

Malpractice in Otolaryngology



Ashok A. Jagasia, MD PhD
Director, ENT Global Health

Dept. of Otolaryngology – Head and Neck Surgery
Rush University Medical Center
Chicago, Illinois

Disclosures

- No disclosures to report

MALPRACTICE IN OTOLARYNGOLOGY

➤ Montgomery vs Lanarkshire Health Board- 2015

- Ms. Montgomery, 24 y/o with DM
- Son born with dystocia and CP
- **ALLEGATION:** Physician failed to discuss **all pertinent risks**



Lanarkshire, Scotland

- Patient unable to consider alternatives due to lack of informed consent

MALPRACTICE IN OTOLARYNGOLOGY

➤ Successful malpractice claim

➤ (4 CRITERIA):

➤ Physician had duty to the patient

➤ Breach of the duty (failure to meet standard of care)

➤ Adverse event

➤ Breach of duty resulting in harm

➤ 250, 000 people die each year as a result of medical malpractice

➤ About 10% deaths in the US are due to preventable medical malpractice (this does not include injuries due to malpractice)

Malpractice in Otolaryngology-**OBJECTIVES**

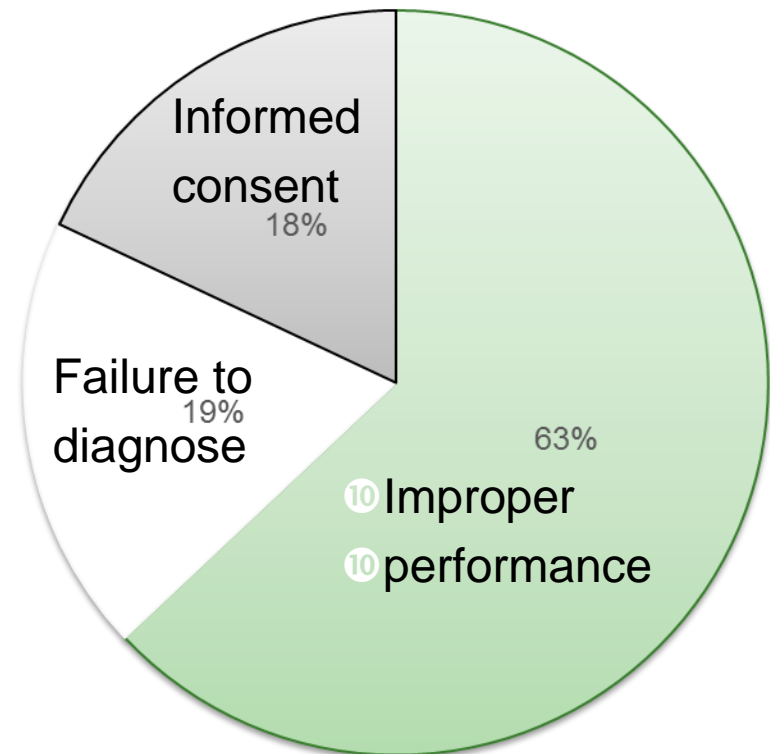
Case Review

Prevalence

Common Allegation Claims

Mitigating risks related to Malpractice

Legal Allegations



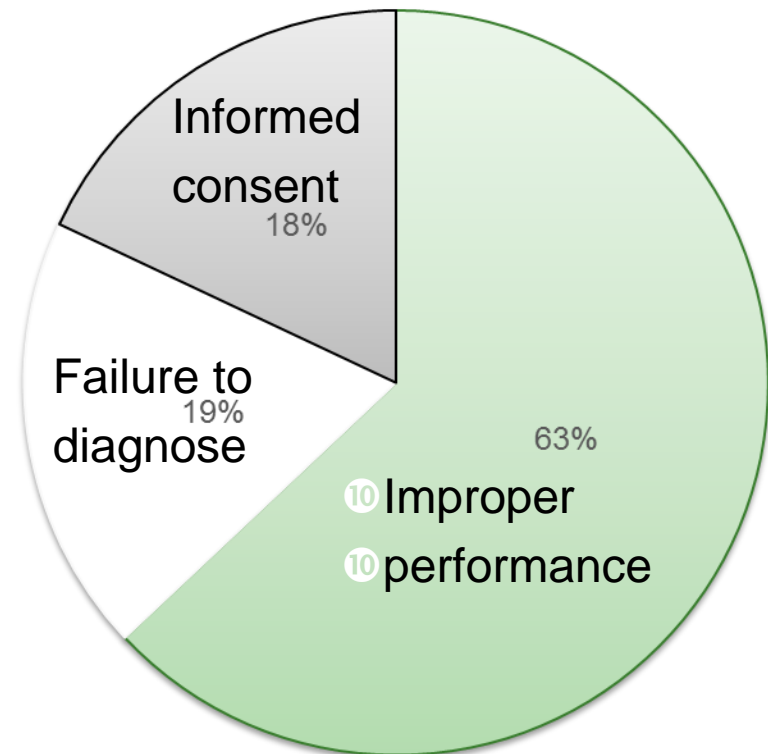
Improper performance Failure to diagnose Informed consent

Malpractice in Otolaryngology-

CASE # 1

- 45 y/o female undergoing a routine microlaryngoscopy
- Woke up in the recovery with neck pain
- No prior history of any neck trauma or pain
- C4 vertebral body fracture
- **Allegation:** Improper performance/failure to diagnose and lack of informed consent

Legal Allegations



Improper performance Failure to diagnose Informed consent

MALPRACTICE IN OTOLARYNGOLOGY

Case # 2

- 2 y/o male underwent adenoidectomy and PE tubes in 2021
- Intraop profuse bleeding with multiple attempts to control
- HB 6.5, transfused, transferred to local hospital
- Subsequently discharged home, and had severe bleeding on POD #12 leading to cardiac arrest

MALPRACTICE IN OTOLARYNGOLOGY

Case # 2

- Failing to properly monitor/follow-up in a patient with significant intraoperative bleeding
- Failure to order testing/imaging/follow-up investigation of the significant bleeding.
- Failing to obtain informed consent.
- Allowing a medical resident to perform surgery without patient consent.

MALPRACTICE IN OTOLARYNGOLOGY

- Case # 3:
- 54 y/o male presents to PCP with complaints of gagging and coughing up mucus.
- Pt has a history of smoking and alcohol abuse
- Patient was initially treated by PCP, underwent a chest CT which was negative
- Subsequently referred to the otolaryngologist
- ENT physician diagnosed pt with LPR and recommended follow-up

➤ Malpractice in Otolaryngology

Case # 3:

- Pt was started on reflux meds and did not follow-up
- Given the persistence of his sx, pt saw another otolaryngologist after several months and was diagnosed with stage 4 laryngeal CA
- Patient passed away 2 years following his diagnosis of laryngeal CA

➤ Malpractice in Otolaryngology

Case # 3:

➤ ALLEGATIONS:

- A) Neck CT not ordered at the time of initial evaluation in a patient with a history of smoking
- B) No documentation or discussion of the possibility of cancer given pt's long history of smoking

Malpractice in Otolaryngology

(Case # 3)

➤ INCORPORATING MEASURES IN YOUR PRACTICE:

➤ Discuss and Document

➤ A) increased risk of malignancy of the upper aerodigestive tract related to smoking

B) a need for a follow-up

C) as well as a future treatment plan including possibly an imaging study if symptoms persist

Malpractice in Otolaryngology

Case # 4:

- 45 y/o male with a vocal fold polyp and hoarseness
- Very difficult intubation, and a loose medial incisor
- Underwent microlaryngoscopy and biopsy
- Medial incisor was dislodged
- Following surgery pt explained that he had a loose tooth prior to surgery (medial incisor)
- Lack of informed consent

