MALPRACTICE IN DENTISTRY

Valentin Pribac, PhD Student and Mariana Pacurar, Prof., PhD, University of Medicine and Pharmacy, Tîrgu Mureș

Abstract: Malpractice in the medical field refers to professional negligence by a health care provider in which the treatment caused harm, injury or death of a patient. In most cases, malpractice is caused by a medical error, possibly during diagnosis, medication dosage, health management, treatment or aftercare. This subject has gained much interest in the past years as more and more cases of malpractice appear. In our paper we present an overview of this subject. In the first part of the paper we analyze the interaction between the medical and the legal standpoints, while in the second part we discuss methods of prevention of cases of malpractice. We can conclude that the risk of malpractice could be diminished by giving more time for the study of individual cases, by consulting in depth and applying the existing literature on the subject specifically and by participating to continuous medical education programs in order to gain knowledge, be updated and to introduce the use of new technologies.

Keywords: malpractice; dentistry; legislation; interdisciplinary collaboration; prevention;

1. Malpractice. Definition

According to Law nr. 95 of 2006, chapter 1, art. 642, malpractice is defined as: professional error committed in the practice of medicine or in the medical-pharmaceutical field, which tortious the patient, involving civil liability of medical personnel and of the supplier of medical, sanitary and pharmaceutical products and services health care provider.

The key concept of patient safety is that of the “adverse event.” An adverse event is any unfavorable, undesired and generally unforeseen incident caused by an error or omission during the dental treatment which has negative consequences for the patient’s health (including physical
or mental damage, and/or prolonging the treatment time). These negative consequences must not be caused by the patient’s underlying disease or pathology. [1]

2. Legislation

Chapter 1 – Civil liability of medical staff:

Art. 642

(1) For the purpose of this title, the following definitions shall apply:

a) medical personnel includes physicians, dentists, pharmacists, nurses and midwives who provide medical services.

(2) Medical personnel is responsible under civil law for damages caused by error which includes negligence, imprudence or insufficient medical knowledge in their practice by their individual acts in procedures for prevention, diagnosis or treatment.

(3) Medical personnel is also civilly liable for damages arising from breaking the rules of the present title concerning privacy, informed consent and mandatory medical assistance.

(4) Medical personnel is responsible under civil law for damages arising from the practice of their profession or when they exceed the limits of the professional competence, except the emergency cases where is not available medical personnel with the required competence.

(5) Civil liability governed by this law does not remove the criminal liability if the act which caused the damage is considered a crime under the law.

Art. 643 – Situations when medical personnel is not responsible:

(1) Everyone involved in the medical act will respond proportionally to their degree of culpability.

(2) Situations when medical personnel shall not be liable for the damages caused while exercising their profession:
a) when damages happen because of the working conditions, insufficient equipment for
diagnosis and treatment, nosocomial infections, side effects, complications and risks
generally accepted of the investigations and treatment methods, hidden defects of the
sanitary materials, equipments and medical devices or medical substances used.

b) when they act in a good faith belief in emergencies, respecting the competence granted.

Chapter 5 –

Refers to the requirement of the professional liability insurance for physicians,
pharmacists and others in healthcare:

Art. 656

(1) Medical personnel as defined in Art. 642 para. (1) letter a) providing medical care
in the public and / or private sectors, in a location with special destination for healthcare and
when it is granted outside of this place, following a request from the person or people requiring
such assistance or a third party requesting such assistance to a person or several people who, for
reasons beyond their control, can not call themselves this assistance will end malpractice
insurance for the civil liability cases arising from the damages caused by the medical act.

(2) A copy of the insurance will be presented before the termination of employment, as a
prerequisite for employment.

Chapter 6 – Regulates the procedure for determining the cases of professional civil
liability for physicians, pharmacists and others in healthcare

ART. 668

(1) In the county public health authorities is established Monitoring and proffesional
competence Committee for the cases of malpractice, hereinafter Commission.

(2) The Commission comprises representatives of the county public health authorities,
representatives of the house county health insurance, of the college county physicians, college
County dentists, college county pharmacists, order county of nurses and midwives in Romania, a
forensic expert, headed by a deputy director of the county public health authority.
(3) Rules of organization and functioning of the Commission shall be drafted by the Ministry of Public Health, approved by the Minister of Public Health and published in the Official Gazette of Romania, Part I.

