

SURVEY AND ANALYSIS OF THE JURISPRUDENCE OF THE COURT OF JUSTICE OF THE STATE OF PARANÁ CONCERNING THE CIVIL LIABILITY OF DENTAL SURGEONS

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Abstract: There has been an increase in the number of lawsuits filed against dental surgeons (DCs) in Brazil over the last few years. This study aims to understand and analyze the jurisprudence of the Court of Justice of the State of Paraná (TJPR) regarding the civil liability of dental surgeons, as well as present the profile and understanding of the factors involved in these legal proceedings. This is a documentary research, carried out by consulting the TJPR website, selecting the consultation option, the jurisprudence option, then selecting the jurisprudence research field. After completing these initial steps, the following keywords will be used for consultation in the free search field: “Dental surgeon”, “Dental clinic”, “Dentist”, “Dental”, “Dental error”, “Dentistry”, “Dentologist” and “Odontologist”. To filter the legal proceedings that occurred between January 2000 and December 2020, the keywords initially used were refined with another keyword: civil liability of the Dental professional. For analysis of jurisprudence, the cases were reclassified as follows: year of judgment; area of activity or specialty of the professional; average compensation value. Excel® spreadsheets were created to record data from the evaluated processes, so that the analysis of the same process would not be counted when the keywords or any other study variable were crossed. After collecting the research data, graphs and tables were created to compare and analyze the final results. In view of this, we obtained data relating to the quantitative and qualitative profile of lawsuits against dentistry professionals, as well as guidance for dental surgeons on the importance of knowing the characteristics of the legal demand and its implications for their contemporary professional activity.

Keywords: Jurisprudence; Dentistry; Civil responsibility.

INTRODUCTION

Civil Procedural Law can be conceptualized as the set of norms and principles that govern the exercise of jurisdiction, that is, they allow, through the succession of procedural acts, for the solution of conflicts of interest of a civil nature to be established by the judiciary, preserving the rights of both parties and ensuring that their allegations are analyzed equally, with a view to a greater objective, which is social pacification and the elimination of conflicts between people, ensuring justice in the specific case (CINTRA; GRINOVER; DENMARK, 2006).

The transformations that Dentistry has taken in recent years are notable, not only from a scientific perspective, but also in human relationships. The entire relationship between the dental surgeon (DC) and the patient has always been based on a bond of security and intimacy, but, due to the major changes that have been taking place in the health service, there is an increase in dissatisfaction with dental care, associated with an increase in the number of civil compensation actions (LIMA et al., 2012).

In the past, the CD provided dental services based on the relationship of trust established between the professional and the patient, thus not having its basis agreed in an express contractual manner, depending on verbal agreements established between the parties (CABRAL, 2009). With the evolution of technology, these relationship concepts have been forgotten in the workplace, which reflects a high level of dissatisfaction on both sides (LIMA; SOUZA, 2010).

Dentistry, like other areas of health, is subject to not so favorable results, which may result in possible harm to the patient in the exercise of professional practice of DC (GARBIN et al., 2009). Therefore, professionals, when maintaining a bond with patients, are subject to the obligation of having to repair damages

that are caused to others when an illegal act is committed (LUCENA et al., 2015).

As the professional is responsible for their actions and attitudes, it is up to them to repair the damage, which often happens in a judicial manner. The CD has civil obligations, which correspond to repairing the damage caused; criminal obligation, which arise from possible bodily injuries caused during treatment, and those related to ethics, which are regulated by the Federal Council of Dentistry, through the Code of Dental Ethics (GARBIN et al., 2009).

Data on legal proceedings in Brazil, in the area of Dentistry, are still little explored, although a recent and significant survey, carried out in the State of Minas Gerais, between 2014 and 2018, resulted in a total of 67 proceedings initiated, mainly in the specialties of Implantology (20), Orthodontics (10) and Surgery (08), with 40 condemnatory actions, with a higher prevalence of these (17) occurring in 2018 (MENDES et al., 2021).

