

## REFLECTIVE ARTICLE

### THE FISCALIZATION OF THE PROFESSIONAL PRACTICE IN THE NURSING FEDERAL COUNCIL A FISCALIZAÇÃO DO EXERCÍCIO PROFISSIONAL NO CONSELHO FEDERAL DE ENFERMAGEM SUPERVISIÓN DE LA PRÁCTICA PROFESIONAL EN EL CONSEJO FEDERAL DE ENFERMERÍA

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#### ABSTRACT

This article aims to analyze the process of fiscalization of the Nursing professional practice in the COFEN System/Regional Councils through the mediation of the theoretical contribution of context analysis. The article emphasizes the importance of fiscalization, its main instruments, and operationalization. It calls for rethinking the articulation between fiscalization practices, the quality of care, and public policies in the health sector at the national level.

**Keywords:** Legislation, Nursing; Health Care Coordination and Monitoring; Ethics Nursing.

#### RESUMO

*O presente artigo tem como propósito analisar o processo de fiscalização do exercício profissional da Enfermagem no Sistema COFEN/Conselhos Regionais, pela mediação do aporte teórico da análise de contexto. Enfatiza a importância da fiscalização, seus principais instrumentos e sua operacionalização. Repensa a articulação entre as práticas de fiscalização, a qualidade da assistência e as políticas públicas do setor saúde no âmbito nacional.*

**Palavras-chave:** Legislação de Enfermagem; Regulação e Fiscalização em Saúde; Ética em Enfermagem.

#### RESUMEN

*Este artículo tiene como objetivo analizar el proceso de control profesional de la enfermería en el Sistema COFEN / Consejos Regionales, a través de la mediación del aporte teórico del análisis de contexto. Hace hincapié en la importancia de la supervisión, sus principales instrumentos y su aplicación práctica. Replantea la relación entre las prácticas de supervisión, la calidad de la atención y las políticas públicas del sector de la salud a nivel nacional.*

**Palabras clave:** Legislación de Enfermería; Regulación y Fiscalización en Salud; Ética en Enfermería.

## INTRODUCTION

The Federal Council of Nursing (COFEN) was established in accordance with law 5,905/1973.<sup>1</sup> It is an institution created to meet the public and social interests, defend the legality and ethical principles, and promote professional valorization and ethical standards.

With the legislative authorization of the National Congress, the COFEN establishes the general guidelines and Regional Councils (CORENs). As an executor agency, it oversees the jurisdictional categories, among other functions through "discipline and supervision of the professional practice in compliance with the general guidelines of the Federal Council".<sup>1</sup>

Monitoring is, therefore, the end-activity of professional councils, an important mission that is not adequately known and recognized by society and what is more serious, it is misunderstood by their own professional categories. In Nursing, this reality becomes more worrisome, considering that the activity has a direct impact on human lives.

In the performance of the counseling function (COREN-RN, management 2008/2011) linked to the Fiscalization Unit, numerous problems were identified, among them, the lack of knowledge from nursing professionals about fiscalization and the dissatisfaction of users regarding the quality of health care/nursing. Even more troubling is the observation during the participation at National Oversight Seminars (SENAFIS) in which inspectors and counselors mostly expressed a legalistic bias that is incompatible with a pedagogical conception of inspection, recommended by Resolution 374/2011 (which regulates the functioning of the Fiscalization System of the Nursing Professional Practice).<sup>2</sup>

A research on the theme presented at the 5<sup>th</sup> SENAFIS in June of 2012 reveals the amount of working and teaching institutions registered and inspected in Brazil between 2010 and 2011. The system hit percentages of 40% of health care services in two years, and only 11% in 2010 and 9% in 2011, respectively, of educational institutions. These numbers are insufficient for Brazilian demands demonstrating, therefore, that Nursing needs further fiscalization coverage and qualification.<sup>3</sup>

Faced with this reality, it is assumed that the COFEN System/Regional Councils must face different difficulties in the fiscalization process of the professional practice. This article intended to analyze the fiscalization process of the professional practice in the COFEN System/Regional Councils identifying the difficulties related to its implementation.

An analysis of the research context enables the understanding of the phenomenon and sharing its meaning, thus, contributing to research and practice. The researcher can interpret and clearly forward implicit knowledge inserted in that phenomenon, mainly for the purpose of diagnosis, planning, evaluation, and in the organization awareness about the context in which the activity is performed.<sup>4</sup>

The authors describe the scenario in four layers related and differentiated by the extent of their meanings and by time frame

(present or future): the immediate, specific, and general context, and the metacontext.<sup>4</sup>

## METHODOLOGY

This was an exploratory study based on documentary and bibliographic sources, performed as an activity within the discipline: *The Nursing philosophical and theoretical foundations in health care*, as a requirement from the graduate program in Nursing at the Federal University of Rio Grande do Norte (UFRN).