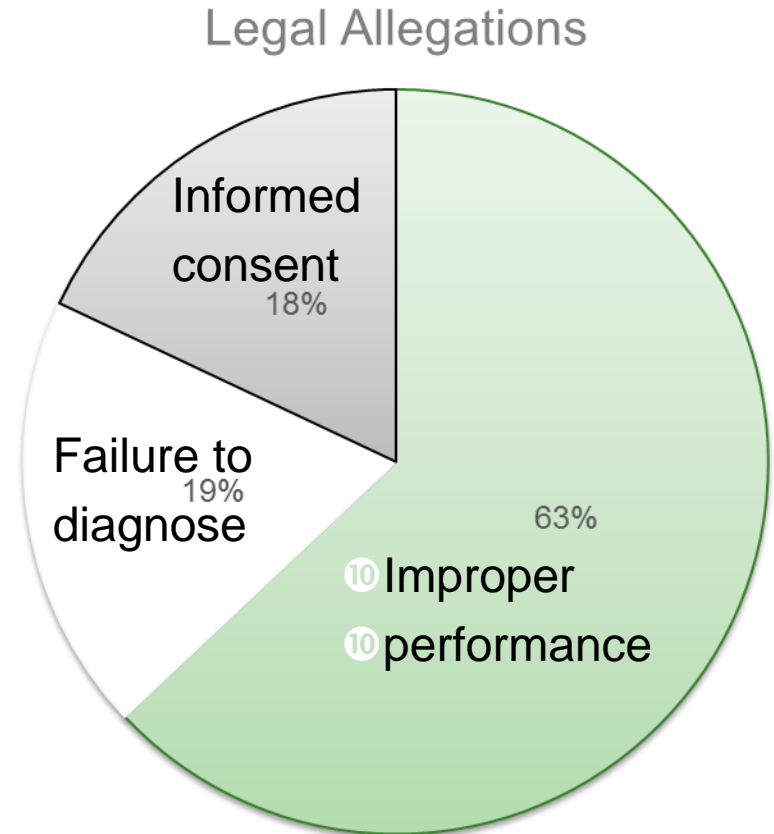
Malpractice in Otolaryngology

OBJECTIVES

Prevalence

Common Allegation Claims

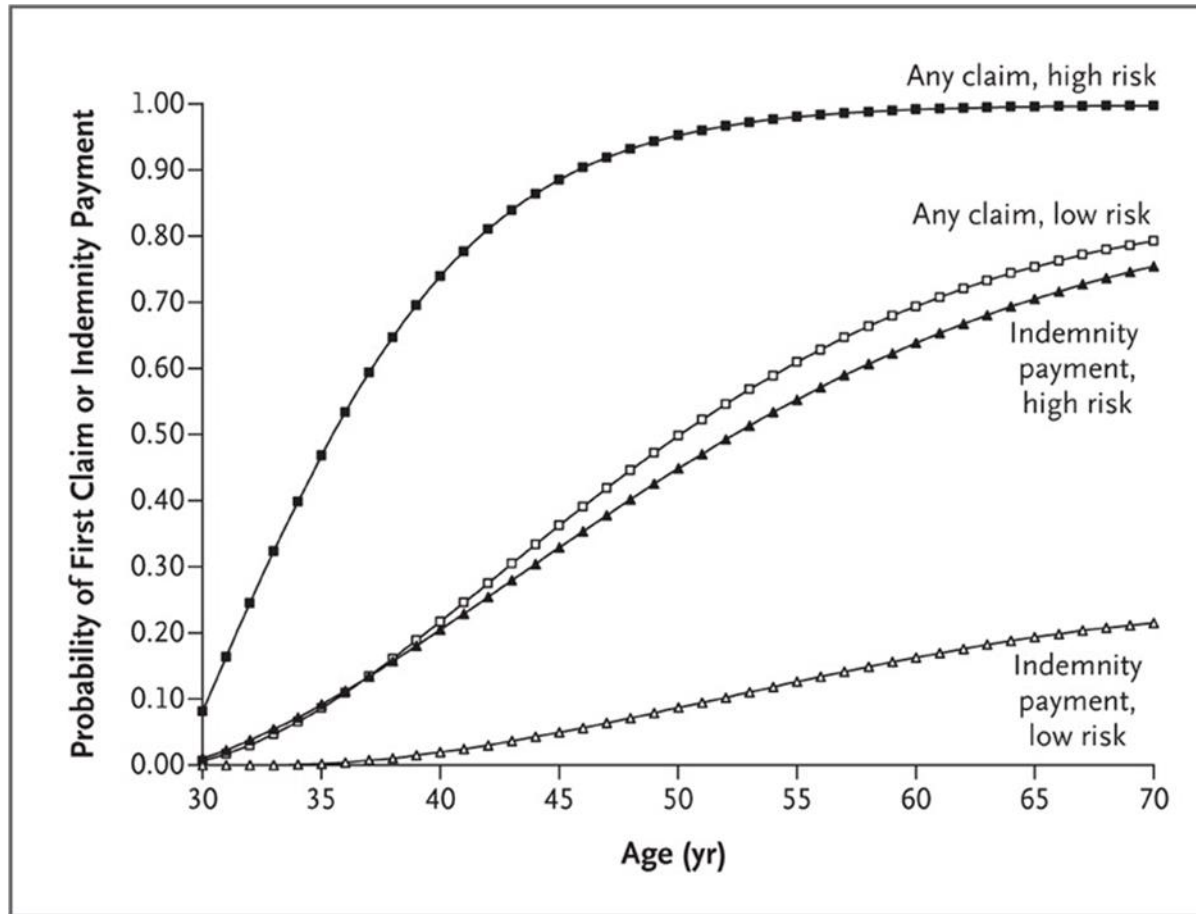
Mitigating risks related to Malpractice



Improper performance Failure to diagnose Informed consent

Malpractice in Otolaryngology

Jena et al 2011

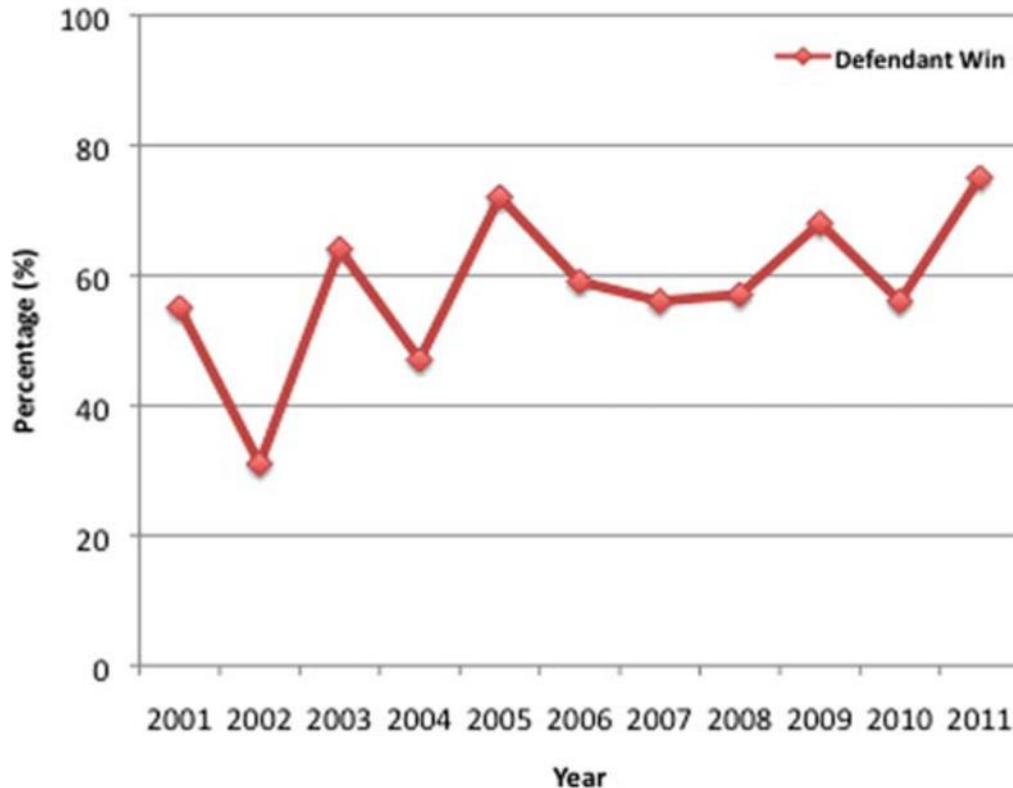


Malpractice in Otolaryngology- Jena et al 2011

	Age	Risk of malpractice
➤ Surgeon	45	88%
➤	65	99%
➤ Primary care	45	36%
➤	65	75%

Malpractice in Otolaryngology

Average defendant (otolaryngologist) verdict outcomes



A Review of the past decade 2001-2011

198 cases, representing 27 states

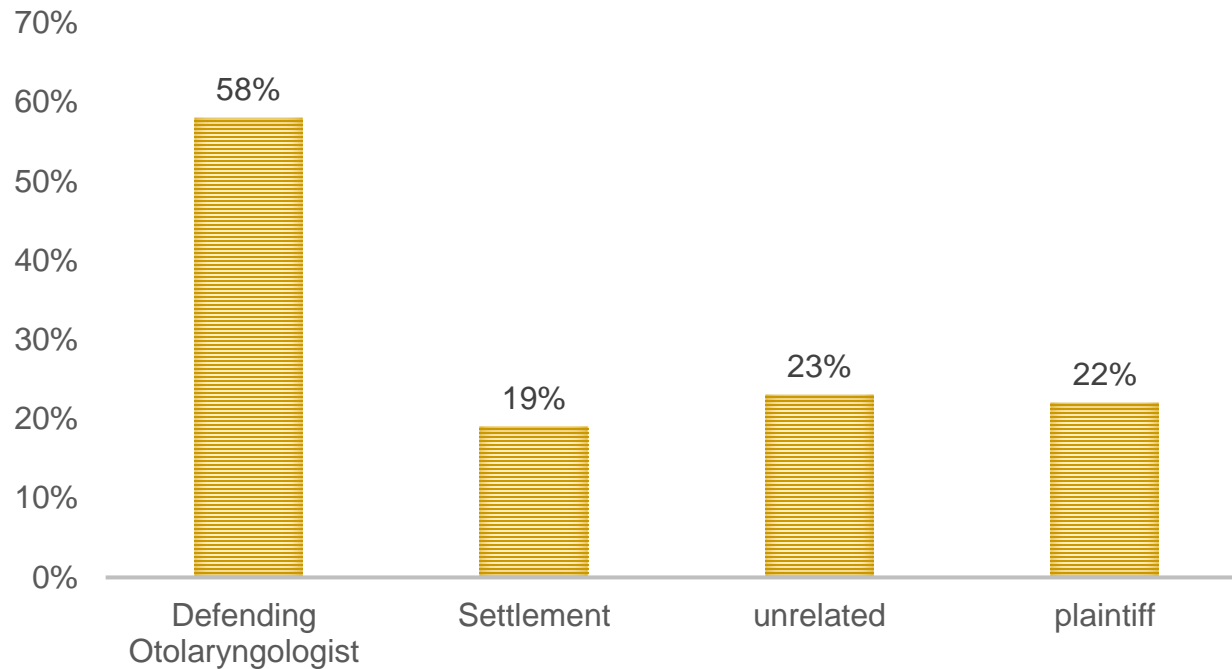
Westlaw legal database

Hong et al 2014

Malpractice in Otolaryngology

Hong et al 2014

TOTAL PERCENTAGE OF CASES

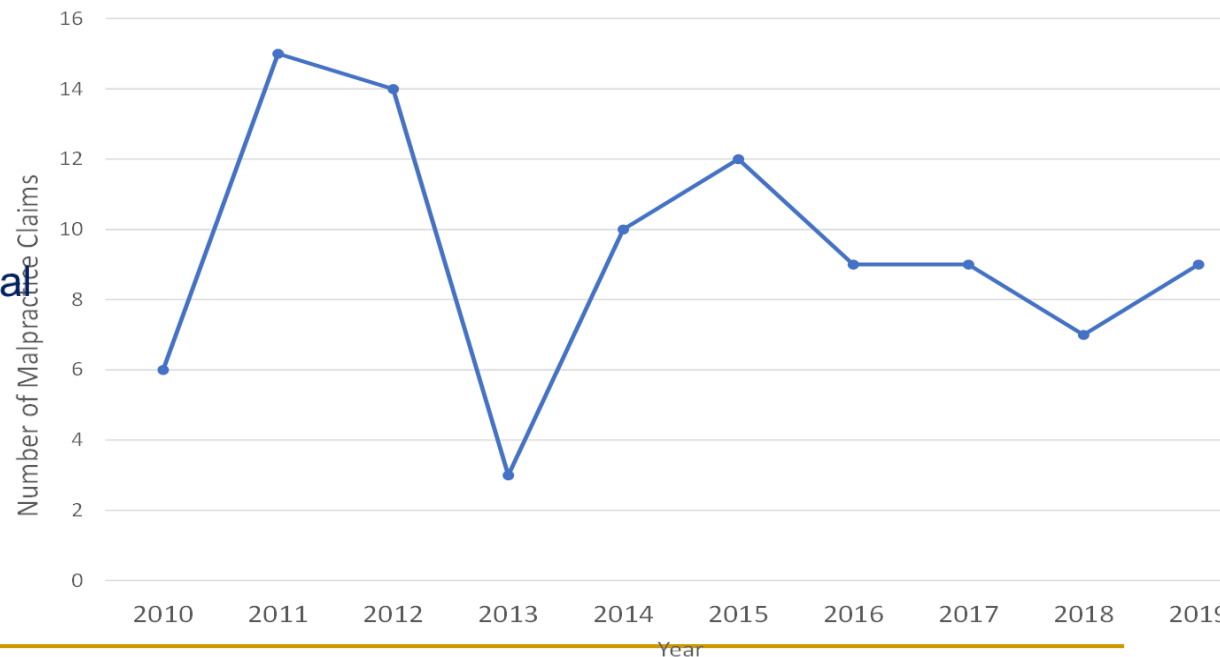


MALPRACTICE IN OTOLARYNGOLOGY

Ceremsak et al 2020

- A review of the past decade (2010-2019)
- 94 cases- all went to trial
- LexisNexis and Westlaw databases
- Average indemnity payment: 3.77 M

