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Malpractice in colorectal surgery: a review of 122 medicolegal cases

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ABSTRACT

Background: Medical malpractice has become a rising concern for physicians, affecting the cost and delivery of health care. Colorectal procedures account for 24% of all general surgery cases, a high-risk specialty, with 15% of its physicians facing malpractice suit annually.

Methods: The Westlaw legal database was used to identify colorectal malpractice cases.

Results: In all, 122 of 230 lawsuits were included in this study. A majority of 65.6% were physician verdicts, 19.7% plaintiff verdicts, and 14.8% reached a settlement. Plaintiff payments were found to be significantly higher than settlement awards. The most common cause of alleged malpractice was failure to recognize a complication in a timely manner (45.1%), followed by damage to surrounding tissues (36.1%).

Conclusions: The most common cause of alleged malpractice was failure to recognize a complication in a timely manner, followed by damage to surrounding tissue. Plaintiff awards were significantly higher than settlement payments. It is important to understand the mechanism of malpractice allegations to better prevent litigation and improve patient care.

1. Introduction

Medical malpractice has become a rising concern for physicians, affecting the cost and delivery of health care. General surgery is considered a high-risk specialty, with 15% of its physicians facing a malpractice suit annually [1]. In 2013, malpractice payments totaled $3.58 billion. Moreover, the overall annual medical liability system cost (including defensive medicine) in 2008 was estimated to be $55.6 billion [2,3].

Studdert *et al.* [4] suggested that the risk of malpractice suits has created a climate of defensive medicine, which has led to an increase in diagnostic tests, unnecessary referrals, and avoidance of high-risk patients. This litigious environment has caused physicians to retire earlier, relocate, and restrict their scope of services, all of which limits patients' access to care [5].

Colorectal procedures account for 24% of all general surgery cases, and it is predicted that there will be a 40% increase in colorectal procedures by the year 2020 [6]. Furthermore, colorectal procedures are associated with considerable morbidity and mortality. Morbidity rates range from 20%–35% and a 30-d mortality rate ranging from 2%–9% [7,8]. With increasing rates of colorectal procedures and trend toward minimally invasive techniques, it is important to understand the effects of malpractice in the current surgical climate. We aim to identify the most frequent causes of alleged

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malpractice in colorectal procedures in an effort to increase patient safety, overcome defensive medicine practices, and ultimately improve the delivery of health care.

2. Methods

The Westlaw legal database was used to identify colorectal malpractice cases. The database is one of two major legal resources used to obtain court records and case descriptions. Records in the Westlaw database are reported voluntarily by attorneys or involuntarily, designated by labels such as "anonymous" or "confidential." Information from these records includes the name of plaintiff and defendant, summary of events preceding lawsuit, names of witness, and jury verdicts and awards.

The keywords "colorectal," "medical malpractice," "surgery of colon," and "surgery of rectum" were used to search the database between 1989 and 2012. The results were then filtered to remove duplicates and nonrelevant cases. Nonrelevant cases were defined as any search result that did not involve a malpractice lawsuit directly relating to a prior colorectal surgery. Remaining cases were then analyzed using Microsoft Excel statistical t-test and chi-squared; significance was determined by $P < 0.05$ (Microsoft Excel; Microsoft Corp, Redmond, WA).

3. Results

The Westlaw legal database search yielded 230 cases, of which 122 (53%) were included in the study. One hundred eight (47%) cases were excluded for duplications and nonrelevant search results (Fig. 1). Nonrelevant results were defined as any case that did not involve a malpractice lawsuit directly after a colorectal procedure or cases that mentioned a history of a colorectal procedure and erroneously retrieved through the searched keywords. Examples of excluded cases included litigations after a colonoscopy, endoscopic retrograde cholangiopancreatography, hysterectomy, or cases in which there was a history of colorectal surgeries in a previous, unrelated hospitalization.

