

ORIGINAL ARTICLE

# Judicialization of health care in the Western Amazon: collective decisions of the jurisdictional court of justice in the State of Acre, Brazil

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*Manuscript received: july 2020*  
*Manuscript accepted: may 2021*  
*Version of record online: january 2022*

## Abstract

**Introduction:** the judicialization of health is an alternative to the health services in Brazil, despite criticism of judicial decisions and control of public health policy. The large number of actions that demand health services is a health problem that characterizes the political, social, ethical, legal, and health systems of the Public Health Policy.

**Objective:** to analyze the judicialization of health care in the Acre State, Brazil, from 2010 to 2016.

**Methods:** it is a documentary and cross-sectional study of collegiate decisions, with final judgments, in the period from 2010 to 2016, issued by the Court of Justice of the State of Acre,

**Results:** all proposed actions were Writ of Mandamus. The use of preliminary injunction was the most common strategy (n = 34; 94.44%). One third of the respondents were not questioned by the State of Acre (n = 9; 25%) as decisions of the Court of Justice on health concern medicines, examinations, and procedures, in these cases, it only manages interests, with no litigation per se. (n = 25, 69.44%). Men and women demanded in the same proportion, all of them characterized by living in poverty (n = 28; 77.78%).

**Conclusion:** the collective health decisions handed down by the State Court of Justice Acre, Brazil, guarantee access to health goods and services to the claimants, with emphasis on preliminary injunctions and grounds based on the principle of human dignity, physical integrity and life, and on medical prescriptions in each specific case and, in a third of the cases, serving as a mere administration of interests.

**Keywords:** public health policy, judicial decisions, legal procedural law, health judicialization.

**Suggested citation:** dos Santos JLG, Pardo DWA, Messetti PAS, de Araujo Moraes SDT, Silva AP, Leitão FNC, Daboin BEG, Bezerra IMP, Abreu LC. Judicialization of health care in the Western Amazon: collective decisions of the jurisdictional court of justice in the State of Acre, Brazil. *J Hum Growth Dev.* 2022; 32(1): 30-42. DOI: 10.36311/jhgd.v32.12615

## Authors summary

### Why was this study done?

Analyze the main issues concerning the judicialization of health in collegiate decisions in the State of Acre from 2010 to 2016.

### What did the researchers do and find?

The authors analyzed 36 (thirty-six) collegiate decisions at the Court of Justice of the State of Acre and examined the interests under discussion, with their motivating factors, circumstances, and outcomes. The analyzed writs of mandamus had the objective to access medicines, examinations, and the referral of the plaintiffs to the treatment of care outside the home.

### What do these findings mean?

Contribute to the understanding of the judicialization profile of health care in Brazil. The judicialization of health in the State of Acre means access to medicines and services based on the medical prescription of each particular case, regardless of the complexity of diagnosis or treatment.

## INTRODUCTION

The judicialization of health is the search for the judicial system as the ultimate alternative to obtain the drug prescription or service denied by the public or private health provider, either for out of stock or budgetary issues. It reflects a flawed health system, which can not fully satisfy the protection of this fundamental right<sup>1</sup>.

Since 1990, the judicialization process has been present in South and Central America. Still, in Brazil, it exhibits many demands attended by the Judiciary, involving discussions among managers and health professionals, politicians, lawyers, in the most varied political, social, ethical and legal contexts<sup>2</sup>.

The scope and social repercussion of the theme caused the Federal Supreme Court (STF) to categorize the judicialization of health as a public health problem present in all Brazilian states<sup>3,4</sup>.

The Unified Health System (SUS) is responsible for the creation and implementation of public health policies. It is administered, executed, and controlled by the Executive Branch at all three levels of government (Federal, State, and Municipal), with established hierarchy and decentralization of actions and responsibilities, promoting health for all in the national territory, regardless of the requirement<sup>5</sup>.

Brazil recorded 1.346,931 processes in the health area as of December 2016, with 214,947 lawsuits related to medical-hospital treatment or medicine supply by the SUS<sup>6</sup>. In the same year, the State of Acre presented 320 legal actions, 82 related to hospital medical treatment or supply of medical drugs (SUS)<sup>7</sup>.

The structuring of the right to health through public policy makes the Executive Branch responsible for creating infrastructure and human resources to guarantee a good quality health service to the citizen. It is the responsibility of the Judiciary to control it without prejudice to all criticisms regarding the capacity technique and social effectiveness of judicial decisions<sup>8,9</sup> affecting SUS management and financing systems.

It is evident that the search for judicial intervention for access to medicines, services, treatments reflects a mismatch between public health needs and the provision of universal, integral, and equitable care to citizens<sup>10</sup>.

In the context of judicial control of the public health policy by the Judiciary, the Executive Branch's challenge is the reduction of the number of judicial litigation. Hence, it is essential to understand the causes and effects of judicialization in the public health policy system<sup>8</sup>, mainly

due to the regional diversity of the Brazilian states, such as Distrito Federal<sup>11</sup>, Pernambuco, Rio Grande do Sul, and Minas Gerais<sup>12-14</sup>.

