



NÖ Patienten- und
Pflegeanwaltschaft

PPA

Lower Austrian Patient Compensation Fund



Proceedings 2006



Table of Contents

I. Legal Basis – Origination and Development

1. Legal Basis
2. Principles of Compensation
3. The Commission

II. Compensation: Facts and Figures

1. Decisions in the Year 2006
2. Duration of Processing of Cases
3. Evaluation of Cases Prior to Involvement of Fund
4. Reasons for Involving the Fund
5. Classification of Cases by Disciplines
6. Amounts of Compensation Granted
7. Number of Cases

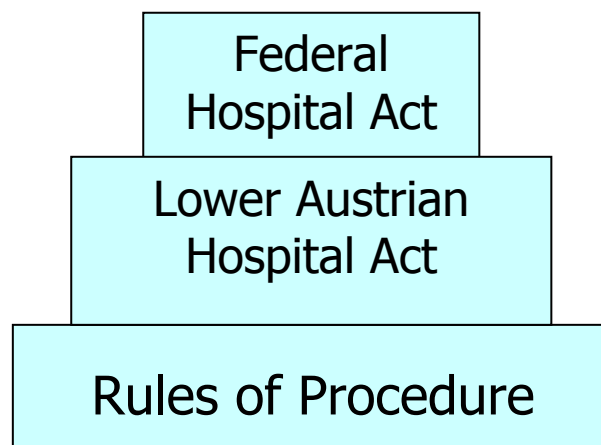
III. Principal Economic Data

1. Annual Balance
2. Development of Receipts and Expenditures

I. Legal Basis – Establishment & Development

1. Legal Basis

The Patient Compensation Fund was established in 2001 under the provisions of Section 27a, para. 5 and 6 of the Federal Act on Hospitals and Medical Institutions¹ and specifically implemented on provincial level with the sections 98 to 108 of the Lower Austrian Hospital Act.² In practical context, the Rules of Procedure provide for the detailed working basis of the Patient Compensation Fund. The Rules of Procedures were enacted on 11-09-2001 at the constituting meeting of the Patient Compensation Fund.



2. Principles of Compensation

The Patient Compensation Fund is no substitute for liability under civil law, but much rather it has been conceived as complementation and optimization of the currently applicable indemnification law. The fund has certainly not been created for providing financial support or relief to the hospital indemnity insurances and current development of the fund clearly shows that this has not been the case.

Much rather coverage is provided for any such cases expected to be without any success in a civil law suit because

¹ Federal Law Gazette I 5/2001.

² Provincial Law Gazette 9440-17.

- liability under civil law cannot be clearly attributed,
- a rare, serious complication has occurred, or
- a known complication has occurred in an extremely severe form and has caused significant damage ("catastrophic course").

Principally, coverage may be provided for any damage resulting from medical examinations or treatments or from failure to institute any such examinations or treatments in hospitals. However, coverage will not include the field of office-based physicians.

The financial means of the fund are derived from the patients themselves who will pay € 0.73 for each day of hospitalization (for a maximum of 28 days per year). These contributions are remitted by the hospitals to the Lower Austrian Healthcare and Social Funds (NÖGUS) from where they are collectively transferred to the Patient Compensation Fund.

3. The Commission

The Compensation Commission consists of the Chairman, Patient and Nursing Advocate *Dr. Gerald Bachinger*, and the following members:

- Provincial Court President *Dr. Kurt Leitzenberger* (Judge)
- *Prof. Prim. Dr. Paul Bratusch-Marrain* (Representative of the Working Group of Medical Directors)
- *Mag. Elisabeth Kapral* (Head of the Department Hospital Law at the Office of the Lower Austrian Provincial Government)
- *Kurt Hiess* (Governing Body of Lower Austrian Self-Help Groups)