TREND OF MALPRACTICE CLAIMS IN OTOLARYNGOLOGY

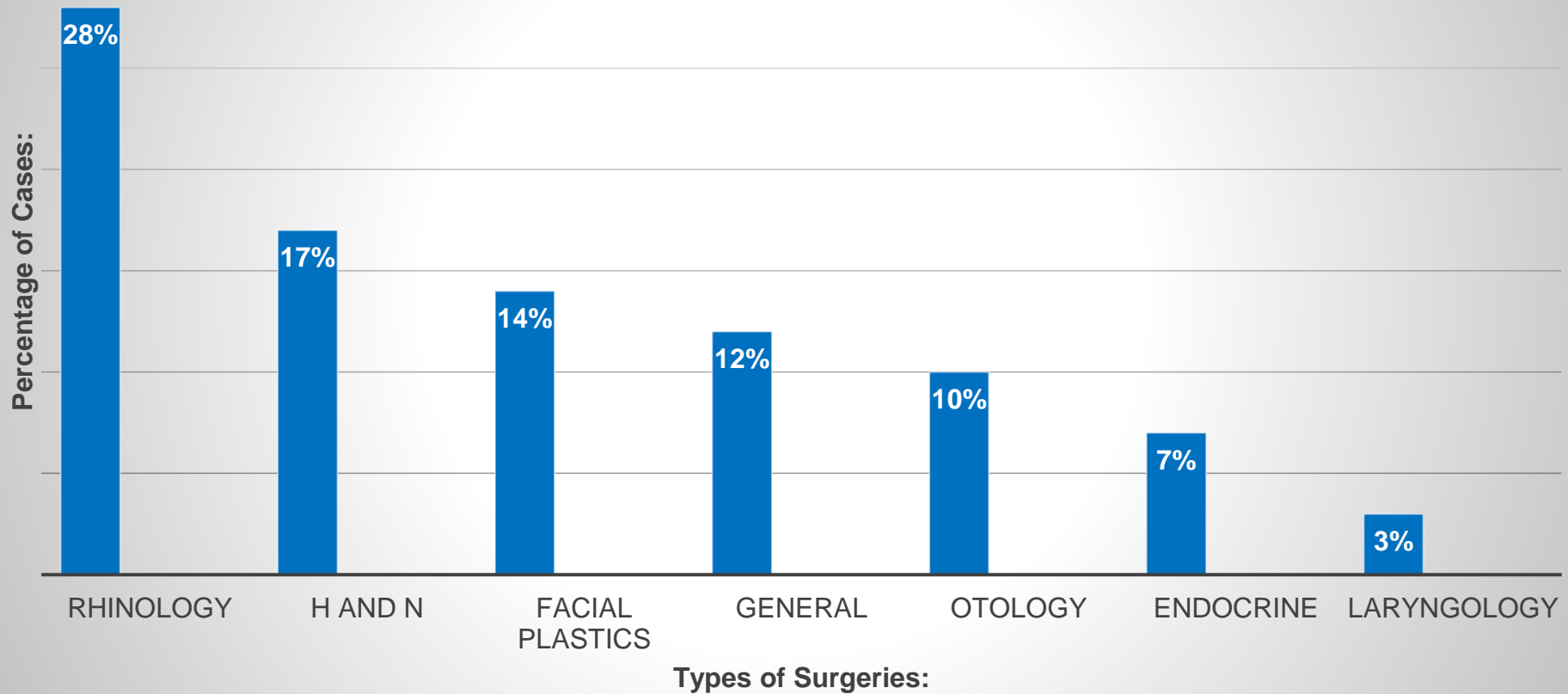


7% of all malpractice cases reach trial

20% resulting in plaintiff verdict

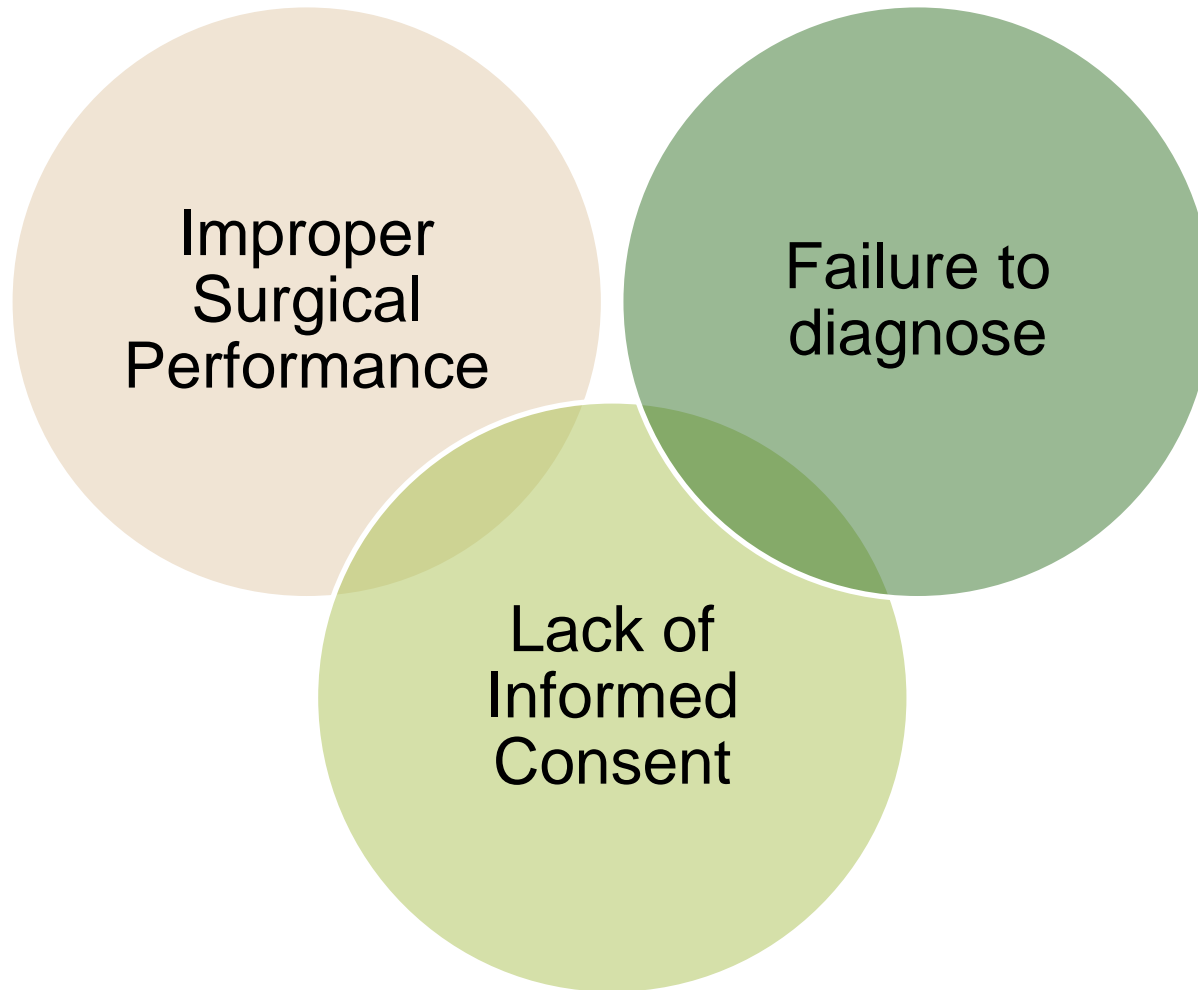
Malpractice in Otolaryngology-2011 to 2019

MALPRACTICE IN OTOLARYNGOLOGY



Malpractice in Otolaryngology

Most common allegations



Malpractice in Otolaryngology- **Informed consent for ESS**

- **Document both common as well as rare risks and complications**
- **Possible need for additional or revision surgery**
- **Discussion of Alternatives and Second Opinion**
- Postoperative bleeding with return to the operative room for control of bleeding
- Sinus infection
- Synechiae

Malpractice in Otolaryngology- Informed consent for ESS

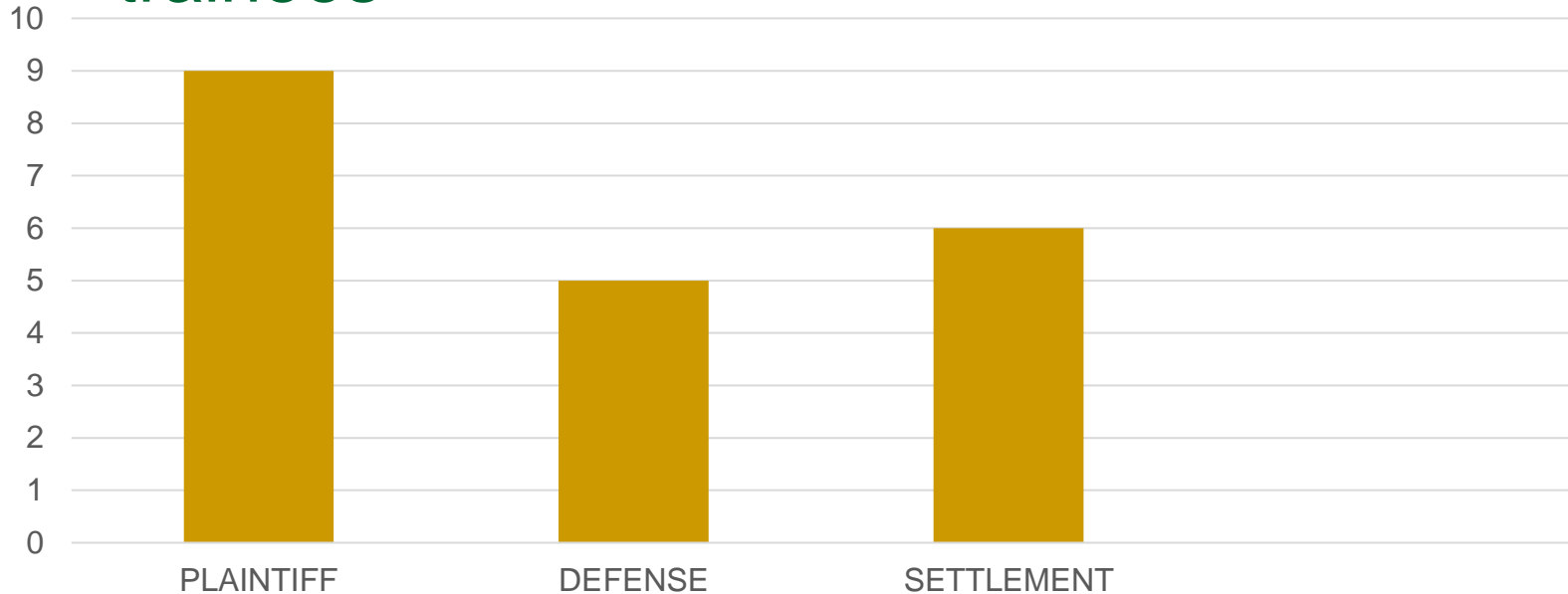
- Orbital injury: blindness, diplopia, orbital hematoma, subcutaneous emphysema
- Anosmia or hyposmia
- Death, stroke, heart attack, or unexpected complications related to anesthesia
- Need for postoperative nasal endoscopy and debridement
- Atrophic rhinitis
- Skull base or intracranial injury: CSF leak, intracranial hemorrhage, brain damage, pneumocephalus, meningitis/abscess

MALPRACTICE IN OTOLARYNGOLOGY

-involving residents/fellows

- 30 year review (Suresh et al 2022)
- 247 malpractice cases (1990-2020)
- 20 cases involved otolaryngology trainees

Chart Title



MALPRACTICE IN OTOLARYNGOLOGY

-involving residents/fellows

- 30 year review
- 247 malpractice cases (1990-2020)
- 20 cases involved otolaryngology trainees

Procedural
error

Lack of knowledge
of trainee
involvement

Failure to
supervise
resident

Incorrect
diagnosis

Inexperienced
trainee

MALPRACTICE IN OTOLARYNGOLOGY

-Developing a medico-legal curriculum for residents



Interactive seminars and
discussion



Formal lectures



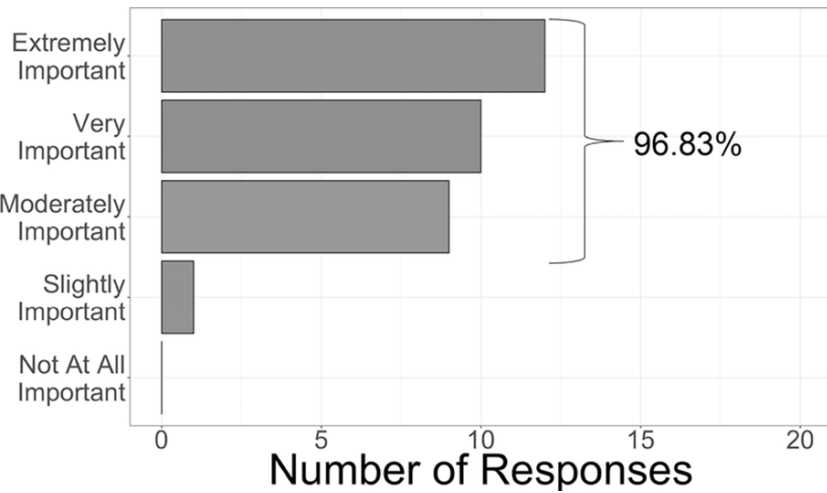
Simulation for malpractice
education



Rotation through medical liability
insurance Co



Open disclosure policy within the
department

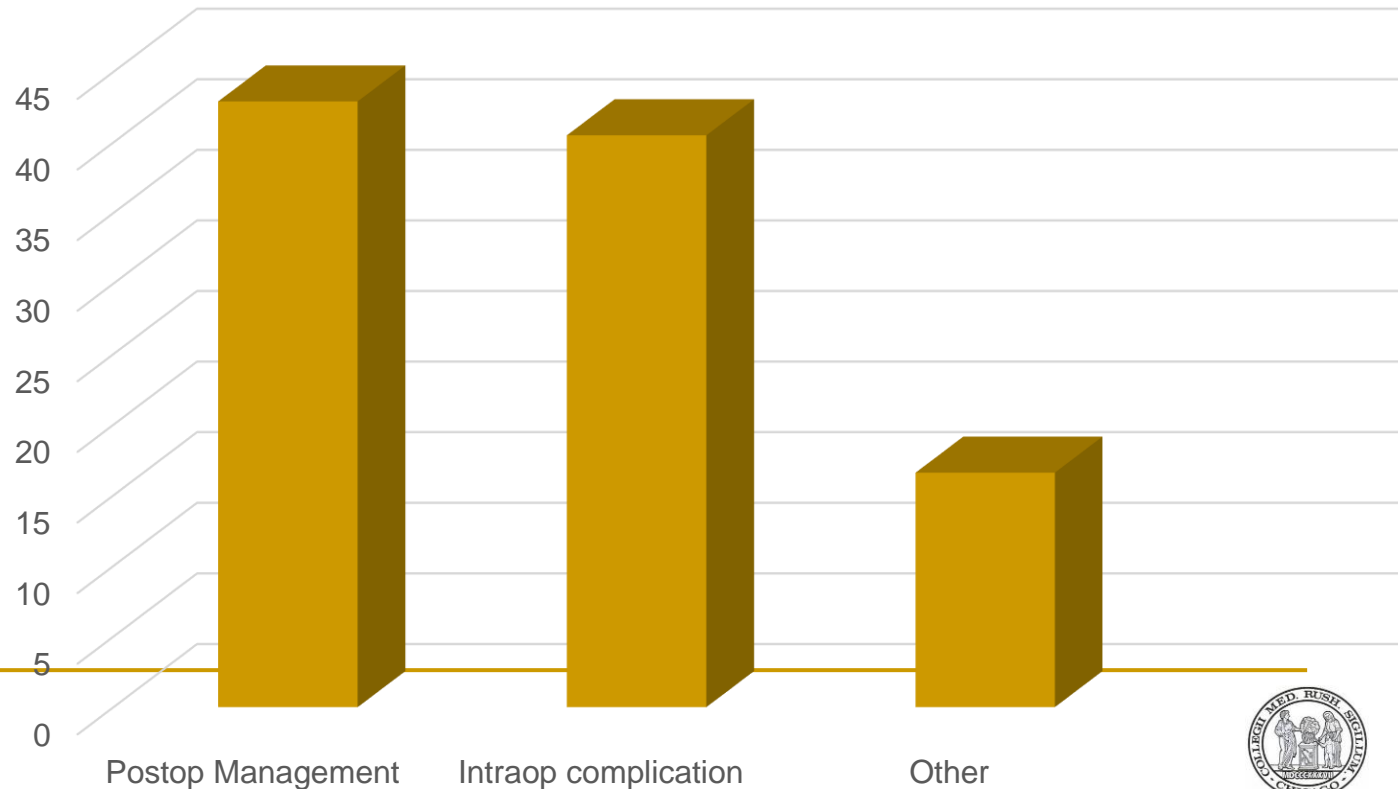


Malpractice in Otolaryngology- litigation after tonsillectomy (Reese et al 2022)

Review of malpractice cases between 1986 to 2020

42 cases were reported

Litigation after tonsillectomy



Malpractice in Otolaryngology- litigation after tonsillectomy

Lack of
instructions for
postop
complications

Improper
management or
advice

Premature
discharge

**PRECISE
INSTRUCTIONS**

**WRITTEN AND
VERBAL**

MALPRACTICE IN OTOLARYNGOLOGY

- MITIGATING RISKS

Malpractice in Otolaryngology

-Mitigating risks/AVOIDING SUIT

Four C's: compassion, care, competence, communication

DOCUMENTATION:

- Operative report: dictate within 24 hrs, read the operative report and notes that you countersign
- **INFORMED CONSENT**
- -proposed treatment, risks and benefits of the proposed treatment, and alternatives including no treatment and second-opinion option

Malpractice in Otolaryngology

-Mitigating risks

- Lab tests ordering and follow-up
- Patient Education
- Managing Patient Expectations
- Quickly identifying complications
- Disclosure/communication

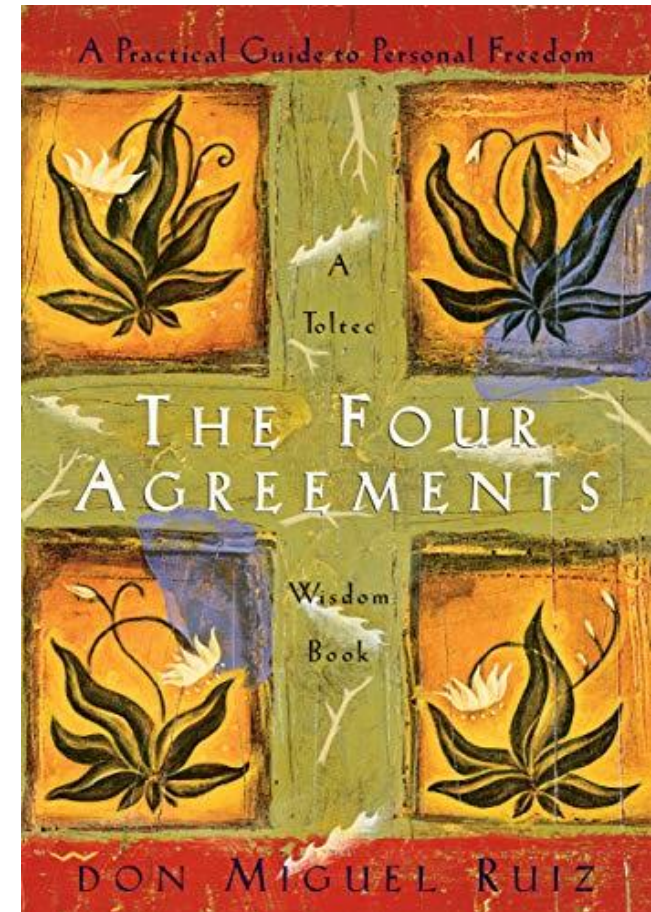
Malpractice in Otolaryngology

CONCLUSION- MITIGATING RISKS

- Four C rule
- Documentation
- Test ordering, tracking and follow-up
- Avoid medication error
- Informed consent
- Manage patient expectations
- Preparation for an unanticipated outcome
- Identification of complications
- Disclosure and communication with patient

MALPRACTICE IN OTOLARYNGOLOGY

- **The Four Agreements**
- **Be impeccable with your word**
-
- **Don't make assumptions**
- **Don't take anything personally**
- **Always do your best.**



References

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- Carroll, AE et al. J Law Med Ethics. 2012;40: 135-142
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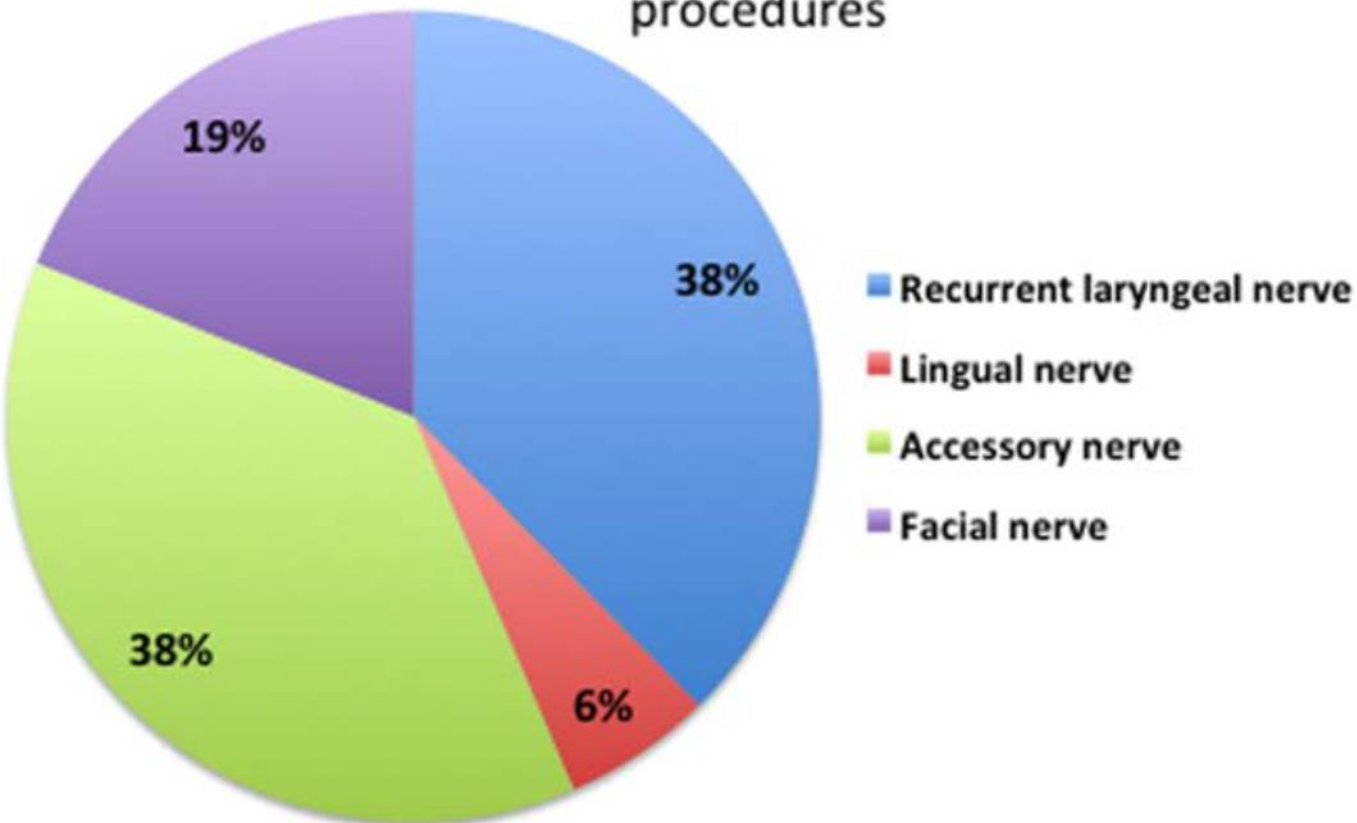
Thanks!



Questions?

Malpractice in Otolaryngology- Head and Neck Surgery

Distribution of cranial nerve injuries in head and neck procedures



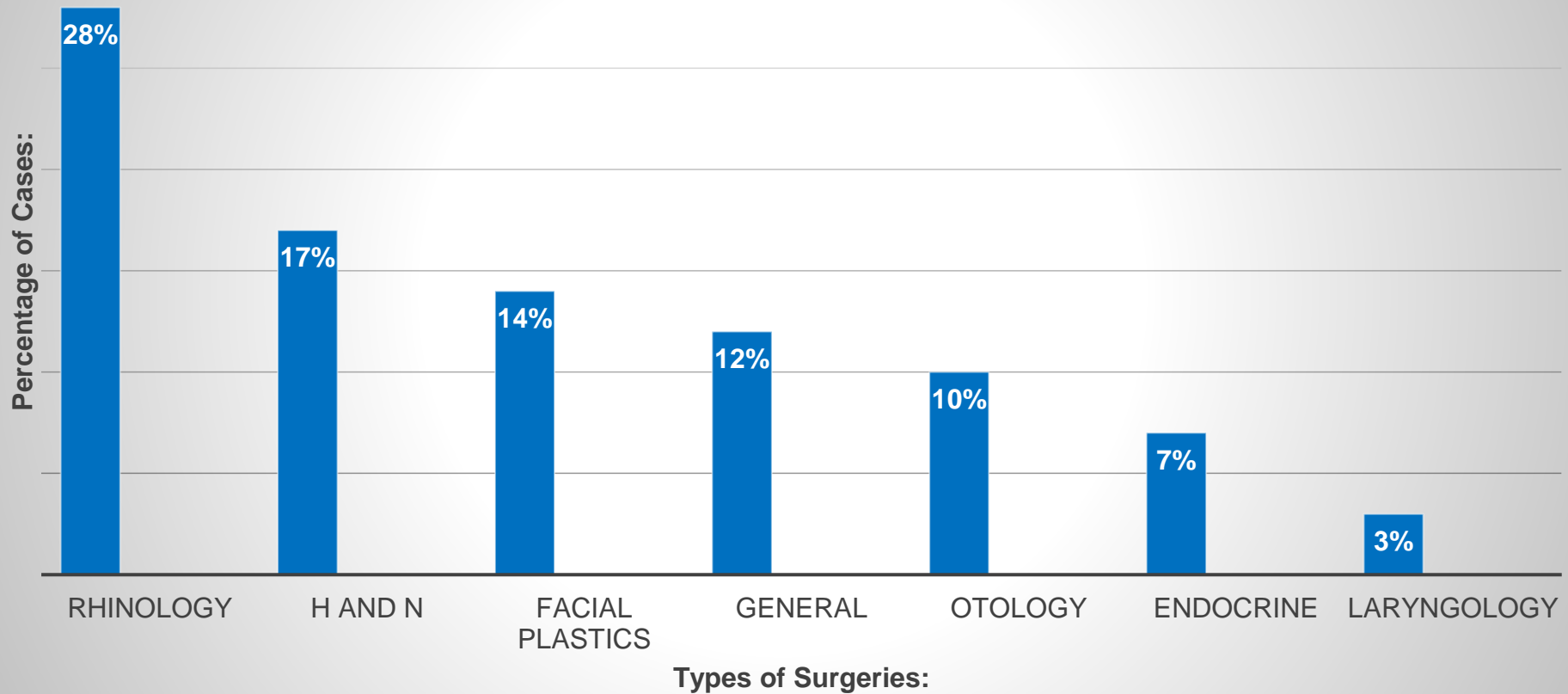
LYMPH NODE BIOPSY

PAROTIDECTOMY

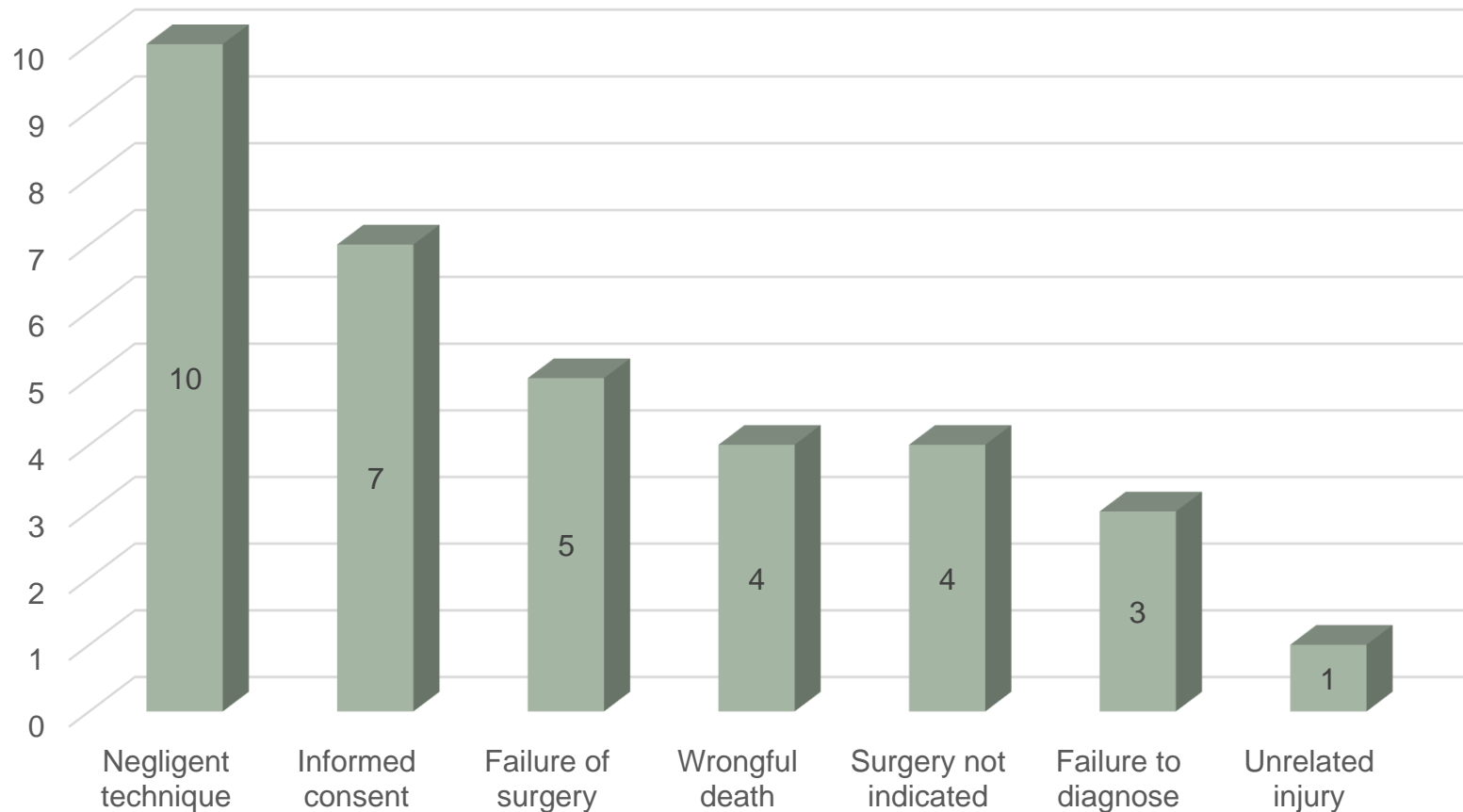
THYROIDECTOMY

Malpractice in Otolaryngology-2011 to 2019

MALPRACTICE IN OTOLARYNGOLOGY



Type of malpractice in Otolaryngology- Endoscopic Sinus Surgery (Winford et al 2015)

