

A descriptive study of medical malpractice cases in Turkey

Umit N. Gundogmus,* Mehmet S. Erdogan,† Mine Sehiralti,‡ Omer Kurtas*

BACKGROUND: Medical malpractice claims in Turkey have increased. We evaluated the problem by describing medical malpractice cases assessed by the Higher Health Council between 1993 and 1998. Our recommendations should help to improve care and decrease medical malpractice claims.

METHODS: We reviewed 997 medical malpractice cases reported to the Higher Health Council between 1993 and 1998 and examined the decisions made by the Higher Health Council. We collected data on demographic characteristics, such as the type of the institution where the defendants worked, type of medical malpractice, and medical outcome.

RESULTS: There were 997 medical malpractice cases reported to the Higher Health Council in the six years between 1993 and 1998. The Higher Health Council decided that 47.7% of the physicians were liable. Malpractice cases were mostly seen in state hospitals (42.4%). Fifty-nine percent of the cases resulted in death. Among actions that led to malpractice lawsuits against all health care workers, including physicians, the most common were negligence, inappropriate treatment, and diagnostic failure.

CONCLUSION: We think it is necessary to revise the health system and working conditions in hospitals and to develop clinical practice guidelines. We are of the opinion that an emphasis on the use of diagnosis and therapy protocols, standards, post-graduation education, clear and informed patient consent, and improved communication with patients will drastically decrease medical malpractice claims.

*From Kocaeli University Medical School, *Department of Forensic Medicine, †Department of Public Health, ‡Department of Medical Ethics*

Correspondence:
Dr. Umit N Gundogmus
Kocaeli University, Tıp Fak
Adli Tıp AD
Derince
41900 Kocaeli, Turkey
Tel: 262-233-5980
Fax: 262-233-5461
ugundogmus@yahoo.com

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Increased awareness of patient and consumer rights, the development of medicine, and modern complicated medical applications have increased the number of medical malpractice claims.¹⁻³ Currently in Turkey, medical malpractice cases are tried according to criminal and civil law. The damage and death caused by medical malpractice is investigated in the name of public according to criminal law. Expert testimony is obligatory at medical malpractice trials in criminal courts. The courts can receive an expert opinion from any source, including the Higher Health Council. The Council includes 11 medical specialists and 5 civil servants from the Ministry of Health. Decisions are made only when two-thirds of the members agree. Expert opinion from the Higher Health Council does not necessarily determine court decisions in medical or other types of cases.⁴⁻⁷

When health care workers are found liable, the law requires that they are sentenced to imprisonment or fined. Fines are based on the Compensation Act. However, in practice, health care workers who are found liable are not usually sentenced to imprisonment in the absence of real intent unless there has been repeated medical malpractice.⁴⁻⁷

Health care workers in Turkey do not have medical malpractice

insurance. The government pays compensation to plaintiffs or their relatives when a healthcare worker who is found liable works in a state institution. However, the sum or part of the compensation may be deducted from the health care workers' salary at certain intervals, so their standard of living is not affected. In Turkey, the adoption of regulations for patients' rights, an increasing awareness of patients' rights, and high levels of compensation have led people to insist on their own rights and to question the health care system in the country.⁴⁻⁷

In this study we describe medical malpractice cases, which have increased in number compared with previous reports and our observations. We reviewed and evaluated the problem from various points of view in order to offer recommendations for improving care and reducing the number of medical claims.

Methods

The database developed for this study came from the case court summaries of the Higher Health Council dealing with medical malpractice cases reported between 1993 and 1998. The investigation was limited to this period since the limitation period is six years in Turkey. The case court summaries included information such as questions of the court, a brief case report, the existence of fault, and persons at fault. Case court summaries included medical records and the statements of plaintiffs and defendants. In this study, the specialty, workplace, and type and characteristics of fault of accused health care workers were obtained from the files of the case court summaries.

