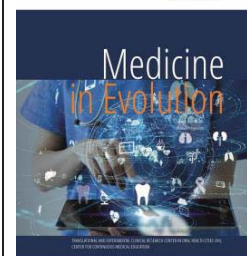


# Legal considerations on criminal liability in the medical field



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## Abstract

Medical criminal liability is a current, leading to a series of consequences regarding the future professional life of doctors. In the context where the health and safety of patients are major priorities, understanding legal medical responsibility is essential for ensuring the quality of medical services and preventing the commission of acts that constitute offenses. **Materials and Methods:** To conduct this observational-prospective study, a questionnaire consisting of 10 closed choice or selection questions was compiled, aiming to analyse the level of information among dentists regarding the Romanian legislation that regulates the legal framework for engaging the medical staff's liability once offenses related to the practice of the profession are established. **Results and Discussions:** After the completion period ended, the questionnaires were centralized and statistically analysed. Dental practitioners from urban areas are better informed about the medical legislation and are aware how to protect themselves against and their professional activity. **Conclusions:** The main conclusion of this study focuses on the importance of increasing the level of information among dentists regarding the content of the existing criminal legislation currently in force in our country, and one of the professional bodies that could contribute to this is the College of Dental Physicians of Romania through its active involvement.

**Keywords:** criminal liability, crime, imprisonment, fine, medical personnel

## INTRODUCTION

Criminal liability is a fundamental institution of criminal law, involving those accountable who have committed an act defined by criminal law, through the application of legal criminal sanctions [1]. Not every antisocial act entails criminal liability, but only those acts which, according to legal provisions, are qualified as constituting the elements of a crime. Identifying the types of crimes that can be committed in the medical field during the performance of the professional duties, is based on the combination of two distinct elements: crimes existing in the current national criminal legislation and the direct link between the professional activity of medical personnel and the life, health, physical and psychological integrity of the patient [2]. By performing medical acts, doctors are not predisposed to commit any of the crimes provided by criminal legislation. Certain categories of crimes like the ones that may interact with the life, health, physical or psychological integrity are harmed. Alongside the crimes through which the aforementioned social values are harmed, crimes of service can also be committed, as the doctor, when exercising professional competencies, is engaged in a service activity, which must be carried out correctly, respecting the legal interests of the person [3]. In the case of any of the crimes, the question arises of the existence or non-existence of unprofessional behaviour, inferior to the standards of competence and skills unanimously admitted and accepted by the medical professional body based on negligence or incompetence, behaviour that draws a series of negative consequences on the patient [4]. In relation to the research topic, the legal regime of practicing the medical profession, currently regulated within Law no. 95/2006 on health reform, need to be primarily considered. According to Law no. 95/2006 on health reform in Romania, practicing the medical profession by a person who does not have this qualification, constitutes a crime and is punished according to the Criminal Code [5]. The perpetrator's ignorance of the abilities necessary to practice the medical profession, namely that of a dentist or the ignorance of the legal conditions for exercising them, does not remove the criminal nature of the act. The provisions regulating the regime of practicing the medical profession, even included in a non-criminal law, have the character of criminal norms that complete the content of the crime [6]. Practicing the medical profession, by a person who does not hold a qualification according to article 348 of the New Criminal Code, the unauthorized practice of a profession or activity is sanctioned according to criminal law, with imprisonment from 3 months to one year or with a fine [7]. Considering the previously mentioned legal provisions, the active subject of this crime can even be a doctor who unlawfully practices a medical profession of another specialty, in the absence of legal authorization or specialization in this regard [8].

### *Aim of the study*

The purpose and objectives of this research study is focusing on analysing the level of knowledge that dental practitioners have regarding the risks they face upon committing an act defined by criminal law, which meets the constitutive elements of a crime. In this context, we aim to observe to what extent they are familiar with the content of the applicable criminal legislation in the medical field, in order to understand which antisocial acts are sanctioned by the legislator when committed during the practice of their profession.

## MATERIAL AND METHODS

This research aims to conduct an observational-prospective study through a questionnaire, to a group of 60 dentists in Timiș County, from urban and rural areas.

