

Dental Ethics versus Malpractice, as Phenomenon with a Growing Trend

Saimir Heta, Kers Kapaj, Rialda Xhizdari, Ilma Robo

Abstract—Dealing with emerging cases of dental malpractice with justifications that stem from the clear rules of dental ethics is a phenomenon with an increasing trend in today's dental practice. Dentists should clearly understand how far the limit of malpractice goes, with or without minimal or major consequences, for the affected patient, which can be justified as a complication of dental treatment, in support of the rules of dental ethics in the dental office. Indeed, malpractice can occur in cases of lack of professionalism, but it can also come as a consequence of anatomical and physiological limitations in the implementation of the dental protocols, predetermined and indicated by the patient in the paragraph of the treatment plan in his personal card. Let this article serve as a short communication between readers and interested parties about the problems that dental malpractice can bring to the community. Malpractice should not be seen only as a professional wrong approach, but also as a phenomenon that can occur during dental practice. The aim of this article is presentation of the latest data published in the literature about malpractice. The combination of keywords is done in such a way with the aim to give the necessary space for collecting the right information in the networks of publications about this field, always first from the point of view of the dentist and not from that of the lawyer or jurist. From the findings included in this article, it was noticed that the diversity of approaches towards the phenomenon depends on the different countries based on the legal basis that these countries have. There is a lack of or a small number of articles that touch on this topic, and these articles are presented with a limited amount of data on the same topic. Dental malpractice should not be hidden under the guise of various dental complications that we justify with the strict rules of ethics for patients treated in the dental chair. The individual experience of dental malpractice must be published with the aim of serving as a source of experience for future generations of dentists.

Keywords—Dental ethics, malpractice, professional protocol, random deviation, dental tourism.

I. INTRODUCTION

THIS study came at one moment when the dental practice is being widely applied in the conditions of dental tourism also. It is important for the dentist to know the basic legal concepts of malpractice, since in the time we live the tendency for dental malpractice is increasing [1]. There must be basic legal knowledge on how to differentiate between malpractice and professional negligence. Both elements or phenomena have different legal approaches and different professional approaches [1]. Dentists, based on their profession and the opportunity that the profession allows, can perform different repairs, having the minimal desire to recover the bull done towards the patient, this is the case of malpractice even in the

case of professional negligence, in contrast to the profession of a doctor for example, where the damage can be irreversible and even life-threatening.

It is important to put the interest of the patient and the public first. Professional codes of ethics are the primary regulators of the dentist-patient relationship [2]. In some countries, additional legal intervention has been required in this regard to prevent dental malpractice and to regulate the dentist-patient relationship, a professional relationship with full respect for ethics [3].

II. MATERIALS AND METHODS

Some complications of dental treatments can be misinterpreted as malpractice by the professionals. For this reason, it is preferable to inform the patient before giving or starting the initial treatment of the patient, about the possible complications of the dental treatment. This procedure is included in the initial communication between the patient and the doctor, in the form of a consent, which can be verbal or written, where the latter is considered more important from a legal point of view, since everything written and signed "remains" and it can be attached to the patient's card to be used in case of misunderstandings of the complications of dental treatment, such as malpractice, this as a misunderstanding in the established professional dentist-patient relationship [4].

There are studies at the national level on data about the evolution of dental practice, an evolution that goes in parallel with the increase in knowledge on the part of patients and about their rights in protection against dental malpractice [5]. If we classify dental malpractice on the basis of specialties within the profession of dentistry, there are data that dental malpractice is more expressed in prosthetic treatments, followed by malpractice expressed in endodontic treatments, despite the years of professional experience of the practitioners, which can exceed 10 years [5]. This may be called "a risk" for the patient and the patient may be a "prey" of dental malpractice [6]. Seen from this legal point of view, malpractice can be judged on the legal basis for civil or criminal violations; which must also find support or understanding from the patient's side, on the nature and the difference in the nature of both types of violation of the legal basis, from the signing of the consent by the patient [7].

Dental practice is carried out in full compliance with the code of ethics for this profession [8]. But again, in compliance with this code, in compliance with the preservation and confidentiality of patient data, most articles about dental

Saimir Heta, Kers Kapaj, and Rialda Xhizdari are with Albanian University, Faculty of Dentistry, Tiranë, Albania.

