

Civil claims related to dental care in Chile according to court rulings 2011-2017.

Reclamaciones civiles relacionadas con la atención odontológica en Chile según sentencias judiciales 2011-2017.

Juan Villagra.¹
Valentina Zúñiga.¹
Javiera Macuada.¹
Carlos Marchant.^{1,2}
Carlos Muñoz.^{2,3}

Affiliations:

¹Universidad de Valparaíso, Chile.

²Consejo Regional Valparaíso, Colegio de Cirujano Dentistas de Chile A.G, Chile

³Pontificia Universidad Católica de Valparaíso, Chile.

Corresponding author: Juan Villagra Pavez.
Escuela de Odontología, Universidad de Valparaíso, Chile. **Phone:** (56-9) 41617922 .
E-mail: jn.villagra.ori@gmail.com

Receipt : 30/01/2019 **Revised:** 06/09/2020
Acceptance: 11/10/2020

Abstract: Objective: To describe Civil Claims (CCs) related to the provision of dental care according to court rulings published on the website of the Chilean Judicial Power. **Material and methods:** Descriptive study of 62 CCs filed against dentists or dental clinics according to court rulings available on the website of the Chilean Judicial Power between the years 2011 – 2017, identified by court rulings using a keyword search. Data were tabulated and analyzed using EXCEL and Stata.15, through descriptive statistics, proportions comparison test, and Spearman's Rho test. **Results:** An increase in the number of CCs according to the 2011-2017 court rulings was observed. CCs were filed on average 27.5 months after the events occurred. Judicial processes lasted a mean of 27 months, and the Araucanía region accounted for the highest rate. The highest number of lawsuits were placed against male general dentists with a mean age of 44, filed by female patients with a mean age of 46. A total of 66.13% of the CCs were rejected by the court, and 33.87% were ruled in favor of the plaintiffs. The financial compensation claims reached an average of \$37,751,516 CLP (1500.32 Chilean UF), approximately \$47,000 USD as of the date of the data collection process. **Conclusion:** There is an upward trend in the filing of CCs in Chile, although most were rejected by the court. A better understanding of the reasons that lead to the legal processes is necessary to prevent their occurrence.

Keywords: *Jurisprudence; malpractice; civil Liability; dentistry; Chile.*

Resumen: Objetivo: Describir los Reclamos Civiles (CC) relacionados con la prestación de atención odontológica según sentencias judiciales publicadas en el sitio web del Poder Judicial de Chile. **Material y Métodos:** Estudio descriptivo de 62 CC interpuestas contra dentistas o clínicas dentales según sentencias judiciales disponibles en el sitio web del Poder Judicial de Chile entre los años 2011 - 2017, identificadas por sentencias judiciales mediante búsqueda por palabra clave. Los datos se tabularon y analizaron mediante EXCEL y Stata.15, mediante estadística descriptiva, prueba de comparación de proporciones y prueba Rho de Spearman. **Resultados:** Se observó un aumento en el número de CC según las sentencias judiciales de 2011-2017. Los CC se presentaron en promedio 27,5 meses después de ocurridos los hechos. Los procesos judiciales

Cite as:

Villagra J, Zúñiga V, Macuada J, Marchant C & Muñoz C.

Civil claims related to dental care in Chile according to court rulings 2011-2017.

J Oral Res 2020; 9(5):363-371.

Doi:10.17126/joralres.2020.077

duraron una media de 27 meses y la región de la Araucanía registró la tasa más alta. El mayor número de demandas se presentaron contra dentistas generales varones con una edad media de 44 años, interpuestas por pacientes mujeres con una edad media de 46 años. El 66,13% de las CC fueron rechazadas por el tribunal y el 33,87% falló a favor de los demandantes. Los reclamos de compensación económica alcanzaron un promedio de \$ 37.751.516 CLP (1500,32 UF

chilenas), aproximadamente \$ 47.000 USD a la fecha del proceso de recolección de datos. **Conclusión:** Existe una tendencia ascendente en la presentación de CC en Chile, aunque la mayoría fueron rechazadas por el tribunal. Es necesario comprender mejor las razones que conducen a los procesos legales para prevenir su ocurrencia.

Palabra Clave: *Jurisprudencia; negligencia profesional; responsabilidad civil; odontología; Chile.*

INTRODUCTION.

