


## MUSCULATURE ORIGINATING FROM THE LATERAL EPICONDYLE OF THE HUMERUS LITERATURE REVIEW

 <https://doi.org/10.56238/sevened2025.020-011>

**Thalissa Pádua Gilaberte, Isabel Cristina Ribeiro dos Reis and Jane Lucia Mayrink Lessa**

### ABSTRACT

Autism Spectrum Disorder-ASD is a public health case, according to the Diagnostic and Statistical Manual of Mental Disorders-DSM-5 is defined as a neurodevelopmental disorder that can affect social interaction, communication and, in some cases, compete with cognitive deficits. Patients diagnosed with Autism Spectrum Disorder (ASD) often live with health comorbidities and will, at some point in their lives, demand hospitalization and consequently use Civil Law as an important instrument in the defense and guarantee of their rights. Civil Law emerges as an essential and protective element, it brings in its code Laws, Norms and Guidelines that guarantee the letter of the Law for the benefit of those most committed in terms of neurodiversity. Patients with Autism Spectrum Disorder-ASD have greater difficulty in integrating the hospital context, and it is important to practice the Law to guarantee them dignity and full exercise of citizenship, in addition to offering their families the technical and legal support that hospital admissions demand. This academic research, of qualitative origin, aims to disseminate the complexity of the hospitalization of patients diagnosed with Autism Spectrum Disorder-ASD and, in addition, to promote Civil Law legislation so that these patients can count on the Judiciary to protect their rights. In this way, this research illuminates Aristotelian thinking so that autistic people are received in a dignified way in hospital units, because by treating the unequal unequally, the fair is found.

**Keywords:** Autism. Civil rights. Hospitalization. Inclusion.

## INTRODUCTION

According to the World Health Organization-WHO,<sup>1</sup> Autism Spectrum Disorder-ASD represents a diverse group of conditions, characterized by a degree of difficulty in social interaction, communication and an unusual reaction to sensations. In fact, ASD affects neurodevelopment, so autistic patients perceive the world in a diverse way, which makes them more vulnerable in hospital environments.

FELDMAN BARRET, L exposes in his book, *Seven and a Half Lessons About the Brain*, 2020 " *that the human brain is an organ of predictability*". Thus, the brain predicts what may arise from the experiences it already has. The condition of ASD makes both predictability and contextualization challenging, so the Hospital becomes a great challenge, both for patients and their families, who repeatedly demand the protection of the Judiciary.

According to Agência Câmara de Notícias<sup>2</sup>, the President of the Republic sanctioned Law 13.861/19 that makes the inclusion of autistic citizens in the population census mandatory. Currently, the IBGE estimates that there are *two million autistic Brazilians, which means that 1% of the population would be on the spectrum*.<sup>34</sup> Each of the autistic patients represents many people around them, so the connectivity network that serves this population must be expanded.

In fact, Brazil has a significant number of citizens diagnosed with ASD. This academic research finds its relevance in anti-ableism, as it seeks to expand possibilities for autistic patients who require hospitalizations, because although the condition of Autism Spectrum Disorder-ASD has been widely publicized in the last decade, there is still a lack of knowledge among the population and many professionals in the area of Health and Law about the specificity of ASD. The general objective of the research is to disseminate the complexity of the hospitalization of the patient who has the diagnosis of Autism Spectrum Disorder-ASD and, in addition, to expand social inclusion through the dissemination of the protective laws of Civil Law so that both patients and their families can count on the Judiciary in the defense of their rights.

<sup>1</sup> element. WHO- World Health Organization. **Autism**. Available at: <https://www.who.int/news-room/fact-sheets/detail/autism-spectrumdisorders>. Accessed on 10/12/2024

<sup>2</sup> Sense about autism. Available in: Sanctioned law that includes data on autism in the 2020 Census - News - Portal of the Chamber of Deputies Accessed on 10/12/2024

<sup>3</sup> MPPR. Public Prosecutor's Office of Paraná. **Monitoring of Disabilities and Autism**. 2023. Accessed 10/12/24; Available at: <https://site.mppr.mp.br/saude/Pagina/Correio-da-Saude-Edicao-ndeg-1212-de-4#:~:text=No%20Brasil%2C%20o%20autismo%20was,da%20popula%C3%A7%C3%A3o%20estaria%20no%20spectrum>. Accessed on 10/15/2024

According to the Ministry of Health<sup>5</sup>, the treatment of ASD is included in the National Health Policy for Persons with Disabilities (PNSPD) and, in this context, the Berenice Plana Law number 12,764 of December 27, 2012, emerged to promote the National Policy for the Protection of the Rights of People with ASD. The law, in its paragraph 2, ratifies that the person with ASD is considered a person with a disability, for all legal purposes.

In this regard, the Brazilian Law for the Inclusion of Persons with Disabilities<sup>6</sup> - Law 13.146./2015, is intended to ensure and promote, under equal conditions, the exercise of fundamental rights and freedoms by people with disabilities, aiming at their social inclusion and citizenship.

It is important to highlight that the Magna Carta exposes in its introductory article: *"the relevance of the Fundamental Right of the Dignity of the Human Person"*, and illuminates the thought of Aristotle who, in Nicomachian Ethics, states<sup>7</sup>: *"The same thing, therefore, is just and equitable, and, although both are good, the equitable is superior."*

In this perspective, Civil Law, through the legal system, becomes an empowering instrument for autistic patients, to the extent that, in fact, it is guided by Aristotelian thought<sup>8</sup>: equality consists in treating equally the equal and unequally the unequal, to the extent of their respective inequalities.

