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Professional liability

ANALYSIS OF CIVIL CASES ABOUT DENTAL ERROR IN THE COURTS OF JUSTICE IN THE NORTH OF BRAZIL.

Análise de processos cíveis sobre erro odontológico nos tribunais de justiça da região norte do Brasil.

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ABSTRACT

Introduction: according to the Federal Council of Dentistry, there are approximately 403,686 dental surgeons with active registrations in Brazil in 2023. These professionals have the duty to carry out the profession following ethical and legal standards. Aim: the objective of this research was to analyze the civil cases regarding dental error that were processed in the Courts of Justice in the northern region of Brazil in the last 10 years. Methods: this is an analytical cross-sectional study conducted with lawsuits from the seven states in the northern region of Brazil, from 01/01/2013 to 09/23/2023. Data was collected through the Jusbrasil website, with "Error in dental treatment", "Error in dental treatment" and "Dental error" terms. The data were evaluated by descriptive statistics and the bivariate logistic regression. Results: there was an increase of lawsuits from 2013 to 2023, with a peak in judgments in 2021. The dental specialty and state with the highest number of lawsuits were Implantology and Rondônia, respectively. Compensation values for material damage ranged from 0 to 48,600 reais (average = 4,554.68) and for moral damage varied from 0 to 50,000 reais (average = 4,915.09). The dental specialty of Implantology ($p = 0.013$; OR = 13.000) and the configuration of moral damage to the patient ($p < 0.001$; OR = 304.500) showed a statistically significant association with the conviction and obligation to compensate. Conclusion: it is concluded that lawsuits related to Implantology and in which there is proof of moral damage may have a greater chance of conviction.

KEYWORDS

Jurisprudence; Forensic odontology; Damage liability.

INTRODUCTION

In Brazil, according to statistical data from the Federal Council of Dentistry (FCD) accessed in December 2023, there are approximately 403,686 Dentists with active registrations in the Regional Councils of Dentistry (RCD)¹. These professionals

have, among several duties, the obligation to perform their functions according to the ethical and legal principles established for the practice of dentistry in Brazil.

Among the ethical principles, the Code of Dental Ethics establishes that the profession must be practiced with dignified

behavior; keep up-to-date professional, technical-scientific, and cultural knowledge necessary for the full performance of the professional practice; ensure the health and dignity of the patient². In addition, it states that the preparation of medical records is mandatory and deals with ethical standards related to other dental documents, in the sense that dentists must always keep the documentation complete and truthful, also as a form of protection against possible legal or ethical actions².

Regarding the legal standards related to dentistry provided by Brazilian legislation, there is a close relationship between the activities of dental hygienists, whether as independent professionals or as dental clinics, and the Consumer Protection Code (CPC) and the Civil Code, legal instruments that regulate the civil liability of dental hygienists.

According to the CPC, a consumer is a person who acquires a product or service as an end user, and a supplier is any natural or legal person, public or private, national or foreign, who carries out activities of production, assembly, creation, provision of services, among others. In the case of dentistry, the patient is the consumer and the dental professionals are the providers of dental services and therefore are responsible for repairing any damage caused to the consumer as a result of defects related to the provision of their services, as well as insufficient or inadequate information on the enjoyment and risks associated with them.

In addition, the dentist may be held civilly liable if their professional conduct, whether by action or omission, causes

harm to their patient. As provided in the Civil Code,⁴ in addition to material damage, moral damage is also considered a wrongful act, and it is usually necessary to prove the causal link between the professional's conduct and the harm suffered by the patient. As independent professionals, dentists have civil liability determined by proof of fault, the so-called subjective liability⁴. The type of professional fault can be classified as negligence, recklessness, and lack of skill. Negligence is characterized by an omission, carelessness, or indifference; recklessness implies a different conduct from that expected; and lack of skill refers to the execution of an action without adequate technical knowledge⁵.

