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NEURONARRATIVES, NEUROPOLITICS AND THE PHARMACEUTICALISATION OF MENTAL HEALTH: CONNECTING THE DOTS IN THE JUDICIAL DISCOURSE ABOUT ATTENTION DEFICIT AND HYPERACTIVITY DISORDER

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Esta Tese foi julgada adequada para obtenção do Título de "Doutor em Inglês: Estudos Linguísticos e Literários, Área de Concentração: Estudos da Linguagem", e aprovada em sua forma final pelo Programa de Pós–graduação em Inglês: Estudos Linguísticos e Literários.

Florianópolis, 22 de fevereiro de 2019.

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Dedico esta tese a três pessoas em especial:

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nosso presidente Lula, aprisionado
e a nosso estimado reitor, Cancellier...

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– Meu caro Márius Caspérides! Que prazer inesperado! A que devo a surpresa de sua chamada?

– Sim, sim, sim... – gaguejou Caspérides.

– Bom dia, Doutor Q.I.... é sobre a droga. É que eu descobri...
– A droga! A maravilhosa Droga da Obediência! – interrompeu a voz do Doutor Q.I. – A fantástica droga que você descobriu, Márius Caspérides!
– Sim, sim, sim... mas é que eu continuei com os testes e...
– Algum problema, Caspérides? Seus testes demonstraram algum problema com a nossa maravilhosa Droga da Obediência?
– Sim, sim, sim... não, não, não! Sim e não...
Lá, na sala que ninguém sabia onde ficava, a imagem trêmula do bioquímico, no vídeo do aparelho, deve ter irritado o poderoso chefe da Pain Control.
A voz agora era fria, era dura.
– Ou sim ou não, meu caro Caspérides. Ou você descobriu um problema com a droga, ou não descobriu.
– Sim, sim, sim, eu descobri. A droga funciona bem. Bem até demais. Muito demais, exageradamente demais. As cobaias se acalmaram e obedecem como esperávamos, mas...
– Mas o quê?
O nervosismo do bioquímico Márius Caspérides crescia cada vez mais ao falar para uma tela de vídeo que não mostrava o rosto do interlocutor. Era como falar para as paredes de uma sala vazia. Uma sala que tinha voz, que tinha o poder absoluto.
– Com a droga, as cobaias obedecem totalmente, Doutor Q.I. Mas parece que perdem a vontade própria, a capacidade de iniciativa. Sim, sim, sim! Ficam incapazes de fazer qualquer coisa voluntariamente. Ficam inertes, à espera de alguma ordem, como se fossem máquinas que só funcionam quando são ligadas e só param de funcionar quando alguém as desliga!
Depois de um breve silêncio, a voz do Doutor Q.I. pareceu aliviada:
– Ufa, ainda bem! Por um momento tive medo de que houvesse algum problema com a Droga da Obediência!
– Sim, sim, sim, Doutor Q.I., parece que o senhor não entendeu direito. Existe um problema, um problema

muito grande. Como o senhor sabe, há anos eu venho pesquisando uma droga capaz de combater os casos de loucura mais rebeldes, mais furiosos...

– E com o financiamento, com o patrocínio da Pain Control para suas pesquisas, seu sucesso foi absoluto, Caspérides! – cortou a voz do Doutor Q.I. – Com a Droga da Obediência, haverá grandes progressos no tratamento dos loucos furiosos.

– Sim, sim, sim, desculpe, Doutor Q.I., mas parece que eu não estou sendo claro. O que eu quero dizer é que a droga tem um efeito devastador sobre a personalidade das cobaias. Parece que a vontade se anula! É claro que eu pretendo agora fazer alguns testes com outros animais maiores. No entanto...

– Outros animais maiores, Caspérides? Que tipo de animais?

– Estou pensando nos grandes orangotangos, em cavalos, touros e até feras, como ursos, leões...

– E seres humanos? – perguntou o Doutor Q.I.

O bioquímico Márius Caspérides assustou–se:

– Como? Seres humanos? Gente? Não, não, não, Doutor Q.I. É muito cedo para testar a Droga da Obediência em seres humanos. Ainda mais agora que eu...

– Pois você está atrasado, meu caro Caspérides. Já dei a ordem, e a Droga da Obediência está sendo aplicada em quem deve ser. Nada de ratos, camundongos ou papagaios. Gente, Caspérides, gente!

– Gente?! O senhor já mandou testar a droga nos loucos?

– Loucos? Loucos coisa nenhuma! Essa droga maravilhosa está sendo testada nos jovens mais saudáveis que pudemos encontrar!

Caspérides empalideceu:

– Gente? E gente sã? Mas esta é uma droga perigosa. Só poderia ser aplicada com ordem médica. E a ética proíbe ao médico aplicar medicamentos em um corpo são!

– Ética médica, Caspérides? – riu–se o Doutor Q.I.

– A única ética que me importa é a da Pain Control!

– Não, não, não! Isso é um absurdo! Eu não vou permitir...

– Permitir? Ora, Caspérides, quem é você para permitir ou proibir qualquer coisa aqui na
Pain Control?

O bioquímico Márius Caspérides agarrou–se ao intercomunicador, gritando desesperado:
– Não, não, não! Por favor! Não pode fazer isso! Com gente, não! Não desligue! Não!

Suavemente o vídeo do intercomunicador apagou–se.

Pedro Bandeira, *"A Droga da Obediência"*

ABSTRACT

This study investigates discourses about mental health produced by the judiciary in Brazil. To do so, it relies on theoretical and analytical frameworks from Systemic Functional Linguistics (Halliday & Matthiessen, 2014), Critical Discourse Analysis (Fairclough, 2010; Van Leeuwen, 2008; Van Leeuwen, 2007) and the Sociology of Health (Biehl, 2012; Caponi, 2009; Caponi & Brzozowski, 2012; Conrad, 2007; Conrad & Barker, 2014; Martins, Gabe & Williams, 2011; Martinez–Hernaez, 2014; Rose & Abi–Rached, 2014) to describe how social actors who have been diagnosed with Attention Deficit and Hyperactivity Disorder (ADHD) are represented in the judicial discourse and discuss social and economic implications behind these forms of representations in the production of judicial narratives involving ADHD. Data is composed of six judicial decisions produced by the *Superior Tribunal de Justiça (STJ)* between 2015 and 2017, divided in two groups: appellate decisions produced by the STJ determining the acquisition of psychopharmaceuticals by the State to treat social actors who have been diagnosed with ADHD; and appellate decisions produced by the STJ related to rape crimes involving the diagnosis of ADHD. The analysis reveals the production of neuronarratives by the *Superior Tribunal de Justiça*. In these narratives, social actors are predominantly impersonalized and referred to in terms of the diagnoses attributed to them, therefore suppressing other social/identity markers. Moreover, ADHD is represented as a neurobiological disorder for which the adequate treatment should be prescribed by a specialist, usually consisting in the prescription of methylphenidate, known commercially as Ritalin. The analysis also reveals that ADHD plays a neuropolitical function in the appellate decisions involving rape crimes, since it has been used to delegitimize the discourses of one social actor who has been diagnosed and to keep an adolescent deprived of liberty. Based on the analysis, I argue for the necessity of judicial institutions to include the recommendations published in 2015 by the Ministry of Health in Brazil, as a way of reducing practices of medicalisation and pharmaceuticalisation of mental health. These recommendations claim that the diagnosis of ADHD and the recommendation of methylphenidate should involve a multidisciplinary staff from the Centers of Psychosocial Care in Brazil, in an attempt to decentralise medical power and reduce the number of inadequate diagnoses and inadequate uses of Ritalin in Brazil. At the

end, I present a framework for critical discourse analysis focused on the investigation of discourses about mental health.

Keywords: critical discourse analysis; forensic linguistics; mental health; neuronarratives; attention deficit and hyperactivity disorder.

RESUMO

Este estudo investiga discursos sobre saúde mental produzidos pelo sistema judiciário no Brasil. Para tanto, parte de princípios teóricos e analíticos da Linguística Sistêmico Funcional (Halliday & Matthiessen, 2014), da Análise Crítica do Discurso (Fairclough, 2010; Van Leeuwen, 2008; Van Leeuwen, 2007) e da Sociologia da Saúde (Biehl, 2012; Caponi, 2009; Caponi & Brzozowski, 2012; Conrad, 2007; Conrad & Barker, 2014; Martins, Gabe & Williams, 2011; Martinez–Hernaez, 2014; Rose & Abi–Rached, 2014) a fim de descrever como atores sociais diagnosticados com Transtorno de Déficit de Atenção e Hiperatividade (TDAH) são representados no discurso judicial e discutir implicações sociais e econômicas destes modos de representação na produção de narrativas judiciais que envolvam o TDAH. O corpus desta pesquisa é constituído por seis decisões judiciais produzidas pelo Superior Tribunal de Justiça (STJ) entre os anos de 2015 e 2017, divididas em dois grupos: acórdãos produzidos pelo STJ determinando a aquisição de psicofármacos pelo Estado a fim de tratar pacientes que foram diagnosticados com TDAH; e acórdãos produzidos pelo STJ relacionados a crimes de estupro, que envolvam o diagnóstico de TDAH. A análise dos dados revela a produção de neuronarrativas pelo Superior Tribunal de Justiça. Nestas narrativas, os atores sociais são predominantemente despersonalizados e tratados em termos dos diagnósticos a eles atribuídos, de modo a suprimir outros marcadores identitários. Por sua vez, o TDAH é representado como um transtorno neurobiológico, para o qual o tratamento adequado deve ser indicado por um médico especialista e consiste, de modo geral, na administração do psicofármaco de princípio ativo cloridrato de metilfenidato, conhecido comercialmente como Ritalina. Além disso, a análise dos acórdãos envolvendo crimes de estupro revela que o TDAH tem uma função neuropolítica, ora deslegitimando o discurso da pessoa diagnosticada, ora servindo para manter um adolescente em situação de privação de liberdade. A partir destes dados, argumento pela necessidade de as instituições judiciais seguirem as recomendações publicadas em 2015 pelo Ministério da Saúde para a redução de práticas medicalizantes na saúde mental, envolvendo equipes multidisciplinares de Centros de Atenção Psicossocial nos processos diagnóstico e de legitimação da necessidade de uso de psicofármacos, de modo a descentralizá–los do poder médico e reduzir o diagnóstico/consumo inadequado do medicamento Ritalina no Brasil. Ao fim, apresento uma

proposta metodológica para estudos em análise crítica do discurso que envolvam a investigação de discursos sobre saúde mental.

Palavras–chave: análise crítica do discurso; linguística forense; saúde mental; neuronarrativas; transtorno de déficit de atenção e hiperatividade.

LIST OF TABLES

LISTA DE ABREVIATURAS E SIGLAS

ABDA – Associação Brasileira de Déficit de Atenção e Hiperatividade *(Brazilian Association of Attention Deficit and Hyperactivity Disorder)*
AD – Appellate Decision
ADHD – Attention Deficit and Hyperactivity Disorder
ASSFAR – Gerência de Assistência Farmacêutica *(Pharmaceutical Assistance Management)*
ANVISA – Agência Nacional de Vigilância Sanitária *(Brazilian Health Regulatory Agency)*
BRATS – Boletim Brasileiro de Avaliação de Tecnologias em Saúde *(Brazilian Bulletin for the Evaluation of Health Technologies)*
CAPS – Centro de Atenção Psicossocial *(Center of Psychosocial Care)*
CDA – Critical Discourse Analysis
CFP – Conselho Federal de Psicologia *(Federal Council of Psychology)*
CNS – Conselho Nacional de Saúde *(National Council of Health)*
DLLE – Departamento de Língua e Literatura Estrangeiras *(Foreign Languages Department)*
DSM – Diagnostic and Statistical Manual of Mental Disorders
ECA – Estatuto da Criança e Adolescente *(Child and Youth Law)*
LGBTQI – Lésbicas, Gays, Bissexuais, Travestis, Queer e Intersex (*Lesbian, Gay, Bisexual, Transgender, Queer and Intersex)*
MERCOSUL – Mercado Comum do Sul *(Southern Common Market)*
MP – Ministério Público *(Public Prosecution Service)*
MS – Ministério da Saúde *(Ministry of Health)*
RAADH – Reunião de Altas Autoridades sobre Direitos Humanos e Chancelarias do MERCOSUL e Estados Associados *(High Authorities' Assembly on Human Rights)*
SFL – Systemic Functional Linguistics
SINASE – Sistema Nacional de Atendimento Socioeducativo *(National System of Socio-Educational Assistance)*
STF – Supremo Tribunal Federal *(Supreme Court)*
STJ – Superior Tribunal de Justiça *(Superior Court of Justice)*
SUS – Sistema Único de Saúde *(Unified Health System)*
TJ – Tribunal de Justiça *(State Court)*
UFSC – Universidade Federal de Santa Catarina *(Federal University of Santa Catarina)*
WHO – World Health Organization

TABLE OF CONTENTS

CHAPTER I
INTRODUCTION OR
"WHERE I COME FROM AND WHERE I AM GOING TO"

1.1. Critical Discourse Analysis: *What, Why* and *How*

First of all, this is a study within the field of Critical Discourse Analysis (CDA) in which I combine linguistic, social and psychological theories to investigate the Brazilian judicial discourse about mental health. To do so, six[1] appellate decisions were gathered from the webpage of the Superior Court of Justice in Brazil (*Superior Tribunal de Justiça, STJ).* CDA is an interdisciplinary, critical social science centred on the explanation of social problems taking into consideration their contexts of production, the social actors and institutions involved, and power relations established among these social actors and institutions. CDA aims at contributing, through the analysis of the semiotic aspects of social practices in relation to their contexts, to the emancipation of the social actors involved in these practices and who might suffer some kind of oppression, marginalization or hierarchization in society.

According to Fairclough (2012), CDA offers to language and discourse studies the critical tradition of Social sciences. In that sense, the author claims that critical social analysis is both a normative and an exploratory critique:

> It is normative critique in that does not simply describe existing realities but also evaluates them, assesses the extent to which they match up to various values which are taken (more or less contentiously) to be fundamental for just or decent societies (e.g. certain standards – material but also political and cultural – of human well–being). It is explanatory critique in that it does not simply describe existing realities but seeks to explain them, for instance by showing them to be effects of structures or mechanisms or forces which the analyst postulates and whose reality s/he seeks to test out (e.g.inequalities in wealth, income and access to various social goods might be explained as an effect of mechanisms and forces associated with 'capitalism') (Fairclough, 2013, p. 9)

[1] The appellate decisions are not included as appendices in this dissertation. However, since they are publically available at the STJ webpage, they were included in the references with their respective access codes.

Therefore, in adopting CDA as an epistemological framework for this study, I am concerned with not only describing "existing realities", but also establishing connections between these realities and major social structures and social forces. To do so, this study is in dialogue with other areas of knowledge, such as the Sociology of Health and Social Psychology. Theories from each of these areas support the explanation of the social practices I investigate in this study, in addition to offering theoretical underpinnings to the interpretation and discussion about how these social practices are recontextualized in the discourses of judicial institutions. If we take into consideration that

> research on CDA has the following characteristics: it is not just analysis of discourse, it is part of some form of systematic transdisciplinary analysis of relations between discourse and other elements of the social process; it is not just general commentary on discourse, it includes some form of systematic–analytic analysis of texts; it is not just descriptive, it is also normative. It addresses social wrongs in their discursive aspects and possible ways of righting or mitigating them (Fairclough, 2010, p. 10)

we may understand why this study takes place within a CDA tradition: it is interdisciplinary, in it relies on different social theories to explain the relations between discourses and other elements of the social organization; it relies on a language theory, namely Systemic Functional Linguistics (SFL), to describe language use in the discourses of judicial institutions and how the social actors involved in the social practices are referred to; and it addresses social wrongs such as the exaggerated pathologization, medicalisation and pharmaceuticalisation of mental health (as denounced by the Ministry of Health in Brazil), to suggest possible solutions to these social wrongs based on the analysis of the social context and on critical discussion.

This leads to why I adopt CDA as a theoretical and methodological framework for this study. I consider, based on the theoretical background I present throughout the thesis, that practices of excessive medicalisation and pharmaceuticalisation of mental health can be understood as practices of oppression – since they may decrease the autonomy of social actors who have been diagnosed with ADHD, and may shape their subjectivities in specific ways, attending institutional interests of social control. Therefore, I rely on CDA since I am interested in the language uses and the discourses that, as part of the

social practices I investigate, may constitute forms of oppression and marginalization of certain social groups.

In relation to *how* I will do CDA, my discussion is backgrounded by Fairclough's (2010) framework to Critical Discourse Analysis, which is divided in four main stages: focusing on a social problem in its semiotic aspect; identifying obstacles to solving the problem through the analysis of its context and of the social practices to which the problem is related; investigating and discussing whether the social order somehow needs the problem; and presenting possible innovative solutions to it. This framework will be further explained on chapter 2 and also on chapter 5.

In the next subsection, I explain why I started doing research on language and law and language and health from a CDA perspective.

1.2. Looking back to the beginning

This is a study within the field of Critical Discourse Analysis, in which I investigate the judicial discourse about mental health produced by a federal Court of justice in Brazil, hereafter referred as *Superior Tribunal de Justiça*[2] (STJ). I have been investigating relations between language and health in the judicial discourse since my undergraduate course in English at *Universidade Federal de Santa Catarina*[3] (hereafter mentioned as UFSC, 2010–2015) under the supervision of professor Débora de Carvalho Figueiredo. In 2012 I started working at Florianópolis's Health Department (Santa Catarina, Brazil), and in 2014, after many insightful conversations with my supervisor, we decided to approach, from critical and linguistic perspectives, one of the social practices related to the place I worked at and which we considered as an indicator of a social problem: the judicialization of health.

During the time I worked at the Health Department, my activities were concentrated in the Pharmaceutical Assistance Management (*Gerência de Assistência Farmacêutica*, hereafter mentioned as ASSFAR*).* One of the main attributions of this sector is to guarantee that citizens living in Florianópolis have access to medicines, based on the Unified Health System (*Sistema Único de Saúde*, hereafter

[2] The Court's attributions will be described in section *3.2, "Explaining appellate decisions".*

[3] Federal University of Santa Catarina

referred as SUS). The SUS is a national public health policy aiming to provide health services to everyone within the Brazilian State, therefore protecting the right to health guaranteed by the Brazilian Constitution. At that time, the Pharmaceutical Assistance Management was registering an exponential increase in the number of judicial claims for the acquisition of certain pharmaceuticals, and I realized that many of these judicial orders we received related to the acquisition of psychopharmaceuticals.

Since I was at the frontline of the administrative routine of that sector, I both received the judicial orders and attended the patients involved in the judicial claims, when they needed information about their medicines (such as the availability of the medicines being requested). Therefore, I had the opportunity of reading the judicial orders and talking to the patients. In these situations, I identified certain discursive patterns, which led me to conduct an investigation on the practice of judicialization of health.

What in fact called my attention was that the discourses of the judicial decisions we received did not present much information (if any) about the patients' social backgrounds, that is, the contexts in which they lived their lives and where their symptoms of distress were manifested. Contrariwise, in talking to the patients, what called my attention was that, in their narratives, the social contexts of distress were given prominence. However, even when verbalizing the social aspects of the contexts in which their distress was produced, the patients kept on reproducing a neurobiological understanding of their own mental health, which in its turn was used to support their claim for psychopharmaceutical drugs.

Three cases were emblematic to me: The first related to a social actor who had been a victim of homophobia at his workplace. As a result of being constantly exposed to his homophobic aggressors, he developed panic attacks and an increasing state of depression, both commonly understood as related to one's mental health. Therefore, in an attempt to "solve" the problem, the company where he worked booked him an appointment with a psychiatrist, from which he left with prescriptions to take daily doses of fluvoxamine and quetiapine, both psychopharmaceuticals. I could tell from his speech that he was exhausted, since the social context where the distress affecting him had been produced remained untouched. Moreover, he had to become used to a new state of mind, provoked by the daily use of psychopharmaceuticals.

The second case involved a woman who had had postpartum depression more than thirty years before. Since then, she had used several psychopharmaceuticals which, according to her, showed no sign of improvements on her state of mind – or, when they did, these were short–term improvements. Even though sometimes she had difficulties speaking, probably as a result of the long and continuous use of psychopharmaceuticals, she constantly referred back to the episode of her postpartum depression, immediately linking it to how medical experts had constantly emphasised the importance and efficacy of the treatment with psychopharmaceuticals as a way to overcome her distress.

Curiously, she did not talk about her experience of motherhood itself, which made me think she probably did not question the social contexts of production of her distress in relation to motherhood, and if she did, this was not something she considered important enough to mention. Rather, she still supported the view that psychopharmaceuticals could, one day, stabilize her long–term depression, if only she took the right ones in the right doses.

The third case involved a child whose father was an artisan, and depended on his own efforts as a street worker to survive. The child had been diagnosed as hyperactive, and since then he was being prescribed high doses of medication aiming to control his behaviour (or "curb his energy", as it was commonly said by people working at the health department). Again, even though his father's talk constantly evoked the social reality which produced the child's distress, the father did not see it as such. Rather, the child was constantly referred by his own father as impulsive, too energetic, and, as a result, as someone who disturbed him when he had to work.

Unfortunately, for lack of time and also for ethical reasons, by that time I could not work with the judicial decisions involving the claimants I mentioned above. My supervisor and I decided we would work with judicial decisions made public by the State Court of Santa Catarina, which we could collect on the Court's website. We decided to investigate judicial decisions in which citizens living in Santa Catarina were claiming for their right to health in order to have access to psychopharmaceuticals, concentrating our work on issues involving mental health. Our hypothesis was that, in providing access to psychopharmaceuticals to citizens, the judicial discourse relied on the production of neuronarratives, which implies suppressing social contexts of production of distress and representing claimants as brain subjects only.

As a result of that initial research, we published an article entitled "*Perspectivas linguísticas para o discurso judicial sobre crianças diagnosticadas com TDAH em Santa Catarina"* (Rieger and Figueiredo, 2017). Our initial findings showed that not only childhood was at stake when it came to the subject of the medicalisation and pharmaceuticalisation of mental health. Gender was also another relevant variable which, in that specific case, we did not have the time to investigate in more depth.

In 2015 I applied to the master's course in English/Linguistics and Literature (PPGI/UFSC), and I was still interested in investigating representations related to mental health in the discourse of the judiciary. In that year, I was very much influenced by activists for LGBTQI rights, who were specifically concerned with the promotion of trans rights. From the discussions I was following, I decided to apply to the master's course with a project aiming to investigate if and how trans people's identity rights were being guaranteed by the judiciary – due to the lack of a specific legislation in Brazil in relation to the theme. This also seemed to be an adequate way of conducting a more complex study involving the second variable mentioned above, gender.

I was very much influenced by the works of Zowie Davy, who I met in 2015 in Florianópolis for a course about the medico–legal boundaries imposed on trans people, and also by the work of Rodrigo Moretti, a professor from the department of Public Health at UFSC who is involved with public health studies and LGBTQI activism – and more strongly with trans people's rights. With my project I intended to offer a contribution, from a critical linguistic perspective, to what I considered an urgent demand at that time concerning trans people's rights in the judiciary, aiming to reduce prejudicial institutional practices affecting them.

As a result of this project, I produced my master's thesis under the supervision of professor Débora de Carvalho Figueiredo, departing from the hypothesis that the lack of legislation in relation to trans people's gender identity rights, coupled with different understandings of gender and mental health by the judges, could produce practices of misgendering directly affecting trans people. Our findings pointed to an oscillation in judicial decisions involving the theme, in which in some cases gender identity rights were recognized by the judiciary, and in other cases, trans people were represented as abject beings by the judges.

The analysis also showed that the amendment of trans people's civil documents and the recognition of their gender depended on

medical interventions attesting a mental/pathological condition, coupled with direct interventions upon trans people's bodies and behaviours. We argued that the approval of a law regulating gender identity rights could diminish the violences to which trans people are constantly exposed in their daily lives and, in some cases, even by the judiciary, who should work to guarantee a state of well–being. Moreover, as a result of this thesis I also proposed a framework for CDA focused on the identification of transphobic discourses.

Despite the recommendations to conduct a follow–up research of my master's thesis on my doctoral dissertation, I wanted to look back at the relations between mental health and the use of psychopharmaceuticals, this time looking at the discourses produced by a Brazilian federal Court. In 2016 I submitted the project that originated this dissertation, having as my main objective to investigate how social actors who have been diagnosed with mental disorders were represented by the judiciary and what implications these representations could have in their lives, as well as upon the perpetuation or transformation of discourses about mental health. I decided to focus on the diagnosis of Attention Deficit and Hyperactivity Disorder (ADHD), since there has been an exponential increase in the numbers of cases reported by health institutions in the last decade in Brazil, as I demonstrate throughout this research.

The reasons for conducting this research are many, and I will present some of them in section 1.4, as the significance of the research. To briefly introduce some of them, as someone closely involved with language educators, I am concerned with the impacts that teachers may have on the lives of children who are early diagnosed as mentally ill, usually of school age. I am also concerned with social actors being labelled as ill from a very early age, appropriating this identity to themselves and possibly developing chemical dependence due to the long–term use of psychopharmaceuticals. Moreover, I am concerned with approximating the significance of the research I decided to conduct to research involving educational institutions and contexts. Even though the data I investigate does not come from educational contexts, they certainly relate to institutional educational practices at some point.

In sum, I produced two research works (a master thesis and a doctoral dissertation) approaching mental health in a dialogue with gender, and mental health in combination with the use of psychopharmaceuticals. Having said that, I hope this study, which is opened to criticisms, debates and suggestions, may contribute to a better

understanding of what constitutes mental health and institutional practices related to it, especially within judicial contexts.

1.3. Language and Law

The present study also takes place within the field of Forensic Linguistics (Coulthard and Johnson, 2007; 2010). To be more specific, the central concern of this study is how judicial discourse understands mental health and Attention Deficit and Hyperactivity Disorder. Therefore, this research connects language and law studies and language and health studies.

Moreover, this study is part of the project coordinated by professor Débora de Carvalho Figueiredo (DLLE/UFSC, 2016–2020), "*Direito, gênero e cidadania: uma análise crítica do discurso jurídico sobre direitos civis, sexuais e reprodutivos de mulheres e da população LGBTQI*". This dissertation is part of this project for two reasons: first, one of the central issues approached in this study is the universal right to health and its materialization through the access to psychopharmaceuticals – thus, a civil right. Second, it also approaches some of the effects of ADHD upon judicial decisions related to rape cases, involving adolescents with masculine and feminine gender assignments.

The field of Forensic Linguistics has several ramifications. It encompasses studies on plagiarism, forensic translation and interpretation, forensic phonetics, forensic discourse analysis, and authorship in crimes (Coulthard and Johnson, 2007; 2010). This dissertation is part of the subfield of forensic discourse analysis, since its methodology is essentially concerned with the description and interpretation of judicial decisions produced and published by the *Superior Tribunal de Justiça* through the application of theoretical and methodological frameworks from Systemic Functional Linguistics and Critical Discourse Analysis.

In relation to studies involving discourses about mental health from a social and critical perspective, even though there is a relevant number of publications in the field of the social sciences relating one issue to the other, most of them do not rely on the interpretative and methodological frameworks of Anglo–saxon critical discourse analysis (e.g. Caponi, 2009; Caponi and Brzozowski, 2012; Biehl, 2013; Martinez–Hernaez, 2014; Caponi, 2015; Mitjavila, 2015). The studies mentioned in the previous section adopt sociological frameworks, but

they do not include linguistic description from a systemic functional perspective. Even the studies focusing on the judicialization of health have not adopted linguistic perspectives (e.g. Biehl, 2013).

However, Rieger (2015, 2016) and Rieger and Figueiredo (2017a, 2017b) rely on interpretative and analytical frameworks from Systemic Functional Linguistics and Critical Discourse Analysis to describe judicial discourses about mental health – in more specific terms, the discourses produced by a state Court in Santa Catarina. In the first case (Rieger, 2015), the study was concerned with investigating appellate decisions[4] produced by TJSC determining the acquisition of psychopharmaceuticals by state and municipal health secretaries to treat diagnoses related to mental health. Rieger (2016) is my master's thesis, in which I investigated the judicial discourse about mental health involving trans people, in addition to investigating how such discourse impacted their rights to gender identity. Rieger and Figueiredo (2017a and 2017b) offer, respectively, linguistic perspectives to the judicial discourse about children who have been diagnosed with ADHD and about trans people in Santa Catarina.

This dissertation is a continuity of two of the aforementioned studies: Rieger (2015) and Rieger and Figueiredo (2017a). In both cases, appellate decisions produced by TJSC were analysed and the results point out the production of neuronarratives as part of the processes of medicalisation, pharmaceuticalisation and judicialization of mental health in childhood. In the present study, this analysis is extended to a higher instance of the judiciary, adding insights in relation to real life effects of these practices as, for instance, when the judiciary adopts medical discourses to either legitimate or delegitimize criminal practices such as rape.

1.4. Significance of the Research

First of all, this study takes into consideration the recommendations to reduce practices of medicalisation in mental health

[4] Appellate decisions belong to the genre "judicial decision" and they are produced by appeal Courts. The genre appellate decision has a well-defined structure presenting the identification of the parties, a summary of the appeal, a report presenting the main elements of the case, a vote or justification preceding the decision and, finally, the decision achieved by the judge(s). For a more detailed description including the structure of the judiciary in Brazil, see section 3.2 "*Explaining appellate decisions"*.

published by three Brazilian public agencies: the National Council of Health[5], the Federal Council of Psychology[6], and the Ministry of Health[7]. All these recommendations were published in 2015, and their argumentative schemata were constructed taking into consideration a range of common elements.

These three documents follow recommendations[8] proposed by the High Authorities' Assembly on Human Rights, from MERCOSUL and Associated States (*Reunião de Altas Autoridades sobre Direitos Humanos e Chancelarias do MERCOSUL e Estados Associados*, hereafter referred as RAADH*)*, to reduce practices of medicalisation involving mental health, especially in the case of children. RAADH is an intergovernmental space concerned with debating public policies concerning human rights, and that unites the main authorities from institutions involved with the promotion of human rights, including health institutions.

According to the recommendations published in October 2015 by the National Council of Health, Brazil currently occupies the position of the second market in the world when it comes to consumption of methylphenidate. The document claims that only in 2010, more than 2,000,000 packages of the psychopharmaceutical were sold in the country. In addition, there has been an increase of 775% in the consumption of methylphenidate between 2003 and 2012. The document also claims that ADHD can not be confirmed by any lab test, and raises several questions and uncertainties in relation to the very existence of this condition. Moreover, the document recognizes the practice of abusive prescription of psychopharmaceuticals, therefore claiming for the publication, by the Ministry of Health, of clinical protocols and therapeutic guidelines to the prescription of methylphenidate, in an attempt to reduce the expressive number of diagnoses.

The recommendations published by the Ministry of Health in October, 2015 take into consideration the Brazilian Child and Youth Law (*Estatuto da Criança e do Adolescente*, hereafter referred as ECA*)*, claiming that such statute recognizes every child's right to a healthy development in adequate conditions of existence. It also mentions the recommendations published by the RAADH to reduce practices of

[5] Retrieved in February, 12th 2018 from: https://goo.gl/BnYEc6
[6] Retrieved in February, 12th 2018 from: https://goo.gl/aPxiPe
[7] Retrieved in February, 12th 2018 from: https://goo.gl/oNa8U4
[8] Retrieved in February, 12th 2018 from: https://goo.gl/7gGcCS

medicalisation, so as to guarantee children's right to not being excessively medicated. In addition, the recommendations reinforce that Brazil consumed more than 2,000,000 packages of methylphenidate in 2010, citing data gathered by the Brazilian Institute for the Defense of Consumers of Medications (*Instituto Brasileiro de Defesa dos Consumidores de Medicamentos)*, besides reinforcing the findings of a research conducted by the Institute of Social Medicine from the State University of Rio de Janeiro (*Instituto de Medicina Social da Universidade do Estado do Rio de Janeiro)*, which indicated an increase of 775% in the consumption of methylphenidate between 2003 and 2012 in Brazil.

Moreover, the document published by the Ministry of Health claims that the Agency for Health Care Research and Quality (USA, 2011), after evaluating the main publications concerning the use of methylphenidate to treat social actors who have been diagnosed with ADHD, discarded most of the studies conducted between 1980 and 2010 due to inadequate methodological procedures and their lack of consistency. Studies with consistency and adequate methodological procedures have shown that there is little evidence of good results from the use of methylphenidate, when compared to other therapeutic approaches, such as family orientation.

In addition, the document mentions a study conducted in 2014 by the Brazilian Bulletin for the Evaluation of Health Technologies (*Boletim Brasileiro de Avaliação de Tecnologias em Saúde*, hereafter referred as BRATS*)*, which systematically mapped studies published since the year 2000 involving children who have been diagnosed with ADHD. According to the Ministry of Health (2015), BRATS argues that the studies they analysed present low methodological quality and indicators of hyper–elevated indexes in relation to the number of diagnoses affecting children and adolescents in Brazil[9]. Moreover, these studies present too short supervision time, and a significant number of them were either directly financed by or were involved with pharmaceutical industries. Therefore, BRATS' survey suggests that these studies do no present enough evidence on the safety and efficacy of the use of methylphenidate for the treatment of people who have been diagnosed with ADHD, due to their lack of consistent methodological procedures and low capacity for generalization. Finally, BRATS also

[9] According to the Ministry of Health (2015), the Brazilian Health Regulatory Agency (ANVISA) has identified different studies in Brazil presenting indexes that vary from 0.9% to 26.8%.

reported the existence of evidence that patients who do not live with ADHD are unnecessarily treated with medication.

The official document with the recommendations published by the Ministry of Health also includes reports of abusive practices of medicalisation and pharmaceuticalisation of mental health in daycare centers, schools and institutions of social assistance in Brazil. According to the document, this can be understood as the result of the artificial transformation of human capabilities into subjects of medical intervention. In that sense, social, political, cultural and affective circumstances surrounding people's lives are transformed into diseases and disorders, reducing their complexity and blaming individuals and their families for these illnesses, at the same time that governments, public policies, science and market forces remain unquestioned.