In this way, the Executive Branch must adopt approaches to the political and collective construction of the right to health, distinguishing the legitimate interests of each actor involved, establishing an effective institutional dialogue in resolving public health conflicts<sup>15,16</sup>. In addition ethical commitment, must be adopted to ensure the balanced performance of each actor, governmental organization, and social organization involved in guaranteeing the right to health<sup>17</sup>.

Regional approaches to the judicialization of health are necessary to understand the problems of access to health in Brazil and adopt an efficient and effective public health policy.

The present study is based on the premise that collegiate decisions on Health Judicialization are legal and constitutional. Moreover, understanding that the apparent divergence between Public Authorities and users is the result of a conflict directed at the resilience of the Judiciary, aiming at the realization of Brazilian SUS principles and human dignity above all.

Thus, the objective of this study is to analyze the collegiate decisions on the of health's judicialization in the State of Acre, Brazil, from 2010 to 2016.

## METHODS

### Study Design

It is a cross-sectional documentary study<sup>18</sup> with secondary data collected in the judgments of the Court of Justice of the State of Acre (TJ / AC), Western Amazon, Brazil, whose decisions were related to health services in the SUS from 2010 to 2016. It defined legal terms for this data collection as follows:

- Monocratic decisions: they are judicial decisions pronounced by a single magistrate;
- Infringing embargoes: it is an appeal filed against a monocratic decision of the rapporteur and is intended to review the decision<sup>19</sup>;
- Amendment of Judgment: refers to a legal instrument (appeal) whereby a party to a judicial process asks the judge (or Court) to clarify particular aspect (s) of a decision given when there is any doubt, omission, or contradiction in judgments<sup>20</sup>;

- Writ of Mandamus: are lawsuits that seek to protect a clear legal right; being this the right whose proof of the factual support is pre-constituted, when there is no need to demonstrate the facts that sustain it by the instruction of the process<sup>21</sup>;

- Out-of-home treatment: these are situations in which the State can not guarantee health treatment in its locality, needing to be referred from its locality to centers referenced within or outside the State, at the discretion of the Acre medical committee<sup>22</sup>;

- Plaintiff: it is the part of the process that holds a right or interest and seeks, by legal action, to obtain a good, to ensure protection and others<sup>19</sup>;

- Defendant: it is the part of the process that is legally responsible for the safeguard and guarantee of a right<sup>19</sup>;

- Interest: it is the condition for filing the lawsuit qualified by the necessity and utility, since the actual situation of the plaintiff admits the service of a need in a helpful and timely manner by judicial means<sup>19</sup>;

- Claim: it is the request of the satisfaction of an interest (a right) of the plaintiff with the Judiciary Power;

- Dispute: it is the defendant's resistance to the satisfaction of an interest (a right) of the plaintiff sought from the Judiciary Branch<sup>19</sup>.

### Study Location and Period

The data were collected in the Service Portal of the

Judicial Automation System (e-SAJ) of the State of Acre, (<http://esaj.tjac.jus.br/cjsg/resultadoCompleta.do>), for the period 2010-2016.

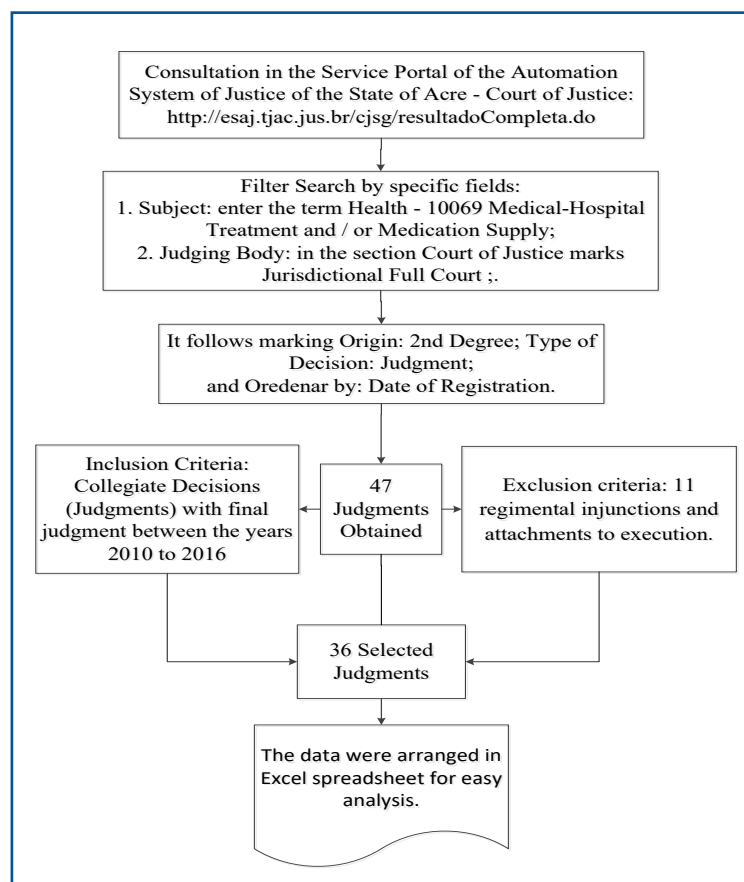
### Study Population and Eligibility Criteria