In recent years there has been a marked increase in the prosecution of civil claims for malpractice against health professionals,¹ being the civil liability of the dentist one of the least studied aspects among legal issues within the health field.² In Chile, there are few studies on this type of liability, and most of them focus on reports issued by the Medical Legal Service (SML, for its acronym in Spanish),³ and claims filed in the Chilean Superintendency of Health.⁴

In the literature reviewed, no studies on civil liability in Chile were found, despite the fact that international publications have shown that claims for malpractice in dentistry are mostly resolved in civil court.^{5,6}

Currently, thanks to technological resources, modernization of the State and the publication of the Transparency Law, public information is available from the Chilean Civil Courts regarding Civil Claims (CCs) on the page of the Judicial Power (JP), -a website that provides information to citizens-, allowing the search for rulings or sentences from 2011 and on with access to complete files. The aim of this study is to describe the CCs related to dental care published on the JP website, according to frequency, region, litigants and ruling.

MATERIALS AND METHODS.

A study of CC cases filed against dentists or dental clinics was carried out in relation to dental care according to rulings issued at the First Instance in Civil Courts and available on the JP website between the years 2011 and 2017, using a census-type sampling. The JP website allows users to request and access public information items such as jurisprudence and rulings, referring to the rulings of the courts and the sentence they contain, with the Civil Courts overseeing more cases.

In the item jurisprudence and rulings, users are given access to the rulings issued from 2011 to the present, showing the last 200 results of the existing total. The search by rulings, legal texts and words allowed to search through the Civil Claims database by matching keywords that were related to the topic, and selecting the year or period when the ruling was issued.

Once the keyword and the ruling date were entered, the last 200 cases were accessed when a match was found with the corresponding keyword, obtaining links to access the rulings, which contained an account of the facts, data of the parties involved, and whether or not the claim was accepted or rejected (with or without costs and compensation).

The data were collected by three researchers previously trained in CCs search on the JP website related to "Medical Liability", obtaining a kappa agreement of 0.962.

Rulings related to dentist liability were searched using terms associated with general dental care as keywords. These terms have been used in similar studies⁷ conducted in Spanish, and grouped in combinations such as: "dentista-tratamiento", "odontólogo-tratamiento" (dentist-treatment); "diente-tratamiento" (dental-treatment/tooth-treatment); "pieza-dentista" (tooth/teeth-dentist); "diente-dental" (tooth/teeth-dental).

Because the texts of very old rulings did not include Spanish orthographic marks on stressed vowels, words such as "odont_logo" and "odont" were also considered so as not to exclude CCs of interest.

All corresponding CCs related to "compensation for damages" or "breach of contract" against dentists or dental clinics in relation to dental care were included, excluding those without ruling.

A total of 749 rulings were identified, 253 were

chosen for evaluation, and of these, 191 corresponded to duplicates; finally, 62 met the inclusion criteria.

With the data collected (RIT [Internal Registration Number of the Court] and the corresponding Civil Court), a unified search for cases was carried out to access the complete file. A Microsoft Excel database was created containing:

1. Administrative variables,
2. Socio-demographic variables
3. Variables related to dental procedures
4. Judicial variables.

For the evaluation of legal matters, expert advice was provided by a lawyer that works for the College of Surgeons-Dentists of the Valparaiso Region, Chile. The Stata 15 software was used for the descriptive and inferential statistical analysis, performing Spearman's rho and the proportions comparison test. A p -value < 0.05 was considered for statistical significance.

Although the data belongs to public databases, the research was carried out with due respect for confidentiality as established in the Constitution of the Republic of Chile, the Organic Code of Courts and Law 20.285 (principle of transparency, access to information, exercise of rights and their protection, and exceptions to the dissemination of information, as is the case of Criminal Cases).

RESULTS.

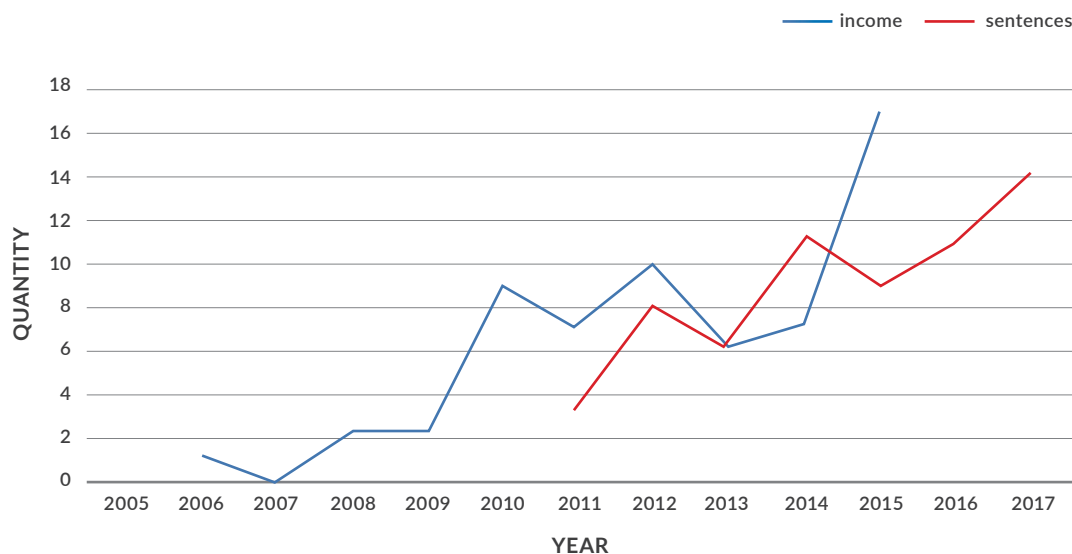
The 62 cases that met the inclusion criteria corresponded to CCs filed since 2006. A statistically significant upward trend was observed (Figure 1).

