

# Right to health: the clinical examination of the judicialization of public health in the face of mistanasia

## Abstract

The present work has as its study the analysis of public policies, regarding access to the right to public health, as well as the difficulties, the neglect of the provision and the length of the concession. The difficult way for doctors to exercise their profession, excessive shifts, lack of specialists, medicines and beds, lack of fair remuneration and various problems; the analysis of the judicialization of public health and the institutes that medicine calls: Euthanasia, Orthothanasia, Dysthanasia and Mistanasia. The methodology used was the tool: bibliographic. At the end of this article, there will be an examination of the studies analysed, and the effectiveness of the judicialization of public health.

**Keywords:** right to health, public health policy, euthanasia, public policy, health's judicialization, medically underserved area

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**Abbreviations:** FC, federal constitution; PHD, principle of human dignity; CM, magna carta

## Introduction

The right to health, listed in the Federal Constitution (FC) of 1988, provides its guarantee of a fundamental, egalitarian and universal right, umbilically linked to the right to life. In turn, the violation of this right damages the property protected by the Principle of Human Dignity (PHD).<sup>1</sup> Injuries that, in many cases, are irreversible, because life is one and death is uncertain. The incessant search for the evolution of this right has been paramount since the remote times of the French Revolution, in the 18th century, to the current 21<sup>st</sup> century. Health was not seen as a right of all, but assistance, with the obligation of the clergy to participate, to whom the doctor was an advisor, which explains the creation of the Santa Casa de Misericórdia in some federations in the country. The heart<sup>2</sup> of the legal system lists it concisely and concisely, but the reality experienced by the professionals responsible and by the low-income population of financial resources is contrary to the Law. The need for the Judiciary to intervene through a judicial demand to meet the request, of character urgent. It is the judicialization of public health. Focusing on the neglect of public health provision, the lack of sufficient funds to supply hospitals, how doctors deal with noncompliance, exercising the profession in a humane and supportive manner. Medicine, in turn, calls this institute, the mistanasia. Throughout the preparation of this scientific article, a clinical examination will be presented, in view of qualitative research, solidifying the judicialization of public health, the competence of the bodies responsible for guaranteeing this right.

## Results and discussion

### Fundamental rights and guarantees

#### The evolution of the constitutions in face of the right to health and the valuation of the principle of the dignity of the human person

With the promulgation of the CF of 1934, it was the first to provide in its legal text the expression health, being by force of law

concurrently. The forecast was as assistance to the worker, a period in which Labor Justice was implemented, the vision was capitalist, without a healthy worker, there would be no production.

Article 10, item II, of the 1934 Constitution: It is the competence of the Union and the States: II - to take care of public health and assistance; [...]

After the 1934 CF, came the 1937 CF, known as Polaca, which institutes the Estado Novo, granted on November 10, 1937, bringing its applicability a little wider. The 1937 CF was authoritarian and a list of guarantees and rights was not foreseen, its prediction was not right but assistance. Each evolution, an innovation to the achievements of a guaranteed, egalitarian, universal and fundamental health to the citizens. The evolution process totalled, in the six Federal Constitutions, passing through the Constitutions of 1891, 1934, until arriving at the FC of 1988. It was necessary to have gone through a period of 54 years, so that the right to health was recognized and listed in the Magna Carta (CM) of 1988, expanding the role of the Judiciary, in favor of guaranteeing fundamental rights. The great discussion revolves around the financial resources supported by the State and the guarantee of health, without it there is no life or society. From the 20th century onwards, health began to gain more attention from the government, forming a decentralized health system according to the needs of each region. There was a need for health providers in the private sphere, that is, health plans, with the emergence of groups of doctors, forming business medical clinics, with greater support to meet the needs and hospital services they needed. It is worth mentioning that, in 1967, the Cooperative Society of Medical Work (Unimed) appeared in Santos - SP, occupying the 29th position, being one of the largest hospital chains in granting health care in the private sector. The judicialization institute comes as a result of the lack of provision of public health service, the violation of the principle of DPH.

