

Public prosecutor's office and social control in the National Unified Health System: a systematic review

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Abstract *The 1988 Constitution increased the Public Prosecutor's Office attributions and facilitated social participation through management councils in the construction of public policies and in the implementation of social control. In this context, it is necessary to reflect critically on the Public Prosecutor's Office work and its interaction with Health Councils to strengthen social control in the National Unified Health System. We conducted a systematic literature review to identify the national panorama of the relationship between the Public Prosecutor's Office and Health Councils with a view to providing answers on this institution's contributions toward effective social control in the National Unified Health System (SUS). The following databases were consulted: PubMed, BVS, CAPES Journals and BDTD. We included 17 studies, papers and dissertations, which were selected in the period 2006-2015. Results summarize that the Public Prosecutor's Office should focus its activities on health, especially on the operative and extrajudicial matrix, in order to boost popular participation and overcome Health Councils' shortcomings. An essential dialogue between the Public Prosecutor's Office and Health Councils is in place and mutually benefits the strengthening and effectiveness of social control in the SUS.*

Key words *Public prosecutor's office, Social control, Health councils*

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Introduction

The right to health stems from contemporary constitutionalism¹ and is a primordial human right². The assurance of human rights, in turn, is itself a fundamental condition for the exercise of other social rights³ and its effectiveness appears as an important item of the Public Prosecutor's Office (MP) actions, whose experience evidences hardships towards the consolidation of new political power sharing ways and directing political decisions to the public interest, resulting in the strengthening of democratic practices and effective citizenship⁴.

The contemporary social dynamics imposed new stances on collective stakeholders, and representative democracy was thus questioned as a method capable of responding satisfactorily to the demand for society's engagement⁵. In this context, the process of establishing the Unified Health System (SUS), from the Health Reform to the 1988 Federal Constitution, which was consolidated and regulated by laws 8080/90 and 8142/90, set the standards of the new health system, institutionalizing community participation and regulating social control⁶ in innovative fashion.

The newly built public health paradigm as a social right has been upgraded as MP's primary function, as a permanent, essential institution to the jurisdictional role of the State, responsible for protecting the legal system, the democratic regime and unavailable social and individual interests⁷ and, lastly, with changes in the Brazilian civil process, its intercessions were restructured in the spectrum of laws to be the prosecutor of the legal system, in practice, including under its strategic and instrumental action the naturalization of administrative customs as well.

In the extrajudicial and resolute action of the Brazilian MP, activity in which this study is projected, one observes the oversight of public policies of the social rights protected by the Federal Constitution⁷, among which is the right to health. Lehmann⁸ says that the foundation for the MP's work, aiming at effective popular participation in the SUS is provided for in the new constitutional framework, ensuring the availability and proper functioning of democratic mechanisms and tools of power, including population participation.

Moreira and Scorel⁹ affirm that population participation is one of SUS structuring principles enshrined in art. 198, III, CF/88 and regulated by Law 8.142/90¹⁰, which established the existence of the Conferences and Health Councils.

The interface carried out by the MP with health counselors, based on their practices of inter-institutional dialogue, has the potential to qualify the social control exercised by them⁹.

In this perspective, this paper aims to build a map of the national academic production on the subject in order to apprehend the results evidenced by investigations that have proposed to analyze and understand MP's practices for the strengthening of social control exercised by Health Councils.

Methodology

Several studies related to MP's work in the social control of the SUS were carried out since the enactment of the 1988 Federal Constitution with a view to conducting research and subsidizing the interinstitutional relationship between the MP and Health Councils. Regarding review, screening was performed according to the methodological steps proposed by the Preferred Report Items for Systematics Reviews and Meta-Analyses (PRISMA).

As a search strategy and sources of information, descriptors were located on the DeCS and MeSH platforms. In DeCS, the following descriptors in Portuguese were selected: *Ministério Público, Controle Social, Participação Popular, Conselhos de Saúde and Direito à Saúde*. In the MeSH, selected descriptors in English were *Public Ministry, Social Control, Social Participation, Health Councils and Health Rights*. The search databases defined were PubMed and BVS, as well as the Digital Library of Theses and Dissertations (BDTD) and the Thesis Database of the Coordination for the Improvement of Higher Education Personnel (CAPES). Next, the Boolean operator and was used in the association between the following Portuguese descriptors: *Ministério Público* and *Controle Social, Ministério Público and Participação Popular, Ministério Público and Conselhos de Saúde*, and lastly, *Ministério Público and direito à saúde*. The same procedure was adopted with English descriptors and carried out in PubMed.