Ilma Robo is with University of Medicine, Faculty of Dental Medicine, Tiranë, Albania (corresponding author, e-mail: ilmarobo@yahoo.com).

practice speak about the success of dental treatments, rather than about malpractice despite the fact that it may be correctable and not bordering on the violation of civil or criminal law [9].

Perhaps the stomatologist profession is such a profession that gives space for professional satisfaction in the "sharing" between colleagues of malpractice, in the perspective of how it can be corrected, since the possibilities for correction are numerous. Perhaps the consent signed by the patient should be regulated, formulated in such a way that, in addition to general and specific evaluations about dental treatment, recommendatory criteria are also included that help both the patient and the stomatologist in making decisions about the treatment method [10], [11].

The method of treatment and then the treatment protocol are decided after the examinations and basic techniques of examinations and additional ones such as taking radiographs. Malpractice also includes the dentist's decision whether or not the patient should undergo a radiological examination, since the latter is not necessary to precede every dental treatment without distinction and exception [12]. But sometimes professional self-defense adds unnecessary rules that limit the full exercise of the profession; excessive rules that must be caught and again controlled or punished by the Order of the Dentists [13]. Malpractice, in addition to the above elements, also includes the type that originates from professional ignorance, equally punishable as the above-mentioned cases [14]. Giving dental care has standards of care that are legal constructs that manage to explain cases of dental malpractice as a source of professional ignorance, or incorrect medical logic of the dentist, which led to the failure of treatment with correct protocol stages of dental treatment [15]. Here is the case where may be a need for dentists, even with many years of experience, to be included in ongoing treatment programs about the professional code of ethics and its effectiveness [16], [17]. Data on dento-legal, dento-ethical observations in bandages and time interval several years are necessary to be carried out and then they become known to the interest groups, including dentists with different years of experience for official [18].

Dentists beyond the profession are humane, even with powerful vices. Therefore, malpractice appearing in different systemic conditions of the individual profession must be understood [19]. Even further, the legal basis of malpractice should also include cases of these conditions where the malpractice is not carried out because the individual will harm the individual in need, but it is found in your knowledge or knowledge in fluctuating conditions of clear professional logic on oral dental pathologies, with which the individual in need appears [19].

The reasons for dental malpractice can be numerous, individual and collective, since the dental services offered to the patient in dental clinics, despite the fact that they are small, non-hospitalized dental clinics, can offer a series of services one after the other, performed by different specialists. Sometimes it happens that a dental service performed incorrectly due to the incompetence or ignorance of the specialist dentist who performed it, may affect other dental processes or subsequent dental services which should be based on that material or

clinical case provided by the error of the previous specialist. So dental services can also be serial services performed by different professionals who implement different dental procedures. Here, the malpractice has a culprit, let's say, known by both sides of the specialists. The opposite happens when different dental services are offered in outpatient dental clinics by the same specialist. In these cases, the malpractice of the ignorance or non-professionalization of the same individual can be consciously hidden. This possibility increases when the patient is actually in this situation. So dental clinics that offer all services from a single professional are prey to the increased possibility of malpractice appearing as a phenomenon. Here we face the professional approach between dental ethics and malpractice. Here the problems of dental ethics brought to the professional in error for malpractice caused to the patient require careful investigation. In this debate between the two phenomena, it seems that the patient is vulnerable, who should be well informed about the possibility of the occurrence of complications of dental treatments, but these clearly expressed without wearing the guise of accidental malpractice or occurring not because of the lack of professionalization of the port dentist, the accidental anatomical or physiological impossibility of implementing the dental treatment plan. At this moment, it is the patient who must clearly read the complications and the possibility of their occurrence in order not to be confused or manipulated by the dentist to hide accidental malpractice.

