Medical Malpractice in Neurosurgery: A Comprehensive Analysis

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BACKGROUND: Of all specialists, neurosurgeons have the highest probability of facing a medical malpractice claim. Here we report the first specialty-wide review of malpractice claims in neurosurgery performed using a well-established national online legal database.

METHODS: The Westlaw legal research service (Thomson Reuters, Eagan, Minnesota, USA) was queried for jury verdicts and settlements related to neurosurgery and medical malpractice between 1985 and 2015. Case files were examined, and factors recorded included the age and sex of the patient, the state and year in which the verdict was reached, defendant specialties, award payouts, and alleged reasons for malpractice. Case files were sorted into neurosurgical subspecialties based on the nature of the condition and the type of treatment administered.

RESULTS: A total of 516 cases were identified, and 343 cases were analyzed. A defendant’s verdict was reached in 165 (48.1%) cases, and a plaintiff’s verdict was reached in 93 (27.1%) cases. A settlement was reached in 81 cases (23.6%). The median payout for plaintiff’s verdicts was $2,550,000 (range, $80,000 – $216,849,187), and that for settlements was $1,300,000 (range, $100,000 – $13,300,000). Procedural error (45.5%), a failure to diagnose (41.4%), or a failure to treat (42.9%) were the most commonly cited reasons for litigation. Neurosurgeons accounted for 21.1% of defendants. The median plaintiff award payout was highest for pediatric cases ($10,100,000).

CONCLUSIONS: A defendant’s verdict was reached in nearly one-half of the cases. In instances where a plaintiff’s verdict was reached, large payouts were common, especially in pediatric and cerebrovascular cases. An emphasis on reducing procedural error, and making timely differential diagnoses, may reduce future litigation.

INTRODUCTION

Rising malpractice premiums and fear of litigation are imposing both an economic and psychological toll on US physicians and the healthcare system as a whole.¹ A recent study assessing malpractice risk by physician specialty found that 19.1% of practicing neurosurgeons face a malpractice claim each year, the highest proportion among the 25 specialties surveyed. In the suits that were won by plaintiffs, indemnity payments averaged nearly $350,000.² These factors contribute to physician burnout and may impact physician behavior, resulting in the practice of “defensive medicine,” which is estimated to contribute an additional $60 billion in healthcare expenditures each year.³

In a survey of more than than 1000 practicing neurosurgeons across the U.S., researchers found that nearly three-quarters of respondents order extraneous imaging studies and laboratory tests in an effort to reduce the perceived risk of medical malpractice claims.¹,⁴ This adds a tremendous economic burden on the healthcare system (nearly 2.4% of the annual budget),⁵ without...
necessarily improving the quality of care delivered by the health system. This problem has become increasingly significant as governments and funders of healthcare emphasize value-based healthcare solutions. Given the highly litigious environment in which neurosurgeons function, an assessment of why patients and/or plaintiffs decide to pursue legal action may help surgeons avoid such claims in the future. Here we queried a comprehensive legal database to examine neurosurgical medical malpractice claims, paying attention to differences among the various neurosurgical subspecialties. This is the first study to date to qualitatively assess medical malpractice claims across the field of neurosurgery.

METHODS

Search Methodology
The Westlaw legal research service (Thomson Reuters, Eagan, Minnesota, USA), a collection of 40,000 online legal databases that provide access to court documents and records compiled by individual attorney editors and commercial vendors, was used to locate state and federal jury verdicts and settlements (court decisions) related to malpractice litigation in neurosurgery. The database is widely used by lawyers and law students for use in legal research, and is one of the largest and most comprehensive databases for legal information in the U.S.6,7 It has been used previously to characterize the expertise of neurosurgeons who served as expert witnesses in medical malpractice cases.8 It also has been used to characterize medical malpractice claims related to specific procedures within otolaryngology, plastic surgery, and neurosurgery.8,9,10 Legal documents (including trial court orders, court dockets, jury verdicts and settlements) from all U.S. states and territories are available via the Westlaw database; however, reporting of cases is optional and at the discretion of individual judges and court systems. Thus, our present analysis is limited to cases submitted to Westlaw and is not representative of all neurosurgical malpractice cases in the U.S. Importantly, the cases that progress to a trial by jury (and are captured by Westlaw) represent only a fraction (55.2%) of all medical malpractice claims filed.11 Claims that are dismissed by the court before reaching trial, resolved by the 2 parties outside of court, dropped before being formally registered within the court system, or are filed in local court systems, are not available through Westlaw.

