

Professional liability: assessment of court sentences for lawsuits against dentists in Peru

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ABSTRACT

Introduction: The number of reported dental malpractice cases has increased in recent years. The aim of this study was to analyze the characteristics of Peruvian court sentences related to dental procedures.

Materials and methods: In the present descriptive study, 33 sentences issued by the civil court of Peru, from 2011 to 2016 were collected. Useful information from the sentences was extracted and analyzed using the SPSS 18 software.

Results: Data showed that dentists were found guilty in 84.8% of sentences due to absence of suitability in dental treatment. Male dentists (61.1%) were involved in more cases than female dentists. Prosthodontics (33.3%) was the dental specialty subject to most claims.

Conclusions: Dentists like other health professionals are regulated by legal rules in the country they practise. As part of dental practice and in order to avoid claims, having a full clinical history and informed consent should be mandatory.

INTRODUCTION

A suitable term for medical malpractice is “an act of a medical professional deviating from the set regulations and standards that result in injury or damage to a patient”.¹ In recent years, claims against dental malpractice have risen. Dentistry is associated with specialist treatments and high costs due to the predominantly private relationship between the professional and the patient who has greater expectations of the results. Thereby, if the dentist fails to reach these expectations, it can result in lawsuits concerning professional liability.² These dental malpractice cases can be resolved in civil law involving sometimes financial implications, but in extreme cases criminal procedures may be conducted by criminal law with sanctions such as imprisonment or fine.³ In general terms, negligent procedures include the lack of scientific qualification to perform a medical act, the violation of guidelines of therapeutic activity and the harm or injury directly caused by the dentist’s negligent act for which compensation is claimed.⁴ Professionals must act with expertise, prudence, and diligence, carrying out risk management before, during and after the procedure.⁵

In Peru, The General Law of Health (N° 26842) establishes that health professionals are responsible for damages caused to the patient by the negligent, imprudent and inexpert exercise of their activities (Article 36) and the health establishment is jointly liable for damages caused to patients (Article 48). For

imposing a sanction, there will be taken into account: a) Damages that have occurred or may occur in patient's health; b) The seriousness of the offence; and, c) The condition of reiteration of the offender (Article 135).⁶ Additionally, The Peruvian Civil Code establishes that those who do not perform their obligations due to wilful intent, inexcusable fault or slight fault are subject to compensation for damages (Article 1321). As for moral damage, it is also susceptible to compensation (Article 1322).⁷ Furthermore, the practise of dentistry is ruled by the Code of Ethics and Deontology, which constitutes the set of standards that govern the disciplines that regulate and supervise the dental profession, establishing the incompatibilities, limitations and prohibitions to the surgeon dentist who practises the profession in the country.⁸ The purpose of this study was to assess and describe the characteristics of Peruvian sentences associated with the performance of dental procedures.

MATERIAL AND METHODS

This descriptive study was done in Lima (Peru) using 33 court sentences concerning dental treatment performed by surgeon dentists in Peru. Sentences were collected from the data base of the application vLEx (only for the Peruvian jurisdiction) using the following key words: sentence, dentist, consumer protection. All of the sentences were issued from 2011 to 2016.

From the 33 sentences, the following information was taken:

- Year of the sentence.
- Gender of the plaintiff.

- Gender of the dentist.
- Type of accused: if it was only the dentist, only the dental centre or the combination of the dentist and dental centre.
- Result of the sentence: if there was or was no suitability, status of limitation or if the court ruling is not conclusive.
- Amount of the indemnification (if any). Peruvian system of indemnifications is fixed in Levy Tax Unit (UITs in Spanish). Among 2011 and 2016, 1 UIT was (on average) approximately 1120 dollars.
- Specialty in dentistry involved.

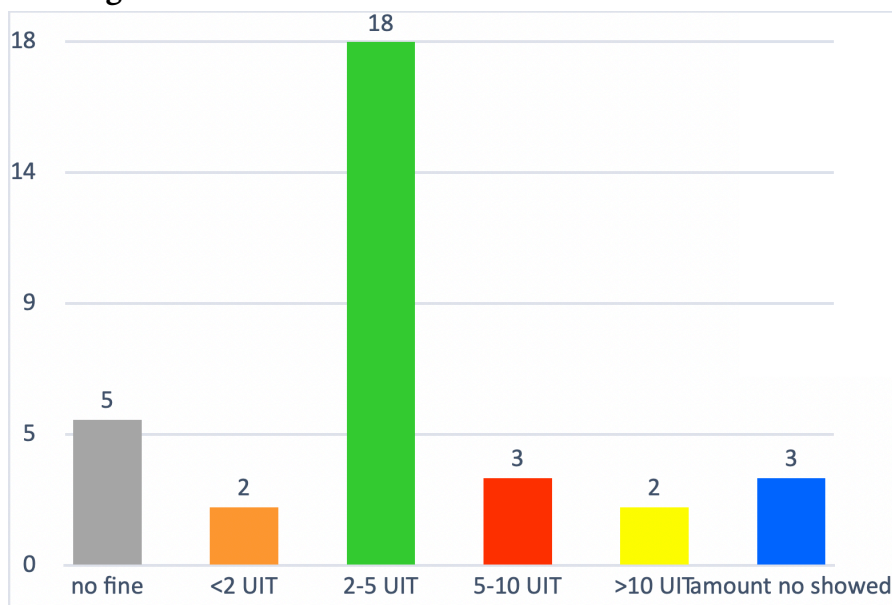
The statistical analysis was performed using SPSS 18 software. Data were analysed by the chi squared test and statistical significance was defined at $P < 0.05$.

