

# **“Medical Malpractice and Liability Insurance *in Brazil*”**

***By Melisa Cunha Pimenta***



# Some data to start with...



- **USA's** population: **336 M** people;
- **1M** Medical Practitioners (2023);
- Average of **2.6** per **1,000** inhabitants.



- **Australia's** population: **25M** people;
- **104K** Medical Practitioners (2020);
- Average of **4.1** per **1,000** inhabitants.



Brazil's population: **214M** people;



**562K** Medical Practitioners (2023);



**50K** New Medical Practitioners per year;

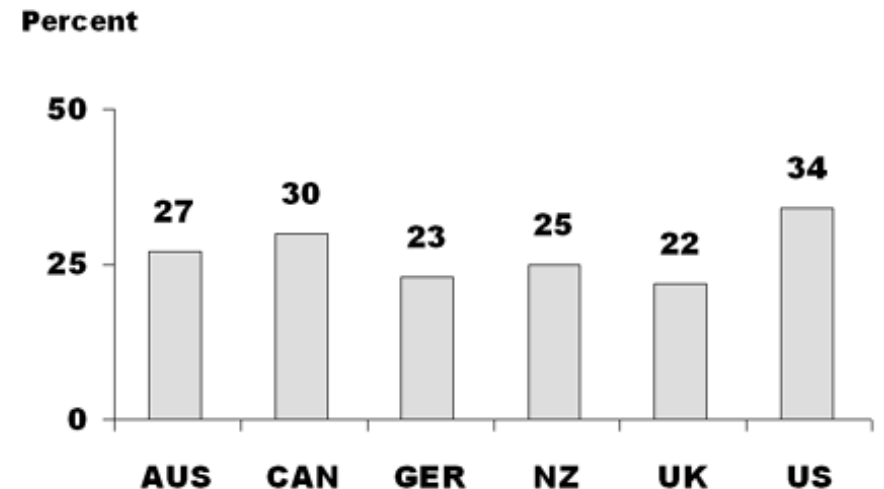


Average of **2.6** per **1,000** inhabitants.

# Medical Malpractice in Brazil

- Outpatient treatment: **40%** of patients suffered some kind of malpractice;
- Hospitalization: **10%** of patients suffered some kind of malpractice.

**Any Error: Medical Mistake, Medication Error or Lab/Diagnostic Test Error in Past 2 Years**



2005 Commonwealth Fund International Health Policy Survey

Adults with Health Problems



## Despite significant risks involved in health professional's job, Liability Insurance:

- **IS NOT** legally required;
- **IS NOT** a common practice;
- Approximately **5%** of Medical Practitioners have it.

**Malpractice Insurance**

# How to take out malpractice insurance?

## *Insurance Proposal Form*

- **occupation/specialty;**
- **prior claims;**
- **any circumstance or incident that might result in a claim;**
- **any dissatisfaction or incident that you are aware of.**

QUESTIONÁRIO	
QUESTÕES	RESPOSTAS
PROFISSÃO DO PROPONENTE	PROFISSIONAIS DA SAÚDE PESSOA FÍSICA
O PROPONENTE ATUA COMO CHEFE DE EQUIPE MÉDICA?	NÃO
O PROPONENTE ATUA COMO RESPONSÁVEL MÉDICO?	NÃO
DESEJA CONTRATAR COBERTURA RETROATIVA?	NÃO
DATA DE RETROATIVIDADE	29/06/2023
DATA DE CONTINUIDADE	29/06/2023
NOS ÚLTIMOS 5 ANOS HOUVE RECLAMAÇÕES OU AÇÕES JUDICIAIS, ADMINISTRATIVA OU ARBITRAL CONTRA O SEGURADO, FUNCIONÁRIO OU REPRESENTANTE DO SEGURADO PELOS SERVIÇOS PRESTADOS? EXISTE ALGUMA EXPECTATIVA DE RECLAMAÇÕES OU AÇÕES FUTURAS OCORRAM?	NÃO
ESTA APÓLICE É PARA O ATENDIMENTO DE UM CONTRATO ESPECÍFICO?	NÃO
ATIVIDADES REALIZADAS PELO PROPONENTE	
QUESTÕES	RESPOSTAS
QUAIS ATIVIDADES SÃO REALIZADAS PELO PROPONENTE	PARTOS, CIRURGIAS OBSTÉTRICAS
ÁREAS DE ATUAÇÃO	
QUESTÕES	RESPOSTAS
ÁREAS DE ATUAÇÃO	CIRURGIA GERAL GINECOLOGIA COM OBSTETRÍCIA

*\* Duty of Disclosure \**

## *Important Points*

- Duty of disclosure **remains during the contract;**
- If the insured receives a claim, he **must** inform the Insurer;
- Settlements only with **prior written consent** by the Insurer;
- Insured and Insurer have to act according to the ***Utmost good faith.***