In this sense, claims for damages against dental services and dental clinics are a reality, and dental professionals must ensure that their profession is properly practiced, in compliance with Brazilian legislation and ethical principles, in order to avoid claims for damages. Understanding the nature of civil lawsuits for professional malpractice in dentistry and identifying patterns and trends in judgments in these lawsuits can help dental clinics improve their professional practice and prevent possible future litigation. Therefore, the objective of this research was to analyze the civil lawsuits for dental malpractice that have been processed in the Courts of Justice of the Northern Region of Brazil during the last ten years.

MATERIAL AND METHODS

Study design and ethical aspects

This is an analytical cross-sectional study, exempt from registration and evaluation by a Research Ethics Committee (CEP/CONEP System), in accordance with item III of Article 1 of CNS Resolution No. 510 of April 7, 20167.

Sample, inclusion, and exclusion criteria

The study included lawsuits filed by patients against dentists or dental clinics in the civil sphere, from January 2013 to September 2023, in courts of the Northern Region of Brazil. The following cases were excluded: lawsuits for injunctions in public examinations, lawsuits for errors committed by non-dentist professionals, lawsuits against health plans, lawsuits for fraud, lawsuits for traffic accidents, labor lawsuits, and lawsuits for domestic violence.

Research and Data Collection Instrument

Civil lawsuits for dental malpractice that were processed in the Courts of Justice of the Northern Region of Brazil in the last ten years were analyzed. The lawsuits were collected through the Jusbrasil⁸ website, which can be accessed by subscribing to the "Basic Legal Research" plan.

When accessing the website, the search "Error in dental treatment", "Dental treatment error", and "Dental malpractice" were applied in the Jurisprudence bar. The filters corresponding to the Courts of Justice of the States of the Northern Region of Brazil (Acre, Amapá, Amazonas, Pará, Rondônia, Roraima, and Tocantins) were selected, in the period from January 1, 2013, to September 23, 2023.

Data collection took place between September 2023 and October 2023. To select the cases, first, duplicate cases identified after data collection with the different search terms were manually removed by identifying the case number, publication date, and initial presentation text. Then, the inclusion and exclusion criteria were applied to select the lawsuits to be analyzed in the research. The process selection and inclusion flowchart is shown in Figure 1.

Data were manually extracted from each case and tabulated in Excel spreadsheets. The following variables were collected: a) state of the federation corresponding to the court where the case was processed; b) year of the trial of the case; c) type of document analyzed: judgment or verdict. d) Patient's sex; e) Dental hygienist's sex; f) Defendant in the case: independent dental hygienist (individual), dental clinic (legal entity), or both; g) Patient's legal counsel: public defender or private attorney; h) Dental specialty related to the alleged dental malpractice that is the subject of the case; i) Damage proven in the case: moral, aesthetic, dental, or material; j) Type of civil liability attributed: objective or subjective; k) Type of fault attributed to the hygienist: lack of skill, recklessness, negligence, or unproven; l) Appointment of an ad hoc expert and performance of an expert evaluation of the case: absent or present; m) Appointment of technical assistants: absent or present; n) Citation of previous ethics proceedings in the RCD: absent or present; o) Form of conviction of the dentist: absent or present. Form of

conviction of the dentist: absent, for material damage, for moral damage, or for both forms of damage; p) Average value of the compensation, in reais, according to the damage: for material damage and moral damage.

Statistical Analysis

The data obtained were evaluated by descriptive statistical analysis and inferential statistical analysis, using the SPSS software (SPSS Statistics, Version 23.0; IBM Corp, Armonk, NY), considering $\alpha = 0.05$. In order to assess whether the sentence ordering the dentist or dental clinic to pay compensation was associated

with factors such as the type of civil liability, the type of damage, the dental specialty involved, and the performance of an expert assessment during the process, a bivariate logistic regression test was applied.

RESULTS

Of the 792 cases retrieved using the search terms, 53 met the inclusion criteria of the study, representing approximately 6.69% of the total number of cases identified in the search (Figure 1). An increase in the number of cases was observed from 2013 to 2023, with the highest peak of studies in 2021.

