

**CRIMINAL MEDICAL LIABILITY. COMPARATIVE ANALYSIS OF TWO ANNUAL PERIODS, FOLLOWING  
A DECADE OF CHANGE**  
**RESPONSABILIDAD MÉDICA PENAL. ANÁLISIS COMPARATIVO DE DOS PERÍODOS ANUALES, TRAS UNA DÉCADA DE  
CAMBIOS**

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**Abstract:** Background: The medical liability refers to the obligation of a physician to face justice for any harm caused while pursuing his role. Methods: An observational, retrospective, comparative study of 2 annual periods was carried out, in which 200 cases were of the year 2013 (G:1) and 200 of the year 2023 (G:2). The general objective was to compare the cases of criminal medical liability, in 2 annual periods with an interval of 10 years, analyzing 6 variables. Results: In both periods, the most frequent cover sheet was “Death due to doubtful cause” (45%-G:1/54%-G:2), the most reported institution was the hospital system (48% public-G:1/47% private-G:2), the most requested medical specialty was internal medicine (29%-G:1/25%-G:2) and the damaging event was most frequent in the year prior to the one studied (39%-2012/36%-2022). Regarding the victims, the most common were those over 60 years of age (31%-G:1/46%-G:2). In 2013, the male sex predominated (54%-G:1), and in 2023, the female sex predominated (55%-G:2). In relation to the time elapsed between the generating event and the expert’s report the average in days was 493.27 in G:1 and 804.81 in G:2. Conclusions: In the criminal jurisdiction, Hospital care is the one that most frequently leads to a medico-legal process and in relation to this the most compromised medical specialty was Internal medicine. The time elapsed between the generating event and the expert report was shorter in 2013, which could be linked to the number of cases of “culpable injuries” evaluated in that period

**Keywords:** malpractice; legal system; forensic medicine.

**Resumen:** Introducción: La responsabilidad profesional de los médicos consiste en la obligación que tienen de responder ante la Justicia por los daños ocasionados durante el ejercicio de su profesión. Material y métodos: Se realizó un estudio observacional, retrospectivo, y comparativo de 2 períodos anuales, en el cual se incluyeron 200 casos del año 2013 (G:1) y 200 del año 2023 (G:2). El objetivo general consistió en comparar los casos por responsabilidad médica penal, en 2 períodos anuales con un intervalo de 10 años, analizando 6 variables. Resultados: En ambos períodos; la carátula más frecuente fue “muerte por causa dudosa” (45%-G:1/54%-G:2), la institución más denunciada fue el sistema hospitalario (48% público-G:1/47% privado-G:2), la especialidad médica más requerida fue Clínica médica (29%-G:1/25%-G:2) y el hecho generador fue más frecuente el año anterior al estudiado (39%-2012/36%-2022). Respecto a los damnificados, sobresalieron los mayores de 60 años (31%-G:1/46%-G:2). En el 2013 predominó el sexo masculino (54%-G:1) y en el 2023, el femenino (55%-G:2). En relación al tiempo transcurrido entre el hecho generador y el informe pericial la media en días fue de 493,27 en el G:1 y de 804,81 en el G:2.

Conclusiones: En el fuero penal, la atención hospitalaria es la que lleva con mayor frecuencia a un proceso médico legal y en relación con ello la especialidad médica más comprometida fue Clínica médica. El tiempo transcurrido entre el hecho generador y el informe pericial fue menor en el 2013 lo que se pudo vincular a la cantidad de casos de “lesiones culposas” evaluadas en dicho período

**Palabras clave:** ala praxis; sistema legal; medicina forense.

## INTRODUCTION

Medical liability is considered a type of professional responsibility, defined as the obligation of a physician who performs his professional activity to face justice for any harm caused while pursuing his role. It is as old as mankind, and the most ancient related laws can be found in the so-called Code of Hammurabi (dated 2000 BC). In this document, the King of Babylon wrote rules of conduct that have inspired several legal codes over the centuries. (1-3)

Regarding Argentina, it is presumed that the first case of this nature occurred on July 27, 1598, in the city of Córdoba. At the time, a lawsuit for malpractice was filed as a result of an event in which a lack of expertise caused the death of five African slaves. (4)