It is extremely important that the CD knows his civil liability in the exercise of his office, in view of the significant increase in the number of legal actions, preventing the professional from being placed in the uncomfortable position of defendant in processes seeking compensation in which the tendency is to favor the patient and not the professional (ZOLINE, 2015).

For this reason, this study becomes relevant for carrying out a first survey and analysis of the jurisprudence of the Court of Justice of the State of Paraná (TJPR) regarding the civil liability of dental surgeons, between the years 2000 and 2020, with the purpose of know in detail and updated the processes that dentists are undergoing in this new model of professional/patient relationship. Although the number of cases against dental surgeons has been increasing, there is a lack of studies carried out in Brazil. The most recent data was carried out in second instance proceedings

at the Court of Justice of the State of Minas Gerais, between 2014 and 2018.

Therefore, the present study becomes relevant, as it aims to carry out a survey and analysis of the jurisprudence of the Court of Justice of the State of Paraná regarding the civil liability of dental surgeons, in order to understand the profile of cases against dentists today, which will provide knowledge about the avoidability of these processes in the practice of Dentistry.

The general objective of the work is to understand the jurisprudence of cases filed against dental surgeons in the State of Paraná, in addition to identifying the year of the trial, the areas of specialty practice with a greater number of convictions and average compensation amounts. Specific objectives: to analyze the jurisdictional districts that received civil liability lawsuits against dental surgeons in the State of Paraná, classify the lawsuits according to the professionals' specialties or areas of activity and establish a list of legal and professional lawsuits registered in each dental specialty.

DEVELOPMENT

The present study presents a quantitative-qualitative approach of an exploratory nature, carried out through documentary analysis with a longitudinal design, in which the sample is obtained through consultations, via the internet, with the objective of carrying out a survey of the jurisprudence relating to actions of civil liability against dental surgeons.

Data collection was carried out through a search on the website of the Court of Justice of the State of Paraná (TJPR), with data collection being based on processes that began in January 2000 until December 2020. For the Internet access was used using the Google Chrome web browser.

To consult the TJPR website (<https://www.tjpr.jus.br>), the consultation option

was initially selected (<https://www.tjpr.jus.br/consultas>), then the jurisprudence option was selected (<https://www.tjpr.jus.br/jurisprudencia>), and then the jurisprudence research field was selected. (<https://portal.tjpr.jus.br/jurisprudencia/>).

The judgments were refined as follows: a) established research period (January 2000 to December 2020) and b) processes related to the civil liability of the dental surgeon.

After completing the previous steps, keywords related to the practice of the Dentistry profession in different specialties were selected, such as: "Dental surgeon", "Dental clinic", "Dentist", "Dental", "Dental error", "Dentistry", "Dentistry" and "Odontologist" (DE PAULA, 2007).

To filter the processes that occurred in the period from 2000 to 2020, the keywords initially used were refined (cross-referenced) with other keywords, thus obtaining the final data collection to carry out the proposed study.

For data analysis, the cases were classified as follows: a) year of judgment, b) district of jurisdiction, c) area of activity or specialty of the professional, d) average compensation value.

The qualitative analysis of the cases sought to identify, within the sample, the characterization of the defendants' profile, the conviction, the areas of Dentistry involved with the highest number of professional citations, the areas with the highest number of convictions, the year of the trial and other data that could contribute to the analysis of the results (MENDES et al., 2021).

After completing the data search, processes found in "Secret of Justice" were excluded from the research, processes filed against municipal governments, requests for special retirement, public tenders, requests for the granting of additional health hazard pay, property rental, increase or reduction in working hours, lawsuits against insurance

companies, house arrest, accidents in a school environment, permits, fights in a dental office, income tax declaration, traffic accidents and repeated lawsuits

Finally, descriptive and inferential analysis of the data was carried out, using the Microsoft Excel® program (Windows XP, Microsoft, USA) to tabulate and organize the process data, by the name of the CD that received the process, by the number of the case, by the trial date and responsible district, by the value of the sentence and whether it is being processed under Secrecy or not.

