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Expert witnesses in dentistry: A comparison between Italy and Croatia

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ABSTRACT

A dentist is frequently required to translate dental trauma into monetary value, for example after car accidents and/or work-related injuries. When called to act in this capacity a dentist should combine his/her biological and technical knowledge with a quality medico-legal knowledge. Calculation of economic (pecuniary) damages and non-economic (non-pecuniary) damages requires specific training in medico-legal matters and awareness of the inherent pitfalls. Expert Witnesses registered in Court are usually asked to perform this duty. Nevertheless, European countries have differences regarding dental damage evaluations as well as significant differences in the conditions required for registration as an Expert Witness in Court. A dental Expert Witness has precise responsibilities and is subject to civil or criminal proceedings (depending on the judicial system) if found wanting. In forensic/legal dentistry a medico-legal doctor should not work in isolation from a dentist in dental cases nor is it wise for a dentist to work in the courts without having had specific training regarding judicial disciplines relating to dental damages. In this preliminary work the authors investigate the principal differences in the judicial systems regarding the appointment of Expert Witnesses in both Italian and Croatian courts. The next step will expand this investigation through to European countries in order to marshal knowledge towards harmonization, best practice and a common ground for dental evaluation and claim compensations (in accordance with the Council of Europe Resolution 75 – 7 Compensation for physical injury or death).

KEYWORDS: Expert Witness, dental damage evaluation, dental law, forensic odontology

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INTRODUCTION

When dental trauma is caused by road traffic accidents and/or occupational injuries, there is frequently a need to translate the claims of the victim into financial figures. The calculation of economic (pecuniary) damages and non-economic (non-pecuniary) damages requires specific training in medico-legal matters as well as an awareness of the inherent pitfalls. In many countries, an Expert Witness (EW) who is registered in courts is usually asked to perform the assessment of a claim for dental damage. In the field of forensic and legal dentistry, an EW can be a dentist with a knowledge and experience in medico-legal matters and in forensic scenarios that is beyond what is expected of a clinical dentist. An EW will use this knowledge to help the Court understand the issues of the case, and thereby reach a just decision regarding the claimed dental damages and/or any professional liability. This knowledge is even more important in penal cases, where crimes such as homicide, sexual violence, domestic violence and child abuse are included. European countries differ in their dental damage evaluations as well as having significant differences in the requirements needed to become a

registered EW in Court. In this preliminary work the authors investigate the principal differences in appointing an EW in the judicial systems of Italy and in Croatia with the purpose of widening this investigation to European countries in order to marshal knowledge towards harmonization, best practice and a common ground for dental evaluation and claim compensations (in accordance with the Council of Europe Resolution 75 – 7 Compensation for physical injury or death).¹

DENTAL EXPERTS IN THE CROATIAN JUDICIAL SYSTEM

In Croatia, the Ministry of Justice requires a specific education process in order to become a permanent EW. In order to be appointed as a permanent EW, the following five conditions must be fulfilled:²⁻⁴

The claimant must

1. have Croatian citizenship;
2. have the citizenship of a member state of the European Union or another signatory State of the European Economic Area;

3. be medically fit to perform the permanent tasks of an EW;
4. have completed study at an appropriate school, and have worked in the profession as follows:
 - at least 5 years – if completed undergraduate and graduate university studies, or undergraduate university study and specialist graduate professional study, or professional study and specialist graduate professional study, or
 - at least 8 years – if completed appropriate undergraduate university study or professional study, or
 - court testimony, in exceptional cases, could be carried out by a professional with at least 10 years work experience in the profession, after having completed suitable high school education;
5. have a contract of liability insurance in order to operate as a permanent EW.

A person cannot be appointed as a permanent EW if he/she has a barrier to entry in the civil service, or has been pronounced a risk to security as a legal consequence of a conviction, or has been banned from pursuing the profession at the time at the time of requesting an appointment as a permanent EW.³

The ability of a candidate to perform the duties of a permanent EW should be determined on the basis of reports on vocational training conducted by a mentor who is a permanent EW in an appropriate discipline and under whose supervision the candidate must complete at least five expert testimonies, findings and opinions.³

The procedure for the appointment of a permanent EW starts with submitting an application to the President of the County Court or Commercial Court (depending on the applicant's place of residence). The application should be accompanied by a list of the candidate's published scientific and professional papers. Before submitting the application, the candidate should pass the vocational training program. Vocational training should be carried out according to the program that has been developed by the appropriate professional association – Croatian Chamber of Dental Medicine (CCDM) for doctors of dental

medicine (dentists), and Croatian Medical Chamber (CMC) for medical doctors. Professional training of specialists with a valid license from the CCDM and CMC cannot be longer than six months; and professionals with an academic position of assistant professor, associate professor, or full professor cannot be longer than three months. Specialists in legal medicine with a valid license of CMC are not obliged to complete any training.²