The questionnaire was comprised of 10 closed-ended questions with three answer choices, focusing primarily on analysing the level of information that the dental practitioners have regarding the content of the criminal legislation applicable in the medical field. Before distributing the questionnaire, dental practitioners were asked for their consent to participate in the study, and the purpose of the study was explained to them. Before filling out the questionnaire, the participants were invited to ask questions regarding this study.

The questionnaire was distributed in physically to dental practitioners in Timiș County, who had one week to fill it. The first question aimed to analyse the level of information that dental practitioners have regarding the knowledge of Romanian legislation regulating the criminal liability of medical personnel, especially dental practitioners, which can be incurred due to the commission of a crime related to the practice of their profession. The main purpose of this question was to evaluate the level of familiarity of dental practitioners with the criminal legislation in the medical field. Moreover, we wanted to observe the source of information regarding the existence of criminal legislation for those dental practitioners who claim to have knowledge in this regard. It is essential for dental practitioners to be aware of the legal responsibilities that come with their profession, as well as the legal consequences associated with practicing their profession. Thus, this aspect can contribute to improving the quality of provided medical services, avoiding the commission of potential crimes related to the practice of the profession, and increasing patients' trust in Romania's healthcare system.

The second question aimed to evaluate to what extent dental practitioners have, until now, sought specialized legal representation in medical malpractice cases to represent them in a criminal trial related to the commission of a crime during their professional practice. Thus, it is important to know if dental practitioners have been involved in such situations and if they have sought specialized legal assistance to defend them in a criminal trial.

The third question addressed to dental practitioners tackled a highly debated topic in various studies over time and in the media, namely, to what extent the criminal legislation in the medical field should be stricter, punishing more severely the antisocial acts committed by medical personnel, which infringe upon the rights and interests of patients, even endangering their safety. We aim to observe whether the tightening of sanctions would lead to a decrease in the number of crimes committed in the medical field by professionals, by increasing awareness of the consequences they face. The fourth question, analyse the extent to which dental practitioners are familiar with various cases from medical practice that have been made public through the media when it comes to different accusations of practicing the profession without the right. Additionally, we wanted to observe if there were dental practitioners who were closely familiar with these cases, informing themselves about how these accusations against their colleagues were resolved.

Question number five is related to dentist's awareness regarding the forms of legal responsibility that can be attributed to them upon the concurrent commission of a crime and a disciplinary infraction during the practice of their profession. Additionally, we wanted to observe if dental practitioners are aware of the legislation that prescribes their sanctioning both from a criminal and disciplinary standpoint when the committed act requires it. Through the sixth question, we aimed to examine the extent to which dental practitioners are aware that the current legislation in Romania applicable in the medical field criminalizes the act of practicing a profession or activity without the right, being considered a crime according to Romanian criminal law. The responses can reflect the level of information that dental practitioners have, regarding legal regulations related to practicing their profession and can highlight the importance of adhering to the legal framework in medical practice. Evaluation of this aspect, can contribute to understanding the need for continuous education and adherence to norms and professional ethics in medical activities.

The seventh question aims to assess the level of knowledge of dental practitioners regarding the role of the Romanian College of Dental Practitioners in identifying crimes related to the practice of the profession. The obtained responses provide information about the level of awareness and familiarity of practitioners regarding the responsibilities and duties of the Romanian College of Dental Practitioners in this context. The results obtained can contribute to strengthening doctors' awareness of the importance and involvement of the Romanian College of Dental Practitioners in managing professional violation and can offer relevant information for improving the regulatory and control system in dental medical field.

Question number eight debates a sensitive topic regarding the sanctions applied in cases where medical personnel are found guilty of committing a crime during the practice of their profession. The goal is to analyse their opinion about the measure of exclusion or how the case should be judge when a dentist is found guilty by committing a crime. The ninth question addressed to dental practitioners examines the extent to which they have become aware so far of situations that involve the identification and sanctioning according to legal provisions of various crimes committed in the medical field by some of their colleagues. The obtained results serve to provide important information regarding the frequency and types of crimes committed in the field of dentistry, as well as the methods of sanctioning them.