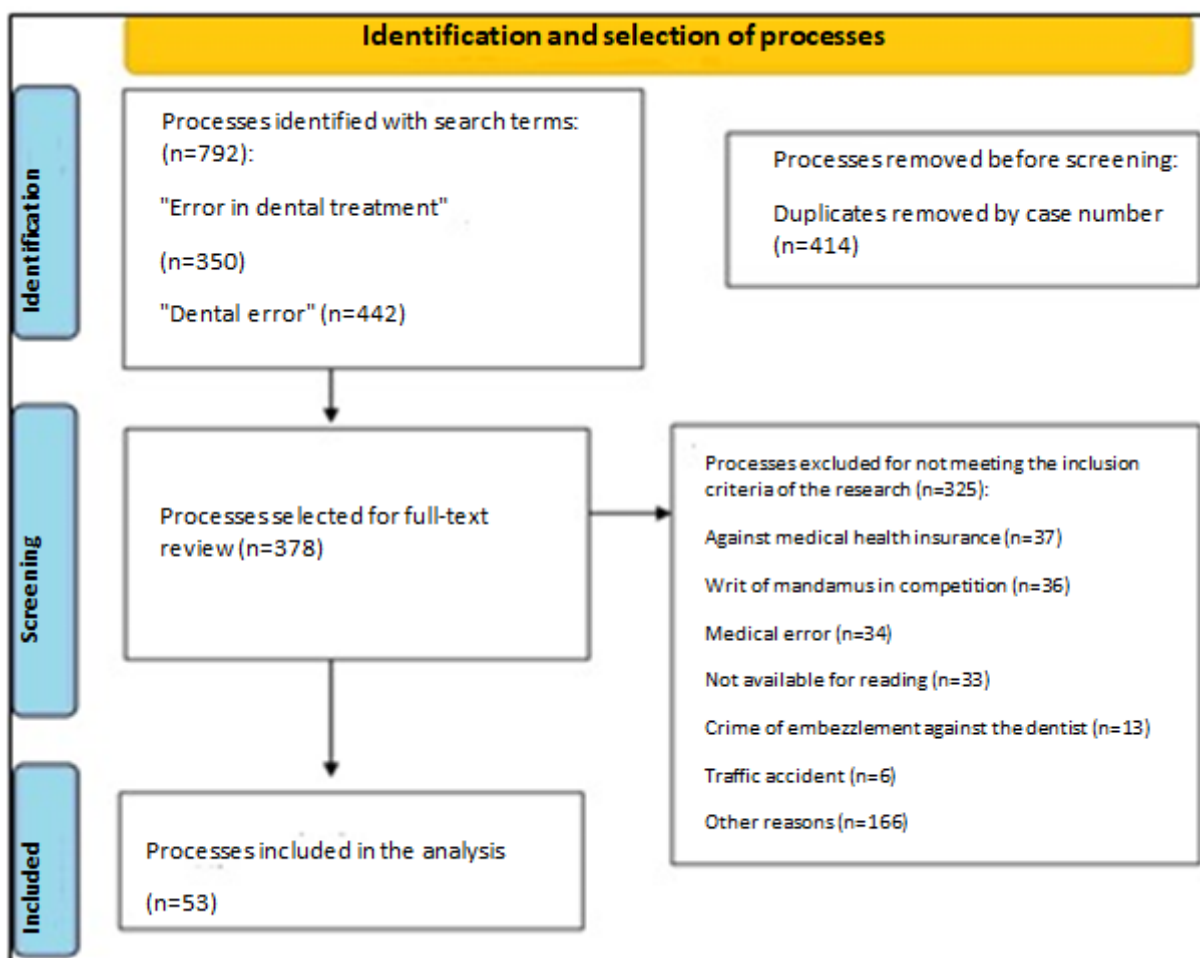


Figure 1 - Flowchart for identification and selection of lawsuits.

