

ORIGINAL ARTICLE

Profile evaluation of orthodontic professionals as for their legal actions

Luiz Renato Paranhos*, Marcio Salazar**, Fernando César Torres***, Antônio Carlos Pereira****, Rhonan Ferreira da Silva*****, Adilson Luiz Ramos*****

Abstract

Objective: Evaluate the legal actions and behavior in the doctor/patient relationship, used by dental surgeons practicing orthodontics. **Methods:** The population sample of the present study consisted of dental surgeons, active in the field of orthodontics, and registered with Dental Press Publishing Company — Maringá/PR, Brazil, with a total sample size of 525 professionals. The research was conducted using a 17-question survey forwarded to these professionals. **Results and Conclusions:** The majority of participants in our study are specialized in orthodontics; 75% of professionals use some sort of contract at the office/clinic; 73.7% of professionals periodically request maintenance X-rays; a large percentage of professionals (58.9%) keep patient records on file for life. The interviewed professionals demonstrate good knowledge of the Brazilian Code of Ethics in Dentistry, especially of Chapter XIV — on Communication.

Keywords: Professional practice. Legal liability. Orthodontics. Enacted statutes.

INTRODUCTION

Following the enactment of Brazilian Law 8078/90¹ (Consumer Defense Code), patients began claiming their legal rights, making dental surgeon become ever more careful regarding possible lawsuits. In order to minimize this type of legal problem, it is necessary to compile and maintain full dental records, containing all patient documents and information.

These documents are a set of declarations signed by the professional over the course of treatment, which serve as proof and can be used for legal, forensic^{2,3} and administrative purposes. They consist of the anamnesis, dental services contract, informed consent, clinical evolution of treatment, as well as copies of prescriptions, certificates and referral letters.⁴

The dental services contract should contain all necessary information on orthodontics, its

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risks and benefits, services, diagnosis, prognosis and treatment plan, as well as the estimated cost and duration of treatment, in addition to pertinent information on appliances and the post-treatment period.⁴

Thus, this contract expresses the conditions and limitations of the orthodontist as a rehabilitator, along with patient consent and comprehension. It is an agreement between two or more persons, on account of a licit and possible object, with the intent of acquiring, preserving, modifying or extinguishing rights.^{5,6}

The rise in lawsuits is due to the general lack of information given to patients, turning them into litigants. Therefore, it becomes necessary to clarify the objectives aimed at the conclusion of treatment, what functional benefits there are, and what type of improvement the treatment will provide in terms of dental and facial esthetics.

Thus, the present work had as objective to evaluate the profile of orthodontic professionals with regard to legal actions.

LITERATURE REVIEW

Analyzing the professional/patient relationship with regard to possible legal problems originating from orthodontic treatment, Koubik et al.⁷, in 1995, concluded that dental surgeons should act honestly with their patients, obtaining full and detailed clinical documentation, establishing a legal relationship based on common agreement. This will consequently lead to a stable relationship between the two parties, avoiding future problems with regard to jurisdiction.

In 2006, Melani and Silva⁶ applied surveys to orthodontists and their respective patients, with the objective of investigating this professional/patient relationship, analyzing the legal aspects that guide orthodontic treatment. It was concluded that dental surgeons do not give importance to a well-devised record sheet, containing clear and written data on their patients, which could discharge them in ethics and civil liability lawsuits,

as these records would serve as the orthodontist's main defense tool. Professionals have worried only about contracts that express compensations and periodical maintenance, due to concern with the financial aspect of treatment.

Rodrigues et al.⁸ reviewed the literature on civil liability of orthodontists, clarifying the rights and obligations in professional/patient relationships. They concluded that dentists should adopt conducts based on ethical-legal precepts, avoiding an undesired involvement in legal suits. Therefore, professionals should act according to their abilities and the knowledge expected from a prudent doctor. With regard to the patients, they should be compensated by the professional in case of any injury caused to their health, as described in Art. 949 of the Brazilian Civil Code, which states: "The offender shall compensate the aggrieved party for expenses of the treatment and loss of profits until the end of the convalescence, in addition to any other damages the aggrieved party can prove".