In view of this evidence, the Ministry of Health recommends specific therapeutic approaches to reduce practices of medicalisation and pharmaceuticalisation in mental health, especially those involving children and adolescents. The first recommendation concerns an investment in public education to make citizens aware of practical alternatives to the use of psychopharmaceuticals. In addition, the document reinforces the recommendation by BRATS to avoid diagnosing practices that rely on questionnaires and observations only. Instead, there should be a social, psychological and clinical evaluation of each case, with the *aid* (my emphasis) of a an assisting doctor.

Therefore, a complete approach to one's mental health should consider educational, social, and emotional aspects of a person's life. In other words, what these recommendations claim is that every child goes through complex processes of adaptation to their educational environment, family relationships, teacher–student and student–student relations. Moreover, the recommendations affirm that a child's mental health diagnosis has to be well grounded on a complex evaluation of the child's background by a multidisciplinary staff from one of the Brazilian Centers of Psychosocial Care (*Centros de Atenção Psicossocial*, hereafter mentioned as CAPS[10]).

[10] CAPS are units of multiprofessional and interdisciplinary healthcare provision. They constitute the Network of Psychosocial Care institutionalized by the Mental Health National Policy in Brazil. CAPS are mainly responsible for providing healthcare and psychosocial rehabilitation for people who have been diagnosed with mental illnesses and/or people with chemical dependence caused by alcohol and drug use. Retrieved from

Taking the aforementioned into consideration, the main contribution of this research to the broad fields of Language Studies and Social Sciences will be the verification of whether the judiciary has been taking these recommendations into consideration and what is the understanding of a federal Court in Brazil in relation to mental health, within a specific historical period. This study offers not only a linguistic description of how the judiciary constructs the notion of mental health in relation to social actors, including children, but also a critical analysis of judicial discourse, by relating it to its historical, political, social and economic contexts. This may impact both on future decisions, with lawmakers and judges having a different understanding in relation to the application of the constitutional right to health, as well as on educational practices, since the judiciary is seen as a reliable, just and impartial institution, and therefore its discourses have an impact on the way society, including educational institutions, perceive certain social practices and certain discourses, such as those about mental health.

Having that in mind, in the next subsection I will describe the specific objectives of this research, in addition to introducing the main research questions which guided the analysis and discussion. I will then provide information on the organization of the dissertation, including the chapters, their subdivisions and what discussions are found in each.

1.5. Objectives of the Study and Research Questions

First of all, in this doctoral dissertation I discuss and explain how a systemic functional approach to language, in special van Leeuwen's (2008; 2007) frameworks for the analysis of the representation of social actors and legitimation in discourse, can contribute to the understanding of the discourse of appellate decisions in cases of medicalisation of mental health, in addition to the judicialization and use of Ritalin (*methylphenidate)* by social actors who have been diagnosed with Attention Deficit and Hyperactivity Disorder (ADHD). To do so, I conduct a critical linguistic analysis of six appellate decisions produced by a Brazilian Federal Court between 2015 and 2017, pointing out the role that this type of analysis, especially from a functional and critical linguistic perspective, can play in the intersection of language/law/health studies. Therefore, I will discuss

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http://portalms.saude.gov.br/saude–de–a–z/saude–mental in November 18th, 2018.

critically, on the basis of my data, the concept of "health" present in the discourse of these appellate decisions, and whose interests this concept may serve.

More specifically, I am applying theoretical and methodological frameworks from Critical Discourse Analysis and Systemic Functional Linguistics to investigate how social actors who have been diagnosed with ADHD are represented in appellate decisions involving claims for access to psychopharmaceuticals, and what elements of the claimants/patients and of their lives are given prominence by the judges. Moreover, I investigate what possible implications practices of medicalisation and pharmaceuticalisation of mental health might have in the lives of these social actors, as for instance when I discuss relations between the diagnosis of ADHD and rape crimes. In that sense, during my research I have also found two appellate decisions produced by the STJ that involve rape crimes and the diagnosis of ADHD. I decided to include these two appellate decisions in my analysis to illustrate some of the possible consequences of the pathologization of mental health on a claimant's life, specifically in relation to that claimant's loss of autonomy and to the Court's disbelief in her/his views of the social events involved.

In my analysis, I look specifically at the representations, in each appellate decision, of the social actors who have been diagnosed with ADHD, so as to have, at the end of the analysis, a picture of how the judiciary predominantly represents these claimants and how these representations contribute to the construction of the judicial understanding on mental health. Departing from this analysis, I discuss the possible effects these representations and discourses might have on the lives of these social actors, as well as on the construction of institutional and social views on mental health.

Taking the specific objectives of this study into consideration, the research questions that guide my analysis are the following:

1) In what ways are social actors named and referred to linguistically in the judicialization of methylphenidate to treat Attention Deficit and Hyperactivity Disorder?
2) How is legitimation constructed in the six appellate decisions, both in the ones which combine the diagnosis of ADHD and the acquisition of psychopharmaceuticals, and the ones which combine the diagnosis of ADHD and rape crimes?
3) On the basis of the data, what do such representations and arguments

reveal in terms of the discourse of appellate decisions in relation to mental health and the use of psychopharmaceuticals?
4) Based on the findings, is it possible to say that the appellate decisions produced by this Court follow the recommendations by the National Council of Health, the Ministry of Health and the Federal Council of Psychology?
5) How does gender, race, class and age, as axis of social organization, oppression and discrimination, operate and intersect in the legal texts under analysis?
6) Based on the findings, what roles can linguistic analysis, especially from a functional and critical perspective, play in the area of interdisciplinary health studies?

1.6. Chapters of the Study

This study is divided in six chapters. In chapter I, I present the research trajectory I followed up to the point I submitted the project to write this dissertation. This includes an explanation on when my interest in language and health sparkled, the reasons that made me research language and health in the judicial discourse, in addition to the significance of this research, both to the field of Social Sciences in general and to the field of Linguistics. Finally I present the main objectives of the study and the research questions that guide my analysis.

Chapter II, Theoretical Background, is subdivided in nine main sections. First, I introduce the chapter with general comments on what readers can find in it. I then move to an explanation/discussion about what it means to adopt a social perspective to mental health and illnesses, mainly reinforcing the importance of recognizing the complexity behind each human being, and the risks of reducing human subjectivity to just a neurobiological dimension. I also provide definitions for mental health, in addition to explaining the concepts of medicalisation, pharmaceuticalisation and judicialization of health, which are central to the understanding of how the artificial transformations of human capabilities into disorders can impact our general understanding of what mental health is. I also discuss the concept of neuronarratives and in what ways such concept is related to practices of neuropolitics. Finally, I present a summary of studies within the field of Social Sciences involving the medicalisation and pathologization of mental health.

Chapter III, Methodology, is divided in seven main sections. To begin with, I define appellate decisions, the genre of judicial decisions I am analysing. Afterwards, I explain how data were collected. I then present both CDA and SFL theoretical–analytical frameworks for this study (Fairclough, 2010; Van Leeuwen, 2007; 2008). I also revisit my research questions and objectives before I start the analysis, in addition to explaining how data will be presented and how the analysis is organized.

In Chapter IV, I present the analysis of six appellate decisions involving the diagnosis of Attention Deficit and Hyperactivity Disorder. The first four appellate decisions concern the judicialization of Methylphenidate to treat social actors who have been diagnosed with ADHD. The two last appellate decisions were produced by the same Court (STJ), but instead of relating to the judicialization of methylphenidate, they intersect ADHD and rape judgements. I decided to include these two appellate decisions in the corpus of this dissertation as an illustration of what kind of practical impacts ADHD may have in the lives of social actors who have been diagnosed.

In chapter V, I revisit the research questions previously proposed and answer them, taking into consideration the findings produced by the analyses. I present a summary and a discussion of the findings, based on the theoretical–methodological apparatus of this dissertation, exploring what they reveal in terms of the judiciary's understanding of mental health in relation to social actors who have been diagnosed with ADHD. I also discuss the implications of these findings to interdisciplinary health studies.

In chapter VI I present the final remarks of this study, including the limitations I found while conducting the analysis, mainly in relation to the genre appellate decision. I also present the pedagogical implications of this interdisciplinary research, which may have impacts on the understanding of mental health by professionals of different areas (e.g. education, health, law). Moreover, I present some suggestions for further research, especially on what concerns the relations between ADHD and other social and/or criminal practices, such as rape. Finally, I present a framework for CDA focused on investigating discourses about mental health.

CHAPTER II
THEORETICAL BACKGROUND OR "ADOPTING CRITICAL AND SOCIAL PERSPECTIVES TO MENTAL HEALTH AND DISCOURSE STUDIES"

2.1. Introduction to the Chapter

In this chapter I present the main theoretical and epistemological basis of this study, in an attempt to situate my research in relation to the fields of Language and Social Sciences. I present a critical perspective to investigate the judicial discourse on mental health, in addition to providing the central theoretical conceptualizations underpinning the data analysis and discussion.

I begin by presenting a framework for Critical Discourse Analysis proposed by Fairclough (2010). In the sequence, I discuss the concepts of mental health proposed by national and international policies and institutions, for instance, the Unified Health System (SUS) and the World Health Organization (WHO). Moreover, I explain and discuss the adoption of a social perspective to mental health, which in sum means the adoption of a theoretical framework that questions naturalized assumptions about health and the idea that mental health diagnoses are disconnected from the social reality of the patients.

Keeping in mind that this is the theoretical framework adopted in this study, in subsection 2.6, I present the concepts of medicalisation (Conrad, 2007), pharmaceuticalisation (Gabe and Williams, 2011), and judicialization (Biehl, 2013) of health. These concepts, aligned with a social theory of mental health, refer to the processes through which human capabilities are transformed into subjects for medical, pharmacological and judicial interventions.

In the sequence, in order to provide a better understanding of the sociopolitical implications behind these concepts, I discuss the management of human capabilities through the brain and the creation of neuronarratives. In these sections I argue, based on previous studies (Caponi, 2009, 2012; Martinez–Hernez, 2014; Rose & Abi–Rached, 2014), that the brain has become a subject of interest for medical, pharmaceutical and legal institutions, which attempt to explain human capabilities in terms of brain function or disfunction. As part of this attempt to create a notion of the self based on the functioning of the brain, I also discuss the concept of neuronarratives, which are narratives about mental health constructed uniquely in neurobiological terms,

portraying the brain as solely responsible for the presence or absence of a healthy state of mind.

Throughout the discussion, I also address the neoliberal conjuncture in which these mercadological practices of social control take place. Having this in mind, in subsection 2.8 I discuss central ideas associated to the neoliberal ideology[11] (Fairclough, 2000, 2005). My main focus is the transformation of human afflictions and subjectivities into areas for market intervention and social control. Therefore, this section aims to discuss how market forces influence the creation of neuronarratives, since State institutions (health and legal ones) consider that they are protecting mental health through the acquisition of psychopharmaceuticals which, in their turn, have a market value and contribute to practices of social control.

At the end of this chapter, I present empirical studies from the Social Sciences which also adopt a social framework to the investigation and understandings of mental health (Caponi, 2015; Decotelli, 2013; Hellmann and Verdi, 2015; Mitjavila, 2015; Whitaker, 2005, 2015). Therefore, such studies question mental health excessive pathologization and its implications, mainly in (but not restricted to) cases addressing children who have been diagnosed with mental disorders.

2.2. Defining Theoretical and Analytical Frameworks for Critical Discourse Analysis

The framework for CDA adopted in this study has been proposed by Fairclough (2010) and consists of four main stages: first, the study should focus on a social problem in its semiotic aspect; second, it is necessary to identify the obstacles to confronting the social problem; third, we must consider if the social order somehow needs the problem; and forth, it is necessary to present possible solutions to the social problem being addressed.

In relation to stage 1 – ***focusing on a social problem in its semiotic aspect***, I focus on language choices made by judges from the STJ in the production of appellate decisions involving ADHD and the use of Ritalin. Since I am dealing with appellate decisions published as

[11] For a more detailed reading on the topic, see also Foucault (1979; 2008), Harvey (2005), and Dardot and Laval (2016).

jurisprudência (jurisprudence) at the STJ's website, only verbal aspects are taken into consideration[12].

In relation to stage ***2 – identifying obstacles to the problem being solved through the analysis of the context and the network of social practices to which the problem is involved***, I mainly explore the discursive production, both commonsensically and by medical institutions, of mental disorders as resulting from neurobiological processes only. In that sense, in this study I discuss how the Brazilian Association of ADHD (Associação Brasileira de TDAH, hereafter referred as ABDA), for instance, defends ADHD as a neurobiological disorder that has to be treated by the State on the basis of psychopharmaceuticals. I will also discuss how this narrative is aligned with the one produced by the Diagnostic and Statistical Manual of Mental Disorders (DSM–V), in which ADHD also figures as a neurobiological health problem. According to Marty and Segal (2015):

> The Diagnostic and statistical manual of mental disorders (DSM), published by the American Psychiatric Association, is a compendium of mental disorders, a listing of the diagnostic criteria used to diagnose them, and a detailed system for their definition, organization, and classification.

In sum, I attempt to discuss the existence of a generalized understanding about the diagnosis of ADHD that classifies it as resulting from neurobiological phenomena only, and not from complex interpersonal and social relations located within specific social contexts, for instance, family and educational institutions.

On what concerns stage ***3 – considering if the social order needs the problem***, I discuss how the neoliberal capitalist doctrine has come to influence public health policies around the globe, since they are both lucrative to the pharmaceutical industry and convenient to institutions of social control (e.g. medical and legal institutions). My arguments are based on the understanding that, by diagnosing social actors with brain dysfunctions, institutions achieve control over individual subjectivities and, at the same time, blame these individuals themselves for the health problems that may have their roots in the social order, as is the case of ADHD. Therefore, I argue that the

[12] Appellate decisions are verbal genres. Therefore, they lack visual aspects that could be analysed in other judicial contexts, as for instance Court interactions.

discursive construction of ADHD as a neurobiological disorder serves both market and social control interests through the production of specific social identities.

In relation to stage ***4 – offering possible solutions to the problem***, I rely on the recommendations of non–medicalizing practices published in Brazil by the National Council of Health, by the Federal Council of Psychology and by the Ministry of Health, all in 2015. Departing from the understanding that these documents report excessive practices of medicalisation and pathologization of mental health, especially involving children, the main suggestion I present to the judiciary is that it should take these documents into consideration when evaluating the necessity of psychopharmacological treatments involving social actors who have been diagnosed with mental disorders. This implies that, in the practice of the judicialization of health, the judiciary should take into consideration a variety of voices, for instance, the opinion of professionals working in a CAPS. Additional elements concerning the social lives of the patients involved in these diagnoses should also be taken into consideration, as for instance the educational contexts where they come from and their family structures.

The next sections present a theoretical contextualization to support the understanding of the social problem being addressed in this thesis, in addition to presenting central concepts necessary to its comprehension. The theoretical background I present in these sections will be revisited in chapter 5, during the discussion, in which I establish a dialogue between the data analysis and the theoretical frameworks for this study, including the framework for CDA, which I have just presented. However, due to way the study was organized, at first I focus on the theoretical background only – leaving the analytical categories and data analysis themselves to chapters 3 and 4. This study is organized like this since I want to provide a solid theoretical contextualization supporting my interpretation of the data and the discussion I propose, in addition to presenting the specific analytical categories proposed by Van Leeuwen (2007; 2008) for the analysis of how legitimation is constructed in discourse and how social actors are represented in discourse closer to data analysis.

2.3. Systemic Functional Linguistics

Systemic Functional Linguistics (SFL) is a linguistic theory for which language expresses different functions simultaneously, and that

provides systems and categories to analyse language use (Halliday & Matthiessen, 2014). Eggins (2004) claims that SFL is both a descriptive and interpretive framework concerned with how social actors and institutions make use of language to produce meanings in their interactions.

To SFL, language has functional, semantic, contextual and semiotic dimensions (Halliday & Matthiessen, 2014). Its meaning–making function is what characterizes language as functional, since we use language to talk about experiences and to establish interpersonal relationships in a given society. Due to its potential to express meanings, language is also semantic – and these meanings are determined by the social and cultural aspects of the contexts in which language is used, what makes language contextual. Language is also semiotic, since in using language we are involved in a choice–making process in which we choose certain words/signs instead of others, therefore referring to different aspects of reality, according to our views of the world. This semiotic aspect of language is what allows us as analysts to determine what positions social actors attribute to themselves and to others during a given social practice.

Within a systemic functional perspective, we are concerned with what linguistic choices indicate in relation to the positions occupied by social actors in social practices, as well as with what possible choices could have been made. I can, for instance, refer to my advisor as *Débora*, or as my *supervisor,* or as *a friend.* Each of these verbalizations reveal different dimensions of reality, although all of them relate to the same person. When I refer to her as Débora, I am representing her unique identity and it also indicates a sense of proximity between us. When I refer to her as my supervisor, I am using language to create what some would consider a more professional environment. When I refer to her as a friend, I am reinforcing our proximity.

The same applies to social actors who have been diagnosed with ADHD. From a systemic functional perspective, I assume that they can be referred to by the judges in several different ways. They can be nominated in terms of their unique identity; they can be referred as *children*, when the judges are interested in reinforcing their age; and they can also be referred in relational terms, that is, in relation to other social actors (as for instance when they are referred by the judges as *patients*, automatically positioning them in relation to a health professional or health institutions).

Therefore, through relying on SFL to analyse the appellate decisions produced by STJ, I am concerned with investigating the dimensions considered relevant by the judges to be included in their narratives about social actors who had been diagnosed with ADHD. Since I am interested in investigating language use as representation, I am concerned with the ideational metafunction played by language – which, in sum, concerns the representation of experience in language, that is, language use to represent social action and social actors.

This is a brief overview of SFL, the theory I adopt to understand language use. The analytical systems and categories within SFL proposed by Van Leeuwen will be presented in chapter 3, Methodology, immediately before data analysis. Having that in mind, in the next subsection I define mental health.

2.4. Defining Mental Health

The World Health Organization (2001) defines mental health as:

> a state of well–being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community (p. 1).

According to the World Health Organization (2005), mental health should not be interpreted as the absence of mental illnesses only. It involves multiple factors beyond a binary understanding of health that considers two polar opposites, i.e. the social actor with or without a disorder. In that sense, the WHO (2005) claims that physical, mental and social well–being are interdependent and can not exist in isolation. According to Sartorius (1990, apud WHO 2005), these could only be seen as independent factors through the lenses of a limited understanding of health as simply the absence of diseases.

Moreover, the WHO (2005) claims that the issue of mental health has gained prominence in the last two decades for two main reasons. First, mental health is essential to physical and social health, therefore it should be addressed as an issue that impacts both our physical and social states of being. Second, there has been an expressive increase in the global state of mental ill–health. In that sense, for instance, the World Health Federation for Mental Health (2012, p. 15) estimates that

> By 2020, depression will be the second leading cause of world disability (WHO, 2001) and by 2030; it is expected to be the largest contributor to disease burden (WHO, 2008).

Multiple factors are determinant to our mental health. According to the WHO (2005), our health is influenced by what we eat, our gender, our ethnicity, our access to social and developmental resources such as education, our social relations, our conditions of housing, our employment and economic status, and by the physical environment as well. These are some of, but not all, the social markers directly influencing our mental health. Therefore, if we take into consideration that our society is divided according to these social markers and that different positions assumed by social actors allow them to have more power than others in a given society, we may also assume that health is unequal among different social actors.

That suggests we should look at the issue of mental health from a social perspective. Since age, gender, ethnicity, social class, and (un)employment are core elements to one's health, we should be able to understand that social actors will experience health in different ways, depending on the positions they occupy in a society divided on the base of these social markers. Socio–political minorities tend to experience health in unequal ways when compared to hegemonic groups in society. We cannot assume, for instance, that low–income black social actors experience health the same way as high–income white social actors, since these two groups represent polar opposites in a society divided by race and social class. On the contrary, these social markers will be precisely the ones responsible for defining which of these two groups will actually experience health care and which one will not.

Even though there the World Health Organization understands that all these social markers impact and produce mental health states, and that health is not only the absence of illness, but the result of physical, social and mental well being, the Brazilian Mental Health Policy (2001) does not seem to share the same understanding. The Brazilian Mental Health Policy, institutionalized in 2001 as the Law 10.216/2001, focuses on the rights of social actors living with mental disabilities. Thus, the discourses it evoke in relation to mental health contradict what the WHO advocates, since the Brazilian Mental Health Policy is focused on mental ill–health and on the prevention of suicides. This scenario reveals that the Brazilian mental health policies do not follow the recommendations of the World Health Organization, and

reinforces the necessity of adopting social perspectives to discuss mental health.

Taking the aforementioned into consideration, in the next section I present a social perspective to mental health. It is aligned with the understanding of the WHO that social, physical and mental well-being are interdependent health dimensions. Therefore, our mental health cannot be looked at in an isolated form that classifies and treats it in neurobiological terms only, but rather it should be looked at taking into consideration the variety of social markers and social conditions affecting our states of mind.

2.5. Adopting a Social Perspective to Understanding Mental Health and Illness

Adopting a social perspective to understanding the construction of health and illness implies questioning naturalized assumptions of what health and illness are (Conrad & Barker, 2010). Instead of understanding medical knowledge as natural, the social perspective sees medical knowledge as socially constructed and situated, therefore attending specific social and institutional interests. It also embraces the differentiation between the terms *disease* and *illness*, with the first representing something invariable in time and space, and the second representing an interaction with social phenomena, and therefore being socially and culturally constructed.

According to Conrad and Barker (2010), the social construction of health and illness is a major concern in medical sociology. To present that discussion, in this section I review of the authors' article, '*The Social Construction of Illness: Key Insights and Policy Implications'* (2010), in which they present a story line of this perspective and claim, to begin with, that cultural meaning is not detached from certain diseases, so that their construction and understanding are culturally achieved, rather than being the result of nature. Second, the authors claim that every person experiences illnesses in different ways, depending on the position they occupy in a society divided by age, class, race, gender, ethnicity, (dis)ability, and personal knowledge, and therefore their understanding of their illnesses are also dependent on these social roles or social positions. Third, they claim that medical knowledge is socially constructed in spite of its hegemonic discursive

determinism, since it attends specific interests (e.g. social control, industrial and/or market interests).

Conrad and Barker (2010) depart from a theoretical standpoint concerned with historical and cultural aspects of phenomena commonly understood as natural. They point out that, from the naturalistic standpoint, the meanings related to a certain phenomenon (in this case, an illness) are understood as inherent to it, rather than as the result of the interaction between the phenomenon and its social context. In view of that, the authors are concerned with discussing how social agents and institutions contribute to the understanding and production of knowledge of certain phenomena. In the case of health and illness, Conrad and Barker (2010, p. 69) claim that:

> (...) more than sociological curiosities, these cultural meanings have an impact on the way illness is experienced, how the illness is depicted, the social response to the illness, and what policies are created concerning the illness.

The production of knowledge about ADHD, for instance, can be understood from two main perspectives. First, from the perspective of determinist and neurobiological discourses that construct ADHD as a neurobiological disability. Second, from the perspective of sociological discourses that question the assumption that ADHD is in itself a neurobiological phenomenon, given the lack of resources capable of providing concrete evidence of that (for instance, lab tests capable of identifying the disease in the brain). These two opposite understandings of ADHD reveal how the discourses produced in the diagnoses vary according to who is producing them and where, and based on whose needs. They have different impacts on how the illness is experienced, depicted, and therefore they also result in the production of different public policies and social responses to the illness, such as the judicialization of psychopharmaceuticals.

Conrad and Barker (2010) make a retrospect of theories about social problems emerging in the 1960's and 1970's, in order to delimit one of the intellectual bases of the social construction of illnesses. According to the authors, some researchers (e.g. Becker 1963; Gusfield 1967, 1975; Spector and Kitsuse 1977), distancing themselves from a positivist approach to the construction of knowledge, started to argue that deviant behaviors and social problems were contextualized,

therefore their understanding as deviant behaviors and social problems was culturally produced in contextually and socially situated social practices. One of the resulting theoretical assumptions presented by these researchers engaged in describing a sociological framework to health is that deviant behaviours were represented as diseases as a way of providing institutions with more social control over people.

This transformation of human capabilities and behaviours into medical conditions with the purpose of controlling populations was later referred to by Conrad and Schneider (1992) and Conrad (2007) as the medicalisation of society – a process by which everyday life, human afflictions and human moral traditions are appropriated by medical institutions and shaped and sold as diseases requiring specific medical treatments.

Another theoretical standpoint takes into consideration the results of the interaction between social actors who have been diagnosed and the discourses produced in relation to their diagnoses. In that sense, Conrad and Barker (2010) point to the work of Erving Goffman (1961, 1963) as responsible for shaping a symbolic interactionist tradition of social studies. From such perspective, social actors (referred to as patients in medical contexts) appropriate discursive elements associated to their diagnoses, which in turn become part of their identities. That is also demonstrated in the works of Charmaz (1991) and Glaser and Strauss (1965), for whom diagnoses play an important role on the performance of the self. If we apply that to the case of social actors who have been diagnosed with ADHD, they are likely to suffer, from a very early age, the impact of the diagnosis on their identities, since they might be labelled as ill or as moral deviant due to the characteristics associated to their 'diseases'.

This impact on the performance of identities can be looked at in terms of Foucault's (1977) definitions of power. Conrad and Barker (2010) rely on Foucault's view of the notions of "normality" and "abnormality" as categories of power and social control, responsible for delimiting who has knowledge and power (and are therefore authorized to classify the normal and the abnormal), and who hasn't. From Foucault's perspective, these categories are not naturally given, but rather they are social constructs aiming to define who and what assumes control over whom and what. As claimed by Conrad and Barker (2010, p. 69):

> medical discourse can influence people's behaviors, impact their subjective experiences of embodiment, shape

> their identities, and legitimate medical interventions (Foucault 1975, 1977). Accordingly, Foucault–inspired scholars deconstruct medical knowledge (i.e., provide a detailed analysis of medical discourse) to reveal its embedded meanings, normalizing tendencies, and relationship to embodiment and identity (Barker 1998; Lupton 1997; Rose 2006).

One of the arguments sustained by Conrad and Barker (2010) is that medical knowledge may help to reproduce social inequalities. By constructing knowledge that relies solely on neurobiological notions, elements such as class, gender and ethnicity, which are central axes of social classification and oppression, are not taken into consideration or are neglected. As a result, complex social problems related to these axes remain untouched or unquestioned, reproducing social injustice and social structures of oppression.

My previous study on gender identity rights (Rieger, 2016) is an example of how, in the case of trans people, these social structures of oppression remain untouched, while gender non–conformance is represented as a mental pathology. In the present case, the findings indicate that judicial and medical institutions, in constructing their discourses about gender, frequently reinforce patriarchal and sexist discourses about gender through the construction of a mentally pathological self.

In sum, a sociological perspective to mental health understands the behaviour patterns and the discourses produced by social actors diagnosed with ADHD as resulting from complex social interactions. Moreover, it aims at reducing social inequalities that may result from the attribution of the diagnosis. In the case of social actors who have been diagnosed with ADHD, for instance, their behaviour is impacted by family structures, by institutional educational designs, by power relations between them and teachers and/or other authority figures, and by power relations among them and other social actors.

This view of the behaviour patterns of people diagnosed with ADHD as a result of complex social interactions contradicts the hegemonic medical discourse about ADHD, which appropriates such behaviours to construct the diagnosis in terms of a neurobiological disability. Hence, adopting a social framework to mental health implies questioning the hegemonic medical discourse about ADHD and the assumption that the diagnosis is located within a person's brain.

Now that I have presented the epistemological basis of a social framework to health and illness, I will present the concepts of

judicialization, medicalisation and pharmaceuticalisation of society, to later on discuss how these concepts might reveal practices of social control in the pathologization and judicialization of mental health. In that sense, I argue that such practices of social control, through the pathologization of mental health, need specific linguistic forms and discourses, in this case, on the terms of neurobiological disabilities.

2.6. Defining Judicialization, Medicalisation and Pharmaceuticalisation

The first time I had contact with the social practice that I here address, i.e. the judicialization of health, was in 2012, when I started working as an assistant in the Pharmaceutical Assistance Section at the Municipal Health Department, in Florianópolis (SC/Brazil). The judicialization of health means relying on Courts of law to guarantee access to biomedical technology, based on the constitutional right to health (Biehl, 2013).

In fact, the Pharmaceutical Assistance Section received, on a daily basis, judicial demands determining that Florianópolis' Health Department had to provide certain pharmaceuticals to plaintiffs. The technical role of the Pharmaceutical Assistance Section, in these cases, was to either accept or refuse such demands, supported by the National Policy for Pharmaceutical Assistance and scientific studies attesting the efficacy of each pharmaceutical for the purposes they had been demanded. In view of that, I realized I was dealing with the social practice of the judicialization of health, which, in its turn, relates to the pharmaceuticalisation and medicalisation of society (Conrad, 2007; Gabe, Martins & Williams, 2011).

Medicalisation and pharmaceuticalisation are key concepts emerging in the discussions raised by researchers from the field Sociology of Health (Bianchi & Ortega et al, 2016; Caponi and Brzozowski, 2013; Biehl, 2013; Gabe, Martins and Williams, 2011; Caponi, 2009; Conrad, 2007). Despite the fact that all these studies adopted a critical perspective to discuss the appropriation of human capabilities by medical knowledge and their transformation into illnesses and opportunities for pharmaceutical intervention, none looked critically at discourse using a systemic functional perspective. Therefore, none of the aforementioned works discussed the specific

linguistic resources that judicial institutions make use of when dealing with the right to health.

Medicalisation is defined by Conrad (2007, p. 1) as "the process in which non–medical problems are defined and treated as having a medical solution, usually in terms of illnesses and disorders". Pharmaceuticalisation, on the other hand, is defined by Gabe, Williams and Martins (2011, p. 714) as "the translation or transformation of human conditions, capabilities and capacities into opportunities for pharmaceutical intervention". Even though the judicialization of health encompasses several types of procedures to guarantee health (from surgeries to the acquisition of pharmaceuticals), I am specifically concerned with the prescription and use of psychopharmaceuticals to treat a specific diagnosis, in this case ADHD.

Pharmaceuticalisation may or may not co–occur with medicalisation. In the case of this study, I adopt these two concepts to discuss my data since every person who addresses the judiciary claiming for psychopharmaceuticals, such as Ritalin, necessarily holds a medical prescription to use them. Therefore, in the case of psychopharmaceuticals, medicalisation and pharmaceuticalisation are conjoined social practices, and pharmaceuticalisation depends on medicalisation.

As I explained before, by adopting a social framework to conduct the analysis of the data in this study, I am concerned with identifying if judicial institutions give any prominence to social and cultural aspects of the realities lived by citizens who have been diagnosed with ADHD, or if their discourses rely on neurobiological and medical expertise only. Therefore, since I share the understanding that diagnoses involving social behaviors and mental disorders are discursively and socially constructed, this implies that relying exclusively on biological and chemical treatments is a reductive way of approaching these behaviours and disorders (Caponi, 2012; Martinez–Hernaez, 2014).

In this context, I take into consideration the recommendations from the Brazilian Ministry of Health to reduce practices of medicalisation and pharmaceuticalisation of mental health, which in this case involve a growing tendency of diagnosing people with ADHD based on medical knowledge/discourses only, not including an assessment produced by a multidisciplinary staff from a CAPS. I also share the understanding that medicine, in this case psychiatry, has appropriated and problematized the human body, human behaviors and everyday human life with the purpose of achieving social control by

proposing medical and pharmaceutical interventions to social and political deviations from the norms (Foucault, 1977; Caponi, 2009). Hence, I address practices of medicalisation and pharmaceuticalisation as practices of social control.

In that sense, Caponi (2009) claims that one of the results of the medicalisation of society is that, from the nineteenth century on, new diagnoses and diseases started to emerge associating deviations from socio-political norms to mental illnesses. The author argues that hegemonic medical discourse represents social and subjective aspects of life in biological terms only, ignoring that identities and subjectivities are produced within complex sociocultural contexts. According to medical knowledge and clinical protocols, many of these disorders can be treated with the use of psychopharmaceuticals – which may be available at the Unified Health System (SUS) or, in the cases when they are not listed in any public clinical protocol, may be bought in a pharmacy or judicialized, that is, petitioned to the municipality via a legal process.

For this reason, Biehl (2013) claims that the judicialization of health to the acquisition of pharmaceuticals is aligned with market principles and with biopolitics. In that sense, the author argues that market principles, health care and the universal right to health are aligned in the judicialization of health to the acquisition of pharmaceuticals, representing a conflict of interests among the claimants of pharmaceuticals, the marketplace, and institutions of social control, such as medical and judicial ones. In relation to biopolitics, Caponi (2012) claims that:

> biopolitics means a form of governance, administration and certain governmental strategies destined to the population and reduced to the level of its biological necessities, to the processes of birth, reproduction and death. Biopolitics opposes an understanding of politics as the governance of self, as a space of ethical and political constitution of subjectivity. It is what allows the replacement of the argumentative dialogue, essential to the construction of the political space, by the urgency, the immediate and irreflexive satisfaction of our necessities, reducing the plurality of the human condition to biological processes. (...) The administration of the populations as a biological multiplicity neglects our capacity of existing publicly and politically, the

> argumentative dialogues, the individual narratives and our social relations (pp. 113–114, *my translation*[13]).

The aforementioned interests are not symmetric, though. On the one hand, claimants of psychopharmaceuticals are interested in treating a disease they have been diagnosed with, for which they believe biomedical technology offers the highest probability of healing or control. Moreover, if we take into consideration that the pharmaceutical industry is the second most profitable industry in the globe, we may conclude that the pharmaceuticalisation of health directly affects the maintenance of these profits, and that this industry will produce discourses aiming to increase its profits, at the same time that it claims to be protecting our health. In that sense, according to Foucault (1979):

> For a capitalist society, it was biopolitics, the biological, the somatic and the corporal that mattered more than anything else. The body is a biopolitical reality, and medicine is a biopolitical strategy (p. 80, *my translation*[14]).

