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Review of Ophthalmology Medical Professional Liability Claims in the United States from 2006 through 2015

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Purpose: To describe characteristics of closed medical professional liability (MPL) claims against ophthalmologists in the United States.

Design: Retrospective analysis of MPL claims from 2006-2015. Data were obtained from the Physician Insurers Association of America (PIAA) Data Sharing Project (DSP). Comparison was made between ophthalmology and all healthcare specialties for physician demographics, prevalence and costs associated with closed claims, and resolution of claims. The most prevalent chief medical factor, presenting medical condition, operative procedure, outcomes, and resolution of ophthalmology claims were compared between the 2006-2010 and 2011-2015 periods.

Participants: From 2006-2015, 90 743 MPL claims were closed: 2.6% (2325/90 743) of closed claims and 2.2% (564/24 670) of all paid claims were against ophthalmologists.

Methods: Retrospective analysis of MPL claims captured by the PIAA DSP over a 10-year period.

Main Outcome Measures: Subspecialty pertaining to the claim, number of claims closed and paid, indemnity paid, allocated loss adjustment expenses, chief medical factor, presenting medical condition, operative procedure, outcome, and resolution.

Results: Only 24% of closed claims against ophthalmologists resulted in payment. Two-thirds were dropped, withdrawn, or dismissed. Ninety percent of claims that received a verdict were favorable toward the ophthalmologist. Cataract and cornea surgeries were the most prevalent and most costly operative procedures, accounting for 50% of all claims and $47 641 376 and $32 570 148 in total paid indemnity, respectively. Average indemnity was higher for corneal procedures ($304 476) than vitreoretinal procedures ($270 141) or oculoplastic procedures on the eyelid ($222 471) or orbit and eyeball ($183 467). The prevalence and cost of claims related to endophthalmitis declined from 2006-2010 (n = 38/1160 [3.3%]; average indemnity, $516 875) period to the 2011-2015 (n = 26/1165 [2.2%]; average indemnity, $247 083) period. Average indemnity paid ($280 227 vs. $335 578) and amount spent on legal defense ($41 450 vs. $46 391) was slightly lower among ophthalmologists compared with all healthcare specialties, respectively.

Conclusions: Ophthalmology has a relatively low number of malpractice claims reported compared with other healthcare specialties and shows less spending on average indemnity and defense. Further studies are needed to investigate the reasons for the higher prevalence of claims related to cataract and corneal surgeries and the higher average indemnity paid for corneal procedures relative to vitreoretinal or oculoplastic procedures. *Ophthalmology 2017;■:1–11 © 2017 by the American Academy of Ophthalmology*

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Medical professional liability (MPL) refers to liability incurred whenever a healthcare professional is found to be negligent as a result of being outside of the standard of care or in providing due care to a patient. Medical professional liability (formerly referred to as *medical malpractice*) claims filed against physicians can lead to substantial monetary settlements and judgements on the order of thousands to millions of dollars per claim.[1,2] Medical liability accounted for an estimated 2.4% of healthcare spending in 2008 alone.[3] Physicians are more likely to practice defensive medicine when they perceive their liability risk to be high, and such shifts in behavior can contribute to escalating healthcare costs.[4,5]

As a high-volume medical and surgical subspecialty, ophthalmologists may be particularly at risk of malpractice lawsuits. Most studies examining patterns of malpractice claims in ophthalmology have focused narrowly on a specific subspecialty within ophthalmology,[6–8] on a single procedure or disease,[9–11] on a short time period,[12] or on a small sample.[13] Two recent studies that examined trends in ophthalmology negligence claims in the United Kingdom demonstrated that most claims were filed against cataract surgeons.[14,15] Several large studies of malpractice claims filed against United States physicians have been performed across multiple specializations.[16,17] To our knowledge, there has not been a recent analysis focused on

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ophthalmology malpractice claims in the United States using a nationally representative dataset to examine the causes of ophthalmology malpractice claims or their patterns of resolution relative to other subspecialties.[18]

We sought to describe the landscape of MPL claims filed against ophthalmologists in the United States over a 10-year period using physician-level MPL claims from a large independent MPL data registry of more than 30 specialty groups. The first aim of this study was to compare the characteristics of ophthalmologists with those of other healthcare specialists with closed claims and to evaluate the resolution of closed claims. The second goal of this study was to compare the number of claims reported and costs of closed claims for ophthalmologists over 10 years. The final aim was to assess the most prevalent chief medical factors, presenting diagnoses, operative procedures, and outcomes leading to ophthalmology MPL claims.