QUESTÕES		RESPOSTAS	
ÁREAS DE ATUAÇÃO		CIRURGIA GERAL	
		GINECOLOGIA COM OBSTETRÍCIA	
DESCONTOS			
QUESTÕES		RESPOSTAS	
DESCONTO TÉCNICO PROMOCIONAL		10,00	
COBERTURAS			
COBERTURA	L.M.I.	PRÊMIO	P.O.S.
Serviços Profissionais	R\$ 300.000,00	R\$ 4.228,54	10 % dos prejuízos com mínimo de R\$ 4.000,00.
CLÁUSULAS PARTICULARES			

## LIABILITY INSURANCE

Coverage (**USD 62K**)  
x Premium (**USD 864 per year**)

Specialty: **obstetrician**

Average medical practitioner  
salary per year: **USD 42K**

## INSURANCE COVERAGES

(Up to the Indemnity Limit)

- **Compensations amounts;**
- **Punitive damages;**
- **Legal costs.**

Considering that Brazil has a

- (i) high statistics of malpractice;
- (ii) liability insurance is not compulsory,

The **QUESTION** is:

*How are the disputes between patients and medical practitioners (or hospitals) resolved?*





# *How about Mediation?*

- Mediation IS NOT a common practice in Brazil when it comes to malpractice or hospital liability disputes.
- All disputes end up in **Court**;
- Australia: Only **3%** of claims were settled by a court decision.



# Malpractice and Hospitals Liability Lawsuits

\* Civil sphere

Countries with more malpractice lawsuits:



35K  
per  
year  
(2021)

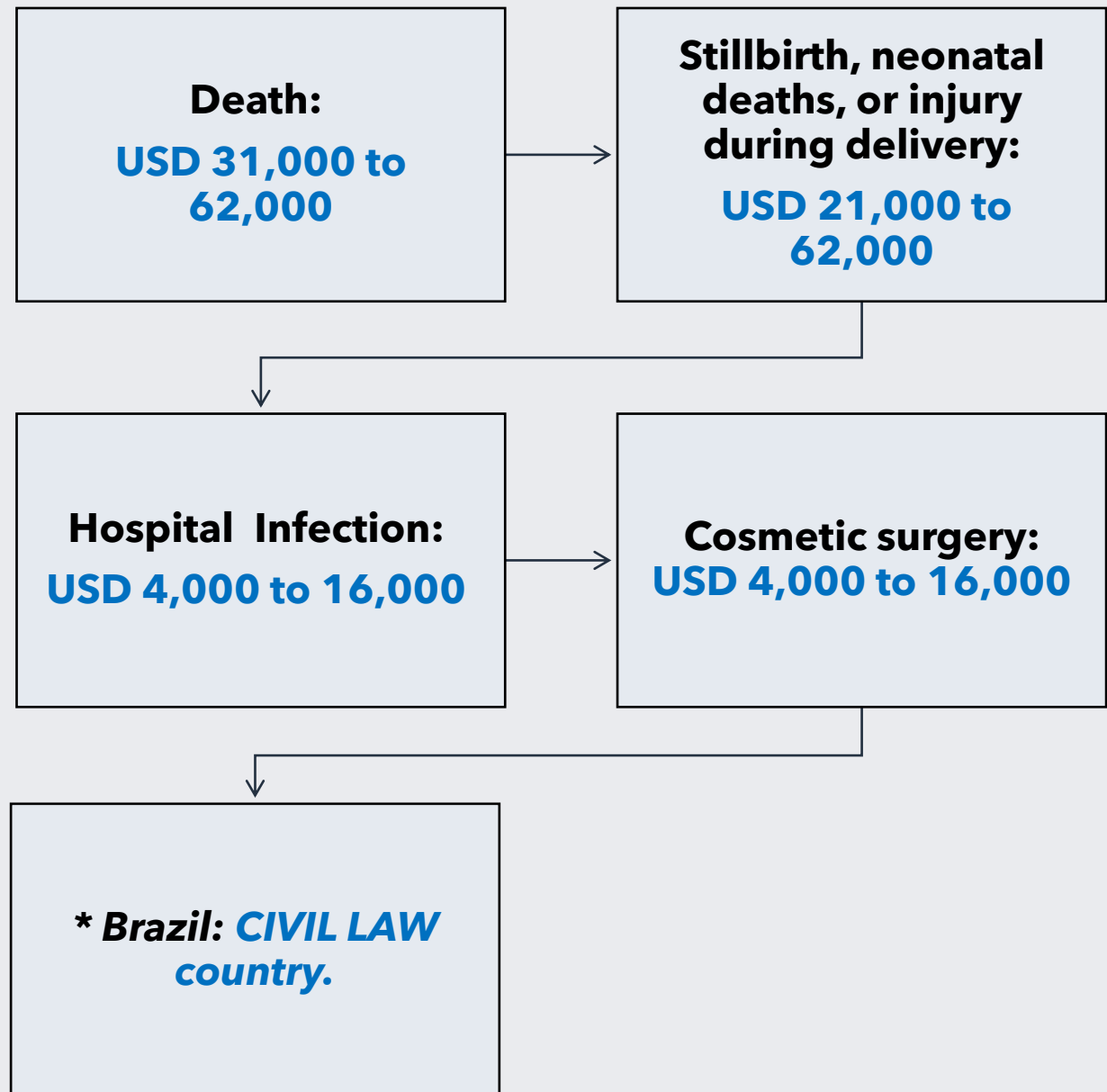
54% of the  
decisions are  
in the health  
professional's  
favor

