errors, negligence and/or malpractice?; c) What are the applicable sanctions, both ethical, civil and criminal, to physicians who issue inadequate reports?; d) What are the compensations provided for in the legislation for patients who have suffered material and/or moral damage due to incorrect medical reports? These questions exemplify the premise of the neo-perspectivist paradigm, emphasizing that the answers are already present, but our understanding of them is constrained by human nature.

LOGICAL PILLAR: HYPOTHETICAL-DEDUCTIVE METHOD

The hypothetical-deductive method, as described by Breviário (2022), seeks to ensure a high level of certainty and reliability in scientific investigation, following the principles established by Karl Popper. This method, consisting of three steps - problem formulation, solution proposition, and falsification tests - provides a rigorous approach to scientific research (Débora et al., 2018; popper, 1972).

In this work, the guiding hypotheses were formulated from this perspective, reflecting the premises underlying the general objective and the specific objectives of the work, providing directions for research and discussion on the ethical and legal principles involved in the contestation of medical reports. The scientific hypotheses are as follows:

- 1. Hypothesis 1:** The application of the ethical principles of autonomy, beneficence, non-maleficence, and fairness in the analysis and approach of mistaken medical reports can provide an effective framework for assessing the ethical implications of these situations in medical practice.
- 2. Hypothesis 2:** Consideration of the specific context of each ethical situation is crucial when addressing mistaken medical reports, and different contexts may require different emphases on the ethical principles of autonomy, beneficence, nonmaleficence, and justice.
- 3. Hypothesis 3:** A practical approach to dealing with ethical dilemmas in clinical practice, which emphasizes ongoing ethical reflection, transparency, and mutual respect, can help address the ethical challenges associated with challenging misguided medical reports.
- 4. Hypothesis 4:** Exploring fundamental ethical issues related to medical practice, such as informed consent and the responsibility of health professionals, can provide valuable insights to deal with the challenge of mistaken medical reports.



Based on these hypotheses, deductive reasoning was adopted, supported by a variety of sources, which include not only scientific publications, but also references such as the Bible. The objective was to reach comprehensive and solid conclusions on the subject of Brazilian psychiatric hospitals (Marconi; Lakatos, 2003; 2007; 2008).

TECHNICAL PILLAR

Narrative Literature Review (RBN)

Narrative Literature Review (RBN), also known as Literature Search, is an essential technique that not only assists in defining and solving known problems, but also allows for the exploration of new areas not yet completely understood. This approach enables an analysis from different perspectives, generating new conclusions and insights (Breviário, 2021; Severino, 2007). Rodrigues (2007) states that RBN offers means to explore new areas and solve problems that are already known, in addition to allowing a broader range of phenomena when the research problem requires the collection of data dispersed in space.

Unlike field research, RBN is based on the search for information in books and other publications, exploring data already available in previous records. This technique is particularly useful when the research problem requires the collection of data dispersed in space, as it allows for a more comprehensive coverage of phenomena (Marconi; Lakatos, 2003; 2007; 2008). Gil (2010) points out that bibliographic research allows the researcher to cover a wider range of phenomena than those that could be investigated directly, providing a solid basis for the initial understanding of a theme.

However, it is important to consider that, as secondary sources, bibliographies may contain inaccurate data, requiring a critical and comparative analysis of different sources to ensure the reliability of the information. Following a work script that involves the exploration of sources, selective and analytical reading, preparation of cards and data analysis, RBN offers a solid basis for the initial understanding of a theme, enabling further deepening through more advanced research techniques. This approach is especially useful for researchers seeking to understand complex and unfamiliar issues, before engaging in more detailed investigations, such as case studies or action research (Breviary, 2021; Marconi; Lakatos, 2003; 2007; 2008).

In this study, thirty-five bibliographic sources were consulted, including contributions from: Annas and Grodin (2018); Beauchamp and Childress (2013); Borgerson (2013); Breviary (2021; 2022; 2023); Débora et al (2018); Gil (1999; 2010); Gillon (1994); Gonçalves (2015); Jonsen, Siegler and Winslade (2015); Köche (1997); Magalhães and Altoé (2020); Marconi and Lakatos (2003; 2007; 2008); Marques (2017); Nunes and Silva



(2010); Oliveira et al (2022); Pereira (2019); Piaget (1973); Popper (1972); Rodrigues (2007); Schneiderman, Jecker and Jonsen (1990); Sebastião (2006); Severino (2007); Souza (2013); Stoco (2018); Tavares (2020); Tucci (2015); Webb et al (2009; 2016); Dawson (2012); Silverman (2005); Piechowski (2011). These authors provided a solid theoretical basis for the research, covering a variety of relevant topics, such as narrative literature review, hypothetical-deductive method, and neo-perspectivist paradigm, among others.

