INTRODUCTION

The practice of otology is challenging, based on the complexity of the anatomy and physiology of the auditory and vestibular systems. The margin of error in the surgical practice of otology/neurotology is small, and there may be obvious postoperative manifestations of iatrogenic injury, including facial paralysis, hearing loss, vertigo, and imbalance. Consequently, otologists are especially concerned about professional malpractice claims for adverse outcomes of otologic procedures.

The Westlaw database (Thomas Reuters, New York, NY) is a web-based resource that compiles verdict and settlement reports from publically available state and federal court records. It has previously been used in multiple otolaryngologic malpractice analyses including hearing loss,1 ceroidrosis sine ceroidrosis,2 facial paralysis,3 facial nerve paralysis,4 iatrogenic tracheal stenosis,5 iatrogenic cranial nerve injury,6 iatrogenic cerebrospinal fluid leakage,7 and iatrogenic orbital injury.8 In this study, the database was utilized to analyze medical malpractice cases resulting from complications in otologic procedures in the United States (U.S.). To the best of our knowledge, this is the first analysis examining otologic malpractice litigation in the U.S.

METHODS

The Westlaw database was searched in October 2012 for jury verdicts and settlement reports related to medical malpractice in otologic procedures. Using the advanced search function, the term “medical malpractice” was searched in conjunction with terms related to otology and neurotology obtained from the Westlaw database. The term “medical malpractice” was searched in combination with terms related to otology and neurotology obtained from the Westlaw database. The search resulted in 47 claims involving otologic procedures from 1988 to 2011. Of these, 63.8% resulted in a defense verdict, 25.5% resulted in a plaintiff verdict, and 10.6% resulted in a settlement (Figure 1). The average payment for plaintiff verdicts was $446,687 (Range $2,733,000-$1,515,000), while the average payment for settlements was $37,670 (Range $1,075,000-$55M). Otolaryngologists were named in 28 cases, and of the 28 otolaryngologists, 5 were otologists. The subspecialty of the other 23 otolaryngologists was unspecified. Other specialties named were general practice (9), neurosurgery (5), anesthesiology (4), plastic surgery (1), radiology (1), and non-medical doctors (4). The defendant specialty was unknown in 2 cases. Procedures frequently leading to litigation included cerumen removal, acoustic neuroma resection, stapedectomy, mastoidectomy, tympanoplasty, myringotomy, ventilation tube placement, and ossiculoplasty (Figure 1).

RESULTS

Cerumen removal was the most litigated procedure, mentioned in 21.3% (N=10) of cases (Figure 1). In the cerumen removal cases, primary care practitioners were mentioned in 8 (80.0%) cases, Otolaryngologists were mentioned in 2 (20.0%) cases, and 1 (10.0%) case did not specify specialty. One case mentioned both an Otolaryngologist and a primary care physician. It was not specified whether the Otolaryngologists were generalists or subspecialists like otologists. The method of cerumen removal was ligation in 5 (50.0%) cases and unspecified in 5 (50.0%) cases.

Hearing loss was the most common injury claimed and was mentioned in 53.2% (N=25) of cases (Figure 2). The highest proportion of cases resulting in payment was associated with facial nerve injury, tympanic membrane perforation, and hearing loss, with payment resulting in 6 out of 13 (46.2%), 5 out of 11 (45.5%), and 10 out of 25 (40.0%) cases respectively (Figure 3). Cases involving cerumen removal procedures were most likely to result in payment (50.0%) (Figure 1). Though less likely to result in payment, mean payments were highest for acoustic neuroma resection and stapedectomy ($1,498,587 ± $1,802,189 Standard Deviation and $2,733,000 respectively). The average payment by injury is shown in Figure 5. Allegra's name was used in all cases, with a mean payment of $2,733,000. Figure 6 shows the number of cases resulting in payment by injury. The number of cases involving overpayment was highest in cases involving facial paralysis and facial nerve injury (27.7%).

