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Perspectivas
Teóricas,
Metodológicas
e de
Investigação

Luis Fernando González-Beltrán
(organizador)



EDITORA
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PRÓLOGO

Este séptimo volumen de la colección *Humanidades y Ciencias Sociales: Perspectivas Teóricas, Metodológicas y de Investigación* reúne una serie de estudios multidisciplinarios que reflejan la constante evolución de los problemas contemporáneos en diversas áreas del conocimiento. Los artículos aquí presentados fueron seleccionados a partir de un análisis cuidadoso de sus contribuciones innovadoras, que van desde desafíos globales, como la gobernanza climática y la seguridad alimentaria, hasta temas profundamente arraigados en las prácticas culturales y sociales, como las dinámicas del pensamiento crítico en la educación y los nuevos enfoques en la traducción y la literatura.

La diversidad temática y metodológica de los trabajos refleja la riqueza y complejidad de las humanidades y las ciencias sociales en el mundo contemporáneo. La primera sección: Lingüística, Cultura e Historia, con tres capítulos, explora aspectos históricos e ideológicos, como la interpretación de referentes culturales del folclor: los cambios en los modelos educativos en México; así como el debate lingüístico en la inclusión social.

La siguiente sección: Acción Participativa, Promoción Social e Innovación, que incluye dos capítulos, se centra en las prácticas concretas de desarrollo social e innovación organizacional, como es el caso de los proyectos integradores en educación; y el uso de Metodologías transdisciplinarias para la identidad organizacional.

En la sección Procesos Educativos: Universitarios, Escuelas Rurales y Educación para la salud, tenemos cinco capítulos, donde se muestra cómo esta colección no solo presenta variadas perspectivas teóricas y metodológicas, sino que también destaca la relevancia de las ciencias sociales y las humanidades para la construcción de una sociedad más consciente, crítica e inclusiva, al proponer, primero, un nuevo enfoque, más interdisciplinario e interactivo, de la formación jurídica; al proponer en segundo lugar, a la Universidad como promotora de una pedagogía para el pensamiento crítico; tercero, proponiendo la escuela rural como foco para fomentar una nutrición adecuada; a continuación, proponiendo también las prácticas de investigación como factor clave en la innovación y la solución de problemas en la instrucción primaria; y finalmente, considerando los programas educativos como un elemento fundamental en la calidad de vida de pacientes terminales.

La interconexión entre la teoría y la práctica impregna este volumen, demostrando cómo las ciencias sociales y las humanidades no solo producen conocimiento, sino que también contribuyen directamente a la solución de problemas sociales apremiantes, como se muestra en las siguientes secciones. En nuestra cuarta sección: Administraciones

Públicas, Auditorías Municipales y Responsabilidad Legal, con tres capítulos, los temas versan sobre los nuevos sistemas contables; los cambios de revisiones fiscales en los municipios; y las responsabilidades legales en el ámbito de la salud.

También con tres capítulos, la sección: Empresas: Desafíos y Vinculación con la Academia, inicia con la evaluación de empresas exportadoras del sector agropecuario; sigue con la formalización de las pequeñas empresas como factor que promueve su crecimiento y su éxito; y termina con la colaboración Unidad Académica y Empresa.

Además, el libro también aporta una reflexión sobre temas emergentes, como el impacto de las tecnologías, con los tres capítulos de la última sección: Tecnología para todos los usos: Ambiente, Supervisión y Terrorismo. Aquí se demuestra que las nuevas tecnologías tienen la propiedad de ser ubicuas, se pueden desarrollar con una meta particular, pero su uso se extiende a todas las esferas de actuación humana, desde la adaptación al cambio climático, la implementación de políticas públicas efectivas y la promoción de la sostenibilidad ambiental y social; pasando por el uso de drones en la preservación del patrimonio arquitectónico, ofreciendo mayor seguridad a los monumentos y también a los trabajadores de ese sector; hasta el uso de contranarrativas en la lucha contra el terrorismo, que también ataca, y es atacado, con el uso de drones.

Al abordar temas como la identidad, la seguridad, la política ambiental y la educación, los artículos contribuyen a una comprensión más profunda y compleja de las dinámicas sociales y culturales que nos rodean. Invitamos a los lectores a explorar las reflexiones y propuestas presentadas en este volumen, que sin duda enriquecerán el debate académico y ampliarán las fronteras del conocimiento en las áreas de las humanidades y las ciencias sociales.

