

THE RELATION BETWEEN THE SOCIAL PURPOSE AND THE RIGHT TO HEALTH IN THE MEDICAL-HOSPITAL CARE SECTOR

A RELAÇÃO ENTRE FUNÇÃO SOCIAL E DIREITO À SAÚDE NO SETOR DE ASSISTÊNCIA MÉDICO-HOSPITALAR

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ABSTRACT: The social function of the medical-hospital care sector stems from questioning the effectiveness of the fundamental right to health and the practicality of business activity, as a co-responsibility for social development. In order to achieve the goal of conducting the social purpose of the company to the hospital environment, the recognition of the first to the hospital activity is essential to exercise the right to health that must be provided jointly by the State and by society. Using the hypothetic-deductive method, this article analyzes the role of the healthcare market in the provision of this service in a humane manner and in the performance of specialized management.

Keywords: Delivery of health care; social purpose; community development; right to health; humanization of assistance.

RESUMO: A função social do setor de assistência médico-hospitalar advém da problematização entre a efetividade do direito fundamental à saúde e a funcionalização da atividade empresarial, enquanto corresponsável pelo desenvolvimento social. Para atingir o objetivo de conduzir a função social da empresa ao âmbito hospitalar, parte-se do reconhecimento do outro e da atividade hospitalar como essenciais para alcançar a efetivação do direito à saúde que deve ser propiciado conjuntamente pelo Estado e pela sociedade. Utilizando-se da metodologia hipotético-dedutiva, esse artigo analisa o papel do mercado de assistência à saúde na prestação desse serviço de maneira humanizada e na realização de uma gestão especializada.

Palavras-chave: Assistência à saúde; função social; desenvolvimento da comunidade; direito à saúde; humanização da assistência.

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1. INTRODUCTION

The relation between social purpose and the right to health was born from the analysis and identification of the possibility of framing the concept of social purpose of the company to the hospital activity, in view of the fundamental right to health that must be granted jointly by the State and society. In order to achieve this initial objective, the purpose is to investigate the social purpose of the healthcare sector, such as hospitals and private healthcare establishments, while helping to achieve the right to health, through its humane management, in order to make this fundamental right effective.

Considering the social purpose of the institute as a modern concept resulting from the theory of constitutional civil law justifies the beginning of the analysis, in view of the restlessness with the effects caused by the practice of activities carried out from the individual interest. The concern with the thoughtfulness of social and individual interests deepens the research, explaining in this way the concern with social development.

Therefore, the social responsibility of the company also deserves to be highlighted, given the innumerable misunderstandings and confusions that exist between this type of institute and the practicality of the hospital activity.

It is interesting to reflect that the concern with future generations causes great commotion and deserves respect on the part of everyone, including the State, through the awareness of the actions taken in the present time and its effects.

In the historical process of the medical-hospital care sector, the gradual reduction of the public health network was combined with a rationalizing policy based on the selectivity of care, contributing directly and indirectly to the establishment and expansion of the private network.

With this, new models of management of the hospital activity arise for the concession of the provision of care services directed to the “private entities”, “private non-profit organizations” governed by the private law that brings in its bosom the “public-private partnership”. It is observed the imperative of effecting the fundamental right to health of the citizens, based on joint actions between State and society, including business activity, considering its importance and responsibility for the increase in community awareness.

It is important to point out that the development of a management capable of meeting the needs of the healthcare sector is based on the increase of activity, given the precariousness of the means of administration of resources, given the eminent needs of clients/patients and the constant technological development. Since it is no longer able to meet all the demands due to its need to be made effective, the State has been faced with the demands on the so-called judicialization of health, which has caused great concern, given the innumerable demands for the establishment of the right to health, for being a natural law.

It is essential to understand the paths that have been followed up to now, as well as those that still need to be addressed, sufficient to satisfy the fundamental guarantee of complete healthcare in order to think about the need to provide a joint service between State and business to achieve the guarantee of social development, when talking about the right to health. For this reason, the healthcare sector must recognize the business sector as fundamental to the establishment of the right to healthcare and thus be able to identify the reasons why the struggle for the recognition of rights has been so effective and widely spread among individuals; this recognition of the business sector and the hospital activity is what deepens the analysis when another individual is needed in order to see his or her granted right and this, in a humane and effective way, assisting in the establishment of the right to health, thus committing itself to the development of the whole.

The usefulness of the right to health is observed with caution when countered by the argument of the surplus reserve theory, usually carried out by the State, which does not require clear evidence of

the impossibility to comply with the minimum conditions to protect and provide the right to healthcare, including, in this situation judicial decisions regarding the duty of the State to enforce it.

