

Medical malpractice litigations against gastroenterologists in Belgium

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Abstract

Introduction: Medical malpractice litigations represent a reality for clinical physicians. However, no data are available about the impact on gastroenterologists in Belgium.

Aim: We estimated the number of malpractice litigations against gastroenterologists in Belgium based on the annual reports of the Fund for Medical Accidents (FMA), residing under the Belgian national social security service (RIZIV-INAMI).

Methods: FMA annual reports are available online in the public domain from 2012 onwards. We reviewed all available annual reports, focussing on results within the fields of Gastroenterology and Cardiology.

Results: From 2010 to 2023 a total of 6884 applications for malpractice litigations were filed resulting in a final decision for 3185 care providers between 2014 and 2023. In this 10 years period claims were filed against 92 gastroenterologists, placing them in the top 10 of care providers at risk for malpractice litigations in Belgium. There are currently 777 practicing gastroenterologists in Belgium, indicating that over 10 years time the cumulative risk of malpractice litigation through the FMA alone is as high as 12%. The subject of the claims is not mentioned in the FMA reports, and therefore remains unknown. Compared to Cardiology, another interventional speciality within the field of Internal Medicine, gastroenterologists are more prone to malpractice litigations. Only 73 (6%; $p < 0.001$ Chi-square) on a total of 1237 practicing cardiologists faced malpractice litigations through the FMA.

Conclusions: Based on the FMA annual reports, Belgian gastroenterologists are considerably at risk of malpractice litigations reaching 12% over a 10 years time period, as compared to only 6% cumulative risk of practicing cardiologists. Endoscopy-related complications are supposedly the most common reason of malpractice litigation and Belgian gastroenterologists should be aware of this risk. (*Acta gastroenterol belg.*, 2025, 88, 38-42).

Keywords: Medical malpractice litigation, Gastroenterology, Endoscopy, Cardiology.

Introduction

Medical malpractice litigation represents a feared back side of our medical profession. It is an important reality of daily clinical practice in the USA, where approximately one-third of all practicing physicians have faced a medical malpractice lawsuit against them, reaching even 50% for physicians age 55 years and older (1). In Belgium, the threat of medical malpractice lawsuits is definitely much lower. However, the global impact of malpractice litigations in Belgium is unknown since there is no national database available covering the topic. Currently available data in the literature on the Belgian situation arose from local initiatives (2,3).

Patients in Belgium can file claims against physicians at different levels and authorities. The majority of indemnity payments most likely comes from settlements at the level of the hospital's conciliation service and the physician's professional liability insurance without

trial verdict (2). Access to the databases of all medical malpractice liability insurers is mandatory to have an idea of the extent of malpractice claims in Belgium. Patients can also file malpractice claims in the court of justice, which usually turns out to be a long and costly process with an unknown outcome (4). In Belgium the outcome of trial verdicts of different courts of justice can be consulted freely online through the Juportal platform (<https://www.belgielex.be/en/juportal>). However, only a selection of verdicts on the platform is open to the public, and therefore no complete database of malpractice lawsuits can be consulted. A third institution dealing with patient malpractice claims is the Order of Physicians, representing all practicing physicians in Belgium. The Order is a legal entity with the authority of disciplinary punishment of its members, ranging from a warning to definitive eviction of the list of practicing physicians, but without indemnity payments for the victims. The Order publishes exemplary anonymized verdicts on its website, but the database of malpractice claims is not open to the public (<https://ordomedic.be/nl>). Based on the previously discussed instances dealing with medical malpractice claims, it is clear that compensating medical liability litigation is not unified and well-regulated in Belgium and often represents additional agony to the victims' suffered medical harm.

It was therefore that the Belgian malpractice system was reformed in 2010 aiming for adequate and timely compensation of medical malpractice victims for the harm suffered (compensatory function) (5,6). In addition, it aims to incentivise physicians to deliver healthcare with sufficient reasonable care (deterrent function) (5,6). The Fund for Medical Accidents (FMA) was established in 2010 residing under the Belgian national social security service (RIZIV-INAMI) and applies an out-of-court settlement in a timely manner (5). It allows patients to file a malpractice claim against their treating physician through a low-threshold online platform (or through a call-centre) free of charge (<https://www.riziv.fgov.be/nl/thema-s/medische-ongevallen>).

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Since then the FMA represents the most accessible official instance for patients to file malpractice claims.