The County or Commercial Court refers a request from an applicant to the CCDM to nominate a mentor who will conduct the training of the candidate. The Executive Board of CCDM selects a mentor and informs the Court. A mentor will be a dentist who is appointed as a permanent EW of the County or Commercial Court, who is a member of good standing with the CCDM, who has provided at least five expertise testimonies independently, and who has the same or higher level of educational degree as the candidate.⁵

The training program includes both a theoretical and a practical part. In the theoretical part the vocational training mentor introduces the candidate to the professional dental literature and all legal and regulatory acts relating to the judicial expertise for which the candidate is being

trained. The practical part of professional training covers all related data collection, access to the trial, etc. Under the mentor's supervision, the candidate is required to complete at least five expert testimonies and make findings and opinions. After the training has been completed, the mentor compiles a report on the effectiveness and qualifications of the candidate to present to the Executive Committee of the CCDM. Based upon this report, CCDM is obliged, within one month after having received it, to prepare a final written opinion on the effectiveness of the completed vocational training and qualifications of the candidate and to submit it to the President of the appropriate County or Commercial Court. The candidate bears all costs of performing the professional training (HRK8000 +VAT which is approximately €1100). As a compensation for providing professional training, the mentor is entitled to the amount of HRK2500 (approximately €350), which is paid from the abovementioned costs.⁵

Prior to appointment as a permanent EW, the candidate is obliged to submit proof of compulsory liability insurance that meets the demands for damages that could result from his/her work as a permanent EW. The candidate must be covered during the entire period in which he/she is appointed

as a permanent EW. The minimum sum insured is at least HRK200,000. After these requirements have been met, the President of the Court considers the candidate's request and issues the final decision.²

A permanent EW is obliged to treat all knowledge acquired during the performance of his or her tasks as confidential. In Croatia, it is prohibited for a permanent EW to have self-promotion on either public or private land, or to advertise services, except for the usual signs at the office of the permanent EW.

On appointment, an EW takes an oath in front of the President of the Court that appointed him/her and is thus able to serve in both civil and penal cases. After the expiry of the term of appointment, a permanent EW may be re-appointed for an additional term of four years. The request for re-appointment should be completed no later than 30 days prior to the expiration of the period for which he/she is assigned.²

DENTAL EXPERTS IN THE ITALIAN JUDICIAL SYSTEM

In the Italian judicial system there is no specific educational process required by the Court for appointment as an EW. A dentist who wishes to apply to become a

registered EW has to fulfil the following requirements and have

1. Italian citizenship and residence in the Court province;
2. special technical competence in a specific discipline (documents as proof);
3. registration to the professional Medical/Dental Order;
4. a clear criminal record certificate;
5. moral quality (high ethical standards).

Moral quality is not only identified as absence of penal convictions or proceedings, but also the presence of a highly ethical way of life both in private and professional environments. The application is evaluated by a committee consisting of the Court President for the geographical area of the candidate, the Province Prosecutor Attorney and a representative of the professional Order of the candidate. These committees may evaluate applications differently in different location. Some consider a degree in dental medicine/science sufficient to demonstrate the 'special technical competence' requested by law (Art. 61 of the civil code). However in the Court of

Rome the candidate will be eligible only with a total of more than 30 points, calculated from professional experience in complex cases, publications of articles, monographs, books, presentations as a lecturer or a speaker in universities, institutes or specialization courses.⁶ Finally, a reasonable period of five years of professional work is also required.

Every Court holds an additional list of expert witnesses for penal cases. In this case, an EW must have five years of enrolment on the civil cases list. The lists of expert witnesses are revised every four years. These are the only lists from which the Judges may choose an EW unless there are none available or there is a possible conflict of interest. In this case the Judge can appoint an EW from other Court province. Only the Court President may authorize the appointment of an expert in a specific field who is not registered on the EW list.

The registered EW is obliged to accept a case given by a Judge, unless there is a conflict of interests or he/she lacks the specific competence/knowledge.

ETHICAL CONSIDERATIONS

An EW has a duty to be unbiased, independent and objective in the evidence

and in the analysis provided. The opinions given should relate solely to the facts and to the queries of the case in question. It is for other professionals to apportion blame or deliver criticism. An EW needs to be particularly mindful of the risks involved in acting in cases involving former clients or colleagues with whom the EW has professional or personal relationships.⁷ If there is a conflict of interest of this kind, or it appears that there may be one, the EW concerned should refuse to testify.

