

# Evaluation of Injury Cases for Dental Intervention Described in Legal Dentistry Reports

## Evaluación de Casos con Lesiones de Intervención Dental Descrita en los Informes Legales Odontológicos

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**ABSTRACT:** The dentist responsibility on dental interventions during the exercise of his/her activity guides in civil, ethical, administrative and criminal obligations. When a harmful result occurs on a patient whether by recklessness, malpractice and / or negligence, the examination of the injury can be ordered by a judicial authority and held at the expert level, thus making the dentist subject to the Brazilian Penal Code and its penalties. The dentist might be forced to repair the damage and compensate according to the caused consequence, based on the Civil Code, or both and may suffer a double action. With the increase of Dentistry-related processes, the focus of this research is to give greater visibility to the subject, emphasizing the ethical and legal aspects involved in professional practice. To meet this end, we carried out a survey on reports of maxillofacial injuries from the "Instituto Médico Legal Nina Rodrigues", Salvador-BA-Brazil, from January 2007 to December 2013, analyzing the data on the procedures performed, the reason for the expert's report and its result, the professional responsibility and the conclusion given by the expert. It was noticed that from the total of personal injury examinations made by dentists, most of the complaints are in the area of surgery (42.9%), followed by Endodontics and Orthodontics with 14.3% each, and in 96 % of cases involved one or more elements of professional liability and 47.4% were classified by experts as minor injuries. It is concluded that the increase in injuries lawsuits generated in service is due to the fact that the dentist does not take responsibility to protect himself/herself from poor results and to perform procedures without having the proper skill. It is therefore suggested, professional training for the acquisition of technical and scientific knowledge in their area, enabling them to act with utmost in care and professionalism.

**KEY WORDS:** dental care, maxillofacial injuries, forensic dentistry, claims analysis.

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## INTRODUCTION

Responsibility is required in the performance of its functions in all professions. In health area, interventions in the patient, even though aiming to rehabilitate, restore or prevent diseases, are subject to adverse effects. Health provider must then assume obligations on the treatment performed in order to protect a predictable result (Garbin *et al.*, 2006a). The failure of a procedure may be due three attitudes: negligence (passivity, omission or adverse behavior to that that should be taken); malpractice (lack of technical or scientific preparation for the conduct) and recklessness (hasty action without caution and

inconsequential). The results of these attitudes expose patients to risks that could be avoided by due care during service (Garbin *et al.*, 2006a, 2007).

Patients complaints and the search for damages compensation are becoming more frequent. In order to clarify the law, and to cooperate with the judicial labors, problems that are relevant, experts use a set of investigations for the assessment of the caused damages (Peres *et al.*, 2007). The criminal matters in Dentistry require verification of injury incidents in different tissues and maxillofacial complex structures,

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careful record of the treatment becomes critical to support future analyzes aimed at the resolution of legal issues (Garbin *et al.*, 2008).

Injury examination constitutes in one of the skills performed by the forensic dentist in the criminal context, within the Forensic Medical Center (Peres *et al.*). The final product of this expert examination is the report, which is the written and detailed account of all specific facts and permanent, related to a skill. The correct issuance of the report is essential for the proper prosecution of criminal cases, since errors in their description can lead to serious legal flaws (Garbin *et al.*, 2008).

The Brazilian Penal Code (BPC) specifies, in Article 129, the crime of bodily injury, which penalties vary according to the results caused by the production of the lesion. The results from dentomaxillar lesions described in BPC usually are associated with the inability to perform usual activities for more than thirty days; permanent debilitation of a member, sense or function; permanent incapacity for work, incurable disease; loss or member destruction, sense or function and permanent deformity (Presidencia da República, Brazil, 1940).

Literature is controversial regarding the evaluation of dental injuries. There are scarce discussions on the subject (Peres *et al.*). Given the increasing number of processes associated with procedures performed by dentists (Garbin *et al.*, 2009), this study aims to analyze the characteristics of descriptions of forensic dentistry reports of injury by professional dentists' action, the liability measured on the professional and the relationship established by official experts in their conclusions, among dental injuries and their results described in Article 129 of the BPC.

## MATERIAL AND METHOD

This is a retrospective, descriptive, quantitative, investigating study on all reports of injuries, a total of 3,600, issued by official forensic dentist experts, from 2007 to 2013 at the "Instituto Médico Legal" Nina Rodrigues - Salvador-BA. The inclusion criteria for this study were: reports describing injuries in professional action, dental character. Exclusion criteria were: reports caused by violence or accident and incomplete reports.