On the other hand, Courts of law, as trustworthy institutions, may also control social behavior through their discourses. In this sense, the population trusts the discursive practices of judicial institutions, which in its turn work as a source of legitimization of medical and neurobiological interventions upon our bodies. According to Biehl (2013), this suggests that the relation between the subjects of the right to health and the judicialization of health privileges the interests of the biomedical market and of social control, placing the well–being of the

[13] The original reads as: "[a biopolítica] significa um modo de gestão, de administração, certas estratégias de governo destinadas a uma população reduzida ao domínio das necessidades biológicas e aos processos de nascimento, reprodução e morte. A biopolítica é justamente aquilo que se opõe à política entendida como governo de si, como espaço de constituição ética e política da subjetividade. Aquilo que permite substituir o diálogo argumentativo, essencial para a construção do espaço político, pela urgência, pela imediata e irreflexiva satisfação das necessidades, reduzindo a pluralidade da condição humana a processos biológicos. (...) A gestão das populações enquanto multiplicidade biológica deve deixar nas sombras, como antecipara Aristóteles, nossa capacidade de existência pública e política, os diálogos argumentativos, as narrativas individuais, os vínculos sociais".

[14] The Portuguese version reads as: "Foi no biológico, no somático, no corporal, que, antes de tudo, investiu a sociedade capitalista. O corpo é uma realidade biopolítica. A Medicina, uma estratégia biopolítica".

population in secondary position in relation to commercial interests, even though this is not the official discourse produced by these institutions.

In that sense, van Dijk (2001) claims that the population in general might find limitations to contest or to resist the discourses produced by prestigious institutions, such as medical and legal ones. As a result, the knowledges produced by these institutions are assimilated by the population as the only ones to be respected or taken into consideration when addressing the issue of mental health. Therefore, if judicial and medical institutions produce knowledge about ADHD which relies on neurobiological discourses only, the commonsense view about ADHD may be affected and built in neurobiological terms. As a consequence, the population will also believe that having access to psychopharmaceuticals through medical and judicial institutions is the most adequate way to deal with the diagnoses attributed to them.

In sum, in this section I presented the concepts of judicialization, medicalisation and pharmaceuticalisation of mental health within a social framework. In that sense, the main ideas that should be kept in mind are: the social practice of medicalisation, although necessary in many cases, may be excessive and may suppress or deal with social problems as individual disorders that can be treated with psychopharmaceuticals. This may increase, as a result, the number of people who seek and rely only on pharmacological treatments to treat the disorders attributed to them.

However, since our right to health is guaranteed by the Brazilian Constitution, social actors may look for judicial support to have access to the pharmaceuticals they want. This necessarily establishes a relationship between these subjects and the institutions involved in these social practices, coupled with a conflict among their interests – on one side, citizens aiming to guarantee their universal right to health, and on the other side, medical and judicial institutions attempting to guarantee social control, in addition to pharmaceutical industries attempting to increase their profits.

Now that I have presented these central concepts to a social reading of the practice of judicialization of mental health, in the next section I discuss how the practices of medicalisation and pharmaceuticalisation of mental health produce neuronarratives as a way to achieve social control. In that line, I explain how neuronarratives are connected to neuropolitics, better understood as social control achieved through the production of knowledge about the brain.

2.7. Defining Neuropolitics and Neuronarratives

The neuropolitics of the population can be understood as the attempt to achieve social control through the brain. It implies the circulation of discourses about mental health focused only on the brain, and the understanding that scientific knowledge about the brain can, by itself, explain a person's states of mind and actions (Rose & Abi–Rached, 2014).

Neuropolitical discourses depend on specific narratives to operate. Since it implies the circulation of discourses on mental health centred on the brain, neuropolitics directly depends on the construction and circulation of neuronarratives – defined by Martinez–Hernaez (2014) as narratives which explain human subjectivity, states of mind, capabilities and capacities in terms of brain functions or dysfunctions.

The problem with neuronarratives is that they explain, in neurobiological terms only, social problems that affect our states of mind. For instance, if we take into consideration the diagnosis of Depression, we can safely infer that this condition is influenced by social aspects and social positions, such as social class, gender, race, ethnicity, and ability/disability, in a society where these social positions also determine assymetrical positions of power. However, in clinical terms, Depression takes the shape of a neuronarrative, since it is explained in relation to failing neuronal transmissions.

The same applies to ADHD. In the DSM–V (2013), the manual produced by the American Psychiatric Association, in which mental disorders are classified and criteria for diagnosis are established, ADHD is defined and categorized as a neurobiological disorder. According to the DSM–V (2013, p. 32):

> ADHD is a neurodevelopmental disorder defined by impairing levels of inattention, disorganization, and/or hyperactivity–impulsivity. Inattention and disorganization entail inability to stay on task, seeming not to listen, and losing materials, at levels that are inconsistent with age or developmental level. Hyperactivity–impulsivity entails overactivity, fidgeting, inability to stay seated, intruding into other people's activities, and inability to wait—symptoms that are excessive for age or developmental level. In childhood, ADHD frequently overlaps with disorders that are often considered to be "externalizing disorders," such as oppositional defiant disorder and conduct disorder. ADHD often persists into adulthood,

> with resultant impairments of social, academic and occupational functioning.

The diagnosing criteria involve only the observation of behaviour, with no mention of the use of any neurobiological markers (e.g. brain imaging, blood testing), but still the classification of ADHD is in itself a neuronarrative. In doing so, the DSM–V excludes relevant social aspects to the comprehension of how and why the behaviours of different social actors are shaped. Like Depression, the symptoms understood as indicators of ADHD relate to a number of factors, such as social class, educational background, educational structure, family structure, and interpersonal relationships. Therefore, by relying exclusively on a neurobiological explanation of the behaviours referred to as symptoms of ADHD, the DSM–V is reductive of the sociocultural issues behind their manifestation (Caponi and Brzozowski, 2012; Rieger and Figueiredo, 2017).

Martinez–Hernaez (2014) claims that neuronarratives simultaneously attend neuropolitical purposes of social control and market interests. In that sense, we are living in a context of expansion of neoliberal discourses, in which every aspect of life can be commodified and represented in market terms at the same time they attend to interests of social control. These two forms of expansion of neoliberal discourses (in ideological and mercadological terms) are responsible for the success of neuronarratives as resources for social control to medical, legislative and judicial institutions, in addition to attending the profit demands of pharmaceutical companies, responsible for producing, circulating and selling psychopharmaceuticals. Ideologically, neuronarratives involve attributing to the individuals themselves the responsibility for their personal afflictions, ignoring the social context in which these individuals live. In market terms, neuronarratives allow the circulation of discourses that construe and classify psychopharmaceuticals (which have a market value) as the most appropriate resource to solve individual existencial or psychological problems.

Caponi (2014) claims that neuronarratives gained prominence in a specific historical moment. According to the author, if on the one hand in the past patients' reports were central to the understanding of their clinical history, on the other hand, in contemporary societies such reports serve as a basis for the construction of neuronarratives, which associate the patient's' behaviour to neurobiological dysfunctions. Since these narratives are solely constructed in neurobiological terms in the official discourse of certain health institutions and organizations (e.g.

DSM–V, ABDA), it is no surprise that public policies concerned with the promotion of mental health, as well as the judiciary, rely on these expert discourses to agree that psychopharmaceuticals can by themselves solve problems related to mental health, and therefore that it is a duty of the State to make them available to the population.

However, institutions such as the Ministry of Health (2015), in defending the reduction of medicalizing practices on mental health, especially concerning children, recognizes that there are several methodological gaps in the studies attesting the efficacy of psychopharmaceuticals to the promotion of mental health. In addition, the Ministry of Health also recognizes that a large number of these studies were financed by pharmaceutical companies, which in turn have a direct interest in the maintenance of these diagnoses as a way to increase their profits[15]. This scenario suggests that health institutions assume different positions in relation to mental health, and specifically in relation to diagnosing practices involving ADHD. Therefore, health institutions are involved in a territory of disputes of meanings associated to mental health, and the judiciary is not taking into consideration all the voices involved in such disputes.

Within this context, language plays a central role to the neuropolitics of the population and to the success of market practices geared to mental health. Language materializes the discourses of medical and judicial institutions, and it is also through verbal language that neuronarratives are produced. With that in mind, in the next section I discuss the role played by language in the promotion of neuronarratives within a neoliberal capitalist mode of production and try to explain how language produces and maintains social control and market interests in what refers to mental health and mental disorders.

2.8. Language and Neoliberalism: Connecting the Dots

Fairclough (2000) argues that, in the contemporary world, capitalism is ascending in a reorganized structure that involves the creation and circulation of new discourses and the imposition of new

[15] An important aspect to be taken into consideration in relation to the use of methylphenidate in the treatment of ADHD is its continuous aspect. Social actors who have been diagnosed with ADHD make a continuous use of the medication, which, in its turn, demands the constant production and circulation of the medication.

ways to make sense of societies. According to the author, in neoliberal capitalist societies, socioeconomic differences among social groups increase, and our rights (for instance, to health), our security and democracy itself lose their space to attend hegemonic market interests, redefining the relations between the State, the economy and society. Language has a central role in this process, as it is through language that institutions of social control guarantee the creation and circulation of discourses that justify the material conditions in which we live.

To Fairclough (2000), neoliberalism is a conjuncture of political practices that aim at redesigning social organization to attend the demands imposed by global capitalism. In that sense, redesigning social organization requires the construction of specific social identities able to attend the demands imposed by the market, and therefore subjectivity itself gains a market value. In the case of mental health, subjectivity gains a market value at the moment certain social identities and afflictions are represented by official institutions (e.g. DSM–V, ABDA) as brain dysfunctions that require specific biotechnological interference, even though their diagnoses are given through subjective questionnaires that involve the identification of ways of experiencing reality or engaging in social practices. The creation and commoditization of these identities end up allowing the circulation of market products such as psychopharmaceuticals as a promising way of reducing mental distress.

Neoliberalism can also be seen as an ideology or a way of perceiving the world (Fairclough, 2005; Nascimento, 2014). This ideology involves the production, use and circulation of semiotic practices to explain the material conditions in which we live, without considering that individual are positioned according to social markers such as disability, social class, race, ethnicity, gender and age. Moreover, Fairclough (2005) argues that neoliberal capitalism unifies groups of different political and ideological orientations. As a consequence of the rule of the market, effective public policies tend to disappear, resulting a failed democracy, attacks to welfare policies, increased vulnerability and marginalization of the lower and working classes by the elites. In this scenario, public policies end up being constructed and having their discourses specifically shaped in the terms established by the market, and to stigmatize those who belong to socio–political minorities (e.g. the poor, the working class, women, black,

indigenous, homeless, chemical dependents and/or people with disabilities)[16].

According to Fairclough (2000), language operates in two main ways in the production of neoliberal discourses. First, language itself acts as an element of material practices, creating a network of social practices that are logically connected through discourses. Second, language works for the construction of specific social identities that will attend the demands of these material practices and, therefore, constitute them. Based on these ideas, Nascimento (2014) argues that the role of neoliberal policies is to transform ideas into material processes, which in turn may be assimilated as products and receive/acquire an economic value.

In that sense, what characterizes neoliberalism is the way through which linguistic signs are semiotically (re)produced to figure as elements of material processes. If language itself can be seen as part of material processes, it not only acquires market values, but it can also be used to shape subjective aspects of life, transforming them into material elements with the potential of functioning as commodities. This market value is not associated to random discursive practices, but on the contrary, to discursive practices that need to have a well–defined shape to operate. As a result of this assimilation of subjective aspects of life

[16] In November, 14th 2018, for instance, the Brazilian government published the official ordinance *Portaria 3659/2018* in the Brazilian Official Gazette (*Diário Oficial da União)* suspending financial sources destined to the Centers of Psychosocial Care and other services associated to the Network of Psychosocial Care in Brazil. Two weeks later, Henrique Mandetta, a federal congressman and the former Minister of Health announced by the elected president Jair Bolsonaro, claimed in an interview given to the *Rede Globo*, a private television network, that, statistically, the Centers of Psychosocial Care are not the most adequate source to solve the problem of chemical dependence. Moreover, the former minister claimed that he intends to consult psychologists and psychiatrists to help designing possible solutions to the problem of chemical dependence, but without dismissing the work done by religious institutions in the recovery of chemical dependents. This scenario suggests that part of the financial sources previously destined to mental health State institutions are at risk of being destined to religious institutions through government partnerships, reducing the role of the State in the attendance of people with mental disabilities and/or chemical dependence, and attributing that responsibility to religious institutions, which may result in more conservative approaches to mental health directly affecting socio–political minorities in Brazil. Source: https://goo.gl/EJeUxo, accessed on December, 4th 2018 at 7.51 p.m.

and their transformation into products, Fairclough (2000) argues that we are faced with the reduction of possibilities to create acts of resistance and, therefore, with the reduction of chances to confront and change hegemonic and oppressive discourses.

These well–defined discourses end up participating in the production of new values, social relations and identities. Caponi (2009) argues that new pathologies in the case of mental health are created and sold under the regime of specific discourses which serve social control and market interests. In that sense, mental disorders are discursively constructed as material processes/problems (for instance, as processes of neurobiological destabilization) that may be solved through the intervention of material processes as well (in this case, the use of psychopharmaceuticals), instead of subjective ones, for instance non–pharmacological psychotherapy or social assistance and family orientation.

Within this scenario, one of the emerging consequences is that social actors internalize their identities as constructed and constituted through/by material processes only, backgrounding or suppressing their subjectivity and their individual differences. In the case of mental health, the population starts to understand it and our states of mind as results of neurobiological phenomena, accepting and contributing to the commercialization of illnesses and corresponding pharmacological treatments.

Fairclough (2000) uses the term *flexibility* to point out that neoliberal discourses do not present a single shape, but rather a flexible one, in that discourses are mixed, creating the idea that there are different ways of representing social life. In the case of psychopathology and psychopharmacology, these discourses hegemonically constitute neuronarraives (Martinez–Hernaez, 2014), reducing subjects' identities to a cerebral identity only.

However, through the production of specific symptoms associated to specific diseases, neuronarratives may be replicated under different shapes and terms, all of them centred on the brain. As a consequence, social actors who do not fit into the description of one disorder may be associated to another, since they are vulnerable to the multiple subjective ways of constructing neuronarratives and the multiple possibilities of discourses produced by medical, legal and market institutions.

With that in mind, we can say that neoliberal policies depend on specific discursive constructions of real aspects of the world. Fairclough (2005) understands this process as the discursive

colonization of society, aiming to attend market interests and social control, and these hegemonic discursive constructions are produced by the dominant classes and institutions (such as medical, legal and mediatic ones). The production of dominant discourses attempt to control how society perceives social practices, human relations, and the role of the State in guaranteeing our universal rights. In that sense, van Dijk (2001, p. 358) claims that:

> If controlling discourse is a first major form of power, controlling people's minds is the other fundamental way to reproduce dominance and hegemony; (…) recipients tend to accept beliefs, knowledge, and opinions (unless they are inconsistent with their personal beliefs and experiences) through discourse from what they see as authoritative, trustworthy, or credible sources, such as scholars, experts, professionals, or reliable media (Nesler et al. 1993); and some recipients may not have the knowledge and beliefs needed to challenge the discourses or information they are exposed to (Wodak 1987).

In relation to that, Fairclough (2005) argues that controlling the population implies the operationalization of discourses. Discursive practices acquire the function of constructing and reconstructing social life in a way that each and every aspect of it may be understood in terms of the market and in the production of identities to the market. This results in socioeconomic changes that are based on the relations between institutions and the real world, giving a new connotation to the roles of these institutions and of the State in relation to society. In the case of the judicialization of health and the effectiveness of our right to health through the acquisition of psychopharmaceuticals, we may adopt the perspectives that Biehl (2013) and Caponi (2009) also adopt: Both authors argue that social welfare occupies a secondary position in relation to market demands, and therefore also mental health, as part of social welfare.

Taking the aforementioned into consideration, we may assume that language has a central role in the social practices of medicalisation, pharmaceuticalisation and judicialization of mental health. In these social practices, language shapes our conceptions towards mental disorders, in addition to shaping the corresponding adequate treatments to such disorders. As a result, language shapes human subjectivity and the responses of social actors to these disorders.

Now that I have presented the role of language within the social practices of medicalisation, pharmaceuticalisation and the judicialization of health in neoliberal capitalism, in the next section I present a summary of additional studies approaching the issue of mental health from a sociological perspective.

2.9. Additional Studies on the Pathologization of Mental Health

Many authors have dedicated their careers to investigating and questioning excessive practices of medicalisation in society. In this section, I present a brief map with some of the studies developed in the last decade, situated mainly within the field of the Social Sciences, with an emphasis on the sociology of health. These are studies that report abusive prescriptions of psychopharmaceuticals to social actors diagnosed with mental disorders. Therefore, they question the ethical limits of medicalizing practices and the interests these practices attend.

Whitaker (2005) published a critical analysis of the exponential rise in the consumption of psychopharmaceuticals and in the number of diagnoses related to mental health since the first publication of the DSM, in 1952, and with the publication of its further editions. The author refers to these events as an "epidemy". He points out, for instance, a contradiction in the numbers produced by the United States, since the number of people hospitalized due to mental disorders decreased, at the same time that the number of diagnoses related to mental disorders increased in the last decades. The author suggests that in the pharmacological era, psychopharmaceuticals replace the hospital and have a central role in controlling our subjectivity. In this context, practices of control materialize through practices of pathologization and pharmaceuticalisation of social actions and social actors considered as deviants from socio–political norms. In this new context, they are controlled with biotechnology rather than with the hospital apparatus.

Decotelli et al. (2013) published a critical reading of practices of medicalisation in educational contexts, especially involving children. To the authors, practices of medicalisation and pathologization of our ability to learn also reveal interests of social control. They argue that the use of Ritalin in medical practices aiming to attend educational demands has been increasing in Brazil. In that sense, the authors classify Ritalin as "the drug of obedience", which allows for a more efficient introduction of regulatory powers in children's lives. Based mainly on Foucault (1979), the authors adopt an epistemological framework that

discusses how medical sciences have created sources of discipline and social control, and how health institutions see children as potential consumers as well.

Caponi (2015) has also published an analysis of the evolution of mental disorders involving children within the DSM–IV (1994) and the DSM–V (2013). The author argues that up to the DSM–IV, there was a specific section designed to categorize mental disorders in childhood. However, in the DSM–V (2013), this section centred on childhood disappeared and was replaced by a new and more general one: disorders associated to the neurodevelopment, usually detected during childhood. This new section eliminates the distinction between mental disorders in childhood and mental pathologies in adulthood. Therefore, it allows every kind of mental disorder to fit anybody, independent of their age, potentializing the reach of diagnostic practices.

Caponi (2015) also refers to the notion of risk. According to the author, the mental disorders described in the DSM–V, in addition to fitting anybody independent of age, are classified as neurobiological pathologies. This allows the use of neurobiological discourses to claim that certain individuals might represent risks for society – usually members of socio–political minorities, such as black, poor and/or low–income citizens. Therefore, the concern with social security leads socially vulnerable citizens to being deprived of their freedom, which is is justified by narratives about these citizens that represent them as potential threats to society.

From the same epistemological perspective, Mitjavila (2015) connects practices of medicalisation with practices of social control. She argues that discourses about health have become central to the maintenance of biopolitical power, that is, power exerted upon and through the body. The author focuses on practices of medicalisation of criminality related to the concept of risk. In this case, mental health diagnoses work as evidence to justify judicial interventions upon citizens, by claiming that judicial institutions are concerned with social security. Therefore, health discourses are used to determine who can live in society and who cannot (or, in other words, who must be deprived of liberty).

In relation to the medicalisation of childhood, Whitaker (2015) argues that the medicalisation and pharmaceuticalisation of life are represented by psychiatric institutions as examples of technological advances in society. Moreover, the author points to the strong relation between pharmaceutical companies responsible for the production of psychopharmaceuticals and the financing of studies aiming to attest their

efficacy upon mental health. While financing studies that promote psychopharmaceuticals as beneficial to mental health, pharmaceutical companies also hide the methodological fragilities of such studies. An example are studies published by the American Psychiatric Association in relation to ADHD – which showed positive results in relation to short–term uses of psychopharmaceuticals, but hid the results of long–term studies (Whitaker, 2015). In that sense, long–term studies have demonstrated the potentialization of the symptoms reported by the patients before the psychopharmaceuticals were introduced in their routines. According to Whitaker (2015), the pharmaceutical industry made a profit of U$ 11,5 billion dollars in 2013 from the sales of psychopharmaceuticals to treat ADHD, which might explain why the long term results remained unpublished.

In sum, these studies share a concern with denouncing the abusive side of certain practices of medicalisation of mental health, as well as arguing that this side is related to the exercise of social control by medical and judicial institutions and to the increase in the profits of pharmaceutical companies. Moreover, they point to the construction of neuro–identities as a central resource for biopolitical power and the rentability of the institutions involved in practices of medicalisation of mental health. Finally, these studies also report epistemological and methodological fragilities in the studies that consider psychopharmaceuticals as beneficial to mental health.

Now that I have presented some of the studies approaching the issue of mental health from sociological and linguistic/discourse perspectives, in the next subsection I provide a brief summary of this chapter. Subsequently, in chapter 3 I introduce the methodological frameworks supporting this study, to then move to the analysis of data in chapter 4.

2.10. Summary of the Chapter

In this chapter, I first presented general aspects concerning mental health, for instance the definition proposed by the World Health Organization and the public policies on mental health in effect in Brazil. Moreover, I presented data on how mental health diagnoses have been increasing in the last decades.

In a second moment, I discussed some of the implications of adopting a social perspective to mental health. The main contribution of the adoption of such perspective is to question naturalized discourses

about mental health centred on biological markers only. A social perspective to understanding mental health considers social markers as part of the constitution of our mental health. Therefore, it considers that an approach to mental health centred just on medical discourses about neurobiological markers is reductionist of the complexity of the issues involving mental health.

In a third moment, I presented the concepts of judicialization, medicalisation and pharmaceuticalisation of society. From a social perspective, these concepts affirm that social aspects of life are appropriated by medical institutions and treated in medical terms, usually resulting in their pathologization and/or pharmaceuticalisation. In addition, such practices have far–reaching effect on society, since the judiciary has become a means to guarantee the acquisition of psychopharmaceuticals, based on the constitutional right to health. This discussion suggests that there is a strong relation between the medicalisation and pharmaceuticalisation of mental health and the judicialization of health, since while apparently guaranteeing our right to health through access to psychopharmaceuticals, the judiciary is also refusing to discuss or even to mention the social aspects of the lives of people who have been diagnosed with mental disorders.

In addition, I presented a section in which I discuss how the production of these narratives by the judiciary may respond to biopolitical interests. In discussing the concepts of neuropolitics and neuronarratives, I argue that an understanding of mental health centred only in the brain is part of a neuropolitical discourse which aims at controlling the population through the production of knowledge about the brain. In that sense, at the same time that neuronarratives exclude social markers important to the understanding of our states of mind, they also enable social aspects to be explained, justified and controlled through discourses about the brain only.

I have also discussed how discourses centred in the brain may not only be important to institutions of social control, such as medical and legal ones, but also to market forces. For this reason, I also presented a section in which I discussed the role language plays in neoliberal capitalism. In this sense, since neuronarratives are based on an understanding of mental health that reduces social conducts to brain functions or dysfunctions, in linguistic and discursive terms the results of such understanding is the production of discourses which promote the use of psychopharmaceuticals as capable of balancing brain functions. However, these psychopharmaceuticals are produced by private companies, pharmaceutical companies, which, as neoliberal

capitalist corporations, are mainly concerned with their profits, and not necessarily with the well–being of the population.

In addition, I presented some of the studies conducted in the last decade within the field of Sociology of Health. These studies adopt a social framework to mental health. They also ratify the understanding that there is a global hegemony of narratives about mental health centred in the brain, as well as the understanding that these narratives attend social control and market interests. As I explained, none of these studies adopted linguistic or discourse frameworks, such as Critical Discourse Analysis. Therefore, this dissertation is original in the sense that it offers an interpretation of discourses about mental health produced by the judiciary, combining sociological, linguistic and discourse theories.

Taking the aforementioned into consideration, in the next chapter I present the methodological principles from Critical Discourse Analysis which have guided this study. They are: interpretive and analytical tools to the investigation of the representations of social actors (Van Leeuwen, 2008); interpretive and analytical tools to the investigation of how legitimation is constructed in discourse (Van Leeuwen, 2007); all of them based on the socio–semantic view of language proposed by Systemic Functional Linguistics (Halliday & Matthiessen, 2014).

CHAPTER III
METHODOLOGY OR
"WHAT HAS TO BE DONE AND HOW"

3.1. Introduction to the Chapter

In this chapter, I present the main methodological choices I have made during the organization of this study. I also provide an explanation of the genre *appellate decision*, in addition to explaining the reasons behind my choice of this specific genre of judicial decisions as my data.

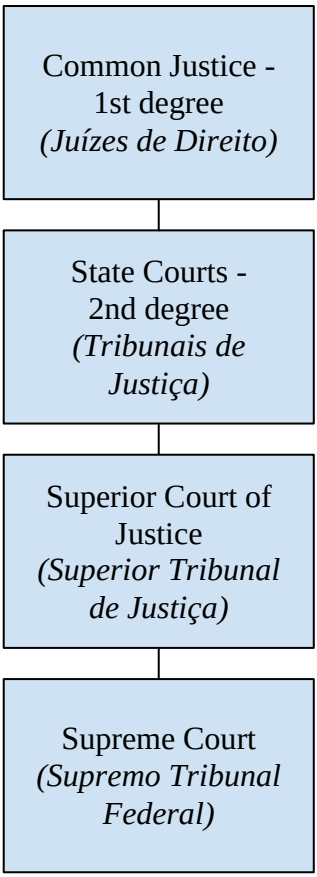
One of the steps of the framework for CDA proposed by Fairclough (2010) concerns the analysis of a social problem in its semiotic aspect, therefore the analysis of semiosis itself. To conduct the linguistic analysis, I rely on two of Van Leeuwen's frameworks: the one for the analysis of representations of social actors and social practices (2008), and the one for the analysis of legitimation in discourse (2007). The analytical categories selected from these two frameworks allow us to explore the choices made by the judiciary to represent social actors diagnosed with ADHD, and what these choices can tell us about how the judiciary understands mental health.

Moreover, I present the procedures used for data collection and data analysis, in addition to providing an example of how data will be organized. Finally, before moving to data analysis itself, I restate my objectives and research questions, since they were first presented in the introduction, and it is important to keep them in mind during the application of the analytical categories.

3.2. Explaining Appellate Decisions

Appellate decisions belong to the genre 'judicial decision', and are produced by appeal Courts. When a judicial decision is produced by a first instance Court of justice, the parties involved in the trial may appeal the decision to a higher Court. In this case, the decision taken by the single judge is analysed again by a second degree Court, more specifically, by a committee of three judges at a state appeal Court. In case one of the parties appeals the decision produced by these second degree state Courts, the case is taken to the STJ and/or, finally, to the highest judicial Court in Brazil, the STF. The following diagram represents the hierarchy of the judiciary in terms of the decisions

involving civil rights, starting from the lower degree of jurisdiction, that is, the first degree:



In the case of STJ, appellate decisions can be monocratic decisions produced by a single judge only, and for this reason I refer to them simply as *judge* in parts of the analysis. According to the STJ webpage:

> The STJ has been created by the Brazilian Federal Constitution (1988). It is the Court responsible for standardizing the interpretation of the federal law in the whole country. The STJ is responsible for the definitive ruling of civil and criminal cases. To achieve this

> standardization, the main kind of processes judged by the STJ are Special Appeals. These appeals work fundamentally to resolve different interpretations of the law. For instance: consider that a state Court in São Paulo takes a decision based on an interpretation of the law that differs from an interpretation produced by a state Court in another state. It is possible to appeal the decisions, so that the STJ defines which interpretation is more adequate. In such cases, the decision of STJ works as a role model to other Courts[17] (my translation[18]).

According to Catunda (2004), the genre appellate decision presents five basic elements, referred by the author as its informational content. They are: the identification of the parties involved; a summary of the appellate decision; a report of the reasons for the appeal ('relatório'); the vote or the justification/legal arguments presented by the committee of judges or by a single judge ('voto'); and the final decision. In view of that, as a genre, appellate decisions present a well-defined structure and focus on the review of a judicial decision produced by a lower Court of justice. Therefore, only the main elements of each case are included in appellate decisions, even when the decisions produced by lower jurisdictions are more detailed.

The fact that appellate decisions constitute a judicial genre that focuses on the interpretation of the law produced by a lower Courts is a limitation to this study, since I did not have access to the entire content of the decisions produced by the common justice[19]. However, from the

[17] Retrieved on December, 5th, 2018 from https://goo.gl/iJKzpV.

[18] The original reads as: "Criado pela Constituição Federal de 1988, o Superior Tribunal de Justiça (STJ) é a corte responsável por uniformizar a interpretação da lei federal em todo o Brasil. É de sua responsabilidade a solução definitiva dos casos civis e criminais que não envolvam matéria constitucional nem a justiça especializada. Para buscar essa uniformização, o principal tipo de processo julgado pelo STJ é o recurso especial. Esses recursos servem fundamentalmente para que o tribunal resolva interpretações divergentes sobre um determinado dispositivo de lei. Por exemplo: um tribunal em São Paulo chega a uma determinada interpretação de um artigo de uma lei, mas um tribunal de Minas Gerais chega à conclusão diferente ao ler o mesmo artigo. Pode ser possível recorrer das decisões, para que o STJ defina qual é a mais adequada. Essa decisão do STJ passa então a orientar as demais cortes".

[19] The decisions produced by the common justice (that is, 1t degree Courts) are not available for public access. Only decisions produced by State Courts (e.g. TJPR, TJRJ, TJMG) and federal Courts (e.g. STJ and STF) are available for

original decision produced by a single judge, the judges from STJ choose what legal elements they give prominence when they produce their appellate decisions, and these elements reveal their interpretation of the application of the law by lower instances, and the positions STJ takes in relation to the cases being judged. Even though they follow a well defined generic structure in the appellate decisions, the appeal judges express institutional and personal views of the world in the decisions they produce. Therefore, their choices reveal positions they occupy and attribute to others in relation to a given event or social practice.

In the context of this research, I decided to work with appellate decisions for two main reasons: First, they are public documents available at the webpage of each appeal Court responsible for their production (e.g. TJSC, TJPR, TJRJ, TJMG, STJ, STF). Moreover, after conducting studies analysing appellate decisions produced by state Courts (see Rieger and Figueiredo, 2017, 2018), I attempted to investigate the discourses of a federal Court due to the complexity expected for a doctoral thesis – especially if we take into consideration that the decisions produced by federal Courts work as models/jurisprudence in the judicial literature for the decisions produced by state Courts. In that sense, it is important to emphasize the role STJ has in standardizing law interpretation.

3.3. Data Generation

In this study I work with six appellate decisions produced by the Superior Court of Justice (*Superior Tribunal de Justiça*, STJ), a Brazilian federal Court, between October, 2015 and May, 2017. Data was gathered from the webpage[20] of STJ. To have access to these decisions, I used the keywords "*Ritalina"* and/or "*Transtorno de déficit de atenção e hiperatividade"* to map the decisions produced by the STJ containing these words. In the sequence, I established the following criteria to define which of the judicial decisions initially located would constitute the corpus of this study.

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public access. However, the genre appellate decision does not include the entire content of the decisions taken by the common justice. Rather, it focuses on the main elements involving each decision and on how the law has been applied to the interpretation of each case.

[20] http://www.stj.jus.br/SCON/

In first place, my interest in decisions produced from 2015 on[21] is directly related to my interest in investigating whether or not STJ somehow includes the recommendations produced by the Ministry of Health and by the Federal Council of Psychology to the reduction of practices of medicalisation of mental health. In addition, I have included in the corpus of this study only two kinds of appellate decisions: first, four decisions that are related to the acquisition[22] of psychopharmaceuticals (more specifically Ritalin) by the State; and second, two decisions produced between 2015 and 2017 that associate the diagnosis of ADHD and/or the use of Ritalin to crimes of sexual violence. These two last decisions were selected in an attempt to investigate, discuss and illustrate possible implications of mental health diagnoses of ADHD, combined with the use of psychopharmaceuticals, to the production of judicial discourses on rape crimes.

3.4. Van Leeuwen's Frameworks for Data Analysis

Van Leeuwen (2008) proposes interpretative categories to the analysis of textual representations of social actors and social practices. The author argues that, in the recontextualization of social practices in texts – which express the linguistic and discursive choices of their producers – institutions and text makers rely on different semiotic elements, according to their interests.

The way social actors and social institutions re–contextualize social practices indicate what elements of these practices they give prominence to, and which ones they background or exclude. This choice–making process reveals the positions text producers occupy in relation to a certain social practice and in relation to the social actors involved in it. In the language choices made in appellate decisions, the judges reveal different ways of understanding/referring to social phenomena and constructing social identities.

[21] The appellate decisions included in this study were produced before June, 2017, since data was gathered when I was writing the project for this dissertation. Appellate decisions produced from June, 2017 on were not included in the analysis.

[22] I decided to investigate only discourses from decisions determining the acquisition of Ritalin by the State in order to discuss how the acquisition of this psychopharmaceutical is legitimated by the judiciary. Decisions denying the acquisition of psychopharmaceuticals were not included as part of the data.

I will focus on three main categories to the analysis of how social actors are represented: inclusion/exclusion, nomination/categorization and role allocation/transitivity. These categories will be applied to each appellate decision according to how data emerges, which means that sometimes I may rely on one or more of categories in detriment of the others due to the characteristics of the text being analysed.

3.4.1. Inclusion and Exclusion

Two basic categories proposed by van Leeuwen (2008) for the analysis of representations of social actors are *inclusion* and *exclusion.* In this sense, text producers, when they are recontextualizing a social practice, decide which social actors they will include in their texts and under which circumstances they will appear. These choices reveal which goals text producers attempt to achieve and what layers of reality they choose to represent when referring to somebody. Text producers may, therefore, include or exclude social actors combined with different circumstances in order to achieve specific goals.