The e-SAJ portal is an automation system that promotes the integration of information among institutions of the justice ecosystem and brings the justice of all citizens closer together, adopted by the Court of Justice of the State of Acre (TJ / AC) to exchange information and streamline procedures through online services for use by lawyers, citizens, and court officials.

The data extraction was performed using the following descriptors: Health - Medical-Hospital Treatment 10069 and / or Drug Supply. In the following, the operating system of the Court of Justice of the State of Acre, Brazil offers the following fields: judicial body (Court of law), origin (second degree), type of publication (judgment), order by date of publication.

### Data Collection

The information of 47 judgments were found during the examined period. After applying the inclusion and non-inclusion criteria, 11 decisions were excluded because they were monocratic. Subsequently, thirty-six (36) decisions were considered on judicializing the right to health.



**Figure 1.** Flowchart of the methodological procedures for sample selection with the Court of Justice of the State of Acre, from 2010 to 2016.

Source: Documentary research with the judgments of the Court of Justice of the State of Acre (TJ/AC).

The criteria for inclusion were judgments (decisions of collegiate courts) delivered by the Full Court of the Court of Justice of the State of Acre. A collegiate decision does not allow further discussion in higher Court in medical treatment and / or supply of medicines. The exclusion criteria were: internal appeal by a court (infringing liens) and declaration liens.

**Data Analysis**

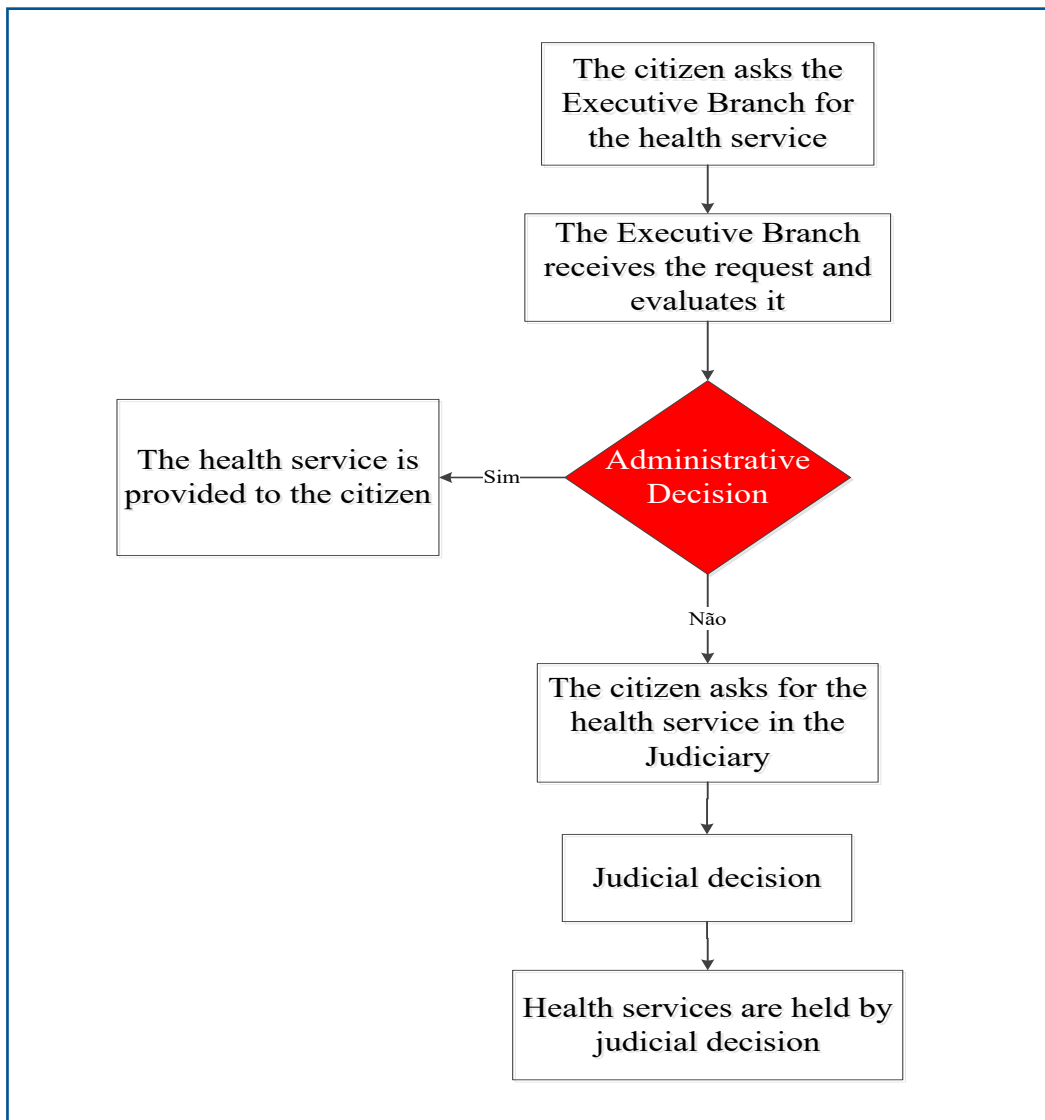
The data were tabulated in Microsoft Excel, and the descriptive statistic was applied to consider the percentage of the judicialization of health requirements.