The duration of the judicial process, from the filing of the claim to the date of the ruling, was 26.9 months. The period of non-execution, from the date of the events to the filing of the claim, had an average of 27.4 months. The Metropolitan Region of Santiago had the highest number of CCs, accounting for 41.94%. However, both the Antofagasta and Araucanía regions presented the highest rates per 100,000 inhabitants. (Figure 2)

Regarding the characterization of the litigants, the plaintiff had a mostly similar patient profile, female and aged 46 years on average; the defendant was solely the dentist in 43.55% of the cases, in contrast to when it was both the dentist and the Clinic/institution involved in the legal claim. Of the total number of treating dentists (regardless of whether the respondent was actively clinically) there were only 56 registered in the National Registry of Health Providers of the Chilean Superintendency of Health, of which the majority were male. (Table 1)

The most prevalent dental procedures were root canal treatment and implantology accounting for

Figure 1. Number of claims and civil liability rulings related to dental care by year.



Spearman's Rho = 0.9009 for rulings (p -value: 0.0056); Spearman's Rho = 0.8110 for claims (p -value: 0.0044); in 2016 there was only 1 claim and the duration of the judicial process was less than the average.

Figure 2. Percentage of CCS rate per 100,000 inhabitants according to court rulings 2011 - 2017.

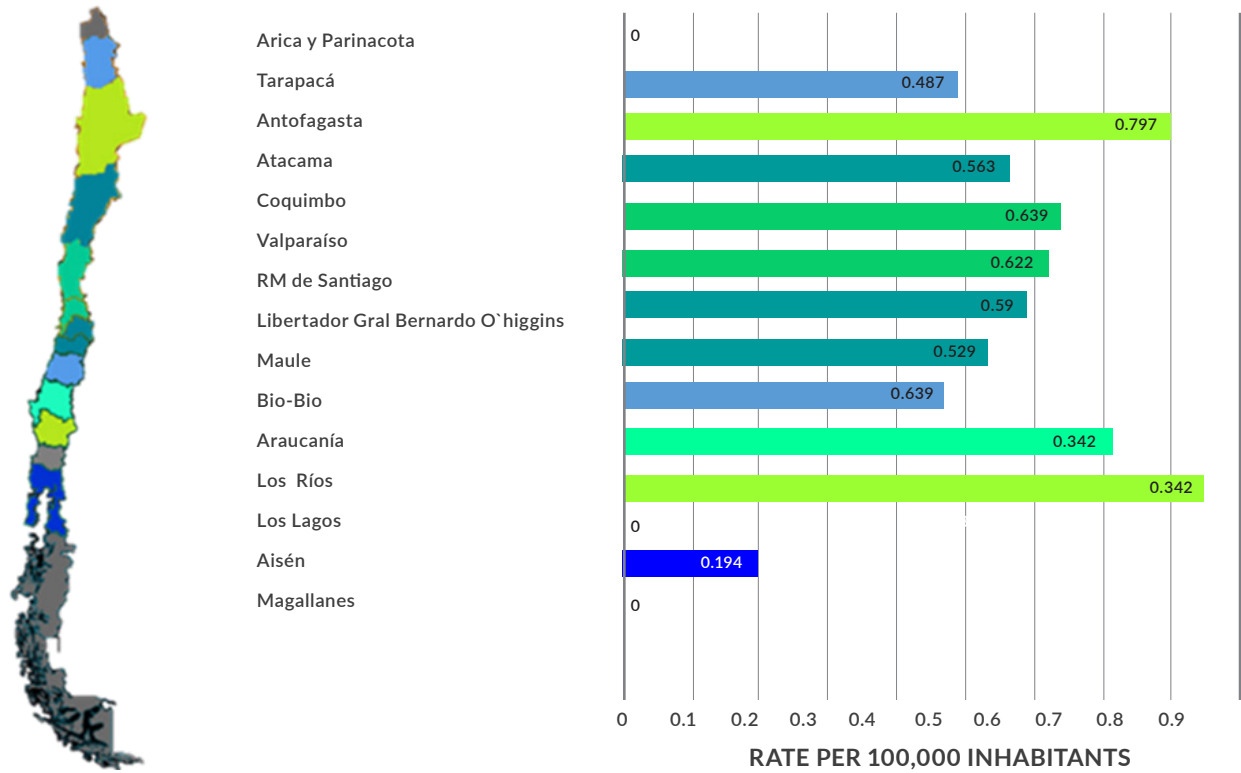


Figure 3. Percentage of CCS by dental procedure.

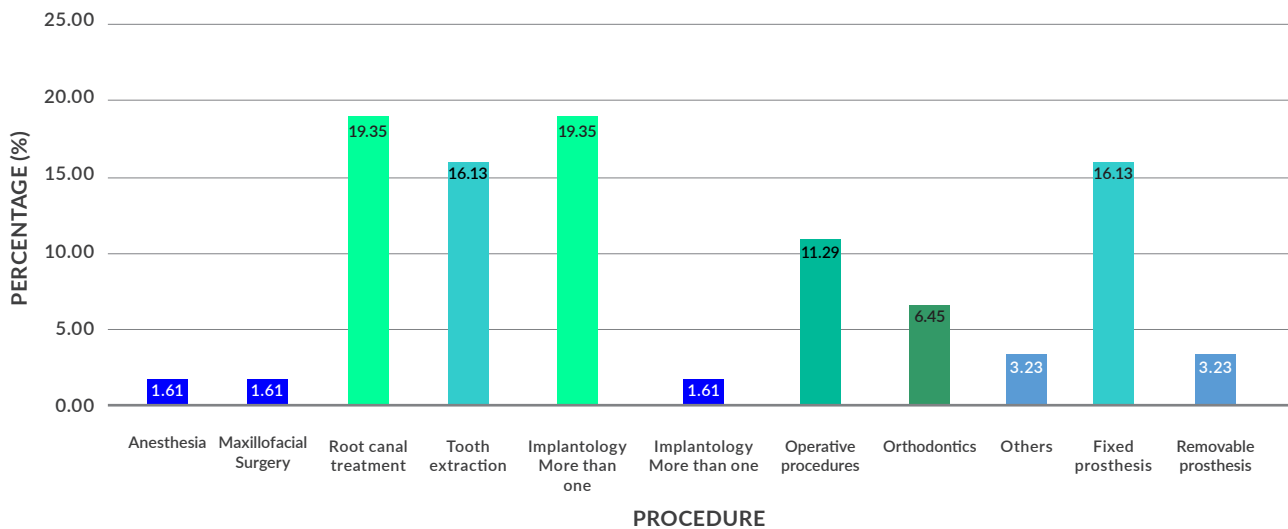


Figure 4. Percentage of CCS by dental procedure.

