LEGAL CONTRIBUTIONS TO THE NURSING PROFESSION HONORS FOR CAREGIVERS

ABSTRACT
Objective: to discuss the legal aspects of regulating the professional practice of nursing in the country as distinction of careers allowance. Method: descriptive, historical and social study, from laws pertaining to nursing, allied and literatures that approached the objective proposed. The study to be prepared was subjected to the researchers of the research laboratory in the history of nursing (Laphe) nursing school Alfredo Pinto/UNIRIO, as laboratory strategy of argumentation, a Republican in the country, profession of 122 years (1890-2012). Results: several were the legal aspects that regulated the Brazilian nursing since the beginning of their professionalization in 1980 until the publication of the legislation in force. Conclusion: a change in nursing legislation is necessary in order to reduce the subjectivities and define what we do in our professional practice, because otherwise other segments in society will find gaps and each new symbolic fights will be fought. Descritores: Nursing; Nursing Legislation; Caregivers.

RESUMO
Objetivo: discutir sobre os aspectos legais da regulação do exercício profissional de enfermagem no país como subsídio de distinção dos cuidadores. Método: estudo descritivo, histórico-social, a partir de legislações pertinentes à Enfermagem, afins e literaturas que se aproximassem ao objetivo proposto. O estudo ao ser elaborado foi submetido aos pesquisadores do Laboratório de Pesquisa em História da Enfermagem (Laphe) da Escola de Enfermagem Alfredo Pinto/UNIRIO, como estratégia laboratorial de argumentação, de uma profissão republicana no país, de 122 anos (1890-2012). Resultados: vários foram os aspectos legais que regularam a enfermagem brasileira desde o início de sua profissionalização em 1980 até a publicação da legislação vigente. Conclusão: uma mudança na legislação de enfermagem se faz necessária no sentido de se reduzir as subjetividades e delimitar o que fazemos em nossa prática profissional, pois caso contrário, outros segmentos na sociedade irão encontrar lacunas e a cada uma, novas lutas simbólicas serão travadas. Descritores: Enfermagem; Legislação de Enfermagem; Cuidadores.
INTRODUCTION

Nowadays, in the professional political space, emerges the profession of caregivers who aspire to other similar object, if not the same, the nursing market bookable in the field of care.

The Bill (PL) 6,966 that aims to create a new profession was sent to the House of representatives in 2006 and since then the caregivers advance in their spaces and their legality, in which currently observe the processing in the Brazilian National Congress a new Bill (PLS 284/2011) in order to regulate the profession of caregivers of elderly in Brazil.

With the nursing profession was no different. From its beginnings was slowly winning their spaces and to rescue the trajectory of its legal provisions since the start of their professionalization in Brazil, which occurred in the early Republican period, specifically in 1890, it is possible to identify some progress through their legal supply regulator, which established and establishes several norms, both for your entry as, professional practice.

In the present study the proposed object this is the trajectory of the legal aspects related to the regulation of the professional exercise of the Brazilian nursing, resulting in temporary demarcation of the years 1931, due to the publication of Decree number 20,109, the first to regulate professional practice of nursing in Brazil and 1986 by the validity of the law governing legal norm, 7,498 today the profession in the country.

The specific legislation for nursing, originated with the publication of Decree No. 791 of September 27, 1890, who created a school of nursing in Brazil, called professional nurses and School Nurses, attached to the National Hospice of Alienated current Nursing School, Alfredo Pinto, of the Federal University of Rio de Janeiro.

From then on, the next steps, how do you want to flag this article, were the efforts to consolidate the occupation, one of them being the regulation of professional practice?

By reported in studies, the idea of creation of the school of nursing has occurred because of political issues like the confrontation of State power with the clerical, which resulted in the lack of people to take care of sick hospitalized at National Hospice of alienated, as also in the medical interest of an environment conducive to apply their clinical studies as well as the medicalization in place of ill treatment to the customers.

