

Malpractice Litigation in the Setting of Prostate Cancer Diagnosis

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Abstract

Introduction: Medical malpractice and prostate cancer screening are important issues in the current landscape of health care. We identified factors contributing to litigation in the diagnosis of prostate cancer.

Methods: We used the Westlaw® database to search for jury verdict reports using the term medical malpractice combined with prostate cancer with dates ranging from January 2000 to December 2013. Each case was examined for trial year, patient age, prostate specific antigen at alleged breach of duty and at diagnosis, defendant specialty, alleged cause of malpractice, whether there was metastasis, the outcome of cases that went to trial or were otherwise settled, and the plaintiff award.

Results: The initial search produced 256 results, which was narrowed to 106 cases. Of these cases 64.1% went to trial, including 66.2% that were decided for the defendant. The mean out of court settlement was \$945,000, significantly lower than the mean plaintiff verdict award of \$2.1 million ($p = 0.0009$). Primary care physicians (74.1%) were the most commonly named defendants, followed by urologists (19.6%). The most common cause was failure to perform an initial prostate specific antigen test (26.8%), followed by failure to follow elevated prostate specific antigen (22.3%).

Conclusions: Causes of malpractice revolved mostly around prostate specific antigen testing. Primary care physicians and urologists must continue to educate patients to minimize malpractice claims made in this setting. It will be important to follow data to see trends following recent guidelines.

Key Words: prostate; prostate-specific antigen; malpractice; liability, legal; guidelines as topic

Abbreviations and Acronyms

AAFP = American Academy of Family Physicians

AUA = American Urological Association

PCP = primary care physician

PSA = prostate specific antigen

USPSTF = United States Preventive Services Task Force

Medical malpractice is an important component in the current debate over United States health care and it impacts the continuing increasing costs of the current system. It was estimated that the annual cost to defend malpractice claims is \$6.5 billion.¹ Such costs are of particular importance to surgeons such as urologists because of the inherent risks of surgery place their risk exposure and subsequent insurance premiums higher than those of other physicians. Urology ranked eighth of 25 specialties in the number of claims reported and it was estimated that the average urologist would be sued at least twice in a career.^{2,3} Although urology sees many claims due to

surgical performance and outcomes, missed diagnosis represents 15% of urological malpractice claims overall.⁴

Prostate cancer is the most common cancer in American men and the second leading cause of cancer death in men in the United States. However, despite the prevalence there is ongoing debate regarding whether and how men should be screened for prostate cancer. In May 2012 the USPSTF as well as the AAFP established a grade D recommendation, stating their stance against PSA based screening for prostate cancer regardless of patient age (see Appendix).⁵ This was an update to the 2008 recommendation against screening men older than 75 years that was based on several large-scale, randomized clinical trials that failed to show a mortality benefit in patients who underwent prostate cancer screening.^{6,7} However, the single largest randomized, controlled trial, ERSPC (European Randomized Study of Screening for Prostate Cancer), demonstrated a 20% reduced rate due to prostate cancer in a screened population.⁸ Based on these findings as well as subgroup analysis of the

Submitted for publication May 7, 2014.

No direct or indirect financial incentive associated with publishing this article.

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other available data in 2013 the AUA organically developed a set of guidelines.⁹ These guidelines broke down into 4 recommendations, chiefly a grade B recommendation that men 55 to 69 years old should undergo PSA testing.

While the clinical implications of this debate are obvious, they also have an underlying medicolegal implication. We identified the causes and contributing factors to litigation in the diagnosis of prostate cancer with a specific focus on screening issues.

Materials and Methods

We used the Westlaw database to search for jury verdict reports using the term medical malpractice combined with prostate cancer with dates ranging from January 2000 to December 2013. Jury verdict and settlement reports found on Westlaw represent legal proceedings that advance far enough for inclusion in publicly available federal and state court records. Different commercial vendors from various jurisdictions supply these records to Westlaw. While some jurisdictions provide voluntarily (attorney) submitted records with the express purpose of educating legal professionals, most jurisdictions also include records with the legal parties labeled with terms that preserve anonymity, such as Jane vs John Doe, confidential and anonymous.

