



# An analysis of causative factors in closed criminal medical malpractice cases of the Taiwan Supreme Court: 2000–2014



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## ABSTRACT

Most medical malpractice in Taiwan leads to criminal prosecution. This study examined the epidemiologic factors and clinical errors that led to medical malpractice convictions in Taiwanese criminal prosecutions. A retrospective, 15-year population-based review of criminal Supreme Court judgments pertaining to medical malpractice against physicians and nurses was conducted. Eighty-four cases were reviewed, yielding data that included the number and specialty involved, accused hospitals, the diagnosis, the time interval between incidents to closure, result of adjudication, the origin of cases (private vs. public prosecution), the result of medical appraisal, and the primary error. Overall, the cases averaged 7.6 years to achieve final adjudication. Seventy-five percent were settled in favor of the clinician; twenty-three physicians and three nurses were found guilty, but all of these avoided imprisonment via probation or replacement with forfeit. The single most risky specialty was emergency medicine (22.6% of the cases), with 36.8% of those resulting in guilty verdicts. The most common diagnosis groups were infectious diseases (23.8%), intracranial hemorrhages (10.7%), and acute coronary syndrome (9.5%). Public prosecutions had a 41.2% conviction rate; no guilty verdicts resulted from private prosecution. Nineteen (22.6%) cases were commuted, and 73.7% of those had a controversial appraisal result. The characteristics of criminal malpractice prosecution in Taiwan that could be improved to relieve the stress of frivolous lawsuits on the judicial process include lengthy jurisdiction process; low public-prosecution conviction rate; frequent commuted jurisdiction related to a controversial appraisal; and zero imprisonment rate for clinicians.

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## 1. Introduction

### 1.1. Background: increasing criminal lawsuits

Medical malpractice litigation has become an important issue worldwide, as it not only interferes with the clinician's career satisfaction and increases defensive medical practice [1], but also raises the social burden of medical care [2]. Medical staff can be held accountable both in civil and criminal liability under the present legal system. Monetary reimbursement for patients injured during the course of medical therapy has been sought through insurance settlements or through civil courts. In western countries, such as the United States of America, almost all medical disputes have been settled either out of court or through the civil compen-

sation system, so criminal law plays a limited role in malpractice litigation. However, criminal prosecution of health care providers for medical errors is not unusual in some jurisdictions, including courts in Japan [3] and Taiwan [4,5].

Although there is still a major debate in medicine and law about the criminal justice system's role in medical error [5–8], criminal suits account for 79% of all medical malpractice law suits in Taiwan [4]. There are two major reasons why Taiwanese society is predisposed to treat healthcare providers as criminal suspects. First, filing charges against the healthcare provider under criminal law procedures is free-of-charge, and prosecutors investigate the evidence and request appraisal even if the evidence provided by alleged victims is scarce. Second, clinicians convicted of a crime may also be sentenced to imprisonment. It is reasonable to understand that the provision of healthcare in certain circumstances would be more stressful under the shadow of criminal charges. At the very least, plaintiffs might abuse the criminal legal system to impose more pressure on the defendant to force compensation

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or a settlement [5]. This study suggests these to be the reasons for the increase in criminal malpractice lawsuits in recent years.

### 1.2. Objective of the study

Although there is a four-year study on such criminal charges in Taiwan [4], the epidemiological investigation (e.g., duration of litigation, the specialty of physicians, the rate of guilty sentences) remains unclear. Besides, it is also important to identify the causative factors and clinical actions that led to criminal medical lawsuits through the analysis of closed claims, which can in turn identify conditions and processes where primary health care is prone to error, with the aim of making changes to reduce or eliminate such error [9]. As an example, improved care resulting from obstetric safety projects based on previous litigation analysis has led to less liability claim exposure and reduced liability payments [10].

Considering the rising risk of criminal charges in Taiwan, this study conducted a population-based study from 2000 to 2014 to collect closed criminal prosecutions from Supreme Court for further analysis. The objective of this study was to investigate the epidemiologic factors of the criminal judgments, analyze the causative factors, and identify clinical error that led to conviction. With this information, clinicians could prevent further litigations by awareness of high risk situations and being more cautious with decisions or errors that might eventually bear criminal liability.

