

## **CHLOROCHINE - Scientific Antagonism and Risk of Professional Culpability of the Doctor**

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**Abstract:** The scientific world finds it difficult to position itself against the prescription of chloroquine and its derivatives. The role of the Supervisory Councils is innocuous and does not guarantee the physician a risk-free role in the event of prescription of the medication. In Brazil, the drug law makes it a crime to prescribe medication that does not comply with the literature. The physician is raised in a result gap that is not yet known due to the difficulty of understanding between what is recommended in the guidelines and what the law determines, especially the treatment rule of the Brazilian Ministry of Health. In this article, from the perspective of criminal law, we sought to frame the doctor's conduct in the prescription of chloroquine.

**Keywords:** Improper guilt - conscious guilt - eventual fraud

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### **INTRODUCTION**

It has long been talked about the use of the drug chloroquine<sup>1</sup> in cases of COVID-19 with distrust from the scientific community and a ban in most countries around the world on its pharmacological effectiveness, raising the question that side effects may be more harmful than the patient's own treatment and cure. The medical conduct of prescribing a scientifically prohibited drug for use in a particular medical treatment should be considered a criminal offense, as described in Article 38<sup>2</sup> of Law 11.343, the Anti-Drug Law. In addition to the anti-legal conduct to be pursued in the criminal field, we also have the investigation of the attitude in the administrative sphere punishable by the respective class counsel according to the sole paragraph of the aforementioned article [1]. The World Health Organization (WHO), since the beginning of the pestiferous time of SARS-CoV-2, has been taking a stand against the administration of chloroquine or its hydroxychloroquine derivative and has already brought out the following understanding: "These preliminary results show that hydroxychloroquine and lopinavir / ritonavir produce little or no reduction in mortality in hospitalized patients with COVID-19 when compared to the current standard of care. The study investigators will stop the trials with immediate effect"- 07/04/2020 [2]

The United States also repeatedly contradicts itself over the use of the drug; now President Donald Trump defends the use of chloroquine [3], which generates an increase in the prescription of the drug [4], now the Food and Drug Administration (FDA) revokes the authorization to use chloroquine, according to COVID-19 [5 ] with the following placement:

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<sup>1</sup> Chloroquine is intended for the treatment of malaria and hepatic amebiasis, as well as indicated for the treatment of rheumatoid arthritis, systemic lupus erythematosus and discoid lupus, in sarcoidosis and in photosensitivity diseases such as porphyria cutanea tarda and severe polymorphic eruptions triggered by light (<https://consultaremedios.com.br/farmanguinhos-chloroquina/bula#:~:text=Farmanguinhos%20chloroquine%20C3%A9%20destinado%20ao,erup%C3%A7%C3%B5es%20polim%C3%B3rficas%20graves%20failed%20by>)

<sup>2</sup> CHAPTER II - OF CRIMES Art. 38. Prescribing or administering drugs, without fault, the patient does not need them, or doing so in excessive doses or in disagreement with legal or regulatory determination. Penalty - detention, from 6 (six) months to 2 (two) years, and payment of 50 (fifty) to 200 (two hundred) days-fine. Single paragraph. The judge will communicate the condemnation to the Federal Council of the professional category to which the agent belongs.

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"The FDA has concluded, based on new information and other discussions [...], that there is no longer any reason to believe that oral chloroquine and hydroxychloroquine formulas can be effective in treating COVID-19, nor that there is reason to believe that the known and potential benefits of these products outweigh the potential risks".

In Brazil, the Ministry of Health Guidelines for the early drug handling of patients diagnosed with COVID-19 [6] emerged, advocating the use of chloroquine and hydroxychloroquine, including based on the understanding of the Federal Council of Medicine (Consultation Process CFM nº 8 / 2020 - CFM Opinion 4/2020) [7] openly indicating medications, including mandatory requirements for the Unified Health System (SUS).

Faced with the demonstrated antagonism, what is sought in this study is an analysis of the behavior of physicians who prescribe this medication without having scientific support for the effective need in the treatment of COVID-19, which may trigger risk of death in the sick or irreversible damage to the health of the patients.