We aimed to analyse the impact of malpractice claims filed through the FMA against gastroenterologists and cardiologists in Belgium, in order to define the risk of facing medical liability litigation in these two specialities residing under Internal Medicine. We performed a retrospective review of all available annual reports from 2012 onwards, focussing on data provided within the fields of Gastroenterology and Cardiology. In addition, we received upon request a list of claims against Belgian gastroenterologists from the Order of Physicians, that was used as a comparative control of the FMA results. Following malpractice claims both instances are entitled to condemn physicians, but the types of infringement and the subsequent sanctions differ.

Materials and Methods

The annual reports of the FMA are available online in the public domain (<https://www.riziv.fgov.be/nl/publicatie/activiteitenverslagen-van-het-fonds-voor-de-medische-ongevallen>). They are written both in Dutch and in French. The reports provide data on the annual number of claims received, the global status of the applications throughout the years as well as the outcome and the global amount of indemnity paid, if any. There is no information available about individual claims, victims or medical professionals. They also list the affected organ systems as well as the type of health care provider involved (medical doctor, dentist, nurse, physical therapist, midwife, other), led by far by medical doctors. Within the group of medical doctors a frequency list of all specialities is provided allowing comparison of rates between different medical specialities. No information regarding outcome per speciality nor the type of claim (diagnostic error, therapy-related complication, consent and communication problems,...) is available. Therefore, the analysis of the available data only allows global conclusions for each speciality.

Upon request, a list of claims against Belgian gastroenterologists was obtained from the Order of Physicians. The annual numbers and types of infringement were provided, as well as the Order's sanctions. These data were used as a comparative control of the numbers of claims received by the FMA. Descriptive statistical analysis was performed using Excel 2024 for Windows (Microsoft 365). When appropriate statistical analysis of risk ratios was performed using Chi-square for contingency tables. $P < 0.05$ was considered statistically significant.

Results

Launched in April 2010, the FMA provides annual reports open to the public as from 2012 onwards including information about definitive verdicts since

2014. The latest annual report available is 2023. Therefore a 10 years time period (from 2014 to 2023) was used to analyse medical malpractice claims against gastroenterologists and cardiologists in Belgium. As mentioned earlier, medical doctors are the most important group of health professionals in the FMA database. They cumulatively represent 92% (2922 of 3185 claims with a final verdict) of all health care providers in the 2023 annual report and the speciality most frequently involved is Orthopedic Surgery representing 27.5% of all claims with a final verdict. Failed back surgery is the most important reason for malpractice claims. The FMA top 10 listing of medical specialities at risk of malpractice claims is shown in Table 1, Gastroenterology being one of the few non-surgery-related specialities next to Emergency Medicine and General Medicine in the top 10. Throughout the 10 years study period, the position of Gastroenterology fluctuated between position 6 and position 9.

Focussing on the FMA claims against gastroenterologists, the number of claims steadily increases during the 10 years period. In the annual reports of 2019 to 2021 the specific numbers per speciality are not mentioned, explaining the gap in the curves in Figure 1 showing the cumulative number of claims against general surgeons, gastroenterologists and cardiologists. At the end of the year 2023 the cumulative number of claims against gastroenterologists reached 92 on a total of 3185 final verdicts, representing 2.9% of all claims against medical professionals during the 10 years study period (Table 1). Relative to the total number of practicing gastroenterologists in Belgium (777 in 2022) the number of 92 represents a 10 year cumulative risk of malpractice claims of 12% (7). Compared to cardiologists, another medical speciality with therapeutic interventions residing within the group of Internal Medicine, gastroenterologists are statistically more prone to malpractice litigations. There are 1237 practicing cardiologists (in 2022) with 73 registered malpractice claims by the FMA during the 10 years period, resulting in a cumulative risk of claims of only 6% ($p < 0.001$ Chi-square) as compared to gastroenterologists. The numbers of claims against gastroenterologists and cardiologists in the FMA annual reports do not allow to identify the number of claims per individual health professional. So a bias because of multiple claims against a single gastroenterologist or cardiologist cannot be excluded. Also information on the subject of the malpractice claims (diagnostic error, therapeutic complication,...) is not provided, so no detailed information regarding the cause and the outcome of the claims is available.

Upon request a list was obtained with claims against Belgian gastroenterologists received by the Order of Physicians between 2018 and 2024. The list consisted of 67 claims over a 7-year time period, with a mean of 9.6 claims per year. This is very much in line with the 92 claims against Belgian gastroenterologists received

Table 1. — **Top 10 list of the medical specialities facing malpractice claims at the Fund for Medical Accidents in Belgium.**

Medical speciality	Number of claims	Percentage of all claims
Orthopedic Surgery	876	27.5
Surgery	280	8.8
Gynaecology / Obstetrics	270	8.5
Neurosurgery	266	8.4
Anaesthesiology	148	4.7
Ophthalmology	109	3.4
Emergency Medicine	97	3.1
Urology	97	3.1
Gastroenterology	92	2.9
General Medicine	78	2.5

