83 - THE VULNERABILITY OF THE ACADEMIES SERVICES AND CONGENERS TO BENEFICIARY, BY THE LAW Nº. 15.619 / 2015 OF THE STATE OF PERNAMBUCO/BRAZIL

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INTRODUTION

The regulation of the profession of Physical Education and the creation of the Federal Council and Federal Councils, upon enactment of Law Nº. 9696 of September 1, 1998 by the President, was a major breakthrough Brazilian society, because that way , helped to ensure on the grounds that the nation, by enacting its Constitution of 1988 forced himself to watch over , internally, among many others , as entrenchment clause , in accordance with items II and III of art. 1: The dignity of the human person and citizenship. (MORAES, 2011)

Under these aspects, some observed that the constitutional legislator , established the prerogatives of the profession, the professionals that met the established legal requirements , which are :

1) TheTraining ;

2) The record in their bodies , and ;

3) character reception , as had once been in other regulated professions , those proven to have recognized your exercise, accrued under the terms established by CONFEF system.

It is worth recording that the stated requirements are in line with the XIII device art. 5 of LEX mater, "is free to carry on any work, trade or profession, observing the professional qualifications prescribed by law . " (MORAES, 2011)

Therefore, until the earlier date the sanction of the above-mentioned law, any person of the people, could come to teach an activity that resembles physical activity; However, the advancement of knowledge of motor skills , physiology of stress, among other powers relating to the exercise of the profession and aiming to offer quality in service delivery in the legal text itself which regulates the profession , brought their skills , as well giza your art. 3rd:

> Art. 3 incumbent upon the physical education professionals to coordinate, plan, schedule, supervise, stimulate , direct, organize , evaluate and execute jobs, programs, plans and projects, and provide audit services , consulting and advisory services , conduct specialized training , participate multidisciplinary and interdisciplinary teams and prepare technical reports , scientific and educational , all in the areas of physical activity and sport. (PLATEAU, 2015)

One has to observe how much has the skills Professional of Physical Education, established by law in providing originating ; however, here and there, we are faced with situations that leaves uncomfortable situation , face obligation to act on pain of incurring liability solidarity , of these , this article object , give up , due to the imposition manifests by Law No. 15,619 / 2015 in the state of Pernambuco, which " provides for Gyms operating and other establishments Physical Fitness , Sports Initiation and Practice of Sports and Recreation Sports Education. " (ALEPE, 2015)

State law, in Article 2, until we contemplate with breakthrough because, the text matches the systematic admitted to the Federal Constitution and Law 9696/98, which establishes the regulation of the profession, however, the discussion of this article, is the final wording of Article 3 of the relevant law:

> Art. 3 For the frequency in establishments covered by this law, it is compulsory to reply to Readiness Questionnaire for Physical Activity, contained in Annex I, being optional performing physical assessment, functional assessment and anamnesis. (ALEPE, 2015)

It is observed that a priori, there was by the legislator, a greater appreciation of the questionnaire to be completed by the recipient, than even the intervention of the physical education professional who was hired by the school that will promote the service, seeking to know, through techniques and interventions, the actual state of health of the person seeking services, behold, we are facing a precarious consumption ratio, which at first leaves the recipient vulnerable and can lead you to hipossuficiência, and there, the reversal of the burden of proof.

It should be noted that the legal relationship at this point, it is established in the tradition of (PAR-Q) as initial forecast of Law No. 15,619 / 2015, which makes it compulsory piece and its real answers, with optional physical evaluation, functional and history;

About this narrative, we are discoursing in this article, in order to verify if there is legal liability of the professional of Physical Education, for not observing the need for its intervention in measuring and assessing the Beneficiary seeking the service, because of a state law making it mandatory to Readiness Questionnaire padding for Physical Activity (PAR-Q), and optional performing physical assessment, functional and medical history. (Emphasis added)

ANNEX I

Readiness for Physical Activity Questionnaire (PAR-Q)

In accordance with Law No. _____ of _____, this questionnaire is to identify the need for medical evaluation before beginning phys ical activity. If you answer "yes" to one or more questions, talk to your doctor BEFORE you increase your current level of physical activity. Mention this questionnaire and the questions to which you answered "yes". Please tick "yes" or "no" to the following questions:

1) Has a doctor ever said you have a heart problem and that it should only carry out physical activity supervised by health professionals? ( ) Yes. ( ) No.

