

ORIGINAL ARTICLE

## *Medical liability related to Ophthalmology practice in Greece. A retrospective analysis of court decisions.*

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### ABSTRACT

**Purpose:** The research aimed to evaluate the current situation regarding medical liability in Ophthalmology in Greece, the impact of court cases and decisions and the total litigation time.

**Methods:** Published court decisions of criminal, civil, administrative and disciplinary content related to malpractice in ophthalmology were searched in legal information banks, from 1985 to 2021.

**Results:** A total of 36 court decisions were retrieved, related to 11 civil cases and 6 criminal ones, while 7 of them were acquittals. The average duration of cases from the date of filing of the complaint to the final decision was 5.25 years. An average compensation of 26.227 Euros was imposed in 5 civil cases.

**Conclusion:** Ophthalmology cases represent a small percentage of reported complaints of medical negligence in Greece. The majority of litigation cases involved complications after cataract and corneal surgery. There is a need for judicial - legislative reform and education of doctors in the legal aspects of medical liability.

*Keywords:* Ophthalmology, malpractice, medical liability, litigation

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E. Samara, L. Tzoumas, K. Tzoumas, E. Zisoulis, V. Tzouma, P. Tzimas, G. Papadopoulos. Medical liability related to Ophthalmology practice in Greece. A retrospective analysis of court decisions. *Scientific Chronicles* 2025; 30(2): 285-292

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### INTRODUCTION

The medical profession is considered to be one of the noblest professions in the world, rendering important service to humanity by providing significant results in the treatment of diseases with due care and professional skill. While tremendous progress is being made in medicine worldwide, the doctor-patient relationship is deteriorating, and allegations of medical malpractice are on the rise. An American Medical Association report reveals that more than 42% of all physicians have been sued. Of these, 57% concerned doctors of

surgical specialties [1]. The specialties with the highest rates of malpractice litigation are Gynaecology-Obstetrics, General Surgery and Internal Medicine, with medical malpractice occurring regardless of the doctors' experience [2-3]. In the study by Vincent et al., 75% of senior obstetricians and gynaecologists in the UK in the North Thames region had been involved in litigation [3].

For Ophthalmology, there is a limited number of studies related to malpractice. Studdert *et al.*, analyzed data from five US insurance companies and found a low

percentage of injuries caused by Ophthalmologists [2].

In the research by Thompson *et al.*, Ophthalmology exhibits less expenditure on average compensation and defence, with Ophthalmology malpractice litigation outcomes generally favouring defendants, compared to other medical specialities [4].

The analysis of closed patient malpractice claims can be used to review risk patterns, increase physicians' awareness of certain risks, and suggest corrective or preventive actions in future practice, thereby minimising the risk of future errors.

The purpose of the current study is to evaluate the current situation regarding medical liability in Ophthalmology in Greece, the involvement of Anesthesiologists in court decisions, the impact of court decisions and cases, the duration until the final decision, the reasons for attribution of bad medical practice as well as the relationship between these issues and judicial outcomes.

## METHODS

A search was made for published judicial decisions of criminal, civil, administrative and disciplinary content, from 1985 to 2021, in the legal information banks “Nomos/Nόμος”, “Sakkoulas online.gr” and “Bank of the Athens Bar Association/ Τράπεζα Δικηγορικού Συλλόγου Αθηνών”, and legal magazines, such as “Nomiko Vima/Νομικό Βήμα”, “Greek Justice/Ελληνική Δικαιοσύνη”, “Criminal Chronicles/Ποινικά Χρονικά”, “Criminal Justice/Ποινική Δικαιοσύνη”, were Greek court decisions are published. Keywords used were the following: “Ophthalmologists, Medical liability, Ophthalmologist medical malpractice, civil, criminal”, in all possible combinations.

The date of operation and the causes leading to the adverse outcome were recorded. An analysis of the court decisions was made by an expert, a specialist Ophthalmologist and an Anesthesiologist, for the causes of bodily injury and /or death in collaboration with the lawyers of the investigation. It was checked whether a detailed history, informed patient consent, timely medical and surgical treatment, continuous and mandated follow-up were applied to all patients and whether all procedures were performed in organized institutions.

