Special Article

Bichectomy procedure: a discussion on the ethical and legal aspects in odontology

Procedimento de bichectomia: uma discussão sobre os aspectos éticos e legais em odontologia

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■ **ABSTRACT**

Introduction: Bichectomy consists of removing part of a fat structure in the region of the cheeks, and it recently gained popularity in the field of odontology, which began to widely perform the procedure, with predominantly aesthetic demands and, with that, doubts and uncertainties arose with respect to its ethical and legal aspects. **Objective:** The objective of this work was to seek national laws, as well as normative and resolutions issued by professional councils, aiming to address such controversies, enlightening professionals to the legitimacy of the procedure. **Results:** Since 1978, the Federal Councils of Medicine and Dentistry have issued resolutions to determine thresholds for professional performance, which particularly focused on Oral and Maxillofacial Surgery and Traumatology because it is the closest clinical dental specialty of medical practice. Over time, these Councils have been updating these resolutions, considering the technical and scientific advances of the area, but all the resolutions analyzed were unanimous in affirming that the accomplishment of bichectomy with a strictly aesthetic purpose is a medical attribution. **Conclusion:** Subsequently, based on the documents currently in force, it is verified that the dental surgeon who is willing to perform bichectomy surgery for aesthetic purposes will be incur administrative infractions and, consequently, such interpretations can be seen in other legal areas (civil and criminal).

Keywords: Odontology; Legal odontology; Aesthetics; Plastic Surgery; Medical legislation; Odontology legislation.

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■ **RESUMO**

Introdução: O procedimento denominado de bichectomia consiste na remoção parcial de uma estrutura adiposa na região das bochechas e ganhou recente popularidade entre a classe odontológica, que passou a executá-lo amplamente, com demandas predominantemente estéticas e, com isso, dúvidas e incertezas surgiram a respeito dos seus aspectos éticos e legais. **Objetivo:** O objetivo deste trabalho foi buscar legislações nacionais, bem como normativas e resoluções emitidas por conselhos profissionais, visando abordar tais controvérsias, alumiando os profissionais quanto à legitimidade do procedimento. **Resultados:** Verificou-se que desde 1978, os Conselhos Federais de Medicina e de Odontologia vêm emitindo resoluções para determinar limiares de atuação profissional, em especial, com enfoque na especialidade Cirurgia e Traumatologia Bucomaxilofacial, visto que é a especialidade odontológica clínica que mais se aproxima de campos de atuação médica. Com o tempo, estes Conselhos foram atualizando estas Resoluções, tendo em vista os avanços técnicos e científicos da área, porém todas as resoluções analisadas são unânimes em afirmar que a realização de bichectomia com finalidade estritamente estética é atribuição médica. **Conclusão:** Desta forma, com base nos documentos atualmente vigentes, verifica-se que o cirurgião-dentista que estiver disposto a realizar a cirurgia de bichectomia com finalidade exclusivamente estética estará incorrendo em transgressões administrativas e, consequentemente, tais interpretações podem ser vislumbradas em outras esferas (cíveis e criminais).

Descritores: Odontologia; Odontologia legal; Estética; Cirurgia plástica; Legislação médica; Legislação odontológica.

INTRODUCTION

Bichat fat pad is a tubular fat structure, covered by a thin fibrous capsule that is located in a space between the skin and the external side of the buccinator muscle, occupying a prominent position in the middle third of the face[1,2]. It has several functions, such as suckling, chewing, facial filling, gliding, and protecting important structures, such as neurovascular branches[1-3]. Generally, it is more developed in adults and elderly than in the young[2,3].

Bichectomy is a procedure that consists of removing part of the Bichat fat pad and aims to obtain more favorable facial aesthetics in the middle and lower thirds of the face, given that the removal makes the face thinner due to reduced cheek volume [3,4]. Because it is a surgical procedure in the oral cavity, complications are intrinsic to the procedure, such as pain and edema[5], infections [6], and hemorrhage[7]. Nevertheless, the procedure provides cosmetic benefits, and these setbacks are generally unlikely [2,8]. Anatomical and surgical knowledge, as well as a good diagnosis, are necessary to perform this procedure because the bulky aspect of the face may have other causes that do not involve the aforementioned structure[1].

