

## Revista Brasileira de Odontologia Legal – RBOL

ISSN 2359-3466

<http://www.portalabol.com.br/rbol.html>



### Dental Malpractice

## PREVALENCE AND CONTENT OF LEGAL SUITS FOUNDED ON DENTAL MALPRACTICE IN THE COURTS OF MIDWEST BRAZIL

### *Prevalência e conteúdo das jurisprudências fundamentadas em erro odontológico nos Tribunais de Justiça do Centro-Oeste brasileiro*

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#### Informação sobre o artigo

Recebido: 21 Jun 2015

Aceito em: 10 Jul 2015

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### ABSTRACT

Introduction: The Brazilian work market of Dentistry became overloaded in the last decades. Consequently, the prevalence of legal suits involving dentists considerably increased. Malpractice arose as result of the vicious relations between patients and dentists. Objective: To report the prevalence rate of legal suits founded on dental malpractice in the Courts of Midwest Brazil. Material and Methods: A systematic search of civil jurisprudences related to dental malpractice litigation in Midwest Brazil was performed. A single examiner screened collected data based on the following parameters: 1) number of legal suits in each of the Courts; 2) sex of the involved parts; 3) dental specialty involved; 4) type of legal obligation; 5) modality of guilty; 6) type of damage; and 7) cost of financial claims. Results: Thirty-four jurisprudences were detected. Most of the jurisprudences were found in the Court of Justice of the Federal District (64%). Females consisted of the most involved part (79%). Endodontics was the most involved dental specialty (28%). Obligations of means (36%) and results (29%) were similarly distributed. Technical malpractice was the most prevalent modality of guilty (53%). Moral and material claims were observed in 33 and 28 cases, respectively. The mean financial cost for material claims was R\$ 3.500,00, while for moral claims the cost was R\$ 8.000,00. Conclusion: The current increase of legal suits involving dentists indicates that patients are becoming aware of

their rights. Consequently, dentist must be aware of legal liabilities and ethical guidelines in order to avoid further litigations.

## **KEYWORDS**

Dentist; Jurisprudence; Malpractice; Law.

## **INTRODUCTION**

The prevalence of legal suits within the Brazilian medical jurisprudence considerably increased in the last decades. Specifically in Dentistry, the work market is highly competitive, making necessary alternative pathways to overcome the current supply and demand. In this scenario, conflicts into the relationship between patient and professional arose as consequence of vicious relations between dental professionals<sup>1</sup>. Additionally, malpractice became more common and evident. In parallel, dental patients became supported against malpractice after the last update the Federal Constitution (1988), which consolidated the Consumer Protection Code. Based on that, a new era on the consumer behavior started, inverting the burden of proof, making the professionals responsible for taking the risks of their activities<sup>2,3</sup>.

Considering the increasing trend on the prevalence of civil

demands among dental professionals, as well as the limited number of studies on this topic, the present research aims to analyze the Brazilian jurisprudence screening the prevalence rate of legal suits founded dental malpractice in Midwest Brazil.

## **MATERIAL AND METHODS**

The present research was designed on a transversal and observational basis for the analysis of digital documents through *internet* investigation. A search string was developed combining the following keywords: “dentist; dentistry; and dental”. The collection of data consisted of three different steps: the screening of abstracts using the search string; the selection of abstracts; and the detailed reading of full-text legal suits.

Data collection from the legal content was performed using all the civil jurisprudence related to dental malpractice litigance in Midwest

Brazil, from 2008 to 2010, through the Superior Court of Justice - STJ ([www.stj.jus.br](http://www.stj.jus.br)); Superior Federal Court - STF ([www.stf.jus.br](http://www.stf.jus.br)); Court of Justice of the Federal District - TJDFT ([www.tjdft.jus.br](http://www.tjdft.jus.br)); Court of Justice of Goiás - TJGO ([www.tjgo.jus.br](http://www.tjgo.jus.br)); Court of Justice of Mato Grosso - TJMT ([www.tjmt.jus.br](http://www.tjmt.jus.br)); and Court of Justice of Mato Grosso do Sul - TJMS ([www.tjms.jus.br](http://www.tjms.jus.br)). Only legal suits covering the relationship patient vs. professional were used.