To evaluate possible process duplications, tools present in the Microsoft Excel® program were used and files that were repeated were excluded, so that the same process could not be evaluated.

From this quantitative-qualitative research, it is expected to contribute to broadening the debate on the topic of legal proceedings that dental surgeons have been suffering over the last few years, as well as establishing criteria that help to define the main characteristics of these proceedings in the area. dentistry and the implications of its prevention in the practice of the profession.

Knowledge about the adoption of supported and evaluated practices during care, with a focus on filling out dental records, can generate a reduction in the number of lawsuits and possible legal convictions.

The study was composed of 976 mirrors of rulings with the criteria used in the research on the website of the Court of Justice of the State of Paraná, which resulted in 213 duplicate processes during the research and 264 processes that covered the research interest, involving Dental Surgeons, legal entity, health plans and popular dental care clinics. The other processes involved areas that were not the target of this research.

After the analysis, the keyword that presented the highest number of case law was

“DENTIST”, with 96 results, and the one with the lowest number was “DONTOLOGIST”, resulting in 4 processes, as shown in Graph 1.

Total number of Jurisprudence according to each keyword used in the search	
KEYWORD	JURISPRUDENCE NUMBER
Dental surgeon	41
Dental clinic	10
Dental	9
Dentist	96
Dental Error	67
Dentistry	31
Dental specialist	4
Dentist	6
TOTAL	264

Graph 1: Total number of case laws according to each keyword for searching in the TJPR database (2021).

When analyzing the areas of dentistry with the highest number of citations, it was observed that implant dentistry, surgery and prosthesis were the areas with the highest number of processes: 61 (23.11%), 58 (21.97%) and 44 (16.67%), respectively.

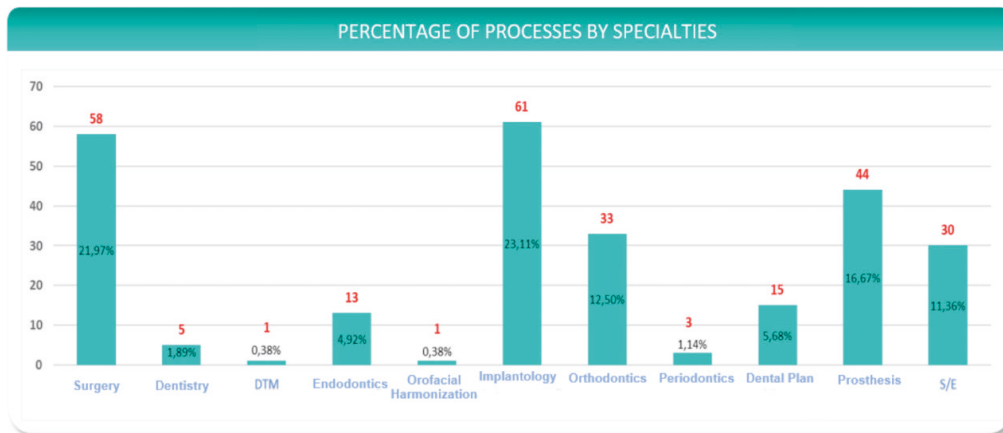
And, in 30 jurisdictions, it was not possible to classify such information, since specialties were not mentioned in the processes, as shown in Graph 2.

The frequency of occurrence of jurisprudence, in the period from January 2000 to December 2020, was presented in Graph 3, in which, when analyzing the year in which the actions found occurred, it appears that 2019 and 2020 were the years with the largest number of processes, with 44 and 47, respectively.