2) Do you feel chest pain when practicing physical activity? ( ) Yes. ( ) No.

3) In the last month, did you feel chest pain when practicing activity? ( ) Yes. ( ) No.

4) You present imbalance due to dizziness and / or loss of consciousness? ( ) Yes. ( ) No.

5) Do you own any bone or joint problem that could be worsened by physical activity? ( ) Yes. ( ) No.

6) Do you currently take medication for high blood pressure and / or heart problem? ( ) Yes. ( ) No.

7) Do you know of any other reason why you should not do physical activity? ( ) Yes. ( ) No.

Date _____ Full name _____

Signature: _____

ANNEX II

Disclaimer for Physical Activity.

I am aware that it is advisable to talk to a doctor before increasing my current level of physical activity, for answering "yes" to one or more Readiness Quiz questions for Physical Activity (PAR-Q).

I take full responsibility for any physical activity practiced without the fulfillment of this recommendation.

Date _____ Full name _____

Signature: _____

THE PROJECT OF WHICH THIS LAW IS THE AUTHOR OF DEPUTY AUGUSTO CÉSAR - PTB.

Figure 01 - Annex I and II of Law No. 15,619 / 2015

This determination of Pernambuco Law a priori affront the millennia of evolution of humanity, which in recent decades, search scientism through "epistemológicas¹ theories support." (TOJAL, 2010, P.36)

PROFESSIONAL DUTIES OF PHYSICAL EDUCATION X BENEFICIARY.

It´s well advised remembering that on February 18, 2002, the CONFEF was published Resolution No. 046/2002, which provides for the Physical Education of Professional Intervention and their expertise and define their professional fields of endeavor, that in this way and defined the fields of intervention of this professional, in Article 1:

> Art. 1 - The Physical Education Professional specializes in physical activities in its various manifestations - gymnastics, exercise, sports, games, fighting, capoeira, martial arts, dance, rhythmic, expressive and acrobatic activities, fitness, recreation , rehabilitation, ergonomics, body relaxation, yoga, compensatory exercises to labor activity and daily life and other bodily practices - with the purpose to provide services that support the development of education and health, contributing to the training and / or re-establishment of adequate levels performance and fisiocorporal conditioning of their beneficiaries, aiming at achieving the well-being and quality of life, conscience, expression and aesthetics of motion, prevention of diseases, accidents, postural problems, compensation of functional disorders, contributing further to achieving autonomy, self-esteem, cooperation, solidarity, integration, citizenship, social relations and the preservation of the environment, subject to the liability provisions, security, technical quality and ethics in the individual care and collective. (CONFEF, 2015)

Article 2º of the aforesaid resolution also approves the Professional Intervention document, which aggregates the institutes to be observed by all who seek to exercise that regulated profession.

To that end, the CONFEF the Technical Note No. 002/2012, and sets the assessment as essential to the work of professional physical education, so that it can gather the information needed to justify their interventions to the recipient:

> The physical examination is an essential procedure of the work of the Professional Physical Education and gather objective evidence to substantiate its decision on the method, type of exercise and other procedures to be adopted for prescribing physical exercise and sports. The physical evaluation should be comprehensive and systematic, and in accordance with the objectives and characteristics of the beneficiary, can consist of complete history, analysis of risk factors for coronary disease, risk classification, verification of the main symptoms or signs suggestive of cardiovascular disease and lung, anthropometric, neuromotor tests, metabolic panel, cardiac assessment and postural assessment. (CONFEF, 2015)

It must be noted that based on the Technical Note information, the largest organ class of the Physical Education Professionals, the CONFEF aimed at safeguarding society established "that performing physical assessment is necessary, preceded by Professional Physical Education , according to their respective area of intervention, which will examine the conditions for the development of activities to be carried out "(CONFEF, 2015)

Different from what the law says in Pernambuco, there are mandatory Physical Evaluation of Professional Physical Education, not a college, as an activity that aims at optimizing the health of the people, there is no room for empiricism, a science day after day comes developing the scientism, seeking the application of methods and techniques hulling quality of life.

We emphasize it will be these introductory data, proceeded by the Physical Evaluation or "Kin anthropometry, measure of man, with a view to performance engine in a variety prospects" (Carnival, 2008), when interpreted, "taking into consideration the quality of life , risk factors and physical activity level of the recipient "(CONFEF, 2015), the training will be prescribed, which will offer their well being.