Because requirements for cases that progress far enough for inclusion in publicly available federal and state court records differ by jurisdiction and commercial vendor collection patterns, a resource such as Westlaw is ideal to examine detailed considerations raised in included proceedings rather than to estimate the overall incidence of litigation related to a specific topic. It was previously used to analyze several other medicolegal issues in various other specialties, including neurosurgery,¹⁰ otolaryngology,^{11,12} emergency medicine¹³ and genetics.¹⁴ Since the database does not contain any protected patient information, this study was exempt from institutional review board review. Data were collected in February 2014.

After an initial review all unique cases related to the initial diagnosis of prostate cancer were included in our analysis. Each qualifying case was examined for various parameters, including trial year, patient age, defendant specialty, alleged cause of malpractice, PSA at the alleged time of breach of duty and at diagnosis of prostate cancer, whether there was metastasis, the outcome of cases that went to trial or were otherwise settled, and the plaintiff award.

Statistical Analysis

The Student t-test was used to compare normally (symmetrical) distributed continuous data and the Mann-Whitney U-test was used for nonparametric (asymmetrical) continuous data with significance considered at $p < 0.05$. SPSS®, version 20 was used for statistical calculation.

Results

The initial search produced 263 results, which were narrowed to 106 cases after various exclusions, including 61 of prostate

cancer, 54 duplicates and 35 cases that did not involve the initial diagnosis.

Of the 106 cases 75 reported patient age. Mean age was 58.4 years (range 41 to 80). Patients in the sixth and seventh decades of life represented 42.7% and 30.7% of cases, respectively, and were the most common demographics (fig. 1). There was an increasing trend in the mean award for the plaintiff as age decreased with patients in the fifth decade of life receiving a mean award of \$2.4 million (fig. 2). The most prevalent years for malpractice claims were between 2005 and 2007, consisting of 34.9% of the cases (fig. 3).

Of the examined cases 68 went to trial, of which 66.2% were decided for the defendant. The remaining 38 cases were settled out of court. Six cases had a codefendant along with the primary defendants. Five of these cases were settled out of court while 1 went to court in favor of the defendant. The mean settlement made out of court was \$945,000, significantly lower than the mean \$2.1 million plaintiff verdict that went to court ($p = 0.0009$, fig. 4).

PCPs were the most commonly named defendants (74.1%), followed by urologists (19.6%), internal medicine physicians (5.4%) and pathologists (0.9%) (fig. 5). When looking at PCP cases, 38.6% were settled out of court for a mean of \$1.0 million (fig. 4). Of those that went to court 36.5% were resolved in favor of the plaintiff with significantly higher awards than settlements (average \$2.3 million, $p = 0.0025$). Of claims against urologists 45.5% were settled out of court for a mean of \$803,000 (fig. 4). Of cases that went to trial 83.3% were resolved in favor of the defendant. Those that resolved for the plaintiff had a mean award of \$621,000, which was not significantly lower than the mean settlement ($p = 0.48$). Settlement and verdict awards involving urologists were not significantly lower than PCP awards ($p = 0.173$ and 0.58 , respectively).

The alleged cause of malpractice in the initial diagnosis of prostate cancer in most cases revolved around PSA testing. The most common reason overall was failure to determine an initial PSA value (26.8% of cases) (see table). Of the most common alleged causes of malpractice failure to report an increase in PSA to the patient was the only one that resulted in a verdict in favor of the plaintiff more often than for the

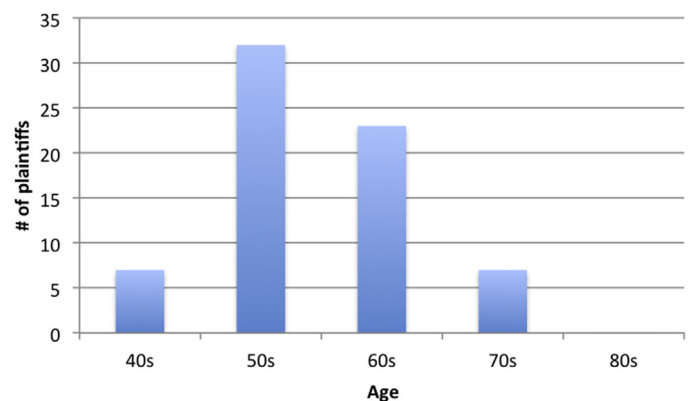


Figure 1. Plaintiff age distribution

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