Garbin et al.⁹ in 2006, applied surveys directed at dentists, with questions that assessed their conduct regarding patient records. After analyzing the results, it was observed that, even with the possibility of facing lawsuits, many professionals are negligent towards patient documentation. As such, there is a need to make dentists aware of these aspects.

A statistical census was carried out by Soares et al.³ in 2007, using a survey aimed at Brazilian orthodontists enrolled in the Federal Dentistry Council (CFO), with the objective of analyzing patient/professional relationships in light of the Consumer Defense Code (CDC), the obligatory nature of orthodontic services, and patient awareness of the risks they may face during orthodontic treatment. They concluded that orthodontists are aware of the need to put in practice the rules of the CDC as service providers to their customers — in their case, their patients. Nonetheless, only a minority regarded orthodontics as a duty of due

activity and make patients aware of the risks they face, verbally and in writing.

Kliemann and Calvielli¹⁰ analyzed the legal understanding on obligations resulting from contract relationships and the correlations between these obligations and the activity of dentistry. They acknowledged the real importance of dental surgeons knowing these pre-established conditions with their patients — after all, it is not enough to have knowledge and technique to execute a procedure; one must have professional conduct and well-defined record procedures, with the objective of preventing legal implications resulting from non-observance of these contractual obligations.

MATERIAL AND METHODS

Criterion for choosing the professionals in the study

Questionnaires were distributed to dental surgeons active in the field of orthodontics, from different regions in Brazil, registered with Dental Press Publishing Company — Maringá/PR, Brazil.

Data collection

A total of 525 questionnaires were sent out, containing 17 structured and open questions directed at dental surgeons. Participants received the questionnaire and a letter requesting their participation in the survey via e-mail. The confidentiality of the information provided was assured, as well as their use exclusively for research purposes. Questionnaires were not identified.

Return for data collection was previously arranged with the professionals, with a maximum period of one month after delivery. After the questionnaires were returned, the data were compiled and distributed in percentages, using graphs to demonstrate the result.

The questionnaires

The survey took into consideration the characteristics of training within orthodontics and

knowledge of legal dentistry. Next, the following questions were presented: Whether dental surgeons use any type of contract in the office and/or clinic, and for how long; whether they inform the treatment plan and mode of payment to patients; whether they usually offer more than one treatment option and time estimate; what conduct is adopted if the patient is absent more than three times; whether they use patient images in folders, printouts, newspapers, TV ads or in classes; whether they advertise treatment photographs in printouts, showing the start and end of treatment, and whether they have legal authorization from patients or guardians; whether they advertise costs or modes of payment; whether they have had legal problems, and how they were solved; which items they request for initial orthodontic documentation and how often they request control X-rays; and whether they keep patient records on file, and for how long.

RESULTS AND DISCUSSION

The sample consisted of 525 dental surgeons active in orthodontics. When questioned on their training, most were specialists in orthodontics, as shown in Figure 1.

Dental services contract

All dental surgeons should include the dental services contract in their practices, explaining the main obligations involved in rendering dental services, establishing a legal relationship¹¹ and secondary obligations, in order to prepare or assure the perfect accomplishment of the main obligation.

This contract should be drafted in simple language, containing only the necessary scientific terms, clarifying what will be done within the specialty, informing the risks and benefits of treatment, all possible treatment options within technical-biological limits, how the service will be performed, as well as informing post-treatment precautions, which are usually neglected items.¹²

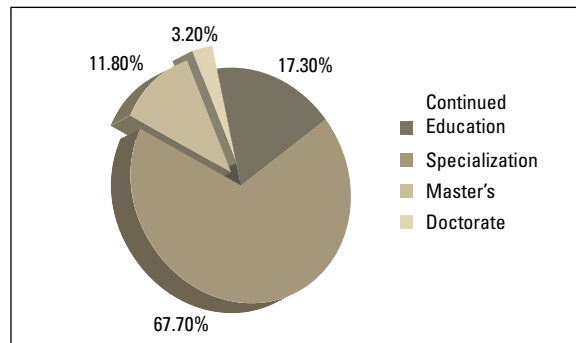


FIGURE 1 - Professional training of the population sampled in this work.