Abstracts found were analyzed to select the works that would be part of the research landscape and, as a criterion of eligibility, papers whose objective or research question was related to the subject of this investigation were used, that is, that evaluated the MP's work and/or Health Councils' work in the implementation of social control in the SUS, interaction between these

instances to comply with the guideline of population participation set forth in the Federal Constitution. In addition, another criterion used was the availability of free full-text reading in the databases used, whether in English or Portuguese. Finally, texts addressing health councils or social control, but not containing the perspective of the interinstitutional dialogical relationship in the research were excluded.

The selection of studies that met the eligibility criteria and underpinned this review was performed through the reading and critical analysis of abstracts. The following information was listed in Chart 1 to assist in the visualization of the main outcomes of the selected papers: author (s) and year of publication, objective or research questions and result, culminating in the definition of thematic categories identified after descriptive and qualitative review of the bibliographic sample. The process was conducted through peer review and any disagreements resolved by consensus.

Finally, as inter-study bias control strategy, we performed a search of unpublished studies (dissertations and doctoral theses) aiming to achieve an overview of the topics covered in these studies and results found on the inter-institutional relationship between MP and the Municipal Health Councils (CMS) in the exercise of social control in the SUS.

Results and discussion

The use of the abovementioned descriptors returned 997 studies. After discarding duplicate abstracts, reading abstracts and applying the indicated criteria resulted in a final sample of 17 studies (Figure 1). The studies selected for the sample date back to the last ten years. We consulted studies published in national and international journals, but all addressed the Brazilian reality. Most selected studies used the qualitative method and documental analysis and interviews were the most widely used techniques and tools. Some studies related to the MP have not been published in scientific journals, consisting of six master's dissertations found in the CAPES Journals Database and the BDTD^{3,4,6,8,11,12}.

The attempt to control publication bias, seeking unpublished studies did not result in works being included in the review. The characterization of selected studies was synthesized and shown in Chart 1, which also includes data referring to the main objective and result.

Results were characterized and divided into two thematic lines: a) Public Prosecutor's Office, the Right to Health and Social Control in the SUS, and b) Health Councils, participatory democracy and population participation (Chart 1). Thus, thematic lines were, divided to address the two control instances analyzed herein, linking the MP to its constitutional attributions in Health and the Health Councils to the ideal of democracy and participation inherent to them.

Public Prosecutor's Office, the Right to Health and Social Control in the SUS

The 1988 Federal Constitution defined health as the citizen's right and the duty of the State, facilitating social participation through management councils in the construction of public policies^{3,4,6,8}. On the other hand, it extended the powers of the Public Prosecutor's Office and entrusted it with oversight and protection of the juridical framework, the democratic regime and the unavailable social and individual interests, providing it with tools for the protection of diffuse and collective rights⁶.

Based on a classification developed by Marcelo Pedroso Goulart, Oliveira et al.¹³ affirm that the performance of the Brazilian MP is divided into two categories: procedural and resolutive. In the first case, the MP member values work before the Judiciary; in the second case, it values mediation of social conflicts based on extrajudicial action¹³.

Resolutive action has been better adapted to protect the democratic regime⁴, because it implements a new dialogue that makes democracy and citizenship more effective, attributing greater legitimacy to the solutions found¹³. Evaluating the implications of MP's resolutive and procedural action, Oliveira et al.¹³ affirm that resolutive and extrajudicial matrix is more adequate for the complexity of the right to health and health policies.

This outcome seems to confirm the results obtained in the studies by Lehmann⁸, Asensi¹², Oliveira¹⁴ and Santana¹¹. Asensi¹² affirms that MP's extrajudicial performance is based on dialogue that builds shared solutions, contributing to horizontal relationships between State and society and closer ties between MP and society, which allows its performance to be laden with greater social legitimacy¹². Oliveira¹⁴, in turn, points out two advantages of resolutive action: (a) it strengthens procedural work, because it makes it more selective; and (b) prioritizes preventive action, which has the potential to trans-

Chart 1. Characterization of included studies according to the thematic lines, main objective and main outcome.