Within the framework of criminal medical liability, when a professional deviates from the *lex artis* in performing a medical act, the physician may be punished with a custodial sentence and/or disqualification from practice. The concept of *lex artis* does not only refer to technical aspects in the performance of the medical act, but it is also strongly related with aspects of bioethical medicine. (5, 6)

In the criminal jurisdiction, guilt and malice must be authentically proved. They cannot emerge as the product of intuition, nor can they be inferred in a discretionary way. Only clear evidence, based on proof and the analysis of the incriminating behaviour renders the act guilty or malicious. (7-9)

The general aim of the study consisted of comparing the situation of selected cases of medical liability in the criminal jurisdiction in two different annual periods (2013 and 2023) that had been examined in an Institution that depends on the highest instance of the Judiciary in Argentina.

The specific objectives in both periods were the following:

- Determine which is the cover sheet of the judicial files.
- Explore the age and sex of affected parties.
- Identify the medical specialties that are most frequently involved.
- Identify the Institutions that were reported.
- Determine the year in which the generating event of the alleged damage occurred.
- Determine the time elapsed between the generating event and the performance of the expert report by the professionals of the Institution.

In Argentina it is difficult to carry out studies on professional liability because there are only limited number of databases containing reliable information, and if available, of very difficult access. This explains the lack of studies carried out in this field. Very often data is obtained from biased sources such as insurance companies or patient associations, and as a consequence, the reliability of the analysed data is questionable, and the results obtained have limited scientific evidence.

## **MATERIAL AND METHODS**

The study was carried out in an Institution composed by medical professionals, and it is hierarchically integrated within the structure of the higher instance of the Judiciary in Argentina. This Institution has a unique database that contains information on professional liability claims within the framework of the criminal jurisdiction. This database contains information that has been stored over several years and therefore constitutes a powerful instrument to value the evolution of this type of reports over time.

The purpose of the study was to compile the existing information in the database of the mention Institution of two annual periods in which, the number of reports for criminal medical liability reached high levels, and to perform a comparative analysis in order to establish the differences.

An observational, retrospective, and comparative study of two annual periods was made, in which 400 expert reports were analysed: 200 corresponded to 2013 and 200 to 2023.

A non-probabilistic strategy of purposive sampling by equal quotas was used to select the subjects for the study sample.

The target population was determined based on the established inclusion and exclusion criteria. The inclusion criteria applied to select the sample correspond to cases that were admitted to the Institution as a result of reports against a physician before criminal courts during the selected years. One aspect to consider is that the specialty of the professional acting for this Institution must necessarily coincide with the specialty of the medical act for which the file was opened.

Among the exclusion criteria, the files considered belong to the civil jurisdiction from lawsuits coming from the criminal jurisdiction that were filed on several occasions at different times and come from the same case.

With the information provided by the database and after the application of the inclusion and exclusion criteria, we proceeded to locate the reports prepared by the professionals of the Institution.

The fulfilment of these reports requires a special commitment that involves the study and analysis of the case. This implies having access to all the necessary documents. Therefore, there is no deadline to conclude the reports. However, this must be done within a reasonable interval.

An Excel database was set up in which the previously collected data was entered manually creating a data sheet.

Once the data has been collected and entered into the database, statistical processing was carried out to extract the information to be presented in the Results section.

This study was completed based on data records and did not involve interviews with individuals. Neither has there been any type of financing nor any conflict of interest in the present investigation. The data collected were analysed with the technical support of IBM® SPSS® Statistics v. 30.0 software and by means of descriptive and inferential statistics. [10] A value of  $p < 0.05$  was considered statistically significant.

A descriptive analysis of the variables was performed by calculating the mean and standard deviation for quantitative variables that follow a normal distribution. The chi-square test was used to test hypotheses.