## RESULTS

A total of 36 court decisions were found, namely: 4 Administrative Courts of First Instance, 3 Administrative Courts of Appeal, 6 Civil Courts of First Instance, 3 Courts of Review, 6 Courts of Appeal, 1 Council of Misdemeanors, 6 Supreme Court, 1 Prosecutor's Order, 2 Council of State, 1 Mixed Jury Court and 3 Three-member Misdemeanor Courts. The average duration of cases from the date of filing of the complaint to the final decision was 5.25 years with a range of 3 to 21 years.

These decisions were related to 11 civil cases, including 6 criminal ones, while 7 of them were acquittals at the criminal level or were rejected at the civil level. Civil cases concerned exclusively with bodily injuries. In 5 civil cases an average compensation of 26.227 Euros (12,000 to 58,000 Euros) was imposed. In one case, the amount of compensation of 25,000 E imposed by the civil court of first instance was considered low by the Supreme Court, which referred the case for a new trial. This was a case of untimely diagnosis of microbial keratitis resulting in corneal abscess, retinal

CASE	DURATION (years)	COMPENSATION (Euros)
<b>Homicide negligence</b>		
1. Right eye extraction due to melanoma. Failure to submit the patient to appropriate treatment - metastasis - death.	3	
<b>Bodily harm (cataract surgery) n=3</b>		
2. Cataract surgery & peri-anterior vitrectomy. Ophthalmic oedema, endophthalmitis - eye extraction.	4	
3. Postoperative blindness, lack of informed consent, passive bribery.	3	
4. Pain, inability to recover vision post-operatively, and corneal damage. Preoperative evaluation was omitted.	3	12,000
5. Trauma due to a local anaesthesia needle that was not identified by the surgeon. Corneal damage, diffuse hemorrhage.	3	70,000
<b>Bodily harm (myopia surgery) n=4</b>		
6. Photorefractive kerato-sculpting surgery. Poor outcome and poor postoperative update.	3	37,367
7. Photorefractive keratectomy, damage, reoperations, hidden Complications.	5	58,000
8. Iatrogenic keratectasia, impaired corneal thickness. Incomplete information and updates on the possible and actual complications.	5	622,784
9. Cataract & glaucoma post myopia surgery. Vision worsening and improper postoperative care	3	
<b>Misdiagnosis (n=2)</b>		
10. Conjunctivitis instead of retinal detachment.	3	
11. Glaucoma instead of exophthalmos.	3	20,000
<b>Delayed diagnosis (n=3)</b>		
12. Acanthamoeba keratitis, retinal detachment, corneal transplant, high myopia, aphakia, glaucoma, blurred vision.	8	
13. Demarcation line in retinopathy of prematurity, delayed review and intervention	3	800,000
14. Eye perforation, endophthalmitis. Initial treatment by a trainee. Blindness.	16	80,000
<b>Mistreatment (n=1)</b>		
15. Eye drops in 14 degrees myopia, sudden blurring, retinal detachment, multiple surgeries, vision loss. The doctor was not an ophthalmologist and the patient was not referred to a specialist.	11	
<b>Delayed treatment (n=1)</b>		
16. Debris removal, vision loss. Patient was not referred to a higher-level center.	21	30,000
<b>Missed examination (n=1)</b>		
17. Blindness post-retinal detachment in a newborn (funduscopy missed).	3	30,000

**Table 1.** Causes of Ophthalmologist convictions in criminal and civil cases, litigation duration and the compensation awarded.

detachment, ceratoid transplant, new transplant, high myopia, postoperative aphakia and posterior chamber intraocular lens, glaucoma and blurred vision. In two other cases, compensation of 622,748 E and 800,000 E respectively, was imposed, while in another three, the compensation is not mentioned in the decision of the Supreme Court, whereas the decisions of the substantive courts have not been published yet.

