

# Civil liability of dentists based on reports filed to the Regional Council of Dentistry

Neusa Barros Dantas Neta<sup>1</sup>, Priscila Ferreira Torres<sup>1</sup>, Luciana Tolstenko Nogueira<sup>2</sup>,  
Carmem Milena Rodrigues Siqueira Carvalho<sup>3</sup>

<sup>1</sup>Undergraduate dental student, School of Dentistry, Federal University of Piauí, Brazil

<sup>2</sup>Substitute Professor, School of Dentistry, Federal University of Piauí, Brazil

<sup>3</sup>Professor, School of Dentistry, Federal University of Piauí, Brazil

## Abstract

Civil liability is the obligation to repair the damage that one causes someone else. Dentists must respect legal precepts and comply with the Consumer Protection and Defense Code. In order to prevent legal action, it is important to communicate with the patients and/or their caregiver. **Aim:** The goal of this study was to assess the number of dentists living in the city of Teresina-PI and in some other capitals of the northeastern Brazil as well as the number of reports filed against dentists to the Regional Council of Dentistry (CRO) between 2002 and 2009. **Methods:** This was a cross-sectional descriptive study conducted in the city of Teresina, located in northeastern Brazil, with an estimated population of 802,537 inhabitants. In 2009, 1,938 dentists were registered at the CRO - Piauí, 1,239 of whom belonged to the city of Teresina. The number of reports filed against dentists is presented, using a comparative description of the data by dental specialty and states in northeastern Brazil. **Results:** Data collection showed that 70 complaints were registered. The majority were against orthodontists (N=16), regarding advertising (N=15) and regarding administrative, ethical or service violation (N=15, 11 of whom were dentists who worked in a non-registered practice). **Conclusions:** The number of reports filed against dentists has decreased in Piauí, unlike other states. However, professionals must be aware about communication with the patient and archiving of dental charts and treatment-related documents or exams.

**Keywords:** civil liability, code of ethics, code of consumer protection, obligation of the dentist.

## Introduction

Civil liability is the obligation to repair the damage that one causes someone else. This is a topic of growing importance in the Brazilian law<sup>1</sup> because of the obligation to repair the damage to someone else by the person who has the duty to ensure or enforce a certain order<sup>2</sup>.

As dentists provide a service to consumers, they must respect legal precepts and comply with the Brazilian Consumer Protection and Defense Code. They must have care and concern for their work and, whenever a mistake is made, they must have liability to repair the damage, respond to lawsuits and are forced to reimburse the patient<sup>3</sup>. In order prevent these civil actions, it is important to communicate with the patients and/or their legal guardian, as well as prepare, approve and safeguard all documentation, describing the treatment plan and the risks, benefits and costs of the treatment that was carried out<sup>4</sup>.

Received for publication: October 19, 2010

Accepted: May 09, 2011

**Correspondence to:**

Neusa Barros Dantas Neta

Quadra 196 casa 06 – Conjunto Dirceu

Arcoverde 2, 64078120 Teresina, PI, Brasil

E-mail: nbdn2@msn.com

The aim of this study was to assess the number of dentists living in the city of Teresina and in some other capitals of the northeastern Brazil as well as to identify the number of reports filed against dentists to the Regional Council of Dentistry (CRO) between 2002 and 2009.

## Material and methods

This study was a cross-sectional descriptive investigation conducted in the city of Teresina, capital of the state of Piauí (PI), located in northeastern Brazil, with an estimated population of 802,537 inhabitants<sup>5</sup>. In 2009, 1,938 dentists were registered at the CRO - Piauí, 1,239 of whom belonged to the city of Teresina<sup>6</sup>. The number of reports filed against dentists is presented using a comparative description of the data by dental specialty and states of the northeastern region of Brazil. These data were collected by the Regional Council of Dentistry (CRO) in the states of Piauí (PI), Ceará (CE), Rio Grande do Norte (RN) and Paraíba (PB) regarding the period between 2002 and 2009.

This study complied with the guidelines of Brazilian National Health Council's Resolution No. 196/96 and was approved by the Ethics Committee of the Federal University of Piauí.

## Results

There were records of 70 reports against dentists between 2002 and 2009. Among these, most were against orthodontists (16 reports), followed by irregular advertising (15 reports) and management /ethical/service infraction (15 reports, 11 dentists working at unregistered clinics) (Table 1).