Finally, once appointed by the Court an EW should verify that he/she has sound knowledge of the subject matter in the dispute and of the legal procedures pertaining to that specific type of legal evaluation (mediation, technical opinion, preliminary technical assessment). The dental EW must be aware that he/she will not be able to formally express any technical evaluation outside his/her area of expertise for example within the various dental specialist disciplines (particularly in oral surgery and orthodontics) or in relation to other medical disciplines. In these circumstances an EW can either refuse to testify due to lack of knowledge/competence or ask the Judge for auxiliary collaborations with other professionals with special expertise.

The ethical requirements of a Croatian EW are clearly defined in Article 30, Statute of the Croatian Association of Court Expert Witnesses, (adopted in 2011, Feb 12th) entitled *The Code of Ethics*.⁸ The basic five principles in relation to an expert witness's work are:

1. The principle of behaviour– an EW should carry out his/her duties professionally, honestly, truthfully, and should be able to be fully relied upon;
2. The principle of responsibility – an EW should accept only those activities that he/she considers can be carried out in a flawless manner;
3. The principle of trust – an EW should accept obligations in a manner that serves the public interest, respects public trust and show a commitment to the profession;
4. The principle of authenticity – an EW must perform his/her duties in the most reliable way to make, keep and strengthen public confidence;
5. The principle of professional attention, or professionalism – an EW must comply with professional and ethical standards, must

constantly improve his/her knowledge, increase the quality of services and perform to the best of his/her abilities.

In the Italian judicial system rights and duties of an EW are stated under the law and ethics provisions relating to medico-legal consultation that is defined by Article 62 of *Medical Code of Ethics*⁹ and summarized as follows:

1. The activity of the medical examiner requires high moral standing and professional awareness regarding the ethical-legal and deontological responsibilities involved and an awareness in avoiding any kind of influence or pressure from external technical resources;
2. The taking on of any case must correspond with an adequate medico-legal and scientific knowledge so that all judicial requirements of the case under examination may be fulfilled (...);
3. In particularly complex cases the medical examiner may seek consultancy from a colleague who has a proven history of experience and competence in the involved

discipline. The medial examiner in charge assumes full professional responsibility for an such consultancy;

4. General practitioners may not exercise medico-legal responsibilities (...) in cases where they have directly assisted or treated, or those in which there exists an employment contract with the health establishment involved in the judicial enquiry;
5. Consultants should interpret the scientific evidence which has been made available by the claimant, with both objectivity and logical scientific reasoning as well as with a prudent evaluation relative to the conduct of the involved subjects;
6. The completion of unlawful medico-legal services (...) constitutes not only as an illegal offence punishable by law, but also as indecorous conduct towards the profession itself.

DISCUSSION AND CONCLUSION

Clinical dentistry and dental law are two different disciplines although both related

to dentistry. As an EW, a dentist has precise responsibilities and if found wanting can be subjected to either civil or criminal proceedings depending on judicial system.¹⁰⁻¹²

The role of an EW is not just writing reports, but it involves much else besides. To fulfil their duties adequately it is vital that an EW is involved in the legal and/or forensic field in order to keep up to date with current thinking and developments in this field, and to attend relevant continuous educational training with lawyers, medico-legal doctors and other forensic experts. The Croatian judicial system seems keen to promote an appropriate level of education and experience in the candidate's medico-legal field prior to registration on the EW list. On the other hand, the Italian judicial system seems to rely on the principle that if an applicant is a dental professional it implicitly means that they have enough training for appointment as an EW. However, very few dental schools provide forensic odontology and legal dentistry as a part of the university curriculum. Italy offers several master's programs plus annual and short courses in legal medicine, forensic sciences and forensic odontology. In addition, Italy seems to be the only country in the world with four national associations/societies related to forensic

dentistry.¹³⁻¹⁶ Although at first glance this situation could seem to represent a dispersion of initiatives and energies, it could also be seen as a strong will of the Italian forensic dental community to ensure a proper training in forensic dentistry and an improved recognition of odontologists in the various fields of dental damage assessment and forensic investigation.

This initial comparison of two different judicial systems reveals the importance of quality control and quality assurance in the registration of Dental Expert Witnesses in Courts and highlights the need for collaboration with medico-legal doctors. Civil and criminal cases involving any aspect related to dentistry or odontology should ideally require medico-legal doctors

to work in collaboration with an experienced dentist who is an EW so that medical doctors are not providing advice outside their area of expertise. For the same reason it would not be wise for a dentist to work as an EW in dental cases, either alone or in support of medico-legal doctors, without having had specific training and expertise in the judicial disciplines relating to dental damages.

In the opinion of the authors, dentists without any specialist training in forensics and law should refrain from any involvement in civil or criminal cases, leaving the provision of expert testimony to those odontologists qualified in forensic sciences and medico-legal doctrines.

