



## Forensic dental expertise

### *El peritaje odontológico forense*

Agustín Tiol-Carrillo\*

When a patient arrives at a dental office or hospital in order to receive treatment and there is some unconformity with respect to dental service provided, the patient will be able to resort to different authorities and judicial organisms to vent his complaints on events that took place and promote claims or complaints before competent authorities such as Comision Nacional de Arbitraje Medico (CONAMED) (National Commission for Medical Arbitrage), Comision Nacional de Derechos Humanos (CNDH) (National Commission for Human Rights) attorney general, as well as criminal or civil jurisdiction.

It is necessary for the dentist to be knowledgeable with the different circumstances which might arise once the unsatisfied patient has resorted to any of the aforementioned judiciary organs or institutions. Not all the complaints presented by a patient merit the initiation of a penal procedure, only those described in a Penal Code, and more precisely in some section of «Professional Responsibility» should be taken into account. According to article 7, Chapter 1 of the Federal Penal Code, offense is any action or omission penalized by penal law.<sup>1</sup>

Nevertheless, the most common cause for patient dissatisfaction is having been inflicted damage in oral-dental health that was not present before treatment. There are several actions or omissions that a dentist can perform and which can be the motive for suits demands or unconformities. We hereby offer a list:

#### GUILT AND MALICE

Any action or omission taking place in the practice of the profession can be consummated maliciously or culpably. According to the Penal Federal Code in its Chapter «General Rules on Offense (offense crime) and Responsibility, Article 9» a subject acts maliciously when knowing the penal type elements or foreseeing as possible the typical result, wants or accepts the accomplishment of the fact. A subject acts culpably when he produces a typical result which he did not foresee (although it was foreseeable) or trusting that it would not take place». <sup>1,2</sup>

In other words, deceit is effected when although knowing the judicial consequences of a certain action, it is decided to perform it in an autonomous and voluntary manner, and guilt takes place when, without desiring it, an unexpected result is obtained, and this result is legally typified as an offence.

#### MEDICAL MALPRACTICE

Also called «poor praxis» or medical malpraxis, it takes place when a set of clinical and ethical errors chronologically take place during dental practice, independently of the fact that the dentist might not count with minimal necessary knowledge to provide a solution to the condition of the patient.<sup>2</sup> For instance, a dentist exerts «poor praxis» when he does not count with minimal equipment and material necessary to provide dental care, when he foregoes a patient's treatment without any justification, in cases when the dentist is offensive and arrogant to a patient, or when there is absence of effective communication between dentist and patient.

It would be relevant to highlight that the clinical part of a «poor praxis» does not only consist on performing low quality procedures, lack of dentist's knowledge to be able to establish accurate diagnosis, or dentist's inability to clearly and effectively expose postoperative indications of some procedure.<sup>2,3</sup> When as a consequence of this medical malpraxis the health professional causes damage in the patient which he did not suffer before visiting him, it is called iatrogenia.<sup>4</sup>

#### INEXPERIENCE

Lack of skill can be described as care provided by non-qualified personnel who lack skills and minimum knowledge necessary to solve a patient's oral and dental health problem. A dentist acts with lack of skill

\* Full time professor. Metropolitan Autonomous University, Xochimilco Campus.

when, lacking the specialist's degree, he conducts risky procedures even though he is aware of the negative consequences that might arise.

### NEGLIGENCE

In these cases, the dentist counts with full knowledge and sufficient skill to solve the patient's affliction, but due to poor ethics and reasons such as carelessness, forgetfulness or indifference, he voluntarily decides not to perform pertinent actions, although treatment prognosis might be affected by it (*Figure 1*). For instance, when a dentist voluntarily decides to undertake operative dentistry or endodontic treatment with absence of total isolation with a rubber dam, he is acting negligently. Likewise, it is considered a negligent action when the dentist underestimates a real emergency (such as abscess or odontogenic facial cellulite) and voluntarily decides not to treat the patient or to refer him to the pertinent specialist.

### IMPRUDENCE

Imprudence occurs when the dental personnel acts with excess confidence, not foreseeing negative consequences that might arise during the performance



**Figure 1.** The dentist voluntarily performed maladjusted restorations which prevented suitable oral hygiene.



**Figure 2.**

Patient afflicted with maxillary and mandibular osteonecrosis after multiple extractions. The fact that the patient was undergoing bi-phosphonate treatment was not taken into consideration (Courtesy of CMF Carmina Peña Martínez).

of a given procedure. For instance, this would be the case when a dentist intends to conduct a root canal treatment when he is knowingly aware that files to be used in the procedure are in poor state or weakened by use; he knows perfectly well that these files can fracture within the canals, but nevertheless, he decides to use them. *Figure 2 (A and B)* shows the case of a patient treated with bi-phosphonates, a deficient clinical history of this patient was taken, due to dentist lack of observance and imprudence, the dentist performed multiple extractions and culpably caused maxillary and mandibular osteonecrosis.

### FAILURE TO COMPLY

This is culpably configured when the professional does not grant sufficient attention to a given fact and thus involuntarily causes damage to the patient's health. A dentist commits failure to comply when he performs an inappropriate treatment due to inattention to his professional responsibility. An example of this would be friction burns in the corner of the lips (labial commissure) during a dental extraction by dissection of a lower third molar.

Based on the aforementioned explained facts, when a dissatisfied patient resorts to a competent institution to inform about his complaint, an expert procedure will be initiated; this will begin with a request from the Public Prosecutor or from the National Commission of Medical Arbitrage, so as to analyze the case and impart a fair solution for both parties (patient-dentist).

All dental health professionals must be aware of the fact that there are different circumstances which might generate false imputations, in cases when the dentist has not incurred in real blame. For example, when the patient consciously decides not to follow indications given by the dentist, then, complications arise as a consequence of this neglect, or when the patient additionally omits prescribed pharmacological therapies, demands unnecessary treatment in teeth

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