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## Dissecting malpractice in pancreaticoduodenectomy cases

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### ABSTRACT

**Background:** Medical malpractice is a growing concern for physicians in all fields. Surgical fields have some of the highest malpractice premiums and litigation rates. Pancreaticoduodenectomy (PD) has become a popular procedure; however, it is still associated with significant morbidity and mortality. This study is the first to analyze factors involved in litigation regarding PD cases.

**Methods:** The Westlaw database was searched for jury verdicts and settlements using the terms “medical malpractice” and “pancreaticoduodenectomy”. Twenty-nine cases from 1991 to 2012 were initially collected. Seven entries not involving PD and three duplicate cases were excluded. Nineteen cases were included for analysis.

**Results:** Of the 19 cases included in the analysis, three (15.8%) reached a settlement, three (15.8%) were ruled in favor of the plaintiff, and 13 (68.4%) were ruled in favor of the physician. The average settlement award was \$398,333 (range, \$195,000-500,000), and the average plaintiff award was \$4,288,869 (range, \$1,066,608-10,300,000). The most common factors raised in litigation included PD being allegedly unnecessary (47.4%), followed by postoperative negligence and misdiagnosis (36.8% each).

**Conclusions:** The most common factors present in litigation included the allegation that PD was unnecessarily performed. The cases that are awarded large monetary sums are those that involve continued medical care. Ways to improve patient safety and limit litigation include increasing transparency and communication with a thorough discussion between surgeon and patient of the most common topics of litigation discussed.

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## Introduction

The United States' medical malpractice system is generally regarded as inefficient, slow to reform, and granting some of the highest payouts in the world.<sup>1,2</sup> Malpractice claims drive up healthcare costs and consume physician time, with physicians spending an average of 50 mo of their career with an open malpractice case.<sup>2</sup> The comfort of knowing most claims are ruled in favor of the physician<sup>3</sup> is often diminished by the costs of litigation, time consumed through the legal process, and effects on physicians' reputations.

Surgery is one of the leading fields in malpractice rates.<sup>4,5</sup> Malpractice premiums, although thought to have declined in recent years, are still some of the highest for those in surgical fields.<sup>6</sup> Only 2.9% of actual negligent events result in malpractice lawsuits, presenting the question, which patients and events are most likely to result in litigation?

Pancreaticoduodenectomy (PD), also known as the Whipple procedure, has been performed in most major medical centers around the world since Allen O. Whipple first described it in 1935.<sup>7</sup> Known for its serious complications, the Whipple procedure has been found to have a 30-d morbidity of 45.9%,<sup>8</sup> with pancreatic fistula and delayed gastric emptying as some of the more common postoperative morbidities.<sup>9-11</sup>

Given the high rates of morbidity associated with the procedure and high rates of litigation associated with the field, PD has never been studied to determine the factors involved in its malpractice claims. The objectives of this analysis were to determine the most common causes of malpractice claims in PD as well as the most effective ways to protect patients in the operating room and physicians in the courtroom.

## Methods

The Westlaw legal database (Thomson Reuters, New York, NY) was queried for PD malpractice cases using the search terms "medical malpractice" and "Whipple procedure or pancreaticoduodenectomy or pancreatoduodectomy or Kausch-Whipple" between 1991 and 2016 under the category of jury verdicts and settlements. All data until 2012 were collected in April 2013 and were updated to reflect data up to 2016 in August 2016.

The search yielded 83 total cases; 21 (25.53%) were included in this analysis (Fig. 1). The cases that were not involving a Whipple were retrieved through the search by the keywords appearing in either the summary of the patient's case as either a procedure performed as part of the patient's past medical history, a procedure performed subsequent to the negligent event, or listed as options the patient was given.

### Westlaw legal database

Westlaw is a legal database covering publically available state and federal court records obtained via attorney-submitted records and involuntary recordings labeled by "anonymous" or "confidential." The case descriptions include summaries of preceding events, causes of alleged malpractice, names of expert witnesses, as well as the outcomes and awards.

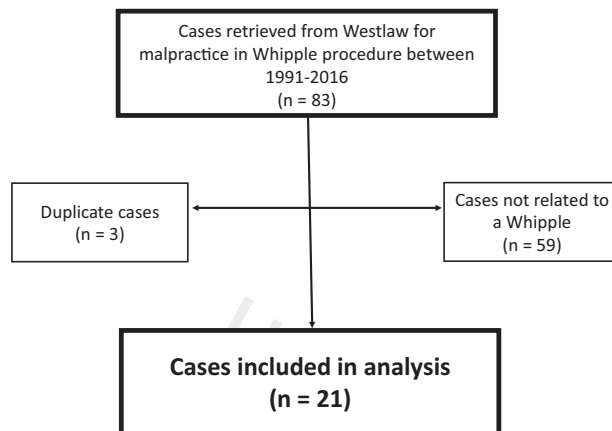


Fig. 1 – Breakdown of excluded cases.

Commercial vendors collect settlement and jury verdict reports that have progressed far enough to be included in public records and submit these to Westlaw. Cases that do not proceed far enough to be included in public records, such as certain types of settlements, are not included. Westlaw is not a comprehensive database and therefore cannot be used to study the overall prevalence of malpractice in any given field. It is hard to know how many cases are left out of Westlaw, but a recent article determined that only about 13% of print collection, which includes multiple nonlitigation-related items, is available online.<sup>12</sup> It is difficult to know if this number is different for medico-legal cases. However, it is one of two major legal databases used for the retrieval of court records, LexisNexis being the other. This latter resource draws from the same record pool, and a previous medico-legal analysis virtually equivalent search results between these two resources.<sup>13</sup> Westlaw was chosen for its user friendly database and ease of use and has been invaluable in many malpractice studies in various medical fields.<sup>13-30</sup>

### Statistical analysis

Statistical analysis to compare monetary awards between plaintiff verdicts and settlements was determined using an unequal variance t-test, and the influence of death on verdict outcome was determined using a chi-squared test (Microsoft Excel; Microsoft Corp, Redmond, WA).

## Results

Of the 21 cases included in the analysis, three (14.3%) reached a settlement, four (19.0%) were ruled in favor of the plaintiff, and 14 (66.7%) were ruled in favor of the physician. The average settlement award was \$398,333 (range, \$195,000-500,000), and the average plaintiff award was \$3,366,652 (range, \$600,000-10,300,000). Monetary awards between plaintiff verdicts and settlement cases were not significantly different (t-test,  $P = 0.29$ ). The most common causes of alleged malpractice were unnecessary procedure with 10 cases (47.6%), followed by both postoperative negligence and misdiagnosis with seven cases (36.8%) each (Fig. 2).

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