The principle of DPH is the indispensable and inalienable characteristic for the subsistence of human life, attributed with its unparalleled autonomy due to the greater good that is constitutionally valued, providing a quality of life and its full development. As added,

Salazar and Grou, (2009, p. 42) “The right to health is part of the minimum nucleus of the dignity of the human person, thus being part of the existential minimum”. The big problem, which haunts thousands of citizens dependent on the provision of public health, is the slowness, lack of attention due to the patient, who is already psychologically shaken, his visit to a public hospital is for the reason “I am sick, I need to of help”. But not always, what is desired is accomplished; the neglect in the provision is alarming. The violation of this principle also affects the Medical Code of Ethics (CEM), Chapter IV Human Rights, the doctor is prohibited, article 23: Treating human beings without civility or consideration, disrespecting their dignity or discriminating in any way or under any pretext. The minimum of the DPH, however, is the existential minimum (ME) whose purpose is made by the question, what the CM does not cover, uses doctrinal concepts, whether by any force, this principle will be safeguarded taking the judge to ensure its effectiveness. The panoramic view represents a protection of social rights, established by Law and by the State, whether in the public or private sphere. The guarantee seen by the way that the judges face the actions brought to the Judiciary Power, reason that the desire will be ascertained and in the end it will be concluded by a sentence based on the DPH, conferring the decision power in favour of the greater good.<sup>3,4</sup>

The American Convention on Human Rights, an international treaty ratified in Brazil in 1992, expressly states that life must be preserved from conception, relating the minimum vital characteristics, such as equality, fraternity and solidarity in the face of the recognition of human rights. Often, the slowness is the result of pending compliance with the faithful funds destined to the public service, to which professionals perform their labor duties in a disrespectful manner in order to harm the labor and fundamental rights of the citizen. How to guarantee an immediate and qualified service, if the professionals do not receive their respective remuneration for the fulfillment of the service, or if they do not receive the due minimum of the instruments for the performance of their function. Therefore, chaos is ballasted like a cancer, devastating the social rights typified in the CF,<sup>5</sup> shaping the active *mistanasia*. Overcrowding in the hospital, doctors with exacerbated shifts, lack of supply of medicines, equipment without maintenance, prolonged schedules, hurt what is guarded, because, in fact, professionals are tired of dealing with this abandonment of the Executive branch every day. Professionals fatigued by the routine, do not live up to the patient, in many cases dealing with the lack of timely care. Poor management generates a sick society, without guaranteeing the rights listed by the Law. Idle professionals treat patients inhumanly, they report their symptoms, but due to the lack of commitment to the provision of the service, they deny due care for the simple fact, “you are well”. When, in reality, if he did not seek the private, he would not be able to resist pathology, a conduct that is classified, to passive mystasy.

What drives a citizen to seek public health, whether by providing a consultation, a medication, undergoing surgery or an examination, no matter the complexity of the patient, has the right to be attended to in a humane, swift and efficient manner, showing the due treatment and quality, to remedy the suffering saturated by the patient, avoiding the commitment of mystasy. This demonstrates the evolution of medicine, in worrying about what is brought by the law, the responsibility of the State and doctors, examining the balance between health and legal knowledge. Medicine and law are intertwined, establishing a link for health and the right to live a dignified life. The 1988 Constitution guarantees a dignified existence, enshrining among the principles and objectives of the constitutional economic order, the obligation of the Powers, to control the budgets of revenues, expenses and resources

for health care, guaranteeing universal access. The Universal Declaration of Human Rights was promulgated on December 10, 1948, incorporating all the basic needs worthy of a person to survive and in its core highlights medical care. The complexity of this access and the violation shows, the extreme need to provoke the Judiciary Power machine, to guarantee access to public health in a universal, equal and immediate way. So, attending to the actions filed represents an achievement in favor of life and of those who fight for the right.