In view of the above, it is essential to expand knowledge about the specificity of medical and hospital care for a patient diagnosed with Autism Spectrum Disorder (ASD), as well as to disseminate the laws of Civil Law that aim to protect these patients from ableist attitudes and behaviors.

## AUTISM SPECTRUM DISORDER (ASD)

According to the National Autism Society of the United Kingdom<sup>9</sup>, autism is a developmental disorder that affects the way individuals communicate and interact with the world.

---

<sup>5</sup> Ministry of Health- MS. **Autism Treatment**. Available in: Health includes ASD treatment in the National Policy for Persons with Disabilities — Agência GovAcesso on 12/09/2024

<sup>6</sup> Chamber of Deputies. **Statute of the Person with Dependency**. Brazilian Law for the Inclusion of Persons with Disabilities: [text:(expanded type)] : Law No. 13,146, of July 6, 2015, which establishes the Brazilian Law for the Inclusion of Persons with Disabilities (Statute of Persons with Disabilities) Accessed on 10/14/2024

<sup>7</sup> ARISTOTLE. **Nicomachian Ethics** - reproduced by the collection Os Pensadores (1987)

<sup>8</sup> PUCSP. **Equality**.. Legal Encyclopedia. 2017. Available at: <https://enciclopediajuridica.pucsp.br/verbete/4/edicao-1/igualdade> Acesssp on 10/14/2024.

<sup>9</sup> Autism National Society. **What is autism?** Available at: What is autism Accessed on 09/18/2024

According to the World Health Organization-WHO,<sup>10</sup> the diagnosis of ASD usually occurs in childhood, however there are cases of autism that are diagnosed at a later stage, with a prevalence of 1 in 100 children in the world and, in some well-controlled studies, these numbers are higher.

According to the Diagnostic and Statistical Manual- DSM-5 (American Psychiatric Association, 2014), Autism Spectrum Disorder-ASD has three levels of severity: "*Level 1 – Requires support; Level 2 – Requires substantial support; Level 3 – Requires very substantial support.*"

In this regard, the American Centers for Disease Control and Prevention CDC<sup>11</sup> illuminates the guidelines of the Diagnostic and Statistical Manual - DSM-5 about some specificities of ASD:

*Deficits in socio-emotional reciprocity, reduced sharing of interests, emotions, or affections; failure to initiate or respond to social interactions Deficits in nonverbal communicative behaviors used for social interaction, ranging for example from poorly integrated verbal and nonverbal communication; anomalies in eye contact and body language or deficits in the comprehension and use of gestures; a total lack of facial expressions and nonverbal communication Deficits in the development, maintenance and understanding of relationships, ranging from, for example, difficulties in adjusting behavior to suit various social contexts; difficulties in sharing imaginative games or making friends; to the absence of interest in colleagues.*<sup>element.</sup>

It is worth noting that Autism Spectrum Disorder is not considered a disease, people with ASD have the condition of neurodiversity that promotes a variety of expressions and characteristics that are individual, depending on the degree of brain impairment.

## THE TERTIARY SERVICE NETWORK

The Tertiary Care Network is composed of Hospitals that save many lives every day, attends to cases of medium and high complexity, in this way, institutions in general have multiprofessional teams in the health area that work in favor of life. Likewise, patients and families have the protection of the State, through the Judiciary, its public defenders and the parquet

In Brazil, the Single Health System (SUS) follows a parameter of care, hospitals have multidisciplinary teams in the health area and social workers who work together with

<sup>10</sup> Available at: <https://www.who.int/news-room/fact-sheets/detail/autism-spectrum-disorders> accessed on 09/19/2024

<sup>11</sup> U.S. Centers for Disease Control and Prevention. **About Autism Spectrum Disorder**. Available at: About Autism Spectrum Disorder | Autism Spectrum Disorder (ASD) | CDC. Accessed on 09/18/2024

the public defenders of the states for the benefit of these patients who are more vulnerable.

DONELLAN AM et al ( 2013 ) highlight that:

Communication, relationship, and participation require neurological systems to coordinate and synchronize the organization and regulation of sensory information and movement. Developmental differences in these skills are likely to result in differences in the way a person behaves and expresses intention and meaning.

According to the Ministry of Health-MS about the Tertiary Network<sup>12</sup>:

*The tertiary network is part of specialized care in medium and high complexity cases. , Medium complexity is composed of specialized services found in hospitals and outpatient clinics and involves care directed to areas such as pediatrics, orthopedics, cardiology, oncology, neurology, psychiatry, gynecology, ophthalmology, among other medical specialties. The Emergency Care Units (UPA 24h) fit here and concentrate health care of intermediate complexity, with a capacity to serve 150 to 450 patients per day. Large general hospitals, university hospitals, Santos Casas and teaching and research units are part of the high complexity level of specialized care. These are places with ICU beds, large and complex surgical centers. It also involves procedures that require state-of-the-art technology and higher costs, such as oncology, cardiovascular, transplants and high-risk births.*

In this way, Hospitals save and maintain health protection within the parameters desired by the population and said by the Government. In order for the population to have universal access to health, life and dignity, these three rights are highly requested in Hospitals, whether for the treatment of children, young people, adults and the elderly. The Public Prosecutor's Office acts directly in Hospitals, through their attorneys, who investigate the maintenance of beds, in the supply of hospital medical materials and all the necessary hospital material for the benefit of citizens, in this way the Law is present in hospital admissions and, if there is suspicion of violation of rights, the Judiciary can be provoked, for the Law is for everyone.