**Ethical and Legal Aspects of the Research**

CEPCEA CAAE approval: 60249316.0.0000.5624, Opinion no. 1.802.271.

**RESULTS**

Judicial decisions on a writ of mandamus are preceded by the failure or omission of the State of Acre to provide essential health services to the citizens, who seek in the Judiciary to meet their needs and fulfill their health rights (figure 2).



**Figure 2.** Flow diagram of the Health Judicialization process in the State of Acre.

Source: Documentary study in collegiate decisions in the Court of Justice of the State of Acre (TJ/AC).

Thirty-six (36) collegiate decisions were found to analyze and evaluate the legal steps to assure their right to health. They identify the factors and circumstances that motivated the demand, the profile of the plaintiff and the nature of his judicial representation (public or private), the legal principles used by magistrates, and the outcome.

The analyzed writs of mandamus had the objective to access medicines, examinations, and the referral of the plaintiffs to the treatment of care outside the home. The

most frequent diagnoses are viral hepatitis B or C. The most requested applications are pegylated interferon-alpha two or alpha 2 b, ribavirin, protease inhibitor Victrelis (Boceprevir), Telaprevir 375 Entecavir 0.5 mg. In contrast, the second most frequent diagnosis was osteoporosis, which had Teriparatide Fortéo 250 mg (table 1).

**Table 1:** Characterization of the Judicialization of Health in the Collective Decisions of the Court of Justice of Acre, Western Amazon, Brazil, from 2010 to 2016.

Collective Decisions	Doctor's Prescription	Diagnosis
6111	TOH	Retinopatia diabética com deslocamento de retina e hemorragia
6183	Colonoscopy	Intestinal Disease
6290	Physiotherapeutic Treatment + TOH1	Locomotion Problem
6549	Imipramine 75mg e Normosang	Porphyria in Acute Neuronal Lesion
6676	Pegylated Interferon Alpha 2 A or Alpha 2 B Ribavirin and the Victrelis Protease Inhibitor (Boceprevir)	Hepatitis "C"
6792	Cardiac Catheterization + TOH	Cardiopatía
6799	Antibody Examination CCP e FAN	Daily suffering for unexplained cause
6977	Clexane 40 mg	Thrombophilia
6986	Testosterone Udecanoate 250mg	Testicular retention in the abdominal cavity causing sterility and serious diseases
7066	Telaprevir 375mg	Hepatitis "C" Genotype I
7083	Alfapeginterferone 2B 180mcg ampoule, Ribavirin 250mg capsule and Boceprevir 200mg	Hepatitis "C" Chronic
7104	Alfapeginteride 2B 180mg ampoule; Ribavirin 250mg capsule; Boceprevir 200mg	Hepatitis "C" Chronic
7106	Telaprevir 375mg	Hepatitis "C"
7179	Boceprevir 200 mg	Chronic Obstructive Pulmonary Disease, Type Emphysema, Class IV
7204	Spiriva Respimat (Brometo de Tiotrópio 2,5 mg)	Chronic Obstructive Pulmonary Disease, Type Emphysema, Class IV
7293	Interferon Pegylated 180mg, Ribavirin 250mg - Capsule and Telaprevir 375mg	Hepatitis "C" Chronic
7419	Teriparatide Fórteo 250 mg	Severe Osteoporosis, having suffered fracture in several vertebrae in the dorsal and lumbar spine
7426	Leg graft + TOH	Queimadura da perna esquerda, necessidade de enxerto.
7427	Enoxaparin 40mg	Thrombophilia
7429	Risperidone 1mg e Imipramina 75mg	Psychotic Disorder
7431	24-Hour Holter and Nasosinusal Videoendoscopy	Adenoide and Extra-Systoles
7466	Electroneuromyography MMSS e MMII	Repetitive Strain Injury - "READ OUT"
7482	Entecavir 0,5 mg	Hepatitis "C" Chronic Viral "B"
7510	Teriparatide 250 mg	Osteoporosis with Vertebral Fractures and Wrist
7513	Teriparatide 250 mg	Severe Lumbar Osteoporosis with Risk of Pathological Fracture
7570	Cardiology of Peripheral Blood Band G	Microcephaly
7592	Exame + TOH	Microcephaly
7594	Spiriva Respimat 2,5mg	Chronic Respiratory Failure 3rd Degree and Chronic Pulmonary Disease
7596	Entecavir 0,5 mg	Cirrhosis
8161	Sandostatin LAR-20 IM	Gallbladder Cancer