Table 1 shows a comparison of data from CRO-PI and CRO-RN regarding the motivation of reports and involved dental specialties, revealing that most complaints referred to orthodontics, illegal advertising and management /ethical/service infraction.

According to data provided by the CRO-CE and CRO-

RN, there were 205 and 232 reports, respectively between 2002 and 2009. Fifty-one reports were filed against dentists to the CRO-PB between 2002 and 2007 (it was not possible to collect the data from 2008 and 2009).

## Discussion

The dentist is a professional whose obligation is to relieve the patient's pain, treat and restore teeth as well as to provide full information on preventive measures and behaviors in order to prevent future diseases. Unrestorable teeth should be extracted and an adequate treatment plan should be outlined. However, the dentist must still respect the patient's esthetics and only carry out such a procedure after proper communication. The dentist undertakes the obligation to be effective and achieve a result without harming the patient<sup>7</sup>.

Patients wish for a comfortable and warm interaction with their dentist, and believe that the dentist is competent and keeps them informed about their oral conditions and the treatment to be carried out. When these wishes are not met, the patient becomes disappointed, discontented, and uncooperative with the dentist's decisions<sup>8</sup>. It is therefore important for the dentist to know the patient's expectations in order to achieve the best possible outcomes<sup>9</sup>.

For a better understanding of civil liability, one must first understand the type of obligation that such professionals undertake when providing services. There are two types of obligations: obligations of means and obligation of outcome. The obligations of means are those in which the dentist must use of their technical skills and personal ability to achieve a specific goal. However, this obligation is not related to the final outcome of the activity, i.e., the dentist is committed to act with fairness, correctness, prudence, dedication and technique, but he/she cannot guarantee the outcome<sup>10</sup>.

The dental specialties traumatology and oral and maxillofacial surgery, endodontics, pediatric dentistry, periodontics, orthodontics, oral and maxillofacial prosthetics, stomatology, temporomandibular dysfunction and orofacial pain, labor dentistry, special care dentistry, geriatric dentistry and functional orthopedics of jaws are considered obligation of means. However, specialties such as restorative dentistry, community health dentistry, forensic dentistry, oral pathology, and radiology are seen more as obligation of outcome.

The dentist is not liable only in cases of harmful acts that occur due to a fortuitous event or force majeure, excusable error, state of science, patient's fault, or if the dentist acted without fault and in accordance with all standards that rule the profession<sup>11</sup>. However, when the dentist commits an unlawful act, then he/she will be subject to sanctions imposed by the Code of Dental Ethics<sup>12</sup> in the Criminal Code, the Civil Code<sup>13</sup>, Consumer Protection and Defense Code<sup>14</sup> and the Regulations of Governing Bodies or Institutions where they are working<sup>15</sup>.

The dentist cannot be assumed guilty without there being a correlation between the injuries suffered by the patient. There must be a proof of professional liability<sup>16</sup>. One can

**Table 1.** Number of reports against dentists in northeastern states of Piauí and Rio Grande do Norte distributed by motivation of reports and involved dental specialties, corresponding to the period between 2002 and 2009, Brazil.

Motivation of reports/Dental specialty	Piauí	Rio Gde do Norte
Orthodontics	16	67
Endodontics	4	6
Illegal Advertising	15	67
Oral and maxillofacial surgery	9	9
Implants	4	22
Management / Ethical/ Treating Infraction	15	19
Prosthodontics	1	19
Restorative Dentistry	0	13
Medical Certificate	0	4
Radiology	1	0
Total	52	164

then conclude that if the professional fails to inform the patient about the risks of a surgery, the dentist will be obliged to compensate for the patient in the case of any sequela regardless of whether or not being diligent in carrying out the surgical procedures because knowing the risk in anticipation could contribute to the patient's decision on undergoing or not surgery<sup>17</sup>.

In Brazil, there are 222,203 dentists, according to the Federal Council of Dentistry. Therefore, they are all subject to liability, which consists of the duty to repair the damage done to the patient, and compensation for the caused damage. Currently, there has been an increase in Brazil in the number of people who seek their rights by filing reports against dentists at the CROs and even at Law Courts. This was the reason why we decided to assess the number of reports filed against dentists to the CRO in the northeastern states of Piauí, Ceará, Paraíba and Rio Grande do Norte, obtaining number of 1,825; 4,677; 3,087 and 2,558 respectively.

