



## Judicial litigations and social welfare: access to medicines in two towns in the Santa Catarina State, Brazil

Silvana Nair Leite<sup>1\*</sup>, Cristine Schaefer<sup>2</sup> and Kelly Fittkau<sup>2</sup>

<sup>1</sup>Departamento de Farmacologia, Universidade Federal de Santa Catarina, Cx. Postal 476, 88049-900, Florianópolis, Santa Catarina, Brazil.

<sup>2</sup>Universidade do Vale do Itajaí, Itajaí, Santa Catarina, Brazil. \*Author for correspondence. E-mail: silvana.nair@hotmail.com

**ABSTRACT.** The growing number of lawsuits to obtain free medicines from the Brazilian Health System (SUS) is analyzed to characterize the supply of the requested drugs in two towns with different social and economic characteristics and different municipal pharmaceutical assistance organizations. Data for 2006 and 2007 were collected from the archives of the Municipal Health of Blumenau and Social Welfare Department of Aurora, two towns in the state of Santa Catarina, Brazil. The number of patients assisted in both towns was similar in 2007 (115 in Aurora and 160 in Blumenau). A total of 0.53/1,000 inhabitants sought this kind of access in Blumenau, with an average cost of R\$ 2,503.29 and R\$ 1.33 per capita; in Aurora, 21.29 users/1,000 inhabitants sought the service, with an average cost of R\$ 101.63 and R\$ 2.14 per capita. In Blumenau, cardiovascular medicines were the most requested, mostly from specialist physicians; in Aurora, drugs that act on the central nervous system were the most prescribed, mainly by FHP physicians. The differences evidenced the situation of the pharmaceutical organization in the two towns and their level of organization with regard to the public health system.

**Keywords:** pharmaceutical services, access to medicines, lawsuits.

## Judicialização e assistência social: formas de acesso a medicamentos em dois municípios no Estado de Santa Catarina, Brasil

**RESUMO.** O crescimento no número de mandados judiciais para assegurar o acesso a medicamentos no âmbito do SUS motivou o presente estudo, com o objetivo de caracterizar o fornecimento de medicamentos solicitados por tal via em dois municípios com características socioeconômicas e situação da organização da assistência farmacêutica municipal diferentes. A coleta de dados foi referente aos municípios de Blumenau e Aurora – SC, no período de 2006 a 2007, cujos dados foram encontrados nos arquivos da Secretaria Municipal de Saúde de Blumenau e Secretaria de Assistência Social de Aurora. A quantidade de pacientes atendidos nos dois municípios foi semelhante no ano de 2007 (Aurora - 115 e Blumenau - 160), sendo que em Blumenau 0,53/1.000hab recorreu a este tipo de acesso, custo médio de R\$ 2503,29, per capita de R\$ 1,33; em Aurora, 21,29 usuários/1.000 habitantes, média de R\$ 101,63 e per capita de R\$ 2,14. Em Blumenau, a classe de medicamentos mais solicitada foi de cardiovasculares e prescrição de médicos especialistas enquanto em Aurora foi de medicamentos que atuam no sistema nervoso central e prescrição de médicos do PSF. As diferenças evidenciam a situação da organização da assistência farmacêutica entre os municípios e seu nível de organização no sistema público de saúde.

**Palavras-chave:** assistência farmacêutica, acesso a medicamentos, mandados judiciais.

### Introduction

For a large portion of the Brazilian population the public health insurance system is the only means they have to obtain medical assistance and basic medicines. The 1988 Brazilian Constitution and 1990 Parliament Act 8080 assure this type of access to health programs.

According to Article 196 of the Brazilian Constitution the materialization of rights should be warranted by social and economical policies, or rather, more than the mere access to services and products is needed to guarantee the health of the population.

Policies are required that would guarantee to person suitable homes, basic water and drainage systems, employment, income, leisure and education. In the case of health products and services, their materialization should be provided by the structuring and execution of policies and services as the Medicine Policies (BRASIL, 1998) and Pharmaceutical Assistance Policies (BRASIL, 2004) surmise.

Access to medicines may be defined by the relationship between their demand and supply. The need is satisfied at the moment and at the place required by the patient, coupled to guarantees of

quality and information sufficient for their proper use (BRASIL, 2003).

The Brazilian Health System (SUS) adopts the international proposal for access to medicines through a National List of Essential Drugs (Rename) which supplies types of medicines according to the main health problems of the population, a program based on safety, efficaciousness and costs. Drugs should be included in the municipal lists of essential medicines and made available at the government health clinics.