Methods

The Physician Insurers Association of America (PIAA) annually reports 10-year snapshots of cumulative anonymous data on all MPL claims contained within the Data Sharing Project (DSP), which is the largest independent MPL data registry in the United States.[19] The PIAA is an association of medical professional liability insurance companies that insure more than two-thirds of private practice physicians and dentists in the United States. The information in the PIAA DSP is provided voluntarily by a subgroup of United States-based MPL carriers who are members of the PIAA. Approximately 20 PIAA member companies voluntarily submit anonymous aggregate data to the DSP twice per year. The number of contributing member companies has varied during the existence of the DSP since 1985. Participating member companies do not report exposure data, such as the number of healthcare professionals they insure in a given year, thus precluding rate making or insurance pricing. The study complied with the Health Insurance Portability and Accountability Act and adhered to the tenets of the Declaration of Helsinki. Institutional review board approval was obtained from Duke University Medical Center.

The presenting medical condition and procedures performed for each claim were classified using the International Classification of Disease, Ninth Revision, Clinical Modification. The chief medical factor was coded following a standardized algorithm set by the PIAA to ensure consistency; it consisted of any act or omission by a healthcare professional that deviated from the standard of care for treatment or diagnosis, thus leading to an MPL claim.

Aggregate physician-level demographics, including age, gender, employment status, board certification status, medical training (United States or international), and practice type (institution, group, solo, or not specified), were compared between ophthalmologists and all healthcare specialties combined. The total number of closed claims, number of paid claims, paid-to-close percentage, total indemnity paid, average indemnity paid, and largest indemnity payment were compared between ophthalmology and each of the 29 other healthcare specialties. The resolution status of claims also was compared between ophthalmologists and other specialists. For ophthalmologists with MPL claims, PIAA provides the annual number of closed claims reported to the DSP, paid claims, and percentage of claims paid to close, as well as the associated total and average indemnity paid to the plaintiff for adjudicated damages, and total and average amount of allocated loss adjustment expenses (ALAE) between 2006 and 2015; to account for inflation, these dollar amounts were adjusted to 2015 United States dollars using the Consumer Price Index.

The term *claim* referred to any written or verbal demand for compensation in the form of money, services, or both, such as a lawsuit. A closed claim was a claim that was resolved, either with or without payment to the claimant. A settled claim was a claim or lawsuit that was filed and resulted in indemnity paid to the claimant. Some claims led to a lawsuit in which a verdict was issued in favor of either the plaintiff or the defendant. An Alternative Dispute Resolution (ADR)/contract is a claim or lawsuit settled through a contract or dispute resolution. The terms *dropped*, *withdrawn*, or *dismissed* characterized claims that did not result in indemnity paid to the claimant. Average indemnity was generated using the number of paid claims closed in the specified period as the denominator. A paid claim was a claim that was resolved with an indemnity payment to the plaintiff. Allocated loss adjustment expenses (ALAE) included any expenses associated with defense or cost containment in the process of adjudicating a claim or lawsuit. The average ALAE was generated using the number of closed claims in the specified period. The PIAA also provided a comparison of the most prevalent chief medical factors, presenting medical conditions, operative procedures, and outcomes of all closed ophthalmology claims between the 2006 through 2010 and 2011 through 2015 periods to evaluate longitudinal changes.

Results

From 2006 through 2015, a total of 90 743 closed malpractice claims were filed against 30 medical, surgical, and dental specialty groups according to the MPL registry. From these closed claims, 2325 (2.6%) were filed against ophthalmologists. Also, 2.2% (564/24 670) of all paid claims were against ophthalmologists.

Demographics, Medical Training, and Practice Type

Figure 1 shows the age, gender, board certification status, medical school type, and practice type of insured ophthalmologists with closed claims compared with all healthcare specialties combined. Most claims were filed against ophthalmologists 40 to 59 years of age (n = 1414/2325 [60.8%]), which was similar to all healthcare specialties (n = 57 319/90 743 [63.2%]). However, there were more claims reported against ophthalmologists 60 to 69 years of age (n = 484/2325 [20.8%] vs. n = 12 423/90 743 [13.7%]) and slightly fewer claims naming ophthalmologists 30 to 39 years of age (n = 341/2325 [14.7%] vs. n = 16 970/90 743 [18.7%]) compared with all specialties combined. Most of the claims reported were against male ophthalmologists, and men constituted a slightly higher proportion of filed claims in ophthalmology than in all specialties (n = 1933/2325 [83.1%] vs. n = 70 125/90 743 [77.3%]). Full-time employment also was the most common status both for ophthalmologists (n = 2260/2325 [97.2%]) and all healthcare specialties (n = 87 271/90 743 [96.2%]). However, unlike other healthcare specialties, a greater proportion of ophthalmologists were in solo practice (n = 1154/2325 [49.6%]) than in institutional practice (n = 79/2325 [3.4%]) or group practice (n = 1043/2325 [44.9%]) when facing a malpractice claim. Compared with all specialties, a greater proportion of ophthalmologists with closed claims graduated from a medical school in the United States (n = 1722/2325 [74.1%] vs. n = 59 290/90 743 [65.3%]). Board certification status was an optional data field with only 54.5% (n = 1266/2325) of ophthalmologists reporting on their status. Among respondents, 80.6%