MEDICAL MALPRACTICE TREND REVIEW / CONTENTS

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+ Enterprise Risk Management
+ Medical Malpractice and Patient Safety
+ Claims and Litigation
+ Workers’ Compensation
+ Risk Financing

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Foreword

TO OUR READERS

This is our 43rd and final analysis of medical malpractice verdicts and settlements, as reported by various media outlets. We take a final look at recent national trends in awards that exceeded $5 million. Our report does not include further updates of California cases of $1 million or more. This update utilizes information about medical malpractice verdicts and settlements that appeared in print and through Internet media searches made over an 18-month span from January 2016 to June 2017.

We did not find enough reports about California verdicts and settlements of $1 million or more because the source publications we relied upon for decades – a handful of specialty newsletters and periodicals – have either stopped publishing entirely or sharply reduced their focus on medical liability cases. We suspect this is partly due to increased online competition, including paid and unpaid search capabilities, and diminished participation by law firms that traditionally supplied case descriptions to the publishers.

We did find enough media articles via Internet searches to continue our national survey of $5 million + cases for this final update, although the number of descriptions is also down from earlier years. We know that many more large malpractice awards are achieved via settlement than by jury verdicts, yet the media reports in recent years have included mostly verdicts. Settlements are commonly subject to confidentiality agreements, that limits media coverage.

We welcome your comments and questions, which can be sent to info@theriskauthority.com.

In partnership,

Jeffrey F. Driver  
Chief Executive Officer, The Risk Authority - Stanford  
Chief Risk Officer, Stanford University Medical Center
SUMMARY

• We found articles describing 41 malpractice verdicts and settlements. There were 28 in 2016 and 13 through June 2017. The total awarded in the 34 verdicts and 7 settlements was $844,565,752.

• In the 2016 cases, a total of $463,146,752 was awarded; the average award was $16,540,955 and the median award was $11,825,000.

• In the 2017 cases, a total of $381,419,000 was awarded. The average was $29,339,923 and the median award was $14,500,000.
WHAT TRENDS WERE EVIDENT IN THE 2016-17 REVIEW?

GROWING SEVERITY

• Our review uncovered larger financial awards. 30 of the 41 cases in 2016 saw awards of at least $10 million, with the largest at $52 million.

• That trend accelerated in 2017, when 11 of the 13 cases saw more than $10 million in awards.

MOST OF THE CASES REPORTED WERE VERDICTS

• All but 7 of the 41 cases were jury verdicts. Two settlements found their way into the media because plaintiff attorneys insisted that confidentiality agreements would not be accepted.

• Many of the media descriptions included comment from defendants or their attorneys that the verdict was improperly large or unwarranted and that further legal action, including post-trial motions and appeals, would be pursued. Without interviewing the parties directly, it’s not possible to determine whether those actions took place and what if anything became of them.

• Large settlements still happen, possibly more than ever, but because of strict confidentiality agreements, neither party is allowed to publicize the agreement.

MAJOR, PERMANENT OR GRAVE INJURIES, INCLUDING DEATH, PREDOMINATE

• As in past years, all but one of the plaintiffs in these 41 cases suffered serious injuries or death, although there are arguments about the appropriateness of damages awarded by juries, especially awards for unspecified non-economic damages.
WHAT ACTS (OR FAILURE TO ACT) LED TO THE 2016-17 AWARDS?

Nearly two-thirds of the 41 cases in 2016 and 2017 involved delays or a failure to diagnose birth-related injuries and failure to treat those allegations. Together, these three categories accounted for more than $600 million, or 72%, of the total awarded in all 41 cases. Below is a sample of the summary descriptions.

DIAGNOSTIC-RELATED INJURY CASES

These 11 cases involved patients from 10 states; New York was represented twice. A total of almost $220 million was awarded in 8 verdicts and 3 settlements. A few case descriptions:

- A two-year-old suffered quadruple amputations following an undiagnosed bacterial infection, later diagnosed as toxic shock syndrome, at a trauma center - $47.5 million settlement.

- Emergency Department physicians fail to recognize signs of child abuse in a baby who was sent home, eventually suffered severe cognitive defects - $45 million verdict.

- Failure to diagnose Wilsons Disease in a five-month-old, which resulted in tetraplegia, speech impairment and inability to feed - $28.9 million verdict.

- Vascular surgeon and emergency physicians failed to diagnose blood clot in leg of an 18-year-old woman, resulting in loss of circulation and leg amputation - $20 million verdict.
BIRTH-RELATED INJURIES

The eight birth injury cases included six verdicts and two settlements. They occurred in seven different states, with the largest three in Illinois, Pennsylvania (2) and Florida, all jurisdictions with a history of large verdicts.

