Legal and health variations in drug litigation injunctions granted in Minas Gerais

ABSTRACT

OBJECTIVE: To investigate the factors related to the granting of preliminary court orders [injunctions] in drug litigations.

METHODS: A retrospective descriptive study of drug lawsuits in the State of Minas Gerais, Southeastern Brazil, was conducted from October 1999 to 2009. The database consists of 6,112 lawsuits, out of which 6,044 had motions for injunctions and 5,167 included the requisition of drugs. Those with more than one beneficiary were excluded, which totaled 5,072 examined suits. The variables for complete, partial, and suppressed motions were treated as dependent and assessed in relation to those that were independent – lawsuits (year, type, legal representation, defendant, court in which it was filed, adjudication time), drugs (level five of the anatomical therapeutic chemical classification), and diseases (chapter of the International Classification of Diseases). Statistical analyses were performed using the Chi-square test.

RESULTS: Out of the 5,072 lawsuits with injunctions, 4,184 (82.5%) had the injunctions granted. Granting varied from 95.8% of the total lawsuits in 2004 to 76.9% in 2008. Where there was legal representation, granting exceeded 80.0% and in lawsuits without representation, it did not exceed 66.9%. In public civil actions (89.1%), granting was higher relative to ordinary lawsuits (82.8%) and injunctions (80.1%). Federal courts granted only 68.6% of the injunctions, while the state courts granted 84.8%. Diseases of the digestive system and neoplasms received up to 87.0% in granting, while diseases of the nervous system, mental and behavioral disorders, and diseases of the skin and subcutaneous tissue received granting below 78.6% and showed a high proportion of suspended injunctions (10.9%). Injunctions involving paroxetine, somatropin, and ferrous sulfate drugs were all granted, while less than 54.0% of those involving escitalopram, sodium diclofenac, and nortriptyline were granted.

CONCLUSIONS: There are significant differences in the granting of injunctions, depending on the procedural and clinical variances. Important trends in the pattern of judicial action were observed, particularly, in the reduced granting [of injunctions] over the period.

DESCRIPTORS: Pharmaceutical Preparations, supply & distribution. Pharmaceutical Services, legislation & jurisprudence. Judicial Decisions. Patient Advocacy.
Defining the judiciary’s role is one of the greatest challenges of democratic societies. It is a difficult and controversial task to identify the limits of judicial activity, especially in its control over political activity.2,5,7 This task has become increasingly more intricate due to the proactivity of the judiciary in guaranteeing the efficacy of social rights. This new position has expanded the horizons of judicial action, reconfigured relations between the different branches of government, and destabilized the structures that once served to steer the checks and balances system in the judiciary.12,a

Judicial proactivity in Brazil has gained prominence in the healthcare industry. Over 240,000 lawsuits for health benefits were in progress in 2011, which contributes to the exponential growth of expenditure and indicates that the judiciary is determined to play a prominent role in the process of guaranteeing the right to health.

Petitioning for medicines via the judiciary represents the principal means by which the constitutional right to health is exercised. Consequently, this method presents itself as one of the factors that can influence the interpretation of the National Policy on Drugs. The change in the performance of pharmaceutical assistance for the implementation of this policy was recently directed to the expanding of the concept of essential

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a Cappelletti M. Juízes legisladores? Porto Alegre: Fabris; 1993.
drugs, culminating in the inclusion of several drugs in the essential drugs list in force (RENAME – 2013) in order to universalize the availability of drugs according to growing demands.\textsuperscript{b,e,d}

Because of this major role, several issues arise, which control the effects of judicial intervention. While the judiciary is appointed as the last resort for those who do not receive the necessary health care guaranteed by the State, judicial action often has negative effects on the development of the health system (e.g., irrational spending) and may eventually harm patients seeking legal protection (e.g., cases of lawsuits that determine the delivery of multiple drugs whose combined use results in drug interactions, causing adverse reactions and endangering patients’ health).\textsuperscript{3,4,9,13}

Injunction motions are among the key aspects of this phenomenon. Under Article 273 of the Code of Civil Procedure, this procedural tool seeks to anticipate the motion made in court, where delaying the verdict can jeopardize the right being claimed. Thus, the granting of injunction does not require a definitive proof of the existence of a right, but requires the plaintiff to prove that the delay in deciding endangers the right being claimed (\textit{periculum in mora}).