REFERENCES

1. Council of Europe, Committee of Ministers, Resolution (75) 7 on compensation for physical injury or death, 14 march 1975 [Internet]. [updated 2012 Jul 8; cited 2012 Sep 29]; Available from: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1390303&SecMode=1&DocId=651122&Usage=2>.
2. Croatian Association of Court Expert Witnesses – pravilnik o stalnim sudskim vještacima [Internet]. [updated 2012 Jul 8; cited 2012 Sep 28]; Available from: <http://www.sudski-vjestaci.hr/clanci/aktualno/pravilnik-o-stalnim-sudskim-vjestacima/pravilnik-o-stalnim-sudskim-vjestacima-37.html>.
3. Croatian Association of Court Expert Witnesses – pravilnik o izmjenama i dopunama pravilnika o stalnim sudskim vještacima [Internet]. [updated 2012 Jul 8; cited 2012 Sep 28]; Available from: <http://www.sudski-vjestaci.hr/clanci/aktualno/pravilnik-o-stalnim-sudskim-vjestacima/pravilnik-o-izmjenama-i-dopunama-pravilnika-o-stalnim-sudskim-vjestacima-49.html>.
4. Croatian Association of Court Expert Witnesses – pravilnik o izmjenama i dopunama pravilnika o stalnim sudskim vještacima [Internet]. [updated 2012 Jul 8; cited 2012 Sep 28]; Available from: <http://www.sudski-vjestaci.hr/clanci/aktualno/pravilnik-o-stalnim-sudskim-vjestacima/pravilnik-o-izmjenama-i-dopunama-pravilnika-o-stalnim-sudskim-vjestacima-49.html>.
5. Hrvatska komora dentalne medicine – pravilnik o načinu obavljanja stručne obuke kandidata za stalnog sudskog vještaka [Internet]. [updated 2012 Jul 8; cited 2012 Sep 28]; Available from: <http://www.hkdm.hr/?page=akti-pravilnik8>.
6. Rossetti M. *Il CTU*. Milano, Giuffrè Ed.; 2006. p. 43.
7. Kolczynski PJ. How To Be A Successful Expert Witness, *ExpertPages.com's Knowledge Base*, 1997. Available from: http://expertpages.com/news/how_to_be_a_successful_expert_wi.htm [Cited 23 Sept 2012].
8. Croatian Association of Court Expert Witnesses – etički kodeks sudskih vještaka [Internet]. [updated 2012 Jul 8; cited 2012 Sep 28]; Available from: <http://www.sudski-vjestaci.hr/clanci/o-nama/normativni-akti/eticki-kodeks-sudskih-vjestaka-58.html>.
9. Medical Ethical Code 2006 - Codice di Deontologia Medica 2006 [Internet]. [updated 2006 Dec 16; cited 2012 Sep 28]; Available from: http://www.google.it/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&sqi=2&ved=0CCcQFjAB&url=http%3A%2F%2Fportale.fnomceo.it%2FPortaleFnomceo%2FdownloadFile.dwn%3Fid%3D60474%26version%3D0&ei=JjN3UIGxOYnTtAvtIDACw&usg=AFQjCNGuHKZPK0H43d2_rCIP-MAAi7I3Eg&sig2=eAurZXBdrmtYU2_tv5ijSA.
10. Nuzzolese E, Montagna F, Di Nunno N, De Leo D. *The responsibilities associated with expert witness assessment*. *Minerva Medicolegale* 2011;131(3): 67-73.
11. Introna F, Di Donno. La responsabilità del perito/CTU nei procedimenti per colpa medica. *Persona e danno*. Available from: http://www.personaedanno.it/cms/data/articoli/files/006464_resource1_orig.pdf [Cited 30 Sept 2012].

12. De Leo D, Montagna F. La responsabilità del consulente tecnico. In: Montagna F, De Leo D, Carli OP. *La responsabilità nella professione odontoiatrica*. ANDI Verona, Ed. Promoass; 1999. p 309-13.
13. Società Italiana di Odontoiatria Forense (SIOF) [Internet]. [updated 2012 Jul 8; cited 2012 Sep 30]; Available from: <http://www.siofonline.it>.
14. Società Italiana di Odontoiatria Legale ed Assicurativa (SIOLA) [Internet]. [updated 2012 Jul 8; cited 2012 Sep 30]; Available from: <http://www.siola.eu>.
15. Progetto odontologia forense (ProOf) [Internet]. [updated 2012 Jul 8; cited 2012 Sep 30]; Available from: <http://www.proofweb.eu>.
16. Accademia Italiana di Odontiatra Legale (OELLE) [Internet]. [updated 2012 Jul 8; cited 2012 Sep 30]; Available from: <http://www.oelle.org>.
