

Professional supervisory boards and protection of society

Eduardo Neubarth Trindade¹, Márcia Vaz¹, Juliano Lauer¹, Vanessa Schmidt Bortolini¹, Manoel Roberto Maciel Trindade¹

1. Conselho Regional de Medicina do Estado do Rio Grande do Sul, Porto Alegre/RS, Brazil.

Abstract

The Federative Republic of Brazil, in recognizing the value of freedom of professional practice and the duty to protect society, delegated to professional councils activities typical of ethical and technical supervision of people who exercise certain professions. To this typical function of the State are also added the exercise of a public service and the role of ensuring the good prestige of the profession. Professional supervisory boards fulfill these functions in a legitimate, democratic, effective way and with undeniable social value. For these entities to continue exercising their institutional missions, it is necessary to defend their recognition as legal entities of public law, holders of supervisory power.

Keywords: Constitution and statutes. Professional ethics. Public administration.

Resumo

Conselhos de fiscalização profissional e proteção da sociedade

A República Federativa do Brasil, ao reconhecer o valor da liberdade do exercício profissional e o dever de proteger a sociedade, delegou aos conselhos profissionais atividades típicas de poder de fiscalização ética e técnica de pessoas que exercem determinadas profissões. A essa função típica de Estado são somados ainda o exercício de um serviço público e o papel de zelar pelo bom prestígio da profissão. Os conselhos de fiscalização profissional cumprem essas funções de forma legítima, democrática, eficaz e com incontestável valor social. Para que essas entidades continuem exercendo suas missões institucionais, é necessário defender seu reconhecimento como pessoas jurídicas de direito público, detentoras do poder de fiscalização.

Palavras-chave: Constituição e estatutos. Ética profissional. Administração pública.

Resumen

Consejos de supervisión profesional y protección de la sociedad

La República Federativa de Brasil, reconociendo el valor de la libertad de ejercicio profesional y el deber de proteger a la sociedad, delegó en los consejos profesionales actividades típicas de poder de supervisión ética y técnica de las personas que ejercen ciertas profesiones. A esta función típica del Estado se añaden el ejercicio de un servicio público y el papel de velar por el buen prestigio de la profesión. Los consejos profesionales de supervisión desempeñan estas funciones de manera legítima, democrática, efectiva y con un valor social innegable. Para que estas entidades puedan continuar ejerciendo sus misiones institucionales, es necesario defender su reconocimiento como personas jurídicas de Derecho Público, titulares de la facultad de supervisión.

Palabras clave: Constitución y estatutos. Ética profesional. Administración pública.

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The word “profession,” from the Latin *professio*, originally meant the act or effect of professing¹, relating to beliefs, values or commitments. Only from the 18th century did the term come to have its current meaning, that is, the act of exercising a trade, science or artistic skill².

Professions, as they are known today, result from a historical process related to forms of work organization and social needs³. The development of productive forces and the transformation of society resulted in the creation of different professions, with their own knowledge, theories and practices. These professions became increasingly specialized in order to meet new demands.

As the essence of working relationships and free enterprise, professions are necessary for the development of a society, not only from an economic point of view, but also for promoting individuals’ well-being and dignity. From this idea, the Brazilian Constitution, already in its first article, points to the social value of work and free enterprise as one of the foundations of the republic. And article 5, item XIII, establishes that the exercise of any work, trade or profession is free, but safeguarding the possibility of the law establishing the necessary professional qualifications to exercise such right⁴.

The constitutional provision is based on the fact that professions have social repercussions, and it is necessary to protect the collectivity of ill-intentioned people who do not meet the minimum requirements for professional practice in certain areas. It is in this context that professional supervisory boards stand out as entities that regulate, standardize and supervise professional exercise for the benefit of society.

Professional supervisory boards and their nature

Although the Federal Constitution has granted the Federal Government the competence to legislate and supervise professional practice, in certain professions this function has been delegated, through specific laws, to the so-called “professional inspection councils”⁵. These councils are managed by professionals in the field who, elected by their peers, serve terms⁶. Administrators are not remunerated, exercising honorary functions.

These supervisory entities receive various denominations in the doctrine, among which we can mention: “para-administrative self-managed institutions,” “autonomous corporations,” “professional corporations,” “corporate institutions” and “corporate self-managed institutions.” Thus, although not all laws establishing professional supervisory boards expressly provide for the self-managed nature of these entities, doctrine and jurisprudence recognize such nature. It is, however, a peculiar, differentiated institution, which does not integrate the federal public administration, nor does it fall within the precepts of Decree-Law 200/1967⁷.

As entities that are not part of public administration, professional supervisory boards have financial and administrative autonomy, receive no subsidies or financial transfers from the Federal Government, nor are they subject to ministerial supervision. In order to fulfill their institutional missions, councils work under the prerogative to collect taxes from their members, including professional category interest contributions (“annuities”) and other fees, as established by federal law.

Given their self-managed nature, councils are legal entities under public law and subject to constitutional dictates. Among these dictates, the observance of the principles of strict legality (you can only do what the legislation allows), impersonality, administrative morality, publicity and efficiency can be noted. Professional supervisory boards, therefore, are subject to the public tender system for recruiting personnel and are required to carry out a bidding process to acquire goods and services. Their acts, moreover, are controlled and inspected by the Federal Court of Accounts, and their actions must have a public purpose.