Figure 1 shows that the number of lawsuits has increased, but not only because of dentists. This increase was also due to the changes in patient's behavior. Formerly, dentists were considered as the holders of knowledge and their ability was above suspicion. Nowadays, people better knowledge of their rights due to the advent of the Consumer Protection and Defense Code and Civil Code, and they understand that the dentist is a human being capable of making mistakes.

Orthodontics was the dental specialty with the largest number of reports in this study. This is because orthodontic treatment corrects malocclusion and aims to improve the function and esthetics of patient's teeth. However, not all of patient's expectations are known by the dentists, and this sometimes precludes proper planning based on the wishes of the patient and on the real treatment possibilities.

Illegal advertising was the second most frequent reason for complaints. It can cause a dentist trouble if he/she does not clearly inform the patient about the possible outcomes

of treatment. The Consumer Protection and Defense Code provides a penalty of 1 to 3 years imprisonment and fines for misleading advertising or omission when the dentist fails to report essential information about the product or service<sup>13</sup>.

Another specialty with a large number of lawsuits was prosthodontics. One of the reasons may be the fact that the patient attends only the appointment to receive the prosthesis and does not return for reassessments.

On the basis of the obtained results, it may be concluded that although the number of reports against dentists is still large, it is currently in decline, especially in Teresina-PI when compared with the other states surveyed. It is known that dentists have obligations and must respond legally for their errors. Thus, to prevent possible problems, dentists must take responsibility for their actions from the beginning of service: before reaching a diagnosis, a form should be filled out with the patient's identification, the anamnesis (a questionnaire about the patient's condition), the general physical examination and complementary dental examinations in order to have an overall assessment and discover any conditions which might interfere with the treatment. After doing this, a final diagnosis can be reached and the patient should receive an explanation about the treatment options and the prognosis.

Communication between the professional and the patient is of paramount importance and therefore a relationship based on confidence and trust must be established for the success of treatment. Dentist must also be aware of the patient's expectations and create the most appropriate treatment plan. Some advices are worth following:

- Information about treatment should be passed on to the patient, always in writing, supported with technical reports and with the consent (signature) of the patient.
- Dentists must file and record any procedure that is carried out on the patient.
- Dentists should invest in their education and improvement of skills, keep themselves well informed and always bear in mind their role as a health professional.

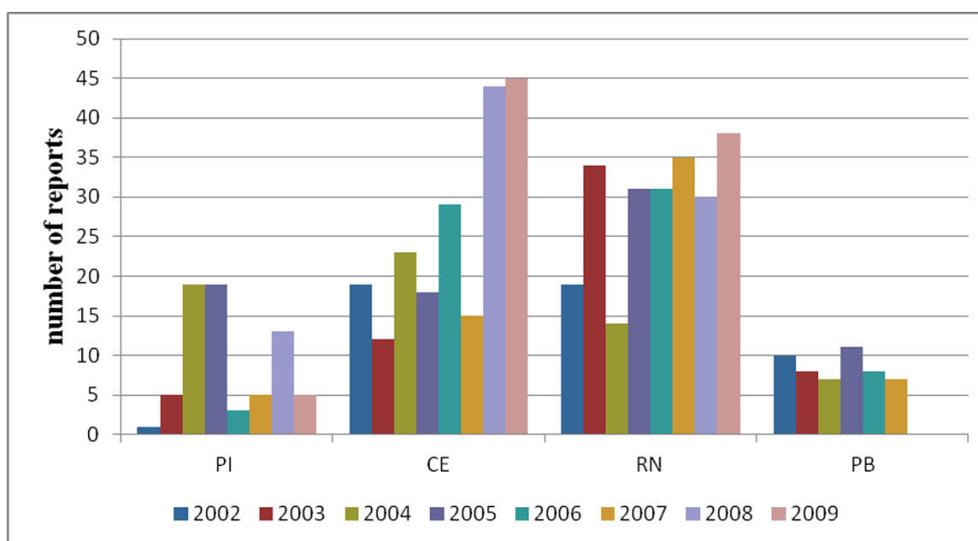


Fig. 1: Number of reports against dentists in some cities of the northeast regions of Brazil for the period between 2002 and 2009. Analysis of the liability of dentists based on reports filed to the Regional Councils of Dentistry.