Thematic Lines	Author/Year	Main objective	Main outcome
The Public Prosecutor's Office, the right to health and social control in the SUS	Oliveira et al., (2015) ¹³	To analyze the possible contribution of the Public Prosecutor's Office (MP) for effective right to health.	The extrajudicial performance of the Public Prosecutor's Office is more adequate to address the complexity of the right to health and health policies in Brazil.
	Machado, (2013) ⁴	Analyze how the MP can contribute to effective management councils.	Interface between a resolute MP, social management and management councils is important.
	Lehmann, (2013) ⁸	To analyze how the MP should act in the field of population participation in health.	The MP should focus on strengthening population participation.
	Oliveira, (2013) ¹⁴	To evaluate the tension between the preventive action and the institutional autonomy of the Brazilian MP.	The MP must find solutions through resolution, which provides mechanisms for expanded democratic citizen participation.
	Santana, (2011) ¹¹	To examine the actions of the Attorney-General Office at the Municipal Health Council of Rio de Janeiro.	The extrajudicial action of the MP provides a valuable space for interaction with health councils, strengthening their performance.
	Batista e Melo, (2011) ¹⁵	To understand how social stakeholders ensure the right to participate in political decision-making in Health.	There is a setback in participatory practice in the health sector.
	Asensi, (2010) ¹²	To study how the institutional scheme between MP, society and members of municipal management develops.	The institutional scheme established between the MP, health councils and management has facilitated actions focused on the public sphere.
	Ribeiro, (2008) ⁶	To identify the possible interaction between MP and health councils in the right to health advocacy.	Interaction among stakeholders marked by subordination. Offense against the principles of the SUS finds resistance in MP's actions.
	Machado et al., (2006) ¹⁶	To analyze the new participation model, mainly from institutional stakeholders MP and CS.	Association between CS and MP has been recurrent and has reciprocal advantages for these two social stakeholders.
	Machado, (2006) ³	To analyze the current relationships between the MP and the Health Council.	The MP has fostered greater interaction between the management of services and health councils, establishing a space for dialogue. The joint action of the MP and Health Councils has led to the establishment of new ways and mechanisms of negotiation and agreement.

it continues

form social reality and create greater interaction with society, by providing mechanisms to increase citizen's democratic participation¹⁴.

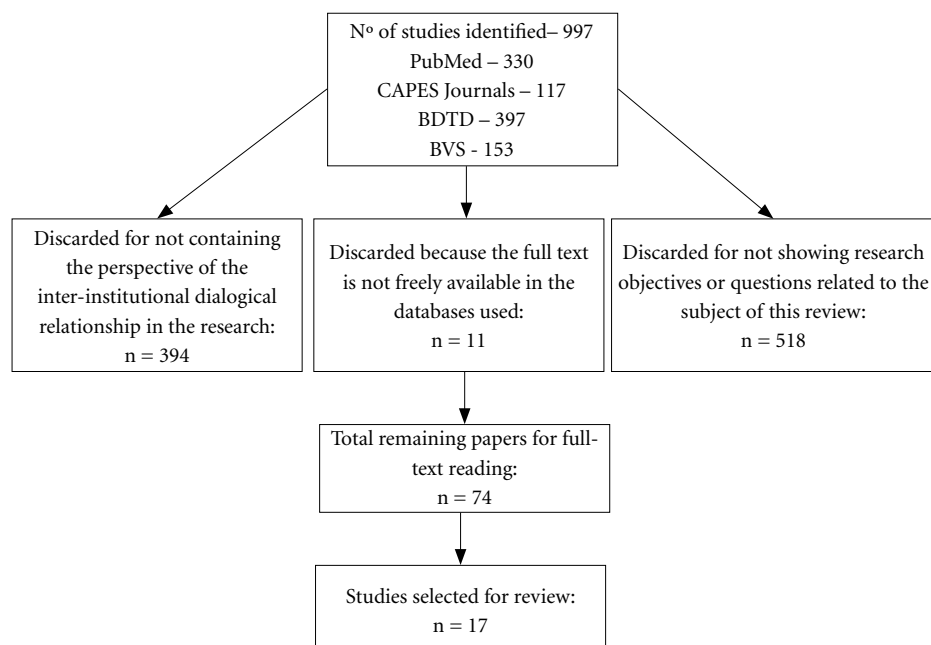
From the results of the selected research, we can infer that there is a certain plasticity in the extrajudicial performance, which would not be possible in the rigid procedural action, especially for the possibility of agreement, adjustments, use of spaces and dialogical provisions that implement the right to health, but also the right to citizen's full participation. This plasticity is a quality