Dr. Luis Fernando González Beltrán
Universidad Nacional Autónoma de México (UNAM)

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THE LEGAL RESPONSIBILITY OF THE MEDICAL SCIENCE STUDENT

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Marco Antonio Sigüenza Pacheco

Medical Doctor

Master in Health Management
and Medical Law

Professor of the Nursing Career of the
Catholic University of Cuenca
Cuenca, Azuay, Ecuador

<https://orcid.org/0000-0003-4058-6037>

Juan Diego Sigüenza Rojas

Doctor of Medicine and Surgery

Lawyer of the Courts of Justice

PHD in Project Management

Medical Director of the
Santa Marianita de Jesús Clinic
Azogues, Cañar, Ecuador

<https://orcid.org/0000-0002-4328-0773>

María Belén Sigüenza Pacheco

Medical Doctor

Postgraduate in Anesthesiology at
Hospital Clínico San Borja Arriarán
Santiago de Chile, Chile

<https://orcid.org/0000-0003-0441-9717>

Johnny Esteban Arias Parra

Medical Doctor

Resident Physician of the Hospital de
Urgencia y Asistencia Pública
Santiago de Chile, Chile

<https://orcid.org/0009-0008-7936-6908>

Janeth Esperanza Toalongo Salto

Nurse

Master's Degree in Care Management

Professor of Nursing at the Catholic

University of Cuenca

Cuenca, Azuay, Ecuador

<https://orcid.org/0000-0002-0386-9516>

ABSTRACT: Introduction: The involvement of health career students in medical practice is pivotal within the dynamics of healthcare services; however, their increasingly active and less supervised participation has led to a rise in legal proceedings, implicating them as directly or jointly responsible for patient harm. Problem Statement: This study aims to determine the legal responsibility of students within medical practice and to examine the regulations that protect their interventions. Objective: This qualitative research, employing a descriptive narrative design, analyzed a court case involving a nursing student in Chile. The discussion was framed around the current legal regulations in Ecuador, particularly concerning the Rotating Internship program. Methodology and Results: The findings indicate that the legal framework governing teaching care practice is insufficient to adequately measure the legal responsibility of health sciences students when faced with charges of medical negligence. The study underscores the necessity for a more robust legal framework to protect both patients and students. It

highlights the critical need for enhanced supervision and clearer guidelines to ensure that students can learn and practice safely without the looming threat of legal repercussions. Conclusions: This research calls for a balanced approach that safeguards the educational process while maintaining high standards of patient care.

KEYWORDS: Student. Legal Responsibility. Malpractice. Intern. Medical Error.

1 INTRODUCTION

Michel de Montaigne, in his wisdom, once expressed that doctors should consider themselves fortunate, for their successes will always shine under the sun, while their mistakes will be covered by the earth. This reflection, far from being a contradiction, underscores the necessity that all medical negligence be sanctioned, not to exempt health professionals from the law, but to elevate justice as a social moderator, always protecting legal rights, especially when one of them is life itself. However, the medical profession has facets that require deep analysis, as its nature significantly differs from other professions. The essence of medicine lies in the intention to safeguard the legal right that, paradoxically, it is accused of having harmed. This distortion is something that few justice administrators manage to understand today. The idea of sanctioning errors in the health field is not new. It has been present throughout history, from the Code of Hammurabi, which punished the doctor's fault with the amputation of his hands, to the time of Alexander the Great, where the doctor found guilty of abandoning his patient was sentenced to die crucified. Today, European countries and North America lead the legal rigor in medical actions, counteracting this zero-tolerance policy towards negligence with an excellent training system that guarantees reducing errors to the minimum possible. Additionally, they implement civil or criminal liability insurance against possible lawsuits against hospital institutions or their officials.

2 PROBLEM STATEMENT

In Ecuador, the judicialization of medical practice has grown exponentially since the implementation of the Comprehensive Organic Penal Code (COIP, 2014). This is partly due to the collective perception that the health professional is directly responsible for the damage derived from the medical act, without considering the intrinsic dimensions of the action or omission, as well as the differentiation between means and results. From this perspective, the pursuit of perfection has become the holy grail of medicine, and preventing fatality through constant preparation remains a utopia that finds refuge in the inexorable training of medical science students.

