

Head and neck, oral, and oropharyngeal cancer: a review of medicolegal cases



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Objective. The purpose was to review cases of malpractice in head and neck cancer (HNC) in order to examine allegations and outcomes of the litigation and to assess the implications for best practices in the clinical care of patients with HNC.

Materials and Methods. Three U.S. legal databases were accessed to assess the basis of the cases and the outcomes reported.

Results. Dental and medical health care providers are identified in cases with alleged failure to diagnose or delayed diagnosis. In addition, inadequate prevention and management of oral complications of cancer therapy also may result in medicolegal action. In the dental cases, the mean recovery was \$1,033,500.11, and in medical cases, it was \$2,828,639.20.

Conclusions. In addition to failure in the diagnosis of malignant disease, our review identified failure to properly prevent and manage oral complications as potential causes of medicolegal actions. Evidence-based care with a multidisciplinary team may promote diagnosis of disease and prevention and management of complications. (Oral Surg Oral Med Oral Pathol Oral Radiol 2015;119:177-186)

Cancers in the head and neck region at early stages are commonly associated with few symptoms, and when symptoms are present, they may be minor and nonspecific. Even advanced-stage cancers at initial presentation may have few, minimal, or nonspecific symptoms. Mucosal lesions may appear clinically innocuous, presenting as red or white changes that may mimic benign conditions and may not raise concerns in the patient or the examiner. Establishment of a diagnosis is a process that requires the synthesis of a series of events and observations ultimately including the patient's presentation in a health care environment. Diagnosis can be completed following a comprehensive patient history, thorough examination of the head and neck and oral tissues, knowledge of variations of normal, and an index of suspicion for findings that could represent oral potentially malignant epithelial lesions (PMEL), squamous cell carcinoma (SCC), or other neoplasms, including those of salivary and lymphoid origins, among others. Diagnosis requires recognition of the abnormal, as well as appropriate and accurate testing and interpretation of results. Upon diagnosis, referral for appropriate cancer therapy and

prevention of common oral and other local complications of treatment following current standards of care are necessary.

The diagnostic process presents the risk for delay or misdiagnosis at each step from patient presentation to tissue diagnosis. In cases of oral squamous cell carcinoma and oropharyngeal squamous cell carcinoma, delays in diagnosis of more than 1 month have been reported to contribute to diagnosis of later-stages of disease.¹⁻³ However, other studies have not shown statistically significant associations between the stage of disease and delay and the outcomes of therapy.^{4,5}

A study evaluating time to treatment reported a mean delay of referrals to specialists of 5.1 weeks and a mean time to surgical treatment of 5.2 weeks and 10.3 weeks for radiation therapy. However, patient delay from first symptom to diagnosis may be the cause of longest delay; one study reported a mean delay of 4.9 months.⁶

Dentists may identify early symptoms or signs of PMEL and head and neck cancer (HNC) more commonly compared with physicians (72.5 % dentists, physicians 40%).^{7,8} However, a study of dentists and physicians found that only 58% of dentists reported routinely examining patients for oral cancer, and physicians reported examining the mouth only when

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Statement of Clinical Relevance

Medicolegal actions may occur due to alleged delay or failure in diagnosis and with alleged failure to prevent and manage oral complications of cancer therapy and may involve dentists and/or physicians. Following current guidelines for the detection and diagnosis of cancer and for the management of oral complications may reduce the risk.

