

Evaluation of the medical malpractice cases concluded in the General Assembly of Council of Forensic Medicine

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ABSTRACT

BACKGROUND: Malpractice is an occasion that occurs due to defective treatment in the course of providing health services. Neither all of the errors within the medical practices are medical malpractices, nor all of the medical malpractices result in harm and judicial process. Injuries occurring at the time of treatment process may result from a complication or medical malpractice. This study aims to evaluate the reports of the controversial cases brought to trial with the claim of medical malpractice, compiled by The Council of Forensic Medicine.

METHODS: Our study includes all of the cases brought to the Ministry of Justice, Council of Forensic Medicine General Assembly with the claim of medical malpractice within a period of 11 years between 2000 and 2011 (n=330).

RESULTS: In our study, we saw that 33.3% of the 330 cases were detected as “medical malpractice” by the General assembly. Within this 33.3% segment cases, 14.2% of them resulted from treatment errors such as wrong or incomplete treatment and surgery, use of wrong medication, running late for a true diagnosis after necessary examination, inappropriate medical processes as well as applied treatment having causality with an emergent injury to the patient. 9.7% of them emerged from diagnosis errors like failure to diagnose, wrong diagnosis, lack of consultation request, lack of transfer to a top centre, lack of intervention resulting from not recognizing the postoperative complication on time. 8.8% of them occurred because of careless intervention such as lack of necessary care and attention, lack of post operation follow-ups, lack of essential informing, absenteeism when called for a patient, intervention under suboptimal conditions. Whereas 0.3% of them developed from errors due to inexperience, 0.3% of them were detected to have occurred because of the administrative mistakes following malfunction of healthcare system.

CONCLUSION: It is very important to analyze the errors properly in order to get the medical malpractice under control. Going through the errors, on which process of health service they occur and their owners; keeping the record of all examinations and treatments in the course of health service regularly and properly will be a cornerstone for both occupational and forensic medicine practices to be standardized.

Key words: Complication; forensic medicine; malpractice; standardization.

INTRODUCTION

Malpractice cases are events resulting from faulty actions while providing healthcare services. According to the World

Medical Organization’s statement adopted at the 44th World Medical Assembly in 1992, medical malpractice is defined as “physician’s failure to conform to the standard of care for treatment of the patient’s condition, or a lack of skill, or negligence in providing care to the patient, which is the direct cause of an injury to the patient”; and a distinction between medical malpractice and an untoward result occurring in the course of medical care and treatment that is not the fault of the physician (complication) is emphasized.^[1,2]

Among medical practices, neither all failures are considered as medical malpractice nor do all medical malpractice cases result in harm. Harm occurring during treatment may either develop due to a complication or medical malpractice. When the patient develops an adverse event, it is the experts’ duty to identify whether or not this event was the result

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of medical care and treatment and whether or not this care and treatment was faulty.^[3] The Council of Forensic Medicine, Ministry of Justice, is an official expert organization in Turkey assigned to deliver expert opinions. Within this structure, the Forensic Medicine General Assembly is a supreme board of experts evaluating expert reports referred by courts and prosecution office due to being considered as unsatisfactory, untrustworthy, inconclusive, or contradictory.

This study aimed to evaluate controversial reports prepared by the Forensic Medicine General Assembly for cases referred to courts with medical malpractice claims.

MATERIALS AND METHODS

All cases of medical malpractice claims referred to the Council of Forensic Medicine General Assembly, Ministry of Justice, within a period of 11 years between 2000 and 2011 were reviewed retrospectively and included into our study (n=330).

The cases were assessed according to age, gender, courts' queries, reason for admission to the healthcare institutions, complaints upon admission, healthcare institutions providing the treatment, injuries or harm claimed to result from faulty care and treatment, defendants of the allegations, their field of medical specialization, and the conclusions of the Forensic Medicine General Assembly.

Data was identified by SPSS 13.0 computer software using frequency, % percentage.