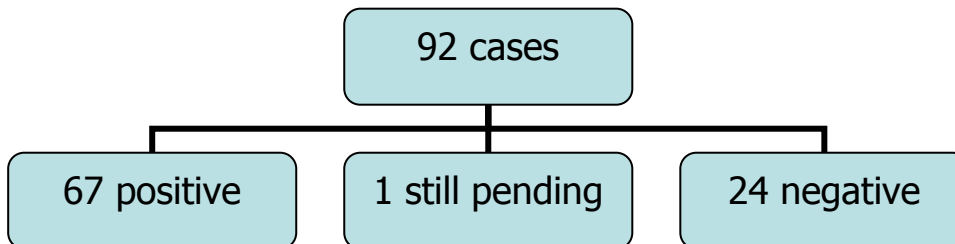
For each member a substitute member has also been appointed, namely:

- *Dr. Gabriela Jungblut* (Judge)
- *Univ. Prof. Prim. Dr. Georg Salem*,
- *Univ. Prof. Prim. Dr. Dieter Depisch*
- *Univ. Doz. Prim. Dr. Ernst Kutscha-Lissberg*
- *Senior Resident Dr. Peter Muckenhuber*
- *Mag. Robert Bruckner* (Department Hospital Law at the Office of the Lower Austrian Provincial Government)

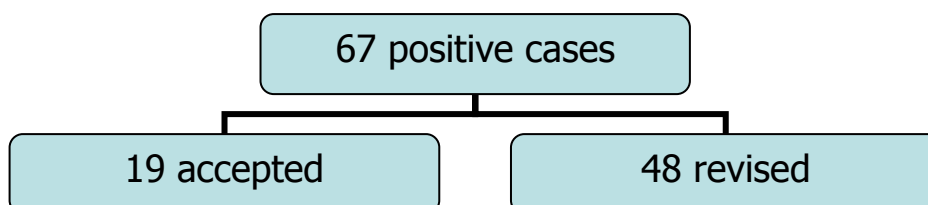


II. Compensations: Facts and Figures

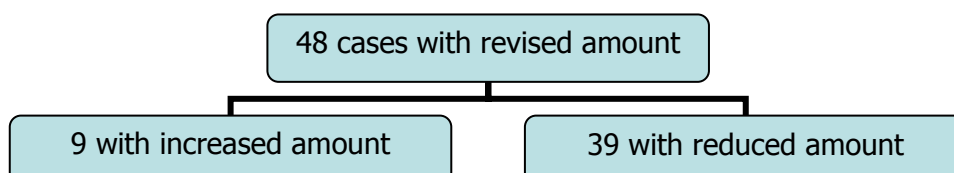
1. Decisions in the Year 2006



An overall 92 cases were submitted to the Fund after evaluation by the Lower Austrian Patient and Nursing Advocacy for liability under civil law had shown that such liability was likely to be excluded. In 67 of these cases the Commission awarded compensation, while 24 cases were rejected as they did not fulfill the requirements for compensation payment. One case has not yet been decided as additional evidence needs to be clarified.



For 19 of the 67 cases with a positive decision the Commission accepted the compensation coverage proposed by the Lower Austrian Patient and Nursing Advocacy.



In 48 cases the amount of compensation was revised and the compensation awarded was increased in 9 of these cases and reduced in the remaining 39 of the cases. The reasons for a reduction of the

Lower Austrian Patient Compensation Fund - Proceedings 2006

compensation mostly involved the fact that part of the health damage the patients had suffered had been the result of the underlying disease itself and not of the occurrence of the complication or of a malpractice potentially being subject to liability.

The reason for an increase of the amount of compensation was mostly the presence of damage expected to be persisting and permanent.

