

The Romanian Physicians' Disciplinary Liability - a Retrospective Study

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Abstract

The physicians' disciplinary liability is one of the liability forms regarding professional practice and does not represent a superimposed situation on civil or criminal juridical liability that can be drawn in the case of errors or neglect during medical care provision. The latter can fall under the concept of medical malpractice. The reactions of the public opinion in the press seem to be more and more vehement in claiming problems arise during the practice of the medical profession and which seem to attest to an increase of the litigation risk related to the profession. Clarifications on these issues are useful for both professionals and society. The objectives of this study were to identify the medical specialties with high risks of reaching before the collegiate commissions, to observe the tendencies regarding the disciplinary procedures at the level of the College of Physicians, the types and number of sanctions pronounced as well as to identify correlations regarding the tendencies of reporting potentially litigious medical cases in the online press.

Keywords: disciplinary liability, litigation risk, medical malpractice, medical speciality.

Rezumat:

Răspunderea disciplinară a medicilor reprezintă una dintre formele de răspundere cu privire la practica profesională și nu reprezintă o situație superpozabilă răspunderii juridice civile sau penale care poate fi atrasă în situația cazurilor de erori sau neglijență pe durata acordării îngrijirilor medicale. Acestea din urmă se pot încadra în noțiunea de malpraxis medical. Reacțiile opiniei publice existente în presă par să fie din ce în ce mai vehemente în a reclama probleme apărute pe durata exercitării profesiei de medic și care par să ateste o creștere a riscului litigios legat de profesie. Lămuriri cu privire la aceste aspecte sunt utile atât pentru profesioniști cât și pentru societate în ansamblu. Obiectivele acestui studiu au urmărit identificarea specialităților medicale cu riscuri mari de a ajunge în fața comisiilor colegiale, observarea tendințelor în privința procedurilor disciplinare de la nivelul Colegiului Medicilor, tipurile și numărul de sancțiuni pronunțate precum și identificarea unor corelații privind tendințele raportării în presa online de cazuri medicale potențial litigioase.

Cuvinte cheie: răspundere disciplinară, risc litigios, malpraxis, specialitate medicală.

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INTRODUCTION

The physician's liability during the exercise of the profession can take various forms, depending on the action claimed as being non-compliant and depending on the legal or administrative path chosen by the potentially injured person. It is notorious that the patient's dissatisfaction transposed in a news release seems to end with the petition of several institutions: the College of Physicians, Public Health Authorities, judicial research bodies. There may also be a form of overlapping or limited understanding at company level regarding liability forms. A form of professional liability coexists in front of the medical guild represented by the College of Physicians and related to deontological and ethical norms with legal responsibility forms towards the patient (Civil Code) or towards society as a whole (Criminal Code). The liability from the perspective of civil law implies the observance of a general law by which the damage to a person must be repaired. In the case of criminal law, the facts of a higher gravity are considered and that affect social values that the law protects and for which specific penalties are provided.

The judicial liability of the physician and the litigious risk he assumes are topics of interest to both the professional group and the society. „*First, there are the direct financial costs associated with paying premiums for insurance coverage, plus any deductible or above-limits payment in the event a claim is successful. Second, if one is sued, there is the time, effort, and anxiety associated with mounting a defence. But for many physicians, the most important factor is that they view medical mal litigation as an attack on their professionalism and self-identify as caring professionals — perpetrated and controlled by a hated rival profession*”¹. Some studies evaluate the global litigation risk but also by specialties; such studies in the case of the Romanian health system are limited but the trends seem to be like those existing globally. If we look at Medscape Malpractice Report 2017, we can see that: „*Malpractice lawsuits are sometimes unavoidable. More than half of physicians have been named in a lawsuit. Almost half (48%) were involved in suits where they were named, while 13% were involved in suits where they were the only person named. Specialists were more likely than primary care physicians to have been named in a malpractice lawsuit. Not surprisingly, surgeons and ob/gyns take the lead (85% of both groups) in being sued*”².