**Continuation - Table 1:** Characterization of the Judicialization of Health in the Collective Decisions of the Court of Justice of Acre, Western Amazon, Brazil, from 2010 to 2016.

Collective Decisions	Doctor's Prescription	Diagnosis
8186	Teriparatide 250 mg	Advanced Lumbar Osteoporosis with Pathological Fracture
8225	Genetic CGH-ARRAY	Chronic Non-Evolutionary Encephalopathy
8708	Entecavir 0,5 mg	Hepatitis "B" and Renal Insufficiency
8718	Doxorubin and Vimblastine EV	Hodgkin's lymphoma ICD 10 n. C81.9
8724	Slelazini 5mg e Léptico 100 mg	Psychotic Disorder
9565	TOH	Cancer

1. TOH - Treatment Outside the Home.

Source: Documentary study in collegiate decisions in the Court of Justice of the State of Acre (TJ / AC).

All the actions proposed in the period under study were imposed by writ of mandamus (MS). Most of the cases supported the right to health of the plaintiffs by injunctions, duly confirmed in a final merits decision (table 2).

Nine lawsuits were not contested by the State, which contemplated the sale of medicines, followed by examinations and treatments.

**Table 2:** Characterization of the Judicialization of Health in the Collective Decisions of the Court of Justice of Acre, Western Amazon, Brazil, from 2010 to 2016.

Variables	Nº	%
Action Kind:		
WM <sup>1</sup>	36	100.00
Court Judgment:		
Right to Health ensured	34	94.44
Right to Health not ensured	2	5.56
Legal Dispute:		
WM contested	27	75.00
WM uncontested	9	25.00
Requests:		
Drugs	25	69.44
Exame and therapeutic treatment	11	30.56
Sex:		
Male	19	50.00
Female	19	50.00
Claimant's representation by a lawyer:		
Public Attorney	28	77.78
Private Attorney	10	22.22
Defense's representation by a lawyer:		
Public Attorney	36	100.00

<sup>1</sup> Writ of Mandamus.

Source: Documentary study in collegiate decisions in the Court of Justice of the State of Acre (TJ/AC).

## DISCUSSION

In the analysis of the collective health judicial decisions issued by the Court of Justice of the Acre State, from the Full Jurisdictional Court, the results report that all actions proposed in the period under study were writ of mandamus (WM). And, 94, 4% (n = 34) of the requests were granted by injunctions, duly confirmed on merits in these same cases (table 1).

There is evidence of a high level of legal health

demands, such as those reported by Travassos<sup>12</sup> (91.2%) and Gomes<sup>8</sup> (93.6%), noting that judicial measures are urgent and emerging, requiring rapid action the Judiciary to safeguard the plaintiff's physical integrity and life.

The study reveals a regional peculiarity that a quarter of the demands, 25% (n = 9), have not been contested by the State of Acre. There are no similar records in the literature, and in this case, despite the possibility of interfering with the judicial action of the



State of Acre. It is possible that the Executive Branch uses judicial channels for the purpose of granting the health service or input under the scrutiny of legality, but without due administrative proceedings for public procurement, a time-consuming and laborious procedure, especially in the case of medicines.

The absence of litigation in health actions transforms the Judiciary into a mere administrator of public-private interests, which distorts the judicial function and reveals the need for a new mechanism of state action to resolve public health litigation. In this context, the judicialization of health legitimizes the expenses in front of the control organs, allowing the purchase of medicines and the solicitation of medical exams without bidding.

The absence of litigation in health demands induces the adoption of institutional arrangements that favor conciliation and / or mediation<sup>23</sup>.

The health demands, in most cases, are about the judicial discussion of access to medicines, observing this situation in other States of the Federation, motivated by the divergence between the medical prescription and the indications contained in the Clinical Protocols and Therapeutic Guidelines (PCDT) of the SUS<sup>11-13</sup>.

The divergences of PCDT from SUS and medical prescriptions, which are always prevalent over those in the cases studied, bring as possible consequences the risk to the health of the applicant because there is no scientific proof as to the suitability and efficacy of the drug and / or service and / or procedure for the treatment of the health need of the petitioner. A clear example of this situation was the granting of 13,000 preliminary injunctions for the supply of synthetic phosphoethanolamine<sup>24</sup>, an experimental drug, at the time considered a remedy by the Judiciary, without the protection of CPTGs, violating the principles of bioethics<sup>25,26</sup> and endangering of thousands of people.

