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SHOULD WE BE AFRAID OF MEDICAL MALPRACTICE COMPLAINTS? THE DOCTORS' PERSPECTIVE

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Abstract: *Background.* Medical malpractice litigation is a well-known increasing phenomenon all over the world, although precise data are not always available. The reasons for submitting complaints against the doctors may vary from one country to another, from one culture to another, from the view of the patients and the view of physicians, although some of them are universal. The aim of this study was to analyze the risk of malpractice complaints and the reasons lying beneath through the eyes of physicians who were involved in complaints filed by patients.

Material and method. The authors performed a qualitative research and the data were collected using a semi-structured interview. The target population was represented by doctors from different specialties, who were involved in complaints from patients on any of the three components of medical liability: civil, criminal, disciplinary. The analysis of the collected data was done inductively, identifying common themes.

Results. The general opinion of the participants was that the malpractice risk follows an upward trend, and the factors that contribute to this are related both to patients (e.g. external influences, financial motivations) and medical practice (e.g. medical communication, overwork of the medical staff).

Conclusions. Malpractice complaints are an increasing reality in medical practice in Romania, and the data are of particular importance for sounding the alarm in the directions in which measures should be taken to limit the continued growth in the number of complaints and open up new opportunities for research on this topic.

Key words: medical malpractice, risk, reasons, qualitative study, interview, physician.

INTRODUCTION

The technological progress in medicine contributes to the success of the medical act by improving the methods of diagnosis and treatment, but at the same time can greatly increase the patients' expectations [1], which may become unrealistic. If we add the commercialism of medicine [2], the recent emphasis on patient's rights, the overload of medical information- not always precise and reliable- from the virtual space [3] and the sometimes abusive and unfair manner in which social media [4] and mass media reports on the failures of medical practice, we have a framework in which the doctor feels pressured by the need for successful performance. When this desideratum is not fulfilled, patients tend to sanction the doctor, complaining about him [2, 3] and thus the premises of a conflicting doctor-patient relationship are created [5].

All over the world, medical practice has seen in the recent decades an upward trend on the scale of complaints from patients [6]. For example, in the United States of America, which faced a malpractice crisis at the end of the last century [1], estimates show that 75% of doctors in low-risk specialties (e.g. psychiatry, pediatrics, family medicine or dermatology) are prone to face a claim of malpractice until retirement, the estimates being more bleak for those in high-risk specialties (e.g. neurosurgery, thoracic and cardiovascular surgery, general surgery, orthopedics), where the proportion reaches 99% [7]. In China, preventable errors are estimated to cause at least 420,000 deaths annually, and the study conducted by Gao *et al*. [8] showed that during the period 1990-2015 there were recorded 649 medical disputes. Annually in New Zealand, 1 in 17 doctors is prone to being

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complained about [9]. Medical practice in Italy faces 15,000 complaints from patients each year [10], with an increase of 255% from 1994 to 2011 [11]. In Romania, the number of medical malpractice complaints filed in Court increased from 8 in 2008 to 65 in 2017, with a total of 331 in the period 2006-2018 [12]. The complaints filed for extra-judicial analysis, at the Commissions of monitoring and professional competence for cases of malpractice within the Directorates of Public Health of the region of Moldova, increased from 6 in 2007 to 16 in 2019, with a total of 153 cases throughout this period [13]. The complaints regarding the disciplinary liability submitted to the Superior Disciplinary Commission of the Romanian College of Physicians increased from 112 in 2006 to 267 in 2018, with a total of 2394 during this period [14].

On the one hand, it is important and rightful for patients (or their families) to be allowed to complain [4,15], as the investigation can help protect patients [4] and maintain clinical standards at an appropriate level [16, 17].

On the other hand, however, the significant potential of exposure to complaints determines on the medical practitioner inevitable personal and professional consequences [18], which must not be neglected. The tormenting increase in the number of complaints generates significant additional stress for practitioners, sometimes exacerbated by the fact that the onset of these conflicts is governed by external factors, i.e. people who influence the patient to complain and who are more and more often doctors themselves, colleagues of the involved physician.

The purpose of this study was to assess the risk of malpractice complaints from the perspective of physicians who were involved in various complaints filed by patients. The present study is a section of a larger doctoral research, which targets the identification of methods to prevent complaints from patients and reduce their impact on the medical personnel.