After consultation and careful analysis of the reports we extracted relevant information relevant to the process and tabulated as follows: i) Sociodemographic characteristics of the dentist and the patient; ii) Procedure performed by the professional; iii) Damage characterization and the resulting set by the expert according to the BPC and iv) Professional responsibility categorized according to the CCB.

Identification and characteristics of professionals and patients have been specified in each analysis: dentist (sex, education and work) and patient (sex, profession, marital status, age, place of birth and residence), in order to know the profile for surgeons and patient complaints of professional conduct.

At the conclusion of the expert report, indicating whether or not, resulted in dental injury, according to the interpretation of the expert, the resulting injuries were coded as: LIGHT - lesions that do not cause any of the results described as serious or very serious; GRAVE - inability to perform usual activities for more than 30 days and / or permanent debility of a member, sense or function; VERY GRAVE - permanent deformity and NO FEATURE - for cases not completed by the experts, for not affirming or denying elements if the damages were related to injury presented, as well as for those who were not admitted as personal injury. The description of the injury is related to the characteristic elements of professional activity, according to the civil liability of dentists, founded by the theory of the Civil Code of guilt, derived from negligence, malpractice or recklessness.

All terms of this study are in accordance with the required ethical criteria and with due consent of the board of the "Instituto Médico Legal" Nina Rodrigues, Salvador - BA. For data analysis, we used the statistical software Epi Info version 3.5.2.

## RESULTS

After evaluating 3,600 reports, using the inclusion and exclusion expected criteria in the methodology; we selected 35 cases that met the sample criteria.

The criminal reports did not expose detailed information about the claimed dentists, however, it was possible to detect that most dentists involved were male (n= 22), as for their specialty, there was a highest

percentage for the general practitioner, and his employment was higher in the private sector (Table I).

As for the procedures performed, we identified that the Oral and Maxillofacial Surgery is the most affected, totaling 42.9% of cases; followed by Endodontics and Orthodontics with 11 reports each, corresponding to 14.3%; Implant with 11.1%; Prosthodontics with 8.7%; Dentistry with 5.8% and 2.9% with Periodontics (Fig. 1).

Regarding the characteristic of the complainants, it was identified that most patients (65.7%) were male; the average age was 35.7 ranging from 10–75 years, with the prevalence of 86% of adults, according to the categories of WHO, with predominant single marital status and employees of private companies. As for the location of the residence, there was the prevalence of peripheral neighborhoods with 63% (Table II).

The relationship of one or more pictures of professional responsibility was made with the description of the lesions, as being negligence, recklessness, malpractice or any irregular attitude of professionals. Of the 35 cases, the recklessness element prevailed with 26%, followed by 14% with malpractice and negligence with 11%. Combinations in some cases, we had the presence of figures: malpractice + negligence, recklessness + negligence and malpractice + recklessness with 12% each; a single case who committed three errors as the responsibility (2%); and finally, four cases (11%), which were not judged as an irregularity (Table III). The descriptions of the lesions, paresthesia and tooth loss were significantly expressed in almost 30% of cases. Depending on the specifics of each case, it is possible

to identify the lesions affected by dentists relating to tooth loss, excessive wear of tooth substance and paresthesia, have different conclusions in similar cases, the lack of agreement among the experts of the office may be explained by the importance given to the affected region, functional, aesthetic or chewing.

Among the injured regions, we identified: molars in 40% of cases, anterior teeth in 12.5%, premolars in 15% and eight other regions resulted in a total of 32.5% of cases. The hard tissues were the areas most affected by the 84% of injuries, consequently, there was no need to categorize the lesions in other tissues (Table IV).

As for the damages caused to the patient generated by occupational injury, 22 cases (62.8%) characterize to be damaged; 1 case (2.9%) did not infringe the patient and 12 cases (34.3%) were hampered because according to the experts, there were no elements to affirm or deny the condition found at the time of the forensic examination.

The following data were obtained as result of experts interpretations regarding the types of injuries: Minor lesions 45.7%; Serious injury (permanent weakness of member, sense or function or inability to perform usual activities for more than 30 days) 14.3%; threatening injuries (permanent deformity) with 2.9%, cases that have not been categorized as lesion with 3.1%. Those who had their suboptimal outcome, it refers to those that were not open to interpretation by the lack of additional tests or that the collected information on expert examination could not affirm or deny that the lesion corresponded to a trauma caused by professional action or a previous commitment, corresponding to 34% (Fig. 2).

Table I. Socio-demographic characteristics of dentist.