As a general objective, to identify the comprehensiveness of the concept and application of the institute of the social purpose in the medical-hospital sector, before the conception of the right to health and its humane approach. In this case, a hypothetic-deductive analysis with bibliographical revisions about the social purpose of business is necessary to deepen the study of the theoretical reference of historical and fundamental perspectives for its development.

The text is organized, first starting with the concept of the institute of the social purpose of business. Second, the questioning of the right to healthcare as a constitutional guarantee and the necessity of its application for the social development, the management of the hospital activity and the humane effectiveness are established. Later the right to healthcare will be presented. Lastly, the aims of the social purpose of the medical-hospital care sector will be addressed.

2. THE CONCEPT OF THE INSTITUTE OF THE SOCIAL PURPOSE OF BUSINESS

The study about the social purpose of business brings innumerable questions and even some contradictions about its concept and its comprehensiveness. In this sense, it can be seen that the social responsibility of business is one of the foundations that make up the institute of the social purpose of business activity (FRANCO, 2015, p. 227).

The social purpose entered into the Brazilian legal system as essential for the development of society, aimed at quantified and qualified growth, as well as implementing the developmental aspects of relations between individuals (MAMEDE, 2016, p. 159). Thinking of the practicality of business from the social purpose brings the need of business to help social development, through the recognition of the rights of individuals and the augmentation of consumption, it is necessary to do it in a conscious and sustainable way.

The identification and effectiveness of the social purpose of business must be concerned with the community and guarantee the interest of society for the effectiveness of healthcare, even in face of a competitive market.³ It is based on an analysis of the objectives of the company, whose fulfillment requires that its economic objectives are pursued efficiently and the achievement of goals is reflected to ensure good results in the world of business

Identifying the effectiveness of the right to health, provided by the State and business, through the analysis of the management and humanization of the hospital activity, it is also essential to reach and formulate the concept of the social purpose of the medical-hospital care sector (SALU, 2013, p. 226). Humanization is seen from the identification of the other person who needs comfort and care to relief their physical and/or psychic pain and, given the importance of the business activity in society, it becomes responsible for the effectiveness of the right to health of individuals, by means of its objectives and relevance of the humane vision that it must exert.

The development of scientific research is allowed precisely due to the legal and social relevance that the practicality of the hospital activity has, hence from this it is possible to put into effect the fundamental right to health, through the fulfillment of its corporate objectives, however, it must respect social interests. The balance of these interests must be considered in order to reach a broader perspective that, from a social point of view, the situation presented surpasses the subjective interests of the individual, after all "The society demands that healthcare markets provide good quality medical care without having to wait months for this care" (FERREIRA, 2016, p. 14).

³ "Article 154. The administrator shall perform the duties that the law and the statute confer on him to achieve the ends and in the interest of the company, satisfying the requirements of the public good and the social function of the company" (BRAZIL, 1976).

According to the Natural Law point of view, the social purpose of property was identified as a means of effecting divine justice, a concept that only changed in the 19th century with the proliferation of liberal thinking, which guaranteed that the social practicality of property was a consequence of human freedom and intelligence (RAMOS; GRAMSTRUP, 2016, p. 98-99). Subsequently, putting the written laws into perspective became more relevant, resulting in the collective interests prevailing over individual interests, which ensured a greater concern with the results caused by any legal transaction carried out, thus guaranteeing their social effectiveness.

Carvalho Neto and Passareli (2016, p. 178) comment that the institute of the social purpose is a new way of observing society through practicality, which ceases to be concerned only with the individual, to prevail over collective interests and sustainable development. In general, the current problem is to protect human rights and not only justify them, precisely because of the creation of the social function as a supporter of the reduction of inequalities, thus eradicating the abuses hitherto practiced.

Bittar (2014, p. 219) affirms that the social function guarantees a greater equality in society, including the freedom of individuals, as it is an off-balance-sheet tool of private relations, thus it is necessary to protect the dignity of the human being.

The expression “social purpose” immediately refers to the notion of fraternity or solidarity, supporting the importance and recognition of the other in the construction of the person and social life. The social purpose advocates the duty to overcome individual rules over collective ones, an obligation intrinsic to every human being, so as to enable the prosperity of society (MACIEL, 2015, p. 349). Santi Romano, in 1977 was the one who truly developed the concept of social purpose making a connection from the powers, rights and duties, that before a written law, a “duty of care” was characterized, whose exercise by the individual that indicates a reaction which is not contrary to the public interest (ROMANO, 2008, p. 30).

The constitutionalization of the institute of the social purpose of business, observing it from the primitive conceptions of social purpose of property and contract, must be analyzed in the sense of the principle of free initiative, from the economically constitutional order (GÉRING, 2017, p. 62-63). In this context, Sy (2003, p. 557-560) describes the fair distribution of social benefits and healthcare burdens in the Philippines, where two opposing doctrines of welfare and free enterprise whose business sector must operate in competitive conditions with minimal government control.