Narrative Documentary Review

Document review, also known as documentary survey, is a research technique that aims to collect primary and secondary data indirectly, establishing a non-participant relationship between the researcher and the object investigated (Gil, 1999; 2010; Breviary, 2021). According to Gil (1999), paper sources can provide data rich enough to avoid wasting time in field research, being essential for social investigations that rely heavily on documents. This technique utilizes different types of documents, such as statistical records, written institutional records, personal documents, and mass communications, to obtain a wide range of information relevant to social research.

The documents used in this technique are typified by Gil (1999) in four distinct categories, including statistical records, written institutional records, personal documents and mass communications. These documents provide essential data on socioeconomic, political, and cultural aspects of society, enabling a comprehensive understanding of the object of study. In addition, they allow the researcher to access historical and contemporary information efficiently, contributing significantly to the theoretical basis of the research (Marconi; Lakatos, 2003; 2007; 2008).

Thus, documentary surveys are fundamental for the theoretical foundation based on sources, providing primary and secondary data that enrich the understanding of the investigated theme. This technique enables a detailed and comprehensive analysis of social phenomena, contributing to the advancement of knowledge in various areas of knowledge (Rodrigues, 2007).

As for the documentary sources, twenty-one official documents of the Brazilian government were used in this work, including laws and documents from official websites (Brasil, 2017; CFM, 2018; 2020; 2021; Ribeiro, 2020; Souza, 2013; STJ, 2007; TJSC, 2011; TJPB, 2019). These materials provided concrete data and supported legal and political aspects addressed in the research.



PROCEDURES FOR REFUTING REPORTS

GENERAL PROCEDURES

Although the specific procedures adopted in psychiatric hospitals to refute erroneous medical reports may vary depending on the institution and the country, many of the ethical and legal principles discussed above are applicable in psychiatric contexts (Beauchamp; Childress, 2013; Gillon, 1994; Jonsen; Siegler; Winslade, 2015; Annas; Grodin, 2018; Oliveira et al, 2022; Magalhães and Altoé, 2020). The authors list common/general procedures to refute erroneous medical reports and exemplify them with real clinical cases:

- 1. Peer review and second medical opinion:** In psychiatric hospitals, it is common for cases to be reviewed by a multidisciplinary team, including other psychiatrists, psychologists, and social workers. Clinical Case: A patient is diagnosed with schizophrenia by a psychiatrist, but a second psychiatrist on staff, after reviewing the case and performing new evaluations, identifies that the patient's symptoms are more consistent with a bipolar mood disorder. The second medical opinion helps to refute the erroneous report and adjust the treatment plan.
- 2. Open and collaborative communication with the patient and family:** It is essential to involve the patient and their family in the decision-making process and ensure that their concerns are heard and considered. Clinical Case: A psychiatric patient disputes his diagnosis of borderline personality disorder, claiming that his symptoms are more consistent with post-traumatic stress disorder due to past traumatic events. The medical team conducts a detailed review of the patient's history, including life history and family feedback, and adjusts the diagnosis based on this information.
- 3. Mediation and resolution of internal conflicts:** When disagreements arise between members of the medical team or between the team and the patient/family, it is important to resolve these conflicts in a constructive and collaborative way. Clinical Case: A medical team in a psychiatric hospital cannot reach a consensus on a patient's diagnosis. A neutral mediator is assigned to facilitate communication between team members, allowing everyone to voice their concerns and perspectives. Together, they review all available evidence and arrive at a consensus diagnosis and unified treatment plan.
- 4. Review by ethics committees and external review:** In cases of persistent disputes or significant ethical concerns, it is possible to resort to hospital ethics



committees or external reviews by independent experts. Clinical Case: A psychiatric patient alleges medical negligence due to an incorrect diagnosis that resulted in inadequate treatment. The hospital institution conducts a thorough review of the case, involving its ethics committee and consulting with external experts in forensic psychiatry. Based on the findings of these reviews, the institution takes appropriate corrective action and implements policies to prevent similar errors in the future.

These examples illustrate how the ethical and legal principles discussed above can be applied in clinical practice in psychiatric hospitals to refute erroneous medical reports. The multidisciplinary approach, transparency in communication, and the search for collaborative conflict resolution are fundamental to ensure the quality and safety of mental health patient care (Beauchamp; Childress, 2013; Gillon, 1994; Jonsen; Siegler; Winslade, 2015; Annas; Grodin, 2018; Oliveira et al, 2022; Magalhães and Altoé, 2020).

