

Reflections on medical malpractice stress disorders in Neurosurgery

G. Iacob¹, C. Majer²

¹Neurosurgery Clinic, Univeritary Hospital Bucharest, Romania

²Neurospinal Hospital, Dubai, UAE

Murphy's law: "If anything can go wrong, it will!"

Medicine is a practice based on scientific proofs. Neurosurgeons are a high-risk group for allegations of malpractice; also they are humans and they do make mistakes - "Errare humanum est, sed perseverare diabolicum" (Seneca). The most frequent allegations 56% involved the spinal surgery cases, 39% the head and/or brain and 5% are miscellaneous (1). Of particular significance in terms of improved diagnostic methodology were spinal operations at the wrong level as well as failure to diagnose sentinel bleeds, aneurysms, arteriovenous malformation and other cerebral lesions (2).

Therefore every day a busy neurosurgeon may confront in consultations, operations or even after discussions with responsables of medical staff the fears of medical malpractice: loss of reputation, loss of significant supporters, lack of knowledge about the potential process and outcomes, loss of livelihood, loss of control, loss of assets.

The magnitude of the problem (3): in 2005 alone, in the USA, for 3,229 active neurosurgeons certified by the American Board of Neurological Surgeons (ABNS) neurosurgeons paid a total of \$28 million in malpractice claims, to provide remediation for negligent medical care; with the highest average payment per specialist surgeon

\$465,000 and the single highest payment of any claim in any specialty \$5.6 million. Also an overzealous application of malpractice in the United States can have devastating effects on practicing neurosurgeons as the Council of State Neurosurgical Societies (CSNS) survey in 2002 proof:

- nearly half of all respondents were likely to restrict their practice for example, limiting their practice to only spine or not providing emergency or trauma coverage at a local emergency room.

- nearly one third of respondents at that time stated that they were considering retirement, rather than continue to practice in the face of increasing insurance costs, especially in that states with high malpractice claims and high malpractice insurance premiums (so called "crisis" states)

- one fifth stated that they were considering moving their practice to a state with "better" malpractice conditions, affecting patients demanding neurosurgical procedures.

Several facts in my plea concerning medical malpractice in neurosurgery are:

- no neurosurgeon is immune from medical malpractice; practicing good neurosurgery, in and of itself, is not a guarantee that somebody will avoid being hit with a medical malpractice lawsuit; to

failed to meet the prevailing standard of care, especially negligence allegation - the main cause for malpractice

- incidence of malpractice claims is increasing influenced by the number and selection of patients, the anvergence of the procedure, but also by the social systems: compensation claims increasing the incidence rate

- bad outcomes may result even with the best of medical care; it's important to explain that bad results don't equate with malpractice and good results don't mean that the patient has had the best of care !

- being sued for medical negligence, a predictable hazard of medical practice in our times may lead to frustrated, dissatisfied patients; the neurosurgeon with malpractice is perceived as a "wound to the heart".

- as a consequence and risks of excessive encouragement of medical complaints, most neurosurgeons are not well prepared to deal with bad consequences of medical malpractice on themselves, their family and their medical practice

- neurosurgeons will avoid treating high risk cases, no longer performing high risk neurosurgical procedures such as aneurysm surgery, complex spine surgery, pediatric tumors or not treating neurosurgical emergencies (4); they leave the community/cities or even countries where the risks of being sued easily (because of unhappy patients)

- patients will not find the appropriate specialist to treat them and they may lose chances to receive the accurate treatment in the needed time; this may even negatively influence any investment from the medical community

A neurosurgeon's chances of being sued for malpractice are not necessarily related to the medical complexity of a particular case

but rather to the types of cases with which the physician is involved. Elective spinal surgery cases constitute the majority of litigation (2).