The analysis of the business’ social responsibility and its practicality are of extreme importance, not only to elucidate the theme, but also to demonstrate the complementarity and esteem in taking care of the effects caused in society from the business activity.

3. THE RIGHT TO HEALTHCARE AS A CONSTITUTIONAL GUARANTEE AND THE NEED TO IMPLEMENT IT FOR SOCIAL DEVELOPMENT

Healthcare is a fundamental right granted to everyone and at the same time it must be provided not only by the State, as a benefactor of welfare, but also, and perhaps even more concretely, given by others social institutions that aid in social and human development. The right to health is a social right that refers to

[...] the value of equality among persons whose legal right, the right to life, falls within the category of fundamental rights, constitutionally protected, in a non-exhaustive way, since it accepts international treaties in which the Federative Republic of Brazil is a party, as prescribed in article 5, paragraph 2, of the Brazilian Federal Constitution (DELGADO, 2013, p. 277).⁴

4 Our translation. In the original: “[...] ao valor da igualdade entre as pessoas cujo bem jurídico, direito à vida, encontra-se situado na categoria dos direitos fundamentais, constitucionalmente tutelado, de forma não exaustiva, porquanto pode recepcionar tratados internacionais em que a República Federativa do Brasil seja parte, conforme prescreve o artigo 5º, § 2º, da Constituição Federal.”

Well-founded in this understanding, Pinheiro (2016, p. 161) comments that the terminology “right to health” defined by the World Health Organization (WHO) is simplistic and inadequate, which states that it does not seem right to aim for the “health” result, or to the “healthy” state, assuring that the use of the term “right to healthcare”, which seeks to guarantee completeness, is difficult to achieve by humans in general.

When thinking about healthcare, it is necessary to understand what this term is, since it refers to a social and legal range, while it is something intimate of the individual, considering that the conception of healthcare can suffer different meanings, given the reality experienced by the community and the individual. In this way, the perception of the right to healthcare, seen by D’Ávila and Saliba (2017, p. 17), is that it bends to “... their own foundations and also their political, economic and social determinatives, which shows its interface with the search for social justice”.

For being considered recent, the right to healthcare in Brazil does not have a simple and easy history of effectiveness as a human and fundamental right, prone to the protection of the State. It is important to note that, according to Folland, Goodman and Stano (2008, p. 344), the healthcare market of “hospitals ... in the US and in many countries usually began as charities, providing assistance primarily to the poor and depending heavily on donations”.

In any case, the very conception of this Brazilian right has been built and idealized at the heart of society, until the conception of a social constitutionalism accessible to all individuals and granted by the State, as recommended in article 6 of the Brazilian Federal Constitution (DELGADO, 2013, p. 227).

Throughout the history of Brazil, healthcare has gone through different moments of conception, being treated as favor and service, until the right to health was reached. Although not necessarily in a successive way, it is important to highlight that the right to health has been debated up to now, in order to confirm its protection and the need for its effectiveness.

The current debate refers to the provision of healthcare services under the aspect of prevention and integral protection of the individual, in view of the exclusive responsibility of the State in guaranteeing its effectiveness, or it would be simultaneously the responsibility of the business sector the establishment of the rights to healthcare. In these terms, Ramos, Madureira and Sena (2016, p. 458) reinforce that the idea of health policy must have four fundamental principles: be contestable, relevant, public and regulated by the State.

In the first moment of the history, the health care provided by the State to the population was considered a favor, therefore, the citizen could not make any demands for the provision, by the State, or even, to question its applicability and extension of the service (PINHEIRO, 2001, p.128-131). After the process of democratization of the State, Brazil began to show greater concern with the workers.

In the mid 1980s, the provision of the healthcare service was a consideration resulting from a specific hiring of those who were able to afford the costs of medical treatment or to workers who contributed to social security. In any case, the health service was not considered a duty of the State or an individual right.

The State was not yet responsible for health policies, which is why it did not refer to a universal and broad service. At this time, the sheltering of sick and needy people was carried out by the “Santa Casas” (Holly Houses), that is, charitable organizations, most often funded by specific churches and social organizations for this purpose (XAVIER *et al.*, 1997, p. 27).

In the 1970s, discussions began on healthcare reform and concern for expanding healthcare, as well as promoting public policies related to the prevention and cure of diseases (PAIM, 2008, p.626-627). It was defended the globalization in regard to paying attention to healthcare and the humanization of medical assistance.