### The judicialization of public health: the theory of the reserve of the possible and the existential minimum

Carelessness in the fulfilment of the Constitutional law of public policies, related to the provision of health, generates a default of the guiding principles of article 37 of the 1988 Constitution, legality, impersonality, morality, publicity and efficiency causing the failure of the basic precept. To fill this gap, it is necessary to intervene by the Judiciary, through the institute of judicialization of health justiciability or action ability is nothing more than the possibility of seeking the concretization and respect of a right through the Judiciary, that is, it is the possibility of using mechanisms to give it effectiveness. In other words, health is a social right of all and a duty of the Federated entities: Union, States, Municipalities and the Federal District, guaranteeing the prevention of diseases and the appreciation of the principle of DPH. In its core, the implementation of public policies, the enforcement of this right through the courts, to fill this gap in the ineffectiveness of the Executive Branch. However, the analysis that is made is of the perception that the Judiciary is shown in the protection of the right to health and the right to life, in the intention of the afflicted parties to help themselves to the judicial machine, is what adds the legal brocade “*Da mihi factum, dabo tibi jus*” (Give me the fact that I will give you the right).

Therefore, the current Code of Civil Procedure, in its Article 2, is protected by Law No. 13,105 of March 16, 2015.<sup>6</sup> The process begins at the initiative of the party and develops on an official impulse, except for the exceptions provided for by law. The judicialization of health, or better, for some indoctrinators, called jurisdictionalization, is a mechanism that shows concern for demands aimed at having access to the provision of public health, listed in article 196, of the 1988 Constitution, based on the Principle of Health. Universality, that is, everyone has the right to be served by SUS. For the safe fulfilments of the public health institute, it is enough to have administrative discretion; the tripartition of the Executive, Judiciary and Legislative powers; compliance with budgetary principles; the reserve of the possible (RP) and the existential minimum (ME). The guarantee for meeting the demands filed, are reviewed in a single context of public health policy: the financial aspect and the inoperability of the system. The problem of public health provision, foreseen in the country as a whole, the biggest disease that corrodes this provision is corruption, present as a cancer that daily prevents execution in compliance with the internal regulations of the nosocomium, in hospital management, in the contracts of the health plans and the largest, the Law. The most important asset is life, it does not compare to the inconsistent claims of the Executive Branch, in the face of a judicial demand. Lamentations are heard in the daily lives of citizens, becoming something routine for health professionals, it is clear in the care and the way they express themselves.

In turn, medicine calls this disregard, the institute of *mistanasia* is the presumed death for lack of resources. In addition, the magistrate cannot fail to accept the demand that came from a flawed administrative act, due to guidelines or subjectivity, discretion is the choice for soluble opportunities in the light of fundamental rights and the interest

of public law, its effectiveness. The duty of providing the State to the patient. On the other hand, the limitation of access to health causes a bankruptcy in Constitutional Law, which has been repeatedly the focus of discussion of judicial decisions, for the vital minimum. What is RP? It is the justification that the State uses to claim that it has not fulfilled its obligation, alleging the lack of social rights, the economic impossibility that makes the provision unfeasible. This argument should not thrive in the light of the principle of DPH. As a rule, it establishes access to health in an egalitarian and universal manner, the applicability of Law No. 8,080 of September 19, 1990 (Unified Health System - SUS),<sup>7</sup> for exams, procedures and medications as listed, must be respected exceptionally, judicial intervention to determine the public administration of SUS occurs. It is a constitutional right, the administrative reserve is not under the right to health. According to article 24, §1º, Federal Constitution of 1988. Articles 165 and 169, both of the CM, establish the budgetary guidelines that the Executive Branch must transparently demonstrate in a report the destination of public funds, complying within the limits established in the Law. The control of public accounts is relevant for the development of better management, aimed at PR and ME, as stated in article 166, paragraph 3, item II, point c, of the 1988 constitution.

One aspect of the pertinent examination is the focus on the transparency of the resources inherent to the provision of the public service, with regulation within the limits of the PR to the public power, passing through a brief analysis of the tax burden and the efficiency of the financial resources employed. It is notorious, the way the State behaves when faced with the fundamental right protected, whether by the RP or the ME, its first focus is to find out if it has a budget available to meet the need. "ME originated in German Constitutional law and is the result of the DPH Principle, the right to life and physical integrity and derives from a systemic interpretation of the Social State Principle". The ME is the guarantee of the fundamental principles, those listed in article 6 of the 1988 Constitution, are the primordial to have a dignified life. It would be what he calls the vital minimum for human beings, the basic conditions inherent to a fair survival, thus valuing the principle of DPH.