### METHOD AND ANALYSIS

The study was carried out through the search for data from primary and secondary sources, a bibliographic survey on chloroquine, hydroxychloroquine and the legal framework of the physician's conduct. The research is basic, explanatory and qualitative.

The source literature was fundamental to form the theoretical framework of the research due to the problematic and transdisciplinarity of the proposed theme. The compilation of data, articles and theses democratizes and enriches the discussion, especially of themes that they keep without their relevant antagonism. The general purpose of the literature review involves locating, analyzing, synthesizing and interpreting previous research (scientific journals, books, conference proceedings, abstracts, etc.) related to the area of study; it is, then, a detailed bibliographic analysis, referring to the works already published on the theme [32]. Having as sciences essences of the study Medicine (health science) and Law (applied social science) the study permeates the areas of knowledge with the objective of facilitating the understanding of the risks of the prescription of the analyzed drugs.

### RESULTS AND LITERATURE

#### The occurrence of crime / criminal offense in the culpable modality of mere conduct

The Brazilian Penal Code defines as an offense the action or omission that violates the penal law<sup>3</sup>, which specifies the conduct that has its practices prohibited, as they are harmful to society's interest or because they cause personal harm to the individual and / or his / her property, according to Assis Toledo. "Substantially, crime is a human fact that harms or exposes protected legal (legal-criminal) assets. This definition is, however, insufficient for criminal dogmatics, which needs a more analytical one, able to show the essential aspects or structural elements of the concept of crime. And among the various analytical definitions that have been proposed by important penalists, it seems more acceptable to us that he considers the three fundamental notes of the criminal fact, namely: typical action (typicality), illicit or anti-legal (illegality) and culpable (culpability)). Crime, in this conception we adopt, is, therefore, a typical, illicit and culpable action" (TOLEDO, 1994). [8]

We have a legal description of what is considered a crime in article 1 of the Law of Introduction to the Penal Code. The incriminating types may prohibit or impose conducts that, if not followed, will result in criminal conviction: Art. 1 The criminal offense that the law entails punishment of imprisonment or detention, either alone, alternative or cumulatively with the fine penalty; misdemeanor, the criminal offense to which the law separately commits a simple prison sentence or a fine, or both, alternatively or cumulatively (BRASIL, 1941). [9] The legislator describes a conduct that, if practiced, will lead to the incidence of the sentence corresponding to the penalty provided for in the law that typifies the occurrence of the criminal offense, a theory also called Binding Theory<sup>4</sup> (GRECO, 2017). [10] The objective of Criminal Law is to protect the greatest assets, that is, to support the most important and necessary rights to human existence and coexistence in society, according to Luiz Regis Prado, "modern legal thinking recognizes that the immediate and primordial scope of Criminal Law is based on the protection of legal assets - essential to the individual and the community." (PRADO, 1999) [11]. For Nilo Batista, he adds "the mission of criminal law is the protection of legal assets, through the combination, application and execution of the sentence" (BATISTA, 1996) [12]. Therefore, the consequent application of the penalty imposed for the offense is the instrument of coercion proper to criminal law so that it can protect assets, values and social interests and human rights. The Penal Code specifies that the willful crime is when the agent intends to produce the result and that the wrongful crime is when the agent caused the result to the victim through his recklessness, negligence or malpractice. [13] Penal Code - Art. 18 - The crime is said:

Willful crime

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<sup>3</sup> Law that specifies what will be considered a criminal offense, that is, what qualifies as criminal conduct.

<sup>4</sup> For Binding, the criminal, when committing a crime, does not break the law, but the criminal law contained therein. As the legal type brings with it an imperative structure, the individual, when practicing the typical conduct, does not disobey the law, conforming to it perfectly, which shows that the offense is in relation to the penal rule contained in the legal statement.

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I - intentional, when the agent wanted the result or assumed the risk of producing it;

Guilty crime

II - guilty, when the agent caused the result due to recklessness, negligence or malpractice.

