



Otorhinolaryngology litigations in Japan

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Abstract

Purpose The purpose of this study was to examine the malpractice litigations pertaining to otorhinolaryngology in Japan.

Methods A retrospective review was undertaken of cases tried in the Japanese civil court system during the 26-year period from 1990 to 2015 as identified in a computerized legal database. Data including patient demographics, disease, chief allegations, court's decisions, and the year decision was made were collected and analyzed. Patients' chief allegations were assigned to one of the five categories: delayed diagnosis, complication during diagnostic procedure, inappropriate treatment, complication during treatment procedure, or lack of informed consent.

Results Thirty-one malpractice litigations were identified. Eight (26%) malpractice litigations pertained to tumors, 1 (3%) to a tumor-like lesion, 14 (45%) to inflammation, and 8 (26%) to others. Among the patients' chief allegations, inappropriate treatment and complication during treatment procedure were the most frequent [11 (36%) for each], followed by delayed diagnosis [6 (19%)], complication during diagnostic procedure [2 (6%)], and lack of informed consent [1 (3%)].

Conclusion These data may aid in the design of risk-prevention strategies to be used by otorhinolaryngologists.

Keywords Otorhinolaryngology · Malpractice · Litigation · Japan

Introduction

The number of medical malpractice litigations against physicians and surgeons has been increasing, not only in western countries but also in Japan. As the frequency of malpractice claims has risen, otorhinolaryngologists have begun to focus on risk-management activities. Furthering the awareness of otorhinolaryngologists may be one method of reducing the number of malpractice claims. However, there are few reports on malpractice litigations pertaining to otorhinolaryngology, and all of them were from the US [1–13]. Little is known about the allegations underlying malpractice litigations in Japan or about those pertaining to otorhinolaryngologists in particular. To identify the allegations in malpractice litigations pertaining to this field, a review of Japanese civil court trials that involved otorhinolaryngology was undertaken. To our knowledge, this is truly the first report on the issue in a country other than the US.

Materials and methods

A listing of Japanese civil court trials pertaining to otorhinolaryngology from 1990 to 2015 was retrieved from a computerized legal database, Westlaw Japan. The database is one of the major legal databases commercially available in Japan, although the database does not cover all the malpractice cases. Inclusion criteria included (1) disease process or procedure within the field of otorhinolaryngology, (2) otorhinolaryngologist as a defendant, (3) medical malpractice cases, and (4) cases with known outcomes. The cases were searched with key words including “otorhinolaryngology” and “compensation”.

Published reports of court decisions in these cases were then obtained from volumes of judicial precedents, and medical information was abstracted from these precedents. Extracted data included patients' demographics, disease, chief allegation, geographic location, court's decision, and the year the decision was made. Patients' chief allegation was assigned to one of the five categories: delayed diagnosis, complication during diagnostic procedure, inappropriate treatment, complication during treatment procedure, or lack of informed consent.

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Results

Thirty-one malpractice litigations were identified. Among them, 15 (48%) patients were dead, and 3 (10%) were in a vegetative state after treatment accidents. Other problems included hemorrhage, facial nerve palsy, vision impairment, etc. The hospital won in 15 (48%) cases and lost in 16 (52%) cases.

Diseases involved in litigation

Eight (26%) malpractice litigations pertained to tumors, 1 (3%) to a tumor-like lesion, 14 (45%) to inflammation, and 8 (26%) to others (Fig. 1). Among the tumors, 3 (10%) were of thyroid cancer, 2 (6%) were of laryngeal cancer, and 1 each (3%) was of pharyngeal, maxillary, and auricle cancer, respectively. The tumor-like lesion was an epiglottal cyst. Among the inflammations, 5 (16%) pertained to acute epiglottitis and 2 each (6%) pertained to allergic rhinitis, tonsillitis, and pharyngitis, respectively. The remaining inflammation pertained to neck cellulitis.

Patients' chief allegation

Inappropriate treatment and complication during treatment procedure were the most frequent allegations [11 (36%) for each], followed by delayed diagnosis [6 (19%)], complication during diagnostic procedure [2 (6%)], and lack of informed consent [1 (3%)] (Fig. 2).