RESULTS

Of the three hundred and thirty cases with medical malpractice claims within a period of 11 years between 2000 and 2011, one hundred and sixty-five cases were female, one hundred and sixty-four were male, and one case was hermaphrodite. Mean age of the cases was 28 (0-86), and 12.7% of the cases were 1 year of age or younger.

In 40.3% of the cases, individuals were referred to a state hospital for healthcare services, in 39.1% to a private hospital, 9.1% to other healthcare institutions, 6% to university hospitals, and 5.5% to clinics for out-patients (Figure 1).

When queries most frequently referred by courts were investigated, 83.0% of the queries were asking 'whether or not there was a failure', 11.5% were asking 'whether or not the present harm or injury was a result of care and treatment, surgery, drugs, and drug dosage', and 7.0% were asking 'whether or not there was a causal link between the present harm or injury and the provided care and treatment', 6.4% were asking 'cause of death', 5.5% were asking 'failure in service', 2.1% were asking 'contradictions between expert reports'. In sixty-two of the cases, courts were asking more than one question (Figure 2).

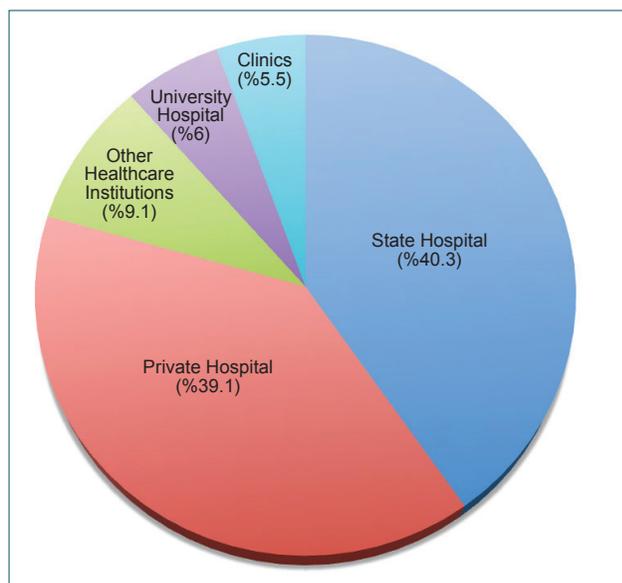


Figure 1. Distribution of expert opinion by the health centers and the state of liability.

When the cases were evaluated according to the reason for admission to the healthcare institutions, 81.5% consisted of individual referral for diagnosis and treatment due to several complaints, and 15.2% consisted of admissions following an accident. The most frequent complaints upon admission were gynecological and obstetrical complaints (n=83), traumatic injuries (n=57), and gastrointestinal complaints (n=45), respectively.

In 40.3% of the cases, individuals were referred to a state hospital for healthcare services, in 39.1% to a private hospital, 9.1% to other healthcare institutions, 6% to university hospitals, and 5.5% to clinics for out-patients.

The leading harm and injuries in cases with claimed medical malpractice were deaths allegedly due to lack of treatment, lack of care (39.7%), followed by nervous system injuries (12.1%),

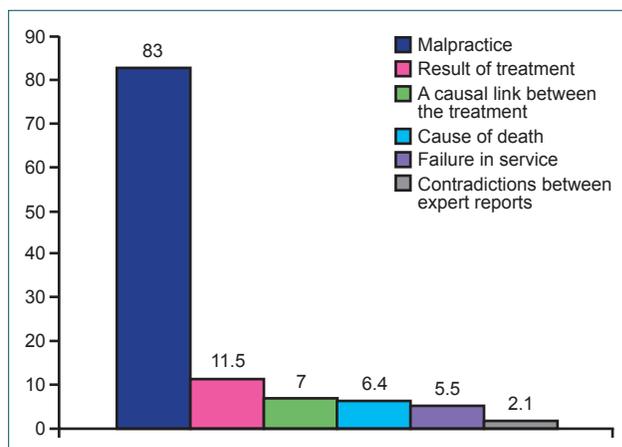


Figure 2. Distribution of malpractice claims according to laws by judgment.

organ perforations and organ loss (10.9%), incomplete recovery (7.9%), and skeletal system injuries (7%) (Figure 3).