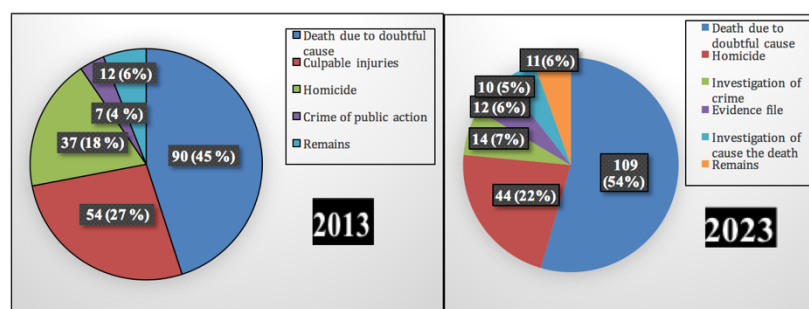
## RESULTS

400 cases of criminal medical liability that were sent for examination at an Institution dependent of the highest instance of the Judiciary in Argentina were analysed. The variables analysed were the following:

### 1) Cover sheet of the judicial files.

In each period studied, the type of injury that appeared as the cover sheet was analysed. In both periods, the most frequent was “Death due to doubtful cause”. In 2013, the second most frequent type was “Culpable injuries” (27 %). (See Fig. No. 1)

Fig. No. 1. Cover sheet of the judicial files



Source: Own elaboration.

### 2) Characteristics of the victims: age and sex

- Age: To be more specific, age ranges were established. In 2013, the following was observed, in order of frequency: \* > of 60 years = 63 cases (31.5 %); \* 0 to 19 years = 53 cases (26.5 %); \* 20 to 39 years = 43 cases (21.5 %); \* 40 to 59 years = 33 cases (16.5 %); and \* < of 0 (fetus) = 8 cases (4 %). The mean age was 38.48 years (95 % CI: 32.26-44.37). On the other hand, the following was found in 2023: \* > 60 years = 92 cases (46.0 %); \* 40 to 59 years = 52 cases (26.0 %); \* 20 to 39 years = 35 cases (17.5 %) and \* 0 to 19 years = 21 cases (10.5 %). The mean was 54.45 years (95 % CI: 49.26-59.29).

-Sex (associated with physical and physiological characteristics): The distribution of cases evidenced a higher number of female cases (108 cases-54 %) in 2013, and a predominance of male cases in 2023 (110 cases-55%).

### 3) Medical specialty required

The medical specialty of the professional of the Institution is determined based on the specialty of the professional that performed the medical act that motivated the opening of the procedure. In other words, the specialty of the medical expert of the Institution must necessarily coincide with the specialty of the professional who performed the medical act that led to the opening of the file. It should be noted that on occasions, medical professional liability cases require professionals from different specialties of the Institution (shared cases). In both periods studied, the most requested medical specialty was Internal Medicine. (See Tables Nos. 1 and 2).

**Table No. 1. Medical specialties required in 2013**

Medical specialties required	Causes (n= 200)	Porcentaje
1- Internal medicine (9 shared)	59	29,5 %
2- Pediatrics (7 shared)	29	14,5 %
3- Obstetrics (10 shared)	25	12,5 %
4- Cardiology (3 shared)	17	8,5 %
5- Traumatology (1 shared)	12	6,0 %
6- Surgery (3 shared) Plastic surgery (2 shared)	11	5,5 %
7- Infectology (6 shared)	9	4,5 %
8- Neurology Gynecology (3 shared) Intensive therapy	6	3,0 %
9- Neumonology Anesthesiology	5	2,5 %

*Source:* Own elaboration.