of harmless adaptation and is a fundamental attribute for MP's successful efforts to draw other social stakeholders nearer and foster a new, more resolute and contemplative molding of plural suggestions of social control in the SUS.

Asensi¹² affirms that health juridicity is developed using dialogue, which is the approach of the conflict from the legal viewpoint, without necessarily there being a judicialization, leading to an appreciation of institutions with democratic practices.

Chart 1. Characterization of included studies according to the thematic lines, main objective and main outcome.

Thematic Lines	Author/ Year	Main objective	Main outcome
Participatory Democracy, population's participation and health Councils	Zambom e Ogata, (2013) ¹⁷	To analyze social control from the perspective of health counselors.	Health counselors do not recognize social participation as SUS guideline; centralization of decisions in the management and recognition of technical expertise.
	Farias Filho et al., (2014) ¹⁸	To verify the actions of the health counselors regarding their collective participation actions.	Actions marked by the co-optation of health counselors and the definition of deliberative agendas by the manager.
	Bispo Junior e Gerschman, (2013) ⁵	To analyze Health Councils as expanded democracy spaces.	Health Councils are mechanisms for expanded democracy, understood as the assurance of social rights.
	Oliveira et al., (2013) ¹⁹	To describe and analyze the dynamics of social participation in the CMS of Belo Horizonte (MG) and verify possible signs of institutional reaction to the difficulties reported.	The Health Council operates several mechanisms to improve its modes of action, organization and commitment of the stakeholders to this forum.
	Moreira e Escorel, (2009) ⁹	To understand reactions and rules of the Health Councils institutionalization process.	Health Councils have an autonomy and organization issue.
	Van Stralen et al., (2006) ²⁰	To investigate the effective participation of Municipal Health Councils in the management of health policies.	Councils have little impact on the restructuring of health services.
	Oliveira e Pinheiro, (2010) ²¹	To analyze the participation practices in the Municipal Health Council of a capital of the Brazilian Northeast and its relationship with the local political culture.	Authoritarianism and cooptation in relationships between municipal managers and representatives of civil society. Counselors recognize the fragile deliberative and oversight power of health councils.

**Figure 1.** Study selection stages.

In the protection of the democratic regime, MP's role in the health sector should be directed not only to ensure the right to health, but above all the proper functioning of the health system⁸. The ministerial institution should focus its action mainly on promoting deliberative democracy, materialized as population participation, and this last principle of the SUS is recommended in the Federal Constitution⁴.

Machado³ affirms that civil society action ends up in the very State institutions. However, this assertion must be seen not only from the standpoint of society seeking protection, but from the perspective of society seeking institutional partnerships that strengthen existing social movements or struggles and allow the impact or legitimacy necessary for the realization of rights. The institutional partnership most suited to the promotion of the right to health is the one that takes place between the MP and Health Councils, as it is an element of strengthening social control and promoting collective health, which explains the relevant structuring and interaction of these two oversight instances.

Health Councils, participatory democracy and population participation

Assuming that the Health Council (CS) is MP's main partner, Machado FRS³ observes that there are reciprocal advantages in cooperative action, since the MP enriches the CS's performance with symbolic and practical resources, and this validates MP's action in the protection of the right to health, bringing demands whose content is social reality. Dialogue between the two instances is an example of how it is possible for MP to escape from paternalistic practices that replace civil society's work, and to rethink their legal practice based on an approximation with the reality of public health^{3,16}.

The MP should seek to contribute to the Health Councils so that they advance especially discussions involving regimental and technical issues, although the discussion process is hampered by a political culture that hardly recognizes and respects the other as a citizen¹⁹. The MP should foster an increasing dialogue between the management of services and Health Councils in order to find a solution to the health problems of the municipality.