Most frequent disease involved in litigations

The most frequent disease involved in the litigations was acute epiglottitis. The outcomes of these five cases are shown in Table 1. Three patients had died, and two were

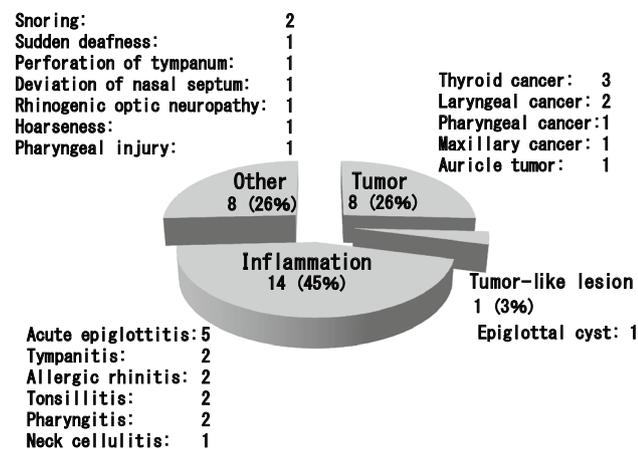


Fig. 1 Diseases involved in Japanese malpractice litigations

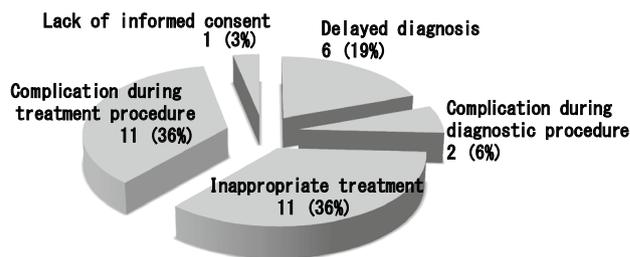


Fig. 2 Patients' chief allegations

left in a vegetative state due to the disease. The hospital won in two cases and lost in three cases.

Amount of compensation

The highest amount of compensation paid among all of the cases litigated was 150,000,000 JPY (1,230,000 EUR) plus 300,000 JPY (2460 EUR)/month until the patient's death. In this case, a 32-year old man complained of severe sore throat and visited the hospital. His diagnosis was acute epiglottitis, and he choked while in the outpatient ward. The otorhinolaryngologist tried to maintain his airway but could not do it well. Ultimately, the patient progressed to a vegetative state. In another case, an otorhinolaryngologist overlooked acute epiglottitis, and this patient also progressed to a vegetative state. In this case, the amount compensated was 200,000,000 JPY (1,640,000 EUR).

Discussion

Medical malpractice has become a predominant concern of otorhinolaryngologists in Japan as in western countries. Clinical risk management is the process of collecting, evaluating, and applying data to reduce the frequency of preventable patient injuries. Although general risk-management information is abundant in the medical and lay literature, published material specific to otorhinolaryngology is limited. Otorhinolaryngologists need an understanding of malpractice allegations to develop appropriate risk-reduction strategies.

Differences in litigations between the US and Japan

Malignant tumors have been reported to be the most frequently involved-in litigations in the US. Hong et al. [2] reported that 21% of all litigations pertained to malignancies. These authors also reported that 28% of the laryngology litigations in the US pertained to laryngeal cancers [1]. In the present study, however, the most frequently involved disease in Japan was inflammation, especially acute

Table 1 Malpractice litigation pertaining to acute epiglottitis

| No. | Court | Decision date | Patient | | | Court decision | Amount of compensation | Reason |
|-----|-----------------------|---------------|---------|--------|------------------|----------------|---|-------------------------------------|
| | | | Age | Sex | Status | | | |
| 1 | Nagoya District Court | Sep 27, 2007 | 30 | Female | Dead | Hospital won | – | Impossible to avoid patient's death |
| 2 | Tokyo District Court | Dec 24, 2005 | 50s | Male | Dead | Hospital lost | 140,000,000 JPY | Poor emergency system |
| 3 | Tokyo District Court | Nov 29, 2004 | Unknown | Male | Dead | Hospital won | – | Impossible to avoid patient death |
| 4 | Osaka District Court | Jan 21, 2004 | 32 | Male | Vegetative state | Hospital lost | 150,000,000 JPY + 300,000 JPY/month until his death | Inappropriate airway maintenance |
| 5 | Tokyo District Court | Mar 13, 2002 | 50 | Male | Vegetative state | Hospital lost | 200,000,000 JPY | Disease was overlooked |

epiglottitis. This may be the most characteristic difference in litigations between the US and Japan. One possible reason may be the higher incidence of acute epiglottitis in Japan than in the US. Both children and adults may have the disease, but the disease predominantly occurs in adults. The child:adult ratio was reported to be 1:34 by Guldred et al. [14] and 1:36 by Hermansen et al. [15]. A similar tendency of 1:24 was also observed in Japanese patients [16]. However, the incidence in Japanese children was 3.2 cases/100,000/year, [17] whereas that in western adults ranged from 1.0 case/100,000/year to 4.9 cases/100,000/year, i.e., an incidence similar to that of Japanese children [14, 18, 19]. This implies that the incidence in Japanese adults may be quite higher than that in US adults. A second possible reason may be the poor knowledge on acute epiglottitis possessed by the general Japanese population. The rapid clinical course and high mortality of the disease are well known to otorhinolaryngologists but to very few to none in the general Japanese population. This lack of knowledge may lead to medical disputes.

