

Chapter 03

Workplace Violence Against Medical Personnel. Medico-Legal Analysis, Occupational Risks, and Institutional Response

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Medical-legal and regulatory framework in Argentina

Legal aspects

In the event of physical or verbal aggression against a member of the healthcare team, in the exercise or in the course of providing healthcare services, by a third party (patient or family member), our legal system allows for the initiation of various legal actions for different purposes to safeguard constitutional and conventional rights (the right to health, life, dignity, physical and mental integrity, work, among others) (Bolzán et al., 2018).

Criminal jurisdiction

Criminal law has various functions:

- Repressive: it sanctions/punishes offenses committed.
- Preventive: (deterrent) prevents offenses from being committed so that others will not commit them in the future.

Criminal law consists of two parts:

- It prohibits certain human behavior, which is defined as unlawful.
- The penalty for violating this prohibition is defined.

Crime of threats

During the provision of healthcare services, a situation may arise in which a patient/family member informs (verbally, in writing, or electronically) a member of the healthcare team of a serious, possible, and future harm, with the aim (intention, direct malice) of instilling fear, alarm, or intimidation. Such action violates the individual's mental freedom (freedom of decision and sense of tranquility) and may therefore constitute the criminal offense of threats, as defined in the Criminal Code, art. 149 bis. According to established case law, the crime of threats is not committed when the expressions are made in the context of an argument (in a state of nervousness, anger, or irritation), as they are not sufficient to be interpreted as an announcement of real harm (they do not seek to intimidate or instill fear among the participants in the incident) (Bolzán et al., 2018).

Aggravating factors

The penalty will be increased from one to three years if:

- The threats are anonymous.
- Weapons are used to make the threats.

Who can bring the action?

This is an action that can be prosecuted ex officio. This is without prejudice to the possibility of the victim filing a complaint with the judge, public prosecutor, or police (art. 285 CP) (Ministry of Justice and Human Rights, 1984).

- Means of evidence: Graphics, documents, videos, testimonies, statements, expert reports.
- Precautionary measure: The complainant may request that the judge grant a restraining order against the accused for a specified period. This is based on the State's obligation to guarantee the victim's right to protection of their physical and moral integrity and even that of their family. This is a precautionary measure. It is a prudent and reasonable restriction, in the interest of the greater good.

Crime of injury

In the context of the provision of health services, healthcare personnel, either collectively or individually, may suffer acts by patients or family members that cause bodily harm. When such acts violate physical integrity (a right recognized in the Pact of San José, Costa Rica, Art. 5.1) and there is an intention and will to cause harm, it may constitute the criminal offense of intentional injury, as defined in our criminal code in Articles 89--90--91. Such injuries can be caused by any means and are punishable by imprisonment, the severity of which depends on the type of injury in question. For the crime to be established, there must be actual harm (a result of the action).

Criminal offenses (Ministry of Justice and Human Rights, 1984):

- Minor injuries (Art. 89 CP): covers cases in which the agent causes damage to the body (internal injuries: organs/tissues; external injuries: cuts/burns) or to health (alteration of the balance/function of the organism that the victim had prior to the injury), which includes physical and mental health. Note: criminal offenses are defined by exclusion when not provided for in another regulation.
- Serious injury (Art. 90 CP): the action falls under this type when there is permanent impairment (prolonged over time, not perpetual) of health (does not require it to be an illness), of a sense, of an organ, of a limb or speech, or when the life of the victim has been endangered (actual risk, not potential). Additionally, when the victim is unable to work for more than a month or when the face is permanently disfigured. In all cases, medical evidence is needed.
- Very serious injuries (Art. 91 CP): In this case, the loss (not the impairment) of a sense, organ, limb, speech, or ability to procreate or conceive is needed. When the ability to work is lost or when the mental or physical illness caused to the victim has been accurately diagnosed as incurable.

Who can bring the action?

- Minor injuries: This is a privately prosecuted offense. The victim must report the crime to a judge, public prosecutor, or police officer (Art. 72 CP and 285 CPP).
- Serious-very serious injuries: This is an action that can be prosecuted ex officio. This is without prejudice to the possibility of the victim themselves reporting the incident or coming forward later in the ongoing investigation to assert their rights (Art. 285 CCP). Therefore, the preliminary criminal investigation may be initiated by a complaint, by the Public Prosecutor's Office or by the police (Art. 268 CCP).

