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REVISTA IBERO-AMERICANA DE SAÚDE E ENVELHECIMENTO  
REVISTA IBERO-AMERICANA DE SALUD Y ENVEJECIMIENTO

**HEALTH LAWSUITS:  
VIEW OF A BRAZILIAN TOWN**

**JUDICIALIZAÇÃO DA SAÚDE:  
PANORAMA DE UM MUNICÍPIO BRASILEIRO**

**JUDICIALIZACIÓN DE LA SALUD:  
PANORAMA DE UN MUNICIPIO BRASILEÑO**

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## ABSTRACT

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**Objectives:** Analyze health lawsuit processes related to civil rights violation of elderly people in view to requests of pharmacological treatment.

**Methods:** Qualitative as well as quantitative, descriptive, retrospective and documental study. Descriptive, percentage frequency and of the assumptions of the thematic contents. All ethical principles have been applied. Processes referred to 2016 and 2017 were investigated from data base registers from the local general attorney office, in 2018, in Araraquara town, São Paulo, Brazil.

**Results:** The referred town has approximately 250 thousand inhabitants from which 16% are elderly. Among all 536 processes, 257 (48%) referred to requests for pharmacological treatment; 211 (82.1%) for medications, and 46 (17.9%) for medications and additional materials such as food supplies and others. Women related processes (141; 54.9%) resulted in larger number as compared to the corresponding men quantity of processes (116; 45.1%). The median age was 73 years for both genders, mostly married and with 4 years of schooling. The requested medications are related to treatment for: diabetes mellitus, systemic arterial hypertension, neoplasms and macular degeneration.

**Conclusion:** The elderly health guarantee system is fragile. Actions that can strengthen and enhance the present health system should be implemented as indicated by the World Health Organization: aligning actions and levels of health care, developing long-term care actions and investing in creating more favorable environments; controlling and monitoring.

**Keywords:** Aging; Civil Rights; Legal Services.

## RESUMO

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**Objetivos:** Analisar os processos judiciais referentes à violação dos direitos civis da pessoa idosa, com vista às solicitações de tratamento farmacológico.

**Métodos:** Estudo qualitativo e quantitativo, descritivo, retrospectivo e documental. Análise descritiva, frequência percentual e com os pressupostos de conteúdo temático. Todos os princípios éticos foram aplicados. Os processos de 2016 e 2017 foram investigados, a partir dos registros da Promotoria, em 2018 na cidade de Araraquara, São Paulo, Brasil.

**Resultados:** O município tem próximo a 250 mil habitantes e 16% são idosos. Dentre os 536 processos, 257 (48%) foram solicitações para tratamento farmacológico: 211 (82,1%) para medicamentos e 46 (17,9%) para medicamentos e insumos. As mulheres (141; 54,9%) soli-

citaram mais do que os homens (116; 45,1%). A mediana de idade foi de 73 anos para ambos, maioria casados e escolaridade de 4 anos. Os medicamentos estão relacionados ao tratamento para: diabetes *mellitus*, hipertensão arterial sistêmica, neoplasias e degeneração macular.

**Conclusão:** O sistema de garantia à saúde do idoso é frágil. Medidas que fortaleçam esta garantia devem ser aplicadas, como indica a Organização Mundial da Saúde: alinhar ações e os níveis de atenção do sistema de saúde, desenvolver ações de cuidados de longo prazo e investir na criação de ambientes mais favoráveis; controlando e monitorando.

**Palavras-chave:** Direitos Civis; Envelhecimento; Serviços Legais.

## RESUMEN

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**Objetivos:** Analizar las demandas relacionadas con la violación de los derechos civiles de las personas mayores, con miras a las solicitudes de tratamiento farmacológico.

**Métodos:** Estudio cualitativo, descriptivo, retrospectivo y documental. Análisis descriptivo, frecuencia porcentual y supuestos de contenido temático. Todos los principios éticos han sido aplicados. Los casos de 2016 y 2017 se investigaron a partir de los registros del Fiscal en 2018, en Araraquara, São Paulo, Brasil.