The structuring of the Unified Health System (SUS, in Portuguese) gradually occurred through various regulations and development of specific policies, starting in 1990, which indicated the process

of negotiation and agreement among the three federative branches (Executive, Legislative and Judicial), Law no. 8,080/1990 that established SUS and confirmed the fight for the globalization of the right to healthcare and the responsibility of the State in the promotion of public policies necessary for its implementation. In this same law, it was also acknowledged the expansion of the provision of health services in the private sphere, precisely with the purpose of assisting the State in the promotion, protection and recovery of health, and the free enterprise is responsible for the development of the activity.

Healthcare for the population aims at globalization and equality. Therefore, the right to health is guided by necessary principles, which together make the fundamental right and all those that result from it (RIBEIRO; MARQUES, 2013, p. 134) becoming more effective and efficient. The table below describes such essential principles for attaining healthcare in Brazil:

Principles	Definition/Characterists
Globalization	It deals with the extension of care and responsibility, by the State, of the right to healthcare, as a fundamental right, must be granted to every individual.
Completeness	It refers to the extent of care, and for this reason, the State must provide all necessary and indispensable means for the implementation of healthcare, be it at preventive or curative levels, where care must be full and effective to what is claimed.
Equality	It deals with the elimination of inequalities, referring precisely to the principle of material isonomy, treating equals equally and inequalities in proportion to their inequality.
Decentralization of healthcare service	<ul style="list-style-type: none"> – It refers to the approximation of public policies to individuals, being the approximation and local attention primordial for effective care; – Redistribution of decision-making power, resources and jurisdiction when, concurrently, they act at municipal, state and federal levels.
Community Involvement	<ul style="list-style-type: none"> – Assuming social participation in the formulation of public policies capable of realizing this right; – It occurs through health councils, health conferences and institutions that provide the community with the elements needed to expand the information and knowledge needed about health.

Source: Brito-Silva; Bezerra; Tanaka (2012).

So to speak, Gunnar (2006, p. 178-179) affirms that the right to healthcare is treated as a fundamental right because it belongs to all members of society, indiscriminately and indistinctly, and can never be shaken by any activity of the State that must offer integral and effective protection, as recognized by the Universal Declaration of Human Rights of 1948.

Thus, health is the expression of the quality of life of a population and, if it is considered as a fundamental right to every human being, it is necessary to consider good food, housing, work, leisure, land, freedom, citizenship, education, environment and access to medical-hospital care, all as unconditional factors of integral healthcare.

In order to justify the qualification of the right to healthcare as a fundamental right, it is essential to establish that its extension belongs to all members of society indistinctly. However, egalitarian and universal ideals in healthcare have their limitations as a result of public policy, in which "Public healthcare coverage has increased a lot in recent years, but access to medical care is precarious and very unequal". (BACHA; SCHWARTZMAN, 2011, p. 4).

The right to healthcare must be provided indiscriminately to all persons who need their coverage and care, which must be provided by the State. Therefore, the right to healthcare and protection

cannot be denied to those within the national territory, justifying themselves through the dignity of the human person.

Therefore, the right to health care and protection cannot be denied to those within the national territory, justifying themselves through the dignity of the human people.

However, this benefit must be observed with caution, in order to overcome the state-centeredness, although without distancing itself from its effectiveness in the healthcare field, as argued by Novato-Silva (2010, p. 196):

Centrism, presence of the past, respect, continuity and avoidance of conflict are also seen as perceived characteristics, configuring more conservative and closed institutions, typical, according to some respondents of historic and very religious cities. This reveals, in organizational terms, the tendency for an “incremental” decision-making process - which tends to repeat past decisions, making simple adjustments, which ensures the maintenance of the status quo. In the case of healthcare, this means preserving the social situation with indicators that are far from those recommended by the World Health Organization (WHO) and more resistant to change, such as the introduction and appropriate use of information management tools.⁵

In this sense, healthcare should be thought according to all the involvement it has in society, in a panoramic and at the same time concrete point of view. It is essential to say that the institutions responsible for healthcare must reformulate the performance and administration of their services, so that the individual is observed in its integrity regarding the bio-psychic-social and spiritual aspects (RÜTTEN, 2000, p.35-38). There is a need to promote new models of healthcare promotion through systems committed to defending life in an ethically responsible manner.

According to Lobato (2012, p. 27-15) it is necessary to affirm that healthcare deserves to be treated as essential, not only in its denomination or guarantee, but also in practice, effecting integral care, whether carried out by the State or by private companies, in a preventive and curative way, or even in rehabilitation.

The aim that is reached when it comes to healthcare is the integral attention to the individual who is vulnerable to its existence. Thus, life deserves to be safeguarded by providing the services in their integrality to the individual in need of attention and socially vulnerable.