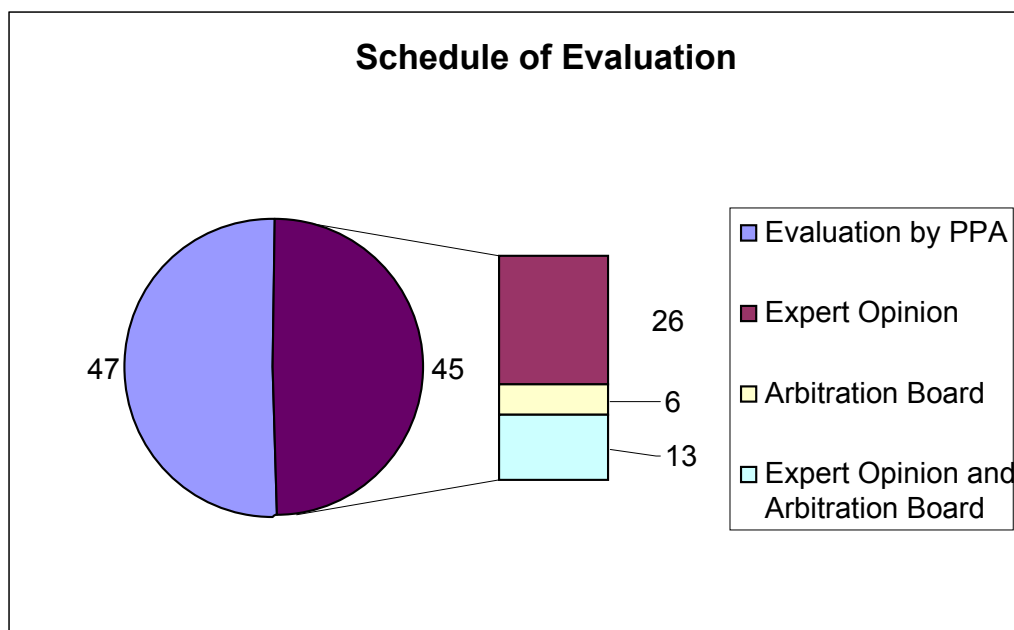
2. Duration of Processing of Cases

The average duration of processing of the cases was 8.5 weeks. During this time the patient affected was invited for at least one discussion of the evaluation of the case by the Lower Austrian Patient and Nursing Advocacy and of the potential involvement of the Patient Compensation Fund. Upon consent by the patient affected the information required was collected using an appropriate written form completed in telephone or personal contact with the patient. This evaluation is focused on the following issues:

- a) How do the persons affected currently feel? Are there still any sequelae of the damage persisting and how do these affect professional/occupational and social/leisure life? Do the persons require assistance in coping with everyday activities?
- b) Did the damage involve any loss of income or earnings? If yes, to what extent?
- c) What kind of expenses has the damage suffered involved? Examples of such expenses include retentions, travel expenses for treatments and examinations, costs of nursing and assistance unless such expenses are covered by any other funds or programs.

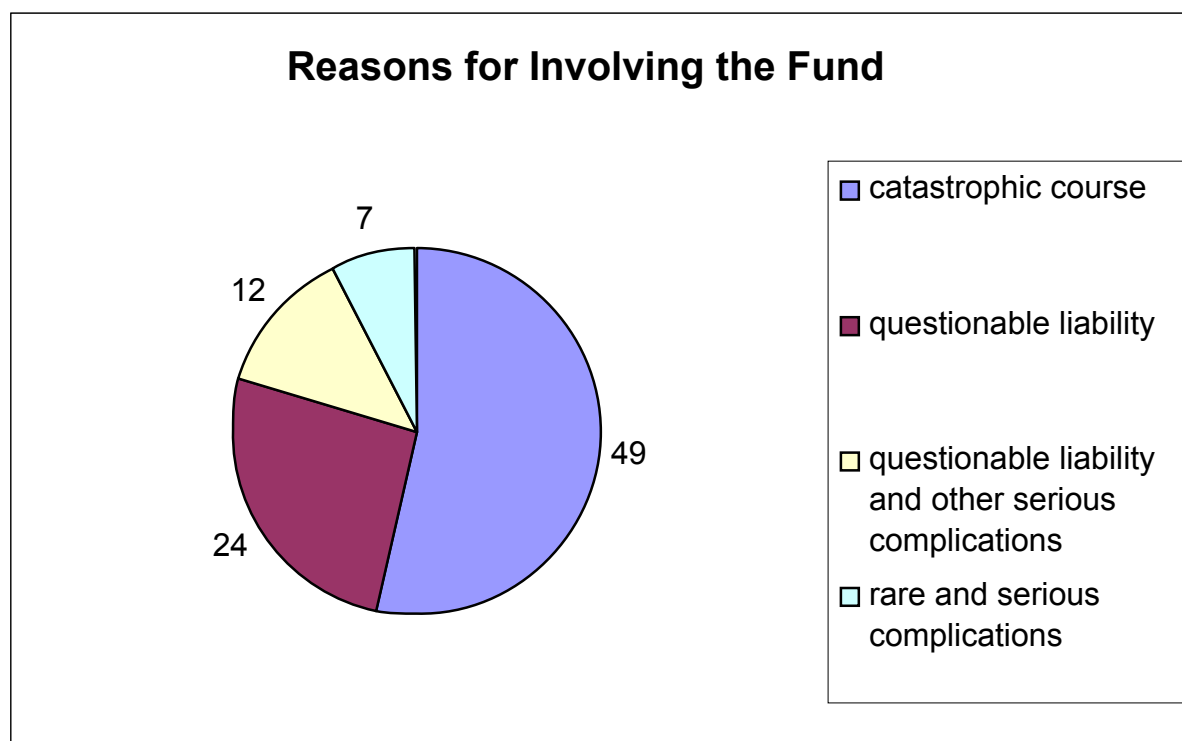
Finally, the case was summarized, presented to the Commission in writing together with the documentation completed and reviewed and discussed in the respective meeting of the Commission. This was followed by a recommendation to the chief executive of the Fund regarding payment or non-payment.