Variable	n	%
Gender Female	5	14
Male	22	63
Not Specified	8	23
Education General Dentist	19	54
Specialist Dentist	13	37
Not Specified	3	9
Services Private	27	77
Public	3	9
Not Specified	5	14

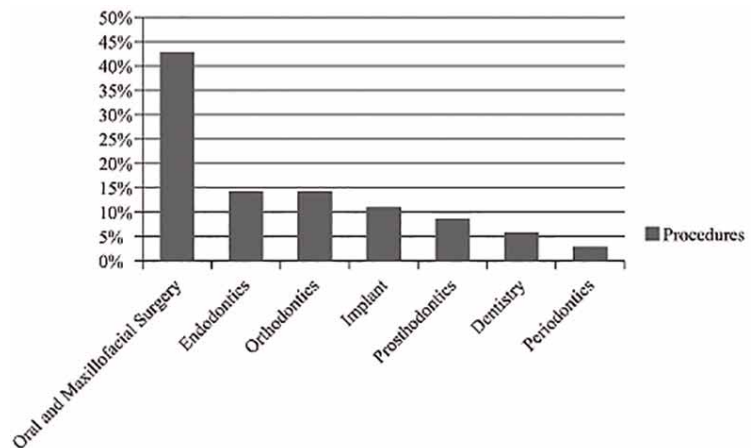


Fig. 1. Procedures performed by the professional.

Table II. Socio-demographic characteristics of the patients.

Variable	n	%
Gender Female	13	37
Male	22	63
Age 0-9 (Children)	---	---
(Teens)	4	11
20-59 (Adults)	30	86
60 or more (Elderly)	1	3
Marital Status Married	12	34
Single	23	66
Residence Center	7	20
Periphery	22	63
Another city	6	17
Occupation Retired	2	6
Autonomous	8	23
Unemployed	1	3
Student	6	17
Private Employee	11	31
Civil Servant	4	11
Uniformed	3	9

Table III. Classification of responsibility as the injury caused.

Classification	Amount
<b>Malpractice</b>	<b>5</b>
Mobility	2
Paresthesia	1
Tooth loss	1
Oroantral communication and trismus	1
<b>Malpractice and recklessness</b>	<b>4</b>
Oroantral communication and rinorrhagia	1
Laceration gingival and mobility	1
Paresthesia	2
<b>Malpractice, recklessness and negligence</b>	<b>1</b>
Rinorrhagia, fractured alveolar bone and perforated palate	1
<b>Recklessness</b>	<b>9</b>
Substance of dental wear	5
Paresthesia	2
Tooth loss	1
Ulceration	1
<b>Negligence</b>	<b>4</b>
Tooth loss	1
Resorption root	1
Ulceration	1
Alveolitis	1
<b>Negligence and malpractice</b>	<b>4</b>
Abrasion and rest root	1
Bone mandibular exposed, trismus and malocclusion	1
Trismus and injury biting	1
Ulceration	1
<b>Negligence and recklessness</b>	<b>4</b>
Tooth loss	3
Ulceration and erythema	1
<b>Any irregular attitude</b>	<b>4</b>
Without injury	4
<b>Grand Total</b>	<b>35</b>

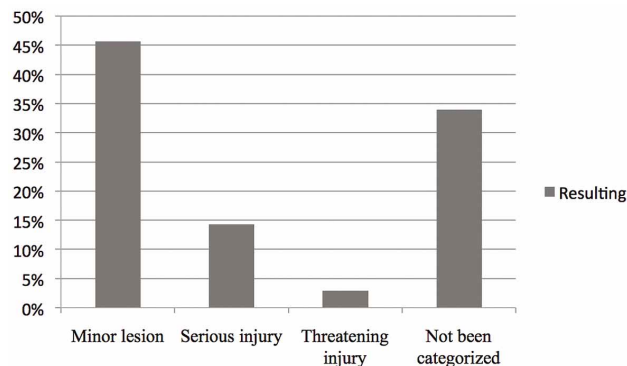


Fig. 2. Resulting generated by injury.

Table IV. Regions damaged.

Region	Tissues	%
Anterior teeth	Hard	12.5
Premolars teeth	Hard	15.0
Molar teeth	Hard	40.0
Other	Soft and Hard	32.5
Total	---	100.0

## DISCUSSION

The increase and the frequency of lawsuits against the dentists are related to various problems, such as getting faster care and lack of professional responsibility. Getting to know the professional and patient profiles involved on it becomes important because it allows evaluating the incident factor in the occurrence (Hashemipour *et al.*, 2013; Kiani & Sheikhzadi, 2009; Santos Pacheco *et al.*, 2014).