**Table No. 2. Medical specialties required in 2023**

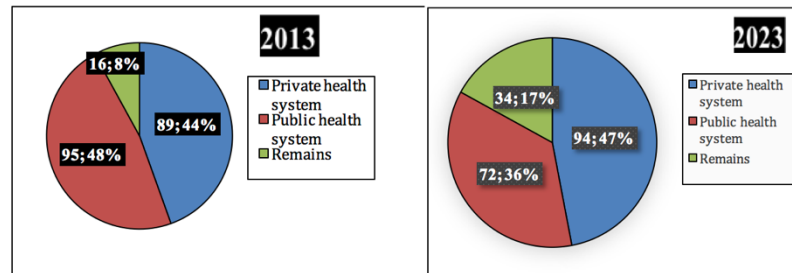
Medical specialties required	Causes (n= 200)	Porcentaje
1- Internal medicine (22 shared)	50	25 %
2- Neumonology	31	15,5 %
3- Surgery (13 shared)	26	13 %
4- Cardiology (6 shared)	22	11 %
5- Pediatrics (4 shared)	10	5,0 %
6- Neurology (1 shared)	9	4,5 %
7- Obstetrics (2 shared) Anesthesiology	8	4,0 %
8- Traumatology	7	3,5 %
9- Psychiatry (2 shared) Toxicology Infectology (1 shared) Plastic surgery (5 shared)	5	2,5 %

*Source:* Own elaboration.

#### 4) Institution reported

In both periods studied, most of the Institutions reported were part of the public health system. In 2013, 95 cases (48%) were in the public health system, and in 2023, 94 cases (47%) were in the private health system. (See Fig. No. 2)

Fig. No. 2. Institutions reported



Source: Own elaboration.

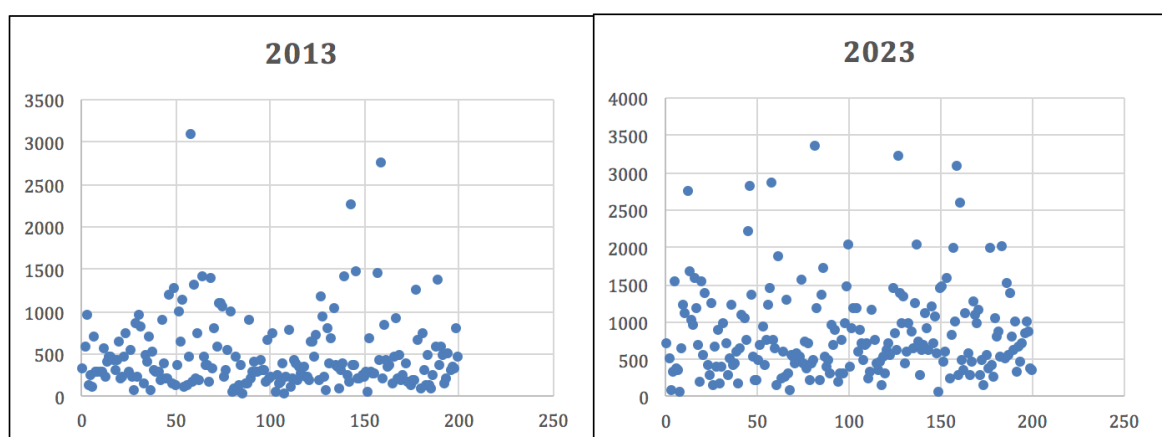
#### 5) Year of the event generating the damage:

The date on which the medical act that generated the admission of the case occurred in 2013, in order of frequency, was the following: 79 cases (year 2012); 78 cases (year 2013); 26 cases (year 2011) and 11 cases (year 2010). On the other hand, in the year 2023 the following was found: 72 cases (year 2022); 39 cases (year 2023); 35 cases (year 2021) and 29 cases (year 2020).

#### 6) Time elapsed between the event giving of to the corporal damage and the expert's report

The time elapsed between the date of the event that caused the damage and the completion of the criminal expert's report in 2013 had an average of 493.27 days (95% CI: 407.60 - 584.00), i.e., 1 year, 4 months and 5 days. On the other hand, in the year 2023, the average was 804.81 days (95 % CI: 694.84 - 922.20), i.e., 2 years, 3 months and 12 days. (See Fig. No. 3) In both graphs, the horizontal axis (x-axis) represents the number of cases analysed, and the vertical axis (y-axis) represents the time elapsed in days.

Fig. No. 3. Time between the event that caused the damage and the expert's report.



Source: Own elaboration.

