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The civil liability of physicians in elective surgical procedures: a case law analysis from the Court of Justice of Rondônia (2020-2025)

The civil liability of physicians in elective surgical procedures: jurisprudential analysis of the Court of Justice of Rondônia (2020-2025)

The civil responsibility of doctors in elective surgical procedures: jurisprudential analysis of the Rondônia Court of Justice (2020-2025)

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SUMMARY

This article aims to analyze how the Court of Justice of Rondônia (TJRO), from 2020 to 2025, has applied the legal criteria of civil liability in cases of medical malpractice in elective surgical procedures. To this end, it examines the TJRO's jurisprudence on medical malpractice in elective procedures, highlighting the application of subjective or objective civil liability and the criteria adopted for setting compensation for moral and material damages. The methodology employed consists of bibliographic, qualitative, and jurisprudential research, with doctrinal, legislative, and case law analysis from the TJRO and the Superior Court of Justice (STJ), adopting deductive and dialectical methods for interpreting specific cases. The results demonstrate that the TJRO has predominantly adopted the theory of subjective liability, which requires proof of fault, causal link, and damage, in accordance with the consolidated guidance of the STJ. However, there has been a trend toward expanding patient protection in situations related to the absence of informed consent and aesthetic procedures, in which the obligation of result assumes greater relevance. It is concluded that case law seeks to balance the protection of patient rights and the legal security of medical practice, contributing to the consolidation of safer technical and legal parameters in medical civil liability.

Keywords: medical civil liability; medical malpractice; elective surgical procedures; case law; TJRO (Court of Justice of Rondônia); expert evidence.

ABSTRACT

The present article aims to analyze how the Court of Justice of Rondônia (TJRO), between 2020 and 2025, has applied the legal criteria of civil liability in cases involving medical malpractice in elective surgical procedures, seeking to examine TJRO case law on medical errors in elective procedures, highlighting the application of subjective or objective civil liability and the criteria adopted for determining compensation for moral and material damages. Thus, the methodology employed comprises bibliographic, qualitative, and jurisprudential research, with doctrinal, legislative, and case-law analysis of decisions issued by the TJRO and the Superior Court of Justice (STJ), adopting deductive and dialectical methods for interpreting concrete cases. The results demonstrate that the TJRO has predominantly adopted the theory of subjective liability, requiring proof of fault, a causal link, and damage, in line with the STJ's consolidated understanding.

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However, a tendency toward broader patient protection was identified in situations related to the absence of informed consent and aesthetic procedures, in which the obligation of result assumes greater relevance. It is concluded that jurisprudential practice seeks to balance the protection of patients' rights with the legal certainty of medical practice, contributing to the consolidation of safer technical and legal parameters in medical civil liability.

Keywords: medical civil liability; medical malpractice; elective surgical procedures; case law; TJRO; expert evidence.

1 INTRODUCTION

The civil liability of physicians in elective surgical procedures is a topic...
widely debated in contemporary Civil Law, due to the increase in lawsuits.
arising from allegations of medical malpractice. As a rule, medical liability is subjective, requiring
Proof of guilt, whether due to negligence, recklessness, or incompetence; however, in surgeries
In cases of elective aesthetics, case law allows for strict liability when the outcome is central.
in the established relationship (Diniz, 2020; Gonçalves, 2019).

According to Gagliano and Pamplona Filho (2021), the civil liability of a physician requires...
Proof of damage, fault, and causal link, except in consumer relations, as per article 14 of...
Consumer Protection Code. In this context, a distinction is made between obligations of means and obligations of obligation.
Result: as a rule, medical practice is characterized as an obligation of means, which requires diligence.
and the correct use of techniques, without guaranteeing a cure; however, in aesthetic procedures, the
Case law recognizes the obligation of result (Cavalieri Filho, 2022).

The Superior Court of Justice has ruled that the determination of compensation for moral damages...
and materials must observe reasonableness and proportionality, considering the severity of the damage,
the extent of the consequences and the economic capacity of the parties. In a decision dated July 29th
In 2021, the Third Panel upheld the conviction of an obstetrician who neglected to complete the...
medical records, which resulted in irreversible consequences, highlighting the importance of medical documentation.
as evidence and an instrument for patient protection (Brazil, 2021).

