

Professional Liability in Plastic Surgery: A Change of Scenario in Medical Professional Liability in Spain

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Background: The epidemic of complaints and/or litigation, both in and out of court, for cases of alleged malpractice has increased dramatically. In Spain, claims related to plastic surgery are gaining more and more interest.

Methods: The Council of Medical Associations of Catalonia database was used to analyze claims related to plastic surgery from 1986 to 2021.

Results: 1039 claims (9.8% over 10,567 total claims) were studied. Both the total number of claims ($P = 0.016$; $R^2 = 0.16$) and the number of claims for plastic surgery ($P < 0.0005$; $R^2 = 0.732$) showed an upward trend during the period of study. In the period from 2000 to 2021, the behavior was different; while the number of total claims stabilized ($P = 0.352$; $R^2 = 0.043$), plastic surgery claims continued to show a time-related tendency to increase ($P < 0.0005$; $R^2 = 0.484$). The distribution was 50.12% out of court. Ten unique procedures accounted for 84.5% of the total number of claims. Liability was observed in 21.46% of the closed claims, with differences between civil (20.34%), criminal (6.89%), and out-of-court (25.53%) procedures. Regarding compensation amounts, out-of-court cases had an average of 33,169.44 euros paid; civil cases, 29,153.37 euros; and criminal cases, 37,186.88 euros.

Conclusions: The increase in the number of cases can only be related to an increase in the activity carried out by plastic surgeons. There has been a change in Spain in terms of the most sought-after medical specialty, with plastic surgery having displaced the perennially most sought-after specialty, orthopedic surgery and traumatology. (*Plast Reconstr Surg Glob Open* 2023; 11:e5054; doi: 10.1097/GOX.0000000000005054; Published online 9 June 2023.)

INTRODUCTION

In the last decade, the epidemic of complaints and/or litigation, both in and out of court, for cases of alleged “malpractice or poor healthcare” has increased particularly dramatically in Europe,¹ although such trends cannot be generalized.² Thus, patient safety (PS) is a fundamental principle of health care and is now being recognized

as a large and growing global public health challenge.³ Historically and in a very stable manner, in Spain, the specialty with the highest indemnity payments was obstetrics and gynecology, and the most frequent was orthopedic surgery and traumatology.^{2,4-6} However, something is changing regarding the most claimed specialty. Claims related to plastic surgery are gaining more and more interest, in accordance with the exponential increase in the number of medical acts performed on a daily basis. In fact, since the pandemic, plastic surgeons have seen unprecedented demand for cosmetic procedures.⁷

Analysis and prevention of adverse events in PS are challenging due to the scarcity of widespread, detailed records. As a result, information derived from allegations of medical legal liability is a well-known but underutilized source for correcting errors and enhancing PS.⁸ These data can be accessed via studies on sentences or, more broadly and directly, by analyzing the databases managed by medical professional liability (MPL) insurers like the National Practitioner Data Bank.⁹ These databases usually include both judicial cases and out-of-court claims. Thus, knowledge of the data on complaints in the specialty of plastic surgery and its diffusion among specialists

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Received for publication February 2, 2023; accepted April 13, 2023.

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DOI: 10.1097/GOX.0000000000005054

Disclosure statements are at the end of this article, following the correspondence information.

to improve the quality of patient care and reduce the rate of adverse events and the number of complaints for MPL has been exposed as a necessity in our context and at the international level.

This study analyses MPL claims related to plastic surgery, either through judicial or out-of-court procedures in Catalonia (Spain), with the aim of having data available on which to base PS recommendations to decrease the risk and consequences of this kind of procedure, as well as to report on critical situations in the clinical handling of medical symptoms that entail a high risk of compensation by MPL.

METHODS

The Professional Liability Service of the Council of Medical Associations of Catalonia manages most of the MPL policies in Catalonia (more than 26,000 physicians) and has recorded all claims against insured professionals since 1986. The the Council of Medical Associations of Catalonia database was used to identify claims related to plastic surgery for the period from January 1, 1986 to December, 31, 2021. The claims were identified electronically, with extraction of anonymized data by encryption of the cases, and analysis of different medico-legal variables such as claim procedures (judicial or out-of-court), amount of compensation, reason for the claim, damage claimed, procedure involved, and outcome of the claim was performed. In the Spanish setting there are three ways to file a claim against a professional. Firstly, there is the possibility of bringing an out-of-court procedure. On the other hand, in the courts, this can

Takeaways

Question: Are professional liability claims for plastic and reconstructive surgery in Spain relevant?