Sole paragraph - Except for the cases expressed in law, no one can be punished for a fact that is foreseen as a crime, except when he intentionally practices it. (BRAZIL, 1940). Therefore, any action or omission that occurred in an intentional or culpable way, which falls within the classification of the criminal law, will be pursued with such intuition to apply the criminal conviction and repression of its occurrence.

### The Crime of Mere Conduct and the Crime of Abstract Danger

The crime of mere conduct (or simple activity), as the denomination itself says, does not provide for any naturalistic result in the penal type. It only narrates the behavior that we want to prohibit or impose, making no mention of the material result, nor demanding its production, as in the case of the violation of domicile, typified in art. 150 of the Code (GRECO, 2017) [14].

The crime of mere conduct does not require a result for the criminal infraction to occur, however, even if there is no injury, there will be a danger of injury to the legally protected property. Therefore, the risk of injury is sufficient to classify the crime of mere conduct, without requiring the naturalistic (finalistic) result, also called the material result of the crime, that is, the damage to the criminally protected property. The crime of abstract danger occurs when the incriminating criminal type considers the practice of risk-generating behavior to be sufficient for the occurrence of the crime, as described in the criminal type. The crime of abstract danger is also known as a crime of presumed danger, that is, there will be a presumption that the conduct practiced by the agent will cause danger of harm to the victim. According to Doctrinator Fernando Capez, the crime of mere conduct of abstract danger does not require the effective exposure to the victim's risk to occur, demonstrating greater protection for the protected legal good, such as the life and dignity of the human person: The crime is mere conduct and, according to Fernando Capez, an abstract danger, since the law did not require the effective exposure of others to risk, the subsequent assessment of the occurrence of danger to the community being irrelevant. In crimes of abstract danger, according to Capez, "the political option of the Legislative Power to consider the fact, formally and materially, typical regardless of whether someone, in the specific case, comes to suffer real danger, does not support the law that defines human dignity. Instead. It reveals, on the part of the legislator, an even greater willingness to protect the legal good, repressing the violating conduct since its birth, trying not to give it any chance of progressive unfolding capable of converting it into a later concrete danger and, later, in actual damage. It is a legitimate political option to safeguard, in a more comprehensive and effective way, people's lives, bodily integrity and dignity, which are threatened with the mere conduct of leaving home illegally armed. By carrying out the conduct described in the type, the author will already be putting public security at risk, as protecting it was the desire expressed by the law. To deny the validity of the device in cases where there is no real danger, on the grounds that it would undermine the dignity of the human person, implies reducing the protective scope of the device, based on justifiable justifications. By decreasing the protection of potential victims of more serious offenses, produced through the use of firearms, leaving them uncovered against the damage in their birth, the interpreter will be relegating the objective criterion of the law to his, of subjective and personal nature. The condition of the offender is privileged over the victim, against the express letter of the law. The presumption of insult, for that reason, characterizes a mere criterion of criminal policy, chosen by the legislator with the purpose of offering a broader and more effective form of protection of the legal good" ("Firearm - Comments to Law n° 9.437, of 20.2. 1997", ed. Saraiva, 1997, pages 25/26) apud (SUPREMO TRIBUNAL FEDERAL, 2004). [15] Crimes of abstract danger do not require the actual damage to the protected legal property, but rather consider the act of the agent to put the protected legal property at risk, describing the guilty behavior or conduct:

Crimes of abstract danger are those that do not require the injury of a legal asset or the placing of that asset at real and concrete risk. They are criminal types that describe only a behavior, a conduct, without pointing to a specific result as an express element of the unjust. [...] Crimes of abstract danger have been widely used by the legislator in recent times, not only in traffic crimes, but also in the environmental area, biosafety, financial crimes, among others (BOTTINI, 2010). [16]

It has to be mentioned that a doctrinal current defends the principle of the minimum intervention of the State that preaches as the main function of Criminal Law is to protect the most important and necessary assets to live in society, being only these defended by penal legislation, being restrained by applying tougher sanctions. This criterion for the protection of the most important assets cannot be absolute and rigid, as these will be determined by the society under analysis, in which it will be applied, having different degrees of importance, according to the culture of the people [17]. The minimum criminal law recognizes that the creation of crimes of abstract danger without the concern to demonstrate the real danger of behavior, can lead to convictions for innocuous attitudes, without the capacity to affect legal assets. This criminalization of behavior without verifying its potential to affect legal<sup>5</sup> assets can lead to an authoritarian criminal law, which is concerned only with protecting the validity of the rules without observing its ultimate framework, which is the preservation of human dignity. The crime of abstract danger is punished

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<sup>5</sup> Principle of injury to offensive conduct.