Diagnosis of medical malpractice are based on the following three elements:

- negligence: deviation from the standard of medical care, which means that you did something outside your area of expertise or did it in a fashion that others in your profession would not have done, affecting the same degree of skill used by other physicians under the same or similar circumstances

- proximate cause: to prove causal connection, the direct link between the negligence and damage

- damage: proof of damage, directly resulted from the breach of the alleged standard of medical care

Once a medical malpractice case appear, the stress of being accused with malpractice make the accused neurosurgeon: extremely stressful and traumatic and may lead to what was recognized as "Medical Malpractice Stress Syndrome" which manifest first by psychological symptoms such as anxiety symptoms: irritability, tiredness, restlessness, difficulty in concentration, excessive worry - may occupy more than 50% of working hours, tense muscles, insomnia, depression and if this last it leads to physical illness, affecting his life at work and at home. If neurosurgeon has a weak personality, stress of Medical Malpractice Stress Syndrome and the resulting dissatisfaction lead to burnout of the medical practice, early retirement or even may generate extreme reaction, deep depression leading to suicide. Another aspect of the problem is economic: the costs of defensive medicine generated by the

stress physicians to protect themselves from being sued: ordering unnecessary tests, referrals and hospitalizations are tremendous; some estimate \$55.6 billion annually, cited by (5).

Neurosurgeons can take steps to reduce their vulnerability to potential litigation, avoiding or reducing medical malpractice stress:

- to define risk management - “the process of attempting to identify and reduce or manage incipient risk of injury to patients in the clinic, hospital or any medical care setting”

- to avoid negligence: limit your activity, made a good selection for patient, for surgical skills, thinking before surgery to availability of resources and facilities in your hospital; make sure you are fully prepared; avoid to do something new that you are not adequately trained for, outside of your expertise; avoid to do something in careless way. You should never regret to lose effort and time for patient and relatives education about any possible complications even about unexpected outcome that can reduce your risk of getting sued, complete carefully the informed consent

- if you have a complication, an unexpected result be forthcoming with the reason, communicate openly and explain to the patient how and why it occurred; don't avoid the patients or hide the facts - most patients simply want to know what happened and most important knows you care. Document complication in your record which should be “concrete” (use neuroinvestigations, explaining when, how and why they occurred, visit the patient more often!). In such situation no attorney wants to put time and money necessary to pursue litigation into a case involving unavoidable complications; also the lawyer

can tell the patient that they are dealing with a complication rather than negligence.

- accused neurosurgeon should be prepared: your goal is to be successful in demonstrating that what occurred was a complication rather than a deviation from the standard of medical care, to reduce vulnerability to potential litigation and to increase the odds of a successful defense (1):

- do not hide information, all hidden information it will be found

- work to help the patient recover, making him a very strong defendant

- try to keep the patient away from the attorney's office or discourage the attorney from accepting the case and pursuing the claim against you; always think to an ancient romanian saying: “it's better to accept a wrong consent, instead of a fair judgment”

- seek advice from experienced colleagues, malpractice and estates lawyers, counselors, consultants; identify a qualified expert - knowledge is power

- be actively involved in the defense team; discuss your ideas and suggestions with your lawyer but follow their instructions

- ask questions and acknowledge that this is not the neurosurgeon's sphere of expertise

- be careful about possible conflicts of interest between the insurer and the neurosurgeon

- attend supportive educational meetings, read available materials on litigation stress support

- seek support, understanding and comfort from family, professional colleagues and organizations, friends, defense counsel

Conclusions

Medical malpractice litigation is one of the most stressful events of the life of any physician, from which the physician can actually become a better doctor; it's a survivable and surmountable event. Every neurosurgeon may become a stronger and better doctor – “there is only one answer to defeat, the victory” Sir W. Churchill.

Best solutions still remain education, training or new techniques at any level & any age and a good communication with the patients, their relatives. Adapting techniques to medical experience, hospital resources and a good chronic disease patients selection are mandatory. In medical malpractice litigation professional support from neurosurgeon colleagues, local medical

societies and associations is needed; even supportive 2nd opinion from international professional organizations (medico-legal committees) will be of great help.

References

1. Rovit RL, Simon AS, et al. - Neurosurgical experience with malpractice litigation: an analysis of closed claims against neurosurgeons in New York State, 1999 through 2003, *J Neurosurg*, 2007 106(6):1108-14.
2. Fager C.A. - Malpractice issues in neurological surgery, *Surgical Neurology* 2006, 65(4): 416-421.
3. Betsy van Die - Study Analyzes How the Malpractice Environment Impacts Practicing Neurosurgeons, AANS Communications Department, 2008 Apr 28, (312) 949-3205.
4. Berenson RA, Kuo S, May JH, - Medical malpractice liability crisis meets markets: stress in unexpected places, *Issue Brief Cent Stud Health Syst Change*. 2003 Sep;(68):1-7.
5. Sacopulos M.J. - Dealing With Malpractice Litigation Stress, *comment SurgiStrategies*, Apr; 23, 2012.