



Objectives

To characterize the association between scholarly activity, academic rank, practice setting, and malpractice claims among otolaryngologists.

Background

-Medical malpractice litigations have become a substantial consideration in determining a physician's standard practice.

-It is imperative for surgeons to recognize the trends in medical malpractice to manage the potential risk of litigation and further improve the quality of patient care.

Methods and Materials

Design: Data was extracted from the two legal databases, WestLaw and LexisNexis. The data was queried in September 2020. The records were obtained from January 2010 to January 2020. These two major legal databases do not include the cases that were settled outside the court. Scopus and PubMed databases were used to identify bibliometric data including h-index. "The h-index is defined as the number of papers (N_p) that have at least h citations each and the the other ($N_p - h$) papers have $\leq h$ citations each."

Setting: Population-based.

Participants: The initial search revealed 851 cases. Duplicates and non-relevant cases were excluded. The final data consisted of 102 jury verdicts and settlement court cases.

Results

Demographics: From 2010 to 2020, a total of 102 malpractice cases in the otolaryngology field were identified. Of the 102 cases, 77.5% (N= 79) were ruled in favor of the defendant, 13.7% (N=14) in favor of the plaintiff, and 8.8% (N=9) were settled outside of the court.

A total amount of \$46,533,346.82 was rewarded to plaintiffs in 14 cases. The mean amount of paid malpractice claim was \$3,323,810.48.

Of the 102 defendant surgeons, 20 (19.6%) were faculty at an academic institute versus 82 (80.4%) community/private. Among the 14 cases that the surgeon was found at fault, 13 (92.8%) were in the community/private setting.

Results

Table 1. Malpractice case characteristics and underlying reasons for litigation. SD: Standard Deviation

Characteristics	Reason for Litigation						P-value
	Improper Performance	Failure of Informed Consent	Delayed/ Misdiagnosis	Postoperative Complications	Negligence	Improper Disposition	
	N=51 (50%)	N=22 (21.6%)	N=18 (17.6%)	N=6 (5.9%)	N=3 (2.9%)	N=2 (2%)	
Outcome-Surgeon in Favor or at Fault, n (%)							
Favor	43 (84.3%)	19 (86.4%)	16 (88.9%)	6 (100%)	2 (66.6%)	2 (100%)	0.786
Fault	8 (15.7%)	3 (13.6%)	2 (11.1%)	0 (0%)	1 (33.3%)	0 (0%)	
Amount awarded in US dollars							
Mean (SD)	\$1,851,166.60 (\$2,287,899.76)	\$5,366,338.0 (\$8,646,154.64)	\$6,712,500.00 (\$8,891,867.77)	--	\$2,200,000.00 (-)	--	0.584

Table 2. Scholarly activity and association to litigation outcome.

Scholarly Activity	Litigation Outcome				Association to Litigation Outcome
	Favor		Fault		
	Mean	Standard Deviation	Mean	Standard Deviation	
Total Publications	20.5	49.1	6.5	10.1	P=0.290 95% CI=-40.31 to 12.17
Publications at the Time of Litigation	15.7	38.7	4.7	5.9	P=0.296 95% CI= -31.62 to 9.71
H-Index	9.0	13.0	4.0	3.8	P=0.017 95% CI= -8.9 to -0.93

Discussion and Conclusions

-These databases do not contain information for litigation settled prior to proceeding to court. Therefore, the above data only includes those proceeding to court.

-Although a higher number of court cases and settlements were noted in private practice, it is unclear based on available data if this is due to surgeon experience (e.g. higher number of cases done at academic institutions), settlement strategies (e.g. academic institutions settling more frequently prior to case going to court), or other reasons.

-In our sample group of cases that went to court, we found a statistically significant correlation between the higher h-index and favorable litigation outcome. The significance of this finding is unknown and not able to be extrapolated based from the databases utilized.

-Further research is necessary to identify the risk stratification of litigation in otolaryngology based on surgeon experience, number of cases overall (settled out of court in addition to those proceeding to court), number of years in practice, and if scholarly status has a true association with eventual litigation outcomes.

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