In 85.1% of the claims, the defendant was the physician (n=284). When the files were investigated, there were medical malpractice claims against 454 physicians; including 52 medical practitioners, 402 residents, specialists, and academicians, in some files more than one physician, auxiliary healthcare professional and healthcare institution was accused. Considering their medical specialties, Gynecology and Obstetrics (94) was the leading specialty, followed by General Surgery (60), Orthopedics (41), Ear Nose and Throat Diseases (22) and Anesthesiology (21) (Figure 4).

Considering the cases evaluated and concluded in the General Assembly (n=330), 33.3% were concluded as 'medical malpractice' in 49.5% no failures of health system and healthcare professionals were detected and in 17.3% of the cases medical malpractice was linked with some of the healthcare professionals involved, some were not considered as medical malpractice and some were considered as inconclusive.

When all General Assembly conclusions were evaluated in more detail, the following were observed:

In cases concluded to be medical malpractice (33.3%), the reasons of failure were evaluated as;

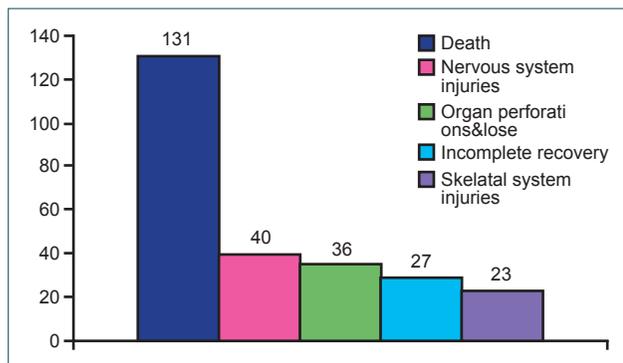


Figure 3. Outcomes of medical/surgical interventions.

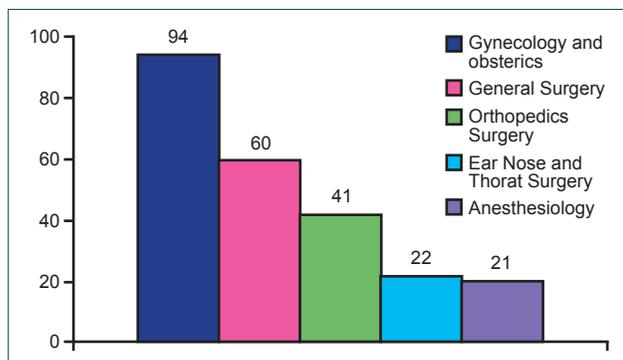


Figure 4. Proportion of physicians facing a malpractice claim according to specialty.

Group 1: wrong or incomplete treatment and surgery, wrong drug use during treatment, delay in necessary and accurate diagnosis and treatment, procedures non-compliant with medical principles and medical failures with a causal link between action and injury that the patient has developed (14.2%),

Group 2: failure in diagnosis, wrong diagnosis, no request for consultation, no referral to a higher institution, failure in intervention to a complication which developed in the post-operational period and was not identified in time (9.7%),

Group 3: failure in providing the necessary standard of care and attention, failure in post-operational monitoring and follow-up, failure in providing the necessary information, no show of physician upon being called in for the patient, intervention under inappropriate conditions (8.8%),

Group 4: failures due to professional inexperience (0.3%),

Group 5: administrative failures due to defects within the health system (0.3%).

Justifications for the conclusion in cases concluded as not a medical malpractice (49.5%) were as follows:

Group 1: it was stated that symptomatic treatment was provided, that necessary tests and treatments were applied and since no harm or injuries developed following treatment, there was no need for determining the failure (27.6%),

Group 2: complication (19.4%),

Group 3: no causal link between injury that the patient has developed and medical applications (2.1%),

Group 4: necessary care and attention was provided (0.3%).