The last question included in the questionnaire, is focuses on dental practitioners' perception of the current legislation in Romania in the field of medical criminal liability in the context of crimes related to the practice of the profession. The goal is to evaluate the doctors' opinion on the clarity and conciseness of the legislation regarding possible scenarios of committing crimes in the medical field. The results obtained can offer relevant information about the perception of dental practitioners regarding the effectiveness of the legislation in preventing and sanctioning crimes in dental medical practice, as well as possible suggestions for improving the legislation in this area.

## RESULTS

The collected data were analysed based on the responses of 60 dental practitioners from rural and urban environment.

Question 1: Are you aware that there is currently legislation in Romania regulating the criminal liability of medical personnel and implicitly of dental practitioners? The results showed that four from the rural and fourteen from the urban environment do not know which law currently regulates the criminal liability of medical personnel. Seven dental practitioners from rural and twenty-five from the urban environment learned about the existence of legislation regulating medical criminal liability through acquaintances practicing in the legal field as lawyers. Three practitioners operating in the rural environment and seven in the urban environment know in detail the legislation regulating the criminal liability of the dental practitioner, given that they have participated in a professional training course on this topic (Figure 1).

Question 2: Have you so far resorted to lawyers specialized in the field of medical malpractice to defend yourself in a criminal process involving the commission of a crime? Ten dental practitioners from rural and eleven from the urban environment have resorted to lawyers specialized in the field of medical malpractice to defend themselves by criminal accusations. Four practitioners operating in the rural environment and thirty-five from the urban environment mentioned that they have not been involved in a criminal process involving the accusation of committing a crime so far (Figure 2).

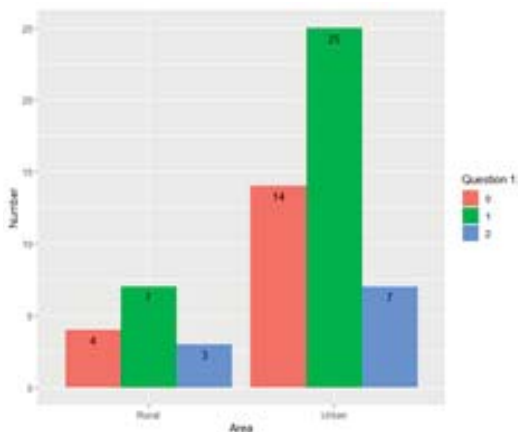


Figure 1. Question 1, statistical results according to urban and rural environment

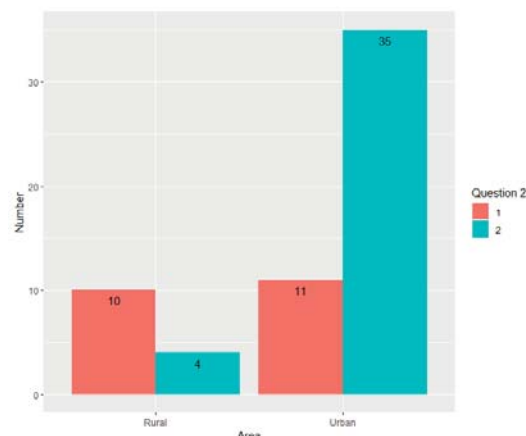


Figure 2. Question 2, statistical results according to urban and rural environment

Question 3: Do you think that the criminal legislation in the medical field should sanction with much harsher punishments the crimes committed by dental practitioners related to the practice of the profession? Results showed that three dentists from the rural and nine from the urban environment believe that the criminal legislation in the medical field should sanction with much harsher punishments the crimes committed by medical personnel related to the practice of the profession. Nine dental practitioners from the rural environment and twenty-four in the urban environment did not provide an opinion on the subject, considering that they have knowledge regarding the applicable criminal legislation in the medical field. Two practitioners from the rural and thirteen from the urban environment consider that the criminal legislation in the medical field should not become harsher in terms of the applied sanctions (Figure 3).