This surgery has been currently gaining popularity, mainly due to the tireless pursuit for optimal aesthetics, and one of the techniques being used constitutes an intraoral approach for Bichat fat pad removal[4,8], and in this way, odontology has initiated the implementation of several of these surgeries because the jugal area corresponds to the head and neck region and has intimate contact with the oral cavity.

This interface of procedures performed mostly by medical doctors with areas corresponding to the activities of the dental surgeon generates doubts and controversies about the legitimacy of the act.

OBJECTIVE

The objective of this study was to pursue, through legal devices, administrative rules and resolutions, the ethical and legal aspects that can be applied for bichectomy in odontology.

WHERE CAN WE GO?

On the field of activity of the dental surgeon in the human body

Legally, Brazilian odontology is regulated by Law no. 5.081, on August 24, 1966[9], wherein the professional skills and qualifications are set up. Regarding the field of activity, the said Law does not specify anatomical areas, but Art. 6, item I states that: "*It is up to the dental surgeon: to practice all the acts pertinent to odontology, stemming from knowledge acquired in regular or in postgraduate courses*".

In these terms, dental surgeons are understood to be able to perform procedures that they have been trained not only during undergraduate studies, but also during post-graduate training, such as updates, enhancements, specializations, among others. Since it was published, the aforementioned Law[9] has not been reviewed and/or updated, despite the long time since its promulgation. Thus, the Federal Council of Odontology (CFO) composed an extensive normative, which is a compilation of rules and standards to be followed by the Regional Councils of Odontology (CROs) and by the entire odontology class, called Consolidation of Standards for Procedures in the Councils of Odontology[10], in its current version, CFO Resolution No. 63/2005. Chapter VIII, Title I, contains the rules regarding the exercise of each of the recognized dental specialties, including their areas of practice.

Highlighting only the articles of the Consolidation[10] that are related to the areas of activity of dental surgeons is important, which can be correlated directly to bichectomy, which are provided in the part that delimits the competencies of the Oral and Maxillofacial Surgery and Traumatology specialty. According to Article 43: "*It is forbidden for the dental surgeon to use the infra-hyoid cervical access, because it is out of his area of practice, as well as the practice of cosmetic surgery, except for the aesthetic functional masticatory apparatus*."

This Normative[10] places caveats also in Art. 48: "*It is the exclusive competence of the medical doctor to treat malignant neoplasms, neoplasms of the major salivary glands (parotid, sublingual, submandibular), the infrahyoid cervical access, as well as the practice of aesthetic surgeries, of the stomatognathic system that are the competencies of the dental surgeon* ". It can be seen that the purpose of the Consolidation was to draw a dividing line between medical and dental practice, derived from joint norms issued by the Federal Councils of Medicine (CFM) and Odontology (CFO).

The reading of the articles mentioned above allows us to affirm that the Consolidation of Standards for Procedures in the Councils of Odontology[10] lays down two parameters for defining the competence of the dental surgeon: The first is a criterion related to surgery; the second is related to the purpose of the procedure.

The CFO, more recently, on September 6, 2016, issued Resolution No 176/2016[11], within the scope of elucidating the odontology field in relation to the use of botulinum toxin in the head and neck region. Article 1, paragraph 1 describes, for the first time, the anatomical delimitation of the area of activity of the dental surgeon, as follows: "*The anatomical area of clinical–surgical operations by the dental surgeon is superiorly to the hyoid bone, up to the limit of the nasion point (bones of the nose) and anterior to the tragus, covering attached and related structures*".

As to the purpose of the procedures of competence of the dental surgeon-, Resolution CFO Nº 176/2016[11] presents conflicting conclusions with the provisions in the Consolidation of Standards for Procedures in the Councils of Odontology [10], by stating, in the *caput* of article 1, that "*The use of botulinum toxin and facial fillers by the surgeon-dentist, for functional and/or aesthetic therapeutic purposes* " is authorized.