MATERIAL AND METHODS

To achieve our goal we used a qualitative research methodology. The data were collected using a semi-structured interview. The target population was represented by doctors from different medical, surgical and para-clinical specialties, both men and women, from different cities in Romania, who were involved in complaints from patients on any of the three components of medical liability: civil, criminal, disciplinary. Before the interview, the participants agreed to participate. The interviews were transcribed verbatim, and the analysis was done inductively, identifying common themes.

RESULTS

By adapting the snowball method, we identified 9 doctors from medical (pneumology, psychiatry, emergency medicine), surgical (pediatric surgery, obstetrics and gynecology, urology) and paraclinical (pathology) specialties who consented to participate in our study. The complaints faced by the interviewed doctors concerned all aspects of professional liability, isolated or combined: civil (6), criminal (5), disciplinary (5). The study group included 4 men and 5 women, who work in different cities of the country. In this article, the authors present partial results of the analysis of the collected data, with reference to the evaluation by the participants of the nowadays risk of medical malpractice complaints in Romania.

Assessing the risk of medical malpractice complaints in Romania and the reasons for that assessment was a distinct question of the interview, but given that the discussions took place freely, the qualitative analysis allowed the identification of additional reasons along the way or the detailing of those already mentioned.

Most of the interviewed doctors appreciated that the risk of malpractice complaints is increasing, the reasons being related to both the patient, and the doctor and medical system in general.

Regarding the reasons related to the patient, most of the doctors stated that most patients submit complaints as a result of external suggestions. Thus, the participants talked about the influence that other doctors have on patients, instigating them to complain. This affirmation is based on the experiences of other colleagues involved in complaints: "But all the complaints I've seen are usually helped by colleagues. That is, no patient took the first step by himself, with his thought, with… Because the patient usually trusts the doctor. But when she/he is helped by another colleague, then… this is the first place, I think, in patients' complaints." (P2); "It seems to me- as I have been in the field of work for over 30 years - it seems to me that the relations between colleagues have also worsened and the vast majority of these complaints, lawsuits, arise at the advice or discussion with various colleagues as they want to somehow get ahead"(P6), or is based on their own experience: "[…] And he submitted a complaint against me… and from what I understood […] the doctor who took care of her told him that in fact I did

not take care of his mother, that I neglected her and that is why she became so seriously ill"(P3).

Other external influences may come from the lawyers "[Who] lie in wait for malpractice lawsuits, because they gain from these malpractice lawsuits. And it is a struggle between lawyers for malpractice lawsuits, based on the idea that insurance companies pay and that they can earn good money" (P6). One of the doctors pointed out the difficulty of defense in such situations: "They are legally educated, and in the face of this, we, as doctors, are absolutely defenseless" (P7).

The role of the media was also mentioned, especially when the information that journalists make public is not true: "False information that patients or family members take from the media, from the internet, so not strictly from the medical field" (P6).

The financial motivation for the complaint was another aspect highlighted by some of the participants in the study: "I think patients are motivated, unfortunately, by money, by the financial aspect" (P7).

Another reason was the low level of medical education- which does not allow patients to sufficiently understand medical terms, procedures or priorities, with complaints often coming before asking for explanations: "Patients or relatives, dissatisfied […] because they have to wait long time in the Emergency Room, they do not understand that the emergency case has priority. The more or less family medicine consultations have little to look for in the Emergency Room" (P5). For the same reason, some patients postpone the presentation to the doctor: "He had a referral from the family doctor a week before, but his daughter did not bring him then, she brought him only when the man felt worse" (P1).

The reasons regarding the medical practice were mainly related to communication within the doctor-patient relationship, often the information provided by doctors being scarce: "The risk is increased due to the lack […] of informing patients on what the medical system can and what cannot do" (P1). Likewise, the reduced communication within the medical team that takes care of the patient was highlighted: "There are many cases in which there is no precise communication between the attending physician or physicians- because here too there is a problem of multidisciplinary consultations, and there is not enough collaboration between doctors from different specialties to explain to the family the serious situations in which the patients are" (P8). Another important aspect that was highlighted regarding the increased risk of malpractice in terms of medical practice was the overload of the medical system, doctors risking to make mistakes when they are exhausted: "As a result of overload. Given the small number of doctors. And the high addressability of the population to a small number of doctors on a certain specialty" (P5); "We have a lot of work, we are too few, we work day and night, we work overtime. And if you work a lot, you have a lot of requests, you operate a lot, there is also a higher risk of making a mistake" (P9).