There is an increase in the number of cases over the years, which is seen more clearly in Figure 5. The number of medical

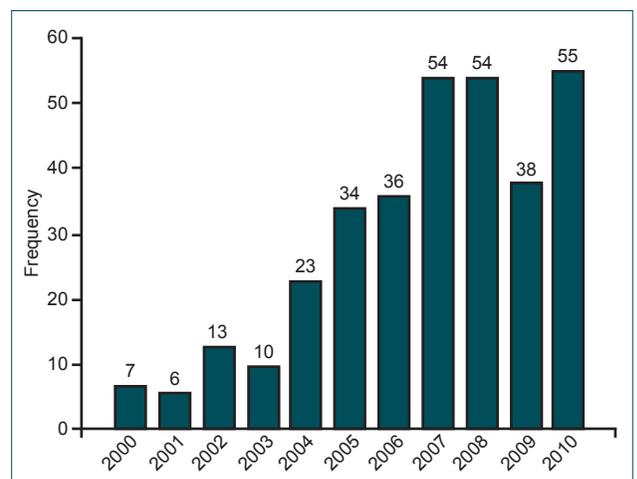


Figure 5. Distribution of cases according to years.

malpractice cases was seven in 2000 and 55 in 2010. This rate is an increase of 300%.

DISCUSSION

The rate of medical malpractice claims against healthcare professionals and healthcare institutions is constantly increasing in recent years. The reasons for this increase include continuous innovations in medical field due to progress in technology, rapid distribution of these innovations, and raise in education and awareness levels of the public and media coverage.^[4]

The most frequent referral by courts were with the query 'was there a failure or not' with 83.0%, followed by 'was the present harm or injury a result of care and treatment, surgery, drugs, and drug dosage' and 'was there a causal link between the present harm or injury and the provided care and treatment'. In a study conducted in Germany, the majority of medical malpractice allegations have been categorized as negligence, complications during surgery, failures in treatment and failures in care.^[5]

Considering healthcare institutions in medical malpractice claims, state hospitals were the leading healthcare institutions with 40.3%. In a study conducted in our country, state hospitals have been the leading healthcare institutions with 62%.^[4] A study conducted in Italy has shown that claims have been against public institutions in 88% and against private sector in 12% of the cases.^[6]

A study conducted in our country has demonstrated that the most frequent medical malpractice claims have been against Gynecology and Obstetrics (16.8%), followed by General Surgery and Neurology.^[7] Maeda et al. have indicated internal diseases as the most frequently alleged medical specialty.^[8] In another study regarding clinical departments involved in medical malpractice claims, 52% were surgical departments, 41% internal sciences and 7% were anesthesiology; investigation in more detail revealed that 16% were in Gynecology and Obstetrics, 14% in General Surgery, 10% in Emergency Department, 9% in Internal Diseases, 8% in Orthopedics, 7% in Anesthesiology, 5% in Brain Surgery, 4% in Cardiology, 3% in Pediatrics, 2% in Ear Nose and Throat Diseases, 22% in other departments.^[6] The doctoral thesis of Yorulmaz in 2006 evaluated medical malpractice rates, experts and took into account the number of attempts. Gynecology and obstetrics experts led the medical malpractice rate of 1%.^[9] In our study, conforming with the literature, considering accused physicians, the leading specialty was Gynecology and Obstetrics (n=94), followed by General Surgery (n=60) and Orthopedics (n=41).

The leading harms and injuries in medical malpractice cases in our study were deaths due to alleged failure in treatment and failure in care (39.7%), followed by nervous system injuries (12.1%) organ perforations and organ loss (10.9%). Accord-

ing to a study by Di Nunno N at al. in 2004, between 1991 and 2000 medical malpractice was determined in 364 out of a total of 2123 autopsy cases. In 30% of these cases, a causal link was established between medical malpractice and death, in 55% no failure was determined, and in 15% death was not linked directly with medical malpractice.^[6] In a study by Pakiş et al. in 2008 involving only medical malpractice cases that resulted in death, in 60% of the cases, no medical malpractice was observed; whereas, in 32% of the cases, medical malpractice was determined.^[4]