When social actors are excluded from the recontextualization of a social practice, there is no mention to them throughout the text, neither to their actions. When included, they may be suppressed, that is, they are not linguistically represented but we can infer that they are part of the social practice because of the actions related to them. Suppression is linguistically realized through passive agent deletion (as for instance, when I say that "*someone has been diagnosed with ADHD"*, without mentioning who is the person responsible for attributing the diagnosis); through non–finite clauses functioning as grammatical participants (as for instance, when I say that *"it is an obligation to guarantee someone's right to health",* in which someone or some institution is necessarily responsible for the action of *guaranteeing);* and also through the use of adjectives (as for instance, when I say that "*the use of Ritalin is necessary",* but with no linguistic mention to whom claims the necessity).

3.4.2. Nomination and Categorization

When represented, social actors may be nominated or categorized. When nominated, they are referred in terms of their unique identity (e.g. *Pedro Rieger, Sandra Caponi).* Nomination can occur through name obscuration (when social actors are referred through the

use of letters, e.g. *P.G.R.* or *D.C.F*.) or through the use of proper nouns (e.g. *Litiane, Monique).* When categorized, social actors are referred to in terms of their identities and functions shared with others.

Categorization is divided by Van Leeuwen (2008) into two main subcategories: functionalization and identification. Functionalization occurs when social actors are referred to in terms of something they do (e.g. *the professor, the researcher*), and identification occurs when social actors are referred to in terms of something they are (e.g. *child "carrier" of ADHD, the patient*). There are three main forms of identification: physical identification, classification and relational identification.

When referred to in terms of the "major categories by means which a given society or institution differentiates classes of people" (p. 42), social actors are classified. These categories may include age, ethnicity, gender, sexual orientation, disability, among others. When referred in terms of their relation with others (e.g. *the patient*), social actors are categorized in terms of relational identification. Finally, when social actors are referred to in terms of their physical characteristics, categorization occurs through physical identification. Van Leeuwen (2008) claims that the linguistic realization of physical identification occurs through the use of nouns which denote physical characteristics, as for instance prepositional phrases with "with" and which are post–modified with certain characteristics (e.g. *On D.'s physical appearance, we emphasise a certain precocious emergence of feminine secondary characteristics).*

In these cases, sometimes social actors are represented by writers in interpersonal terms, thus appraised. When appraised, social actors are given evaluative qualities. In the case of this study, evaluations play a central role in the legitimation constructed in AD 5 and AD 6, both involving rape crimes (as for instance, when a rape victim is represented as a child with a precocious "*interest for sexual issues"*).

3.4.3. Role Allocation

Text producers relocate and reorganize roles and social relations when recontextualizing social practices. According to Van Leeuwen (2008), the roles attributed to social actors in the recontextualization of social practices are not necessarily congruent to the roles they occupy in the social practice itself. In recontextualizing social practices, text producers relocate social actors according to their

views and interests in relation to a given fact or event. In view of that, in analysing representations of social actors we must pay attention to the roles attributed to each participant, especially in terms of who acts upon whom.

Social actors' role allocation can be described in terms of active and passive roles. When activated, social actors are represented by text producers as the agents (or the doers) of an action, meanwhile when passivated they are represented as the receivers of an action performed by others. Activation and passivation may be described

> by transitivity structures in which activated social actors are coded as actor in material processes, behaver in behavioral processes, senser in mental processes, sayer in verbal processes or assigner in relational processes (Van Leeuwen, 2008, p. 46).

Since activation and passivation may be described by the transitivity structure of the clause, in the next section I present this analytical system.

3.4.4. Transitivity

Transitivity refers to the grammar of the clause as representation (Halliday & Matthiessen, 2014; Eggins, 2004). Transitivity is an analytical system provided by SFL, with tools to describe agents, process types and circumstances used to represent a social practice. According to Figueiredo (1999):

> Transitivity refers to three basic elements present in a clause. The first is a process (the semantic nucleus of the clause), consisting of an obligatory verb or adjective; it involves the event or state of affairs described in the clause. This process is combined with one or more nouns or noun phrases which indicate the *participants* in the event or the state of affairs. The process may also be accompanied by one or more circumstances (p. 101).

The choice of process type indicates the perspective of the text producer about how the social action happened. Processes are connected to an agent and, depending on the case, another participant who benefits or suffers impacts from the action performed by the agent. The relation between agent and process type offers a perspective about how agency

is represented, that is, about the social roles of each participant in a social practice. Finally, the analysis of the circumstances tells us which elements were considered meaningful by the text producer, and were included in the text to create a setting, or a contextualization for the action.

The six main types of processes within the transitivity system are material processes, mental processes, verbal processes, behavioral processes, existential processes and relational processes. These processes, through the description of the grammar of the clause, allow us to identify which roles and functions each participant of a social practice has been attributed in its recontextualization.

Material processes denote someone's ability to act in a concrete manner, therefore they are processes of doing (e.g. Pedro turned the computer on). Their main participants are an actor, who performs the action, and a goal or a beneficiary, at whom the action is directed. Mental processes denote meanings of thinking or feeling, and may be divided into processes of cognition (e.g. thinking, knowing), affection (e.g. liking or disliking) and perception (e.g. listening, seeing). Their main participants are a senser and a phenomenon, the ones who perform the process and the thing/person being thought/liked/felt respectively. Verbal processes relate to actions of saying. They contain three main participants: a sayer, a receiver and a verbiage (e.g. *The doctor told Gabriel to use Ritalin*, for which "the doctor" is the sayer, "Gabriel" is the receiver and "to use Ritalin" the verbiage). Behavioral processes lay between material and mental processes and represent actions performed by a conscious being (e.g. *The child behaved properly at school*). Existential processes are, in English, identified by the use of '*There*' (which in portuguese translates to the verb "*haver"*). Finally, relational processes concern processes of being and are often combined with an evaluative adjective (e.g. *"She seemed to be bipolar"*).

3.5. Legitimation in Discourse

Legitimation is a framework proposed by Van Leeuwen (2007) for the analysis of how legitimacy is attributed in discourse. According to Van Leeuwen (2007), legitimation in discourse can be understood as the explanation to why something has been done the way it has been done. Legitimation is a productive analytical category to understand judicial discourse, since judges cannot ground their decisions on their

personal beliefs, rather they must justify why and explain how they reached their decisions.

Van Leeuwen (2007) presents five main types of legitimation: *authorization*, when voices of authority are used to legitimate a certain discourse; *moral evaluation*, when facts and/or social actors are represented in discourse as "good" or "bad"; *rationalization*, when "purposes are constructed in discourse in order to explain why social practices exist" (p. 101); *mythopoesis*, when legitimation is "achieved through storytelling" (p. 105) that produces positive or negative endings according to the social actors' engagement to social norms; and *multimodal legitimation*, when legitimation is expressed through semiotic systems different from written ones (e.g. visually).

In constructing legitimation, the judiciary may rely on witnesses, both lay and/or expert ones[23]. This is the case of the appellate decisions that constitute the data in this study. For this reason, I will work with two categories of legitimation proposed by Van Leeuwen: legitimation through authorization and legitimation through moral evaluation.

Legitimation through authorization happens when someone with some kind of authority is part of *why* something has been done the way it has been done – in the case of judicial decisions, why they were taken in one way and not another. Van Leeuwen (2007) distinguishes different types of legitimation through authorization (i.e. legitimation through personal authority, expert authority, role model authority, the authority of tradition, and the authority of conformity). However, I will

[23] The Article 212 from the Brazilian Civil Code (2002) claims that juridical facts may be proved through a) confession (*confissão)*; b) document (*documento)*; c) witnesses (*testemunhas)*; d) presumption (*presunção)*; and e) expertise (*perícia)*. Witnesses produce narratives in Court about a given fact and they are cautioned by the judges that they can be penalized in case they lie or hide what they know about the case being judged. The Brazilian Code of Civil Procedures (2015), in its Articles 442-447, claims that evidence of witnesses or expert witnesses are always admissible. In that sense, every citizen may be a witness, with the exception of those considered unable [*incapazes*] (e.g. mentally disabled), disqualified [*impedidos*] (e.g. partner or close relative), and suspects [*suspeitos*] (e.g. someone directly interested in the judicial decision, or an enemy of one of the parties). In relation to expert witnesses, the Brazilian Code of Civil Procedures (2015) claims that expert evidence involves scientific and/or technical examination, inspection and/or evaluation (see Articles 464-465) by someone with an academic degree in the specific area related to the evidence.

focus only on authorization through expert authority – when legitimation is provided by someone with a degree of expertise in a specific area. According to the author (2007, p. 6):

> Typically, expert legitimation takes the form of 'verbal process clauses' or 'mental process clauses' (e.g. Professor so–and–so believes...') with the expert as subject. In multimodal texts the credentials may be visual, signified by laboratory paraphernalia, books, or other professional attributes. The experts' utterances themselves will carry some kind of recommendation, some kind of assertion that a particular course of action is 'best' or 'a good idea'. No reasons need to be provided, no other answer to the question of 'why should I do this?' than a mere 'because Dr Juan says so'.

Legitimation through expert authorization, as demonstrated in the data analysis, is a central resource for the judges in their decision making – since they rely on medical, psychological and social working reports to support their views of each case.

A second kind of legitimation proposed by Van Leeuwen is moral evaluation. This category is divided in three sub-categories: evaluation, abstraction and analogies. In this study, I will focus on the sub-category evaluation, in which adjectives play a significant role in attributing qualities/characteristics to the participants of social practices. If we take into consideration the transitivity system (Halliday and Matthiessen, 2014), qualities/adjectives are usually attributed through the use of relational processes. For instance, evaluation is a relevant category in the construction of legitimation in appellate decision 5, in which the decision taken by the judges relied to a large extent on the narratives produced by the witnesses attributing negative qualities to a child involved as a victim in a rape crime, therefore delegitimizing the child's representation as a victim.

3.6. Explaining Data Presentation and Data Analysis

In relation to data presentation, in chapter IV each of the appellate decisions I am working with will be presented in a subsection. However, Data presentation and analysis will be conducted in different ways: The analysis of the first four appellate decisions will follow one structure, and the analysis of the two final appellate decisions will

follow a different structure. In the first four cases, I am concerned with how social actors who have been diagnosed with ADHD are represented in the judicial discourse, in addition to unveiling the legitimation strategies used by the judges to allow the claimants to have access to psychopharmaceuticals. I am specifically concerned with the kinds of subjects and narratives the judges construct to justify the determination of the acquisition of Ritalin for social actors who have been diagnosed with ADHD.

In the two final decisions, I am specifically concerned with understanding the relations presented by the judges between ADHD and rape crimes. Therefore, instead of focusing on how social actors are represented in these two cases, I will focus only on the strategies used by the judges to legitimate their decisions and on how they link ADHD to the crimes being judged.

For each case, I will present a table containing a summary of the appellate decision, that is, information concerning the parties involved (i.e. appellant, appellee), the date of production, the main arguments supporting the appeal, and the final decision taken by the judges. The following table illustrates how the summary of the appellate decisions will be presented:

EXAMPLE 1 – SUMMARY OF THE APPELLATE DECISION

Date: March, 3rd 2016.	appellate decision produced by the *Superior Tribunal de Justiça* in order to provide Ritalin to a child who has been diagnosed with ADHD by a neurologist.
Appellant	Paraná's Health Department
Arguments supporting the appeal	(a) the illegitimacy of the *Public Prosecution Service (Ministério Público, hereafter mentioned as* MP*)* to enter a claim that aims at protecting the rights of a single individual; (b) the requested psychopharmaceutical is not available on SUS, therefore violating article 19–M of the Brazilian Federal law 8080/90[24].

[24] Retrieved in February, 17th 2018 from: https://goo.gl/g5eSK9

Decision	*Superior Tribunal de Justiça* orders the acquisition of Ritalin by the executive (the state health department).

In relation to the first four appellate decisions, I will present the parts of each decision containing representations of the social actors who have been diagnosed with ADHD. After that, I will present a table containing the analysis of these representations, applying Van Leeuwen's framework for the analysis of representations of social actors. The following two tables illustrate how data will be presented and analysed:

EXAMPLE 2 – REPRESENTATIONS OF THE SOCIAL ACTOR/CLAIMANT WHO HAS BEEN DIAGNOSED WITH ADHD

INTERESSADO : ***G A M R (MENOR)***
INTERESTED: ***G A M R (MINOR)***

AD 1, P. 1 – the STJ presents the social actors and institutions involved in the appeal.

AÇÃO CIVIL PÚBLICA EM FAVOR DE ***CRIANÇA PORTADORA DE TRANSTORNO DO DÉFICIT DE ATENÇÃO E HIPERATIVIDADE***
CIVIL LAWSUIT FAVORABLE TO A ***CHILD CARRIER OF ATTENTION DEFICIT AND HYPERACTIVITY DISORDER***

AD 1, P. 1 – the STJ cites the summary of the appellate decision published by the State Court of Paraná.

EXAMPLE 3 – ANALYSIS OF THE REPRESENTATIONS OF THE SOCIAL ACTOR/CLAIMANT WHO HAS BEEN DIAGNOSED WITH ADHD

social actor's representations	classification of the representation	comment
G A M R (MENOR) ***G A M R (MINOR)***	name obscuration and categorization through identification and classification	Gabriel is referred to through the use of letters and in relation to his age
CRIANÇA PORTADORA DE TRANSTORNO DO DÉFICIT DE ATENÇÃO E HIPERATIVIDADE ***CHILD CARRIER OF ATTENTION DEFICIT AND HYPERACTIVITY DISORDER***	categorization through identification and classification	Gabriel is referred to in relation to his age and also in relation to the diagnosis attributed to him

Each presentation/analysis of the judicial representations of social actors diagnosed with ADHD will be followed by a subsection in which I discuss how legitimation is constructed in the text. Since legitimation is constructed in different ways in the appellate decisions, I will rely on different ways of describing and interpreting how it takes place in each decision. For instance, in some cases I will describe how other social actors involved in the claim (e.g. lay or expert witnesses) are represented and/or which discourses are attributed to them. In addition, at other moments I will present the narratives produced by the judges in relation to ADHD or in relation to the aforementioned social actors.

Concerning the two final appellate decisions, which involve ADHD and rape crimes, I will focus, as I said before, on how legitimation is constructed in the text. In each case, we should keep in mind that ADHD plays a central role in how legitimation is constructed.

Therefore, my main concern is with the description of the roles played by ADHD in these judicial decisions, either supporting or refuting the accusations of rape.

3.7. Restating the Research Questions

Before I move to the analysis, I would like to restate the research questions which form the basis of this investigation, since they were presented for the first time on chapter one. These are the questions I attempt to answer through the analysis:

1) In what ways are social actors named and referred to linguistically in the judicialization for the acquisition of methylphenidate to treat Attention Deficit and Hyperactivity Disorder?
2) How is legitimation constructed in the six appellate decisions, both in the ones which combine the diagnosis of ADHD and the acquisition of psychopharmaceuticals, and the ones which combine the diagnosis of ADHD and rape crimes?
3) On the basis of the data, what the representations and arguments used reveal in terms of the judicial discourse on mental health and the use of psychopharmaceuticals?
4) Based on the findings, is it possible to say that the appellate decisions produced by this Court follow the recommendations by the National Council of Health, the Ministry of Health and the Federal Council of Psychology?
5) How does gender, race, class and age, as axis of social organization, oppression and discrimination, operate and intersect in the legal texts under analysis?
6) Based on the findings, what roles can linguistic analysis, especially from a functional and critical perspective, play in the area of interdisciplinary health studies?

CHAPTER IV
DATA ANALYSIS OR
"A CLOSE READING OF THE APPELLATE DECISIONS"

4.1. Introduction to the Chapter

In this chapter, I present the analysis of the six appellate decisions that form the basis of this study. To do so, I rely on the analytical categories proposed by Van Leeuwen (2007; 2008) and which have been presented in the previous chapter.

4.2. Data Analysis

As I said before, in the analysis of appellate decisions 1-4, I will present, in this order, a summary of each appellate decision; the representations of social actors who have been diagnosed with ADHD, followed by the analysis; and how legitimation has been constructed by the judge in each case. In appellate decisions 5 and 6, I will present a summary, followed by examples of how legitimation has been constructed. To do so, I rely on transitivity choices to describe how the social action has been contextualized, and discuss how these choices impact the construction of legitimation in discourse. The examples I provide will be identified with the abbreviation "AD" combined with the number of the appellate decision (1-6) and followed by the number of the page and a subtitle/explanatory caption. Moreover, I will use bold to highlight the representations of the social actors in Portuguese, followed by the translation into English[25] of each example, in italics.

[25] The translations I provide are as literate as possible and, therefore, they do not follow English legal standards. This was a conscious decision, taken due to the fact that in doing lexical description and analysis I should maintain certain lexical choices to preserve the semantic effects of the Portuguese versions of each appellate decision.

4.2.1. Appellate Decision 1 *(AD 1)*

Summary of the appellate decision

The following table presents a summary of the first appellate decision being analysed, with information regarding the date of production, who the appellant is, the arguments supporting the appeal and the final decision achieved by the Court.

TABLE 1 – SUMMARY OF AD 1

Date: March, 3rd 2016.	appellate decision produced by the STJ ordering the state to provide Ritalin to a child who has been diagnosed with ADHD by a neurologist.
Appellant	Paraná's Health Secretary
Arguments supporting the appeal	(a) the illegitimacy of the *Public Prosecution Service* to enter a claim that aims at protecting the rights of a single individual; (b) the psychopharmaceutical requested is not available through the public policies for mental health in Brazil, therefore violating article 19–M from the Brazilian Federal law 8080/90[26].
Decision	STJ determines the acquisition of Ritalin by the Executive (i.e. Paraná's Health Secretary)

[26] Retrieved in February, 17th 2018 from: https://goo.gl/g5eSK9

Representations of the child who has been diagnosed with ADHD in AD 1

The following examples present the mentions to Gabriel, a six-year-old child who had been diagnosed with ADHD and who is represented by the judge as the party interested in the acquisition of Ritalin through the public health services:

INTERESSADO : **G A M R (MENOR)** *INTERESTED:* ***G A M R (MINOR)***

AD 1, P. 1 – STJ presents the social actors and institutions involved in the appeal.

AÇÃO CIVIL PÚBLICA EM FAVOR DE **CRIANÇA PORTADORA DE TRANSTORNO DO DÉFICIT DE ATENÇÃO E HIPERATIVIDADE** *CIVIL LAWSUIT FAVORABLE TO A* ***CHILD CARRIER OF ATTENTION DEFICIT AND HYPERACTIVITY DISORDER***

AD 1, P. 1 – STJ cites the summary of the appellate decision published by the State Court of Paraná.

CONJUNTO PROBATÓRIO SUFICIENTE PARA COMPROVAR A NECESSIDADE DA **CRIANÇA** *EVIDENCE PRESENTED IS ENOUGH TO PROVE THE* ***CHILD****'S NECESSITY*

AD 1, P. 1 – STJ cites the summary of the appellate decision published by the State Court of Paraná.

Assim, embora o Sistema de Padronização de Medicamentos seja necessário para o desenvolvimento da política de saúde pública, este deve ser flexível ao ponto de respeitar as particularidades de cada cidadão, pois de nada adiantaria fornecer a medicação padrão se esta não é a adequada para o tratamento ou até mesmo não apresenta resultados **ao enfermo**

Therefore, in spite of the need of a universal system of medications to the development of public health policies, this system should be flexible enough to respect the particularities of each citizen, since it is worthless to provide medication unless it is adequate to the treatment and presents positive results to ***the sick person.***

AD 1, P. 2 – STJ cites the grounds for the decision published by the State Court of Paraná.

O Médico **do menor**, Neurologista Infantil APARECIDO J. A.[27], relatou que (pág. 38): Reiterando resposta ao ofício em que refere o **paciente GABRIEL A. M. R.,** por nós acompanhado desde 24/03/2009 (...)

The ***minor's*** *doctor, the pediatric neurologist APARECIDO J. A., reported that (p. 38): Reinforcing the answer to the official document related to the* ***patient GABRIEL A. M. R.***[28]*, accompanied by us since March, 24th 2009.*

AD 1, P. 3 – STJ cites the grounds for the decision published by the State Court of Paraná.

o paciente apresenta sintomas clássicos de Hiperatividade e Déficit de Atenção

the patient *presents classic symptoms of Hyperactivity and Attention Deficit Disorder*

AD 1, P. 3 – STJ cites the specialized neurologist Aparecido J. A.

Logo, não remanescem dúvidas de que o medicamento receitado é o adequado à situação **do paciente**, além do que, o diagnóstico e o tratamento foram fornecidos por médico com boa reputação perante a comunidade médica de Londrina (fls. 672/677)**.**

[27] The neurologist's full-name has been replaced with acronyms for ethical reasons.

[28] The social actor's full-name has been replaced with acronyms for ethical reasons.

*Therefore, there is no doubt that the medication prescribed is the proper one to the **patient**'s situation, and besides, the diagnosis and the treatment have been provided by a health professional with a good reputation in the medical community in Londrina (pp. 672/677).*

AD 1, P. 3 – STJ cites one of the arguments used by the lower Court to support its decision, in this case, the reputation of the professional who prescribed Ritalin to Gabriel.

The following table presents an analysis of the choices made by the judge to refer to Gabriel:

TABLE 2 – REPRESENTATIONS OF THE CHILD WHO HAS BEEN DIAGNOSED WITH ADHD IN AD 1

social actor's representations	classification of the representation	comments
G A M R (MENOR) ***G A M R (MINOR)***	name obscuration and categorization through identification and classification	Gabriel is referred to through the use of letters and in relation to his age.
CRIANÇA PORTADORA DE TRANSTORNO DO DÉFICIT DE ATENÇÃO E HIPERATIVIDADE ***CHILD CARRIER OF ATTENTION DEFICIT AND HYPERACTIVITY DISORDER***	categorization through identification and classification	Gabriel is referred to in relation to his age and also in relation to the diagnosis attributed to him.
CRIANÇA ***CHILD***	categorization through identification and classification	Gabriel is referred to in relation to his age.

enfermo ***the sick***	categorization through identification and classification	Gabriel is referred to as someone with a pathology.
menor ***minor***	categorization through identification and classification	Gabriel is referred to in relation to his age.
paciente GABRIEL A. M. R. ***patient GABRIEL A. M. R.***	categorization through relational identification, and nomination through unique identification	Gabriel is referred to as a "patient" in relation to the medical expert who prescribed him Ritalin and also in relation to his unique identity.
o paciente ***the patient***	categorization through relational identification	Gabriel is referred to as "a patient" in relation to the medical expert who prescribed him Ritalin.
(do) paciente ***(of) the patient***	categorization through relational identification	Gabriel is referred to as "a patient" in relation to the medical expert who prescribed him Ritalin.

In sum, *Gabriel* is represented in relation to his age (*menor/minor, criança/child)* and categorized in relation to a medical condition, that is, with focus on his diagnosis (*paciente/patient, criança portadora de TDAH/child carrier of ADHD, enfermo/sick).* Moreover, he has also been nominated in terms of his unique identity once (when the judiciary mentioned the medical report referring to him through the use of his full name) and through the use of name obscuration, when he was referred to as *"G A M R"*.

Such choices by the STJ reveal an impersonalization in relation to *Gabriel*, since he has been predominantly referred to in terms of a medical condition, or from a pathologized perspective (as *paciente/patient*, or as *enfermo/sick*, or as *portador de TDAH/carrier of ADHD*). The frequent categorization of Gabriel in relation to his diagnosis reinforces the idea that ADHD is a central aspect of his

identity, and that ADHD is a biological/physiological condition (e.g. *criança portadora de TDAH/child carrier of ADHD*).

For instance, when the judge refers to Gabriel as "*portador de TDAH/a child carrier of ADHD*", he[29] is suppressing the whole diagnostic process, which is linguistically and discursively constructed through questionnaires, therefore produced by social agents who have been suppressed from the representation in the appellate decision. In that sense, the two following verbalizations would have different connotations: "*Gabriel é portador de TDAH/Gabriel is a carrier of ADHD*" and "*Gabriel foi diagnosticado com TDAH/Gabriel has been diagnosed with ADHD*". In the first case, the agent responsible for producing the diagnosis is omitted.

Therefore, such linguistic realization creates the mental image of a diagnosis which is intrinsic to the child. In the last case, however, "*Gabriel foi diagnosticado/Gabriel has been diagnosed*", we have the understanding that the diagnostic practice has necessarily happened through a verbal process (the act of diagnosing itself) or a material process (for instance, the realization of a blood test).

Taking the aforementioned into consideration, we have that *Gabriel* has been nominated and referred to according to his unique identity, but he has also been assimilated and categorized, that is, referred to as "*portador de TDAH/a child carrier of ADHD*" – which creates the image that people diagnosed with ADHD do not have a unique identity, but rather a collective one, a pathologized identity shared with other people who have been given the same diagnosis. This generalization of his identity may result on what I before addressed as his loss of autonomy and individuality. Finally, no other social marker has been attributed to *Gabriel.*

[29] The six appellate decisions were produced by men. For that reason, in the analysis I use masculine gender inflections to refer to the judges.

Legitimation in AD1

As a consequence of representing Gabriel as a child with a mental pathology, the STJ sentenced the Executive (i.e., Paraná's Health Secretary) to provide him with Ritalin, as claimed by the Public Prosecution Service, by constructing a network of discourses to justify its decision. This has been done to legitimate the acquisition of Ritalin as means to guarantee Gabriel's access to his right to health. Having that in mind, I will now address what discourses have been used by STJ to construct a sense of legitimacy to the case. I am doing it by separating what elements / voices have been given prominence by the judiciary in order to legitimate this as a health issue demanding the use of Ritalin.

One of the largest passages of the appellate decision includes an interview with a doctor, referred as Terezinha F. S[30]. According to the text, Terezinha F. S. is a specialist in general clinical procedures. In this context, the specialist plays the role/function of an expert witness who has been indicated by the appellant, the State Health Secretary of Paraná. The interview can be read in the table below:

TABLE 3 – INTERVIEW WITH TEREZINHA F. S.

Interview with Terezinha F. S.

8min27seg – MINISTÉRIO PÚBLICO – Pelo que a senhora me disse – pode me corrigir se eu estiver errada – os dois (Ritalina e Concerta) podem tratar o mesmo problema de saúde, dependendo da particularidade de cada paciente.
MÉDICA – de cada paciente.
MINISTÉRIO PÚBLICO – e quem verifica isso é o especialista.
MÉDICA – é o especialista, isso. E ele vai ter (que) experimentar as duas drogas e fazendo um comparativo e analisando o que vai ser vantajoso para aquele paciente, isto não é uma coisa que se decide de imediato.
MINISTÉRIO PÚBLICO – A senhora conhece o médico que prescreveu essa medicação?
MÉDICA – conheço.
MINISTÉRIO PÚBLICO – tem alguma (...) contraindicação, algum fato que desabone o conhecimento (...) profissionalmente dizendo?
MÉDICA – o conheço profissionalmente e acredito que até um dos

[30] The doctor's full-name has been replaced with acronyms for ethical reasons.

únicos que faz esse tipo de tratamento em Londrina e na região uns três ou quatro que controlam esse tipo de patologia e ele é um dos mais conceituados. É professor na universidade, é [...] coordenador de uma residência, então eu acho que ele está bem conceituado para fazer o que ele faz.

Logo, não remanescem dúvidas de que o medicamento receitado é o adequado à situação do paciente, além do que, o diagnóstico e o tratamento foram fornecidos por médico com boa reputação perante a comunidade médica de Londrina (fls. 672/677) (AD 1, P. 3 – STJ interviews a medical practitioner to gather information about the reputation of the practitioner responsible for prescribing Ritalin to Gabriel).

MP – *According to what you told me – you may correct me in case I am wrong – both psychopharmaceuticals (Ritalin and Concerta) may treat the same health problem, depending on the particularities of each patient.*
Doctor *– of each patient.*
MP *– and the person responsible for checking this is the specialist.*
Doctor *– it is the specialist, exactly. And he will have to try both psychopharmaceuticals in order to compare them and analyse which one represents an advantage to that patient, this is not something to be decided in a hurry.*
MP *– Do you know the doctor who prescribed this medication?*
Doctor *– I do.*
MP *– Do you have any contraindication, or are you aware of any fact that might question his knowledge, professionally speaking?*
Doctor *– I know him professionally and I believe he is one of the only [doctors] who do this type of treatment in Londrina. In the region he is one out of three or four who prescribes this type of treatment, and he is one of the most reputable ones. He is a professor at the university, he is (...) the coordinator of a medical residency, so I think he is well reputable to do what he does.*

Therefore, there is no doubt that the medication prescribed is the adequate one to the patient's situation, and besides, the diagnosis and the treatment have been provided by a health professional with a good reputation with the medical community in Londrina (pps. 672/677).

The choices made by Terezinha F. S. legitimate the need for the medication, through the discursive construction of the efficacy of Ritalin to treat patients according to their own specificities, therefore requiring the evaluation of a specialist, such as psychiatrists or neurologists. Legitimation is, therefore, constructed through authority and moral evaluation, since Terezinha F. S. represents a voice of medical authority, which in its turn is combined with a positive moral evaluation made by herself in relation to the neurologist responsible for diagnosing Gabriel, as for instance when she addresses him as "*one of the most reputable ones"*. Other voices and social actors, such as professionals involved with a CAPs, were not mentioned. Moreover, the passage gives no information in regards to Gabriel' social life, and the judge gives prominence to voices of social actors who have no connection with Gabriel in the social practices he participates in his routine. What the judge does, in fact, is to turn his attention to the reputation of the specialist responsible for diagnosing Gabriel.

Moreover, this interview indicates that the legitimation of the need for a psychopharmaceutical is discursively based on the reputation of the medical expert who diagnosed Gabriel and recommended his treatment. The following table presents a summary of the choices made by *Terezinha F. S.* to represent the expert neurologist responsible for diagnosing Gabriel and used by the judge to support his decision:

TABLE 4 – REPRESENTATIONS OF THE NEUROLOGIST RESPONSIBLE FOR DIAGNOSING GABRIEL

representations of the neurologist	classification of the representations	comments
o especialista (2x) ***the specialist/expert***	categorization through identification/ functionalization	The neurologist Aparecido J. is not directly cited, but he is functionalized through the use of the category "specialist".
[ele é]um dos únicos que faz esse tipo de tratamento ***[he is] one of the only ones who does this type of treatment***	categorization through functionalization and name obscuration	The neurologist is categorized in relation to what he does, and as one of the only persons qualified to do so.
na região uns três ou quatro que controlam esse tipo de patologia e ele é um dos mais conceituados ***he is one of the three or four who prescribes this type of treatment, and he is one of the most reputable ones***	categorization through functionalization and name obscuration	The neurologist is categorized in relation to what he does, and as one of the only persons qualified to do so.
É professor na universidade ***He is a professor at the university***	categorization through identification/ functionalization	The neurologist is categorized in relation to one of his social roles as a professor, therefore someone with a high social status and expertise in the field.

é [...] coordenador de uma residência ***He is the coordinator of a medical residency***	categorization through identification/ functionalization	The neurologist is categorized in relation to one of his social roles as a coordinator of a medical program, therefore someone with a high social status and expertise in the field.
[ele é] médico com boa reputação ***[he is] a doctor with a good reputation***	categorization through identification/ functionalization and appraisal	The neurologist is categorized in relation to one of his social roles as a doctor and evaluated positively as someone with a good reputation.

These choices reveal that a central concern of the judge to legitimate his decision was the investigation of whether or not the neurologist Aparecido J. had a good reputation within the medical community. Moreover, they reveal that the main concern of Terezinha F. S. was to construct a representation of Aparecido J. as someone respected within the medical community, in addition to occupying social roles that attribute expert qualifications to him, such as *"professor"* and *"coordinator"* of a medical program.

These choices are combined with the representation of ADHD as a neurobiological comorbidity that "*needs"* to be treated with Ritalin. The following table shows the representations of ADHD in the appellate decision:

ADHD as represented in AD 1

MINISTÉRIO PÚBLICO – Pelo que a senhora me disse – pode me corrigir se eu estiver errada – os dois (Ritalina e Concerta) podem tratar o mesmo ***problema de saúde***

According to what you told me – you may correct me in case I am wrong – both psychopharmaceuticals (Ritalin and Concerta) may treat the same ***health problem***

AD 1, P. 3 – STJ presents the interview conducted by the MP with a medical expert, Terezinha F. S. In this case, ADHD is treated as a "health problem".

No caso em questão, o paciente apresenta sintomas clássicos de Hiperatividade e Déficit de Atenção, além de **comorbidades** associadas, como transtorno de conduta, opositor e desafiador. O uso da medicação Ritalina l0mg, neste caso, devido ao baixo tempo de efeito e de pequena concentração não traz benefício eficaz para o paciente, sendo indicado e com resposta excelente a formulação "Concerta", que hoje é de 12 (doze) horas, em concentrações adequadas e com nível sanguíneo adequado, portanto é a primeira escolha neste caso

In this case, the patient presents classic symptoms of Attention Deficit and Hyperactivity, in addition to associated ***comorbidities*** *such as oppositional defiant disorder [ODD*[31]*]. The use of Ritalin 10mg, in this case, due to the short time of effect and the low concentration, does not offer effective benefits to the patient, resulting in the indication and with an excellent response the formula "Concerta", whose effects last for 12 hours, in adequate concentrations and adequate blood levels, thus it is the first option in this case*

AD 1, P. 3 – STJ cites the report produced by the neurologist who has diagnosed Gabriel with ADHD and prescribed the psychopharmaceutical Concerta, claiming that regular doses of Ritalin 10mg were not benefiting Gabriel due to the shorteffect period in the blood. One of the arguments used by the neurologist is that the effects of Concerta last for 12 hours.

[31] According to the DSM-V (2013, p. 463): "The essential feature of oppositional defiant disorder is a frequent and persistent pattern of angry/irritable mood, argumentative/defiant behavior, or vindictiveness".

A ***patologia*** TDAH (Transtorno de Déficit de Atenção e Hiperatividade) é um ***complexo neurológico*** reconhecido na OMS, no CID10 F90 [...] e no DSM – 4 e agora no DSM – 5, regulador de sinais e sintomas diagnosticados, das diversas patologias mundialmente

*The **pathology** ADHD (Attention deficit and hyperactivity disorder) is a **neurological disorder** recognized by WHO in the CID 10 F90 [...] and in the DSM – IV and now on the DSM – V, which regulates diagnosed signs and symptoms of several pathologies worldwide.*

AD 1, P. 3 – STJ cites the response of the neurologist to an official request made by the judiciary. This was the first information he included in the official response, therefore in textual terms, the one he considered the most relevant to include: the classification of ADHD as a neurological disorder recognized by the DSM–IV and the DSM–V.

