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THE PSYCHOLOGIST AS A HEALTH PROFESSIONAL: THE SMALL PRINT

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The State is attempting to regulate citizens' activities in order to guarantee the predomination of the law. In Spain, the ascription of some branches of psychology to the sanitary professions entails the obtaining of recognition and the designation of specific areas of intervention. Yet there is also an associated collection of obligations derived from the laws regulating the health care professions at both national and regional levels. It is necessary that the psychologists ascribed to the sanitary professions know these obligations in order to comply with them. It would be advisable to introduce training in specific areas of the Law in the future Master's degree that will lead to the obtaining of the title of General Health Psychologist.
Key words: *Health professional, Law, Legislation, Patient rights, Clinical files.*

Los Estados llevan a efecto la regulación jurídica de las actividades de los ciudadanos con la finalidad de garantizar la prevalencia del Derecho. En España, la adscripción de algunas especialidades de la Psicología a las profesiones sanitarias supone la obtención de reconocimiento y la designación de áreas específicas de intervención. No obstante, también lleva aparejadas un conjunto de obligaciones derivadas de cuantas normas regulan la Sanidad tanto a nivel estatal como autonómico. Es necesario que los psicólogos sanitarios las conozcan con el objeto de poder cumplir con ellas adecuadamente. Sería recomendable introducir formación en áreas concretas del Derecho en el futuro master que conduzca a la obtención del título de Psicólogo General Sanitario.
Palabras clave: *Profesional sanitario, Derecho, Legislación, Derechos paciente, Documentación clínica.*

In recent years we have witnessed intense mobilization by the community of psychologists to demand the recognition of psychology as a health profession. This goal has recently been attained; however, strictly speaking we could say that healthcare activity has only been recognized for some psychologists, specifically those that can prove they are in possession of the title Psychologist Specialized in Clinical Psychology (PEPC) or the title of General Health Psychologist (PGS).

The debate on this issue has revolved around two basic questions. Firstly, there is the premise that possession of the title of PEPC was and is necessary to enter into work activities related to mental health care in jobs of a public nature. Secondly, there is an urgent need to accredit the condition of healthcare professional for psychologists, primarily for the purposes of registration as medical centers with psychology consultancy or to perform tasks in these centers, which has been achieved through the title of PGS, pending its practical realization and, in a major breakthrough, attributes to the professionals a set of skills that will validate them as an important field of work in relation to mental healthcare.

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The purpose of this article is not to address the various controversies that have arisen around the title of PEPC or that may arise from the creation of PGS; we understand that the former have already been resolved legally and the latter have fortunately not arisen and perhaps may not do so.

Our goal is to draw attention to the "small print" of the contract which grants psychologists the status of health professionals and consequently empowers them to intervene in the mental health of other citizens. This metaphor is justified because, in focusing our attention on those parts of the documents or texts that corroborate our expectations or grant us what we want, we often pay little attention to the set of clauses contained in contracts, the "small print". These clauses often become apparent however when problems arise and invariably they describe perfectly the problem that concerns us, they indicate that it was likely to happen and often the solution to it has also already been planned, so it turns out that the harm to our interests is in line with the law and could have been avoided.

I have become aware of the importance of the law, through a career path that has included extensive training in the subject. Spain, and the whole world, is governed by laws and regulations. Nothing can be done without

regard to these laws. In fact, as indicated at the beginning of this article, it has been demanded that our profession is reflected in the written rules and declared as pertaining to healthcare. It was important, therefore, for this to be reflected in the law. However, through contact with other professionals, I have found that the majority do not usually take much interest in the purely legal aspects. I reconfirmed this finding after developing a manual with a legal expert and receiving feedback from some readers, psychologists who had mistakenly understood that there were two parts of the book, one for psychologists and one for lawyers.

This circumstance motivated me to write this article, to highlight the importance of understanding the legal context affecting our profession, even more so when we achieve the status of healthcare professionals. It is important to be aware that it is not enough to simply read or take note of the rules and legislation, focusing exclusively on those aspects that are limited to the recognition of rights; it is also essential to comprehend the obligations derived from these laws.