4. THE RELATIONSHIP BETWEEN HOSPITAL ACTIVITY AND RECOGNITION OF THE OTHER

The individual must perceive in the other the essence of his existence as the fundamental human relation to the development of being and to define and mold his own experience, since it is the condition of existence and the very limits of freedom. Thus, the fulfillment of social cooperation for the conduct of universal fraternity – as a third-generation Fundamental Human Right – is of the utmost importance, as Borba (2012, p. 503) explains:

The passage from the concept of fraternity associated with charity - duty of one individual against another - to the conception of solidarity - duty of an individual towards all

5 Our translation. In the original: “Centrismo, presença do passado, respeito, continuidade e evitar conflito também constam como características percebidas, configurando instituições mais conservadoras e fechadas, típicas, segundo alguns respondentes, de cidades históricas e muito religiosas. Isto revela, em termos organizacionais, a tendência de um processo decisório do tipo “incremental” – que tende a repetir as decisões passadas, fazendo simples ajustes, o que assegura a manutenção do status quo. No caso da saúde, isto significa a conservação de situação social com indicadores distantes dos recomendados pela Organização Mundial de Saúde (OMS) e mais resistente às mudanças, como introdução e uso adequado de instrumentos para gestão da informação.”.

individuals - corresponded in legal terms to the understanding of society as a reference of law, no longer centered on legislators or jurists.⁶

Hospital activity demands the recognition of the patient/client as someone who is in need, not only of the products and services offered by the company, but also, often lacking in socioeconomic conditions. In turn, the fraternity has important constitutional importance and as such should be considered, not only as a value of the Democratic State of Right, but also as a legal principle that must be pursued by all its members.

The overcoming of individuality is the fundamental point in order to achieve a fraternal society instituted constitutionally, and this vision must be transferred to the business entities, considering its importance for society and its development. A different thought is posed by Silva and Andrade (2017, p. 67) who ask if the social function should be prioritized to the individual interest whose understanding is that "In principle, the answer must be negative, since the social function of business does not intend to neutralize all the consequences arising from the principle of free enterprise".

It is precisely in the construction of the recognition of the fraternity that it must be guided, in order to lead the individual to identify the necessary relationship between different people, in order to achieve justice, as set out in the introduction to the Constitution (BARCELLOS, 2002, p. 105). Acting in a fraternal way, the company begins to observe all the others involved in the business network, which it is inserted in.

By fulfilling an important global economic and political role, the business is charged with activities that take due account of social concerns (TAROZZO; GOULART, 2004, p.132-135). At this point, it also addresses environmental, ethical and economic issues related to the common welfare and the guarantee of the development of the society to which it belongs.

It is necessary that the individual put himself in the place of the other so that the moral freedom is reached. This statement of freedom is a flag of the French Revolution, being a primordial element of Kantian philosophy, especially in what concerns the moral freedom:

He explain in details the basic 'sociability' of man and listed as its elements the communicability – the need for men to communicate - and publicity, public liberty not only to think but also to publish – 'freedom of writing'; but he is unaware of both a faculty and a need for action (ARENDDT, 1993, p. 28).⁷

The analysis of the claims for justice is essential for two reasons, the redistribution and recognition in valuing the other and seeking what is just. This time, reflective recognition of the other is fundamental for the performance of the activities of hospitals and private healthcare institutions.

Thus, it is up to the medical-hospital care sector to assess the economic, political and social context that is inserted to avoid superiority in relation to the social entities that are linked to it, and should be inhibited due to effectively applied business awareness. In order to achieve the desired practicality, it is necessary that in addition to understanding the recognition of the other and the need to enforce their rights, the healthcare market has a humane management in order to achieve the stated goal.

6 Our translation. In the original: "A passagem do conceito de fraternidade associado à caridade – dever de um indivíduo frente a outro –, à concepção da solidariedade – dever de um indivíduo frente a todos os indivíduos –, correspondeu, em termos jurídicos, à compreensão da sociedade como referência do direito, não mais centrado nos legisladores ou nos juristas."

7 Our translation. In the original: "Ele esmiuçou a 'sociabilidade' básica do homem e enumerou como seus elementos a comunicabilidade – a necessidade de os homens comunicarem-se – e a publicidade, a liberdade pública não apenas para pensar, mas também para publicar – 'a liberdade de escrita'; mas ele desconhece tanto uma faculdade quanto uma necessidade para a ação."

5. MANAGEMENT OF HOSPITAL ACTIVITY AND HUMANIZATION OF THE EFFECTIVENESS OF THE RIGHT TO HEALTH

In the recent past, Brazilian hospitals were the place where people, already sick, lodged and waited for death, given the conditions of the disease that left it no prospect, not even a cure. They were also considered places of beneficence, markedly of assistance to the poor and often directed and maintained by religious institutions (OGUISSO, 2014, p. 43). Only in a second moment were the hospitals maintained by the State, that is, after the recognition of healthcare as a fundamental right of the individual.