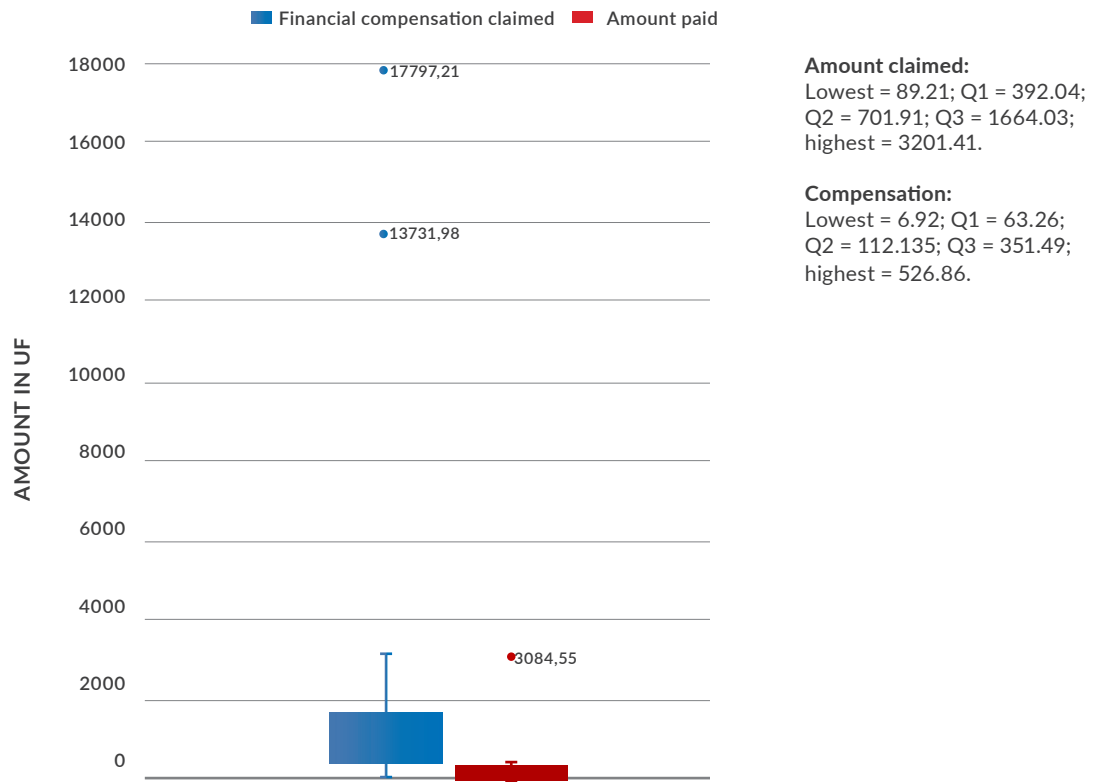
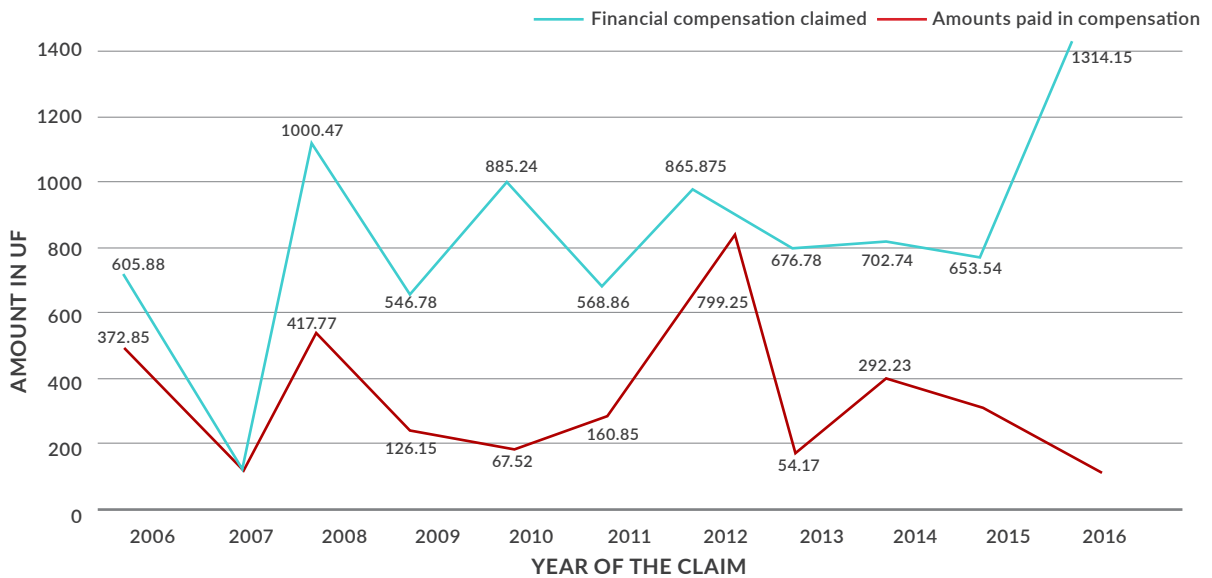


Figure 6. Average amounts of financial compensations claimed and amounts paid in compensation in uf according to year of the claim.



| Coefficients of variation | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|--------------------------------|------|------|------|------|------|------|------|------|------|------|------|
| Financial compensation claimed | 0 | 0 | 0,58 | 0,56 | 0,94 | 8,02 | 5,93 | 0,69 | 1,61 | 1,31 | 0 |
| Amount paid in compensation | 0 | 0 | 0 | 0 | 0,58 | 0,18 | 1,68 | 0 | 0,35 | 0,87 | 0 |

Above the graph of the amounts in UF, below the coefficients of variation (Coef. Var) per year.