Table I. Summary of dental malpractice cases

<i>Incident date</i>	<i>Filing date</i>	<i>Mediation/ trial date</i>	<i>Primary diagnosis</i>	<i>Malpractice liability</i>	<i>Allegations</i>	<i>Outcome of case (value in 2012 dollars)</i>
Apr-03	Dec-05	Settlement: Sep-06	Oral cancer	Diagnosis	Failure to diagnose; progression of disease	Mediation \$50,000 (\$57,370)
N/A	Oct-87	Settlement: Jan-88	Oral cancer	Diagnosis	Failure to diagnose; progression of disease	\$200,000 (\$391,068)
N/A	N/A	Trial: May-84	Oral cancer	Diagnosis	Failure to diagnose; progression of disease	\$3,500,000 (\$7,792,199)
Jul-93	N/A	Trial: Dec-97	Oral cancer	Diagnosis	Failure to diagnose; lesion attributed to inflammation	Defense prevailed (\$0)
Oct-85	N/A	Trial: Sep-90	Oral cancer	Diagnosis	Failure to diagnose oral cancer from X-rays	Defense prevailed Past Medical: \$4000 (\$7,079)
Oct-02	N/A	Trial: May-06	Oral cancer	Diagnosis	Failure to diagnose; progression of disease	\$1,199,999 (\$376,886)
Aug-98	N/A	Trial: Apr-02	Oral cancer	Diagnosis	Failure to diagnose, progression of disease	\$870,000 (\$1,1168,663)
Jan-94	Oct-97	Settlement: Apr-98	Oral cancer	Diagnosis	Failure to diagnose; progression of disease; facial disfigurement Defendant: Cancer already advanced; patient negligence	Settlement: \$1,000,000 (\$1,419,123)
N/A	N/A	Trial: Mar-94	Oral cancer	Diagnosis	Failure to diagnose; progression of disease	Settlement: \$325,000 (\$507,724)
Mar-07	N/A	Settlement: Jan-10	Oral cancer	Diagnosis	Failure to diagnose; progression of disease	Settlement: \$500,000 (\$530,407)
Mar-93	N/A	Trial: Oct-98	Oral cancer	Diagnosis	Failure to diagnose; progression of disease; clinician and pathologist	Settlement: \$300,000 (\$425,737)
Sep-86	N/A	Trial: Jan-89	Oral cancer	Diagnosis	Failure to diagnose; progression of disease	\$1,098,054 (\$2,048,375)
Jun-05	N/A	Settlement: Apr-07	Oral cancer	Diagnosis	Failure to diagnose; progression of disease	Settlement: \$180,000 (\$200,813)
Feb-88	N/A	Trial: Nov-92	Oral cancer	Diagnosis	Failure to diagnose; progression of disease	Settlement: \$220,000 (\$362,721)
Dec-88	N/A	Trial: May-91	Oral cancer	Diagnosis	Failure to diagnose; pathologist and oral surgeon	\$1,300,000 (\$2,207,871)
2005	N/A	Trial: Jan-10	Oral cancer	Diagnosis	Failure to diagnose; progression of disease	Settlement: \$500,000 (\$528,030)
May-06	N/A	Trial: 2009	Oral cancer	Diagnosis	Failure to refer for biopsy	Settlement: \$500,000 (\$528,030)
					Failure to diagnose; progression of disease	Jury award: \$150,000,750 State's malpractice reduced to \$619,000 Total recovery \$525,000 (\$563,525)
Jan-04	N/A	Settlement: Apr-07	Oral cancer	Diagnosis	Failure to diagnose persisting lesion	Settlement: \$180,000 (\$199,913)
Apr-02	N/A	Settlement: Jun-05	Oral cancer	Diagnosis	Failure to diagnose; failure to submit excised tissue for pathology	Settlement: \$400,000 (\$471,644)
Aug-98	N/A	Trial: Apr-03	Oral cancer	Diagnosis	Failure to diagnose; progression of disease	Defense prevailed (\$0)
N/A	N/A	Trial: Nov-99	Oral cancer	Diagnosis	Failure to diagnose; more extensive surgery and radiation with damage to salivary glands	Defense prevailed (\$0)
Dec-92	N/A	Trial: Apr-98	Oral cancer	Diagnosis	Failure to diagnose; progression of disease.	Defense prevailed (\$0)
Jul-92	N/A	Trial: Jan-98	Oral cancer	Diagnosis	Failure to diagnose; progression of disease Defendant claimed biopsy recommended; patient refused	Defense prevailed (\$0)
Jul-93	N/A	Trial Dec-97	Oral cancer	Diagnosis	Failure to diagnose; progression of disease	Defense prevailed (\$0)
Dec-86	N/A	Trial: Jun-92	Oral cancer	Diagnosis	Failure to diagnose progression of disease Defendant's initial lesion diagnosed as abscess was not associated with cancer	Defense prevailed (\$0)

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