Also part of the obligations concerning dental contracts are biosafety, continuity of treatment, payment of fees, professional secrecy, protection and care, and the place where the dental surgeon monitors the patient, with the intent of highlighting the importance of fulfilling their obligations.¹⁰

It is important that the patient be given proper instructions on hygiene when this guideline is not expressed in the contract, thereby preventing the onset of periodontal disease that could put the treatment in jeopardy. Clarifications should also be made on which type of toothbrush to use, type of dental floss, use of threaders and mouthwash, in order to eliminate and prevent the formation of dental biofilm.

The best way for dental surgeons to legally protect themselves is through documentation.^{4,6,7,10,12} Garbin et al⁹ observed that most dentists (66%) do not have a formal term of service agreement. Melani et al⁶ reported that 53% of patients affirmed having signed some sort of document prior to starting treatment. In the present study, most specialists in orthodontics (61%) use a written and signed dental contract, as shown in Figure 2.

This study showed that 75% of professionals use some sort of contract in their practice and/or clinic. Most professionals in the sample are more careful with this procedure, and 55% have

already used this type of procedure for 1 to 5 years, 37% for 6 to 10 years, and 10.30% have used it for over 10 years, as shown in Figure 3.

Melani et al⁶ observed that few orthodontists (28%) inform their patients in writing about the length of treatment. In our work, 78.9% of dental surgeons define the duration of treatment for their patients, and 21.1% do not.

With regard to the risks of orthodontic treatment, Soares et al,³ in 2007, observed that 1.23% of orthodontists do not report this factor to patients, 2.52% did not answer the question, 4.29% report the risks in writing, 28.66% report them orally, and 63.31% do so both orally and in writing. Furthermore, 19% of dental surgeons pass on information to their patients orally, 17% in writing, 61% in writing and signed, and 3% use other methods. Rodrigues et al⁸ agree with reporting treatment risks to patients, among other issues.

Thus, it is recommended that after diagnosis, treatment options be described with their respective prognoses, letting the patient choose the most adequate treatment option. It is necessary to explain well to the patient the limits, restrictions and contraindications of each option, informing everything that could interfere directly or indirectly on the result the professional can offer and the patient expectations.^{11,12,13}

Therefore, it is important to offer more than one form of treatment to patients.^{7,11,13} This is in accordance with our results, in which most dental surgeons (83.4%) present more than one treatment option to patients.

According to the Code of Ethics in Dentistry¹⁴ — chapter V, section I, Art. 7, clause IV — it is an ethical infraction to “not clearly express the purposes, risks, costs and alternatives of treatment”. In the Consumer Defense Code,¹ Art. 31, “The offer and presentation of products or services shall ensure a correct, clear, accurate and noticeable information on their characteristics, quality, quantity, components, price, warranty,

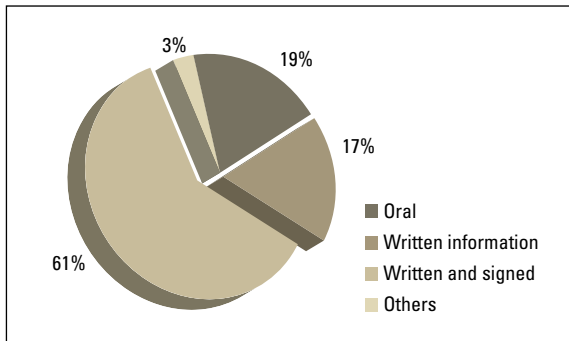


FIGURE 2 - Percentage distribution of the manner in which most specialists in orthodontics use the free and informed consent form.

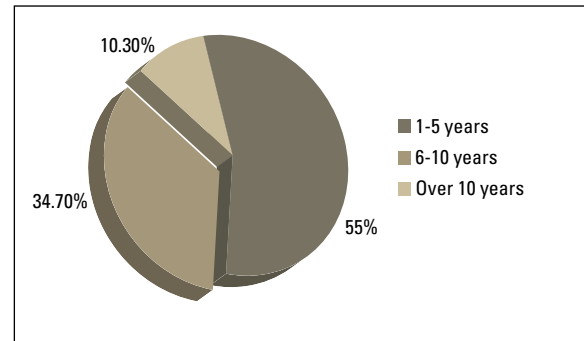


FIGURE 3 - Usage time of the contract in dental clinics of the evaluated sample.

duration and origin, among other data, as well as about the risks they might involve to consumers' health and safety".