The creation of this school was the starting point for the birth of the nursing profession in Brazil. No one knows for sure if the main interest was the emergence of a profession, or of people who could care for the mentally ill, those of medical competence and not, that serve to execute their orders to ensure their proceedings and consequently, the power and prestige to the company.

It is necessary to emphasize, that the profession has several conceptions and so lacks a consensus on elements relevant to their concept. However, a few of them, warn the legal aspects that a profession need to possess as a form of control.

In this sense, the profession can be defined as an activity composed of a body of people who have obtained a title, through training, in order to carry out certain activity; must be a group of people engaged in the same activity, based on a regulation, and are organized in professional associations with a code of ethics and collective instances for the definition of rules.

Furthermore, it is an occupation that requires highly specialized knowledge or skills considered, who’s technical and social performance demand some kind of control.

In this way, the Brazilian nursing started its process of becoming a profession, in 1890, with the institutionalization of their teaching. However, to move forward in this process, the nurses as part of its exercise required control, rules governing their professional exercise even for matches with other professions have already said consolidates in the country, as doctors, surgeons, Apothecaries, dentists and midwives who, in 1850, began their regulations in order to eliminate the quackery, with the creation of Public Hygiene, which at the time was responsible for the control of the professional exercise of those professions.

To this end, this study aims to discuss the legal aspects of regulating the professional practice of nursing in the country as distinction of careers allowance.

The rationale for conducting the study should be given to understanding as to the flight of the laws pertaining to nursing, which resulted in a conquest to its members before the Brazilian society through their struggles and achievements.

METHOD

Study on social-historical perspective is understood as an approach that prioritizes the human experience, the processes of differentiation, individualization of collective
identities and behaviors in historical explanation, and that relied on an analysis of the laws relevant to nursing.

In addition to these laws, the analysis also occurred in dissertations, articles, book chapters and related laws the Federal Brazilian Constitution and nursing.

The study to be prepared was submitted to our pairs of researchers, through the participation of undergraduates, graduate students, doctoral students, teachers and researchers in the history of nursing history research laboratory of nursing (Laphe) nursing school, Alfredo Pinto.

This was not only a step forward in the discussion on behalf of the profession, but also understood, at the time with our peers, as a form of participation in certain clarifications, as laboratory strategy of argumentation, a Republican in the country, profession of 122 years (1890-2012).

**RESULTS**

The idea of profession as a set of people holding the same activity and are organized in a professional association, occurred in nursing in 1926, in Rio de Janeiro, in which the nurses of the first class of the school of the National Department of public health - 1925 gathered with the purpose of founding an Association for past pupils and put into practice an important strategy in the process of professionalization in mission nurse Parson. However, the idea of Association was developing and eventually expanded to create an association that would bring together nurses from all over Brazil, and being formed in August 1926, the National Association of Graduate Nurses, current Brazilian Association of nursing, known by the acronym ABEn.

The school of the National Department of public health, today the Anna Nery School of nursing, of the Federal University of Rio de Janeiro, was the third nursing school established in Rio de Janeiro, in the former Capital of the Republic in 1922, being preceded by School nurses Practice from the Brazilian Red Cross, founded in 1916, and the professional school of Nurses and nurses from 1890, broken down into three sections: male, female and mixed, in 1921, and it is clear that mixed and female only ran on National Hospice Alienated and Stranger’s colony of Engenho de Dentro, at the time, Professional School Nurses Alfredo Pinto, respectively, continuing the process of professionalization of nursing in the country.

Turning the Association, three were their names - National Association of Graduate Nurses (1926), the National Association of Brazilian Graduate Nurse (1929); Brazilian Association of Graduate Nurses and 1954, a fourth title was, and remains to this day, as the Brazilian Nursing Association (ABEn).

The current development of ABEn made it an entity from its early days, involved in issues of education and training of nurses, so much so that in its statute those purposes were expressed. However, his concern with nursing is not exhausted in relation to teaching, extended both to the labor issues with regard to the legal aspect with the bias to regulate the profession of nurse.