Findings: A percentage increase in claims for plastic and reconstructive surgery in Spain has been demonstrated.

Meaning: Currently, plastic and reconstructive surgery is the most claimed specialty in Spain.

be either criminal or civil. The criminal type (which can lead to an imprisonment, professional disqualification, and compensation) deals with those claims typified in the penal code as imprudent offenses in the exercise of the profession (the most serious being homicide or imprudent injury).

SPSS software (version 24.0) was used to record the data and perform descriptive and bivariate analysis. An analysis of temporal trends was carried out using linear regression. Quantitative variables were compared by Student *t* test and qualitative variables by Pearson chi-square test or Fisher exact probability.

RESULTS

A total of 1039 claims related to medical acts specific to the specialty of plastic surgery (9.8% over the total of 10,567 claims) were recorded in the period from 1986 to 2021. The mean number of claims related to plastic surgery per year was 28.86 (SD 15.98), with a minimum of five cases (1988) and a maximum of 57 (2019). However, from 2000 to 2021, the mean was 37.64 (SD 13.56). [Figure 1](#)

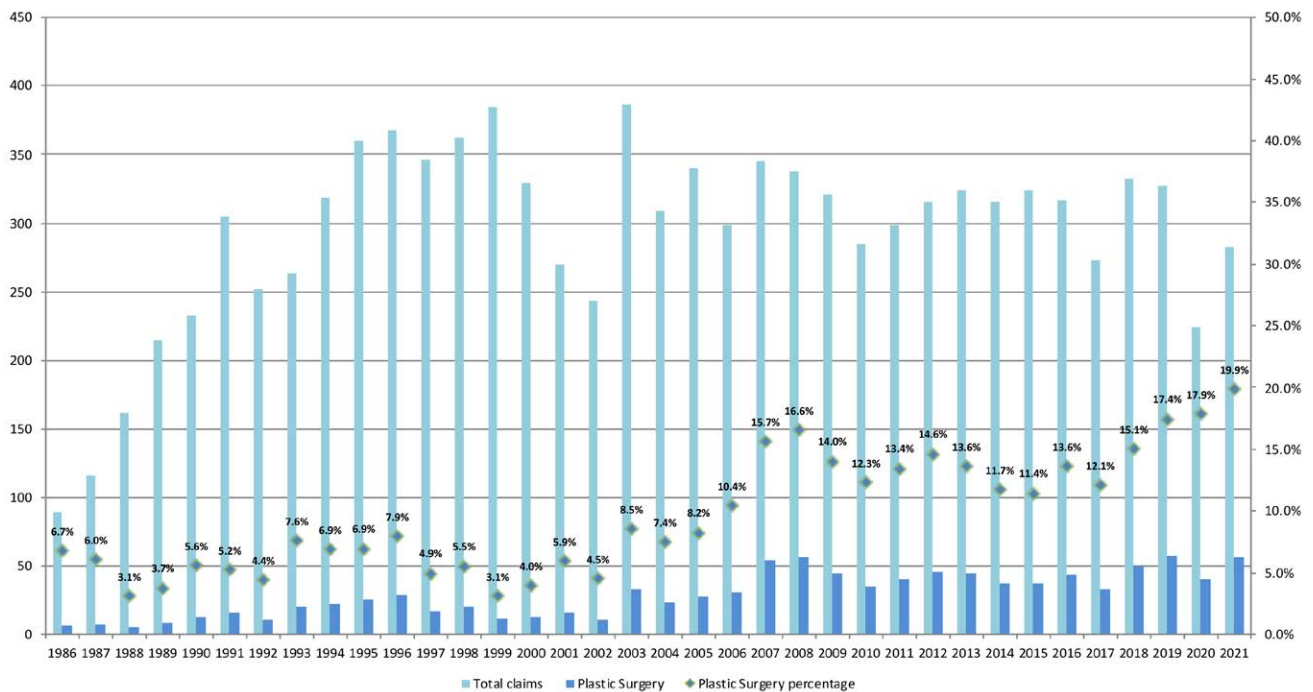


Fig. 1. Temporal distribution of the total incidence of claims in the period 1986–2021, the incidence related to plastic surgery and the percentage that plastic surgery claims represent over the total number of claims, by year.