## THE COMPLEXITY OF HOSPITALIZATION OF PATIENTS WITH AUTISM SPECTRUM DISORDER (ASD)

The Hospital under normal conditions, causes some physical and emotional discomfort, illnesses cause anguish and impact the thinking of the patient and family

---

<sup>12</sup> Ministry of Health-MS. **Primary Care and Specialized Care**. Available in: Primary Care and Specialized Care: Learn about the levels of care of the largest public health system in the world — Ministry of Health. Accessed on 09/18/2024.

members, The Right arises as a protective source of rights and guarantees so that access to health is softened.

Despite the fact that the Hospital is a place of challenges, it is possible to understand the difficulties of patients who have the ASD condition and who have difficulties in sensory perceptions and who often arrive at the Hospitals by ambulance, with loud sirens and bright lights, in addition to the high speed of the vehicle that leads them to the Hospital.

Certainly, the Hospital is a place of challenges and that causes some discomfort, especially for the autistic patient, who feels unprotected, this discomfort can be exacerbated due to the overload of sensory and environmental information, with this the autistic patient has more anxiety, a condition that courses with the condition of ASD. WARREMAN et al (2023) "Adults diagnosed with ASD are at increased risk of co-occurring conditions and mortality and face difficulties in accessing health care due to different types of barriers."

Now, if for a typical patient hospitalization arouses feelings of anguish due to family distance, for the patient with ASD this distance can affect and compromise their medical treatment during hospitalization, and is therefore a determining factor for the benefit of treatment.

The family member of a patient diagnosed with Autism Spectrum Disorder-ASD, who uses the tertiary service network, demands the Law in a dynamic and cooperative way, as it seeks in the norms and laws the construction of exchange relationships based on the legal certainty that the autistic patient demands to soften his hospital stay.

In this area, it is the duty of the Judiciary to ensure that this patient not only has access to the medical and hospital services that every citizen has, but that he can have access to the necessary services to attend to his neurological condition and contribute to the better, for this, the guarantee of a companion throughout the hospitalization is indispensable.

## THE CHALLENGES OF PATIENTS WITH AUTISM SPECTRUM DISORDER IN THE TERTIARY CARE NETWORK

According to ELLIS R. et al, (2023) Autism Spectrum Disorder-ASD "is part of cognitive diversity, resulting in differences in communication and sensory processing, which can become disabling in a neurotypical world".

Patients who have ASD often have health comorbidities, as they have a lot of difficulty in self-care and many have compromised mental health.

Thus, in the face of a world that is often distant from the needs of the most vulnerable, provoking the Judiciary becomes a necessity.

These autistic patients, when entering a Hospital totally foreign to their natural habitat, often feel afraid, in this challenging context for family members, the demand for the performance of qualified and welcoming teams grows, who know how to act in the face of a patient who cannot perceive and translate the environment like the others.

According to POWELL T.et al (2023): "Hospitalization is seen as a stressful and often traumatic event, but an approach to care based on trust, transparency, and collaboration has enhanced this negative experience." In this context, the Judiciary acts to ensure that hospitals receive these patients and their families, so that multidisciplinary teams capable of understanding these patients and being able to translate their needs throughout the hospitalization period are offered in these units.

More and more countries are expanding the care of autistic patients, it is worth noting that the ICB – Integrated Care Board / Integrated Care Council of the English National Health System-NHS illuminates the care around autistic patients in hospital units, by guiding:

- Increase the capacity and accessibility of mental health care in the community for autistic adults.
- Prevent abuse, neglect, or mistreatment of autistic adults in all services ordered or provided by an ICB.
- Reduce restrictive practices with autistic adults, including: number of hospitalizations, number and duration of long hospitalizations, frequency of physical and/or pharmacological restraint, use of seclusion, frequency and duration of long-term segregation.
- Improve the effectiveness of interventions to reduce mental health symptoms and the rate of recovery from mental health problems for autistic adults<sup>13</sup>.

In fact, to ensure the best care and care for autistic patients in tertiary networks, it is important to have a constant dialogue between society, the powers that legislate, execute and judge the laws, in order to expand social protection.

It is also worth noting that in the event of omission by the hospital administration in meeting these demands, the Public Power can be provoked through the public defenders of the States, as a way to ensure that the experience of this patient is softened by the Judiciary.

---

<sup>13</sup><https://www.england.nhs.uk/wp-content/uploads/2023/12/B1800-meeting-the-needs-of-autistic-adults-in-mental-healthservices.pdf>. Acessado on 18/09/2024



## LEGAL SUPPORT IN THE FACE OF ABANDONMENT AT HOSPITAL DISCHARGE

Autism Spectrum Disorder (ASD) is included in the Statute of Persons with Disabilities ( Law No . 13,146/2015), so the omission or failure of medical and hospital care for these citizens must be inspected by the Judiciary.

According to BELIZZE OLIVEIRA<sup>14</sup> - Supreme Court of Justice - STJ, about (BRAZIL-Law No. 13.146/2015): *"This law ratifies the United Nations Convention on the Rights of Persons with Disabilities, minors under 16 years of age are considered absolutely incapable of personally exercising the acts of civil life"*. In this way, the aforementioned law ensures that autistic patients, if they are over 16 years of age, are considered and treated as citizens capable of exercising the acts of civil life.

Family abandonment of autistic patients or those who have a high degree of cognitive impairment and high weaknesses is a sad reality in General Hospitals in Brazil and is often present at the time of hospital discharge.

Nevertheless, the Federal Constitution of Brazil-CFB (BRASIL, 1988) guarantees in its article 196:

Health is a right of all and a duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other health problems and universal and equal access to actions and services for its promotion, protection and recovery.