ART. 669

(1) The Ministry of Public Health approves, at the proposal of the College of Physicians in Romania, for every county and Bucharest, a national list of medical experts in each field, who will be consulted according to the rules of organization and functioning of the Commission.

(2) The list of experts can score any physician, dentist, pharmacist, nurse / midwife with a length of at least 8 years in the specialty, with the approval of the College of Physicians in Romania, College of Dentists, the College of Pharmacists, respectively, of the Order of Nurses and midwives in Romania.

(3) The manner of remuneration of medical experts from the national list is determined by the Minister of Public Health.

(4) Fees for services provided by medical experts appointed according to art. 671, are in accordance to the complexity of the case expertised, must be approved by the Minister of Public Health and will be supported by stakeholders

ART. 670

The Commission May be Referred to:

a) the person or, where appropriate, legal representative, who is considered a victim of an act of malpractice committed in the exercise of activities of prevention, diagnosis and treatment;

b) successors of the deceased as a result of an act of malpractice attributable to an activity of prevention, diagnosis and treatment.

ART. 672
The Commission shall be established, by decision, whether concerned or not a case of malpractice. The decision shall be communicated to all concerned, including the insurance company within 5 days.

ART. 673

(1) If the insurer or any party disagrees with the Commission's decision may challenge the competent court within 15 days of the notification date.

(2) The procedure of malpractice cases does not prevent the free access to justice according to common law.

ART. 674

(1) The whole procedure establishing malpractice cases until court is seised, is confidential.

(2) Violation of confidentiality by the person making the notification would void the benefit of conciliation procedure.

(3) The violation of confidentiality by committee members or experts appointed by it draws labor and administrative penalties under the regulations approved.

3. Malpractice causes

The main causes of malpractice occur when certain protocol that was not followed or respected before making the procedure. That is why more attention should be accorded to better case selection and documentation.

An important part of the treatment procedure is the documentation of every case. Starting with the general health evaluation status of the patient from which you can obtain valuable information about the patient health condition. This may have great impact on certain dental procedures especially on surgical ones.

For example a patient with diabetes that is not following his treatment, in a case of a tooth extraction increases the chance of infection compared to a healthy individual. [2]
Or a patient that follows a treatment with bisphosphonates for osteoporosis and suffers a tooth extraction after that bone tissue necrosis and failure of healing appears, leading to infections and pathological fractures. [3]

Another cause of malpractice can occur because of the lack of experience of the medical team, therefore skills and knowledge are important. It is important to be trained for every procedure that is going to be performed, and to know the risks of every procedure in order to be able to spot all complications that each case faces and to have the knowledge how to react.

Besides the lack of training and knowledge there may also be cases on bad faith which steps over the Hippocratic oath that every doctor has sworn, and may lead to malpractice conduct in treatment procedure.[4]

According to a study conducted in Spain by B. Perea-Perez et al, analyzing over 4000 cases of legal claims from 2000 till 2010 it shows that the highest frequency of complaints were about implant treatments, endodontics and oral surgery.

From the total of adverse events resulted after dental treatments 40% were classified as “errors”, and a further 40% were “complications”. The rest of 20% were classified as “accidents”. From all those events the most common were the “unpreventable” complications. [5]

4. Prevention of malpractice

The main objective of patient safety is to avoid preventable adverse events to the greatest extent possible and to limit the negative consequences of those which are unpreventable.

Prevention methods of adverse events is represented by the importance of continuous medical education (CME) that makes every doctor keep up with the new concerns of the moment, the newest procedures that help reduce the chances of failure.[6]

Another way of prevention is to try to focus and train only on a certain field and to choose a specialization such as orthodontics, endodontics, prosthetics, periodontics, and oral surgery. This specialization would imply to have deeper knowledge about each field and to offer the ability to choose the right technique for each individual.

It is also important to participate in workshop programs to achieve a level of practical training for the new procedures that every individual wants to offer to its patients. And of course
nothing can be done without having a foundation and that is represented by literature. Each specialist has to know the literature and to study the studies concerning various procedures of its specialty. [7]

5. Conclusions

It is essential to ascertain what adverse events occur in each dental care activity in order to study them in-depth and propose measures for prevention.

In order to reduce the chance of malpractice occurrence it is important to have a good interdisciplinary collaboration, because always group work achieves the best results.

References