### **Clinical examination of the institutes: eutanasia, ortotanasia, distanasia and mistanasia**

What leads to being bioethics? It is a set of studies carried out on the analysis of morals, ethical principles, customs and behaviours. The behaviour of the professionals responsible for the care of patients will be examined. For the renowned Maria Helena Diniz apud Lopez:<sup>8</sup>

*Bioethics is a set of philosophical and moral reflections on life in general and on medical practices in particular. To this end, it would encompass multidisciplinary research, involving itself in the anthropological, philosophical, theological, sociological, genetic, medical, biological, psychological, ecological, legal, political, etc. areas, to solve individual and collective problems derived from molecular biology, embryology, genetic engineering, medicine, biotechnology etc., deciding on life, death, health, identity or physical and psychological integrity, seeking to analyze those problems ethically, so that biosafety and the law can establish limits to biotechnology, prevent any abuse and protect the fundamental rights of people and future generations. Bioethics would also consist of studying the morality of human conduct in the area of life sciences, seeking to ascertain what would be lawful or scientific and technically possible.*

In view of this analysis, the institutes of Euthanasia, Orthothanasia, Dysthanasia and Mistanasia will be examined clinically. The orthothanasia word of Greek origin, Orthos: correct; Thanatos:

death is dying naturally, that is, dying at the right time. There are no procedures that lengthen the days of life. It is the doctor's behavior in the face of an imminent death, to which he suspends the performance of any procedure that prolongs the patient's life, which would lead him to suffering and superfluous treatment. Such procedure adopted by the doctor, is to keep the patient under his palliative care, until he dies with dignity. Provided the patient has the consent, in his absence, the family members, according to article 41, sole paragraph, of the Medical Code of Ethics (CEM). Death to orthothanasia is a natural process, the end of life with dignity and respect. According to the words of Débora.<sup>9</sup>

*Good death would be the result of a combination of moral, religious and therapeutic principles. Good medicine is not enough to guarantee a good death, respectful care is needed with the beliefs and values that define the meaning of life and existence in order to guarantee the experience of a good death for the sick person.*

Euthanasia is one of the oldest practices in the science of medicine, due to its historical account of letting die, nor was it understood, since, in the current 21st century, orthothanasia has stood out because it is called by palliative care doctors, because this are human rights. "Doctors avoid using the term orthothanasia, either because it is confused with the term euthanasia, or because the patient and his family may think that the doctor is doing some harm to the patient". The euthanasia word of Greek origin, Me: good; Thanatos: death, is to anticipate the death of the patient, less days of life and suffering. For some renowned indoctrinators, there must be a feeling of compassion, it will be shown as a form of support for those who need it for the rest of their lives, and in their absence the conduct will typify homicide. A topic of great relevance to that of debate, as nothing has been ratified, which prevails the thesis in medical books that, without compassion in the practice of euthanasia, will be characterized as homicide. Controversial points, a minority position, say that compassion should not be seen as a point of weakness, but rather wanting to help your neighbor, he points out, the patient's consent must be valued.

It is the duty of the physician to inform the patient of his clinical situation, as well as to necessarily have life expectancy in the face of the disease, to explain to the patient the therapeutic forms and palliative care, as well as the consequences, and to argue the request for euthanasia. As stated, CEM, article 41, Resolution 2.217 / 2018:

[...]

Art. 41 [...]

*Sole paragraph: In cases of incurable and terminal illness, the physician must offer all available palliative care without undertaking useless or obstinate diagnostic or therapeutic actions, always taking into account the express will of the patient or, in his impossibility, that of his legal representative. (Emphasis added) [...]*

Active euthanasia is divided into direct and indirect. In the active mode it is when the doctor turns off the device to which the patient is dependent, or injects medicine into the patient's vein, practicing one of these conducts does nothing, he is absent in the provision of medical care. The doctor takes action to cause death to occur.