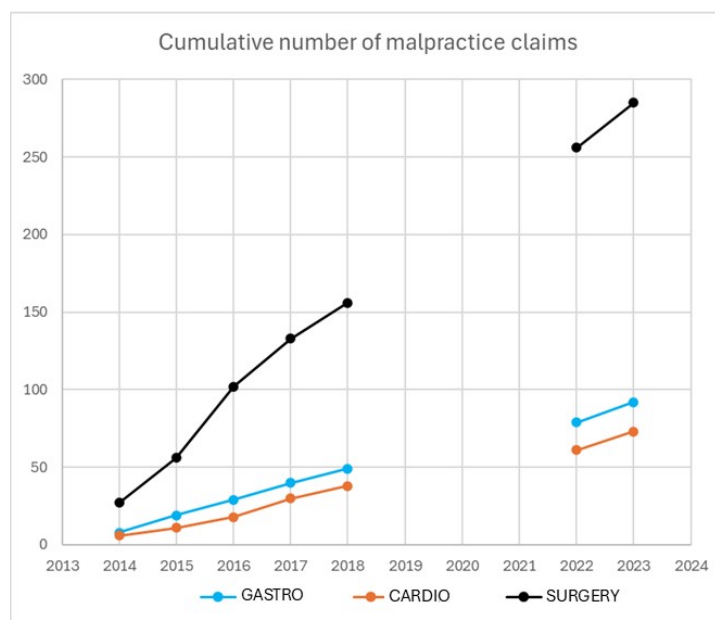


Figure 1. — Cumulative number of malpractice claims at the Fund for Medical Accidents over a 10 years period against general surgeons, gastroenterologists and cardiologists in Belgium. Specific surgical specialities are not included: orthopedic and plastic surgery, gynaecology and urology, ophthalmology and otorhinolaryngology.

by the FMA over a 10-year time period from 2012 to 2023, with a mean of 9.2 claims per year. Although the Order's malpractice claims and subsequent sanctions deal with different types of infringement as compared to the claims received by the FMA, the mean annual number of claims by the two instances is nearly identical. This finding strengthens the liability of the calculated cumulative 12% risk of malpractice litigation against Belgian gastroenterologists.

Discussion

Since the reform of the Belgian medical malpractice system in 2010, medical liability litigation is becoming

an important aspect of daily clinical practice for physicians in Belgium (5,6). Based on the annual reports of the FMA, representing a low-threshold and low-cost instance for patients to file claims against treating physicians, the cumulative 10 year risk of malpractice claims is as high as 12% for gastroenterologists and 6% for cardiologists in Belgium. Regardless the outcome of the verdict, facing medical liability litigation represents a long-term stressful event throughout the professional career of any health care provider (5). The current study also showed that gastroenterologists are in the top 10 list of specialities at risk of malpractice claims, which are for obvious reasons the more invasive surgical specialities. Although specific data about the nature of the claims is

not provided by the FMA, digestive endoscopy-related complications are supposed to be the main reason for malpractice claims against gastroenterologists, although diagnostic error as a cause cannot be excluded (8). In this respect, it is remarkable that Belgian cardiologists, also representing an important professional group of interventional specialists (coronarography and percutaneous intracardiac interventions) within the field of Internal Medicine, and outnumbering Belgian gastroenterologists, face a lower absolute and relative cumulative risk of malpractice litigation based on the FMA data. In the field of interventional cardiology procedural errors and complications as well as missed and incorrect diagnosis represent the majority of malpractice claims in the USA (9,10). There is no reason to assume that other important causes lead to malpractice claims against (interventional) cardiologists in Belgium. The outcome of the analysis of the FMA data provided valuable information about the risk of malpractice litigations against both gastroenterologists and cardiologists in Belgium and revealed that gastroenterologists are more at risk than cardiologists. Explanatory reasons remain speculative but for both specialties the major risk of malpractice claims originates most likely from the interventional procedures. Compared to the malpractice claims filed against Belgian gastroenterologists received by the Order of Physicians, the mean annual number of claims (9.6 vs. 9.2) is nearly identical to the annual number received by the FMA. However, the types of infringement of the claims received by the Order are less likely associated with interventional procedures.