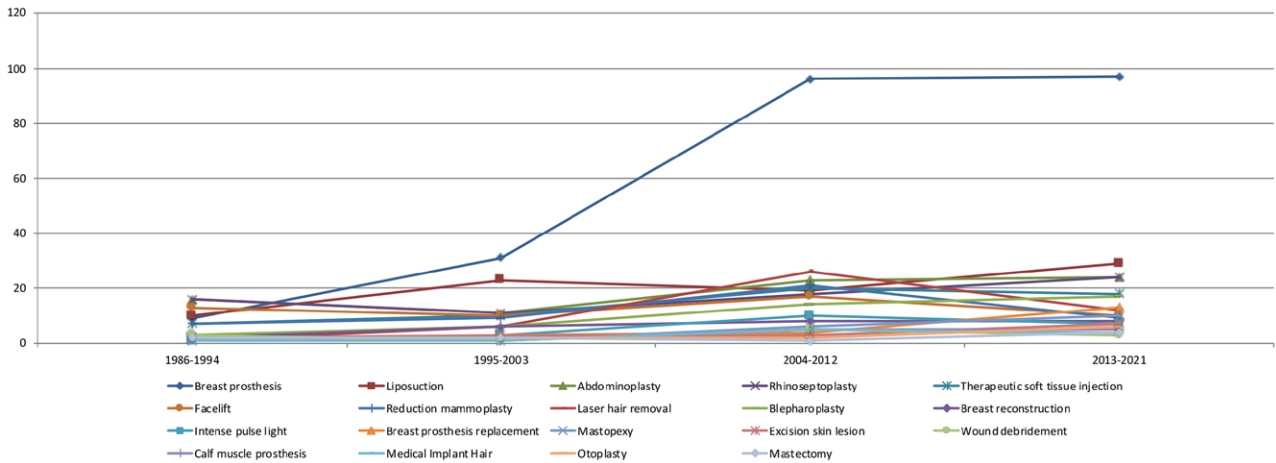


Fig. 2. Temporal evolution of procedures related to claims in plastic surgery cases that involve one procedure (1986–2021).

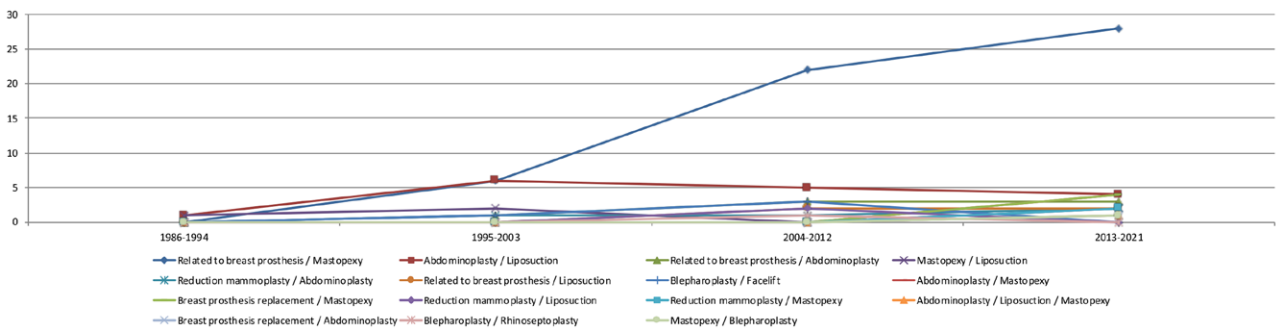


Fig. 3. Temporal evolution of procedures related to claims in plastic surgery cases that involve more than one procedure (1986–2021).

shows the temporal distribution of the incidence of claims in the period studied as well as the percentage of claims pertaining to acts related to plastic surgery compared with the total number of claims in the same period.

Both the total number of claims ($P = 0.016$; $R^2 = 0.16$) and the number of claims for plastic surgery ($P < 0.0005$; $R^2 = 0.732$) showed an upward trend during the period of study. As can be seen in Figure 1, in the period from 2000 to 2021, the behavior was different; while the number of total claims stabilized ($P = 0.352$; $R^2 = 0.043$), in the case of plastic surgery claims, they continued to show a time-related tendency to increase ($P < 0.0005$; $R^2 = 0.484$).