The structuring of Pharmaceutical Assistance in the context of the Brazilian Health System places all drugs for less frequent diseases or high cost drugs or those required to impact various epidemiological events under the Specialized Drugs in Pharmaceutical Assistance or the Strategic Drugs in Pharmaceutical Assistance Components.

The strategies proposed by the National Policy for Medicines are justified by the great number of services, large portions of the population still excluded from basic attention, the non-use of Rename in medical prescriptions, faulty supplies, self-medication, production and commercialization problems of drugs and, with great relevance, changes in the population's epidemiological profile (SILVA; BERMUDEZ, 2004).

Pharmaceutical assistance in Brazil is inserted in the public policies and especially within health policies. Its principal aim is the availability and rationalization of drugs to attend to the needs of the population and thus consolidating the process of decentralization by distributing responsibilities to the administrators at the three government levels. In other words, it aims at improving and making efficient therapeutic interventions and allocation of financial resources (LEITE; CORDEIRO, 2008).

The access to drugs, a growing phenomenon in Brazil, was close to 90% for common clinical situations, according to a recent national study (BRASIL, 2008). Brazil had the highest access level in the public sector and was reported in a comparative study on the access of drugs for chronic pathologies in developing countries (MENDIS et al., 2007). However, the access to drugs which are not included in the standard lists of Pharmaceutical Assistance of the Brazilian Health System have recently been the object of lawsuits causing an increase in medicine supplies, in some case, with a rather unreliable efficiency, safety and need (VIEIRA, 2008), even though they guaranteed the right of integral attention in situations in which the public health administration was fault in its duty to provide access of medicine which are considered essential and necessary for the

needs of the population. The growth in the number of petitions through lawsuits has been described by some authors as representing an increase in conscience-awareness of the population with regard to civil rights (LOPES; VASCONCELOS, 2006). However, a recent study in the state of Santa Catarina revealed that such a phenomenon is not related to people's empowerment since it reproduces their own political and social dependence and the great influence of pharmaceutical laboratories and health professionals (LEITE; MAFRA, 2010).

The apparent lack of clear ideas of the plaintiffs and their lawyers causes deep chasms between the executive and the judicial powers and the misapplication of financial resources allotted to collective activities involving pharmaceutical assistance (MESSEDER et al., 2005). In fact, such conflicts are a great concern for the administrators of public health at all levels and they have enhanced the need for the development of services of pharmaceutical assistance in the Brazilian Health System.

Current essay analyzes the access to drugs bought directly by the municipal governmental of the towns of Blumenau and Aurora, Santa Catarina State, Brazil. These towns participate in a state evaluation study on the selection process of non-listed drugs and their access in the municipalities of Santa Catarina. The latter investigates the effects of the municipal pharmaceutical assistance organization with regard to costs and access to drugs within the Brazilian Health System context.

## Material and methods

The government of the above-mentioned municipalities were contacted and invited to take part in the research. An official letter petitioning their participation in the study was sent to the Health Secretary of Blumenau and to the Municipal Secretary for Social Assistance of Aurora. They also received a letter on the availability of data and commitment of the use and publishing of data.

Court writs, written notices and authorization for direct buying were analyzed. Court writs are tools used by the population making mandatory for the government of the municipality or state to obtain a certain pharmaceutical product by judicial means. Written notices may be defined as a declaration recommended to the government of the municipality or states that they make available the required medicine without the need for a posterior court writ. Authorization for direct buying is a non-

bureaucratic practice used by the health administrator who authorizes the dispensing of the prescribed drugs by a commercial pharmacy of the municipality. In its turn, the pharmacy forwards to the Health Secretary the invoices of the product made available to the population. Direct buying by the municipalities has been employed to comply with writs and court notices through the Social Assistance.

All buying authorization of medicines in 2006 and 2007 to attend to patients, regardless of their being produced by judicial writ or not, were identified in the archives of the Municipal Health Secretary of Blumenau and of the Social Assistance Secretary of Aurora. The following data were retrieved: drugs solicited, resources spent by the municipality to attend to these petitions, origin of the solicitation (when possible), specialty of the prescribing doctor (when extant), juridical person involved, the manner the medicine was acquired (court writ, buying authorization or written notices) and the district in which the user lived.

Medicines were classified according to the Anatomical Therapeutic Chemical (ATC) Classification System, based on the World Health Organization and the Brazilian Common Denomination (BCD). Foregrounded on the ATC code, groups with the highest incidence of petitions were given, and the solicited drug was presented according to the BCD code, together with the amount, name of drug and its active substance. The index of solicitation of drugs present on the municipal list was verified by comparing it to the municipal roll of essential medicines (Remume).