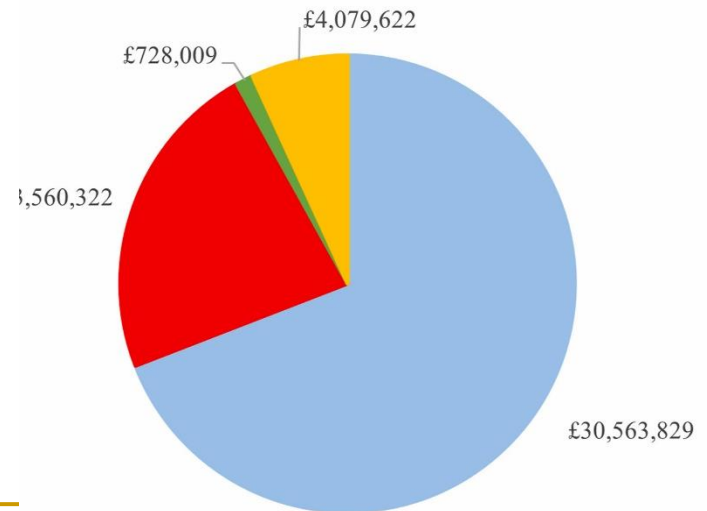


Malpractice in Otolaryngology-pediatric otolaryngology

Litigation in pediatric otorhinolaryngology: Lessons in improving patient care

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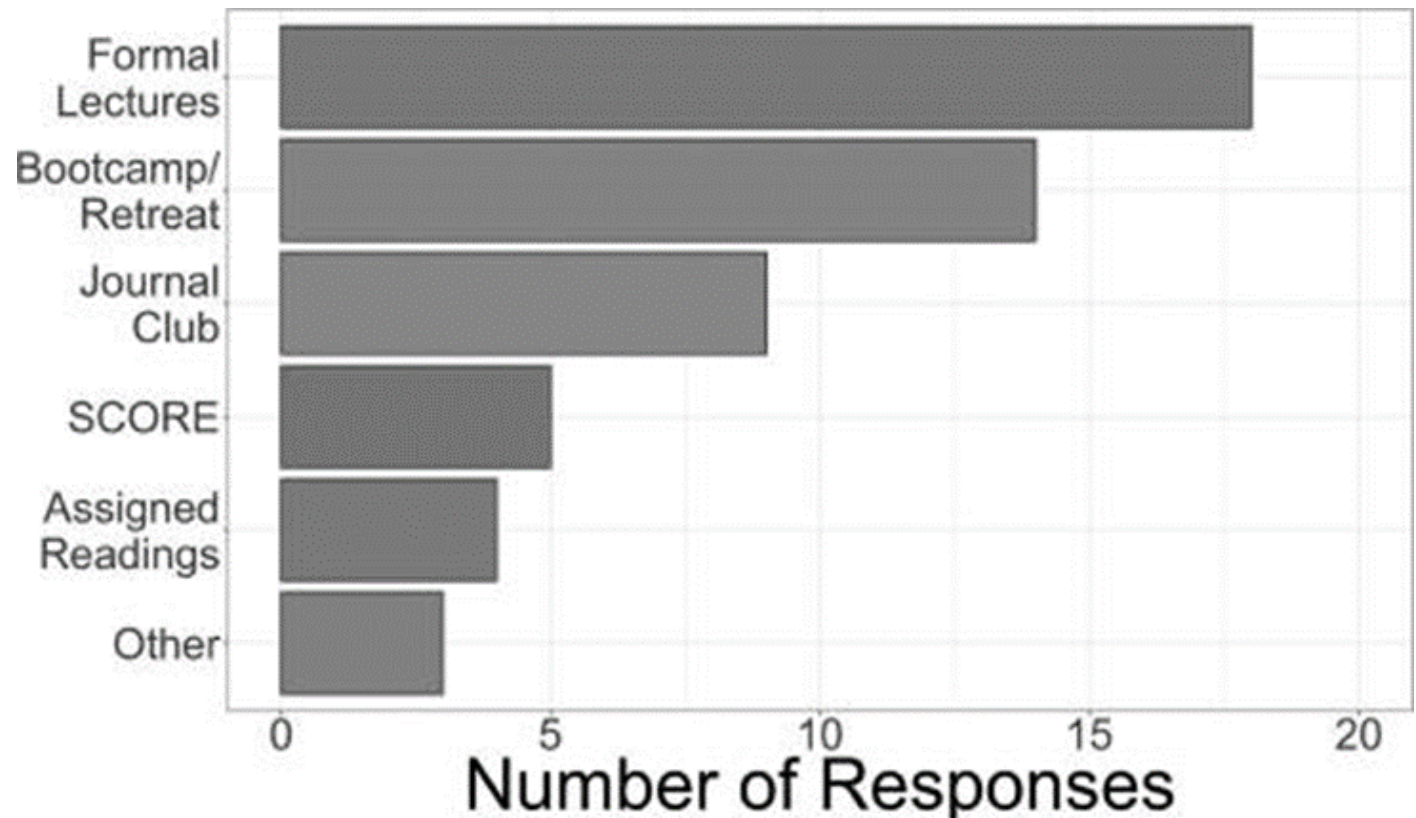
- Pediatric Otolaryngology/clinical negligence claims by age group (2013-2020)
- Retrospective review, 100 malpractice claims
- Total cost 49 million pounds
- Common allegation claims
 - Failure to diagnose
 - Failure to treat
 - Lack of informed consent



■ 0 - 4 years ■ 5 - 8 years ■ 9 - 12 years ■ 13 - 16 years

MALPRACTICE IN OTOLARYNGOLOGY

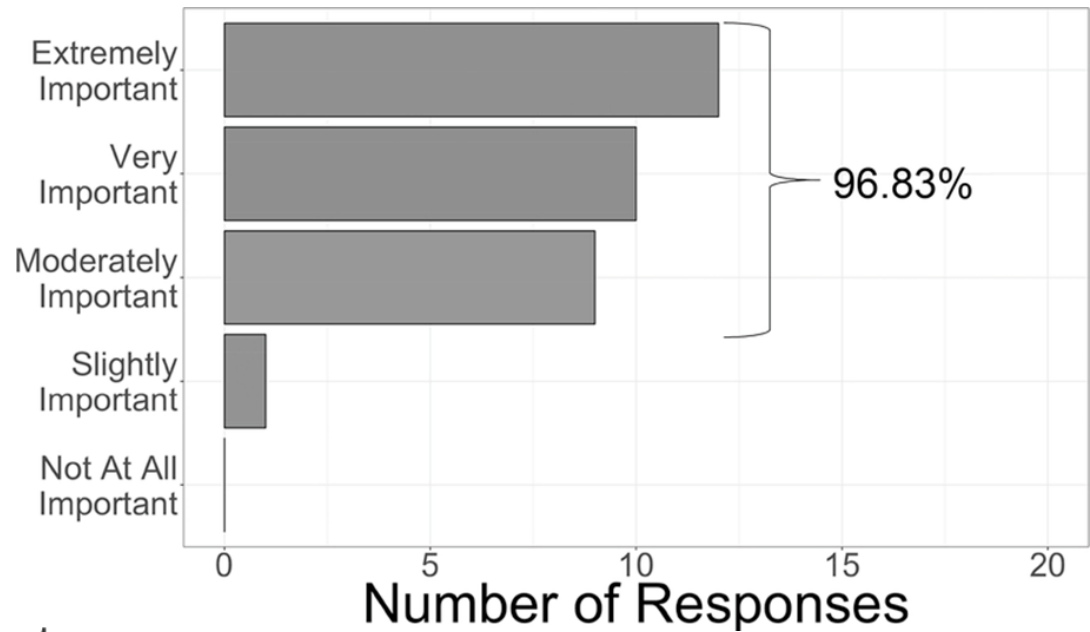
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Survey Results – What is the Best Way to Establish a Medico-Legal Curriculum?

MALPRACTICE IN OTOLARYNGOLOGY

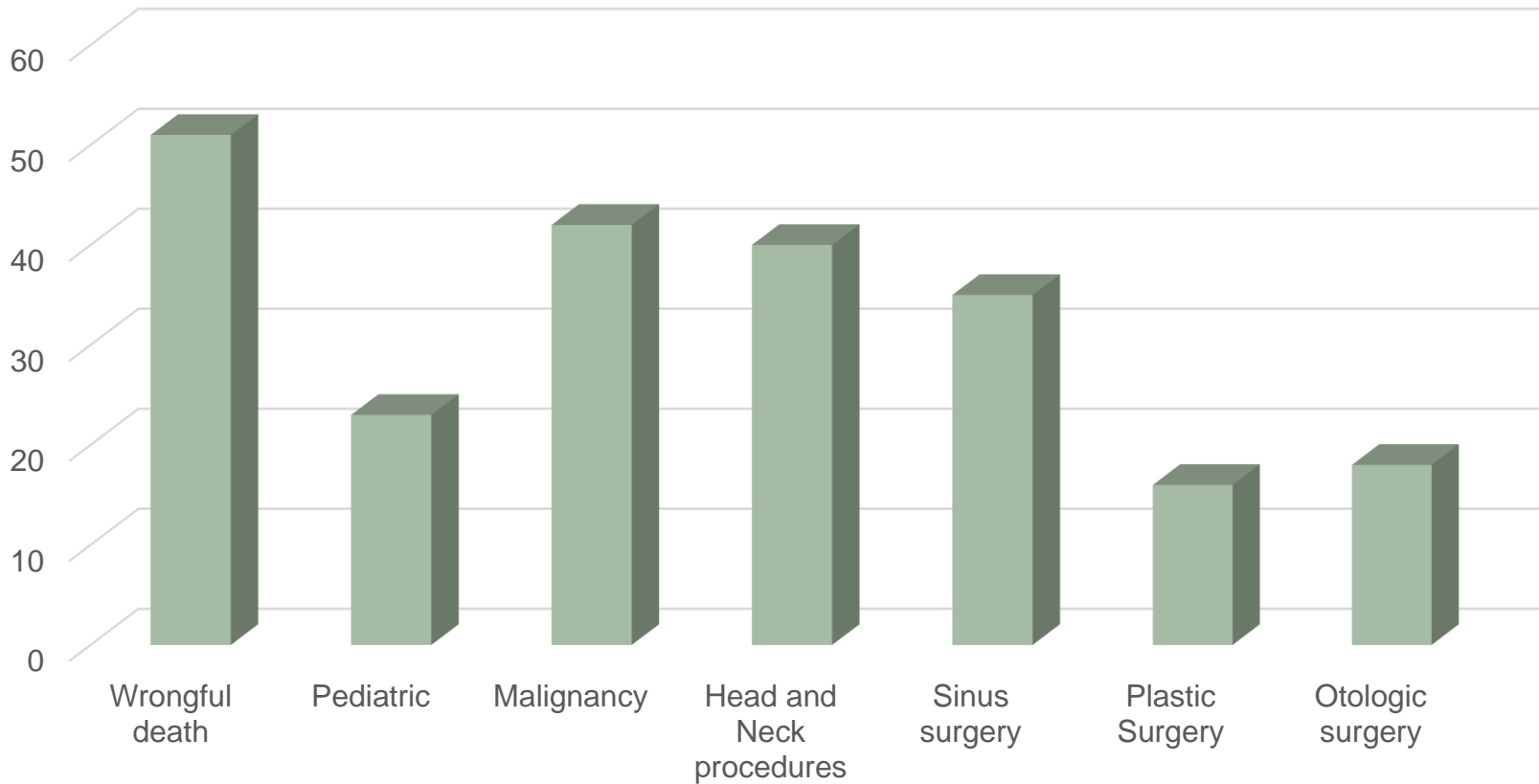
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Survey Results – What is the Best Way to Establish a Medico-Legal Curriculum?