The distribution of the claims according to the complaint procedures (in or out of court) in the period from 2000 to 2021 ($n = 802$) was 402 out of court (50.12%) and 400 judicial (49.88%), of which 98 were criminal (24.50%) and 302, civil (75.50%). Ten unique procedures accounted for 84.5% of the total number of claims. There were cases in which more than one surgical procedure has been claimed. In order to analyze the temporal evolution of the incidence of the different surgical procedures, a distinction was made between cases in which only one procedure was claimed (Fig. 2) and those in which more than one procedure was claimed (Fig. 3). Evolution over time is shown in these figures according to the cumulative incidence for each procedure over 8-year periods. Overall,

liability was observed in 21.46% of the closed claims, with differences between civil (20.34%), criminal (6.89%), and out-of-court (25.53%) procedures. These differences were statistically significant ($P = 0.0006$). Only six circumstances (Fig. 4) account for 96.72% of all reasons for complaints, and only seven situations (Fig. 5) account for 97.02% of the damages registered in claims related to plastic surgery.

Regarding compensation amounts, of the 156 closed cases in which a payment was recorded, 99 were out-of-court cases with an average of 33,169.44 euros paid, 49 civil cases with an average of 29,153.37 euros, and eight criminal cases with an average of 37,186.88 euros. The maximum amount of indemnity (in an out-of-court case) was 483,640.76 euros (and minimum of 500 euros). The highest amount paid in a civil proceeding was 95,000 euros, and in a criminal proceeding 91,710.62 euros.

CONCLUSIONS

Nowadays, there are two absolutely different scenarios regarding to the incidence of claims for MPL, both in relation to claims related to all medical specialties and to plastic surgery in particular. In the United States, the annual trend of claims for MPL continues to increase.^{10,11} In addition, it is estimated that the annual percentage of plastic surgery specialists who have to deal with a claim is

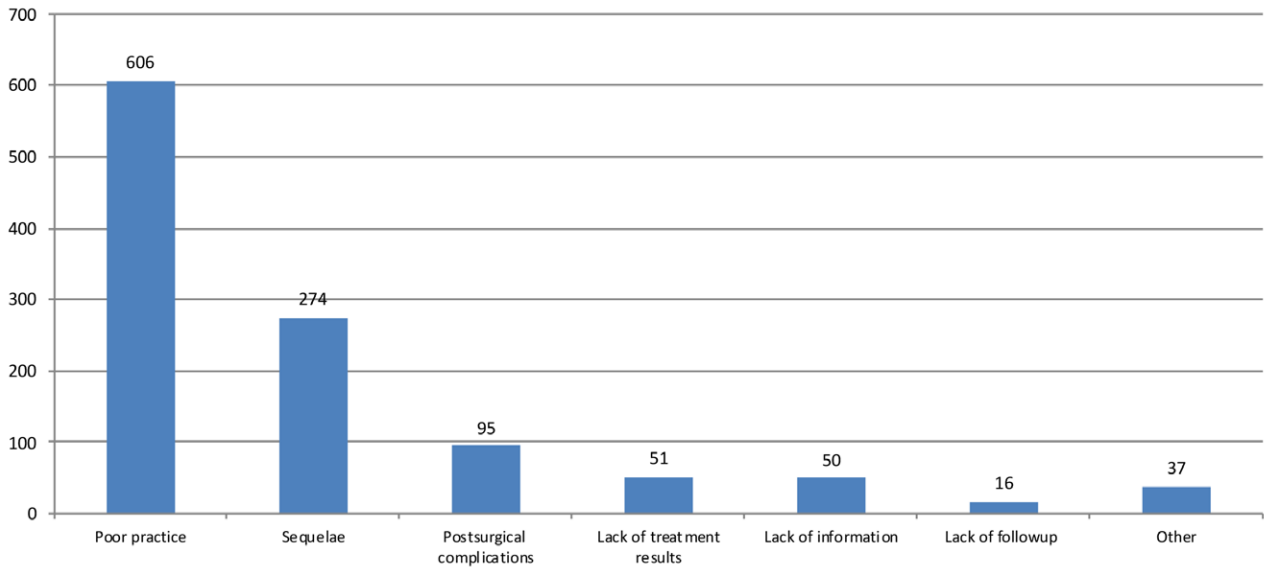


Fig. 4. Reasons for complaints related to claims in plastic surgery (1986–2021).