It is worth noting that many of these patients, in addition to not having family members they can count on, do not have a home for hospital discharge. The multidisciplinary teams, often sensitized to the situation, seek the support of the Hospital's Social Service. This service does not discharge hospitals, but promotes constant dialogue between the hospital administration and the Judiciary in the search for better conditions for the hospital discharge of less favored patients.

Thus, the Law, highlighted by the CFB/88 and for its protective characteristic, cannot allow the abandonment of vulnerable patients in hospital beds.

To this end, each Brazilian state has legal support where family members have judicial shifts for more urgent cases. It is important to mention that some autistic patients are non-verbal and, therefore, have the full support of the three powers.

If there is a need to guarantee the rights of autistic patients, it can be carried out through the Judicial Shifts for cases of urgent demands, the State Public Defender's Office,

---

<sup>14</sup> Superior Court of Justice-STJ. **After the Statute of Persons with Disabilities, absolute disability only applies to children under 16 years of age. Available at:** After the Statute of Persons with Disabilities, absolute disability only applies to children under 16 years of age. Accessed on 11/01/2024



the Public Prosecutor's Office-MP and the activation of the Guardianship Council in the case of children under 16 years of age.

## DEVELOPMENT

### CONSTITUTIONAL RIGHTS OF PEOPLE WITH AUTISM SPECTRUM DISORDER (ASD)

It is worth noting that autistic patients have priority in the Judiciary for procedural processing, Art. 1048, about the Priority of Justice. In addition, it is entitled to the Gratuity of Justice, Article 5, item LXXIV of the CFB/88 and also Article 98 of the CPC/2015.

In cases where the hospitalization requires Emergency Relief, Artl. 300 of the CPC/2015.

In this area, the Federal Constitution of Brazil-CFB (BRAZIL, 1988) guides in many of its articles the rights of people with disabilities and that it can be used by patients with Autism Spectrum Disorder-ASD, in case of abuses or conflicts of interest that violate the Rights of these patients, see article 196 CFB/88:

*"Health is a right of all and a duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other health problems and universal and equal access to actions and services for its promotion, protection and recovery".*

People with Autism Spectrum Disorder-ASD are widely protected by the Federal Constitution of Brazil/1988, regardless of the degree of autism they have, some of these constitutional rights for the health sector<sup>15</sup>:

*"Art. 6 The following are social rights: education, health, food, work, housing, transportation, leisure, security, social security, protection of maternity and childhood, assistance to the destitute, in the form of this Constitution. (...)*

*Article 196. Health is a right of all and a duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other health problems and universal and equal access to actions and services for its promotion, protection and recovery.*

*Article 197. Health actions and services are of public relevance, and it is up to the Government to provide, under the terms of the law, for their regulation, inspection and control, and their execution must be done directly or through third parties and also by an individual or legal entity under private law.*

*Article 198. Public health actions and services are part of a regionalized and hierarchical network and constitute a single system, organized according to the following guidelines: (...)*

*II - Comprehensive care, with priority for preventive activities, without prejudice to care services;"*

<sup>15</sup> <https://www.tjdft.jus.br/consultas/jurisprudencia/jurisprudencia-em-temas/direito-constitucional/a-inviolabilidade-do-direito-a-saude-ea-vida-responsabilidade-do-estado-em-prestar-assistencia-integral> accessed on 09/18/2024

## FEDERAL LAW 8.080 OF SEPTEMBER 19, 1990 - REGULATES THE SUS

This Law regulates the Unified Health System, in its Article 2 states:

Art. 2 Health is a fundamental right of the human being, and the State must provide the indispensable conditions for its full exercise. Paragraph 1 - The duty of the State to guarantee health consists in the formulation and execution of economic and social policies aimed at reducing the risks of diseases and other health problems and in establishing conditions that ensure universal and equal access to actions and services for their promotion, protection and recovery. Paragraph 2 - The duty of the State does not exclude that of individuals, families, companies and society. Art. 3 Health has as determining and conditioning factors, among others, food, housing, basic sanitation, the environment, work, income, education, transportation, leisure and access to essential goods and services; the health levels of the population express the social and economic organization of the country. Sole Paragraph. Actions that, by virtue of the provisions of the previous article, are intended to guarantee people and the community conditions of physical, mental and social well-being also concern health.

Article 7 of Law 8.080/90 sets out the principles of the SUS, in verbis:

Art. 7 - The public health actions and services and the private services contracted or contracted that are part of the Unified Health System - SUS, are developed in accordance with the guidelines provided for in article 198 of the Federal Constitution, also obeying the following principles: I - universality of access to health services at all levels of care; II - comprehensiveness of care, understood as an articulated and continuous set of preventive and curative actions and services, individual and collective, required for each case at all levels of complexity of the system; III - preservation of the autonomy of persons in the defense of their physical and moral integrity; IV - equality of health care, without prejudice or privileges of any kind;

### 2.3 FEDERAL LAW NO. 13,146/2015—BRAZILIAN INCLUSION LAW-STATUTE OF PERSONS WITH DISABILITIES

Federal Law 13.146/2015<sup>16</sup> is known as the Brazilian Inclusion Law – and defends the rights of all people with disabilities. It is worth noting that People with ASD are considered people with disabilities, if there is negligence or omission in hospital admission and treatment, Law 13.146/15 must be referenced, especially in cases where omission occurs, either from society in general or from the Public Power. The introductory articles bring the citizenship rights of people with disabilities, in verbis:

*Article 1 of the law protects people with disabilities, aims to ensure and promote, under equal conditions, the exercise of fundamental rights and freedoms by people with disabilities, aiming at their social inclusion and citizenship.*