This classification of ADHD as a neurological health problem is what allows the judge to disregard different aspects of Gabriel' social reality. With the representation of ADHD as primarily a neurobiological disorder, the judiciary accepts the claim that there is a biochemical solution to such a disorder, which in its turn is attested by one single neurologist, with no support from other health practitioners, such as those who work with a CAPS (e.g. social workers, psychologists, psychiatrists). In this sense, Caponi (2009) and Martinez–Hernaez (2014) argue that the reduction of the patients and of their social context to a biological dimension reproduces neuronarratives and results in the understanding of health promotion as access to psychopharmaceuticals, even though the Brazilian Health Ministry has recognized the impossibility of diagnosing ADHD through lab tests.

Taking the aforementioned into consideration, in order to justify decisions in favour of granting the acquisition of Ritalin, the STJ claims, supported by medical witnesses, that a chemical intervention is the only way to solve "health problems" such as ADHD and to relieve the patient's behaviour. In discursive terms, this is the only possibility offered as treatment, indicating that the State intervenes upon a disease rather than upon a person located within a complex network of social practices.

Finally, the need for the pharmaceutical *Concerta* is attested by the documents produced from the interview with the medical doctor specialized in clinical procedures, Dr. Terezinha F. S., and from the

response produced by the neurologist Aparecido J. in answer to the official request made by the judiciary. In that sense, the legitimation of Gabriel's need for the medication is reinforced, as the passages below suggest:

PRECEDENTES DESTA CORTE DE JUSTIÇA E DO STJ. CONJUNTO PROBATÓRIO SUFICIENTE PARA **COMPROVAR A NECESSIDADE DA CRIANÇA**

*PREVIOUS DECISIONS FROM THIS COURT OF JUSTICE AND OF THE STJ. THE EVIDENCE PRESENTED IS **ENOUGH TO PROVE THE CHILD'S NEED FOR [THE MEDICATION]***

AD 1, P. 1 – STJ cites the summary of the decision produced by the lower Court, claiming to have gathered enough evidence to attest the need for Concerta in Gabriel's case.

Quanto ao medicamento pleiteado, **o acórdão recorrido reconheceu a sua necessidade**, ao asseverar que: (...) o Estado não pode furtar–se do dever de propiciar os meios necessários ao gozo do direito à saúde por todos os cidadãos, mesmo que o medicamento pleiteado não integre a lista especial do Poder Público

*In relation to the psychopharmaceutical being requested, **the appealed decision recognized its need** by claiming that: (...) the State cannot evade the obligation of providing the necessary means so that all citizens have their right to health guaranteed, even when the medication is not listed within any protocol produce by official health institutions.*

AD 1, P. 2 – STJ claims that the need for Concerta has been recognized by a lower Court, which in its turn had also recognized that the State cannot rely on the argument that the pharmaceutical is not listed in official protocols of the Health National Policy (SUS) to deny access to someone who claims its need.

Logo, não remanescem dúvidas de que **o medicamento receitado é o adequado à situação do paciente**, além do que, o diagnóstico e o tratamento foram fornecidos por médico com boa reputação perante a comunidade médica de Londrina

Therefore, there are no doubts that ***the medication prescribed is adequate to the patient's situation.*** *In addition, the diagnosis and the treatment were provided by a health professional with a good reputation to the medical community in Londrina*

AD 1, P. 4 – STJ claims that there is no doubt that the pharmaceutical claimed for Gabriel is adequate to the treatment. Even though the word 'need' is not explicitly mentioned, the STJ has no doubts in relation to the adequacy of Concerta to Gabriel's case.

A Primeira Turma do Supremo Tribunal Federal entende que 'o recebimento de medicamentos pelo Estado é direito fundamental, podendo o requerente pleiteá–los de qualquer um dos entes federativos, **desde que demonstrada sua necessidade** e a impossibilidade de custeá–los com recursos próprios'

It is the understanding of the STF that 'receiving medicines from the State is a fundamental right, and ***claimants may request them to any federation institution, as long as they demonstrate the need*** *and the impossibility of paying for them with their own resources'*

AD 1, P. 5 – STJ cites a previous decision published by the Supreme Court, *STF*, claiming that the providence of pharmaceuticals by the State is a fundamental right of anyone who demonstrates their necessity and the lack of possibility to pay for them.

In sum, the analysis reveals two main strategies of legitimation in relation to Gabriel's need for a specific psychopharmaceutical medication: First, the neurologist responsible for diagnosing and prescribing *Concerta* to Gabriel is constantly represented in relation to his expertise and reputation through the attribution of social roles and social functions with high social status (such as *specialist, professor, coordinator of a medical program*). Therefore, legitimation is built through resource to authority.

Second, ADHD is represented as a neurobiological disorder, and therefore a neurologist of good reputation is represented as the proper person to define what kind of treatment Gabriel should receive. This interpretation is reinforced by the judge when he claims to have no doubt that the prescribed medication is adequate to Gabriel's case since it has been prescribed by an expert of good reputation in his town.

4.2.2. Appellate Decision 2 *(AD 2)*

Summary of the appellate decision

The following table presents a summary of the second appellate decision under analysis, with information regarding its date of production, who the appellant is, the arguments supporting the appeal and the final decision reached by the Court:

TABLE 5 – SUMMARY OF THE APPELLATE DECISION 2

Date: February, 21st 2017.	One appellate decision produced by the STJ in order to provide Ritalin to a social actor who has been diagnosed with ADHD
Appellant	Paraná's Secretary of Health
Arguments supporting the appeal	The State Health Secretary of Paraná claimed that the articles 19–M and 19–P (Brazilian Federal Law 8080/90[32]) were not respected in the decision taken by the lower Court. In that sense, the institution claimed that the psychopharmaceutical requested is not listed in the clinical protocols of the Brazilian Health Policy (SUS). In addition, the State Health Secretary of Paraná claimed that Paraná's State Court rejected the first appeal, in which the State Health Secretary of Paraná had claimed the violation of the article 535/73 from the Rules of Civil Procedure (Brazilian *Código de Processo Civil*, law 5869/73[33], replaced by the law 13105/2015[34], hereafter referred as CPC).

[32] Retrieved in February, 17th 2018 from: https://goo.gl/JRZzgW
[33] Retrieved in February, 18th 2018 from: https://goo.gl/dFpJsQ
[34] Retrieved in February, 18th 2018 from: https://goo.gl/gK8Ngs

Decision	The appeal was rejected and the STJ determined the acquisition of Ritalin by the Executive, here represented by the State Health Secretary of Paraná. The STJ claimed that the article 535/73 from the CPC was not violated, since, according to the Court, the acquisition of pharmaceuticals by the State is possible when lower Courts demonstrate the necessity to do so.

Representations of the social actor who has been diagnosed with ADHD in AD 2

The following examples present the choices made by the judge to represent the social actor who claimed for a psychopharmaceutical in AD2:

> FORNECIMENTO GRATUITO DE MEDICAMENTO ***A PESSOA HIPOSSUFICIENTE***[35]
>
> *FREE PROVISION OF MEDICATION TO* ***PERSON IN FINANCIAL DISADVANTAGE***

AD 2, P. 1 – STJ cites the summary of the previous judicial decision.

> verifica–se que ***o Favorecido*** necessitava do medicamento "Ritalina 10 mg", de acordo com a prescrição médica
>
> *it has been verified that* ***the beneficiary*** *needed the medication "Ritalin 10mg", according to the medical prescription*

AD 2, P. 2 – STJ cites the vote of the previous judicial decision.

The following table presents an analysis of the choices made by the judge to refer to the social actor claiming for Ritalin:

[35] The use of capital letters is maintained according to the original text.

TABLE 6 – REPRESENTATIONS OF THE SOCIAL ACTOR WHO HAS BEEN DIAGNOSED WITH ADHD IN AD 2

social actor's representation	classification of the representation	comments
PESSOA HIPOSSUFICIENTE ***PERSON IN FINANCIAL DISADVANTAGE***	categorization through identification and classification	The claimant is referred to in relation to their socioeconomic status
o Favorecido ***the beneficiary***	categorization through relational identification	The claimant is identified in relation to a claim involving the judiciary, since the social actor has been benefited by a judicial decision

From the two representations presented above, it is possible to say that the STJ does not refer directly to the claimant of the psychopharmaceutical. Instead, the two references were extracted from the lower judicial decision, the one appealed by Paraná's secretary of health. In both cases, the claimant was not referred to in terms of their unique identity, but rather in terms of their socioeconomic status (their lack of financial resources to afford the psychopharmaceutical) and their position in relation to the judicial demand under analysis (when they are referred as "*favorecido"* or "*beneficiary").* Therefore, this appellate decision does not produce its own representations of the person who benefits from this judicialization of mental health, it simply borrows representations from the decision of a lower Court.

The choices made by the judge also indicate the suppression of the benefited social actor in this specific representation of the social practice of judicialization of health, and an impersonalization. According to Van Leeuwen (2008), text producers include or exclude certain elements in their texts in order to achieve their goals and attend specific interests. If we consider the representations of the benefited social actor in this appellate decision, we may claim that the STJ was

only interested in representing them as someone who lacks financial resources to buy the medication and, therefore, as someone who needs the State to provide them with the psychopharmaceutical.

Other dimensions involving the social life of the claimant who has been benefited with the acquisition of the medication were not taken into consideration by the STJ in the production of this appellate decision. However, certain discourses emerge from the representation of the social practice of the judicialization of health in this case, and they relate to the obligation of the State to provide the technologies (either pharmaceuticals or other technologies) considered as *necessary* or *indispensable* to treat a social disorder or to reduce its impacts on someone's life. This can be demonstrated through the analysis of the prominent elements included in the appellate decision by the judge in order to legitimate his decision, which will be presented in the next subsection.

Legitimation in AD 2

As I said before, in representing the social practice of the judicialization of health, text producers in the STJ extract, from previous judicial decisions, the elements to which they give more importance to legitimate their actions. In doing so, the STJ constructs the legitimation of the social practice of the judicialization of health, that is, it constructs the basis of the decision it takes in relation to the appeal. We should also take into consideration that these elements relate to the application of the law, since this is a primary aspect of appellate decisions – they review the accuracy of the application of the law by lower Courts.

In the case of AD 2, the following passages work as legitimation resources produced by the STJ:

Não merece prosperar a tese de violação do art. 535 do CPC/73, porquanto ***o acórdão recorrido fundamentou, claramente, o posicionamento por ele assumido***, de modo a prestar a jurisdição que lhe foi postulada

The hypothesis of violation of the article 535 from the Code of Civil Procedure/73 cannot prosper, ***since the appealed decision has substantiated, explicitly, the position it assumes****, in order to provide the jurisdiction attributed to it*

AD 2, P. 2 – STJ responds part of the appeal that contests the violation of the CPC/73, claiming that the appeal is not legitimate since a lower Court presented a 'clear' basis for its position in relation to the supply of Ritalin to the plaintiff of the judicial request.

Anote–se que esta Corte admite o fornecimento de medicamentos não incorporados ao SUS mediante Protocolos Clínicos, quando as instâncias ordinárias verificam **a necessidade do tratamento prescrito**

Take into consideration that this Court admits the provision of medication not incorporated to the Brazilian Health Policy (SUS) when the ordinary instances verify ***the need for the treatment prescribed***

AD 2, P.2 – the STJ sustains its argument by claiming that it is a prerogative of the Court to admit the acquisition of a pharmaceuticals not listed in the official clinical protocols of the Brazilian Health Policy (SUS), as long as a lower Court demonstrates its need.

Confira–se, no ponto, o seguinte excerto do voto condutor (e–STJ, fl. 258): "(...) Compulsando o presente caderno processual, ***verifica–se que o Favorecido necessitava do medicamento "Ritalina 10 mg", de acordo com a prescrição médica*** (fl. 31 – mov. 1.2). Verifica–se também a negativa de fornecimento pela 21§ Regional de–Saúde de Telêmaco Borba, ante a justificativa de que "o medicamento Ritalina 10 mg não faz parte do elenco de medicamentos padronizados no CEAF" (fls. 32/33 – mov. 1.2)

Check the following excerpt of the vote (e–STJ, p. 258): "(...) ***it is possible to verify that the claimant needed the medication "Ritalin 10mg", according to the medical prescription*** *(p. 31). It is also*

possible to verify the denial of the provision by Telêmaco Borba's secretary of health, supported by the justification that "the medication Ritalin 10mg is not incorporated to the official protocols of the Specialized Component of Pharmaceutical Assistance (CEAF)" (pp. 32/33)

AD 2, P. 2. – the STJ claims that the assessment of the need for the psychopharmaceutical has been done by a lower Court. The document taken into consideration to the production of this claim was a medical prescription.

Quanto ao mérito, a norma contida no artigo 196 da Constituição Federal estabelece que a saúde é direito de todos e dever do Estado. Tal obrigação, por certo, somente será cumprida se, além de políticas de prevenção às doenças, o Estado disponibilizar aos cidadãos o ***atendimento médico e os remédios necessários a cura e, quando esta for impossível, ao controle da moléstia.*** (...) Logo, ***é obrigação do Estado do Paraná dispor do medicamento solicitado***, sobretudo porque ***"a saúde é um direito do cidadão e um dever do Estado, devendo ser satisfeita de modo integral e gratuito*** (Lei Orgânica da Saúde – Lei no 8.080/90. art. 43)."

In relation to the merit, article 196 of the Brazilian Federal Constitution establishes that health is a universal right that should be guaranteed by the State. Such obligation will only be provided if, in addition to illness prevention policies, the ***State provides to every citizen medical care and access to the medication needed for their cure. When the cure is impossible, the medication necessary for the control of the pathology should be provided as well.*** *(...)* ***Therefore, the state of Paraná is obligated to provide the requested medication****, mainly since* ***"health is a universal right that should be guaranteed by the State*** *(Law 8.090/90, article 43)"*

AD 2, P. 2 – the STJ claims that the Brazilian Constitution guarantees the right to health to every Brazilian, and this right can only be achieved through the implementation of public health policies and access to medical and pharmacological resources necessary to treat illnesses/disorders.

These passages suggest that legitimation in AD2 is given through the verification by the STJ of three main elements: First, the consistency of the justification presented by a lower Court claiming the

need for the psychopharmaceutical; second, the confirmation of the existence of a medical prescription; and finally, the obligation of the State to provide the necessary means to promote the cure or the control of the disorder.

Therefore, legitimation is supported by the "need" of the claimant who has been benefited with the acquisition of Ritalin, and in terms of the universal right to health established by the Brazilian Constitution. Moreover, from the passages we may infer that such need has been attested through the presentation of a prescription produced by a single medical professional, hence not taking into consideration other voices, such as from a multidisciplinary staff of health professionals, available from the CAPs. If we take into consideration Van Leeuwen's framework for the analysis of how legitimation is constructed, we may argue that, in this case, legitimation is constructed by authorization, in this case through the presentation of a document produced by a single medical authority.

4.2.3. Appellate Decision 3 (*AD 3)*

Summary of the appellate decision

The following table presents a summary of the third appellate decision being analysed, with information regarding its date of production, who the appellant is, the arguments supporting the appeal and the final decision achieved by the Court:

TABLE 7 – SUMMARY OF THE APPELLATE DECISION 3

Date: April, 6th 2017	appellate decision produced by the STJ in order to provide Ritalin to a social actor who has been diagnosed with ADHD
Appellant	Rio de Janeiro State Health Secretary
Arguments supporting the appeal	The Health Secretary in Rio de Janeiro claimed that articles 19–M and 19–P (Brazilian Federal Law 8080/90) were not respected in the decision taken by the lower Court. In that sense, the institution claimed that the psychopharmaceutical demanded through a judicial intimation is not listed in the clinical protocols of the Brazilian Health Policy (SUS). In addition, the institution claimed to have alternative pharmacological therapies, which in their turn are listed in the clinical protocols of the Brazilian Health Policy.
Decision	The appeal has been rejected and the STJ determined the acquisition of Ritalin by the Executive, here represented by Rio de Janeiro's Secretary of Health.

Representations of the social actor diagnosed with ADHD in AD 3

The following examples present the choices made by the judge to represent the social actor diagnosed with ADHD and who is petitioning to have access to Ritalin, based on his right to health:

AGRAVADO: JOSE V. D. M. S.[36] (MENOR)

APPELLEE: JOSE V. D. M. S. (MINOR)

AD 3, P. 1 – STJ cites the parties involved in the case.

A hipótese trata de pedido de fornecimento de medicação indicada pelo médico assistente **do autor** (Depakote 500mg; Riss 2mg e Ritalina 10mg), em razão de ser **portador de Distúrbios da atividade e da atenção (CID:F90.0) e Transtorno Afetivo Bipolar** (CID:F31) e não possuir recursos financeiros para arcar com os seus custos

*The case relates to the provision of a medication prescribed by the plaintiff**'s** assisting doctor (Depakote 500mg; Riss 2mg and Ritalin 10mg), **since the plaintiff lives with activity and attention disorders (CID:F90.0) and Bipolar Disorder (CID:F31)** and cannot afford the costs of these medications by herself.*

AD 3, P. 3 – the STJ cites the decision published by Rio de Janeiro's State Court, arguing that the psychopharmaceutical Ritalin has been prescribed by a medical practitioner to treat the claimant's diagnosis of ADHD and Bipolar Disorder.

[36] The social actor's full-name has been replaced with acronyms for ethical reasons.

Trata–se de matéria que já se encontra pacificada pelos Supremo Tribunal Federal e Superior Tribunal de Justiça, no sentido da responsabilidade do Poder Público, inclusive, pelo fornecimento gratuito de medicamentos necessários ao tratamento **da paciente** e a recuperação da sua saúde (...)

*STF and STJ have come to an agreement in relation to the responsibility of the State in what concerns the free provision of the necessary medications to the **the patient's** treatment of and the reestablishment of her health.*

AD 3, P. 3 – the STJ cites the decision published by Rio de Janeiro's State Court, in which that Court claims that the acquisition of pharmaceuticals is a State responsibility, as established by the Federal Supreme Court.

Assim, demonstrada a necessidade de fazer uso da medicação prescrita pelo médico assistente às fls.08/09, e tendo em vista a hipossuficiência comprovada **do paciente**, impõe–se aos entes públicos o dever de atendimento àqueles que não podem arcar com os custos do tratamento

*Therefore, as the need for the medication prescribed by the assisting doctor (pp. 08/09) is demonstrated, and having in mind the **the patient's** financial disadvantage**,** it is the duty of public institutions to attend those who cannot afford the costs of the treatment*

AD 3, P. 3 – STJ cites the decision published by the Rio de Janeiro State Court, in which the Court claims that the necessity of the psychopharmaceutical has been demonstrated with the presentation of a laud produced by a medical practitioner.

Assim, a pretensão **do autor** encontra flagrante respaldo, pois resta evidente a responsabilidade do ente público pela garantia da saúde **do cidadão**, direito fundamental do ser humano, nos termos dos artigos 196 da Constituição da República e 293, XVIII, da Constituição deste Estado

*Therefore, the aim of **the plaintiff** of the lawsuit is widely supported, since it is evident that public institutions have the responsibility of guaranteeing the **citizen**'s right to health, a fundamental human right,*

as established in articles 196 and 293 of the Brazilian Federal Constitution

AD 3, P. 4 – the STJ cites the decision published by Rio de Janeiro's State Court, arguing that the person claiming for the psychopharmaceutical is absolutely supported by the legislation. The STJ attributes to the State the responsibility of providing the psychopharmaceutical so as to guarantee the person's access to their universal right to health.

o ora agravado não demonstrou a ausência de necessidade e medicação indicada, constituindo prova suficiente dos fatos narrados os documentos apresentados nos autos

the appealed party *has not demonstrated the lack of need and the necessary medication, which constitutes sufficient proof of the facts reported the documents presented in the lawsuit*

AD 3, P. 4 – the STJ cites the decision published by Rio de Janeiro's State Court, claiming that the plaintiff of the judicial request has presented all the necessary documents to attest the necessity of the psychopharmaceutical he claims for. In this passage the plaintiff of the judicial request is passivized in relation to Rio de Janeiro's State Court, when referred as 'o agravado'.

o medicamento pleiteado **pelo paciente** é imprescindível ao seu tratamento, em atendimento à peculiaridade do caso, gravidade do quadro e do relatório elaborado por profissional habilitado, portanto, conhecedor do quadro clínico

the medication requested by ***the patient*** *is essential to his treatment, due to the particularity and severity of the case, in addition to the official report produced by a licensed professional, therefore, someone who knows the claimant's clinical history.*

AD 3, P. 4 – the STJ claims that the lower Court, after examining the case, determined that the psychopharmaceutical was essential to the plaintiff of the judicial request.

Ademais, este Sodalício possui entendimento assentado no sentido da obrigatoriedade do fornecimento pelo Estado de medicamento, ainda que não presente na listagem do SUS, em razão da comprovação de sua

imprescindibilidade **ao paciente** *Moreover, this Court understands that the State is obligated to provide the medication, even when it is not within the official State protocol, when its indispensability to **the patient** has been proved*

AD 3, P. 4 – STJ reinforces the claimant's necessity of the psychopharmaceutical, even though it is not listed in an official protocol of the Unified Health System, SUS.

The following table presents an analysis of the choices made by the judge to represent the social actor claiming for a psychopharmaceutical in AD3:

TABLE 8 – REPRESENTATIONS OF THE SOCIAL ACTOR WHO HAS BEEN DIAGNOSED WITH ADHD IN AD 3

social actor's representation	classification of the representation	comment
JOSE V. D. M. S. (MENOR) ***JOSÉ V. D. M. S. (MINOR)***	nomination through unique identification and categorization through identification and classification	The social actor is referred to through the use of his unique name and in relation to his age.
autor (2x) ***plaintiff***	categorization through functionalization	The claimant is referred to as the plaintiff of the judicial claim for a psychopharmaceutical.
paciente (3x) ***patient***	categorization through relational identification	The social actor is referred to as "a patient" in relation to the medical expert who prescribed them Ritalin.

agravado ***the appealed part***	categorization through functionalization / beneficialized in relation to the Rio de Janeiro Health State Secretary	The claimant is referred to as the party being appealed.
cidadão ***citizen***	categorization through genericization	The claimant of the psychopharmaceutical is referred to through a general category which incorporates every Brazilian citizen.

These representations reveal a categorization of the claimant predominantly as ill, since he[37] has been mostly referred to through the use of relational identification, that is, as a *"patient"*, which implies the existence of medical relations and supervision. He has also been functionalized as the plaintiff of the judicial order (i.e. '*o autor da ação/the plaintiff')* and passivized in relation to Rio de Janeiro's Health Secretary, as the party being appealed against.

Moreover, there is only one mention to the child's name and age, when the parties are presented, which implies his unique identity has been mostly suppressed from the choices made by the judge to represent him. Therefore, in predominantly using medical terms to refer to the social actor, the judge constructs his image as someone who needs medical care and/or someone who is ill, justifying the provision of the medication he claims for.

[37] The appellate decision uses two different gender inflections to refer to the same person, in this case, a child who had been diagnosed with ADHD and who was claiming for psychopharmaceuticals in the judiciary. However, in the presentation of the parties involved in the appeal, the appealed party (that is, the person claiming for Ritalin) is presented with a masculine name. For that reason, I will maintain the masculine gender inflection.

Legitimation in AD 3

The following passages retrieved from AD3 represent the choices made by the STJ to legitimate its decision of providing the psychopharmaceutical demanded by the plaintiff of the judicial claim. As in the previous appellate decisions, these passages are sometimes quotes by the STJ of the elements retrieved from a previous decision and considered by the STJ as the most relevant ones, including sometimes excerpts from texts produced by the STJ itself.

Responsabilidade solidária dos entes federados. Direito à saúde. Garantia constitucional do direito à vida. **Obrigatoriedade solidária dos entes federativos ao fornecimento da medicação indicada para a eficiência do tratamento** *Responsibility of the federative institutions. Right to health. Constitutional guarantee of the right to life. **Obligation of the federative institutions to provide the medication indicated to the efficacy of the treatment***

AD 3, P. 1 – the STJ quotes the TJRJ[38], which claims to be the responsibility of the State to provide the necessary medication to the efficacy of the treatment.

A hipótese trata de pedido de fornecimento de medicação indicada pelo médico assistente do autor (Depakote 500mg; Riss 2mg e Ritalina 10mg), em razão de ser portador de Distúrbios da atividade e da atenção (CID:F90.0) e Transtorno Afetivo Bipolar (CID:F31) e não possuir recursos financeiros para arcar com os seus custos. *The case relates to the provision of a medication **prescribed by the plaintiff's assisting doctor** (Depakote 500mg; Riss 2mg and Ritalin 10mg), since the plaintiff lives with activity and attention disorders (CID:F90.0) and Bipolar Disorder (CID:F31) and cannot afford the costs of these medications herself.*

AD 3, P. 3 – STJ presents the diagnoses in addition to justifying the claim for psychopharmaceuticals in a judicial instance based on the claimant's lack of financial sources.

[38] Rio de Janeiro's State Court, *Tribunal de Justiça do Rio de Janeiro (TJRJ).*

responsabilidade do Poder Público, inclusive, pelo fornecimento gratuito de medicamentos necessários ao tratamento da paciente e a recuperação da sua saúde, vez que, **diante de sua enfermidade, a medicação indicada pelo médico assistente tem o escopo de garantir melhor êxito ao tratamento.**

the State is also responsible for the free provision of the necessary medication to the patient's treatment and the reestablishment of their health, ***since the medication prescribed by the assisting doctor in view of their illness aims at guaranteeing the success of the treatment***

AD 3, P. 3 – the STJ attributes to the State the responsibility of providing the psychopharmaceutical.

Assim, **demonstrada a necessidade de fazer uso da medicação prescrita pelo médico assistente** às fls.08/09, e tendo em vista a hipossuficiência comprovada do paciente, impõe–se aos entes públicos o dever de atendimento àqueles que não podem arcar com os custos do tratamento.

Therefore, ***when the need for the medication prescribed by the assisting doctor (pp. 08/09) is demonstrated****, and having in mind the financial disadvantage of the patient****,*** *public institutions have the duty of attending citizens who cannot afford the costs of the treatment.*

AD 3, P. 4 – STJ claims that when the need for the medication is demonstrated, the State is responsible for providing it.

consta dos autos comprovação da prescrição do médico assistente, não sendo exigível que o laudo médico seja expedido por profissional da rede pública de saúde, até porque o ora agravado não demonstrou a ausência de necessidade e medicação indicada, constituindo prova suficiente dos fatos narrados os documentos apresentados nos autos.

The confirmation of the assisting doctor's prescription is part of the lawsuit. The prescription can be produced by a professional other than the ones working for the Unified Health System (SUS)*,* especially taking into consideration that the party being appealed against has not demonstrated the lack of need for the medication

requested, and the documents presented constitute sufficient evidence of the reported facts.

AD 3, P. 4 – the STJ cites the official report produced by the assisting doctor claiming the necessity to provide the specific medications he had recommended.

o medicamento pleiteado pelo paciente é imprescindível ao seu tratamento, em atendimento à peculiaridade do caso, gravidade do quadro e **do relatório elaborado por profissional habilitado, portanto, conhecedor do quadro clínico**.

the medication requested by the patient is essential to his treatment, due to the particularity and severity of the case, ***in addition to the official report produced by licensed professional, therefore, someone who knows the claimant's clinical history****.*

AD 3, P. 4 – STJ cites the official report produced by the assisting doctor claiming the need to provide the specific medications he had recommended.

The analysis of AD 3 suggests that legitimation is constructed through authorization, that is, relying on an expert authority. In that sense, the health professional responsible for attributing the diagnosis of ADHD to the social actor claiming a psychopharmaceutical is the only expert witness involved in the case. As a consequence, the reports produced by the assisting doctor were the only institutional/official documents taken into consideration in the evaluation of the claim for a psychopharmaceutical. As in the previous appellate decisions, social actors belonging to a multidisciplinary staff from CAPS were not consulted.

Legitimation is supported by discourses of the "need" of the social actor who has been benefited with the acquisition of Ritalin (i.e. *"when the need for the medication prescribed by the assisting doctor is demonstrated"*); it is also constructed in terms of the "success" and "efficacy" of the use of the medication prescribed by the health professional, here referred to as the expert witness (i.e. *"the medication prescribed by the assisting doctor in view of their illness aims at guaranteeing the success of the treatment"* and *"obligation of the federative institutions to provide the medication indicated to the efficacy of the treatment"*); in terms of the universal right to health established by the Brazilian Federal Constitution (i.e. "*Right to health.*

Constitutional guarantee of the right to life"); and through the representation of ADHD as an illness (i.e. *"medication prescribed by the assisting doctor in view of their illness"*).

4.2.4. Appellate Decision 4 (*AD 4)*

Summary of the appellate decision

The following table presents a summary of the fourth appellate decision being analysed, with information regarding its date of production, who the appellant is, the arguments supporting the appeal and the final decision achieved by the Court:

TABLE 9 – SUMMARY OF THE APPELLATE DECISION 4

appellate decision – May, 2nd 2017.	appellate decision produced by the *Superior Tribunal de Justiça* in order to provide Ritalin to a social actor who had been diagnosed with ADHD
Appellant	Rio de Janeiro's State Secretary of Health
Arguments supporting the appeal	The appellant claims the violation of the article 1022, II, from the Code of Civil Procedures (2015), because the Court judging the case did not produce any manifestation in relation to the articles 19–M, 19–P, 19–Q and 19–R from law 8090/90. The appellant also claims that the decision violated the aforementioned articles by determining the acquisition of a medication that is not within a SUS protocol, in spite of the existence of a similar alternative available from SUS.
Decision	The appeal has been rejected and the STJ determined the acquisition of Ritalin by the Executive, here represented by Rio de Janeiro's State Secretary of Health.

Representations of the social actor who has been diagnosed with ADHD in AD 4

The following examples present the parts of the decision in which the social actor who had been diagnosed with ADHD is mentioned by the judges:

AGRAVADO: LUCAS S. A.[39]

APPEALED PARTY: LUCAS S. A.

AD 4, P.1 – the STJ cites the parties involved in AD 4 and nominates *Lucas S. A.* as the appealed party.

AUTOR PORTADOR DE DOENÇA DE HIPERATIVIDADE E ENURESE NOTURNA, NECESSITANDO PARA O SEU USO CONSTANTE, DE REMÉDIOS

PLAINTIFF CARRIER OF ATTENTION DEFICIT AND HYPERACTIVITY DISORDER AND NOCTURNAL ENURESIS*, THEREFORE NEEDING CONSTANT USE OF MEDICATION*

AD 4, P. 1 – the STJ presents the summary of the appellate decision, mentioning the diagnoses attributed to the social actor as justification for the constant use of medication.

Necessita **o autor** dos medicamentos descritos na inicial, em razão de ser **portador da doença neurológica de hiperatividade e enurese noturna** (incontinência urinária)

The plaintiff *needs the medication described in the lawsuit due to being a* ***carrier of the neurological disease of hyperactivity and nocturnal enuresis*** *(bedwetting)*

AD 4, P. 1 – the STJ presents the summary of the appellate decision, mentioning the diagnoses attributed to the social actor as justification to the constant use of medication.

[39]The social actor's full-name has been replaced with acronyms for ethical reasons.

O Município e o Estado integram o Sistema Único de Saúde (SUS), tendo o dever de manter o tratamento indicado em favor **do doente**, com a concessão dos medicamentos necessários para a recuperação da saúde da população.

The municipality and the state integrate the Unified Health System (SUS), therefore they are obligated to offer the indicated treatment to ***the sick person****, with the provision of the necessary medication to the reestablishment of the population's health*

AD 4, P. 2 – the STJ quotes the decision produced by Rio de Janeiro's state Court, claiming the obligation of the State and of the Unified Health System to provide and maintain the treatment indicated to the "sick person".

Em relação ao argumento da existência de alternativa terapêutica para o tratamento da autora, tem–se caber ao médico que a assiste, a respectiva escolha e indicação, observando quanto aos remédios específicos para **a paciente**

In relation to the argument of the existence of a therapeutic alternative to the treatment of the plaintiff, the decision of changing the treatment has to be taken by the doctor who assists her for, the choice of the medication and the indication, observing which medications are specific to the ***patient***

AD 4, P. 2 – STJ quotes the decision produced by the state Court, attributing the responsibility for choosing the adequate medication for the treatment of the social actor (here referred as "the patient") to the assisting doctor.

Ademais, este Sodalício possui entendimento assentado no sentido da obrigatoriedade do fornecimento pelo Estado de medicamento, ainda que não presente na listagem do SUS, **em razão da comprovação de sua imprescindibilidade ao paciente**.

Moreover, this Court understands that the State is obligated to provide the medication, even when it is not within an official State protocol, ***when its indispensability to the patient has been proved***

AD 4, P. 3 – the STJ quotes the decision produced by the state Court, reinforcing its understanding in relation to the obligation of the State, through

the SUS, to provide the medication considered indispensable to the claimant who had been diagnosed with ADHD, here referred to as "the patient".

The following table presents the analysis of the choices made by the judge to represent the social actor who has been diagnosed with ADHD:

TABLE 10 – REPRESENTATIONS OF THE SOCIAL ACTOR DIAGNOSED WITH ADHD IN AD 4

social actor's representation	classification of the representations	comment
AGRAVADO: LUCAS S. A. ***APPEALED PARTY: LUCAS S. A.***	nomination through unique identification	The social actor is referred to in terms of his unique identity.
AUTOR PORTADOR DE DOENÇA DE HIPERATIVIDADE ***PLAINTIFF CARRIER OF HYPERACTIVITY DISORDER***	categorization through identification and classification	The social actors is referred to in terms of the diagnosis of hyperactivity attributed to him.
pessoa com a doença neurológica de hiperatividade e enurese noturna ***person with the neurological disease of hyperactivity and nocturnal enuresis***	categorization through identification and classification	The social actor is referred to in terms of the diagnoses of hyperactivity and nocturnal enuresis attributed to him.
o autor ***the plaintiff***	categorization through functionalization	The social actor if referred to as the plaintiff in the judicial claim for a psychopharmaceutical.

do doente ***the sick person***	categorization through identification and classification	The social actor is referred to in terms of his state of health.
a paciente ***the patient***	categorization through relational identification	The social actor is referred to in terms of his relation to the medical expert who prescribed him Ritalin.
ao paciente ***to the patient***	categorization through relational identification	The social actor is referred to in terms of his relation to the medical expert who prescribed him Ritalin.

