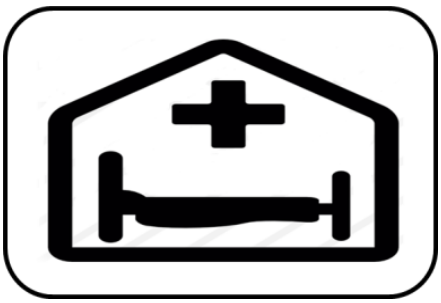

Accountabilities Stemming from Intra-Hospital Infection Inside a Health Facility.

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A 47-year-old patient underwent surgery for a herniated intervertebral disk in the spine, at a private clinic in the city of Concepción. The operation appeared to have no complications, and the patient was discharged two days later. However, approximately one month after surgery, the patient developed a wound infection that required additional hospitalization. The infection required surgical cleaning of the wound, draining of epidural abscess (accumulation of infected material between the spinal bones and the membrane covering the spinal cord), and treatment with antibiotics. The patient was discharged 15 days later. Notwithstanding these procedures, the patient had to be admitted a third time as the infection persisted; a new surgical procedure was required so as to drain the remains of infectious secretions. This involved extending his stay in hospital for more than two additional months, until he was finally discharged.

JUDICIAL STATUS

In June 2016, the affected patient filed a complaint against the clinic where he had undergone surgery, and the two doctors who were in charge of the surgery and monitoring his postoperative complications. In his complaint, the patient accused the clinic of not having complied with its hospital duties, as the infection had apparently been caused by the *Coagulase-Negative Staphylococcus* bacteria, of an intra-hospital origin. Regarding the sued doctors, the complaint argued that they had apparently provided treatment without having the necessary coordination, opting for a premature discharge, and with changes to medication that apparently were not successful; all of this led to a new admittance, surgical wound cleanings, and additional surgery for eliminating the abscess.

The patient demanded an indemnity in the amount of $52,100,000, broken down as follows: $1,300,000 for indirect damage (hospital expenses stemming from the infection, physical therapy rehabilitation, and medicine), $800,000 for loss of income, and $50,000 for pain and suffering.

The ruling in first instance was of a condemnatory nature, but only as regarding the clinic, who was found to be accountable for non-compliance of protocols regarding the prevention of intra-hospital infections. On the other hand, the ruling absolved the sued doctors, thus establishing a merely institutional liability for what had happened.

Compensation for damage established by the court came to the amount of $20,705,715, broken down as follows: $705,715 for indirect damage (expenses for medical attention to the infectious condition), and $20,000,000 for pain and suffering.

The clinic's defence filed a remedy of annulment on procedural grounds and a remedy of appeal against this ruling; these were dismissed by the relevant Appellate Court. A subsequent remedy of annulment on grounds of law before the Supreme Court was also dismissed, thus the ruling in first instance was considered definitive and final in its entirety.

RELEVANT ASPECTS FOR THE AREA OF MEDICAL MALPRACTICE CRAWFORD - GRAHAM MILLER

INSTITUTIONAL LIABILITY

The arguments of the issued ruling clearly show the relevance of the health institution's accountability in a case such as this one, leaving out the professionals that were involved. The ruling emphatically attributed the infection to the non-compliance of protocols and technical regulations which the institution should have complied with (such as Supreme Decree 161, Rules and Regulations for Hospitals and Clinics), as said institution should have ensured that regulations regarding asepsis and antisepsis were complied with, so as to prevent intra-hospital infections, specifically stating that "*what is directly related to intra-hospital illnesses are, in principle, the clinic's responsibility".*

Thus, an infection within a hospital environment is attributable to the institution, the doctors' only duty is to provide treatment once said infection becomes evident. It is for this reason that a reproach regarding the origin of a situation of this kind, cannot be directed towards the professionals.

For this same reason, the ruling releases the sued doctors from any reproach, indicating that they were not responsible for the occurrence of the intra-hospital infection, and although said ruling admits that ideally a better coordination should have existed between the medical team when making their diagnosis, establishing the patient's treatment and his discharges, their activities in attempting to control the infection *per se* had been in accordance with *lex artis,* to such a point that the need for extending the patient's stay in hospital was attributed to the nature of the pathogen (and not to the professionals' performance).

INADMISSIBILITY OF ARGUMENT REGARDING PROBABLE RISKS OF SURGERY

In medical issues it is usual for part of the defence strategy to be focused on the fact that all surgeries include risk percentages *(therapeutic risk).* However, in this particular case the ruling stated that when intra-hospital infections are involved, said allegation of the inevitability of possible complications is not acceptable, as the action of a given bacteria or another pathogen found inside hospital premises is a foreseeable situation, and as such, can be avoided if the necessary precautions are taken.

The ruling mentions that in order to accept the defence strategy of a therapeutic risk, it is necessary for same to be foreseeable but **unavoidable**, which is related to the concepts of *fatality and ignored causality.* However, the cause of intra-hospital infections is known, and therefore they cannot be classified as those risks that are inherent to all surgical actions. As can

be seen, this criterion likens the juridical treatment of intra-hospital infections to a kind of objective or strict accountability.

SITUATION OF INFORMED CONSENT AND DEFENSE

Another matter analysed in the ruling is related to the existence of an informed consent by the patient prior to submitting to a surgical procedure. The existence of this statement is usually used by the defence teams of institutions and professionals as a means of proving that the patient was aware of possible complications surrounding the procedure which said patient was undergoing (and among which would be the occurrence of infectious conditions).

The ruling mentions that the purpose of all informed consents is so that the patient can autonomously decide if he does or does not wish to undergo the surgical procedure (protecting his free will), by making him aware of situations that commonly occur, depending on the case; however in no way can this be interpreted as the patient's acceptance of becoming a victim of a bacteria or pathogen that could cause an infectious illness to invade his organism, and which originated in the environment of the clinic or hospital itself, as this does not fall within what is usual for any type of procedure.

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