In case of legalization of health, this application is very common, and most of the suits receive favorable decision. The high rate of granting has been problematized in several studies and concludes by questioning the limits to use such an instrument in suits, which seeks access to medicines.\textsuperscript{6,8} It is important to acknowledge that injunctions may be essential to ensure a patient’s right to an emergency situation. However, some features of this procedural tool – urgency, plausibility of the claims, and provisional decision – can be decisive in the disorganization of the health system and increasing the use of drugs without sufficiently documented scientific evidence.\textsuperscript{3}

Despite emphasizing the injunction motions in investigations dealing with the legalization of health, especially with regard to the developments in drug policy management and to promote rational use of granting, one cannot find studies with a specific approach on the use of this procedural tool [injunction] in drug suits.\textsuperscript{4} This absence precludes an understanding of the fundamentals that guide the magistrate in the decision-making process of the injunctions and prevents her from reaching further clarity about the balanced use of such an instrument.

This study aims to investigate the factors related to granted injunctions in the health care industry.

**METHODS**

A retrospective descriptive study based on the data obtained from administrative files related to lawsuits for drugs in the state of Minas Gerais, Southeastern Brazil, was conducted from 1999 to 2009 October.

Data were collected from the personnel of the State Secretariat of Health of Minas Gerais, between February and November 2009, by researchers of the Grupo de Pesquisa em Economia da Saúde (GPES – Health Economics Research Group) of Universidade Federal de Minas Gerais (UFMG). A pretested questionnaire, on completed or ongoing court proceedings, was presented to the administrative personnel. The information obtained was stored in a database by using Microsoft Office Access 2007\textsuperscript{8}, including 6,112 lawsuits in total. Among these, 6,044 had motions for injunction filed and 5,167 were petitions for drugs. Cases with more than one beneficiary were excluded because of the difficulty to establish unambiguous association in those with more than one patient, and consequently, several drugs. During screening, 5,072 cases (83.0% in total) were selected with reference to 6,237 diseases and 9,932 drugs.

Associations for the descriptive analysis were established using database management system (DBMS) MySQL 5.1.41, and the rest of the primary analyses were performed using Microsoft Office Excel 2007\textsuperscript{8}.

The dichotomous variables related to total, partial, and suppressed injunctions were treated as dependent. Due to the unknown distribution of each variable, Pearson’s Chi-squared test was performed with Yates continuity correction ($p < 0.05$), reporting only the statistically significant variables. Independent variables were described in terms of the distribution of relative and absolute frequency. Independent variables were the beneficiary (gender, legal representative), case (year, type of lawsuit, legal representation, defendant, type of court filed with, time of adjudication, the district of prosecution, judiciary department), drugs by chemical substance pursuant to level five of the Anatomical Therapeutic Chemical (ATC), disease (according to Ministério da Saúde. Secretaria de Políticas de Saúde. Departamento de Atenção Básica. Política nacional de medicamentos. Brasília (DF); 2001.

\textsuperscript{4} Decreto n° 7.508, de 28 de junho de 2011. Regulamenta a Lei n° 8.080, de 19 de setembro de 1990, para dispor sobre a organização do Sistema Único de Saúde - SUS, o planejamento da saúde, a assistência à saúde e a articulação interfederativa, e dá outras providências. Diário Oficial Uniao. 29 Jun 2011:1.

\textsuperscript{5} Ministério da Saúde. Portaria n° 533, de 28 de março de 2012. Estabelece o elenco de medicamentos e insumos da Relação Nacional de Medicamentos Essenciais (RENAME) no âmbito do Sistema Único de Saúde (SUS). Diário Oficial Uniao. 29 Mar 2012.