The analysis of the representations of the social actor who had been diagnosed with ADHD in AD 4 reveals that the judge relied on different choices to refer to him. However, most of these choices make use of medical terms, either directly categorizing him in relation to the diagnoses attributed to him (e.g. *"plaintiff carrier of hyperactivity disorder", "sick person",* and *"carrier of the neurological disease of hyperactivity and nocturnal enuresis")* and in relation to the health professional responsible for attributing the diagnoses (e.g. *"the patient").* The social actor has also been nominated once in relation to his unique identity.

Such choices made by the STJ reveal a process of impersonalization in relation to *Lucas*, since he has been predominantly referred to in terms of a medical condition or relation. This categorization of the social actor in relation to his diagnosis and to a health condition reinforces the idea that ADHD is a central aspect of his identity, and the only one seen as relevant to be semiotically included in the representation of the social practice of the judicialization of mental health. Moreover, using the Portuguese word *"portador/carrier"* combined with the diagnosis suggests that ADHD is intrinsic to his body, omitting the social action of diagnosing, necessarily performed by the health professional in charge of Lucas' treatment on the basis of questionnaires and observation only. As I argued about previous appellate decisions, this impersonalization of Lucas, reducing him to a

mental disorder, might result in loss of individuality and, as a consequence, loss of autonomy.

Once again, other dimensions related to Lucas' social life were not included in the representation of the social practice of judicialization. The only social dimension considered relevant enough to be included by the judge was the medical one, which attributes to Lucas the diagnosis of ADHD and categorizes him as a sick person.

Legitimation in AD 4

The following examples present how legitimation has been constructed in AD 4:

CONDENAÇÃO DO ESTADO E DO MUNICÍPIO A ENTREGAR OS FÁRMACOS CLORIDRATO DE METILFENIDATO 10MG (RITALINA®) E CLORIDRATO DE IMIPRAMINA 25MG (TOFRANIL®), **CONFORME INDICAÇÃO MÉDICA**, POSSIBILITANDO A SUBSTITUIÇÃO POR OUTROS, PARA O TRATAMENTO DA MESMA MOLÉSTIA, MEDIANTE APRESENTAÇÃO DE LAUDO MÉDICO QUE A AUTORIZE. *THE MUNICIPALITY AND THE STATE ARE SENTENCED TO PROVIDE THE MEDICATIONS METHYLPHENIDATE 10MG (RITALIN) AND IMIPRAMINE (TOFRANIL),* ***FOLLOWING MEDICAL RECOMMENDATION,*** *ALLOWING THE REPLACEMENT BY OTHER MEDICATIONS AIMING TO TREAT THE SAME DISEASE, PROVIDED THERE IS A MEDICAL REPORT AUTHORIZING IT.*

AD 4, P. 1 – the STJ presents the summary of the appellate decision, indicating that the State should provide the medications recommended in a medical prescription produced by a health professional.

ESCOLHA DOS MEDICAMENTOS E TRATAMENTO QUE CABE AO
MÉDICO QUE ASSISTE O PACIENTE.

THE CHOICE OF THE TREATMENT AND MEDICATIONS IS UP TO THE DOCTOR *WHO ASSISTS THE PATIENT.*

AD 4, P.1 – the STJ presents the summary of the appellate decision, claiming that the assisting doctor is in charge of defining the best treatment to the social actor who has been diagnosed with ADHD.

Necessita o autor dos medicamentos descritos na inicial, em razão de ser portador da doença neurológica de hiperatividade e enurese noturna (incontinência urinária), **conforme laudo a fls. 19**

The plaintiff needs *the medication described in the lawsuit as he is a person with the neurological disease of hyperactivity and nocturnal enuresis (bedwetting),* ***according to the clinical report on page 19***

AD 4, P. 2 – the STJ quotes part of the decision produced by the state Court, in which the judges claim the need for the medications due to a neurological disease.

Em relação ao argumento da existência de alternativa terapêutica para o tratamento da autora, tem–se **caber ao médico que a assiste, a respectiva escolha e indicação, observando quanto aos remédios específicos para a paciente, idêntica orientação, não se podendo substituir aquele prescrito por correspondentes ou similares, se assim não autorizar o profissional assistente.**

In relation to the argument that there are therapeutic alternatives to the treatment of the plaintiff, the ***choice and indication is up to the doctor who assists her, the same applying to the specific medications used by the patient. The medications prescribed cannot be replaced by others, unless the assisting doctor authorizes it.***

AD 4, P. 2 – the STJ quotes part of the decision produced by the state Court of justice, which attributes the responsibility of choosing the best treatment to the assisting doctor and denies the possibility of replacing the prescribed medication by a corresponding or similar one, as claimed by the appellee.

O Tribunal a quo, portanto, analisou o feito com base no substrato fático–probatório dos autos, no sentido de que o medicamento pleiteado pelo paciente é imprescindível ao seu tratamento, em atendimento à peculiaridade do caso, gravidade do quadro e do **relatório elaborado por profissional habilitado que acompanha o tratamento do paciente e, portanto, conhecedor do quadro clínico.**

Therefore, the state Court analysed the claim based on the evidence within the lawsuit, in the sense that the medication required by the patient is indispensable to his treatment, attending the specificity and the severity of the case, and the ***official report produced by a licensed professional, therefore, someone who knows the claimant's clinical history****.*

AD 4, P. 3 – the STJ cites part of the decision produced by the state Court of justice, claiming the indispensability of the medication to the treatment of the social actor who had been diagnosed with ADHD, in view of the report produced by his assisting doctor.

Ademais, este Sodalício possui entendimento assentado no sentido da obrigatoriedade do fornecimento pelo Estado de medicamento, ainda que não presente na listagem do SUS, **em razão da comprovação de sua imprescindibilidade ao paciente**.

Moreover, this Court understands that the State is obligated to provide the medication, even when it is not within an official State protocol, ***when its indispensability to the patient has been proved.***

AD 4, P. 3 – the STJ cites part of the decision produced by the state Court, claiming for the obligation of the State to provide the medication when its indispensability is proven.

Again, legitimation in AD 4 is constructed through authorization. In that sense, the STJ attributes the responsibility of choosing the best treatment to the person diagnosed with ADHD to the assisting doctor responsible for diagnosing him. The reports produced by the assisting doctor were the only institutional/official documents taken into consideration to the evaluation of the claim for a psychopharmaceutical. As in the previous appellate decisions, social actors belonging to a multidisciplinary staff from CAPS were not consulted.

Legitimation is constructed by attributing to the assisting doctor the responsibility for the decision about the treatment and medicines (i.e. "*THE CHOICE OF THE TREATMENT AND MEDICATIONS IS UNDER THE RESPONSIBILITY OF THE DOCTOR WHO ASSISTS THE PATIENT", "the decision of changing the treatment has to be taken by the doctor who assists her",* and *"The doctor should decide the medication and the indication, observing which medications are specific to the patient")*, combined with a positive evaluation that considers him a licensed professional who knows the social actor's clinical history *(i.e. "the official report produced by a licensed professional, therefore, someone who knows the claimant's clinical history").*

Legitimation is also constructed in terms of the indispensability of the psychopharmaceutical (i.e. "*the State is obligated to provide the medication when its indispensability to the patient has been proved"* and *"the medication required by the patient is indispensable to his treatment").* The argument of indispensability, in its turn, is supported by the prescription provided by the assisting doctor, who diagnosed the social actor as suffering from ADHD. Therefore, the understanding of the judge is that, once prescribed by a medical professional, the psychopharmaceutical is indispensable, characterizing legitimation through authorization, relying on a single expert authority.

4.2.5. Appellate Decision 5 *(AD 5)*

Summary of the appellate decision

This is a decision produced by the STJ involving ADHD and a rape crime. I decided to include this and the next appellate decision (AD 6) in my data since they have been produced within the time frame used for this study (appellate decisions produced between 2015 and 2017), and since they illustrate possible implications in relation to the diagnosis of ADHD, combined (or not) with the use of psychopharmaceuticals. The following table presents a summary of the appellate decision 5:

TABLE 11 – SUMMARY OF APPELLATE DECISION 5

Date: October, 10th 2015.	appellate decision produced by the *Superior Tribunal de Justiça* in a rape case.
Appellant	*Minas Gerais Public Prosecution Service (*Ministério Público do Estado de Minas Gerais)
Arguments supporting the appellate	The MP argues that evidence in relation to the manipulation of the victim's genitals is enough to incriminate the defendant for the crime of rape, based on article 217–A from the Penal Code.
Decision	The appeal was rejected and the STJ maintained the acquittal of the defendant, taking into consideration the defendant's testimony denying the accusation, and the narratives produced by the witnesses in relation to the victim's sexual behavior and mental health.

In sum, the two main parties involved in this appellate decision are "F.E.C", hereafter mentioned as the accused, and "D", hereafter mentioned as the victim. The accused was charged of raping a seven-year-old girl. The first judicial decision acquitted him, and the Public Prosecution Service appealed that decision. The state Court also declared him innocent, resulting in a second appeal by the MP. In this case, the MP claimed that there was evidence of sexual abuse perpetrated by the accused. However, the STJ, as the analysis suggests, had a different understanding in relation to the case, maintaining the acquittal of the accused – as the first and second degree Courts had done.

The analysis of AD 5 will be divided in a different way from the previous ones. I will not focus on how the social actor diagnosed with ADHD is represented, but rather on how legitimation has been constructed by the judge throughout the appeal to justify his decision. In that sense, I will present, first, the narratives produced by the accused to the police inquiry (the stage before the judgement by the 1st instance

Court) and in the judicial interrogation done by the 1st degree Court, combined with a transitivity analysis aiming to describe how social action is recontextualized by the accused in these narratives.

Second, I will present the narratives produced by the witnesses involved in the case. These are both lay or expert witnesses, which are called to testify about the victim, her state of mind/mental health and her sexual behavior. I will not provide narratives produced by the witnesses about the accused because these are non-existent.

Third, I will present the narratives produced by the victim herself in the police inquiry and her judicial testimony, also combined with a transitivity analysis aiming to describe how social action has been recontextualized by her in these narratives. The combination of these three narratives will provide a sense of how legitimation was constructed in AD 5, especially in terms of how social action has been recontextualized by the parties involved and how the identity of the victim has been represented.

Legitimation in AD 5

The following passages precede the decision of the minister judging the appeal. They are divided in three main parts: the recontextualization of the narratives produced by the defendant; the narratives produced by the witnesses involved in the case; and the narratives produced by the victim. These narratives were retrieved by the STJ from the first decision produced by the first instance judge, and were included as part of the legitimation of the decision taken by the STJ.

I am interested in describing how legitimation has been constructed through the recontextualization of social action and representation of social identities. Therefore, I will predominantly rely on transitivity to analyse the narratives produced by the social actors involved in the case, in order to have a general view of the positions they and other social actors occupy in the social practice being recontextualized/represented.

Recontextualization of the narrative produced by F E C, during the police inquiry, reporting the events

The following example presents the recontextualization of the narrative produced by F.E.C. during the police inquiry. Translations for

the parts chosen for the analysis will be provided throughout the analysis:

> Durante o inquérito–policial, o réu negou veementemente a prática do crime. Asseverou que no dia dos fatos estava muito cansado e dormiu na casa de J., mãe da vítima, após o que foi acordado por ela enquanto o pedia para deixar a residência. Disse, então, que obedeceu ao pedido e, no outro dia foi surpreendido por policiais
> militares, que lhe informaram da acusação de estupro (fls. 08/08 verso).
>
> *During the police inquiry, **the accused vehemently denied** practicing the crime of rape. He asserted that on the day of the facts, he was very tired and slept at J.'s home, the victim's mother, and later on he **was woken up** by her [J.] asking him to leave the house. Then, **he claimed to have obeyed** her request and the next day he was surprised by military police officers, who informed him about the accusation of rape.*

AD 5, P. 6 – the STJ cites the narrative produced by the accused during the police inquiry.

The following table presents an analysis of how social action was recontextualized by the judge and by the accused in the narrative he produced during the police inquiry:

TABLE 12 – TRANSITIVITY ANALYSIS IN AD 5

Textual representation	Text description
Durante o inquérito–policial, **o réu negou veementemente** a prática "do crime *During the police inquiry,* **the accused vehemently denied** *practicing the crime of rape*	F E C is activated in relation to the verbal process "denied", combined with a modalizing adverb (vehemently), to which the verbiage is "the practice of rape".

Asseverou que no dia dos fatos **estava muito cansado e dormiu** na casa de J., mãe da vítima *He asserted that on the day of the facts, he was very tired and slept at J.'s home, the victim's mother*	F E C is activated in relation to the verbal process "claimed", for which the verbiage is another clause in which he is activated in relation to the relational process "was", combined with a state of mind "tired", functioning as a justification for the next mental process, "slept".
após o que **foi acordado** por ela enquanto **o pedia** para deixar a residência. *later on he **was woken up** by her [J.] asking him to leave the house*	F E C is passivated in relation to a material process performed by J. (D.'s mother), "woken up", followed by a clause in which J. is activated in relation to a verbal process for which the verbiage as a request for F E C to leave the house.
Disse, então, que **obedeceu** ao pedido *Then, **he claimed to have obeyed** her request*	F E C is activated in verbal and mental processes (*claimed* and *obeyed*, respectively), arguing he left the house.
no outro dia **foi surpreendido** por policiais militares, que **lhe informaram** da acusação de estupro *the next day **he was surprised** by military police officers, who **informed him** about the rape charge*	F E C is passivated in relation to a material ("surprised") and a verbal process ("informed"), both performed by the military police officers.

In sum, the recontextualization of the narrative produced by the accused during the police inquiry activates and passivates him in

relation to different types of processes. He is activated in verbal processes, as for instance *"denied*" and *"asserted"*, which express denial in relation to the versions produced by the victim and her mother and a ratification in relation to the versions produced by himself; in mental processes, as for instance *"obeyed"* and *"slept"*, which express obedience in relation to the victim's mother and, therefore, produce a narrative of passivity and not a narrative of activity. In that sense, for instance, he has not been activated in any material process, expressing the idea that he did not perform any material action that day in relation to the victim.

The accused has also been passivated in relation to the police officers, as for instance *"was surprised"* and *"informed him*", expressing the idea that he was not expecting to be accused of rape. He has also been passivated in relation to J., the victim's mother, as for instance in *"was woken up"*, which, when combined with the absence of material processes in which he was activated, reinforce the idea that he was doing nothing but sleeping in the occasion – since this could justify the lack of actions in the recontextualized narrative.

Recontextualization of the narrative produced by F E C, during the judicial testimony, reporting the events

The following example presents the recontextualization of the narrative produced by F.E.C. in his judicial testimony. Translations for the parts chosen will be provided throughout the analysis:

"J. convidou o declarante para dormir em sua casa; que concordou e ao entrar na casa imediatamente sentou–se no sofá e ficou assistindo televisão e J. foi tentar fazer D. dormir; que J. em dado momento retornou e disse que estava difícil da criança dormir; que J. foi para a cozinha e o depoente a acompanhou e, inclusive, deu–lhe um beijo na boca; que ouviram a criança saindo do quarto chamando pela mãe; que, então, o depoente sentou–se novamente no sofá e a mãe, mais uma vez, foi tentar fazer a criança dormir; que, então, a mãe disse para o depoente aguardar deitado na cama, enquanto iria tomar um banho; que o depoente, então, deitou–se na cama de J., inclusive, sem tirar o tênis que usava (...); que pegou no sono e foi acordado por J. lhe dizendo que sua filha não iria dormir, que era melhor ele ir embora; que, então, foi para a casa de l. (...); que foi acordado pela polícia lhe dizendo que

estava sendo acusado de estupro (...); que já havia ficado com a J., mãe da vítima, mas nada além de beijos; que não sabe porque está sendo acusado (...)".

AD 5, P. 3 – the STJ cites the testimony given by the accused during the judicial interrogation.

The following table presents an analysis of how social action was recontextualized by the judge and by the accused based on his testimony during the judicial interrogation:

TABLE 13 – TRANSITIVITY ANALYSIS IN AD 5

Textual representation	Text description
No interrogatório judicial, ***o réu manteve sua versão dos fatos***, ***narrando–a de maneira firme*** e estreme de dúvidas *During the judicial interrogation,* ***the accused kept the same version of the facts, narrating them in a firm style*** *and lacking doubts*	F E C is activated in a mental process (kept) and a verbal process (narrating), combined with an appraisement which positively describes his narration as "consistent" and "lacking doubts".
Aduziu que a vítima estava bastante inquieta ***[He] claimed*** *that the victim was very restless*	F E C is activated in a verbal process (claimed) whose verbiage was an appraisement in relation to the victim's behavior, combined with an intensity adverb (very).

esclareceu com riqueza de detalhes que ***J. convidou o declarante*** para dormir em sua casa; que ***concordou*** ***He clarified*** *in a rich and detailed narrative that* ***J. had invited him*** *to sleep over; that* ***he agreed***	F E C is activated in a verbal process (clarified) combined with an appraisement positively evaluating his narrative as "rich in details". F E C is also passivated in relation to a material process performed by J. (invited), attributing to her the responsibility for inviting him to sleep over. F E C is then activated in relation to a mental/verbal process (agreed) related to the invitation made by J.
ao ***entrar*** na casa imediatamente ***sentou–se*** no sofá e ***ficou assistindo*** televisão *when* ***he got into the house****,* ***he immediately sat*** *at the couch and* ***kept watching TV***	F E C is activated in two material processes, one denoting movement and the other one not (got in the house and sat on the couch, respectively). F E C is also activated in a mental process (kept watching TV).
J. foi para a cozinha e ***o depoente a acompanhou*** e, inclusive, ***deu–lhe um beijo*** na boca *J. went to the kitchen and* ***he followed her****, he even* ***kissed her*** *on the mouth*	F E C is activated in two material processes whose goals were J. (followed and kissed).
ouviram a criança saindo do quarto chamando pela mãe ***they heard*** *the child leaving the room and calling her mother*	F E C is activated as a senser in a mental process (heard) whose phenomenon was a call made by D., who was leaving the room.

o depoente sentou–se novamente no sofá ***the accused sat*** *on the couch again*	F E C is activated in a material process (sat) combined with a modalizing adverb (again).
a mãe disse para o depoente aguardar deitado na cama ***the mother told him to wait*** *on her bed*	F E C is passivated as the receiver of a verbal process performed by J., who told him to lay on her bed and wait.
o depoente, então, deitou–se na cama de J., inclusive, sem tirar o tênis que usava ***the accused, then, laid*** *on J.'s bed,* ***without even taking off*** *his shoes*	F E C is activated in a material process (laid) whose circumstance is that he kept his clothes on, including his shoes.
que ***pegou no sono e foi acordado por J. lhe dizendo*** que sua filha não iria dormir *that* ***he fell asleep and was woken up by J. telling him*** *that her daughter was not going to sleep*	F E C is activated in a behavioural process (fell asleep) and passivated in a material process (got woken up) performed by J., who said her daughter was not going to sleep.
foi acordado ***pela polícia lhe dizendo que estava sendo acusado*** de estupro ***he was woken up by the police*** *claiming he was being accused of rape*	F E C is passivated as the goal of a material process (got woken up) and the receiver of a verbal process (telling), both performed by police officers who told him he was being accused of rape.
que já ***havia ficado com a J.***, mãe da vítima *that* ***he had dated J****., the victim's mother*	F E C is activated in a material process (dated) whose goal is J., combined with a modalization (had already + dated).

que ***não sabe*** porque está sendo acusado (...) *that **he does not know** why he is being accused*	F E C is activated in a mental process combined with a negative pre–modifier (doesn't know).

In the recontextualization of the narrative produced in the first instance Court, the accused is, again, activated and passivated in relation to different types of processes. He is predominantly activated in verbal processes combined with verbiages that denote the coherence/similarity between his testimony at the Court and the one produced during the police inquiry (i.e. *"kept the same version of facts", "narrating it in a firm style").* He is also activated in a material process (i.e. *"laid on J.'s bed"*), immediately followed by the behavioural process *"fell asleep"*, denoting that in between laying on her bed and sleeping he did not perform any other action. Moreover, he is activated in the mental process *"know"* combined with a negative pre–modifier, which expresses the idea of surprise in relation to the accusation of rape – similar to the narrative produced during the police inquiry. Finally, when activated in material processes, these represented social actions addressing just J., the victim's mother – and never the victim herself.

These choices represent a contrast between the recontextualization of the narratives produced by the accused and the narratives produced by the victim. If on the one hand the narratives produced by and about the victim are considered inconsistent by the judge (as I will argue and demonstrate in the next analytical sections) and portray the victim's action in relation to sex–related material processes, on the other hand the narratives produced by the accused are considered as having a *"firm style"* and lacking any type of sex–related social actions.

The following examples present the recontextualization of the narratives produced by the witnesses involved in AD 5. In this case, there is the presence of expert witnesses – as for instance psychologists and social workers, responsible for producing social and psychological reports in relation to the victim –, and also the presence of civil witnesses who had social relations with the victim.

Recontextualization of the narratives produced by the witnesses in AD5

o Laudo de fls. 92/93 não constatou a presença de sêmen no material biológico que foi extraído da vítima e enviado para análise. Da mesma forma, o Exame de Corpo de Delito, acostado às fls. 89–91, concluiu pela "integridade himenal" ressaltando que "não houve conjunção carnal", e que **havia, apenas, indícios de "manipulação da genitália" da menor** *the official report on pages 92/93 did not observe the present of semen on the biological material collected from the victim and sent to analysis. The forensic (medical) examination, on pages 89–91, indicated "hymenal integrity", reinforcing that "there has not been sexual intercourse" and that* ***there was only evidence of manipulation of the victim's genitalia***

AD 5, p. 5 – the judge cites the analysis of biological material collected from the victim and the results of the forensic (medical) examination.

a testemunha E. D., ao ser ouvida perante este juízo, destacou que não presenciou os fatos narrados na denúncia, mas que **a vítima D.M.P.C.B.M. possui "humor instável" e apresenta "comportamento incompatível com sua idade; que a criança demonstrava interesse quanto ao assunto de sexualidade"**. No mais, **disse que "a vítima costumava se aproximar e encostar no noivo da filha da depoente"** (fls. 478/479) *the witness E. D., when heard by the Court, claimed that she was not present during the events, but that* ***the victim D.M.P.C.B.M. has an "unstable mood" and presents "sexual behavior incompatible with her age; that the child demonstrated interest in relation to sexuality". Moreover, she claimed that "the victim used to get close and touch the witness' son–in–law***

AD 5, p. 5 – the judge quotes the witness "E.D", who produced a narrative about the victim's social behavior and hypothetical sexual precocity.

Essa mesma testemunha, aliás, "**questionada se presenciou algum *comportamento sexual inadequado por parte da vítima* disse que *a***

vítima já tentou abaixar as calças de seu filho para ver seu órgão sexual; que seu filho à época tinha 13 anos, que já ouviu dizer que isso já aconteceu com um amigo de seu filho de nome G." (fls1
478). Tal informação denota certa precocidade sexual, que se refletia também em características físicas da vítima, conforme atestado no estudo social e psicológico de fls. 337/339. ***Esse interesse por questões sexuais, aliado ao transtorno de déficit de atenção e hiperatividade ao uso de medicação controlada (...) impede que sua versão seja utilizada como prova segura para a condenação***. É possível que o réu a tenha molestado sexualmente, mas também é possível que seja inocente, e, havendo dúvida, deve ser mantida a sentença absolutória

*The same witness, when "**asked if she ever saw any inadequate sexual behavior performed by the victim, said that the victim had already tried to take down her son's trousers to see his genitals**; that her son was 13 years old by that time, and that she heard that the same had happened with her son's friend, named G." (pp.478). Such information denotes a certain precocity of the victim, which was also reflected on her physical characteristics, according to the social and psychological report (pp. 337–339). **This interest in sexual issues, combined with the attention deficit and hyperactivity disorder and with the use of psychopharmaceuticals (...) prevents the victim's version from being used as safe evidence to a conviction. The accused** might have sexually assaulted her, but he might also be innocent. In view of these doubts, he should not be convicted.*

AD 5, P. 7 – the judge cites the testimony of witness "E. D." and the social and psychological report, both narratives related to the character of the victim and her social/sexual behavior.

Os militares K. B. (fls. 117) e P. R. (fls. 118), ouvidos em juízo, relataram a abordagem e prisão do réu. K. disse, também, que alguma coisa poderia ter acontecido com a vítima, mas que durante a conversa que manteve com a mesma, **ela se mostrava, em determinados momentos, bastante ansiosa, além de aparentar certo grau de "bipolaridade".**

The military police officers K. B (p. 117) and P. R. (p. 118), when called as witnesses by the Court, reported the approach and arrest of the accused. Moreover, K. said something might have happened with the victim, but while he was talking to her, ***she seemed to be, at times, too anxious, in addition to apparently having a certain level of "bipolarity"***

AD 5, p. 5 – the judge cites the narrative produced by the military police officers who first received the report of rape.

o Estudo Social e Psicológico da vítima, constante às fls. 337–339, concluiu que: "durante as entrevistas realizadas, observamos que a ***criança apresentou–se inquieta, ansiosa e tensa***. Na aparência física de D. ***destaca–se uma certa precocidade na emergência dos caracteres secundários femininos, o que pode estar associado à experiência de intensa estimulação sexual*** (...) D. apresenta quadro de hiperatividade, evidenciando–se a presença de ansiedade em seu comportamento"

The social and psychological investigation on pages 337–339 has concluded that: "during the interviews [with the victim], we observed that ***the child was restless, anxious and tense.*** *On D.'s physical appearance,* ***we emphasise a certain precocious emergence of feminine secondary traits, which might be associated to intense sexual stimulation[40].*** *D. has been diagnosed with hyperactivity, which*

[40] It is worth noticing that the social and psychological investigation associated the emergence of feminine secondary traits to a possible intense sexual stimulation only. The investigation did not mention, for instance, the possibility of the victim being a person with precocious puberty, a diagnosis presented in the International Statistical Classification of Diseases and Related Health Problems (ICD-10). According to the ICD-10 (WHO, 2015), precocious puberty is "a disorder characterized by unusually early development of secondary sexual

puts in evidence her anxious behavior.

AD 5, p. 5 – the judge cites the narrative produced by the social and psychological investigation.

A vítima apresenta transtorno de déficit de atenção e hiperatividade, fazendo uso de medicamentos (ritalina, haloperidol e fluoxetina) cuja interação pode desencadear reações psicóticas (laudo de fls 438/459).

The victim has been diagnosed with attention deficit and hyperactivity disorder, *making use of medication (ritalin, haloperidol and fluoxetine), whose interaction might cause psychotic reactions.*

AD 5, p. 6 – the judge cites a report attached to the lawsuit with no specification in relation to the kind of expert who produced it, in which the victim is diagnosed with attention deficit and hyperactivity disorder, in addition to attesting that she is regularly making use of ritalin, haloperidol and fluoxetine.

Como se percebe, **as provas, in casu, baseiam–se apenas nas declarações da vítima e de sua mãe**, e em que pese a importância daquelas, deve–se agir com a máxima cautela ao analisá–las, sobretudo se considerarmos o teor do Exame de Corpo de Delito (fls.89–91), do Laudo de fls. 92/93 e do Estudo Social e Psicológico da vítima (fls. 337–339).

As it is possible to notice, ***the evidence so far is based on the declarations of the victim's and the victim's mother****, and in spite of the importance of these, we should act with the utmost caution in analysing them, mainly if we take into consideration the forensic (medical) report (pp. 89–91), the official report on pages 92/93 and the victim's social and psychological investigation.*

AD 5, p. 5 – the judge cites the forensic report, an unspecified report, and the social and psychological investigation as support to the accused's version of the facts.

features; the onset of sexual maturation begins usually before age 8 for girls and before age 9 for boys". Moreover, the causes leading to the development of precocious puberty are not well defined. However, it is worth mentioning that none of the listed possible causes (e.g. abnormalities in the nervous system, genetic syndromes) are related to sexual practices.

A Corte a quo, mantendo o decreto absolutório, assim se manifestou (fls. 801/803): Primeiramente, **o laudo pericial realizado na vítima, no dia dos fatos, não atestou conjunção carnal, constatando a integridade do hímen (fls. 89/91). Também não restou comprovada a ocorrência do coito anal ou da introdução do dedo no ânus da vítima, haja vista que durante o exame foi percebido pregas anais íntegras, sem lesões macroscópicas evidenciáveis"** (fls. 90). Vale destacar, ainda, que segundo os Peritos, a vítima, teria relatado que "percebeu secreção que saiu do pênis do F. e essa tocou sua 'popoca'"(fls 89). Contudo, ao procederem pesquisa de esperma nas vestes da criança, o resultado deu negativo (fls. 92). Sexo oral, apalpadelas e beijo na boca não deixam vestígios, mas considerando que os fatos mais graves imputados não restaram comprovados, seria temerário condenar o acusado com base na versão da vítima

The first instance Court, in keeping the acquittal, has thus declared (pp. 801–803): First, ***the forensic report has not attested sexual intercourse, confirming the integrity of the victim's hymen (pp. 89–91). The occurrence of anal intercourse has not been proved either, since the expert report also observed the integrity of the victim's anal folds, without visible macroscopic injuries".*** *Moreover, it is worth highlighting that, according to the expert witnesses, the victim reported "having observed secretion from F.'s penis which touched her 'wee wee'" (p. 89). However, in looking for sperm in the victim's clothes, the result was negative (p. 92). Oral sex, fondling and kisses do not leave traces, but considering that the most significant facts were not proved, it would be reckless to condemn the accused based on the victim's version*

AD 5, P. 6 – the STJ cites the justification of the state Court to maintain the accused's acquittal.

In the previous passages retrieved from AD 5, the victim is predominantly activated in relational processes produced by the witnesses, creating an image of her identity. For instance, she is activated in relation to the processes *"the victim has an 'unstable mood'"*, *"the child presents 'sexual behavior incompatible with her age'"*, "*she seemed to be, at times, too anxious"* and *"in addition to apparently having a certain level of 'bipolarity'"*. Moreover, it is worth noticing that the evaluation done by the police officers emphasizes

psychosocial aspects of the victim's identity, in spite of their lack of expertise to make such type of evaluation.

Relational processes have the function of attributing qualities to social actors (Heberle, 2018). In the case of AD 5, the relational processes attributed to the victim are combined with negative moral evaluations, therefore attributing to her negative qualities related to her mood, personality and sexuality. In spite of being only 7 years old when her mother reported the rape, she is represented in the discourses of the witnesses as someone with an inadequate sexual behavior and mood fluctuation.

Moreover, the social investigation of the victim refers to her in terms of her physical characteristics. In that sense, the social report claims that the victim "*[presents] a certain precocity in the emergence of feminine secondary characteristics*", which *"might be associated to the experience of intense sexual stimulation"*. In terms of Van Leeuwen's framework to analyse the representation of social actors, the victim has been referred in terms of her physical characteristics, therefore through physical identification. Moreover, the diagnosis of ADHD, aligned with this characterization of the victim by the witnesses, allows the judge to associate hyperactivity with a hypothetical early interest in sex–related practices, as for instance when he claims:

> *Such information denotes a certain precocity of the victim, which was also reflected on her physical characteristics, according to the official report produced on her social and psychological investigation (pp. 337–339).* ***This interest in sexual issues, combined with the attention deficit and hyperactivity disorder and with the use of psychopharmaceuticals (...) prevents the victim's version from being used as safe evidence to convict the accused*** *(AD. 5, p. 7).*

Therefore, legitimation in these passages has been constructed through two main strategies: first, through moral evaluation and the character assassination of the victim, that is, through the recontextualization of accounts produced by the witnesses with a prominence of relational processes combined with negative moral evaluations associated to the victim; and second, through authority, since the diagnosis of ADHD, confirmed by a health professional and the use of Ritalin that the professional prescribed, were used to

delegitimize the accounts produced by the victim and to reinforce the narratives produced by the witnesses about her sexuality and instability.

Recontextualization of the narrative produced by the victim, during the police inquiry, describing the events

a vítima D.M.P.C.B.M. relatou, em sede policial, que tinha contato constante com o acusado, e que, em certa feita, enquanto estavam sozinhos, **o réu haveria lhe beijado, compelindo–a a ter conjunção carnal e praticar atos libidinosos**.

*the victim D.M.P.C.B.M. claimed, at the police station, that she had constant contact with the accused and that, once, when they were alone, **he is said to have kissed her, forcing her to have sexual intercourse and practice lascivious acts.***

AD 5, P. 3 – the STJ cites part of the narrative produced by the victim during the police inquiry, in which she attributes certain actions to the accused.

A menor narrou que:
"nesta noite, **estava em uma festa** na casa de seu vizinho **e depois foi embora junto com sua mãe, seu irmão M. e F**.; que M. ficou no computador no quarto dele e a mãe da informante foi para a cozinha fazer café; que quando a mãe dela saiu, **F. levantou da cama e ficou em pé; que F. abriu a calça e abaixou ela um pouco e ficou mexendo no "pinto" (...) e ele falou "vem gostosa me beijar"; que F. deitou na cama perto da informante e ele a beijou com a língua e passou a mão no peito dela (...) que F. enfiou o pinto dentro da boca da informante e ficou mexendo enquanto a informante chupava; que depois Fabrício chupou a "popoca"[41] dela (...) que quando F. estava chupando a "popoca" ele começou a enfiar o dedo no "lugar do cocô"; que depois de chupar a informante, F. colocou o pinto na "popoca e depois me virou e colocou atrás também"** (...)" (fls. 07/07verso).

The minor declared that:

[41] *"Popoca"* is a childish way to refer to the word "*vagina*", in Portuguese. In the English version, I decided to use the word "*wee wee"* to produce the same semantic effect.