Outlined below, and centering on four essential questions to be considered in the discourse: professional competence, patient rights, clinical documentation and medical facilities, we will discuss the legislative environment that regulates the professional activity of the psychologist as a health professional. Nevertheless, we neither have, nor could we have, the intention to be fully exhaustive, firstly because of the very extensiveness of the law to be mentioned, and secondly, because the configuration of the state and the fact that healthcare is the responsibility of the regional governments would require a separate subsection devoted to each of them. We will establish a much more modest objective: to spark the interest of readers and describe the broad lines on which they should focus their search regarding what affects them.

PROFESSIONAL COMPETENCE

"The authority of the professional psychologist is based on his training and qualifications for the tasks he performs. The psychologist must be professionally trained and skilled in using the methods, tools, techniques and procedures adopted in his work. It is part of his work to make a continued effort to upgrade his professional competence. He must recognize the limits of his competence and the limitations of the techniques used" (Art. 17, Code of Ethics of the Psychologist).

The Constitution recognizes, in Article 35.1, that there is "free choice of profession" and states in Art. 36, that "the law shall regulate the exercise of certified professions." In compliance with the above by Law 43/1979 of 31 December, upon the establishment of the Association of Psychologists, it was determined that membership of the Association would be required in order to practice in the profession of psychologist (Art. 2). In those early days, a prerequisite to becoming a member was to be in possession of one of the qualifications related to psychology. Today, and of course within the current structure of the Association, to request membership to one of the associated schools of psychologists, it is a prerequisite to be in possession of a Bachelor's degree in Psychology, notwithstanding that those who at another time possessed the required qualifications may also request membership, which, of course, is still required for professional practice.

There was no change in depth in terms of professional skills until the enactment of Royal Decree 2490/1998 of 20 November, which creates and regulates the official title of Psychologist Specialized in Clinical Psychology, imposing restrictions on the use of this title in positions of both public and private work (Art. 1). Thereafter there were consequently two distinct and legally recognized areas of competence, one of a specialized nature and another general, whereas until then there were only psychologists who freely decided the area in which they wanted to practice professionally.

The second milestone came with the enactment of Law 44/2003 of 21 November on the Organization of Health Professions (LOPS), which complements the provisions of Law 14/1986 of 25 April, on General Health (LGS), which only refers to the free exercise of the healthcare professions, without addressing their regulation, although it does provide for, under state jurisdiction, the standardization of postgraduate training programs, the training and specialization of health workers and the general standardization of jobs in the health services.

This text, which is applicable "whether the profession is exercised in public health services or in the area of private health" (Art. 1 of the LOPS) determines that psychologists who have the title of PEPC shall be graduate level health professionals (Art. 6.3). In the same article and no less importantly, it is noted that "these professionals shall carry out the functions that correspond to their respective qualifications." To complete the above, we must turn to Order SAS/1620/2009 of 2 June, which approves and

publishes the training program in the specialty of Clinical Psychology. Its Annex defines the professional skills of the PECP in the clinical care situation of promotion, prevention, evaluation, diagnosis and treatment; in Management and Administration; and in teaching and research. Also defined are the specialty, its scope, the professional profile and incorporation into the National Health System (NHS). In this regard, note that Law 16/2003 of 28 May on Cohesion and Quality in the National Health System (LCCSNS), Article 13, states that mental health care is a specialized service.

The final step took place with the enactment of Law 33/2011, of 4 October, on General Public Health (LGSP), which in its 7th Additional Provision, and pursuant to the provisions of Article 2.3 of the LOPS creates a new health profession, entitled General health Psychologist. It is important to also pay attention to section 3.a, as it explicitly states that the Degree in Psychology does not automatically permit its holder to practice psychology in the health sector.

But as noted earlier, the same texts that grant this condition also impose obligations. From reading the LOPS it follows that the psychologist who holds the position of health professional must: comply strictly with the ethical obligations, as determined by the professions themselves in accordance with current legislation and criteria of normal praxis or, where appropriate, the general purpose of their own profession (Art. 4.5); maintain a level of continuing education and regularly demonstrate their professional competence (Articles 4.6, 33 and 41.3); formalize in writing their work a clinical history common to all centers (Article 4.7.a); provide technical and professional health care appropriate to the health needs of the people they serve, according to the state of development of scientific knowledge at each moment and with the quality and safety standards set out in this law and other applicable legal and ethical regulations "(Art. 5.1.a), and therefore both they and those responsible for the health centers where they practice must facilitate their patients to exercise their rights to know the name, qualifications and specialty of health professionals who care for them, and to know their category and role, if these are defined in their center or institution" (Article 5.1.c).