The judicial mechanisms of the physicians' professional liability represent a form of social control and the physicians who deviate from these norms can be considered deviant from the perspective of the soci-

ological theories³. When the balance between health professionals and physicians is affected by inadequate laws, poor professional or training conditions, as well as public perceptions and movements, the consequences can be costly not only economically but for the functioning of the entire health system. The regulation of the professional liability has in the centre the protection of the patient's rights, imposing pressure on the physician to act in the patient's interest, with objectivity and making the necessary efforts to maintain a favourable risk versus therapeutic benefit ratio. In the case of claiming a situation that is not confirmed to be a medical error but requires expensive and costly juridical and administrative procedures or when we have to deal with aggressive media coverage, the result can be materialized in an affectation of a whole professional group; from a timid physician during the exercise of the profession to various pathologies related to stress (burnout) or even to the de-credibility and stigmatization of a profession. The way of presenting medical cases in the media (which is later confirmed or not as a case of malpractice) can lead to an eroding of confidence in health professionals; this aspect is recognized at the level of the professional forum even by its highest representative, Gheorghe Borcean, the President of the College of Physicians: „*The health professional bodies, without exception, attend, again, for several weeks to media assaults related to facts of which no one denies it. The assertions, not yet proven, which are the subject of a criminal investigation, which have invaded the public space, are the object of our concern. Our colleagues who practice their profession with fairness, honesty, selflessness, love towards their patients find out today, once again, that the avalanche of information from the last period only does, besides prematurely ostracizing the one only accused, to shed false and malignant light on the activity of a whole professional body, thus influencing public opinion and planting an unjustified distrust in the activity of most physicians*”⁴. Similar statements were made by the previous President, Vasile Astărăstoae: „*Nowhere in the world, physicians are blamed like in Romania. Whatever goes wrong in the health care system is because of the physicians. Any incident is malpractice. When you must give bread and circus, if you have no bread, you give circus. Malpractice appears as there is a news crisis. On all sociological researches it appears as a reason why the physicians want to leave the state of insecurity and the lack of respect*”⁵. However, institutional measures, legislative proposals or appropriate communication strategies cannot be identified. For these reasons, we consider that any clarifications and research-

ches regarding the physicians' professional liability are important not only for the professional group but for the society. A justification for seeking the trends that appear in our society regarding the action of physicians in court, in the collegial disciplinary committees or in the way of reflection in the media is represented by the increase in time of the number of lawsuits filed, of the number of physicians subjected to disciplinary research actions as well as the number of press articles on these topics.

In this paper, we focused on disciplinary responsibility in front of the collegiate committees. It is worth mentioning that in this case, we have professional deontology in the middle and the analyzes are not related in all cases of erroneous or negligent treatments that can constitute cases of malpractice. However, there is a confusion at the society level whereby it is considered that the emergence of such a situation imposes a complaint at the college level. In many cases, the media news promotes the petitioners' intention to file complaints to several public institutions and the College of Physicians. „*There is no month in which patients who have been hospitalized or their relatives do not file complaints with the College of Physicians. Most of the time, they bring to the management's college attention the behavioural deviations of the physicians or they demand aspects related to the medical act*”⁶. The litigious risk of the physician, following the exercise of the profession, is one related to facts provided by the civil, criminal law and deontological norms; in our system, it seems that concomitant priming of these forms of liability is promoted. An example of a news item in this regard: „*The man's family has notified the hospital, the College of Physicians and the police who have started checks. A complaint has been filed and the Criminal Investigation officers are conducting investigations in this regard. A criminal case has been drawn up, and at the end of the investigations the file will be submitted to the competent prosecutor's office*”⁷.

In some situations, there some statements tend to accredit the idea that physicians are „defended” in collegiate disciplinary committees and their resolutions are biased. An example of this is shown below: „*The Bistrița-Năsăud College of Physicians has completed the investigation in the case of A. M., the four-year-old girl who died in January 2013 after suffering a common sprain in her left ankle. According to the documents, to blame is only a staphylococcus present in the girl's body in a latent state and which reacted once the trauma occurred. None of the physicians who were part of the trial panel of the Disciplinary Commission of the Bistrița-Năsăud College*

of Physicians raised the question of the negligence of any of the physicians who consulted A.”⁸.

Although in our society there is a form of public awareness of the litigious phenomenon related to medical practice, we far from understand the multiple dimensions of the phenomenon and the factors involved which are social, economic, cultural, behavioural, educational and professional.