**Resultados:** El municipio tiene cerca de 250 mil habitantes y el 16% son ancianos. De los 536 casos, 257 (48%) fueron solicitudes de tratamiento farmacológico: 211 (82,1%) para medicamentos y 46 (17,9%) para medicamentos y suministros. Las mujeres (141; 54,9%) solicitaron más que los hombres (116; 45,1%). La mediana de edad fue de 73 años para ambos, en su mayoría casados y 4 años de escolaridad. Los medicamentos están relacionados con el tratamiento de: diabetes mellitus, hipertensión arterial sistémica, neoplasias y degeneración macular.

**Conclusión:** El sistema de garantía de salud para ancianos es frágil. Las medidas que fortalecen esta garantía deben implementarse como lo indica la Organización Mundial de la Salud: alinear las acciones y los niveles de atención médica, desarrollar acciones de atención a largo plazo e invertir en la creación de entornos más favorables; control y monitoreo.

**Descriptores:** Derechos Civiles; Envejecimiento; Servicios Legales.

## INTRODUCTION

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Population aging is a fact and Brazil is prominent among the developing countries. The number of people aged 60 and over is increasing enormously compared to other age groups<sup>(1,2)</sup>.

In Brazil, between 2001 and 2011, the growth in the number of elderly people increased from 15.5 million people to 24 million<sup>(4)</sup>. This escalate in the elderly population goes beyond a transformation in the age pyramid, since it involves significant changes in family structures, public service organizations in different segments of services and products, and of course the need for revisions of public policies<sup>(2,3)</sup>.

The increase in the proportion of the elderly people with respect to the total population is the result of various demographic, epidemiological, social, and political changes, and has been contributing significantly to the process of individual and collective aging<sup>(2)</sup>. Estimates indicate that in 2025 Brazil will have the sixth largest population of elderly people in the world with more than 32 million people over 60 years old<sup>(1,2)</sup>.

Regarding the total population of the country in gender, there is a tendency of the majority being among women, representing 57.8% of the population. Most of the female population, around 64%, occupied the position of reference person at home. Of these, 66% are already retired. As far as family budget is concerned, around 12% have a family income of up to half the minimum wage, and IBGE (Brazilian Institute of Geography and Statistics) projections point to the strengthening of these figures in the coming years<sup>(1,2)</sup>.

In the context of the demographic transition, health profile in Brazil is also changing. Instead of commonly found infectious diseases, there is a new group of non-transmissible, complex and more expensive chronic diseases, that is characteristic of most advanced age groups, requiring not only care services for the elderly and the use of multiple medications (polypharmacy) as well as their adverse effects on people health condition<sup>(2-5)</sup>.

Aging and simultaneously keeping functional capabilities do not seem to pose a serious problem for a person and society. However, when decrease in functional capability is observed in a person or group of people, the consequences certainly require changes in the structure of their lives and for those people living together as well as in the spaces used by them<sup>(2,4,6)</sup>.

Research shows that most elderly people have multiple medical problems and chronic degenerative diseases. On average, there exists around 4 to 6 of these diseases among people aged 65 to 80 years, also leading to a higher consumption of medications compared to the increase in the lived years. Generally, as a result of them, their daily lives related to their functional capacity and autonomy change, interfering with their life quality<sup>(2,4,5)</sup>.

The use of medications in health care has been one of the most important items regarding the elderly population. Older people tend to use more pharmacological products, and their prescription use is higher among women over 70 years, although those who are not prescribed (self-medication) are prominent in their use<sup>(3,7)</sup>.

The above indicated data, together with research in the area of aging and future projections, point out that the integration of the elements of maintenance into human life in old age impacts mainly on social changes and family structure<sup>(4,8)</sup>.

The woman, who formerly stayed at home and usually developed significantly herself as the caregiver of the family, began to occupy other social spaces integrated into the segment of the labor market, and in many cases taking over the financial direction of her own home. However, it is found that in situations of caring for an elderly person, the home environment and a family member are present in many homes<sup>(4,5)</sup>.

The dimension of life that integrates all the transformations mentioned above has been translating new needs to organize and offer care to families, in order to address the needs in the context of each person and the collective; as well as mechanisms to guarantee fundamental rights to life.

The challenge is to provide and guarantee the fundamental rights inherent to each person, in its entirety, prioritizing family and community life. As indicated in the Elderly's Statute<sup>(9)</sup>, of the general provisions, Art. 3:

“It is the obligation of the family, the community, society and the Public Power to ensure to the elderly, with absolute priority, the realization of the right to life, health, food, education, culture, sport, leisure, work, citizenship, freedom, dignity, respect and family and community life.”