The preparation of the future professional does not depend solely on the established syllabi or curricula but also on the possibility of developing their skills and abilities through constant practice and adequate tutoring. Training spaces can witness improper acts, especially when the doctor-patient relationship is mediated by students or interns who try to educate themselves without the option of error as a learning opportunity. In this context, it is common for practitioners or trainees to be linked to administrative, civil, or criminal sanction processes, being pointed out as directly responsible for the damage and, in extreme cases, for manslaughter.

The legal obligation derived from teaching assistance practice has not been delineated in the Ecuadorian legal context, which is questionable since other countries have shown interest in regulating the student's actions under the strict supervision of higher education entities. This accidental or premeditated oversight could have serious consequences in the future, as the media inquisition by communication media and social networks has encouraged a witch hunt dressed in white coats. Citizens, blinded by misinformation and subjective passion, become executioners of health personnel without giving them the opportunity for proper defense. Several cases of negligence related to health science students are currently being processed. However, due to the excessively prolonged professional malpractice procedures, the processes are still without a verdict, preventing their public exposure. Additionally, knowing the possible consequences against their prestige and assets, many health institutions, doctors, nurses, and undergraduate students have opted for out-of-court settlements to avoid economic and emotional wear due to the delay and distrust in the judicial system.

Gonzalez (2021) notes that when meticulously examining medical responsibility, the first thing to establish is that, according to Ecuadorian law, the health professional who wishes to legally practice must complete their rigorous studies to acquire their status as a graduate doctor from a higher education institution.

With the systematic increase in complaints against the medical community and the prevailing reality in hospitals and health centers, where medical and nursing interns cover the staff deficit during night shifts or weekends, it is only a matter of time before students are found guilty of medical malpractice. This is without considering that the responsibility for their training lies in the same health system that will be ready to tear its clothes and cast the first stone. Therefore, this article aims to elucidate the dimension and scope of the student's legal responsibility within teaching assistance practice, comparing the existing legal arguments, and investigating the role of universities and hospitals responsible for enabling the student in their operational activities, seeking to define how this triad should face the consequences of their actions within the framework of health care.

3 METHODOLOGY

This qualitative, non-experimental research utilized a descriptive narrative approach to examine a case of medical negligence in Chile. A nursing intern faced legal proceedings due to a medication error affecting eleven patients at Melipilla Hospital. This scenario was then compared to the current legal framework in Ecuador to gain a concrete, contextual, and in-depth understanding of the legal responsibility of students in medical practice. A comprehensive document analysis was conducted using databases such as Web of Science, Scopus, Virtualex, and Vlex. Boolean operators AND, OR, NOT were applied to search for documents with keywords: student, legal responsibility, malpractice, intern, medical error. This search yielded 32 bibliographic references, including books, websites, Ecuadorian legal regulations, and research articles. Inclusion criteria were established for documents supporting the legal responsibility of trainees in medical practice. Articles that did not significantly contribute were excluded. The focus was on the Rotating Internship program, excluding pre-professional practices of university students in higher cycles and postgraduate students' teaching assistance practice. The case study centered on events in 2014 at a public hospital in Chile, where a nursing intern was linked to judicial proceedings due to a medication administration error, resulting in the tragic death of three individuals. This case provided a critical lens to examine the broader implications of legal accountability for medical trainees.

4 THE LEGAL RESPONSIBILITY WITHIN TEACHING ASSISTANCE PRACTICE

Beca (2016) defines the legal aspect of medical practice as crucial, given that healthcare professionals are seen as paradigms of ideal praxis and exemplary ethics. Abreu (2004) asserts that medicine is intrinsically linked to law, as the legal good to be protected is health and life itself. For society to function correctly, medical legislation, as described in legal norms such as codes, laws, regulations, protocols, and guidelines, specifically defines the *lex artis* of healthcare professionals' actions. However, these precepts establish the inherent responsibility of healthcare professionals. According to Article 194 of the Organic Health Law (2006), to practice a healthcare profession, one must have previously obtained a university degree from a legally recognized Higher Education Institution (HEI) within the country, or if from abroad, the degree must be duly endorsed. This means that professional malpractice is governed by those holding a university degree, a situation not applicable to trainees, who retain the status of students until they complete their academic training, seemingly leaving a legal void regarding their involvement in harm. This scenario raises several questions, from the feasibility of