Articles consistent with the above are also found in the Psychologist's Code of Ethics (CDP), in terms of the need to refrain from using means or procedures that have not yet been sufficiently tested, within the limits of current scientific knowledge (Art. 18).

Additionally, Organic Law 10/1995 of 23 November, of the Criminal Code (Código Penal or CP), contains several provisions of interest to psychologists. Article 403 criminalizes professional intrusion and, in referring not only to the possibility of practicing a profession without a qualification, but also to the fact that within the profession there is a lack of "an official qualification that certifies the necessary training and legally enables an individual to exercise" seems to open the door to intrusion among specialties.

Also specifically criminalized in Article 196 is the denial of assistance from a healthcare professional. In our case, we should consider possible suicides or violent acts against other people, which could be interpreted as occurring due to a lack of attention or neglect of a patient in crisis.

It is equally relevant to consider the concept of professional negligence, linked to crimes and infractions incurring damage, which contemplates cases in which a professional acts negligently, in breach of the rules of the *lex artis*. In other words, there is an oversight that could foreseeably lead to negative consequences, caused by a lack of attention to the rules or due diligence.

PATIENT RIGHTS

With regard to the patient, it is first necessary to refer to any rights conferred by the law, especially to those who require special care by the healthcare professional providing the service to them, since these rights become obligations for the professional. They relate primarily to the right to receive information and to the appropriate management of the clinical documentation of their case.

To address this section, in general we should pay attention to the provisions of the LGS, especially Article 10 and also, in the case of professionals working in the public sector, to the aforementioned LCCSNS.

However, there are two texts directly related to patient rights that are fundamental, having the character of basic state legislation. The first is the Instrument of Ratification of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (CDHB) created in Oviedo on 4 April 1997. It indicates among other matters, that: a) the general rule is that any intervention in the field of health can only be made after the person concerned has given free and informed consent (Art. 5), b) everyone has the right to know any information obtained regarding their health (Art. 10.2) and c) everyone has the right to have

their privacy respected when it comes to information related to their health (Art. 10.1).

The second is Law 41/2002, of 14 November, a basic law regulating patient autonomy and the rights and obligations regarding clinical information and documentation (LAP), whose scope is as broad as imaginable, because it "concerns the regulation of the rights and obligations of patients, users and professionals as well as public and private health centers and services on matters of patient autonomy and clinical information and documentation." To that effect, the LAP, in Art. 3 defines the "patient" as "the person requiring health care and who is subject to professional care for the maintenance or restoration of their health."

The following sections shall expressly mention the provisions contained in these regulations as they relate to their specific content, although it was necessary to individualize them as rights of the patient.

We also find reference in the CDP to the obligation to appropriately inform the receiver of professional intervention (Art. 25); to respect patient autonomy (Art. 27) and other aspects of the intervention to which section III is dedicated.

CLINICAL DOCUMENTATION

The professional activity of the psychologist is inconceivable without the inclusion of the clinical interview among its working methods as well as other means of obtaining patient data which make it possible to diagnose and subsequently plan and implement a psychotherapeutic process. Consequently we obtain from the subjects themselves, personal information on various aspects of their privacy. At this point, we must note that we are referring to those classified as health data.

So, effectively, Royal Decree 1720/2007 of 21 December, approving the Regulations implementing Organic Law 15/1999 of 13 December on the protection of data of a personal nature, in Article 5.1.g establishes that personal data relating to health is "information regarding the past, present and future physical or mental health of an individual. Data referring to people's percentage of disability or their genetic information are particularly considered to be related to people's health ".

Let us not forget that from reading documents produced by the AEPD itself, it can be deduced that there are other psychology professionals who manage healthcare data without being healthcare professionals (the report of the Legal Office of the AEPD 1999 in which it states "that psychological data should be considered, for the purposes of the application of the Data Protection Act, as data concerning people's health" and the report of the same Office 0445/2009, which states that the psychotechnical evaluation of skills, personality traits and career preferences, and therefore the "psychological medical evaluation to determine the suitability or otherwise of [...], are data related to people's health") and are therefore included within the provisions of these laws.

Law 15/1999 of December 13, Protection of Personal Data (LOPD), Article 8, states that: "... the institutions and public and private health centers and associated professionals may process the personal data concerning the health of the people who attend or have to be treated there, in accordance with the provisions of state or regional health legislation."