Approximate per capita values, resources spent per patient, mean price of medicines and total expenditure for this type of access were carried out, foregrounded on the price of drugs required by the municipalities of Aurora and Blumenau.

Data on the origin of the solicitation (Brazilian Health System, physician, hospital) by the juridical assistance were analyzed when mentioned (attorney, lawyer, health secretary). Medical specialties were categorized by importance, namely, Family Health Program/Community and Family doctor; gynecology/obstetrics, cardiology and pediatric.

The social exclusion diagnosis of the state of Santa Catarina, developed by the State Secretary for Social, Urban and Environmental Development, was employed so that the condition of social exclusion of the petitioners could be analyzed (BORCHARDT, 2003). The socially excluded districts represented 10% of people with insufficient income. However, in current research, people with

insufficient income were calculated to be only 5% of the population since the municipality of Blumenau did not have high percentages of socially excluded people in its districts. No data on the percentage of social exclusion among the districts of Aurora were available.

Data were then categorized and listed by Excel to calculate percentages and means so that the main characteristics of petitions could be described. Statistical analysis (Chi-squared distribution) was considered significant at  $p < 0.05$ .

Current research is a section of a wide ranging investigation called "Evaluation of the process of medicine selection and access to non-listed drugs in municipalities of Santa Catarina", already evaluated and approved by the Ethics Committee in Research of the Univali (Resolution No. 563/2006).

## Results and discussion

### Aurora and Blumenau

Data of 2006 and 2007 in Aurora showed respectively 26 and 298 drugs required, although no court writs or notices were registered but mere attendance by the Social Assistance office to individual solicitations of drugs. The Remume of the municipality lists 93 drugs and there is neither a municipal pharmaceutical assistance service nor are there chemists attending at the Social Assistance office. Total costs during the period amounted to R\$ 12,877.79. The most expensive drugs were Paroxetina (20 mg, 30 pills) in 2006 (R\$ 73.04) and Clopidogrel (75 mg, 30 pills) in 2007 (R\$ 163.03). The pharmaceutical products most requested were respectively Paroxetina and phytotherapeutic medicines.

The Remume in Blumenau comprises 96 drugs and the municipality has several health programs and access to strategic medicines dispensed exceptionally (high cost drugs) and a department, with 14 chemists, which administers the municipal pharmaceutical assistance.

In the case of having to supply drugs through judicial suits, Blumenau implanted a system which comprised a technical analysis by which the personnel of the Pharmaceutical Assistance department evaluate the patient's requirement and provide technical arguments against the suits and in defense of the municipality. Drug requirements were exclusively those originated from judicial writs and from notices by the Minors' Tutor Council. No individual solicitations were attended to through other means. In the case of judicial writs that required drugs within the Rename list, that is, drugs which are

considered basic medicines, distribution is carried out by the Municipal Pharmacy which dispenses drugs to patients monthly.

During the two years under investigation, 480 drugs were distributed in Blumenau, or rather, 158 in 2006 and 322 in 2007, with a growing demand for this type of drug access. High cost drugs that had to be dispensed in Blumenau in 2006 and 2007 were respectively Teriparatida (3 mL, injection) (R\$ 2,339.45) and Rituximab (500 mg 50 mL<sup>-1</sup>) (R\$ 7,431.82), with Formoterol + Budesonida (at different doses) as the most solicited drug during the two years.

Table 1 takes into consideration not only the populations of Aurora (5,474 inhabitants) and Blumenau (301,333 inhabitants) but also other important data, such as the amount of drugs solicited each year/municipality, attendance of patients and the money spent to attend the solicitations.

**Table 1.** Relationship between total expenditure, required drugs and patients attended in the municipality of Aurora and Blumenau during 2006 and 2007.

Municipality	Aurora		Blumenau	
	2006	2007	2006	2007
Year				
Approximate expenditure	R\$	R\$	R\$	R\$
R\$/year	1,189.46	11,688.33	136,354.73	400,526.89
Amount of drugs/year	26	298	158	322
Number of patients attended	8	115	100	160
Costs per capita	0.22	2.14	0.45	1.33
Costs R\$/patient	148.68	101.63	1,363.55	2,503.29
Mean costs of drugs	32.69	27.63	141.33	237.05

Even though it does not supply high complex medicines to the population, the municipality of Aurora has higher costs per capita by directly buying drugs. On the other hand, Blumenau supplies the population with highly complex services and thus medical prescriptions of high costs. Costs spent per patient and costs per capita are lower when compared to those of the other municipality under analysis.