## References

1. Willemann C. A responsabilidade civil do cirurgião dentista não-autônomo nas situações de emergência das atividades hospitalares. Teresina: Rev Jus Navigandi. 2002; 6(58). Available from: <http://jus.uol.com.br/revista/texto/3129/a-responsabilidade-civil-do-cirurgiao-dentista-nao-autonomo-nas-situacoes-de-emergencia-das-atividades-hospitalares>. [Access 2011 May].
2. Barbosa FQ, Arcieri RM. A responsabilidade civil do cirurgião-dentista: aspectos éticos e jurídicos no exercício profissional segundo odontólogos e advogados da cidade de Uberlândia-MG. Minas Gerais: Revista do CROMG; 2005 Available from: [http://www.buscalegis.ufsc.br/arquivos/Cr\\_100707\\_25.pdf](http://www.buscalegis.ufsc.br/arquivos/Cr_100707_25.pdf). [Access 2011 May].
3. Maciel SML, Xavier YMA, Leite PHAS, Alves PM. A documentação odontológica e a sua importância nas relações de consumo: um estudo em Campina Grande – PB. Pesq Bras Odontoped Clin Integr. 2003; 3: 53-8.
4. Rodrigues CK, Shintcovsk RL, Tanaka O, França BHS; Hebling E. Responsabilidade civil do ortodontista. Maringá: Rev Dent Press Ortodon Ortop Facial. 2006; 11: 120-7.
5. IBGE. Instituto Brasileiro de Geografia e Estatística. Informações estatísticas Available from: <http://www.ibge.gov.br/estadosat/perfil.php?sigla=pi>. [Access 2010 Feb].
6. Conselho Federal de Odontologia. Distribuição dos profissionais e entidades por município no Brasil Available from: <http://www.cfo.org.br/index.htm>. [Access 2009 Feb].
7. Romanello Neto J. A responsabilidade civil do odontologista. Rev TEMA; 2007 49: 34-49.
8. Mori AT. Expectativas com relação aos resultados estéticos dos tratamentos odontológicos [dissertation]. São Paulo: Faculdade de Odontologia da USP; 2003.
9. Godoy LP, Zenckner CL, Ansj AP. Percepção da qualidade dos serviços de odontologia. In: Anais do XXV Encontro Nacional de Engenharia de Produção. Porto Alegre: ENEGEP; 2005.
10. Souza NTC. Odontologia e responsabilidade civil. Porto Alegre: Rev Jus Vigilantibus; 2006 Jun. Available from: <http://jusvi.com/artigos/21464> [Access 2009 Jan].
11. Ferreira, KG. Algumas considerações sobre a responsabilidade civil do ortodontista. Rio Grande: Rev. Âmbito Jurídico, 2004 Available from: [http://www.ambitojuridico.com.br/site/index.php?n\\_link=revista\\_artigos\\_leitura&artigo\\_id=3971](http://www.ambitojuridico.com.br/site/index.php?n_link=revista_artigos_leitura&artigo_id=3971) [Access 2009 Feb].
12. Conselho Federal de Odontologia. Código de Ética Odontológica. Rio de Janeiro: CFO. Available from: [http://cfo.org.br/wp-content/uploads/2009/09/codigo\\_etica.pdf](http://cfo.org.br/wp-content/uploads/2009/09/codigo_etica.pdf). [Access 2011 May].
13. Lei nº 10.406, de 10 de janeiro de 2002. Available from: <http://www.receita.fazenda.gov.br/legislacao/leis/2002/lei10406.htm>. [Access 2011 May].
14. Lei nº 8.078, de 11 de setembro de 1990. Código de Defesa do Consumidor Available from: <http://www.codigodefesaconsumidor.com>. [Access 2011 May].
15. Caixeta FCTA. Da responsabilidade civil do cirurgião-dentista. Available from: <http://www.webartigos.com/articles/8740/1/da-responsabilidade-civil-do-cirurgiao-dentista/pagina1.html>. [Access 2008 Set 25].
16. Pereira W. A responsabilidade civil do cirurgião dentista em face ao Código de defesa do consumidor [trabalho de conclusão de curso]. Uberlândia: Universidade Federal de Uberlândia; 2006.
17. Lima, MR. Responsabilidade profissional. In: Pitta GBB, Castro AA, Burihan E, editors. Angiologia e Cirurgia Vasculiar: guia ilustrado. Maceió: UNCISAL/ECMAL & LAVA; 2003 Available from: [http://www.lava.med.br/livro/pdf/marcia\\_responsabilidade](http://www.lava.med.br/livro/pdf/marcia_responsabilidade). PDF. [Access 2009 Jan].