Westlaw Study (2001 to 2011)

198 cases between 2001 to 2011



Malpractice in Otolaryngology-**OBJECTIVES**

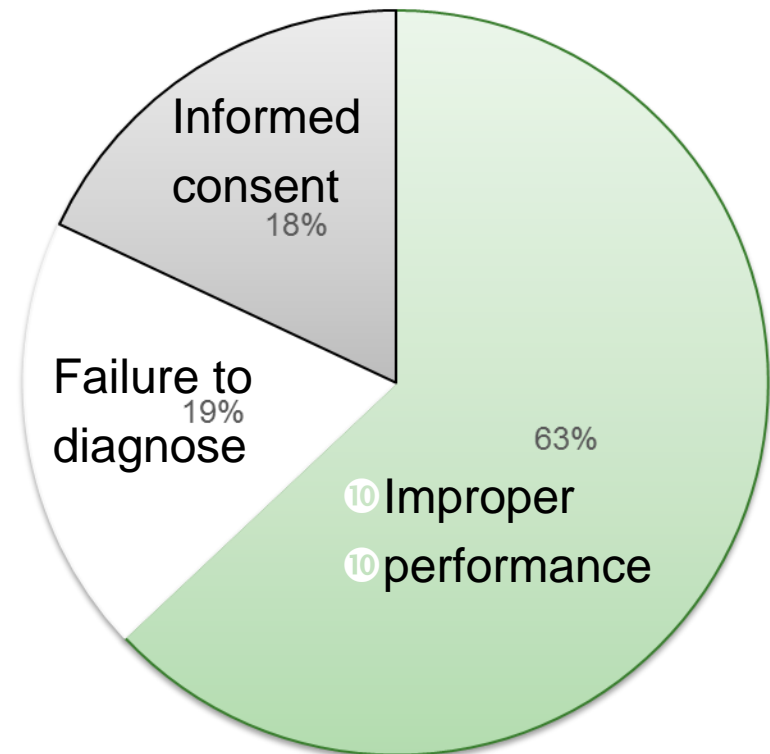
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- Reference:
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MONTGOMERY
(APPEALANT) V
LANARKSHIRE HEALTH
BOARD (2015)

A LANDMARK LEGAL CASE
IN BRITISH LAW AND
MEDICAL CONSENT

CASE STUDY

MALPRACTICE IN OTOLARYNGOLOGY

- Ms. Montgomery
- Son born with dystocia and CP
- Physician failed to discuss ALL pertinent risks
- Patient unable to consider alternatives due to lack of informed consent

MONTGOMERY
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LANARKSHIRE HEALTH
BOARD (2015)

A LANDMARK LEGAL CASE
IN BRITISH LAW AND
MEDICAL CONSENT

CASE STUDY

MALPRACTICE IN OTOLARYNGOLOGY -CORTICOSTEROID USE

- Avascular Necrosis of the hip-most common complication associated with litigation and steroid use
- 1 in 300 patients treated with corticosteroids and doses as low as 290 mg prednisone and durations as low as 6 days
- AVN-dose dependent (Lv et al 2009)
- 3-yr cumulative (1250-12,499 mg prednisone)
- 50% presented with AVN

**Medical Malpractice
and Corticosteroid Use**

John J. Nash, MD

, Amanda G. Nash, JD

, Matthew E. Leach

2010

MALPRACTICE IN OTOLARYNGOLOGY

-CORTICOSTEROID USE

- **INCORPORATING MEASURES IN YOUR PRACTICE:**
- **Informed Consent with use of a Medication:**
- Rationale behind the use of medication
- Expected benefits
- Risks associated
- Alternatives
- Right to refuse therapy
- Documentation of discussion

MALPRACTICE IN OTOLARYNGOLOGY -CORTICOSTEROID USE (Case#3)

- 45 y/o male who presented with sudden hearing loss
- Treated with 60 mg tapering course of prednisone
- Several months later noted to have right hip pain and diagnosed with Avascular Necrosis (AVN)
- Allegation: Negligent Use
- Outcome: in favor of defending Otolaryngologist

MALPRACTICE IN OTOLARYNGOLOGY

Case # 1

- **OUTCOME:** Oculoplastic surgery evaluation
- corrective surgery for the transected medial rectus muscle
- Communication
- Patient Safety
- Measures to mitigate malpractice

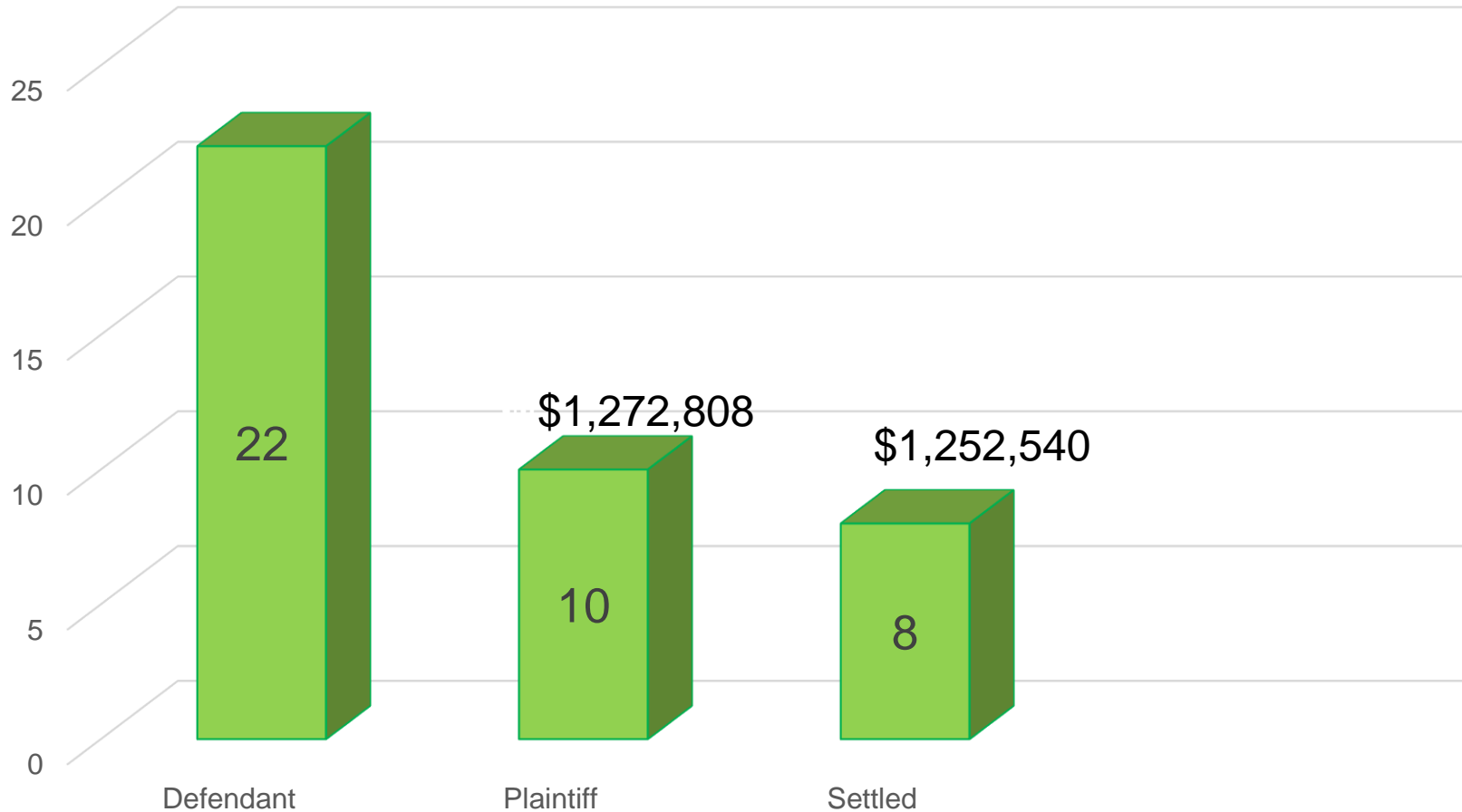


Malpractice in Otolaryngology

- REASONS PATIENTS SUE
- Need for explanation
- Desire to hold physician accountable
- Desire to prevent future recurrence

Norcal 2018

Malpractice in Otolaryngology Head and Neck Surgery (Hong et al 2014)



➤ MALPRACTICE IN LARYNGOLOGY

Thirty Year Review (Song et al 2016):

- 87 malpractice cases (11 pediatric cases)
- Average patient age: 47 years
- (age range-5 months to 90 yrs)
- Databases: Westlaw, LexisNexis

- Procedures performed:
 - Microlaryngoscopy, tracheostomy, direct laryngoscopy, laryngectomy, vocal fold biopsy/injection (no difference between type of procedure and legal outcome)
- Outcomes:
 - 60% of cases went to trial, and remaining 40% settled out of court

Malpractice in LARYNGOLOGY

Thirty Year Review (Song et al 2016):

- **REASONS CITED FOR MALPRACTICE**
- Continuation of surgery despite a recognized puncture of the ET cuff
- Use of incorrectly sized ET tube
- Improper implementation of airway precautions

- **INCLUDE MEASURES IN YOUR PRACTICE DURING TIMEOUT:**

Cuff leak pressure/ FiO₂

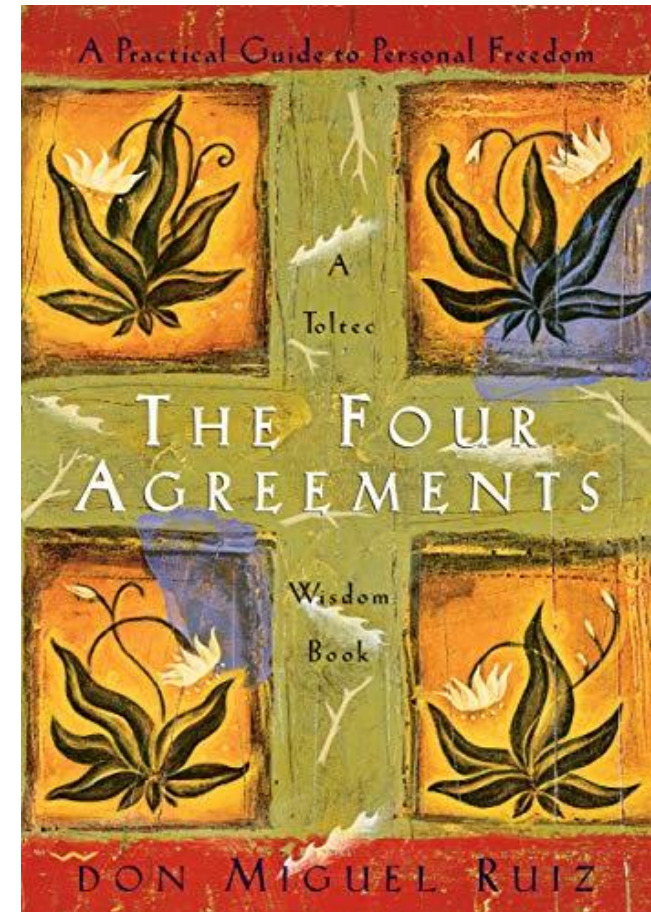
Identification of individual responsible for extinguishing flames/Water bath and wet towels

Malpractice in Otolaryngology-responding to unanticipated outcome

- **Document in the medical record**
- What to document-
- Known facts, care given in response, disclosure discussion and names of witnesses, treatment and follow-up plan
- What NOT to document- subjective feelings, blame, legally confidential information (generated by medical staff when performing an internal analysis of an event)

MALPRACTICE IN OTOLARYNGOLOGY

- **The Four Agreements (with modifications)**
- **Be impeccable with your word**
-
- **Don't make assumptions**
- **Don't take anything personally**
- **To practice medicine is a privilege**
- **Always do your best.**



