

## The correct completion of the dental record and its role in legal proceedings

O correto preenchimento do registro odontológico e seu papel no processo judicial

El llenado correcto del registro dental y su papel en los procesos judiciales

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### **Abstract**

The dental record is the essential document that must contain essential patient information that can be used as evidence of civil actions involving dental surgeons. Objective: to illuminate the importance of dental documents for the resolution of judicial issues. Methodology: This is a narrative literature review on the Google Scholar platform, on the website of the Constitution of the Federative Republic of Brazil and the Federal Council of Dentistry. Results: A way to prevent legal problems caused during dental treatment. Furthermore, it is necessary for the dental surgeon to correctly fill in the medical record, in order that this information can be used as judicial evidence. Conclusion: The growing number of civil lawsuits filed against dental surgeons is the result of the commercialization of dental work, and it is therefore important that these professionals prevent themselves, through the correct filling of dental documents, and are aware of their rights and duties.

**Keywords:** Forensic dentistry; Civil liability; Literature review.

### **Resumo**

O prontuário odontológico é o documento indispensável que deverá constar informações essenciais do paciente que podem ser utilizadas como prova de ações civis envolvendo cirurgiões dentistas. Objetivo: iluminar sobre a importância dos documentos odontológicos para a resolução de questões judiciais. Metodologia: Trata-se de uma revisão de literatura narrativa na plataforma Google Acadêmico, no site da Constituição da República Federativa do Brasil e do Conselho Federal de Odontologia. Resultados: Uma maneira para prevenir problemas judiciais ocasionados durante o tratamento odontológico. Para mais, é necessário que o cirurgião dentista preencha de forma correta o prontuário tendo em vista que essas informações podem ser utilizadas como provas judiciais. Conclusão: O crescente número de processos civis movidos contra cirurgiões dentista é o resultado da mercantilização do trabalho odontológico, sendo dessa forma de sua importância que esses profissionais se previnam, por meio do preenchimento correto dos documentos odontológicos, e estejam cientes dos seus direitos e deveres.

**Palavras-chave:** Odontologia legal; Responsabilidade civil; Revisão de literatura.

### **Resumen**

El registro odontológico es el documento esencial que debe contener información esencial sobre el paciente que puede ser utilizado como prueba de acciones civiles que involucran a los dentistas. Objetivo: arrojar luz sobre la importancia de los documentos dentales para la resolución de problemas legales. Metodología: Se trata de una revisión narrativa

de la literatura en la plataforma Google Scholar, en el sitio web de la Constitución de la República Federativa de Brasil y del Consejo Federal de Odontología. Resultados: Una forma de prevenir los problemas legales ocasionados durante el tratamiento odontológico. Además, es necesario que el odontólogo llene correctamente la historia clínica, considerando que esta información puede ser utilizada como prueba legal. Conclusión: El creciente número de demandas civiles presentadas contra los cirujanos dentistas es el resultado de la mercantilización del trabajo odontológico, por lo que es importante que estos profesionales se protejan completando correctamente los documentos odontológicos y siendo conscientes de sus derechos y deberes.

**Palabras clave:** Odontología forense; Responsabilidad civil; Revisión de literatura.

## 1. Introduction

The dental record is an indispensable document that must contain essential information about the patient that will be essential for the elaboration of their treatment plan. This documentation will contain the odontogram which is the record in which each dental element is found, photographs, models, copies of certificates, copies of prescriptions, details of the procedures performed, and materials used. (Silva et al., 2016).

As the Dental Code of Ethics states in chapter VII, art. 17, the dental record must be kept up-to-date and legible, and it is the dentist's obligation to prepare this documentation, including keeping it in its own file by physical or digital means. (CEO, 2012)

Therefore, improperly completed medical records and the lack of attached documents expose the professional to civil or criminal liability, in addition to making it difficult to build his defense, so it is necessary that they be filed with complementary exams to protect them legally. (De Lacerda et al., 2020)

Among the penalties related to dental documentation, it is an ethical infraction to deny access to the clinical record for the patient, not to certify acts performed when requested, to issue documents without having performed the professional act, to sell documents, to use prescriptions from public institutions, the same being verified in private office, among others. (CEO, 2012)

The legal exercise of dentistry is regulated by law 5.081/66, which states the permission of the dentist qualified by recognized schooling, after registration of the diploma in the National Service of Dental Inspection and registration in the Regional Council of Dentistry. (Brazil, 1966)

In view of the importance of dental documentation as supporting arguments in civil proceedings involving Dental Surgeons, the aim of this study was to shed light, through a narrative review of the literature on official and scientific documents, on the importance of these records by professionals for resolving dental problems legal issues.