This regulation was made official in 1931, with the publication of Decree No. 20,109, the first to regulate the practice of nursing in Brazil. Signed by President Getúlio Vargas, in addition to the regulatory standards, also brought those assembling the assimilation of nursing schools as versa his caput.

In its first article, the Decree instituted those who could use the title of nurse, followed by the official standard school-Anna Nery School of Nurses. Other articles refer to composing examination stalls to validate diplomas of nurses dispatched by foreign schools; how the schools should proceed to their assimilation with the official standard school among others.

In that Decree, as you can see, the main aim was to regulate, establish rules for the use of the title of nurse, for assimilation of nursing schools and legitimize the Standard Official School of the country. Lacked the competence, responsibilities of nurses for your professional practice.

Still, by President Getúlio Vargas, in January 11, 1932, another Decree was published, the number of non-specific, to 20,931 nursing, and aimed to bring some norms to regulate and oversee the exercise of medicine, dentistry, veterinary medicine and pharmacist, midwife and nurse, in Brazil.

In this Decree, there is permission from your exercise throughout the Brazilian territory for those qualified in accordance with the federal laws; the qualification exam to graduates for schools or foreign universities; compulsory registration of the diploma in the National Department of public health; the penalty to be suspended or dismissed if they commit misconduct or mistake of the craft and a fine if present opposition or embarrassment of any order to supervisory action of the health authority, among others.

In your reading, there are also duties, prohibitions, penalties and checks expressed for each profession, however, regarding the nurse, this is cited along with the midwives.
and the Decree was only that specialized in obstetrics, bringing the beginnings of their competence, and limited to essential care for women and newborns in normal cases in its article 36. Nevertheless, for that nurse was not specialized in obstetrics, which would be its rules for the exercise of their profession?

Later years of the publication of the Decree 20,931 in present-day nursing Association, specifically in the administration of President Zaira Cintra Vidal (1943 to 1947), began a struggle for the creation of a Council for its professionals. For this, there was the entry of the first draft in the Division of Health Organization (DOS), the Ministry of education and health in August 24, 1945, requesting its creation. In the meantime, is law 775/1949, which addresses the nursing school in the country, and brought in article 1 the two courses that included the teaching of Brazilian nursing: travel nursing and nursing assistant! This law does not expressly repeal included although there had been various publications of Decree and law as it pertains to Education and teaching.

This law originated by law 92/48 that received attention at the time of the Division of education of current ABEn for nursing and nursing assistant proposing amendments deemed necessary. It is necessary to emphasize, in accordance with the previous study, that the emergence of the nursing assistant began, even before the regulations of its teaching that occurred in 1949, at Hospital Samaritano de São Paulo in 1936, who went on to be certified as a nursing assistant girls that concluded the basic course of three years, in order to meet its internal needs, despite there is no regulatory legislation at the time for the course. During the same period the school of nursing Carlos Chagas, in Belo Horizonte, also created a similar course for its first Director Lais Netto dos Reis, but his short-lived led to his non-recognition. In 1941, Lais Netto dos Reis, then Director of the Anna Nery School of nursing, in view of the need to increase the number of professionals trained to work with hospitalized patients, because there were not enough qualified nurses for the role, creates the nurse auxiliary course during the closing session of the 1st Week of nurse, on May 20, 1940. Yet even without the current regulation and the profession of nursing auxiliary, in 1946, the President of the Republic José Linhares decreed, by Decree of 22 January 8,772, the creation of the career of nursing assistant of the permanent staff of the Ministry of education and health. However, what were their duties while nursing professional?

Returning to the Brazilian Association of Graduate Nurses, according to study conducted management of President Waleska Paixão (1950-1952), began the formation of a Commission to study the code of ethics for nurses. Even in this decade have been discussed also in the Association that nursing could have their teaching extended to three levels: the helper, for those that had the primary course, coach to the holders of the junior high school (or four years of gym) and higher than those who had attended the full secondary.