Likewise, public officials or employees who become aware of the crime in the course of their duties, or doctors and other persons practicing any branch of medicine, may also file a complaint (Art. 287 CCP). Therefore, the medical director of the institution could file the complaint.

Civil jurisdiction

Functions of civil liability:

- When damage has already occurred, the person who caused the damage must restore the situation to what it was prior to the unlawful act.
- Preventive: the aim is to act before damage occurs or, if it has already occurred, to prevent it from worsening.

Action for damage

There is a general duty not to harm others, which applies to all persons. In the event of a breach of this duty (in this case, physical or verbal assault on a member of the healthcare team in the course of their duties), the right to claim compensation for the damage caused, for both immediate and indirect consequences, is enabled. Such a claim is made by initiating legal action, known as an action for damage, in civil courts.

What are the requirements/prerequisites for initiating such an action?

- Existence of damage: when a right or interest not prohibited by law is infringed. This consists of the infringement of a lawful interest, whether financial or nonfinancial, which has consequences for spirit or patrimony.
- Causal relationship: There must be an adequate causal link between the event causing the damage and the harmful consequences. The causal relationship determines the perpetrator and the extent of compensation. First, this element links the unlawful act with a specific result (a precedent is elevated to the category of legal cause of damage; to this end, a probability assessment is made, i.e., whether the alleged perpetrator's action or omission was likely to produce, regularly or normally, a result). Second, the extent of compensation should include immediate and foreseeable consequences.
- Unlawful conduct: an action that is not justified under the legal system.
- Attribution factor: This may be based on objective or subjective factors. In the case at hand, we will always refer to the latter, i.e., intent or negligence. The compensation for damage must be full, comprehensive, and fair. The aim is to eliminate the harmful effects of the damaging event as completely as possible, and it consists of restoring things to the state they were in prior to the event. It may be in kind or in cash equivalent.

Who can initiate the action?

- The direct victim.
- If the victim suffers a severe disability or dies, their ascendants, descendants, spouses, and those who live with the injured party and receive ostensible family treatment may claim moral damage.

What will the compensation include?

- Actual damage: the loss/reduction of the victim's assets (including for example, medical, pharmaceutical, transportation, and psychological treatment expenses).
- Loss of earnings: the loss of the objective probability of obtaining an economic benefit. The damage consists of the deprivation of an income that was not obtained. The victim will have to provide precise evidence of the objective probability of obtaining such economic income. This item includes supervening disability.
- Loss of opportunity: frustration of the victim's current and certain possibility that a future event will or will not occur, without knowing whether the damage would occur if it did not occur. The deprivation of such an opportunity may be financial or nonfinancial.
- Influence on personal rights: compensation for the consequences arising from the influence on personal integrity, mental and physical health, and interference with life plans.
- Nonpecuniary consequences - moral damage: injury to a nonpecuniary interest of the victim with consequences of the same nature. What is compensated is the negative change in the spirit.

Evidence

- Burden of proof: As a general principle, whoever alleges/invokes having suffered damage must prove/demonstrate the existence of damage, intent/fault, and causal relationships. Except in those cases where the judge orders the reversal of the burden of the proof (the theory of the dynamic burdens of the proof).
- Means of proof: documentary - informative - expert - testimonial. What is the deadline for bringing an action? In these cases, the claim for compensation for damage arising from civil liability expires three years after the event occurred. Note: In the Province of Buenos Aires, Law 13951 provides for mandatory mediation prior to the commencement of a lawsuit for damages as an alternative method of resolving legal disputes.

Convergence of actions (civil and criminal)

- Autonomy: There is independence in the exercise of civil and criminal actions resulting from the same event. Option: Civil action may be brought jointly with criminal action before the criminal court.
- Criminal proceedings take precedence over civil proceedings: General principle: Civil judgment is suspended until criminal proceedings are concluded if the latter begins first or is attempted while civil action.

Exceptions to the general principle:

Causes for the extinction of criminal proceedings.

If the delay in criminal proceedings effectively frustrates the right to compensation. The civil action for damage is based on an objective factor of liability.