3. Evaluation of Cases Prior to Involvement of Fund



In 47 cases preliminary examination was exclusively done by the Lower Austrian Patient and Nursing Advocacy, in 45 cases additional other measures were taken. In 13 cases, submission to the Fund had been preceded by both an expert opinion and presentation to the arbitration board of the Lower Austrian Chamber of Physicians. In 26 cases an expert opinion (without arbitration board) had been the basis for further processing. Six cases had been reviewed by the arbitration board (without expert opinion).

4. Reasons for Involving the Fund

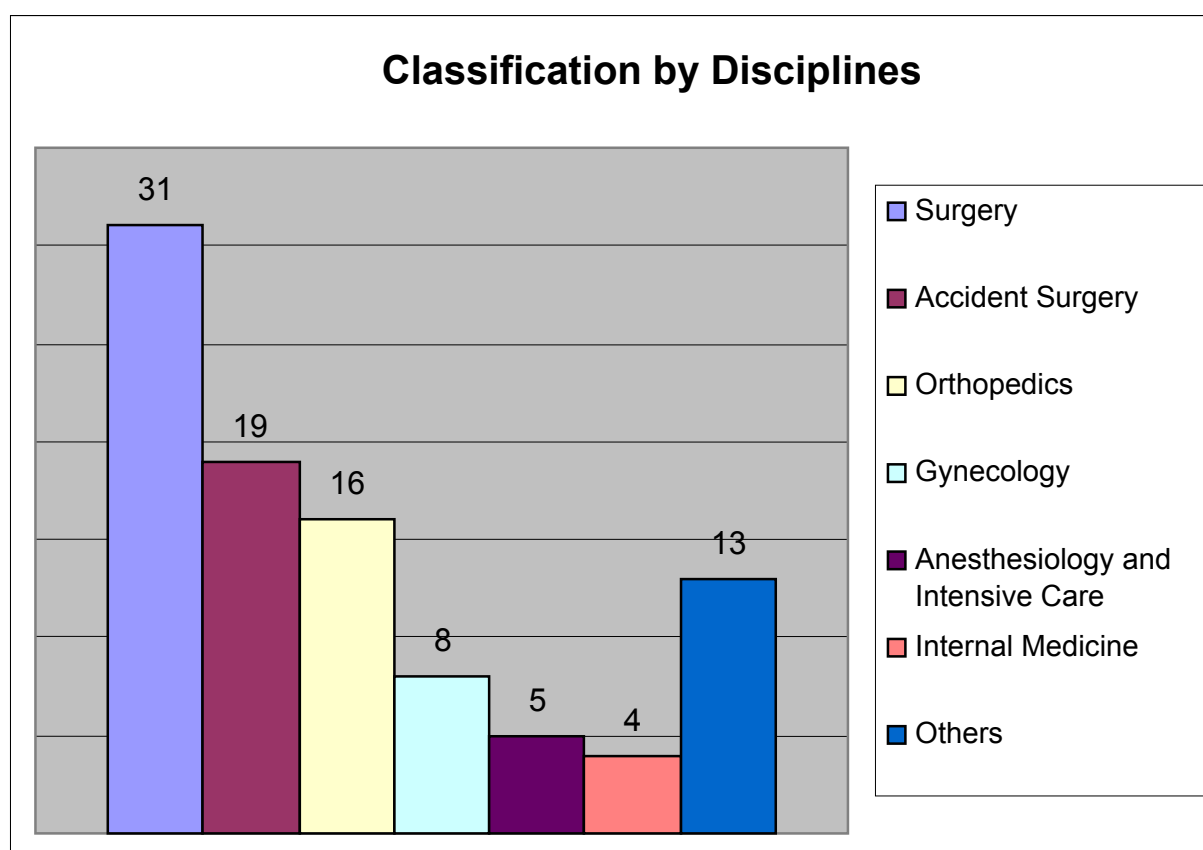


In 49 cases the Compensation Fund was involved because of the catastrophic course of the complication. In 24 cases there were assumptions of a potential