Orthopaedics & Traumatology: Surgery & Research xxx (2017) xxx–xxx

Available online at
ScienceDirect
www.sciencedirect.com

Elsevier Masson France
EM|consulte
www.em-consulte.com/en

Original article

Litigation in orthopedic surgery: What can we do to prevent it? Systematic analysis of 126 legal actions involving four university hospitals in France

J. Mouton [a,*], R. Gauthé [a], M. Ould-Slimane [a], S. Bertiaux [b], S. Putman [c,d], F. Dujardin [a]

[a] Service de chirurgie orthopédique et traumatologique, CHU de Rouen, 1, rue de Germont, 76000 Rouen, France
[b] Service de chirurgie orthopédique et traumatologique, hôpital privé de l'estuaire, 505, rue Joliot-Curie, 76620 Le Havre, France
[c] Université de Lille–Nord-de-France, Lille, France
[d] Service de chirurgie orthopédique, hôpital Salengro, CHRU de Lille, place de Verdun, 59037 Lille, France

ARTICLE INFO

Article history:
Received 27 July 2017
Accepted 13 November 2017

Keywords:
Litigation
Traumatology
Judiciary
Compensation

ABSTRACT

Introduction: Orthopedic surgery produces 20% of medical malpractice claims. However only a few studies have examined the reasons for and consequences of these disputes, and they have usually been limited to a single hospital. This led us to perform a retrospective analysis of the claims at four teaching hospitals in northwestern France. The goals were (1) to describe the circumstances that led to these claims and recommend ways to prevent them, and (2) to describe the conduct of the proceedings and their financial and social outcomes.
Hypothesis: A systematic analysis of litigation cases will provide accurate information on the circumstances leading to these claims.
Methods: The study included 126 disputes settled between 2000 and 2010 and related to orthopedic or trauma care given at one of four teaching hospitals in northwestern France. The method of recourse, grounds of the complaint, type of surgical procedure, expert findings and amount of the award were systematically analyzed.
Results: Of these 126 cases, 54 (43%) of them were submitted to the French CRCI (regional conciliation and compensation commission), 48 (39%) to the French administrative courts and 51 (41%) were settled amicably. Multiple methods of recourse were used in 21% of cases ($n = 27/126$). The average length of administrative court proceedings was 36.7 ± 27 months [4–102], which was significantly longer than the CRCI proceedings (22.7 ± 17.9 months [3–80]) or out-of-court settlement (23.7 ± 21.5 months [0–52]) ($p < 0.0001$). Damages were sought for medical error or treatment-related risk in 67.5% of the complaints ($n = 85/126$), and for failure to inform in 15.8% of cases ($n = 20/126$). There was a suspected surgical site infection in 79.3% of cases ($n = 100/126$). There were multiple grounds for complaint in 68.3% of cases ($n = 86/126$). Poor communication between the physician and patient was identified in 26.2% of cases ($n = 33/126$). Damages were awarded in 25% of cases ($n = 31/126$), with an average award of €58,303 ± €91,601 [0–357,970].
Conclusion: The primary grounds for legal action are infection-related complications combined with a deterioration in the doctor–patient relationship. Disputes could be prevented by continuing efforts to combat hospital-acquired infections and providing better communications training.
Level of proof: IV (retrospective study).

1. Introduction

Orthopedic surgery has been in the subject of medical malpractice claims for more than 130 years [1]. According to the Observatoire des risques médicaux, the medical risk monitoring agency in France, surgical specialties (excluding plastic and obstetric surgery) account for 61.9% of cases and are the primary medical activities leading to litigation [2]. Surgical litigation cases in French resulted in awards totaling more than €670,000,000 over five consecutive years [2]. Orthopedics is the specialty most subject to lawsuits. An orthopedic surgeon is exposed to an average of 17 litigation proceedings over his/her career [3].

* Corresponding author.
E-mail address: mouton.jor@gmail.com (J. Mouton).

https://doi.org/10.1016/j.otsr.2017.11.002
1877-0568/

Four methods of recourse coexist in France. A request for amicable settlement (AS) can be made through a letter sent to the hospital's management. A claim can also be brought before the CRCI (French regional conciliation and compensation commission), which is presided over by a judge and rules on possible damages. In the case of a complaint against a public healthcare facility, the case may be submitted to the administrative courts (AC) in France, which can lead to a finding against the surgeon and associated institution. In private practice, the case is submitted to the Tribunal de Grande Instance (regional court). Lastly, the country's medical association can be informed of a breach of professional ethics and determine which disciplinary actions should be brought against the physician. Several factors appear to contribute to litigation: failure to inform the patient, treatment-related risks, incorrect diagnosis and development of a surgical site infection [4–7]. Behind these motives, patients are likely also seeking acknowledgement of a medical error, monetary damages, or simply an explanation of their treatment and care.