In the present study it was observed that 92.2% of consulted sample had not had legal problems with their patients, while 7.8% had legal involvements. A good relationship between professional and patient avoids litigious involvement, preventing civil liability suits against the orthodontist^{4,6,7,9,10,15}. It was further observed that 41.5% of dental surgeons who were involved in suits solved the issue in small claims court, 29.3% in regular courts, 24.4% in the Regional Dentistry Council, 2.4% in the consumer advocate agency, and 2.4% did not answer the question.

The Consumer Defense Code¹, Law 8078/90, in articles 2 and 3, transforms dental surgeons into providers, patients in consumers, and dentistry in a rendered service. Therefore, in any dentist/patient relationship, everything must be made clear, in order to avoid legal troubles in the future. Article 14 states, "The personal responsibility of independent professionals shall be determined upon verification of fault".

The Brazilian Civil Code,¹⁶ in its article 186, states that "incurs in an illegal act one that violates or causes harm to third parties' rights, by means of action or voluntary omission, neglect or imprudence, even if exclusively a moral harm",

and should repair the damage done to the other party (Art. 927). The code also expresses, in Art. 951, that damages should be paid by whomever, in the practice of their professional activity, by negligence, malpractice or incompetence, causes the patient's death, worsens their condition, causes lesions or lead to work disability.

At the end of the dental services contract, the patient's authorization should be requested to execute treatment, for publication in scientific articles or even commercial advertisements, always respecting the patient's anonymity.⁴ The present study showed that 26.1% of dental surgeons used images of their patients in folders, newspapers, TV ads or in classes.

Patient or guardian signature on the record documents confirm the consent and approval for the procedure or fact in question, as determined by the Brazilian Civil Procedure Code¹⁷ — Section V — On Documentary Evidence — Art. 368. "The declarations contained in a private document, written and signed, or only signed, are presumed to be true with regard to the signatory".

The Code of Ethics in Dentistry¹⁴ states it is an ethical infraction within Chapter XIV — On Communication (sections I and III) to publish, without written consent, any element that identifies the patient, exposing their privacy. Our study showed that 43.2% of professionals

have authorization from the patient or guardian for these publications, 41.7% do not, and 15.1% did not answer. To publicize advertising gimmicks to attract clientele, particularly if using the terms “before” and “after” is illicit as well. A total of 12.8% of treatment photographs in printouts show the beginning and end of treatment, while 87.2% do not.

The Code of Ethics in Dentistry¹⁴ states it is an ethics infraction to advertise prices, free services and modes of payment that represent unfair competition. The present study showed that 0.4% advertise pricing and mode of payment, whereas 99% do not, and 0.6% did not answer.

Legal guidance for orthodontists

What to do with dental records at the end of treatment? This is a very common question among orthodontists. To answer that question, Garbin et al¹³ conducted a study with 56 dental surgeons. Most of them (98%) keep records on file, while 2% give them to patients without keeping a copy for their records. Most keep these records, but for how long? This study showed that 1.5% of professionals keep patient dental records for 1 year; 2.3% for 2 years; 20.6% for 5 years; 15.8% for 10 years; 58.9% for life (Fig 4). It should be highlighted that all records belong to the patient, and the best conduct would be to keep them on file for five years, and then return them with an itemized receipt signed by the patient or guardian.