In Brazil, the elderly has their rights guaranteed in the Federal Constitution of 1988<sup>(10)</sup> in the expression of the dignity of the human person and the welfare of the Brazilian citizen. It highlights in its Article 226 paragraph 8 “The State shall ensure assistance to the family in the person of each of its members, creating mechanisms to curb violence within their relations”<sup>(10)</sup>.

Articles 229 and 230 state that “Parents have a duty to assist, raise, and educate their minor children, and older children have a duty to help and support their parents in old age, want, or sickness,” and “The family, society and the state have a duty to support the elderly, ensuring their participation in the community, defending their dignity and well-being and guaranteeing their right”<sup>(10)</sup>.

In addition to constitutional protection, the Elderly's National Policy<sup>(11)</sup> and the Elderly's Statute<sup>(9)</sup> constitute specific infra-constitutional legislation for the elderly, guaranteeing and protecting their rights, in particular fundamental rights. The National Policy<sup>(11)</sup> and the Elderly Statute<sup>(9)</sup> constitute the specific non-constitutional legislation for the elderly, guaranteeing and protecting their rights, in particular fundamental rights.

Regarding the right to health as universal to all, the same in the Brazilian context, also stands out in the quality of integral and equanimous. The realization of these qualities is weakened and in many situations, justice is resorted to guarantee rights; aiming to support human health and in many cases needs for pharmacological assistance for individually as well collectively<sup>(4,12-14)</sup>.

The public administration through its different entities (Union, States, Federal District and Municipalities) carries among its duties the obligation to ensure the health of the population, at the individual and collective level. However, the effectiveness of this guarantee is not always found in everyday life, enforcing alternative paths that can be reached<sup>(3,5)</sup>.

In this sense, we observe the worldwide phenomenon of the judicialization of contemporary society in action. This phenomenon involves important elements of political, social and moral issues that are resolved by the judiciary, when the solution has not been reached by the competent power, either the executive or the legislature<sup>(3,5)</sup>.

In the health field, the phenomenon recognized as “judicialization” is also present. The transfer of decisions about health situations and policies to the judiciary has been causing high demand, prompting action and intervention of the Public Prosecution Service to guarantee the health, life and dignity of the human person<sup>(3,16)</sup>.

To play this important decision-making and rights-guaranteeing role, the participation of the Public Prosecution Service as a State institution responsible for overseeing matters related to the interests of people and the collective, as well as performing actions that may improve people's lives, driven by the indications of the Elderly Statute<sup>(9,17)</sup>.

Article 74 of the Elderly Statute establishes the competence of the Public Prosecution Service (MP) for actions and procedures aimed at protecting the diffuse or collective rights and interests, unavailable individuals and homogeneous individuals of the elderly. In addition, it is the holder of the unconditional public criminal action in cases of investigation of crimes against the elderly<sup>(9,11)</sup>.

When it comes to guaranteeing the violated rights of the elderly, and in line with the phenomenon of judicialization to health, the role of the judiciary is increasingly observed, often being understood as the last alternative to obtaining adequate treatments to guarantee full health<sup>(3,16-19)</sup>. The demand for support to the judiciary has become frequent and has been generating excessive expenses in relation to the total health budget. In 2010, Silva<sup>(16)</sup> points out that these expenses reached 2% of the total health budget.

The lack of control, disorganized and/or poorly formulated planning, economic scarcity in the public sector, the economic political moment in which the country is experiencing, are certainly contributing elements to the increase and the increasing effectiveness of the phenomenon of judicialization. Especially in health, in line with the increase in the elderly population, this phenomenon has been growing<sup>(20)</sup>.

Regarding the unit related to this study, the Prosecutor's Office of the Elderly, in the District of Araraquara-SP, it is observed that the demand about the judicialization to health is present, and characteristics of the city show that it is above average (13%) of most municipalities in the state of São Paulo. Araraquara indicated 16.8% of elderly people in 2018, with a population close to 240 thousand inhabitants<sup>(1)</sup>.