Consider also that these data to be of high importance, is the Physical Education Professional obliged to keep confidential, otherwise reach, and still has a duty to notify the beneficiary under the veracity of the information provided, not with the intent to hinder, harm the recipient, but rather provide you the best service.

> Given the ethical responsibility of professional practice, the physical assessment of the information will be

> kept confidential, both professional and institutional point of view and the recipient will be notified of the importance of accuracy of the information provided by it. (CONFEF, 2015)

Whereas the State Law under discussion, as we said earlier, in essence, it establishes a relationship of consumption, as a service, one has to note that this legal business should observe the dictates of Article 104 of the Civil Code (Law No. 10406/2002) prevailing in our country, which guides the requirements for validity of Legal Business:

> Art. 104. The validity of the legal business requires:
> I - capable agent;
> II - lawful object, possible, determined or determinable;
> III - the manner prescribed or no defense in law. (PLATEAU, 2015)

Then observing the requirements for validity of Legal Business, provided for in art. 104 of the Civil Code, Item I, we are able agent, ie, considering the Federal Law No. 9696 of August 1, 1998, which states that for professional practice, should the active agent, being possessed of qualification and be with their obligations under CONFEF / CREF system in compliance with current regulations, whether Bachelor, Bachelor or those with full performance.

Thus, in the field of their social responsibility, still under the dictates of Resolution No. 046/2002 CONFEF, not ruling out the others, but emphasizing the Professional Intervention means, it is the reminder that in his speech:

> The Physical Education Professional, is used for diagnostic procedures, techniques and tools of measurement, and functional evaluation, motor, biomechanics, body composition, programming and implementation of dynamic loads, demonstration techniques, assistance and security to the execution of movements, serving If facilities, equipment and materials, music and musical instruments, technically appropriate. (CONFEF, 2015)

Then exhausted is the ability agent in the case, the Professional Physical Education which to act, you must be a graduate (or accrued) and be in good standing before the CONFEF/CREF system, acting on providing original, considering the information provided by the Borrower of the services to Corporate and promoting competent assessment in the light of the specific recommendation of his class entity, under penalty of Ethical reach, as provided in accordance with the Resolution No. 046/2002 CONFEF, shall the Diagnostic Evaluation of client, realizing the competent planning to run, according to the principles of training in all fields.

When the item II of art. 104, which deals with lawful object, delivery of the completed questionnaire is lawful purpose; but the state of the diagnostic evaluation in which it is the policyholder services (client / patient / student) before the activity to be prescribed, is "sine qua non" for there to be optimization results and minimize risks even before medical certificates that permit the customer to physical activity; the positive response hypothesis of the PAR-Q is not obstacle the activity as a chest pain may just be gas, and the absence of pain, without an auscultation of the heart or blood pressure measurement, can lead to death an apparently healthy person.

Finally, consideration should be made in relation to section III of the same art. 104 CC, the prescribed form and no defense in law; the guidance of CONFEF is the biggest rule and species subject to all the professionals of Physical Education to perform diagnostic procedures, for having power, is thus meeting the statutory and regulatory requirements relating to professional practice, well established in kind by CONFEF resolution Nº 046/2002; State Law of Pernambuco Nº. 15.619/2015 regarding the right to perform performing physical assessment, functional and medical history (ALEPE, 2015), constitutes a mismatch good quality of service provided by the Professional Physical Education, which is obliged to comply with the recommendation of its regulatory agency.

Moreover, the positive response to the questions of the PAR-Q (Annex I), as the art forecasting. 4, linked the signing of the disclaimer (Annex II) of Law No. 15,619 / 2015 in accordance with the preceding paragraph, not without legal responsibility the Professional Physical Education, not even the Establishment hired, should you have a complication and will be harmed in their health, given that at the beginning of Legal Business, their vulnerable condition has not been fulfilled; the same applies to people who did not responded positively to the questions and / or had medical opinion favorable to perform sports, given the time of submission professional intervention of Physical Education, since this is required to assess the applicant even before start any intervention through the various means of intervention that they are willing.