After selected, the legal suits were organized in *Excel* sheets considering the following variables: 1) number of legal suits in each of the Courts; 2) sex of the involved parts (patient and professional); 3) dental specialty involved; 4) type of obligation (result or means); 5) modality of guilty (negligence; imprudence or technical malpractice); 6) type of damage (moral, material or aesthetic); and 7) cost of financial claims.

A single examiner performed the data screening and selection, as well as data collection. Descriptive statistics was applied to provide a clear overview of the current status of the Brazilian dental jurisprudence.

## RESULTS

The final sample consisted of 34 legal suits involving dentists and patients.

TJDFT revealed the larger number of legal suits (n=22); followed by TJGO (n=8) and TJMS (n=4). Legal suits were not found at the websites of TJMT, STF and STJ. The prevalence of legal suits varied according to the use of different keywords: dentist (62%), dentistry (0%) and dental (38%).

Most of the legal suits consisted of female patients (79% of the patients) demanding against male dentists (53% of the dentists).

The involved specialty of Dentistry was mentioned in 32 legal suits out of 34. The most involved specialties were: Endodontics (28%; n=9), Orthodontics (19%; n=6), Maxillofacial Surgery and Traumatology (19%; n=6), Prosthodontics (19%; n=6), Implantology (9%; n=3); Restorative and Operative Dentistry (3%, n=1) and Periodontology (3%; n=1) (Table 1).

Twelve legal suits were interpreted as obligation of means (36%); while 10 (29%) were considered obligation of results. In 12 (35%) legal suits the

type of obligation was not clearly mentioned.

*Table 1 – Distribution of dental specialties most involved within legal suits. n: number of legal suits; \*: 2 cases did not report the involved dental specialty.*

Dental specialty	n	%
Endodontics	9	28
Orthodontics	6	19
Maxillofacial Surgery	6	19
Prosthodontics	6	19
Implantology	3	9
Restorative and Operative Dentistry	1	3
Periodontology	1	3
<b>Total</b>	<b>32*</b>	<b>100</b>

The specialties more related to the obligation of means were: Endodontics (42%; n=5) and Maxillofacial Surgery and Traumatology (25%; n=3); while the specialties more related to the obligation of results were Prosthodontics (40%; n=4) and Orthodontics (30%; n=3).

The modality of guilty was considered only for 16 (47%) legal suits in which the association between damage and dental treatment was observed. Mostly, technical malpractice (53%; n=9) and negligence (35%; n=6) were detected.

Yet according to the type of damage, moral claims were found in 33 legal suits; while material and aesthetic damages were observed in 28 and 2 legal suits, respectively. However, the moral claims were proved only in 15 suits out of 33; while 14 claims of material damage were proved out of 28.

The minimum and maximum values paid for material claims were R\$ 329,95 and R\$ 12.080,00, respectively (mean value: R\$ 3.500,00). In relation to moral damages, the minimum and maximum values were R\$ 2.000,00 and R\$ 25.000,00, respectively (mean value: R\$ 8.000,00).

## DISCUSSION

In between 1960 and 1980 Dentistry was highly influenced by the period of economic miracle. Specifically in Dentistry, the Brazilian economic situation contributed to a drastic scientific and technological development creating a society founded on capitalism and consumption. On the other hand, malpractice arose among health professionals<sup>4</sup>.