In the TJRO (Court of Justice of Rondônia), responsibility may fall exclusively on the doctor when the damage
This stems from an identifiable technical error, or is jointly and severally the responsibility of the institution when there are failures.
administrative or systemic (Brazil, 2018; Didier Jr., 2020).

In this sense, the following question was defined as the problem for this study:
How has the TJRO (Court of Justice of Rondônia) applied the legal criteria of civil liability in cases of medical malpractice?
in elective procedures?

The hypothesis is that the Court of Justice of Rondônia (TJRO) has applied
predominantly the criteria of subjective liability in cases of medical malpractice in

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elective surgical procedures, requiring proof of the professional's fault, whether due to
Incompetence, negligence, or recklessness, aligning with the guidelines established by the Superior.
Court of Justice (STJ).

Given this, the objective of the present research is to analyze how the Court of Justice
The Court of Justice of Rondônia (TJRO), in the period from 2020 to 2025, has applied the legal criteria of
civil liability in cases of medical malpractice in elective surgical procedures, seeking
Therefore, to examine the case law of the TJRO (Court of Justice of Rondônia) regarding medical malpractice in elective procedures,
highlighting the application of subjective or objective civil liability and the criteria adopted for
Determining compensation for moral and material damages. Assessing the role of expert evidence and the duty to prove the facts.
information (informed consent) in establishing medical malpractice in legal proceedings.
related to elective surgeries, and to investigate situations in which the TJRO (Court of Justice of Rondônia) assigns responsibility.
exclusively to the doctor or, in a spirit of solidarity, to the healthcare institution, considering factors such as
failure to fulfill the duty to inform, obligation of result, and incidence of subjective liability or
objective.

The social relevance of this study is evident in the delicate doctor-patient relationship, which
It requires trust, care, and safety in healthcare procedures. In recent years, there has been a
a significant increase in lawsuits related to medical malpractice, especially in
elective surgeries, which reflects society's concern with the proper accountability of
health professionals and with the reparation of damages suffered by patients (Almeida, 2015).

The methodology adopted consisted of a review of legal literature and case law analysis.
of rulings from the Court of Justice of Rondônia (TJRO), in the period from 2021 to 2025, related
This research addresses medical civil liability in elective surgical procedures. The research adopts an approach...
qualitative, with analysis of legal, doctrinal and jurisprudential foundations, using the method
The analysis was deductively based on the Federal Constitution, the Civil Code, the Consumer Protection Code, and the
Medical Ethics Code. Furthermore, representative decisions from the Court of Justice of Rondônia (TJRO) were examined.
precedents from the Superior Court of Justice (STJ) allowed for a critical analysis of the criteria.
adopted by the Judiciary in medical civil liability.

2. MEDICAL CIVIL LIABILITY AND ITS EVOLUTION

According to Massafra (2016), medical civil liability acts as an instrument of
The protection of fundamental rights, particularly physical and moral integrity, is crucial.
To understand how the Judiciary assesses guilt and causation in different clinical contexts.

Based on this concept, it is possible to understand that civil liability for medical malpractice

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This has been the subject of intense debate in Brazilian legal scholarship and jurisprudence, especially in light of...
due to the increase in lawsuits involving errors in surgical and diagnostic procedures.

According to Diniz (2020, p. 67), "civil liability is the successive legal duty that
"It arises to redress the damage resulting from the violation of an original legal duty," being,
Therefore, it is an essential instrument for the protection of personality rights and human dignity.

The evolution of the concept of medical responsibility follows social transformations.
and technological aspects of the practice of medicine. Gonçalves (2022) explains that, until the mid-20th century,
The physician's accountability was rare, since medicine was seen as an activity of
a medium, based on trust and the impossibility of guaranteeing absolute results.

In this sense, Cavalieri Filho (2021, p. 54) argues that "medical responsibility must
to be analyzed in light of the principle of the dignity of the human person and the protection of life and health,
"Constitutional values that guide the civil reparation system." The author notes that the error
Medical failure should not be confused with therapeutic failure, but rather stems from the practice of a professional act that...
This violates the duty of care, constituting fault in the forms of negligence, recklessness, or incompetence.

Gagliano and Pamplona Filho (2021) also point out that the evolution of responsibility
The medical profession aligns itself with the expansion of consumer protection for health services, especially after the
enactment of the Consumer Protection Code (Law No. 8.078/1990).