In 1955, the law 2,604 was sanctioned by President José Café Filho, and aimed to regulate the practice of professional nursing, as described in its heading. this law repealed the first legal norm that regulated the Brazilian nursing, the Decree of 1931 20,109. Only six years later, this new legislation became regulated by Decree number 50,387 from 1961, with the aim of instructing the execution of the law.

The new law, in effect at the time, that regulated the exercise of nursing and that has not been expressly repealed, brought freedom to exercise standards of nursing across the country; who could exercise the profession-nurses, midwives, nursing assistants, midwives, practical nurses or nursing-practical with their requirements and their duties. Regarding the duties of nurses and obstetricians is only expresses management issue in the hospital service and teaching, however, not explaining the nursing service related. The practical nurses and nursing assistants, assigned to them by law all the activities of the profession, excluding for nurses and similarly did with the midwives compared the obstetricians.

It should be noted that the Decree 23,774 in 1934 guaranteed to the Laity of nursing with over five years of nursing, exercise the right to use the title of nurse practical, in which Vargas tried to legalize the situation of nursing executes that, in one way or another, were involved in the care of the sick. So what would be the practical services of nurses profession seen all these activities be part of list of attributions of practical nurses and nursing assistants under the law 2,604/1955?

The question could have been answered by the Decree that regulated the law 2,604/1955, due to their goal, the drill down the law for its faithful implementation.
However, the fact that lacked professional assignments that make up the nursing.

For the nurse, the Decree 13 cited in its article 9 that are its powers, the exercise of nursing in all its branches. However, what fields? In addition, completed their assignments with the managerial issues and education as described in the law. Also cites in its article 2 the implementation of acts, for all those who make up the nursing, such as observation, care and health education; administration of medications and treatments prescribed by doctors and the application of measures to prevent diseases. Similarly treated subject to the obstetricians and the nursing assistants.

The bans also nursing professionals were detailed in this Decree. It is noteworthy that the nursing, as points to 2,604/1955 law, article 9, was supervised throughout the national territory by national Inspection Service of Medicine, an integral organ of the National Department of health, as had occurred since 1932 with the publication of Decree 20,931. Already the legal regulatory standard brings as responsible for this supervision, obstetricians and nurses with diplomas dispatched by official or recognized school by the Ministry of education and culture are registered according to the legislation in force.

In the management of Maria Rosa Souza Pinheiro (1958-1954) in Brazilian Nursing Association, there was the adoption of the code of ethics of nursing. In this way, the Brazilian nursing with almost 70 years of professionalism demonstrated, still, even shy their standards for the practice of the profession on the definition in law of their powers, rights, duties and obligations.

It is noted for the creation of the Council started its request in 1945, many were losses and deviations of several other drafts sent by the current Brazilian Nursing Association (ABEn) for the creation of a Nursing Board. Yet 1973, in fact the request was answered, being sanctioned the law 5,905 creating Federal and regional councils of nursing. This law beyond create the respective Councils, brought its powers, the Constitution of your recipes, composition of its members and its mandate, the form of election, in addition to the possible penalties for nursing professionals regarding the infringement of the code of Ethics of nursing.

This set of principles and rules of conduct inherent in nursing-Ethics-Code according to the aforementioned law, responsible for their preparation, from 1973, the Federal Council of nursing (COFEN) as well as lower provisions and dispatch instructions for uniformity of procedure and functioning of the regional councils and other assignments. In this way, the COFEN is an organ that discipline since the professional practice of nursing, that is, one who is competent to formulate a set of regulations, the example of the Cofen Resolution, intended to maintain the good order of the profession and which should be followed by all nurses and other professions including nursing services in the country.

Based on this new law, the supervision of nursing services, is of competence of national inspection Service of medicine and nuance that the regional councils of nursing. Established in the same law of 1973, 5,905 regional boards of nursing (COREN) should be established in each State and Territory, with headquarters in its capital, and they fit the COFEN subordination and has as one of its competencies, to discipline and supervise the professional practice of nursing, noting the General guidelines of the Federal Council, as cited in article 15, item II of the Act.