The exploratory research seeks to present information about an object delimiting an area of knowledge and revealing the scope of a given phenomenon.<sup>5</sup>

The documentary sources are from the COFEN System/Regional Councils and their organization, the Brazilian Association of Nursing, and publications of books and articles that deal with the theme in different historical conjunctures.

## RESULTS

### THE IMMEDIATE CONTEXT: THE FISCALIZATION OF THE NURSING PROFESSIONAL PRACTICE

Regulatory conflicts are recognized in the professional regulation in the area of health involving processes of professional error, issues related to illegal practices, and corporate disputes for the recognition of professions.<sup>6</sup>

The regulation is defined as *disciplinary policies of economic and social activities, aiming at its control and prevention or attenuation of its consequences for the community* [...]. It is therefore, a public intervention.<sup>6</sup>

With the legal assignment of disciplining the Nursing practice, the COFEN System/Regional Councils has as its major challenge, the fiscalization of issues related to the profession representing operationalization of self-regulation.

This present work is governed by the COFEN Resolution No. 374/2011. In its article 1, it brings an innovation as it elects a conception of the educational process as the normative basis to stimulate ethical values and valorization of the work process in Nursing. This conception of pedagogical aspect was built collectively, resulting from the process of re-democratization of the Nursing Council in recent years, seeking to overcome the purely punitive vision, which predominated previously.<sup>2</sup>

The new Resolution strengthens the participation of federal and regional advisers considering them as fiscalization agents and clarifying about the possibility of ethics ban in situations where the Nursing care could endanger the health of users and/or professionals.<sup>2</sup>

In accordance to the fundamental principles of the Brazilian Administrative Law and ethics legislation, the fiscalization educates those involved and combat operations in disregard for laws, favoring the public interest, individual rights, and freedoms by contributing to improve the quality of services provided to the population.<sup>6</sup>

In the Nursing Council, the self-regulation begins with the registration and entry of professionals (COFEN Resolution No. 372/2010) and covers all the fiscalization actions, including decisions, and administrative and legal referrals arising from this act.<sup>7</sup> With the prospect of system democratization, we acknowledge that the political articulations with other regulatory agencies are still incipient and punctual (Public Ministry, Health Surveillance, and Social Control); however, it facilitates the participation of professionals and users contributing to the humanization of assistance and social transformation.

The procedures of the said action are properly described in the COFEN manual in the Resolution 374/2011 annex. They follow a systematic planning of visits to institutions or upon a received complaint. The fiscalization act proceeds with an inspection on the institution's premises, observing and advising on the profession legal compliance. The inspector draws up a detailed report, writes a notification (when necessary), and develops educational activities.<sup>2</sup>

An ethical process begins upon identification of evidences of Nursing professional ethical malpractice, based on a complaint or report from a preliminary investigation, and is followed by the ethics-disciplinary code for Nursing processes based on the COFEN Resolution No. 370/2010.<sup>8</sup>

The Nursing professional practice and the COFEN System/Regional Councils autonomy as a fiscalization agency are properly backed up by the law. Does the legality guarantee good practice and quality of care? The reality has shown that it does not. However, laws are instruments of power both for professionals, users, and the general population.

Problems with illegal or irregular practice, absence of nurses at the institution, students without the supervision of a nurse, staff deficit, and unfavorable conditions of work among other aggravating aspects, are common in the day-to-day actions of fiscalization across the country.

## THE SPECIFIC CONTEXT: THE HISTORICAL TRAJECTORY

The Brazilian Association of Nursing (ABEN), before the creation of the Council, led a mobilization of nurses conquering the legality of the Nursing practice by means of law nº 2,604/1955.<sup>9-11</sup> That law regulated the Nursing practice and related categories that could exercise it defining some of the assignments for these professionals: nurse, midwife, nursing assistant, and practical nurse.<sup>9-11</sup>

The struggle for the creation of a council that would guarantee the fiscalization of the professional practice was part of the

ABEN achievements since the 1940s, in the 20<sup>th</sup> century. In August of 1945, the first draft for the creation of a Nursing Council was presented to the Division of Health Organization (DOS) from the Ministry of Education and Health, which was approved only almost 30 years later, in July of 1973.<sup>10</sup>

The Law 5905/73 defines in its article 2: the Federal Council and Regional Councils are "*disciplinarian organs for the nursing professional practice and other professions including Nursing services*".<sup>1</sup> Initially, the federal authority under the Ministry of Labor, and in 1997 through the Provisional Measure no. 1,549/97, it came to be exercised, in a private character, through the delegation of the public power, later becoming law No. 9649, from May 27, 1998.<sup>9</sup>

