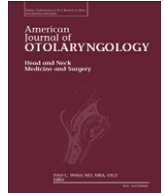


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Dizziness, malpractice, and the otolaryngologist



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ABSTRACT

Purpose: To assess malpractice claims related to the management of dizziness in otolaryngology in order to improve care and minimize the risk of litigation.

Materials and methods: This is a retrospective review of the LexisNexis “Jury Verdicts and Settlements” database. All lawsuits and out of court adjudications related to the management of dizziness by otolaryngologists were collected. Data including patient demographics, plaintiff allegation, procedure performed, and indemnities were analyzed.

Results: Of 21 cases meeting inclusion criteria, 17 were decided by a trial jury and four were resolved out of court. Jury verdicts favored the plaintiff 53% of the time and a payout was made in 57% of cases overall. Average payments were higher for jury verdicts in favor of the plaintiff (\$1.8 million) as compared to out of court settlements (\$545,000). Two-thirds of cases involved surgery, most commonly stapes surgery. Legal allegations, including physical injury, negligence, and lack of informed consent failed to predict the legal outcome.

Conclusions: Appropriate examination, testing, and referrals within a timely manner are crucial in the management of dizzy patients to avoid misdiagnoses. It is imperative that patients undergoing ear surgery are appropriately counseled that dizziness is a potential complication. The analysis of malpractice literature is complementary to clinical studies, with the potential to educate practitioners, improve patient care, and mitigate risk.

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1. Introduction

The otolaryngologist is uniquely keen to dizziness, both from evaluation of dizzy patients in clinic and because otologic surgery and vestibular pathology are intertwined. However, prior to seeing an otolaryngologist, a patient has typically been evaluated by several providers – potentially resulting in delayed treatment [1]. Meanwhile, the otolaryngologist, considered a dizziness expert by the medical and lay communities [2], may be perceived as a patient’s “last chance” for symptom improvement. This environment creates the potential for dissatisfaction and litigation when patient expectations are not aligned with treatment realities. Moreover, otologic surgery itself risks creating or exacerbating dizziness. This study aims to characterize these claims in order to understand what factors may improve patient satisfaction and safety.

2. Materials and methods

A search of a computerized legal database (LexisNexis “Jury Verdicts and Settlements”) was performed through June 2015 to find all U.S. civil trials pertaining to medical malpractice and dizziness complaints involving an otolaryngologist. Although similar databases exist (e.g. Westlaw), there is a high degree of overlap among these. The database includes source information from all 50 states and the District of Columbia. A Boolean search was performed as follows: [(dizzy or vertigo or disequilibrium) AND [(ear surgery) OR otology OR otologist OR neurotology OR neurotologist OR otolaryngologist OR otolaryngology OR “ENT”] AND malpractice]. No date limits were entered to ensure the widest range of data collection. There were sixty-three results (see Fig. 1). Duplicate entries (17) and cases with unknown outcomes (2) were subsequently excluded. Twenty-three cases were also excluded because they did not directly involve an otolaryngologist in patient care (i.e. expert witness only).

Data were entered into a Microsoft Excel spreadsheet (Microsoft Corporation, Redmond, Washington). Extracted data included patient demographics, geographic location, type of procedure performed, plaintiff allegation and nature of injury, outcomes, and indemnities paid. Outcome favorability was determined from the perspective of the

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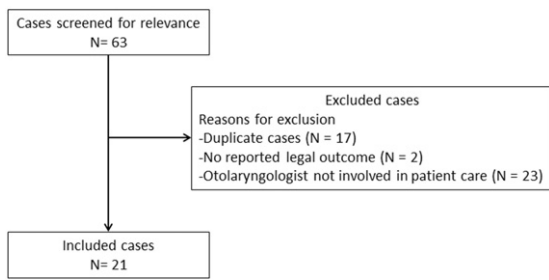


Fig. 1. Inclusion methodology. Flow chart outlining excluded cases.

defendant physician. As such, favorable outcomes were defined as those cases in which no payout was made (i.e. jury verdicts for the defendant physician) and unfavorable outcomes were cases in which a payout was made.

Fisher's exact test (two-tailed) was used to analyze type of surgery, injury claims, and legal allegations versus overall outcomes. Statistical significance was set at a p-value of 0.05.

3. Results

3.1. Patient demographics

Twenty-one unique cases met inclusion criteria between 1987 and 2012. The average patient was 40-years-old with a range between 17 and 61-years-old. There were more men (12) than women (8), and the gender was unknown in one case. Eleven states were represented. The Northeast region had the highest proportion of cases (52%) and included the two states with the most reported cases - New Jersey (4) and Pennsylvania (3). In addition, the Northeast region had the most cases that resulted in payouts to the plaintiff (7).