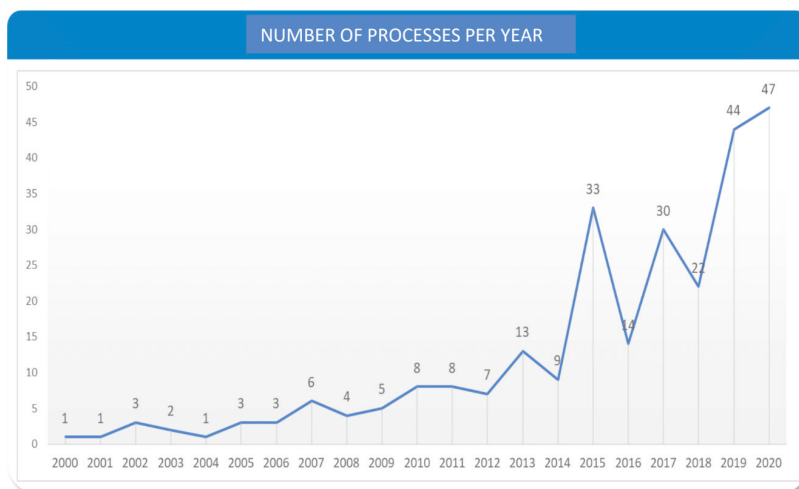
Correlating the areas of dentistry present and the convictions found, the average value of compensation paid can be verified.

The specialties found with the highest compensation value were “Surgery” and “Orthodontics”, with values of R\$ 100,000.00 (one hundred thousand reais).

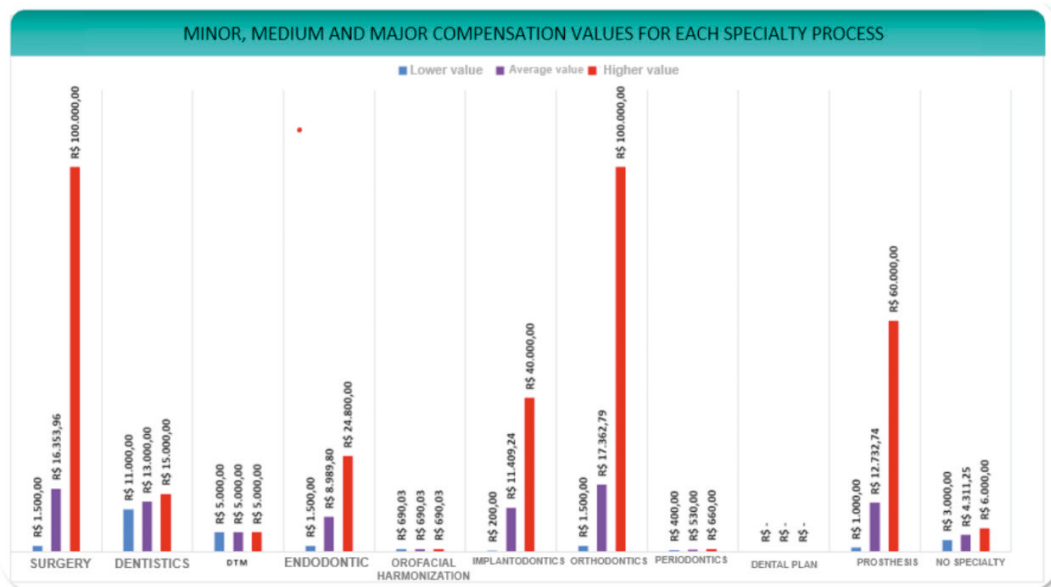
The Specialty that presented the lowest value



Graph 2: Percentage number of processes by specialties.



Graph 3: Number of Processes listed per year.



Graph 4: Compensation values by specialty.

