

The orthodontist's responsibility and the bioethical aspects in the current jurisprudence

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ABSTRACT

Context: The orthodontists usually have to manage patient's expectations and treatment plans at the same time. Consequently, the civil responsibility and the bioethics involved on orthodontic routine are matters of relevance. Therefore, the importance of adequate conducts is addressed in this research. **Aim:** The present aim is to analyze the tendency of the courts judging the orthodontists' responsibility and to observe the bioethical aspects on the current jurisprudence. **Materials and Methods:** The sample consisted of 108 lawsuits related to the orthodontist's civil responsibility, dated from 2003 to 2009. The qualitative data were obtained by the Bardin's method for detailed reading. The quantitative collection was performed by observing statistical distribution of the following variables: (1) reason of the complaint against the orthodontist, (2) type of obligation designated to the professional, (3) presence of expert's examination, and (4) jury decision. The correlations between the jury decision and the other variables were verified by applying the Chi-square test. **Results:** The main reason of the complaints against the orthodontist was the personal dissatisfaction (32%). Subjective and objective obligations had pair incidence (26% and 27%, respectively). The experts' examination was present in 63, 89%, of the cases, and the jury decision acquitted 57, 78%, of the orthodontists. The passages involving bioethical principles supported properly the qualitative approach. **Conclusion:** The orthodontists show deviations from the correct daily attitudes. In order to avoid further conflicts, more attention must be given to the principles of bioethics.

Key words

Bioethics, civil responsibility, lawsuits, orthodontics

INTRODUCTION

The importance of adequate clinical attitudes increased in the last decade. At the same time, orthodontists have been able to provide better oral health to their patients.^[1] But benefits generated by technology also increase the patient's expectations of treatment outcomes. Nowadays, the relationship between professional and patient is based on a new and democratic lineation. Thus, dialogue appears as an important part of the contract.^[2] Consequently, as they are more informed and aware of their rights, patients start to demand more against the professionals which may not be adequate with respect to their expectations. The orthodontist, who is responsible

for oral functioning and esthetics, is not exempt from these facts.^[3] The contract of dental services, based on responsibility, indicates violation when it is characterized by negligence, malpractice, or imprudence.^[4] Brazilian jurisprudence bases the orthodontist's responsibility on two different modalities of obligation. The first, subjective obligation, conditions the professional to provide health care to the patient by using qualified knowledge, without being responsible for positive results. The second, objective obligation is where the professional is responsible for providing positive outcomes at the end of the treatment.^[5]

Bioethics is applicable to the orthodontists' routine in order to guide their daily attitudes. This science aims at the enlargement of human values in the same proportion as technological development.^[6] The supporting principles of bioethics are autonomy, nonmaleficence, and beneficence.^[7,8] In synthesis, the principle of autonomy allows the patient or his parents to take decisions with the orthodontist.^[9] A common tool related to this principle is the informed consent, through which the orthodontist can make formal contracts before the treatment and can

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control the situation.^[10] The principle of beneficence is observed when the orthodontist provides health care under the patient's needs,^[11] and the nonmaleficence principle was established in order to avoid injuries.^[12] These principles support a pleasant relationship between professional and patient if applied in a proper way.^[13]

Thus, the aim of this study is to investigate the orthodontist's responsibility in the Brazilian jurisprudence under the bioethical approach.

MATERIALS AND METHODS

The sample consisted of 108 lawsuits collected from the internet addresses of all the Brazilian civil courts, originated during the period between 2003 and 2009. The key words used for search were "orthodontist", "orthodontics," and "orthodontic treatment". The documents were analyzed individually by using Bardin's method of reading, which consists of a pre-analytical reading, exploration of the material, result from collection, and interpretation.^[14] During the qualitative analysis, all the text passages containing bioethical reference to the principles of autonomy, beneficence, and nonmaleficence were highlighted and extracted for further analysis. This was performed to obtain the phrases which could provide better bioethical argumentation for the civil responsibility discussion.

The quantitative data were collected based on the following variables: (1) reason of the complaint against the orthodontist, (2) type of obligation designated to the orthodontists, (3) expert's examination, and (4) jury decision. In order to obtain detailed information, the variables were subdivided. The reason of the complaint against the orthodontist was composed of (1.1) omission of information, (1.2) extended treatment, (1.3) influence of other orthodontist, (1.4) oral injuries, and (1.5) personal dissatisfaction. The type of obligation was divided into (2.1) subjective obligation, (2.2) objective obligation, (2.3) combined obligations, and (2.4) absence

of obligation. The expert's examination was considered into the (3.1) presence of examination and (3.2) absence of examination. The variable jury decision was organized into (4.1) orthodontist convicted and (4.2) orthodontist acquitted, as shown in Table 1.

The obtained data were submitted to descriptive statistical analysis of frequency. Aiming to verify possible influences in the court judgment, the jury decision was analyzed in correlation to the other variables through the Chi-square test.

RESULTS

Quantitative data

The major complaint against the orthodontist was the personal dissatisfaction with an incidence of 32, 41%, followed by the influence of other orthodontist, representing 25% of the cases. Oral injuries, extended treatment, and omission of information obtained frequency of 20, 37%; 12, 96%; and 9, 26% respectively.

Concerning the type of obligation, the results showed a similar distribution of 26, 85% and 27, 78% between the subjective and the objective obligations. The absence of this information had an incidence of 44, 44%. Both subjective and objective obligations were found combined only in 0, 93%, of the cases. The expert examination was requested in 63, 89%, of the cases and absent in 36, 11%, of the remaining judgments. The jury decision was divided into 47, 22% of convicted cases and 52, 78% for acquitted orthodontists [Table 1].

