

Physiotherapy and acupuncture: legal aspects

The practice of acupuncture has been discussed among the categories of health professionals for a long time now, with the Board of Medicine arguing that the technique is exclusive to the doctor, which was once considered applicable in decisions given at the TRF-5 (Fifth Chamber of the Federal Regional Court) from the same precedent¹. Researching the unified jurisprudence of the Federal Court² on 1/26/2015, one can find 56 available cases involving the name of the therapeutic resource in question.

Amid the diversity of opinions of judges on the subject, the Superior Court of Justice established that such an activity cannot be regulated by Resolutions of Professional Councils, without being based on a specific authorizing law. In Public Law, only it may assign jurisdiction and its absence would lead to the banning of the practice by the regulated professional, because it is not acceptable for the Professional Entity to expand the field of expertise of the profession through an administrative act.

However, in the persistence of this “legislative void”, although projects concerning it exist at the Senate³ and at the Council⁴, even physical education teachers almost got the permission for practicing this form of treatment through Resolution CONFEF No. 69/03⁵, but what is universally agreed upon currently is that specialized training confers relative legitimacy on the use of the method, taking into account the decision by the TRF-3⁶ which considered its learning feasible through the acquisition of practical knowledge on muscles and vital points of the human body. In a civil service examination held in Brasília, the notice for the job of acupuncturist was endorsed by a municipal law, according to which it could only be performed by physicians, dentists and veterinarians, however the chief legislator assigned to the Union the task of establishing the requirements for the exercise of professions, which immediately removed the legitimacy from the restriction.

While there is no legal provision for the practice of acupuncture, its sociological and

cultural heritage must be respected, especially because injuries to people who underwent it have not been heard of yet, without impairment to its free exercise, in compliance with item XIII of art. 5 of the Federal Constitution of 1988⁷. That is what João Eduardo de Araújo, who was at the time President of SOBRAFISA in São Paulo-Brazil, as well as of the Scientific Committee of said Institution, ratified in an article⁸ published in the Brazilian Magazine of Physiotherapy, “Sobre o direito de praticar acupuntura no Brasil” [On the right of practicing acupuncture in Brazil], when questioning how a Professional Council can be accused of expanding the field of expertise of its professionals, since acupuncture in Brazil is an occupation without legal standardization, thus, within the reach of all healthcare professionals.

The argument of freedom of choice is, indeed, a constitutional principle provided in art. 170-IV⁷, but regarding the “strict criteria” used by COFFITO so that physiotherapists could make use of acupuncture, it is necessary to study another point: administrative competence.

This is an independent literary production, not related to the functions assigned to the author in civil service and to the understanding of the respective governing authority on the subject.

Carlos Iuri da Silva Lucio

REFERENCES

1. Pernambuco. Tribunal Regional Federal da 5ª Região. Apelação Cível nº 369112-PE no Processo nº 2003.83.00.016783-7 da 5ª Vara Federal de Pernambuco. Partes: José Heitor Alves Casado Filho, Cremepe, SMBA e Dirceu de Lavor Sales. 2005 [acesso em 10 maio 2016]. Disponível em: <<http://bit.ly/2ewkCeH>>.
2. Brasil. Justiça Federal. Pesquisa livre utilizando o termo “acupuntura” em todos os Tribunais na Jurisprudência Unificada. [acesso em 26 jan. 2015]. Disponível em: <<http://bit.ly/2fsmTcE>>.
3. Brasil. Senado Federal. Projeto de Lei nº 473, de 2011. Regulamenta o exercício da acupuntura. 2011

- [acesso em 26 jan. 2015]. Disponível em: <<http://bit.ly/2fLGB79>>.
4. Brasil. Câmara dos Deputados. Projeto de Lei nº 1549, de 2003. Disciplina o exercício profissional de Acupuntura e determina outras providências. 2003 [acesso em 26 jan. 2015]. Disponível em: <<http://bit.ly/2eODiY4>>.
 5. Conselho Federal de Educação Física. Resolução Confed nº 069, de 2003. Dispõe sobre a utilização da técnica de acupuntura pelo Profissional de Educação Física, quando da sua intervenção. 2003 [acesso em 26 jan. 2015]. Disponível em: <<http://bit.ly/2fvCx9B>>.
 6. São Paulo. Tribunal Regional Federal da 3ª Região. Apelação Cível nº 0005333-24.2012.4.03.6100/SP no Processo nº 2012.61.00.005333-0 da 8ª Vara Federal de São Paulo. Partes: Wu Tou Kwang e Cremesp. 2012 [acesso em 10 maio 2016]. Disponível em: <<http://bit.ly/2fxYOQx>>.
 7. Brasil. Constituição da República Federativa do Brasil de 1988. 1988 [acesso em 20 jan. 2015]. Disponível em: <<http://bit.ly/1eolror>>.
 8. Araujo JE. Editorial. Sobre o direito de praticar a acupuntura no Brasil. *Rev Bras Fisioter.* 2012 [acesso em 15 nov. 2015];16(4). Disponível em: <<http://bit.ly/2fxZ2HE>>.