95.8  
per  
day

# Malpractice Payouts in Brazil

## PUNITIVE DAMAGE

(non-material damage)



# **Medical Negligence Payout - Australia**

\* Patient suffered a perforated bowel during delivery by the misuse of forceps leading to surgery + treatment over the next 2 years: **USD 978K.**

\* Patient went to the hospital with severe neck pain and was misdiagnosed as a muscle strain. Three days later, he was rushed into surgery, and it was found a cervical spinal abscess caused by an infection. **Outcome: paraplegic + 4 months in hospital: USD 3M.**

*The average medical negligence payout in Australia is around **USD 440K.***

Source: <https://lawpartners.com.au/blog/medical-negligence-payouts-guide>

# Case from the Superior Court

Case number 1.749.965 (2019)



The Newborn was injured during the delivery by the **misuse of forceps** and had tetraplegia.

The child was permanently in the hospital for **7 years**.

He was taken home with intensive care from the **age of 8 to 15 years old** before died.

Compensation damages: **all medical, hospitals, medications, extra care, equipment (including artificial respiration) expenses throughout the entire period.**

Punitive damage: **USD 61K for each parent.**



## Malpractice lawsuit: *Time-consuming*

05.2005 - Lawsuit filed;

2007 – Family was granted for injunctive relief to cover all expenses;

2009 - Expert report was carried out;

2010 - Hearing occurred;

08.2011 - First Instance Decision (**USD 203K for each parent**);

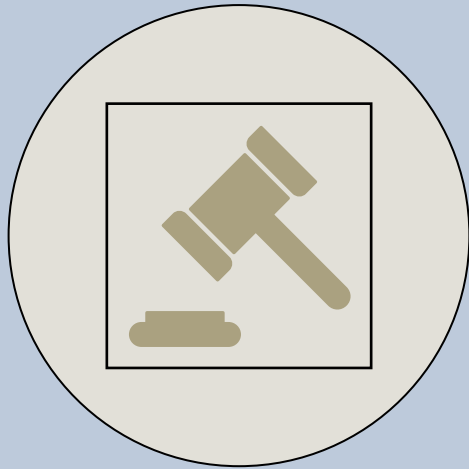
08.2016 - Second Instance Decision (**First Decision was upheld**);

11.2019 - Superior Court Decision (**USD 61K for each parent**).

Punitive Damage (**USD 61K**) + Interest **1%** monthly (**USD 101K**) +

Defeat Fees (**USD 16K**) = **USD 178K x 2 + Compensations**

*Amounts*



# **CONCLUSION**



**High Rate of Malpractice;**



**Significant number of Lawsuits filed against Medical Practitioners;**

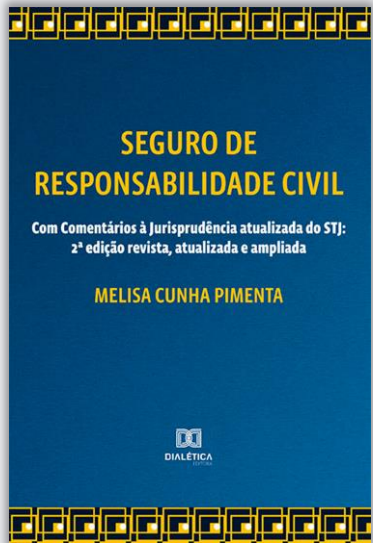


**Malpractice Lawsuits are time consuming and the payouts can be substantial;**



**Liability Insurance is easy to take out, affordable, and with appropriate coverage.**

## Melisa Cunha Pimenta



- Partner in a Brazilian Law Firm, specialized in Insurance Law, Medical Malpractice and Civil Contracts.
- Member of Brazilian International Insurance Association (AILA).
- Master's Degree in Civil Law - Pontifícia Universidade Católica - São Paulo, Brazil.
- Books published: Civil Liability Insurance – 1st and 2nd edition – São Paulo, Brazil (2010 and 2021).
  - E-mail: [melisapimenta@advpmr.com.br](mailto:melisapimenta@advpmr.com.br)
  - <https://br.linkedin.com/in/melisa-cunha-pimenta-a0371a10a>

*Thank you !*