As a fundamental part of human development, the right to healthcare has evolved in the sense that the State has been obliged to create and maintain medical assistance. By transforming the coverage of this risk into a responsibility of society, the collective and, consequently, a State obligation, a long movement of de-commodification of access to health began, despite the development of private activity in the area of healthcare that always existed (VIANA; SILVA; SCHEFFER, 2016, p. 415).

Hospitals, besides providing medical services, also cover studies, teaching and research, adding missions that go beyond the further research and cure of diseases, such as disease prophylaxis activities, health promotion and reduction of deaths, such as the creation of Brazilian Company of Hospital Services (EBSERH, in Portuguese) by the federal government through issuing Law no. 12.550/2011 (GOMES, 2016, p. 29).

It is important to point out that hospitals have specific characteristics, precisely because of the complexity of their activity, in view of being an essentially human apparatus, therefore, it must be managed properly. In addition, the costs related to medical, walk-in-clinics, clinical and surgical services, technology and equipment, personnel, among others, are extremely high (SALU, 2013, p. 41).

With regard to public health, the Brazilian constitutional arrangement brought federal centrifugal sanitation in counterpoint to constitutional federalism in a centripetal rule with new principles already described to be carried out by the Union, States, the Federal District and Municipalities. Such a model, in theory, is not bad, but in practice it has not proved to be efficient (KHAMIS; SARTORE, 2017, p. 309). Moreover, it innovated with the possibility of health being structured both by public and private entities, affirming that health is the field of economic activity free to private initiative.

The health system should have as its primary objective the care and improvement of the healthcare of the entire population, through prevention, treatment, rehabilitation and even cure promotions. According to Ramos (2016, p. 689-690), this system is afflicted by different variables, such as political, economic, cultural and social.

Given its social relevance, healthcare is a social good and therefore deserves careful consideration, especially when exposed to the laws of the market. In this particular case, the State, no longer able to meet all the needs of the community, needs the assistance of private entities to guarantee the protection and fulfillment of fundamental rights.

In turn, Martins (2001, p. 353) considers that the State has the duty to regulate the execution of these services, while the execution is granted to the private sector, aiming, in this way, greater efficiency in the provision of health services. The State to minimum conditions of maintenance in order to fulfill the constitutional provision of the right to health, but the current model allows for the possibility of companies in the private sector, assist the State that is committed to the reduction of concomitant social inequalities generation income and wealth to entrepreneurs and to society as a whole.

It should be stressed, however, that the discussion went beyond the fundamental rights array, also entering into the duties, which integrates the citizen as a fundamental part for the achievement of constitutional guarantees, before a sense of responsibility towards social problems. Marques (2001, p. 2) understands that the responsibility for the establishment of the right to healthcare is essential for the

understanding and extension of the duty of implementation, initially granted to the State.

According to the Federal Constitution, companies are granted the operation of healthcare services⁸. Strictly speaking, the State should direct its activities in social development, guaranteeing the implementation of social rights, including healthcare, and the partnership with private companies is allowed to carry out services capable of extending the coverage of such rights (VECINA NETO; MALIK, 2016, p. 103).

Efficiency in access to and provision of healthcare services is paramount in achieving social objectives, since private companies are more demanding and have a more specialized service, so that the achievement of goals is more concrete. Therefore, it is a duty of the State to promote the fundamental right to health, but it is not exclusive to it, and it is also incumbent upon society, including corporations (legal entities governed by private law), as co-responsible for the provision of private healthcare services.

6. THE SOCIAL PURPOSE OF THE MEDICAL-HOSPITAL CARE SECTOR

The social purpose of the medical-hospital care sector presented in this study comes from the implementation of the right to healthcare as a constitutional guarantee, combined with the management of hospital activity instructed by the humanization of the effectiveness of the right to health and the recognition of the other.

The combinations of these goals are capable of guaranteeing social development, as well as the increase of the hospital activity, precisely because it is able to meet the group goals without failing to comply with individual goals. It is important to point out that the identification of these elements as an attempt to practicality of the hospital activity have as a final result the guarantee of the greater good, which is social development, through means capable of fulfilling it.

The private autonomy of the contracting parties results from the freedom to contract, by identifying the social purpose that serves as a theoretical instrument for the implementation of distributive justice (ARAÚJO, 2015, p. 73). The Brazilian medical-hospital market has the majority of the population covered by healthcare insurance policies that are linked to business contracts, which depend on employment and income levels, with a predominance of collective contracts (DELGADO, 2017, p. 116-121).

