Or we protocolize ourselves or they protocolize us: the judicialization of the ophthalmology
O nos protocolizamos o nos protocolizan: la judicialización de la oftalmología

Since the time of Montesquieu, we know (although some have already forgotten it) that democracy is founded on three powers whose balance is guaranteed by the rule of law: the executive, judicial and legislative powers.

We have often witnessed the battle between these powers and the disputes arising between «politicians» and «judges», which have led to the so-called «judicialization of politics» and its reciprocal «politization of Justice».

In certain domains, the absence of laws (or regulations or protocols) has turned judges (unwillingly) into interpreters or scholars who are forced to issue verdicts to administer justice concerning issues beyond their own fields of expertise. Thus, they have broken into the domain of medicine and, as far as we are concerned, in that of ophthalmology, with verdicts that are very far from the scientific reality, advised by scarcely expert «expert witnesses», who issue their own opinions.

For instance, we have heard of guilty verdicts in a case where no antibiotic prophylaxis was prescribed to address endophthalmitis during cataract surgery. In other words, any judge may show up and solve in the wink of an eye an old controversy in ophthalmology and in microbiology-antibiotic policy. Maybe some of these judges could also clarify in the wink of an eye certain doubts regarding the etiology of macular degeneration, the vasoproliferative factor of diabetic retinopathy or a subject that is even more puzzling: the causes of glaucoma.

Other recent rulings are equally dangerous, such as the lawsuit brought before a court by a hypermetropic patient who had undergone LASIK surgery. I do not know the whole text of the ruling and stick to the data published by Diario Médico. The ruling emphasizes the fact that refractive surgery is similar to a service contract, it is «results-oriented» and, what is even more outrageous, is based on the notion that refractive surgery is a cosmetic procedure. Obviously, the mere fact that a judge would rule in such way means that he has not met too many myopic patients. We can imagine what would happen, and is already beginning to happen, if a patient considered that his near vision does not meet his expectations after receiving an expensive intraocular lenses (at that time, multifocal lenses).

Such rulings become case law when certain medical-surgical actions are defined as service contracts, and it is up to the judges to determine their classification without consulting the appropriate scientific authorities (since we have not given them the opportunity to do so). Some patients, advised by their greedy lawyers, will learn their symptoms by heart, recite them and claim that we «did not fulfil our promises».

In this scenario, we are either courageous enough to determine our own rules or let others set the rules and judicialize ophthalmology. We may also set our own criteria in accordance with medicine based on evidence or let someone else impose their criteria based on business rulings...and we shall blame it on our own inaction.

WE EITHER PROTOCOLIZE OURSELVES OR THEY WILL PROTOCOLIZE US (allow me the barbarism).

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