Thus, dental surgeons are prohibited to perform strictly aesthetic procedures by the Consolidation[10], but the use of botulinum toxin is allowed by Resolution CFO No 176/2016[8], even for aesthetic purposes only. Differences are also observed between the two standards mentioned in relation to the area of practice of the dental surgeon because by Resolution CFO Nº. 176/2016[11], the area of odontology practice may extend to the upper thirds of the face, as provided in §2, of Art. 1 of this ethical norm.

These divergences are derived from an error in assumption, that is, in the "Considerations" of Resolution CFO 176/2016[11], it is stated that the dental surgeon works on the aesthetics of the patients' face in the following terms: "*Considering that the dentist works also in the face (Articles 41, 42, 53, 54, 59, 60, 62, 73, 74, 77, 78, 81, and 82 of the Consolidation of Standards for Procedures in the Councils of Odontology, approved by Resolution CFO-63/2005) and in aesthetics (Articles 43, 48, 52, 74, 81 and 83 of the Consolidation of Standards for Procedures in the Councils of Odontology, approved by Resolution CFO 63/2005)*". However, all the articles of the Consolidation of Standards for Procedures in the Councils of Odontology[10] cited to justify the performance "in aesthetics" (43, 48, 52, 74, 81, and 83) that clearly mention that the aesthetic performance is bound, necessarily, to the pursuit for functional improvement. None of these articles showed that the dental surgeon can act exclusively perform aesthetic enhancement to the patient. Articles 43 and 48 sufficiently clarified the impossibility of a strictly aesthetic performance of dental surgeons.

Likewise, the reading of Articles 81 and 83 also leads to the conclusion that the performance of the dental surgeon may not have an aesthetic approach as

their sole purpose. Art. 81 says: "*The objective of oral and maxillofacial prostheses is the protection, prevention, anatomical, functional, and aesthetic rehabilitation, of regions of the maxilla, mandible, and face, missing or defective, as sequelae of surgery, trauma or due to congenital malformations or developmental disorders, by means of prostheses, medical appliances and devices*". For its part, Article 83 stipulates that: "*The objective of Dental Prosthesis is the reconstruction of partially destroyed teeth or replacement of missing teeth aiming at the maintenance of the functions of the stomatognathic system, providing the patient with function, health, comfort, and aesthetics*." Both Articles 81 and 83 mentioned that the goal of the dental surgeon is function, and the aesthetic improvement may be associated with the pursuit of functional improvement, but the aesthetic improvement is never treated in the above cited articles as the sole objective to be pursued in dental practice[10].

Not even Article 52, which deals with the skills of the odontology specialist, conveys the possibility of acting with a purely aesthetic purpose by the dental surgeon. Article 52 should be analyzed in conjunction with Article 51, both from the Consolidation. Article 51 states that "*The objective of odontology, in a comprehensive and humanistic view, is the study and application of educational, preventive and therapeutic procedures, to restore to the tooth its physiological integrity, and thus to contribute in an integrated way with the other specialties for the restoration and the maintenance of the health of the stomatognathic system*". Therefore, the purpose of the odontology specialist is to restore and/or maintain the health of the stomatognathic system. Within this functional purpose, the specialist can practice aesthetic, educational, and preventive procedures (Article 52, Subsection III) [10]. The practice of aesthetic procedures dissociated from functional purpose is not authorized.

Therefore, the Consolidation of Standards for Procedures in the Councils of Odontology [10] does not allow the achievement of any procedure with exclusively aesthetic purposes, and neither authorizes the actuation in the upper thirds of the face. Moreover, in this sense, the transgression of the working area and/or the disrespect for the purpose of activity of the dental surgeon, in the administrative sphere, is envisaged as a breach of ethics by the Odontology Code of Ethics [12], whose Chapter V, Section I, Subsection XIV, writes as an act detrimental to professional ethics: "*(...)XIV - to propose or implement treatment outside the scope of Odontology. (...)*", allowing sanctions that may range from a confidential warning to the cessation of the professional registration[13].