In a study by Dettmeyer et al., 285 medical malpractice cases were evaluated; in 72 of the cases wrong application within treatment, in 53 cases wrongful diagnosis and in 45 cases failure in recognizing complications following treatment were reported.^[10] Our study indicated 'medical malpractice' in 33.3% of 330 cases evaluated by the General Assembly. 14.2% of these cases consisted of medical malpractice cases including wrong or incomplete treatment and surgery, wrong drug use during treatment, delay in necessary and accurate diagnosis and treatment, procedures non-compliant with medical principles and medical failures with a causal link between action and injury that the patient has developed, 9.7% consisted of medical malpractice cases including failure in diagnosis, wrong diagnosis, no request for consultation, no referral to a higher institution, failure in intervention to a complication which developed in the post-operational period and was not identified in time, 8.8% consisted of medical malpractice cases including failure in providing the necessary standard of care and attention, failure in post-operational monitoring and follow-up, failure in providing the necessary information, no show of physician upon being called in for the patient, intervention under inappropriate conditions, 0.3% consisted of medical malpractice cases including failures due to professional inexperience, 0.3% consisted of medical malpractice cases including administrative failures due to defects within the health system. Wanzel et al. have reported failure in treatment in 72% and failure in diagnosis in 28% of the investigated medical malpractice cases.^[11,12]

In 49.5% of the cases evaluated and concluded in the General Assembly (n=330), no failures were attributed to health system and healthcare professionals. In 17.3% of the cases, medical malpractice was linked with some of the healthcare professionals involved, some were not considered as medical malpractice and some could not be evaluated due to incomplete documentation.

Proper analysis of medical malpractice cases is very important in the management of medical malpractice. It must be investigated on which level of healthcare services and by whom these failures were caused, and all tests and treatments as well as follow-ups must be archived regularly and accurately in order to provide a significant reference for the standardization of professional as well as medico-legal procedures.

Conflict of interest: None declared.

REFERENCES

1. Sütlaş M. Tıbbi yanlış uygulama (Malpractis) ve mesleki mesuliyet (Sorumluluk) sigortası üzerine bazı saptamalar. <http://www.hastahaklari.org/kotuyg-sig.htm>. (Erişim Tarihi: 26.02.2009).
2. Sayek F. Sağlıkla ilgili uluslararası belgeler. 1. Baskı. Ankara: TTB Yayınları; 1998.
3. Polat O. Tıbbi uygulama hataları. Ankara: Seçkin Yayınları; 2005.
4. Pakiç I, Yaycı N, Karapirli M, Polat O. The Role of Legal Autopsy in the Investigation of Death Cases Due to Medical Malpractice. [Article in Turkish] Türkiye Klinikleri J Med Sci 2008;28:30-9.
5. Madea B, Preuss J. Medical malpractice as reflected by the forensic evaluation of 4450 autopsies. Forensic Sci Int 2009;190:58-66. [CrossRef](#)
6. Di Nunno N, Dell'Erba A, Viola L, Vimercati L, Cina S, Vimercati F. Medical malpractice: a study of case histories by the Forensic Medicine Section of Bari. Am J Forensic Med Pathol 2004;25:141-4. [CrossRef](#)
7. Büken E, Ornek Büken N, Büken B. Obstetric and gynecologic malpractice in Turkey: incidence, impact, causes and prevention. J Clin Forensic Med 2004;11:233-47. [CrossRef](#)
8. Maeda H, Fujita MQ, Zhu BL, Quan L, Taniguchi M. Medical practice-related fatalities in forensic autopsy during the past 6 years in the southern half of Osaka city and surrounding areas. Leg Med (Tokyo) 2003;5 Suppl 1:S322-4. [CrossRef](#)
9. Yorulmaz AC. İstanbul tabip odası'na yansıyan hekim hatası. İddiası bulunan olguların adli tıp açısından değerlendirilmesi. [Doktora Tezi] İstanbul: İstanbul Üniversitesi Cerrahpaşa Tıp Fakültesi; 2005.
10. Dettmeyer R, Egl M, Madea B. Medical malpractice charges in Germany-role of the forensic pathologist in the preliminary criminal proceeding. J Forensic Sci 2005;50:423-7. [CrossRef](#)
11. Wanzel KR, Jamieson CG, Bohnen JM. Complications on a general surgery service: incidence and reporting. Can J Surg 2000;43:113-7.
12. Emircan S, Özgüç H, Akköse Aydın S, Özdemir F, Köksal O, Bulut M. Factors affecting mortality in patients with thorax trauma. Ulus Travma Acil Cerrahi Derg 2011;17:329-33. [CrossRef](#)