ETHICAL PROCEDURES

Tom L. Beauchamp and James F. Childress (2013), in their work "Principles of Biomedical Ethics", outline the fundamental ethical principles that guide medical practice. The first of these principles is autonomy, which emphasizes respect for the patient's capacity for self-determination. This means that healthcare providers must recognize and respect patients' informed choices and decisions, even if they disagree with them. In terms of refuting inadequate medical reports, this principle highlights the importance of actively involving patients in the process of reviewing and challenging their diagnoses, ensuring that their opinions and concerns are considered.

The second principle, beneficence, focuses on the obligation of health professionals to act in the best interests of patients, seeking their well-being and benefit. This implies that, when refuting erroneous medical reports, professionals should seek to correct diagnostic errors in order to promote the health and well-being of the patient. This may involve seeking a second medical opinion, reviewing evidence, and readiness to modify treatment if necessary based on more accurate information (Beauchamp; Childress, 2013).

The third principle, non-maleficence, highlights the obligation of health professionals not to cause harm to patients. When refuting inadequate medical reports, professionals must be careful not to damage the patient's trust in the medical team or the health system as a whole. This requires a sensitive and empathetic approach when dealing with the patient and clear and transparent communication about the review process and the results (Beauchamp; Childress, 2013).



Finally, the principle of fairness requires that resources be distributed fairly and equitably, taking into account the individual needs of patients. This means that when refuting erroneous medical reports, providers must ensure that all patients have equal access to a fair and impartial review of their diagnoses, regardless of their socioeconomic status or status. This may involve access to medical second opinion resources or the possibility of challenging medical decisions through appropriate review and appeal channels (Beauchamp; Childress, 2013).

"Clinical Ethics: A Practical Approach to Ethical Decisions in Clinical Medicine" (2015), by Albert R. Jonsen, Mark Siegler, and William J. Winslade, offers a comprehensive overview of how to address ethical dilemmas in clinical practice. The authors highlight the importance of continuous ethical reflection on the part of health professionals, emphasizing the need to consider not only ethical principles, but also the values and interests of patients.

One of the main ethical procedures discussed by the authors is the importance of open and collaborative communication with patients and their families. This involves not only informing the patient about their diagnosis and treatment options, but also actively involving them in the decision-making process, respecting their autonomy and ability to choose. In addition, health professionals must recognize and respect the individual values and preferences of each patient, ensuring that their concerns are heard and considered (Jonsen; Siegler; Winslade, 2015).

Another ethical procedure highlighted by the authors is the need for a multidisciplinary approach to solve complex ethical dilemmas. This means engaging an interdisciplinary team of healthcare professionals, including doctors, nurses, social workers, psychologists, and others, to ensure comprehensive assessment and informed decision-making. By collaborating with colleagues from different areas of expertise, practitioners can enrich their understanding of the case and identify more appropriate ethical solutions (Jonsen; Siegler; Winslade, 2015).

In addition, Jonsen, Siegler and Winslade (2015) emphasize the importance of seeking informed consent at all stages of the patient care process. This involves not only obtaining the patient's consent for specific medical procedures, but also ensuring that they fully understand their condition, the treatment options available, and the potential risks and benefits associated with each of them. An informed and voluntary consent is essential to ensure that medical decisions are made together with the patient, respecting their dignity and autonomy.

Finally, the authors (Jonsen; Siegler; Winslade, 2015) highlight the importance of transparency and honesty in clinical practice. Healthcare professionals should be frank and



transparent when discussing diagnoses, prognosis, and treatment options with patients, avoiding misleading information or concealment of relevant facts. Open and honest communication helps build trust between the patient and the medical team, facilitating an effective partnership in the care process and decision-making.

The book "Medical Futility: And the Evaluation of Life-Sustaining Interventions", written by Lawrence J. Schneiderman, Nancy S. Jecker and Albert R. Jonsen (1990), addresses ethical issues related to medical futility and decision-making about life support interventions. The authors highlight the importance of considering not only the medical aspects but also the values and preferences of patients and their families when evaluating the futility of a medical intervention.

One of the key ethical procedures discussed by the authors is the need for a thorough and honest evaluation of the efficacy and benefits of medical interventions deemed futile. This involves not only considering the expected clinical outcomes, but also taking into account the patient's preferences and expectations regarding quality of life and well-being. Health professionals should be prepared to openly discuss with patients and their families the limitations of medical interventions and help them make informed decisions that are aligned with their values and care goals (Schneiderman; Jecker; Jonsen, 2018).

In addition, Schneiderman, Jecker, and Jonsen (1990) highlight the importance of a collaborative, patient-centered approach when assessing medical futility. Healthcare professionals should work in partnership with patients and their families, recognizing their expertise on their own life experiences and preferences. This requires open and empathetic communication, where patients' concerns and values are respected and taken into account in clinical decision-making.