Finally, a chart with all the integrated data is presented (See Table No.3)

**Table No. 3. Integrative comparative table**

Variables	Year 2013 n = 200	Year 2023 n = 200	Statistics
<b>Age (years)</b>	-> de 60 : 31,5%.  -From 0 a 19: 26,5%	-> de 60: 46,0%.  -From 0 a 19:10,5%	-M (2013): 38,48. -IC 95 %: 32,26 – 44,37. M (2023): 54,45. -IC 95 %: 49,26 – 59,29.
<b>Time (days) between fact and report</b>	-493 days (1 year, 4 months and 5 days).	804 days (2 years, 3 months and 12 days).	-M (2013): 493,27. -IC 95 %: 407,60 – 584,00. -M (2023): 804,81. -IC 95 %: 694,84 – 922,20.
	<b>n (%)</b>	<b>n (%)</b>	
<b>Sex</b> - Male - Female	92 (46 %) 108 (54 %)	110 (55 %) 90 (45 %)	$\chi^2$ : 730,76 p: < 0.001
<b>Cover page of the judicial files</b> -s/ Death due to doubtful cause -s/ Injury -s/ Homicide	90 (45 %) 54 (27 %) 37 (18 %)	109 (54 %) 1 (0,5 %) 44 (22 %)	$\chi^2$ : 4082,46 p: < 0.001
<b>Medical specialty required</b> - Internal medicine - Pediatrics - Obstetrics - Cardiology	59 (29,5 %) 29 (14,5 %) 25 (12,5 %) 17 (8,5 %)	50 (25 %) 10 (5 %) 8 (4 %) 22 (11 %)	$\chi^2$ : 1400,93 p: < 0.001
<b>Institution reported</b> - Public Institutions - Private Institutions	95 (48 %) 89 (44 %)	72 (36 %) 94 (47 %)	$\chi^2$ : 1098,76 p: < 0.001
<b>Date of the generating medical act</b>  - One year before  - One year  - Two years before  - Three years earlier	-Year 2012: 79 (39,5 %) -Year 2013: 78 (39 %) -Year 2011: 26 (13 %) -Year 2010: 11 (5,5 %)	-Year 2022: 72 (36 %) -Year 2023: 39 (19,5 %) -Year 2021: 35 (17,5 %) -Year 2020: 29 (14,5 %)	-Me (2013): 2012.   -Me (2023): 2022.

Source: Own elaboration.

-n = number of cases  
-M = arithmetic mean  
-Me = median

-IC 95% = 95 % Confidence Interval  
- $\chi^2$  = Chi-square test  
-p = Probability

## CONCLUSIONS

First of all, it is important to highlight the importance of the data source used, since it comes from an Institution that is hierarchically integrated within the structure of the Argentine Judicial Branch, hence the relevance of the information obtained. Therefore, the information obtained is representative of the situation at the national level in a specific area.

It is important to bear in mind that in the 10-year period between these 2 annual periods (2013 and 2023) the Sars-CoV-2 pandemic occurred, which had important social, economic, health, political, and jurisprudential implications worldwide. In fact, at the legislative level, this led to the creation of a “criminal shield” to protect health professionals from the extreme pressure generated by the pandemic, which obviously influenced the number of court cases generated. (11)

The judicial system is constantly in permanent change, but the legal opinion does not necessarily keep pace with scientific point of view. The study of changes over time allows us to introduce the contextual factor that is a determining factor in the generation of cases. (12)

From the bibliography, among other articles (13-16), the one published by Jena and collaborators stands out, in which the incidence of claims was studied based on information from a database (National Practitioner Data Bank, United States) with 40.916 registered physicians during 15 years (between 1991 and 2005), in which the specialties with the highest medical-legal risk were Neurosurgery (19.1%), Thoracic-Cardiovascular Surgery (18.9%), General Surgery (15.3%) and those at low risk were Family Medicine (5.2%), Pediatrics (3.1%) and Psychiatry (2.6%). (17)

Regarding the objectives set out in this research work, the following conclusions can be drawn:

\* At first, because the p-value was lower than the significance level, it is concluded that there is a statistical difference in the distribution of the nominal variables (specialty, sex, cover page and institution) between the 2 annual periods (2013 and 2023).