Question 4: Have you become aware through the media of cases in the dental medicine field where certain individuals were accused of practicing the profession without the right, and were subsequently sanctioned according to legal provisions? The results showed that four from rural areas and twenty-six from urban areas stated that they have noticed a series of cases related to various accusations of practicing the profession without the right appearing in the media recently; however, they do not have knowledge about how these complaints were resolved. Two dental practitioners from rural areas and four from urban areas specified that they are aware of such cases appearing in the media, given that in one of these situations the accusation made was directed at one of the individuals within their close circle of friends. Eight dental practitioners from rural and sixteen from urban areas stated that they are not aware of such cases being publicized in the press (Figure 4).

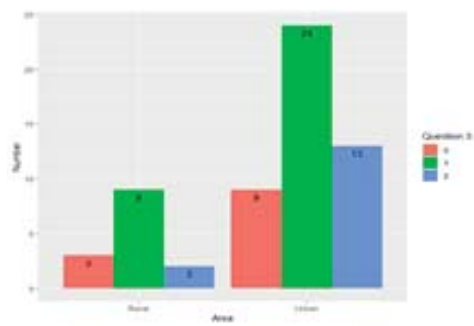


Figure 3. Question 3, statistical results according to urban and rural environment

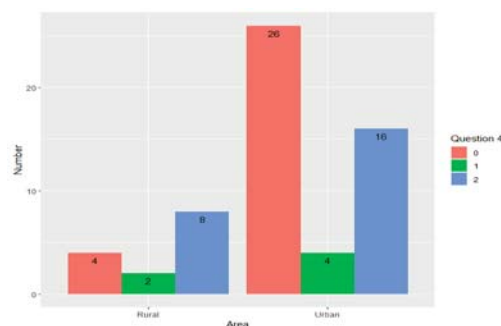


Figure 4. Question 4, statistical results according to urban and rural environment

Question 5: Are you aware that according to legal provisions, dental practitioners can be subject simultaneously to both criminal and disciplinary responsibility in cases where they commit an act that constitutes both the elements of a crime related to the practice of the profession and those of a disciplinary infraction? Two dentists from rural and nine from urban areas are aware that according to legal provisions, dental practitioners can be subject simultaneously to both criminal and disciplinary responsibility. Ten dental practitioners from rural areas and thirty-one from urban areas responded affirmatively to this question, but they specified that they do not have exact knowledge about the legislation that regulates this aspect, and two of the practitioners from rural areas and six from urban areas are not informed about this legislative provision.

Question 6: Are you aware that practicing a profession or activity in the medical field without the right constitutes a crime under Romanian criminal legislation? Only one from the rural area and one from the urban area are not aware about the act of practicing a profession without the right that constitutes a crime under the current legislation in Romania. Nine dental practitioners from rural areas and thirty-four from urban areas stated that they are aware of the criminalization of this act but do not know the legislation in detail, and four practitioners from rural areas and eleven from urban areas are familiar with the legal provisions regarding the act of practicing a profession or activity without the right.

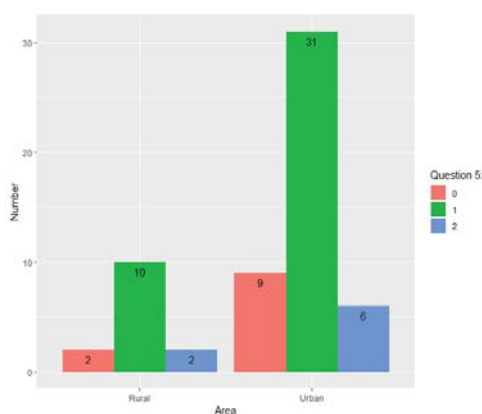


Figure 5. Question 5, statistical results for question 5 according to urban and rural environment

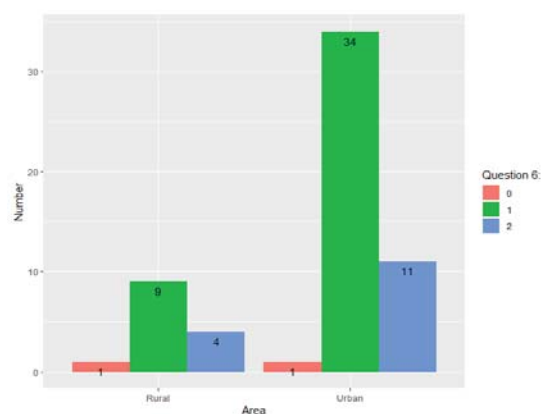


Figure 6. Question 6, statistical results for question 6 according to urban and rural environment