The disciplinary liability is regulated within the specific Law on the functioning of the health system, with the subsequent modifications, articles 450-459⁹. The collegiate disciplinary investigations are carried out in accordance by a specific regulation¹⁰ and based on a code of ethics¹¹.

MATERIALS AND METHODS

We conducted retrospective research by analyzing secondary data obtained from annual official reports on the activity of the Superior Discipline Commission of the Romanian College of Physicians in the period 2007-2018 available on the official website at <https://www.cmr.ro/new/index.php/category/cmr/comisia-de-disciplina/>. Descriptive statistics were performed, and correlations were calculated using the statistical functions of the Excel MS Office program. Trends in media reporting have been appreciated by selecting news items identified on the Google search engine. The identification of medical specialties in the news represented qualitative research of content as described by Earl Babbie¹². The correlation of trends using multiple data sources followed the principles of sociological triangulation described by Norman Denzin¹³. The number of physicians of different specialties was taken from the official report of 2012 being the only data source identified at <http://data.gov.ro/storage/f/2013-12-12T12%3A06%3A02.065Z/medici-specialitati-2012.xls>.

RESULTS AND DISCUSSIONS

The synthetic presentation of the number of physicians responded and those sanctioned following the decisions given by the *Superior Disciplinary Commission (SDC)* of the *Romanian College of Physicians (RCP)* was based on the Activity Report of the Superior Disciplinary Commission for 2018 available online. The increasing tendency of the physicians' number who end up in collegiate disciplinary procedures can be observed, while the number of physicians against whom sanction decisions are pronounced has a slightly decreasing tendency. The percentage of sanctioned physicians registered a

maximum of 31% in 2007 and a minimum of 8.16% in 2013. Out of a total of 2934 physicians in front of the SDC, 405 received sanction decisions (16, 91%). This percentage may represent the overall risk of receiving a disciplinary sanction once such a procedure is reached. These general aspects are shown in Figure 1 and Table 1.

We tried to perform an analysis according to the specialty of the physicians subjected to the disciplinary procedures of the college. It is worth mentioning that I had at my disposal the reports of the national forum and not some of each county organization. The period for which the analysis was carried out is 2008-2018, for which there are such public reports, with the men-

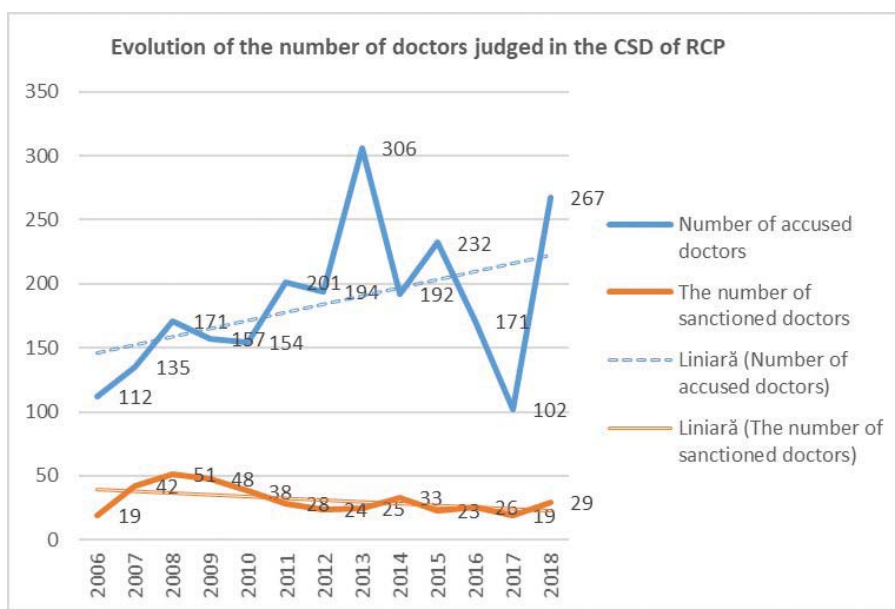


Figure 1. Evolution of number of doctors judged in the SDC of RCP.

Table 1. Synthetic Reporting of Intimate/Sanctioned Doctors in SDC actions Source: www.cmr.ro Note: The number of physicians is higher than the number of decisions because in some cases there were several doctors in the same case, from the same specialty or from different specialties.