Table 1 presents information on the personal characteristics of the dentist and the patient, as well as the procedural and legal characteristics extracted from the cases included in the research. Regarding the type of document, judgments had the highest prevalence in all states of the Northern Region of Brazil, with the State of Rondônia showing the highest prevalence of lawsuits, accounting for 43.40%. The State of Rondônia also had the highest percentage of the total number of trials with convictions (22.64%), followed by the State of Amazonas with 18.87%. In total, 58.50% of the dentists were convicted and it is noted that there was a conviction of 100% of the dental services processed in the State of Amapá (Figure 2). In the analysis of the citation of ethical lawsuits in the lawsuits, this occurred only in a small part of the lawsuits in the States of Pará (3.77%), Rondônia (1.89%), and Amazonas (1.89%), which shows that the

majority of civil lawsuits did not base civil complaints on previous results of ethical lawsuits.

Among the types of damage analyzed, there was a low prevalence (from 1.89 to 16.98%) of dental damage (damage to the dental organ) in all states of the Northern Region of Brazil, as well as a low prevalence of aesthetic damage. Only the states of Rondônia, Acre, Amazonas, and Roraima had cases with proven aesthetic damage, representing 16.98%, 7.55%, 5.66%, and 1.89% of the lawsuits, respectively. Material damages were proven in 22.64% of the cases in the State of Rondônia and 15.09% of the cases in the State of Amazonas. On the other hand, moral damages were the most common in all states. In 30 of the 53 cases, moral damages were proven. The states of Rondônia and Amazonas had the highest percentages: 20.75% and 18.87%, respectively.

Table 1 - Raw frequency and relative frequency of the variables of personal characterization of the dental surgeon and the patient, as well as procedural and legal characteristics extracted from the lawsuits included in the research.

Variables	State													
	Amazonas		Rondônia		Acre		Roraima		Amapá		Pará		Tocantins	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Legal document type														
Judgment	9	16,98	23	43,40	4	7,55	4	7,55	1	1,89	2	3,77	1	1,89
Sentence	4	7,55	-	-	2	3,77	2	3,77	-	-	1	1,89	-	-
Ethical proceeding cited in the civil lawsuit														
No	12	22,64	22	41,51	6	11,32	6	11,32	1	1,89	1	1,89	1	1,89
Yes	1	1,89	1	1,89	-	-	-	-	-	-	2	3,77	-	-

Proven dental damage														
No	6	11,32	14	26,42	3	5,66	5	9,43	1	1,89	3	5,66	1	1,89
Yes	7	13,21	9	16,98	3	5,66	1	1,89	-	-	-	-	-	-
Proven aesthetic damage														
No	10	18,87	14	26,42	2	3,77	5	9,43	1	1,89	3	5,66	1	1,89
Yes	3	5,66	9	16,98	4	7,55	1	1,89	-	-	-	-	-	-
Proven material damage														
No	8	15,09	12	22,64	4	7,55	4	7,55	-	-	3	5,66	1	1,89
Yes	5	9,43	11	20,75	2	3,77	2	3,77	1	1,89	-	-	-	-
Proven moral damage														
No	3	5,66	12	22,64	3	5,66	3	5,66	-	-	1	1,89	1	1,89
Yes	10	18,87	11	20,75	3	5,66	3	5,66	1	1,89	2	3,77	-	-
Gender of the dentist responsible for the dental procedure														
Male	5	9,43	15	28,30	2	3,77	3	5,66	1	1,89	1	1,89	-	-
Female	6	11,32	8	15,09	2	3,77	2	3,77	-	-	1	1,89	-	-
Not declared	2	3,77	-	-	2	3,77	1	1,89	-	-	1	1,89	1	1,89
Patient's gender														
Male	3	5,66	3	5,66	-	-	2	3,77	-	-	-	-	-	-
Female	10	18,87	20	37,74	6	11,32	4	7,55	1	1,89	3	5,66	1	1,89
Not declared	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Patient's age														
Not informed	12	22,64	22	41,51	6	11,32	6	11,32	1	1,89	3	5,66	1	1,89
Informed	1	1,89	1	1,89	-	-	-	-	-	-	-	-	-	-
Dental specialty corresponding to the procedure questioned in the lawsuit														
Dentistry	1	1,89	-	-	1	1,89	-	-	-	-	-	-	-	-