In this sense, this study followed part of the actions of the Public Prosecution Service in the segment of the elderly, and identified the demands faced by the Senior Prosecutor's Office in the city of Araraquara-SP, through civil proceedings and their requests. Thus, it aims to analyze the lawsuits regarding the violation of civil rights of the elderly, with a view to requests for pharmacological treatment.

## MATERIAL AND METHODS

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The research is exploratory, documentary, descriptive, with qualitative approach in its essence, and with elements of quantitative approach. Simple frequency analysis and thematic content were applied<sup>(21,22)</sup>.

This study is linked to the Law, City and Aging Research Group of the Department of Gerontology-DGero of the Federal University of São Carlos-UFSCar, whose outstanding feature is the interdisciplinary work, and has been developing several studies in the city of Araraquara, São Paulo, Brazil, related to the strengthening of elderly care policies.

Content analysis was applied considering the theoretical framework. It is a set of communication analysis technique that works the words, being strictly linked to research in documents, complementing the sources about the norms, the laws and the scientific data on the studied subject<sup>(21,22)</sup>.

The documentary nature of the study is based on the analysis of civil proceedings filed with the District Attorney of the Elderly of the District of Araraquara, SP, according to the established legal consent.

All lawsuits concerning the Elderly Prosecutor's Office, filed in 2016 and 2017, were investigated regarding the requests for pharmacological treatment. It was organized through the system records called e@SAJ, collected in the year 2018 at the Prosecutor's Office. The e@SAJ system is the domain of the Justice system, and all the supporting documents that are required for court requests, whose purpose is to computerize and manage information for the Justice, are stored in it.

The intentional sampling related to the search of all processes with requests for pharmacological treatment, as well as the indication of the general data of the applicant's profile, formed the guiding axis for the collection that was organized in spreadsheets, and highlighted the type of drug requested. The correlation between the request and the diseases justified by the health technical reports was also verified.

The sample consisted of 536 processes verified between 2016 and 2017, allocated into categories and subcategories in accordance with the object of this study. Fig. 1 illustrates this data.



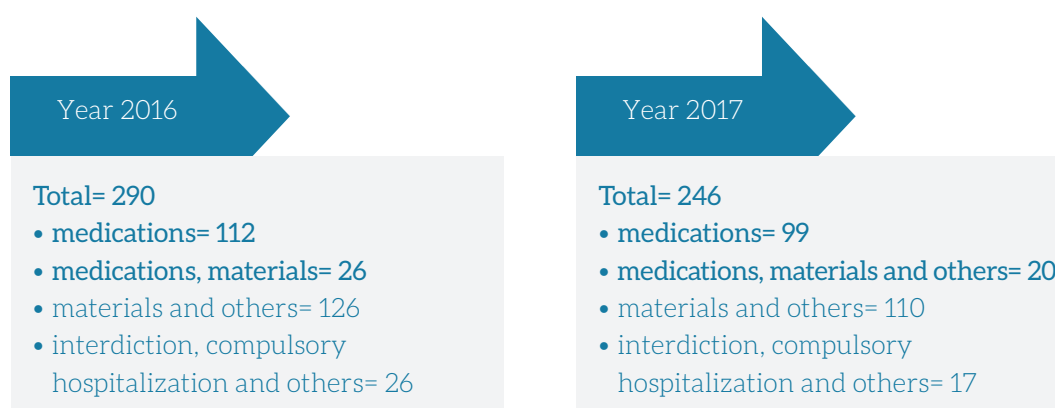


Figure 1 - Number of processes in 2016 and 2017 and their classifications adopted and the corresponding quantity.

Of the 536 cases verified, 257 (48%) were related to requests for support and aid to pharmacological treatment.

## RESULTS

Among the 257 requests for pharmacological treatment, 211 (82.1%) are related to medication requests only, and the remaining 46 (17.9%) to medication requests, materials and others.

Regarding the origin of the processes it was observed that the majority came from the Public Defender's Office, totaling 201 (78.2%) cases, followed by the private sector through processes with representation of law professionals, 56 (21.8%) processes.

Regarding gender, it was found that women (141; 54.9%) made more requests than men (116; 45.1%), and the median age for both was approximate at 73 years with distribution among the age groups indicated in Table 1. Among the applicants the predominance is married (142; 55.3%) followed by widowers (58; 22.6%) and indicate monthly income between 1 and 2 minimum wages, being the current minimum wage of R\$ 998 (in Brazilian Currency).