Notably, the so-called law of the Medical Act, or law 12.842/2013[14], lists a series of activities exclusive of the medical class in its Article 4, deserving special mention the provisions in Sections II and III, which stipulate that the "*indication and implementation of surgical intervention and prescription of pre and post-operative medical care*" and the "*indication and implementation of invasive procedures, whether diagnostic, therapeutic or aesthetic, including deep vascular access, biopsies, and endoscopies*" are exclusive activities of the medical doctor. The §6 of Article 4 emphasizes that "*The provisions of this Article shall not apply to the exercise of odontology, within their area of practice.*"

Resuming the considerations regarding the provisions contained in the Consolidation of Standards for Procedures in the Councils of Odontology, the CFO itself, until presently, does not recognize an exclusively aesthetic purpose as a possible actuation of the dental surgeon. Thus, the exception provided for in §6 of Article 4 of Law 12.842/2013 does not authorize the odontology professional to indicate and/or perform invasive procedures with a purely aesthetic purpose, which are the exclusive competence of the medical doctor.

MEDICINE AND ODONTOLOGY INTERFACE IN THE LEGAL ASPECT

Joint resolutions and normative

Through documentary research, access was obtained to some administrative regulations issued by the Federal Council of Medicine (CFM) that provided essays relevant to the theme. In 1978, the CFM created Resolution no. 852, which provided an approach to a series of procedures involving interaction between doctors and dental surgeons, and consequently, controversies over the responsibility and attribution of these professionals when performing procedures covering the two areas[15]. In this Resolution[15], item 5 contained the following statement:

"(...) 5 – It is the exclusive competence of the medical doctor to use the infra-hyoid cervical access, as well as the practice of cosmetic surgery, except for the functional aesthetics of the masticatory apparatus ;(...)"

It can be seen that, even in the most distant times, surgery for aesthetic purposes was reserved for the medical professional, and the dental surgeon should perform surgeries that would involve the masticatory apparatus.

In 1998, with the progress of the specialty of Oral and Maxillofacial Surgery and Traumatology (CTBMF) in Odontology, revocation of the aforementioned Resolution was needed, creating a new normative[16] (Resolution CFM 1536/1998), which updated some important points and quoted others. In addition, it brought a new structure to the normative and, in its Article 2, it stated:

"(...) Art. 2º - It is the exclusive competence of the medical doctor to treat malignant neoplasms, neoplasms

of the major salivary glands (parotid, submandibular and sublingual), access through the infrahyoid cervical route, as well as the practice of cosmetic surgery, except for the functional aesthetics of the masticatory apparatus. (...)"

Despite bringing more exclusive competencies to medical doctors, such Resolution[16] retained the position of its previous version regarding surgical-aesthetic procedures. Consequently, due to the standardization of the specialty of CTBMF, the CFO brought up Resolution CFO 100/2010[17], which, similarly, included the same Article 2, in agreement with the medical field.

Finally, CFM, in conjunction with the CFO, drafted a final rule on the subject, Resolution No. 1950/2010[18], despite elaborating additional items, kept Article 2 intact, without changing anything in its statement or positions to aesthetic plastic surgeries. Even so, in the years that followed, a significant increase was observed in the spread of dental work involving aesthetic procedures, including bichectomy, in the media and social networks.

This phenomenon led the CFM and CFO, on November 3, 2016, to conduct a meeting with the purpose of discussing relevant issues between the two areas, such as hormonal modulation, stem cells, botulinum toxin, and bichectomy, and as recorded in the Minutes of the meeting[19], the representatives of the two professional categories sought to argue regarding the aforementioned issues and their regulations, being observed, in relation to the procedure of bichectomy, and stated the following:

"(...) on bichectomy, Dr. Levy Nunes (President of the Brazilian Society of Botulinum Toxin and Facial Implants in Odontology) *stated that the procedure with aesthetic-functional role is within the powers of the dentists. He stated that bichectomy only for aesthetic purposes is being fought by the CFO. Dr. Carlos Vital* (President of the CFM) suggested the preparation of a document to be signed by the CFM and the CFO, with general guidelines and clarifying all the issues discussed at this meeting. (...)"

It appears, therefore, that there is also an apparent concern by the class councils in applying the standards that control the procedure, as well as in regulating again the competencies and areas of expertise of each professional category.