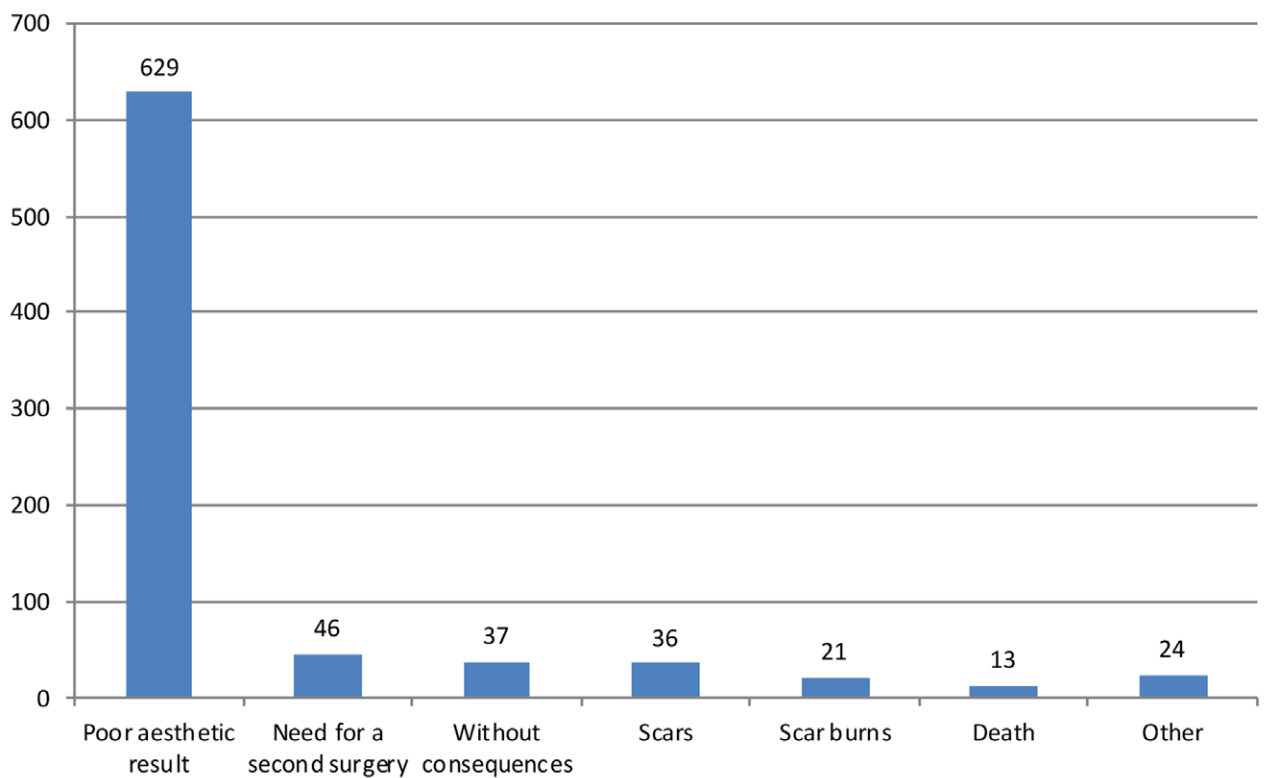


Fig. 5. Damage claimed related to claims in plastic surgery (1986–2021). In 233 cases, the claimed damage was not recorded.

over 13%–15%,^{10,12} while the average for all specialties as a whole is 7.4%. Plastic surgery accounts, in the United States, for 3.31% of reported claims and 3.16% of paid claims. Total payments for plastic surgeons represent 1.75% of the total paid for all specialties. Also, 93% of cases will close with a dismissal or a settlement, and only

7% will go to trial. Of these, the plastic surgeon will prevail in 79%.¹²

On the other hand, there is a tendency for the incidence of MPL claims to be contained or stabilized in the European setting, in general, and in Spain, in particular.⁹ This stability seemed to be maintained also in the specialty

of plastic surgery.^{4,13,14} However, the results of the present article highlight a statistically significant increasing percentage trend in recent years of cases related to the specialty of plastic surgery, while overall claims remain stable. There is nothing to suggest that the practice or the physician-patient relationship¹⁵ in this specialty has changed, nor have there been any legislative changes to explain this change in trend. On the other hand, there is no evidence that patients are more querulous. Thus, the increase in the number of cases registered and the percentage increase in comparison with the rest of the medical specialties can only be related, in our opinion, to an increase in the activity of aesthetic medical acts carried out by specialists in plastic surgery.^{7,16} This fact seems to coincide with the data and inputs we have on the subject, especially after the pandemic. Be that as it may, there has been a change in Spain in terms of the most sought-after medical specialty, with plastic surgery having displaced the perennially most sought-after specialty, orthopedic surgery and traumatology. It is noteworthy that in 2021, MPL claims related to plastic surgery accounted for 19.9% of total claims, when only 15 years earlier they accounted for 10.4% as shown in Figure 1.

