

The Regulation of Health Professions in Brazil: Dilemmas and Directions

Author: Sabado Nicolau Girardi, MD

E-mail: girardis@medicina.ufmg.br

Universidade Federal de Minas Gerais
Observatório de Recursos Humanos em Saúde/NESCON/UFMG
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Professions as Institutions

Professions can be defined in sociological terms by their legal exclusionary jurisdictions, autonomy and the capacity of being self-regulated. They are social institutions characterized by the detention of a patrimony constituted by a kind of complex and abstract knowledge, acquired through a long process of formal training, generally in universities; and not accessible in its applications to the immediate judgment by the large public. The services they provide are based on confidence, trustworthy relations with the clients and moral integrity of its members. Because of this, unlike other business or labor activities, professions are regulated in special modes. The avoidance of risks to life, integrity, safety, welfare or clients' patrimony leads to a kind of regulation called self-regulation, i.e., the regulation of its own peers instead of bureaucratic or market regulation. Professions legally have what could be defined as a corporate private property right over a specific field of expertise; an exclusionary power in their work jurisdictions. In Brazil, as in many other countries, the professions have much of their lives regulated in such manner.

Brazilian Institutional Sources of Professional Regulation: a brief description

The Federal Constitution (art.22, XVI) establishes the Union's exclusive competence to legislate about the organization of the national system of professions.

The National Congress (the legislative power) analyzes professional regulatory claims and after hearing the substantive ministry that governs its areas of work as well as interested segments of the public, can promulgate the professional laws or not. These laws establish basically the right to practice and the scopes of practice for each profession. They also establish professional regulatory authorities for each profession (The Professional Councils in the case of self-governing professions). Each profession has its own and specific-professional Act.

The administrative authorities that participate of the process are:

- The substantive ministry that governs its areas of work;
- The Ministry of Employment and Labor that enacts the occupational/labor regulations and
- The Ministry of Education responsible for educational rules and credentials for each profession

The system of universities participates in the professional education and provides the diplomas that enable graduates to be registered in each professional council.

Professional Councils register and authorize professionals to practice and are responsible for their control and discipline.

*Except for lawyers and veterinarians there is no need to submit to a national examination to be licensed and authorized to practice. It is enough to have a diploma issued by professional schools and being registered and authorized by the Councils.

Brazilian Model of Professional Regulation

The *self-governance* of the professions and the assignment of legal *exclusive rights to practice* through private acts to self-regulated professions could be defined as the essential characteristics of the Brazilian model of professional regulation,

There are two fundamental institutional pieces of this self-governing model:

Professional Acts define:

- ✓ The scope of practice for the profession constituted by certain exclusive acts
- ✓ Pre-requisites of legal habilitation to practice, particularly educational credentials
- ✓ Institutional forms and competences of professional regulatory authorities

(Self-governing professions are regulated by their councils. There are 13 profession-specific Acts applied to 14 health professions).

Professional councils are federal autarchies (i.e., institutions that have the power to regulate their members and are part of the state; a decentralized branch of the government; an agency of the Brazilian state) with regulatory authority. Their main mission is to assure the protection of the public and the integrity of the professions. Professional Councils:

- ✓ Register and authorize the professionals to practice;
- ✓ Enacts the rules and bylaws, including the Ethical Codes, that govern the practice of their members;
- ✓ Establish the surveillance of the profession and its discipline.

There are 13 federal health professional councils in the country, each of them with approximately 27 regional (or state) councils.

Number of Regulated Professions

- ✓ 116 professions and occupations are regulated at a national level
- ✓ 44 regulated professions have higher level of education
- ✓ 37 professions are regulated by 28 professional councils
- ✓ 14 regulated health professions have higher level education and are governed by 13 health professional Councils

Self-Governing Health Professions

Health Professional Council	Number of Professionals licenced	Existence of Subordinated occupations regulated by the council
Physicians	331.146	No
Dentists	219.345	Yes
Psychologists	136.024	No
Nurses	104.217	Yes
Social Service Assistants	96.209	No
Physical Education Professions	164.230	No
Pharmacists	104.098	Yes
Veterinarians	68.085	No
Physical Therapists and Occupational Therapists	111.250	No
Biologists	36.404	No
Dietitians	50.041	Yes
Audiologists and Speech Therapists	32.000	No

Source: Professional Councils, circa 2008

Claims for Professional Regulation

There are a lot of demands - a real plethora - for regulation, deregulation or re-regulation of particular occupations and professions now running in the country. They come from a variety of sources and even represent rival interests.