Data were collected between January and May of 2004. During this period the decisions of the Higher Health Council and case court summaries were peer reviewed and data were transferred into a database for the study. The variables of the study, "setting of case", "occupation of accused person", "type of fault", and "size of damage" are categorical. Type of fault was classified as negligence, inappropriate intervention, diagnostic failure, follow-up failure and practice beyond the scope of professional licensure. Negligence was determined as not intervening even if demanded, being late with an intervention, not taking measures for lack of technical equipment, and being careless. The frequencies and percentages of variables were calculated. Data were analyzed with SPSS version 10.

Results

There were 997 medical malpractice cases reported to the Higher Health Council in the six-year period

between 1 January 1993 and 31 December 1998. The Higher Health Council found that 476 health care workers were liable (47.7% of health care workers sued) (Table 1). State hospitals, with 395 cases (39.6%), were first in rank in institutions where the defendants had worked. Social security hospitals and private hospitals followed with 207 (20.8%) and 113 (11.3%) cases, respectively. State hospitals were first in institutions mentioned in the litigations, constituting 42.4% of cases. Social security hospitals (18.5%) and private hospitals (12.0%) ranked next in order (Table 1).

Most of the sued health care workers were in the field of gynecology and obstetrics (19.0%) (Table 2). General surgery took second place (13.0%) while general practitioners were in the third place (12.2%). Health care workers except physicians (nurses, midwives, laboratory workers, anesthesiology technicians) were the most faulty (63.4%). Anesthesiologists, general surgeons, and obstetricians and gynecologists were next most faulty (Table 2).

Negligence was the most common fault, constituting 25.0% of proven faults (Table 3). Inappropriate intervention and diagnostic failure were second and third. Diagnostic failure was most common in state hospitals followed by insurance hospitals and military hospitals (Table 3). Health care personnel who were found guilty because of negligence, insufficient treatment, and insufficient follow up (53.4%) were mostly working at state hospitals, while the most who were guilty of unauthorized intervention were working at doctor's offices. More than fifty percent of cases resulted in death (59.0%), 21.0% in temporary disability, and 20.0% in persistent disability.

Table 1. Distribution of malpractice cases by setting (n=997)

| Setting | Liable (n) | % of total liable | Not liable (n) | % of total not liable |
|----------------------------|------------|-------------------|----------------|-----------------------|
| State hospital | 202 | 42.4 | 193 | 37.0 |
| Social security hospital | 88 | 18.5 | 119 | 22.8 |
| Private hospital | 57 | 12.0 | 76 | 14.6 |
| Doctor's office | 40 | 8.4 | 27 | 5.2 |
| Military hospital | 28 | 5.9 | 26 | 5.0 |
| University hospital | 13 | 2.7 | 22 | 4.2 |
| Outpatient clinic | 12 | 2.5 | 21 | 5.4 |
| Village clinic | 5 | 1.1 | 19 | 3.4 |
| Home | 16 | 3.4 | 7 | 1.3 |
| Military outpatient clinic | 9 | 1.9 | 10 | 1.9 |
| Pharmacy | 6 | 1.3 | 1 | 0.1 |
| Total | 476 | 47.7 | 521 | 52.3 |

Table 2. Distribution of malpractice cases by speciality and liability

| | Liable | | Not liable | | Total | |
|---------------------------------------|------------|--------------------------|------------|--------------------------|------------|------------------|
| | n | % of total for specialty | n | % of total for specialty | n | % of total cases |
| Gynecology and obstetrics | 100 | 52.9 | 89 | 47.1 | 189 | 19.0 |
| General surgery | 69 | 53.1 | 61 | 46.9 | 130 | 13.0 |
| General medicine | 54 | 44.3 | 68 | 55.7 | 122 | 12.2 |
| Orthopedics | 32 | 36.0 | 57 | 64.0 | 89 | 8.9 |
| Internal medicine | 24 | 42.9 | 32 | 57.1 | 56 | 5.6 |
| Ophthalmology | 9 | 22.0 | 32 | 78.0 | 41 | 4.1 |
| Pediatrics | 18 | 42.9 | 24 | 57.1 | 42 | 4.2 |
| Neurosurgery | 9 | 30.0 | 21 | 70.0 | 30 | 3.0 |
| Anesthesiology | 28 | 62.2 | 17 | 37.8 | 45 | 4.5 |
| ENT | 11 | 44.0 | 14 | 56.0 | 25 | 2.5 |
| Others | 39 | 40.2 | 58 | 59.8 | 97 | 9.7 |
| Health care workers except physicians | 83 | 63.4 | 48 | 36.6 | 131 | 13.1 |
| Total | 476 | 47.7 | 521 | 52.3 | 997 | 100 |