The passive modality is the doctor's conduct in failing to provide the necessary and essential care, gradually reducing the maintenance of the patient's life. Death by default occurs. According to Lopes, Lima and Santoro<sup>8</sup> active euthanasia is subdivided into:

*[...] direct, the shortening of the patient's life is sought through positive behaviors, helping him to die. In indirect active euthanasia, the patient's death is not sought, but to relieve pain or suffering, with*



*the use of drugs that, however, have the right or necessary side effect to shorten the patient's life, that is, will be the cause of the death event [...]*

The breadth of this institute will prove to be of paramount importance from orthothanasia, for passive euthanasia, being the target of criticism by renowned doctrines and doctors, for both of them having the omission of medical care to the patient. The difference results in the way the patient dies, in orthothanasia the death event has already started, due to the doctor being silent and not providing any medical assistance to prolong the patient's life, and in passive euthanasia, the omission is the cause of the death event, due the doctor to suspend or interrupt the necessary care. Euthanasia gained relevant status in the second half of the 20th century, and bioethics is a witness to this innovation. To the extent that, the patient no longer supports, or does not have the strength to support his existence, he chooses euthanasia. In some countries they are accepted as: they were adopted in 2002 in Belgium and Holland, in 2009 Luxembourg, and in the other countries France, Germany, Austria, Colombia, Uruguay, and some states of the United States. In other countries, this practice is recognized illegally, as in Brazil, being classified as homicide, conformed to article 121, of the Brazilian Penal Code. In 2001, assisted suicide was considered lawful conduct. On May 17, 1998, the Association was founded, whose headquarters are located in Switzerland, the Clínica Dignitas, specializing in caring for people whose desire is to kill themselves, for countless serious illnesses. In Switzerland, the practice of euthanasia is prohibited. Based on the perspective analysis of the reports of people who come to the clinic, the greater demand is to avoid pain for their family members, that is, for these people, their livelihood of life will cause discomfort in their day-to-day activities.<sup>10</sup>

*Second, Lopes, Lima and Santoro:*<sup>8</sup> “[...] assisted suicide is the behavior in which the individual ends his or her life without the direct intervention of a third party in the conduct that will lead to death [...]”

Unlike euthanasia for assisted suicide, it is delimited that, in euthanasia, the act is performed to promote the patient's suffering without suffering with compassion; in assisted suicide it is the act performed by the patient himself. Therefore, the number of people looking for each year increases, Brazil is in this ranking. Between 1998 and 2011, 1,298 members,<sup>3</sup> died and for committing assisted suicide, the amount of R \$15 thousand reais is charged, per patient at Dignitas.<sup>3</sup> The Netherlands was the first country to approve euthanasia, between 2002 until 2011, in that time span there were 3,695 requests, cancer patients<sup>4</sup>, circulation problems and neurological disorders. As for the demand for mental patients, dementia is rare. The responsible clinic is Leven seindekliniek, it will be translated into Portuguese (clinic to die), performs euthanasia free of charge, the way the clinic is maintained is through donations, it was analysed that so far 198 requests have been rejected.<sup>4</sup> It is noted that the request to die must be substantiated, both due to an unbearable illness or disability, as well as the patient's consent, and must be accompanied by a medical report, testifying, and in fact there will be a second opinion about. The dysthanasia word of Greek origin, Dis: prolongation; Thanatos: death, is to prolong the patient's death slowly with more suffering and pain. Currently, this institute is seldom used, however, in order to adapt to it, the treatments closest to the cure of the disease faced will be used, such as considered useless, that is, with no response to the desired cure, per yes, the process of dying is prolonged and not the life with more suffering and pain until the day of death.