"that night, ***she had been to a party*** *at her neighbor's house and then* ***she left with her mother****, her brother M. and F.; that M. was at the computer in his bedroom and her mother went to the kitchen to prepare some coffee; when her mother left [the room],* ***F. stood up; that F. opened his trousers and kept touching his "penis" (...) and then he said "come kiss me"; that F. laid close to her on the bed and kissed her using his tongue and grabbed her breasts (...) that F. introduced his penis inside her mouth and kept touching it while she sucked it; that later Fabrício licked her "wee wee" (...) that when F. was licking her "wee wee" he started to finger her "bottom"; that after licking the victim, F. introduced his penis in her "wee wee" and then turned her around and introduced it behind too"*** *(...)" (p. 07).*

AD 5, P. 3 – STJ cites part of the narrative produced by the victim during the police inquiry, in which she attributes certain actions to the accused.

A informante J., mãe da ofendida, estava no local dos fatos, em tese, praticados pelo réu. Quando indagada pela autoridade policial, destacou que, naquela ocasião, deixou a vítima a sós com o acusado enquanto tomava banho. Disse, ainda, que momentos depois **sua filha lhe chamou, contando que o denunciado "estava mexendo em suas pernas fazendo carícias como se estivesse querendo um relacionamento mais íntimo"** (fls. 07/07verso).

The informant J., the mother of the offended, was at the place where, hypothetically, the crimes took place. When questioned by the police, she reinforced that, in the occasion, she left the victim alone with the accused while she was taking a shower. Moreover, she said that ***her daughter called her afterwards, claiming that the accused "was touching her legs as if he intended to have a more intimate relationship"*** *(p. 07).*

AD 5, P. 4 – the STJ cites part of the narrative produced by the victim's mother during the police inquiry, in which she reports what her daughter told her about the actions performed by the accused.

Perante a 4a Vara Criminal da Comarca de Santarém/PA, Juliana confirmou suas declarações, relatando que chamou o réu para dormir em sua residência e esclarecendo que: **"o réu se deitou na cama da informante e a vítima permaneceu na sua cama, no mesmo quarto**; que enquanto tomava banho a informante não ouviu nada anormal; que

ao terminar o banho retornou para o quarto, apanhou uma peça de roupa e se dirigiu novamente para o banheiro para se vestir, tendo percebido **(que sua filha) continuava em sua cama e o réu permanecia na cama da informante**, como se estivesse cochilando; que pediu para o réu ir para a sala pois iria fazer a vítima dormir; que o réu foi para a sala; que **a informante, deitada na cama, dormiu logo; que acordou com a voz da vítima dizendo que o réu se encontrava no quarto; que ao acordar a informante, deparou–se com o réu agachado ao pé da cama, beijando o pé da informante**; que a informante ficou sem entender aquilo; que a informante disse para o réu ir embora indiretamente; que **todos voltaram para a sala**; que a informante foi lavar a louça e fazer café **enquanto o réu cuidava da vítima na sala; que o réu disse que iria levar a vítima para o quarto e fazê–la dormir, tendo a informante permitido**; que a informante percebeu um silêncio, tendo inclusive pensado que a vítima já tinha dormido; que em meio ao silêncio ouviu um barulho estranho no quarto; que ao adentrar no quarto **deparou–se com a vítima subindo a calcinha, deitada em sua própria cama, e o réu estava deitado na cama da informante**; que ficou assustada; que perguntou à vítima o que havia ocorrido; que **a vítima disse que o réu havia lhe tirado a calcinha**; que o réu fingia que estava dormindo; que mandou o réu voltar para a casa de sua prima (...); que passou a conversar com a vítima sobre o fato; que **a vítima disse que estava doendo o "local que sai cocô"[42] dizendo que o réu tinha colocado o dedo; que a vítima disse que o réu tentou colocar o "piu piu"[43] na "popoca" dela e estava doendo e ardendo** (...)" (Declarações da informante, fls. 292/293).

*Juliana confirmed her testimony given to the Judicial District of Santarém/PA, reporting that she invited the accused to sleep at her house, and ratifying: that **"the accused laid on her bed and the victim stayed on her own bed, in the same room;** that while she was taking a shower, she did not hear anything unusual; that when she got out of the*

[42] "*local que sai cocô"* and "*bumbum*" are childish ways to refer to the word "anus", in Portuguese. In the English version, I decided to use the word "*bottom*" to produce the same semantic effect.

[43] "*piu piu"* is a childish way to refer to the word "penis", in Portuguese. In the English version, I decided to use the word "*pee pee"* to produce the same semantic effect.

shower she returned to the room, grabbed her clothes and went back to the bathroom to get dressed, when she realized ***(that her daughter) was still on her own bed, while the accused was on J's bed, apparently napping****; that she asked the accused to move to the living room since she would put her daughter to sleep;* ***that laying on her bed, J. fell asleep; that she woke up with the voice of the victim, saying the accused was inside the room; that when she woke up, she realized that the accused was kneeling down, kissing her feet****; that she did not understand what was going on and indirectly asked him to leave; that* ***everyone went back to the living room****; that she went to the kitchen to wash the dishes and prepare some coffee while* ***the accused was looking after the victim in the living room; that the accused said he would take the victim to the the room to put her to sleep;*** *that she noticed all was silent, and she thought the victim had fallen asleep; that* ***when she entered the room, the victim was lying on her own bed, putting up her underwear, and the accused was lying on J's bed****; that she was surprised;* ***that she asked the victim what had happened; that the victim answered that the accused had taken off her underwear; that the accused was pretending to sleep****; that she told the accused to go back to her cousin's house (...); that she started talking to the victim about the facts; that* ***the victim told her that her "bottom" was hurt and that the accused had put his finger in it; that the victim said the accused tried to introduce his "pee pee" into her "wee wee", which was hurting and burning*** *(...)" (J's testimony, pp. 292–293).*

AD 5, P. 4–5 – the STJ cites part of the narrative produced by the victim's mother during the police inquiry, in which she reports her own actions, in addition to what her daughter told her about the actions performed by the accused.

In the narrative produced by the victim during the police inquiry, notice that she has predominantly activated the accused in sex–related material processes whose goals were constantly herself. Therefore, different from the vision that the accused presented when questioned by the police and by the judge, which lacked sex–related material processes, in the version presented by the victim and her mother the accused sexually assaulted the victim. The following passages, in which the victim is directly quoted, illustrate this difference: *"F. stood up; F. opened his trousers and kept touching his penis", "F. laid close to her on the bed and kissed her using his tongue and grabbed her breasts", "F. introduced his penis inside her mouth*

and kept touching it", and *"F. started to introduce his finger in her bottom"*. Notice, however, that in spite of being in quotation marks, the victim's words are presented not as a first-person narrative with the pronoun 'I', but with the pronoun "her", which suggests that she is not being directly quoted, but rather that her narrative is being reconstructed.

However, when out of quotation marks, the recontextualization of her narrative by the judge is modalized through the use of the modal verb *"haveria/is said to have"*, suggesting that the facts she narrated might not have happened: *"o réu haveria lhe beijado, compelindo–a a ter conjunção carnal e praticar atos libidinosos" (the accused is said to have kissed her, forcing her to have sexual intercourse and practice lascivious acts).*

Different from the evaluation made by the judge in STJ in relation to the narratives produced by the accused, the following passages show how the evaluation of the narratives produced by the victim considers them inconsistent in relation to one another. One of the reasons presented by the judge as justification for this inconsistency is, as mentioned before, the fact that the victim had been diagnosed with ADHD and, because she was making regular use of Ritalin, she might have had a psychotic episode, or, in other words, a hallucination.

Recontextualization of the victim's testimony in Court

Ao ser ouvida em juízo, ***a ofendida apresentou versão menos detalhada*** que a anterior, ***salientando que o acusado haveria lhe mostrado sua genitália e, que, em seguida, a encostou em seu corpo.***

When heard in Court, ***the offended presented a less detailed version in relation to the previous one, reinforcing that the accused is said to have shown her his genitalia, and afterwards, touched her body with it.***

AD 5, P. 4 – the STJ cites the version presented by the victim in Court, in which she attributes actions to the accused.

Confira–se:
"(...) que ***sua mãe lhe disse que iria tomar banho; que ficou deitada no quarto; que já havia colocado sua roupa de dormir; que F. entrou no quarto e a beijou; que F. mostrou o pinto e mandou que ela***

mostrasse a sua "popoca"; que o F. encostou o pinto dele no "bumbum e na popoca"; que pediu para ele parar e ele não parou; que "ele continuou, continuou"; que quando F. encostou o pinto em seu bumbum doeu e na popoca não doeu; que quando sua mãe chegou ela bateu no F. e ele foi embora; que questionada se ***o acusado lhe beijou disse que sim; que questionada se o acusado lhe beijou com a língua disse que sim; questionada se ele beijou em algum outro lugar a depoente apontou as mãos para o peito*** (...) que ficou com a popoca machucada e que ele colocou o dedo no seu bumbum; que sua mãe não viu; ***disse que sua mãe saiu do banho foi trocar de roupa e escovar os dentes; que posteriormente disse que sua mãe viu o acusado deitado na cama ao lado da depoente encostando o pinto nela*** (...)" (Declarações da vítima, tis. 477).

Take into consideration:
"(...) that ***her mother told her she would take a shower; that she stayed in bed in her mother's bedroom; that she was wearing her nightdress; that F. came into the room and kissed her; that F. showed her his penis and told her to show her "wee wee"; that F. touched her "bottom and wee wee" with his penis; that she asked him to stop and he did not; that "he carried on, he carried on"; that when F. touched her bottom with his penis it hurt, and in her wee wee it did not hurt****; that when her mother came into the room, she punched F. and he left the house; that when she was asked if the accused had kissed her, she said yes; that* ***when questioned if the accused kissed her using his tongue, she said yes; that when asked if the accused kissed any other part of her body, she pointed with her hands to her chest*** *(...) that her wee wee was hurt and that he introduced his finger in her bottom; that* ***her mother did not see what had happened; she said that her mother had left the shower and was changing her clothes and brushing her hair; that later she said her mother saw the accused lying on her bed beside her, touching her with penis (...)*** *" (Victim's testimony, p. 477).*

AD 5, P. 4 – the STJ cites part of the victim's testimony in Court, in which she attributes actions to the accused.

In spite of the claim by the judge that the narrative produced by the victim in her testimony to the Court is less detailed than the one to the police, from a systemic functional perspective she managed to keep the same style through the use of sex–related material processes attributed to the accused, in which he performs as the actor and the

victim performs as the receiver of his actions. That can be seen in passages such as

> *F. came into the room and kissed her; that* ***F. showed his penis*** *and told her to show her "wee wee"; that* ***F. touched his penis on her "bottom and wee wee"****; that she asked him to stop and he did not; that* ***"he carried on, he carried on"; that when F. touched her bottom with his penis it hurt, and in her wee wee it did not hurt*** *(...) when* ***she was asked if the accused had kissed her, she said yes****; that* ***when questioned if the accused kissed her using his tongue, she said yes****; that* ***when asked if the accused kissed any other part of her body, she pointed with her hands to her chest*** *(...) and that* ***he introduced his finger in her bottom***

Moreover, there is, again, a predominant use of possessive adjective *"her"* when her speech is being reported. When the narrative produced by the victim is presented out of quotation marks, the judge relies on modalization through the use of the modal *"is said to"*, therefore creating a sense of doubt and uncertainty in relation to her version of the facts. That can be seen in the following passage:

> *the offended presented a less detailed version in relation to the previous one, reinforcing that the accused* ***is said to*** *have shown her his genitalia, and afterwards, touched her body with it.*

We should also take into consideration that a child does not have the same ability to organize past events in a chronological order like adults do. Moreover, despite the inconsistencies the judge saw in her narratives, the semantic effect of the material processes she chose does not vary significantly in the accounts of the events. In that sense, for instance, as a child she might not differentiate the semantic effects produced by the verbal choices (in Portuguese), "*colocou*" and "*encostou*" (put and touched, respectively). These two verbs might, in her way of making sense of the world as a child, have the same connotation.

Another central aspect to be taken into consideration is that the judge himself recognizes that there has been a manipulation of her genitalia – which has been the main argument supporting the appeal by the MP. Moreover, the judge contradicts himself when he claims, first, that the biological material collected from her body did not show any

signs of semen, and afterwards, that the material was not actually collected from her body, but from her clothes. The judge also assumes that actions such as *"kissing"* and *"touching"* do not leave traces that can be confirmed by an expert evaluation.

However, in view of the narratives produced by the witnesses, added to the fact that the victim was represented as ill, as the user of a psychopharmaceutical medication with potential psychotic side effects, and as someone with precocious sexual behaviors, combined with the absence of information about the sexual habits of the accused (an adult) and the absence of biological evidence of the accused's DNA on the victim's clothes, the judge decided to disclaim the victim's narrative and, consequently, her accusation. Therefore, ADHD in AD 5 plays a neuropolitical role, which is combined with a sexist narrative which denigrates the victim's character, presenting her as a sexually precocious and potentially untruthful seven-year old.

4.2.6. Appellate Decision 6 *(AD 6)*

Summary of the appellate decision

The following table presents a summary of the sixth appellate decision analysed. It involves an Habeas Corpus produced by São Paulo's Public Defender's Office claiming for the release of an adolescent who had been sentenced to prison by São Paulo's State Court after raping and murdering a girl. São Paulo's Public Defender's Office appealed the state Court decision, arguing that a multidisciplinary staff had already produced a report attesting that the teenager was fit to return to social life. The STJ denied the Habeas Corpus, arguing that the teenager should be submitted to a psychiatric examination to evaluate the possibility of releasing him, since he had been diagnosed with ADHD and, according to the judge from STJ, his diagnosis could represent a risk to society.

TABLE 14 – SUMMARY OF THE APPELLATE DECISION 6

Date: February, 22nd 2017.	appellate decision produced by the STJ determining that the accused, an adolescent charged with rape and feminicide, should remains in prison until a psychiatric examination evaluates whether he is able or not to return to social life.

Appellant	São Paulo's Public Defender's Office (*Defensoria Pública do Estado de São Paulo)*
Arguments supporting the appeal	São Paulo's Public Defender's Office claimed that a multidisciplinary staff had produced an official report arguing that the accused teenager was fit to return to social life, since he had accomplished all the objectives established by the Individual Plan of Assistance designed for him during his imprisonment.
Decision	the STJ maintained the previous decisions taken by the 1st and 2nd degree Courts, claiming that a psychiatric examination would be necessary to determine if the prosecuted was fit to return to social life, therefore dismissing the official report produced by the multidisciplinary staff favorable to the adolescent's release.

Legitimation in AD 6

The following passages support the analysis of how legitimation has been constructed in the appellate decision, leading the judge to maintain the prison sentence:

HABEAS CORPUS CONTRA DECISÃO QUE INDEFERIU PEDIDO LIMINAR NA ORIGEM. ECA. MEDIDA SOCIOEDUCATIVA DE INTERNAÇÃO (ESTUPRO DE VULNERÁVEL E LESÃO CORPORAL COM RESULTADO MORTE). PLEITO DE EXTINÇÃO. ***NECESSIDADE DE AVALIAÇÃO MÉDICA***.

HABEAS CORPUS AGAINST THE DECISION THAT DISMISSED THE PRELIMINARY INJUNCTION. SOCIAL INTEGRATION MEASURE OF INTERNMENT (RAPE OF MINOR AND GRAVE BODILY HARM RESULTING IN DEATH). EXTINCTION PLEA. ***NECESSITY OF MEDICAL EVALUATION.***

AD 6, P. 1 – the STJ reports the summary of the appellate decision, in which it claims the need for a medical evaluation.

os órgãos julgadores da Justiça Paulista indeferiram o pedido de extinção da excepcional medida privativa de liberdade (...) ***determinando a submissão do adolescente a perícia psiquiátrica***, cujo resultado até hoje não está nos autos.

São Paulo's judging institutions dismissed the plea of extinction of the social integration measure of internment (...) ***determining the submission of the adolescent to a psychiatric examination, whose results are not part of the lawsuit so far.***

AD 6, P. 3 – the STJ reports the justification presented by the State Court to determine the maintenance of the interment measure, claiming the absence of a psychiatric examination of the accused.

A proposta de Plano Individual de Atendimento e os relatórios de acompanhamento socioeducativo (todos em anexo) destacaram o bom desempenho do jovem com base nos objetivos traçados (...) "Sendo assim, avaliamos que o trabalho desenvolvido por esta equipe de referência junto ao adolescente foi positivo, bem como alcançou os objetivos da proposta pedagógica da medida socioeducativa. Frente ao descrito acima, S.M.J, ***somos favoráveis a extinção da medida socioeducativa conforme prevê o SINASE"***

The Individual Plan of Assistance's proposal and the reports of the

*social integration measure (attached) emphasized the teenager's positive performance, based on the objectives established (...) "Therefore, we evaluate that the work developed by this reference staff with the adolescent was positive, having reached the pedagogical objectives of the measure of social integration/interment. In view of that, S.M.J., **we are favorable to the extinction of the measure of social integration as established by the SINASE[44]"***

AD 6, P. 1 – the STJ presents a summary of the facts, including the production of an multidisciplinary official report in favor of the extinction of the internment measure.

a Defensoria Pública pugnou pela extinção da medida socioeducativa extrema, mas a douta Juíza de 1o Grau entendeu por bem indeferir o pedido de extinção da medida e ***determinar a realização de exame psiquiátrico.***

*the Public Defender's Office claimed for the extinction of the internment measure. However, the 1st degree judge decided to dismiss the claim and **request a psychiatric examination.***

AD 6, P. 1–2 – the STJ presents a summary of the facts, with two different positions on the case: the position assumed by the Public Defender's Office, favorable to the extinction of the internment measure; and the position assumed by the 1st degree judge, who dismissed the claim made by the Public Defender's Office and required a psychiatric examination of the adolescent.

o pedido foi negado sob o argumento de que ***a perícia seria necessária para avaliar se o jovem encontra–se apto a retornar ao convívio social.***

*the claim was dismissed with the argument that **a psychiatric examination would be necessary to evaluate if the adolescent is fit to be reintegrated to social life.***

AD 6, P. 2 – the STJ a summary of the facts, explaining that the claim made by the Public Defender's Office was denied due to the understanding of the 1st degree judge that a psychiatric examination was necessary to determine if the adolescent was fit to return to social life.

[44] Sistema Nacional de Atendimento Socioeducativo, implemented by the law 12594 in January, 18th 2012.

a Magistrada de 1a Instância e a Câmara Julgadora do Tribunal de Justiça, desconsiderando os argumentos lançados pela equipe técnica do CASA, composta por profissionais que convivem diariamente com os adolescentes ali internados, indeferiram o pedido de extinção da medida socioeducativa, ***determinando a continuidade do acompanhamento intra muros até a realização de perícia psiquiátrica***

the 1st and 2nd degree judges, dismissing the arguments raised by the technical staff from CASA, formed by professionals who have daily contact with the teenage internees, dismissed the request of the extinction of the social integration/internment measure, ***determining the continuity of the internment until a psychiatric examination is done***

AD 6, P. 2 – the STJ reproduces the justifications offered both by the 1st degree and the 2nd degree Courts in favor of the teenager's internment, dismissing the official report in favor of his release, produced by a multidisciplinary staff.

a magistrada da execução apontou a necessidade da avaliação médica ante a gravidade do delito cometido (estupro de vulnerável e lesão corporal com resultado morte), sua inclinação para a reiteração infracional, ***não se podendo olvidar que ele já foi diagnosticado com TDAH (Transtorno do déficit de atenção com hiperatividade), o que reforça a justificativa da manutenção da medida extrema***

the 1st degree judge emphasized the necessity of a medical evaluation due to the severity of the crime (rape of a minor with grave bodily harm resulting in death), its inclination to recidivism, ***taking into consideration that the accused has been diagnosed with ADHD (attention deficit and hyperactivity disorder), which reinforces the justification for maintaining the extreme measure of internment***

AD 6, P. 5 – the STJ presents the justifications offered by the 1st degree Court in favor of the teenager's internment, reinforcing that the accused had been diagnosed with attention deficit and hyperactivity disorder, which, according to them, justified the maintenance of the internment.

Munida do laudo médico psiquiátrico, a magistrada de primeiro grau reunirá mais elementos acerca da ressocialização do paciente, a fim de formar uma convicção segura sobre a providência a ser adotada ao caso, ante o déficit apresentado por ele.

With the psychiatric report, *the 1st degree judge will have more elements concerning the patient's social integration, and therefore will be able to form a firmer opinion about what measure should be adopted in relation to the deficit he presents.*

AD 6, P. 5 – the STJ presents the justification given by the 2nd degree judges to maintain the internment, which was to allow the 1st degree judge to make a better informed decision after a psychiatric examination.

The discourses in AD 6 present a conflict between two voices of authority: the voice of a multidisciplinary staff from SINASE, which argued for the release of the adolescent from internment; and the voice of the judges from the 1st and the 2nd degree Courts, who argued that the adolescent should be submitted to a psychiatric examination before his release, since the diagnosis of ADHD, according to them, reinforces the need to keep the teenager in prison.

Legitimation in AD 6 is, therefore, constructed through authority – and more specifically, a medical authority which has not yet contributed to the lawsuit directly, since a psychiatrist had not been consulted until the publication of the appellate decision. If on the one hand the official report produced by the multidisciplinary staff from SINASE is part of the lawsuit, on the other hand the psychiatric examination is not. However, the absence of a psychiatric report, combined with the adolescent' diagnosis of ADHD, leads the judge to maintain the internment, suggesting that only a psychiatric examination could indicate the possibility of releasing the adolescent. This scenario suggests the existence of an epistemological hierarchy in terms of the participation of expert witnesses in the judiciary, with a higher degree of legitimacy being attributed to psychiatrists and a lower degree of legitimacy being attributed to other experts.

Legitimation is constructed in terms of the need to submit the adolescent to a psychiatric examination which, in its turn, according to the judge, is the only way to determine if the adolescent is fit to return to social life without representing potential risks to society. This can be seen in passages such as "*NEED OF MEDICAL EVALUATION", "a psychiatric examination would be necessary to evaluate if the*

adolescent is fit to be reintegrated to social life" and *"With the psychiatric examination, the 1st degree judge will have more elements concerning the social integration of the patient".*

These passages also show that ADHD plays a neuropolitical role in AD 6. In that sense, the position of the judge in disclaiming the official report produced by the multidisciplinary staff from SINASE and claiming for the need of a psychiatric examination indicate that knowledge about the brain can alone explain or prevent potential threats to society, such as rape crimes. This reduction of the complexity of a rape crime to a psychiatric dimension produces a medical–centered narrative, in which the official report of a psychiatrist suppresses the social structures that may explain rape crimes, such as sexism, misogyny and gender oppression.

Moreover, the narrative produced by the STJ, which connects a diagnosis to a sense of risk, reinforces Mitjavila's (2015) argument that mental health has been used as a measure to determine who represents a risk to society and who does not. The idea of risk is explicitly represented in the discourses of the judges, such as in the passage "*taking into consideration that the accused has been diagnosed with ADHD (attention deficit and hyperactivity disorder), which reinforces the justification for maintaining the extreme measure of internment".*

Now that I have analysed how language was used to construct a sense of legitimacy in the six appellate decisions that form the data for this study, in the next section I will move to a discussion of how the discourses on appellate decisions 1–6 are interconnected and operate according to similar linguistic devices. In the sequence, I also provide a summary of the chapter to then move back to the additional steps of Fairclough's (2010) framework to CDA.

4.3. From AD 1 to AD 6: Focusing on a Social Problem in its Semiotic Aspect

Fairclough's (2010) framework to CDA has as its first step the focus on a social problem in its semiotic aspect. With that in mind, chapter 4 presented the semiotic analysis of six appellate decisions produced by the STJ involving ADHD and the medicalisation and/or the pharmaceuticalisation of mental health. Having that in mind, in this section I present a summary of the main findings revealed through the analysis of the appellate decisions analysed.

The textual description of the appellate decisions revealed a predominance of lexical choices for representing social actors diagnosed with ADHD that reinforce the understanding of ADHD as a defining aspect of their identities. The discourses evoked by the STJ reveal that the Court adopts an epistemological perspective to mental health that considers it as a result of brain (dys)functions, which can be balanced with the use of psychopharmaceuticals prescribed by medical experts. Therefore, they reveal that the STJ does not understand mental health and medical knowledge as socially constructed.

In AD 1, for instance, the child who had been diagnosed with ADHD is constantly referred to in terms of the diagnosis attributed to him, as for instance "*child carrier of attention deficit and hyperactivity disorder*" or "*sick*". In addition, the child is also identified in relation to the health professional who produced the diagnosis, as for instance when he is referred as *"the patient"*. From a systemic functional perspective, these choices suggest that prominence was given to the representation of a single aspect of Gabriel's social life, which relates to the diagnosis attributed to him. These choices also denote that the diagnosis is intrinsic to his body/brain, since the health professional who diagnosed him is suppressed from the action of diagnosing, when the judge relies on the Portuguese word "*portador*" *(carrier)* to refer to Gabriel.

Legitimation in AD 1 also depended on specific language choices and authorities. First, ADHD is represented as a *"health problem"* and as a *"neurobiological disorder"* only, which implies that Gabriel has a brain dysfunction. Second, the the need to take Ritalin has been legitimated through the presentation of medical reports which classify ADHD as a neurobiological disorder, and also through appraisal, that is, a positive evaluation of the reputation of the health professional (a neurologist) responsible for diagnosing Gabriel. Based

on the prescription provided by the neurologist, the judge uses terms such as *"adequate"* and *"necessary"* to refer to the use of Ritalin. These choices reveal that in constructing legitimation in AD 1, the judge relies on a single narrative about ADHD – the one provided by the neurologist. Other aspects related to Gabriel's social life and which might result in the "symptoms" manifested in his behavior are not mentioned, as for instance aspects related to his family or school relationships.

As a result of these choices, the use of the psychopharmaceutical Ritalin figures as the only alternative to guarantee Gabriel's right to health. The representations of Gabriel as a sick child with a neurobiological disorder, combined with the prescription provided by a neurologist, lead the judge to accept the claim to provide Gabriel with Ritalin, therefore creating a neuronarrative.

AD 2 is different in terms of the choices made by the judge to represent the social actor who claimed for a psychopharmaceutical. In fact, this appellate decision has only two direct mentions to the aforementioned social actor, which in turn relate to his social class (when, for instance, he is referred as *"financially disadvantaged"*) and to his position in the social practice of judicialization of health, as the person benefited with a psychopharmaceutical (when, for instance, he is referred as *"favoured/benefited"*). Even though we can take for granted that the claimant has a central role in the social practice of judicialization of health, he is suppressed in the representations produced by the judges.

Legitimation in AD 2, on the other hand, is very similar to legitimation in AD 1. ADHD is referred to as a *"pathology"* that requires *"medical care and access to medication"*. As in AD 1, a medical prescription was the main determining element in the judge's decision of accepting his claim for Ritalin – as we may see, for instance, in *"the claimant needed the medication Ritalin, according to the medical prescription"*. Moreover, the judge predominantly relied on the discourse of *need*, using terms such as *"necessity" , "needed", "necessary"* combined with words such as *"treatment", "medication"* and *"medical care"*.

As in AD 1, other aspects involving the child's social life have not been included in the representation of the social practice. There is no mention to his age or social background, that is, the social conditions in which he lives and that might be, to a certain extent, responsible for the production of the "symptoms" associated to a pathology, in this case

ADHD. Legitimation is therefore constructed according to medical terms only, which represents Ritalin as necessary to treat a brain pathology, also creating a neuronarrative.

AD 3 follows a similar pattern to AD 1, which means that the judge relies on similar choices to represent the social practice of judicialization of health and the social actor who had been diagnosed with ADHD. The child was predominantly referred as *"the patient"*, therefore identified in relation to the health professional who diagnosed him. He has also been referred as *"plaintiff carrier of attention deficit and hyperactivity disorder, and bipolar disorder"*, with the use of the Portuguese word *"portador"* (*carrier*), which also denotes the idea that the diagnosis attributed to him is actually intrinsic to his body/brain – suppressing the action of diagnosing and the social actor responsible for it, in this case, a doctor.

Legitimation in AD 3 has also been constructed through authorization and in terms of the *"need"* of the treatment, which in its turn was demonstrated by only one health professional – the doctor responsible for diagnosing the child. This discourse of necessity has been constructed through the use of words such as *"crucial", "necessity", "efficacy"* and *"success"*, combined with the words *"treatment"* and *"medication"*. In that sense, the use of Ritalin is represented as the only resource to guarantee the child's right to health, and the one that will enable the success and efficacy of the treatment.

Other aspects related to the social actor's social background were not taken into consideration, except his social class – when, for instance, he is said to have claimed *"financial disadvantage"*. Social and family relations were not included in the representation of the social practice, therefore they were not taken into consideration in to understand the context of production of distress leading the child to manifest the "symptoms" referred to as pathological. The only aspect included in the representation of the social practice is a pathological condition, which has been attested by a health professional, therefore producing legitimation by a medical authority. As in AD 1 and AD 2, in combining the use of psychopharmaceuticals to a discourse of centrality and necessity, AD 3 also produces a neuronarrative.

In relation to AD 4, the choices made by the judge to represent the social actor diagnosed with ADHD are very similar in content to AD 1 and AD 3. The social actor is called *"sick"* and *"plaintiff carrier of the neurobiological pathology attention deficit and hyperactivity disorder"*. In this case, the word *"portador"* (*carrier*) also denotes ADHD is a pathology intrinsic to his body/brain. Moreover, the social

actor has also been referred as *"the patient"*, therefore identified in relation to the health professional who diagnosed him.

In relation to legitimation in AD 4, two main strategies were used by the judges: First, ADHD is referred to as a neurobiological *"disease"* through the use of the Portuguese word *"moléstia"*. Second, the treatment for such disease is, according to the judge, under the charge of the claimant's assisting doctor. Words such as *"responsibility", "choice", "indication", "decide"* and *"authorize"* are associated to the health professional responsible for attributing the diagnosis, therefore legitimating this professional as the person in charge of defining the best way to approach the issue. These choices, however, reveal a concentration of power in the hands of a single health professional, the doctor.

Like AD 1, 2 and 3, in AD 4 other aspects concerning the social life of the child diagnosed with ADHD were not mentioned. In choosing to represent the social actor only in terms of a pathology and in relation to a health professional, the judge suppressed the social/family relationships in which the social actor is involved and which might, somehow, explain the behaviors interpreted as symptoms of a neurobiological disease. These choices also produce a neuronarrative by classifying ADHD as a neurobiological disorder and leaving the entire responsibility for the treatment on the judgement and evaluation of a single professional.

In AD 5 and AD 6, I focused my analysis on the transitivity choices attributed to the social actors involved in each case, and on legitimation or delegitimation of rape crimes related to ADHD and/or to the use of Ritalin – and this might involve, to some extent, representations of the aforementioned social actors.

In AD 5, for instance, the analysis of transitivity choices revealed that the adult male accused of raping a child created a narrative that I will address as a narrative of passivity – mainly because such narrative creates an image of obedience, conformism and passivity in relation to the actions he was accused of performing. Whenever his own account of the events is recontextualized in the text produced by the judges, he is activated in material processes that have J., the victim's mother, as the only goal, such as in *"kissing her mouth"* and *"followed her"*. Moreover, he was activated in material processes that did not denote violent movements or actions, but rather passive actions, such as *"sitting on the couch"* or *"lying on J.'s bed"* after *"obeying"* her. I call this a narrative of passivity since, according to him, his actions are

limited to *"obeying"* J. and sitting on the couch or lying on the bed, not because he wanted to, but because he was told to do so.

The accused was also activated in mental processes combined with negative pre modifiers (such as in *"did not know why he was being accused"*) and verbal processes (such as *"denied", "reported", "clarified", "kept the same version"*), combined with circumstances that denote a certain clarity and rational chronology of the facts being narrated, such as in *"clarified in a rich and detailed narrative"* and *"kept the same version of the facts"*. The use of these processes combined with these circumstances confer legitimation to his discourses due to the coherence they represent in relation to one another – which does not necessarily mean they are true, on the contrary, it means that the accused, as an adult man, is capable of maintaining the same narrative in relation to events that happened in the past.

If on the one hand the transitivity analysis reveals a scenario of passivity associated to the accused, on the other hand the scenario changes completely when we analyse the verbal choices made by the witnesses in relation to the victim. She is predominantly activated in material processes that, in fact, denote the idea of action – a sexual type of action. That happens when, for instance, the witnesses claim that the victim, in spite of being a seven-years-old child when the facts occurred, performed sex–related material processes whose goals were men (e.g. *"the victim used to get close and touch the witness' son–in–law"* and "*the victim had already tried to take down her son's trousers to see his genitals*").

Moreover, the victim is also depicted as *"unstable", "restless", "anxious", "tense",* as *"the child demonstrated interest in relation to sexuality"*, and with *"sexual behavior incompatible with her age"*. All these moral evaluations, combined with the diagnosis of attention deficit and hyperactivity disorder and with the activation of the victim in material processes with sexual connotation, led to her character assassination. There was no mention to the sexual habits of the accused, for instance. On the contrary, focus was given to a hypothetical precocious sexual behavior presented by the child. Therefore, legitimation in AD 5 was constructed through moral evaluation and through authority, that is, the discourses of the witnesses and the social and psychological reports about the victim, respectively.

If on the one hand in AD 5 ADHD had the neuropolitical function of delegitimizing the discourses produced by a seven-year-old victim of rape, on the other hand, in AD 6, it had the neuropolitical function of attributing to the adolescent diagnosed with it the status of a

dangerous person – or, in other words, a threat to society. This idea of risk was constructed in terms of the need to submit the adolescent to a psychiatric examination aiming to evaluate the possibility of releasing him from internment, since, according to the judges, the diagnosis of ADHD reinforced the understanding that the adolescent should remain in prison (i.e. "*NEED OF MEDICAL EVALUATION", "a psychiatric examination would be necessary to evaluate if the adolescent is fit to be reintegrated to social life"* and *"With the psychiatric examination, the 1st degree judge will have more elements concerning the social integration of the patient").*

Moreover, we should also take into consideration that in AD 6 the official report produced by a multidisciplinary staff from SINASE was dismissed by the judge. In that sense, the judge took the decision of attributing the responsibility for evaluating the possibility of releasing the adolescent to a single psychiatrist, therefore giving more power to a specific kind of expertise (psychiatry) than to other (multidisciplinary).

