



A 15 years survey for dental malpractice claims in Rome, Italy

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ABSTRACT

Introduction: In recent years, dental malpractice claims seems to have increased dramatically worldwide without a clear explanation. The aim of our work is to shed more light on this phenomenon to better understand its magnitude and trend, and to point out possible critical factors that, if changed, can mitigate it.

Material and method: 458 cases of dental malpractice sentenced by the civil court of Rome, Italy, from 2001 to 2015, were collected. Useful information was extracted, reported in a grid and statistically analyzed. Data was compared between years and overall evaluated.

Results: Multiple information were obtained, among which: the number of dental malpractice claims has decreased in most recent years; Dental professionals are found guilty in 74% of cases; the average compensation granted is 18.820,15 €; only 47,7% of the insured dentist found guilty was fully covered by their insurance.

Conclusions: Contrary to what we expected, dental malpractice claims in court have decreased in recent years. The limit liability of dental professional insurances is high compared to the average compensation granted and the insurance doesn't always cover all the expenses for the presence of peculiar clauses in the contract.

1. Introduction

In recent years, medical malpractice claims have surge worldwide^{1–3} and Italy was no exception. Every year Italian courts face 34000 new medical malpractice claims (data from Osservatorio Sanità, Ania) making medical malpractice a major issue needed to be addressed, not only to improve patients' health, but even to reduce doctor awe of lawsuits and, consequently, their use of defensive medicine, with a reduction of health system expenses.

To tackle the problem a thoroughly analysis of the phenomenon is needed, but up until now retrieving data it has been difficult, making it very hard to understand if the increased number of medical litigations is due to an increase error rate in the medical activity or to psychological or sociological causes, such as increased patient expectations.

Dental care, as being a medical act, is subject to malpractice claims and in recent years, as all medical activities, has seen the number of litigation increase.^{4,5} However, dental litigations are in some way *special*, because dental patients often sue not because they suffered or are suffering a health problem secondary to the dentist's mistake, but because the hoped result wasn't reached. The claims are often moved by a sense of “revenge” for the past, present and future expenses, more than on an actual dentist's mistake.

By examining a high number of verdicts from the Civil Forum of Rome, our study wants to analyze the dental malpractice phenomenon

in Italy as thoroughly as possible and to point to possible actions to reduce it.

2. Materials and method

Our work is a descriptive study performed by collecting all dental malpractice claims sentenced by the Civil Court of Rome from 2001 to 2015. All Civil trials in Italy are public and sentences can be retrieved either by using private paid databases or by searching in the tribunal archive. We used the latter. We retrieved a total of 6963 professional malpractice in the indicated time frame. We divided them by profession: medical litigation cases were 4386, among which there were a total of 458 first degree verdict for dental malpractice. Those cases were collected and used for the study. 69 of them had a second instance verdict. 6 had a legitimacy verdict. From their analysis, the number of dental malpractice cases were 464, because in 6 verdicts there were two distinct compensation requests from two distinct claimants - husband and wife and/or brother and sister – to the same dentist. Every verdict was analyzed and all information useful for our research was collected and inserted in a grid with multiple items, such as: branch of dentistry involved, the losing party, type of items of losses acknowledged, coverage provided by insurance companies and legal expenses. Data was then statistically described - and results compared. For verdicts that had second instance judgement and eventual legitimacy verdict, the

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Table 1
Dental claim verdicts by year of ruling.

Years	Number of Verdicts	%
2001	31	7%
2002	54	12%
2003	50	11%
2004	47	10%
2005	40	9%
2006	35	8%
2007	42	9%
2008	28	6%
2009	17	3%
2010	20	4%
2011	19	4%
2012	20	4%
2013	18	4%
2014	19	4%
2015	24	5%
Total	464	100%

importance of the first sentences was evaluated.

3. Results

Dental claim verdicts were firstly compared with the total number of professional litigation verdicts and the number of medical litigation verdicts pronounced by the Civil Court of Rome from 2001 to 2015: of 6963 professional liability verdicts, 4386 were medical litigation ones, with 458 regarding dental malpractice, corresponding to 6.6% of the total professional liability verdicts and 10.4% of the medical litigations ones. Considering dental claim verdicts by year of ruling (Table 1) in recent years the number of verdicts has progressively decreased, with a mean of 20, compared with the maximum registered in 2002 of 54. In 98% of all cases the dentist cited was male. By sorting the claims by the branch of dentistry involved, prosthesis was the most common one, accounting for over 44% of all cases (204 of 464), followed by implantology (18%) and endodontics (13%) that, however, in half the cases had a prosthesis entailed (Table 2). By analyzing the content of the verdicts, in 74% of cases (339) the dentist was found guilty. Interestingly, if the analysis is restricted to the period 2010–2013 and 2012–2013 the percentage grows respectively to 78% and 79%, but if we consider just the last two years of our study, 2014 and 2015, the percentage drops to 60%. Regarding the single compensation voices that the Italian law consider, Biological Damage (BD), an Italian juridical concept that uses percentages from 0 (nothing) to 100 (the complete loss of physical validity) to quantify psychological and physical permanent impairment, was recognized in 62% of the cases with a mean of 4,31% (minimum 0,25% - maximum 25%). Moral damage, defined as the inner shock endured by a person for the suffered wrongful doing, was recognized in 64% of the cases, with an increase of the evaluated BD of 1/4 to 1/2. Patrimonial damage for future expenses

