

PROFESSIONAL RESPONSIBILITY AND DENTAL RECORDS - LITERATURE REVIEW

Salen Marchesi de Almeida¹, Fábio Delwing², Maria da Penha Siqueira Assis³,
Frederico Mamede Santos Furtado⁴, Juliana Aires Paiva de Azevedo¹

Autora para correspondência: Salen Marchesi de Almeida - salenmarchesi@hotmail.com

¹Perita Odontologista da Polícia Civil do Maranhão no Instituto Médico Legal de São Luís. São Luís, Maranhão, Brasil.

²Perito Odontologista da Polícia Civil do Maranhão no Instituto Médico Legal de São Luís. São Luís, Maranhão, Brasil.

³Mestre. Professora na Universidade Vale do Rio Doce. Governador Valadares, Maranhã, Brasil.

⁴Encarregado do Serviço de Tanatologia do Instituto Médico Legal de São Luís. São Luís, Maranhão, Brasil.

ABSTRACT | Introduction: In the practice of dentistry, the dental surgeons are accountable for their actions or omissions of which the outcome causes harms to the patients. This liability may occur in ethical, civil and penal sphere among others. Throughout the years, society and patient-professional relation has changed supported by current legislations as well as information and communication dissemination. Stated thus, it was observed a growing number of lawsuits involving dental surgeons and patients that reveals the significance of professionals' acquaintance with the norms that regulate Dentistry practice, as well as the consequences of the illicit action. **Objectives:** This study aimed at providing knowledge by means of literature review of the legal aspect of dental surgeons professional responsibility. Moreover, it highlights the importance of dentistry documentation as proof of professional performance. **Methods:** Books, theses and scientific articles published in electronic addresses, such as SciELO, Bireme, MedLine and Lilacs, written in Portuguese. Laws and normative rules published in official electronic addresses were accessed. **Conclusions:** It was concluded that a proper record protects the professional; whereas faulty documentation compromises the treatment performed and might result in conviction.

Key words: Documentation; Forensic Dentistry; Professional Responsibility.

INTRODUCTION

Life in society is ruled by norms aimed at harmonizing social conviviality granting rights and duties to citizens of all spheres, including professional practice. Law and professional ethical codes are the guidelines regarding fulfillment of labor activities and demand the professional to develop knowledge, abilities and responsibilities regarding the performance of his duties.

In Brazil, Dentistry practice is ruled by law 508¹ as of 1966. Among the legal provisions that involve the occupation are the Federal Constitution (FC), Code of Ethics of Odontology (CEO), Civil Code (CC), Consumer Defense Code (CDC) and Penal Code (CP)².

According to CEO (2012)³, Odontology is an indiscriminate occupation that is collectively performed for the benefit of the human being health and the environment. Therefore, the dental surgeon is committed to contribute to people's buccal health⁴, and is subject to accountability due to his acts or omissions⁵. Ethics, civil, and penal are among the spheres in which accountability may occur².

Throughout the years, the society and professional-patient relationship have been modified. Given the onset of CDC introduced in the Brazilian legislation in 1990, the society is more conscious regarding their rights and supported in their search⁶. The above said code aiming to protect the consumer, hypo-sufficient extremity of consumer relations guaranteed a greater balance in the judicial relationship between product and service suppliers and consumers^{7,8}. Given such feature, the patients have judicially revindicated their rights more incisively⁸.

Another fundamental factor in the modification of behavior is the media actions that contribute to spread knowledge about consumer rights and dedicate large space to the so-called "medical errors"⁹. Just the same, given the current reality of the labor market, highly competitive, some professionals adopt improper risk conducts such as exhaustive working hours and inadequate operative conditions that might end in failure¹⁰.

As a result, it has been observed a sharp growth of

lawsuits involving dental surgeon and patient, due to malpractice accusation, iatrogenicity, fees charges, or any other reasons that lead to disharmony among the parties¹¹.

Given this new scenario, a new professional posture is required: the "Defensible Odontology". It is not a new odontological branch; it is rather a new manner to conduct working practices adopting preventive measures that are capable of protecting the professional in eventual lawsuits¹². In this context, the objective of this paper aims at providing knowledge regarding the legal aspects of the dental surgeon highlighting odontological documentation as an instrument of proof of professional conduct.

METHOD

Literature review was carried out by means of books, theses and scientific papers written in Portuguese published in electronic addresses such as Scielo, Bireme, MedLine and Lilacs, and laws and normative rules published in official electronic addresses were accessed.

The terms employed were "documentation", "legal odontology", and "professional responsibility", "odontology", "malpractice", "misconduct". The articles search was carried out starting in August up to December 2016. The criteria for inclusion of articles selection were: articles available in full and in Portuguese and related to the review theme. Exclusion criteria were: repeated bibliographic material and deviation from the theme.

LITERATURE REVIEW

Legislation

In the field of ethical responsibility, the dental

surgeon is governed by the rules of the Code of Ethics of Odontology that regulates the rights and duties of the profession. The code displays a set of conducts, moral principles and values that must be followed in the professional practice. It also determines sanctions to those who infringe it, even if it is an indirect or omissive attitude³.