Listed in Chapter I of the Fundamental Principles, item XXII, of the CEM. In the understanding of the mentioned indoctrinators, Lopes, Lima and Santoro:<sup>8</sup>

*[...] it deals with unlawful conduct, because the Federal Constitution prohibits in its article 5, item III any form of inhuman and degrading treatment. The protection of a dignified life presupposes its guarantee at all times of human existence, including in the process of death. This is a conduct that should not be practiced by doctors, under the risk of inflicting inhuman and degrading treatment on the patient.*

In other words, the practice of dysthanasia is a violation of human treatment, subjecting it to a slow, distressing process of dying, with more pain and more suffering. The *mistanasia* word of Greek origin, Mis: unhappy; Thanatos: death, is the presumed death due to lack of resources, that is, unfortunate death, whether in active or passive modality. Violating the principles of human rights, medical ethics and bioethics. As the wise words add, by Leonard Martin<sup>12</sup>

*First, the great mass of sick and disabled people who, for political, social and economic reasons, do not become patients, as they are unable to effectively enter the medical care system; second, the patients who manage to be patients and then become victims of medical error and, third, the patients who end up being victims of malpractice for economic, scientific or socio-political reasons.<sup>5</sup>*

The author, mentioning in terms of the passive *mistanasia* modality, the death event will only occur when it comes from negligence, malpractice and imprudence, which will occur due to the omission of the physician aware of the patient's situation.<sup>13</sup>

### **Mystanasia: active and passive**

Institute named by medicine, also known as, social euthanasia, human evil, popularly unworthy death, not very pronounced, but its practice will be repeatedly observed in hospitals primarily in the public sector, damaging the basic principle of life, DPH. The lack of maintenance in hospitals, such as the necessary supply of medicines, tests when requested, lack of beds in the ICU and ICU. The fulfilments of public policies in the face of health has led to debates in alarming numbers, due to the high demand for consumption of patients, who require the provision of effective service, as well as the filing of actions to plead in a swift manner. The sad reality, comes the occurrence of *mistanasia* daily, it is noted that from the moment when, it is not possible to give due care to those who seek assistance in a public hospital, such inhuman conduct conducts itself to this institute. Mass discussion is the form of intervention by the judiciary in the executive branch, in other words, the sentence condemns the State based on the theory of the PR and the ME, to fulfil an obligation to do, requiring that the requested be fulfilled, which in many cases, the State alleges for not having sufficient resources. It is denoted, the greatest asset protected is life, which is safeguarded by the CF. The quality of service of public health provision, every day that passes, becomes disordered, due to the lack of administrative preparation coming from the Union, passing through the States and Municipalities until they reach the hospitals.

*Mistanasia* means miserable death, unhappy death, a term analysed in the mid-1980s by the Redemptorist priest Márcio Fabri dos Anjos, theologian and bioethicist.<sup>6</sup> It is subdivided into active and passive modality. Active is the person's early death due to lack of resources. Others call it, as a miserable death concept, classifying it as a phenomenon of experience, people are subjected, as if they were guinea pigs and if the result was not expected, nothing would be worth if they lost their lives, such a fact occurred in the Second World War, in the fields of Nazi concentration. In the field of medicine, *mistanasia* results from poor public administration, reaching the public service most in need and sought by the population. This neglect affects not only the right to health, but also in life as it is one, and inviolable. The most propitious way is to prove the effective

spending on public health through strict supervision, continuing the way it performs, the guaranteeing means is the intervention of the Judiciary. Mostly, and more updated with the context that society experiences, it is the presumed death due to non-compliance with the minimum requirements or the simple supply of medicines, and in other peculiarities, it is the absence of the State, lack of funds to maintain the *nosocomios*, the lack of competence to carry out public management, the result of human malice is the suffering of many lives; in Passive or Omissive modality, death is the result of a doctor's misconduct, either through negligence, imprudence or malpractice. Negligent behavior is shaped by carelessness, or inattention, creating a lack of precaution in the face of the situation. Imprudence is the anticipation of doing something, but in a wrong way, being the lack of attention, and the Malpractice will show itself by the lack of technique, necessary and basic knowledge.<sup>14</sup>