Prevalence of criminal judgment in civil proceedings

Prevalence of issues judged in criminal proceedings on:

- The existence of the main fact (classification and circumstances inherent to it).
- The guilt of the convicted person. Both points are incontrovertible in civil proceedings.

Occupational hazards law 24557 and amendments (lrt) Law 26773

Cases of aggression (physical or verbal) against healthcare personnel, occurring during or in the course of their duties, may be considered work-related accidents and therefore be covered by national regulations on occupational hazards, enabling the compensation scheme provided therein. In this way, we arrive at a full recognition of the constitutional duty not to cause harm, in this case, within the protective framework of labor law (Ministry of Justice and Human Rights, 2012).

What is a work accident (Art. 6 Inc. 1, Law 24557)? (Ministry of Justice and Human Rights, 1995)

It is an event that is as follows:

- Sudden (a rapid event of brief origin) and violent (with the capacity to cause harm).
- That must occur due to the event (linked to the specific performance of the service committed to by the worker) or during work (not arising from the specific performance of the work obligation but rather the occasion of work is a relevant condition/connection surrounding the performance of the service). Work is a risk factor, e.g., an accident while commuting).

According to the above definition, an external attack in the healthcare sector could fall

within the scope of occupational risk regulations.

However, both in doctrine and in national case law, the nature of an accident at work resulting from the actions of a third party outside the workplace is disputed.

Legitimate

Active

All workers in the public sector, whether national, provincial, municipal, or private sector, are covered by occupational risk law. Therefore, such workers are entitled, as direct victims, to file a claim with their ART.

In the event of the worker's death, benefits are granted to the worker's beneficiaries.

Liabilities.

- The occupational risk insurer is directly liable for the benefits.
- The employer may self-insure (under certain requirements), in which case it assumes the obligations established by the LRT.
- An employer who does not join an ART will be directly liable to the beneficiary for the benefits.

What types of benefits are available?

- Benefits in kind: medical and pharmaceutical assistance, prosthetics and orthopedics, and rehabilitation. These are granted until complete recovery or while the incapacitating symptoms persist. They also include professional retraining and funeral services. This list is illustrative and should be interpreted broadly.
- Cash benefits: the amount is determined by calculating the application of age modules, disability percentage, and base income.

Specific legal intervention tools

Agreement on acceptable behavior

In the event of behavior by a patient/family member who is unacceptable to the health institution (physical and/or verbal aggression), the health team may decide to continue providing the service by establishing certain guidelines for conduct as a condition for continuing care.

Agreements on acceptable behavior signed in the healthcare setting are written agreements between a patient/family member and the healthcare team responsible for their care.

They are an effective tool for modifying behaviors that violate the institution's internal regulations and/or national law and infringe on individual and collective rights. They are a useful alternative for conflict resolution.

Healthcare mediation offices are an appropriate setting for addressing conflicts between users, between members of healthcare teams, and between users and healthcare teams. Therefore, these acceptable behavior agreements can be signed within the framework of their work and because of the healthcare mediation process (it should be noted that the mediation tools explained in the previous section will be very useful in reaching such an agreement).

Importantly, the objective of healthcare mediation is infinitely greater than the signing of these agreements.

When is it used?

When patients or their relatives commit acts of physical violence against members of the healthcare team; shouting, insults, signs, gestures, words, or graphics that are capable of disturbing, intimidating, or psychologically undermining a member of the healthcare team; acts of physical violence against healthcare property; or disturbances in any way to the exercise of the healthcare service and/or to other patients.

Preparation process

- The patient/family member must be formally summoned to a meeting to address the situation.
- The meeting is an opportunity to explain and help them understand the impact their behavior has on other people/the system. It is also an opportunity to discuss the terms of the agreement. The meeting should be led by a third party to ensure neutrality and impartiality.
- In the meeting(s) prior to reaching an agreement, mediation tools may be used, such as the rules of reflective teamwork. This creates the possibility for emotions to arise among the parties involved (see the previous section).
- It is important to verify that the patient/family member is competent at the time of signing.
- The meeting must be governed by the principles of confidentiality and should not be structured.
- The patient/family member was informed that the existence of this agreement would be included in the medical records.
- It should not be signed without the consent of all parties. It may be done over several meetings.