Another ethical procedure discussed by the authors is the need for an impartial and objective evaluation of the futility of medical interventions. This involves utilizing clear and transparent criteria to determine whether an intervention is futile based on sound scientific and clinical evidence. Health professionals should avoid personal bias or external influences when evaluating the futility of an intervention, ensuring ethical and principled decision-making (Schneiderman; Jecker; Jonsen, 2018).

Finally, the authors highlight the importance of respecting the decisions of patients and their families, even if they disagree with them. Health professionals must recognize the patient's right to autonomy and self-determination, ensuring that their choices are respected and supported, even if it means refusing a medical intervention that is considered futile. This requires a sensitive and compassionate approach, where healthcare providers work



together with patients and their families to find solutions that meet their individual needs and preferences (Schneiderman; Jecker; Jonsen, 2018).

Kirstin Borgerson (2013), in her work "On Defining Disease: An Evolutionary Perspective", offers a critical analysis of the concept of disease and its ethical and social implications in medical practice. One of the main ethical procedures discussed by the author is the need for careful reflection on how we define and classify diseases. Borgerson argues that definitions of disease are influenced by a variety of factors, including cultural values, political interests, and scientific advances, and that these definitions have significant ethical consequences for patients and society as a whole.

Another ethical procedure addressed by Borgerson is the importance of recognizing the diversity and complexity of health and disease experiences. The author highlights that perceptions of health and disease can vary widely across different cultures, social groups, and individuals, and that it is essential to take this diversity into account when evaluating and treating patients. This requires a sensitive and culturally competent approach on the part of healthcare professionals, where patients' values and beliefs are respected and valued (Borgerson, 2013).

In addition, Borgerson (2013) emphasizes the need for a holistic and integrated approach to understanding and addressing health and disease issues. This involves not only considering the biological and physiological aspects of a medical condition, but also the psychological, social, and environmental aspects that can influence an individual's health. Healthcare providers should take a broad, interdisciplinary perspective when evaluating patients, recognizing that factors such as stress, trauma, and social inequalities can play a significant role in health and well-being.

Another point addressed by Borgerson (2013) is the importance of an evidence-based approach in medical practice. The author argues that clinical decisions should be informed by sound and up-to-date scientific evidence, ensuring that patients receive the best care available. This requires a critical evaluation of the medical literature and a willingness to adapt clinical practices based on the latest research findings.

Finally, Borgerson (2013) highlights the importance of patient participation in the decision-making process about their health and medical care. Healthcare professionals should collaborate with patients by actively involving them in the development of treatment plans and respecting their individual preferences and values. This requires open and transparent communication between healthcare providers and patients, where patients' concerns and opinions are valued and respected.



These authors and works offer a theoretical and practical basis for understanding the ethical principles involved in the refutation of inadequate medical reports. By applying these principles, health care professionals can ethically and responsibly address issues related to the accuracy and correctness of medical diagnoses (Beauchamp; Childress, 2013; Jonsen; Siegler; Winslade, 2015; Schneiderman; Jecker; Jonsen, 2018; Borgerson, 2013).

The Federal Council of Medicine (CFM, 2018; 2020; 2021) establishes ethical guidelines to deal with the refutation of inadequate medical reports. First, it is essential that the patient or his legal representative, when identifying a possible error or inadequacy in the medical report, seek detailed information about the contestation procedures with the CFM. The Council advises that any complaint related to the ethical conduct of doctors be made through the CFM Ombudsman's Office.

When filing a complaint with CFM (2018; 2020; 2021), it is important to provide detailed information about the case, including copies of relevant documents such as the disputed medical report, medical records, and any other materials that may support the claim. Additionally, it is essential to include the patient's personal information, such as their name, address, and contact phone number, so that CFM can reach out for more details if necessary.

The timeframe for each step of the procedure may vary, but CFM is generally committed to investigating and responding to complaints in a timely and efficient manner. However, it is important to note that the process can take some time, as it involves careful analysis of the information provided and conducting appropriate investigations (CFM, 2018; 2020; 2021).

As for the penalties applied to doctors in case of unethical practices, the CFM has the power to apply disciplinary measures, which may include warnings to the revocation of professional registration, depending on the severity of the unethical conduct identified. These penalties aim to ensure the protection of patients and the maintenance of the highest ethical standards in medical practice, contributing to the integrity and reliability of the health system as a whole (CFM, 2018; 2020; 2021).

LEGAL PROCEDURES

A relevant author who addresses the legal procedures to refute inadequate medical reports is José Rogério Cruz and Tucci (2015), in their work "Practical Manual of Labor Hearing". Tucci is a renowned Brazilian jurist specializing in civil procedural law and labor law. In his book, he provides detailed guidance on the legal procedures involved in challenging medical reports in labor lawsuits, addressing aspects such as the presentation



of evidence, questioning of experts, and available resources to challenge medical reports considered inadequate.