In this survey, it was observed that the male-dentists were the most involved in legal proceedings, a similar situation found in the work of Santos Pacheco *et al.* The knowledge gained in academic education of the dentist in the dentistry course allows him/her to have science of various specialties, however, he must opt for the higher affinity area by choice. In the profession, according to Article 7 of Law 5,081 / 66 (Presidencia da República, Brazil, 1966), the professional may exercise two specialties, which unfortunately does not happen, many

venture to perform complex procedures, even knowing his/her limitations.

In this study, the specialty referred in the analysis is on the performance of the dental surgeon, not meaning that he/she has expertise in the area, only categorizing according to the procedure performed. By taking the responsibility in the attendance, the professional must have technical and scientific preparation in the area in order to avoid mistakes. This study identified that 54.3% of dentists were generalists, which did not stop them from acting in procedures, requiring greater skills and knowledge.

An eleven year retrospective study in Brazil (Santos Pacheco *et al.*), reported that followed by the general practitioner, orthodontics specialty was the most involved in lawsuits. Two studies conducted in Iran (Hashemipour *et al.*; Kiani & Sheikhezadi), brought differences in the outcome of the involved procedure, they reported a higher number of cases in Endodontics and Prosthodontics, respectively. The Endodontics, Orthodontics and Prosthetics bring a greater number of legal complaints, as they are prone to a higher expectation of the patient in rehabilitation and aesthetics, and any failure notoriously triggered and claimed.

In this study it was observed the predominance of surgery (42.9%), because it is a more invasive nature of the procedure, which provides complications in the course of their practice and injury causes. We also analyzed, which few experts justify its conclusion based on the literature, of the 35 cases examined, only two reports were justified. So without scientific backing in each specific area, 37.1% of the reports were not completed due to lack of documentation and the expert to justify the absence of evidence to evidence whether it was an injury caused by professional intervention or not according to what was claimed by the patient.

Although the number of cases is different in different countries and cities, such as Iran and Cairo (Hashemipour *et al.*; Kiani & Sheikhezadi; Azab, 2013) both in medical and dental practice most cases are part the private sector.

As for the patients, men (65.7%) are the ones who show most lesion complaints, more than women. A similar case to that result is a study conducted by Kiani & Sheikhezadi, in Tehran, where the percentage found was 70%. This can be explained by the fact that men have greater potential for complaint when facing

service failure situations. It was found that 77.1% of patients were single, although not a significant data, the interpretation refers to single patients, most looking for aesthetic and health care.

In all major cities, the Forensic Medical Institute and the Medical and Dental Councils are sought not only by local patients, but also for others of other regions; these due the lack of structure in the city where they live or their belief in a larger center will have greater support and guarantee their rights. Situation confirmed by the naturalness of the patients, although most are locals, there are many cases of non-regional patients (Hashemipour *et al.*; Kiani & Sheikhezadi).

In this study, 62.9% of the patients lived in the periphery; taking into account that we had the urban center and other region variables, this issue is significant and can be attributed to the large number of popular private practices in the locations that offer low-cost services, but of dubious quality.

The Brazilian Civil Code contains rules on the relationship between the interests in general, among these standards, some are of specific character. The art.186da Law 10,406 / 02 provides that dentists are required to repair the damage generated by professional errors led by recklessness, negligence or malpractice injuries. The distribution of dentists by the liability figures were classified and analyzed by the authors, in a quantitative approach, as negligence, recklessness, malpractice or any irregular professional's attitude, of the 35 cases analyzed, the recklessness element prevailed with 26%.

In Brazil, the conclusion of the expert report of injury, is classified according to the result described in the Brazilian Penal Code (BPC). This typifies in Article 129, the crime of bodily injury, whose penalties vary according to the results caused by the production of the lesion. Analyzing the classification of lesions with the resulting established by Article 129 and judged at the conclusion in the study expert reports, the light result was the highest with 45.7% of cases, in any order: negligence, recklessness or malpractice.

The criminal classification of maxillofacial injuries is a very controversial subject, when these relate to dental interventions, there is a consensus among experts in order to classify them in the item corresponding to no result, that is light bruise, not having generated inability ordinary duties for 30 days, permanent weakness of member, sense or function or

permanent deformity; what was found in report analysis, to be justified as insusceptible situations happen in dental care. However, the maxillofacial injuries related to teeth, generate conflicts as its criminal classification (Azab).