What should it include?

- Untolerated/unacceptable behaviors must be clearly stated. E.g.: shouting, threats, insults (the terms should not be numerous).
- The commitments made by all parties must be included, as well as their obligations and rights (seeking symmetry between the parties).
- The direct consequences of noncompliance should be included. For example, they may have discontinued care with the doctor in charge, transferred the patient to another healthcare facility, or always attended the facility accompanied by someone else.
- Period of validity and/or review.
- The wording should be clear and simple.
- Preprinted forms should not be used; the agreement should be adapted to the actual behavior observed.

Legal validity

Under our internal legal system, these are private instruments. Their purpose is deterrent; they do not necessarily form legally binding contracts and therefore cannot be enforced by the courts in the event of noncompliance.

The consequences of noncompliance are immediately applicable, following reliable notification. They may be used as background information, evidence, or evidence in future legal proceedings arising from an assault by the patient/family member on the healthcare team. Importantly, private mediation may be used.

Preventive action

In the event of noncompliance with the agreement, preventive action may be considered. This is appropriate when damage is foreseeable or likely to worsen. The threat of damage and the existence of a certain risk of damage are sufficient (Art. 1711 et seq. CCyC) (Ministry of Justice and Human Rights, 2014).

Templates

A model-acceptable behavior agreement can be found in the appendix to this guide.

International examples of the use of this tool:

- Australia.
- United Kingdom.
- Spain: Healthcare mediation offices have been set up in communities such as Barcelona and Valencia.

Such offenses

Healthcare workers may be affected by such offenses, inaccurate/false or defamatory information (related to the provision of healthcare services or as a result), published in the media and reaching the public.

What rights may be violated by such actions? The right to one's image, honor, dignity, physical and mental integrity, and privacy (human rights of a highly personal nature).

In the event of such a violation, the person directly affected has the right to request a correction/response from the same media outlet.

Discontinuity of care

When there are significant and certain problems for the safety of the healthcare team because of the behavior of a particular patient or their family members (e.g., repeated acts of violence or the agreement on acceptable behavior has not yielded any results), discontinuing healthcare for that patient may be considered.

What rights are exercised?

Right of admission: in the case of private healthcare institutions. The exercise of this right must be a reasonable measure and must not cause irreparable harm. The reasons must be stated, and healthcare services must be guaranteed. Irregular exercise of this right is not permitted.

Exercise of the liberal profession: In the case of a professional who works independently, owing to the nature of their work (no subordination, technical autonomy), they are not obliged to treat everyone.

Before deciding, and if applicable, communicating the cessation of care:

- Confirm that this is a decision agreed upon by the entire healthcare team, including the institution's management. Institutional support is essential.
- The patient's health situation was analyzed. The existence of any certain risk to their mental and physical health prevents the discontinuation of care.
- Analyze the risks, if care is continued, for the rest of the healthcare team and for other patients.
- An analysis of whether continuing care for the patient could lead to a decline in the

high quality of care provided to other patients was performed.

- How to communicate discontinuation:
- In person (it is important to consider how to approach the discussion and train the communicator).
- Formal letter (explain the reasons for discontinuing care, guarantee the patient's right to care and information).

Important precautions when discontinuing care:

- The patient should be referred to another appropriate healthcare center to continue their care. Alternatively, patients may choose where to continue their care.
- Inform patients, in a reliable manner, of the importance of continuing care for their health, as appropriate.
- Provide prescriptions for temporary treatment and inform patients of the care they should receive until they visit another healthcare center.
- The patient's medical records should be provided or automatically sent to the healthcare center to which they are referred.

Background on the issue

Violence in the workplace has become one of the main problems of our time, growing disproportionately in recent years and gaining ground with globalization, having a global impact on occupational risk, and affecting all sectors and categories of workers, especially the health sector, which is at serious risk. Assaults in this sector may account for a quarter of all workplace violence (Vítolo, 2011).

Violence against healthcare professionals is a growing cause for alarm. The estimation of its true extent is complex, given that many of these events are not recorded and that even the most serious events are not usually reported to authorities. Its frequency varies in publications, partly due to the definitions of violence used and the populations evaluated (Kowalenko et al., 2013).