In this study, all available state and federal neurosurgical jury verdicts and settlements in the U.S., over a 31-year period (1985–2015), were considered. Boolean-based searches, enabled by Westlaw, were performed using a combination of search parameters that yielded the highest number of individual cases. A search incorporating the key words “medical malpractice” and “neurosurgery” met this criterion. All cases were manually reviewed for the requisite data.

Data Collection
Factors including the age and sex of the plaintiff or patient, state and year in which the verdict was reached, defendant specialties, award payouts, and alleged reasons for malpractice were recorded from the individual case files. Alleged reasons for malpractice were characterized into distinct categories including failure to obtain informed consent, failure to diagnose in a timely manner, failure to treat, failure to order necessary tests and/or refer a patient, misinterpretation of a test, unnecessary surgery, procedural error, and patient death. Multiple reasons could be cited for individual cases. Case files were sorted into neurosurgical subspecialties based on the nature of the condition and the type of treatment administered and included cerebrovascular, functional, pediatric, skull base, spine, and neuro-oncology. All other routine performed neurosurgical procedures were grouped into a separate “general” neurosurgery category. Duplicate case files, and files pertaining to the management and/or treatment of non-neurosurgical conditions, were excluded from analysis.

RESULTS

Search Results and Patient Demographics
A total of 516 cases were identified using the initial search parameters. Following removal of 33 duplicate case files and 140 claims unrelated to neurosurgical conditions, 343 cases spanning from 1985 to 2015 remained for analysis. Among these, claims related to spine (n = 199; 58.0%), general (n = 54; 15.7%), and cerebrovascular (n = 38; 11.1%) procedures were most common (Table 1). The median age of the plaintiff(s) and/or patients referenced in all claims was 45.0 years. One hundred and sixty-seven (52.2%) patients were male, and 153 were female (47.8%). Gender was not reported in 23 cases.

Jury Verdicts, Settlements, and Awards
A defendant’s verdict was reached in 165 cases (48.1%). A plaintiff’s verdict was reached in 93 cases (27.1%), with a median payout of $2,550,000 (range, $80,000–$216,849,187). Of the remaining 85 cases, a settlement was reached between the parties in 81, with a median payout of $1,300,000 (range, $100,000–$13,300,000). A mixed verdict was reached in 4 cases (1.2%), with a median payout of $1,264,668 (range, $230,000–$23,442,602).

Alleged Basis for Litigation
The 3 most commonly cited allegations of malpractice were procedural error (156 cases; 45.5%), a failure to treat (147 cases; 41.4%), or a failure to diagnose (142 cases; 41.4%). Sixty-six cases (19.2%) involved the death of the patient. The least commonly cited allegations were failure to obtain informed consent (7.9%) or misinterpretation of a test (9.6%).

Chronological Distribution
The cases spanned a 31-year period. The greatest number of claims were observed in 2005–2009 (n = 139; 40.5%). Subsequently, there was a decrease in the number of claims. Between 2010 and 2015, 60 cases (17.5%) were observed (Table 1).

Geographic Distribution
The greatest number of neurosurgical malpractice claims in our study were filed in Florida (87), California (84), New York (38), Texas (27), and Illinois (16) (Table 2).

Co-Defendants
A total of 522 co-defendants were listed across all claims. Of these, 110 (21.1%) were neurosurgeons. Emergency room (ER) physicians
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