In order to provide greater legal certainty to judicial decisions on health, the National Council of Justice (CNJ) issued Recommendation No. 31 of October 30, 2010, establishing to the Courts the adoption of measures aimed at better subsidizing judges and other to ensure greater efficiency in the resolution of lawsuits involving health care, including the adoption of technical assistance centers in health<sup>27</sup> and that the basis of the decisions consider scientific evidence<sup>27,28</sup>.

The judicialization of health can not be a prejudicial factor to society<sup>29</sup> and the judicial granting of health services, inputs and procedures with observance of the PCDTs of the SUS, with the assistance of health technical assistance centers and based on scientific evidence are objective and firm criteria for provide the universality, completeness and equity of SUS.

The resolution of the difficulties regarding the incorporation of technologies in the SUS goes through legal, administrative and technological evolution issues, noting that advances in Brazilian legislation have sought to reduce the time of evaluation and incorporation of services and inputs<sup>30</sup>, but the time of management never will be the time of need and urgency of health care.

It is also worth noting that the health court in the State of Acre concerning requests for services of

examinations and procedures, which occurred in 30.56% (n = 11), emphasizing that in six cases the request was associated with the referral of the petitioner to the treatment of care outside the home. This association is not observed in other states such as Brasília<sup>11</sup>, and Rio Grande do Sul<sup>13</sup>.

Five were associated with receiving treatment outside the home in the eleven cases concerning the requests for examinations and services (TOH). The TOH associated with judicial health claims is a peculiar condition deriving from the geographical location of the State of Acre in the westernmost part of the Amazon Brazilian population, with 54.19% (397,521 inhabitants) settled in distant areas from urban centers. The main urban centers are Rio Branco, capital of the State of Acre, and Cruzeiro do Sul, where the main health centers are located<sup>31</sup>.

Most of the population of the State of Acre lives in the forest. However, the largest urban concentrations are in the cities of Rio Branco (336,038 inhabitants), and Cruzeiro do Sul (78,507 inhabitants)<sup>31</sup>. If not completely isolated, remote locations sometimes present transit difficulties during rainy periods, which hampers public health interventions in the vast majority of the 22 municipalities of the State of Acre.

A strategy to solve the problem can be itinerant health and video medicine, for example, that can mitigate conflicts and adequately meet social needs, especially regarding primary health care, efficiently meet health demands, as a fundamentally guaranteed constitutional right<sup>32</sup>.

It is also important to note that CCE cases considerably increase health costs for public claimants because they are associated with the services and expenses, such as housing and food. In 2017, the State of Acre spent more than R\$ 12 million (the US \$ 5 million) on TOH<sup>33</sup>.

It is noticed that 16.66% (n = 6) of the processes involve vulnerable population: children, older adults, pregnant women, and people with disabilities. They request medicines already included in the National List of Essential Medicines (RENAME), for example, Risperidone and Imipramine, to treat mental disorders; Teriparatide 250mg, for osteoporosis treatment; and the G. Band Peripheral Blood Cardiotype test.

The concept of vulnerability in health is shaped by a dynamic of reciprocal interdependencies that express multidimensional values - biological, existential, and social<sup>34</sup>. This research reports the health vulnerability in six analyzed cases that show that the violation of fundamental rights is aggravated when there is an absence or delay in health care, as well as when their vulnerable condition have been neglected, directly violating equity, one of the basic principles of SUS.

It is perceived that the situation of vulnerability in the health of the claimants is transferred to their capacity of exercise of postulation in Court, which is treated like the other petitioners of the other cases analyzed.

The socioeconomic profile of the prosecutors of the health judiciary in the State of Acre is poor since in 77.78% (n = 28) of the actions, the prosecution of these cases is performed by the Public Defender, acting in view

of the urgency and necessity of the judicial measure in health. The Court, considering the factual support of the case, deferred gratuitousness for presumption, whereas the law requires objective proof of the insufficiency of financial resources of the author postulation in court<sup>35</sup>.

The judicialization of health is a means of accessing health services and inputs through the most varied social levels. The demands are related to high-cost drugs, hospitalizations, and procedures from the most complex to the simplest<sup>8,36</sup>. The characteristics of poverty and extreme need for health care are also observed in other regions of Brazil, such as Rio Grande do Sul, Minas Gerais, and the Federal District<sup>11,12,37,38</sup>.

The research data also show the dynamic performance of the Public Defender's Office and the judicial manifestations of the Public Ministry in the health demands of Acre State, frequently in favor of the defendants of the demands as observed in the judgments analyzed. Note that the hypo- sufficiency of the claimants is evidenced by a signed self-declaration of poverty<sup>35</sup>. In contrast, the health need of the impetrates is proved by medical prescription, seen in the cases analyzed as the primary evaluation parameter of the judgment.