\textsuperscript{6} Torres IDC. Judicialização do acesso a medicamentos no Brasil: uma revisão sistemática [MA dissertation]. Salvador: Universidade Federal da Bahia; 2013.
to chapter of the International Classification of Diseases – ICD-10), and medical document (prescription and/or medical report). Statistical analyses were performed using R project version 2.14.1 and OpenEpi version 3.01 software.

Ethical aspects and confidentiality of the study were guaranteed. This study was a part of the “Impacto das ações judiciais na política nacional de assistência farmacêutica: gestão da clínica e medicalização da justiça” (Impact of lawsuits on the national pharmaceutical care policy: clinical management and the medicalization of justice), and the “Avaliação de cobertura, acesso e qualidade da assistência farmacêutica, garantidas pelas decisões judiciais em Minas Gerais” (Evaluation of the coverage, access, and quality of pharmaceutical care, guaranteed by the decisions of the courts in the State of Minas Gerais). The project was approved by the Ethics Committee of Universidade Federal de Minas Gerais (Opinion of the ETIC 292/08, dated September 24, 2008).

RESULTS

Table 1 shows the distribution of the proportion of injunction motions granted in the specified course of time, according to the procedural variables, judicial representation, type of claim, defendant, and court in which the claim was filed. Out of the 5,072 injunction motions selected, 4,052 (79.9%) were fully granted and 132 (2.6%) were partially granted, totaling 4,184 (82.5%). By excluding the initial years (1999-2002) because of less occurrence, the granting of injunctions varied from 95.8% in 2004 to 76.9% in 2008, considering that the defendant could seek to reverse the decision by filing an appeal with the court thereafter. Table 1 shows that by 2003, the appeals did not result in suspension and in 2007 – the year with the highest number of suspended injunctions – approximately 10.0% of the granted motions in the first instance were reversed by the Court. Although, the data analyzed show the number of suspended injunctions, but do not indicate the number of appeals filed thereafter.

Table 2 shows the proportion of granted injunctions in cases with and without representation by legal counsel. All cases without legal representation were found in ordinary lawsuits, representing 14.4% present in this type of lawsuit. The ability to appeal the judiciary independent of having an attorney is an exception in the Brazilian legal system, established in Article 9 of Law 9,099/95 as well as in Article 10 of Law 10,259/2001. In cases where legal representation was involved, the proportion of acceptance was above 80.0%, more than the lawsuits filed without legal representation, which did not exceed 66.9% of the approvals. Despite lower acceptance rates, injunctions petitioned without the aid of a legal counsel, where they were granted, were in most cases confirmed after appeal. The cases in which there was legal representation, petitions made by public defenders achieved greater success (86.9% granted) and the acceptance rate of the injunctions requested by the center for legal assistance (84.6%) exceeded the motions moved by private attorneys (82.7%). The granting of injunctions filed in public civil actions (89.1%) was superior to those recorded for ordinary lawsuits (82.8%) and writs of mandamus (80.1%). However, the suspension of the injunctions in public civil action was 3.1% higher than that in ordinary actions, and 6.4% higher when compared with the writs of mandamus. The Federal Courts granted only 68.6% of the injunctions, whereas the State Courts granted 84.8%.

Table 3 shows the time required for a decision on a motion for injunction in the first instance. Out of 5,072 injunction motions, 48.2% were decided within a week and 70.0% within 30 days. The time between the date of the motion and decision interfered in the results of the injunction with proportionately greater acceptance for motions granted in very short period of time.

Although there were 6,237 diagnoses in total, covering 450 different diseases, most cases (85.9%) reported only one diagnosis, varying from one to twelve. As seen in Table 4, digestive system diseases and neoplasms showed a high rate of occurrence (over 87.0%) and diseases of the nervous system, mental and behavioral disorders, and diseases of the skin and subcutaneous tissue received granting below 78.6% and also showed a high proportion of suspended injunctions (10.9%). However, there was a similar proportion of suspended injunctions in the diseases related to blood and blood-forming organs as well as in some immune disorders (n = 48) that obtained 98.0% of acceptance. The diseases in Chapter XX of the ICD-10, referring to the external causes of morbidity and mortality (V01 to Y98), were not claimed. There was no significant difference between the approval process of cases involving just one disease and those with multiple illnesses.