In this way, it is up to CORENS supervise the exercise of nursing professionals as to the compliance with the regulations issued by the federal agency disciplinarian of Brazilian nursing as well as laws pertaining to nursing and related legislation.

In this sense, it can be observed that from 1973, the ABEN that from the beginning of its creation accumulated all nursing issues such as education, training, scientific, legal and labor issues, with the creation of the Councils, their competence, and to issue regulations on the exercise of nursing as set out in the statutes of the Association purposes from 1929 to 1935 and later presidential administrations came to be nursing the Federal Council. Among other functions of ABEn, the nursing labor issues, in its early days, were out of their jurisdiction. In 1932 has occurred, in accordance with the Presidential Decree 19,770 of 5/19/1931, and the Association's help, the foundation of the National Union of Nurses of the merchant marine and with the passing of years in 1977, in addition to this, the Nurses’ Union of Rio de Janeiro. Only thirteen years after the creation of nursing Councils and thirty one of the publication of the last act, which addressed regulation of exercise of nursing (2,604/55), the publication on the same subject, law 7,498 for June 25, 1986, that until the times
today, 21st century, regulates the profession at the national level.

This new device not expressly repealed that law enacted in 1955 - law 2,604 – she used currently for the omission cases by law 7,498/1966. In its content brings that nursing activities can only be carried out by persons legally empowered and given in the respective regional councils of their jurisdiction, in accordance with article 2. Brought the nursing technician, as a component of the nursing staff, with their proper requirements and duties, among others.

With regard to this new professional, signal that the first discussion of this category began in the 50. The Brazilian Nursing Association, various discussions occurred concerning the creation or not of nursing technical course, since article 5 775/1949 law relate to the requirement of high school to join the nursing course (superior). 12 at the time fit within size level of education, so much so that in 1956, 2995 law included a single paragraph in the law that regulated the teaching to the time (775) increasing the period of validity of article 5 to up to 1961, and establishing the junior high course for nursing until the US entry deadline. This was the same level of education considered for the nursing technical course described in law 3,082/1957. 12

In addition, the season was identified the needs for care of patients and found the existence of great shortage of nursing professionals both quantitative and qualitatively. 12

In 1961, was published to law 4,028 of national education Bases and Guidelines that consider the technical training of paramount importance for the development of the country which has influenced decisively in the creation of nursing technical course in 1966. 12

Regarding the tasks of nursing professionals, the law 7,498/1986 revealed a better clarity in relation to previous standard assigned. Were included to nurse: consulting, auditing, reviewer on nursing issues, consultation and prescription of nursing, nursing direct care to patients with life-threatening and greater technical complexity. The same occurred with the other professionals.

The following year the Decree 94,406/1987 came to regulate that which rules on the exercise of nursing (law 7,498/86), similarly as the previous law ran with, bringing a little more details the subjects discussed in the law.

It is worth mentioning that at the time of the publication of the new law regulating the practice of nursing, the country's political scene was of re-democratization, leaving behind 21 years of military dictatorship. 22

José Sarney led the Presidency of the Republic and one of the most important achievements during his administration was the constitutional amendment, with the convening of a national constituent Assembly, for a new Brazilian Constitution by virtue of the change of context of a dictatorial political regime to the Democratic Party. 22

In this way, in October 5, 1988, was published in Official Gazette 191-A, the Constitution of the Federative Republic of Brazil, being born at that time a democratic State of law.

His relationship with the context of the Brazilian nursing occurs that your title II deals with the fundamental rights and guarantees, that is, the understanding that the new democratic State has on what is required for a Brazilian citizen with dignity, one of his foundations. In addition, is in its article 5 that are exemplified, the individual and collective rights and duties. In its 13th paragraph cites the free exercise of any work, trade or profession, met the qualifications that the law establish, and for nursing, legislation which the Constitution refers are laws 5,905/73, 7,498/86, Decree 94,406/87 and law 8,967/94 amending the first paragraph of the law, 7,498/86 legal framework governing the exercise of Nursing Profession in the country along with the decisions of the Regional Councils of each jurisdiction and the resolutions of the Federal Council of nursing, being those that currently constitute the ethical and legal aspects of the nursing profession.

