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Analysis of judicial sentences against psychiatrists dictated by appellate courts in Spain between 1992 and 2007.

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Review

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Sentences against psychiatrists dictated in appellate or higher courts of Spain in the period from 1992 to 2007 were analyzed. Decisions were gathered for 13 of the 17 autonomous communities and statistical analysis yielded the following results: in more than 50% of cases, the decision was unfavorable for the psychiatrist, but the damages never exceeded € 600,000. The most frequent condition in the series was personality disorders (48.9%). The most frequent reasons for seeking legal redress were monitoring errors and negligence; no cases were brought to trial for therapeutic errors. The patient died in 58.3% of cases. It is noteworthy that 10% of the sentences cited defects in patient information or informed consent.

The psychiatric health care teams in both the public and private sector should maximize monitoring of institutionalized patients and optimize installations to provide special security measures for the patients.

Key words:
Judicial sentences, Unfavorable verdicts, Indemnizations, Monitoring errors, Suicide

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Análisis de las sentencias judiciales contra psiquiatras resueltas en segunda instancia en España entre 1992 y 2007

El objetivo del trabajo es analizar las sentencias contra psiquiatras emitidas en segunda instancia o posteriores en España durante el periodo de 1992 a 2007. Se han recopilado sentencias en 13 de las 17 Comunidades Autónomas y tras su análisis estadístico destacan los siguientes resultados: se condenan más del 50% de los casos, pero nunca con cuantías superiores a los 600.000 euros. La patología más frecuentemente implicada en la serie ha sido los trastornos de personalidad con un 48,9%. Los motivos más frecuentes de demanda fueron el error de seguimiento y la negligencia, no existiendo casos de error terapéutico. El fallecimiento del paciente se produjo en el 58,3% de los casos. Y destaca que en un 10% de las sentencias se hace referencia a defectos en la información o en el consentimiento informado.

Los equipos asistenciales de pacientes psiquiátricos tanto del sector público como privado deben extremar el seguimiento de los pacientes institucionalizados y adecuar de la mejor forma posible las instalaciones con especiales medidas de seguridad para los pacientes.

Palabras clave:
Sentencias judiciales, Condenas. Indemnizaciones, Errores de seguimiento, Suicidio

INTRODUCTION

The increased intervention of the justice system in health affairs in Spain affects all specialties, whether surgical or medical, hospital or outpatient. During the period from 1995 to 1998, 932 claims were brought against the Spanish national health system. Medical errors cost the former INSALUD 726.5 million pesetas in compensation for 95 patients (a mean of 7.8 million pesetas per patient). By specialties, emergency medicine accounted for 23.8% of claims, gynecology and obstetrics, 18.2%, and orthopedic surgery and traumatology, 11.2%. Psychiatry was not among the ten top-ranked medical specialties for the frequency of lawsuits. However, Psychiatry ranked fourth in the mean damages per case (about € 109,000) and accounted for 3.32% of all claims paid by the INSALUD in that period.[1] These data are consistent with the findings of the study by Willis using reinsurance data from the Spanish public health service for the period 2005-2007.[2] This series also showed that Psychiatry is not among the ten medical specialties with the largest number of lawsuits, but it is among the top ten with regard to the mean damages claimed (ninth ranked

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with € 116,188). A study of the British National Health Service reported closing the 1999-2000 period with 3,254 claims at a cost of UK£ 386 million.[3]

One immediate consequence of this situation may be to cause psychiatrists to systematically practice defensive medicine, thus distancing them from a fluid relationship between doctor and patient based on mutual trust and grounded in a bioethical approach designed to enhance the patient's autonomy. However, an analysis of the factors that motivate lawsuits and condition judicial decisions can help psychiatrists to assess certain clinical practices from that vantage point, and then take precautions when elements that could give rise to a lawsuit are present.

In this article we aimed to identify the characteristics of the lawsuits brought against medical specialists in Psychiatry after considering all the variables that can influence the decision to sue and the outcome of the judicial process. The objective was to analyze lawsuits brought against medical psychiatry specialists to characterize them and analyze the sentences dictated, such as decisions unfavorable to the defendant and the economic damages stipulated. In this way, the findings of this study may make it easier to implement safer psychiatry practices for both for patient and doctor as there are certain remarkable particularities of the discipline that should be pointed out, as they may result in professional liability.