Complete orthodontic records should consist of intra- and extraoral photographs, panoramic X-ray and lateral cephalometric and periapical radiographs of all teeth, and cast models. A total of 0.6% of den-

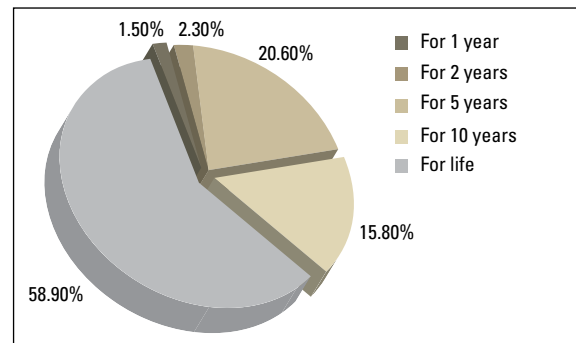


FIGURE 4 - Percentage distribution of the length of dental record storage.

tists affirmed they request only panoramic radiographs; 0.9% request panoramic and lateral cephalometric radiographs and cast models; 64% request panoramic and lateral cephalometric radiographs with cephalometric tracing, intra- and extraoral photographs, periapical radiographs of the incisors and cast models; 25% request panoramic and lateral cephalometric radiograph with cephalometric tracing, intra- and extraoral photographs and cast models; and only 9.5% request all of these exams as well as periapical radiographs of the entire mouth.

Requesting control X-rays (every six months) is essential to detect possible resorption during orthodontic treatment, as is updating patient records, in accordance with the Code of Ethics in Dentistry.¹⁴ In our work, 33.5% of professionals requested control X-rays every six months, 40.2% once a year, 19.0% at the start and end of treatment, 6.1% request them only at the start of treatment, and 1.2% did not answer (Fig 5).

When patients are absent, Garbin et al⁹ affirmed that 73% of dental surgeons only call them to schedule a new appointment, awaiting their return. With regard to the prevalence of professionals who send registered correspondence or telegram by phone, the prevalence was 16.41%. In our study, 60.6% of orthodontists make phone contact with their patients; 2.7% contact by letter; 28.7% by registered letter; 8% await patient contact. In case of patient absence for more than 30 days, it is suggested the patient be contacted by phone; if even then the patient does not come to the appointment, a registered letter should be sent, keeping a copy in the patient's records. The letter should make it clear that not attending will result in risks and non-return will characterize abandonment of treatment.

This survey inquired how professionals obtained their ethics and legal training; 36.3% answered it was during undergraduate studies, 45.9% in graduate school, 15.5% in conferences, CRO (Regional Council of Dentistry) and literature, and 2.3% did not answer. It is noteworthy that, according to the Consolidated Rules for Proceedings in Dentistry Councils,¹⁸ specialization courses are required to offer 30 hours of Ethics and Legislation and 15 hours of Bioethics courses. This suggests that many programs are not giving proper emphasis on these disciplines, being subject to penalties by disobeying Resolution CFO-63/2005.¹⁸ A good relationship with patients, technical-scientific training and legal background assure an excellent level of service and treatment by dentists, as well as protection against lawsuits.^{4,15,19,20}

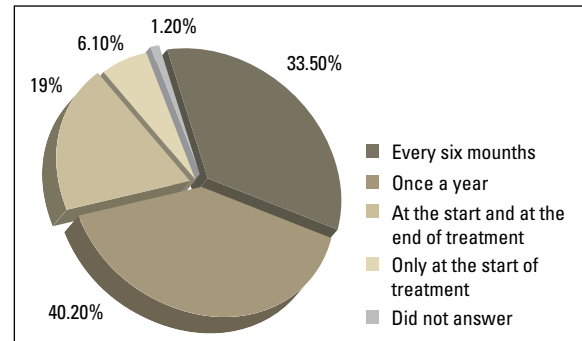


FIGURE 5 - Percentage distribution of the frequency in which control X-rays are taken during orthodontic treatment.

CONCLUSION

Based on the obtained results, it can be concluded that:

- 1) Most participants in the sample are specialists in orthodontics, and 75% use some sort of contract in their practice and/or clinic.
- 2) 92.2% of the sampled professionals have not had legal problems with their patients.
- 3) 73.7% of professionals periodically request maintenance X-rays.
- 4) A large part of professionals (58.9%) keep patient records for life.
- 5) The consulted professionals showed good knowledge of the Code of Ethics in Dentistry, particularly Chapter XIV — On communication.

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