liability, but there was no adequate clarification of any action liable for damages. In 12 cases there was both questionable liability and extremely serious complications. In seven cases the Fund was involved because of the serious (but clarified) nature of the complication.

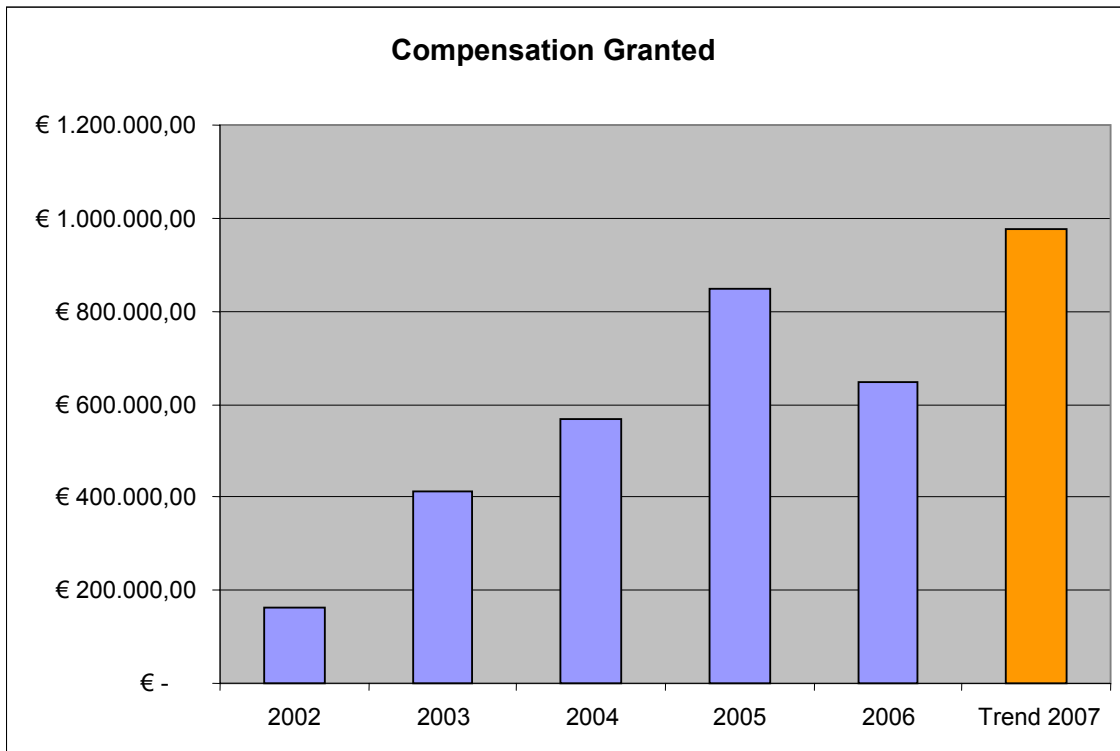
5. Classification of Cases by Disciplines

Of the cases submitted to the Fund, 31 cases involved surgery, 19 cases accident surgery and 16 cases orthopedics. 8 cases concerned anesthesiology and intensive-care medicine and 4 cases involved procedures in the course of treatment in a Department of Internal Medicine. The remaining cases derived from various other disciplines without any significant accumulation of a specific discipline. Some cases involved multiple disciplines.