The space for dialogue between these bodies establishes a new field of practices for the improvement of the democratic state, establishing new forms and mechanisms of agreement be-

tween the different spheres of public powers and their relationship with society¹⁶, since the MP must be there at all times, fostering and qualifying social participation, complying with an important educational and creative role in social change^{3,16}.

Lehmann⁸ uses the expression "participatory democracy", repeating Paulo Bonavides, and attributes to it society's reviving role as a subject of active law in the supervision and management of off-balance collective assets, using population participation in deliberative spaces, such as the Health Councils as a tool. Social stakeholders must take ownership of these democratic spaces, establish robust partnerships and internalize the constant struggles for the assurance of constitutionally guaranteed social rights⁶. Of course, these authors take ownership of the epistemological background underpinning the structuring discourse of social rights inscribed in the legal method theory²²⁻²⁷ and of the perception that the legal discourse is established in the constructive way of the constitutional identities of a population and its capacity of articulation and action as conditions to react to the processes of social exclusion and people's iconization in the bias of purely rhetorical political participation^{22,23,25}.

During the national redemocratization process, social movements returned to the theme of social participation as a claim for democracy, envisaging a new tool of societal expression, representation and participation, with the opportunity to imprint a new format in public policies, especially in the area of health⁶. With the perception of poor representative democracy in finding a solution to the problems found, the ideal of participatory democracy emerges as a strategy capable of ensuring greater citizen participation^{5,21}.

With adherence of the 1988 Federal Constitution to the democratic banners of the Health Reform, community participation in the SUS has been institutionalized: conferences and health councils^{11,28}. Health Councils emerge to meet the constitutional guideline of population participation and as a model of participatory democracy, since they inaugurate the possibility of direct participation of the population in local management⁶. After a few years of formal implementation of this democratic management model, it is important to evaluate whether the material achievements of incorporating society in management actually occurred, as well as which are the difficulties and possible solutions.

Oliveira & Pinheiro²¹ recognize the importance of democratizing the relationship between

the State and civil society and in the struggle for the realization of the right to health through Health Councils. Bispo Junior and Gerschman⁵, in turn, affirm that councils are, in fact, a new type of relationship between State and civil society, which facilitated the incorporation of society in the decision-making core. As a result of a historical democratization process⁵, Health Councils should draw the relationship between State and society closer and more responsive insofar as more citizens have the opportunity to participate in the decision-making process⁹, turning it into an expanded democracy space⁵.

When analyzing a census study published in the 20 years of the SUS, Moreira and Escorel⁹ affirmed that the Health Councils are the broadest initiative of political and administrative decentralization implemented in the country, although there are factors that hamper the democratization of the decision-making process of health policies. Authors argue that the most organized and autonomous Health Councils are located in the municipalities with a civil society more mobilized and accustomed to political articulation⁹. This demonstrates that the realization of the right to health is a constant task of social mobilization³, that is, Health Councils can only effectively exercise their role as a democratic and deliberative instance in environments where democratic values are respected and valued⁵.

Health Councils carry out social control over the health system's management, including new stakeholders in the discussion of their policies, facilitating the emergence of legitimate decisions, in accordance with the constitutional principles recommended for the SUS²⁰. However, counselors have a hard time establishing a dialogue with the bases of representation and access to information, which makes it urgent to articulate and enable the strengthening of social control¹⁷.

With the evident process of current demobilization of social movements¹¹, the evaluation of the democratic bases and relationships in the municipal health policy shows that there is a reversal in participatory practice in the health sector, with obstacles ranging from citizen's disbelief vis-à-vis population participation and the misuse of technical knowledge to hinder the discrete social participation identified¹⁵ to manipulation of the composition and interference of managers in its operation⁶.

Farias Filho et al.¹⁸ results point to noncompliance of the constitutional principles of the SUS and the weakening social image of counselors. Some records show that Health Councils

are not recognized by a significant portion of the population as representatives of their interests or as responsible for guiding government directions⁵. The main difference of these findings against previous surveys is that they indicate failure in the process of identity and resonance of the representation of health councils, which has a limited scope for not having related the weakened social image of councils to effective population participation.

