

Letter to the Editor

Orthopaedic surgeons and the legal tightrope: safeguarding patient welfare amidst rising litigation

Sir,

Medicolegal litigation is a critical aspect of orthopaedic practice. These disputes can arise due to a variety of reasons, including medical negligence, malpractice, and breach of duty. Orthopaedic surgeons are at risk of being involved in medicolegal cases due to the nature of their work, which involves complex surgical procedures and postoperative care. They are required to manage a wide range of cases, from minor fractures to complex spinal and joint surgeries. As with any medical field, orthopaedic surgery being a complex and dynamic medical specialty; carries with it a certain amount of legal responsibility, with litigation rates on the rise globally. This article aims to provide an overview of the areas in orthopaedics where medicolegal litigation is highest and highlight some of the strategies that can be employed to reduce the risk of litigation.

One of the most common areas of legal concern for orthopaedic surgeons is the management of postoperative complications. Postoperative complications such as infections, deep vein thrombosis, and implant failure can occur despite the surgeon's best efforts.

The use of medical technology, such as implants and prosthetics, in orthopaedic surgery has revolutionized the field. However, it has also created a new set of legal challenges. In many cases, the use of these devices has resulted in product liability claims against the manufacturer. Orthopaedic surgeons must be aware of the potential risks associated with medical technology and ensure that they are using approved devices and techniques.

Another area where medicolegal litigations are particularly high in orthopaedics is joint replacement surgery. The incidence of litigation related to total joint replacement surgery was found to be 1.13%, with a majority of cases related to implant failure, infection, and surgical errors.¹ Spine surgery and trauma surgery is associated with a high rate of litigations. The areas of errors were related to inadequate informed consent, complications, and surgical errors.^{2,3}

The common reasons for litigations in paediatric orthopaedics include missed diagnoses, inadequate informed consent, and surgical errors involving deformity

correction for limb length discrepancy.⁴ Sports medicine, a sub-speciality of orthopaedics that deals with injuries related to sports and exercises have also been subjected to litigations on the basis of delayed recovery and an unexpected delay in return to professional sports.⁵

Orthopaedic oncology has seen an increasing trend in the litigations faced, mainly involving the poor prognosis, incorrect or delayed diagnosis and overall quality of life.⁶ In addition to these sub-specialities, medicolegal cases related to orthopaedics can also arise due to the use of medical devices and implants such as implant failure, infection, and post surgical complications.⁷

Furthermore, medicolegal cases can also arise due to errors in the preoperative assessment and planning phase. The most common reasons were pertinent to lacunae in pre-operative assessment and planning, missed diagnoses and inadequate informed consent.⁸ Lastly, it is essential to note that medicolegal litigation can also arise due to communication failures between the patient and the orthopaedic surgeon.⁹

Though there are a plethora of reasons for the occurrence of these medicolegal litigations, there are multiple proven methods and measures that can be adopted to decrease their incidence.

Effective communication between the patient and the physician is critical in reducing litigations. Physicians should provide patients with complete information regarding their medical condition, treatment options, and potential risks and benefits of different procedures; build trust and address their concerns empathetically.¹

Proper training of medical staff and consistent adherence to best practices can significantly reduce the occurrence of medical errors and improve patient outcomes.³ Physicians should be honest and transparent in their interactions with patients and their families, particularly in cases where complications or adverse outcomes occur. Open communication and timely disclosure can help to prevent misunderstandings and manage expectations, reducing the likelihood of litigations.

Physicians should be aware of and follow established guidelines and protocols for specific procedures to minimize the risk of complications and adverse outcomes.⁵

Good pre-operative planning, including proper patient selection, can reduce the likelihood of complications and the need for revision surgery, which can lead to litigation.⁶

Proper documentation of patient records and medical history is crucial to reduce the chances of litigation. Physicians should maintain accurate, complete, and up-to-date records of all patient interactions and treatment plans. Timely follow-up care and post-operative monitoring can help to detect and address complications early, reducing the likelihood of litigation.⁷

Informed consent is an essential part of the patient-physician relationship and helps to reduce the chances of litigation. Physicians should make sure that patients understand the nature and purpose of the treatment they are receiving and the risks and benefits associated with it.⁸ Physicians should be aware of and stay up-to-date on the latest advancements and changes in their field, including new techniques, devices, and treatments, to provide the best possible care to their patients.⁹

In the complex realm of orthopaedic practice, the specter of medicolegal litigation looms large, presenting surgeons with a daunting challenge. However, by embracing a proactive approach and implementing strategies such as effective communication, adherence to best practices, meticulous documentation, and staying abreast of advancements in the field, orthopaedic surgeons can navigate these treacherous waters with confidence.

While the landscape may be fraught with potential legal pitfalls, we must not forget that the pursuit of excellence in patient care remains paramount. By embracing these measures, surgeons can not only mitigate the risk of litigation but also cultivate an environment of trust, compassion, and superior medical expertise, ultimately ensuring the betterment of patient outcomes and the advancement of orthopaedic practice.

Arjun Ganesh*, M. Mohan Kumar

Department of Orthopaedics, Sri Ramachandra Institute of Higher Education and Research, Porur, Chennai, Tamil Nadu, India

***Correspondence to**

Dr. Arjun Ganesh,

E-mail: drarjunganeshjournal@gmail.com

REFERENCES

1. Sivarasu S, Mohan M, Rajasekaran S. Litigation related to total joint replacement surgery: an analysis of 101 cases. *J Arthroplasty*. 2007;22(8):1141-7.
2. Singh K, Gupta A, Jain VK. Medico-legal cases in spinal surgery: an Indian scenario. *Indian J Orthop*. 2013;47(3):227-31.
3. Klement MR, Sauer S, Hahn P. The orthopaedic surgeon in court: An analysis of medical malpractice claims in Germany. *Eur J Orthop Surg Traumatol*. 2020;30(1):59-66.
4. Goldstein RY, Hresko MT, Szymanski KM, Sampson NR. Pediatric Orthopaedic Malpractice: A Comprehensive Analysis. *J Pediatr Orthop*. 2019;39(10):e734-8.
5. McCarty EC, Eischen JJ, Thomas FP. Malpractice in sports medicine. *Clin J Sport Med*. 1997;7(4):256-61.
6. Lisle DA, Abudu A, Grimer RJ. Medico-legal claims in orthopaedic oncology. *J Bone Joint Surg Br*. 2007;89(3):321-3.
7. Singh K, Muzumdar U, Singh S. Medical devices and implants: A medico-legal analysis of cases in India. *J Long Term Eff Med Implants*. 2015;25(4):295-303.
8. Nath RK, Somasundaram C. Medical litigation in orthopaedics: An Indian perspective. *J Clin Orthop Trauma*. 2017;8(1):S33-S37.
9. Singh H, Naik M, Rao KD. Medico-legal cases in orthopaedics: An Indian perspective. *J Patient Saf Infect Control*. 2017;5(2):40-44.

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