RESULTS

Data obtained from the 33 sentences showed that the years with the largest number of sentences was the period 2013-2014 (54.5%) with 18 sentences. Regarding the type of accused, professionals and dental centres have the largest number of sentences (48.5% for each one).

Most of the sentences (84.8%) found no suitability in the dental treatment, meaning that the accused was found guilty. The amount of indemnification was issued in 25 sentences and most of them fluctuate between 2-5 UIT (54.5%). The largest indemnification was equal to 15 UIT for a malpractice case in implantology. Sentences which found suitability in the treatment, status of limitation or when the court ruling was not conclusive have no fine (Figure 1).

Figure 1. Amount of indemnifications awarded in sentences



The dental specialty most involved in the sentences, was prosthodontics (33.3%), followed by orthodontics (27.3%), oral and maxillofacial surgery (9.1%), implantology (9.1%), other specialties (9.1%), endodontics and more than 2 specialties (6.1% each one) (Figure 2).

Regarding the gender of the accused, the largest percentage was for males (61.1%). However, there was no significant difference between male and female dentists ($p > 0.05$) (Table 1). On the other hand, most of the patient claimants were female (66.7%).

Figure 2. Fields of dentistry involved in sentences

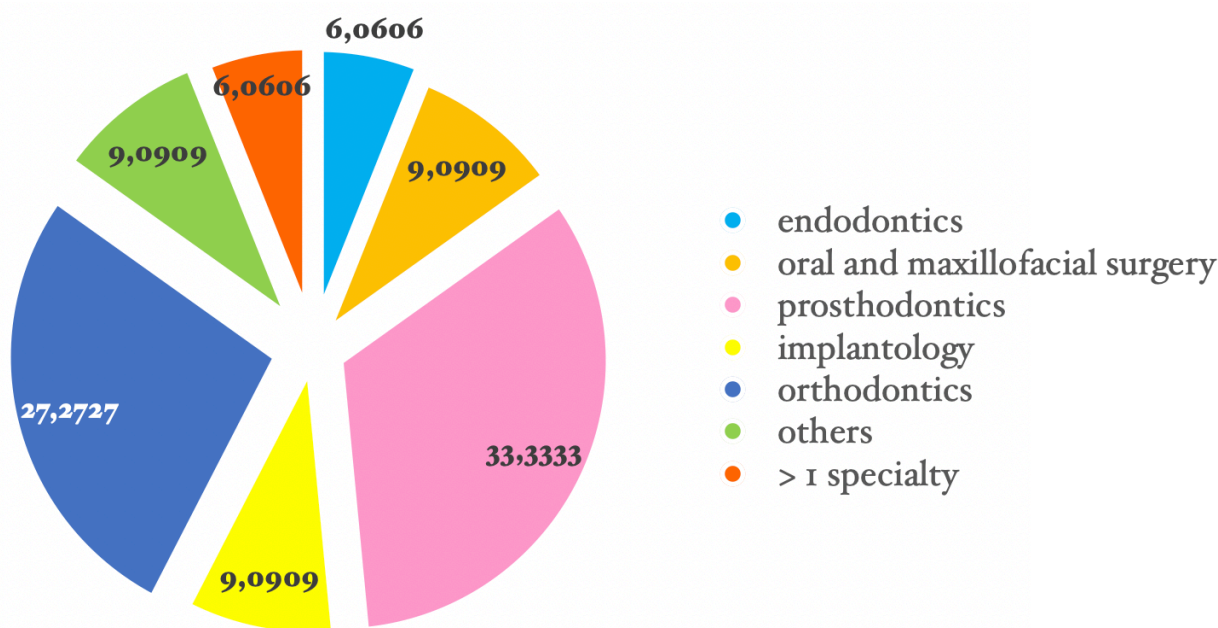


Table 1. Gender of dentist regarding type of accused

		Type of accused			Total
		Dentist	Dentist + DC	DC	
Female	Number	5	2	-	7
	%	31,3%	100%	-	38,9%
Male	Number	11	0	-	11
	%	68,8%	0%	-	61,1%

DC: Dental Centre. $p = 0.06$

DISCUSSION

Primarily, it is very important to indicate that the literature regarding sentences involving dental treatment is limited. In addition, the access to the information was very difficult because in Peru documents of this kind are not stored in any data base; consequently, the authors had to use vLex

application and even using this source the sample was restricted.