## 2. Materials and Methods

Trata-se de uma revisão de literatura narrativa de acordo com o que é preconizado por Rother (2007), na plataforma Google Acadêmico para verificar os periódicos sobre o tema exatamente. Além de realizar uma consulta no site da Constituição da República Federativa do Brasil e do Conselho Federal de Odontologia para pesquisar as leis que regulamentam o exercício da profissão e identificar os direitos e deveres da classe odontológica.

Foi realizado levantamento bibliográfico no período de 2012 a 2022. A busca dos artigos foi por meio das palavras-chave “documentação odontológica”, “responsabilidade civil”, “odontologia legal”, “processo civil”. Para os critérios de exclusão, foram descartados artigos que não estavam relacionados ao objetivo do trabalho em estudo.

### **3. Results**

#### **3.1 The dental record**

One way to prevent legal problems arising during dental treatment is to establish a pleasant relationship between the professional and the patient. However, this relationship does not become simple when, in addition to technical and clinical procedures, ethical, legal, and administrative issues are also involved. Due to these factors and the change in society's behavior, the dental surgeon had the need to protect himself in case he was sued in court, due to the claim of patients about their rights. For the dental surgeon to be supported in the judicial sphere, it is necessary to keep the dental record filled out correctly, making it indispensable for its protection. (De Lima Amorim et al., 2016)

As a resource for these clashes, there is a predisposition to reverse the burden of proof, which occurs when the dental surgeon proves that he performed the procedures within the principles imposed by dental science. Thus, the professional needs to have the dental record on hand as a means of defense. (De Almeida et al., 2017).

The word medical record comes from the Latin *promptuariu*, which is defined by a set of patient information recorded in an easily accessible place. For the professional, the elaboration of the clinical record is mandatory, and it can be said that this is part of the provision of services. (Coltri & Da Silva, 2019)

The Dental Code of Ethics, in chapter VII, art. 17, states that the dental record must be kept up-to-date and legible, and it is the dentist's obligation to prepare this documentation, including keeping it in its own file by physical or digital means, in addition to regulating the rights and duties of the dental surgeon and the entire team that performs activities in the field of Dentistry. (CEO, 2012)

The dental record is an extremely important document prepared by the dental surgeon, which will contain records of each dental care, whether carried out or proposed, in addition to the patient's identification and information about his health. To integrate this documentation, anamnesis, physical examination (intra and extra oral), completion of the odontogram, proposed treatment, evolution, and interurrences, including complementary examinations, must be included. According to legal dental doctrine, all documents produced in the dental field have clinical, administrative, and legal importance. Even in view of the above, there are still professionals who disregard the complete completion of the medical record, failing to obtain the signature of the patient or the person responsible for it, becoming vulnerable in the administrative or judicial spheres. (Silva et al., 2016)

Access to data contained in patients' medical records is more difficult compared to conventional documentation, where large physical spaces are required for storage. But as technology advances, the digital age becomes an ally for solving this problem (Fonsêca et al., 2014).

The use of a digital system in Dentistry is as important as for other areas of human activities, aiming to have a set of information by digital means (Holanda et al., 2010).

#### **3.2 The documentation and its archiving**

Handling and protecting dental records in a conventional way requires a broad and organizational environment in dental clinics. With the development of technology, many professionals in the area are finding a solution to this problem in this advance and deciding to convert manual documentation to digital records, through scanners or digital cameras, producing documentation directly in electronic media. (Fonsêca, et al. 2014)

The manual medical record contains a lot of information about the patient, being produced and preserved on paper. This has ethical-legal and legal legitimacy. The information contained therein has authenticity and presumption. In the event that the patient does not agree with his information in the medical record, the respective person will have the burden of proving the need for effectiveness or the failure of what is in the medical record. The digital medical record also contains a lot of patient information, but the difference lies in its storage, which takes place electronically, requiring authentication certification.