Year	The number of accused doctors	The number of sanctioned doctors	Percent of Punished Doctors	Number of decisions SDC
2006	112	19	17	123
2007	135	42	31	118
2008	171	51	29,8	148
2009	157	48	30,5	95
2010	154	38	24,6	106
2011	201	28	14	149
2012	194	24	12,37	136
2013	306	25	8,16	169
2014	192	33	17,18	164
2015	232	23	9,91	157
2016	171	26	14,7	140
2017	102	19	19,38	75
2018	267	29	10,86	180
Total	2.394	405	16,91	1.760

Table 2. The number of physicians according to medical specialty accused in disciplinary actions - Source: www.cmr.ro

Medical Specialty	Number
Obstetrics and Gynecology	278
Cardiology / Internal Medicine	157
Surgery	297
Family Medicine / General Medicine	145
Orthopedics - Traumatology	109
Emergency Medicine	87
Psychiatry	64
Neurosurgery	61
Anesthesia and Intensive Care	125
Infectious diseases	35
Neurology	59
Urology	33
Pediatrics	60
Forensic Medicine	28
Gastroenterology	23
Nephrology	11
Radiology	24
Diabetes and Metabolic Diseases	7
Oncology	21
Pathological anatomy	20
Otorhinolaryngology	36
Ophthalmology	38
Neonatology, Pneumology	38
Allergology	3
Endocrinology	6
Sports Medicine, Occupational Medicine, Dermatology, Neonatology, Hematology, Rehabilitation Medicine	47
Radiotherapy	3
Laboratory Medicine	5
Rheumatology	3
Medical Expertise	4
Nuclear Medicine	5
Geriatrics	1
Total number of doctors accused in disciplinary actions (2008-2018)	1833

tion that for 2007 and 2010 the sanctions broken down by specialties are not specified. The global situation of the physicians responded according to the specialty is shown in Table 2.

For "Surgery", a cumulative registration was made for several distinct surgical specialties (General Surgery, Plastic Surgery, Cardio-Vascular Surgery, Pediatric Surgery, and Thoracic Surgery), as they were included in the reports from where they were the data was extracted. Accumulated data existed for medical specialties, too, as can be seen from Table 2. Considering these aspects regarding the reporting it can be observed

that the specialty with the largest number of disciplinary actions is Obstetrics - Gynaecology.

Subsequent analysis was performed on the first 10 specialties as the number of responded physicians; the specialties for which a small number of physicians have been reported globally under the category „Other”. It is worth mentioning that the number of individual medical specialties in the report on the number of physicians in Romania is 52 and there are specialties whose members have not been subject to disciplinary analysis.

Looking at the number of physicians sanctioned by SDC similar to a risk it can be seen that it is significantly higher in the case of surgical specialties, ICU and Emergency Medicine. The global reporting in the case of surgery makes the real risk of the specialties thus reported to be much lower. The percentage recorded by Family Medicine/General Medicine is most likely influenced by a population effect, by the disproportionately large number of physicians in this category and, implicitly, by the number of services performed in comparison with the other specialties. In the chapter "Other" were summed the figures reported for more than 20 different specialties, most of the medical specialties spectrum. The percentage of sanctioned physicians reported to the number of physicians undergoing CUD analysis suggests that for about 1 in 5 professional behavior is confirmed that deviates from the norms. The most vulnerable specialties are Obstetrics-Gynecology, Orthopedics-Traumatology, Family Medicine and Emergency Medicine. The situation must be viewed with reservations considering the type of therapeutic acts performed, the complexity degree but also the number of specific services performed at the system level.

To clarify, we compared these figures with the specialists' number per category reported at country level. The only data identified are from 2012 but they manage to lead to a probably more real picture of the phenomenon. Thus, for the family medicine specialty, which comprises the largest number of members, we observe that the relative risk is significantly reduced. The number of specialists of a certain kind is directly proportional to the volume of services provided. Reporting to such a volume can lead to a credible figure regarding the risk of reaching a disciplinary procedure and receiving a sanction. These aspects are presented in Table 3.