It may be remarked that expenditure in direct buying of drugs is high and has already been considered a threat to the financial and administrative health of the Brazilian Health System. This is due to the fact that more money must be made available to comply with the judicial writs. However, even in the lack of court writs, the availability of drugs through individual solicitation has great repercussions on additional costs for the administration and make difficult the organization of services with their norms, standardizations and types of rationalizing (without rationing) the consumption of medicines.

Direct solicitations (in Aurora) or court writs and notices (in Blumenau) for access to drugs show important differences. Whereas in Blumenau only 0.53 users out of 1000 inhabitants solicited this type of access to medicines, 21.39 users out of 1000 inhabitants did so in Aurora.

Higher incidence in Aurora is due to the easy access of the population to the Social Assistance department and to client-ridden activities in the municipal organization with regard to health attention. Contrastingly, a rather complex bureaucracy exists in Blumenau for the supply of medicines to patients, or rather, structured and well-run programs for access to drugs rationalize demand and access. It seems that no restrictions to access drugs exist but only organized public policies as Law 8080/90 surmises

There was a significant difference between Blumenau and Aurora with regard to the more solicited medicine classes through administration demands or judicial means. In fact, Blumenau attended to more medicine solicitations for the Cardiovascular System and Aurora for the Nervous System ( $p = 0.00$  and  $\chi^2 = 33.31$ ) (Table 2).

Whereas during 2006 the municipality of Aurora produced more medical prescriptions for the Central Nervous System by the community and family doctors, in 2007 the two specialties involved the Family Health Program and Gynecology/Obstetrics. In several prescriptions the name of the doctor was omitted or the physician did not have the specialty recorded at the Brazilian Medical Society.

Data crossing showed a statistically significant relationship between the ATC Code and the origin of the service demanded ( $p = 0.0000$  and  $\chi^2 = 23.3715$ ), with a concentration of medicine solicitation to the Central Nervous System in 2007 originating from the Brazilian Health System. The constant demand of medicine belonging to the Central Nervous System group is a consequence of the lack of establishment of mental health program by the municipality of Aurora. A study in the municipality of Florianópolis, Santa Catarina State, Brazil, also detected medicines belonging to the Central Nervous System group as more demanded by judicial writs or social assistance notices (LEITE et al., 2009).

It may be verified that solicitation of drugs in the municipality of Blumenau are made by specialist doctors with only a small participation by physicians of the Family Health Program.

**Table 2.** Relation between medical specialty and ATC code between the two municipalities during 2006 and 2007.

Municipality	Aurora				Blumenau			
	2006		2007		2006		2007	
	%	(n°)	%	(n°)	%	(n°)	%	(n°)
<b>ATC</b>								
C (Cardiovascular system)	23.1%	(6)	17.11%	(51)	20.89%	(33)	27.02%	(87)
N (Nervous System)	42.3%	(11)	26.84%	(80)	15.19%	(24)	16.77%	(54)
R (Respiratory System)	3.84%	(1)	6.7%	(20)	25.32%	(40)	13.04%	(42)
Others	30.77%	(8)	49.33%	(147)	38.6%	(61)	43.17%	(139)
<b>Medical specialty</b>								
Family Health Program/Community and Family doctor	61.54%	(16)	27.18%	(81)	1.27%	(2)	0.62%	(2)
Gynecology/Obstetrics	-		29.19%	(87)	-		2.17%	(7)
Cardiology	-		9.73%	(29)	14.57%	(23)	23.0%	(74)
Pediatrics	-		3.7%	(11)	23.42%	(37)	13.35%	(43)
Specialty not extant	-		2.35%	(7)	3.8%	(6)	9.0%	(29)
Others	30.77%	(8)	15.77%	(47)	39.24%	(62)	39.13%	(126)
Not shown on clinical chart	7.7%	(2)	12.08%	(36)	17.72%	(28)	12.73%	(41)

There is a relationship between the drug class belonging to the ATC code and the medical specialties involved in which pediatricians demand medicines mainly for the respiratory system and cardiologists solicit medicines mainly for the cardiovascular system. There was no statistically significant difference ( $p = 8.77E - 8$  and  $\chi^2 = 0$ ) for this municipality with regard to therapeutic class (ATC Code) and the originating service.