Further, citing opinion CRO-DF 021/2015[20], delivered by the Regional Council of Dentistry of the Federal District is necessary, amid all the controversies that surrounded bichectomy and the preparation of courses of the most diverse formats for professional training, and consequently the doubt on the legality of the procedure that affected professionals who sought such training, in mid-2015. This document is used by many of these courses as a justification and legal support for the realization of these procedures. However, observing the provisions in item 12, we have the following statement:

"12. For all of the above, this Legal Department, understands that the dental surgeon is the competent professional to perform the bichectomy procedure, when it is indicated for the improvement of the masticatory apparatus, and when this surgery is performed for exclusively aesthetic purposes, it is the competence of the medical doctor."

It should be noted that this opinion[20] agrees with the legislation already mentioned. Despite this, the proliferation of courses with aesthetic emphasis is a recurring event. In contrast, it is noted that many professionals who were not discouraged in the field of oral surgery, see an opportunity for greater gains in their private practice, and with this reason, an increased risk of the procedure is observed, because similar to any procedure, a learning curve is required, which should have been conceived in courses with a greater workload and which are in compliance with the current legislation.

Likewise, more recently, on March 07, 2016, the Regional Council of Medicine in the state of Paraná approved and endorsed Opinion No. 2520/2016[21], reiterating the understanding that bichectomy is a procedure that is an exclusive competence of the medical doctor:

"According to Resolution No. 1950/2010, the Federal Council of Medicine and the Federal Council of Odontology jointly established criteria for the performance of oral and maxillofacial and craniomaxillofacial surgeries. In Article 2, it is very clear that: it is the exclusive competence of the medical doctor to treat malignant neoplasms, neoplasms of the major salivary glands (parotid, submandibular and sublingual), access through the infra-hyoid cervical pathway, as well as the practice of aesthetic surgery, except for the functional aesthetics of the masticatory apparatus.

It remains uncontroversial that aesthetic procedures in the buccal or peri-buccal region are exclusively performed by the medical doctor. "

EXTRAPOLATING THE ADMINISTRATIVE AREA

What repercussions may exist in the civil and criminal spheres

The goal of the excision of the Bichat fat pad is lately is the improvement in facial aesthetics, providing contours that highlight the angularities of the facial characteristics[22]. As previously stated, there is still no current standard that provided dental surgeons the permission to perform procedures with exclusively

aesthetic purposes, only being accepted when they involve function and are restricted to the stomatognathic and masticatory fields. Thus, the disobedience of these regulations that are presented here makes the professional vulnerable not only to the Odontology Code of Ethics [9], herein discussed, but also in other spheres, such as civil and criminal. The following is observed in Article 282 of the Brazilian Penal Code (CP) [23]:

"Illegal exercise of medicine, dental or pharmaceutical art

Art. 282 - Exercise, even if gratuitously, the profession of doctor, dentist, or pharmacist, without legal authorization or exceeding the limits:

Penalty - detention, from six months to two years.

Sole Paragraph - If the crime is committed for the purpose of profit, a fine shall also apply (...)"

Bichectomy, when solely and exclusively used for aesthetic corrections, may fit into the above condition because these are clearly intended for medical doctors[18]. It is a much more serious condition that surrounds this procedure and dental surgeons who venture to perform such an act will be invading restricted areas or exceeding the limits of their profession, incurring in criminal offenses that may lead to restrictions of rights and also of freedom.

With regard to criminal sanctions, to citing Article 129 of the Brazilian Penal Code is also important[23], which brings the crime of bodily injury in line with what has been observed:

"(...) Bodily injury

Art. 129. Offending the bodily integrity or health of others:

Penalty - detention, from three months to one year. (...) "

Such criminal typification may seem distant from the dental clinic routine. However, it is important to mention that, despite being a procedure wherein complications are uncommon[22], some setbacks[2,4,8,24] are still inherent to the surgical procedure of partial excision of the pad, or Bichat fat pad, the most frequent being: pain, edema, trismus, and bruising that can last for up to two months.

Edema, in turn, usually lasts up to three months, with the final result expected for 3–6 months. Infection and damage to the parotid duct (causing sialocele, complication of difficult treatment in the area of maxillofacial surgery) and buccal branches of the facial nerve (which have a close relationship to the said fat pad) can still occur, the latter being generally irreversible and partially paralyzing the face of the patient.