Adjusting the risk values of reaching a disciplinary procedure and confirming a deviation leads to the conclusion that the most vulnerable specialties are, in order, Obstetrics-Gynecology, Orthopedics-Traumatology,

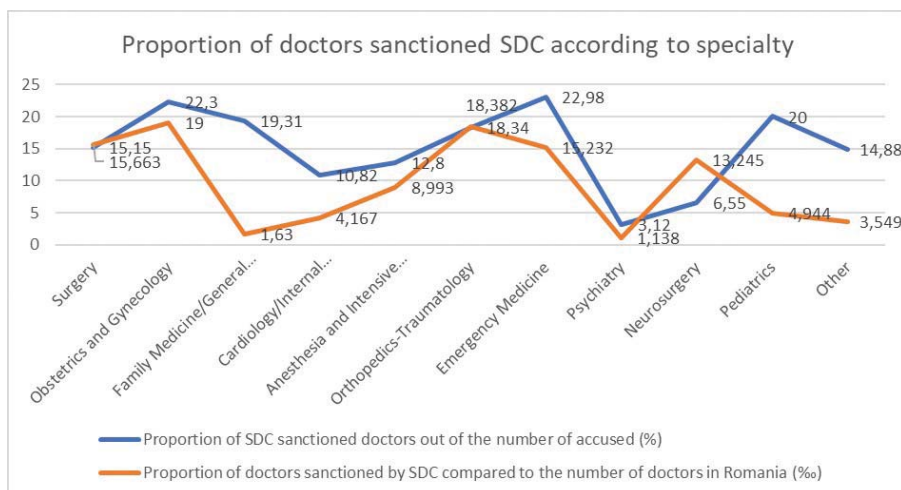


Figure 2. Proportion of doctors sanctioned by SDC according to specialty.

and Emergency Medicine. The risk associated with surgery is lower if it were reported on the 5 distinct specialties reported globally. These data are summarized in the figure below. These aspects are shown in Figure 2.

An important analysis concerns the type of sanctions granted. It is noted that 359 sanctions were issued and 1607 decisions found that the physicians did not have a disciplinary offense. Most sanctions were reprimands (159) and warnings (106) and a small number of case of severe sanctions: blaming vote (50), prohibition to practice for periods from 3 months to one year (27) and only in three cases was the of the college membership withdrawal in only 3 cases and implicitly the ban on the profession practice (Figure 3).

Given that the SDC is an appeal forum for decisions made within county disciplinary committees, it is important to note that decisions can maintain the initial solution, reduce or aggravate the sanction, but may resubmit the file to the initial committee if there are different procedural deficiencies. Practically in 73.79% of the cases, the decision made in the first commission was maintained and in about 7.2% of the cases, the SDC modified the sanction by diminishing or increasing it. During the period analyzed the SDC decisions were distributed as shown in Table 4.

Another data source on the medical specialties involved in potentially contentious cases is the analysis of press releases; although the press objectives are largely different and start with some ideals (such as the right to information) and go as far as what we might call “sensational search” and reaching rating points, the information obtained may be useful for shaping an image of the phenomenon of malpractice in our so-

ciety. To do this, I searched the www.google.ro engine using the following keywords: „malpractice” + „medical” + „news”. The search was carried out on 03.06.2018 and the results, presented synthetically, are as follows: the number of independent news items was 131. After removing the news items that presented the same disputed event or represented the same news redistributed on other websites, retained a number of 95 that were entered in a database for further analysis. The time interval was between 16.08.2010 and 05.01.2018. Out of the 90600 results indexed by the search engine, 21 pages with 12 results were returned. Also, the results that represented advertisements of some entities were eliminated; it is noteworthy that in this situation there are a large number of law firms or legal representation.

Considering the research objectives considered for the present article we can observe that the time interval is a relatively similar one; the news related the period 2010-2018 while the interval for which the reports of the College of Physicians were analyzed is 2007-2018. Following a content analysis, the specialties involved in potentially litigious cases could be identified. Without discussing whether these medical conditions were confirmed in court as malpractice or other crime or contravention, we wanted to identify which specialties are at risk. Triggering a response in the press can be a powerful enough signal for a future litigation effort both in front of specific collegiate commissions and in front of judicial institutions. It is important to note that the trend in the number of news articles regarding malpractice is an increasing one, even if it does not signify a trend of the phenomenon but it may only be of interest to the growing media institutions for this topic. This aspect is shown in Figure 4.