Table 3. Distribution of cases by setting and type of liability for 476 cases deemed liable.

| | Diagnostic failure n (%) | Insufficient treatment n (%) | Insufficient follow-up n (%) | Inappropriate treatment n (%) | Unauthorised interventions n (%) | Negligence n (%) |
|-------------------------------|--------------------------|------------------------------|------------------------------|-------------------------------|----------------------------------|-------------------|
| State hospital | 34 (32.3) | 20 (51.3) | 31 (53.4) | 36 (31.9) | 8 (19.1) | 73 (61.3) |
| Social security hospital | 25 (23.8) | 5 (12.8) | 17 (29.3) | 22 (19.5) | 2 (4.8) | 17 (14.3) |
| Private hospital | 14 (13.3) | 6 (15.4) | 2 (3.4) | 24 (21.2) | 5 (11.9) | 6 (5.0) |
| Village clinic | | 1 (2.5) | | | 1 (2.4) | 3 (2.5) |
| Home | 1 (1.0) | 3 (7.7) | 2 (3.4) | 6 (5.3) | 3 (7.1) | 1 (1.0) |
| Outpatient clinic | 3 (2.9) | 1 (2.5) | 1 (2.0) | 4 (3.5) | 3 (7.1) | |
| University hospital | 2 (2.0) | 2 (5.1) | 3 (5.1) | 3 (2.7) | 2 (4.8) | 1 (1.0) |
| Military hospital | 16 (15.2) | | | 6 (5.3) | | 6 (5.0) |
| Doctor's office | 3 (2.9) | 1 (2.5) | 2 (3.4) | 11 (9.7) | 18 (42.9) | 5 (4.2) |
| Military outpatient clinic | 7 (6.6) | | | | | 2 (1.7) |
| Pharmacy | | | | 1 (0.1) | | 5 (4.2) |
| Total (% of all cases) | 105 (22.1) | 39 (8.2) | 58 (12.2) | 113 (23.7) | 42 (8.8) | 119 (25.0) |

The rate of filing malpractice lawsuits because of deaths or permanent disability was 79.0%.

Discussion

In criminal trials in Turkey, asking the opinion of the Higher Health Council is a must in cases of alleged medical malpractice. Courts established for compensation trials can receive expert opinion from any source, including the Higher Health Council. Findings obtained from the assessment by the Higher Health Council are probably sufficient to analyse medical malpractice in Turkey.^{1,4,7}

Compared with claims from western countries, the number of medical malpractice claims in Turkey over the six-year period is very small.^{3,8-12} The small number of medical malpractice claims could be due to the lack of awareness of people about health issues. People in Turkey usually leave the right of final decision to doctors on issues concerning the patient due to a paternalist attitude and the huge amount of confidence placed in doctors in Turkey. Besides, the religious belief in fate dampens the initiative of the patient on such issues. Delays in justice due to bureaucracy could be another reason for the small number of medical malpractice claims. In fact, the more people are becoming aware of good medical care, the more they are demanding it. Looking at the problem from various perspectives in order to see the reason behind this unprecedented increase in these cases can be helpful.

Health care workers in Turkey do not have medical malpractice insurance. In 2002 there were attempts to draft a medical malpractice insurance law, but it has not been accepted by the Turkish Parliament.¹³ However, without changing the root causes of litigation, the provision of insurance alone would lead to higher premiums as time goes on. Insurance companies are in the market to make and not lose money. The influence of the insurance companies may result in an increase in the number of litigations in time.

