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Malpractice lawsuits and change in work in Japanese surgeons

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ABSTRACT

Background: The risk of lawsuits causes surgeons stress and is associated with defensive medicine. It is possible that some surgeons withdraw from surgery because of malpractice lawsuits, although the actual impact of lawsuits is not clear. This study evaluated changes in work and medical practices involved in lawsuits, as well as support they receive.

Materials and methods: A total of 115 surgeons who had been involved in lawsuits in Japan were eligible to participate. Participants were surveyed about changes in work because of lawsuits, the influence of lawsuits on medical care, defensive medicine, and their opinions on support they received.

Results: A total of 30 surveys were collected. Six surgeons changed work: five had lost their lawsuits and the remaining one had a settlement. Surgeons felt that lawsuits imposed a time burden (100%) and caused emotional strain (96%). Surgeons made a number of conscious changes to their medical care after lawsuits, including over care (27%) and a hesitation to use high-risk treatments (39%). They had positive opinions of support they received from the legal counsel (89%), the hospital director (73%), supervisors (65%), and colleagues (57%). Surgeons who changed work were significantly more likely to engage in defensive medicine, including over care and hesitation, than those who had not changed work. Support from the legal counsel was negatively correlated with over care and hesitation.

Conclusions: Given the significant influence of lawsuits on surgeons' practice, medical institutions should provide support to surgeons. Future research is needed to confirm whether legal counsel may prevent defensive medicine.

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1. Introduction

There is concern that the trend toward malpractice lawsuits is leading to defensive medical practices; this refers to how physicians order tests or procedures solely to protect themselves from the risk of lawsuits [1]. Malpractice lawsuit risk influences physicians' behaviors, especially physicians in high-risk surgical specialties [2,3]. Defensive medicine is problematic for surgeons in malpractice environments

because it makes surgeons order more, often costly, tests and avoid high-risk patients [4].

A recent large-scale research project conducted among surgeons who had actually been involved in a lawsuit showed that 25% of these surgeons had been involved in medical malpractice litigation in the past 2 y alone, and that malpractice lawsuits often had profound personal consequences for them [5]. In a survey of 72 surgical oncologists at a single academic center, 71% of the respondents had been

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named in a medical malpractice suit. More than half of those surgeons who had been sued reported the experience as “highly stressful” [6]. Experiencing a malpractice lawsuit is associated with distress, including burnout and depression; it has been pointed out that a bidirectional relationship between burnout and malpractice litigation is possible [5]. Professional burnout has also been linked to poor mental health and early retirement among physicians [7]. Several studies have indicated that professional burnout is correlated with increased medical errors among residents and surgeons in practice [8,9].

Health-care professionals may be traumatized by events in which their patients suffer. In the year 2000, Wu [10] introduced the term “second victim” to describe such situations. Studies have reported insufficient support from organizations and colleagues for professionals experiencing adverse events in the medical field [11–14]. Second victim support is needed to care for physicians and to improve the quality of medical care.

In this environment, the excessive burden of medical malpractice lawsuits can lead to concerning defensive medicine practices and even withdrawal from surgical practice. However, little is known about the way malpractice lawsuits lead to personal changes of work in medical practice and how they influence medical care. This study examines surgeons’ reactions to malpractice lawsuits and to the support they receive from relevant parties in the medical institution. In addition, we investigate the association between the surgical practices and support among those who have experienced lawsuits.

2. Material and methods

2.1. Participants

Surgeons who were involved in medical malpractice lawsuits in Japan from 2003–2013 for medical events occurring since 1998 were eligible to participate. Court cases were obtained from case databases that can be used to search for court cases in Japan, including “Hanrei Hisho” by LIC Corporation and “Lex-DB” by TKC Corporation. The following newspaper article databases were also used: “The Asahi Shimbun,” “The Nikkei,” and “Yomiuri Shimbun.” A total of 115 cases involving a surgeon and a named medical institution were found. However, the surgeons’ names could not be identified. We sent the survey to the medical institution where the surgeons were working at the time of the event. All 115 eligible surgeons received the survey by mail and were thereby invited to take part in the study.

Participation in this study was voluntary. By submitting the survey, surgeons indicated their agreement to participate in this research; this was explained on each survey.

The Fukuoka University Hospital Institutional Review Board approved this study.

2.2. Data collection

A survey was sent to the medical institution where the 115 surgeons were working between January and September 2013.

The survey asked for a description of the medical institution named in the lawsuit. Surgeons who had been involved in malpractice lawsuits completed the surveys on their own; alternatively, a staff member who knew the surgeon could answer as a proxy. We asked proxies to only answer the items of which they were confident.

Data on lawsuits (e.g., claim amount, award amount) filed at the district court were collected from judgments and newspaper articles referencing the name of the medical institution.

2.3. Survey instrument

No existing surveys addressed our domains of interest at the time of this study. We therefore developed our own items with reference to relevant articles [4,5]. Items were tested informally with physician colleagues and refined before administration.

The survey included 26 questions, divided into six sections. The first section inquired about personal characteristics, age, and specialty. The next section asked about any changes in work after the event (e.g., changes specialty, resignation as a doctor, or resignation from the medical institution). The third section asked about the result of the malpractice lawsuit (lost lawsuit, judicial settlement, and lawsuit won) and the validity of the lawsuit result using a 5-point Likert scale (agree, somewhat agree, neutral, somewhat disagree, and disagree). The fourth section asked respondents to rate their level of agreement that the malpractice suit was a burden (e.g., time burden and emotional strain) on a 5-point Likert scale. The fifth section asked about the support participants received (e.g., from the director of the hospital, the legal counsel, Department of Medical Safety, and colleagues) on a 5-point Likert scale. The last section asked about surgeons’ awareness of any changes in medical care, first in response to the event and then in response to the result of the lawsuit (e.g., awareness of medical safety, over care for self-defense, and hesitation to use high-risk treatments for self-defense) on a 5-point Likert scale.

2.4. Statistical analysis

Means and standard deviations were calculated for continuous variables. Wilcoxon rank-sum tests were used to test for differences between groups (e.g., result of lawsuit and changes in medical practice) in their responses to the scales. Spearman rank correlation coefficients were used to assess the degree of association between questionnaire scales (e.g., cooperation of participants and awareness of changes in medical care). Surveys with missing values were not excluded; all item-level responses were incorporated into the analysis.

SPSS statistics version 19.0 (SPSS Inc, Chicago, IL) was used for all analyses. Statistical significance was set at a *P* value of 0.05.

3. Results

We collected 30 surveys (response rate of 26%). Response rates of 26% were obtained for both lawsuits with a positive ruling

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