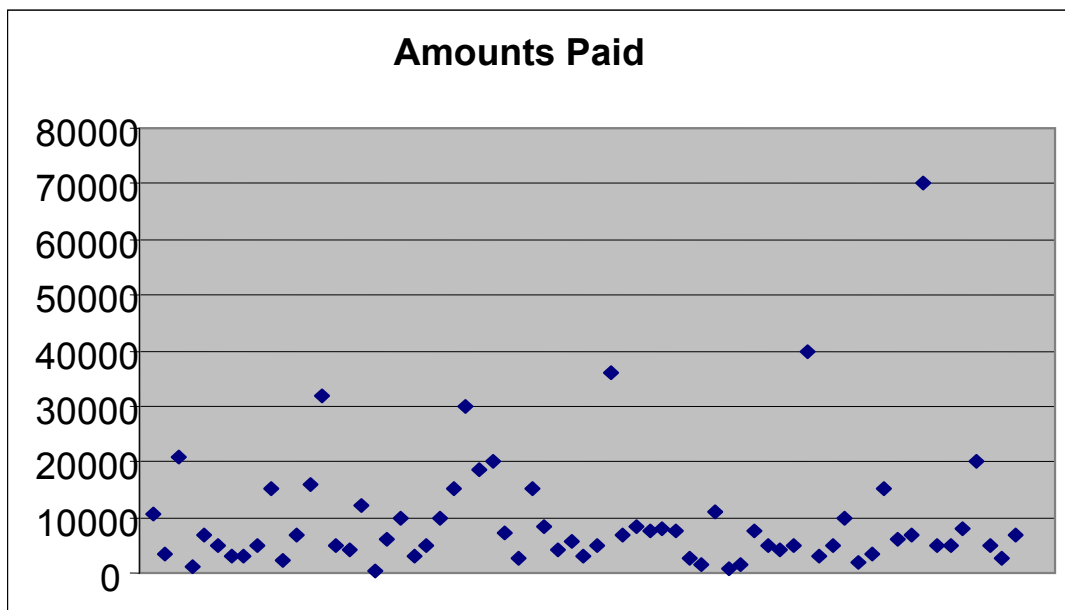
As already seen in previous years, it was especially the surgical disciplines that took a major role in the work of the Compensation Fund, which certainly is not surprising considering the highly interventional and partly also extremely risk-prone treatment approach in this discipline.