Through a systematic analysis, we can gain a better understanding of the purpose of these claims and adopt preventative strategies. However, detailed information is not widely available to teaching hospitals in France. Most published studies on this topic involve the United States and Great Britain or an analysis from insurance companies. We performed a retrospective analysis of claims involving four teaching hospitals in northwestern France. The goals were (1) to describe the circumstances that led to these claims and recommend ways to prevent them, and (2) to describe the conduct of these proceedings, and their financial and social outcomes. We hypothesized that a systematic analysis of litigation cases will provide accurate information on the circumstances leading to these claims.

2. Material and methods

2.1. Case selection

This observational, multicenter study analyzed all the litigation cases brought between January 1, 2000 and December 31, 2010. The subjects involved had to be adults at the time of the procedure, and the cases had to be closed as of January 1, 2016. The cases had to be related to orthopedic or trauma surgery care (excluding spine surgery) carried out at one of four teaching hospitals in northwestern France (Amiens, Caen, Lille and Rouen). We did not include cases from other units, such as those related to a diagnostic error during an emergency room visit. The institutional review board approved this non-interventional study (No. 20140217).

2.2. Methods

The cases were anonymized and then examined by a single investigator (J.M.) in the offices of the legal department of each hospital. Each case file contained an expert report, medical and nursing records, and the final decision.

2.3. Assessment methods

For each case, the method of recourse (AC, CRCI or AS) was specified. The grounds of the complaint, recourse to a lawyer or patient association, if applicable, the request for an expert opinion and the total duration of the proceedings were recorded.

Basic epidemiology and morphology information was documented, such as age, sex, body mass index (BMI), occupation, and the American Society of Anesthesiology comorbidity score (ASA score) [8]. The context of the surgical procedure was determined: scheduled surgery or trauma case, multiple fractures, joint or limb affected, work-related injury, time to treatment for trauma cases, revision surgery or infection-related complications. The occurrence of complications during the treatment period was recorded.

The expert findings on temporary total disability (TTD), temporary partial disability (TPD), pain and suffering (PS), or permanent physical or mental impairment (PPMI) along with the social and economic consequences (occupational reclassification, disfigurement and amount of compensation) for the patient were also recorded.

2.4. Statistical analysis

SPSS software (version 22.0, IBM, Armonk, NY, USA) was used to carry out the statistical analysis. A descriptive analysis was carried out with the dispersion parameters for the quantitative data (mean or median, standard deviation, minimum and maximum) and described as a percentage for qualitative data.

3. Results

3.1. Methods of recourse

Of the 133 cases analyzed, 7 were excluded: 5 involved another specialty, 1 patient died before the expert assessment, and 1 case had no medical records (Table 1). Of the remaining 126 cases, 54 (43%) of them were submitted to the French CRCI, 48 (39%) were submitted to the French administrative courts and 51 (41%) were settled amicably. Multiple methods of recourse were used in 21% of cases ($n = 27/126$). An expert medical opinion was requested in 80% of cases ($n = 101/126$). The other 25 cases were compensation requests that were closed without an expert opinion or the proceedings were terminated by the plaintiff. The mean time elapsed before the complaint was 16.1 ± 12.4 months [1–67] for the AS, 20.6 ± 16.2 months [2–100] for the CRCI, and 32.6 ± 26.4 months [1–158] for the AC. The proceedings lasted an average of 25.8 ± 22.1 months [2–102]. The AC proceedings lasted an average of 36.7 ± 27 months [4–102], which was significantly longer than for the CRCI (22.7 ± 17.9 months [3–80]) or AS (23.7 ± 21.5 months [0–52]) ($p < 0.0001$). The proceedings were terminated before completion in 11% of cases ($n = 14/126$), with multiple recourse mechanisms being used in 3 cases (case taken up

Table 1
Methods of recourse.

	n (%) or mean ± SD [min–max]
Number of cases analyzed	126
Number of cases excluded	7
Other medical specialty	5
Death before end of proceedings	1
Incomplete file	1
Methods of recourse	
CRCI	54 (43)
AC	48 (39)
AS	51 (41)
Multiple avenues	27 (21)
Average duration of proceedings (months)	25.8 ± 22.1 [2–102]
CRCI	22.7 ± 17.9 [3–80]
AC	36.7 ± 27 [4–102]
AS	23.7 ± 21.5 [0–52]
Time elapsed before complaint was made (months)	22.3 ± 23 [1–158]
CRCI	20.6 ± 16.2 [2–100]
AC	32.6 ± 26.4 [1–158]
AS	16.1 ± 12.4 [1–67]
Expert opinion requested	101 (80)
Proceeding terminated before conclusion	14 (11)
Lawyer involved	69 (55)
Represented by patient association	0 (0)

CRCI: regional conciliation and compensation commission; AC: administrative courts; AS: amicable settlement; SD: standard deviation.

Please cite this article in press as: Mouton J, et al. Litigation in orthopedic surgery: What can we do to prevent it? Systematic analysis of 126 legal actions involving four university hospitals in France. Orthop Traumatol Surg Res (2017), https://doi.org/10.1016/j.otsr.2017.11.002