This is interconnected with the manual medical record, that is, it also has authenticity and presumption, so that if the patient contradicts the information contained therein, he will fulfill the burden of proof in view of the failure or effectiveness of the information. (Coltri & da Silva, 2019).

Digital verification is where the inspection of documents and electronic transitions takes place, such as security, veracity, credibility and completeness are fundamental to this mechanism. It is a computer protocol that analyzes a natural or legal person in the digital world, in this analysis the name and encrypted keys are verified. (Santana, et al. 2019).

The Federal Council of Dentistry (CFO), watching all this progress, drafted resolution 91/2009, which enables Security Requirements in Electronic Health Documents, authorizing digital documentation in dental clinics to facilitate the preparation and storage, however the signature of the must be authenticated by the ICP-Brasil - Brazilian Public Key Infrastructure certification system. (de Almeida et al, 2017).

There is a big problem with respect to the storage time of dental records, so that there is still no legislation that notifies the correct storage time of the records. (Saraiva, et al. 2012)

In view of this problem, art. 6 of Law 13.787/2018 brought an answer to one of the most discussed questions. All records, whether conventional or digital, can be canceled after 20 years from the last record. In Law 13,787/2018 and Resolution 91/2012, of the Federal Council of Dentistry, there is a change in relation to the minimum storage of conventional and digital medical records. In CFO Resolution 91/2009, the conventional medical record could be discarded 10 years after the last service and the digital medical record would be kept permanently. Thus, in Law 13,787/2018, it was defined that the minimum storage time for conventional medical records would be 20 years after the last service. As for the digital medical records that had their permanent custody, it was reduced to 20 years after the last service. (Coltri & da Silva, 2019).

We know that the dental record is subject to legal consequences, which is why it is so necessary to fill it out and keep it properly. Although this documentation is under the responsibility of the dental surgeon, it belongs to the patient, where his information is contained, and which can be used as legal evidence. Knowing this, the professional has the right to have a copy of the documentation, archiving it physically or digitally. (Vanrell, 2012).

### **3.3 The Professional Responsibility of the Dental Surgeon**

The practice of Dentistry is susceptible to adverse results, and it is necessary that there is an action for the professional to be held accountable. (Daruge et al., 2017)

Despite being considered on the grounds of obligation of result, it is necessary to prove the fault even if the result is not expected by the patient, even so, the professional must prove that he did not act in bad faith. For this reason, the dental surgeon must keep the dental documentation in good condition, if mentioned in court, in addition to proving his aptitude, knowledge and skills. (De Oliveira et al., 2021)

Civil liability is one of the ways to enforce rules in the judicial sphere. (Aguilar et al., 2020) In Dentistry, it is defined by the act of not harming someone, but if it occurs, the damage caused must be repaired. The reparation will take place in view of some assumptions that are necessary, such as: action or omission; intent or negligence and causal link. (De Oliveira et al., 2021)

According to Coelho (2016), the action is defined by the act of movement being conscious or unconscious, consequently the omission is to stop practicing the activity. Fraud is proven guilt. De Oliveira (2021) states that the causal link is what unites the conduct to the damage that occurred.

The Civil Code, art. 186 cites: “anyone who, by voluntary action or omission, negligence or imprudence, violates the right and causes harm to others, even if exclusively moral, commits an unlawful act”. (Brasil, 2002) That is, it is not acceptable.

Civil liability can be divided into objective and subjective. It is understood that the objective encompasses individuals who are service providers, these will respond for the acts performed, being considered as a theory of risk. The subjective is defined as the theory of guilt, being necessary to compensate for the damage caused. (Daruge et al., 2017) In other words, the difference between the two is in their principle, in the objective will be the laws and the risk, since the subjective is defined by guilt, when there is proof. (Plautz, 2022)

In addition, law 8.078/90, art. 14, states that the service provider will respond regardless of the fault, repairing the damage caused to consumers by failures related to the provision of services, in addition to unsatisfactory information about the risks. (Brasil, 1990).