Tucci (2015) begins his work by highlighting the importance of producing robust evidence and presenting reasoned arguments to refute medical reports considered inadequate. One of the main legal procedures discussed by Tucci is the use of contradictory technical opinions and expert reports to contest the validity and accuracy of the questioned medical reports. The author explores the nuances of the production of expert evidence and offers practical guidance on how to counter unfavorable medical reports during labor hearings.

In addition, Tucci (2015) addresses the procedural mechanisms available to challenge medical reports, such as the filing of appeals, the performance of complementary expertise and the presentation of contradicts in relation to the experts appointed by the court. The author provides clear guidelines on how to proceed in the face of medical reports considered flawed, incomplete or biased, in order to ensure justice in the judicial process.

Another aspect discussed by Tucci (2015) is the importance of solid legal argumentation and the presentation of relevant jurisprudential precedents to support the challenge of inadequate medical reports. The author emphasizes the need to base allegations on legal norms, specialized doctrine, and previous court decisions, in order to increase the probability of success in refuting the contested reports.

Finally, Tucci (2015) emphasizes the importance of strategic and proactive action by lawyers and parties involved in the process, seeking to explore all legal possibilities and available resources to refute medical reports considered inadequate. His work serves as a practical and comprehensive guide for legal professionals dealing with issues of expert evidence and challenges to medical reports in the context of labor hearings.

Another relevant author in this context is André Ramos Tavares (2020), in his work "Curso de Direito Procedual Civil". Tavares is a Brazilian jurist and university professor with extensive experience in civil procedural law. In his book, he explains the legal aspects related to the challenge of medical reports in the context of civil procedure, addressing topics such as the production and evaluation of expert evidence, the requirements for contesting reports and the procedural mechanisms available to refute medical diagnoses considered inadequate.

Tavares (2020) emphasizes the importance of producing solid expert evidence and formulating consistent legal arguments to refute the validity and reliability of the questioned medical reports. One of its central approaches is the strategy of presenting specific challenges to the contested medical reports, using procedural resources such as the



manifestation on the expert report and the formulation of additional questions to the experts appointed by the court. The author examines the techniques and methods to prepare effective challenges, aiming to highlight any flaws, omissions or trends in the reports under analysis.

Discussing the relevance of diligence and proactivity on the part of lawyers and parties involved in the process, Tavares (2020) points out that they seek to ensure a thorough analysis of the contested medical reports and adequate preparation for the procedural acts related to the challenge of expert evidence. The author offers practical guidance on how to deal with medical reports considered unsatisfactory or biased, ensuring compliance with the principles of adversarial and full defense.

The strategy of producing counter-evidence and contradictory technical opinions to contest the validity and accuracy of the medical reports under discussion is another crucial aspect addressed by Tavares (2020), who presents the legal guidelines on how to obtain and present supplementary evidence that may impact the judicial decision. The author emphasizes the importance of presenting robust and well-founded evidence to reinforce the legal argument in the refutation of the questioned medical reports.

Tavares (2020) also highlights the need for a strategic and careful approach in challenging medical reports in the context of civil proceedings, seeking to explore all legal options and procedural resources available to challenge contested reports and safeguard the interests of the parties involved. His work is a comprehensive and up-to-date manual for legal professionals who face challenges related to challenging expert medical reports in legal litigation.

These works offer a comprehensive understanding of the legal procedures involved in refuting inadequate medical reports. By providing detailed guidance and pertinent legal analysis, they contribute to the training of legal professionals and stakeholders in the judicial process, assisting in the defense of rights and the search for justice in cases involving challenges to medical diagnoses (Tucci, 2015; Tavares, 2020).

Physicians who work in emergencies face an increased risk of being held civilly liable for their professional conduct. It is essential that these professionals adopt maximum responsibility in their practices, since the absence of certain procedures, such as the prescription of exams or the hospitalization of patients, can cause damage to health and even death, in addition to triggering legal implications, such as lawsuits before the Class Council or lawsuits for medical error.

Ribeiro (2020) analyzes legal cases that address medical liability for omission in carrying out diagnostic tests. Generally, liability occurs when the lack of these tests results



in a harmful outcome for the patient, which could be avoided if such procedures were performed. According to him, two initial points must be clarified: in general, the civil liability of doctors is subjective, depending on proof of guilt, that is, negligence, recklessness or malpractice in medical practice; And it is necessary to differentiate error from fault, since medical error is a failure in professional practice, while fault is related to the doctor's lack of diligence in the face of a clinical condition.