These prospective complications are related to what is stated in the *caput* of Article 129 and can be interpreted by judicial authorities as a criminal conduct, not necessarily needing malice (intent to cause them) in the configuration of the crime.

In a hypothesis of a troubled professional–patient relationship, the latter may well require criminal corrections in the form of the aforementioned infractions. The configuration in Article 282, of the illegal exercise of medicine or extrapolation of dental activity, in purely cosmetic surgeries of bichectomy does not prevent other penalties, such as those of Article 129 of the Penal Code[23] or those provided for in Law 4.324/1964[13] and in the Odontology Code of Ethics, to be applied.

Furthermore, in addition to the criminal and ethical responsibilities that cover the dental surgeon who is willing to perform bichectomy with an exclusively aesthetic purpose, civil liability is present and also expressive because it can generate lawsuits and convictions of another nature. For better understanding, observing the Civil Code[25], in its Article 186 is necessary: "*Whoever, by voluntary act or omission, negligence or recklessness, violates the law and causes harm to another, even if exclusively moral, commits an unlawful act.*"

In the case of the dental surgeon and civil liability, the damage resulting from such conduct and that configures the tort is tied to their professional activity, i.e., the procedures performed in their routine dental care. Once the damage is caused, it requires the professional the obligation for reparation, in case the patient claims and is victorious in a lawsuit indemnification. The obligation of indemnification is supported in the *caput* of Article 927 of the Civil Code[25], thus contemplated: "*He who, by tort, cause harm to others, is obliged to repair it.*"

The reparation or compensation in the civil field is, primarily, financial. In a civil lawsuit, the dental surgeon, if convicted, may be compelled to pay for three types of damages: material, moral, and aesthetic. The material damage is related to the costs borne by the patient (expenditure with treatments, medications, surgeries, procedural costs, expenses, etc.) and/or the amount that the requesting party (patient) no longer effectively receives (profits or reduction of remuneration) due to the damage caused by the professional.

The second type deals with the moral damage existing to express in pecuniary values everything that goes beyond the contractual or material nature and affects the patient's feelings, that is, the greatness of the suffering caused by the harmful unwanted conduct caused by the dental surgeon. Finally, the aesthetic damage has a self-explanatory name, and imputes indemnification to the possible aesthetic deformities suffered by the patient. As to the latter case, it is worth mentioning that overcorrection and asymmetry of the lower thirds of the face are contingent problems of bichectomy[26].

Ignorance of the law or norms of class entities is not an excuse for avoidance of possible sanctions, penalties, or damages that may arise from the simple act of performing bichectomy. Be it civil, criminal or ethical, the odontology professional should be aware of the regulations. Article 3 of the Law of introduction of the Civil Code[27] states the following: *"No one is excused from complying with the law, claiming that they do not know it"* and, likewise, Article 52 of the Odontology Code of Ethics[9] says: "*The allegation of ignorance or poor understanding of the precepts of this Code, does not absolve the offender from penalty*".

FINAL CONSIDERATIONS

Given the above, analyzing the current ethical and legal norms, particularly Law No. 5.081/1966, Law No. 12.842/2013, CFM Resolutions no. 1950/2010 and CFO no. 100/2010, and the Consolidation of Standards for Procedures in the Councils of Odontology (Resolution CFO no. 63/2005), it can be said that it is not the competence of the dental surgeon to perform bichectomy with an exclusively aesthetic purpose, and the practice of this procedure can be considered as an illegal exercise of medicine or extrapolation of the dental activity, according to the Criminal Code.

Furthermore, the peculiar complications of this surgery, when they do occur, can bring greater legal or ethical charges to the professional, who may not plead ignorance of the existing laws and class regulations to suppress their criminal, civil, and ethical responsibilities.

COLLABORATIONS

VJ Writing the manuscript or critical review of its contents.

MVC Writing the manuscript or critical review of its contents.

TSS Writing the manuscript or critical review of its contents.

RHAS Final approval of the manuscript; writing the manuscript or critical review of its contents.

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