The comparison of acceptance proportion from the area of filing (capital or inland) indicated greater acceptance in the counties of the capital. A difference in acceptance rates was also observed in different judicial sectors. The analysis from the judicial sectors showed 20.8% variation among sectors, with Uberlândia recording the lowest percentage of acceptance (72.6%.

1 Ministério da Ciência e Tecnologia; Conselho Nacional de Desenvolvimento Científico e Tecnológico; Ministério da Saúde. Edital MCT/CNPq/MS-SCTIE-DESC/CT-Saúde 33/2007. Brasília (DF); 2007.
2 O setor judiciário é uma divisão administrativa que consiste no agrupamento de comarcas de uma mesma região. Tribunal de Justiça de Minas Gerais [cited 2014 Mar 10]. Available from: http://tj-rmg.justica.inf.br
of 489 injunctions) and Divinópolis with the highest percentage of acceptance (93.4% of 274 injunctions).

Only one drug had been suits filed against in 68.9% of motions, while in 96.1% of cases, up to eight were filed suit against. A single case had up to 27 drugs filed suit against. Ultimately, 9,932 medicines representing 699 different drugs were recorded. The medicines with the highest numbers of lawsuits filed against were adalimumab (362, 83.7% of acceptance), etanercept (289, 77.2% of acceptance), and suporte nutricional (nutritional support – 237, 77.2% of acceptance). The drugs paroxetine (31), somatropin (26), and ferrous sulfate (19) received 100% acceptance. Escitalopram (28), sodium diclofenac (23), and nortriptyline (18) received less than 54.0% of the suits accepted. The anatomical group P (antiparasitic products, insecticides, and repellents) had the lowest rate of acceptance (71.4%), but in none of the cases were the injunctions for this group of drugs suspended. The anatomical group H (systemic hormonal preparations, excluding sexual hormones and insulin) was not surpassed and had 85.7% of injunction motions granted preliminary. The presence of other items, along with drug petitions did not significantly alter the proportion of acceptances; however, they were 11.7% higher when the prescription was attached to the motion (n = 4,719), 5.6% higher with medical report attached (n = 4,051), and 2.7% higher in motions with a

| Table 1. Annual distribution of granted injunctions. Minas Gerais, Southeastern Brazil, 1999-2009. |
|-----------------------------------------------|
| **Year**          | **Motion Granted** | **Partially granted** | **Total** | **Suspended** |
|                  | **N** | **n** | **%** | **n** | **%** | **n** | **%** | **n** | **%** |
| 1999a             | 2     | 2    | 100.0 | 0    | 0.0  | 2    | 100.0 | 0    | 0.0  |
| 2000              | 8     | 6    | 75.0  | 0    | 0.0  | 6    | 75.0  | 0    | 0.0  |
| 2001              | 3     | 3    | 100.0 | 0    | 0.0  | 3    | 100.0 | 0    | 0.0  |
| 2002              | 6     | 5    | 83.3  | 0    | 0.0  | 5    | 83.3  | 0    | 0.0  |
| 2003              | 49    | 41   | 83.7  | 0    | 0.0  | 41   | 83.7  | 0    | 0.0  |
| 2004              | 121   | 115  | 95.0  | 1    | 0.8  | 116  | 95.8  | 4    | 3.4  |
| 2005              | 368   | 337  | 91.6  | 5    | 1.4  | 342  | 93.0  | 9    | 2.6  |
| 2006              | 770   | 669  | 86.9  | 16   | 2.1  | 685  | 89.0  | 39   | 5.7  |
| 2007              | 1,231 | 987  | 80.2  | 51   | 4.1  | 1,038| 84.3  | 97   | 9.3  |
| 2008              | 1,534 | 1,138| 74.2  | 41   | 2.7  | 1,179| 76.9  | 100  | 8.5  |
| 2009b             | 980   | 749  | 76.4  | 18   | 1.8  | 767  | 78.2  | 20   | 2.6  |
| **Total**         | 5,072 | 4,052| 79.9  | 132  | 2.6  | 4,184| 82.5  | 271  | 5.3  |