3.2. Legal outcomes

Seventeen cases (81%) were determined by a trial jury. The defendant physician won eight (47%) of these. Other methods of litigation resolution included settlements (3), in which a payout was made to the plaintiff, and mediation (1), in which no payout was rendered. Overall, nine (43%) cases were favorable for the defendant physician and 12 (57%) were unfavorable (see Fig. 2).

3.3. Cause of dizziness and procedures performed

Each case involved an otolaryngologist in direct patient care. Three cases involved a fellowship trained neurotologist. Four cases involved

another defendant in addition to the otolaryngologist. These included a physician's assistant, an oral surgeon, a family practice doctor, and an emergency physician. Thirteen patients claimed the otolaryngologist caused their dizziness. Ten cases of dizziness were claimed to have been caused by otologic surgery. This included stapes surgery (5), tympanoplasty with or without mastoidectomy (3), other ossicular chain reconstruction (1), and osteoma excision (1). An additional three cases of dizziness were claimed to be the result of non-surgical procedures, including in-office cerumen removal (2) and diagnostic transtympanic electrocochleography (1).

Eight cases involved patients who presented to the otolaryngologist for treatment of pre-existing dizziness. Four of these patients alleged the otolaryngologist failed to make the correct diagnosis. These included: complicated sphenoid sinusitis, meningioma of the internal auditory canal, medulloblastoma, and cholesteatoma. Worsened dizziness following endolymphatic sac surgery was reported twice, while the remaining two cases involved a failure to improve dizziness.

There was no difference in legal outcomes when comparing patients who claimed dizziness was caused by the otolaryngologist as compared to patients treated for pre-existing dizziness (p = 0.6731).

3.4. Plaintiff allegations

Plaintiff allegations were taken directly from the documentation of each case. Specifics as to the reason behind a particular allegation were not always available, such as type of injury or reason for claiming negligence. Nevertheless, the most common legal allegation was physical injury (20). Negligence (17) and surgical error (11) followed in frequency. Issues surrounding informed consent were less common (6). Wrongful death was alleged in one case in which a medulloblastoma was missed. Table 1 outlines plaintiff allegations according to legal outcomes and demonstrates that there were no statistically significant predictors of legal outcomes by patient allegations.

3.5. Payout

A payout was made in 11 cases, including nine trial verdicts and two out of court settlements. A jury verdict in favor of the plaintiff resulted in an average payout of \$1.79 million, compared to \$545,000 for the settlements. The average payout for cases that were decided by a jury was \$948,000 when verdicts in favor of the defendant (i.e. verdicts with no payout) were also included. A wide range of payouts was seen with jury verdicts (\$33,000 to \$8.5 million) and settlements (\$340,000 to \$750,000) (see Fig. 3).

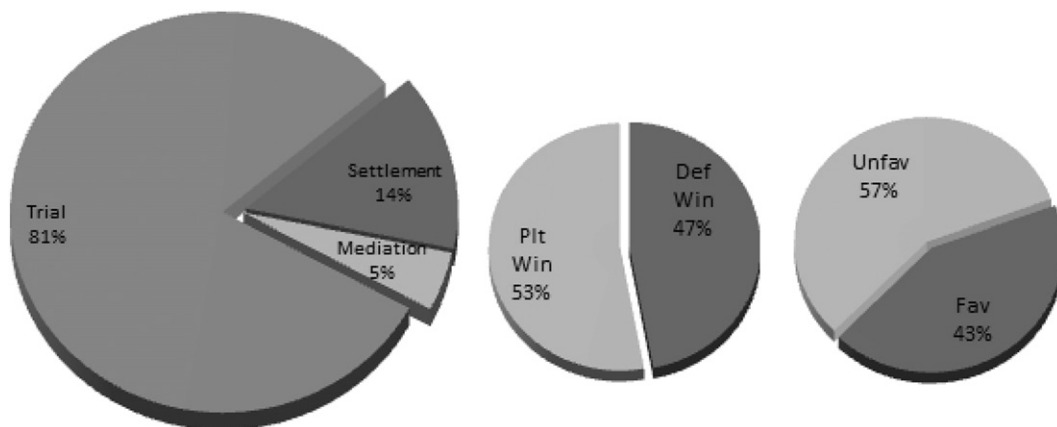


Fig. 2. Outcomes. The left window corresponds to the method of resolution; the middle window corresponds to jury verdicts; the right window corresponds to outcome favorability with respect to the defendant; Plt = plaintiff; Def = defendant; Unfav = unfavorable outcome; Fav = favorable outcome.

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