According to the authors, Article 14 of the Consumer Protection Code introduced an important milestone by allowing...
objective liability of hospital institutions, even if the physician's liability
It generally remains subjective in nature. This distinction reveals the balance that...
The legal system seeks to balance patient protection with the preservation of the technical autonomy of the professional.
healthcare professional.

2.1 CONTEMPORARY EVOLUTION OF MEDICAL CIVIL LIABILITY IN BRAZILIAN JURISPRUDENCE

Contemporary case law has followed this trend. Silva's study...
(2021) demonstrated that the modernization of diagnostic instruments and the expansion of
Cosmetic procedures have broadened the scope of medical practice, but also the risks of...
judicialization. The research shows that medical civil liability, previously centered on fault, is becoming increasingly important.
From an individual perspective, systemic factors began to be considered, such as hospital organization and conditions of
The professional's job.

Similarly, Oliveira (2022) analyzes the jurisprudential evolution of the Superior Court
of Justice regarding civil compensation for medical malpractice. The author notes that the Superior Court of Justice (STJ) has been seeking

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to standardize its interpretation, reaffirming that expert evidence is indispensable to establishing the fault and that objective liability is restricted to healthcare institutions, except when Proven direct fault on the part of the professional.

Lobo (2019) emphasizes that medical civil liability must be understood within the scope from a humanistic and ethical perspective of law, which prioritizes restoring trust in the doctor-patient. For the author, the function of responsibility is not only compensatory, but also Preventive and educational, encouraging diligent conduct and the improvement of medical practice.

In this scenario, Schreiber (2018) points out that the evolution of civil liability in Brazil has been marked by the progressive appreciation of personality rights, especially in within the context of doctor-patient relationships, which reinforces the centrality of human dignity as interpretative parameter. The author highlights that the Judiciary has broadened its analysis of damages, moving beyond... considering not only the material losses, but also the resulting existential impacts. of failures in the provision of health services.

Similarly, Tepedino (2020) argues that contemporary civil liability is It is guided by a constitutionalized logic, in which fundamental principles, such as dignity, are paramount. The rights of the human person and the protection of health directly influence the interpretation of the norms. sub-constitutional. In the medical context, this implies a more rigorous analysis of the duties of care and information, especially in elective procedures, where the expectation of The patient plays a significant role.

Thus, civil liability for medical malpractice presents itself as a field... Dynamic and interdisciplinary, reflecting the effort of law to harmonize advances in medicine. in accordance with the constitutional principles of dignity, health, and social justice.

2.2 ELEMENTS OF MEDICAL CIVIL LIABILITY: FAULT, INTENT AND MODALITIES OF GUILT

Medical civil liability is generally subjective, requiring proof of fault on the part of the physician. health professional, as established by article 186 of the Brazilian Civil Code, according to which "He who, through voluntary action or omission, negligence or recklessness, violates a right and causes..." "Harm to another, even if exclusively moral, constitutes an unlawful act" (Brazil, 2002).

Article 927 of the same legal instrument further clarifies, stating that whoever causes damage is liable. obliged to repair it, which constitutes the general basis of civil liability (Brazil, 2002).

In the medical field, fault can take the forms of negligence, recklessness, or incompetence. as detailed in article 951 of the Civil Code, which deals with the liability of professionals.

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liberals. This article stipulates that doctors are held civilly liable for damages arising from incompetence, recklessness or negligence, linking liability to technical conduct. Inadequacy, and not merely the failure of treatment.

As Venosa (2022) explains, guilt represents the violation of a legal duty to Care is taken when the agent fails to observe the diligence required by the circumstances. that causes harm to another. The distinction between negligence and intent is essential: in intent there is an intention to harm, whereas in cases of negligence, there is only carelessness, haste, or lack of technical skill.

The Penal Code, in its article 18, item II, also defines the types of culpability within the scope of... criminal law, establishing that a culpable crime occurs when the perpetrator causes the result by Negligence, recklessness, or incompetence are parameters that apply equally in civil matters.

Rizzardo (2020) differentiates these modalities by stating that negligence manifests itself through Omission in the duty of care; recklessness, through hasty action or lack of caution. necessary; and incompetence, due to a lack of technical knowledge essential to the medical profession. Such These distinctions are relevant to judicial analysis because they determine the degree of reprehensibility of the act. conduct and the extent of the duty to compensate.