*Art. 2 A person with a disability is considered to be one who has a long-term physical, mental, intellectual or sensory impairment, which, in interaction with one or more barriers, may obstruct his or her full and effective participation in society on an equal basis with other people.*

<sup>16</sup> [https://www.planalto.gov.br/ccivil\\_03/\\_Ato2015-2018/2015/Lei/L13146.htm](https://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13146.htm) Accessed on 09/19/2024

*Paragraph 1 - The assessment of the disability, when necessary, will be biopsychosocial, carried out by a multiprofessional and interdisciplinary team and will consider*

*I - Impediments in the functions and structures of the body;*

*II - Socio-environmental, psychological and personal factors; III - the limitation in the performance of activities; and IV - The restriction of participation.*

## **EQUALITY AND NON-DISCRIMINATION**

*Art. 4 Every person with disabilities has the right to equal opportunities with other people and will not suffer any kind of discrimination.*

*Paragraph 1 - Discrimination on the basis of disability is considered to be any form of distinction, restriction or exclusion, by action or omission, which has the purpose or effect of impairing, preventing or annulling the recognition or exercise of the fundamental rights and freedoms of persons with disabilities, including the refusal of reasonable accommodation and the provision of assistive technologies.*

*Paragraph 2 - The person with disabilities is not obliged to enjoy benefits arising from affirmative action.*

*Article 5 - Persons with disabilities shall be protected from all forms of negligence, discrimination, exploitation, violence, torture, cruelty, oppression and inhuman or degrading treatment.*

*Sole Paragraph. For the purposes of the protection mentioned in **the caput** of this article, children, adolescents, women and the elderly with disabilities are considered especially vulnerable.*

*Article 6 Disability does not affect the full civil capacity of the person, including for:*

*I - get married and form a stable union;*

*II - Exercise sexual and reproductive rights;*

*III - exercise the right to decide on the number of children and to have access to adequate information on reproduction and family planning; IV - To preserve their fertility, with compulsory sterilization being prohibited;*

*V - To exercise the right to family and family and community life; and VI - To exercise the right to custody, guardianship, curatorship and adoption, as an adopter or adoptee, on an equal basis with other people. Art. 7 It is everyone's duty to report to the competent authority any form of threat or violation of the rights of the person with disabilities. Sole Paragraph. If, in the exercise of their functions, judges and courts become aware of facts that characterize the violations provided for in this Law, they must send documents to the Public Prosecutor's Office for the appropriate measures.*

*Art. 8 It is the duty of the State, society and the family to ensure that people with disabilities, as a priority, are given the realization of the rights related to life, health, sexuality, paternity and maternity, food, housing, education, professionalization, work, social security, habilitation and rehabilitation, transportation, accessibility, culture, sports, tourism, leisure, information, communication, scientific and technological advances, dignity, respect, freedom, family and community life, among others arising from the Federal Constitution, the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the laws and other norms that guarantee their personal well-being, social and economic.*

## **FEDERAL LAW NO. 12,764 OF DECEMBER 27, 2012 - BERENICE PIANA LAW**

The Berenice Piana Law signed by the former President of the Federative Republic of Brazil, DILMA ROUSSEFF, which institutes the National Policy for the Protection of the Rights of people with Autism Spectrum Disorder, which amends Law No. 8,112, of December 11, 1990 and refers to Berenice Piana, mother of a child with Autism Spectrum Disorder, as at the time there were no protective laws, she, in partnership with

other parents, got the support of the Legislative House, until the Law was published in 2012.

Art. 1 This Law establishes the National Policy for the Protection of the Rights of Persons with Autism Spectrum Disorder and establishes guidelines for its implementation.

Paragraph 1 - For the purposes of this Law, a person with autism spectrum disorder is considered to be one with a clinical syndrome characterized in the form of the following items I or II:

- I - Persistent and clinically significant impairment of social communication and interaction, manifested by marked impairment of verbal and nonverbal communication used for social interaction; absence of social reciprocity; failure to develop and maintain relationships appropriate to their level of development;
- II - Restrictive and repetitive patterns of behaviors, interests, and activities, manifested by stereotyped motor or verbal behaviors or unusual sensory behaviors; excessive adherence to ritualized routines and patterns of behavior; restricted and fixed interests.

Paragraph 2 - A person with autism spectrum disorder is considered a person with a disability, for all legal purposes.

Paragraph 3 - The public and private establishments referred to in Law No. 10,048, of November 8, 2000, may use the puzzle ribbon, a worldwide symbol of awareness of autism spectrum disorder, to identify the priority due to people with autism spectrum disorder. (Included by Law No. 13,977, of 2020)

Art. 2 The guidelines of the National Policy for the Protection of the Rights of Persons with Autism Spectrum Disorder are:

- I - Intersectoriality in the development of actions and policies and in the care of people with autism spectrum disorder;
- II - the participation of the community in the formulation of public policies aimed at people with autism spectrum disorder and the social control of their implementation, monitoring and evaluation;
- III - Comprehensive attention to the health needs of people with autism spectrum disorder, aiming at early diagnosis, multidisciplinary care and access to medicines and nutrients;
- IV - (VETOED);
- V - Encouraging the insertion of people with autism spectrum disorder in the labor market, observing the peculiarities of the disability and the provisions of Law No. 8,069, of July 13, 1990 (Statute of the Child and Adolescent);
- VI - the responsibility of the public authorities regarding public information regarding the disorder and its implications;
- VII - the encouragement of training and qualification of professionals specialized in the care of people with spectrum disorder autistic, as well as parents and guardians;
- VIII - the encouragement of scientific research, with priority given to epidemiological studies aimed at measuring the magnitude and characteristics of the problem related to autism spectrum disorder in the country.