Finally, some doctors also referred to the shortcomings of medical practice regarding protocols: "The risk is increased due to the lack of clear protocols" (P1). "The problem in Romania is that the protocol from a surgical point of view does not really exist. In the sense that they are only now beginning to sketch something. This is it. In the western countries, you have these well-defined, well-thought-out things. Maybe for many years before entering the hospital there are certain things that are known. And you know what to look for" (P4).

DISCUSSION

In this study we aimed to assess the current risk of complaints of medical malpractice in Romania in the view of doctors who have been involved in various complaints from patients, as well as the factors that contribute to shaping this risk. The general opinion of the participants is that the risk follows an upward trend, and the factors that contribute to this situation are related to either patients or medical practice. Regarding the factors related to the patient, we identified a number of external influences (coming from doctors, lawyers, media), financial motivations, as well as poor level of health education in patients. Regarding the medical practice, the following are underlined: poor doctor-patient communication, poor communication within the medical team, overwork of the medical staff and the gaps in the medical practice regarding the protocols.

Some of the opinions of the participants in our study are consistent with previous studies or general data published in the literature. It is universally recognized the importance of efficient patient-physician relationship in the success of the medical act or, conversely, poor relationship in triggering complaints [11, 19], the basis of the efficient relationship being a good communication. In the study performed by Schaad *et al*. [6], the authors analyzed the reasons why patients and their relatives visit the hospital's complaints center and found that the reasons related to the relational aspects of the doctor-patient binomial (e.g. questions left unanswered, missing

reciprocal understanding, unstable relationship) were significantly more reported compared to the technical aspects of the medical practice (e.g. lack of diagnosis, breach of confidentiality, failed surgical interventions). Similarly, there are other studies and data to show that in the process of initiating the complaint, inefficient communication prevails, leaving in the background the actual medical act (care, treatment, documentation) [19,20].

Just as there is evidence that poor communication increases the risk of complaints, there is also evidence that improved communication can prevent complaints despite the occurrence of a medical error [21]. By improving communication, the physician has the opportunity to inform the patient more clearly about the risks and benefits of a particular method of diagnosis or treatment, so that the patient accepts or refuses it perfectly aware of the situation [22]. In the same context, Larsen [23] suggests that using apology when an incident occurs can help prevent complaints. Incidents in medical practice can lead to feelings of anger among patients [24], and anger is a powerful trigger for initiating a complaint. Therefore, Larsen states that honest apology, expressing the empathy- without inducing the patient the idea that in this way the doctor takes the blame, may prove to be sufficient to avoid the trauma determined by the complaint [23].

Communication deficiencies within the medical team were also reported in our study. In nowadays medicine, the emphasis falls more and more on approaching the patient by a team of professionals [25,26], and communication- the central element of the doctor-patient relationship becomes essential in the patient-medical team relationship [25] as well as between the members of the team itself [26]. Data published in the literature confirm that communication deficiencies within the team have a negative effect on the well-being of the patient and the medical team [26] as well as on patients' trust in medical professionals, and that mistrust can be a trigger for complaints [11].

Another aspect reported by the doctors in our study is the link between complaints and the level of health education in patients, which they evaluate as being very low. Thus, many of the complaints arise because patients do not understand medical terms, priorities or medical procedures. The lack of education is supported by misinformation in the virtual environment or in the media and it indirectly contributes to non-compliance with medical recommendations or delayed presentation to the doctor, thus creating the premises for therapeutic failure and subsequently for the complaint. A similar reason for complaints was reported in the study published by Schaad *et al.* [6], where doctors stated that sometimes patients' complaints were related to the limits of medicine or as an expression of disappointment with medicine in general, with the impression that medical staff did not do everything possible to solve the case.

Regarding the postponement of the presentation to the doctor, the literature proposes another hypothesis for the reasons that determine the initiation of the complaint: the search for a scapegoat. The situations presented by the doctors in our study are cases in which the outcome was the death of the patients, and the families blamed the doctors saying that they mistreated the patients or did not do everything possible to save them, provided the patients ignored the medical recommendations and they did not see a doctor in time. The scapegoat hypothesis is well underlined by Davis and Scott [27], who state that patients' relatives file complaints to get rid of guilt. For example, because they noticed that the patient's health was deteriorating, but they did not see a doctor in time. And in order to free themselves from the burden of guilt, they seek to blame the doctor, considering that she/he did not do everything possible to save the patient's life [27].