Table 2
Claims by branch of dentistry involved.

Specialities	Number of Claims	%
Prosthesis	204	44%
Implants	85	18%
Endodontia	60	13%
No Specified	41	9%
Orthodontics	32	7%
Extraction	19	4%
Consensus	9	2%
Preservative	9	2%
Paradontology	5	1%
Total	464	100%

was recognized in 73,39% of cases, with a mean compensation of 10.227,11€, with the minimum assigned being 51,65€ and the maximum 56.909,97€ (Table 3). The return of the dental professional's emolument was acknowledged in 45,19% of cases, with a progressive rise through the years, from 30% registered in 2005, to 75% in 2015. Overall, compensations, when granted, had a mean of 18.820,15 €, with a maximum of 217.583,00 € and a minimum of 307,98 €, against an average plaintiff's request of 55.148,31 € (calculated on the 206 cases that had the plaintiff's request stated) with a minimum demand of approximately 7.000€ and a maximum one of more than half a million of euros (557.773,45 €). Analyzing first degree verdicts, we found that in 84,70% of cases the sentence followed the nominated court professional expert advice. In the 69 cases that had a second-degree verdict, in over 2/3 of the cases (48) the requests were denied, confirming the first-degree verdict, while in the remaining 21 s degree cases, the compensations were modified, increased or decreased, but with not great difference from the first degree verdict. In only 7 cases that went to a second-degree trial the court found needed to entrust a new professional expert for the court. In two of those cases the decision was overturned. Lastly, 5 cases had a third-degree verdict, a legitimacy one; all of them confirmed the rightness of the juridical principles used for the verdict, rejecting the requests. Finally, we considered the role played by insurances: 61,42% of all the dentists sued had a professional insurance, with the percentage dropping to 59,94% (203 dentists) when only convicted dentists (339 dentists) were considered. Of the convicted dentists, just 67% (136 dentists) were actually covered by the insurance. Fully covered, comprehensive of the return of the emolument, were 97 dentists (47,7% of the convicted insured) while 39 were only partially covered. 67 insured dentists didn't receive any cover (Table 4). The insurance companies that did not or partially covered their clients did so for multiple reasons; the most common were: the absence of coverage for specific dental branches (implantology) or special voices (emolument), unmet clauses in the contract, delayed report to the insurance about the complaint. In those cases, where the dental professional was found guilty, but wasn't covered by his insurance, the maximum compensation granted by the court was 95.396,00€.

4. Discussion

Medical malpractice “numbers” have been always difficult to collect, making nearly impossible to have a well-defined image of the phenomenon. Dental malpractice is not different. Retrieving data of out of court settlements is difficult and literature regarding it is scarce.⁶ Even if it doesn't consider out of court settlements, our study both for its nature (juridical) and the amplitude of the sample (to our knowledge the most extensive ever used for this type of study) it embodies in small all the dental malpractice phenomenon and allow us to analyze it and address it.

The first consideration that comes to mind is that, in line with the evidence found by Pinchi et al.,⁷ the number of dental malpractice sentences (464) by the Civil Court of Rome (the largest of Europe) is very small compared to the enormous number of dental procedures every year performed in Rome, making it, in our opinion, physiological and acceptable, especially when compared with the medical malpractice numbers. Moreover, by observing the number of cases per year, we can see that there is a decreasing trend, with the 2013 case number being 1/3 of the 2002 one (Fig. 1); an unexpected result, in consideration of the literature cited.⁸ In our opinion, the reason of those numbers is twofold: 1 dentists are more mindful in approaching patients and 2 out of court settlements have increased.⁹ While we can confirm the former with our experience in the field, the latter is impossible to verify due to the lack of data released by insurance companies. In contraposition with this positive data, we found that professionals are found guilty in 76% of cases, in line with other studies. Nonetheless, if we consider only the last two years of our study, this percentage drops to 60%. The former percentage can be explained with

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