By analyzing the gender of plaintiffs, this study shows that 66.7% of all the cases were female. Other studies agree that in relation to the profile of the plaintiffs there is a predominance of

women, as in the studies by Zanin et al.⁹ (74%), Montagna et al.¹⁰ (68%), Knaak et al.¹¹ (56%) and Marinescu Gava et al.¹² (74%). This higher number of submitted claims is explained by women's greater general interest in dental health and use of services.¹³ Data from the current study show regarding the gender of the professional and the type of accused, there is no significant difference between male and female dentists ($p > 0.05$). However, the largest percentage was for males (61.1%). Similarly, Perea-Pérez et al. found that 84.1% of all the professionals subjected to complaints or lawsuits concerning oral surgery were male.¹⁴ Also, in the study conducted by Hashemipour et al., most complaints involved males (90.6%) and there was a significant relationship between the gender of dentists and the number of complaints ($p = 0.001$).¹⁵ According to studies by Pinchi et al.¹⁶ and Givol et al.¹⁷ female patients are more likely to lodge complaints against treatment by male dentists, which suggest that male dentists are more likely to become involved in litigation than female dentists. The present study suggests that the relationship between male dentist/female patients is more likely to result in complaints. Results which point out that female dentists are less likely to undergo malpractice lawsuits. According to several authors this could be due to female dental practitioners tend to practise more communication that can be considered patient centred, which can minimize the probability of litigation.^{18,19}

This study shows that all of the sentences (100%) involved dental treatment performed in private dental centres. In the literature, several authors agreed with our results, for instance Perea-Pérez et al. found in 85.7% of all the cases that the care was provided in a dental clinic.¹⁴ A study conducted by Ozdemir et al. showed that in most of the cases (81.8%) treatment was carried out in private dental practice.²⁰ As for the the branch of dentistry most involved in sentences, prosthodontics was claimed in 33.3% of all the cases. In practically all data the same trends are found, Kiani et al. reported that the majority of clinical complaints involved fixed prosthodontics (27.8%) followed by oral surgery (23.5%), endodontics (16.6%), periodontics (2.5%) and operative treatment (13%).²¹ Also, Manca et al. found that prosthodontics was the most claimed specialty, accounting for over 44% of all cases (204 of 464).²² This information coincides with

the study published by Nassani who indicated that the available evidence suggested that prosthodontics may come at the top of dental specialties in terms of inciting patient complaints and filing of dental claims.²³ There is current evidence in the literature which point out estimations about failure in prosthodontic treatments; for instance Pjetursson et al.²⁴ have estimated that over one-fifth of prosthodontic cases fail after 10 years service and according to Saunders et al.²⁵ one-fifth of teeth prepared for full coverage crowns become non-vital within five years of placement. These results suggest taking into account other options for preserving teeth such as the use of adhesive materials in the practice of minimally invasive dentistry.²⁶

As result of the sentences, in 84.8% of the cases there was no suitability in the dental treatment, consequently, the dentist was found guilty. Other studies agree that in most of the cases, the dentist is found guilty, as Hashemipour et al.¹⁵ (56.7%) and Manca et al.²² (74%). However, Thavarajah et al. reported a lower number of dentists pronounced guilty, 39.63% of litigations decided in favour of patients.²⁷

In this study, implantology was the specialty with the highest indemnification issued (15 UIT). According to the amount of indemnifications, Perea-Pérez et al. reported that sentences involving implantology surgery had the greater amount of indemnifications.¹⁴ Nevertheless, Thavarajah et al.²⁷ found that procedures involving oral surgery are often associated with high compensations and Kiani et al.²¹ showed a case which involved a general dentist who worked as a prosthodontist with the most expensive compensation.

In the sentences analyzed in this study we did not find information about the operator's specialization which theoretically should reduce errors in dental treatment with a decrease in complaints from patients. Moreover, dentists should recognize their own limits and make timely referrals when they are needed. Agreeing with this statement, Hiivala et al. showed that moderate to severe harmful patient safety incidents were caused by overconfidence performing complicated treatment such as fixed prosthetics, implants or surgical procedures.²⁸ However, Vehkalahti et al. found no statistical differences between specialized and general dentists ($p = 0.963$) in cases of endodontic treatment.²⁹

Although the sentences assessed did not show information about dental records, research points out that a very important issue to take into account is the absence of relevant information in dental records, which should be emphasized because such a lack of information causes problems for dentists during their defence in malpractice cases.^{30, 31} Hence, it is important to remember the statement of “poor records mean poor defence, no records mean no defence”.³²

Finally, we consider that data in the scientific literature should force us, as health professionals, to be mindful of having a full clinical history and before performing any dental procedure we must have the appropriate informed consent signed by the patient. This conclusion was in agreement with Marei who concluded that during the consenting process verbal and written communication are essential.³³ In addition, cases of malpractice incidents should be used for feedback to instruct dental practitioners.

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