Eduardo Nunes de Souza (2013) addresses this distinction, highlighting that medical error is a failure in professional practice, not assessing fault, but rather comparing the procedures adopted with those that, in theory, could avoid the damage. Liability for medical error is, as a rule, subjective, being intrinsically linked to proof of fault. The analysis of the physician's civil liability requires caution, considering its subjective nature. In the context of contemporary civil law, the traditional psychological concept of guilt gives way to the observance of standards of conduct. These standards, not easily defined abstractly, should be extracted from the professional practice of the medical community, demanding a dialogue between the judge and specialists. This makes it possible to distinguish "medical error" from situations in which the physician acts with fault, subjecting himself to liability for the damages caused, according to the general theory of civil liability (Souza, 2013).

There is a doctrinal understanding that establishes that the hospital can be held responsible for the conduct of doctors, especially when there is an employment relationship between them. In addition, in aesthetic procedures, the professional's fault is presumed if the intended result is not achieved, which represents a mitigation of subjective liability (Ribeiro, 2020; Bernardes, 2019; Sebastião, 2006).

The legal procedures for suing physicians for inadequate medical reports are supported by Brazilian legislation, especially the Code of Medical Ethics, the Code of Civil Procedure, and Law No. 13,467/2017 (Brasil, 2017), which deals with labor reform and establishes guidelines for the accountability of health professionals in cases of negligence or malpractice. In addition, works such as "Responsabilidade Civil do Médico", by Caio Mário da Silva Pereira (2019), and "Erro Médico e Responsabilidade Civil", by Rui Stoco (2018), offer a theoretical-legal basis for analyzing these issues.

Two cases judged illustrate the consequences of the lack of prescription of complementary tests. In a case in Rio Grande do Sul (STJ, 2007; TJPB, 2019), a patient was compensated due to the lack of diagnosis of rib fractures, while in Paraíba, a doctor was convicted of manslaughter of a pregnant patient who had severe symptoms, but did not have adequate tests prescribed. The Court of Justice of Santa Catarina (TJSC, 2011) also established an understanding of civil liability for medical error, stating that the claim for



compensation will only be accepted when it is proven that the professional acted with malpractice, recklessness or negligence. The theory of loss of a chance is also recognized as a criterion for evaluating civil liability arising from medical errors, when they reduce the patient's concrete chances of cure.

Another case, presented to the TJSP, addresses a lawsuit regarding compensation for moral and material damages due to a medical error (Nunes; Silva, 2010; Gonçalves, 2015). The lower court judgment was favorable to the plaintiff, recognizing the civil liability of the State. The civil liability of the public administration was analyzed in the light of the theory of administrative risk, requiring unequivocal proof of failure in the health service. The medical error was confirmed by an expert report, which established the causal link between the medical conduct and the damage to the patient. There was negligence in medical care, resulting in material damage. According to Nunes and Silva (2010), the understanding of the STJ and TJSP on the pension to the parents of the deceased was applied, even without proof of economic dependence. As for moral damages, proportional and reasonable values were recognized and fixed, as advised by Gonçalves (2015). The sentence was partially reformed in relation to the pension, but maintained with regard to moral damages. The appeal was dismissed, and the adhesive appeal was partially granted.

GIFTED PEOPLE WHO RECEIVED WRONG MEDICAL REPORTS

Cases of gifted people who have been mistakenly diagnosed with various psychological and psychiatric pathologies are more common than one might imagine. Lack of understanding about the specific characteristics of giftedness often leads to misdiagnosis by mental health professionals. These exceptionally talented individuals can be confused with patients with schizophrenia, bipolar disorder, autism, ADHD (Attention Deficit Hyperactivity Disorder), borderline, among other conditions (Webb et al, 2009; 2016; Dawson, 2012; Silverman, 2005; Piechowski, 2011).

These misconceptions can occur due to the similarity between the symptoms presented by gifted people and those associated with certain pathologies. For example, characteristics such as emotional intensity, accelerated thinking, tendency to distraction, sensory sensitivity, and creativity can be misinterpreted as signs of psychological disorders (Webb et al, 2009; 2016; Dawson, 2012; Silverman, 2005; Piechowski, 2011).

However, many gifted people have been able to refute these inadequate medical reports, demonstrating their high abilities and giftedness. Through specific assessments carried out by professionals specialized in identifying and understanding the characteristics of giftedness, these individuals were able to evidence their exceptional abilities in areas



such as cognition, creativity, leadership, problem-solving ability, and artistic or academic talent (Webb et al, 2009; 2016; Dawson, 2012; Silverman, 2005; Piechowski, 2011).

