Residência RP Pediátrica
Publicação Oficial da Sociedade Brasileira de Pediatria

REVIEW ARTICLE

Responsibility of the physician on duty

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Keywords:
After-Hours Care.
Ethics, Medical.

Abstract

The author discusses the responsibility of the physician on duty focusing on the major issues of the day - to-day health units .
The physician on duty must always , except for reasons of force majeure, respect their times of entry and exit, never leaving the hospital before the arrival of his replacement colleague.

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Residência Pediátrica 2016;6(suppl 1):13-16.

In Brazil, parents increasingly seek assistance for their children in pediatric emergency rooms, probably because opening hours are more convenient. On the other hand, pediatric clinics are being closed because, among other reasons, they are costly to maintain, compensation from health insurance companies is low, and shift remuneration has improved.

The responsibility of the physician on duty will be discussed by focusing on the major issues regarding this topic in the day-to-day of healthcare units.

The physician on duty should always, except in cases of force majeure, respect his/her clock-in/clock-out times and never leave the hospital before the arrival of the next physician on duty.

Brazilian Code of Medical Ethics, Chapter III, Professional Responsibility, Article 9: *"The physician shall not… Fail to present him/herself to the shift at the pre-established time or abandon it before the arrival of the next physician on duty, except for a justifiable reason. Single clause. In the absence of the next physician on duty, the technical direction of the healthcare unit should arrange for a replacement."*

It should be noted that "justifiable reason" is a serious and accidental event. A "mother's birthday," a "best friend's wedding," among other commonly heard justifications, are not justifiable reasons for missing a shift. In such cases, the physician, with the knowledge and agreement of a direct superior or the management, should find a replacement among the hospital's clinical staff.

Moreover, the physician cannot leave the shift earlier than the check-out time or absent him/herself, even if temporarily, with the justification that "my shift is over". The physician is responsible for the shift from start to finish. By refusing to see a patient, claiming that "the shift is over," in Brazil the physician may be accused of omission and may have to answer for violation of Article 1 of the Code of Medical Ethics if harm is caused.

Brazilian Code of Medical Ethics, Chapter III, Professional Responsibility, Article 1: *"The physician shall not... Cause harm to the patient, by action or* ***omission****, which is characterized as malpractice, recklessness, or negligence. Single clause. Medical responsibility is always personal and cannot be presumed."*

Let us recall that the physician cannot claim, as a reason to leave the shift earlier or not wait for the next physician on duty that he/she has to clock in at another unit, not least because work shifts with little or no interval between them are forbidden by the Brazilian Consolidation of Labor Laws.

Brazilian Consolidation of Labor Laws, Chapter III – On the Duration of Work, Section II – On Work Hours, Article 66: *"Between 02 (two) work shifts there will be a minimum period of 11 (eleven) consecutive resting hours".*

Care should be taken not to delegate medical procedures to members of the team who are not physicians.

Brazilian Code of Medical Ethics, Chapter III, Professional Responsibility, Article 2: *the physician shall not... Delegate to other professionals procedures or responsibilities that are exclusive to the medical profession."*

The physician is responsible for the actions and procedures that he/she has participated in or prescribed.

Brazilian Code of Medical Ethics, Chapter III, Professional Responsibility, Article 3: *"The physician shall not... Fail to take on the responsibility for a medical procedure that he/she has prescribed or participated in, even when several physicians have provided assistance to the patient."*

Brazilian Code of Medical Ethics, Chapter III, Professional Responsibility, Article 4: *"The physician shall not... Fail to take on the responsibility for any professional act that he/she has practiced or prescribed, even if requested or authorized by the patient or the legal representative."*

The physician cannot:

Brazilian Code of Medical Ethics, Chapter III, Professional Responsibility, Article 5: *"The physician shall not... Take on the responsibility for a medical act that he/she has not practiced or participated in."*

Moreover:

Brazilian Code of Medical Ethics, Chapter III, Professional Responsibility, Article 6: *"The physician shall not... Attribute his/her failures to third parties and to occasional circumstances, except in cases where this can be duly proved."*

Even when there is a strike of physicians, a physician working in urgency and emergency departments should ensure the functioning of the department.

Brazilian Code of Medical Ethics, Chapter III, Professional Responsibility, Article 7: *"The physician shall not… Fail to assist patients in urgency and emergency departments, when it is his/her duty, risking the lives of patients, even when supported by a majority of medical workers."*

The physician should always write in a clear and legible manner, and affix his/her full name and the state's Council of Medicine registration number. Moreover, the physician should not leave signed blank documents within reach of third parties.

Brazilian Code of Medical Ethics, Chapter III, Professional Responsibility, Article 11: *"The physician shall not... Prescribe, certificate or issue reports in a secretive or illegible manner, or without including his/her state's Regional Council of Medicine registration number, or sign blank prescriptions, certificates, reports, or any other medical documents."*

One should remember that:

Brazilian Code of Medical Ethics, Chapter III, Professional Responsibility, Article 19: *The physician shall not... Fail to guarantee, when holding a supervisory position or role, the rights of the physicians and the remaining adequate conditions for the ethical practice of medicine."*

The physician on duty, like any other physician, has the duty to preserve medical confidentiality, unless he/she has a

legal obligation or justifiable reasons for disclosure, or has the patient's or legal representative's authorization. The following articles from the Brazilian Code of Medical Ethics state this particular principle:

Chapter IX, Professional Confidentiality, Article 73: *"The physician shall not... Disclose facts that he/she has become aware of in the practice of the profession, unless there is a justifiable reason, legal obligation, or written consent from the patient. Single clause. This prohibition shall still stand: a) even if the fact has been disclosed to the public or the patient has died; b) when the physician deposes as a witness. In this case, the physician shall appear before the authorities and declare his/her impediment; c) in the investigation of an alleged crime, the physician is prevented from revealing confidential information that may expose the patient to criminal proceedings."*

Chapter IX, Professional Confidentiality, Article 74: *"The physician shall not... Reveal professional confidential information regarding a minor patient, even to the parents or legal representatives, provided that the minor has the capacity of judgment, except when not revealing the information leads to harm to the patient".*

Chapter IX, Professional Confidentiality, Article 78: *"The physician shall not... Fail to advise his/her team members and students to respect professional confidentiality and ensure that it is maintained by them."*

The physician, regardless of the conditions of the shift, should write a medical record for each patient.

Brazilian Code of Medical Ethics, Chapter X, Medical Documents, Article 87: *"The physician shall not... Fail to write a legible medical record for each patient. Clause 1. The medical record should contain the clinical data necessary for the follow-up of the case, and should be filled at each patient evaluation, in chronological order, including date, hour, the physician's signature and Regional Council of Medicine registration number. Clause 2. The medical record shall be kept by the physician or the institution where the patient is assisted."*

The medical record should include everything that was done and everything that could not be done for the patient, to prevent the physician from being accused of violating Article 32.

Brazilian Code of Medical Ethics, Chapter V, Relationship with Patients and Family, Article 32: *"The physician shall not... Fail to use all the available scientifically recognized means of diagnosis and treatment in benefit of the patient."*

The physician working in urgency and emergency departments has the obligation to provide reports and certificates. It is not true that "emergency departments do not issue certificates."

Brazilian Code of Medical Ethics, Chapter X, Medical Documents, Article 84: *"The physician shall not... Fail to certify the death of a patient to whom he/she had been providing care, except when there is evidence of violent death."*

Brazilian Code of Medical Ethics, Chapter X, Medical Documents, Article 86: *"The physician shall not... Fail to provide a medical report to the patient or the legal representative when the patient is referred or transferred for the continuation of treatment or in case discharge is requested".*

Brazilian Code of Medical Ethics, Chapter X, Medical Documents, Article 91: *"The physician shall not... Fail to certify acts practiced in the exercise of the profession, when requested by the patient or the legal representative".*

The final part of the deontological section, related to the duty of doing, will deal with the relationship between physicians:

Brazilian Code of Medical Ethics, Chapter VII , Medical Documents, Article 48: *"The physician shall not... Take on a job, position or role to replace a physician who was dismissed or removed in reprisal for an attitude of protection of legitimate movements of the profession or of the application of the present Code."*

Brazilian Code of Medical Ethics, Chapter VII , Medical Documents, Article 49: *"The physician shall not... Act in opposition to legitimate movements of the profession."*

Brazilian Code of Medical Ethics, Chapter VII , Medical Documents, Article 52: *"The physician shall not... Disrespect a patient's prescription or treatment that was established by another physician, even when in a supervisory or auditing role, except in a situation of unquestionable benefit to the patient, in which case he/she should immediately communicate the fact to the physician in charge."*

Brazilian Code of Medical Ethics, Chapter VII , Medical Documents, Article 55: *"The physician shall not... Fail to inform the next physician on duty of the clinical condition of the patients that are under his/her responsibility when replaced at the end of the shift."*

Brazilian Code of Medical Ethics, Chapter VII , Medical Documents, Article 56: *"The physician shall not... Use his/her hierarchical position to prevent his/her subordinates from acting within ethical principles".*

The final part of this article addresses the rights of physicians; emphasis will be placed on the rights that concern physicians on duty.

Brazilian Code of Medical Ethics, Chapter II, Rights of Physicians, III: *"Point out flaws in norms, contracts, and internal practices of the institutions where he/she works when he/she deems these practices unworthy of the exercise of the profession or harmful to him/herself, the patient, or third parties, in which case he/she should contact the competent bodies and, by obligation, the ethics commission and the state's Regional Council of Medicine."*

Brazilian Code of Medical Ethics, Chapter II, Rights of Physicians, IV: *"Refuse to practice his/her profession in a public or private institution where the working conditions are not acceptable or may harm the physician's or the patient's health, as well as that of other professionals. In this case, the physician*

shall communicate immediately his/her decision to the ethics commission and to the Regional Council of Medicine."

Brazilian Code of Medical Ethics, Chapter II, Rights of Physicians, V: *"Suspend his/her activities, either individually or collectively, when the public or private institution for which he/she works does not offer adequate conditions for the exercise of the profession or does not offer acceptable and fair remuneration, except in situations of urgency and emergency, in which case the physician should communicate immediately his/her decision to the Regional Council of Medicine".*

Brazilian Code of Medical Ethics, Chapter II, Rights of Physicians, VIII: *"Decide, under any circumstance and considering his/her experience and professional ability, the time to be allocated to the patient, thus avoiding harm as a result of the accumulation of tasks or consultations."*

Brazilian Code of Medical Ethics, Chapter II, Rights of Physicians, IX: *"Refuse to perform medical acts that, although allowed by law, go against his/her conscience."*

Every time the physician chooses to exercise his/her right, he/she should ensure that patients are not exposed to risk, particularly if he/she is the only physician available.

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