With the creation of the COFEN in early 1970, the discussion about this legislation led to the current law nº 7,498/1986. It adopts provisions concerning the Nursing practice and other matters advancing in the definition of competencies of the different professional categories: auxiliary, nursing technician, and nurse.<sup>12</sup>

A recent article published by the COFEN Journal presents a historical report about the Nursing Code of Ethics. In this space, we will only allude to those editions.<sup>13</sup> Thus, the first code of Brazilian Nursing emerged in 1958, named as Code of Ethics of the Brazilian Nursing Association. This code recommended its fulfillment only to nurses considering that the ABEN did not have legal competence to inspect.<sup>13</sup> The following Nursing Code of Deontology, according to the COFEN Resolution No. 9/1975, emphasized only professional duties.<sup>13</sup> Almost 20 years later, in 1993, COFEN replaced the previous code, through the COFEN Resolution nº 160/93 (Code of Ethics of Nursing Professionals) including a chapter about nursing professional rights. In its next version, the code was updated by the COFEN Resolution No. 240/2000.<sup>13</sup>

The last change in the Code of Ethics was effective through the COFEN Resolution No. 311/2007 and contemplated the current technological advances and some aspects of professional practice overlooked in the previous versions.<sup>13,14</sup> It is the primary coded reference for ethical conduct and fiscalization.

In addition to this legislation, the specific guiding resolutions related for the fiscalization process must be highlighted, which was subsequently adopted for the creation of the Council.

1993 – COFEN Resolution No. 158/1993 – regulates the functioning of the System of Discipline and Fiscalization for the Nursing Professional Practice and defines its main objectives: standardization of the professional practice; prosecution for trial of reported professionals; inquiry and referral to other competent organs; orientation about and prevention of violations, and inspection of premises where Nursing is practiced.<sup>15</sup>

2003-COFEN Resolution No. 275/2003 – updates the previous resolution without significant changes being revoked by resolution No. 374/2011.<sup>16</sup>

In addition to the COFEN and federal legislation resolutions related to the professional Nursing practice, the fiscalization system rests on the standards of the Ministry of Health and is described in its manuals.

### THE GENERAL CONTEXT/METACONTEXT: PUBLIC POLICIES IN THE HEALTH SECTOR

Health is inserted in the area of public policies implemented by the Brazilian State regardless of its historical context, which is the reason why it is not possible to understand professional councils that operate detached from the wider debate and the political organization of society in each specific context.

The discussions about the regulation and fiscalization function of the health professional Councils in Brazil focus commonly on the dispute of private acts and market reserve, being contradictory to the citizenship, and constituting an obstacle for the development of the health sector in our country. In this perspective, the interests of social groups with more power overlap with professions and population interests.<sup>6</sup>

The authors justify the need for self-regulation and present a new paradigm of professional regulation based on certain principles:

- the public defense against damaging effects of professional practice;
- contribution to the general objectives of health systems: universality and equality of access;
- increased cooperation between professions;
- adjustment to technological innovations, development of new methods of treatment, and expansion of safe therapeutic alternatives for users.<sup>6</sup>

For this, the development of a culture of politicization in the councils becomes essential from all entities from different professions and training institutions, which are the main responsible parts for the construction and consolidation of a critical view in new professionals.

It is worth mentioning that the process of re-democratization of the country equally penetrates all spheres and open spaces for a more open and critical debate in relation to social policies, including health. This segment, together with education, constitutes one of the important pillars of support that are essential to the development of a democratic society.

In this perspective, the use of these spaces of political openings becomes a priority for professional councils to develop, discuss, and disseminate a new working agenda. The COFEN action, in its function as a fiscalization agency for the profession, represents a critical moment for structuring a new and more open fiscalization conception, more pedagogical, prioritizing the quality of care, as indicated in the current discussions in national events for this professional category.

## FINAL CONSIDERATIONS

Rights in the area of health often reach users through Nursing, hence the responsibility and commitment to protect these users from errors and negligence, whatever their origins are.

While recognizing that the quality of care depends on numerous factors such as social, economic, political, cultural, and other spheres of life, we emphasized in this study, the contribution of the Nursing Council fiscalization sector in the construction of citizenship and quality of care.

Therefore, the organizational capacity of different segments involving the health sector in which the Nursing Council is included as a fiscalization agency for the professional practice should be guided by fiscalization with an educational and participatory dimension. This is a recommendation in the last COFEN resolution 374/2011, which may contribute, among other measures, to the implementation and effectiveness of the right to health, in a more democratic perspective and in line with the principle of social control advocated by the SUS.

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