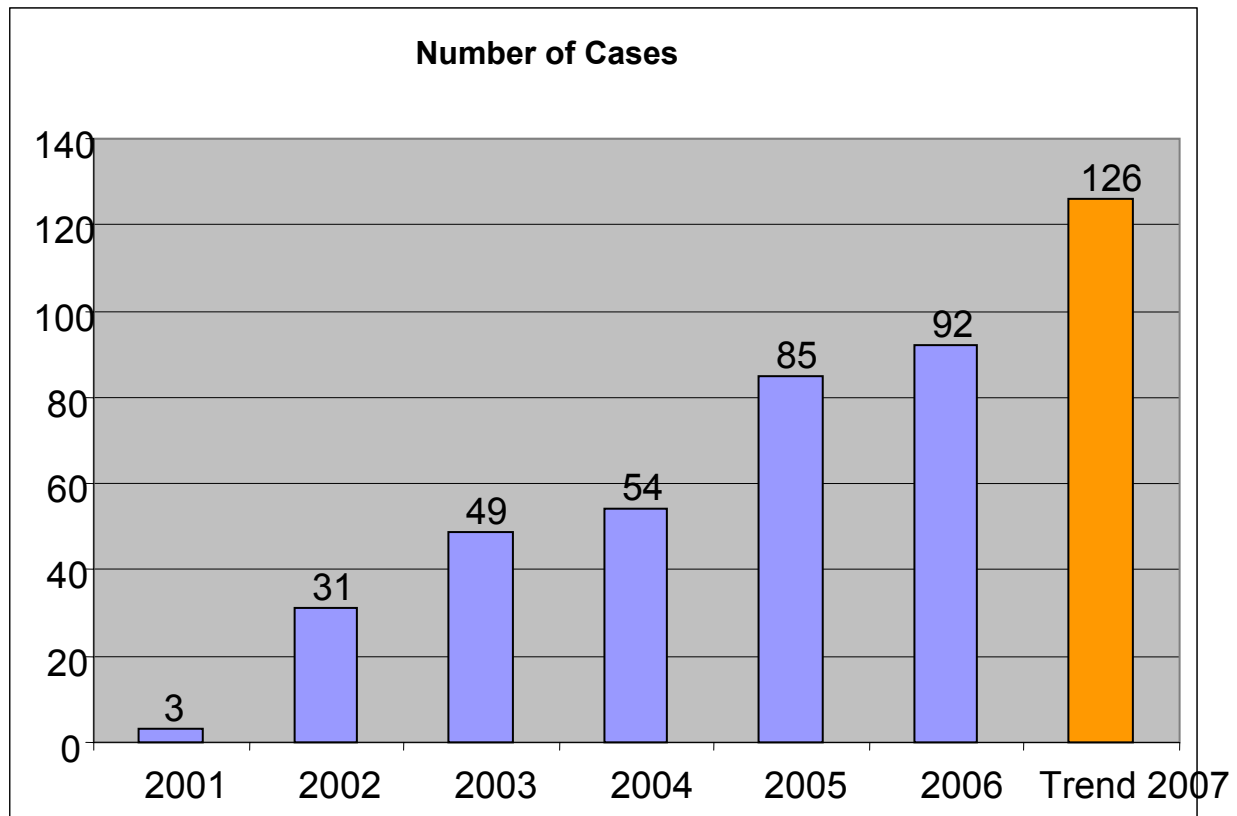
6. Amount of Compensation Granted



Overall, compensations amounting to € 648,163.14 were awarded and paid by the Fund. The highest single compensation paid was € 70,000. The average compensation payment was € 7,122.70.



7. Number of Cases per Year



In the year 2006 92 cases were submitted to the fund representing an increase of 8.2% in cases submitted as compared with the 85 cases in the previous year. If the current trend is to continue another massive increase of case number and payments must be expected for the current year.