The Consumer Protection Code, in its article 14, also influences the discussion by providing... that the service provider is liable, regardless of fault, for damages arising from Defects in the provision of services. However, paragraph 4 of the same article establishes an exception. This expresses to liberal professionals, whose liability depends on proof of guilt, reaffirming the subjective nature of medical responsibility (Brazil, 1990).

In the ethical field, the Medical Code of Ethics (CFM Resolution No. 2,217/2018) reinforces the Obligations of diligence and professional competence. Article 1 prohibits physicians from causing harm to... patient by action or omission, characterized by negligence, recklessness or incompetence, while the Article 29 prohibits the practice of any activity for which the physician is not adequately qualified. reinforcing the duty of technical and scientific updating (CFM, 2018).

Cavalieri Filho (2021) emphasizes that medical negligence is not presumed and must be proven by whoever claims otherwise, except in cases of obligation of result, such as in some cosmetic surgeries. The The author adds that the analysis of fault must consider the specific circumstances of the care provided. and the structural limitations of the medical service.

This view is shared by Carvalho (2019), who argues that medical error should be appreciated in a contextualized way, considering the available resources and the inherent pressure of hospital environment. Along the same lines, Fachin (2020) warns that the assessment of medical negligence must to observe the principle of proportionality, recognizing that medicine involves uncertainties and risks. which should not be confused with negligence or incompetence.

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Tartuce (2023) warns that contemporary Civil Law must balance the protection of the patient.
and the legal security of the doctor, avoiding automatic liability for failure.
therapeutic. For the author, medical malpractice only occurs when there is a breach of the duty of care.
required by technique and good medical practice, in light of the principles of reasonableness and dignity.
In this sense, the analysis of medical civil liability in surgical procedures
elective procedures require an interpretation that harmonizes the protection of health and patient rights with
The emphasis on the autonomy and responsible professional conduct of physicians.

3. Medical Civil Liability in the Jurisprudence of the Superior Court
COURT OF JUSTICE (STJ)

In recent rulings by the Supreme Federal Court (STJ), the Court has reaffirmed that the
The failure of the procedure, in itself, is not sufficient to establish a duty to compensate, being
Proof of technical failure or conduct contrary to medical protocols is indispensable.
established.

According to the understanding reiterated by the Superior Court of Justice (STJ), the civil liability of the doctor
It generally remains subjective in nature, requiring proof of culpable conduct and causal link.
causality and actual damage are required; the mere occurrence of an adverse outcome is not sufficient to establish liability.
of the duty to indemnify. This guidance reinforces the idea that medicine develops under a
obligation of means, in which the professional commits to technical diligence and not to the
guarantee of outcome, as consolidated in recent rulings of the Superior Court (Brazil, 2021)

Similarly, the Superior Court of Justice (STJ) has reiterated that expert evidence plays a decisive role in...
resolution of claims for medical malpractice, constituting an indispensable instrument for verifying the
existence of incompetence, recklessness, or negligence. In several rulings, the Court has dismissed the...
Civil liability arises when the body of evidence indicates the technical adequacy of the procedure.
performed and there is no causal link between the medical conduct and the damage alleged by the patient, which
This highlights the central role of technical and expert analysis in judging these cases.

Another relevant aspect of contemporary jurisprudence concerns liability.
of hospital institutions. The understanding consolidated by the STJ (Superior Court of Justice) is that hospitals are liable.
objectively for the services provided within the organizational and structural scope, but the
Liability for medical acts depends on proving the professional's fault, according to the terms
from article 14, § 4, of the Consumer Protection Code (Brazil, 2024). Thus, the responsibility of
An institution can be removed from office when there is no demonstration of systemic, structural, or other failures.
administrative, restricting the duty to indemnify to cases where technical error is proven.

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individualized or deficiency in hospital services.

Case law has also frequently addressed the determination of the quantum.
compensation in cases of medical malpractice, especially in situations involving moral damages and
aesthetic. The Superior Court of Justice (STJ) advises that the quantification of compensation must observe the principles of...
reasonableness and proportionality, considering the severity of the damage, the impact on the life of
The victim and the educational nature of the conviction are important, and the review of the amount awarded is prohibited when it does not...
if there is a clear disproportionality (Brazil, 2021).