The criminal cases involved 1 case of manslaughter and 5 cases of bodily harm. In three cases, a prison sentence of 5, 8 and 10 months respectively was imposed. These cases are concerned:

a) Administration of eye drops for conjunctivitis by a non-specialist Ophthalmologist to a patient with myopia of 14 degrees, resulting in sudden blurring and retinal detachment. The patient was not referred to a higher-level facility promptly and underwent ceratoid transplant twice, as well as multiple further operations and finally acquired glaucoma and blurry vision.

b) Administration of eye drops and analgesics in endophthalmitis, after cataract surgery and limited anterior vitrectomy resulting in eye extraction.

c) New-onset cataract and glaucoma with almost complete loss of vision, after laser myopia correction surgery, due to negligence during the post-operative stage. Table 1 summarizes the causes of Ophthalmologist convictions in criminal and civil cases and the compensation awarded.

The case of medical malpractice in the removal of debris from an eye, with worsening vision loss, lasted 21 years, as the litigation was conducted in an Administrative Court of First Instance, and then in an Administrative Appeals Court in the Council of State and in an

Administrative Appeals Court. The patient was not referred to a higher-level facility for proper care, worsening the defendant's position. Blindness was the final injury in 6 cases, eye extraction in 1, reduction of visual acuity or reduced vision or blurred vision in 8 patients. Seven court cases resulted in acquittal decisions (Table 2)

## DISCUSSION

This study provides an overview of clinical negligence claims in Ophthalmology in Greece from 1985 to 2021. Considering the huge number of eye surgeries performed, the incidence of Ophthalmologist malpractice lawsuits was low in contrast to other surgical specialties in Greece [5-8]. The results are comparable to international literature. In the survey of Thompson et al. 90,743 closed medical malpractice cases against ophthalmologists and other specialties only 2.6% involved an Ophthalmologist representing 2.2% of all paid claims [4].

In our investigation, there was one case of manslaughter due to improper post-operative treatment of a patient with right eye melanoma, after eye extraction, resulting in metastasis and death. Ophthalmologist malpractice litigation in patients with eye malignancy accounted for 1.5% of all Ophthalmology litigation in the West Law® database in the United States and 1.2% in the National Health Service Litigation Authority database in England [9-10]. The research by Engelhard *et al.* [9] evaluated sixteen (16) cases of Ophthalmologist litigation with eye malignancy patients for the years from 1930 to 2014. In ten (10) cases the litigation was resolved in favor of the defendant. Missed diagnosis was the most common reason and involved five cases of uveal melanoma with

CASE
1. Corneal blurring not related to medical mistreatment.
2. Eye trauma properly treated. Patient care was within good practice.
3. Corneal burn attributed to machine failure, responsibility of the technical services of the Hospital.
4. Expulsive hemorrhage, rare complication.
5. Corneal blurring post laser myopia correction surgery. Common complication, patient informed.
6. Chronically post medical examination for benign vitreous exudates.
7. Retinal detachment 2 years after vitrectomy. Verbal informed consent was accepted as enough in the court.

**Table 2.** Acquittal decisions.

only one case resulting in compensation. In the majority of cases, blindness or premature death were the results of inadequate treatment. The study brought up the significance of timely diagnosis and intervention, as well as the difficulties in diagnosing ocular malignancy [10].

In our research, the majority of litigation cases involved complications after cataract and corneal surgery. Likewise, In Thompson et al.'s survey, cataract and corneal procedures were the most common for malpractice and represented 50% of all claims. However, less than one quarter of closed claims resulted in compensation. The majority of the claims were rejected [4].

Moreover, in the present study, medical liability was identified in four cases of retinal detachment involving a) delayed consultation and operation, b) misdiagnosis c) missed information about the surgery and possible complications and lack of patient's consent. Fundoscopy was not performed in one neonate with retinal detachment. Rhegmatogenous retinal detachment is the most common diagnosis presented in most studies of Ophthalmologist medical malpractice lawsuits. In the Kraushar *et al.* survey of Ophthalmological Surgeons Macula, Retina and Vitreous Societies questionnaire, negligence in treatment of rhegmatogenous retinal detachment (63%) was more common

than negligence in diagnosis (10%). The most common medical mishaps were diminished or unimproved visual acuity and surgery failure [11].

