

Malpractice Litigation After Surgical Injury of the Spinal Accessory Nerve: An Evidence-Based Analysis

Content

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OBJECTIVE: To review the background, case characteristics, and outcomes of malpractice litigation resulting from surgical injury of the spinal accessory nerve. **DESIGN:** Retrospective review of indemnity insurance cases (part 1) and court trials (part 2) between January 1, 1985, and January 1, 2007. In part 1, records of the Medical Liability Mutual Insurance Company identified 41 lawsuits in New York State; part 2 was a review of a national legal database (WestLaw) that identified 81 court trials. Case details were analyzed, and awards were adjusted for inflation.

RESULTS: For part 1, of 41 indemnity insurance cases, 39 (95%) involved a posterior triangle lymph node biopsy. Defendants were mainly general surgeons and otolaryngologists. Most lawsuits against surgeons (22 of 34 [65%]) were settled before trial, and only 4 of 34 (12%) were discontinued. Of these 34 cases, 28 (82%) ultimately compensated the plaintiff. The mean inflation-adjusted pretrial settlement was \$264 395, and the mean settlement at trial was \$443 538. Cases reaching trial received significantly higher settlements ($P = .01$). For part 2, 81 cases of alleged surgical injury to the spinal accessory nerve were identified. Defendant physicians were mainly general surgeons and otolaryngologists. Most operations were cervical lymph node biopsies (55 [68%]), followed by sebaceous cyst excisions (6 [7%]), neck dissections (4 [5%]), and other procedures (12 [15%]). Morbidity included weakness (81 patients [100%]), pain (30 patients [37%]), inability to work (20 patients [25%]), need for a nerve repair procedure (16 patients [20%]), deformity (9 patients [11%]), and numbness (4 patients [5%]). Types of malpractice alleged included negligent surgical technique (79 cases [98%]), lack of informed consent (17 cases [21%]), and failure to diagnose the injury (16 cases [20%]). Thirty-seven cases (46%) were decided for the defendant, 32 (40%) were decided for the plaintiff, and 12 (15%) were settled (percentages do not total 100 because of rounding). The mean inflation-adjusted settlement was \$356 132, and the mean jury award was \$515 968. Jury awards were significantly higher than settlements ($P = .003$).

CONCLUSIONS: Unintended injury to the spinal accessory nerve after head and neck surgery is a significant source of malpractice litigation. Timely diagnosis and treatment of this complication are essential. Regardless of whether the medical community considers careful surgical technique and nerve preservation to be the standard of care, the legal system clearly treats it as such, awarding compensation in 82% of cases. Strategies for optimal surgical care and litigation risk reduction are discussed.