Among the fundamental duties of the dental surgeons instituted by CEO, there are the duties to practice the profession maintaining dignified behavior, elaborate and update patients' records, including digital records, and allow access to the records to the patient or their legal representative. It also determines that the elaboration, as well as the patients' record maintenance, that it must be legible and conserved in a personal file, be it soft copy or hard copy³. Noncompliance with the norms contained in the CEO is considered an ethical infraction and the facts will be verified and what is disposed in the Code of Odontological Ethics Process (CPEO)¹³.

In general, civil responsibility is attributed to the professional when a norm in CF, CC or CDC is infringed¹⁴. In order to prove the infringement in the suit the presence of second degree conduct of the professional, injury to the patient and causal nexus/cause and effect between the professional act and the damage¹⁵. Civil responsibility can be defined as juridical duty of reparation to the inflicted damage imposed directly or indirectly by its begetter for the practice of illicit act or inobservance of rules^{5,16}.

Existing damage, be it material or moral, is the main element of civil responsibility⁵ whose foundation is the reestablishment through pecuniary indemnification of the juridical balance altered by pecuniary indemnification of the modified juridical balance modified by the lesion¹⁷.

The Civil Code (2002)¹⁸ states in article 186 that those who act or omit voluntarily, neglectedly or imprudently infringing rights and causing impairment to others, violating their rights and causing damage to others commit illicit acts, even if it is exclusively moral. The article 927 of the abovementioned code sets forth the obligation of reparation of actual damage to others and determines in article 951 the application to the professional who in the practice of professional activity is at fault for causing the death of the patient, aggravating the patient's condition

causing lesion or impairment.

The Consumer Defense Code (1990)¹⁹ is accountable to the norms of consumer protection and defense. This code counterbalanced Odontology professionals to subcontractors and provided patients/consumers the right to complain about flaws, defects or damages as a result of odontological treatment. In CDC Article 3, supplier is defined as any private or public, national or foreign individual taxpayer or corporate taxpayer, public or private that develops production, creation, construction, transformation and service rendering activities. In article 14, it was added the supplier's duty to legal obligation to compensate damages caused to consumers.

Moreover, the above said code establishes in article 6, subparagraph VIII as the consumers' basic rights, facilitation of defense of their civil rights, including inversion of burden of proof to their favor in the civil action when the judge criterion considers the allegation verisimilar or hypo-sufficient, according to experiences with ordinary rules¹⁹.

In the penal sphere, the dental surgeon may be indicted by typified conduct such as Penal Code crimes^{10,14,20}. Among the crimes related to Odontology professionals, there are: illegal exercise of the profession (article 282), violation of professional secrecy (article 154) (article 299), contract frauds (article 171), body injuries (article 129)¹⁰ and homicide (article 121)^{21,22}.

The crime of illicit practice of Odontology is characterized by illegal and unauthorized performance of the professional or surpassing the mandatory limits imposed for the profession^{10,20}.

Violation of professional secrecy occurs when the dental surgeon reveals without just cause the fact related to the patient known by reason of incumbent professional knowledge, occupation or profession, given that such revelation might cause harm to others^{10,14,20}.

However, the confidentiality of this secret is not absolute¹⁰. The breach of secrecy can occur with the consent of the patient or his legal representative or under the legislation support in just cause²³. The hypotheses of just cause are listed in CEO, they are: compulsory notifications of diseases; collaboration

with justice in cases set forth in the law; odontological specialized examination within their exact limits; strict defense of legitimate interest of registered professionals; breach of secrecy regarding the person responsible for the incapable³.

Criminal misrepresentation is applied when the professional issues a false document, for instance, an illegitimate certificate whose information cannot be verified^{10,14,22}. Essentially, the professionals' duty is to attest only true facts with regards to their clinical practice¹⁰.

On the other hand, the crime of stellionate occurs by taking illicit advantage of alien damages, inducing or maintaining someone in error²⁰. In Odontology, illicit advantage is verified when the professional negotiates with the patient a certain treatment and executes another treatment of inferior quality²².

The criminal law also runs upon body lesions, including the second degree modality²⁰, and the dental surgeon may be summoned in the following situation: the odontological practice caused lesions in patient's body^{10,14,21,22}. It is important to remember that odontological activity is invasive and employs contusive and cut-contusive instrumental that may cause lesions²². Nevertheless, the damage produced is frequently inherent to the treatment performed and patients must be informed, considering the risk of being liable for omission¹⁰. Moreover, though fortuitous, such laws is based on the criterion of murder in the first degree²².

Odontological Record

The odontological record is the tool employed by the dental surgeon to register all information about the patient pertinent to treatment. In this record, diagnosis; prognostic and eventual intercurrent allows the continuity of the treatment and follow-up the patient's evolution. Clinical cards, radiographies and molds are examples of parts of the odontological record^{9, 24}.