In Reddy *et al*'s survey of 25 uveitis-related cases in the United States from 1930-2014, infections mainly included viral retinitis, iritis, syphilis and toxoplasmosis. Seven of above cases resulted in settlement, while two cases ended as a guilty verdict, awarding \$1,399,800 and \$630,799 respectively [12]. In our research, there was one case of medical negligence due to delayed diagnosis of acanthamoeba keratitis. This infection is rare, it most often affects contact lens wearers resulted, in our case, in corneal necrosis.

In the current study, there was one case related to locoregional anesthesia. Similar medical malpractice lawsuits are rare in the international literature, however serious complications can arise. Morley et al' s survey for the years 1995 - 2006 reported 63 anesthesia-related cases from 50 claimants. Complications included: death, eye perforation, hemorrhage, vascular and optic nerve damage, pain and injuries related to sedation and intubation [13].

Moreover, in our research, there were three cases in which patients lacked informed consent or missed information regarding complications after re-operations which was an aggravating factor in the conviction of the

Ophthalmologist. On the contrary, the signed informed consent by the patient for potential complications in three cases contributed to the acquittal of the Ophthalmologists. The timely, prior to the operation, signed informed consent for possible complications is an important element for the Ophthalmologist's defense.

However, decision 219/2019 of the Athens Appeal Court regarding an Ophthalmologist ruled that there is no provision for written pre-operative information for the patient and verbal information is also sufficient. Nevertheless, we emphasize that an important role is also played by the optimal doctor-patient relationship and the communication between the two sides.

In 5 civil cases an average compensation of 26,227 E (12,000 - 58,000 Euros) was awarded, with medical negligence in myopia operations having the highest compensations. In Ali et al.'s research, 46% of 651 ophthalmologist medical malpractice lawsuits in England for the years 1995 - 2006 resulted in compensation, with most of them being awarded an average compensation of £37,100. Pediatric Ophthalmology cases had the highest average compensation (£170,000) [14]. In one of our cases, a compensation of 800,000 E was imposed. This was the case of delayed re-examination and operation in a patient with demarcation line in retinopathy of prematurity. Another case was awarded a compensation of 622,748 E. This was the case of iatrogenic keratectasia and incomplete information in a myopia operation. These compensations are reminiscent of US court decisions, which can lead to a burden on hospital budgets, possible charges against hospital doctors and defensive medicine, with further financial implications for the health system and the pockets of the insured. In the research of Thompson et al. the

average reimbursement was higher for corneal procedures (\$304,476) than vitreous procedures (\$270,141) or eyelid ophthalmoplastic procedures (\$222,471) [4].

In our research, there was an acquittal of the Ophthalmologists in seven complaints of medical negligence, as no medical malpractice was proven. However, they were basically punished. A medical malpractice lawsuit is a horrible experience for the defendant, as, according to the court records, most of the defendants were subjected to a legal ordeal of at least 3 years resulting in mental ordeal, moral damage, waste of valuable time, personality diminishing and significant financial burden. As if it is not frustrating enough, all the other doctors would know that one has been sued and the status of the accused in society would be lowered as the media can play a negative role among other things.

## **CONCLUSION**

Ophthalmology has a relatively small number of reported malpractice complaints compared to other surgical specialties, in accordance with international literature data. To prevent medical malpractice, the most important aspects to address are improving the doctor-patient relationship and communication, in addition to encouraging continuous patient follow-up, high expertise and proper completion of the medical records.

Informed consent for potential complications can go a long way in exonerating doctors. Legal aspects should also be studied as part of medical education during undergraduate studies, because "no one is forgiven for pleading ignorance of the law" [1].

The average duration of each litigation up to final decision was 5.25 years with a range of 3 to 21 years, which is an unacceptable amount of time, adding to the involved parts suffering.

A judicial-legislative reform of the framework for seeking medical liability would contribute to a quicker settlement of the relevant cases-lawsuits.

## LIMITATIONS OF THE STUDY

Our study involving the analysis of published court decisions has some limitations as there are yet unpublished cases. The delay in adjudicating the cases is also responsible for possible errors in the data analysis as it is possible to observe an increase in the number of procedures involving Ophthalmologists during the analyzed period that have not yet been published.

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