Implantology	3	5,66	8	15,09	3	5,66	2	3,77	-	-	-	-	-	-
Orthodontics	-	-	3	5,66	-	-	-	-	-	-	-	-	1	1,89
Endodontics	-	-	1	1,89	-	-	1	1,89	-	-	-	-	-	-
Surgery	5	9,43	6	11,32	1	1,89	3	5,66	-	-	-	-	-	-
Prosthesis	2	3,77	2	3,77	1	1,89	0	-	1	1,89	-	-	-	-
Two specialties	2	3,77	3	5,66	-	-	-	-	-	-	3	5,66	-	-
Required is a dental clinic														
No	7	13,21	16	30,19	2	3,77	2	3,77	1	1,89	2	3,77	-	-
Yes	6	11,32	7	13,21	4	7,55	4	7,55	-	-	1	1,89	1	1,89
Required is a dentist														
No	2	3,77	-	-	1	1,89	1	1,89	-	-	1	1,89	1	1,89
Yes	11	20,75	23	43,40	5	9,43	5	9,43	1	1,89	2	3,77	-	-
Modality of fault														
Malpractice	1	1,89	3	5,66	-	-	-	-	-	-	-	-	-	-
Recklessness	1	1,89	-	-	-	-	-	-	-	-	-	-	-	-
Negligence	-	-	1	1,89	1	1,89	-	-	-	-	-	-	-	-
Not specified	7	13,21	5	9,43	3	5,66	3	5,66	1	1,89	2	3,77	1	1,89
Not proven	3	5,66	12	22,64	2	3,77	3	5,66	-	-	1	1,89	-	-
More than one modality	1	1,89	2	3,77	-	-	-	-	-	-	-	-	-	-
Appointment of an expert witness for the case and conducting an expert examination														
No	6	11,32	7	13,21	1	1,89	3	5,66	1	1,89	2	3,77	1	1,89
Yes	7	13,21	16	30,19	5	9,43	3	5,66	-	-	1	1,89	-	-
Participation of a technical assistant cited in the lawsuit														
No	13	24,53	23	43,40	6	11,32	6	11,32	1	1,89	3	5,66	1	1,89
Yes	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Conviction to indemnify the dentist or the dental clinic														
No	3	5,66	11	20,75	2	3,77	3	5,66	-	-	2	3,77	1	1,89
Yes	10	18,87	12	22,64	4	7,55	3	5,66	1	1,89	1	1,89	-	-
Patient legal assistance type														
Private Lawyer	12	22,64	23	43,40	6	11,32	6	11,32	1	1,89	3	5,66	1	1,89
Public defender	1	1,89	-	-	-	-	-	-	-	-	-	-	-	-
Liability														
Objective	5	9,43	4	7,55	1	1,89	2	3,77	-	-	1	1,89	1	1,89
Subjective	8	15,09	19	35,85	5	9,43	4	7,55	1	1,89	2	3,77	-	-
Year of the case trial														
2013	-	-	-	-	-	-	1	1,89	-	-	-	-	-	-
2014	-	-	-	-	-	-	2	3,77	-	-	-	-	-	-
2015	-	-	1	1,89	-	-	-	-	-	-	-	-	-	-
2016	1	1,89	2	3,77	-	-	1	1,89	-	-	-	-	-	-
2017	2	3,77	-	-	1	1,89	-	-	-	-	-	-	-	-
2018	1	1,89	-	-	1	1,89	1	1,89	-	-	1	1,89	-	-
2019	-	-	4	7,55	1	1,89	-	-	1	1,89	-	-	-	-
2020	2	3,77	1	1,89	2	3,77	-	-	-	-	1	1,89	1	1,89
2021	3	5,66	6	11,32	1	1,89	-	-	-	-	1	1,89	-	-
2022	4	7,55	2	3,77	-	-	1	1,89	-	-	-	-	-	-
2023	-	-	7	13,21	-	-	-	-	-	-	-	-	-	-

n: raw frequency; %: relative frequency; -: value equal to zero.