In such clinical cases, the patient is faced with long consents for signing, where nothing is left unsaid, even passing unnecessary and even exaggerated professional details, where it remains to be said that in all cases any dental intervention can lead to dangerous or very dangerous consequences for the patient's life. Perhaps these types of consents need to be looked at more carefully to be balanced both for the emotional burden of the affected patient who will undergo dental intervention and also for the dentist who cannot be covered by the malpractice shown for reasons of professional absence, being justified by cases of complications whose occurrence has a relatively low incidence.

The situation is even more complicated when faced with an extremely high amount of explanatory text for exhausting the possibility of penalizing the dentist presenting the malpractice, attempts are made to reduce the font size of the text with the aim of compressing this text into a reduced number of paragraphs as a part of the one-page or two-page patient chart. Here what happened is in the patient's favor since the way the text is presented reduces the patience to read it to a minimum, which ends with the signature of the letter and the hope that these complications will not happen to the patient in question. But the situation is phasing for the dentist, showing that the malpractice that occurred is part of the complications of the possible dental intervention, which as a patient you have read and even signed with full awareness.

Special cases of the occurrence of malpractice may also include moments of non-reaction of the profession for an individual health reason. The health condition of the dentist who undertakes the treatment can affect the continuation of this

treatment, even the possibility of malpractice occurring without the professional's desire to do so. It is not that there is no knowledge on how to perform the treatment, not because there are individual anatomical, physiological obstacles of the patient, but for an individual reason of the dentist's health, the latter is impossible to perform the treatment regardless of the fact that he knows very well theoretically and practically how to perform this treatment with successful results. These situations should be distinguished and analyzed separately by guiding other specialists to the training of professional or well-trained professionals.

Being open-minded and realizing that one's experience can be transmitted and forwarded to another, not only showing individual professional success, but also showing mistakes regardless of lack of professionalism or anatomical, physiological impossibility of implementing the plans dental treatments, it is an obligation towards colleagues but also towards patients. This would reduce the problems mentioned above. The patient must feel comfortable with the competent decisions of the dental professional, in malpractice situations regardless of professional competence, the patient can use these situations to spoil the professional's image, even when the malpractice was not the intention of the latter [20]-[22]. The legal basis should also support this direction of the patient-dentist relationship, a completely ethical and professional relationship [23]-[27].

In the end, a confrontation may also appear in the patient's difficulty. The patient offers payments for dental services which, if not covered by health insurance, are relatively high. The dental service for patients is not a service accessible by all layers, especially for aesthetic dental services, but also for functional ones such as the placement of implants or orthodontic treatments. So, a patient found in the midst of the consequences of malpractice and in the conditions that in some cases even a part of the payment of the dental treatment has been carried out, it is understood that he will not be cold in the individual reactions. In some cases, one can even feel frustrated with the tendency to use every paragraph of the pre-signed consent to attack the dentist for individual benefits.

In conclusion, it can be said that being a dentist as a profession is known to be difficult like all professions that deal with the treatment of patients' health problems, significantly differentiating it from the profession of a doctor due to the specifics of the profession. A toothache cannot be clearly conceived by a general practitioner, but at the same time the dentist must know and deal with complications of dental treatments that affect the general health of the patient.

The dental tourism business has found different flourishing times in different states [28], [29]. Despite the fact that in the displayed period there are economic conditions related to the country where it appears, the time of prosperity and profit has been short-term, this from the recorded marketing data published in the literature. Maybe the time has come for this business to be organized by making the best use of the advantages that the application of artificial intelligence brings [29]-[32]. Data of dental tourism are published on Pubmed site, specifically related to the different countries, with the reason or

type of dental treatment why tourism is performed, accompanied by the advantages and disadvantages of this procedure.

The percentage of dissatisfaction, and non-subsequent individual counseling, based on the same individual experience of dental tourism performed, is in direct proportion to the duration of this business by both the former patient and the dental clinics, the professionals who performed it [32]-[35].

Dental treatments can also be accompanied by complications and pain after the procedure, which do not give you the opportunity to do "tourism" in an unknown place, which you would like to explore with healthy teeth, used minimally for an individual's smile in touristic photos, or to taste the typical foods of a country, an unknown country or a place where you have not been before. Economic finances conditioned you to pay less for better dental services than in your country, and at the same time to enjoy the "unknowns" of this country, if you can, among dental complications [35]-[39].