It is noteworthy, and must be kept in mind that the teeth have many functions, which are, chewing, aesthetics, phonetics and social, so you can classify them correctly. It is important to correctly analyze the craniofacial fractures and disjunctions, which can cause damage: directly, indirectly, mediate or immediately, as well as describe the damage that will be temporary and that which will remain (Hesham, 2013). The loss of anterior teeth, have all the characteristics to fit them as permanent deformity (aesthetic, visible, not repairable course). However, there are several conclusions to similar cases, as reported by da Silva *et al.* (2009) for a case in which avulsion of two anterior teeth in a woman with previous battery lip (top and bottom) complete was classified as serious injury, and therefore excluded the possibility of deformity. Garbin *et al.* (2006b), analyzing injuries in female victims of domestic violence report that the doctrine provides very serious injury if it results "in loss or member, sense or function, or permanent deformity" and ratify be what just occurs with loss of dental elements.

Differences in the report results are likely to occur, since the individual and specific characteristics of each expert always exist and may justify different result. However, no correlation is observed that at present in this endeavor should not occur, and this is of concern, in as much as legal penalties, lighter or more serious, can be attributed to similar lesions, depending on the expert that evaluates them; bringing the importance of being prepared specific questions for criminal reports for dental work (Curley, 2011). In this sense, Garbin *et al.* (2008), states that the correct issue is essential for the proper handling of criminal cases, once your correct completion makes it easier the interpretation, discussion and conclusion of an expertise.

If there were parameters to be followed for the evaluation of damage caused in the stomatognathic system, taking into account the Brazilian Penal Code, and also, the mandatory forensic dentist's presence in IMLs throughout Brazil, there would be no doubt about the framework of dental injuries, among all professionals concerned, directly linked to processes. These facts would bring benefits to the victim, who

would have his/her damage properly qualified, and contribute to the smooth running of the process, becoming the starting point for a civil repair (Gulati *et al.*, 2012).

## CONCLUSION

In this study, we found that most injuries are impaired in procedures that require competence in the specialty, and that generally, interventions are performed by general professional. Some professionals who work in health care in an expanding service offering, however, in most of the cases, do not bother to take specialization courses in their fields, but also ignore the general ethical and specific legal rules, which regulate the profession.

The dentists have an obligation to act safely, properly and professionally in treating their patients. Their activity requires ethical and moral responsibilities that must be met under the law. It is noticed that caution is essential for dental care, so that they are not prosecuted by the injury generated in services.

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**RESUMEN:** La responsabilidad del dentista acerca de las intervenciones dentales realizadas en el ejercicio de sus actividades tienen responsabilidades civil, ética, administrativa y penal. Cuando se prueba que un resultado es perjudicial para el paciente, por imprudencia, *mal praxis* o negligencia, el examen de la lesión puede ser ordenado por una autoridad judicial y se analiza por peritos, haciendo que el dentista este sujeto a las sanciones previstas en el Código Penal brasileño, siendo forzado a reparar el daño e indemnizar de acuerdo a la consecuencia causada, con base en el Código Civil, o ambos, pudiendo sufrir una doble acción. Debido al incremento de los procesos legales relacionados con la odontología, el objetivo de esta investigación es dar mayor visibilidad al tema, haciendo hincapié en los aspectos éticos y legales relacionados con la práctica profesional. Para ello, llevamos a cabo un estudio de los informes odontológicos legales de lesiones maxilofaciales en el Instituto de Medicina Legal Nina Rodrigues, Salvador-BA-Brasil, durante los meses de enero 2007 a diciembre 2013. Se analizó la información de los procedimientos realizados, la razón para el informe del perito y su resultados, la responsabilidad profesional y la conclusión propuesta por el peritos. Se encontró que del total de exámenes por injurias a pacientes, la mayoría correspondió al área de cirugía

(42,9%), seguido por endodoncia y ortodoncia con 14,3% en cada uno; en el 96% de los casos se involucraron uno o más elementos de responsabilidad profesional, siendo el 47,4% clasificados por los peritos como lesiones menores. Se concluye que el aumento de los litigios por lesiones generadas por la atención odontológica se deben a que el dentista no toma responsabilidad sobre los malos resultados y realiza procedimientos sin tener la habilidad adecuada. Se sugiere realizar una adecuada formación profesional para la adquirir los conocimientos técnicos y científicos de cada área (especialización), lo que permitiría actuar con el máximo cuidado y profesionalismo

**PALABRAS CLAVE: cuidado dental, lesiones maxilofaciales, odontología forense, análisis de reclamos.**

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