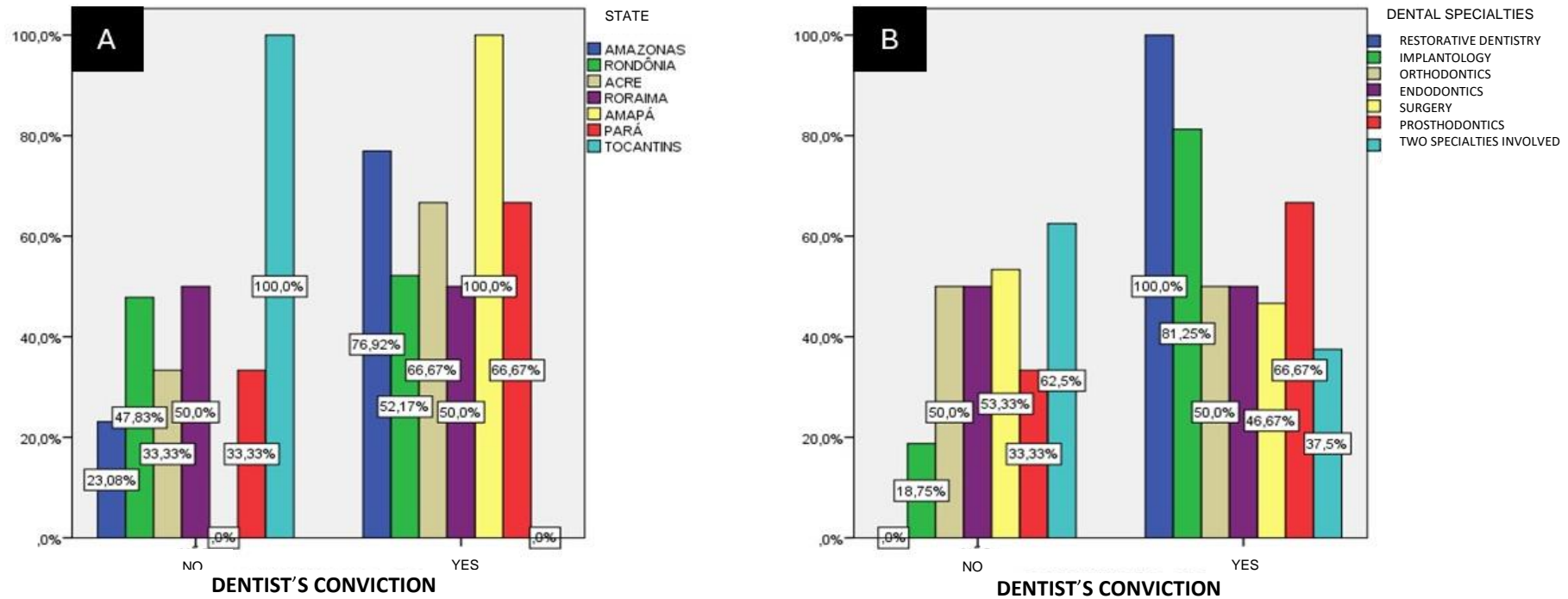


Figure 2 – Graphs representing the proportion of convictions of dentists: A) according to the state and B) according to dental specialties.

Concerning dental specialties, the following were cited in the lawsuits: Dentistry, Implantology, Orthodontics, Oral and Maxillofacial Surgery, Prosthodontics, and Endodontics. Some of the lawsuits cited more than one specialty. The specialty with the highest number of lawsuits was implantology, representing 30.18% of the cases, and the dental service was condemned in 100% of the lawsuits related to the procedure in

which the dental malpractice was alleged was related to the specialty of dentistry (Figure 2).

Approximately 57% of the claims were filed against dental clinics, while independent professionals were required in 88.67% of cases. Regarding the gender of the patients filing the civil suits, approximately 84.91% were female. Only one of them was represented by a public defender's office member and all the others by a private lawyer. Males

were the most common dentist requested. Most cases tried did not specify the type of fault, and in 39.62% of the cases, the fault was not proven. In more than half of the 53 cases, an expert was appointed. However, no technical assistants were appointed in any of the cases.