These discipline-specific aspects may lead to liability claims and are summarized below:

- Involuntary patient institutionalization (which can result in a complaint or lawsuit for illegal detention, coercion and threats).
- Drug treatment derived side effects and interactions.
- Psychotherapeutic treatments (with special consideration for issues derived from transference).
- Other treatments (informed consent for electroconvulsive therapy, surgery, etc.).
- Emergency situations (risk of suicide, agitation).

No similar studies have been published in the recent literature that refer specifically to the Psychiatry specialty in Spain.

MATERIALS AND METHODS

The present study was made using the "Archive of health-related judicial sentences of the School of Legal Medicine of Madrid," Universidad Complutense of Madrid. This file contains 1,899 judicial sentences related to health interventions dictated in appellate or higher courts in the civil, penal and administrative jurisdictions in the period from 1995 to June 2007. The file contains 49 sentences that were considered for this study based on the following inclusion criteria:

1. The sentence involved a medical psychiatry specialist exercising the professional specialty, or the sentence involved a doctor of unspecified specialty subject to a legal claim for an intervention corresponding to the field of Psychiatry, according to the definition and skills given in the appendix to ORDER SCO/2616/2008 of 1 September, BOE No. 224 of Tuesday, 16 September 2008, by which the training program of the Psychiatry specialty is approved and published.
2. Text of the sentence indicating the treatment, circumstances and place where the incident occurred, its consequences and the judicial decision.

The following variables were included in the data entry:

1. Identification number in the Aranzadi file (reference)
2. Civil, penal or administrative jurisdiction of the suit.
3. Date of the sentence.
4. Autonomous community where the claim occurred.
5. Occupational activity of the defendant professional.
6. Gender and age of the patient.
7. Economic damages claimed.
8. Unfavorable/favorable sentence for the defendant.
9. Number of professionals involved
10. Type of professional: psychiatrist or other type of specialist or occupation.
11. Amount of damages in the case of sentence unfavorable to the defendant.
12. Reason for the lawsuit.
13 Condition diagnosed.
14. Outcome of the injury originating the lawsuit.
15. Observations recorded by investigators.

A descriptive study was made of the variables and then the variables were compared using contingency tables and the Chi-square test with the SPSS 15 statistical program.

RESULTS

The civil jurisdiction issued 85.7% of the sentences. The high proportion of sentences corresponding to civil jurisdiction is due to the nature of the database used. Many criminal complaints are dismissed and passed to civil suits where the possibility of success is greater.

The number of sentences has tripled in the last study period compared to the first period (Figure 1). Catalonia was the autonomous community with the largest number of

sentences with 24.5% of the total sample. Both private and public health care systems were the object of claims.

Two-thirds of the patients involved in cases were men and the most frequent age (41.7%) range was 18 to 40 years. The most frequent range of economic damages sought is found to be between € 60,001 and € 600,000. The condition most often involved in the series was personality disorders (48.9%).

The high percentage of sentences decided in favor of the plaintiffs is noteworthy, with 51.1% (compared to other medical specialties[4]). Involvement of more than one professional (55%) predominates in the sentences and with regard to the type of professionals involved, being a psychiatrist was similar in frequency to that of other professionals, both adding up to 77.5% of the total number of cases.

Of the cases in which the decision was favorable to the plaintiff, the range of compensation was € 18,001 to 60,000 in 45.8% and € 60,001 to 600,000 in 50%. These two groups covered almost all the compensatory damages stipulated by the sentences. In our series, the mean compensation awarded by the courts was € 57,588. To this amount must be added the judicial and administrative (unknown in our series) expenses to determine the cost of the lawsuits for insurance companies.

In this respect, it is important to highlight the absence of decisions favorable to the plaintiffs that awarded over € 130,000. The incident that most frequently gave rise to claims was a monitoring error (42.9% of cases). The final outcome of the damage was the death of the patient in 58.3% of the cases, with injuries and moral damage occurring with the same frequency (20.8%). The most frequent mechanism of injury was suicide (51.2%), followed by burns (12.2%) (Tables 1 and 2).