**DISCUSSION**

We can identify in the results, since the beginning of the process of professionalization of Brazilian nursing, there were many struggles and achievements, what fits the question: But what is the importance of knowing the legal path to the discussion of the distinction of the nursing profession in the face of caregivers?

A possible answer would be under the qualitative aspects of the legal standards of nursing, because when you know its trajectory and analyses the laws, realize-if absences to content for professional practice as well as for gifts, more objectivity.

In the first attempt to regulate the profession came through Decree
Aguilar S, Porto F, Nassar P et al.

(20,109/1931), in which she performed tentatively into society, reporting only who was nurse, the official school pattern and form of assimilation of the other, even after more than 40 years of creation of the first nursing school of Brazil.

The advance, the second attempt in the process of regulating nursing occurred with a law (2,604/1955) and a decree (50,387/1961). In this circumstance, there was a breakthrough in both the quantity and quality of legal provisions, but in a generic form, leaving doubts as regards each fact professional assignments of nursing.

These questions remain even after the publication of the current legislation that regulates the Brazilian nursing, law 7,498 of 1986 and his Decree of 94,406/1987.

There is no doubt the development that the law has in relation to his daughter, that brings the most varied assignments of each Member that makes up the nursing staff, but once again, many of them questionable from the point of view of goal, leaving doubts as to his faithful exercise and giving banks a number of interpretations, such as: nursing care of greater complexity.

It can be observed that the lack of clarity accompanies the nursing legislation since its beginnings and are repeated, yet, today, perhaps espousing be weakening legislation its contents due to several possible interpretations that many of your items may present.

This is perhaps one of the reasons that caused several other professions to come up with a practice that was from the beginning of nursing professionals, such as nutrition, physiotherapy and, currently, the more we would like the office, the caretaker.

It should be noted that the term craft, currently can be understood as any specialized activity; profession; employment; way of life. Its meaning also covers among other definitions any manual or mechanical art. There is no hierarchy of superiority when compared to profession or occupation because the Brazilian Constitution itself does not make any distinction.

With regard to this new worker in the field of health, its name is very close to the essence of professional practice of nursing. To put it another way, the care that could result of nursing a regulatory standard with points, still not well understood, have difficulty settling in that House for sale the practices of the professional practice of nursing. Political point that the profession needs to broaden the discussion on tighten to the competent agencies: who are we? What we do in professional practice?

The answer may be clear and objective probes possible to legal understanding, because for those who think this is because we think the reason for the emergence of workers, known as caregivers, and the reasons why are support to try to establish in the field of health.

### CONCLUSION

By the beginning of the process of professionalization of Brazilian nursing, we were able to once again bring up the possible consequences related to the emergence in position in the legislative field to review aspects of the regulation of the profession.

In addition, it is believed that the present study it was certain academic provocation to identify, once again, among the many already made by other researchers, the opportunity to know, understand and as acted and acts the Brazilian Nursing Association, when invested and invested, like consulting, regulatory process, understood as a MOM, or better, in the sense of direct participation in the creation of the Federal Council of Nursing State Councils, in the Union of nurses and many others, even though the plural in the present time, it is acknowledged by the struggles and achievements written in the pages of the history of the profession.

Through the results of conquest, during years and due to the dynamism and the different niches that nursing professionals are working, perhaps one of the greatest needs is not a new regulatory legislation, but rather a review of which already exists. But whether new legislation or revision of existing, emerging on the need to revise the text relating to professional practices in order to reduce the subjectivities, allowing for various interpretations, sometimes dubious in the legislature.

This attitude, among others, may be the way to once again define what we do, in our professional practice, because otherwise other segments in society will find gaps and each new symbolic fights will be fought.

In this respect, as already mentioned earlier, the present study was also certain academic provocation, methodological rigor, which is necessary to Park, not to stop, but to reflect on what was said and not said in the lines above, and think of a professional attitude towards the Act of caring.
REFERENCES


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