An analysis of attacks on healthcare personnel in Spanish-speaking Latin American countries revealed that this is a frequent problem that generates emotional and occupational consequences and causes a perception of insecurity in the workplace among healthcare professionals. The problem takes on serious dimensions not only because it exposes thousands of people to become victims of aggression but also because it violates fundamental rights to safety in the workplace and because its consequences alter the quality of the service provided and thus affect the public health of the entire population (Travetto et al., 2015).

In Argentina, few studies have evaluated and recognized the factors that determine the situations of aggression to which health professionals are exposed, although it is recognized that a large population of health personnel has experienced this problem. 66,7 % reported assaults. A total of 11,3 % of the assaults were physical. A total of 73,4 % of the cases occurred in public institutions, mainly in emergency areas. In 16,9 % of the cases, sequelae were reported in professionals who were assaulted, with physical assault being significantly associated with a greater risk of sequelae than verbal assault. They concluded that verbal or physical violence toward healthcare personnel was frequent, with the consequences of occupational, psychological, and even physical sequelae (Travetto et al., 2015).

Algieri et al. studied a sample of 362 physicians (52,21 % men), of whom 91,99 % reported

having been assaulted during their work and 8,01 % denied experiencing violence. This study concluded that aggression toward doctors, in all its forms, is a unique occurrence that usually goes unnoticed and takes a toll on the health of professionals. It can lead to adverse events that seriously compromise patient safety and, at the same time, increase healthcare costs. The establishment and development of a safety-based organizational culture should be promoted. One of the substantive aspects is to develop early identification of risks of aggression and/or violence and to act within the system to put barriers in place to prevent them from happening, thus preventing the occurrence of events that are undesirable for everyone (Algieri et al., 2014).

Muñoz Pascual et al. analyzed records of assaults on staff in a health district and a public health institution hospital and reported that doctors reported the most assaults, 34 %, followed by administrative assistants, 15,1 %, and nurses, 13,2 %. Among healthcare centers, hospitals accounted for 41,5 % of violent acts. Among the types of assault, 15,1 % involved shouting and insults to achieve their goal; 13,2 % involved insults and verbal threats; 11,3 % involved shouting and verbal threats; 9,4 % involved shouting, insults, and verbal threats; and 7,5 % involved shouts, insults, verbal threats, and physical assault. The same percentage is obtained for shouting, verbal threats, and damage to facilities. These authors consider that we are dealing with a highly topical issue, possibly due to the media pressure surrounding its consequences and the social alarm that this type of behavior generates (Muñoz Pascual et al., 2008).

A thesis presented by María Betiana Fornasari at the National University of the Littoral Center analyzed the frequency with which 114 workers had experienced situations of violence in health centers with emergency rooms in the city of Paraná. A total of 57,9 % of those surveyed had experienced situations of violence in the workplace. The most frequently recognized aggressors were patients and senior staff, both at 52,6 %. In turn, the most frequent forms of violence were shouting (84,2 %), disrespect (68,4 %), and criticism (57,8 %) of the total violence obtained in the survey. The author concluded that workers in the healthcare institutions studied recognize the presence of manifestations of violence and that, furthermore, the most frequent manifestation is psychological violence. This can have greater repercussions than physical violence, reducing quality of life. The aim is to open more possibilities for study and thus improve interpersonal relationships (Fornasari, 2019) .

A study conducted in the city of Córdoba with a sample of 321 healthcare workers revealed that 62,9 % reported incidents of violence at the institution. Among the violent behaviors, shouting was highlighted as the most common form of violence in the institution, with 65,1 % of respondents reporting it, whereas 55,1 % reported that insults were another form of violence present. The external aggressors most frequently recognized by workers (50,7 %) are family members and/or companions of patients. Among internal aggressors, workers with higher hierarchical status are recognized as agents who generate situations of violence in 54,8 % of cases. Among the main circumstances that lead to situations of violence are the lack of immediate response from the institution, workload, lack of shifts, and delays in care. Verbal defense and physical defense were found to be the most frequent ways in which workers responded to acts of violence. Among the consequences of violence perceived by workers are defensiveness and exhaustion. Among the groups vulnerable to violence in health services recognized by workers, nurses are the most frequently recognized group. Various manifestations of violence at work are frequently present in the health sector, affecting a significant number of workers and constituting a major occupational risk for those who work there, as well as affecting the quality of health care services (Farias, 2010).