However, the Superior Court also emphasizes that this solidarity cannot be presumed.
automatically, with the attribution of responsibility taking into account the degree of participation of each individual.
agent in producing the harmful result. In this sense, the Superior Court of Justice (STJ) has established the understanding that the
responsibility of hospital establishments, although objective with regard to the services they provide
These are specific to the acts of physicians, and do not extend indiscriminately to the technical and professional acts of physicians, whose
The investigation remains contingent upon verification of guilt, thus avoiding liability.
generic and disproportionate healthcare institutions (Brazil, 2017).

Thus, the Superior Court of Justice (STJ) seeks a balance between protecting the patient and...
preserving the legal security of medical practice, avoiding both impunity and...
indiscriminate strict liability.

3.1 Damages in Medical Civil Liability and Liability of Hospital Institutions

Civil liability in the medical context is not limited to the professional who provides the service.
directly the service, extending, in certain situations, to hospital institutions,
clinics and health insurance providers. In this scenario, the occurrence of material, moral, and aesthetic damages.
It is now analyzed in an integrated way, considering both the individual conduct of the doctor and
the structure and organization of the service provided (Serra, 2018).

Material damages involve verifiable economic losses, such as expenses for
Additional treatments, corrective surgeries, or patient rehabilitation. Moral damages, on the other hand, refer to...
respect for the suffering, distress, or psychological harm caused by medical conduct, and may
to be combined with material damages, provided that the causal relationship is proven (Diniz,
2020).

Aesthetic damage encompasses permanent changes in the patient's physical appearance.
frequently discussed in elective and plastic surgical procedures, in which the outcome
The promised visual result may not be achieved, thus establishing an obligation of result under the terms of article [relevant article number].

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Article 186 of the Civil Code (Brazil, 2002).

The responsibility of hospital institutions is a widely debated topic. According to According to Saraiva (2020), the general rule is that the institution is objectively liable for related failures. to the structure, equipment and auxiliary services, while the technical performance of the doctors is Analyzed subjectively, depending on whether guilt has been demonstrated.

The Superior Court of Justice has reinforced this understanding in several decisions. establishing that the hospital's liability cannot be presumed based on an isolated case of medical error, except when there is a systemic failure or omission in the duty of oversight and management (Brazil, 2014).

In a study defended by Carvalho (2021), it is highlighted that hospital failure should be evaluated in three dimensions: physical structure, care protocols, and supervision of professionals. Thus, the institution is liable for damages resulting from organizational failures or Insufficient resources, while the doctor's culpability must be determined on an individual basis.

According to Oliveira (2020), the hospital has a duty to ensure that all procedures They should be accompanied by adequate information and the patient's consent should be formally obtained. registered, which can directly influence the assessment of civil liability in cases of litigation.

Therefore, the analysis of material, moral, and aesthetic damages must consider the complexity. of the doctor-patient relationship and institutional performance. While the doctor is held responsible for Without fault, hospital institutions are objectively liable for structural and administrative failures. in the exercise of patient rights.

3.2 Expert Evidence and the Duty to Inform in Medical Liability

Expert evidence occupies a central position in the analysis of medical civil liability. especially due to the technical complexity inherent in medical practice.

The importance of this technical test is also related to the need to distinguish between Medical error and therapeutic failure. As observed in the study by Rodrigues (2022), the analysis of The professional's responsibility should consider not only the result obtained, but also... primarily, the suitability of the methods employed and adherence to medical protocols, which This can only be properly assessed through a specialized expert evaluation.

Alongside expert evidence, the duty to inform has become established as one of the pillars of contemporary medical accountability. This duty stems from the very evolution of The doctor-patient relationship, which ceased to be based on a paternalistic model and began to adopt...

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a perspective centered on patient autonomy.

According to Silva (2003), informed consent establishes limits to the actions of medical, functioning as an element of protection for the patient's personality rights and directly influencing the analysis of civil liability. The absence or insufficiency of Information may constitute a breach of legal duty, giving rise to liability, even when there is no technical error per se, but rather a failure in communication and clarification. suitable.