Thirty-four legal suits founded on dental malpractice were detected in

between 2008 and 2010 in Midwest Brazil, revealing a larger sample if compared to previous studies. Paula<sup>5</sup>, 2007, found 44 legal suits in the same region, considering a time interval of 32 years (from 1974 to 2006). Yet Giostri<sup>6</sup>, 2009, found 26 legal suits in 22 years (from 1987 to 2009). However, these authors did not consider exclusively available full texts in the jurisprudence. This data illustrates the enlargement in the prevalence of legal suits in Midwest Brazil over the last decades.

Similarly to previous studies<sup>7-9</sup> our results revealed a higher prevalence of females (79%) suing a higher prevalence of males (53%). The differences observed investigating the variable "gender" may indicate a deficient relationship<sup>7</sup> between female patients and male dentists, culminating in legal suits founded on dental malpractice. Additionally, women are known to be more concerned and aware of oral hygiene if compared to men<sup>10</sup>, demanding more aesthetics and quality in the routine of Dentistry.

Yet in relation to the most involved specialties, Endodontics (28%) played the main role, corroborating with the current literature. Specifically, Seidberg<sup>11</sup>, 2004, found

a prevalence rate of 15-25% in Endodontics. Yet Ozdemir *et al.*<sup>8</sup>, 2005, stated that Maxillofacial Surgery and Traumatology, Endodontics, and Prosthodontics are the most suited dental specialties. Moreover, Endodontics also appeared in the top three most suited specialty in the studies of Paula<sup>5</sup>, 2007, and Bjorndal and Reit<sup>7</sup>, 2008, highlighting the need for major technical and ethical care during Endodontic treatment.

In relation to the type of legal obligation, our study revealed similar distribution between obligation of means (n=12) and obligation of results (n=10). In opposite, previous studies detected a major discrepancy between the two types of obligation. Paula<sup>5</sup>, in 2007, verified that the obligation of results was more than twice the prevalence of obligation of means. However, the difference on sample size must be considered in face of the different results. Particularly, the present study indicates that the type of obligation has been decided depending on the particularities of each case. Specifically, dental specialties more related to aesthetics, such as Restorative and Operative Dentistry, Prosthodontics, Implantology and

Orthodontics, tend to be considered obligation of results, once the dentist is dealing with high patient's expectations for aesthetic outcomes. Yet other specialties, such as Maxillofacial Surgery, Endodontics, Radiology and Stomatology, are often considered as obligation of means, once aesthetics are not always involved. In this context, the dentist is primarily requested for therapeutic purposes, and no aesthetic outcomes are expected. Yet in relation to the modality of guilty, technical malpractice (53%) and negligence (35%) were more prevalent. Oppositely, Bjorndal and Reit<sup>7</sup>, in 2008, detected 43% of negligence and 28.4% of technical malpractice in 3.611 litigations. Following the same trend, Kiani and Sheikhezadi<sup>11</sup> detected 412 litigations founded on negligence in 2009. However, attempting a literature review on the modality of guilty is a challenging task, once no consensus on the correct terminology is made. Specifically, most of the literature overlaps the concepts of *malpractice*, *medical error* and *negligence*. Apart the terminology, the current literature reveals that most of the legal complains are based on the lack of

technical expertise. Seidberg<sup>11</sup>, 2004, highlighted technical errors during treatment performance. Accordingly, Bjorndal and Reit<sup>7</sup>, 2008, also reported the technical inability as the main cause of legal suits in Denmark. Yet Kiani and Sheikhezadi<sup>12</sup>, 2009, detected 56.7% of errors related to treatment performance and 40% related to treatment planning. These studies expose the need for a proper classification of clinical errors in dentistry and related health sciences, making feasible further comparative analysis between different surveys. Above all, the present study supports the current literature indicating that major care must be given during clinical diagnosis, treatment planning and technical performance.

## **CONCLUSION**

The current increase of legal suits involving dental professionals indicates that patients are becoming aware of their rights. Additionally, the interface between patient and professional changed from a close/familiar relation to a business environment. In this context, the dentist must be aware of legal liabilities and ethical guidelines in order to avoid further litigations.

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