Question 7: Are you aware of the role played by the Romanian College of Dental Practitioners in identifying crimes related to the practice of the profession by a dentist? The results showed that two from rural areas and eight from urban areas do not possess information regarding the role and duties the Romanian College of Dental Practitioners fulfils in identifying crimes concerning the practice of the profession. Eleven dental practitioners from rural and thirty-four from urban areas know the role this professional body plays in identifying crimes related to the practice of the profession. One dental practitioner from a rural area and four from urban areas know in detail the role this professional body plays in identifying crimes related to the practice of the dentistry profession, considering they have been accused in the past by a patient of committing such an act.

Question 8: Do you think that regardless of the act committed, when the commission of a crime by medical personnel related to the practice of the profession is proven, the sanction that should be applied is permanent exclusion from the profession? The results showed that one dental practitioner from a rural area and seven from urban areas consider that regardless the act committed, when the commission of a crime by medical personnel related to the practice of the profession is proven, the sanction that should be applied is

permanent exclusion from the profession. Six dental practitioners from rural areas and fifteen from urban areas do not have legal knowledge for a relevant opinion. Seven practitioners from rural areas and twenty-four from urban areas believe that the sanction of permanent exclusion from the profession should only be applied in cases where the committed criminal act presents a significant social danger.

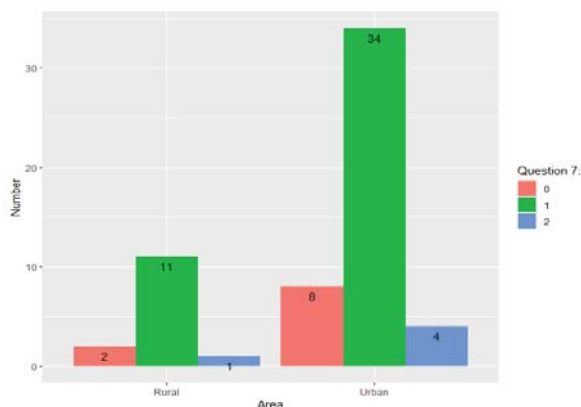


Figure 7. Question 7, statistical results for question 7 according to urban and rural environment

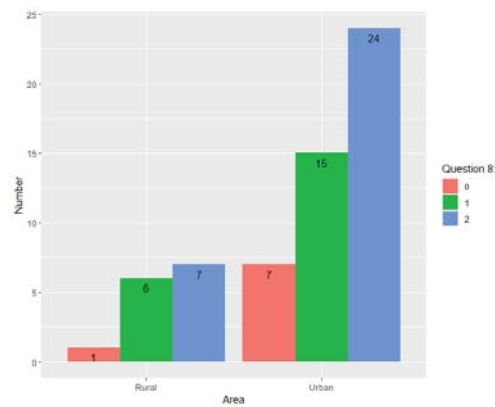


Figure 8. Question 8, statistical results for question 8 according to urban and rural environment

Question 9: To your knowledge so far, are there cases within the Romanian College of Dental Practitioners you are part of where the commission of a crime related to the practice of the profession by a dentist has been proven, with criminal responsibility being attributed to them? The results showed that three dental practitioners from rural areas and four from urban areas stated they are aware of certain cases within the Romanian College of Dental Practitioners they are registered in which some of their colleagues were found guilty of committing criminal acts related to the practice of the profession, with their responsibility being engaged. Only two dental practitioners from urban areas stated that, up to this date, no cases have been recorded within the Romanian College of Dental Practitioners they are registered in which the commission of a crime related to the practice of the profession by some of their colleagues has been proven. Eleven practitioners from rural areas and forty from urban areas do not have precise information in this regard.

