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CORRESPONDENCE AND COMMUNICATIONS

A review of litigation in plastic surgery in England. Lessons learned

The NHS Litigation Authority (NHSLA) was established on the 20th November 1995 to indemnify English National Health Service (NHS) bodies against claims for clinical negligence. The NHSLA's collated data offers an insight into the problems and instances of clinical negligence in plastic surgery.

Method

We requested from the NHSLA all legal claims of negligence against English health trusts that involved plastic surgery departments from the 1st of April 1995.

The results were sent as a Microsoft Excel[®] spreadsheet. We only included 'closed' cases that had reached a legal conclusion. Each case was analysed for the incident details and the cause of litigation and collated into trends.

Results

A total of 673 recorded cases of litigation pertaining to plastic surgery occurred between 1995 and 2009. Of these, 564 (346 elective, 87 emergency, 115 unknown) were classified as 'closed'.

The trends in litigation that emerged from the data included:

- Issues of consent
- Poor cosmetic result
- Scarring
- Lack of expertise in performing that procedure

There were total of 157 procedures on breasts (Table 1) and this was the most common body area for litigation. The operations where litigation arose were breast reduction, breast reconstruction and breast augmentation.

Procedures to the hands represented 87 of all cases (Table 2). There were six incidents of wrong site surgery concerning the hands and the average pay out was £25,713.

Of the 54 operations on the skin and soft tissues, the procedures with highest litigation were those concerning the misdiagnosis of skin cancer. There was one fatality associated with the misdiagnosis melanoma, which resulted in a large payout of over £300,000. Two basal cell carcinomas were misdiagnosed due to administrative errors.

Discussion

A literature search yielded a recent paper that compared the litigation against the NHS following rhinoplasty by otorhinolaryngologists and plastic surgeons using NHSLA data.¹ They found that the most common reasons for litigation were one, failure to obtain valid consent and two, post-operative cosmetic deformity. The latter reason for litigation was most commonly due to the mismanagement of a patient's expectations, this is confirmed in our study.

Breast reduction appears to be the procedure with the most litigation in the NHS and poor cosmetic result post-operatively resulted in an average payout of £38 k (Table 1). Breast reduction is traditionally a procedure with very high rates of patient satisfaction. It is important for an operating surgeon to obtain the patient's expectations and to ensure they are realistic to reduce the risk of litigation.

Issues of consent can be very financially punitive and there are no standardised consent criteria for procedures in plastic surgery. A paper from 1988 suggested that a specialty should establish a community standard of informed consent in order to minimise potential malpractice claims.² In orthopaedic surgery, the British Orthopaedic Association has endorsed a website (www.orthoconsent.com) which allows surgeons to click, modify and print standardised consent forms. We suggest a project similar to this in association with BAPRAS would be an option.

Lack of expertise is a common and expensive cause of litigation. The data suggests that there is a lack of supervision occurring in the operating theatre or inadequate training. It has been suggested that the introduction of the European Working Time Directive will affect junior surgeons' training and that they will not be experienced enough to perform common operations unsupervised.³ Proper supervision is going to become even more essential to minimise errors.

Table 1 The average payout for each cause for litigation for procedures on the breasts. The total amount paid in each category is shown in bracketed italics below each figure.

	Poor cosmetic result	Consent	Scarring	Lack of expertise
Breast reduction 96 cases	£38,514.49 (£1,309,492.73) (34 cases)	£25,515.35 (£255,153.54) (10 cases)	£36,963.08 (£295,704.62) (8 cases)	£26,953.65 (£215,629.19) (8 cases)
Breast reconstruction 40 cases	£11,109.44 (£55,547.19) (5 cases)	£32,974.79 (£263,798.35) (8 cases)	£12,312.16 (£49,248.63) (4 cases)	£24,437.25 (£48,874.50) (2 cases)
Breast augmentation 21 cases	£16,372.84 (£130,982.75) (8 cases)	£46,247.18 (Median) (£501,409.00) (5 cases)	£29,567.83 (£59,135.65) (2 cases)	£0.00 (£0.00) (1 case)

Table 2 Reasons for litigation in procedures of the hands.

	Delay in treatment leading to amputation (11 cases)	Poor outcome (11 cases)	Consent issues (6 cases)	Misdiagnosis (6 cases)	Delay in treatment (14 cases)	Wrong site surgery (6 cases)	Lack of expertise (3 cases)
Average payout	£14,295.29	£9306.13	£9906.94	£29,991.89	£14,641.41	£25,713.45	£70,336.83
Total paid out	£157,248.19	£102,367.43	£59,441.64	£179,951.34	£204,979.68	£154,280.71	£211,010.50

The misdiagnosis of skin cancer, particularly melanoma, results in high financial payouts. This raises concerns that surgeon's are not recognising potentially fatal cancers early enough. Skin cancer is increasing in the UK and highlighting the recognition of skin cancer in education both at undergraduate and postgraduate level is especially important.⁴

Finally, six cases in hand surgery that resulted in a total pay out of around £150 k because of wrong site surgery. The WHO has developed a 'surgical safety check list' to minimise the risk of incorrect site surgery.⁵ This should be standard protocol.

Limitations of study

The NHSLA data is very limited by the actual detail provided on each case and was collated as an audit tool for the litigation authority and not for clinical governance. The data provided sometimes is not robust enough to be used and may be misleading.

We recommend that surgeons become familiar with the frequent and avoidable pitfalls of certain procedures. Careful attention needs to be paid to the pre-operative stage of consent etc. in order to help minimise the chance of a malpractice claim.

The authors have made initial applications for a new website called, www.plasticsconsent.com, where consent forms for plastic surgery procedures will be available for any surgeon to download.

Conflict of interest statement

None.

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