The most common alleged injury was facial nerve injury (27.7%), resulting in a mean payment of $2,733,000. Other common alleged injuries were facial nerve injury (27.7%), cerumen removal (21.3%), and tympanic membrane perforation (23.4%). Injuries claimed are shown in Figure 7. The most common injuries claimed were facial nerve injury (27.7%), tympanic membrane perforation (23.4%), and cerumen removal (42.6%).

Injuries claimed. FN, facial nerve; TM, tympanic membrane; AMS, altered mental status.

CONCLUSIONS

Malpractice trials were resolved in the defendant’s favor in the majority of cases. Cerumen removal was the most common procedure leading to complaint and the procedure most likely to result in payment. Hearing loss was the most common injury cited. Payment was highest in acoustic neuroma and stapedectomy cases.

In addition to time and energy spent attending to medicolegal issues, monetary costs associated with malpractice litigation are substantial and may be passed down to patients.1,3,4,10 Rising malpractice insurance premiums, diminishing numbers of agencies offering coverage, considerable legal fees, and increasing damages awarded may all contribute to rising operative and non-operative costs. In addition, physicians cite harm to professional reputation as even more important than the monetary costs associated with the medicolegal process.11

The most litigated procedure was cerumen removal (10 cases) (Figure 1), which was also the most likely procedure to result in payment (50%). However, the average award ($363,615) was lower than that for more complicated procedures (Figure 3). Cerumen impaction accounts for 12 million patient visits a year and cerumen removal is performed over 8 million times per year.2,3 As it is thought of as an innocuous procedure, physicians may be surprised to learn that acoustic neuroma resection is the greatest number of malpractice cases. Otolaryngologists can take away two main points from this finding: 1) even the smallest of procedures is not immune to litigation, and 2) the same level of vigilance should be maintained for both common and low risk procedures like cerumen removal as is maintained during higher risk procedures because the threat of litigation is real.

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Matthes et al.9 recently examined medical malpractice litigation related to otology in the United Kingdom (U.K.). Conclusions drawn from this paper can be useful to otologists in the U.S., however, given the different legal structures and examination of cases litigated in the U.K. is also of value. By analyzing litigation stemming from all otologic procedures and profiling outcomes, average payments, commonly litigated procedures, and other alleged factors important in determining legal responsibility, this analysis aims to educate otolaryngologists on legal vulnerabilities specific to otology. This information should help otolaryngologists to be aware of the otologic procedures and legal grounds where they are most vulnerable, to foster a safer environment for the practice of otology, and potentially improve patient care.

Injuries claimed. FN, facial nerve; TM, tympanic membrane; AMS, altered mental status.

Figure 2. Injuries claimed: FN, facial nerve; TM, tympanic membrane; AMS, altered mental status.

Figure 3. Secondary injuries claimed. Add'l surgery, additional surgeon required; informed consent, lack of informed consent.

Figure 4. Mean payment by procedure. Error bars indicate standard deviation. Acoustic neuroma, acoustic neuroma resection.

Figure 5. Mean payment by injury. Error bars indicate standard deviation. FN, facial nerve; TM, tympanic membrane; AMS, altered mental status.

Figure 6. Mean payment by secondary injury. Error bars indicate standard deviation. Add'l surgery, additional surgeon required; informed consent, lack of informed consent.

Figure 7. Trial outcomes by state. Blue, defense verdict; peach, plaintiff verdict; green, settlement.

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METHODS

The Westlaw database was searched in October 2012 for jury verdicts and settlement reports related to medical malpractice in otologic procedures. Using the advanced search function, the term “medical malpractice” was searched in conjunction with terms related to otology and neurotology. A total of 435 jury verdicts and settlement reports were initially found. We specifically included all cases involving procedural complications in order to perform a thorough, scientific analysis. Ultimately, 47 cases including procedural complications were included in this analysis. Other cases were excluded for the following reasons: chief complaint unrelated to otology (28), duplicate verdict and settlement reports (20), not at otologic procedure (8), injury unrelated to the otologic-related (8), and not medical malpractice (5).

Each case was examined for the outcome, award, alleged cause of malpractice, unfavorable outcomes such as requirement for additional surgery, and secondary complaints such as lack of informed consent. Demographic information including patient age, sex, and race was also recorded.