When the Judiciary considers medical prescription as the main evaluation parameter for the judgment of health demands brings out the intense controversy about the concept of essential medicine in the face of that available to the World Health Organization (WHO).

It is noticed in the analyzed demands that essential medicine is one that the patient needs, prescribed by a qualified doctor, which conflicts with the definition of essential medicine from the WHO, that defines it as that either satisfies the need priority of health of the population<sup>39</sup>. The judicial position of the TJ/AC conflicts with the collective conception of health concerning essential medicine. Bucci et Duarte (2017)<sup>40</sup> criticize the individual concession of treatments for interfering in public health policy management and systematic financing.

The study results showed that the implementation of public health policy requires programming, systematicity, tactics, and management strategy to achieve healthcare, under the principles of universality, completeness, and equity, with a fundamental social right of the citizen.

Even the judicialization serves as an alternative instrument to health access, the resolution of conflicts involving public policies control, requires mechanisms of institutional dialogue between political and legal actors to reduce lawsuits, which may increase even more given the broad concept of health built after the Declaration of Alma-Ata(1978)<sup>41</sup> and the Ottawa(1986) Charter<sup>42</sup>.

An example of an initiative of communicative institutional dialogue was carried out in the Municipality of Lages, Santa Catarina State, Brazil, with Conciliation Centers<sup>43</sup>. In specific cases, the judge promotes the reduction of the health claim litigation through the mediation of conflicts, strengthening the dialogue among the various local actors, despite the resistance of the Court of Justice of that State.

In the State of Acre, a similar initiative was performed in 2012, through the Technical Cooperation Agreement No. 017/2012, which drew technical

cooperation between the Executive Branch, Judiciary Branch, Public Prosecutor's Office, and Public Defender's Office, intending to guarantee technical subsidies to the demands and procedures that involve the provision of health services<sup>44</sup>.

The interactivity between all the organs that are part of the relationship in which the judicialization is established is indispensable for constructing actions that serve the common good, considering the possibility and reality of each of the organs involved in this chain<sup>45</sup>. The initiative of institutional dialogue in the State of Acre had no practical solutions. It should be re-evaluated and resumed to rationalize relations between the Executive Branch, Judiciary, and users of the health system.

The foundation of institutional arrangements lies in communicative theories and cooperative constitutionalism, which are based on balance and reasonableness in the relationship between power and citizenship as an effective alternative for resolving issues involving the judicialization of public policies<sup>26,43</sup>. Thus, the conventional judicial model of conflict resolution in public health is dysfunctional to meet social health demands, and tends to aggravate violations of SUS principles and permanent increase in the number of requests in the Judiciary, harming the management of public health and intelligent allocation of scarce resources.

In referring to the thesis on the right to health as a fundamental social right of the citizen, the findings of the research report that the JB / AC bases its decisions on the principle of human dignity, physical integrity and life, affirming that the right to health must be guaranteed, regardless of budget constraints and bureaucratic requirements. But it reinforces the idea of the need for a new resolution mechanism in public health policy, since 25% of the health demands analyzed were not judicially resisted by the State of Acre in meeting the health interest of the user.

Access to healthcare is a fundamental citizen social right materialized by SUS, which serves more than 220 million people, and is characterized by three pillars of support: universality, integrality and equity<sup>46</sup>.

Universality is bound to guarantee the right to health to all Brazilians, without meaning or discrimination, to access the health services offered by the SUS; while the integrity of care is understood as an articulated and continuous set of preventive and curative actions and services, individual and collective, necessary for each case at all levels of system complexity<sup>46</sup>.

The main causes of health judicialization in Acre are the divergences between medical prescriptions and the provisions established in the SUS PCDT, with prevailing injunctions as the main strategy of the applicants for access to health.

On the other hand, its main negative effects are the prevalence of individual rights over collective rights to health, with the credible commitment of the normative system of the SUS, and damages to the public order, public economy and systematicity of public health policy, especially consequences of double or triple violation of the fundamental rights of vulnerable groups, who must have differential and priority treatment.



In addition, the effects of the judicialization promote a direct violation of equity in SUS, which is characterized by valuation, fair judgment and virtue (attitude, behavior, fact, etc.) of who or what manifests a sense of justice, impartiality, respect for equal rights. Nevertheless, the judicialization directs the protection of the actions and services of the citizens that must be offered, regardless of the complexity of the service provision, the region in which the individual resides or his / her nationality<sup>46</sup>.

The work of the Judiciary ensures compliance with SUS principles when the executive branch plans and effectively execute the public health policy. Still, the judicialization of health cannot be a mere administration of judicial interests in cases without conflicts, as was observed in cases not contested in the State of Acre.

The findings show that in the imposition of judicial decisions, there is no judicial evaluation regarding the predictability of the resources needed by the executive for health, and the damage to SUS's management and financing system is a serious consequence in the State of Acre.