* October to December.

b January to October.

| Table 2. Distribution of granting according to procedural variables. Minas Gerais, Southeastern Brazil, 1999-2009. |
|-----------------------------------------------|
| **Procedural variable** | **Motion Granted** | **Partially granted** | **Total** | **Suspended** |
|                  | **N** | **n** | **%** | **n** | **%** | **n** | **%** | **n** | **%** |
| Legal representative of the beneficiary | | | | | | | | | |
| Legal attorney             | 2,807 | 2,273 | 81.0 | 48   | 1.7  | 2,321| 82.7  | 162  | 7.0  |
| Public defender            | 1,175 | 971   | 82.6 | 50   | 4.3  | 1,021| 86.9  | 73   | 7.1  |
| Center for legal Assistance | 188   | 151   | 80.3 | 8    | 4.3  | 159  | 84.6  | 9    | 5.7  |
| Without representation    | 511   | 324   | 63.4 | 18   | 3.5  | 342  | 66.9  | 4    | 1.1  |
| Not informed               | 391   | 333   | 85.1 | 8    | 2.1  | 341  | 87.2  | 23   | 6.7  |
| Claim filed                | | | | | | | | | |
| Public civil action        | 284   | 242   | 85.2 | 11   | 3.9  | 253  | 89.1  | 26   | 10.3 |
| Ordinary action            | 3,312 | 2,640 | 79.7 | 103  | 3.1  | 2,743| 82.8  | 198  | 7.2  |
| Writ of mandamus           | 1,443 | 1,139 | 78.9 | 18   | 1.2  | 1,157| 80.1  | 45   | 3.9  |
| Other                      | 33    | 31    | 93.9 | 0    | 0.0  | 31   | 93.9  | 0    | 0.0  |
| Defendant                  | | | | | | | | | |
| State only                 | 3,528 | 2,890 | 81.9 | 72   | 2.0  | 2,962| 83.9  | 209  | 7.1  |
| More than one defendant    | 1,544 | 1,162 | 75.3 | 60   | 3.9  | 1,222| 79.2  | 62   | 5.1  |
| Filing court               | | | | | | | | | |
| Federal                    | 707   | 460   | 65.1 | 25   | 3.5  | 485  | 68.6  | 8    | 1.1  |
| State                      | 4,365 | 3,592 | 82.3 | 107  | 2.5  | 3,699| 84.8  | 263  | 6.0  |
| Total                      | 5,072 | 4,052 | 79.9 | 132  | 2.6  | 4,184| 82.5  | 271  | 5.3  |
Table 3. Distribution of the granting of injunctions according to the time for decision. Minas Gerais, Southeastern Brazil, 1999-2009.

| Time                | Motion | Granted | Partially granted | Total |
|---------------------|--------|---------|-------------------|-------|
|                     | n      | %       | n      | %    | n     | %    |
| Up to 1 day         | 266    | 5.2     | 250    | 93.9 | 2     | 0.8  |
| Up to 1 week        | 2,180  | 43.0    | 1,950  | 89.4 | 3     | 0.1  |
| Up to 30 days       | 1,054  | 20.8    | 894    | 84.9 | 3     | 0.2  |
| Over 30 days        | 978    | 19.3    | 772    | 78.9 | 4     | 0.4  |
| Date unknown        | 594    | 11.7    | 186    | 31.2 | 120   | 20.3 |
| Total               | 5,072  | 100.0   | 4,052  | 100.0| 132   | 100.0|