Tabla 1. Description of litigants and dentists.

| PLAINTIFF | | | 62 |
|------------------|-----------------------|--------|----------------|
| Sex | Patient | 91.94% | p-value <0.001 |
| | Legal representative | 8.06% | |
| | Male | 27.42% | |
| | Female | 72.58% | |
| | Mean age | 46.03 | |
| DEFENDANT | | | 62 |
| TREATING DENTIST | Dentist | 43.55% | 56 |
| | Clinic or Institution | 40.34% | |
| | Both | 16.13% | |
| Sex | Specialty | 20.00% | p-value <0.001 |
| | Male | 71.43% | |
| | Female | 28.57% | |
| | Mean age | 44.68 | |

In the proportion comparison tests, statistically significant differences were observed for the sex of the plaintiff and treating dentist.

19.35% of the cases, followed by simple tooth extraction procedures and fixed prostheses (16.13%). (Figure 3)

Regarding the judicial variables, CCs were rejected in 66.13%; the ruling was against the dentist in 12.80% of the cases, against the institution in 17.74%, and against the dentist and institution in 3.23%. The mean financial compensation claimed by the patients was \$37,751,516 (CLP), (mean 1500.32 Chilean UF), approximately \$47,000 USD as of the date of the data collection process. The compensation paid was on average \$7,814,765 (CLP) (304.58 UF), approximately \$9,700 USD as of the date of the data collection process. However, when analyzing the distribution of these values, atypical maximum data are observed (Figure 4).

There was no upward trend in the amounts claimed or compensated (Figure 5), and the years 2011 and 2012 presented a high coefficient of variation in the amounts claimed, not similar to the rest, so these results should be interpreted cautiously.

DISCUSSION.

The increase in CCs in Chile coincides with other studies conducted in the country for other legal procedures, such as expert reports issued by the SML and claims filed in the Chilean Superintendency of Health (Supersalud).^{3,4} According to the SML³ (2015), dentistry is at the second place of the professions with the highest number of lawsuits, with an increase in the requests for expert opinions on health responsibility

and liability and, therefore, in lawsuits against professionals.

Claims processed in the mediation system of Supersalud show, in turn, a gradual and significant increase in claims related to dental care.⁴ Additionally, the results of this study point to an increase in the number of CCs in Chile; not having found other studies in the literature that report these data.

This increase also coincides with articles published in other countries. In Spain, in a total of 504 court rulings, a significant increase was observed from 2006 to the beginning of 2015.⁷ Brazil, meanwhile, registered a 73.3% increase in claims between 2006-2011.⁶

According to the College of Dentists and Stomatologists of Murcia, Spain⁹ (2005), the increase in claims is proportional to the increase in the number of professionals working in the field. This, added to the data provided by Moscoso *et al.*,⁸ (2016), which shows that the increase in the number of graduates in the 2008-2016 period in Chile doubles those of the 1998-2007 period, would explain the upward trend of CCs observed in this study.

According to statistics from the preliminary report of the Study of Health Users regarding the Law of Rights and Duties published in Chile 2015,¹⁰ it was concluded that, despite little knowledge of the law, health users declare willingness to demand compliance according to their rights. Thus, it could be stated that patients have better knowledge of their rights and therefore they want their rights to be respected.

Regarding the geographical distribution of CCs, as rates per 10,000 inhabitants, the regions of Araucanía (0.842), Antofagasta (0.797) and Bío-Bío (0.713) have the highest *p*-values.

However, the Metropolitan Region (RM) concentrates the highest percentage of CCs (41.94%). The latter could be explained by its higher population density,¹¹ in addition to a larger number of civil courts in the area. These data coincide with those provided by the SML,¹ in which the distribution by region showed that the highest number of lawsuits were filed in the RM (39.5%), Bío-Bío (16.5%), and Maule (8.1%). Although in that study results were not analyzed by population rates. In the study conducted by Portela,⁴ the regions with the highest claims rate, from highest to lowest, were: Antofagasta, Coquimbo and RM, which does not coincide with our study, presumably because they report mediations and not CCs.

The results obtained allowed to describe the profile of the litigants, information that was previously limited mainly to sex and age. The plaintiff mostly corresponds to the same patient, unlike the findings reported by Portela,⁴ in which only 46% of claims were filed by the patients.