It would be ideal to relate this increase to care activity rates. Unfortunately, we can only obtain official statistics from public authorities for the years 2016 to 2020 and, as is well known, 2020 data are not useful for calculating rate trends due to the global COVID-19 pandemic. Nevertheless, the calculated rates range from 5.08 claims per 10,000 plastic surgery procedures in 2016 to 4.24 in 2019.

This change in the most demanded specialty means that the agents involved in MPL and risk management have to adapt to this new situation. A precise knowledge of the main characteristics of this type of claim is necessary for its correct management. In this regard, it is crucial to know that the main type of complaint is the out-of-court one. Thus, in the period from 2000 to 2021 this route was already the majority (50.12%), and in 2021 it was 58.53%. This implies that studies that only analyze court cases or legal databases offer only partial results and views of the reality of MPL claims. Moreover, it seems that this trend towards out-of-court settlements will increase in the coming years.¹⁷

Regarding the characteristics of these cases, our sample shows that the medical procedures most frequently involved are those related to various breast procedures. In fact, breast procedures of an aesthetic nature, as well as the other main procedures involved, such as rhinoplasty, abdominoplasty, or blepharoplasty, are common to all scenarios.^{11,13,18–20} These are the most involved procedures, logically, because these are the most frequent procedures in the clinical practice of the specialty.

Regarding the reasons for claims, it also logically highlights an alleged shortfall in practice. In this sense, it is worth mentioning that a supposed lack of information or incorrect consent process has been internationally pointed out^{21,22} as a cause of special interest in this specialty, because it is usually a noncurative medicine. In Spain, law 41/2002²³ clarifies these aspects. In our sample, the cases reported as lack of information refer to incorrect

consent processes, because the policy analyzed does not provide coverage for noncurative procedures (aesthetics) in the specialty of plastic surgery when the informed consent document does not exist.

On the other hand, in more than three quarters of the claims, the damage alluded to refers to an alleged poor aesthetic result. This is a key aspect because, except for a few clearly catastrophic results, the improvement in the aesthetic result of a treatment, surgical or otherwise, is always subjective, and it is common for the patient to be dissatisfied with it. It must be remembered that the physician's obligation is one of means, not of results. Failure to obtain an intended result is not synonymous with medical malpractice. To avoid these circumstances, it is essential not to create false expectations for the patient, to inform clearly at all times, not to give misleading publicity about results that cannot be assumed, and to document the previous state and the state existing at the end of the treatment.

Moreover, the percentage of plastic surgery-related claims that were resolved with estimation of liability by MPL (conviction or out-of-court settlement) was 21.46% in our sample. The existence of liability according to the different types of complaints shows differences, being 6.89% in criminal, 25.53% in out-of-court and 20.34% in civil complaints. According to previous studies,⁴ the average amount of compensation in our sample was relatively low (32,501.05 euros), although still far from amounts considered catastrophic.²⁴ As expected, these amounts are far from those observed in the United States.^{10,12} Finally, the changing practice of the specialty, such as the introduction of telemedicine²⁵ and its place in professional liability insurance, makes it necessary to be alert to new risks that must be addressed.

Claims related to the specialty of plastic surgery in the Spanish scenario are already the most frequent percentages, probably due to the spectacular increase in medical procedures that are carried out nowadays in this specialty. This fact requires knowledge of the main characteristics of these claims for their correct management and to be able to issue recommendations or proposals for improving clinical safety.

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DISCLOSURE

The authors declare that they have no conflicts of interest.

REFERENCES

1. Ferrara SD. Medical malpractice and legal medicine. *Int J Legal Med.* 2013;127:541–543.
2. World Health Organization. Patient safety. Available at https://www.who.int/health-topics/patient-safety#tab=tab_1. Accessed October 10, 2022.
3. Arimany-Manso J, Gómez-Durán EL, Aubia-Marimon J. Malpractice claims by specialty in a non-US setting. *Gac Sanit.* 2013;27:92–93.