The correlations between the jury decision and the reason of the complaints against the orthodontist, type of obligation, and expert's examination did not show relevant statistic results ($P > 0.5$).

Qualitative data

In order to argument the civil responsibility of

Table 1: Distribution of variables into subgroups, represented by frequency and percentage

Variables	Subgroups	Frequency	Percentage
1. Reason of the complaint	1.1 Omission of information	10	09, 26
	1.2 Extended treatment	14	12, 96
	1.3 Influence of other orthodontist	27	25, 00
	1.4 Oral injuries	22	20, 37
	1.5 Personal dissatisfaction	35	32, 41
2. Type of obligation	2.1 Subjective obligation	29	26, 85
	2.2 Objective obligation	30	27, 78
	2.3 Combined obligations	1	00, 93
	2.4 Absence of obligation	48	44, 44
3. Expert examination	3.1 Presence of examination	71	63, 89
	3.2 Absence of examination	39	36, 11
4. Jury decision	4.1 Orthodontist convicted	51	47, 22
	4.2 Orthodontist acquitted	57	52, 78

orthodontists under the bioethical approach, the phrases which could better represent the principles of autonomy, nonmaleficence, and beneficence were selected. The principle of autonomy was better represented by textual content related to the informed consent, such as is there is any informed consent? and did not provide feedback regarding the consequences of the orthodontic treatment.

The principle of nonmaleficence was represented by the sentences related to orthodontic documentation: no panoramic or periapical X-rays were taken, and no previous examination was taken before the orthodontic treatment.

The principle of beneficence was better observed on passages related to dental improvements as follows: the treatment provided evident benefits and there was slight improvement with the treatment.

DISCUSSION

The last update of the Brazilian Consumer Code provided for the patient a higher status into the contractual relation.^[1] In parallel, an increasing demand for better quality was evident. For example in orthodontics routine, personal dissatisfaction represented the main reason in the complaints against the professional. One of the hypotheses for this significant level of complaint is that it can be associated with the absence of dialogue between orthodontists and patients.^[9] Through Bardin's method^[14] of contextual analysis, the principle of autonomy was observed and was related to the lack of dialogue: e.g. is there any informed consent? The content of this passage shows the judge's interest in knowing if the principle of autonomy had been upheld. In order to avoid the lack of dialogue, informed consent is applicable to the orthodontic routine. In this way, the professional can provide information to the patients and receive or not receive their consent.^[10,15,16] This document keeps the professional safe by registering the patient's choices before and during elective treatments. The dialogue is also the main point when the following passage is analyzed: did not provide feedback about the consequences of the orthodontic treatment. The example represents the violation of the autonomy principle by the omission of feedbacks regarding the treatment. Today, the literature already says that informed patients have more reasonable expectations about the treatment outcomes.^[17,18] This type of conduct could decrease the amount of cases resulting from 'Omission of Information', which was represented in 9, 26%, of the analyzed lawsuits.

Bioethics is also related to the civil responsibility on: no panoramic or periapical X-rays were taken; and on: no previous examination was taken before the orthodontic treatment. Both contents demonstrate the direct relationship between the incidence of the nonmaleficence

principle and the act of negligence. The passage stresses the importance of forecasting damages to the patient.^[19] In this research 20, 37%, of lawsuits resulting from oral damage were observed. If the forecasting conduct, proposed by the nonmaleficence principle, had been regularly followed in the clinical routine, this amount could certainly be reduced.

Considering the beneficence principle, the following sentences can provide discussion about the orthodontist's responsibility: the treatment provided evident benefits and there was slightly improvement with the treatment. The first case showed the correct attitude of the orthodontist while using dental documentation as a tool for self-protection under a lawsuit.^[20] The second statement relates the dental documentation to the treatment outcome. It is relevant to observe that the principle of beneficence does not change according to the level of benefit; "slight" or significant improvements are considered the same. The mentioned passages also have in common the presence of an expert's analysis, which were requested in 63, 89%, of the cases. The remaining lawsuits were judged without an expert's opinion, which demonstrates an important issue considering that the courts are not aware of orthodontic science.

The type of obligation also was an assignment that was absent in a large scale. This information was missing in 44, 44% of the judged cases. The remaining cases had similar incidences, 26, 85%, for the subjective obligation and 27, 78%, for the objective obligation. These data show that the courts were in doubt about the type of obligation on which the orthodontists should be judged. Regarding this, the orthodontic treatment is based not only on the orthodontist's knowledge,^[21] but on the patient's physiological response, collaboration, and maturity. These were aspects not liable to be under professional control and should be considered during the judgment.^[22]

The jury decision, when analyzed, showed divided frequency between acquittal and conviction, represented by 52, 78% and 47, 22% of the cases, respectively. When analyzed in correlation with the other variables, the jury decision did not suffer influence ($P > 0.05$). This information shows that orthodontists have been judged accurately during the period of 2003 and 2009.

CONCLUSION

The absence of correlation between the jury decision and the external influences demonstrates that unbiased judgments are being executed. Despite that, the high prevalence of convictions presented nowadays demonstrates failures in the routine of the orthodontic practice, shown by deviations from the correct attitudes. In order to avoid further conflicts, more attention must be given to the principles of bioethics.

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