The average values of compensation for material and moral damages are shown in Table 2. The values of compensation for material

damages ranged from 0 to 48,600 reais (mean = 4,554.68; standard deviation = 10,474.122) and the values of compensation for moral damages ranged from 0 to 50,000 reais (mean = 4,915.09; standard deviation = 8,133.345). The highest compensation values were found in the State of Amazonas.

Table 2 - Average amounts of compensation, in reais (R\$), for moral damage and material damage, according to the State.

Proven damage type	Compensation amount according to the State													
	Amazonas		Rondônia		Acre		Roraima		Amapá		Pará		Tocantins	
	Mean	Standard deviation	Mean	Standard deviation	Mean	Standard deviation	Mean	Standard deviation	Mean	Standard deviation	Mean	Standard deviation	Mean	Standard deviation
Material damage	5.973	15.006	6.032	10.573	3.932	7.045	237	480	-	-	-	-	-	-
Moral damage	10.538	13.648	3.326	4.263	4.000	4.561	3.000	4.648	-	-	1.667	2.887	-	-

-: value equal to zero

Table 3 shows the results of the bivariate logistic regression analysis. It was observed that only the dental specialty of implantology ($p = 0.013$; OR = 13.000) and the configuration of moral damage to the patient

($p < 0.001$; OR = 304.500) presented a statistically significant association with the condemnation of the dental service and the consequent obligation to compensate the patient.

Table 3 - Bivariate logistic regression of the association of the conviction to indemnify with independent variables related to the lawsuits.

Independent variables	Conviction to indemnify		
	p	OR	CI 95%
Summons of ethical proceeding in civil procedure			
No	-		
Yes	0,192	0,211	0,020-2,181
Dental damage confirmed			
No	-		
Yes	0,998	#	#
Aesthetic damage confirmed			
No	-		
Yes	0,998	#	#
Material damage confirmed			
No	-		
Yes	0,998	#	#
Moral damage confirmed			
No	-		
Yes	< 0,001	304,500	25,878-3582,964
Appointment of an expert witness for the case and conducting an expert examination			
No	-		
Yes	0,872	1,096	0,359-3,345
Liability			
Objective	-		
Subjective	0,609	0,719	0,203-2,543
Required			
Dentist	-		
Dental clinic	0,651	0,667	0,115-3,872
Both	0,937	0,952	0,284-3,197
Dental specialty			
Restorative Dentistry	-		
Implantology	0,999	#	#
Orthodontics	0,013	13,000	1,701-99375
Endodontics	0,395	3,000	0,239-37,672
Surgery	0,501	3,000	0,122-73,642
Prosthodontics	0,318	2,625	0,395-17,458
Restorative Dentistry	0,132	6,000	0,582-61,842

CI = confidence interval; OR = *odds ratio*; - = Reference Category; # = data not reportable by equality between the response levels of the variable.

DISCUSSION

This research showed that the states of Rondônia and Amazonas led the other states in the northern region of Brazil in the number of cases tried and the percentage of convictions. In addition, the State of Rondônia also showed a significant increase in the number of cases tried in lawsuits filed by patients against dentists and dental clinics in the last decade.

Most of the lawsuits were filed by female patients. According to Negretto (2020)⁹, about 80% of the existing studies show that women are the predominant authors of complaints, regardless of the setting and the criteria chosen for data collection, with some of the authors attributing this to the fact that women have a greater demand for dental treatment.

In this research, there was a condemnation of the dental service in all the lawsuits related to the procedure in which a dental error was alleged was related to the specialty of dentistry. According to Medeiros and Coltri (2014)¹⁰, most cases of dental treatment have a duty of means, but some treatments are considered as a duty of result, especially when it comes to aesthetic dental procedures, as happens in most cases related to the specialty of Dentistry.