- Plaintiffs allege a 12-hour delay in performing C-Section despite evidence of fetal distress resulting in brain damage, inability to walk and 12 years later a $52+ million verdict. The case was appealed after the trial judge refused to set aside the verdict

- Forceps delivery allegedly causes skull fracture and cranial bleed. The child is wheelchair-bound and cannot speak - $41.6 million verdict

- Failure to perform C-Section caused oxygen deprivation resulting in brain damage and blindness - $33.8 million verdict

- Maternal infection at 28 weeks gestation due to an alleged failure to perform C-Section despite placenta abrupta: extensive brain damage, baby unable to walk or feed - $19.3 million settlement

FAILURE TO TREAT ALLEGATIONS

Three of the seven cases in this category involved newborns; the others were patients in their thirties, forties or fifties who suffered either life-altering injuries or death. All seven cases were jury verdicts, three of which were in Illinois. Two cases were tried under Federal Tort Claims Act (FTCA) procedures, as the defendants were federally funded clinics represented by US attorneys. These were bench trials without juries, in which the judge rendered the verdict and the federal government was financially responsible for the damages.

- Failure to treat newborn with jaundice; discharged without proper instructions to parents, delays in re-admission despite mother’s concerns, high bilirubin levels result in irreversible brain damage and lifelong custodial care required - $46.5 million verdict.

- Alleged failure to treat pre eclampsia and pulmonary edema following childbirth; mother suffered heart attack during X-ray three days later, causing catastrophic brain damage - $46 million verdict.

- Clinic nurse fails to treat or give patient proper advice about hypertension over a two-year period, resulting in kidney damage and eventual transplant, with rejection issues and shortened life expectancy – $29.6 million verdict.

- Newborn suffers blood loss at birth. Newborn was not fully transfused for three hours, which resulted in brain damage - $23.1 million verdict.
OTHER LARGE VERDICTS AND SETTLEMENTS

Post-operative care

• Failure to monitor changes in patient’s blood during anticoagulant therapy caused brain hemorrhage. 57-year-old patient was comatose, bedridden and suffered brain damage - $44 million verdict.

Surgical error

• General surgeon performed 25 procedures on a two-year-old to correct esophageal leak and allegedly used wrong suture, puncturing pulmonary artery and causing brain injury - $30 million settlement.

Unnecessary treatment

• Cardiologist allegedly recommended unnecessary stent procedure after finding a ‘60% blockage’ and warning patient of death. This prolonged recovery and caused job loss. One of many cases against this group - $21 million verdict.
THE 2016-2017 CASES BY TYPES OF TREATMENT AND RESULTING INJURY

2016-2017 NUMBER OF CASES BY TREATMENT AND INJURY

2016-2017 CASES: TOTAL AWARDED BY TREATMENT AND INJURY
SPECIALTIES OF DEFENDANTS AND LOCATION OF TREATMENT(S)

We tried to identify the medical specialty of the primary defendant in each case. Non-physician providers – nurses, lab techs, CRNAs – were identified as primarily responsible in 7 of the 41 cases. Locale of treatment was clear in most of the descriptions, using our traditional five categories.

More than 80% of the cases and 85% of the total awarded in these 41 verdicts and settlements resulted from injuries sustained within hospitals.

OB/GYN specialists were involved as primary defendants in 10 (24%) of the cases resulting in $264 million of awards (31% of the total), followed by emergency medicine specialists with 4 cases and $62.6 million in awards and general surgery with 3 cases and $58.5 million in awards.

NON-PHYSICIAN PROVIDERS
7 OF 41 CASES WERE PRIMARILY RESPONSIBLE
## NUMBER OF CASES BY MEDICAL SPECIALTY AND LOCATION

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<th>HOSP/L&amp;D</th>
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2017 MEDICAL MALPRACTICE TREND REVIEW
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AVERAGE TIME FROM EVENT TO AWARD

- For cases reported in the media during 2016 and the first half of 2017, the average time between medical treatments and ultimate settlement or jury verdict in the subsequent legal case was five years and seven months.

- The largest verdict in this update stemmed from a 2004 birth injury.

- In six other cases, the time lag exceeded eight years.

- The quickest settlement was reached just 30 months after the injury.

- Ten other cases took less than four years to reach a verdict or settlement.

- In many of the verdicts, appeals, post-trial motions and other legal maneuvering no doubt delayed final resolution by additional months or years.

- Surprisingly, the average time lag in the 2016-17 cases is about seven months shorter than that of cases reported in the previous eight years.

MENTIONS OF POST-TRIAL ADJUSTMENTS

- Several of the case descriptions mentioned adjustments that could alter the verdict amounts. Most centered around application of state laws capping non-economic damages.

- One article mentioned a request that the court impose additional interest on a judgment, which if granted would increase the award by $3 million.

- A judge in one case rejected one defense’s request to apply Medicare offsets.

- One hospital claimed charitable immunity.

- Following a large verdict, one defense team claimed that the plaintiff’s attorney used inflammatory language and otherwise misbehaved in front of the jury. The judge denied these motions in a post-trial ruling.
OTHER OBSERVATIONS

• Four of the cases were handled under the Federal Tort Claims Act (FTCA) because care was rendered by providers at federally funded clinics where defense representation and indemnity is handled by the federal government.

