

Influencing Factors Leading to Malpractice Litigation in Radical Prostatectomy

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Abbreviations and Acronyms

LARP = laparoscopic assisted radical prostatectomy

MIP = minimally invasive prostatectomy

RALP = robotic assisted laparoscopic prostatectomy

RRP = radical retropubic prostatectomy

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See Editorial on page 1648.

Editor's Note: This article is the fourth of 5 published in this issue for which category 1 CME credits can be earned. Instructions for obtaining credits are given with the questions on pages 1940 and 1941.

Purpose: The litigious nature of the medical-legal environment is a major concern for American physicians with an estimated cost of \$10 billion. In this study we identify the causes of litigation in cases of radical prostatectomy as well as the factors that contribute to verdicts or settlements resulting in indemnity payments.

Materials and Methods: Publicly available verdict reports were recorded using the Westlaw[®] legal database. To identify pertinent cases we used the search terms “medical malpractice” and “prostate” or “prostatectomy” with dates ranging from 2000 to 2013. Cases were evaluated for alleged cause of malpractice, resulting injury, findings and indemnity payment (if any).

Results: The database search yielded 222 cases, with 25 being relevant to radical prostatectomy. Of these cases 24.0% were settled out of court and the remaining 76.0% went to trial. Of those cases that went to trial 20.8% saw patients awarded damages. There was no significant difference in awards between verdict and settlement. Overall 36.0% of patients claimed that they did not receive proper informed consent and 16.0% claimed that the surgery was not the proper standard of care. Thirteen of the cases claimed negligence in the performance of the surgery with the bulk of these claims being the result of rectal perforation.

Conclusions: The main issues that arise in radical prostatectomy malpractice litigation are those of informed consent and clinical performance. Comprehensive preoperative counseling, when combined with proper surgical technique, may minimize the impact of litigation.

Key Words: prostatectomy, malpractice, jurisprudence, informed consent

It has been estimated that medical errors contribute nearly \$30 billion in avoidable cost each year in the United States.¹ Malpractice litigation resulting from these errors costs an additional \$10 billion in legal and settlement fees for health care providers.^{2,3} These figures are of particular concern to surgeons as postoperative complications have proved to be the most costly type of error and may constitute up to 39% of the costs for medical errors.⁴

The litigious nature of the United States medical-legal environment is of particular concern for urologists. A 2011 survey reported that median annual malpractice insurance premiums are highest for surgical and procedural practitioners, with urologists dedicating a median of \$22,500 annually (vs a median of \$14,700 for all medical specialties).⁵ It has been estimated that the average urologist will be sued approximately twice in a career, with one study

suggesting that lawsuit rates may be as high as once every 11 years regardless of experience level.⁶ Independent of trial outcome, being sued has financial implications, and is stressful, distracting and time-consuming.³

Previous studies have assessed malpractice cases across all urological procedures, reporting an average indemnity paid claim of \$174,245.⁷ This number may be considerably higher when limited to a specific subspecialty. For example, endourology cases, including ureteral stenting, ureteroscopic lithotripsy, shock wave lithotripsy and percutaneous stone extraction, produced a mean indemnity paid claim of \$346,722 from 2005 to 2010 in one region of the country.⁸ However, the largest review to our knowledge of jury verdict cases against urologists showed that the majority of men's health diagnosis related claims were related to prostate cancer (24%), while the majority of men's health treatment related claims were related to prostate surgery (13%).⁹ Thus, in this study we identify the causes of litigation and the factors that contribute to malpractice litigation with regard to radical prostatectomy. Our goals are to cultivate strategies that limit malpractice exposure for urologists who routinely perform radical prostatectomy, and to encourage the best possible patient outcomes and expectation management.

MATERIALS AND METHODS

Data Collection

Publicly available federal and jury verdict reports were recorded using the Westlaw legal database. This database is composed of public records collected via numerous vendors from many jurisdictions, and has previously been

validated in the analysis of several other medical-legal issues in a variety of other specialties including otolaryngology,^{10,11} infectious disease¹² and genetics.¹³ As the database does not contain any protected patient information, it does not require institutional review board review.

To identify pertinent cases we used the search terms "medical malpractice" and "prostate" or "prostatectomy" with dates ranging from 2000 to 2013. Jury verdicts, depositions and narrative summaries were evaluated for their relevance to prostatectomy. Cases that were not directly related to prostatectomy or that were repeats were excluded from analysis. Each relevant case was then reviewed for legal and medical outcome. Various factors including patient demographics, alleged cause of malpractice and resulting injury were also recorded for analysis. All data were collected in April 2013.

Statistical Analysis

Nonparametric statistical analysis using the Mann-Whitney U test was used for comparison of continuous variables (Microsoft® Excel). Statistical significance was set at $p < 0.05$.

RESULTS

The initial search using the identified terms yielded a total of 222 cases. Of those cases 177 were excluded as not being related to prostatectomy and 21 were excluded as being repeat entries. Thus, a total of 25 cases were available for analysis, including 2 involving LARP, 5 involving RALP and 18 involving open RRP. Of the reviewed cases 24.0% were settled out of court and the remaining 76.0% went to trial. Of those cases that went to trial 79.2% were found in the physician's favor while 20.8% saw patients awarded damages (fig. 1, A). Verdict

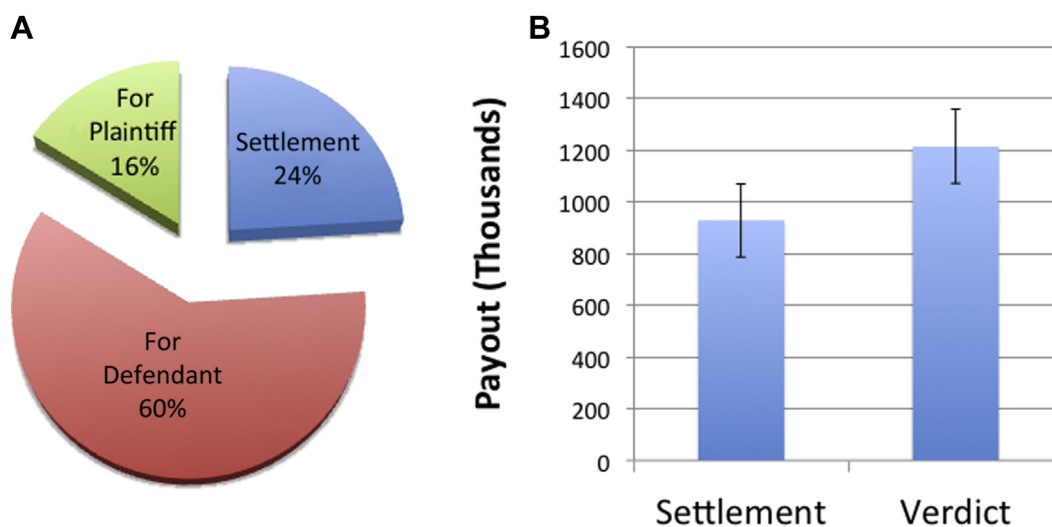


Figure 1. A, case outcomes for litigation related to prostatectomy. B, mean payments in cases resolved via out of court settlements vs verdict. Error bars represent standard error of means.

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