Among the factors associated with a greater chance of conviction of a dental clinic in the cases analyzed, the specialty of implantology stood out. Other studies conducted in Brazil have also shown that the specialty of implantology is involved in the majority of civil cases filed by patients against CD11-15. Approximately one million implants are installed in Brazil each year,

and there are more than 20 manufacturing companies in the country: the country ranks fourth in the world in this field¹⁶. Implantology is about function and aesthetics. In many cases, it can be assumed that implant procedures are predictable and therefore failures are more likely to be "punishable" because of the possibility of extensive pre-procedural planning, the professional's ability to rely on several imaging studies, and the wide availability of materials with different characteristics to meet different needs for rehabilitation with dental implants^{6,17}. However, it is known that patient biological and behavioral factors can also influence the success of the treatment.

Evidence of moral damage to the patient was also associated with a greater likelihood of conviction of the dental clinic or dental practice in this study. According to Bento et al (2021), moral damages were the most frequently requested class of damages in the lawsuits analyzed in their study. Moral damage may be related to emotional factors, feelings of embarrassment, suffering, or an affected image. In other words, it can be related to the daily activities that patients perform. Thus, it can be concluded that the social aspects involved as a result of a dental error are relevant. For example, unjustified pain causes morbidity and may prevent people from working, performing their usual activities, or even enjoying their leisure time; and damage to oral aesthetics may result in embarrassment when smiling or other forms of social embarrassment. The average amounts of compensation for material damages (R\$ 4,554.68) and moral

damages (R\$ 4,915.09) found in this research were lower than the average amounts found in the State of São Paulo, R\$ 8,385.17 and R\$ 13,168.3711-12.

From the perspective of the importance of forensic dental documentation as pre-constituted evidence to be used as a defense in civil proceedings, where the burden of proof is reversed to the professional, this research was limited by the absence of the documentation descriptions, as the documents used as evidence and attached to the cases were not available for viewing on the website used as a source of data collection.

CONCLUSION

The study showed an increase in the number of lawsuits for professional malpractice in dentistry from 2013 to 2023, with the highest number of lawsuits in 2021. Most of the lawsuits were filed by female patients, and the states of Rondônia and Amazonas stood out with the highest number of lawsuits. Moral damages were the most common type of compensation in all states, with awards ranging from R \$0 to R\$ 50,000 (average of R\$ 4,915.09). In addition, it was concluded that lawsuits related to the dental specialty of implantology, in which there is evidence of moral damages, may have a greater chance of professional conviction.

RESUMO

Introdução: segundo o Conselho Federal de Odontologia, havia aproximadamente cerca de 403.686 cirurgiões-dentistas com inscrições ativas no Brasil em 2023. Esses profissionais têm o dever de executar suas funções seguindo as normas éticas e legais da profissão. Objetivo: o objetivo desta pesquisa foi analisar os processos cíveis sobre erro odontológico que tramitaram nos Tribunais de Justiça da região norte do Brasil nos últimos 10 anos. Metodologia: trata-se de um estudo transversal analítico realizado com processos dos sete Estados da Região Norte do Brasil, do período de 01/01/2013 a 23/09/2023, coletados através do site Jusbrasil, com os termos "Erro em tratamento odontológico", "Erro em tratamento dentário" e "Erro odontológico". Os dados foram avaliados por análise estatística descritiva e pelo teste de regressão logística bivariada. Resultados: houve aumento da incidência de processos de 2013 a 2023, com pico de julgamentos em 2021. A especialidade e o Estado com maior número de processos foi a Implantodontia e Rondônia, respectivamente. Os valores de indenização por dano material variaram de 0 a 48.600 reais (média = 4.554,68) e os valores de indenização por dano moral variaram de 0 a 50.000 reais (média = 4.915,09). A especialidade odontológica da Implantodontia ($p = 0,013$; OR = 13,000) e a configuração de dano moral ao paciente ($p < 0,001$; OR = 304,500) apresentaram associação estatisticamente significativa com a condenação e obrigação de indenizar. Conclusão: conclui-se que processos relacionados à Implantodontia e em que há comprovação de dano moral podem ter maior chance de condenação.

PALAVRAS-CHAVE

Jurisprudência; Odontologia legal; Responsabilidade civil.

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