Sole Paragraph. In order to comply with the guidelines referred to in this article, the government may enter into a public law contract or agreement with legal entities governed by private law.

Art. 3 The rights of the person with autism spectrum disorder are: I - A dignified life, physical and moral integrity, free development of personality, security and leisure;

- II - Protection against any form of abuse and exploitation;
- III - access to health actions and services, with a view to comprehensive care for their health needs, including:
  - a) early diagnosis, although not definitive;
  - b) multiprofessional care;
  - c) adequate nutrition and nutritional therapy;
  - d) medicines;
  - e) information that helps in diagnosis and treatment;
- IV - Access:
  - a) education and vocational training;
  - b) housing, including protected residence;

- c) the labor market;
- d) to social security and social assistance.

Sole Paragraph. In cases of proven need, the person with autism spectrum disorder included in regular education classes, under the terms of item IV of article 2, will have the right to a specialized companion.

Article 3-A. The Identification Card for Persons with Autism Spectrum Disorder (Ciptea) is hereby created, with a view to ensuring comprehensive care, prompt care and priority in care and access to public and private services, especially in the areas of health, education and social assistance. (Included by Law No. 13,977, of 2020).

## ROMEO MION LAW NO. 13,977, OF JANUARY 8, 2020

The Romeo Mion Law, no. 13,977, signed by the then President of the Republic, Jair Messias Bolsonaro, amends Berenice Piana Law No. 12,764, of December 27, 2012 and Law No. 9,265, of February 12, 1996, to institute the Identification Card for Persons with Autism Spectrum Disorder (Ciptea), and provides other provisions.

Carriers of Autism Spectrum Disorder-ASD, upon receiving the Identification Card of the Person with Autism Spectrum Disorder-ASD, now have a series of guarantees that can be charged in hospital admissions:<sup>17</sup>

"Art. 3-A Romeo Mion Law: The Identification Card for Persons with Autism Spectrum Disorder (Ciptea) is created, with a view to ensuring comprehensive care, prompt care and priority in care and access to public and private services, especially in the areas of health, education and social assistance.

Paragraph 1 - The Ciptea shall be issued by the bodies responsible for the execution of the

National Policy for the Protection of the Rights of Persons with Autism Spectrum Disorder of the States, the Federal District and the Municipalities, upon request, accompanied by a medical report, indicating the code of the International Statistical Classification of Diseases and Related Health Problems (ICD), and must contain, at least, the following information:

- I - Full name, affiliation, place and date of birth, civil identity card number, registration number in the Individual Taxpayer Registry (CPF), blood type, full residential address and telephone number of the identified;
- II - Photograph in the format 3 (three) centimeters (cm) x 4 (four) centimeters (cm) and signature or fingerprint of the identified;
- III - full name, identification document, home address, telephone number and e-mail of the legal guardian or caregiver;
- IV - Identification of the Federation unit and the issuing agency and signature of the responsible officer.

Paragraph 2 - In cases where the person with autism spectrum disorder is an immigrant holding a temporary visa or residence permit, a border resident or an asylum seeker, the Foreigner Identity Card (CIE), the National Migration Registration Card (CRNM) or the Provisional National Migration Registration Document (DPRNM) must be presented, valid throughout the national territory.

Paragraph 3 - The Ciptea will be valid for five (5) years, and the registration data of the identified person must be kept up to date, and must be revalidated with the

<sup>17</sup>

[https://www.google.com/search?q=lei+romeo+mion&oeq=LEI+ROMEO+MION&gs\\_lcrp=EgZjaHJvbWUqBwgAEEAAYgAQyBwgAEAAAYgAQyCAGBEAAYFhgeMggIAhAAGBYHJIICAMQABgWGB4yCAGEEAAYFhgeMggIBRAAGBYHJIICAYQABgWGB4yCAGHEAAYFhgeMgICBAAGBYHJIICAKQABgWGB7SAQgyOTAzajBqNKgCALACAQ&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=lei+romeo+mion&oeq=LEI+ROMEO+MION&gs_lcrp=EgZjaHJvbWUqBwgAEEAAYgAQyBwgAEAAAYgAQyCAGBEAAYFhgeMggIAhAAGBYHJIICAMQABgWGB4yCAGEEAAYFhgeMggIBRAAGBYHJIICAYQABgWGB4yCAGHEAAYFhgeMgICBAAGBYHJIICAKQABgWGB7SAQgyOTAzajBqNKgCALACAQ&sourceid=chrome&ie=UTF-8) accessed on 09/20/2024

same number, in order to allow the counting of people with autism spectrum disorder throughout the national territory.

### LAW NO. 8,899/1994 – FREE PASS LAW

Law No. 8,899/1994, known as the Free Pass Law, guarantees people with disabilities the free pass in the interstate public transport system. This law establishes the criterion of use for citizens who have a family income of up to two minimum wages. The Free Pass Law helps needy autistic patients to reach hospitals whose location is in other states, because in some cases, hospital care is not offered in the patient's city of residence and domicile.

Access is available in interstate public transport by road, rail and boat. In the case of air transport, the companion of the person with Autism Spectrum Disorder-ASD can have a discount granted of up to 80% of the ticket price, according to resolution no. 280 of the National Civil Aviation Agency-ANAC<sup>18</sup>.

### FEDERAL LAW NO. 8,742/93 ORGANIC LAW OF SOCIAL ASSISTANCE (LOAS)

The LOAS law establishes that social assistance must be provided by the State to people with disabilities of any age and/or seniors over 65 years of age. In this way, people with Autism Spectrum Disorder, in a situation of economic vulnerability, may come to depend on social and government assistance LOAS for the cost of medical care and basic survival subsidies. The assistance benefit can be requested through the platform of the National Institute of Social Security-INSS, and also through the courts.

