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HEALTH WORKFORCE REGULATION FROM A COMPARATIVE LAW PERSPECTIVE: THE DIFFERENT REGULATORY STRATEGIES OF ARGENTINA, PARAGUAY, URUGUAY, CANADA AND AUSTRALIA

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Around the XVIII century B.C. King Hammurabi, of the first Babylonian dynasty, issued the famous Code of Hammurabi, a set of laws carved on a diorite rock and written in cuneiform characters that deals with rules and penalties for various events of life in society, as commerce, property, family, labor, theft, the law of talion (an eye for an eye, a tooth for a tooth), rape, death penalty, medical and veterinary practice, among others.

Among the regulations, provided more than 3.500 years ago, intended to guide medical and veterinary practices, are the following:

218. If a doctor treats someone with a serious wound with the bronze lancet and kills him, or opens an incision with the bronze lancet and the eye becomes lost, he must have his hands severed;

219. If the doctor treats a master's slave of a serious wound with a bronze lancet and kills him, he must give a slave for a slave;

220. If he opens an incision with the bronze lancet and the eye becomes lost, he must pay half of the slave's price;

221. If the doctor heals someone's broken bone or the ill soft parts, the patient must give him five shekels;

[...]

224. If the oxen and the donkey's doctor treat an oxen or a donkey of a serious wound and the animal heals, the owner must give the doctor, in payment, one sixth of a shekel [...]¹.

The tradition of regulating professional medical care practices for human beings has remained for the entire history of mankind. In modern times the work of *Michel Foucault*, must be highlighted, since he examined the phenomenon he calls "State medicine" and exposed with great detail the normalization of medical knowledge and practice. In this sense, analyzing what happened in Germany by the end of the XVIII century and early XIX century, *Foucault* asserts:

With the organization of a state medical knowledge, the normalization of the medical profession, the subordination of doctors to a central administration and, finally, the integration of several doctors in a state medical organization, a series of entirely new phenomena emerge that can be called the medicine of the State².

¹DHNet Direitos Humanos na Internet. *Código de Hamurabi*. Available at: <<http://www.dhnet.org.br/direitos/anthist/hamurabi.htm>>. Accessed in: 05 Feb. 2019.

²FOUCAULT, Michel. O Nascimento da medicina social in *Microfísica do Poder*. Available at: <https://www.nodo50.org/insurgentes/biblioteca/A_Microfísica_do_Poder_-_Michel_Foucault.pdf>. Accessed in: 05 Feb. 2019.

The regulation of the professions oriented to the diagnostic and treatment of human beings is consolidated as a solid field of state regulations and with roots in all the modern democratic states.

With the purpose of guiding the States about the need of a good regulation of this subject, the global governance system for healthcare that emerged after Second World War is dealing with the issue with increasing detail. In this sense, it is worth highlighting the Resolution WHO 69.19 of the World Health Organization, which defines a “Global Strategy on Human Resources for Health Workforce 2030”. This document presents the main objectives, principles and directions that must guide the State regulation of the health professions, with the purpose of fostering the organization of health systems with professionals capable of developing models of universal coverage in health.

Considering that each health system presents challenges and taking into account, at the same time, that health professions state regulation demands an effective and efficiently implemented legal and administrative organization, the comparative law study appears to be an excellent instrument of empirical understanding of the different strategies and experiences put into practice by modern democratic states.

Therefore, this issue of the *Revista de Direito Sanitário*, in its section Argument Section, presents the legal models regulation of the health professions adopted by Argentina, Paraguay, Uruguay, Australia and Canada. The articles published offer an extremely clear and didactic picture of the way these countries are facing the challenges of health profession regulation in the contemporary world.

Researchers *Gabrielle Kölling*, *Isadora da Silveira Steffens* and *Jameson Vinícius Martins da Silva* present the article “The regulation of graduate education for health professionals in Argentina, Paraguay and Uruguay”. In a clear and objective way, they map and analyze graduate education in the Mercosur, focusing on the cases of these three countries. The authors observe in their closing remarks, that (i) the excessive autonomy of universities and provinces in Argentina are an obstacle for regulatory standardization; that (ii) the centralized functions in the public university and the low level of normalization in Uruguay also hinder common regulations from being standardized; and that the regulation of issues about education at university level is very recent in Paraguay, therefore, there is still room to create more specific regulations. In sequence, Professor *Trudo Lemmens* of Toronto University, together with *Kanksha Mahadevia Ghimire* doctorate student at the same university, present the article “Health Professions Regulation in Ontario: self-regulation with statutory-based public *accountability*”. The paper explores the regulation health professions in Ontario, Canada, a model of self-regulation created around a specific statutory regimen. The central focus of this article is a discussion about the Health Professions of Ontario Regulation Law and the main components of other 26 laws enacted under its umbrella to regulate specific health professions.

To complete this excellent framework of study of comparative law on the subject of health professions regulation, professor Cameron Stewart Bec, of the University of Sydney, publishes an instigating article called "Health Professional Regulation in Australia: a vision from the antipodes", in which he explores with clarity the Australian model, which contains a singular experience of creation of a regulatory agency that gathers various health professions. When analyzing the regulation of the health professions in Australia, the article describes the constitutional powers to regulate on health services in the Australian federation and the system created of access to health rights. Follows the examination of the Australian Health Practitioner Regulation National Law, which attempts to create a uniform system for health professionals in Australia. This work also investigates the functioning of this system and brings current data about its operation, closing with an overview of future challenges.

The articles published in this issue of the *Revista de Direito Sanitário* will help us understand the complexity of the subject and the multiple paths that may be followed by the Democratic State for the regulation of health professions. An important lesson to be learned with the texts is that, no matter which the regulation model, it is evident that the State should organize a model health professions regulation capable of protecting the public interest and, at the same time, ensure health services that resolve issues, have good quality and are humanized.

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