There are modalities that hold a larger share of the health insurance market, such as medical cooperatives (Unimed) and medical groups (Amil, Golden Cross etc.), followed by self-management (non-profit, such as Capesp, Cassi, Petros), health insurance companies (Sulamérica, Bradesco, etc.), philanthropists (maintained by Santas Casas) and benefit administrators (such as Qualicorp, which function as “brokers” of collective insurance policy). Currently, about 80% of policies are business plans (financed by employers with or without employee participation in the financing) or membership (hired by associations, unions, etc.). (SCHEFFER; AITH, 2016, p. 364).

Humanizing health-related activities goes far beyond slowing suffering by paying more attention to the individual who needs it. In this regard, the National Humanization Policy⁹ has brought some references to the management of health work, proposing to act in two axes: transforming the way of producing and providing healthcare services (new organizational arrangements) and also changing the social relations that involve the workers and managers in their daily experience of organizing and conducting services (forms of participatory management) (VECINA NETO; MALIK, 2016, p. 73).

8 “Article 199. Health care is free to private initiative. Paragraph 1 - Private institutions may participate complementarily to the single health system, according to the its guidelines, under a public contract or agreement, giving preference to philanthropic and non-profit entities”. (BRASIL, 1988).

9 The National Humanization Policy has existed since 2003 to implement SUS principles in the daily practice of care and management, qualifying public health in Brazil and encouraging solidarity exchanges between managers, workers and users (PORTAL DA SAÚDE, 2017).

Therefore, humanizing should be instituted in the medical-hospital care sector, which should be concerned with the effects that health activity is capable of generating, going beyond those resulting from the ordinary assistance provided to the needy, but also reaching the whole society which needs its attention, so that the full implementation of the right to health is possible.

In this sense, the commercialization of healthcare provision is also an evil that must be avoided, which is why, those involved deserve respect and dignity, either at the moment of the assistance – or as a patient - or in the exercise of activities related to the healthcare professional. In the studies of Viana, Silva and Scheffer (2016, p. 415), the commodification of healthcare consists of two periods in Brazil:

In the first period, the state centralized strategic decisions, created demand and financed private services. In the current period, the private sector is more autonomous, which now has its own financing base. The state, in turn, loses the capacity to directly control the expansion of the sector.¹⁰

In view of this trajectory, it can be seen that healthcare services have now become a commodity like any other, subject to the rules of production, financing and distribution. It means, in practice, a growing capitalization of medicine, encouraged by the Brazilian State, which offered the conditions for the private investments in the healthcare sector, through the acquisition of medical-industrial services and products, the financing of investments and the contracting of services of the private network (VIANA; SILVA; SCHEFFER, 2016, p. 415).

On the other hand, the individual must act with the spirit of brotherhood, today understood as solidarity, starting to think more about the others and especially, the environment in which he lives in. In this sense, Maciel (2015, p. 344) refers to a right of the so-called third generation that allows the need for mutual and reciprocal growth and used the premise of granting diffuse and collective rights, considering their essentiality for the development of humanity.

Since this, it is inferred that healthcare continues to have the character of private property, as occurred in the pre-SUS phase, typically operating based on market rules, and may or may not provide services to the public system through contracts. It should be noted, first of all, that healthcare was not previously a condition of a fundamental right, and therefore it was not necessarily provided by the State.

The Brazilian social security-privatization model began in the 1920s, under the influence of liberal medicine, with the objective of offering medical and hospital assistance to urban and industrial workers. From the 1940s onwards, the hospital network was valued and heavily financed, influenced by the biomedical model based on the Flexner model, which until today has an impact on the care model and on the difficulty of structuring integrated models of collective healthcare (MEHRY; MALTA; SANTOS, 2004).

The flexnerian model was based on a biologic, hospital-centered, curative and medical paradigm, highlighting the worship of the disease and not health, and the illusion that technology would be the center of scientific activity and healthcare (MERHY; MALTA; SANTOS, 2004). It happens that medicine is no longer the simple clinical practice that once was based on the Flexnerian ideal, currently reproduced by the private sector in the enlargement and influx of capital, by financing health (KHUSHF, 1998). It is precisely when we talk about the new developmental model of the public healthcare sector that the enormous commodification on it is justified.

As it can be seen, broadening the range of the social purpose is paramount for the development of society, notably the implementation of fundamental rights, which need to be better safeguarded, not only by the State, but also by society as a whole. Therefore, it is important to get involved in the individual

¹⁰ Our translation. In the original: “No primeiro período, o Estado centralizava as decisões estratégicas, criava demanda e financiava os serviços privados. Já no período atual, percebe-se maior autonomia do setor privado, que passa a contar com uma base própria de financiamento. O Estado, por sua vez, perde a capacidade de controlar diretamente a expansão do setor.”

demands when the collectivity demands is not able to solve them.

