

## The Current State of Medical Malpractice in Urology



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Medical malpractice can present an unwelcome professional, emotional, and economic burden to the practicing urologist. To date, there is a paucity of data specific to urologic malpractice in the literature. We performed a comprehensive literature search to identify and evaluate recent studies related to urologic malpractice. We also analyzed 6249 closed urologic claims from the largest available specialty-specific data set gathered by Physician Insurers Association of America from 1985 to 2012. The resulting comprehensive review seeks to raise awareness of current trends in the malpractice environment specific to urologic surgery while also helping urologists identify opportunities for risk management and improved patient care. UROLOGY 86: 2–9, 2015. © 2015 Elsevier Inc.

The social goals of medical malpractice are to deter unsafe practices, compensate injured parties, and exact corrective justice. Historically, to prove malpractice, a plaintiff must demonstrate the following 4 criteria: (1) the physician had a duty to act, (2) the physician breached that duty, (3) the plaintiff suffered damages, and (4) the damages suffered were caused by the breach of duty.<sup>1</sup> This traditional framework of malpractice invites variability of interpretation. Meanwhile, the complexity of the health care system—mired by rising costs and layers of bureaucracy—has led to instability in the malpractice environment.

In recent decades, urologists have experienced 3 major crises in medical malpractice. The first occurred in the 1970s when private malpractice insurers left the market because of abrupt increases in the cost of claims. By the 1980s, state reforms led to stability in insurance availability, but the frequency of claims and rising costs of premiums led to a second crisis of affordability. More recently, physicians in many states have experienced difficulty obtaining coverage because of regional variability in affordability and accessibility. Lack of competition in the market has led to abrupt increases in insurance premiums.<sup>2–5</sup> In the early 2000s, the American Medical Association identified 44 states (18 at “crisis” levels) where physicians experienced difficulty finding affordable coverage as the costs of liability insurance policies in some areas increased by over 100%.<sup>6,7</sup>

The risk of medical malpractice should raise concern for practicing urologists. Previous studies have revealed that the average urologist will be implicated in >1 claim during his or her career.<sup>2,8,9</sup> Rising costs in the health

care system and ongoing health care reform measures have made medical malpractice a topic of national concern, although most physicians remain unaware of the specialty-specific effects of the current malpractice environment. With this review, we seek to quantify malpractice risk and trends in litigation while educating urologists about the monetary and professional effect of lawsuits. We also identify the types of cases most frequently implicated in claims and review the current political climate surrounding malpractice reform.

### METHODS

A comprehensive literature search was completed using PubMed and Educus database searches with the query “malpractice” along with multiple urologic terms to identify studies related to medical malpractice in urology. Reference lists of the retrieved articles were reviewed for other relevant studies. Studies written in the English language and published from 1990 to present were included for review. We also performed a comprehensive analysis of claims data from 22 member companies of the Physician Insurers Association of America (PIAA) from 1985 to 2012. Data included claims from 28 different medical specialties, including 6249 closed urologic claims. PIAA data were analyzed and aggregated by procedure type and patient condition. PIAA data were coded using the *International Classification of Diseases, Ninth Revision, Clinical Modification*.

### RESULTS

#### Malpractice Risk in Urology

In 1998, Kaplan surveyed urologists listed in “The Best Doctors in America” and compared them to a control group of younger urologists applying for recertification. There was no difference in claims frequency (0.09 claims per year) suggesting that, regardless of experience, all urologists are at similar risk of being implicated in a claim. Among the most experienced urologists, 77% reported being involved in at least 1 claim.<sup>8</sup> In 2006, a survey of 683 urologists practicing in 47 different states revealed

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**Table 1.** Comparative claim analysis: closed claims by specialty group (2003-2012)