Along the same lines, Noldin and Bonissoni (2020) state that the duty to inform is intrinsically linked to the principle of objective good faith, imposing on the doctor the obligation to act with Transparency and loyalty in the relationship with the patient. Failure to observe this duty may result in... Invalidity of consent and, consequently, characterizing a failure in the provision of the service. physician, expanding the possibilities of civil liability.

It can therefore be inferred that the connection between expert evidence and the duty to inform reveals- if essential for the proper analysis of medical civil liability. While technical expertise allows To ascertain the existence of misconduct, the duty to inform acts as Element of legitimacy for medical intervention.

4. JURISPRUDENTIAL ANALYSIS OF MEDICAL CIVIL LIABILITY IN COURT OF JUSTICE OF RONDÔNIA (TJRO)

According to Pinto (2017), the analysis of the judgments provides not only guidance on the concrete application of the law, but it also reveals interpretative trends and criteria adopted by courts in assessing fault, determining damages, and defining liability. healthcare professionals and hospital institutions.

In this sense, case law fulfills a normative function by consolidating understandings that They contribute to the standardization of judicial decisions and to predictability in the actions of... legal professionals, thereby reducing the legal uncertainty faced by doctors and patients.

To illustrate the practical application of the concepts of medical civil liability in the context of In the judicial process, it is relevant to analyze recent decisions that demonstrate how the courts have evaluated the The actions of healthcare professionals in the face of allegations of medical malpractice. These rulings allow to understand the criteria used to assess guilt, to differentiate unexpected complications from failures in medical conduct and verifying the importance of expert evidence in defining the... responsibility. Thus, let us examine the following case law from the TJRO (Court of Justice of Rondônia):

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> CIVIL APPEAL. MEDICAL MALPRACTICE. NOT ESTABLISHED. DAMAGES. The MORAL AND MATERIAL DAMAGES ARE ABSENT. civil liability of a physician who treats a patient is subjective in nature, requiring proof of the professional's fault, pursuant to Article 14, § 4, of the Consumer Protection Code. A claim for damages due to medical malpractice is inadmissible when the causal link, the alleged damage, the supposed failure in the provision of services, and the resulting consequences are not proven, particularly when the evidence indicates that there was no error in the medical professional's actions. Absent proof of medical malpractice in a surgical procedure, there is no basis for holding the hospital jointly liable, especially if there is no demonstration of a specific fact that such legal entities may have harmed the plaintiff's clinical condition. CIVIL APPEAL, Case No. 7027670-67.2021.822.0001, Court of Justice of the State of Rondônia, 2nd Civil Chamber, Rapporteur of the Judgment: Judge Kiyochi Mori, Judgment date: 08/15/2023 (TJ-RO - AC: 70276706720218220001, Rapporteur: Judge
> Kiyochi Mori, Judgment Date: 08/15/2023) (Brazil, 2023).

The case law of the Court of Justice of Rondônia has reaffirmed the need for demonstration of the classic assumptions of civil liability, especially regarding the causal link of causality. This understanding can be observed in the following decision:

> Appeal. Administrative law. State civil liability. Requirements for civil liability. Causal link. Specific omission by the State.
> Moral damages. The state entity's liability and compensation for moral damages should be dismissed when the elements of an unlawful act, the damage, and the causal link are not present, and the State had the possibility of foreseeing and preventing the damage but remained negligent. Inappropriate appeal. CIVIL APPEAL, Case No. 7023361-66.2022.8.22.0001, Court of Justice of the State of Rondônia, 1st Special Chamber, Rapporteur: Judge Glodner Luiz Pauletto, Judgment date: 06/12/2023 (Brazil, 2023).

The decision demonstrates that, even in cases involving state liability... In the provision of healthcare services, there is no room for automatic liability without... Effective proof of the structural elements of civil liability. In this context, the The court reinforces that the absence of a causal link between the omission and the alleged damage prevents... The recognition of the duty to compensate aligns with the logic adopted in cases of medical malpractice. As Schreiber (2019) observes, contemporary civil liability requires an analysis. A rigorous examination of causality is necessary, avoiding accusations based solely on the occurrence of damage, without due consideration. connection to the agent's conduct.