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because the act creates a risk to specific legal assets, and not just because the behavior is contrary to the norm (BOTTINI, 2010) [18].

The crime of abstract danger proposes the safeguarding of the protected legal patrimony without going into details that could compromise the applicability of the law, such as technological developments that may render the applicability of a very closed criminal type unfeasible, thus making this normative as a dead law. And without effective protection of the goods intended for the protection.

### **From committing a crime in the prescription of chloroquine for treatment of COVID-19**

The prescription of untested and approved medication (off-label) by a responsible regulatory agency - ANVISA - may be considered a culprit conduct, as it leads to the fact that it is committed in the event of imprudence or negligence. The negligence results from the action taken, hastily and without due precaution. It is imprudent who exposes the patient to unnecessary risks or who does not strive to minimize them, that is, they occur in cases where the doctor, even without having the direct intention of harming the patient, causes harm to him by not observing the legal dictates duty of care to avoid the occurrence of evil, such as disobeying guidelines. Negligence consists of inaction, inertia, passivity or omission, understanding that it is negligent who, being able or ought to act in a certain way, through indolence or mental laziness, does not act or behave differently (FREITAS and OGUISSO, 2003) [19]. This culpable conduct for recklessness is due to the fact that the doctor did not observe the duty of care, considering that the medication causes side effects that in some cases are more harmful to the patient than the symptoms themselves. The culprit conduct derived from negligence, however, permeates recklessness and unravels in the act of the doctor failing to do what the normal diligence imposed on the case, such as, for example, he avoided studying the previous cases of use of the substance administered by assessing the risks. and side effects presented in current scientific medical doctrine (GRECO, 2017) [20]. It is described in the anti-drug law (Law 11.343 / 06) in article 38 that if drugs are prescribed or administered in a culpable way, negligently or recklessly, without the patient needing them, and that they are in disagreement with the protocols of medical treatment, the doctor will incur a crime punishable by detention from six months to two years and liability for administrative inquiry by the federal council of its category, which in the case of the doctor is the Federal Council of Medicine.

Drug Law - Art. 38. Prescribing or administering drugs, without culprit, without the patient needing them, or doing so in excessive doses or in disagreement with legal or regulatory determination:

Penalty - detention, from 6 (six) months to 2 (two) years, and payment of 50 (fifty) to 200 (two hundred) days-fine.

Single paragraph. The judge will communicate the condemnation to the Federal Council of the professional category to which the agent belongs (BRASIL, 2006). [21]

The prescription of chloroquine is not proven to be effective in the treatment of COVID-19, as well as, its effectiveness has not been scientifically proven and what side effects will be expected and combated. It is seen that chloroquine is tested for several diseases and that in some of them side effects are triggered that are not accepted due to the low improvements presented by the disease, as in the case of sideroblastic anemias:

Sideroblastic anemias (SA) are a heterogeneous group of disorders acquired and inherited from the bone marrow defined by the presence of pathological iron deposits in the mitochondria of erythroblasts. The clinical manifestations of AS are largely dependent on the severity of the anemia. The basis of treatment for patients with AS is red blood cell transfusion (RBC). The low dose of chloroquine was used successfully in porphyria cutanea tarda, which suggests that the drug interfered with heme metabolism. Anecdotal reports pointed to a beneficial effect of chloroquine in sporadic patients with AS. The lack of response and the side effects observed in this study suggest that treatment with chloroquine is not a good option for patients with AS (LIMA, 2003). [22] Specifically, about the new coronavirus, there are no known consistent studies that approve the use of chloroquine, with some studies of its kind applied to cases of Severe Acute Respiratory Syndrome (SARS):