According to Borges, mechanisms and/or dialogical approaches of the Judiciary and Executive Branch provide an environment of collaboration and partnerships between different state actors, such as state courts, state attorneys, public defenders, prosecutors, technical assistance centers, and conciliation chambers to reducing or responding better to individual health care disputes<sup>47</sup>.

There is a lack of administrative and technical-scientific decisions that ensure the fundamental right to health by the Judiciary, and, above all, an instrument of institutional dialogue among the actors involved in litigation is necessary, to enabling a fairness service<sup>48</sup>.

The institutional dialogue gap for resolving health disputes can be solved by improving the administrative process of incorporating technologies in the National Commission for the Merger of Technology (CONITEC)<sup>49</sup>.

The institutional dialogue to mitigate the consequences of judicialization on public health policy can be achieved by improving the process of incorporating technologies into SUS, already existing and with legitimacy, competence and technical conditions to decide whether or not to incorporate technology (medication or procedure) to meet social needs in health, based on scientific evidence, efficiency and impersonality.

It is worth noting that preliminary health measures do not allow for an in-depth analysis of patients' health issues, striving for speed and not considering the State's bureaucratic and financial limitations, but promoting interference in the management and programming of public health policy.

However, understanding the factors and consequences of the judicialization of health in a

regionalized way is essential for understanding the parts of a whole of Brazilian public health policy, for the collection of data and information that enable a more efficient and effective policy to propose services in terms of meeting health needs and filling health gaps.

## ■ CONCLUSION

Thus, collective decisions on the judicialization of health in the State of Acre ensure the right to health for citizens, in most cases (94.44%), through preliminary injunctions based on the principle of human dignity, physical integrity and life, as well as in medical prescriptions in each specific case, regardless of assessments regarding financial, budgetary and bureaucratic constraints of the State.

About a third of cases (25%) go uncontested because the parties have common interests – health is a fundamental, universal and integral right for all. In these cases, health demands are no more than the mere administration of the public interest, where the citizen seeks health and the State grants health, considering the patient's clinical condition, contrary to good health management practices, which are generally silent and non-existent.

On these premises, also, considering the absence of litigation, the reduction of the judicialization of health can be achieved by cooperative procedures between powers and clinical management of diseases with the cooperation and development of due legal process that improves the standardization of patient health and clinical condition.

## ■ Author Contributions

All authors participated in all stages of the work, study design and manuscript design. All authors agreed with the final version of the manuscript.

## ■ Acknowledgments

My family, friends and professor, as well as the Laboratory of Study Design and Scientific Writing at Centro Universitário FMABC and, especially, I thank Professor Pascoal Muniz, who taught me the constancy and intrepidity that the spirit of research requires. This study was financed in part by the Coordenação de Aperfeiçoamento de Pessoal de Nível Superior - Brasil (CAPES) - Finance Code 001. The financial viability of the article is due to the Acre - Health Project in the Western Amazon (multi-institutional agreement process no. 007/2015 SESACRE-UFAC-FMABC).

## ■ Conflicts of Interest

The authors declare that there are no competing interests.

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## Resumo

**Introdução:** a judicialização da saúde é uma alternativa aos serviços de saúde no Brasil, apesar das críticas às decisões judiciais e ao controle das políticas públicas de saúde. O grande número de ações que demandam serviços de saúde é um problema de saúde que caracteriza os sistemas político, social, ético, jurídico e de saúde da Política Pública de Saúde.

**Objetivo:** analisar a judicialização da saúde no Brasil, Amazônia Ocidental, de 2010 a 2016.

**Método:** estudo documental e transversal de decisões colegiadas, com sentenças definitivas, no período de 2010 a 2016, proferidas pelo Tribunal de Justiça do Estado do Acre, cujo foco principal é o contexto, fatores e consequências que os conduzem ao seu direito à saúde no Judiciário.

**Resultados:** todas as ações propostas eram mandatos de segurança. O uso de liminar foi uma estratégia comum entre os autores (n = 34; 94,44%). um terço dos respondentes não foi contestado pelo Estado do Acre (n = 9; 25%). Já as decisões do Tribunal de Justiça em matéria de saúde dizem respeito a medicamentos, exames e procedimentos (n = 25, 69,44%). Homens e mulheres propõem a mesma proporção e uma característica básica dos autores é a pobreza (n = 28; 77,78%).

**Conclusão:** as decisões coletivas de saúde proferidas pelo Tribunal de Justiça do Estado são legais, constitucionais e refletem a alteração entre todos os órgãos que integram a relação em que se estabelece a judicialização, que pode ser alcançada por meio do aprimoramento do processo de incorporação. tecnologias ao SUS, para a boa execução da política pública de saúde, com a manutenção dos princípios da universalidade e integralidade do Sistema Único de Saúde.

**Palavras-chave:** políticas públicas de saúde, decisões judiciais, direito processual jurídico, judicialização da saúde.

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