was accompanied by a consensus on the need to create focused interagency structures in order to provide technical assistance to the magistrates, which, in turn, could constitute the basis for greater judicial rigor, pursuant to Recommendation 31 of the National Council of Justice (CNJ). However, one still needs to perform specific tests to check whether the proportional decrease in the deferrals was the result of greater rigor, and if it was, would there be a relationship between greater rigor and imposition of more secure and cost-effective benefits. In the case of Minas Gerais, the CNJ’s recommendation encouraged the creation, in December 2010, of the State Executive Committee for Health, which, in turn, developed partnership between the Court of Minas Gerais and the Center for Health Technology Assessment of UFMG’s Hospital das Clínicas. Since 2010, this partnership has provided the magistrates the technical documentation to assist them in their decisions when assessing clinical issues presented in lawsuits involving health care. In 2014, the partnership also began to assist in actions involving supplementary health care. Since the database of this study contained lawsuits from 1999 to 2009, the introduction of expert opinion in the evaluation of the actions did not contemplate a sensitive variable.

The time required to grant the injunctions is an important indicator to portray the extent to which health care claims are treated as emergencies by the judiciary. This study reinforces the results achieved by other studies by showing that, in most cases, the approval occurred within 30 days, and a considerable proportion of the motions were granted within a week. However, we still need to investigate whether the perception of urgent health care assessed by the judiciary is supported by scientific standards, especially after the creation of institutional technical support structures. As for the relationship between the time and proportion of motions attended to, those that were decided in lesser
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Periods showed the highest proportion of approvals. This finding indicates the need to verify the existence of the association between the time of acceptance and the effective provision of technical assistance.

The prevalence of chronic diseases observed is similar to the findings of other studies. There was no uniformity of approval when cases were analyzed on the basis of the diagnosed diseases. The trend indicates that the court’s decision is sensitive to the potential risk to the patient. The need for quicker treatment in order to achieve the best treatment or the possibility of a cure may have influenced the formation of an emergency; the diseases related to blood and blood-forming organs were superior in their approvals to cases involving chronic diseases or long-term treatments, such as skin diseases and mental disorders. It is conjectured that the financial impact of treatment may have touched the judges as well, since diseases, which initially do not involve emergencies, but then require very expensive treatment at later stages, showed approvals similar to those with imminent risk.

Table 4. Distribution of the results of injunctions related to disease classified by WHO/ICD-10. Minas Gerais, Southeastern Brazil, 1999-2009.

