

Analysis of general dentist orthodontic practice in Brazilian legal system*

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Abstracts

Aim: Due to the conflict, in Brazilian legal system, between legal principle and human person dignity principle in the issue of general dentist orthodontic practice, this paper aimed to analyze laws and courts decisions concerning this matter. **Methods:** Regulations of orthodontic education and practice were sought in Federal Government and professional organizations. Courts decisions were sought in Brazilian Superior Courts utilizing “Orthodontics”, “orthodontic” and “orthodontist” keywords. **Results:** Brazilian laws classify Orthodontic Postgraduation as *stricto sensu* and *lato sensu*, and each of them have their own specific regulations. National Education Guidelines determine that Dental Graduate Course must only teach preventive Orthodontics. Brazilian courts understand that, in order to practice corrective Orthodontics, Orthodontic Postgraduation Course is necessary. **Conclusion:** Dentistry Graduate Courses are only able to teach Preventive Orthodontics; only *stricto sensu* and *lato sensu* Orthodontic Postgraduate courses are able to teach Corrective Orthodontics; it is unacceptable to understand that law permits that general dentists practice Corrective Orthodontics; and general dentists may only practice Preventive and Interceptative Orthodontics.

Keywords: Postgraduate course. General dentist. Legality. Human person dignity.

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Editor's abstract

In a first analysis, general dentist orthodontic practice seems to be licit, once the Law n. 5081/66, which regulates Dentistry professional exercise, determines that every dentist may practice everything that was taught in Dentistry Graduation and Postgraduation, and Orthodontics is taught in Dentistry Graduation, as "Dental Orthopedics", since 1856⁶. Besides, Dental Ethics Code forbids that dentists entitle themselves as specialist without Regional Dental Board (CRO) inscription and determines that dentists perpetrate an ethical infringement when announce or make public titles, qualification and specialties that either do not bear or are not recognized by the Federal Dental Board (CFO), but nothing about their practice is mentioned.

Orthodontics is directly related to human health⁵. Every harm that is caused by the wrong conduction of orthodontic treatment is a patient's body violation and it is an injury to his/her psychological and physical integrity, which is one of the aspects of human person dignity⁴. The principle of human person dignity is clearly mentioned as one of the Federal Republic of Brazil basis in the article 1st, III, Federal Constitution (CF). Due to the conflict, in Brazilian legal system, between legal principle and human person dignity principle in the issue of general dentist orthodontic practice, this paper aimed to analyze laws and courts decisions concerning this matter, utilizing the Theory of Juridical Arguing.

Regulation of orthodontic education and practice was sought in Federal Government and professional organizations. Then, they were organized according to the hierarchy of Civil Law System¹, which utilizes a pyramid whose top is the Federal Constitution (The Great Law). Bellow the top, there are the Complementary Laws, the Ordinary Laws and other regulations. Court decisions were sought in Brazilian Super-

rior Courts websites.

The analysis of Brazilian legislation shows that the CFO, responsible to watch and to work for the good reputation of dental profession, understands that the specialties must be practiced by qualified professionals to execute more complex procedures, that is, by professionals who made a Postgraduate course. National Education Guidelines of Dentistry Graduate Courses determine that Dentistry Graduate Courses must emphasize the teaching of Preventive Orthodontics, which is compatible with the contemporary Health Promotion Paradigm. When the Law n. 5081/66 permits that dentists practice all the knowledge obtained in graduate or postgraduate courses, it is implicit that this is valid to courses that are capable to be supervised. When the issue is Corrective Orthodontics, only *stricto sensu* and *lato sensu* Orthodontic Postgraduate Courses have legal documents that offer quality parameters. The analysis of Brazilian Court decisions demonstrates that, even for the Law operators, Orthodontic graduation in authorized Postgraduate Courses is necessary in order to conduct corrective orthodontic treatment.

Utilizing the Theory of Juridical Arguing, the interpretation of legislation and superior court decisions leads to the following conclusions: it is unacceptable to understand that law permits that general dentists practice Corrective Orthodontics; and general dentists may only practice Preventive and Interceptative Orthodontics.