We will not refer to all the LOPD provisions regarding the creation and registration of files, data quality, technical measures, rights of access, rectification, cancellation and opposition, etc., since the length restrictions of this article prevent us from doing so and, moreover, these are already the subject of numerous specific texts.

Regarding what interests us, the abovementioned LAP addresses the issue of clinical information saying it is "all information, whatever its form, class or type, which allows you to acquire or expand knowledge about the physical state and health of a person, or the way this health is preserved, cared for, improved or recovered " and the medical history, stating that this is considered as "the set of documents containing the data, assessments and information of any kind on the medical situation and clinical evolution of a patient throughout the healthcare process "(Art. 3 LAP), and the content of this history (Art. 15.2) including inter alia: "interdepartmental reports" (Art. 15.2.g), "complementary examination reports"(Art. 15.2.h) and "informed consent" (art. 15.2.i).

Finally, we note that both the LOPS and the LAP outline the obligations of professionals involved in the healthcare process, in terms of various points related to the clinical documentation. Thus, they say that healthcare professionals attending each patient will be responsible for the preparation of this documentation (Articles 15.3 of the LAP and 4.7.a of the LOPS), and are required to cooperate "in the creation and maintenance of orderly and sequential clinical documentation of the healthcare process of patients" (Art. 17.3 of the LAP), adding that

"every professional involved in healthcare activities is obliged not only to provide the correct techniques, but also to carry out their duties relating to clinical information and documentation, and regarding the free and voluntary decisions made by the patient"(Art. 2.6 of the LAP).

The CDP also devotes its section Y, on the collection and use of information, Articles 39 to 49, to the handling of the data obtained in the course of psychotherapeutic intervention.

To conclude we refer to the existence of Royal Decree 1093/2010 of 3 September, establishing the minimum set of data from the clinical reports in the National Health System, which imposes obligations upon those who attend to, among others, people insured by mutual associations in associated centers.

The orderly processing of the medical history is a guarantee for any professional. The chronological reflection, properly documented, of all acts carried out on a patient will, firstly, ensure that the obligations referred to above are complied with, but also in the event of a claim or complaint, they will provide an adequate line of defense and response to the details that are reported therein.

Moreover, it is worth making a brief reference to the always relevant controversy regarding the limits of confidentiality, the possibility or the obligation to breach this in order to avoid causing serious damage to a third party, an issue that also requires deep reflection with legal support and in some cases will link directly to Article 196 of the CP, when damage occurs that could have been avoided had a particular circumstance of a patient been communicated to others.

HEALTH CENTERS

Logically, the professional activities of the health psychologist take place in establishments that must meet a set of requirements that are outlined legally.

The basic document on this subject is Royal Decree 1277/2003 of 10 October, which establishes the general basis for the authorization of health centers, services and establishments. This regulates the basis of the authorization procedure, in order to establish a classification, naming and common definition for all of these and to create a General Record and a Catalogue of these centers, services and establishments in accordance with the provisions of the LCCSNS. The classification, descriptions and definitions contained therein must be taken as the general criteria to proceed later with the implementation of Article 27.3 of the aforementioned Law 16/2003, to the determination, basic in nature, of the minimum and common guarantees of quality and security that shall be required of the regional governments to authorize the opening and commissioning of the centers, services and establishments.

This law does not seek to organize the health professions or restrict the activities of the professionals, but instead to lay the foundation to guarantee the safety and quality of healthcare, as set out in Article 1. Article 2 contains a set of definitions and it considers the centers, services and establishments that are included in the classification, in Annex I of this Royal Decree, with the definition of each of them being outlined in Annex II.

The Royal Decree 1277/2003 was appealed before the Supreme Court by the Official Association of Psychologists of Catalonia, a dismissing judgment being dictated by the Litigation and Administrative Division of this court. With the emergence of the LOPS, a modification of this Royal Decree occurred through Order SCO/1741/2006 of 29 May, by which the Annexes of Royal Decree 1277/2003 of 10 October are modified, laying down the general basis for the authorization of centers, services and establishments.

This Order was especially driven by the inclusion of Clinical Psychology among the health professions, requiring the amendment of some of the references in the Annexes I and II. The same law was again subject to appeal before the High Court, this time by the General Council of the Associations of Physicians. The judgment on September 26, 2007 was issued in favor of this claim in part, declaring section five of the only article and the only additional provision, a resolution that was later confirmed by the Supreme Court. With all of this, the so called U.900 (Other Care Units) was abolished, which was intended to avoid complications and facilitate the establishing of units that did not require the healthcare qualification.

