

Sueli Gandolfi Dallari

Dear readers,

In this four-month period, some news particularly approaching the relationship between public/private in health have drawn attention. Certainly the most institutional news refers to the adoption of the new Framework of Engagement with Non-State Actors (Fensa) of the World Health Organization (WHO), adopted on 28 May 2016 by the 69<sup>th</sup> World Health Assembly. After a long debate, the WHO Member States have agreed on rules that should apply for the relationship between the organization and its partners from the so-called “third sector”, private companies, research institutions, philanthropic organizations, among others. However, the debate seems unfinished. An argument previously raised to the approval of the text: “The principle of ‘inclusiveness’ for all non-state actors indicates the failure to acknowledge the different nature – and thus different roles – public and private sector actors should play in global health governance [...] widely opens the door for them to shape public health policies and priorities”<sup>1</sup>, keeps being used: “The final version is a great improvement over the original, this cannot be denied. But, even so, it has institutionalized the participation of non-state actors at the same level of the Member States’, which ultimately undermines the inter-governmental power of the UN system. WHO has as core functions the establishment and regulation of international health standards. If it starts to receive great influence of private companies, the agents who should be regulated will also become regulators”<sup>2</sup>. On the other hand, there are excited voices: “It is a balanced policy, not so restricted, that will strengthen the commitment of WHO with the public health as well as its integrity and reputation”<sup>3</sup>, said Julio Mercado, minister at the Argentina permanent mission, country that coordinated the discussions on the subject. And there are prudent voices: “[Fensa] may allow greater control of relationships that occur today in full opacity. The implementation process that starts deserves to be closely monitored by governments, academic community and populations of the States of our region who daily suffer the effects of the international health regulation”<sup>4</sup>, said Deisy Ventura, professor at the University of São Paulo and researcher at the Centre for Studies and Research on Health Law (Cepedisa, in Portuguese).

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<sup>1</sup>GUPTA, Arun; LHOTSKA, Lida. Whose health? The crucial negotiations for the World Health Organization’s future. *Asia & The Pacific Policy Society*. Available at: <<http://www.policyforum.net/whose-health/>>. Accessed in: 5 Sep. 2016.

<sup>2</sup>Amit Sengupta, global coordinator of the People’s Health Movement, in OMS aprova política de colaboração com agentes não estatais. Available at: <[http://www.isags-unasur.org/uploads/eventos/ev\[3374\]ling\[1\]anx\[777\].pdf](http://www.isags-unasur.org/uploads/eventos/ev[3374]ling[1]anx[777].pdf)>. Accessed in: 7 Sep. 2016.

<sup>3</sup>OMS aprova política de colaboração com agentes não estatais, cit.

<sup>4</sup>OMS aprova política de colaboração com agentes não estatais, cit.

By warning the difficult balance between private interests and the maintenance of public health, this debate has updated the “scandal” reported in 2012, and that has permeated the Fensa discussions. In the article “Food, beverage industry pays for seat at health-policy table” *Duff Wilson* and *Adam Kerlin* published the results of their research in Mexico, a country with high incidence of obesity and overweight in adults, showing that the Pan American Health Organization (PAHO) has received hundreds of thousands of dollars from companies that manufacture “sugary drinks and salty foods that are linked to many of the maladies it is trying to prevent”<sup>5</sup>. These cash grants were described by a senior consultant of PAHO as a new way of doing business, comparing this cooperation to a couple who needs to discuss its relationship. And Coca-Cola, denying that drinking causes obesity, has an important official in the steering committee of the Pan American Forum for Action on NCDs, a group that helps to determine how WHO will face obesity in Mexico. The site of this Forum summarizes the benefits of membership as to “avoid regulation” and to influence the “regulatory environment”. In this article the authors show that at least two of 15 members of the Nutrition Guidance Expert Advisory Group had direct financial ties with the food industry. In short, some of WHO consultants believe that the organization is doing a good job to reduce chronic diseases, with the help of industry. According to *Wilson* and *Kerlin*, WHO has repeatedly advocated voluntary measures instead of strong regulatory measures and, in some cases, the major food industries have answered.