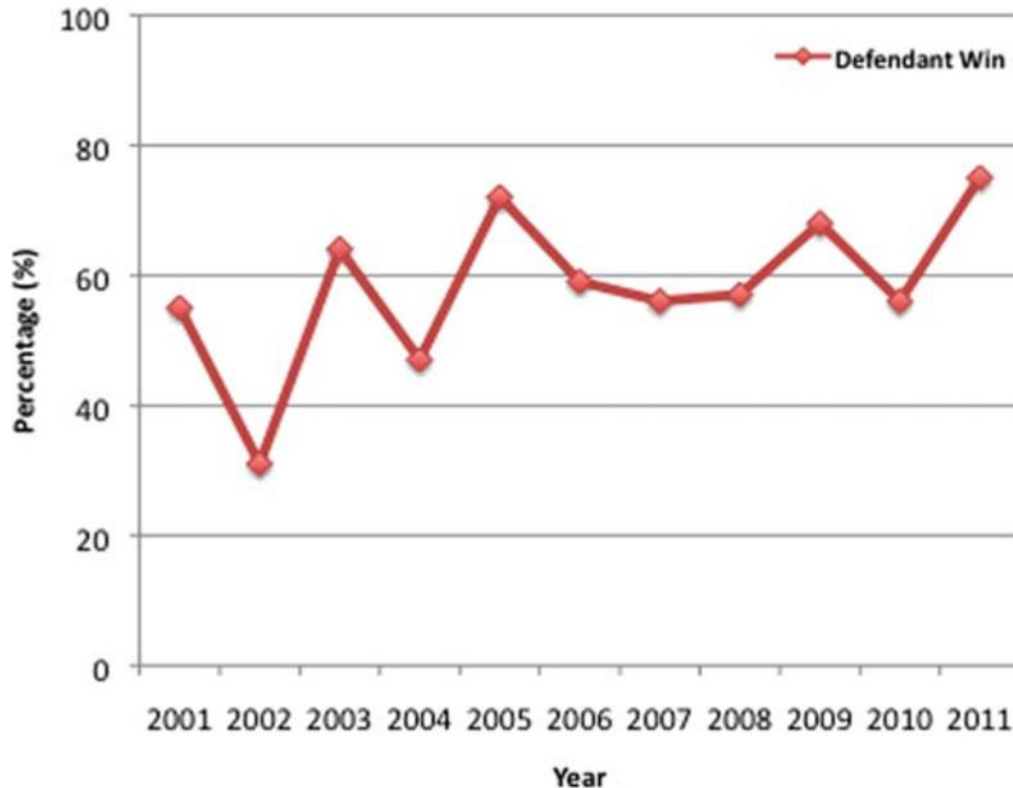
Malpractice in Otolaryngology/Rhinology

Endoscopic Sinus surgery-Hong et al 2014

- Most common complications claimed by plaintiffs
 - CSF leak (35%)
 - Orbital trauma (24%)
 - Anosmia (19%)
-
- One of the most common allegation: lack of informed consent

Malpractice in Otolaryngology

Average defendant (otolaryngologist) verdict outcomes

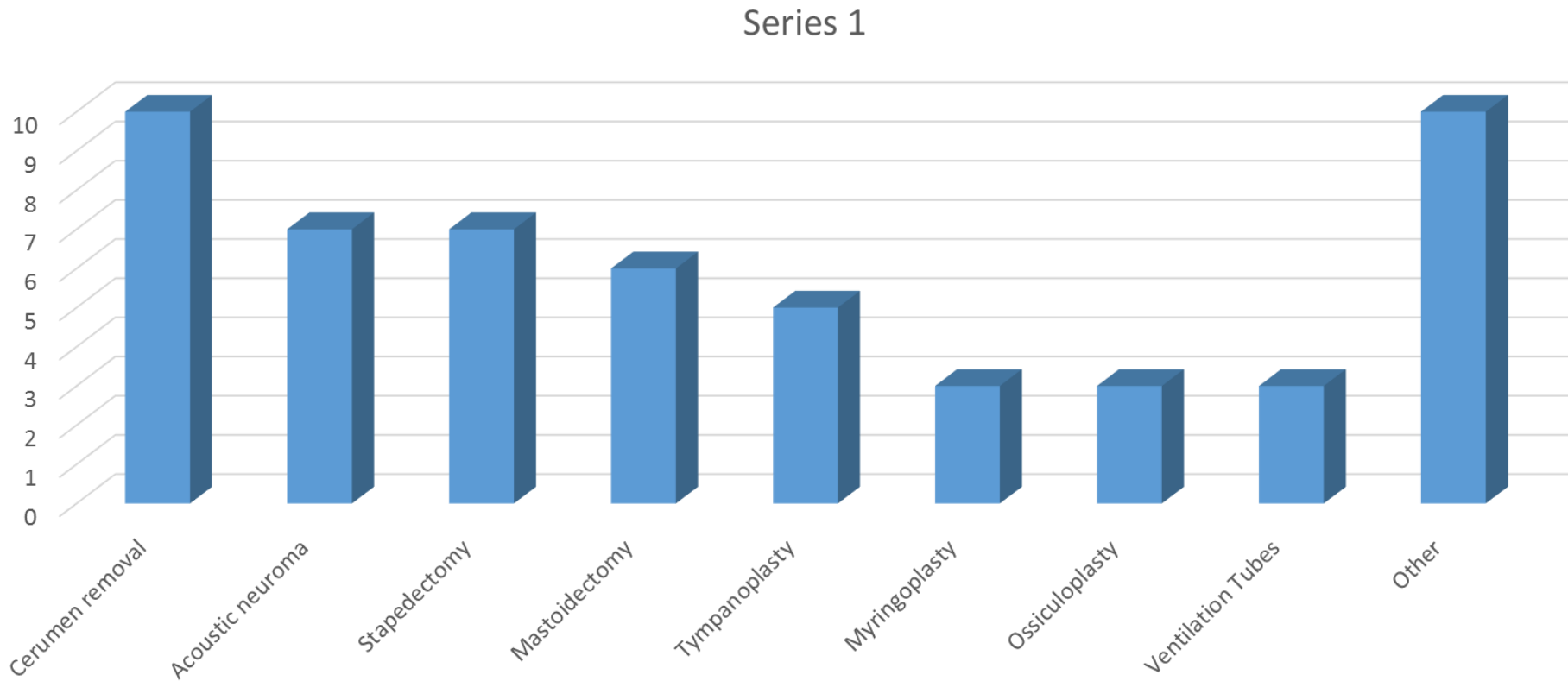


A Review of the past decade 2001-2011

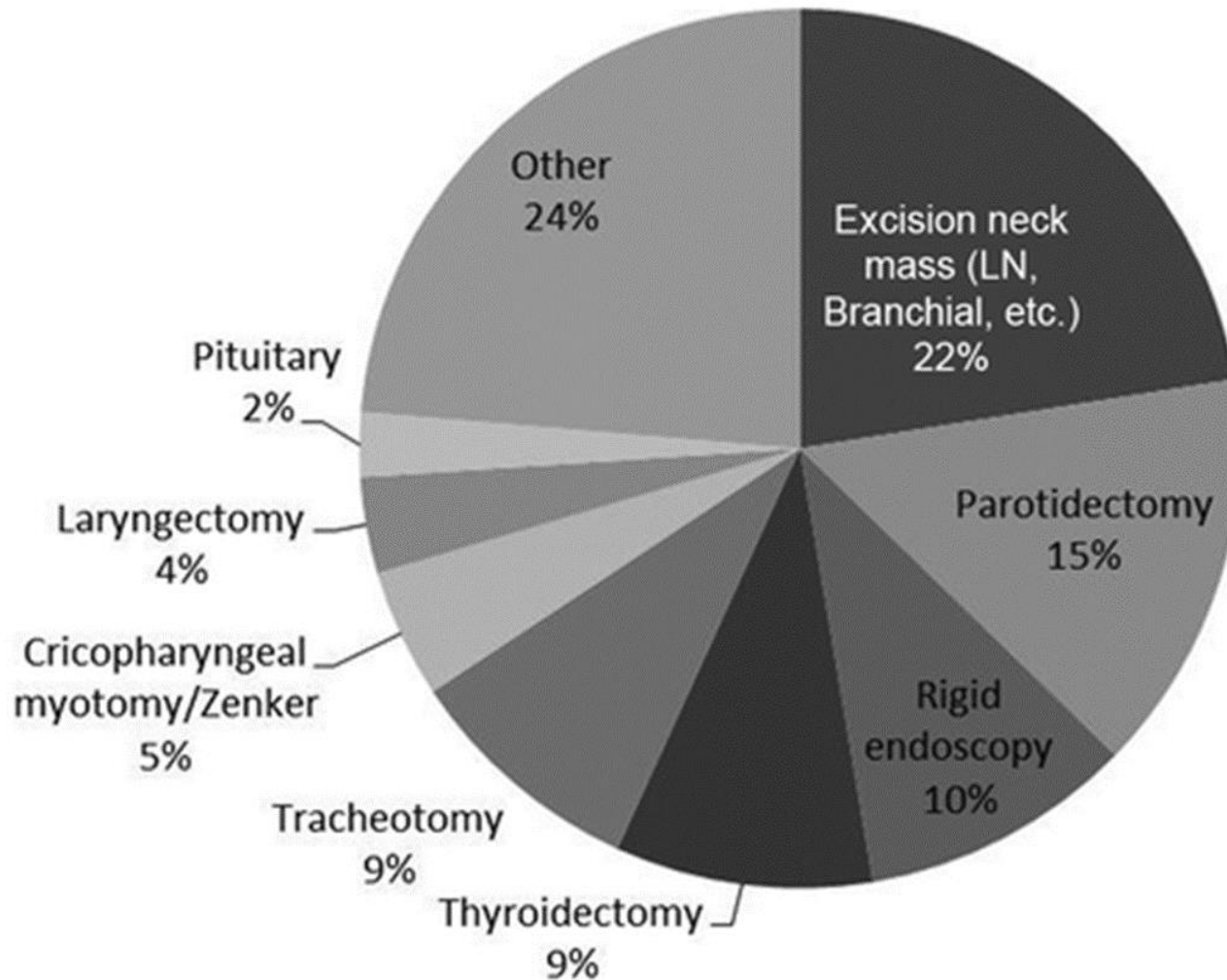
198 cases, representing 27 states

Westlaw legal database

Trial outcomes for all cases and by procedure



Malpractice in Otolaryngology- Head and neck surgery



LYMPH NODE BIOPSY

PAROTIDECTOMY

THYROIDECTOMY

➤ MALPRACTICE IN LARYNGOLOGY

Thirty Year Review (Song et al 2016):

➤ Procedures performed:

➤ Microlaryngoscopy, tracheostomy, direct laryngoscopy, laryngectomy, vocal fold biopsy/injection (no difference between type of procedure and legal outcome)

➤ Outcomes:

➤ 60% of cases went to trial, and remaining 40% settled out of court

➤ Allegations:

➤ Physical injury (most common legal allegation)

claimed in 84 of 87 cases

MALPRACTICE IN OTOLARYNGOLOGY

Case # 5

- 65 y/o female who presented with Ludwigs angina.
- Underwent tracheostomy with intermittent bleeding from trach site during the postop period
- POD #6 patient had intermittent bleeding from trach site; “choking sensation” and unable to breathe
- Physician on call unable to ventilate, and airway noted to be “occluded” based on a bedside laryngoscopy
- Anoxic injury

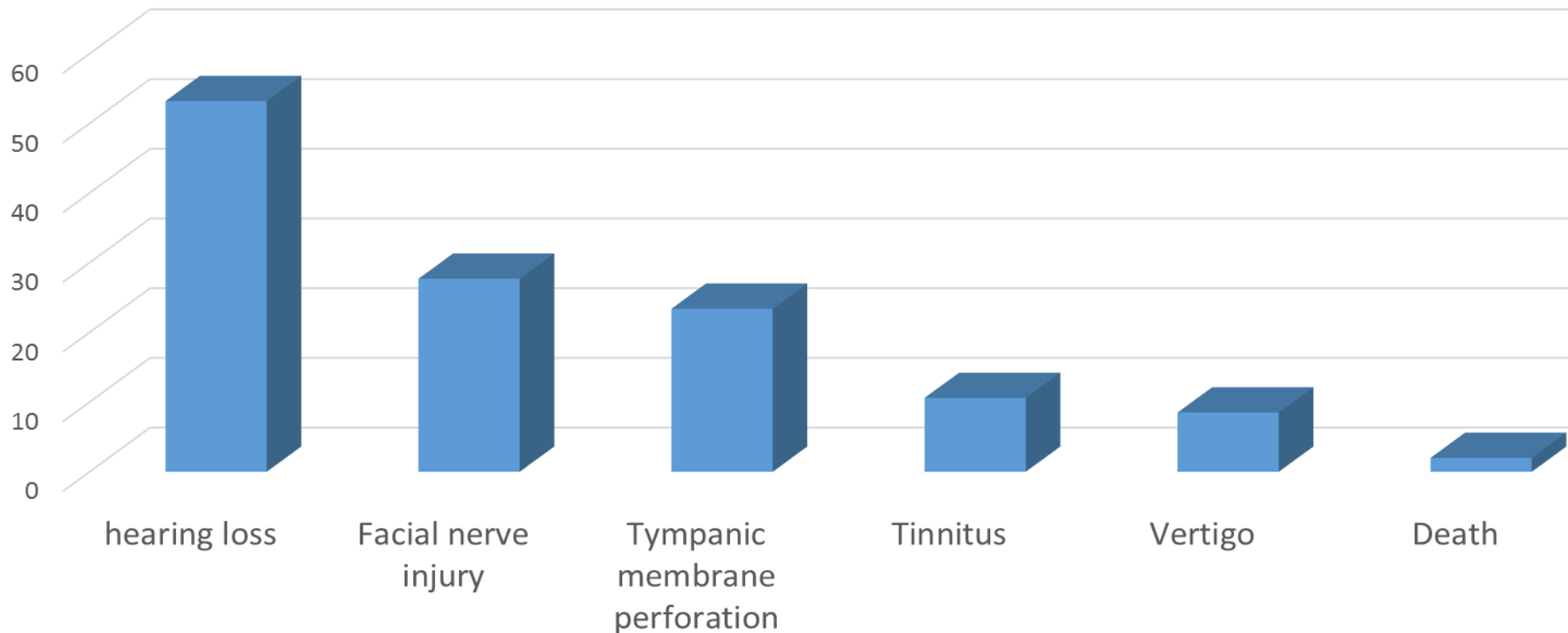
MALPRACTICE IN OTOLARYNGOLOGY

- Jury awarded \$22 million dollars to the plaintiff's family
- ALLEGATIONS:
 - Communication between the nursing staff and the residents and the attending physician
 - Nursing education with regards to tracheostomy care
 - Significant lag time between onset of symptoms to any intervention