CITIES AND THEIR PERCENTAGE OF RESPECTIVE PROCESSES

CITIES	NUMBER OF PROCESSES	% PROCESS
Curitiba	94	35,61%
Londrina	40	15,15%
Maringá	17	6,44%
Fóz Iguaçu	14	5,30%
Ponta grossa	10	3,79%
Cascavel	9	3,41%
Campo Mourão	6	2,27%
Fazenda rio grande	5	1,89%
Paranavaí	4	1,52%
São José dos Pinhais	4	1,52%
Arapongas	3	1,14%
Campo Largo	3	1,14%
Colombo	3	1,14%
Francisco Beltrão	3	1,14%
Guarapuava	3	1,14%
Rolândia	3	1,14%
Cruzeiro do Oeste	2	0,76%
Ibiporã	2	0,76%
Palotina	2	0,76%
Paranaguá	2	0,76%
Pato Branco	2	0,76%
Piraquara	2	0,76%
Primeiro de Maio	2	0,76%
Sarandi	2	0,76%
Toledo	2	0,76%
Apucarana	1	0,38%
Bandeirantes	1	0,38%
Cambé	1	0,38%
Castro	1	0,38%
Cianorte	1	0,38%
Dois vizinhos	1	0,38%
Engenheiro Beltrão	1	0,38%
Goioerê	1	0,38%
Guaratuba	1	0,38%
Icaraíma	1	0,38%
Jacarezinho	1	0,38%
Jandaia do Sul	1	0,38%
Laranjeiras do Sul	1	0,38%
Mandaguari	1	0,38%
Mandaguaçu	1	0,38%
Marmeiro	1	0,38%
Medianeira	1	0,38%
Nova de Fátima	1	0,38%
Palmeira	1	0,38%
Pinhais	1	0,38%
Piraí do Sul	1	0,38%
Pitanga	1	0,38%
São Matheus do Sul	1	0,38%
Mandaguari	1	0,38%
União da Uitória	1	0,38%

Graph 5: List of cases received by Districts.

was “Implantology”, around R\$200.00 (two hundred reais), as shown below, in Graph 4.

It was found that, in the processes involving Dental Plans, there were no values in them, due to the fact that they were authorizations for procedures to be carried out or not in hospitals.

When observing the list of Districts that received civil liability cases, we noticed that the District that obtained the highest number of jurisprudences was Curitiba, where 94 lawsuits (35.61%) were observed against dental surgeons in the State of Paraná, followed by the cities of Londrina with 40 (15.15%), Maringá 17 (6.44%) and Foz do Iguaçu 14 (5.30%).

Below, graph 5 shows, in descending order, by number of cases, the list of each District.

FINAL CONSIDERATIONS

Over the years, dental care has relied on a relationship between the professional and the patient, based on a friendly and trusting relationship. This way, claims made by patients in treatment decisions were rare, meaning the professional had the freedom of choice in relation to decisions about procedures, in view of their technical and scientific knowledge (GARBIN et al., 2009).

Currently, patients have become aware of and exercise their rights, which implies that professionals need to take precautions, which justifies the importance of a complete medical record (BENEDICTO et al., 2010).

The number of processes has increased in recent times, a fact verified in the research, which raises concerns among the dental profession. Therefore, the dental surgeon must be attentive to the procedures and be supported, remembering that, in a process, the medical record is fundamental (SIMONETTI et al., 1999).

The present study presented results that

make it possible to verify a significant increase in processes between the years 2000 and 2020, making it possible to observe that the districts with the highest number of processes are those with the highest population concentration in the State of Paraná. In the work, 264 processes were analyzed, of which the area with the highest number of actions was implant dentistry, with 23.11%, followed by surgery, with 21.97% and prosthesis, with 16.67%, which is justified based on data from Cruz and Cruz (2008), which points out the areas of prosthetics and implant dentistry with the highest number of actions in the Courts, as they involve the aesthetic part, in which the majority of professionals are found practicing the specialty without clinical expertise necessary, in which they complement by referring that the aesthetic result in implant dentistry is not so simple, as they are highly complex procedures and that the soft tissues are not fixed to the surface of the implant, which can lead to exposure of the metallic material of the implant.

It can also be observed that professionals with good qualifications are also subject to receiving lawsuits, not for culpable actions, but for depriving the patient of information or for the lack of clear and objective contracts, duly signed by both (Wanderley and Lima, 2012).

In light of the above, it is reasonable to conclude that there has been an increase in the number of lawsuits against dental surgeons in the last ten years in the State of Paraná, in which the largest number of lawsuits is concentrated in districts that have a higher demographic density.

Professionals who have a specialization certificate present a greater number of lawsuits than those appointed as general practitioners, with the areas of implant dentistry, surgery and prosthetics being the most affected.

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