

Neurosurgeons and malpractice suits

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We live in a litigious world. With respect to medicine, this manifests in medical malpractice suits. Patients sue doctors for unexpected adverse outcomes. One field prone to litigation is neurosurgery, which "treats acute pathology and refractory pain." Patient's dissatisfaction with the outcomes of neurosurgical procedures sometimes shifts over into the legal world where it forms the basis of medical malpractice suits.

To determine the frequency of medical [malpractice](#) suits among neurosurgeons and neurosurgeons' reactions when faced with the prospect of such lawsuits, three researchers from The Netherlands surveyed members of the Congress of Neurological Surgeons. The results of the survey can be found in the article, "Experiences of neurological surgeons with malpractice lawsuits" by Pravesh S. Gadjradj, MD, Julian B. Ghobrial, and Biswadji S. Harhangi, MD, Ph.D., MSc (published today in *Neurosurgical Focus*).

The survey consisted of 24 questions distributed across four topics: 1) survey respondent demographics; 2) how fear of lawsuits may affect the manner in which the respondents practice medicine and view patients; 3) [personal experiences](#) with medical lawsuits; and 4) the impact of the medical malpractice environment on the respondents' personal practice of medicine.

The authors received 490 responses to the survey (an 8% response rate). The survey respondents had a mean clinical experience of 25 years and most (84%) practiced in the United States. The top subspecialties represented were spine surgery, neuro-oncology, and neurotrauma. Survey responses showed that the subspecialty with the greatest number of medical malpractice suits was spine surgery.

When asked about fear of being sued for malpractice, 40% of respondents stated that they were frequently or always concerned about being sued and 77% stated that this fear changed how they practiced medicine. The practice of defensive

medicine was frequently cited (58%) in response to fear of being sued. There are two types of defensive medicine: positive defensive medicine, in which physicians order additional, unnecessary diagnostic tests or therapies, or may demand excessive documentation during consultations; and negative defensive medicine, in which physicians drop complex cases or refer high-risk patients elsewhere.

Of the respondents who stated that fear of being sued affected their practice of medicine, 73% cited ordering more tests or increased documentation, and 12% cited referral of patients to other physicians or dropping complex cases. Twenty-five percent of these respondents noted that these actions resulted in increased costs for patients, and 7% mentioned a changed physician-patient relationship.

More than 80% of survey respondents reported having been named in one or more medical malpractice lawsuits; 26% of respondents had been involved in one [lawsuit](#) and 12% in more than 10 lawsuits. Respondents reported that the majority of medical malpractice suits had been dropped (35%) or settled out of court to the benefit of the plaintiff (22%). Fifteen percent of survey respondents reported having been involved in lawsuits that proceeded through the courts and resulted in plaintiffs receiving more than \$1 million in damages.

Regarding the effect of the medical malpractice environment on the practice of medicine, 59% of survey respondents stated that they considered referring difficult cases, 61% considered limiting the scope of their practices, and 36% considered leaving medical practice altogether.

Given the negative effects of the medical malpractice environment on neurosurgeons and their practice of medicine, the authors suggest some remedies, including transparent communication between healthcare facilities and patients, better informed consent forms, rapid

investigation into adverse effects and fair compensation to patients when appropriate, and the implementation of health courts, in which judges have medical backgrounds.

In addition to offering numbered responses to each survey question, the article offers quotes from several of the survey respondents.

When asked about the study and its findings, Dr. Gadjradj stated,

"*Primum non nocere* is a fundamental principle that all medical doctors know. Adverse events experienced by patients may lead to medical malpractice suits. The results of the current study show to what extent malpractice suits may influence neurosurgeons emotionally, professionally, and financially. Since almost half of the survey respondents are frequently concerned with the risk of being sued, a change in the legal landscape is needed."

The paper is accompanied by an editorial by Richard N. W. Wohns, MD, JD, MBA, titled, "What doesn't kill you makes you stronger." In this editorial, Dr. Wohns advocates that neurosurgeons face the possibility of medical [malpractice lawsuits](#) head on, internalizing Nietzsche's words "what doesn't kill me makes me stronger" and turning a negative experience into a positive one. Dr. Wohns suggests that physicians "turn the malpractice case against us into an educational experience from which we learn to be even better neurosurgeons." He encourages neurosurgeons to be proactive rather than reactive in the face of malpractice suits.

More information: Gadjradj PS, Ghobrial JB, Harhangi BS: Experiences of neurological surgeons with malpractice lawsuits. *Neurosurg Focus* 49(5):E3, November 2020. [DOI: 10.3171/2020.8.FOCUS20250](#)

Wohns RNW: Editorial: What doesn't kill you makes you stronger. *Neurosurg Focus* 49(5):E4, November 2020; [DOI: 10.3171/2020.8.FOCUS20763](#)

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