Although the current study aimed to provide reliable data on the risk of malpractice claims against gastroenterologists and cardiologists in Belgium based on the FMA annual reports, the study also faces several shortcomings. First, although the FMA represents a low-threshold and low-cost instance for patients to file for malpractice litigation, it does not cover claims received by the other instances (out-of-court settlements by the hospitals' conciliation services, claims at the court of

justice, claims at the Order of Physicians). Despite being a 'popular' instance, the FMA database does not cover all claims in Belgium. Second, the FMA annual reports only provide general data about medical specialties, and no information about specific cases or claims or health professionals is provided. Third, a bias is possible since no difference is made in the cumulative number of claims against gastroenterologists (92 in 10 years) and cardiologists (73 in 10 years) between a single claim against a single physician and multiple claims against the same physician. Although, it is generally assumed that most of the involved health professionals are only listed once in the cumulative number of claims.

As a practical advice, we provide an overview of the different factors that play a role in the origin and the progression of common malpractice litigations (Figure 2). In the literature three important recurring causes leading to malpractice claims are identified: a. missed, late or incorrect diagnosis; b. improper or complicated interventional procedure; c. lack of consent or communication (8,10,11). Adequate communication is crucial in daily clinical practice. It facilitates the transmission of medical information between the physician and the patient and it allows to build up mutual confidence. This is the most important reason of existence of the so-called informed consent, playing a pivotal role in medical treatment, including all interventional procedures (12). On the other hand, a patient signed informed consent may represent a valuable discharge to the defendant physician facing a malpractice lawsuit. Also in digestive endoscopy, informed consent is to be obtained systematically for every endoscopic procedure according to good clinical practice standards (13). Loss of confidence by the patient because of poor communication by the physician after a medical event, is often the real motive to file for malpractice litigation. Clear communication with the patient, both before and after an endoscopic procedure is mandatory, even more when the outcome is not as anticipated. Early and correct disclosure to the patient has shown to lower the risk of malpractice claims in case

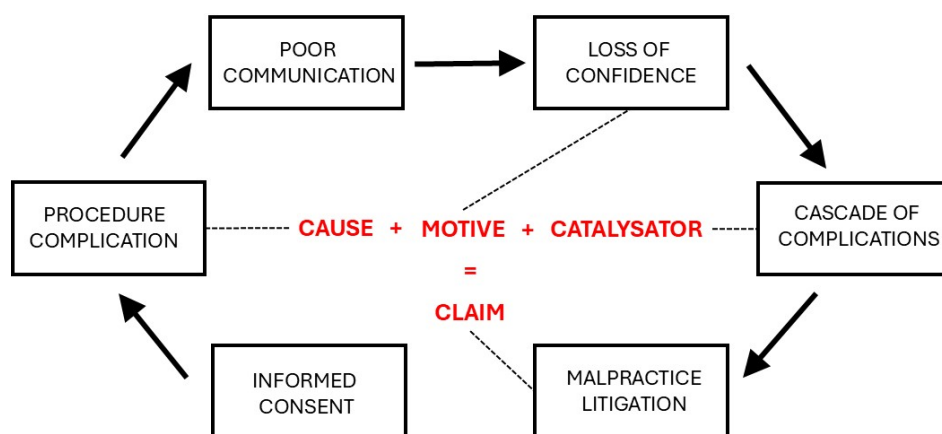


Figure 2. — Typical flowchart of an endoscopy-related complication and the subsequent factors leading to malpractice litigation.

of endoscopy-related complications like perforations (8). The risk of endoscopy-related complications differs according to the gastrointestinal segment and the type of intervention, perforation and bleeding being the most important ones (14). Anaesthesia-related complications are also of importance in Gastroenterology, since many endoscopic procedures are performed under different degrees of sedation (15). Apart from the cause (complication) and the motive (poor communication), other factors may also interfere with the medical recovery, accelerating (catalysator) the victim's claim for compensation. Starting from the initial endoscopy-related complication (perforation for example), a cascade of subsequent complications (infection and sepsis leading to multiple organ failure and even death) severely impacts both the clinical and mental recovery. This despairing decline of personal wellbeing in conjunction with loss of confidence because of poor communication opens the door to malpractice litigation (Figure 2). Endoscopy-related complications cannot always be avoided, poor communication can and should. Therefore, adequate communication and adequate complication management represent the primary constituents to maintain and even strengthen mutual confidence, ultimately avoiding malpractice claims.

In conclusion, the current manuscript gives an accurate estimate of the risk of malpractice litigation against Belgian gastroenterologists and cardiologists based on the annual reports of the Fund for Medical Accidents and the Order of Physicians. The Fund resides under the Belgian national social security service RIZIV-INAMI. It represents a low-threshold and low-cost service to patients to apply for financial compensation being a victim of medical malpractice, as an alternative to legal claims in the court of justice and out-of-court settlements with conciliation services and insurance companies. Gastroenterologists should be aware that they are in the top 10 of medical specialities at risk of malpractice litigation in Belgium.

Declarations

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