The Bolsa Família Program (PBF), the Specialized Assistance Service for Families and Individuals (PAEFI) and the Service of Coexistence and Strengthening of Bonds (SCFV), coordinated by the MDS, stand out<sup>19</sup>. In this way, people with Autism Spectrum Disorder-ASD have a series of protection from the Three Powers with a series of Laws, Norms and Guidelines that allow those who live with ASD to live a full and dignified life.

It is worth noting that the LOAS does not communicate with other INSS benefits, does not give rise to the right to a thirteenth salary and does not produce a pension for death

<sup>18</sup> <https://defensoria.am.def.br/2023/04/26/mes-do-tea-veja-leis-que-asseguram-direitos-das-pessoas-com-autismo/> Accessed on 09/19/2024

<sup>19</sup> <https://legis.senado.leg.br/norma/550618> accessed on 09/21/2024



## FEDERAL LAW 8069/1990 - STATUTE OF THE CHILD AND ADOLESCENT - ECA

The Statute of the Child and Adolescent (ECA) was instituted on July 13, 1990, establishes the guidelines for the full protection of children and adolescents, with citizens who are up to 12 years of age being considered children and adolescents those between 12 and 18 years of age. Article 4 of the (BRASIL-ECA, 1990) states:

It is the duty of the family, society in general and the Government to ensure, with absolute priority, the realization of the rights related to life, health, food, education, sports, leisure, professionalization, culture, dignity, respect, freedom and family and community life

In this way, the ECA protects children and adolescents in case of omissions in hospital care. Parents of autistic children often feel insecure about leaving their children alone during hospitalization, if there is an omission, federal law 8.069/1990 can be used as an instrument of defense for these citizens.

## FEDERAL LAW NO. 10.741/2003 - STATUTE OF THE ELDERLY PERSON

The aforementioned LAW provides for the Statute of the Elderly Person, its introductory articles - art 1, 2 and 3 - promote the protection of the fundamental rights of the elderly, in verbis:

Art. 1 The Statute of the Elderly is hereby instituted, intended to regulate the rights guaranteed to persons aged 60 (sixty) years or older.

Art. 2 The elderly shall enjoy all the fundamental rights inherent to the human person, without prejudice to the full protection provided for in this Law, ensuring him/her, by law or by other means, all opportunities and facilities, for the preservation of his/her physical and mental health and his/her moral, intellectual, spiritual and social improvement, in conditions of freedom and dignity.

Art. 3 It is the obligation of the family, the community, society and the Government to ensure the elderly, with absolute priority, the realization of the right to life, health, food, education, culture, sports, leisure, work, citizenship, freedom, dignity, respect and family and community life.

In this way, it becomes clear that elderly autistic patients are duly protected by current legislation, if there are omissions in order to attend to the hospitalizations of elderly autistic patients, the statute of the elderly must be activated at any time.

## FINAL CONSIDERATIONS

The Magna Carta, a fundamental and positive legal document, which presents the identity of the Brazilian State, in its most humanistic concepts, in its introductory article, presents the fundamental right to the dignity of the human person as the motto of the entire



legal system. In the Aristotelian concept, the virtue of man arises with an eye turned to Justice, where the less favored should be seen in an equitable way.

In this perspective, citizens diagnosed with Autism Spectrum Disorder (ASD) because they have a neurological condition that implies a global developmental disorder, are considered people with disabilities and demand the protection of the Judiciary to guarantee them dignified hospital care, in case there are omissions in medical and hospital treatment.

Brazil has approximately two million autistic people, a significant number, as each autistic citizen mobilizes a care and attention network that needs to be protected by the Judiciary, especially for cases in which autistic people become patients and require hospitalization.

Now, if the Hospital generally causes a feeling of discomfort in practically all citizens who enter its premises, whether because of the beds in the wards that have sick patients, or because of the medical and hospital equipment, or even due to medications or even in front of white coats, one can imagine how the hospital environment becomes a stressful trigger for patients with ASD.

In fact, autistic citizens, when they are hospitalized in wards or hospital rooms, naturally have greater difficulty in perceiving the hospital environment as a place of healing, they feel more anxious and insecure, because due to their sensory limitations, they perceive the hospital environment not only as a place of healing, but of many challenges.

Faced with the challenges of hospitalization,

Nevertheless, in search of better opportunities for a hospital receptivity adapted to the specificities of autistic people, this Hospitalization implies care and exchange of knowledge between multiprofessional teams in the area of Law and Health, as the comprehensive care of these patients depends on a true support network under the responsibility of the State, society and the family.

In this way, Civil Law emerges as a protective mantle to guarantee the rights of these citizens and also to ward off attitudes and behaviors of ableism around their neurodiversity.

Thus, Civil Law, through its laws, norms and guidelines, aims to guarantee autistic patients a qualified civil identity, accessibility, the right to transport to the hospital of their need, to have the physical presence of a companion - in the case of overnight stays - to facilitate communication with the hospital multiprofessional team.

It is important to note that, currently, autistic patients have protective legislation, but it was not always like this. The current legislation present in Civil Law arose through the struggles of many generations. The mother of an autistic boy gave rise to the Berenice Piana Law in 2012, at a time when the word ableism was still unknown.

However, this fight in defense of autistic people is a continuous act, Law and Health professionals must always think about the fundamental and constitutional rights that exert force over other laws and legal norms.