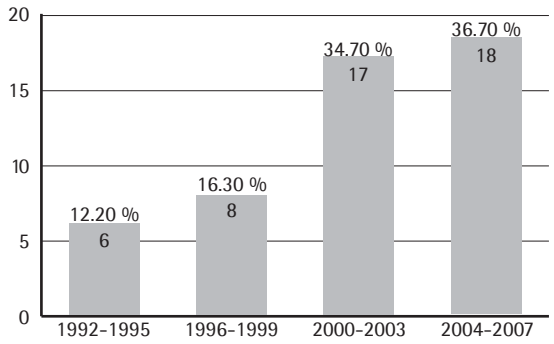

Figure 1 Chronological Evolution

The comparison of variables using chi square contingency table yielded the following noteworthy results:

In the last two periods studied (2000-2007), the economic claims were predominantly in the range of € 60,001 to 600,000. The compensatory damages awarded by the courts were in the range of € 18,001 and 600,000, particularly in the last years of the series.

The type of professional who most often received an unfavorable sentence was the group formed by "psychiatrist plus other occupation." A relationship existed between the same group and larger damages.

Examination of the types of professionals and the reason for the lawsuit disclosed a relationship between the groups of "psychiatrist plus other occupation" and "non-psychiatric professionals" and monitoring errors.

When the healthcare setting was studied in relation to the sentence, a clear relation was found between the public healthcare system and a sentence favorable to the plaintiff. In the private healthcare setting, two-thirds of the cases resulted in sentences favorable to the defendant.

Higher compensatory damages showed a relation with monitoring errors.

The outcome of injuries examined in relation to age highlighted the relation between the groups aged 18 to 65 years and death. In addition, death occurred preferentially in men. Among women, the outcome of injury was divided equally among death, injury and moral damage.

DISCUSSION

Psychiatry is not a specialty with a high risk of lawsuits, it being ranked well below the highest ranked specialties in different national and international series,[1,2] although there have been few studies, usually conducted by parties that are not impartial (insurance companies, patient associations, etc.). Analysis of the sentences in our series showed:

1. Most of the lawsuits that prospered were brought to seek economic compensation. Of the lawsuits brought, 85.7% of the total sample were civil cases; criminal complaints were filed in only 10.2% of the cases. This study includes sentences from the appellate and high courts against psychiatrists. This means that not many criminal complaints are filed against psychiatrists, or many are dismissed or archived, or not many convictions are won in lower courts since the volume of cases submitted to criminal courts is much larger. The number of sentences has increased with time, the number of

Table 1 Descriptive study

		Number	Percentage
Jurisdiction			
Total: 49	Civil	42	80.0 %
	Penal	5	11.7 %
	Administrative	2	12.2 %
Date of sentence			
Total: 49	1992-1995	6	12.2%
	1996-1999	8	16.0%
	2000-2003	17	34.7%
	2004-2007	18	36.7%
Autonomous Community			
Total: 49	Andalusia	4	8.2%
	Aragon	2	4.1%
	Asturias	4	8.2%
	Canary Islands	1	2%
	Cantabria	1	2%
	Castile-La Mancha	2	4.1%
	Castile-Leon	1	2%
	Catalonia	12	24.5%
	Galicia	1	2%
	Madrid	6	12.2%
	Murcia	1	2%
	Basque Country	1	2%
	Supreme Court	10	20.4%
	Valencia	3	6.1%
Healthcare setting			
Total: 47	Public	26	55.3%
	Private	20	42.6%
	Occupational insurance	1	2.1%
Gender			
Total: 48	Men	31	64.6 %
	Women	17	35.4 %
Patient age			
Total: 12	< 18 years	2	16.7%
	18-40 years	5	41.7%
	41-65 years	3	25%
	> 65 years	2	16.7%

Table 1 Continuation

		Number	Percentage
Damages claimed (€)			
Total: 31	< 6,000	0	0
	6,001-18,000	2	6.5%
	18,001-60,000	7	22.6%
	60,001-600,000	21	67.7%
	>600,000	1	3.2%
Patient's illness			
Total: 45	Cognitive disorder	11	24.4%
	Affective disorder	6	13.3%
	Personality disorder	22	48.9%
	Adaptive disorder	6	13.3%