Along the same lines of interpretation, the Court of Justice of Rondônia has also applied this interpretation. such assumptions in specific cases of alleged medical malpractice, reinforcing the need for Proof of guilt and causal link are indispensable elements for establishing liability. This understanding can be seen in the following decision:

> Appeal. Compensation claim. Civil liability. Cyst removal. Injury. Negligence, recklessness, or medical malpractice. Care. Failure not

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> Demonstrated. Lack of causal link. Appeal dismissed. 1. In order for civil liability and the duty to indemnify arising from procedural medical error to be established, it is imperative to prove the occurrence of negligence, malpractice or recklessness and that this failure was the determining cause of the damage. Precedents of the Court. 2. Since no failure in the medical care provided has been demonstrated, there is no basis for civil liability. 3. Appeal dismissed. CIVIL APPEAL, Case No. 7003243-47.2019.8.22.0010, Court of Justice of the State of Rondônia, 2nd Special Chamber, Rapporteur: Judge Miguel Monico Neto, Judgment date: 11/18/2022 (Brazil, 2022).

The ruling clearly reaffirms that medical civil liability cannot be...
presumed from the mere harmful result, requiring concrete proof of conduct.
culpable and its direct relation to the harm experienced by the patient. The absence of
proof of negligence, recklessness or incompetence, coupled with the absence of a causal link,
leads to the dismissal of the claim for damages, demonstrating the predominance of
Subjective liability in the case law of the TJRO (Court of Justice of Rondônia).

The analysis of this ruling reinforces the interpretative line already consolidated within the Court.
Court of Justice of Rondônia: in the case in question, the absence of proof of negligence,
recklessness or incompetence, coupled with the absence of a direct causal link between the medical care
and the harmful result led to the dismissal of the duty to indemnify, highlighting the centrality of
Technical evidence in the formation of judicial conviction.

Thus, the decision aligns with Diniz's doctrine (2020), in arguing that the
Civil liability cannot be presumed, but rather must be established based on concrete verification.
of the elements that constitute an unlawful act.

Therefore, it can be concluded that the jurisprudence of the TJRO (Court of Justice of Rondônia) has adopted a judicious approach.
and technical expertise in the analysis of medical malpractice cases, contributing to safety.
legal and for the balance between protecting patient rights and preserving professional practice.
medical professional.

FINAL CONSIDERATIONS

This research made it possible to analyze how the Court of Justice of Rondônia...
has applied the legal criteria of medical civil liability in surgical procedures
elective elections in the period from 2020 to 2025, highlighting the predominance of subjective responsibility.
as a central foundation for judicial decisions. Based on doctrinal, legislative and
Based on case law, it has been observed that the TJRO (Court of Justice of Rondônia) has repeatedly demanded proof of guilt.
medical, of the damage and of the causal link for the establishment of the duty to indemnify, in accordance with

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The guidance consolidated by the Superior Court of Justice.

It was also observed that expert evidence occupies a prominent position in the proceedings. involving allegations of medical malpractice, functioning as the main technical instrument for the verification of the existence of negligence, recklessness, or incompetence. In this context, the jurisprudence demonstrates concern in differentiating misconduct from mere therapeutic failure, avoiding the automatic liability of healthcare professionals in the face of adverse outcomes inherent to medical activity.

Another relevant aspect identified throughout the research refers to the strengthening of duty to inform and informed consent as mechanisms for protecting autonomy. of the patient. In elective procedures, especially those of an aesthetic nature, it was found that jurisprudential trend towards expanding protection for the consumer-patient, bringing closer certain cases of the logic of the obligation of result, especially when there is a legitimate expectation. obtaining a previously promised benefit.

Furthermore, it was found that the accountability of hospital institutions depends on Demonstration of administrative, structural, or systemic failures is not permitted. automatically solely by virtue of the medical professional's actions. This understanding reinforces the The need for individualizing conduct and for a concrete analysis of the circumstances of each case. contributing to greater legal certainty in doctor-patient relationships.

Thus, it can be concluded that the jurisprudence of the TJRO (Court of Justice of Rondônia) has sought to balance the protection of... fundamental rights of the patient, especially dignity, health and access to civil redress, with the preservation of the physician's technical autonomy and professional safety. Thus, the study contributes to a critical understanding of contemporary medical civil liability. demonstrating the importance of case law in consolidating more established parameters. Safe, technical, and humane solutions for conflict resolution involving surgical procedures. elective.

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