| Disease according to chapter of ICD-10 | Motion | Granted | Partially granted | Total | Suspended |
|--------------------------------------|--------|---------|------------------|-------|-----------|
|                                      | N      | n       | %                | n     | %         | n       | %     |
| D50-D89 III Diseases of the blood and blood-forming organs, and certain immune disorders | 48     | 44      | 91.7             | 3     | 6.3       | 47      | 98.0  | 5     | 10.4  |
| XVI P00-P96 Certain conditions originating in the perinatal period | 14     | 13      | 92.9             | 0     | 0.0       | 13      | 92.9  | 0     | 0.0   |
| XI K00-K93 Diseases of the digestive system | 323    | 284     | 87.9             | 5     | 1.5       | 289     | 89.4  | 8     | 2.5   |
| XVII Q00-Q99 Congenital malformations, deformations and chromosomal abnormalities | 60     | 50      | 83.3             | 3     | 5.0       | 53      | 88.3  | 2     | 3.3   |
| II C00-D48 Neoplasms [Tumors] | 495    | 428     | 86.5             | 3     | 0.6       | 431     | 87.1  | 30    | 6.1   |
| XIX S00-T98 Injury, poisoning, and certain other consequences of external causes | 53     | 39      | 73.6             | 7     | 13.2      | 46      | 86.8  | 9     | 17.0  |
| X J00-J99 Diseases of the respiratory system | 234    | 190     | 81.2             | 12    | 5.1       | 202     | 86.3  | 15    | 6.4   |
| XIV N00-N99 Diseases of the genitourinary system | 151    | 117     | 77.5             | 12    | 7.9       | 129     | 85.4  | 7     | 4.6   |
| XV O00-O99 Pregnancy, childbirth, and puerperium | 13     | 11      | 84.6             | 0     | 0.0       | 11      | 84.6  | 0     | 0.0   |
| IX I00-I99 Diseases of the circulatory system | 626    | 481     | 76.8             | 38    | 6.1       | 519     | 82.9  | 23    | 3.7   |
| III A00-B99 Certain infectious and parasitic diseases | 174    | 142     | 81.6             | 2     | 1.1       | 144     | 82.7  | 11    | 6.3   |
| IV E00-E90 Endocrine, nutritional, and metabolic diseases | 680    | 543     | 79.9             | 19    | 2.8       | 562     | 82.7  | 35    | 5.1   |
| XIII M00-M99 Diseases of the musculoskeletal system and connective tissue | 887    | 714     | 80.5             | 18    | 2.0       | 732     | 82.5  | 62    | 7.0   |
| VII H00-H59 Diseases of the eye and adnexa | 139    | 111     | 79.9             | 1     | 0.7       | 112     | 80.6  | 6     | 4.3   |
| VI G00-C99 Diseases of the nervous system | 407    | 293     | 72.0             | 27    | 6.6       | 320     | 78.6  | 10    | 2.5   |
| V F00-F99 Mental and behavioral disorders | 481    | 363     | 75.5             | 9     | 1.9       | 372     | 77.4  | 20    | 4.2   |
| XVIII R00-R99 Symptoms, signs, and abnormal clinical and laboratory findings not classified elsewhere | 48     | 36      | 75.0             | 1     | 2.1       | 37      | 77.1  | 4     | 8.3   |
| XXI Z00-Z99 Factors influencing health condition and contact with health services | 30     | 23      | 76.7             | 0     | 0.0       | 23      | 76.7  | 0     | 0.0   |
| VIII H60-H96 Diseases of the ear and mastoid process | 4      | 3       | 75.0             | 0     | 0.0       | 3       | 75.0  | 0     | 0.0   |
| XII L00-L99 Diseases of the skin and subcutaneous tissue | 156    | 113     | 72.4             | 2     | 1.3       | 115     | 73.7  | 17    | 10.9  |
| CID not specified or invalid | 931    | 931     | 76.7             | 42    | 3.2       | 973     | 79.9  | 68    | 5.6   |
| Total | 6,237  | 4,929   | 79.0             | 204   | 3.3       | 5,133   | 82.3  | 333   | 5.3   |
2009 in the Supreme Court indicate a pattern by the judiciary toward the greater acceptance of individual claims, given that the financial impact of the judicial action would not be as evident as that in class actions. Even with 10.0% of the revoked injunctions, the public civil actions remained ahead of other types of actions in terms of acceptance proportion. However, in some cases, public civil actions are managed to ensure individual rights, and it would therefore not be appropriate to assume them to always be collective. As for this aspect, in spite of Law 7,347/1985 (regulates the public civil action), establishing that it should handle cases involving collective or diffuse interests, the courts, including the High Court of Justice (precedent: RESP 931,513/RS, RESP 819,010/SP and AgRg no RESP 1328270/MG), consolidated the possibility of using the action in drug claims for a single citizen, particularly in cases of “protection by the court of hyper-vulnerable interests” (RESP 931,513/RS).

The discrepancy in approval observed from the comparison between the lawsuits filed in Federal and State Courts indicate the need for studies that seek to identify, for each justice (State and Federal), the differences in training judges, especially with regard to health law or which propose to evaluate the distinctions related to the quality of the institutional structures created to provide technical support to the judges.

