

GERMÁN ALBERTO CUBILLOS GUZMÁN

Universidad Libre Bogotá, Colombia

OBJECTIVE RESPONSIBILITY FOR HOSPITAL-ACQUIRED INFECTIONS: BETWEEN PREVENTION AND THE REALITIES OF A DEVELOPING COUNTRY

Abstract:

The appearance and the growth of the hospital-acquired infections in developing countries like Colombia, mean some risks that are currently part of the daily work and activities in clinics or hospitals. These kinds of things or actions are considered to be dangerous for the risk that involves the patient care. The Colombian Council of State has modified its jurisprudence in order to recently consider that could be a risk factor to attribute medical and hospital responsibility because from physical point of view, medical activity is dangerous not only for the use of medical instruments and machines, but for the patient organism is subjected to a lot of risks for the simple fact when in the medical activity do a treatment.

Colombian law does not have a regulatory framework aimed at adjustment dangerous activities, therefore the existence of a single article in the Civil Code has generated the doctrinal and jurisprudential source of the public liability regime. Such development as a part of Art. 2356 of the Code, if even no nouns the responsibility for dangerous activities, allows deduce that the existence of the special set of rules different at the Art. 2341 relative to general system of proven guilt.

This presentation will stablish the variables on the exceptional regulatory regime for the dangerous activities and how its lack of clarity, have generated inaccuracy in Council State interpretation. As in Colombia among others Latin American countries, it has been established that in cases of dangerous activities a presumption of guilt must be applied and in other cases it has been expressed that it must be a presumption of responsibility, this has created a jurisprudential change, because High Court assumed the presumption of guilt with the elements of a true presumption of responsibility and vice versa.

Moreover, this account will describe the results of a study about hospital-acquired infections, assessing the guilty concept as an element to configure responsibility. The interpretation of the State Council will be analyzed within the framework of the objective responsibility of clinics and hospitals for hospital-acquired infections, it has been discussions in the hospital sector, insurance company and professional associations, as well as Infectology Association, which has been in disagreement with the Jurisprudential position assumed for the High court. All of this, from a risks of hospital-acquired infections point of view, the duty of prevention of the hospital agent and the socio-economic challenges that underlie developing countries.

Keywords:

Hospital-acquired infections; Legal responsability; insurance company

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