The Higher Health Council found that 47.7% of health care workers sued for medical malpractice were liable. Alsaddique pointed out that in 3% of cases in Saudi Arabia, physicians were found liable and damages were awarded.¹⁴ In Japan, medical malpractice plaintiffs prevailed in fewer suits (31.9%).^{3,15} The success rate for plaintiffs in medical malpractice suits in the United States was 28% and in Germany 16.7%.^{8,9} Despite these low success rates, US medical liability systems are in a state of crisis in many states. In Turkey, suing a healthcare worker is not a usual practice, but people resort to it when major damage

occurs and the fault of the health care provider is apparent. That is why the mortality and permanent disability rates in our study were much higher than temporary disability rates.

More than half of the health care workers were found innocent. In other words, it was decided that the unwanted complications were natural ones or could not be regarded as the fault of the health care worker. Considering that medical malpractice claims mainly depended on individual complaints, the existence of problems with clear and informed consent can be argued because it is commonly known that informed consent and communication with the patient help prevent medical malpractice claims.^{16,17} Studies in various countries have confirmed this.^{8,17} Though informed consent is mandatory in Turkey, based on laws and the regulation on patient rights, lack of informed consent seems a frequent problem in Turkey.

Most of the health care workers sued in Turkey were from the field of obstetrics. General surgery took second place, while general medicine was in third place. These findings are similar to those from Saudi Arabia: obstetrical practice has taken the lion's share of medical malpractice cases, with general surgery following. Obstetrical malpractice is the leading cause in most of instances of medical malpractice worldwide.¹⁴

Most of the medical malpractice cases in Turkey were brought from state hospitals, although state hospitals in Turkey do usually meet the standards of any health care facility. Hospitals in Turkey have a heavy patient population who come mostly from a nonfunctional patient referral system. Patients usually undermine the system, avoiding primary care centers and apply directly to hospitals, mostly state hospitals, for care. Such circumstances cause overcrowded hospitals, restricting the time spent on any one patient on average, which could result in medical malpractice indirectly. Additionally, doctors working in state hospitals can also have their own private practice. The time consumed in private practice may cause doctors to delay or neglect some medical and surgical procedures in hospitals.

Unauthorised intervention and diagnostic failure were the second and third contributing factors in 23.7% and 22.1% of liable cases, respectively. If unauthorised intervention and diagnostic failure were considered together (45.8%), it can be concluded that approximately half of health workers fail to follow advances in medical science and knowledge. Continuing medical education seems an important need in preventing medical malpractice.

Recommendations and Conclusions

More than half of health care workers were found to be innocent. The high rate of innocent cases makes us think that lack of informed consent is the cause of most medical malpractice claims. Independent informed consent and clear communication with the patient could prevent most of the medical malpractice claims.¹⁶⁻¹⁷

To prevent inappropriate intervention and diagnostic failure, health care workers should always try to be current in their knowledge. Continuing medical education is definitely needed to keep up with advances in medical care.

The lack of clinical practice guidelines in our country makes it difficult to examine medical malpractice claims, leading to a risk of subjective decisions and the loss of rights for doctors and patients. Practical guidelines could limit variations in practice between health care providers, increase the quality of care and provide for acting in accordance with prin-

ciples of justice and benefit.¹⁸ Guidelines could be useful in deciding cases of natural complication versus medical errors in regard to medical malpractice claims and lead to a decrease in the number of medical malpractice claims and the costs by preventing unnecessary procedures.¹⁸⁻²¹

The draft law titled "Law on Liabilities Arising From Medical Malpractice of Medical Services" will be in force in the near future.²² The new legislation is a positive step for lifelong medical education and preventing malpractice.

We are of the opinion that an emphasis on following and supervising the use of diagnosis and therapy protocols, standards, post-graduate education, clear and informed patient consent, and improved communication with patients will drastically decrease malpractice claims. Considering the results of this research, we think that it is necessary to revise the health system and working conditions in hospitals and to develop clinical practice guidelines.

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