The mandatory rule for prescribing medicines according to the Brazilian Common Denominations (BCD) code within the Brazilian Health System is highly relevant for concordance to the official nomenclature and the standardization of prescriptions. Adherence to the BCD does not occur in most cases in the municipality of Aurora and to make matter worse the Brazilian Health System is the originating service. Even though in Blumenau the Brazilian Health System is the prevalent originating service (Table 3), prescriptions with the commercial nomenclature are extant. However, their proportion to the prescriptions carried out according to BCD is statistically lower than those in Aurora ( $p = 0.00$  and  $\chi^2 = 161.26$ ).

Requirements of medicine belong to the Remume list by judicial writs, notices or buying authorization are not needed since they should have been available at the Basic Pharmacy of the municipality and thus access to them is guaranteed according to guidelines by the Brazilian Health System.

In the case of Blumenau, drugs solicited and available at Remume are forwarded from the Basic Pharmacy to the High Cost Pharmacy which is responsible for registering and dispensing the medicines to the patient within an integrated system. Aurora does not have an integrated system for services available to clients. The Social Assistance department authorizes the buying of any solicited drug, even those included on the Remume list. Current analysis fails to show whether this fact is due to the true lack of basic medicines or to a lack of communication between the Social Assistance Department and the service network for the verification of available products. The above fact indicates a lack of general organization in pharmaceutical assistance in the municipality.

Messeder et al. (2005), Vieira and Zucchi (2007) and Leite et al. (2009) have also observed the results related to the high percentage of prescriptions with commercial names of drugs in solicitations standardized by Remumes.

**Table 3.** Relationship between medicines on the Remume list prescribed by their commercial name and the Originating Service of patients in Aurora and Blumenau in 2006 and 2007.

Municipality	Aurora		Blumenau	
	2006	2007	2006	2007
	% (No.)	% (No.)	% (No.)	% (No.)
Included in the Remume List	23.1% (6)	16.11% (48)	11.4% (18)	19.87% (64)
Prescribed by commercial name	57.7% (15)	67.95% (201)	26% (41)	19.87% (64)
<b>Originating Service</b>				
Brazilian Health System	76.92% (20)	64.1% (191)	67.1% (106)	57.14% (184)
Private doctor	3.85% (1)	25.17% (75)	18.35% (29)	31.36% (101)
Hospital	19.23% (5)	5.03% (15)	-	-
Not available	-	5.71% (17)	14.55% (23)	11.5% (37)

Based on the diagnosis of Social Exclusion in the state of Santa Catarina, Table 4 shows the districts of origin of users attended in Blumenau and their originating service and the judicial assistance employed. Most users who live in the districts with the highest rates of social exclusion demand assistance from the Brazilian Health System and private lawyers are employed for access to medicines. This fact also indicates that judicial access is not limited to low income people. Similar results were available in studies on the municipality of São Paulo, São Paulo State, Brazil (VIEIRA; ZUCCHI, 2007).

**Table 4.** Districts with high percentages of socially excluded people between the originating service and the judicial assistance in Blumenau.

Originating service	Judicial assistance	Districts		
		Socially excluded	Not excluded	Not available
Brazilian Health System	Attorney	3	-	-
	Lawyer	4	19	2
	Not available	3	2	12
Private	Attorney	1	2	1
	Lawyer	5	14	-
	Not available	-	-	1
Not available	Attorney	1	1	-
	Lawyer	2	4	-
	Not available	-	7	3

Health services may be exercised by private doctor and, as has been shown in the case of Blumenau, frequently private services demand drugs distributed by the pharmacies maintained by the Brazilian Health Service through judicial writ. Since 49 petitioners of judicial suits lived in districts with low social exclusion this fact shows that most of these patients were assisted by lawyers in the court suits. In fact, people with lower needs for social protection are indicting the municipal public authority. These facts problematizes the principle of equality and universality on the access to goods and services by the Brazilian Health System since the access to information and to the judicial authority is higher in the high social classes and thus favors their access to high cost medicine, as already investigated by Marques (2006).

## Conclusion

Differences evidence conditions or organization of pharmaceutical assistance and the level of local health public system in the two municipalities.

A de-structured or absent pharmaceutical assistance causes the solicitation of medicines which belong to different programs funded by the state or federal government. This is the case of those drugs for the Mental Health Program. In fact, this disorder

brings about the disorganization of services, makes mandatory the buying of medicines by the municipal government to attend to particular demands and does not provide adequate guidelines to the users. The structuring of services in pharmaceutical assistance is a basic factor for the development of an adequate administration in the organization of programs in the distribution of medicines and other activities for the promotion, protection and recuperation of health and not merely for the disordered distribution of medicines.

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