## 2. Criminal judicial system background in Taiwan

### 2.1. Court system

The criminal judicial system of Taiwan is comprised of the Supreme Court, High Courts, and District Courts, in which a system of “three-level and three-instance” has been adopted. Cases are heard by a District Court first, and closed if the Supreme Court affirms the verdict of the High Court or if there is no appeal to a higher court. Verdicts are remanded to the High Court by the Supreme Court if they find doubt in the jurisdiction, and then appealed to the Supreme Court if litigants are still against the judgment of the High Court. The closed verdicts of the Supreme Court were selected as study cases because these judgments were conclusive and more influential to other courts. We believed that the outcome of these verdicts could offer more definite information on whether the clinicians in question were guilty.

### 2.2. Prosecution system

According to Taiwan’s Code of Criminal Procedure, criminal cases could be sent for trial via two ways: public prosecution and private prosecution. In public prosecution, the official prosecutor sends the criminal case for indictment after a public-power investigation. Most plaintiffs file a lawsuit against a health caregiver via an official prosecutor because the prosecutor collects detailed evidence and decides whether the case should be sent for indictment. The prosecutor might not file charges against a healthcare provider if criminal evidence is absent or scarce. Therefore, the patient’s heirs also have the right to trial directly by private prosecution, which is a criminal proceeding initiated by an individual instead of by a public prosecutor, if the likelihood of public prosecution is low.

### 2.3. Medical appraisal

If the court needs testimony to differentiate whether the medical process was appropriate, medical records would be sent to

either a medical organization, a specialty medical association, or, as happens in most cases, the official Malpractice Arbitration Committee for medical appraisal. The Malpractice Arbitration Committee was organized by the Taiwan Ministry of Health based on the Medical Care Law. The committee consists of expert members from the medical and law fields and offers professional medical appraisal for courts free of charge.

## 3. Material and methods

### 3.1. Study design

A medical malpractice action is defined as a lawsuit against a physician or nurses for a dispute arising from medical care. The current analysis is based on a retrospective study of Taiwanese criminal Supreme Court judgments pertaining to medical malpractice from 2000 to 2014. The study was approved by the Institutional Review Board of Chang Gung Memorial Hospital.

### 3.2. Study setting and population

The database was obtained from the public de-identified electronic national databank “The Judicial Yuan of The Republic of China Law and Regulation Retrieving System,” maintained by government. The database covers all criminal verdicts of closed litigation from all courts since 2000. The legal standard of performance for clinicians is “vocational negligence,” so verdicts of the Supreme Court were searched for the period January 1, 2000 through December 31, 2014 by the key words “medical” and “vocational negligence.” The verdicts were then reviewed to collect the cases of medical malpractice as defined above. Finally, the collected cases were traced in the database to identify the entire appeals process. The final study cases consisted of criminal medical malpractice cases that were closed by Supreme Court affirmation before 12/31/2014, so cases remanded to the High Court without further appeal were not included due to uncertainty of their final judgments. Exclusion criteria were cases dismissed due to violation of the legal process, such as provisions concerning limitations on actions.

### 3.3. Outcome measures

Data collected from the review included the number and specialty of involved medical staff, the diagnosis, the result of adjudication and origin of the cases (private vs. public prosecution). The cases were categorized into six groups based on the specialty group of physicians, including: 1) internal medicine, including cardiovascular, chest, general medicine, infection, nephrology, gastrointestinal, oncology, and neurology; 2) surgery, including general surgery, neurosurgery, orthopedic, proctology, plastic surgery, and cardiovascular; 3) obstetrics and gynecology; 4) pediatric; 5) emergency medicine; and 6) others. If the defendants were residents, interns, or nurses, cases were categorized into the specialty group with which they worked when the malpractice occurred. The number of trials and the time interval between incidents to their closure was recorded. If the cases were appealed from District Court to High Court and affirmed by the Supreme Court, three trials were counted. The number of trials increased if the cases were remanded to the High Court by the Supreme Court. The results of trial were either acquittal or conviction with guilty sentences, although the defendant could avoid imprisonment if the judges pronounced that probation or penalties could be commuted to fines. Whether the plea was ever commuted (“guilty” changed to “not guilty” and vice versa) was also documented.

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