The greater tendency of females to file legal claims according to the literature could be related to the fact that it is this population group that usually uses the majority of health services.¹² A study based on the CASEN survey¹³ concluded that in relation to the need for care (perception of illness) and the demand for care, there is a higher percentage of women than men who perceive illness and, therefore, they seek care more frequently at health services in Chile. These results coincide with those reported by Portela,⁴ who found a marked trend towards higher numbers of complaints from females in the records of the mediation system of the Chilean Superintendency of Health in relation to dental care. Furthermore, data are similar at international level. In Mexico¹⁴ it was concluded that 68% of dental complaints were filed by women. Similar results were observed in Spain⁷ (69.9%) in the online legal service database in the period 1991-2015. Other authors with similar results include Pinchi *et al.*,¹⁵ (Italy) 77.5%; Moscoso *et al.*,³ (Chile) 82%, and Zanin *et al.*,¹⁶ (Brazil) with 74.22%.

Regarding the plaintiff's age, the results of the present study coincide with those presented by the SML's expert opinions,¹ in which 41.6% of the patients

belonged to the age group of 31-60 years.

Regarding the profile of the defendant, results show a prevalence of males (71.3%), which is consistent with studies conducted by various authors: Zanin *et al.*,¹⁶ reported 69.38% of men were sued in CCs in Brazil; Perea-Pérez *et al.*,¹⁷ (Spain) reported 84.1%; Pinchi *et al.*,¹⁵ reported 80% in the case of root canal treatment, and 98.4% in the case of implantology.

It is worth mentioning that, according to data from the National Registry of Individual Care Providers of Chile, less than 25% of dentists have a specialty (3). The latter could explain why the present results showed a higher incidence of CCs against general non-specialized dentists (80%).

Implantology was the procedure with the highest number of claims, consistent with the data reported in similar studies conducted in other countries such as: Perea-Pérez *et al.*,¹⁷ (25.5%), Perea-Pérez *et al.*,¹⁸ (55.6%), Pinchi *et al.*,¹⁵ (25%), and Palma (7) (27%). Castro *et al.*,¹⁹ concluded that the specialty with the highest number of claims was root canal treatment. Terada *et al.*,⁶ who analyzed civil liability in Brazil, concluded that the main dental specialties involved were in descending order: dental prosthesis 35.6%; implantology 26.6%, and root canal treatment 15.5%.

In Chile, Portela,⁴ after analyzing the claims filed in Supersalud, concluded that, in descending order, they were root canal treatment (17.9%), fixed prostheses (13.5%), tooth extraction (10.9%), implantology (10.9%), and removable prosthesis (7.1%). Results in which root canal treatment, fixed prostheses, and implants are once again among the procedures with the highest number of claims. However, implantology was the third in frequency compared to the first place that was observed in civil cases in this study. This could be due to the fact that this procedure involves a high financial outlay and it is very invasive; in the event of disconformity on the part of the patient, it is more likely that the patient seeks monetary compensation ruling out mediation at Supersalud.

To explain this phenomenon, Perea-Pérez *et al.* (5) suggest that implantology would generate a greater number of claims with a higher economic cost due to the fact that it is a relatively aggressive technique. On the other hand, root canal treatment is a procedure that could cause conflicts due to the lack of clear explanations of the prognosis and the emphasis on the limitations of the treatment.⁶

In relation to the amounts of the financial compensation claimed, it is observed that in general the amounts pursued by the patients did not increase through the years covered in this study but were mostly related to the cost of the procedure carried out in each case. However, a greater trend toward obtaining financial compensation instead of moral compensation was observed, which coincides with the results of Zanin *et al.*,¹⁶ regarding this variable.

One of the main theoretical implications of this study is that it is the first one to collect the CCs published to date, providing updated statistical data to quantify the statement initially presented by the SML⁵ based on the increase in the number of expert reports submitted to the Medical Responsibility Office. In addition, it allows to define the profile of the litigants, providing information about the dentist such as age, sex, level of specialization and institution, data that were previously protected and inaccessible. New information is also provided

CONCLUSION.

It is presumed that there are claims from lawsuits that have not been accounted for in this study because they do not have a ruling yet (for example, those filed in 2016-2017). These were not available on the website during the collection of cases. It follows from the above that the visual representation of lawsuits corresponding to the year 2016 declines abruptly as on those dates there could have been cases that have not yet been ruled, and, therefore, did not appear in the search.

Likewise, those cases with a ruling issued before the year 2011 were not available either, so the number of these could be underestimated. As the information is sourced from legal sources, it is assumed that the vast majority of minor adverse events or those that have been adequately solved in the place or clinic where they occurred, have not been included as they were not taken to court. However, this bias means an important advantage: the events collected are the most serious, and therefore the ones that should cause more concern among dentists. From this point of view, it is considered that this research provides very useful information for professionals in the field.

Finally, a better understanding of the reasons that lead to the legal processes is necessary in order to prevent their occurrence.