The purpose of the record is to prove at any time that the professional attended the duty of presenting proof at any time regarding the health care provided to patient within the principles preconized by odontological science. Furthermore,

the record represents the most important means of communication among the health team members who are responsible for the patient²⁵.

Its primary purpose is clinical, but it can also be employed as an investigation, which can be employed in specialized exam, as the case of human postmortem identification^{22,24} as well as enable juridical effects^{8,9}.

However, in order to elaborate and produce the expected legal results, it is fundamental that they are based on administrative, ethical, and legal requirements. A fault in this process can compromise its validity²⁶.

The Federal Council of Odontology (CFO) knowing of their importance and provides in their site a model that can be adapted to the reality of each professional. In the guidance form shown in the model, there is a clinical card that must contain the data of the professional and the patient – or the patient legal representative or spouse in the case of 18 year old minors or disabled⁹. The card represents a clinical, surgical, dental-legal document and public health²⁷.

Anamnesis must be clearly performed. It must be signed by the patient in order to attest the veracity of the information provided. Detailed annotation with regards to preexistent buccal conditions must be registered in odontogram charting for improved visualization. The treatment plan must specify the procedures to be performed, the technique and the material involved. It is important to be explicit in the document all the possible and indicated treatment options, so the patient perceives his/her autonomy in the choice of the option that adapts easily. Moreover, the patient has to sign a term of consent free and clarified (TCLE)⁹.

The treatment evolution, the intercurrents and the procedures concluded must be registered with minutia. Complementary exams such as radiographies, models and processed photographs labeled, identified and archived correctly⁹. Documents furnished to the patient, such as prescription and certificates must have copies duly signed by the patient, attached to his record²². A proper record must contain all the relevant information for treatment^{2,9,22,24}.

In addition to correct elaboration, there is the need to appropriate storage and protection of the record for undetermined period, in order to preserve the information^{8,9}.

DISCUSSION

The surgeon dentist professional responsibility involves the ethics, civil and penal spheres. The same act can provoke processes in only one of these spheres; in two of them; or even three¹⁵.

The civil instance is constantly moved to sue in order to solve these litigations, given that in this juridical sphere, the patient seeks direct personal advantage (indemnification) due to material or moral damage as the result of the dental treatment received^{5,7,15}.

However, it is not uncommon that dissatisfied patients recur to the council of ethics and criminal justice, even if no direct advantage is obtained in case the professional is condemned¹⁵.

It is worth distinguishing the instances that initially are independent and decisions in one of them don't necessarily imply with the same decision in another instance. However, there are exceptions in which there will be a bond between the instances, such as a condemnatory decision in the criminal civil process becomes a thing adjudicated in a case that has been decided (*res judicata*)¹⁵.

Among the norms established by CDC, the mechanism of inversion of the burden of proof stands out. It is a legal provision that facilitates the defense of consumers' rights. In general, the burden of proof in civil processes is owed to who alleged the fact²⁶.

In praxis, the process in which the patient accuses the dental surgeon to cause damage, it would be his burden of proof against the professional. Given the inversion of the burden of proof, the professional is obligated to demonstrate idoneousness and that he had worked within the professed legal and ethical principles²⁸.

As a matter of fact, given that it is the dental surgeon

duty to elaborate and keep updated the patient's records, he or she has means to prove what really happened during the odontological treatment. In this sense, the odontological record becomes the main instrument of defense of professional conduct by acting in good faith.

When the records are well elaborated, detailed and up-to-date, they display a committed, conscious and zealous professional, as well as the patient's collaboration or not to the treatment. On the other hand, records poorly structured, omissive, outdated, with obscured information, poorly preserved, professional is not protected; on the contrary, they can become a negative proof, revealing their negligence and disregard the patient.

CONCLUSION

The dental surgeons' comprehension of the odontology current scenario, the change of patient-professional relationship and the laws that guide the profession and the society in general, is essential for the good labor performance. The study of pertinent legislation showed that the dental surgeons must abide by moral principles and values, fulfill professional duties and commit themselves with adequate assistance to their patients. It was also shown that the professional is accountable to his acts and omissions, and can be the party defendant due to litigations in ethical, civil and penal spheres. Thus "defensible odontology" becomes a feature that is nothing but the adoption of safe labor practices, such as appropriate production of odontological documents, given that in the solution of conflicts it is common that the professionals have to prove their conduct. An appropriate record protects the professional, whereas faulty documentation compromises all the work performed and may result in your condemnation.

AUTHOR CONTRIBUTIONS

Almeida SM participated of the conception; delineation; search and analysis of research data, interpretation of results, redaction and routing of the scientific article. Delwing F e Assis MPS participated of data collection of the research, interpretation of results and redaction of the scientific article. Furtado FMS and Azevedo JAP participated in the conception; data search; research data; redaction and route of the scientific article.

COMPETING INTERESTS

No financial, legal or political competing interests with third parties (government, commercial, private foundation, etc.) were disclosed for any aspect of the submitted work (including but not limited to grants, data monitoring board, study design, manuscript preparation, statistical analysis, etc.).

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