Table 2 Descriptive study

		Number	Percentage
Verdict unfavorable to defendant			
Total: 47	Yes	24	51.1%
	No	23	48.9%
No. of professionals involved			
Total: 40	One	18	45%
	More than one	22	55%
Type of professional sued			
Total: 40	Psychiatrist	16	40%
	Psychiatrist + other speciality	0	0
	Psychiatrist + other occupation	9	22.5%
	Non-psychiatric professional	15	37.5%
Damages awarded			
Total: 24	Less than € 6,000	1	4.2%
	€ 6,000-18,000	0	0
	€ 18,001-60,000	11	45.8%
	€ 60,001-600,000	12	50%
	> € 600,000	0	0
Alleged reason for lawsuit			
Total: 49	Negligence	10	20.4%

sentences dictated in the most recent period, from 2003 to 2007, being three-fold greater than in the 1992-1995 period. This progression reflects an increased willingness to enter litigation in our social environment. Currently, some important proposals have been made for negotiating out-of-court settlements with offers of compensation and mediation efforts as in the Swedish, Danish or New Zealand models.[5] Notably, the autonomous community of Catalonia had 24.5% of the cases, although the lawsuits were spread around the country, with cases in 13 of the 17 autonomous communities.

Two-thirds of the patients were male and there was a small spike in the age distribution of the group aged 18 to 40 years, although age data were obtained from only one-fourth of the sentences. Only two cases were documented in children under 18, although cases of complaints related to the care of children with psychiatric problems have increased in the U.S. in recent years.[6]

With regard to the economic damages claimed, two-thirds of the sentences involved claims for damages in the range of € 60,001 to 600,000, although plaintiffs were awarded damages in at the lower end of this range in 50% of cases, with 45.8% of convictions involving damages of € 18,001 to 60,000 Euros. In our series, the mean compensation awarded was € 57,588, to which must be added the rest of court costs. Damages in excess of € 130,000 were not awarded. Consequently, the limit of € 600,000 set as the upper limit for damages is related to the limit established by insurance companies for damage compensation. By comparison, the study of the 1995-1998 period of INSALUD[3] reports a mean compensation per case in the Psychiatry specialty of € 108,433.

The number of lawsuits in which the decision is favorable to the plaintiff is high, 51.1% of cases. This percentage is higher than for other medical specialties.[5]

The injury was imputed to a single professional or in equal parts to more than one. As for the types of professional who were sued, psychiatrists and the group "non-psychiatric professionals" showed similar proportions, reflecting the fact that the responsibility for patient care is shared (Figure 2).

2. As for the reasons for the lawsuit, monitoring errors were the foremost reason with 42.9% of all cases, followed by professional negligence (20.4%). However, no reference is made to any case regarding therapeutic error, this being of importance because of the significant pharmacological variability and the transcendence of certain drugs and techniques used in this field of medicine.

   Personality disorders were cited in the diagnosis of 48.9% of the cases, which underlines the potential conflictiveness of this type of patients. It is important to give these patients meticulous medical and institutional management.

The patient died in nearly 60% of the cases analyzed (Figure 3), with a male:female ratio of more than 3 to 1. This ratio is similar to the ratio reported by a study conducted in California of more than 42,000 suicidal deaths published more than 20 years ago.[7] When the mechanism of injury was examined, suicide was foremost with 51.2% of cases, followed by burn injuries (12.2%) and unconsummated suicide attempts (7.3%) (Figure 4). The death of the patient weighs heavily on judicial decisions, and the arguments of the sentences indicated that shortcomings in patient monitoring and even professional negligence were present in a large number of cases. These data coincide with the findings of a study in France in 2007, which evaluates the special measures that should be taken with patients starting in the emergency room of health centers and continuing with suicide prevention efforts.[8] For one group of authors from the University of Florida and Yale Law School (U.S.A.), many suicides consummated by psychiatric patients are not impulsive acts, but perfectly planned, which obviously puts a burden of responsibility on staff.[9]