Specialty Group	Average Indemnity (Rank)	Total Indemnity (Rank)	Closed Claims (Rank)	% Paid to Close (Rank)	Largest Payment
Neurosurgery	\$439,146 (1)	\$262,609,105 (9)	2131 (15)	28.06 (6)	\$5,600,000
Neurology	\$416,835 (2)	\$160,898,197 (15)	1626 (18)	23.74 (18)	\$3,000,000
Obstetrics and gynecologic surgery	\$415,837 (3)	\$1,530,697,387 (1)	11,566 (2)	31.83 (2)	\$13,000,000
Pediatrics	\$394,729 (4)	\$241,179,137 (10)	2315 (14)	26.39 (11)	\$5,250,000
Radiation therapy	\$372,468 (5)	\$37,991,714 (21)	362 (23)	28.18 (5)	\$2,000,000
Anesthesiology	\$366,445 (6)	\$397,959,070 (7)	3982 (7)	27.27 (7)	\$5,048,678
Radiology	\$348,536 (7)	\$614,468,369 (5)	6470 (6)	27.25 (8)	\$3,364,156
Gastroenterology	\$333,984 (8)	\$112,886,665 (18)	1880 (16)	17.98 (22)	\$4,000,000
Pathology	\$331,281 (9)	\$75,851,994 (20)	726 (21)	31.54 (3)	\$2,000,000
Emergency medicine	\$330,762 (10)	\$293,385,809 (8)	3687 (8)	24.06 (17)	\$2,000,000
Internal medicine	\$329,107 (11)	\$982,055,569 (2)	13,785 (1)	21.65 (20)	\$12,000,000
Cardiovascular and thoracic surgery	\$322,485 (12)	\$229,932,059 (11)	3006 (9)	23.27 (19)	\$5,005,000
Urology	\$319,052 (13)	\$206,433,352 (12)	2434 (13)	26.58 (10)	\$3,200,000
General Surgery	\$311,699 (14)	\$863,406,329 (3)	9335 (4)	29.67 (4)	\$3,116,180
Cardiology	\$296,289 (15)	\$148,736,856 (16)	2529 (11)	19.85 (21)	\$2,000,000
Family practice	\$287,844 (16)	\$668,086,055 (4)	9425 (3)	24.63 (16)	\$7,239,248
Otorhinolaryngology	\$283,804 (17)	\$164,606,498 (14)	1710 (17)	33.92 (1)	\$4,199,329
Gynecology	\$281,779 (18)	\$91,296,288 (19)	1279 (19)	25.33 (13)	\$1,875,000
Ophthalmology	\$275,491 (19)	\$174,742,315 (13)	2476 (12)	25.53 (12)	\$2,000,000
Orthopedic surgery	\$260,960 (20)	\$542,275,394 (6)	7791 (5)	26.67 (9)	\$3,000,000
Dermatology	\$213,451 (21)	\$15,032,623 (23)	425 (22)	25.32 (14)	\$1,750,000
Psychiatry	\$194,961 (22)	\$23,590,222 (22)	820 (20)	14.76 (23)	\$1,000,000
Plastic surgery	\$184,890 (23)	\$133,490,813 (17)	2903 (10)	24.87 (15)	\$2,000,000

that 63% had been named in at least one malpractice lawsuit. On average, urologists have admitted to being implicated in 2.1 claims during their careers.<sup>2</sup>

Compared with other medical specialties, urology has been identified as a moderate- to high-risk specialty. In review of data from a large multi-state professional liability insurer, Jena et al<sup>10</sup> reported that urologists have an 11% chance of being implicated in a malpractice claim each year, which ranked 12th among 25 specialties. There is significant variation across specialties in the probability of facing a claim, ranging from as high as 19.1% in neurosurgery to as low as 2.6% in psychiatry.

### Claim Trends in Urologic Malpractice

Analysis of PIAA data identified 6249 claims in urology since 1985. In the past decade, urology ranks 13th of 23 specialties in total claims closed (2434) and 12th in total indemnity paid (\$206 million). Adjusting for inflation, urologic claims closed with payouts in the past decade have an average indemnity of \$319,062, which is similar to most other medical specialties (Table 1). Average indemnity payments in urology have continued to increase since 1988 (Fig. 1). In the most recent recorded year (2012), urologic indemnity totaled \$26 million, and the average indemnity payment was at an all-time high (\$428,643), representing a 68% increase from 5 years before (\$255,048 in 2007). In the past decade, the largest indemnity payment reported for a urologic surgery closed claim was \$3.2 million. The specialty with the largest single payout in the past decade was internal medicine (\$13.0 million; Table 1).<sup>11</sup> Large outlier payouts

exceeding \$1 million are infrequent, accounting for <1% of all indemnity payments. Overall, the increase in average payouts has been a more significant driver of malpractice growth than large sum payouts.<sup>12</sup>

### Associated Costs of Urologic Malpractice

Although the costs of jury awards continue to rise, indemnity payments as a fraction of national health care spending have not significantly varied.<sup>12</sup> Nonetheless, at an individual level, malpractice costs can be devastating. Insurance premiums, faced by all urologists, are a major contributor to overall medical liability expense. From 2008 to 2012, malpractice premiums increased by 8%-20% per year in some states, far outpacing the rate of inflation. Premiums are volatile and vary widely from state to state, ranging from \$6000 to as high as \$200,000 in recent years.<sup>2,13,14</sup> Currently, the median yearly malpractice premium for practicing urologists is \$22,500, which is \$8000 higher than premiums for nonsurgical specialties.<sup>15</sup> The most recent American Urological Association survey to evaluate urologic liability insurance in 2004 revealed that although 99% of urologists had professional liability insurance, 28% had difficulty obtaining coverage. There were regional differences in urologists' abilities to obtain coverage. Most notably, in the Southwestern region, 31% of surveyed urologists reported major difficulty obtaining affordable coverage.<sup>14</sup>

Other indirect costs of malpractice—including time, stress, and reputational damage—are difficult to quantify. Most physicians involved in claims consider the accusation to be a devastating attack on their character,

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