In many cases patients are influenced in their decisions to complain by various outsiders. In our study, participants mentioned the influence of physicians, lawyers, and the media, but the list can be supplemented with pharmacists, representatives of patient organizations [28], friends and acquaintances [11, 29].

The most painful for doctors is when patients are urged to file complaints precisely by other medical professionals, their colleagues. The reasons for inciting the idea of complain are many. According to one of the doctors in our study- a doctor with extensive experience, one of the reasons is the simple desire to assert themselves, to come forward. To this we can add the revenge for past conflicts, as Miglioretti *et al.* [11] point out: doctors who are in conflict and look to take revenge. Competition for patients is also reported as a motivation for instigating patients to complain. In countries where medicine is largely privatized, or in specialties that can be practiced in private, physicians may be tempted to cut back from competition by spoiling colleagues [11]. Sometimes doctors make these suggestions through direct statements, other times through subtle statements that raise the patient's doubt about the doctor who previously consulted him/her [11].

Some doctors referred to how the media contributes to increasing the number of complaints, through the influence it has on patients. Mass media and social media can have an important role in improving the medical system by sounding the alarm about system deficiencies or deviations from responsible conduct in medical practice [30]. Nevertheless, the avalanche of medical information that the virtual environment offers to patients does not always allow verifying their correctness and there is a risk of distorting reality, of unjustly throwing with dirt towards medical professionals when media present cases of medical malpractice [3, 30].

Doctors in our study also talked about the influence that lawyers have on patients. This opinion can be connected with the pecuniary motivations of the patient- and implicitly, in this case, of the lawyers. As the participants in our study discussed the pursuit of lawyers after cases of medical negligence, similarly, in the study conducted by Miglioretti *et al.* [11], one of the participants mentioned the profit that can be obtained by suing doctors, beneficiaries of the malpractice insurances. Although sometimes getting a sum of money easily by claiming the insured doctor is the patient's sole desire, other times this is a necessity for the patients, especially when hospitalization and treatment generate costs that they can hardly afford [27].

Still regarding external influences, Jain & Ogden [28] identified in their study influences from the pharmacist or the leaders of patients' organizations in initiating the complaint, and Domino *et al.* [29] and Miglioretti *et al.* [11] pointed out the role of friends and acquaintances. Concerning this last aspect, Miglioretti *et al.* [11] point out the ambivalence of relatives and friends, who could change their opinion over time, coming to criticize the patient and to reproach him the financial motivation.

An important element that the doctors mentioned regarding the medical practice is the work overload- provided that the medical system in Romania lacks enough doctors. Therefore, existing physicians often have to cover staff shortage which leads to overwork. In clear terms, this means, for example, an increased number of working hours, an increased number of on-call shifts, performing the activity under pressure- factors recognized for their connection with the risk of burnout [31]. In its turn, burnout can lead to mistakes - with all the consequences that stream from here like a cascade (e.g. decreased quality of care, decreased patient satisfaction) which will increase the risk of malpractice [32].

Protocols and guidelines in medicine- established at national level or within each medical specialty, are intended to create a unitary practice, and by observing them, they may prevent mistakes in practice and implicitly the occurrence of medical malpractice [33]. Even if they do not always guarantee the success of the therapeutic act, as there are situations in which the failure is determined by external factors, proving the compliance with protocols and guidelines allows the doctor to defend him/herself when sued for malpractice [33]. The doctors in our study referred to the topic of protocols as an element for the increased risk of malpractice complaints, although not so much through their non-compliance, as through the shortcomings of the medical system, which does not provide protocols for all situations. When there are no protocols, there is a risk for physician of making mistakes and a risk of being defenceless in the event of a complaint.

In conclusion, malpractice complaints are a reality in the medical practice in Romania, their tendency following an upward trend. The reasons for this escalation are related on the one hand to the patient (low level of medical education, financial motivations, external influences), and on the other hand to the medical system (poor medical communication, overload, lack of protocols).

Our research is qualitative, so the results cannot be generalized, but these data are of particular importance for sounding the alarm in the directions in which measures should be taken to limit the continuous growth in the number of complaints and open up new opportunities for research on this topic.

Conflict of interest

The authors declare that they have no conflict of interest.

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