Table 1 – Age distribution of the studied elderly,  
São Carlos, SP, 2018.

Age range in years	Quantity of people
60-69	112 (43.6%)
70-79	95 (37%)
80-89	41 (16%)
90+	6 (2.2%)
No information	3 (1.2%)
Total	257 (100%)

Most of the requests came from the central region of the city of the study, and according to local characteristics you can find various public and private services that support the population in different areas, especially health.

Regarding the type of request about pharmacological treatment, the highlighted drugs were identified, and the number of times cited in the processes represented in Table 2, followed by the appropriate indication for treatment.

Table 2 - Medications requested, number of times cited and their indications, São Carlos, SP, 2018.

Medication Name	Number of Occurrences	Indication
Lucentis (Ranibizumab)	35	To: treat age-related neovascular macular degeneration (exudative or wet) (AMD); the treatment of visual impairment due to diabetic macular edema (EMD); the treatment of visual impairment due to macular edema secondary to retinal vein occlusion (OVR); the treatment of visual impairment due to choroidal neovascularization (CVN) secondary to pathological myopia (MP).
Xarelto (Rivaroxaban)	16	To: prevention of venous thromboembolism (VTE) in adult patients undergoing elective knee or hip arthroplasty surgery.
Eylia (Aflibercept)	10	To: age-related, neovascular macular degeneration (AMD) (wet); macular edema secondary to central retinal vein occlusion (OVCR).
Insulin	9	To: treat patients with diabetes mellitus who require insulin to maintain glucose homeostasis (HUMULIN R's most appropriate prescription).
Abiraterone acetate	8	To: the treatment of patients with metastatic prostate cancer.
Chondroitin sulfate	7	To: osteoarthritis, osteoarthritis or arthrosis in all its manifestations; It also acts as anticoagulants.
Synvisc one	7	To: indicated as a temporary substitute and supplement for synovial fluid. They are indicated for intraarticular use only in the treatment of pain associated with knee osteoarthritis.

In addition to the requests in the processes of medicines, inputs and others, there are highlighted and respective citations: enteral nutrition and equipment for its application (62); geriatric diapers (59); hearing aid (19) and nutritional supplement (11). Other requests related to assistive technologies to assist activities of daily living were indicated, such as: egg box mattress (6), bath chair (6) and hospital bed (5).

Regarding the diseases registered in the cases, resulting from medical reports and complementary documents, we can highlight: diabetes mellitus (47), systemic arterial hypertension (34), neoplasms (30), macular degeneration (29), arthrosis (23), macular edema (16) and stroke (12). Alzheimer's and coronary diseases were indicated 6 to 5 times.

## CONCLUSION

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The data indicate aspects related to longevity and the increase of chronic diseases related mainly to women, over 70 years old, married and widows who need medication to continue the pharmacological treatment, and some equipment considered as inputs that complement the treatment. They signal weaknesses in the functionality of applicants.

According to the National Medicines Policy<sup>(23)</sup> the disarticulation of pharmaceutical care aggravates the problems faced in the distribution and guarantee of medicines, which may expand the search for alternatives to guarantee health care rights, among them, opening of prosecution proceedings.

Also, it is observed in many cases that the prescription for medicines does not always follow the guidelines of SUS, with the prescription inserted in the National List of Essential Medicines (RENAME), and some cases do not adopt the name of the active substance of the medication. These irregularities can affect the supply of medicines and the effectiveness of government actions<sup>(23)</sup>.

The National Medicines Policy in Brazil<sup>(23)</sup> establishes some guidelines to guide the judicial system in the country, among which are: adoption of a list of essential medicines (those products considered basic and indispensable to meet the majority of the population's health problems); health regulation of medicines; reorientation of pharmaceutical care based on decentralization of management and promotion of rational use of medicines.

The National Council of Justice (CNJ), in 2015, published the document entitled "Judicialization of Health in Brazil: data and experiences", which encourages technical cooperation between courts and public or private bodies or entities to fulfill their duties, with technical support from health professionals<sup>(24)</sup>. Similarly, this document provides guidance for the actions of judges to be convenient with medical reports, which must have a description of the disease (including ICD), prescription of the drug(s), generic name or active ingredient and exact dosage. In addition to the recommendation to avoid authorizing drugs not registered by ANVISA (Brazilian National Health Surveillance Agency)<sup>(24)</sup>.