Pepe et al8 evaluated the decisions of court injunctions in the State of Rio de Janeiro, Southeastern Brazil. The authors suggested an almost absolute trend of acceptance in the actions that petitioned for drugs. In this study, we found a maximum approval of 85.7%, with less than 70.0% acceptance near or distant from an absolute granting for the same. Considering some diseases individually, approval is almost absolute; as is the case of diseases related to the blood and blood-forming organs as well as some immune disorders in which the proportion of granting reached 98.0%. These results suggest specific differences in the treatment of injunctions. The variation of acceptance in different

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### Table 5. Requested medication according to ATC/WHO Classification. Minas Gerais, Southeastern Brazil, 1999-2009.

| Anatomical level | Motion | Granted | Partially granted | Total | Suspended by appeal to the Court |
|------------------|--------|---------|-------------------|-------|----------------------------------|
|                  | N      | n      | %                 | n     | %                               | n     | %       |
| H – Systemic hormonal preparations, excluding sex hormones and insulin | 328    | 269    | 82.0              | 12    | 3.7                             | 281   | 85.7    | 17     | 5.2    |
| J – General anti-infectives for systemic use | 375    | 309    | 82.4              | 9     | 2.4                             | 318   | 84.8    | 26     | 6.9    |
| L – Antineoplastic and immunomodulating agents | 1,800  | 1,494  | 83.0              | 23    | 1.3                             | 1,517 | 84.3    | 131    | 7.3    |
| B – Blood and blood-forming organs | 579    | 444    | 76.7              | 42    | 7.3                             | 486   | 84.0    | 26     | 4.5    |
| R – Respiratory system | 482    | 380    | 78.8              | 25    | 5.2                             | 405   | 84.0    | 26     | 5.4    |
| A – Digestive System and Metabolism | 1,518  | 1,167  | 76.9              | 81    | 5.3                             | 1,248 | 82.2    | 66     | 4.3    |
| D – Dermatological Drugs | 125    | 91     | 72.8              | 11    | 8.8                             | 102   | 81.6    | 7      | 5.6    |
| G – Urogenital system and sex hormones | 279    | 214    | 76.7              | 10    | 3.6                             | 224   | 80.3    | 12     | 4.3    |
| V – Various | 339    | 252    | 74.3              | 16    | 4.7                             | 268   | 79.0    | 8      | 2.4    |
| C – Cardiovascular system | 1,467  | 1,003  | 68.4              | 154   | 10.5                            | 115   | 78.9    | 72     | 4.9    |
| N – Nervous System | 1,935  | 1,383  | 71.5              | 115   | 5.9                             | 1,498 | 77.4    | 80     | 4.1    |
| S – Sense organs | 215    | 156    | 72.6              | 4     | 1.9                             | 160   | 74.5    | 6      | 2.8    |
| M – Musculoskeletal System | 333    | 213    | 64.0              | 30    | 9.0                             | 243   | 73.0    | 27     | 8.1    |
| P – Antiparasitic products, insecticides, and repellents | 21    | 15     | 71.4              | 0     | 0.0                             | 15    | 71.4    | 0      | 0.0    |
| Not specified or invalid | 136    | 89     | 65.4              | 4     | 2.9                             | 93    | 68.3    | 4      | 2.9    |
| Total | 9,932  | 7,479  | 75.3              | 538   | 5.4                             | 8,017 | 80.7    | 508    | 5.1    |

ATC: Anatomical Therapeutic Chemical; WHO: World Health Organization.
anatomical groups of the ATC indicates that some treatments may influence the court’s decision.

We observed the exploratory character of the statistical method chosen to establish the differences between the groups. Although the number of evaluated cases was lower in the early years and demanded correction of continuity, the approach to the whole period adds representativeness to the study of the phenomenon. Given the results, in-depth statistical analyses should be prepared to make specific comparisons and enable further knowledge on the elements that influence the outcome of judicial decisions. Important trends in the standard of judicial performance were observed in procedural variables (court of filing, legal representation, time between motion and decision), clinical (disease and drug), and particularly with respect to the change in the performance standard in the study period. These results will allow us to obtain a fresh perspective of the legalization of health, as it is from the identification and understanding of the elements that determine judicial decisions that one can more clearly identify the extent to which judicial actions can help to expand the State’s capacity to meet the real health care needs of the population.

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