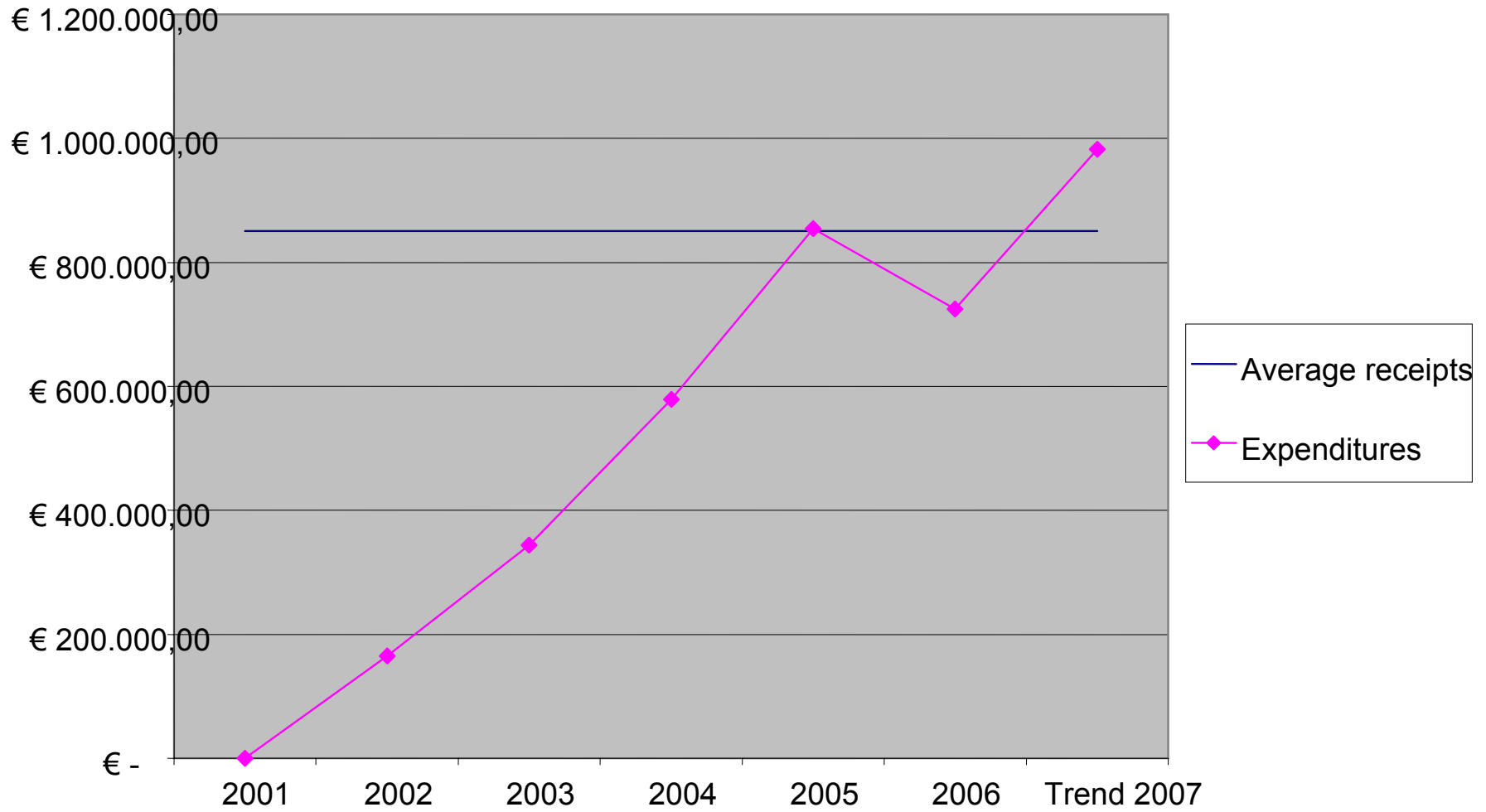
III. Principal Economic Data

Annual statement

Receipts /Expenditures until 31-12-2006:				
	Current acc.	Revenue acc.	Reserves	TOTAL
NÖGUS	€ 776.826,26	-	€ -	€ 776.826,26
Capital gains	€ 13.376,25	-	€ -	€ 13.376,25
Interest earned	€ 148,15	€ 4.895,15	-	€ 5.043,30
Carried forward	€ 390.500,00	€ 800.000,00	-	€ 1.190.500,00
Total receipts	€ 1.180.850,66	€ 804.895,15	-	€ 1.985.745,81
Compensations	€ 718.863,15	-	€ -	€ 718.863,15
Taxes	€ 37,04	€ 1.223,78	-	€ 1.260,82
Expenses	€ 4.275,56	€ 40,00	-	€ 4.315,56
Carried forward	€ 800.000,00	€ 390.500,00	-	€ 1.190.500,00
Total expenses	€ 1.523.175,75	€ 391.763,78	-	€ 1.914.939,53
Balance:	-€ 342.325,09	€ 413.131,37	-	€ 70.806,28
Total receipts:	€ 795.245,81			
Total expenses):	€ 724.439,53			
Annual balance	€ 70.806,28			

Ermittlung des neuen Vermögensstandes:				
	Current acc.	Revenue acc.	Reserves	
Financial position 31-12-2005:	€ 344.879,58	191,41	€ 1.500.752	89
Balance 2006:	-€ 342.325,09	€ 413.131,37	-	
New position 31-12-2006	€ 2.554,49	€ 413.322,78	€ 1.500.752	89
Total assets	€ 1.916.630,16			

Receipts - Expenditures



Lower Austrian Patient Compensation Fund - Proceedings 2006