The victims of this institute are people who are low on financial resources, excluded from the social and economic environment, the poor population. Social exclusion is an expropriating, exclusionary phenomenon, alienating the very human condition of living and must be reviewed by political managers to improve the lives of the entire poor population. Due to the gravity of this point, such practice violates the Brazilian legal system, a constitutional principle and the inviolability of the right to live. What the principle of DPH postulates is a healthy State, full of rigor in the completeness of the faithful fulfilment of the guarantee, of universality and of the existence of a dignified and enjoyable life without restrictions. The DPH principle has a content value that varies in time and space. Such an attribute is not a natural reality, which is born with the human being, but a value developed in a historical and cultural way. *Mistanasia* is a magnificent topic for lectures, congresses and discussions to clarify pertinent points and examine curiosities. Awakening the knowledge of the population in what concerns, the rights and deepening of the controversial points. Scholars of medical and legal science, be they medical and legal scholars, lawyers and doctors, seeking to understand the pertinent relationship between the two sciences and to alleviate the problem, generates a possible<sup>15</sup> suggestion for a solution, the fight is daily against death, in for life, it doesn't matter if you have public money or not, somehow you'll have to guarantee it.

It is noteworthy, the reflection of corruption in the funds destined to the maintenance of public health, causes a failure in the fundamental precept to the provision of this service. One of these factors being *mistanasia*, the lack of commitment in public management, the price to be paid for this neglect is very high, being the needy population. To the extent that the State is confronted head on, it is not to overcome it, but to humanize it, realizing that it is possible to overcome *mistanasia*. The search for a simple service at the reception of a hospital, until the arrival at the doctor's office, the aim of the fight is to diagnose the pathology, seek treatment, overcome mystasy and live a dignified life.<sup>15,16</sup>

### Analysis of the code of medical ethics

The human being is flawed, such acts generated by the human hand are imperfect, and for this reason there is a need for professional ethics to intervene. The word ethics originated from the Greek *ethos*, which means character property, according to its perspective, the professional acts within the set of norms established in the profession category, which form the parameter of the professional controlling his conduct. All professions are subject to the relevant rules to proceed with the development of the profession, obeying the rules of morals and ethics. Evidently, the code does not eliminate the failure of the

human being, but, it limits the conduct of the professional within what is forbidden and allowed, according to the rules of justice, ethics and dignity. The current CEM, Resolution No. 2,217 / 2018 in force, is the result of three years of debates and analyses by the Federal Council of Medicine (CFM), establishing a review updating it, this result being desired and desired by society, was the review of the new EMC. However, several reforms were necessary so that it could meet the pathologies brought by society and the formation of the current CEM, Resolution No. 2,217, of September 27, 2018, respecting the *vacatio legis*, coming into force on, April 30, 2019, covering interpretations pertinent to the evolution of the world. An examination of the timeline will be made:

- I. Code of Medical Moral in 1929, made by Dr. Cruz Campista, approved by the IV Latin American Medical Congress;
- II. Code of Medical Deontology in 1931, approved by the 1st Trade Union Medical Congress;
- III. Code of Medical Deontology in 1945, approved by the IV Brazilian Medical Unionist Congress;
- IV. Code of Ethics of the Brazilian Medical Association in 1953, approved at the IV Meeting of the Deliberative Council;
- V. Medical Code of Ethics in 1965 published in the D.O.U. and force on January 11, 1965;
- VI. Brazilian Code of Medical Deontology in 1984, created on April 27, 1984, officially published in the D.O.U. on May 9, 1984; the Code of Ethical-Professional Process No. 1,617 / 2001, conferred by Law No. 3,268 of 9/30/1957, regulated by Decree No. 44,045 of 7/19/1968, embodied by Laws 6,838 of 10/29/1980 and Law No. 9,784 of January 29, 1999<sup>7</sup>
- VII. Code of Medical Ethics, Resolution No. 1,931 / 2009 of September 17, 2009, published in the DOU of September 24, 2009, effective on April 13, 2010.<sup>17</sup>