In Brazil, there was a significant increase in dental professionals, consequently this generated an increase in lawsuits due to easy access to information regarding justice. (Plautz, 2022).

### **3.4 Civil lawsuits involving Dental Surgeon**

Dentistry has always valued a good relationship between professional and patient, establishing a bond of respect and safety, but in the face of occurrences in the health service, there was a turnaround and dissatisfaction in attendances, creating processes in the civil sphere involving dentists. (Mota et al., 2012)

As society advances, civil liability is an obligation that will be present in our daily lives, being linked to refunds. (Carvalho Filho, 2018). The dental surgeon is not exempt from his responsibility, which certifies the non-compliance with clinical protocols, practiced by the author, and with malpractice exposing patients to risks (Medeiros & Coltri, 2014)

The patient who feels embarrassed in some way by the dentist, may resort to indemnity actions as provided for in Article 389 of the Civil Code, stating that if the obligation is not fulfilled, the debtor will be liable for losses, damages, interest, and monetary restatement according to official rates and attorney fees. (Brasil, 2002) The professional may analyze such actions, in accordance with Article 14, item 4 of the Consumer Protection Code (CDC), which is the responsibility of dentists, if fault is found and rectified. The appeal on the merits can be extended to the second instance, being analyzed in the second instance by judges at the Court of Justice.

The areas of dentistry with the highest number of civil lawsuits are implant dentistry, orthodontics, and surgery. Accordingly, these are also the areas with the highest numbers of convictions (Mendes et al., 2021).

Access to information combined with patient awareness was based on the Consumer Protection Code. The professional changed his posture regarding dental procedures, seeking adaptation, since there was greater responsibility for the services performed (Cavalcanti et al., 2011; Silva, 2010).

## **4. Discussions**

For Neto (2019) with the advancement of technology and access to information, patients have become more aware of the correct ways to perform procedures and the function of medications. When they find information that differs from what the professional reported, it generates a feeling of discontent that makes them claim compensation. This information converges with the findings of Mendes et al., (2021) who observed an increase in the number of processes involving dentists in the last decade.

One of the ways to prevent this problem is through the proper completion of the medical record. This happens since the records of each dental care and the identification of the patient and their health history are filed in it (Silva et al, 2016).

Moreover, for these documents to serve as evidence in cases involving dentists, it is necessary to file them correctly in a wide and organized environment in dental clinics. An alternative for clinics or small offices are digital records, such as scanners, cameras, and digital radiography devices, which produce documentation in the cloud, with information lasting

forever (De Almeida, et al. 2017). In addition to this, Silva et al., (2019) lists the need for authentication certification, so that these digital documents are considered valid in the legal environment. When done this way, it connects the digital medical record to the manual medical record, that is, having double authenticity.

According to the foundation of the obligation of result, for a dental professional to be found guilty, proof of guilt is necessary even if the result is not as expected, provided that the professional does not act in bad faith. In these cases, proof of skills is required (De Oliveira et al., 2021). Associated with this, we currently observe that when we compare clinicians with specialists, there are a greater number of lawsuits filed against dentists in professionals who have a specialty, requiring proof of skills (Mendes, et al., 2021).

The cause of the growing number of civil lawsuits involving dentists is mainly due to the lack of communication between professional and patient, since what was previously a relationship based on friendship and respect, today has become a contractual relationship (Mendes, et al., 2021).

With the advent of the information age, patients have become more conscious about the procedures they are undergoing. With this, it is necessary for professionals to modify their posture, seeking greater accountability for the services provided (Pietrzykowski & Smilowska, 2021), especially now with the growing number of lawsuits against dentists (Magalhães et al., 2019; Silva et al., 2020). In this way, it is imperative that the dental surgeon is attentive to the procedures, dental documents and clinical conduct provided to patients, diligently backing up scientific basis (Mendes, et al., 2021).

## 5. Conclusions

The growing number of civil lawsuits filed against dental surgeons is the result of the commodification of dental work. Thus, it is extremely important that dentists have a good relationship with their patients and prevent themselves from legal problems by correctly completing the dental record, archiving it both physically and digitally and explaining the risks of the procedures to the patient, before the procedure. its realization.

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