Articles 3 and 4 of the State Law Pernambuco No. 15,619 / 2015 also show the vulnerability of the consumer relationship established between the recipient / consumer and supplier, as this time of PAR-Q tradition and / or Disclaimer , features a provisional individual situation, the fragile, unbalancing the relationship of consumption, ie, the recipient then needs protection, which was denied by Law No. 15,619 / 2015 in stunting, when providing intervention "ab initio "Professional Physical Education, which is required to meet the guiding kind of his profession and offer the balance, that is, perform a physical assessment for compliance with the class set by its body.

CONCLUSION

Considering the above in this article, we can say that the professionals of Physical Education, before the State Law Pernambuco No. 15,619 / 2015 are the actors that will restore the balance of the consumer relationship between the beneficiary and the establishment to be hired to perform the activity physical, in the form available to the menu of the aforementioned Act.

Failure to observe these parameters, in case of complication to the detriment of the beneficiary, in accordance with Art. 3 and 4, if none, initial intervention of the Professional Physical Education, to undertake Physical Evaluation, establish a legal relationship entail the possibility legal actions perpetrated by the recipient, to the detriment of the Establishment of the service provider and the Physical Education professionals who attended, the informational vulnerability and technique, this time, may prove to be benefited by the judge to reverse the burden of proof in view of its informational and technical knowledge are insufficient.

Finally, in order not be achieved by legal responsibility, it is "ex officio", the Physical Education Professional conduct Beneficiary Assessment, unlike the option provided in Law No. 15,619 / 2015 in the State of Pernambuco, adapting activities to their real condition physics, thus meeting the technical dictates and doctrine that guides their professional conduct, safeguarding the Ethics liability as well as criminal and civil range, and that his conduct, safeguard the solidarity the Commercial Establishment which is part of the body Technical in the form submitted this article, moreover, Society.

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[1]Epistemológicas comes from Epistemologia- branch of philosophy that studies the scientific knowledge set from the set of fundamentals and developed theses on concessions and perceptions in the areas of operations and human knowledge "(Tojal, 2015 p.36 cited TUBINO, 2001)

THE VULNERABILITY OF THE ACADEMIES SERVICES AND CONGENERS TO BENEFICIARY, BY THE LAW Nº. 15.619 / 2015 OF THE STATE OF PERNAMBUCO/BRAZIL.

ABSTRACT

This article aims to demonstrate the vulnerability of the beneficiary at the Annual Law of the State of Pernambuco No. 15,619 / 15, due to the college offer the Professional Physical Education in performing physical assessment, functional and medical history, making it mandatory to fill Form (PAR-Q) and having implications when completing, signing the liability waiver. Throughout the academic approach, escoimada in robust legal and doctrinal guidance, evidence of which is an obligation "ex officio" the physical education professional to undertake Beneficiary Assessment, under penalty of ethical, civil and criminal liability, taking you, the business premises where he develops his working activities and, as a consumer relationship, the vulnerable conditions, if any sudden illness, solidarity, there will be accountability with reversal of the burden of proof, in favor of the beneficiary and to the detriment of the Establishment of the offerer Professional service and that did not perform the Physical Evaluation, all before the Judiciary and class organ. The protection of society, the beneficiary and the Physical Education Professional is found in obedience to kind of their profession, which guides you to make the Physical Evaluation in the recipient, thus optimizing the redirection of planning and expected results, ensuring that way, the society.

KEYWORDS: Assessment. Liability. Benefits.

LA VULNÉRABILITÉ DES ACADÉMIES ET DES CONGÉNÈRES SERVICES AU BÉNÉFICIAIRE, PAR LA LOI Nº. 15.619/2015, L'ETAT DE PERNAMBUCO/BRÉSIL.

RÉSUMÉ

Cet article vise à démontrer la vulnérabilité du bénéficiaire à la loi annuelle de l'État de Pernambuco n ° 15619/15, en raison de l'université offrir l'éducation physique professionnelle dans l'exercice de l'évaluation physique, fonctionnelle et les antécédents médicaux, rendant obligatoire de remplir le formulaire (PAR-Q) et ayant des implications au moment de remplir, signer l'exonération de responsabilité. Tout au long de l'approche académique, escoimada dans l'orientation juridique et doctrinale solide, dont la preuve est une obligation "d'office" le professionnel de l'éducation physique pour entreprendre l'évaluation des bénéficiaires, sous peine de responsabilité éthique, civil et pénal, en tenant Vous, les locaux commerciaux où il développe ses activités de travail et, comme une relation des consommateurs, les conditions vulnérables, si une maladie soudaine, de la solidarité, il y aura la responsabilité avec renversement de la charge de la preuve en faveur du bénéficiaire et au détriment de la création du fournisseur professionnel service et que ne pas effectuer l'évaluation physique, tous devant la magistrature et de l'orgue de classe. La protection de la société, le bénéficiaire et l'éducation physique professionnelle se trouve dans l'obéissance à type de leur profession, qui vous guide pour faire l'évaluation physique chez le receveur, optimisant ainsi la réorientation de la planification et les résultats attendus, en assurant de cette façon, la société .