4. Gómez-Durán EL, Mulà-Rosías JA, Laila-Vicens JM, et al. Analysis of obstetrics and gynecology professional liability claims in Catalonia, Spain (1986–2010). *J Forensic Leg Med.* 2013;20:442–446.
5. Bori G, Gómez-Durán EL, Combalia A, et al. Clinical safety and professional liability claims in orthopaedic surgery and traumatology. *Rev Esp Cir Ortop Traumatol.* 2016;60:89–98.
6. Benet Travé J. Análisis de las reclamaciones por responsabilidad profesional médica en Cataluña durante el período 2000–2018. [PhD thesis.] Barcelona: Universitat Autònoma de Barcelona; 2021. Available at <https://www.tdx.cat/handle/10803/671960#page=1>. Accessed November 29, 2022.
7. American Society of Plastic Surgeons. Insights and trends report: cosmetic surgery 2022. Available at <https://www.plasticsurgery.org/documents/News/Trends/2022/trends-report-cosmetic-surgery-2022.pdf>. Accessed November 29, 2022.
8. Gómez-Durán EL, Martín-Fumadó C, Arimany-Manso J. Legal medicine contributions to patient safety. From ascertainment and evaluation to research in medical liability. *Int J Leg Med.* 2013;127:1051–1053.
9. Ashish YM, Heath S, Venkat R. the national practitioner data bank: issues in plastic surgery. *Plast Reconstr Surg.* 2010;126:2252–2257.
10. Jena AB, Seabury S, Lakdawalla D, et al. Malpractice risk according to physician specialty. *N Engl J Med.* 2011;365:629–636.
11. Dyer C. Clinical negligence claims against plastic surgeons rise “significantly.” *BMJ.* 2012;344:e298.
12. Boyd JB, Moon HK, Martin S, et al. Plastic surgery and the malpractice industry. *Plast Reconstr Surg.* 2021;147:239–247.
13. Feola A, Minotti C, Marchetti D, et al. A five-year survey for plastic surgery malpractice claims in rome, Italy. *Medicina (Kaunas).* 2021;57:571.
14. Andreu Tena E, Azparren Lucas A, Donat Laporta E. Estudio jurisprudencial en medicina satisfactiva. *Rev Esp Med Legal.* 2013;39:162–167.
15. Gorney M. Avoiding litigation in breast modification. *Plast Reconstr Surg.* 2011;127:2113–2115.
16. Portal estadístico. Área de Inteligencia de Gestión. Ministerio de sanidad. Available at <https://peestadistico.inteligenciadegestion.sanidad.gob.es/publicoSNS/S/rae-cmbd>. Accessed November 29, 2022.
17. Aragonés L, Hunter A, Martín-Fumadó C, et al. New perspectives in resolving medical error: national health service resolution and CARE. *An Sist Sanit Navar.* 2019;42:115–118.
18. Bramhall RJ, Timmons M J. NHS negligence claims: lessons for plastic surgeons from the NHS Litigation Authority. *J Plast Reconstr Aesthet Surg.* 2014;67:134–135.
19. Moltó-García R, Villaverde-Doménech ME, González-Alonso V, et al. Periareolar augmentation mastopexy: a new approach dealing with the cases as tuberous breasts. *Indian J Plast Surg.* 2016;49:172–177.
20. Ganesh Kumar N, Hricic N, Drolet BC. Litigation in rhinoplasty. *Plast Reconstr Surg.* 2019;143:456e–458e.
21. Boyll P, Kang P, Mahabir R, et al. Variables that impact medical malpractice claims involving plastic surgeons in the United States. *Aesthet Surg J.* 2018;38:785–792.
22. Patel AJK, Morrison CM. Opportunities to reduce plastic surgery claims through an analysis of complaints data. *J Plast Reconstr Aesthet Surg.* 2013;66:455–459.
23. Ley 41/2002, de 14 de noviembre, básica reguladora de la autonomía del paciente y de derechos y obligaciones en materia de información y documentación clínica. Boletín Oficial del Estado número 274 de 15/11/2002, p. 40126–32.
24. Arimany-Manso J, Gómez-Durán EL, Barbería-Marcain E, et al. Catastrophic medical malpractice payouts in Spain. *J Health Qual.* 2016;38:290–295.
25. Gfrerer L, Eberlin KR, Figura L, et al. Telemedicine and plastic surgery: principles from the american society of plastic surgeons health policy committee. *Plast Reconstr Surg.* 2022;150:221e–226e.