Chloroquine is effective in preventing the spread of SARS CoV in cell culture. Favorable inhibition of virus spread was observed when cells were treated with chloroquine before or after SARS CoV infection. [...] Chloroquine, a relatively safe, effective and inexpensive drug, used to treat many human diseases, including malaria, amebiasis and human immunodeficiency virus, is effective in inhibiting the infection and spreading SARS CoV in cell culture. The fact that the drug has a significant inhibitory antiviral effect when susceptible cells have been treated before or after infection suggests a possible prophylactic and therapeutic use (VICENTI et al, 2005). [23] There are some studies on the use of this medication applied to cases of Severe Acute Respiratory Syndrome (SARS), which also presents with viral infection, but which presents a limited and very acceptable toxicity, which may result in a low risk and good benefit to the patient who is at imminent risk of life:

Chloroquine is a 9-aminoquinoline known since 1934. In addition to its well-known antimalarial effects, the drug has interesting biochemical properties that can be applied against some viral infections. Chloroquine exerts direct antiviral effects, inhibiting the pH-dependent steps of the replication of various viruses, including members of the flaviviruses, retroviruses and coronaviruses. Its best studied effects are those against HIV replication, which are being tested in clinical trials. In addition, chloroquine has immunomodulatory effects, suppressing the production / release of tumor necrosis factor alpha and interleukin 6, which mediate the inflammatory complications of various viral diseases. [...] We conclude that the administration of chloroquine /

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hydroxychloroquine has limited and very preventable toxicity and, therefore, can result in a low risk / benefit, at least when used in life-threatening conditions (SAVARINO et al, 2003). [24]

The use of chloroquine as a treatment for coronavirus has the problem that the tests of employment effectiveness should happen almost exclusively in humans, considering that other infected living beings have less lethality than humans, thus having low productivity scientific testing on other infected species, such as monkeys, rats, rabbits, etc:

The main challenges in the clinical development of new anti-coronavirus drugs include the limited number of animal models suitable for the evaluation of possible treatments for SARS<sup>6</sup> and MERS<sup>7</sup>, the current absence of new cases of SARS, the limited number of cases of MERS - which also they are predominantly geographically confined to the Middle East - as well as the lack of industrial incentives to develop antivirals for mild infections caused by other less pathogenic coronaviruses. (ZUMLA, CHAN and AZHAR, 2016). [25] However, studies published in the United States National Library at National Institutes of Health, specifically in the Academic Journal Cell Research, reveal that the potential use of chloroquine is clinically possible in combating COVID-19, given its low cost and the safety brought for its use in other viral diseases for more than 70 years:

Chloroquine, a drug widely used for antimalarial and autoimmune diseases, has recently been reported as a potential broad-spectrum antiviral drug. It is known that chloroquine blocks infection by the virus, increasing the endosomal pH necessary for virus / cell fusion, in addition to interfering in the glycosylation of SARS-CoV cell receptors. Our addition time assay demonstrated that chloroquine worked in the entry and post-entry stages of the 2019-nCoV infection in Vero E6 cells. In addition to its antiviral activity, chloroquine has an immunomodulatory activity, which can synergistically increase its antiviral effect in vivo. Chloroquine is widely distributed throughout the body, including the lung, after oral administration. The EC 90 value of chloroquine against 2019-nCoV in Vero E6 cells was 6.90 µM, which may be clinically possible, as demonstrated in the plasma of patients with rheumatoid arthritis who received 500 mg of administration. Chloroquine is a cheap and safe drug that has been used for more than 70 years and, therefore, is potentially clinically applicable against 2019-nCoV (WANG, 2020). [26]

The National Center for Biotechnology Information has information that chloroquine and hydroxychloroquine can be used in autoimmune diseases, although, even though they are considered safe and have relatively mild side effects, they can cause poisoning if used in higher doses, causing cardiovascular disorders. that lead to the patient's death:

Chloroquine sulfate and phosphate salts have been marketed as antimalarial drugs. Hydroxychloroquine has also been used as an antimalarial, but is now widely used in autoimmune diseases such as lupus and rheumatoid arthritis. It is important to note that chloroquine and hydroxychloroquine are considered safe and side effects are generally mild and transient. However, the margin between the therapeutic and the toxic dose is narrow and chloroquine poisoning has been associated with cardiovascular disorders that can be fatal (Frisk-Holmberg et al., 1983). The use of chloroquine and hydroxychloroquine should therefore be subject to strict rules, and self-treatment is not recommended. (TOURET, 2020). [27]

There have been reports from doctors who noticed arrhythmia in patients with COVID-19 who received a high dose of chloroquine and the Canadian Medical Association Journal also warned of the dangers of prolonged use of chloroquine / hydroxychloroquine (in combination with the antibiotic azithromycin) that could lead to hypoglycemia, restlessness, confusion and delusions, in addition to cardiac arrhythmia, epileptic attacks, coma and cardiac arrest, reaching death. In the opposite sense, medical journals support the use of chloroquine and defend its effectiveness in the treatment of the new coronavirus, using as a basis that this medicine is used in the treatment of infectious respiratory diseases: It is difficult to find a product that currently has a better-established safety profile than chloroquine. In addition, its cost is negligible. Therefore, its possible use both in prophylaxis in people exposed to the new coronavirus and as a curative treatment is likely to be readily evaluated by our Chinese colleagues. If clinical data confirm biological results, the new disease associated with coronavirus will become one of the simplest and cheapest to treat and prevent among infectious respiratory diseases (ZHONGHUA, 2020). [28] Science China Life Sciences [29] published a study that verified, through biological analyzes, that the Coronavirus protein is similar in structure to the protein of the virus that causes Severe Acute Respiratory Syndrome (SARS-CoV) and can therefore receive the same treatment medicated: Science China Life Sciences published the document online on January 21, 2020, through biological analyzes, it was found that the 2019-nCoV (S) spike protein is structurally similar to the SARS-CoV S protein and can also bind to the ACE2 receptor on the host cell surface via protein S, thereby infecting the host's epithelial cells. The results of a joint study by the Wuhan Institute of Virology, Chinese Academy of Sciences and Institute of Toxicology and Medicine, Academy of Military Medical Sciences show that, at the cellular level, Remdesivir (GS-5734) and Chloroquine (Chloroquine, Sigma-C6628) can effectively inhibit 2019-nCoV infection (COLSON, ROLAIN and RAOULT, 2020). The Lancet, UK, specialized in medicine, created in 1823, published the largest observational study to date, on the effects of chloroquine / hydroxychloroquine in

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<sup>6</sup> Severe Acute Respiratory Syndrome (SARS-Cov)

<sup>7</sup> Middle East Respiratory Syndrome (Mers-Cov)

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approximately 100,000 hospitalized patients, indicating a marked mortality in those who received this medicine, occurring problems of tachycardia and ventricular fibrillation [30]:

Verified data from an international registry composed of 671 hospitals on six continents were used to compare patients with COVID-19 who received chloroquine (n = 1868), hydroxychloroquine (n = 3016), chloroquine with macrolide (n = 3783) or hydroxychloroquine with a macrolid (n = 6221) within 48 hours of the diagnosis of COVID-19, with 81,144 controls who did not receive these drugs. The primary outcome measure was hospital mortality and the occurrence of unsustained or sustained ventricular tachycardia or ventricular fibrillation was also analyzed. A Cox proportional hazard model, responsible for many confounding variables, including age, sex, ethnicity, comorbidities, other medications and COVID-19 severity, showed a significant increase in the risk of in-hospital mortality with the four treatment regimens compared with the control group. Analyzes using the propensity score by treatment group supported this result. The increased risk of in-hospital mortality was similar in men (CHRISTIAN and ELIE SALEM, 2020). In another article published by The Lancet, the researchers stated in their interpretation of the study that it was not possible to confirm benefits obtained with the use of hydroxychloroquine or chloroquine in patients hospitalized with COVID-19 [31]: It was not possible to confirm a benefit of hydroxychloroquine or chloroquine, when used alone or with a macrolide, in the hospital results of COVID-19. Each of these drug regimens has been associated with decreased hospital survival and an increased frequency of ventricular arrhythmias when used in the treatment of COVID-19. Finally, we have a study published by MedRxiv regarding results in patients hospitalized with COVID-19 and concluded that there is no evidence that the use of hydroxychloroquine, with or without azithromycin, would reduce the risk of mechanical ventilation in patients hospitalized with COVID-19. However, an association of increased general mortality was found in patients treated only with hydroxychloroquine. Therefore, given the duality of claims between researchers who paradoxically defend and another condemn the use of chloroquine in a patient with COVID-19, they highlight the importance of waiting for the results of prospective, randomized and controlled studies in progress before the wide adoption of these drugs.

