

# Orthopedic Medical Malpractice: an Attorney's Perspective

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## ABSTRACT

Orthopedic surgeons are trained to manage problems involving the musculoskeletal system. It would be helpful to identify certain procedures, anatomic areas, or issues related to the physician-patient relationship that could potentially lead to a malpractice lawsuit. Once the problems are identified, steps toward continuing education and physician awareness could be initiated. In this study, we performed a randomized nationwide survey of medical malpractice attorneys to evoke their opinion on these issues. We found that the lumbar spine was the most common anatomic area involved in orthopedic medical malpractice cases, and a physician appearing rushed and uninterested is most likely to be the subject of a lawsuit where a poor physician-patient relationship was a contributing factor. Educational and professional programs are needed to increase the awareness and knowledge of orthopedic malpractice risks, and also to identify potentially preventable problems leading to malpractice litigation.

Many orthopedic surgeons will be the subjects of malpractice claims during their careers. Several reasons exist for patients to sue their physicians. Poor communication between the physician and patient regarding the treatment plan is a frequent problem. Dissatisfied patients, unrealistic treatment expectations by either party, problems associated with informed consent, and diagnostic and procedural errors have contributed to many malpractice lawsuits. Defending malpractice claims is a challenging endeavor. Improper documentation, alteration of the medical records, and criticism of the treatment provided by another physician are avoidable problems that make defending claims difficult.

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(AAOS) Committee on professional liability recently reviewed the closed-claims of the Physicians Insurers Association of America (PIAA) for several diagnoses and procedures over a 6- to 15-year period.<sup>1</sup> Closed claims are defined as cases that have been resolved: either settled out of court, resolved by a judge, or by a jury trial. In the cases reviewed by the AAOS, an orthopedic surgeon was a defendant about 82% of the time, and 75% of defendants had a prior history of malpractice claims. They found the majority of cases were settled prior to trial, while 3% of all cases resulted in a plaintiff verdict after trial by jury. Of those procedures and diagnoses that were reviewed, claims for spine surgery generated the highest indemnity payments and defense costs, while tibia fractures and knee arthroscopy had the lowest.

The purpose of this study was to investigate several issues regarding orthopedic medical malpractice and to identify risk factors for orthopedic malpractice cases as based on a random nationwide survey of malpractice attorneys. To our knowledge, this type of study, based on an attorney rather than physician survey, has not previously been performed. We feel this study represents a unique approach to a very important and potentially serious problem area of musculoskeletal medical care.

## MATERIALS AND METHODS

### Questionnaire Design

A two-page questionnaire (Figure) was developed by a group of five orthopedic surgeons and one attorney at our institution. The purpose of the questionnaire was to access malpractice attorneys' perceptions regarding orthopedic medical malpractice cases. The questionnaire was designed to take 5 to 10 minutes to complete and underwent pilot testing to ensure the questions were easy to understand and represented important issues to malpractice attorneys in regards to orthopedic medical malpractice cases. The pilot testing was performed in northeast Ohio; the questionnaire was completed by 15 medical malpractice attorneys. Results of the pilot testing indicated that only minor changes were needed of the questionnaire. The questionnaire contained items regarding demographic information and also asked for the attorneys' opinions regarding orthopedic medical malpractice cases.