In this respect, the adoption of the ethics of solidarity or social justice is fundamental to understand the new proposals made to the market, in order to fulfill the duties imposed constitutionally (STRECK; REDIN; ZITKOSKI, 2010, p. 167). The understanding of the need to balance supply and demand – justified by the growing search for healthcare, and insufficient assistance provided just by the State, and the incessant search for the right to health – should lead healthcare companies to regulate their costs and profits and only then pass on possible sums to be complied with to the client/patient.

The figure of health costs, especially when it comes to healthcare companies, deserves to be reviewed with the single aim of enabling citizens to have access to healthcare services, while observing the main objective of any business activity, which is focused in to gain profits (AVELLAR, 2015, p. 88-91). Regarding this practicality in the healthcare sector, the population itself has been demanding compliance with the practice of the activity.

In a philosophical perspective, Delgado and Ferreira Filho (2016, p. 184-188) present the dominating economic will of collective representation for political influence. In addition, it is worth mentioning the existence of profit-making companies that are, therefore, those who exploit health-related activities, which mostly perform curative and diagnostic activities, assisting the client/patient who seeks it for the purpose of profit, precisely because of its activity.

In this way, it is possible to identify the social function of the medical-hospital care sector, since, in addition to the individual interests of the owners, it is necessary to recognize the greater interest, in the social domain, about the implementation of the right to healthcare. Based on this premise, Marques and Sousa (2015, p. 279) comment that the medical-hospital assistance sector together with the State figure can assist in the implementation of the right to health guaranteed constitutionally to the individual without ceasing to fulfill its objective of making profit.

Thus, the union between corporate and social objectives is fully possible to be allied in the achievement of a society capable of asserting its constitutional rights, duties and guarantees essential for human and social development.

7. CONCLUSION

The struggle for recognition of the right to healthcare is long and arduous, especially when it comes to the right to health in view of being fundamental to human existence and preservation of life. In fact, the quest to reach this fundamental right is continuous. Every day individuals need more attention to their healthcare, since it involves not only the physical well-being but also psychic and emotional aspects.

The Brazilian State has made the right to health as important as a fundamental right, in a universal and equal way to all citizens, therefore, such federative body must guarantee the minimum conditions for the implementation of this right. Also, identifying the importance of the role of private initiative in the social context, it was granted the possibility of exploring health activity that needs to be developed so much.

Recognizing the constant need to ensure the material effectiveness of the right to health, the correlation between the practicality of hospital business activity derives from the assumption that the social purpose is captured from the increments of business activity in social and economic reality. It should be noted that capital enlargement is one of the impediments to greater effectiveness of the right to health, given that the economic obstacle is presented to society as one of the main obstacles to access health.

In this perspective, the inequalities go beyond the economic character, as they also reach the provision of health services. The “dehumanization” of the hospital activity is seen in any of the hospital environments, often due to the technological increase used by the hospitals, others due to the lack of commitment of the professional when assisting patients, or even of inefficient management.

The adoption of the ethics of solidarity or social justice in public and private institutions is essen-

tial to better exercise the healthcare assistance in the socioeconomic context and in the values involved in the construction of medical reality. In addition, an administrative and organizational ethics offers the promise of transcending government alternatives versus market alternatives.

It is essential that health services are provided in a welcoming and empathetic way, so that those who need them have the safety and peace of mind to wait for both the diagnosis and the treatment, if necessary. Therefore, the humanization of healthcare is necessary from the observation that hospital management must be attentive and understanding towards existing relationships in the provision of healthcare services for all people, regardless of age, social level, financial condition or any other another label.

The healthcare service is fundamental for human existence, which is why, the hospital manager deserves to conduct with care/attention, the structure of the medical-hospital care sector, whether in the assistance, in the relationship between people, in the stipulation of prices or the desired result. Therefore, the relationship between the fraternity and the hospital activity is fundamental to support the statement that through it, it is possible to achieve a greater effectiveness of the right to health, since the company has played such an important role in social development.

The concern with the other's image and the principle of fraternity are directly related to medical-hospital care, precisely because it is capable of increasing social interests based on the consideration of corporate and social objectives at the moment when access to their activities.

It is precisely from the thought that is directed not only to the achievement of the objectives of the company but also of the interests of the whole society that the social purpose is justified, especially when it is aimed at the implementation of the fundamental right to health. Joining the vision of entrepreneurship and the (re-) discovery of the fraternity, we can see a new paradigm of human and social development brought to the Law; the desired and deserved function to guarantee the social increase with less inequality becomes the task of all society, not only the State's.

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