A study of healthcare personnel revealed that 91,99 % were assaulted during their work; 51,35 % were verbal, 35,74 % were psychological, 12,91 % were physical, and 40,24 % were combined verbal and psychological attacks. Twenty-eight point forty-five percent reported workplace problems due to their sexual orientation. A total of 88,12 % of respondents feel that their workplace is a risk to their physical and/or psychological integrity, and 95,03 % recognize colleagues who have been mistreated at work (Algieri et al., 2014).

An epidemiological survey of violence against doctors in the workplace in the province of Santa Fe, Argentina, involved 1,134 respondents (62,7 % women). A total of 70,2 % of the respondents reported having experienced at least one episode of workplace violence (VAL). The frequency of events described was 1 event in 15,1 % of the cases (), between 2 and 5 events in 41,1 %, and more than 5 events in 14 %. The type of violence described was verbal in 63,6 % of the cases and physical in 6,5 %. The aggressors described were a patient's family member in 48,1 % of the cases, an unknown patient in 35,9 %, a patient being treated in 18 %, a medical colleague in 17,5 %, a nonmedical coworker in 16,4 %, and other aggressors in 3,9 %. This study concluded that violence against physicians in the workplace is a very common problem and is on the rise, with significant consequences for both physicians and patients. Seven out of the 10 professionals had experienced at least one episode of violence in the past year. Among the characteristics of the physicians surveyed, younger physicians, those with fewer years since graduation, and female physicians were associated with a greater risk of experiencing an episode of violence. In relation to the workplace, on-call duties, regardless of whether they are in the public or private sector, increase the risk of suffering an episode of violence (Criado, 2019).

The studies analyzed show that the effects of aggression vary and depend on the frequency and severity of the episodes and the vulnerability caused by the number of episodes, leading to a deterioration in the quality of care, suffering, and illness among those involved, thus affecting not only the personnel involved but also their families and their environment outside of work. It is therefore important to investigate and analyze the factors involved in the different situations that arise so that timely intervention can be provided.

Statistics show that acts of violence are more common among younger staff and are more common among women. It is also evident that not only are age and gender the factors with the greatest impact on acts of violence, but other variables, such as nationality, place of work, and position held, also influence the likelihood of being a victim of aggression in the workplace (Argentine Society of Pediatrics, 2013).

Importantly, workplace violence is not only perpetrated by patients. Statistics show that patients' family members or companions are the main external aggressors and that workers with greater hierarchical power are the main internal aggressors. Coworkers are also involved in these incidents.

Justification

This topic was selected in response to the reality of the workplace, the aggression to which we are exposed. Many of us have experienced it and have had to deal with it, but owing to a lack of information, we have not known how to respond or how to act in the face of an act of aggression. Wace violence is recognized as a major problem that affects all groups of workers and, to a large extent, healthcare personnel, particularly doctors. According to studies by the International Labor Organization, approximately a quarter of acts of workplace violence occur in this sector.

The healthcare sector is one of the sectors most affected by this problem. Other studies have shown that, globally, approximately 25 % of workplace violence occurs in the healthcare sector, and 50 % of healthcare professionals have been victims of some form of violence.

Every week, a doctor is assaulted in a hospital, and once a week, a doctor is assaulted in the Buenos Aires metropolitan area. The number could be much greater if all assaults were reported. It is very common to hear stories from healthcare personnel about uncomfortable moments and violent reactions by patients, family members, or companions in situations that are often unrelated and beyond the control or ability of healthcare personnel to resolve them, or simply because they disagree with the decision or how healthcare personnel perform their work. or even among coworkers or superiors, especially those in higher positions.

Therefore, this study is of utmost importance, as it will allow us to delve deeper and recognize the situations of aggression to which doctors are exposed, both in public and private institutions in the *Greater Buenos Aires (GBA)*, with the aim not only of providing information to recognize the degree of exposure but also of providing guidance so that problems can be shared and solved without major repercussions, thereby improving quality and individual satisfaction in the workplace. It also aims to set the stage for further research and future studies on the subject.

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