Malpractice problems increase in cases of dental tourism. This is only because each treatment requires its own time, but in the days of dental tourism, there are rare cases when complications are planned and the possibility of them appears. This means that as long as dental treatments can be accompanied by dental complications, the days of dental tourism are also extended, increasing not only the costs of the days of stay, but also the discomfort of the dental tourist patient [32]-[35].

If there is talk about malpractice, then the legal basis of its treatment must also be looked at. As a patient who is treated in a country for a certain dental treatment, he cannot solve the malpractice that appeared in this country where he is also a tourist, with the malpractice laws and rules of the country he came from. The situation is complicated even in cases where dental tourism is carried out even in conditions where the dentist who performs this procedure may not be regular against the laws and regulations of the state regarding registration and the possibility of exercising his profession [35]-[39].

III. CONCLUSIONS

Malpractice is inevitable in the dental professional who attempts and is brave enough to undertake treatment of difficult or non-dental cases. Malpractice is not necessarily related only to difficult clinical cases, but sometimes also appears as a random deviation of a dental treatment with a well-defined professional protocol. The legal basis on which dental malpractice is judged has separate items according to the specifics of the nature of dental malpractice. Registered and judged cases of dental malpractice should be presented during continuing education training for dental professionals with the aim of raising awareness against this phenomenon.

DECLARATIONS

Ethics Approval and Consent to Participate

The local ethics committee ruled that no formal ethics approval was required in this particular case. This study was submitted to and approved by Albanian University Institutional

Ethics Committee, date 12.11.2022, Tirana, Albania, according to national regulations.

Consent for Publication

Not Applicable.

Availability of Data and Materials

The datasets analyzed during the current study are available from the corresponding author.

Competing Interests

The authors declare that they have no competing interests.

Funding

Not applicable. No funding for this research.

Authors' Contributions

IR collected the scientific data and wrote the manuscript. SH revised and edited the manuscript. Literature research was conducted by SH. KK and RXh collected the scientific data. All authors read and approved the final manuscript.

ACKNOWLEDGMENTS

Acknowledgments belong to Henri and Hera, for the help they give us by understanding and supporting us to continue further and with more commitment, in the field of scientific research.

