



Original Contributions



MALPRACTICE LITIGATION AND TESTICULAR TORSION: A LEGAL DATABASE REVIEW

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Abstract—Background: The litigious nature of the American medical environment is a major concern for physicians, with an estimated annual cost of \$10 billion. **Objective:** The purpose of this study is to identify causes of litigation in cases of testicular torsion and what factors contribute to verdicts or settlements resulting in indemnity payments. **Methods:** Publicly available jury verdict reports were retrieved from the Westlaw legal database (Thomson Reuters, New York, NY). In order to identify pertinent cases, we used the search terms “medical malpractice” and “testicular torsion” with date ranging from 2000 to 2013. Jury verdicts, depositions, and narrative summaries were evaluated for their medical basis, alleged malpractice, findings, and indemnity payment(s) (if any). **Results:** Fifty-two cases were identified that were relevant to this study. Fifty-one percent of relevant cases were found in favor of the defendant physician, with the remaining 49% involving an indemnity payment (13% of which were settled). The most commonly sued medical providers were emergency physicians (48% of defendants), with urologists being second most common and making up 23% of the defendant pool. Emergency physicians were significantly more likely to make indemnity payments than urologists. **Conclusion:** Testicular torsion is a delicate condition and requires expertise in evaluation and treatment. When emergency physicians choose not to consult an urologist for possible torsion, they leave themselves open to litigation risk. When an urologist is involved in torsion litigation, they are rarely unsuccessful in their

defense. Finally, ultrasound is no guarantee for success against litigation. © 2015 Elsevier Inc.

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INTRODUCTION

The medicolegal climate within the United States has changed dramatically over time. The estimated annual cost of legal and settlement fees for medicolegal cases among U.S. health care providers is \$10 billion (1). Concern of litigation among physicians has the potential to dramatically impact clinical practice and appears to be associated with an increased practice of defensive medicine (2). This is especially problematic in our current environment of trying to reduce the cost of care in order to comply with government mandates and to effectively negotiate with insurers for bundled payments.

Emergency physicians need to be especially aware of legal pitfalls in medical practice. In a study of 25 specialties, emergency medicine was in the top half of specialties that face the most malpractice claims annually and pay an average of \$188,572 per claim (3,4). The most commonly cited malpractice claim against emergency physicians is failure to diagnose: in 1 epidemiologic study of emergency department-based malpractice claims, error in diagnosis was the alleged negligence in

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37% of cases, and in another study of malpractice claims specific to pediatric cases it was found that delays or failures in diagnosis accounted for 59.5% of successful litigation claims (4,5).

One urologic emergency often prompting urgent evaluation is testicular torsion. For men <25 years of age, the incidence of testicular torsion is estimated to be 1 in 4000 (6). Failure in diagnosis or management can result in severe consequences, both clinically and medicolegally. Loss of the testicle is common if the diagnosis is not made or the treatment not executed within the narrow window of 4 to 8 hours after the onset of pain (7). Variations in presentation and inconclusive reports after diagnostic imaging can further complicate clinical decision-making (8). Not surprisingly, atypical presentations of testicular torsion have been associated with a higher rate of misdiagnosis and subsequent malpractice claims (9).

In many instances, a thorough history and physical examination may be sufficient for a diagnosis of testicular torsion, when conducted by an experienced clinician. When the suspicion is high, operative intervention should be performed. If, however, the diagnosis is in question, diagnostic ultrasound should be considered (8). While relatively sensitive for torsion, false-negatives are possible, and some locations may lack access to prompt imaging (10). Therefore, evaluation of the acute scrotum places a premium on thorough assessment by a skilled physician capable of distinguishing torsion from other etiologies of acute testicular pain, and one who is aware of the indications to proceed with ultrasound.

Recognizing the time-sensitive nature of testicular torsion is of utmost importance to multiple clinical providers, including urologists, emergency physicians, and primary care providers. The urgency required in diagnosis and management, the potential uncertainty of diagnostic imaging, and the severe consequences of medical error make this condition fertile ground for malpractice claims. The purpose of this study is to determine the outcomes of legal cases involving instances of testicular torsion and their surrounding factors. We hypothesize that urologists will have a higher rate of successful litigation defenses than other specialties, and that urologists will have lower rates of indemnity payment than other fields. In addition, we aimed to identify associations among cases that may provide useful information for physicians in regard to medicolegal protection.

MATERIALS AND METHODS

The Westlaw database (Thomson Reuters, New York, NY) was used to perform an advanced search for jury verdict reports using the term “medical malpractice” in combination with “testicular torsion.” Westlaw is a national database consisting of legal proceedings that

advance far enough for inclusion into publicly available federal and state court records. While some jurisdictions only report voluntarily submitted records (via attorneys), the vast majority of jurisdictions require reporting. In the case of involuntary submissions, the parties involved are named in a manner to preserve anonymity (e.g., John/Jane Doe). Jurisdictions and commercial vendors differ in requirements for making case details available to the public, and the Westlaw database is best-suited to allow examination of details from included proceedings, rather than simply estimating incidence of topic-specific litigation. It has been used for analysis of other medicolegal issues in a variety of specialties, including otolaryngology, emergency medicine, genetics, and urology (11–17). Data collection was performed in June 2014, with the search parameters set to cases occurring between January 1990 and December 2013.

Each case was examined for information regarding the year and location of trial, patient demographics, specialty of the defendant(s), breach of duty, use of ultrasound for diagnostic purposes, progression to trial, case outcome, and plaintiff award(s).

Statistical Analysis

A Student's *t*-test was used for comparison of normally (symmetric) distributed continuous data, and a Mann-Whitney *U* test was used for asymmetric (nonparametric) continuous data, with threshold for significance set at $p < 0.05$. SPSS software (version 20; SPSS, Inc., Chicago, IL) was used for statistical calculation.

RESULTS

The initial search returned 80 cases, 7 of which had multiple defendants. Of these 80 results, 23 were excluded as duplicate entries and 5 were excluded for not being cases of malpractice litigation for testicular torsion, leaving 52 unique cases relevant to this study. Twenty-eight of these cases involved an injured party that was a minor, 17 of these cases involved adult injuries, and the remaining 7 did not specify age.

Figure 1 shows the distribution of trial outcomes: 51% of cases were found in favor of the defendant physician, with the remaining 49% involving an indemnity payment. Of cases involving payment, 33% were the result of pre-trial settlement while the remaining 66% were trial verdicts. There was no significant difference in the rate of decisions between cases involving adults or minors. There was no significant difference in the amounts of indemnity payments made for settlement versus defense verdict, and there was no significant difference between payments made in cases involving adults versus minors. The overwhelming majority of negligence claims were

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