Functions of professional supervisory boards

Although the fundamental role of professional supervisory boards is to regulate and supervise professional ethics, it should be noted that these entities fulfill other functions of social interest. As established in the legal framework, certain professions can only be exercised after registration with a professional supervisory board, when the

conditions and qualifications of the professional are verified. It can be said, therefore, that these entities have a notary role, since they certify the restriction of professional practice to those who demonstrate minimal technical qualification.

To perform their supervisory duties and protect the community, the councils determine and judge, with exclusivity, the administrative responsibility of their members, verifying the professional's ethical behavior and technical capacity and applying the penalties established by law when necessary. An example is the norm for the creation of medical councils, which assigns to these entities the function of *overseeing the exercise of the medical profession and knowing, appraising and deciding on matters pertaining to professional ethics, imposing the applicable penalties* (art. 15, paragraphs "c" and "d")⁷. Therefore, when prosecuting and judging their applicants, the councils also play a judging function, ensuring that the trial observes the due process of law, with a guarantee of adversary proceedings and ample defense.

The councils also play the important role of preventing lay people from illegally exercising the regulated profession. There are several administrative and judicial measures that these entities adopt to denounce to police authorities and the Public Ministry the crime of illegal exercise of the profession and illicit acts against consumers, such as misleading advertising. As an example, one can cite the partnerships between medical councils and the Public Ministry to improve the mechanisms of criminal representation against charlatans and malicious individuals⁸.

Another function of professional supervisory boards is to represent the interests of the professional category. Although not confused with unions or associations, councils seek to protect the prerogatives of their members, filing lawsuits against measures that hamper the free and dignified exercise of the profession. These actions can even challenge the public authorities, especially when governmental acts and infra-legal norms allow untrained and technically qualified people to act without legal support, in activities that are private to professionals, putting society at risk.

A recent example of representation of professional interests and defense of society are the manifestations of federal and regional medical councils against the Federal Government's

permission to open new schools in the field without proper evaluation of the quality of education⁹. These councils have also been against: the flexibility of the process of Revalidation of Medical Diplomas issued by a Foreign Higher Education Institutions (Revalida)¹⁰; the opening of popular health plans, with coverage limited to outpatient consultations and subsidiary tests of lesser complexity, excluding part of the population that most needs medical care, such as the chronically ill and older adults¹¹; and the proliferation of invasive aesthetic treatments performed by people who do not have the necessary technical knowledge to act in case of complications caused by such procedures¹².

Professional supervisory boards are also frequently asked to provide technical opinions in the deliberations of bodies of the state structure, especially on public policies of the Executive Branch of the three spheres (municipal, state and federal) of the Federation, bills in progress in the National Congress and lawsuits such as *amicus curiae*.

All these functions of the professional supervisory boards represent their purpose of protecting society, which is carried out in a legitimate, democratic, effective way and with undeniable social value.

"Legitimate," as only entities of a public nature – such as professional councils, which are federal self-managed institutions – can exercise professional supervision, by delegation of the Federal Government, which allows them to apply sanctions to professionals who commit deontological infractions, verified in administrative proceedings with guarantee of adversary proceedings and ample defense.

"Democratic" because the councils are run by representatives elected by the professionals themselves and who have technical knowledge for the faithful exercise of normative and supervisory functions. This allows for conciliation and technical judgment by professionals in the same field, that is, peers are regulated, supervised and judged by their own peers, who have knowledge and greater capacity for empathy.

"Effective," as the professional registration guarantees quality, trust and credibility, since this procedure is used to measure compliance with the legal and technical requirements for exercising the profession. Finally, councils also have an undeniable social role, since they protect

society from bad professionals who do not perform their activities correctly, or act illegally, without proper authorization¹³. This function is especially important in professions related to life, health, well-being, safety and freedom of the population.

Professional councils are also spaces to debate major issues, often bringing new technologies to light, reviewing knowledge, improving the profession and discussing ethical and disciplinary aspects that involve professional practice. These entities thereby protect society and defend the health, safety and freedom of citizens.

Final considerations

Professional supervisory boards play a fundamental role in protecting the health, life, well-being, safety and freedom of the population,

and can only fulfill these functions once they are recognized as legal entities under public law. In fact, for the full exercise of their functions, the acts emanating from professional supervisory boards must have discretion, coercibility and self-enforcement (typical attributes of the acts of public agents), so that restrictions are imposed on the individual rights of professionals in favor of the greater interests of the collectivity.

This observation is important and should be present in society's debates, especially when legislative initiatives seek to transform professional supervisory boards into private legal entities, removing the obligation of professional registration and the power to apply sanctions. Therefore, it is up to the population and especially professionals to understand and defend the fundamental role of professional supervisory boards in defending collective interests.

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Eduardo Neubarth Trindade – Doctor – entrindade@hcpa.edu.br

 0000-0002-0491-0736

Márcia Vaz – Doctor – marvaz961@gmail.com

 0000-0002-8738-2990

Juliano Lauer – Specialist – julianolauer@hotmail.com

 0000-0002-0591-2952

Vanessa Schmidt Bortolini – Specialist – vsbortolini@gmail.com

 0000-0002-3200-4845

Manoel Roberto Maciel Trindade – Doctor – manoelrmtr@gmail.com

 0000-0001-7809-8296

Correspondence

Eduardo Neubarth Trindade – Avenida Princesa Isabel, 921, Santana CEP 90620-001. Porto Alegre/RS, Brasil.

Participation of the authors

All authors contributed to the making of the article.

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