- ✓ The lay public generally claims to be involved in the work of health professional councils in order to ensure that its views will be adequately represented in the regulatory process.
- ✓ Health services managers claim a more flexible system that allows them to properly combine multi-professional skills and competences. This would make the delivery of health care more effective in order to meet patients' need considering the availability of financial resources.
- ✓ Governmental Authorities need more coordination over health professions to establish professional policies according to their mandates, concerning the principles of efficiency, fairness, practicability and accountability.
- ✓ Health professional and occupational groups' demands for regulation are basically two: to expand exclusive or quasi-exclusive right to practice and to receive social recognition.

A dual logic in the Professional Regulation: Claims in the Congress

We have identified a dual logic in the claims for health professionals regulation. On one hand, the demands for expanding monopolistic privileges made by well established and already self-regulated professions such as medicine, pharmacy, dentistry, and nursing, among others. They claim the definition and expansion of their rights to exclusive scopes of practice. On the other hand, professional minorities, such as optometry and midwifery, struggle for public and social recognition.

14 unregulated professions that have bills now submitted to the National Congress claiming higher levels of education and self-governance, **04 of them are health related: Acupuncture, Optometry, Music Therapy and Psychometric Psychology.**

Besides, **47 technical occupations without a superior level of education** also claim regulation of their activities, **10 of them are health-allied professions: Health Community Agents, Dental Technicians, Dietetic Technicians, Surgical Instrumentists, Podiatrists, Opticians,** among others.

Furthermore, **9 health professions already self-regulated** have submitted bills to the Congress claiming expanding jurisdiction or setting of exclusive acts, e.g., **physicians, dentists, nurses and pharmacists.**

Jurisdictional expansion claims are made:

- ✓ Over educational authorities in order to control the flow of professional entrance into the market;
- ✓ Over health services managers prerogatives to establish their right to set the standards of practice, the permitted mix of shared skills and competences, the hierarchical lines of work, etc.;
- ✓ Over political decision-makers and authorities to establish the right to participate of the definition of health policies;
- ✓ Over rival health professions in order to expand their exclusive property rights by restricting theirs ability to practice on the disputed field

Recent Developments on Governmental Action

In 2004, the Ministry of Health created the Health Labor Regulation Committee (Câmara de Regulação do Trabalho em Saúde - CRTS), in order to open discussions between the government, health services managers, professional groups and the public about the regulation of professions in the health sector.

The CRTS has as mandate to debate with the society professional regulatory actions and strategies to be adopted by the federal government; to propose legislative actions to regulate or re-regulate health professions. The main objective of CRTS is to advise the Minister in adopting public policies in the field.

The CRTS is composed of health authorities (at federal, state and local levels), labor and educational federal authorities, professional councils, the Health National Council, workers representatives and associations.

Between 2004 and 2008 the CRTS has debated the bills that have been submitted to the National Congress by 11 new health occupations.

Professional regulatory bills	CTRS Recommendation
Acupunturists	Create a group to present a new proposal
Chiropractors	Refuse
Dental Technicians	Approve
Estheticists (Technicians)	Refuse
Optometrists	To make more studies
Orthopedics Technicians	No need of new regulation
Podiatrists	To make more studies
Prosthetists (orthopedic)	Not yet evaluated
Surgical Instrumentists	Refuse
Traditional Midwives	To make more studies

Source: Ministry of Health. Câmara de Regulação do Trabalho em Saúde CRTS. Secretaria de Gestão da Educação e do Trabalho em Saúde/ Diretoria de Regulação do Trabalho em Saúde

The main determinants driving new demands in professional regulation are:

- ✓ The democratization of the country has allowed the appearance of new occupational groups demanding at least equal treatment and occupational fairness. The public also claim participation in professional affairs
- ✓ Technological and informational advances demand inter and multidisciplinary work and professional transparency
- ✓ The development of new forms of health care delivery such as the health family strategy that integrate multi-professional teams in community settings requiring the sharing of scopes of practice
- ✓ The renewed appeal of alternative and complementary medicine and "other healers" caused by multiculturalism
- ✓ Pharmacological and clinical advances
- ✓ The Global Health Environment

Conclusion: directions to professional reform

The health professional regulation process can be understood as a public policy, an essential part of the health care policies. In that sense, the current and future demands of professional groups to regulate their activities must be considered in the light of some principles such as efficiency, fairness, practicability and accountability, on behalf of the public interest.

There is a need to achieve an adequate balance between the public interest and the variety of professional regulatory claims - eventually in rivalry - and conflicting with each other.

There is a need to move from one a system that assigns *exclusive rights to practice* into one that considers the possibility to maintain and combine the self-regulation of the professions and *co-shared rights to practice*.

Some countries have taken important steps in this direction that could be adapted to the Brazilian situation.

The directives should include:

- ✓ Reviewing the legal framework of professional regulation;
- ✓ Reviewing the institutional forms and structures of professional regulation;
- ✓ Reviewing the scopes of practice of regulated professions and the new one now struggling for recognition and
- ✓ The assessment of the Brazilian self-regulation model and, if applicable, the proposal of desirable alternatives.

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