\* The most frequent cover sheet was the same in both periods studied, “Death due to doubtful cause”; however, it must be remarked that in 2013 the crime of “Culpable injuries” occupied the second place and in 2023 it was no longer evident, given a regulation of 2018 that determined the transfer of some criminal offenses, among them “Injuries” from the National Justice to the Autonomous City of Buenos Aires.

\* Regarding the age distribution of the affected people, in both periods, the age range with the highest number of affected people was those over 60 years old. Another aspect to consider is that in 2013 there was a higher number of victims in those under 19 years of age, who accounted for 30% (adding the groups of 0-19 years and fetuses), which can be linked to the higher frequency in that period, of certain specialties in demand such as obstetrics and pediatrics.

\* Considering the characteristics of the Institutions reported, in both periods studied, the predominant ones were those of the hospital health system. Hospital care is the one with the highest medical-legal risk due to its complexity and greater possibility of errors because the patients usually have serious, or more complex clinical conditions, and therefore have a greater possibility of an unfavorable evolution.

Among other issues that may explain this situation, we can mention a decrease in professional and performance quality, the absence of protocols or standards, the deterioration of the patient-physician relationship, inadequate records of medical documentation, etc.

\* Analyzing the date on which the medical act that motivated the cause took place, in both periods, most of the causes came from a year before the year analyzed, although it should be noted that in 2013 there were a large number analyzed, although it should be noted that in 2013 there were a large number of cases (39%) in the same year of analysis.

\* Regarding the time elapsed between the event generating the damage and the formalization of the criminal expert report, there was a notable difference between both periods, since in 2013 it was 493 days (1 year, 4 months and 5 days) and in 2023 it reached 804 days (2 years, 3 months and 12 days). The large number of “Injury” cases can likely be related to the shorter time required for the preparation of the expert report in 2013.

\* Regarding the most required medical specialties, in both periods, the most demanded was internal medicine. From the evaluation of the bibliography, there is considerable variability among the most affected specialties in relation to medical professional liability lawsuits. The specialties most in demand in the criminal field are not necessarily those in which the medical professional has the best remuneration. Something similar can be said about medical specialties that a priori imply a higher risk, such as plastic surgery, emergencies or anesthesiology, which are not prevalent at the criminal level. In the research conducted, the most compromised medical specialty was internal medicine, both in 2013 and in 2023, probably because hospital care is the one that most frequently leads to a medical process and clinicians play an important role in the care of patients; in some way, they constitute the “family doctors” in the hospital setting. On the other hand, patients who require this form of hospital care have serious, complex, or higher-care clinical conditions; thus, they are more likely to have an unfavorable outcome, and thus, more legal actions are filed. (18-20)

In other specialties a decrease in their requirement was evidenced when comparing both periods: Pediatrics (14.5 % in 2013 / 5 % in 2023); Obstetrics (12.5 % in 2013 / 4 % in 2023); Traumatology (6.0 % in 2013 / 3.5 % in 2023); Plastic Surgery with (5.5 % in 2013 / 2.5 % in 2023) and Infectious Diseases (4.5 % in 2013 / 2.5 % in 2023).

In an attempt to interpret the reasons for the decrease, improvements in education and academic training can be suggested, as evidenced in cases such as pediatrics, which stands out for the organization of its academic structure, with accredited careers and frequent standardization of its activities (care guidelines and protocolized treatments); and in obstetrics, technological advances such as electronic fetal monitoring, which allows earlier detection of complications during delivery and care by multidisciplinary teams, among others. (21,22) But there was also an increase in requests in other specialties: Pneumology (2.5% in 2013 / 15.5% in 2023); Surgery (5.5% in 2013 / 13% in 2023); Cardiology (8.5% in 2013 / 11% in 2023) and Anesthesiology (2.5% in 2013 / 4.0% in 2023). In the particular case of pneumology, the increase in its requirement arose from what happened during the Sars-CoV-2 pandemic in which respiratory compromise concentrated the evaluation of these cases in professionals specializing in pneumology.

As a conclusion, medical professional liability claims are a worldwide problem that is becoming more and more relevant every day. The situation differs in each country, also according to the jurisdiction in which the claim is filed.

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