ORJİNAL ÇALIŞMA - ÖZET

Adli Tıp Kurumu Genel Kurulu'na sonuçlandırılan tıbbi uygulama hatası olgularının değerlendirilmesi

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AMAÇ: Malpraktis sağlık hizmetlerinin sunulması sırasında kusurlu hareket edilmesi sonucu ortaya çıkan olaylardır. Tıp uygulamaları içerisinde, yapılan hataların tümü tıbbi uygulama hatası olmadığı gibi tıbbi uygulama hatalarının tümü de zararlı ve dolayısıyla hukuki bir süreçle sonuçlanmamaktadır. Tedavi sürecinde gelişen zarar hem komplikasyon, hem de tıbbi uygulama hatası sonucunda ortaya çıkabilir. Bu çalışma ile Türkiye'de tıbbi uygulama hatası iddiası ile mahkemelere yansımış tartışmalı olguların Adli Tıp Genel Kurulu tarafından düzenlenmiş raporlarının değerlendirilmesi amaçlandı.

GEREÇ VE YÖNTEM: Çalışmamız, Adalet Bakanlığı Adli Tıp Kurumu Genel Kurulu'na 2000 ile 2011 yılları arasındaki 11 yılı kapsayan bir dönemde, tıbbi malpraktis iddiası ile gelen tüm olguları (n=330) kapsamaktadır.

BULGULAR: Çalışmamızda Genel Kurulca değerlendirilen 330 olgunun %33.3'ünde "tıbbi uygulama hatası" olduğu tespit edildiği saptanmıştır. Bunlar kendi içinde değerlendirildiğinde %14.2'sini yanlış ya da eksik tedavi ve ameliyatın yapılması, tedavide yanlış ilaç kullanılması, gerekli inceleme yapılarak doğru tanı konulmasında geç kalınması, yapılan işlemlerin tıp kurallarına uygun olmadığı ve yapılan eylem ile kişide gelişen zarar arasında illiyetin olduğu tedavi hataları oluştururken, %9.7'sini tanı konulamaması, hatayı tanı, konsültasyon istenmemesi, bir üst merkeze sevk edilmemesi, ameliyat sonrası gelişen komplikasyonu zamanında tanımayarak müdahale edilmemesi gibi tanı hataları, %8.8'ini gereken özen ve dikkatin gösterilmediği, ameliyat sonrası gerekli takibin yapılmadığı, gerekli bilgilendirmenin yapılmadığı, hasta için çağrıldığı halde göreve gelmediği, uygun olmayan şartlarda müdahale edildiği özen eksiklikleri, %0.3'ünü meslekte acemiliğin neden olduğu hatalar, %0.3'ünü sağlık sistemindeki aksaklıklar nedeniyle idarenin hatasının olduğu görüldü.

TARTIŞMA: Tıbbi uygulama hatalarının kontrol altına alınabilmesi için bu hataların iyi analiz edilmesi çok değerlidir. Hataların sağlık hizmetinin hangi aşamasında, hangi basamakta kimler tarafından yapıldığının araştırılması, sağlık hizmeti esnasında yapılan tüm inceleme ve tedavilerin, takiplerin düzenli ve doğru tutulması hem mesleki hem de adli tıbbi uygulamaların standardize edilmesi için önemli bir referans oluşturacaktır.

Anahtar sözcükler: Adli Tıp; komplikasyon; malpraktis; standardizasyon.

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