Having made such considerations, the CEM, CFM Resolution No. 2,217, approved on September 27, 2018, published in the D.O.U. November 1, 2018, but as of April 30, 2019, the seventh EMC came into force. Divided into 14 Chapters, it expressly lists, to guide medical professionals such as improving the effective exercise and good performance of the medical profession within society, as well as improving the rights of patients. The present Code under analysis, is composed of a preamble with 6 items, 26 fundamental principles directed to the practice of medicine, 11 deontological norms (rights and duties of doctors), 117 deontological norms (relationship between the doctor and the patient) and 4 more standards in the general provisions. The new CEM, before submitting to the FC, will demonstrate the responsibility for patients' rights and the search for preventive, balanced and harmonized medicine, at the exact moment of the doctor respecting what the patient really wants for himself. The way the doctor should approach is one of the main points to be observed by the patient, in order to establish confidence in the doctor's conduct. The role of the new CEM, in the 21<sup>st</sup> century, has been innovating, materializing the procedures adopted for the purposes of today, together with adjustments, which permeates the permission and / or the seal, always encompassing the patient's opinion. Dialogue is one of the sources to establish a healthy connection, without lides and something dark, and such care starts from the time of uterine conception, as determined by Law n ° 8.069 / <sup>18,19</sup> Statute of the Child and Adolescent, in the Title II of fundamental rights, Chapter I of the right to life and health.<sup>20-23</sup>

The collaboration of professionals, organized civil society and regional commissions have a participatory nature in the elaboration of this review, for which reason each Regional Council knows the need that acts in the federation, what differentiates is the way of expressing opinion, mainly civil society, through the registration of the Individual Taxpayer Registry. For the elaboration of the new CEM and today, in addition to the regional phases,<sup>24</sup> CFM held three National Conferences on Medical Ethics (Conem) between the years 2017 and 2018 to decide and examine regarding exclusion, changes and inclusion of content with scientific innovations to the EMC in force. The meetings take place at the headquarters, located in Brasília, the aim is to bring the reform within the medical guidelines, in a reasoned manner demonstrating the active participation of both sides for the current 21<sup>st</sup> century. The focus is on discoveries of treatments or pathologies, establishing an objective contribution to the resourcefulness of future generations, within the scope of new patients to come and newly graduated doctors.<sup>25–35</sup>

## Conclusion

In view of the analyses, in order to resolve uncertainties, delays, omissions in access to public health, since it is a constitutional and inviolable guarantee for the survival of a dignified life, respecting compliance with the law, safeguarding the fundamental constitutional precept. In its midst, there has been an evolution since the constitution of 1934, spanning the time span of 54 years, under the terms of the current CF, assistance gains legal status. In this same context, the valorization of the DPH Principle, in favour of the guarantee, the rules and functions assigned by the Ministry of Health, as well as making SUS functionality feasible, and the mere regulation by ordinances under focus, the inspection of financial resources related to the provision, guaranteeing speed to the user, in view of the public service. The expression: judicialization of public health, therefore, is consistent with the intervention of the Judiciary, the link between the Executive and the Judiciary, in the face of the occurrence of mystasy in both active and passive modality. The evolution of medical science, together with legal science, establishes a connection, studies and research carried out, resulted in institutes analysed by professionals alarmed by the development of a healthy society, such as orthothanasia, euthanasia, dysthanasia and mysthanasia. The analysis made in the face of repeated research on the preparation of this article, focuses on mystasy, in the active and passive modalities. It results in the patient's death due to lack of resources. The purpose of explaining the subject seeks to reveal the proper knowledge, which in practice occurs daily reaching millions of Brazilians. In the face of compliance, there is the human act, added to the professional act, which is entitled to the improvement of this conduct, the applicability of professional ethics, with regard to the need for the evolution of the previous versions of the CEM, the performance of the doctor, establishing a positive, assured relationship. and with respect. In conclusion, the right to health listed in the FC of 88, ensures a healthy evolution, guaranteeing immediate and isonomic access, without distinctions of classes and colors. However, it appears that due compliance, numerous difficulties arise for the maintenance of this benefit, one of the biggest diseases that corrodes is the corruption in the funds destined for hospitals, and the institute of the judicialization of health emerged in the face of mistanasia.

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## Conflicts of interest

The authors declare that there is no conflict of interest.

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