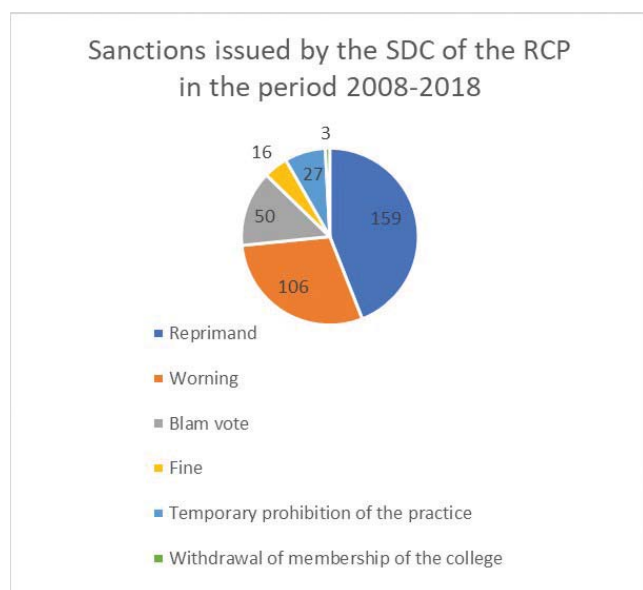


Figure 3. The number and type of sanctions imposed by the SDC.

The distribution of the medical specialties that appeared in the online news as being involved in potentially litigious cases is shown in Table 5.

Trying to verify that the number of physicians, depending on the specialty, in disciplinary procedures respectively found in the news about malpractice have a

similar evolution, we performed a statistical correlation test between these values (found in Table 3 and Table 5). The value of the Pearson correlation coefficient is 0.75092 indicating a strong positive correlation according to Colton's rules. Even if the correlation value does not attest to a causal relationship between the two variables, we can observe, however, that the values of the physicians' number by medical specialties vary in the same way, both in the case of the disciplinary analyzes and in the press. The press functions as a lens through which an image with similarity to that obtained by analyzing the data provided by the collegiate forum. Even though this „lens” has numerous „optical or chromatic aberrations”, depending on some specific objectives, it quite accurately reproduces which medical specialties are at risk for a litigious situation.

CONCLUSIONS

The physicians' number evolution trend subjected to disciplinary actions is increasing in their action before the Disciplinary Committee of the College while the number of physicians receiving a sanction from this forum shows a slightly decreasing trend. The medical specialties that register the highest risk of being subjected to disciplinary action are part of the surgical branch and are, in order, Obstetrics-Gynecology, Orthopaedics-

Table 3. Top 10 medical specialties as number of accused doctors - Reporting on sanction decisions and the number of doctors

	Medical Specialty	The number of accused doctors	The number of sanctioned doctors	Percentage of sanctioned physicians relative to the accused doctors (%)	Number of doctors in Romania according to specialty	Proportion of sanctioned doctors compared to Romanian doctors by specialty (%)
1	Surgery	297	45	15,15	2873	15,663
2	Obstetrics and Gynecology	278	62	22,3	3263	19
3	Family Medicine /General Medicine	145	28	19,31	17177	1,63
4	Cardiology /Internal Medicine	157	17	10,82	4079	4,167
5	Anesthesia and Intensive Care	125	16	12,8	1779	8,993
6	Orthopedics – Traumatology	109	20	18,34	1088	18,382
7	Emergency Medicine	87	20	22,98	1313	15,232
8	Psychiatry	64	2	3,12	1756	1,138
9	Neurosurgery	61	4	6,55	302	13,245
10	Pediatrics	60	12	20	2427	4,944
11	Other	450	67	14,88	18876	3,549
	Total / Average values	1833	293	15,98	53681	5,458