### **Potential knowledge of illegality**

One of the elements of guilt is the potential awareness of illegality, that is, if, at the time of the conduct, the active subject (doctor) had (has) factual conditions to know the illicit character of the act. But can the illicit character be covered by medical literature? The stir created between the prescription and proscription of chloroquine and hydroxychloroquine raises the doctor in a legal gap that he, by himself, does not have knowledge to solve the situation. Depending on the penal analysis applied to the case, the doctor may be held responsible even if there is no deception, in this sense explains the Objective Imputation Theory, as noted by PRADO, 2018: "For this theory, action is considered a pre-judicial category, coinciding with the reality of life, not being purely naturalistic or finalist. Other peculiar aspects of this doctrine come to be the functional criterion of the objective imputation theory (typicality) and the extension of guilt to a new systematic category, responsibility (guilt / preventive need for punishment). Guilt is based on the political-criminal principles of the theory of the ends of the sentence" It means to say that criminal responsibility is attributed to someone, with regard to positive typicality, without taking into account the deceit of the agent since deceit is a subjective condition of the criminal practice. When advocating, the drug law, that prescribing or administering drugs, without guilt, without the patient needing them, or doing so in excessive doses or in disagreement with legal or regulatory determination, underlies the physician's responsibility to act according to the guidelines and that in this particular case they are antagonistic, prescribing and proscribing drug therapy with the drugs under discussion, and such health professional may suffer criminal prosecution for such conduct characterized as a crime in article 38 of law 11.343.

### **CONCLUSIONS**

In view of the antagonism and uncertainty created by the scientific community, it is concluded that the doctor's conduct can be framed based on criminal precepts, while the Drug Law provides for an exclusive type for the prescription of medication in disagreement with regulations, which in that diapason it is characterized by medical literature. The WHO and the FDA were against the prescription of chloroquine and hydroxychloroquine, but the Governments were in favor, including generating, in Brazil, a treatment protocol with subsidy from the Federal Council of Medicine, creating even more insecurity for the doctor and the population. WHO often made and makes prophylactic use of these drugs. This study sought to explain the doctor's conduct in the face of the stir created by the scientific community from the perspective of criminal law, given that by the theory of objective imputation the doctor would be guilty in the hypothesis of administering a medication known to be irrelevant or with a high risk to the health of the patient. Patient . With the information that the Federal Council of Medicine has issued a treatment protocol for cases of COVID-19 with the use of chloroquine and hydroxychloroquine, the doctor finds himself in a legal limbo, where his class council, for unreasonable reasons, determines the use drug that is known to be contrary to the best international medical scientific doctrine, without having the effectiveness of treatment proven and released by the Regulatory Agency (ANVISA), and therefore, the doctor may suffer imputation and be responsible for the crime of prescription of medication in disagreement with legal regulation. The question remains whether the physician should use the guidance given by his class council, or if he is guided by

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more reliable paradigms of studies carried out around the world by researchers with a broader spectrum of research. The doctor must remember the oath he took before beginning his activity, an oath created by Hippocrates known as the father of modern medicine, who founded the foundations of medicine on rationality and scientific criteria. This oath gave dignity to the medical profession, establishing ethical standards of conduct that should guide the doctor's life in professional practice, based on the benefit to the patient and the dignity of the human person. Since medicine is the science that is responsible for preventing and combating diseases based on increasing the quality of life of the individual and society, there is no way to endure it in the face of the behavior of the scientific community that since December 2019 has been unable to position itself clearly against SARS-CoV-2 and much less about possible therapies against the virus.

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