In approximately 10% of the sentences, a defect was found in the information provided to the patient or relatives, or in the informed consent document. This is a very important point to consider as it must be borne in mind that the informed consent document does not protect against lawsuits, but the lack of this document reinforces the case of the plaintiff. The process of providing good information and securing the patient's consent is considered a relevant factor in patient care. It is an obligation to which the medical professional is bound and forms an integral part of the *Lex Artis*; any breach of this obligation determines an obligation to make restitutions (Supreme Court sentences of 22-10-93, 17-1-94 and 24-4-94). Consequently, defects in patient information and consent are generally liable, which underlines the relation between safe practice and good communication with the patient. Nonetheless, the simple legal document in which the patient is required to acknowledge in writing that he or she has been informed and consents to the procedure does not safeguard against lawsuits. In point of fact, it is not the patient's signature on the document that constitutes informed consent, but the patient's knowledgeable assent to the detailed information received. The signed document is only evidence of this. A document that can be shown to have been signed without the understanding of the patient or under pressure may be invalidated. Therefore, informed consent has no validity or force in the absence of a fluid relationship between the patient and the doctor. With regard to this particular, Scout Kim of the Department of Psychiatry of the University of Michigan insists in a 2004 article not only on the legal aspects of consent, but also on the ethical aspects of consent.[10]