creating an inextricable link between medical practice and teaching assistance practice, to determining responsibilities in the event of patient harm or even death. The law in this country tends to prioritize establishing culpability in medical negligence over the circumstances surrounding the event. Therefore, it is imperative to define how feasible it is for a student to be considered legally linked to a healthcare establishment. Article 18 of the Academic Regime Regulations issued by the Higher Education Council (2019) mandates that health careers such as Human Medicine, Nursing, Obstetrics, and Nutrition must complete an additional year corresponding to the rotating internship. The Academic Regime defines the non-dependent relationship between a student and the healthcare establishment, stating that the rotating intern will receive compensation in the form of a scholarship stipend, which should not be considered a salary but an incentive for their academic training. The Technical Standard for Rotating Internships in Health Establishments (2019) states in Article 5 that agreements within the teaching assistance program do not create a labor relationship, dismissing any labor or administrative rights, obligations, or job stability, and interns cannot be considered public service employees. This contradicts Article 4 of the Organic Law of Public Service, which states that anyone who works, provides services, or holds a position within the public sector, regardless of their title, is considered a public servant, a crucial precept in the context of service provision within a public hospital. Similarly, the Technical Standard for Rotating Internships in Health Establishments, in Article 12, establishes that entities within the Integrated Public Health Network (RPIS) and the Complementary Private Network (RPC) with rotating interns must affiliate them to Social Security, deducting contributions directly from the stipend, making the health entity a withholding agent, a mechanism identical to that in a dependent relationship, although the article ultimately exempts liability by stating that this process does not create a dependency relationship with healthcare institutions.

Within the regulatory context, the Rotating Internship program is governed by two technical bodies: the Technical Standard for Rotating Internships in Health Establishments (2019) and the Technical Standard for Teaching Assistance Units (2014). This framework regulates the integration between the assistance and teaching approaches, aiming to deepen the skills and knowledge of students in their final year of study. However, neither of these standards addresses the procedure applicable in cases of medical malpractice complaints, unlike regulations in other countries such as the USA or Spain. For instance, the University of Applied and Environmental Sciences of Colombia (2008) stipulates that if an intern commits negligence, insubordination, indecent conduct, or neglect of duties, they may be removed from the training environment and sanctioned according to the

internal regulations of the hospital and university. Additionally, the degree of the student's involvement will be investigated, and depending on the severity, the competent authority, including the Attorney General's Office, will be notified. Article 18 of this regulation states that the responsibility for patient management lies directly with the attending physician, who may delegate activities to the intern under strict supervision. Conversely, the Technical Standard for Rotating Internships in Health Establishments only mentions in Article 4 that institutions must facilitate the program's execution and notify the Ministry of Public Health in case of non-compliance. The Technical Standard for Teaching Assistance Units defines the teaching assistance relationship as the link between universities and health institutions to train human talent in practical areas. To be accredited as a Teaching Assistance Unit (UAD), an establishment must meet essential requirements such as infrastructure, equipment, and human talent. The deficient infrastructure and shortages in public hospitals can negatively impact student training, leading them to commit preventable errors.

The insufficient regulation of the responsibilities of medical science students, coupled with the collapse and oversaturation of healthcare facilities, especially in the public sector, has led to students directly participating in operational care without the necessary supervision and mentorship. This forces them to perform activities beyond their technical capabilities, making it common to see rotating interns carrying out complex procedures without the required guidance. Most of these adverse events go unreported due to fear of sanctions, maintaining a system of concealment that prevents students from learning from their mistakes and hinders the implementation of continuous improvements. Article 10 of the Technical Standard for Rotating Internships stipulates that students must perform 24-hour shifts every four days, with one full day of rest per week. However, Del Valle (2021) indicates that shorter work shifts, up to 12 hours, are safer, as mental and physical fatigue can increase unforced errors and, consequently, patient harm. This regulation prioritizes patient safety over student well-being, reflecting a disregard for interns and assuming that a single day of rest is sufficient to recover from the workload. As Amor (2020) notes, this increases the prevalence of Burnout Syndrome among medical students. Additionally, the NTUAD mandates that patients must provide informed consent regarding the student's participation in their healthcare. This consent must clearly explain the intern's activities and ensure constant supervision by a tutor, allowing the patient to refuse care within the teaching framework.