In short, there currently exists one type of healthcare unit related to the work of psychologists: "U.70 Clinical Psychology: a care unit in which a psychologist specialized in clinical psychology, is responsible for the diagnosis, evaluation, treatment and rehabilitation of mental, emotional, relational and behavioral disorders." The regulation of care units for General Health Psychologists (PGS) remains an outstanding issue.

It is true that there are at least two types of center that

would accommodate psychological activities within healthcare: C.2.2 (Consultation by other health professionals), C.2.5.10 (examination centers) and C.2.5.11 (mental health centers), but the abovementioned Royal Decree 1277/2003 states in Article 3.2 "the operating permit shall be issued for each establishment and for each health center and for each of the services forming the healthcare provision and it must be renewed, when appropriate, at intervals determined by each autonomous community." And in Art. 6.1, it says that "a distinguishing credential shall be in a visible place to allow users to know that this authorization has been received, stating the type of center and the healthcare services it provides." Therefore, without a doubt, a specified healthcare provision should be established as mentioned before, with the powers attributed to it in Section 1 of the 7th Additional Provision of the LGSP: "to carry out research, evaluations and psychological interventions on aspects of behavior and the activity of people, influencing the promotion and improvement of the general state of their health, provided that such activities do not require specialized attention by other health care professionals ".

Also in the LOPS, it states that health centers, and therefore, those responsible for them, are required to check, at least once every three years, that the healthcare professionals amongst their staff meet the requirements to practice under the provisions of this and other applicable laws (art. 8.3).

CONCLUSIONS

It is not uncommon for psychologists to believe that the only regulation of their professional practice is the Code of Ethics and that, therefore, a disgruntled patient will have to file a claim to the relevant Association. In other cases, the provision of a liability insurance to cover possible financial compensation should be sufficient to avoid any professional disadvantage. However neither of these assumptions is certain.

Focusing exclusively on psychologists in possession of the status of healthcare professional, we observe how the 8th additional provision of the LOPS, says: "To this effect, infringements of the provisions of this law are subject to the system of infractions and penalties established in Chapter VI under heading I of Law 14/1986 of 25 April on General Health, without prejudice, where appropriate, to the civil, criminal, statutory and ethical responsibilities in accordance with the provisions of the existing legal framework".

It is therefore clear that healthcare professionals should respond as imposed by their condition to the claim of a patient who considers themselves the subject of a malpractice or any other injury to their rights, and that the case can be brought before various authorities, including the courts of law.

In view of what we have discussed above and since the plan that is emerging for the professional development of psychologists in the health field in the future is a progression from the Degree in Psychology (which, by itself, does not enable one to practice), to the Master's (for obtaining the title of General Health Psychologist) and finally the PIR (enabling one to practice), it would be desirable to have in the Master's program, which is pending development, a subject under the name of Healthcare Law which incorporates into the training curriculum of the future healthcare professionals some basic notions of law and knowledge of the set of legislative texts governing their future professional activity.

The continuous training included in Chapter IV of the LOPS and the professional career path both also remain to be defined.

Finally, a note about syntactic consistency. With the enactment in 2003 of the LOPS, the concept of healthcare profession is defined as a name with a broad semantic content that encompasses a set of professionals, regardless of the academic discipline of origin, who are united in the professional goal of healthcare. Thus, the expression "health professionals", without excluding doctors in any way extends the condition to include the PEPC and PGS, among others.

Obviously there are numerous previous texts in which the terminology used as a reference name for a health professional is "doctor" (for example the LAP). There is no doubt that the spirit and the provisions contained in these laws are meant for all health professionals today. Therefore, and in order to avoid confusion and in some cases exclusions, it would be appropriate if, as was done with the terms "handicap" and "disability", replacing references to the first with those of the second by Royal Decree 1856/2009, of December 4, the procedure for recognition, declaration and classification of the degree of disability, and amending Royal Decree 1971/1999, of 23 December, a similar procedure were carried out regarding references to the term "doctor" and "healthcare professional" in those cases where this is appropriate.

As stated in Article 6 of the Civil Code, ignorance of the law does not excuse noncompliance; it is better to be familiar with the laws and to understand how to comply with them.

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