

Litigation in Paediatrics

There is little written about malpractice in Paediatrics as it was thought to be uncommon. Up to 2007 there had been only 6 publications, all from the US, on the issue. This is understandable. Most individuals are healthy during their childhood and have less need of and less interaction with medical services when compared with adults. However, Paediatric litigation does happen and furthermore it is likely to increase in parallel with other specialties. Carroll and Buddenbaum have described the pattern of Paediatric litigation in the US. The annual incidence of malpractice claims has been quoted to be as high as 6.6 claims per 100 Paediatricians per year. Almost 30% of Paediatricians have been sued with many being sued on more than one occasion. Of these cases 36% were settled out of court, 33% were dropped by the plaintiff with the remainder going before the judiciary. The authors point out that in the US medical malpractice is a hotly debated issue. Litigation has a questionable impact on health care quality, cost, and access to services. The AMA believes that rising premiums are resulting in the curtailment of medical care particularly in states with high medico-legal rates. The Physician Insurers Association of America (PIAA) is a trade organisation which insures 60% of all private practicing physicians and surgeons has been a useful source of data. In the 20 year period 1985-2005 among a total of 214,226 claims there were 6363 (2.9%) Paediatric claims which ranked it 10th among the 28 specialties covered. The claims arose in equal numbers from the hospital and Paediatrician's office settings. Common reasons for Paediatric litigation were errors in diagnosis (32%), incorrect performance of a medical or surgical procedure (13%), failure to monitor or manage a case effectively (10%) and medication error (5%). The top five medico-legal conditions were meningitis, routine infant or child checks, newborn respiratory problems, appendicitis and brain-damaged infants as a co-defendant with Obstetrics. Good quality information about litigation is important because the discussion among doctors is frequently confused by anecdotes and inaccuracies.

The first comprehensive report from Europe was published recently by a French group of Paediatricians². While US, UK and Irish malpractice is based on tort law, the French process incorporates elements of fault and no-fault system. The outcome of the individual case is decided by a government appointed review board. There are over 3500 Paediatricians in France. Paediatric malpractice claims are less frequent in France than the US, the rate being 0.42 claims per 100 paediatricians per year. The rate, however, rises to 0.8 claims/100 Paediatricians per year when newborn cases are included. The authors found that claims tended to be concentrated on infants and young children (41%), 3-11 years (29%), 12-18 years (30%). This is understandable as specific signs are more vague in young children and the disease process and progress is more rapid. According to the child's age, meningitis, dehydration and congenital dislocation of the hip were the commonest in the infants/young children. Pneumonia, malignancy and appendicitis in children 3-11 years. Trauma, testicular torsion, malignancy in those 12-18 years. Deaths and serious injury secondary to error tended to be concentrated on the youngest age group.

British data does not specifically separate Paediatric from Medical claims but Marcovitch³ in a personal analysis found 992 Paediatric and 87 Paediatric Surgery claims over a five year period 2003-2008. The British experience found that the main reasons for litigation were failure or delay in diagnosis 32.6%, inappropriate treatment 22.1%, and failure or delay in treatment 16.2%. He gives further insight by describing 700 cases that he and other colleagues have handled. He lists the common errors that have been encountered. These include failure to communicate with other clinicians, failure to reach a timely diagnosis, lack of knowledge in managing rare conditions, poor fluid balance management, inadequate neurological assessment and failure to elicit important clinical signs. In some cases there was failure appreciate the importance of a tachycardia or tachypnoea, it being incorrectly assigned to the child's fever. Tachycardia may be the earliest and only sign that the infant is in difficulty. Gastroenteritis leads to mishaps when its severity is not appreciated. Carefully maintained fluid charts are important. Serious neurological conditions such as meningitis are missed when the Paediatrician fails to recognise the early signs of impaired consciousness. Failure to identify conditions at the newborn examination and at other health checks is another source of legal exposure for Paediatricians.

Irish data is available for Paediatric litigation because all malpractice claims are now processed through the National Clinical Indemnity Scheme (CIS). The CIS has been in operation since 2002. Between 2002-2010 there have been 111 Paediatric claims and 25 claims in Paediatric Surgery. Misdiagnosis or delay in diagnosis accounted for 31% of claims, perinatal cases in association with obstetrics 21%, incorrect treatment 17%, organ retention at autopsy without consent 7%. In relation to Paediatric Surgery the 3 main claim categories were treatment related problems (36%), operation incidents (28%) and misdiagnosis (20%).

A number of common themes strike one about Paediatric litigation. It is age related with those Paediatricians caring for infants and young children being at a higher risk of being sued. Misdiagnosis or delayed diagnosis is a major problem. Treatment related complaints are another issue. While these findings are predictable and understandable they are not easy to overcome. All reports on Paediatric litigation would indicate the need for greater emphasis on the achievement of the correct diagnosis. This requires more teaching and training about the red flags in history taking and an appreciation of subtle but important clinical signs. It necessitates the need for the expansion of screening programmes and the more widespread availability of diagnostic tools including Paediatric Radiology and rapid discriminatory laboratory tests for all Units involved in acute Paediatric care.

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Editor

1. Carroll AE, Buddenbaum JL. Malpractice claims involving Paediatricians: Epidemiology and etiology. *Pediatr* 2007;120:10-17.
2. Najaf-Zadeh A, Dubos F, Pruvost I, Bons-Letouzey C, Amalberti R, Martinot A. Epidemiology and aetiology of Paediatric malpractice claims in France. *Arch Dis Child* 2011;96:127-30.
3. Marcovitch H. When are Paediatricians negligent? *Arch Dis Child* 2011;96:117-20.