In 2014, the media informed the public that in the early hours of August 6, 2014, Lisseth G., a nursing intern from the Universidad del Pacífico at the Melipilla Hospital in Chile, was supposed to prepare 1 cc of heparin for 11 elderly patients. However, she confused

the medication with insulin, administering a dose twenty times higher than the therapeutic one. The newly hired nurse, Magdalena P., administered the insulin to the patients, causing severe hypoglycemia. Luis G. and Rosa C. died of cardiorespiratory arrest, and Juan T. died two weeks later. The Chilean Prosecutor's Office charged Andrea F., the head nurse, with involuntary manslaughter and injuries due to medical negligence, and later expanded the investigation to include Lisseth G. as determined by the Penal Code of the Republic of Chile (1874). The Office of the Comptroller General of the Republic of Chile sanctioned Andrea F. and Natalia D. with suspension from employment and salary reduction, arguing that Andrea F. did not adequately supervise the intern. Andrea F. appealed the decision, but the Comptroller's Office confirmed her responsibility. The investigation lasted almost three years, but an out-of-court settlement was reached based on Law 19.966 of the Chilean Health Superintendency (2004), which provides for mediation in health disputes.

This case underscores the importance of proper supervision and rigorous training in the healthcare field to prevent fatal errors and ensure patient safety. The lack of supervision and workload in public hospitals can lead to serious mistakes, as evidenced by this tragic incident. It also highlights the need for a clear regulatory framework that defines the responsibilities of students in training and ensures their constant supervision. Mediation as a conflict resolution mechanism also emerges as a valuable tool for addressing these cases, allowing for agreements that avoid lengthy judicial processes and provide a quicker and fairer solution for all parties involved.

In the administrative field, the Office of the Comptroller General of the Republic of Chile, the institution responsible for overseeing the legality of management acts such as financial ones related to Public Administration, generated a technical sanction report in this case, understanding that the negligence occurred within a public hospital. The report, dated March 19, 2015, states the ratification of disciplinary measures of suspension from employment for 30 days and a 50% salary reduction for three months for nurses Andrea F. and Natalia D., based on the internal audit report conducted at Melipilla Hospital. Mrs. Andrea F. appealed this decision, arguing that the process against her was flawed and invalid, based on the Institutional Cooperation Agreement that allowed tasks to be assigned to interns. She was charged with assigning nursing tasks to a "student" without directly supervising the execution of these tasks, which led to health problems for hospitalized patients. The Comptroller's Office confirmed her involvement and responsibility, noting that nurse Andrea F. was the floor supervisor that day. Given the circumstances, Mrs. Andrea F. held a technical supervisory position in relation to the student, and while it was permissible to assign the medical procedure to her, it was

her duty to oversee its execution. Therefore, the Comptroller's Office dismissed Mrs. Andrea F.'s defense and issued an enforceable act, creating an important precedent for the Prosecutor's investigation, which already had the legal medical report of the autopsy performed on one of the deceased.

5 DISCUSSION

In the medical field, malpractice is akin to an elephant in the room, difficult to ignore despite attempts to conceal it behind softer terms like "iatrogenesis" or "adverse event." A study in Medellín, Colombia (2019), revealed that 93% of hospital staff had witnessed incidents causing harm to patients, and 79% had observed adverse events with severe consequences for patients. This finding opens a debate on the legal issues faced by health science students during their medical practice.

Administratively, the Technical Standard for Teaching Assistance Units establishes that the Teaching Assistance Coordination Committee (ComCAD) will resolve conflicts in teaching assistance practice. If a student violates hospital regulations, the Human Resources Department will inform the Teaching Subdirectorate, which in turn will notify the university and the Zonal ComCAD. Sanctions can range from temporary suspension to expulsion from the program. Thus, the maximum administrative sanction for a medical or nursing student could be the inability to become a healthcare professional.