• One settlement included an innovative agreement by the hospital to implement better systems and procedures that would prevent an injury of the nature suffered by the plaintiff in this case.

• Only one article mentioned inclusion of punitive damages in an award against a county for failing to provide adequate psychiatric services to a jail inmate who committed suicide.

• A $25 million verdict was returned against a physician who had refused a $1 million settlement offer prior to trial.

• All but 5 of the 41 cases included at least one hospital and/or governmental entity as a primary or co-defendant, meaning that a ‘deep pocket’ was available for payment of damages.

• No attorney, either for the plaintiff or defense, was involved in more than one case in this data.

MULTI-YEAR TRENDS

• Since we began tracking national cases of $5 million or more in 2008, we’ve found 404 media descriptions. With the addition of the 2016 and 2017 cases, the total awarded is nearly $7.2 billion.

• The number of cases described in the media as available for review declined from peaks of 64 and 65 in 2012-2013, respectively, to just 28 in 2016. However, both the average and median awards increased from 2015 lows.

• The small sample of just 13 cases in 2017 had average verdict/settlement values of $29.3 million.

• The overall average award in all 404 cases from 2008 to 2017: $17.8 million.

• The overall median award: $10.1 million.

• The half-year sample of 2017 cases included a higher percentage of very large verdicts than in any prior period, sending the average and median sharply upwards.

• Combining 18 months of 2016-2017 data into a single total of $844 million would result in an average award of $20.6 million and a median of $14.5 million, both still significantly higher than 2015.
OVERALL AVERAGE AWARD
$17.8 MILLION
IN CASES FROM 2008 TO 2017
NATIONAL AWARDS OF $5 MILLION OR MORE - AVERAGE AND MEDIAN

OVERALL MEDIAN AWARD

$10.1 MILLION
CONCLUDING THOUGHTS

Perhaps the most significant finding in this final update is the growing number of extremely large verdicts and settlements: those exceeding $20 million. They comprised nearly half (43%) of the cases we found in our 2016-17 media search. Of these cases, 8 happened in 3 states: Illinois (5), Pennsylvania (2) and Florida (1). New York State was notably absent from the list of venues for awards above $20 million.

All but two of the $20 million or higher verdicts/settlements involved hospitals as primary or co-defendants, thus assuring a ‘deep pocket’ for satisfaction of the award. The media descriptions in many of these cases included allegations of systems failures, including things like hospital staff not following proper procedures or protocols or breakdowns in communications that led to delays and injuries.

More surprisingly, several of the $20 million or more verdicts/settlements happened in states not generally known for large awards in medical malpractice, including Arkansas, Missouri, Kentucky and Alabama. Given the right set of circumstances, juries in traditionally conservative areas are thus quite capable of awarding huge damages.

Obviously, the number of media reports describing large malpractice cases has decreased in recent years. Some of the specialty publications tracking malpractice trials and settlements have gone out of business, and others are not reporting enough identifiable data to be considered for the study. Traditional media outlets rarely publish stories about settlements because of confidentiality agreements. In our 2016-17 searches, two settlements reached the media only because the plaintiff law firm refused to agree to a confidentiality clause. Those were the exception rather than the rule.
LIMITATIONS AND ACKNOWLEDGMENTS

For purposes of this survey, we use verdict or settlement sums as described in print and online media articles. When specific mention is made of post-trial reductions to a different sum, or when application of tort reform caps reduces a verdict to a lower specified sum, we adjust the data accordingly. However, most of the articles simply report on the verdict, sometimes mentioning that the defendant(s) have or will file appeals, or that some unspecified modification may occur. In those instances, we use the original verdict total. Defense costs are not a part of the study. We also warn readers that this is by no means a comprehensive listing of all malpractice verdicts or settlements that exceed the dollar threshold of the survey. Settlements typically require confidentiality by all parties as part of the agreement, so no public notice is taken.

The 2017 Medical Malpractice Trend Review is not intended to be and should not be taken as legal advice. The contents of this study are intended for information and educational purposes only. The study does not provide and is not intended to be viewed as providing all available information on the subject matters. The opinions expressed and materials provided do not represent any official position of Stanford University or any of its affiliates including Stanford University Medical Center, its faculty, staff or employees.
ABOUT THE AUTHOR

Ron Neupauer has been involved in medical liability insurance since 1971 and is the retired president of Medical Underwriters of California, the management company for Medical Insurance Exchange of California (MIEC), California’s first physician-owned medical liability insurer. From 1975 to 2008 he served in various management positions at MIEC, retiring from his position as CEO at the end of 2008. Ron has served as a consultant to the company since then. He has also served on committees and the board of the Physician Insurers Association of America and since 2010, on the board of another physician-owned insurer based in California.