Question 10: Do you think the current legislation in Romania in the field of medical criminal liability is sufficiently explicit and comprehensive considering the possible scenarios related to the commission of crimes in the practice of dental medicine? The results showed that two dentists from rural and eleven from urban areas consider the current legislation in Romania in the field of medical criminal liability to be not sufficiently explicit and comprehensive and is requiring a series of modifications and legislative adjustments to ensure adequate protection for both patients and dental practitioners. Nine dental practitioners from rural areas and thirty-one from urban areas state they do not have enough knowledge about the current legislation of medical criminal liability to issue a relevant opinion. Three practitioners from rural areas and four from urban areas believe the current legislation in Romania in the field of medical criminal liability is sufficiently explicit and comprehensive.

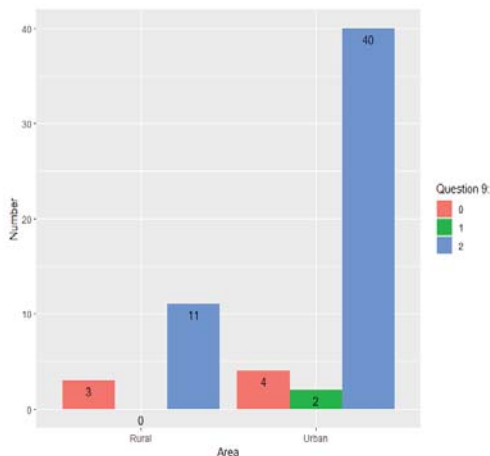


Figure 9. Question 9, statistical results for question 9 according to urban and rural environment

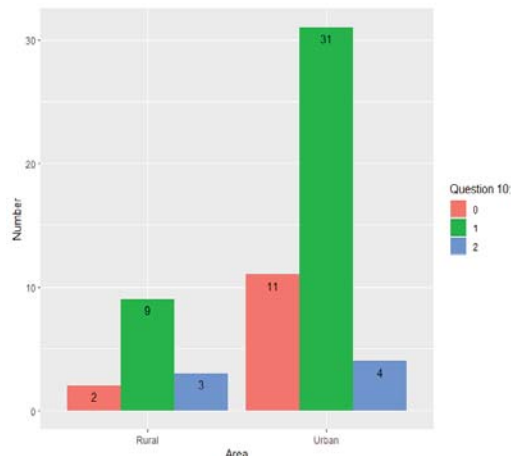


Figure 10. Question 10, statistical results for question 10 according to urban and rural environment

## DISCUSSIONS

It is important for dental practitioners to be up to date with relevant legal provisions to ensure a practice that complies with the law and ethics. Besides being aware of the existence of legislation in Romania that sanctions crimes in the medical field and being familiar with its provisions, they will be informed about the consequences arising from violating these laws. The number of dentists in the urban areas is higher so, connections in the medical practice and with other medical specialities are more stronger.

The knowledge of criminal legislation in the medical field by dental practitioners, especially the sanctions they are exposed to upon committing a crime, serves to decrease the number of unlawful acts, instilling in each practitioner a sense of responsibility for both the lives of their patients and their own life and freedom.

The role of the Romanian College of Dental Practitioners in identifying medical crimes is essential for ensuring ethics and professionalism in the field of dentistry. The Romanian College of Dental Practitioners (CMSR) has the role of monitoring and verifying how each dental practitioner exercises their profession, identifying potential violations of legislation and professional standards. Through the CMSR, efforts are made to protect patients and maintain high standards in the dental medical field.

## CONCLUSIONS

Following the completion of this study, one of the conclusions highlights the imperative need for clear and precise legislation regarding criminal liability in the medical field. The provisions within the legislation should be well-defined, providing precise guidance for medical professionals and ensuring protection for both doctors and patients. Ambiguous or incomplete legislation can create confusion and lead to various uncertainties regarding the criminal liability that may be attributed to dental practitioners following the identification of a committed crime.

It is of real importance for dental practitioners to be aware of the real need to inform themselves about the current legislation regarding informed consent, medical legislation, medical malpractice and it's consequences. Criminalized actions in the medical field, can and need to be prevented in any situation that would dental practitioners outside of legality and which would lead to their sanctioning [9, 10].



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