Regarding civil liability, Del Brutto (2018) notes that the Ecuadorian Civil Code does not address contracts in the medical field, unlike other legislations that seek to provide greater security to patients and avoid defensive medicine. Acosta Madiedo (2010) adds that the responsibility of the healthcare professional is one of means, not results. The contractual relationship between the healthcare professional and the patient is based on Article 1562 of the Civil Code, which requires acting in good faith and fulfilling all circumstances derived from the obligation. The doctor-patient relationship, based on trust and patient autonomy, is compromised when the user is not informed about the participation of a student in their care. Health institutions often do not adequately identify students, which undermines the principle of good faith in the contract. According to Article 1563 of the Civil Code (2005), the burden of proof for having complied with due process lies with the one who was supposed to do so. Without informed consent, a breach of contract could be alleged. Normatively, there are elements suggesting a disguised employment relationship under the guise of stipends and internal regulations that attempt to delegitimize this relationship. If this reality is recognized, hospital authorities would be responsible for repairing the damage caused by involving an unlicensed third party in

the care activity. Article 2347 of the Civil Code regulates liability for the acts of others, stipulating that every individual is responsible for their acts and those of individuals under their charge.

The Organic Health Law, however, attributes non-compliance, incompetence, imprudence, and negligence solely to the healthcare professional, excluding students. For a lawsuit to succeed, the fault of the doctor and the harm to the patient must be proven, without the need for the accused to be a healthcare professional. In the case of students, the obligation to repair the damage may fall on them regardless of their hierarchical position in the hospital. Extra-contractual liability, which involves compensating for damage without a specific contractual link, falls on the Ministry of Public Health and the Ministry of Labor, responsible for the evaluation and control of interns. In civil lawsuits, especially in public hospitals, the State's liability should be considered.

Article 2229 of the Ecuadorian Civil Code establishes that any damage linked to negligence or malice must be repaired. Compensation may include economic indemnity for injuries, medical expenses, and other costs. However, a student could not cover these costs, highlighting the need for civil liability insurance to protect interns. These policies, funded by universities, aim to protect the student's economic assets and cover legal costs in case of lawsuits. Another aspect to consider is the preparation of the Unique Medical Record by students, which violates the right to an accurate and confidential medical record. Current regulations allow rotating interns to prepare these documents, which can lead to technical errors with legal repercussions. Additionally, some health centers require students to obtain informed consent, which contradicts the Health Authority's Informed Consent Management Model. In the criminal context, liability arises from the violation of the law, harming or endangering a protected interest. The imputation can be direct or extended to accomplices, provided the acts are intentional. In teaching assistance practice, the student is seen as an ordinary citizen, without the knowledge or status of a healthcare professional. If a rotating intern makes a mistake resulting in a patient's death, they could be charged with negligent homicide, with more severe penalties than those applicable to healthcare professionals. The lack of supervision and the conditions of the hospital environment, such as staff and resource shortages, can influence the student's decisions and contribute to a fatal outcome. In cases of malpractice, the student's criminal liability is equated to that of an ordinary citizen, underscoring the need for policies that protect interns and ensure adequate supervision. The criminal liability of rotating interns is typified under the same circumstances as that of any individual without professional training, posing serious challenges for their legal and professional protection.

6 CONCLUSIONS

Law and Medicine, as sciences dedicated to addressing human needs and safeguarding life, are compelled to establish truth as a prerequisite for issuing a verdict in court or a diagnosis in a hospital. Unfortunately, the inconsistent application of Article 146 of the Organic Penal Code has tarnished the essence of Law, leading to half-truths or outright falsehoods against Medicine.

Currently, any medical act with an unexpected outcome becomes a case file gathering dust in an archive, awaiting a verdict that is often replaced by fear in the form of an out-of-court settlement.

Caught in the crossfire between Law and Medicine are health science students and interns, enthusiastic young individuals who see clinical practice as an opportunity to acquire skills necessary to become healthcare professionals. Their vulnerability, due to lack of experience and being in a formative stage, mandates that the State, universities, and healthcare centers protect their rights enshrined in the Constitution of the Republic of Ecuador. However, as revealed in this research, undergraduate and rotating interns in health careers find themselves utterly defenseless against outdated laws, norms, and regulations such as the Organic Health Law, the Technical Standard for Teaching Assistance Units, the Technical Standard for Rotating Internships in Health Establishments, and legal ambiguities in the Social Security Law and the Comprehensive Organic Penal Code. These regulations, far from regulating clinical teaching practice, hinder the legitimate right of students to be protected while developing their competencies.