The CNJ also aimed to stimulate participation in the Municipal and State Health Councils, as well as visits to public health units or under the SUS (Brazilian Public Health System).

Increasing knowledge about the causes of requests and available services that guarantee the elderly the right to health is another key issue, which corresponds to one of the four core areas of action to promote healthy aging, proposed by WHO (2015): improving measurement, monitoring and understanding. In this sense, this study contributed to understand a little more about the phenomenon of judicialization to health.

In view of this, the movement and discussion of actions towards health promotion and disease prevention policies, investing in long-term primary care could result in the reduction of old-age spending, and avoid prosecution as identified. In this study, establishing a guarantee of the right to health. Thus, meetings were articulated with municipal managers to present the study and enhance actions in the central region of the city through the elderly care services available in the municipality.

The measures of expanded articulation with municipal managers, may strengthen and/or expand investments for prevention and early treatment of diseases, subsidize the right to health with the implementation of services and products recommended by law, aiming to add measures that can provide a decent aging. the population. It is a fact that access to health care can improve the quality of life throughout a person's life cycle.

Therefore, this study has been investigating the possible causes of the requests made to the Araraquara Senior Prosecutor's Office, and some available services linked to requests that should guarantee the elderly the right to health. To what extent were these services or the health care network of the elderly unsuccessful in their support and actions that could portray the adequate and enough treatment to the needs of each person?

Supported by Article 8 of the Elderly Statute<sup>(9)</sup>: Aging is a very personal right and its protection a social right, under the terms of this Law and the current legislation. And yet, in Art. 15th says:

“Comprehensive health care for the elderly is ensured through the Unified Health System (SUS), guaranteeing universal and equal access to them in a joint and continuous manner of actions and services for the prevention, promotion, protection and recovery of health. , including special attention to diseases that preferentially affect the elderly.”

According to Decree No. 1948 (1996), in Art. 9, V point, the Ministry of Health must: provide medicines, orthoses and prostheses, necessary for the recovery and rehabilitation of the health of the elderly.

The judicialization of health as a multifactorial phenomenon is identified in this study. The legal alternatives that allow the lawsuit to enforce the law, in which the judiciary takes the lead in the requests of each person and each case. Also, it is an active agent in monitoring public policies and social control<sup>(20)</sup>. Situations that this study is in the process of advancing actions with the municipal managers, and jointly outline strategies to strengthen the care network for the elderly in this municipality.

Some weaknesses in the health guarantee system of the elderly seem to emerge in this study, calling for the resoluteness, the judiciary. However, measures that strengthen this guarantee may be preventive when developing central actions indicated by the World Health Organization/WHO<sup>(14)</sup> to promote healthy aging: “1. align health systems with older populations; 2. develop long term care systems; 3. create favorable environments for older adults; 4. improve measurement, monitoring and understanding”.

In this sense, the movement and discussion of actions towards health promotion and disease prevention policies, investing in long-term primary care could result in the reduction of old age spending, and avoid the processes with the MP as identified in this study, guaranteeing the right to health.

### **Ethical Disclosures**

Conflicts of interest: The authors have no conflicts of interest to declare.

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Confidentiality of Data: The authors declare that they have followed the protocols of their work center on the publication of data from patients.

Protection of Human and Animal Subjects: The authors declare that the procedures followed were in accordance with the regulations of the relevant clinical research ethics committee and with those of the Code of Ethics of the World Medical Association (Declaration of Helsinki).

Provenance and Peer Review: Not commissioned; externally peer reviewed.

### **Responsabilidades Éticas**

Conflitos de Interesse: Os autores declaram a inexistência de conflitos de interesse na realização do presente trabalho.

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Confidencialidade dos Dados: Os autores declaram ter seguido os protocolos da sua instituição acerca da publicação dos dados de doentes.

Proteção de Pessoas e Animais: Os autores declaram que os procedimentos seguidos estavam de acordo com os regulamentos estabelecidos pelos responsáveis da Comissão de Investigação Clínica e Ética e de acordo com a Declaração de Helsínquia da Associação Médica Mundial.

Proveniência e Revisão por Pares: Não comissionado; revisão externa por pares.

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