Malignant tumors

Malignant tumors were the second most frequently involved disease in litigations in Japan. Although the rate of smoking in the Japanese is on the decline, it was still relatively high in 2014: 19.3% (males: 32.2%, females: 8.2%) according to the Japan Health Promotion and Fitness foundation. Head and neck cancer deaths in Japan were therefore still relatively high, 11.235 per 100,000 males and 5.547 per 100,000 females in 2016 according to the National Cancer Center Japan. Delayed diagnosis of malignancy often leads to progression of the clinical stage, which can make treatment difficult; therefore, it is easy to understand why there are many litigations pertaining to malignancies.

Patients' chief allegations

As the patients' chief allegations, inappropriate treatment and complication during treatment procedure were most frequent in the present study (36% for each). We previously reported patients' chief allegations for cases related to Japanese gastroenterology [20]. The most frequent chief allegation among those cases was delayed diagnosis (45%), followed by inappropriate treatment (18%), complication during diagnostic procedure (17%), complication during treatment procedure (12%), and lack of informed consent (8%). The pattern differs significantly between otorhinolaryngology and gastroenterology. Levinson et al. [21] reported that the factors associated with litigations differ between physicians and surgeons, and our data may support these results.

Lack of informed consent

Only 3% of the cases related to the patients' chief allegation of a lack of informed consent. In the litigations, however, lack of informed consent is often included as one of the patients' allegations, but not the chief one. Studies have shown that increased communication reduces the risk of malpractice; thus, the process of informed consent can be a useful tool for reducing this risk [10]. The process of disclosing the inherent risks of a procedure or a medical treatment decision essentially asks the patient to accept those risks as part of the medical plan and procedure. The shift in risk does not apply to substandard care, but it would apply to many of the complications that can occur even when procedures are performed properly and medications are administered prudently.

Risk-prevention strategies

Knowledge of the factors leading to preventable patient injury is needed to develop optimal strategies for reducing malpractice risk related to otorhinolaryngology. On the basis of our study results, we suggest the following risk-prevention strategies to decrease the number of malpractice claims related to otorhinolaryngology practice. First, documenting possible complications during the informed consent process is essential. Complications during treatment frequently lead to litigations, especially if the possibility of such complications has not been discussed with the patient in advance. Second, continuous training in safe diagnostic and treatment techniques remains the principal method of preventing such complications. Several studies confirm the importance of continued medical education and training in safe diagnostic and treatment techniques [4]. Third, it is important to establish practice guidelines, especially in areas vulnerable to litigation. Such guidelines offer the best method of decreasing errors leading to malpractice litigations. Fourth, otorhinolaryngologists should recognize that delayed diagnosis of a disease, particularly malignancy, is a common cause of litigation. Improving diagnostic ability and thorough examination of each patient are essential.

Limitations

As in the US, most malpractice cases are settled out of court in Japan. It has been reported that approximately 90% of malpractice cases in Japan are settled out of court, and the remaining cases lead to litigations [22]. Court decisions are given in only approximately 30% of the litigated cases. The compromised and withdrawn cases are not reported or available for review; therefore, the denominator of the present study might have some bias. However, the aim of this study was to extract medical information from published court reports to determine sources of errors in cases requiring litigation. It is hoped that dissemination of the results of the present study among otorhinolaryngologists will serve as a risk-prevention strategy for reducing both complications and malpractice claims pertaining to otorhinolaryngology.

Conclusions

Our data may aid in the design of risk-prevention strategies to be used by otorhinolaryngologists. In the present study, the most frequently involved condition in Japanese litigations was inflammation, especially acute epiglottitis. Malignant tumors have been reported to be most frequently involved in litigations in the US. This may be the most characteristic difference in litigations between the US and Japan. The field of otorhinolaryngology is inherently dangerous

as a consequence of airway proximity. Documenting possible complications during the informed consent process is essential. Continued training in safe diagnostic and treatment techniques remains the principal method of preventing complications. Thorough examination of each patient is essential to ensure that malignancies are not overlooked.

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Compliance with ethical standards

Conflict of interest The authors declare that they have no competing interest.

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