MOTS-CLÉS: Évaluation. Responsabilité. Avantages.

SERVICIOS BENEFICIARIO DE VULNERABILIDAD EN LAS ACADEMIAS y SIMILARES, ANTES DE LA LEY N ° 15.619 / 2015 DEL ESTADO DE PERNAMBUCO.

RESUMEN

Este artículo tiene como objetivo demostrar la vulnerabilidad de los beneficiarios en la Ley Anual del Estado de Pernambuco Nº 15.619 / 15, debido a la universidad ofrecer al profesional de Educación Física en la realización de la evaluación física, funcional y su historia médica, por lo que es obligatorio para llenar Formulario (PAR-Q) y que tiene implicaciones al completar, firmar la renuncia de responsabilidad. A lo largo del enfoque académico, escoimada de orientación jurídica y doctrinal sólida, prueba de lo cual es una obligación "de oficio" el profesional de la educación física para llevar a cabo la Evaluación Beneficiario, bajo pena de responsabilidad ética, civil y penal, teniendo ustedes, los locales comerciales donde desarrolla sus actividades de trabajo y, como una relación de los consumidores, las condiciones de vulnerabilidad, si cualquier enfermedad repentina, la solidaridad, no habrá rendición de cuentas con la inversión de la carga de la prueba, a favor del beneficiario y en detrimento del establecimiento del oferente Servicio profesional y que no realizaron la evaluación física, todo ante el Poder Judicial y el órgano de clase. La protección de la sociedad, el beneficiario y la Educación Física Profesional se encuentra en la obediencia a la clase de su profesión, que le guía para tomar la Evaluación Física en el receptor, optimizando así la reorientación de la planificación y los resultados esperados, salvaguardo de esa manera, la sociedad.

PALABRAS CLAVE: Evaluación. Responsabilidad. Beneficios.

A VULNERABILIDADE DO BENEFICIÁRIO DE SERVIÇOS NAS ACADEMIAS E CONGÊNERES, PERANTE A LEI Nº 15.619/2015, DO ESTADO DE PERNAMBUCO/BRASIL.

RESUMO

O presente artigo tem por objetivo demonstrar a vulnerabilidade do beneficiário, ante a Lei Ordinária do Estado de

Pernambuco Nº 15.619/15, em virtude da faculdade que oferta ao Profissional de Educação Física em realizar à avaliação física, funcional e anamnese, tornando obrigatório o preenchimento do Formulário (PAR-Q) e, havendo implicações quando do preenchimento, assinatura do termo de responsabilidade. Ao longo da abordagem acadêmica, escoimada em robusta orientação legal e doutrinária, evidenciou-se que consiste numa obrigação “ex officio” do profissional de Educação Física em proceder a Avaliação do Beneficiário, sob pena de incorrer em responsabilidades éticas, civis e criminais, levando consigo, o Estabelecimento comercial onde desenvolve suas atividades laborativas e, por ser uma relação de consumo, pelas condições de vulnerabilidade, caso haja mal súbito, solidariamente, haverá responsabilização com inversão do ônus de prova, favorável ao beneficiário e em desfavor do Estabelecimento ofertante do serviço e do Profissional que não realizou a Avaliação Física, tudo perante o Poder Judiciário e órgão de classe. A salvaguarda da sociedade, do beneficiário e do Profissional de Educação Física fica constatada na obediência a espécie de sua profissão, a qual orienta-o a proceder a Avaliação Física nos beneficiários, otimizando assim o redirecionamento do seu planejamento e resultados esperados, salvaguardo dessa forma, a sociedade.

PALAVRAS-CHAVE: Avaliação. Responsabilização. Benefícios.