Conflict of interests: The authors declare no conflicts of interest.

Ethics approval: None needed.

Funding: Financial support provided by the Red de Universidades Estatales de Chile through a public tender (concurso público) period 2017-2018 for the Support of Research Projects through the University of Valparaíso, Chile 2017.

Authors' contributions: Villagra: Study design and analysis of results. Zúñiga and Macuada: Study planning and data collection Marchan and Muñoz: legal aspects of civil case analysis.

Acknowledgements: To Dr. Marcos Faundes Pinto Regional Director of the Valparaíso Medical Legal Service. To Sebastián Espinoza, Professor of the Department of Public Health, School of Dentistry, University of Valparaíso.

REFERENCES.

1. Aparicio D, Brunetto G, Nahuelpan E, "La responsabilidad médica en Chile, una mirada desde el Servicio Médico Legal" Revista Anual Instituto Dr. Carlos Ybar 2015; 4: 163 -76.
2. Manuel J, Cerda B. La responsabilidad profesional en odontología. Rev ADM. 2006; LXIII(3):111-8.
3. Moscoso Matus K, Smok Vásquez P. Responsabilidad sanitaria en odontólogos. Casuística de casos evaluados en el Servicio Médico Legal de Chile. Rev Med Chil. 2015;143(3):345-51.
4. Portela, F. Caracterización de los aspectos bioéticos en los reclamos realizados ante la superintendencia de Salud en Chile en el área de Odontología. Acta Bioethica 2013; 19 (1): 143-152.
5. Perea B, Labajo ME, Vega JM, Fonseca AM. "Estudio sobre el aumento de las reclamaciones de pacientes odontológicos y su relación con el cambio de modelo de asistencia dental". Cien dent., 2005;2(3):187-92.
6. Terada ASSD, De Araujo LG, Flores MRP, da Silva RHA. Responsabilidad Civil del Cirujano-Dentista: Análisis de las Demandas Presentadas en el Municipio de Ribeirão Preto-São Paulo, Brasil. Int J Odontostomat. 2014;8(3):365-9.
7. Palma C. Estudio jurisprudencial de la responsabilidad profesional del odontólogo en España. [Tesis Doctoral]. Universidad de Valladolid, Facultad de Medicina. 2016.
8. Moscoso K, Smok P, Botto A.M. Odontólogos del Registro Nacional de Prestadores Individuales de Salud. Rev Clin Periodoncia Implantol Rehabil Oral 2016;9:42-7
9. Lopez-Nicolas M, Falcón M, Perez-Carceles MD, Osuna E, Luna A. Informed consent in dental malpractice claims. A retrospective study. Int Dent J. 2007;57:168-72.
10. Informe preliminar: Estudio de Usuarios de Salud respecto de la Ley de Derechos y Deberes. Gobierno de Chile, Ministerio de Salud, 2015. Criteria research.
11. Memoria Censo 2017. Instituto Nacional de Estadísticas, INE,Chile. junio /2018. Capítulo 8. Principales productos generados a partir del CENSO 2017; 156-169.
12. Consejo Dentistas. Encuesta Poblacional: La salud bucodental en España, 2010. Madrid: Lacer: 2011.
13. Vega MJ, Bedregal GP, Jadue HL, Delgado BI. Equidad de género en el acceso a la atención de salud en Chile, 2003. Rev Méd Chile. 2003; 131(6).
14. Triana Estrada J. Recommendations to the improvement of odontology care. Rev CONAMED. 2014; 19:38-48.
15. Pinchi V, Varvara G, Pradella F, Focardi M, Donati MD, Norelli G. Analysis of professional malpractice claims in implant dentistry in Italy from insurance company technical reports, 2006 to 2010. Int J Oral Maxillofac Implants. 2014;29(5):1177-84.
16. Zanin A, Herrera L, Melani R. Civil liability: characterization of the demand for lawsuits against dentists. Braz. Oral Res. 2016;30(1):e91.
17. Perea-Perez B, Santiago-Saez A, Labajo-Gonzalez M, Albarran-Juan M. Professional Liability in Oral Surgery: Legal and medical study of 63 court sentences. Medicina Oral Patología Oral y Cirugía Bucal. 2011; 526-31.
18. Pérez P, González L, Juan A, Elena M, Pérez CP, González L, et al. Responsabilidad profesional en odontología. 2013; 39:149-56.
19. Castro ACC, Franco A, Silva RF, Portilho CDM, Oliveira HCM. Prevalence and content of legal suits founded on dental malpractice in the courts of Midwest Brazil. Rev Bras Odontol Legal. 2015;2(1):46-52.