Despite the fundamental principle of justice that no one is obliged to the impossible, inadmissible responsibilities are imposed on medical and nursing interns, such as performing medical procedures, administering medications, monitoring critical patients, preparing unique medical records, medico-legal documents, or prescriptions – tasks that are entirely the purview of contracted professionals in each healthcare unit. This misinterpretation of teaching as delegation is compounded by the lack of supervision or mentorship from qualified personnel within Teaching Assistance Units, forcing rotating interns to fill the human resource gap in a healthcare establishment, thereby increasing the risk of administrative, civil, or criminal liability, with consequent sanctions such as loss of the Rotating Internship year, payment of indemnities, or imprisonment.

The final stage of a health science career should be respected as an academic and clinical phase where the intern tests the knowledge acquired throughout their training, under the constant supervision of their instructor or tutor. This is not only to prevent potential harm to patients but also to focus on instructing the student in the correct

execution of procedures, enabling them to acquire skills essential for their medical career. When the rotating intern becomes a professional, they will have to bravely assume the risks inherent in clinical practice. Until then, their future should be resolved within the walls of a hospital, not in the cold corridors of a courtroom.

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SOBRE O ORGANIZADOR

Luis Fernando González-Beltrán- Doctorado en Psicología. Profesor Asociado de la Facultad de Estudios Superiores Iztacala (FESI) UNAM, Miembro de la Asociación Internacional de Análisis Conductual. (ABAI). de la Sociedad Mexicana de Análisis de la Conducta, del Sistema Mexicano de Investigación en Psicología, y de La Asociación Mexicana de Comportamiento y Salud. Consejero Propietario perteneciente al Consejo Interno de Posgrado para el programa de Psicología 1994-1999. Jefe de Sección Académica de la Carrera de Psicología. ENEPI, UNAM, de 9 de Marzo de 1999 a Febrero 2003. Secretario Académico de la Secretaría General de la Facultad de Psicología 2012. Con 40 años de Docencia en licenciatura en Psicología, en 4 diferentes Planes de estudios, con 18 asignaturas diferentes, y 10 asignaturas diferentes en el Posgrado, en la FESI y la Facultad de Psicología. Cursos en Especialidad en Psicología de la Salud y de Maestría en Psicología de la Salud en CENHIES Pachuca, Hidalgo. Con Tutorías en el Programa Alta Exigencia Académica, PRONABES, Sistema Institucional de Tutorías. Comité Tutorial en el Programa de Maestría en Psicología, Universidad Autónoma del Estado de Morelos. En investigación 28 Artículos en revistas especializadas, Coautor de un libro especializado, 12 Capítulos de Libro especializado, Dictaminador de libros y artículos especializados, evaluador de proyectos del CONACYT, con más de 100 Ponencias en Eventos Especializados Nacionales, y más de 20 en Eventos Internacionales, 13 Conferencia en Eventos Académicos, Organizador de 17 eventos y congresos, con Participación en elaboración de planes de estudio, Responsable de Proyectos de Investigación apoyados por DGAPA de la UNAM y por CONACYT. Evaluador de ponencias en el Congreso Internacional de Innovación Educativa del Tecnológico de Monterrey; Revisor de libros del Comité Editorial FESI, UNAM; del Comité editorial Facultad de Psicología, UNAM y del Cuerpo Editorial Artemis Editora. Revisor de las revistas "Itinerario de las miradas: Serie de divulgación de Avances de Investigación". FES Acatlán; "Lecturas de Economía", Universidad de Antioquía, Medellín, Colombia, Revista Latinoamericana de Ciencia Psicológica (PSIENCIA). Buenos Aires, Revista "Advances in Research"; Revista "Current Journal of Applied Science and Technology"; Revista "Asian Journal of Education and Social Studies"; y Revista "Journal of Pharmaceutical Research International".

<https://orcid.org/0000-0002-3492-1145>

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