But the difficult harmonization of private interests with public health goals was once again focused on the disclosure of the program “Open Payments”, designed to improve transparency in health through the law known as “Obamacare” in the United States. It became known that pharmaceutical companies and medical equipment manufacturers donated \$ 7.52 billion in 2015 for doctors and other health professionals, and that between 10% and 15% of this amount was allocated exclusively to the so-called general payments (meals, travel, expenses with hotels), the remainder being used for payments in the field of research<sup>6</sup>. This question about the impartiality of doctors working in health services was also illustrated in this four-month period by another scandal: that of French doctors extorting migrants to issue medical certificates required for the acquisition of the residence certificate. Reported initially by an association (Cimade, that helps migrants with the recognition of their rights), the case was evaluated by the public structure (*Assistance Publique-Hôpitaux de Paris*, AP-HP), which announced the suspension of a doctor and the opening of

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<sup>5</sup>SPECIAL Report: food, beverage industry pays for seat at health-policy table. Available at: <<http://www.reuters.com/article/us-obesity-who-industry-idUSBRE89I0K620121019>>. Accessed in: 7 Sep. 2016.

<sup>6</sup>ETATS-Unis: les laboratoires ont versé plus de 7,5 milliards de dollars aux professionnels de la santé. Available at: <[http://www.lemonde.fr/ameriques/article/2016/07/01/etats-unis-les-laboratoires-ont-verse-plus-de-7-5-milliards-de-dollars-aux-professionnels-de-la-sante\\_4961640\\_3222.html#87maAY791QfJUHK.99](http://www.lemonde.fr/ameriques/article/2016/07/01/etats-unis-les-laboratoires-ont-verse-plus-de-7-5-milliards-de-dollars-aux-professionnels-de-la-sante_4961640_3222.html#87maAY791QfJUHK.99)>.

an internal inquiry against several other doctors due to the “assumption that other patients in similar situations were obliged to make such payments”<sup>7</sup>.

There is no doubt that the debate on healthcare regulation concerns all researchers and agents of health law. There is also no doubt that this is a controversial issue, with strong arguments to support opposing views. This certainly calls everyone to pay special attention to the issue and, particularly, to use the necessary prudence to control the risks in the society of the 21<sup>st</sup> century, also known as the “risk society”. In other words, it is essential to promote an open discussion among all to create a fair health regulation.

Dear readers, I must inform you that, given the facility of accessing databases of Brazilian courts, we have decided that the section “Jurisprudence” will publish only international decisions, whose knowledge has been shown increasingly important and whose research is still quite an intensive labor. We continue to present the decisions on health law, seeking to emphasize the ones originated in Latin America. I also want to inform you that our journal is present in other international database: Ulrich’s Periodicals Directory. Little by little, we go towards full globalization...

Dear readers, I will insist on another point: help us make our *Journal of Health Law* even better! Send us your papers, reviews or comments to our “Jurisprudence in Perspective/Comments” section, or suggestions of topics and names of potential panelists to our “Argument” section. Do not forget to contribute! The quality of the *Journal of Health Law* also depends on the participation of its readers.

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Scientific editor

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<sup>7</sup>POUR la Cimade, “de nombreux médecins se livrent à un racket” auprès des migrants. Available at: <[http://www.lemonde.fr/societe/article/2016/05/16/pour-la-cimade-de-nombreux-medecins-se-livrent-a-un-racket-aupres-des-migrants\\_4920080\\_3224.html#tbChmyE00eCUGZgy.99](http://www.lemonde.fr/societe/article/2016/05/16/pour-la-cimade-de-nombreux-medecins-se-livrent-a-un-racket-aupres-des-migrants_4920080_3224.html#tbChmyE00eCUGZgy.99)>.