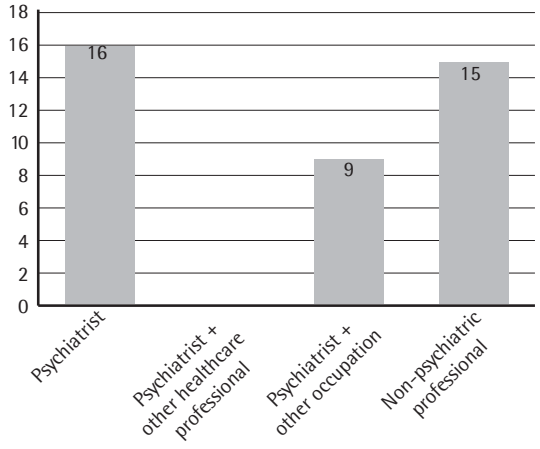

Figure 2 Type of professional sued

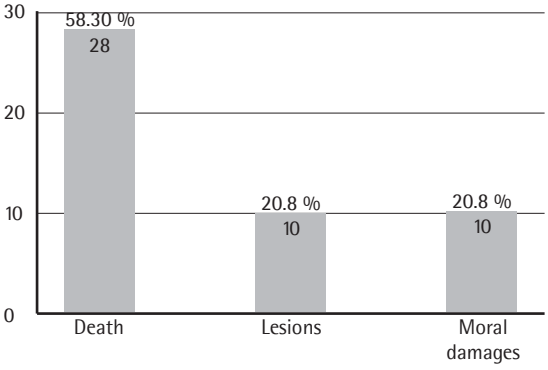

Figure 3 Result of injury

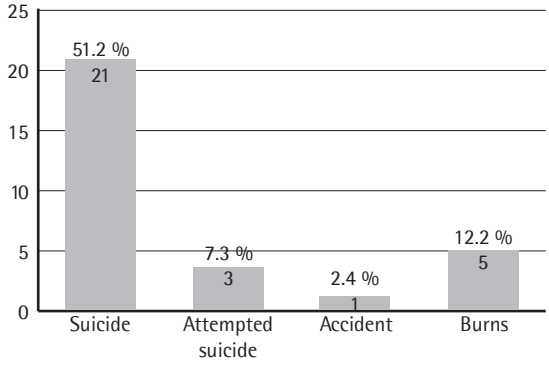

Figure 4 Injury mechanism

3. As for the relation between the type of professional and a sentence favorable to the plaintiff, the most frequent type was the group formed by a "psychiatrist and other occupation." There was also a relation between this group and larger awards of compensatory damages. The judge understands that not only is the professional in charge of the patient responsible, but also the rest of the team assigned, including nursing staff, orderlies, guards, etc. This same group and the group classified as "other professionals" are sued primarily for errors in monitoring the patient during the course of the patient's illness and secondarily for negligence, as it is understood that sufficient care has not been taken to prevent a fatal outcome in a large group of patients.
   In the study of the relation between the "healthcare setting" variable and a sentence favorable or unfavorable to the plaintiff, it is striking that sentences favorable to the plaintiff were much more frequent in cases involving the public healthcare setting than private. This may indicate that public institutions need to establish more effective mechanisms for monitoring patients and reconsider the layout of facilities and deployment of resources.
   The judicial risks of psychiatry could motivate specialists to practice defensive medicine, delaying the implementation of necessary therapeutic measures or involuntary confinement, emphasizing the risk of some procedures and possibly distancing themselves from the patient. Defensive medicine is designed to avoid liability for negligence as opposed to a calm analysis of the risk-benefit ratio of interventional options.[11] In England, a questionnaire sent to medical psychiatrists identified 75% of professionals who had practiced defensive medicine in the month prior to completing the questionnaire.[12] However, a defensive attitude does not seem to be the solution to this problem. Poor communication with the patient greatly increases the risk of litigation.

The general conclusions of this study were the following:

1. Only a small number of sentences have been dictated against psychiatrists in appellate or higher courts in Spain to date, but this number has tripled in recent years compared to the first years of this study. However, more than half of the decisions are favorable to the plaintiff and award high economic compensations for damages, although never more than € 130,000.
2. The primary reasons for suing psychiatrists are errors in monitoring patients and negligence, and lawsuits are brought mainly against a psychiatrist together with other occupations. There was no case in this series in which the defendant was sued for therapeutic error. Healthcare and other staff must analyze the workplace to correct facilities, train auxiliary staff and recommend

to hospital managers the installation of security systems adapted to the needs of patients to ensure patient safety.

3. The outcome of injury was death in 60% of patients, due mainly to consummated suicide attempts. Injuries were caused by burns or unsuccessful suicide attempts.
4. In 10% of cases there was a defect in the patient information or consent process, so it is important to exercise extreme care to establish fluid communication with the patient and properly inform the patient or relatives of the reasons for admission, pathological diagnoses, therapeutic expectations and foreseeable prognosis.

REFERENCES

1. INSALUD, Memoria Estadística INSALUD. Madrid: Ministerio de Sanidad y Consumo, 1999.
2. Torre D. El seguro de responsabilidad civil. En: Actas del XII Encuentro de Responsabilidad Sanitaria. Madrid: Unidad Editorial, 2008.
3. Fenn P. Counting the cost of medical negligence. BMJ 2002;325:233-4. doi: 10.1136/bmj.325.7358.233
4. Perea-Pérez B, Santiago-Sáez A, Labajo-González ME, Albarrán-Juan ME. Análisis de las consecuencias médico-legales de las reclamaciones judiciales en pacientes. Estudio comparativo de los casos de traumatología, ginecología y obstetricia, anestesia y reanimación y odontoestomatología. Trauma Fund MAPFRE 2009;20(4):264-8.
5. Appelbaum PS. Law & psychiatry: reforming malpractice: the prospects for change. Psychiatr Serv. 2011 Jan;62(1):6-8.
6. Ash P. Malpractice in child and adolescent psychiatry. Child Adolesc Psychiatr Clin N Am. 2002 Oct;11(4):869-85.
7. Phillips D, Sanzone A. A Comparison of Injury Date and Death Date in 42,698 Suicides. Am J Public Health. 1988;78:541-3.
8. Franchitto N, Mathur A, Franchitto L, Gavarri L, Telmon N, Rougé D. Emergency suicide care in France: The psychiatrist's liability as seen in case law. Int J Law Psychiatry. 2007 Nov-Dec;30(6):472-9.
9. April R. Smith, Tracy K. Witte, Nadia E. Teale, Sarah L. King, Ted W. Bender, and Thomas E. Joiner. Revisiting Impulsivity in Suicide: Implications for Civil Liability of Third Parties. Behav Sci Law. 2008;26(6):779-97.
10. Scott Y, Kim H. Evidence-Based Ethics for Neurology and Psychiatry Research. NeuroRx. 2004;1(3):372-7. doi:10.1602/neurorx.1.3.372
11. Cunningham W, Wilson H. Complaints, shame and defensive medicine. BMJ Qual Saf. 2011;20:449-52. doi:10.1136/bmjqs.2011.051722
12. Passmore K, Leung W-C. Defensive practice among psychiatrists: a questionnaire
13. Survey. Postgrad Med J. 2002;78:671-3.