REFERENCES

- [1] Blau I, Levin L. Medical malpractice: An introduction for the dental practitioner. *Quintessence Int.* 2017;48(10):835-840. doi: 10.3290/j.qi.a39106. PMID: 29034379.
- [2] Holden A. What do dental codes of ethics and conduct suggest about attitudes to raising concerns and self-regulation? *Br Dent J.* 2018 Feb 23;224(4):261-267. doi: 10.1038/sj.bdj.2018.125. PMID: 29472677.
- [3] Humagain M, Bhattarai BP, Rokaya D. Quackery in Dental Practice in Nepal. *JNMA J Nepal Med Assoc.* 2020 Jul 31;58(227):543-546. doi: 10.31729/jnma.5036. PMID: 32827024; PMCID: PMC7580404.
- [4] Alsaed S, Aljarallah S, Alarjani A, Alghunaim G, Alanizy A. Dental malpractice lawsuit cases in Saudi Arabia: A national study. *Saudi Dent J.* 2022 Dec;34(8):763-771. doi: 10.1016/j.sdentj.2022.11.002. Epub 2022 Nov 7. PMID: 36570586; PMCID: PMC9767827.
- [5] Allan J. Informed consent. *J R Coll Physicians Edinb.* 2014;44(4):299-302. doi: 10.4997/JRCPE.2014.411. PMID: 25516901.
- [6] Laine EE. How to lessen the risk of dental malpractice. *Pa Dent J (Harrisb).* 2014 Mar-Apr;81(2):22-5. PMID: 24979966.
- [7] Holden A, Stewart C. A review of the law of consent in dentistry. *Aust Dent J.* 2019 Sep;64(3):208-212. doi: 10.1111/adj.12707. Epub 2019 Jul 22. PMID: 31264231.
- [8] Maihofer M. Diminishing skills and the ethics of dental practice. *J Mich Dent Assoc.* 2013 Oct;95(10):18, 58. PMID: 24260851.
- [9] Nogueira TE, Gonçalves AS, Leles CR, Batista AC, Costa LR. A survey of retracted articles in dentistry. *BMC Res Notes.* 2017 Jul 6;10(1):253. doi: 10.1186/s13104-017-2576-y. PMID: 28683764; PMCID: PMC5500970.
- [10] Wu CW, Huang TY, Randolph GW, Barczyński M, Schneider R, Chiang FY, Silver Karcioğlu A, Wojtczak B, Frattini F, Gualniera P, Sun H, Weber F, Angelos P, Dralle H, Dionigi G. Informed Consent for Intraoperative Neural Monitoring in Thyroid and Parathyroid Surgery - Consensus Statement of the International Neural Monitoring Study Group. *Front Endocrinol (Lausanne).* 2021 Dec 7;12:795281. doi: 10.3389/fendo.2021.795281. PMID: 34950109; PMCID: PMC8689131.
- [11] Munk LK. Implications of State Dental Board Disciplinary Actions for Teaching Dental Students About Emotional Intelligence. *J Dent Educ.* 2016 Jan;80(1):14-22. PMID: 26729680.
- [12] Salerno S, Laghi A, Cantone MC, Sartori P, Pinto A, Frija G. Overdiagnosis and overimaging: an ethical issue for radiological protection. *Radiol Med.* 2019 Aug;124(8):714-720. doi: 10.1007/s11547-019-01029-5. Epub 2019 Mar 21. PMID: 30900132.
- [13] Champaine GS. State Dental Boards and Public Protection: Fulfilling the Contract. *J Am Coll Dent.* 2015 Summer;82(3):25-30. PMID: 26697652.
- [14] Chambers DW. The Cost of Ignorance. *J Calif Dent Assoc.* 2015 Oct; 43(10):563. PMID: 26798905.
- [15] Curley AW, Peltier B. Standard of care: the legal view. *J Am Coll Dent.* 2014 Spring;81(1):53-8. PMID: 25080672.
- [16] Nortjé N, Hoffmann WA. Professional consequence for dentists involved in unethical decision-making in South Africa. *J Forensic Odontostomatol.* 2014 Nov 30;32(Suppl 1(Suppl 1):22-9. PMID: 25557412; PMCID: PMC5734817.
- [17] Yarborough C, Peltier B, Huston J. The Dangerous Specter of Addiction A Cautionary Tale. *J Am Coll Dent.* 2016 Autumn;83(4):43-48. PMID: 30152927.
- [18] Jerrold L. Litigation and legislation. Dento-legal and ethical observations on the last 100 years. *Am J OrthodDentofacialOrthop.* 2015 May;147(5 Suppl):S234-41. doi: 10.1016/j.ajodo.2015.01.019. PMID: 25925654.
- [19] Brenner G. Dentists with Substance use Disorders: HELP is Available. *J Indiana Dent Assoc.* 2015 Autumn;94(4):22-3. PMID: 26817047.
- [20] Heta, Saimir & Alliu, Nevila & Robo, Ilma & Ostreni, Vera. (2023). Antibiotics for treatment of apical periodontitis, indication or contraindication. *Bulletin of the National Research Centre.* 47. 10.1186/s42269-023-01038-5.