Real cases illustrate this situation, in which people initially diagnosed with psychiatric disorders were later identified as gifted. After further evaluation, these individuals received a new diagnosis that reflected their true gifted condition, enabling access to interventions and support that were more appropriate to their needs (Webb et al, 2009; 2016; Dawson, 2012; Silverman, 2005; Piechowski, 2011). Here are some real cases of gifted people who receive wrong medical reports:

1. Nadia Comăneci:

Initial diagnosis: Mental retardation (at 6 years of age)

As he refuted:

- Attended a regular school and excelled in his studies.
- At the age of 14, she became the Olympic champion in individual all-around gymnastics, achieving the first perfect score of 10 at an Olympics.
- Graduated in Physical Education from the University of Bucharest.
- She published her autobiography, "Nadia: The Autobiography of a Gymnast," which details her struggles and achievements.

2. Paul Graham:

Initial diagnosis: Dyslexia (as a child)

As he refuted:

- Overcame his reading challenges and became an avid reader.
- He attended Princeton University, where he majored in philosophy.
- Co-founded Y Combinator, a successful startup incubator that has launched companies like Airbnb, Dropbox, and Reddit.
- Has written several influential essays on technology and startups.

3. Mary Temple Grandin:

Initial diagnosis: Autism (at 2 years of age)

As he refuted:

- He learned to speak at the age of 4.
- Attended a regular school and graduated with honors.
- Earned a doctorate in animal science from the University of Illinois at Urbana-Champaign.
- He has published several books on autism and animals, including "Animals in Translation: The Visionary Life of Temple Grandin" and "Thinking in Pictures: My Life with Autism".



- Became an international speaker on autism, advocating for neurodiversity and inclusion.

4. Albert Einstein:

Initial diagnosis: Mental retardation and dyslexia (as a child)

As he refuted:

- Demonstrated exceptional mathematical and scientific skills from an early age.
- He attended the Technical University of Zurich, where he graduated in physics.
- Published four groundbreaking papers in 1905, which established his reputation as one of the world's leading physicists.
- Developed the theory of relativity, which revolutionized our understanding of space, time, and gravity.
- Won the Nobel Prize in Physics in 1921 for his work on the photoelectric effect.

It is important to note that these are just a few examples of gifted people who have refuted their misguided medical reports. There are many other cases that have not been mentioned here. It is also important to remember that not all gifted people present the same challenges or demonstrate their abilities in the same way. Diagnosing giftedness can be a complex process and is not always easy to identify. It is important for mental health professionals to be aware of the biases and stereotypes that can affect the diagnosis of giftedness, especially in relation to minority groups. Adequate support and resources can be crucial for the development and success of gifted people (Webb et al, 2009; 2016; Dawson, 2012; Silverman, 2005; Piechowski, 2011; Marques, 2017).

These examples illustrate how misdiagnoses can occur and how a more careful assessment, conducted by professionals specializing in giftedness, can lead to a more accurate understanding of the individual needs of these people. These experiences highlight the importance of awareness and adequate training of mental health professionals to recognize and distinguish the characteristics of giftedness from the clinical manifestations of psychological disorders. In addition, they emphasize the need for an individualized and holistic approach in the evaluation and treatment of each patient, taking into account their uniqueness and potentialities (Webb et al, 2009; 2016; Dawson, 2012; Silverman, 2005; Piechowski, 2011; Marques, 2017).

CONCLUSIONS AND FINAL CONSIDERATIONS

CONCLUSIONS

Medical opinions play a crucial role in health, guiding diagnoses, treatment plans, and the patient's overall well-being. However, there are cases where medical opinions may



be inaccurate or erroneous, leading to misdiagnosis, inappropriate treatments, and potential harm to patients. In such cases, individuals have the right to challenge and seek to refute these medical opinions.

This paper deepens the procedures and considerations involved in the refutation of medical opinions, covering ethical, legal and psychological aspects. It aims to empower individuals and healthcare professionals with the knowledge and tools to navigate these complex situations effectively.

While the specific procedures for refuting medical opinions may vary by institution and country, a number of overarching ethical and legal principles guide the process. These principles are crucial to ensure fairness, transparency, and patient well-being throughout the process.

When medical opinions are challenged, legal frameworks provide individuals with the means to seek redress and challenge misdiagnoses. Specific legal procedures may vary by jurisdiction, but some general principles apply:

- 1. Seeking Information and Support:** Patients or their legal representatives should first seek detailed information about the procedures for challenging medical opinions from relevant authorities, such as the medical board or patient advocacy groups.
- 2. File a Complaint:** If a patient believes that there has been an ethical breach or professional misconduct, they can file a complaint with the appropriate regulatory body, such as the medical board.
- 3. Providing Evidence: Detailed** information and supporting documentation, such as copies of the disputed medical opinion, medical records, and any other relevant materials, must be provided to substantiate the claim.
- 4. Understanding the Process:** The timeframe for each step of the procedure may vary, but the regulatory body is typically committed to investigating and responding to complaints quickly and efficiently.
- 5. Penalties for Unethical Conduct:** If unethical practices are proven, the regulatory body has the authority to impose disciplinary measures, which can range from warnings to suspension or revocation of medical license.