Of the difficulties faced by Health Councils, which are a concrete demand for the performance of the MP's work, identified in the selected studies are those related to weak associative life^{5,19}, the weak link between counselors and the need for technical and political training, enabling a more argumentative intervention¹⁴. In addition, others appear more diffusely in most of the selected studies: lack of work structure, poor representation and social participation process, cooptation by rulers, autonomy and organization problem, lack of transparency and resolution in deliberations, prevalence of technical knowledge, among others.

Health Councils must overcome these institutional limitations⁴, by triggering the various mechanisms to improve their modes of action, organization and commitment of the stakeholders¹⁹. All these functioning disconformities limit social participation and effective social control exercised by them, requiring the collaboration of institutions such as the MP, which can act in two ways: a) internal, regularizing issues related to work structure, parity in the composition or even compliance with the guidelines of Resolution N° 453/2012²⁹; and b) external, fostering social participation, transparency, agreement and effective decisions taken by health councils, avoiding demobilization through participation disconnected from decision¹⁵.

Health policy in Brazil is a dynamic that involves many agents in a new participation model implanted after redemocratization in the country, in which the MP has a fundamental articulation role¹⁶. If the Health Council is the subject engaged in the materialization of the right to health, the MP is the channeling subject of this claim⁴.

It is important to point out that "surveillance of the always informed local community has to transcend the walls of inertia for an equally strategic response to social disruptions of general interest."³⁰ Understanding the dynamics of articulated action between the MP and work of the municipal and state health councils is to provide

*equal respect and consideration for the adequate justification of acts of power*³⁰, which tend to translate into new gains for qualitative and population participation in public health management.

Citizen participation was one of the ideals of the redemocratization process that guided the constitutional framework in the establishment of the Unified Health System and its guidelines, so that its concept cannot be dissociated from the idea of democracy. Besides being a discourse that guides the planning, population participation must become a practice, since it has the potential to legitimize institutions and public spaces and to make important changes to realize the right to health. Thus, rethinking the role of the MP in the area of public health is to redirect institutional actions and strategies for the proper functioning of Health Councils as democratic instruments of power.

Final considerations

We can observe that most of the scientific papers and Master's dissertations analyzed show the importance of interface between the MP and the Health Councils in strengthening social control.

We found that it is incumbent upon the MP to contribute to the effective right to health, which can be achieved through the strengthened social control exercised with municipal health councils. The institutional control in the SUS carried out by the MP, mainly in relation to its performance and interaction with the Health Councils, has been developed more on the resolute and extrajudicial matrix, with the strengthening of the dialogue with other social control agencies, making relations between State and society more horizontal and permeable.

It was verified an inter-institutional dialogue is ongoing, as well as that innovated in the resolution of conflicts essential for the mutual strengthening of both instances and for effective social control of the SUS, since the MP can ensure the autonomous functioning and compliance of the decisions of Health Councils and these, in turn, can legitimize the MP's work, that is, the data seem to confirm that there is a need for closer ties and dialogue between oversight agencies, with gains for all.

The current Brazilian political context, which threatens freezing health resources, demands that the MP be increasingly close to social demands, stimulating and strengthening population participation and overcoming the shortcomings faced by Health Councils, seeking to prevent democratic backwardness.

Results suggest that Health Councils have already consolidated their establishment, but there are still difficulties and challenges for the democratic and transparent management of resources in health, which opens up space and justifies MP's extrajudicial and resolute preparedness, especially with regard to (a) fostering popular participation through social mobilization and political articulation; (b) motivating and supervising the regular technical training of health counselors; (c) mediating the establishment of new forms of agreement between managers and society in addressing the issues that point to deviations in the implementation of health services policies; (d) improving the structural and administrative working conditions of counselors; (e) overseeing compliance with Resolution 453/2012, especially regarding the election to the presidency of health councils, verifying the need to change local laws, and (e) rational and adequate judicialization of health policies seeking rebalance of federal responsibilities.

Collaborations

IP Pereira worked on the design, outline, data analysis and interpretation and writing of the paper; CG Chai worked on data analysis and interpretation, writing of the paper and in the final version to be published; CMD Loyola worked on the final version to be published; IMA Felipe e MAB Pacheco worked on the design and outline, its critical review and the approval of the version to be published; RS Dias participated in the data analysis and interpretation, critical review and approval of the version to be published.

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