Questions

1) The conclusions of this article lead to the discussion about the distance between legal requirements to obtain the title of "Orthodontist" and the suitable policy to graduate a qualified "Orthodontist". In the authors' view, which policy can be implemented in order to guarantee that qualified Brazilian Orthodontists are graduated?

First of all, it is necessary that Federal Dental Board (CFO) regulates and the dental community recognizes and accepts the importance of the Specialist in Orthodontics. As this article demonstrated, the CFO interpretation that “general dentist is authorized to practice Corrective Orthodontics” is unfair and has not any scientific or legal foundation. This CFO policy makes the differentiation between the “Specialist in Orthodontics” and the “general dentist who practices Corrective Orthodontist” very difficult either in advertisement or in remuneration issues.

Once the specialty is valorized, the professional is stimulated to pursuit qualification and to seek adequate Orthodontic Graduation. This would lead to a decreasing demand of “Courses that only teach how to bond brackets and align teeth” and an increasing demand of “Courses that graduate professionals capable of treating malocclusions”.

Finally, it is important that Orthodontic Graduation Courses are rigorously supervised, mainly in their competence to graduate professionals who are capable to: (1) diagnose and treat with scientific basis; and (2) offer high quality orthodontic treatment, evaluated by objective grading, as the Brazilian Board of Orthodontics and Dentofacial Orthopedics (BBO) one.

2) In Brazil, which institution is competent to regulate the quality of *lato sensu* postgraduate courses with the goal of appropriate Orthodontic Specialist qualification?

The legislation of Brazilian *lato sensu* post-graduation has many interpretation gaps. As the legal documents about this issue are generic, conglomerating Human, Biologic and Exact Sciences, it is very difficult that actual cases are fairly resolved based only on an ordinary literal interpretation of a law. Following the “Theory of Juridical Arguing”, which is used by judges in

judicial decisions, the answer to this question is described below.

Considering that:

Lato sensu Orthodontic Postgraduation is related to health and the article 197th of Federal Constitution establishes that the Government must regulate, supervise and control health actions and services.

As the Resolution n. 1/07 of the National Council of Education is generic when states that “*lato sensu* postgraduate courses, for each area, are supervised by the competent institutions”, this gap is fulfilled with the Federal Dental Board (CFO), which was instituted by the Law n. 4324/64 and is part of the Government that regulates Dentistry.

1) The Decision n. 27/03 of CFO designated the Brazilian Association of Orthodontics and Dentofacial Orthopedics (ABOR) the consultant entity of CFO in the issues pertaining Orthodontics.

2) The ABOR founded the Brazilian Board of Orthodontics and Dentofacial Orthopedics (BBO) in the 2nd ABOR Congress, in 1999.

3) The BBO follows the model of the American Board of Orthodontics (founded in 1929) and has scientific parameters to certificate orthodontists who treat their cases with excellence.

It can be concluded that the competent institution to regulate the quality of the *lato sensu* orthodontic postgraduate courses is the CFO, following the counseling of ABOR and BBO.

3) Which are the other issues about Orthodontics legal practice that can be analyzed by studies like this one?

This was the first study of three, which utilized both “Law Science” and “Evidence-based Orthodontics” to fulfill the gaps of Brazilian legislation about Orthodontic practice. Laws

and court decisions must be interpreted in a manner to bring justice to competent professionals and to the patients.

The other two articles were already accepted by the “Revista Dental Press de Ortodontia e Ortopedia Facial”. The first one³ analyses if the conclusions of this article are compatible with the policy of foreign countries; and the second one², already published, discusses the conse-

quences of this article in the remuneration of dental health insurance companies.

More studies that utilize the tools of “Law Science” in the resolution of legal doubts of orthodontists must be done in order to valorize and give legal support to the professionals who seek to, with Orthodontics, bring esthetics, function, health and stability in the treatment of their patients.

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