4.4. Summary of the Chapter

In this chapter, I analysed six appellate decisions produced by the STJ between 2015 and 2017. Four out of these decisions involved the use of jurisprudence to guarantee the right to health through the acquisition of psychopharmaceuticals; and two of them involved the diagnosis of ADHD and rape crimes.

The analysis revealed that the four appellate decisions involving the judicialization of mental health produced neuronarratives which, according to Martinez–Hernaez (2014), are narratives about mental health that explain our states of mind, human capabilities and capacities in terms of brain (dys)functions. The main aspect of these narratives produced by the judiciary is the inclusion of ADHD as a neurobiological disorder for which the use of Ritalin represents the best treatment available. They were narratives in which legitimation was supported by a single health professional (a psychiatrist or a neurologist) in charge of attributing the diagnosis to these social actors, and also in charge of prescribing the adequate treatment for them.

The analysis also revealed that the two appellate decisions produced by STJ involving ADHD and rape crimes corroborate Martinez–Hernaez' (2014) understanding that neuronarratives serve neuropolitical demands. In that sense, in both cases the diagnosis of ADHD was used to support the decisions achieved by the judges, for

whom the diagnosis represented in one case the impossibility of taking the words of the victim of rape into consideration, and in the other the impossibility of releasing an adolescent from internment. That was only possible through the suppression of more complex social elements involved in both cases, or, in other words, their reduction to a neurobiological dimension. In that sense, considering the crime of rape, for instance, which involves a culture of sexism and gender oppression, the analysis revealed that these elements were absent from the narratives produced by the STJ.

Another relevant aspect concerning the neuronarratives (re)produced by the STJ is that they allow the construction of public policies concerned with the promotion of mental health from the perspective that making psychopharmaceuticals available to the population can alone solve any problems related to mental health. In that sense, the analysis revealed that other social dimensions related to the social actors diagnosed with ADHD were not taken into consideration in the evaluation of the best way to approach the symptoms, understood by the judiciary as indicators of an illness – and as such confirmed by medical professionals. Therefore, the language used by the judiciary in the production of these narratives is part of a discourse which suppresses important social elements which led to the mental health diagnoses of the plaintiffs.

With that in mind, in the next chapter I will deepen the discussion I proposed in this thesis, by articulating data analysis with the theoretical background for this research. More specifically, I will move to the next steps of Fairclough's (2010) framework, in an attempt to discuss the roles of the narratives produced by the judiciary within the broader social order, identifying the obstacles to solve the problem of pathologization, pharmaceuticalisation and judicialization of mental health, as well as reflecting upon other social practices related to this social problem.

CHAPTER V
DISCUSSION OR
"CONNECTING THE DOTS"

5.1. Introduction to the Chapter

In this chapter, I will present a discussion which departs from the data analysis and Fairclough's (2010) framework to CDA, based on the theoretical background of this study. I will also discuss some of the implications behind the choices made by STJ's judges to legitimate their decisions. After that, I will revisit the research questions that guided this study, providing more specific answers to each one of them.

Before I move to the next section, I would like to restate the objectives of this research, which were:

1 – to investigate the judicial discourse about attention deficit and hyperactivity disorder through the analysis of the representations of social actors in appellate decisions involving ADHD and the use of Ritalin;

2 – to discuss some of the implications behind the social practices of medicalisation, pathologization and pharmaceuticalisation of mental health, and in more specific ways, how ADHD and the use of Ritalin might be related to neuropolitical practices, that is, practices of human control through the brain.

In the next sections I continue to develop Fairclough's (2010) framework to CDA. My points of departure for the discussion are the understanding of the STJ in relation to mental health; the creation of neuronarratives which represent ADHD as a neurobiological disorder; the neuropolitical function of ADHD; and the language of the appellate decisions within a context of the rise of neoliberal policies.

5.2. Revisiting the Theoretical Background of the Study

Fairclough's framework for CDA is divided in four main steps: focusing on a social problem in its semiotic aspect (which has been done in chapter 4, the analysis of the data); identifying obstacles to the problem being solved through the analysis of its context and the network of social problems to which the problem is involved; reflecting upon whether the social order needs the problem; and presenting possible solutions to the problem. Based on the theoretical background of this research, I will start with the identification of obstacles to the problem being solved, doing a contextual analysis of the social practices in which the problem is immersed.

5.2.1. Identifying Obstacles to Solving the Problem

The first obstacle to solving the problem is the absence, in the appellate decisions, of references to the recommendations produced in 2015 by the Federal Council of Psychology, the Ministry of Health and the National Council of Health to reduce practices of medicalisation of mental health, which reveals a possible lack of knowledge by the judiciary in relation to these recommendations. The aforementioned recommendations reinforce that studies attesting the efficacy of methylphenidate to the treatment of ADHD present methodological fragilities. Moreover, they claim that the number of diagnoses of ADHD in Brazil has increased almost 800% in a ten-year span, which suggests abusive practices of medicalisation, pathologization and pharmaceuticalisation of mental health.

In addition, the recommendations reinforce the need of the participation of a multidisciplinary staff from CAPS in the diagnosing and treatment of ADHD. If on the one hand these recommendations suggest the decentralization of the diagnosis from medical practices only, on the other hand the discourses produced by the judiciary reveal a centralization of the diagnosis on the hands and responsibility of individual professionals – in all the cases, a medical doctor (psychiatrist or neurologist) responsible for both diagnosing and prescribing the pharmacological treatment to the social actors involved.

This leads me to the next obstacle, that is, the way the judiciary sees mental health. The analysis revealed that the understanding of the STJ in relation to mental health opposes the understanding of the World

Health Organization. On the one hand, the WHO (2005) claims that a variety of factors are decisive to our (mental) health, and these include the quality of what/how we eat, our gender and ethnicity, our access to social and developmental resources such as education, our social relations, conditions of housing, employment and economic status, in addition to the physical environments where we live our lives. On the other hand, the judiciary seems to understand mental health as the absence of diseases, or, in other words, a state of mind that can be controlled not through giving attention to how all the above social markers relate to each other, but rather through the use of specific psychopharmaceuticals capable of controlling what the STJ constantly referred to as "an infirmity".

This understanding of the STJ in relation to mental health reveals that it does not adopt a social perspective to address mental health issues, but rather a determinist and hegemonic one that sees mental health as a result of brain (dys)functions. In the case of the appellate decisions I analysed, this understanding of the judiciary probably results from the fact that it relies only on the testimonies produced by the assisting doctors responsible for diagnosing the social actors with ADHD. Conrad and Barker (2010) claim that adopting a social perspective to mental health involves questioning naturalized assumptions of what health and illnesses are and how these assumptions attend specific social, institutional and economic interests. The discourse of STJ does not show any sign of resistance to the diagnoses and treatments attributed and prescribed to social actors diagnosed with ADHD. Rather, the STJ takes into consideration a single narrative about mental health (as I said before, the one provided by the assisting doctor of each patient) and does not question the assumption that ADHD is in itself a neurobiological disorder, in spite of the lack of trustworthy studies claiming it to be a result of neurobiological dysfunctions.

Moreover, if we think of the two appellate decisions that combine ADHD and rape crimes, we may say that they corroborate Conrad and Barker's (2010), Caponi's (2009, 2012) and Mitjavila's (2015) understanding that deviant social behaviours are considered mental problems with the purpose of providing institutions with social control. It is precisely this transformation of human capacities into opportunities for medical and pharmacological intervention with the purpose of achieving social control that characterizes the medicalisation of society (Conrad & Schneider, 1992; Conrad, 2007). In AD 5 and AD 6, the transformation of human subjectivity into an object of medical intervention resulted in the use of ADHD to construct the character of

the social actors involved, so as to delegitimize the discourse of a rape victim and to keep an adolescent in internment, contributing to gender oppression and incarceration.

We should also take into account that the representations of social actors in AD 5 and AD 6 reveal the impact of the diagnosis of ADHD on how social identities are constructed by institutions such as the judiciary. This impact on the construction of identities and subjectivity has to do with power relations (Foucault, 1977; Conrad and Barker, 2010). In classifying social actors as normal or abnormal, sick or healthy, medical and judicial institutions reveal who has power upon whom and use this power to shape subjectivities in terms, for instance, of a precocious sexual behavior (explained by the diagnosis of hyperactivity in AD 5) and of a threat to society (explained by the lack of mental health integrity in AD 6). Therefore, as claimed by Conrad and Barker (2010), medical knowledge may contribute to the maintenance of social inequalities, such as gender oppression.

A third obstacle to solving the problem can be explained in terms of how the judicialization, medicalisation and pharmaceuticalisation of mental health relate to economic practices. In reducing mental health to brain (dys)functions only, the judiciary reinforces discourses that consider psychopharmaceuticals (which, as commodities, have economic value) the most appropriate way of treating mental health diagnoses.

According to Biehl (2013), the judicialization of health to the acquisition of medication aligns with market principles and with institutional forms of social control. To the author, health care, market principles and the universal right to health, when combined, represent a conflict of interests among the parties involved in the social practice of judicialization of health: on the one hand, people who have been diagnosed with mental disorders and who want to protect their right to health; the market (e.g. the pharmaceutical industry), which gains with the circulation of discourses on mental health focused on neurobiological terms and pharmacological treatments; and judicial and medical institutions, which gain both with economic profits and social control. According to van Djik (2001), medical and legal institutions are commonly seen as trustworthy, making it difficult for the population to resist or contest them.

If we think of the practices of medicalisation, judicialization and pharmaceuticalisation of mental health through the lenses of a neoliberal capitalism, we can understand the role that semiosis plays in the the construction of discourses about mental health. Therefore, a

fourth obstacle to solving the problem is the rise of neoliberal policies on a global scale. To Fairclough (2000), the neoliberal conjuncture is composed of political practices aiming to redesign social organization to attend the demands imposed by global capitalism.

In that sense, language plays a central role in this process of redesigning social organization, since language is part of social practices and functions as a central element to establish social order. If we think of neoliberalism as an ideology and a way of perceiving the world (Fairclough, 2005; Nascimento, 2014) we may also think of the role that language plays in shaping the discourses that justify the material conditions in which we live – and that includes shaping discourses about mental health aiming to attend specific interests.

In the case of the judicialization of mental health, language is the means of creating neuronarratives – which, in their turn, categorize mental health as a result of brain (dys)functions. When neuronarratives are created and mental health starts to be understood from a neurobiological perspective only, this allows the circulation of diagnoses and corresponding treatments which rely on psychopharmaceuticals with a market value. In that sense, to have an idea, according to the Bulletin of Pharmacoepidemiology of the National Management System of Controlled Products[45] (2012), Brazilian families spent more than U$ 7,000,000[46] dollars with methylphenidate in 2011.

Taking that into consideration, we can say that neoliberal policies are dependent on how language shapes social practices. However, according to Fairclough (2005), this use of language to shape how we understand social life to attend market interests reveals a practice of colonization of society by the dominant classes and institutions. These discourses end up reinforcing social control and impact how society perceives social practices, human subjectivity and human relations, and even the role of the State in guaranteeing our right to health.

A fifth obstacle is the circulation of discourses about mental health promoted by NGOs and health institutions, which are organized

[45] http://www.anvisa.gov.br/sngpc/boletim.htm and http://www.anvisa.gov.br/sngpc/boletins/2012/boletim_sngpc_2_2012_corrigido_2.pdf.

[46] R$ 28,5 million, considering each US dollar as approximately R$ 4,05 in September, 23rd 2018.

on neurobiological terms. In that sense, ADHD figures as a neurobiological disorder in the DSM–V (2013), in spite of the lack of any neurobiological criteria in the diagnosing practice. Moreover, the Brazilian Association of Attention Deficit and Hyperactivity Disorder (ABDA) defends the narrative produced by the DSM, reinforcing that ADHD is in itself a neurobiological disorder:

> Attention Deficit and Hyperactivity Disorder (ADHD) is a genetic and neurobiological disorder that appears in early years, and it often accompanies individual through their entire lives. It is characterized by lack of attention, anxiety and impulsivity[47] (ABDA, my translation).

According to ABDA, there is no controversy surrounding ADHD. Moreover, the association claims that criticisms of the diagnosis are the result of lack of scientific knowledge and malice. As counterarguments, the association also claims that there are no studies capable of demonstrating the inexistence of ADHD, therefore denying the existence of several studies contesting the legitimacy of the diagnosis, including the publications by the MS, the CFP and the CNS in 2015.

The circulation of these discourses supports the medicalisation, pathologization and pharmaceuticalisation of mental health, representing obstacles to reducing the judicialization of mental health to the acquisition of psychopharmaceuticals. In sum, these obstacles can be described as: the apparent lack of knowledge by the judiciary about the recommendations published by the MS, CFP and CNS; the understanding of the judiciary in relation to mental health, which is given in terms of brain (dys)functions legitimated by a single health professional; the economic conjuncture in which these discourses circulate, since they attend market principles; the increase of neoliberal policies in a global scale, reshaping the way social actors understand the material conditions in which they live; and the circulation of discourses about mental health by dominant institutions focused on neurobiological

[47] The original reads as: "O Transtorno do Déficit de Atenção com Hiperatividade (TDAH) é um transtorno neurobiológico, de causas genéticas, que aparece na infância e freqüentemente acompanha o indivíduo por toda a sua vida. Ele se caracteriza por sintomas de desatenção, inquietude e impulsividade". Retrieved from https://tdah.org.br/sobre–tdah/o–que–e–tdah/ on September, 23rd 2018.

terms only, which also discredit other views on mental health and ADHD which question their assumptions.

5.2.2. Considering if the Social Order Needs the Problem

According to Caponi (2009, 2012), mental health diagnoses are connected to the pathologization of social behaviors considered deviant from dominant moral values. Therefore, practices of medicalisation, pathologization and pharmaceuticalisation of mental health relate to social control, shaping identities and behaviors to attend dominant moral values, acting directly upon our bodies and minds. In the case of this study, appellate decisions 5 and 6, related to rape crimes, illustrate this well, since they illustrate how the pathologization of mental health is a determining element in the characterization of social actors involved in these crimes.

In that sense, appellate decisions 5 and 6 demonstrate how (the lack of) mental health contributes to the maintenance of two social practices: gender oppression and incarceration. On the one hand, in using the diagnosis of ADHD to delegitimize the discourse of a victim of rape, the judiciary supports a form of gender oppression, which in this particular case works through sexual violence against children. The judiciary seems to be unaware that sexual violence occupies the second[48] position in crimes against children from 0 (zero) to 9 (nine) years in Brazil (Brazil, 2017[49]). On the other hand, in using the diagnosis of ADHD to characterize an adolescent as a threat to society and punish him, the judiciary supports the practice of internment and frees the State from the responsibility of creating public policies and services focused on gender and sexual education.

Another aspect of the social order to be taken into consideration here is the rise of neoliberal policies on a global scale, including Brazil. In that sense, Fairclough (2000) argues that in current times neoliberal policies are adopted by different political parties (both left and right-wing), reshaping the way we understand the material conditions in

[48] According to the same source, the first position is occupied by crimes of negligence and abandonment. The investigation by the Ministry of Health showed that 35% of the crimes relate to sexual violence, meanwhile 36% of them relate to negligence and abandonment.

[49] Retrieved from http://www.brasil.gov.br/noticias/saude/2012/05/abuso–sexual–e–o–segundo–maior–tipo–de–violencia–contra–criancas–mostra–pesquisa in September, 26th 2018.

which we live. Even though Brazil had left–wing governments between 2002 and 2015, this was also the period in which Ritalin use increased the most in the country (an increase of 775% between 2002 and 2013, according to the recommendations published by the Ministry of Health in 2015). In spite of the creation of the Network of Psychosocial Care, which in its turn has an interdisciplinary staff, this has not been enough to prevent an exponential raise in the consumption of Ritalin in Brazil. This scenario suggests that market principles were aligned to the production of discourses about mental health by State institutions and State policies that justify the insertion of psychopharmaceuticals in the social practices we participate, even in a period in which the country was governed by a left-wing party, commonly recognized as more concerned with social welfare when compared to right-wing ones.

This alignment results in the circulation of discourses that conceive mental as the lack of illness, and psychopharmaceuticals as a means to guarantee our right to health. Therefore, we can argue that the neoliberal market promotes and depends on the circulation of these discourses shaped as neuronarratives, as much as it depends on State institutions that legitimate such discourses.

In sum, these pieces of information, when combined with the analysis of the data in this study, suggest that ADHD may be used to support patriarchal values in our society, in addition to functioning as justification for depriving people from liberty – even when specialized institutions claim they should be reintegrated to society. Moreover, medicalisation, pathologization and pharmaceuticalisation of mental health attend market principles, which depend on the circulation of these narratives in order to operate.

5.2.3. Presenting Possible Solutions to the Problem

Fairclough's (2010) framework for CDA involves the presentation of possible solutions to solve the problem identified. Having that in mind, in this section I present possible actions that could reduce practices of pharmaceuticalisation of mental health supported by the judiciary.

First of all, the recommendations published by the CNS, the MS and the CFP should be incorporated in the decision–making processes involving the judicialization of health aiming at the acquisition of psychopharmaceuticals. The inclusion of such recommendations does not necessarily guarantee that psychopharmaceuticals will not be

provided to people diagnosed with ADHD, but they may contribute in a positive way to the evaluation made by the judges in each case. In that sense, multidisciplinary staffs from CAPS should participate in the decision–making processes involving the judicialization of health aiming at the acquisition of psychopharmaceuticals, functioning as expert witnesses that may provide additional elements to be taken into consideration before determining or not the acquisition of psychopharmaceuticals by the State.

As the analysis suggests, the STJ has not followed or mentioned the recommendations published by the CNS, the MS and the CFP to reduce practices of medicalisation and pharmaceuticalisation in mental health. Moreover, the Court has not mentioned or considered any research indicating the fragilities in the methodological procedures adopted in studies attesting the efficacy of methylphenidate to treat social actors who have been diagnosed with ADHD. On the contrary, the Court has centralized the legitimacy of the need of psychopharmaceuticals on the responsibility of individual health professionals – in all the cases, the assisting doctors responsible for diagnosing the social actors claiming for psychopharmaceuticals – and in two types of expertise in the medical sciences: psychiatry and neurology. This scenario suggests an epistemological hierarchy in the judicial decisions produced by the STJ, in which these two areas are given value and legitimacy by the judges while other areas are not even mentioned.

A possible way to solve this problem could be the creation of co–operations between the judiciary and State health institutions to approach each case from a multidisciplinary perspective. As the analysis suggests, public health institutions, such as State Health Secretaries, are the ones which appeal against the decisions determining the acquisition of psychopharmaceuticals. The main argument used by these institutions to support their appeals is that Ritalin is not listed within SUS's policies to treat people diagnosed with ADHD. Moreover, they claim that the State provides psychopharmaceuticals with equivalent active principles. However, the arguments supporting the appeal should also make use of the recommendations published by the CNS, the MS and the CFP, emphasizing the need to involve a multidisciplinary staff on the evaluation of each case. By claiming that the State provides equivalent pharmacological alternatives, public institutions themselves produce neuronarratives that can be easily dismissed by the judges when a health professional prescribes a specific type of drug – without ever

mentioning the need to combine medication with alternative treatments, such as family orientation or psychotherapy.

In relation to appellate decisions 5 and 6, involving rape crimes, a possible way to prevent the problem could be the implementation of gender and sexual education programs at all levels of education. Taking into consideration that sexual violence occupies the second position in the number of crimes against children in Brazil (Brazil, 2017), the State should elaborate public policies which focus on sexual education and which aim at promoting awareness in relation to which practices represent violations of children's integrity, therefore increasing the chances of children being able to identify and report cases of sexual abuse.

However, the rise of extreme–right wing political parties in Brazil represents an obstacle to the implementation of such policies. Gender education is seen by these political parties as "gender ideology", a view which is supported by mass media and religious institutions. In their speeches, they claim that gender and sexual education should not be part of educational policies since they would encourage children to become homosexuals or to reject the gender they have been assigned at birth. In circulating these discourses, mass media, social networks, political parties and religious institutions contribute to the perpetuation of gender oppression – than can be potentialized when it comes to children who have been diagnosed with mental disorders.

In sum, I argue that two different actions should be focused on: first, that legal decisions in cases of judicialization of mental health should consider (at least refer to) the recommendations published by the CNS, the MS and the CFP on the theme; and second, the promotion of public policies focused on gender and sexual education aiming to prevent crimes of sexual violence, especially those affecting social actors diagnosed with mental disorders.

5.4. Research Questions Revisited

Six research questions formed the basis of this study, and in this section I will answer each one of them based on the analysis and discussion of the data.

In relation to the first research question, "In what ways are social actors named and referred to linguistically in the judicialization of methylphenidate to treat Attention Deficit and Hyperactivity Disorder?", the analysis revealed the predominance, in the ADs, of lexical choices

that characterize the claimants as pathological subjects. In that sense, the claimants were mostly referred to in terms of the diagnoses attributed to them, *"sick persons"*, or as *"patients"*, therefore in relation to their assisting health professionals.

In relation to the second question, "How is legitimation constructed in the six appellate decisions, both in the ones which combine the diagnosis of ADHD and the acquisition of psychopharmaceuticals, and the ones which combine the diagnosis of ADHD and rape crimes?", the analysis revealed a predominance of legitimation through the use of medical authority. In this sense, the need for the use of medication was conditioned to the presentation of official reports produced by specialized doctors, e.g. psychiatrists or neurologists. The analysis also revealed the absence of reports produced by multidisciplinary institutions, such as a CAPS. Therefore, legitimation in the appellate decisions did not take into consideration the recommendations published by the MS, the CFP and the CNS in 2015. Moreover, in the two appellate decisions involving rape crimes, legitimation is given through medical authorization and moral evaluation.

In relation to the third question, "On the basis of the data, what do such representations and arguments reveal in terms of the discourse of appellate decisions in relation to mental health and the use of psychopharmaceuticals?", the analysis revealed that the judiciary considers mental health from a neurobiological perspective only, therefore related exclusively to brain (dys)functions and the absence of mental disorders. Therefore, the analysis suggests that the judiciary also did not take into consideration the views on mental health adopted by international institutions such as the World Health Organization, which defines mental health as the combination of several social, biological and cognitive factors.

In relation to the fourth question, "How does gender, race, class and age, as axis of social organization, oppression and discrimination, operate and intersect in the legal texts under analysis?", the analysis revealed that the use of methylphenidate, when combined to the diagnosis of ADHD, may be used to delegitimize the accounts produced by a victim of rape. However, in general terms, the appellate decisions do not give any information on ethnic or gender issues involved in the acquisition of psychopharmaceuticals. In relation to social class, even though some of the claimants were described as financially disadvantaged, data is limited to this piece of information only. Moreover, we should also take into consideration that information

regarding the social class of the claimants might have been excluded since, according to the judges, the universal right to health is not dependent on the person's income – it is guaranteed to every Brazilian citizen who can prove their health needs.

In relation to the fifth question, "Based on the findings, is it possible to say that the appellate decisions produced by this Court follow the recommendations by the National Council of Health, the Ministry of Health and the Federal Council of Psychology?", the analysis revealed no mention to the recommendations published by these institutions. The absence of any reference to these recommendations, in its turn, reflects the judicial understanding of mental health, since the need for psychopharmaceuticals is legitimated on the basis of a single report produced by the assisting doctor of each claimant – contrary to the recommendations of the agencies mentioned above, which advise the involvement of a multidisciplinary staff from CAPS in the attendance of social actors diagnosed with ADHD.

In relation to the sixth question, "Based on the findings, what roles can linguistic analysis, especially from a functional and critical perspective, play in the area of interdisciplinary health studies?", this study suggests that the use of a systemic/functional perspective to discourse analysis, combined with theories from the sociology of health, can reveal the ways discourses of legitimation are constructed in relation to ADHD and the use of psychopharmaceuticals. Moreover, it reveals what language choices the judiciary uses to produce narratives about mental health. In the case of this study, a systemic and critical perspective revealed the specific choices the judges use that result in the production of neuronarratives about mental health and some of the implications behind these choices and narratives.

5.5. Summary of the Chapter

In this chapter, I discussed how data (the semiotic aspect of the judicialization of mental health) relates to broader social structures and social practices through the application of Fairclough's (2010) framework to critical discourse analysis. The objective of this chapter was to identify/describe obstacles to solving the problem of the judicialization of mental health, considering the semiotic organization of this social practice and its context of production, in addition to providing recommendations to reduce the medicalisation, pathologization and pharmaceuticalisation of mental health – and,

consequently, the judicialization of mental health to the acquisition of psychopharmaceuticals.

In sum, medicalisation, pathologization and pharmaceuticalisation of mental health are reinforced by the judiciary understanding of mental health, based on a neurobiological perspective. This understanding, when combined with the rise of neoliberal policies on a global scale, attend market principles and institutional interests of social control. As recommendations to solving these problems, I propose that the judiciary should take into consideration the recommendations produced by the MS, CFP and CNS, involving a multidisciplinary staff from CAPS in the judicialization of mental health, so as to increase the legitimacy of their decisions and help reduce unnecessary mental health diagnoses. In that sense, in decisions related to the judicialization of mental health, the judges should rely on a larger number of experts instead of a single medical doctor, as data indicates they did.

In this chapter I also provided specific answers to the research questions that formed the basis of this study, which suggests that the methodology used for data analysis (a combination of CDA, SFL and Sociology principles) was suitable for the objectives of this research. Taking that into consideration, I will now move to the final chapter of this research, in which I draw some considerations in relation to its limitations, pedagogical implications and suggestions for further research in the area of CDA and language and health and language and law studies.

CHAPTER VI
FINAL REMARKS OR
"WHAT NOW AND WHAT NEXT?"

6.1. Introduction to the Chapter

Since the research questions for this study were answered in the previous chapter, in this chapter I attempt to present some of the limitations of this study; to provide suggestions for further research in the field of CDA, language and law and language and health studies; to present some of the pedagogical implications of this study; and to provide a framework for CDA focused on identifying neuronarratives in discourse.

6.2. Limitations of the Study

The main limitation of this study relates to the genre being investigated, appellate decisions. These decisions, produced by State and federal Courts in Brazil, do not present the entire content of the lawsuits that originated them. Since appellate decisions have the function of reevaluating the application of the law when one of the parties involved in a lawsuit disagrees with a lower Court decision, only the main elements (usually legal technicalities) involving the case are included in appellate decisions.

If I had access to the entire content of the lawsuits that originated the appellate decisions I worked with in this study, I could have provided a more detailed analysis in terms of, for instance, all the elements included in previous decisions to legitimate them. However, in spite of this limitation, the choice of appellate decisions as data relied mainly on the fact that they are publically available online, which facilitated data collection, including in bureaucratic terms. Moreover, the decisions of STJ are quite relevant in legal terms since they have the function of standardizing the interpretation of the law, working as models for lower Courts.

Another limitation to this study has a more personal aspect. In fact, after I started working as a professor at a university, I have also been assigned with different functions other than researching. The pressure to publish, prepare classes, and attend administrative demands made it impossible to dedicate myself uniquely to the writing of this thesis. For this reason, I consider that not having time to dedicate myself

exclusively to the research ended up being a limitation through part of my doctoral studies.

6.3. Suggestions for Further Research

I recommend that further research on the topics discussed in this study focus on the investigation of mental health in the criminal justice. The present study focused on appellate decisions involving the civil right to mental health, and two appellate decisions that I have included involving mental health and the criminal justice system. They were included since they combined mental health, the diagnosis of ADHD and rape crimes, representing what I argued could illustrate some of the implications of the way the judiciary understands mental health. As the results suggest, mental health may have a significant impact on how crime–related decisions are linguistically and discursively shaped, and therefore studies focusing on this specific issue represent a promising field of investigation.

Another suggestion for further research concerns the investigation of lawsuits in their entire content, if possible. As it is known, it may be difficult to have access to these decisions, since they are not publically available, and therefore this kind of study would depend on longer and more complex bureaucratic procedures. However, studies investigating the entire content of lawsuits involving mental health could find answers to questions that remain unanswered by this thesis, as for instance: What are, if any, the explicit relations between language, mental health and ethnicity/race in judicial discourse? What are, if any, the explicit relations between language, mental health and social class in legal processes?

Moreover, an additional suggestion concerns the investigation about mental health in different judicial spheres, as for instance state Courts and also the *Supremo Tribunal Federal (STF)*, the highest Court of justice in Brazil. Data in this study included only appellate decisions produced by the STJ, which in spite of being a federal Court, has a lower degree of jurisdiction in relation to the STF. Other studies conducted by myself and my supervisor, Débora Figueiredo, focused on judicial decisions produced by the state Court of Santa Catarina. Therefore, I recognize the need of investigating the discourses produced by other state Courts about mental health in Brazil (considering that the country has 26 states and the Federal District), especially in terms of whether or not these Courts have (or not) been following the

recommendations published by the MS, the CNS and the CFP in 2015, and, if so, how this influences the decision–making process.

6.4. Pedagogical Implications

Figueiredo (1999) argues that appellate decisions have a significant impact on three major social areas of our life: first, they have a direct material impact in our life (e.g. loss of money, loss of properties, deprivation of liberty, and in some countries even death penalty) since judicial decisions are responsible for regulating our behaviors and, consequently, might shape our identity in specific ways. Second, they have a didactic role, since they are used in law schools to discuss the application of the law in judicial contexts. Their didactic role is not restricted to law schools only, though. I have been including appellate decisions in my own practice as a professor of Critical Discourse Analysis to discuss the roles language studies might have in interdisciplinary areas such as language and law and language and health. Third, appellate decisions also function as sources for future decisions, since judges rely on previous applications of the law to take their own.

Studies like the one I present may have a didactic role in two main areas: the judiciary and educational institutions. The analysis of data suggests the necessity of providing qualification/training courses on mental health to the judiciary. These courses should aim at providing judges with sources to support their decision-making processes involving mental health and the use of psychopharmaceuticals, so as to avoid that they keep on relying on the expertise of a single health professional.

In the area of Applied Linguistics, this study contributes to the understanding of how a systemic, functional and critical perspective may be combined with theories from other areas of knowledge – such as the sociology of health, public health, psychology, anthropology –, and therefore it has a direct pedagogical implication to the field of Critical Applied Linguistics, which is interdisciplinary. As a result of the inclusion of these discussions in my own classes, for instance, I noticed that students, who are also teachers, engaged in reflections about their roles as teachers who might at some point of their careers contribute to the reduction of diagnoses involving mental health. They also became more sensitive to the impact discourses about mental health may have

upon individuals' lives and about how these discourses are shaped to attend the interests of specific groups.

Moreover, including this type of study in my teaching practices has also contributed to dismistifying students' views about Applied Linguistics, which in some cases were reductive to the study of language teaching/learning/acquisition. Students have noticed that language research can focus on different social areas and social problems, which has a direct impact on how they construct their identities as linguists.

6.5. A Framework for Studies on Critical Discourse Analysis and Mental Health

Finally, I would like to propose a framework from the perspective of CDA and SFL focused on investigating discourses about mental health. This framework is divided in six main steps that can be adapted and applied to different genres/texts involving mental health:

a. identify how social actors who have been diagnosed with mental disorders are represented: are they nominated, categorized, functionalized, etc, and if so, in what terms and in what social roles?
b. identify which social actors or social institutions are involved in the diagnoses: is there any multidisciplinary staff involved, or are the diagnoses provided by a single medical doctor?
c. identify how mental disorders are treated: are they represented in terms of neurobiological (dys)functions, or are they represented in terms of the social structures and social problems which result in idioms of distress?
d. identify the existence of public policies focused on the mental health diagnoses involved: what are the specific public policies centred on the diagnoses, in what terms are they constructed, and what types of solutions they present to the diagnoses?
e. identify how elements of the social order relate to the diagnoses investigated: are the diagnoses necessary to the social order and to establish social roles, or are they part of the social order somehow?
f. identify different social perspectives and possible obstacles to address the mental health diagnoses being investigated from such perspectives: in what ways can the diagnoses be

approached, and how can interdisciplinary studies in language and health contribute to this approach?

My idea with this framework is to encourage other researchers within the field of CDA to adopt interdisciplinary approaches to the study of mental health within different genres and social contexts. Moreover, it aims at encouraging researchers to reflect about how CDA and SFL, when combined with different social theories, can contribute to the analysis of institutional and social views on mental health. Therefore, it aims at providing some directions within the field of CDA that allows the investigation of discourses about mental health and the possible impacts these discourses might have upon the construction of the social order and social identities.

6.6. Final Words

Writing this thesis has been the most difficult task I have been assigned with in my academic career – not only due to its size or the required complexity of the discussion, but also because addressing issues related to mental health from an interdisciplinary perspective in the last years has gradually changed my own assumptions in relation to discourses about mental health in social and institutional contexts, and in relation to my own mental health as well. After all, I still question myself and think of possible answers to questions such as: What is the most appropriate way to define mental health – if there is any – and have I defined it in the best way possible? How will this study contribute to diminishing social inequalities related to mental health which are supported by institutional apparatus of control, such as legal and medical institutions? What will change in the social order after the publication of this research? How will I confront the power of neoliberal policies shaping discourses about mental health concerned with market principles and social control?

These are some of my concerns about mental health, and I reinforce that, in thinking of answers, the focus should be on education. My understanding is that studies like the ones I present (my own dissertation and the studies I present as its theoretical background) should be incorporated and applied by/to educational contexts. Education is part of the process of attributing diagnoses of ADHD to individuals, since schools are the first institutions to demand a diagnosis to justify how individuals behave in educational contexts. Moreover,

education is also the context in which we can question hegemonic discourses about mental health and challenge/change our practices and perceptions about reality.

Therefore, I expect that this study can impact educational contexts and promote social change in two main ways: reducing practices of medicalisation resulting from pressures from educational contexts, through programs of teacher education – but not restricted to – that approach mental health and educational/teaching practices from a critical and sociological perspective; and presenting mental health as a subject to be investigated within the field of Applied Linguistics from a critical and social perspective by newcomers to the area of Linguistics, especially those interested in CDA and in reducing power asymmetries, social inequalities and oppression that operate through social control and through the apparatus of mental health.

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