Methods (cont.)

2. The major psychosocial concern(s) factoring into the pursuit of litigation result from a lack of physician-patient communication.

<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
<th>Litigation</th>
<th>No Litigation</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parental dissatisfaction in the newborn period</td>
<td>Yes</td>
<td>36 (22%)</td>
<td>22 (14%)</td>
<td>0.003</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>12 (22%)</td>
<td>14 (44%)</td>
<td></td>
</tr>
<tr>
<td>Given adequate info at birth</td>
<td>Yes</td>
<td>16 (13%)</td>
<td>3 (13%)</td>
<td>0.003</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>33 (67%)</td>
<td>21 (67%)</td>
<td></td>
</tr>
<tr>
<td>Fair treatment</td>
<td>Yes</td>
<td>29 (19%)</td>
<td>19 (77%)</td>
<td>0.46</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>20 (41%)</td>
<td>12 (24%)</td>
<td></td>
</tr>
<tr>
<td>Wrongful provider</td>
<td>Yes</td>
<td>38 (25%)</td>
<td>16 (67%)</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>13 (25%)</td>
<td>8 (33%)</td>
<td></td>
</tr>
<tr>
<td>Concerns dealt with at birth</td>
<td>Yes</td>
<td>18 (38%)</td>
<td>3 (13%)</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>30 (62%)</td>
<td>21 (67%)</td>
<td></td>
</tr>
<tr>
<td>Advised to seek legal action</td>
<td>Yes</td>
<td>33 (60%)</td>
<td>25 (50%)</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>17 (34%)</td>
<td>14 (44%)</td>
<td></td>
</tr>
</tbody>
</table>

*Chi-square test or Fisher exact test was applied for group comparison.

Results (cont.)

3. The extent of NBPP (Narakas Grade) was not a major factor prompting lawsuits. Patient age, gender, and race do not differ significantly between litigation and non-litigation groups.

Both the “litigation” and “no litigation” groups show equivalent upper extremity function by objective examination. However, families involved in malpractice litigation reported lower perceived health-related quality of life and greater global disability than non-litigation families.

Physician-Patient Communication is a Key Factor Associated with Malpractice Litigation in Neonatal Brachial Plexus Palsy

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Introduction

Neonatal Brachial Plexus Palsy (NBPP) is a leading cause of medical malpractice lawsuits claiming neurologic birth injury, second only to cerebral palsy. Approximately 60% of lawsuits related to NBPP between 1985 and 2001 resulted in payouts of monetary damages. The median indemnity was $301,000 (~4 times the median payout for all malpractice claims during this period) with a total payout of $54 million. Recently, $12.9 million was awarded to a patient of the UM Brachial Plexus Program. Note that we do not provide claims during this period with a total payout of $54 million.

Objectives

1. Report the prevalence of malpractice litigation in patients of the UM Brachial Plexus Program.
2. Investigate which psychosocial concerns factored into the pursuit of litigation.
3. Determine if the extent of the NBPP is a major factor prompting lawsuits.

Methods

Participants:
- 51 adult parents/legal guardians of NBPP children recruited from University of Michigan Interdisciplinary Brachial Plexus Program.
- Exclusion criteria included comorbid medical conditions and English as a non-primary language.

Data Collection:
- Psychosocial questionnaire modeled after survey developed by Hickson, et al.1
- The NIH-developed PROMIS Parent Proxy Instrument (depression, anxiety, anger, peer relationships, fatigue, pain, upper extremity function, and mobility). Reported using standard T-scores.
- Demographic data and Narakas score obtained from an IRB-approved database.

Statistical Analysis:
- Descriptive statistics of demographics/questionnaire responses were performed using SPSS Version 20.0 (SPSS inc., Chicago, IL). Fisher’s exact tests and Chi-square tests were used to compare differences in gender, race, Narakas score between litigation and non-litigation groups and student t test was applied for group differences in age and PROMIS standardized T-scores. Statistical significance level was established at p < 0.05.

Results

1. The prevalence of malpractice litigation in patients of the UM Brachial Plexus Program is 47% (n = 24).

- 66% of families received suggestion to pursue claim (n = 33)
- 79% other family members
- 48% family friends
- 27% television
- 9% internet

2. The major psychosocial concern(s) factoring into the pursuit of litigation result from a lack of physician-patient communication.

- Prevention of a serious circumstance for another patient/family (22%)
- Presence of malpractice claim (18%)
- Physician-communicable factors (11%)
- Parents believing they were responsible for the injury (10%)
- Lack of awareness of the injury (8%)
- Concerns dealt with at birth (6%)
- Fair treatment (6%)
- Wrongful provider (4%)
- Concerns dealt with at birth (3%)
- Parental dissatisfaction in the newborn period (2%)

3. The extent of NBPP (Narakas Grade) was not a major factor prompting lawsuits. Patient age, gender, and race do not differ significantly between litigation and non-litigation groups.

- Total T-scores were used in the analysis.
- Results are shown in the Statistical Analysis table.

Conclusions

- Physician-controllable factors contribute significantly to the decision-making process regarding pursuit of malpractice litigation.
- PROMIS showed group differences in health-related quality of life, which may be difficult for providers to identify during brief interactions.
- Understand family concerns and values in order to provide the best counseling, timely treatment suggestions, and to prevent misunderstandings or misleading conversation.
- Physical extent of NBPP was not a significant factor in decision-making about litigation and should not deter open communication.

Strengths and Limitations

- Strength of the study lies in the ability to directly compare those who chose to pursue malpractice litigation with those who did not, eliminating medical condition as a possible confounder.
- Limitations include a relatively small sample size, which precluded the use of regression models, and possible confounders including the 2-way nature of communication, reverse causation, and socioeconomic status.

References


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