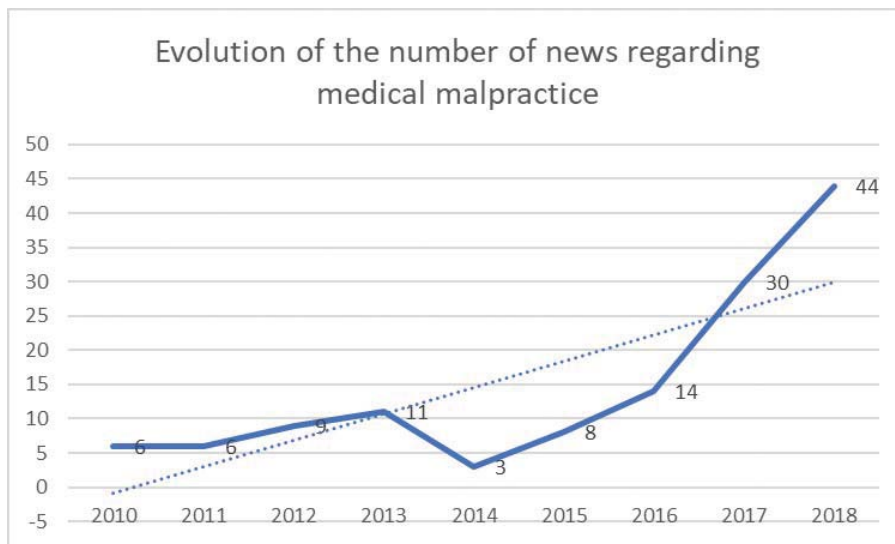


Figure 4. Evolution of the number of news regarding medical malpractice in the period 2010-2018.

Table 4. Categories of cases solved by SDC

Categories of causes	Number
Causes in which the decision from county level was changed, by aggravating the sanction	149
Causes in which the decision from county level was changed, by reducing the sanction	148
Causes in which the decision from county level was not changed, by maintaining the decision (sanctioning or non-sanctioning)	1512
Cases in which the disciplinary action against some doctors, members of the governing bodies of the County Physicians' Colleges, judged according to article 443, para. (4), of Law no. 95/2006	105
Return the file to the territorial college	89
Appeal dismissed as belatedly filed	46

Traumatology, and Emergency Medicine. The situation is similar to that described in other health systems and with the one described in the sociological theories that are based on the role of social control during the exercise of the profession. Several other surgical specialties present high risks even if local reports have been made globally. Among the specialties belonging to the non-surgical branch, we observe that Anaesthesia and Intensive Care present a risk above average fact justified precisely by its profile in close relation with the surgical act and with the patients' specificity of procedures with obvious intrinsic medical risks.

The Superior Disciplinary Commission represents an appeal court that judges the decisions given by the county collegial commissions. In 73% of cases the initial decision was maintained (sanctioning or rejecting disciplinary liability) and in 14% of cases the decision

Table 5. Distribution of the medical specialties identified in the on-line news regarding medical malpractice

Medical Speciality	Number of independent news
Obstetrics and Gynecology	45
Cardiology /Internal Medicine	7
Surgery	14
Family Medicine /General Medicine	1
Orthopedics – Traumatology	2
Emergency Medicine	6
Anesthesia and Intensive Care	2
Infectious Diseases	1
Urology	3
Pediatrics	6
Nefrology	1
Oncology	2
Otorhinolaryngology	5
Total On-line News	95

was modified (both in the sense of diminishing and aggravating the sanction). A percentage of 4,3% of the cases were sent back to the fund commission, not fulfilling certain procedural aspects, proving the necessity of a better procedure of the specific activity within the college. The existence of cases in which the disciplinary actions' solutions are different along with other aspects such as those concerning college communication in the public space can lead to an eroding of the confidence in this control body at the professional level. Regarding the types of sanctions pronounced, we notice that 73% are reprimands and warnings and it would be important to analyze the public perception regarding this type of sanction. There is a possibility that the perception of society level that these sanctions are only formal and without a real corrective role. The number of serious sanctions such as the temporary ban on practicing the profession or college membership withdrawal is reduced as a number (27 respectively 3).

The reflection in the press of some potentially litigious cases has an increasing tendency and the proportion of the medical specialties involved seems to be like those involved in cases analyzed by the Superior Disciplinary Commission. As antagonistic as it may seem the position of the media in the reflection of potentially contentious medical cases, the image regarding the specialties at risk is a similar one and may be an important signal for further analysis and for understanding from a sociological perspective some phenomena related to health care.

Compliance with ethics requirements: The authors declare no conflict of interest regarding this article. The authors declare that all the procedures and experiments of this study respect the ethical standards in the Helsinki Declaration of 1975, as revised in 2008(5), as well as the national law. Informed consent was obtained from all the patients included in the study.

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