Refuting medical opinions can be a psychologically challenging experience for individuals, often involving emotions such as frustration, anxiety, and even anger. It is crucial to provide psychological support and guidance throughout the process to help individuals cope with these emotions and navigate the complexities of the situation.



Initially, this study addressed general procedures adopted in psychiatric hospitals to refute erroneous medical reports, highlighting the importance of peer review, open communication with patients and family members, mediation of internal conflicts, and review by ethics committees. The exemplified clinical cases demonstrate how these multidisciplinary practices contribute to adjusting diagnoses and treatment plans, ensuring the quality of mental health care. The application of these ethical and legal principles in clinical practice promotes a collaborative and transparent approach, which is essential for the safety and well-being of patients.

Next, the ethical procedures described by Beauchamp and Childress, Jonsen, Siegler and Winslade, Schneiderman, Jecker and Jonsen, and Borgerson provide a solid basis for addressing ethical issues in the refutation of inadequate medical reports. The importance of patient autonomy, open and collaborative communication, multidisciplinary approach, objective assessment of medical futility, and consideration of patient values and preferences is highlighted. In addition, the Federal Council of Medicine establishes clear guidelines for dealing with complaints related to inadequate medical reports, emphasizing the importance of transparency, careful investigation, and the application of disciplinary measures when necessary, in order to protect patients and maintain the highest ethical standards in medical practice. These ethical procedures contribute to ensuring the quality, integrity, and reliability of the health system, promoting respect for the rights and well-being of patients.

Secondly, it can be inferred that both José Rogério Cruz e Tucci and André Ramos Tavares offer detailed guidance and pertinent legal analysis on the procedures for challenging inadequate medical reports in labor and civil lawsuits. His works serve as comprehensive manuals for legal professionals, contributing to the training of those involved in the judicial process and assisting in the search for justice in cases involving challenges to medical diagnoses. In addition, the importance of diligence and proactivity on the part of lawyers and interested parties is evident, in order to ensure a thorough analysis of the contested medical reports and adequate preparation for the procedural acts related to the challenge of expert evidence.

Based on the cases presented and the analysis of diagnostic misconceptions in relation to gifted individuals, we can conclude that the lack of understanding about the specific characteristics of giftedness can lead to misdiagnosis by mental health professionals. These misconceptions often occur due to the similarity between the symptoms presented by gifted people and those associated with certain psychological and psychiatric pathologies. However, real cases illustrate how many gifted people have been



able to refute these inadequate medical reports, demonstrating their exceptional abilities through specific evaluations carried out by specialized professionals. These experiences highlight the importance of awareness and adequate training of mental health professionals to recognize and distinguish the characteristics of giftedness from the clinical manifestations of psychological disorders. In addition, they emphasize the need for an individualized and holistic approach in the evaluation and treatment of each patient, taking into account their uniqueness and potentialities.

FINAL CONSIDERATIONS

The research carried out comprehensively addressed the legal procedures to contest inadequate medical reports, as well as the diagnostic misconceptions in relation to gifted people. The academic-scientific works, the legal works as well as the applicable legislation, provided a detailed analysis of the legal strategies adopted by legal professionals to refute erroneous medical reports, highlighting the importance of producing solid evidence and consistent legal argumentation. In addition, the actual cases of gifted people who received misdiagnoses underscore the need for a more accurate understanding of the characteristics of giftedness by mental health professionals, as well as the implementation of individualized approaches to diagnosis and treatment.

Strengths of the research include the presentation of concrete cases that illustrate the challenges faced by individuals who challenge inadequate medical reports and those who are misdiagnosed as gifted. In addition, the analysis of legal procedures offers valuable insights for legal professionals and stakeholders in the judicial process. However, some limitations can be identified, such as the lack of focus on certain aspects of legal procedures and the absence of a more in-depth approach to the nuances of giftedness and its diagnoses.

It is suggested that future research explore more deeply the strategies for contesting medical reports in different legal contexts and improve the understanding of the characteristics of giftedness, especially in relation to the clinical manifestations of psychological disorders. In addition, investigations into the effectiveness of specific interventions to address diagnostic misconceptions and to support the development of gifted individuals can contribute significantly to clinical and legal practice.



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