- [21] Maitland RI. What it means to be a doctor. Sensitizing the dentist and the student to professionalism. *N Y State Dent J.* 2015 Mar;81(2):24-8. PMID: 25928970.
- [22] Beard D. Dealing with good intentions that go bad. *J Am Dent Assoc.* 2015 Jan;146(1):70-2. doi: 10.1016/j.adaj.2014.11.011. Epub 2014 Dec 18. PMID: 25569503.
- [23] Shivapuja PK. Questions about Maihofer column. *J Mich Dent Assoc.* 2013 Dec;95(12):12. PMID: 24558710.
- [24] Marais JT. Dentistry in South Africa is gravely ill, sick to the core. *SADJ.* 2014 Aug;69(7):296. PMID: 26548210.
- [25] Maihofer M. What Happens When Patient Records Are Withheld. *J Mich Dent Assoc.* 2016 Aug;98(8):22. PMID: 30047690.
- [26] Richards W. Ethical dilemmas: guidelines without context. *Br Dent J.* 2014 Apr;216(7):376-7. doi: 10.1038/sj.bdj.2014.256. PMID: 24722073.
- [27] Naidoo S. Ethics corner. Periodontal treatment & allegations of neglect. *SADJ.* 2013 Mar;68(2):84, 86-7. PMID: 23951771.
- [28] Kopmaz B, Kitapci NS, Kitapci OC, Bulu SB, Aksu PK, Koksall L, Mumcu G. Dental Websites as New Media Tools for Patients in Dental Health Tourism. *Acta Inform Med.* 2019 Jun;27(2):128-132. doi: 10.5455/aim.2019.27.128-132. PMID: 31452572; PMCID: PMC6688302.
- [29] Misch CM. Editorial: Dental tourism for implant treatment: Dream vacation or nightmare? *Int J Oral Implantol (Berl).* 2020;13(3):203-204. PMID: 32879926.
- [30] Cabudol MJ, Asgari P, Stamm N, Finlayson TL. Illuminating Mexican Migrant Adolescents' Dental Access and Utilization Experiences. *Community Dent Health.* 2018 Nov 29;35(4):204-210. doi: 10.1922/CDH.4255Cabudol07. PMID: 30198647.
- [31] Miller A, Smith R, Woods N, Warholak T. Analysis of medical tourism at the Andrade port of entry. *J Am Pharm Assoc (2003).* 2021 Mar-Apr;61(2):e114-e119. doi: 10.1016/j.japh.2020.10.018. Epub 2020 Nov 12. PMID: 33191137.
- [32] Nyambe MM, Kwembeya EG, Lisao K, Hans R. Oral hygiene in Namibia: A case of chewing sticks. *J Ethnopharmacol.* 2021 Sep 15;277:114203. doi: 10.1016/j.jep.2021.114203. Epub 2021 May 13. PMID: 33992751.
- [33] Mubarak N, Zin CS. Religious tourism and mass religious gatherings - The potential link in the spread of COVID-19. Current perspective and future implications. *Travel Med Infect Dis.* 2020 Jul-Aug;36:101786. doi: 10.1016/j.tmaid.2020.101786. Epub 2020 Jun 9. PMID: 32531422; PMCID: PMC7282735.
- [34] Collins L. The burden of dental tourism. *Br Dent J.* 2022 Oct;233(7):516. doi: 10.1038/s41415-022-5109-6. PMID: 36241780.
- [35] Felkai PP, Flaherty G, Felkai T. International dental tourism in a post-COVID era: pre-travel advice. *J Travel Med.* 2021 Oct 11;28(7):taab108. doi: 10.1093/jtm/taab108. PMID: 34272850.
- [36] Ashiti S, Moshkun C. Dental tourists: treat, re-treat or do not treat? *Br Dent J.* 2021 Jan;230(2):73-76. doi: 10.1038/s41415-020-2591-6. Epub 2021 Jan 22. PMID: 33483660.
- [37] Shaygani F, Ahmadi Marzaleh M. COVID-19 Pandemic: An Opportunity for Using Tele-Dentistry for a Better Dental Care. *Prehosp Disaster Med.* 2022 Dec;37(6):853-855. doi: 10.1017/S1049023X22001339. Epub 2022

- Sep 15. PMID: 36106585; PMCID: PMC9530381.
- [38] Thananusak T, Zhu R, Punnakitikashem P. Bouncing from the Covid-19 Pandemic: Response of an Online Medical Tourism Facilitator Platform. *Procedia Comput Sci.* 2022;204:278-282. doi: 10.1016/j.procs.2022.08.033. Epub 2022 Sep 10. PMID: 36120409; PMCID: PMC9464300.
- [39] Felkai PP, Nakdimon I, Felkai T, Levin L, Zadik Y. Dental tourism and the risk of barotrauma and barodontalgia. *Br Dent J.* 2023 Jan;234(2):115-117. doi: 10.1038/s41415-023-5449-x. Epub 2023 Jan 27. PMID: 36707585; PMCID: PMC9880927.