In view of all the context presented in this academic research, the current and protective legislation of autistic citizens deserves to be appreciated and followed, so that it is applied in the explicit form of the Federal Constitution-CFB/88. Thus, it is still necessary for everyone to be united in this fight and to use the legal system in defense of the interests of autistic people, so that at some point, the State, the family and society can have the legal security of being on the path of social inclusion and anti-ableism.

## REFERENCES

1. American Psychiatric Association. (2014). Manual diagnóstico e estatístico de transtornos mentais: DSM-5 (5ª ed.). Porto Alegre, RS: Artmed.
2. Aristóteles. (1987). Ética a Nicômaco. In Coleção Os Pensadores (p. 160). São Paulo, SP: Nova Cultural.
3. Barrett, L. F. (2020). Seven and a half lessons about the brain. Boston, MA: Houghton Mifflin Harcourt.
4. Brasil. (1988). Constituição da República Federativa do Brasil: Texto constitucional promulgado em 5 de outubro de 1988, compilado até a Emenda Constitucional nº 134/2024. Recuperado em 15 de agosto de 2024, de [https://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm)
5. Brasil. (1990). Lei nº 8.080, de 19 de setembro de 1990: Regulamenta o Sistema Único de Saúde. Recuperado em 4 de agosto de 2024, de [https://bvsms.saude.gov.br/bvs/saudelegis/lei\\_8080\\_90.html](https://bvsms.saude.gov.br/bvs/saudelegis/lei_8080_90.html)
6. Brasil. (1993). Lei nº 8.742, de 7 de dezembro de 1993: Institui a Lei Orgânica de Assistência Social – LOAS. Recuperado em 10 de outubro de 2024, de [https://www.planalto.gov.br/ccivil\\_03/leis/l8742.htm](https://www.planalto.gov.br/ccivil_03/leis/l8742.htm)
7. Brasil. (1994). Lei nº 8.899, de 29 de junho de 1994: Institui Passe Livre às pessoas portadoras de deficiência no sistema coletivo de transporte interestadual. Recuperado em 18 de setembro de 2024, de <https://www2.camara.leg.br/legin/fed/lei/1994/lei-8899-29-junho-1994-360993-normaatualizada-pl.html>
8. Brasil. (2012). Lei nº 12.764, de 27 de dezembro de 2012: Lei Berenice Piana. Institui a Política Nacional de Proteção dos Direitos da Pessoa com Transtorno do Espectro Autista. Recuperado em 12 de agosto de 2024, de [https://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2012/lei/l12764.htm](https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12764.htm)
9. Brasil. (2015). Lei nº 13.146, de 6 de julho de 2015: Institui a Lei Brasileira de Inclusão da Pessoa com Deficiência – Estatuto da Pessoa com Deficiência. Recuperado em 6 de agosto de 2024, de [https://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2015/lei/l13146.htm](https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13146.htm)
10. Brasil. (2020). Lei nº 13.977, de 8 de janeiro de 2020: Lei Romeo Mion. Institui a Carteira de Identificação da Pessoa com Transtorno do Espectro Autista – Ciptea. Recuperado em 14 de setembro de 2024, de [https://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2020/lei/l13977.htm](https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/l13977.htm)
11. Brasil. Ministério da Saúde. (2023). Transtorno do Espectro Autista – TEA. Recuperado em 15 de outubro de 2024, de <https://bvsms.saude.gov.br/transtorno-do-espectro-autista-tea-autismo/>
12. Brasil. (1991). Estatuto da Criança e do Adolescente: Lei nº 8.069/90. São Paulo, SP: Atlas.

13. Donnelilan, A. M., Hill, D. A., & Leary, M. R. (2013). Rethinking autism: Implications of sensory and movement differences for understanding and support. *Frontiers in Integrative Neuroscience*, 6, 124. <https://doi.org/10.3389/fnint.2012.00124>
14. Han, E., Scior, K., Heath, E., Umagami, K., & Crane, L. (2023). Development of stigma-related support for autistic adults: Insights from the autism community. *Autism*, 27(6), 1676–1689. <https://doi.org/10.1177/13623613221143590>
15. Justiça Federal. (2019). Direito e política. *Revista da Seção Judiciária do Rio de Janeiro*, 23(45). ISSN 1678-3085.
16. Mello, C. A. B. de. (2021). Igualdade. In *Enciclopédia jurídica da PUC-SP*. São Paulo, SP: PUC-SP. Recuperado em 29 de outubro de 2024, de <https://enciclopediajuridica.pucsp.br/verbete/4/edicao-2/igualdade>
17. Organização Mundial da Saúde. (2024). Autism. Recuperado em 10 de outubro de 2024, de <https://www.who.int/news-room/fact-sheets/detail/autism-spectrum-disorders>
18. Powell, T., Glozier, N., Conn, K., Einboden, R., Buus, N., Caldwell, P., & Milton, A. (2024). The impact of early intervention psychosis services on hospitalisation experiences: A qualitative study with young people and their carers. *BMC Psychiatry*, 24(1), 347. <https://doi.org/10.1186/s12888-024-05758-4>
19. Warreman, E. B., Ester, W. A., Geurts, H. M., Vermeiren, R. R., & Nootboom, L. A. (2023). How do primary care providers and autistic adults want to improve their primary care? A Delphi-study. *Frontiers in Psychiatry*, 14, 1145424. <https://doi.org/10.3389/fpsy.2023.1145424>
20. Wasylenki, D., Goering, P., Cochrane, J., Durbin, J., Rogers, J., & Prendergast, P. (2000). Tertiary mental health services: I. Key concepts. *The Canadian Journal of Psychiatry*, 45(2), 179–184. <https://doi.org/10.1177/070674370004500209>