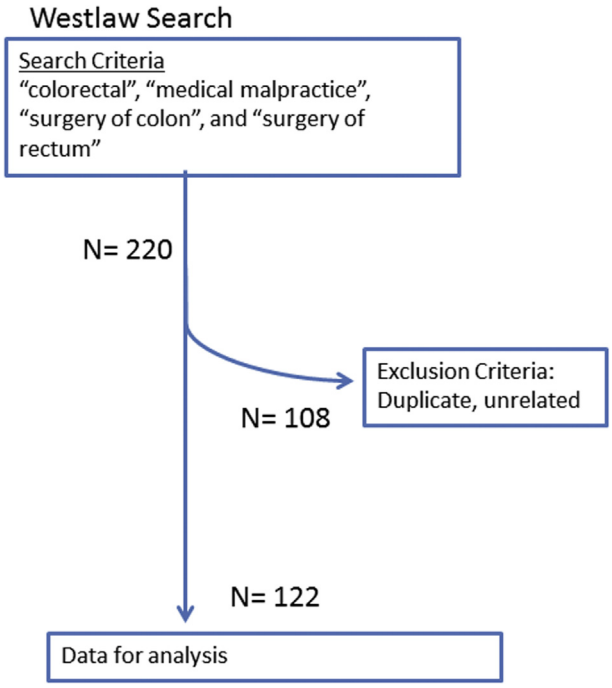

Fig. 1 – Flowchart of data acquisition. (Color version of the figure is available online.)

Of the 122 cases, 80 (65.6%) were physician verdicts, 24 (19.7%) were plaintiff verdicts, and 18 (14.8%) reached a settlement. The average award in a plaintiff verdict was $1,779,426.00 (range, 180,000.00–10,000,000.00). The average settlement amount was $662,972.20 (range, 67.500.00–1,600,000). Plaintiff payments were found to be significantly higher than settlement awards (t-test, $P = 0.03$)

The most common cause of alleged malpractice in colorectal surgery was failure to recognize a complication in a timely manner (45.1%), followed by damage to surrounding tissue during the procedure (36.1%, Figs. 2 and 3). The most common complications that were not recognized in a timely manner were anastomotic leaks (29.1%), followed by infections (14.6%) and injuries to surrounding tissue (12.3%, Fig. 4).

Of the cases involving an alleged failure to recognize a complication, 54.5% were physician verdicts, 23.6% were plaintiff verdicts, and 21.8% reached a settlement. The average plaintiff award was $1,347,564 (range, $180,000–$5,219,086). The average settlement amount was $851,333 (range, $175,000–$1,600,000). The outcome of cases involving an alleged failure to recognize a complication is not statistically significant (χ^2, 2 d.f., $P = 0.18$); it is no more likely to be ruled in favor of the physician or plaintiff.

4. Discussion

In this analysis, we found the most common cause of alleged malpractice to be a failure to recognize complications in a timely manner, the most common of which was an anastomotic leak. Furthermore, it was determined that plaintiff awards were significantly higher than settlement payments. Finally, this analysis showed that of all the colorectal cases that proceeded to trial, more than half (65.56%) of cases resulted in a verdict for the physician.

The findings of this study shed light on the importance of routine postoperative checks and recognizing common complications that can occur after colorectal procedures. There is a positive correlation between timing of intervention in anastomotic leaks and the development of septic complications [9,10]. Smoking, obesity, poor nutrition, alcohol excess, and use of immunosuppressant are adjustable risk factors associated with colorectal anastomotic leaks [11]. The classic presentation includes abdominal pain, tachycardia, high fevers, rigid abdomen, and hemodynamic instability. In a large number of patients, the presentation is insidious with low-grade fever, prolonged ileus, or failure to thrive, often escaping detection [10,12]. Current modalities include intraoperative techniques such as direct endoscopic visualization, air leak testing, tissue oxygenation assessment, and radiologic techniques including computerized tomography and water