Malpractice in Otology

Blake et al 2013

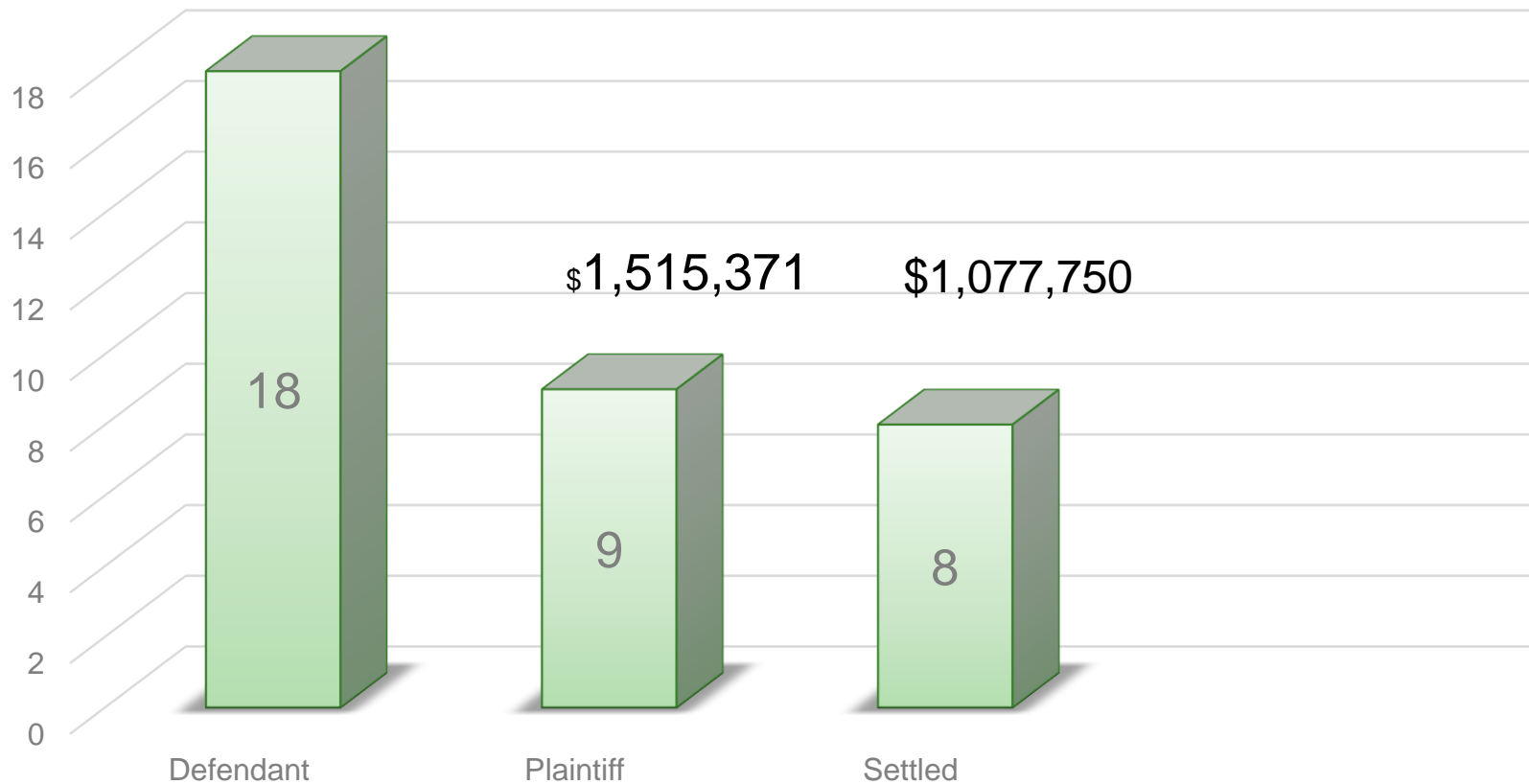
Chart Title



Malpractice in Otolaryngology/Rhinology

Endoscopic sinus surgery (Hong et al 2014)

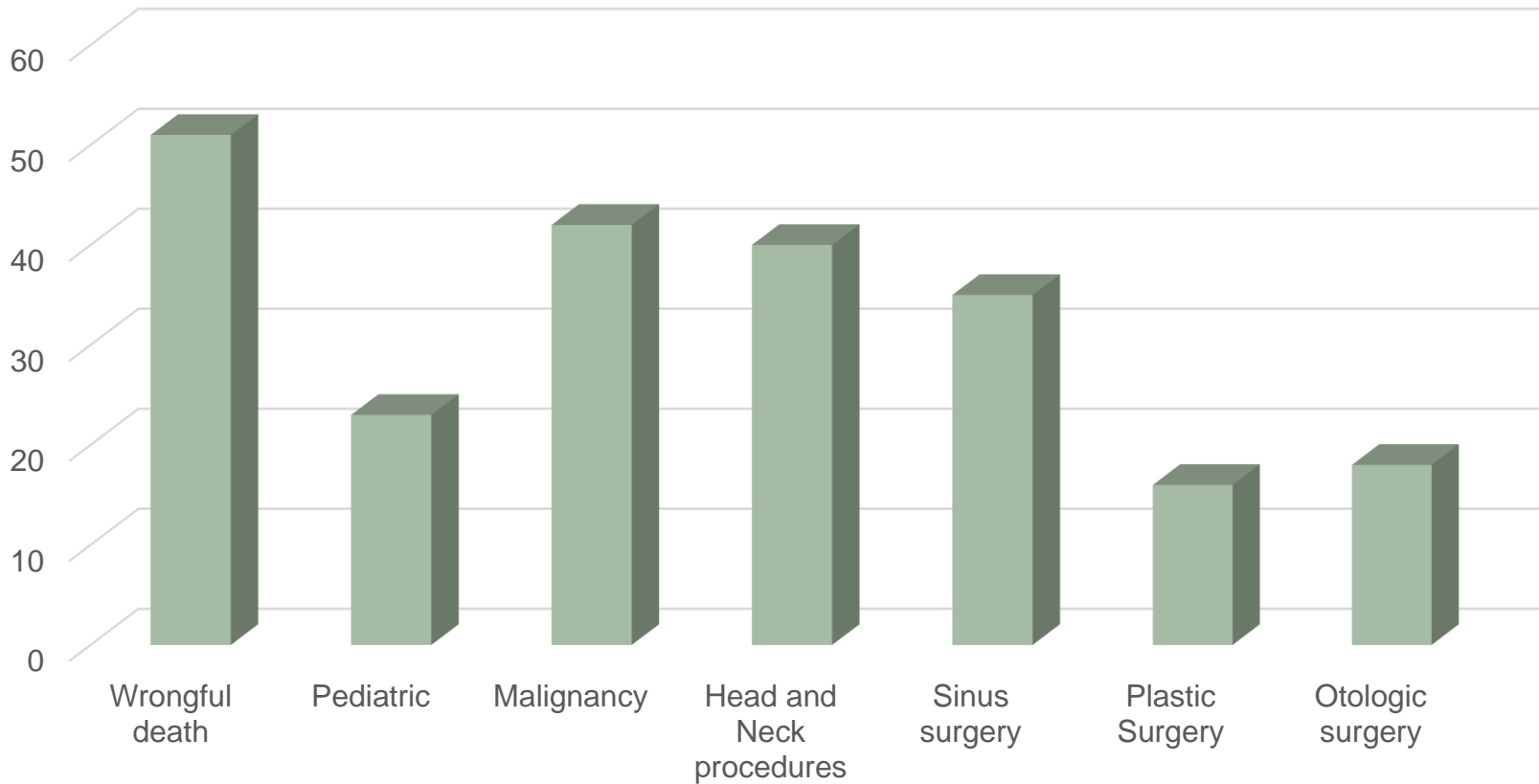
Cases





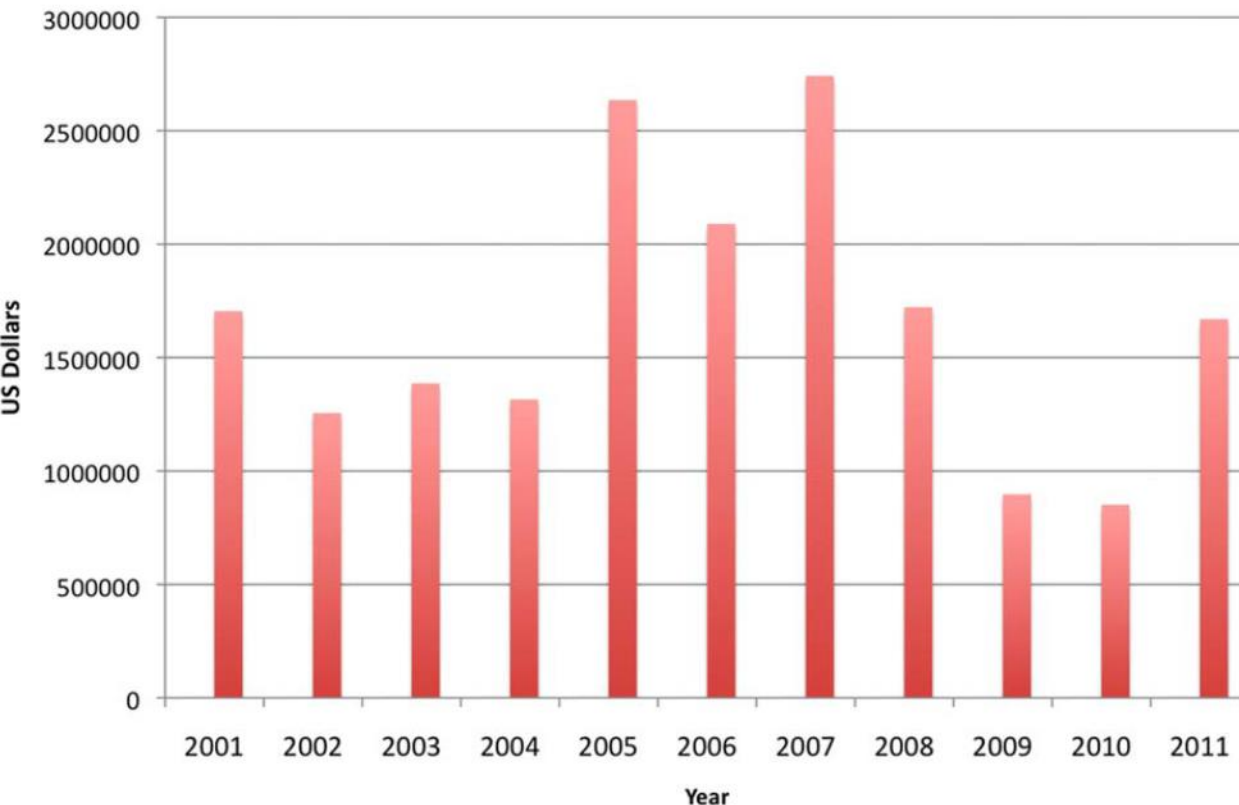
Westlaw Study (2001 to 2011)

198 cases between 2001 to 2011



Malpractice in Otolaryngology

Average indemnity adjusted for inflation in 2011 US dollars



7% of all malpractice cases reach trial

20% resulting in plaintiff verdict

Malpractice in Otolaryngology

Hong et al 2014

- A Review of the past decade 2001-2011
- 198 cases met inclusion criteria for the study, representing 27 states
- Westlaw legal database
- The cases presented include those that were placed on a court docket, evaluated by attorneys
- Suits that were settled or dropped before going to the court could not be obtained (or are not included)

MALPRACTICE IN OTOLARYNGOLOGY

- Definition
- “ A doctor’s failure to exercise the degree of care and skill that a physician or surgeon of the same specialty would use under similar circumstances”

- Reference:
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Malpractice in Otolaryngology

Case # 2

50 y/o female with a right orbital floor fracture

No changes in her vision, but there was herniation of the right inferior rectus muscle and intra-orbital fat through the fracture defect

Given the large size of the orbital floor defect the otolaryngologist recommended surgical intervention

Orbital floor implant was placed; following procedure patient was unable to move her right eye and complained of double vision

MALPRACTICE IN OTOLARYNGOLOGY

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- Reference:
- Black’s Law Dictionary. Eagan, MN:Thomson Reuters; 2009



code of Hammurabi
1700 BC

Babylonian Text

Malpractice in Otolaryngology

- Patient had limited range of motion and double vision, pain with eye movement during her postop apt
- One month later: Pt's sx were persistent and she obtained another opinion
- CT demonstrated that the plate was not covering the entire orbital floor defect and the inferior rectus was entrapped
- Patient had to undergo an additional procedure to address the entrapment
- She filed for a lawsuit due to persistent double vision which she did not have prior to her

Malpractice in Otolaryngology- Mitigating risks

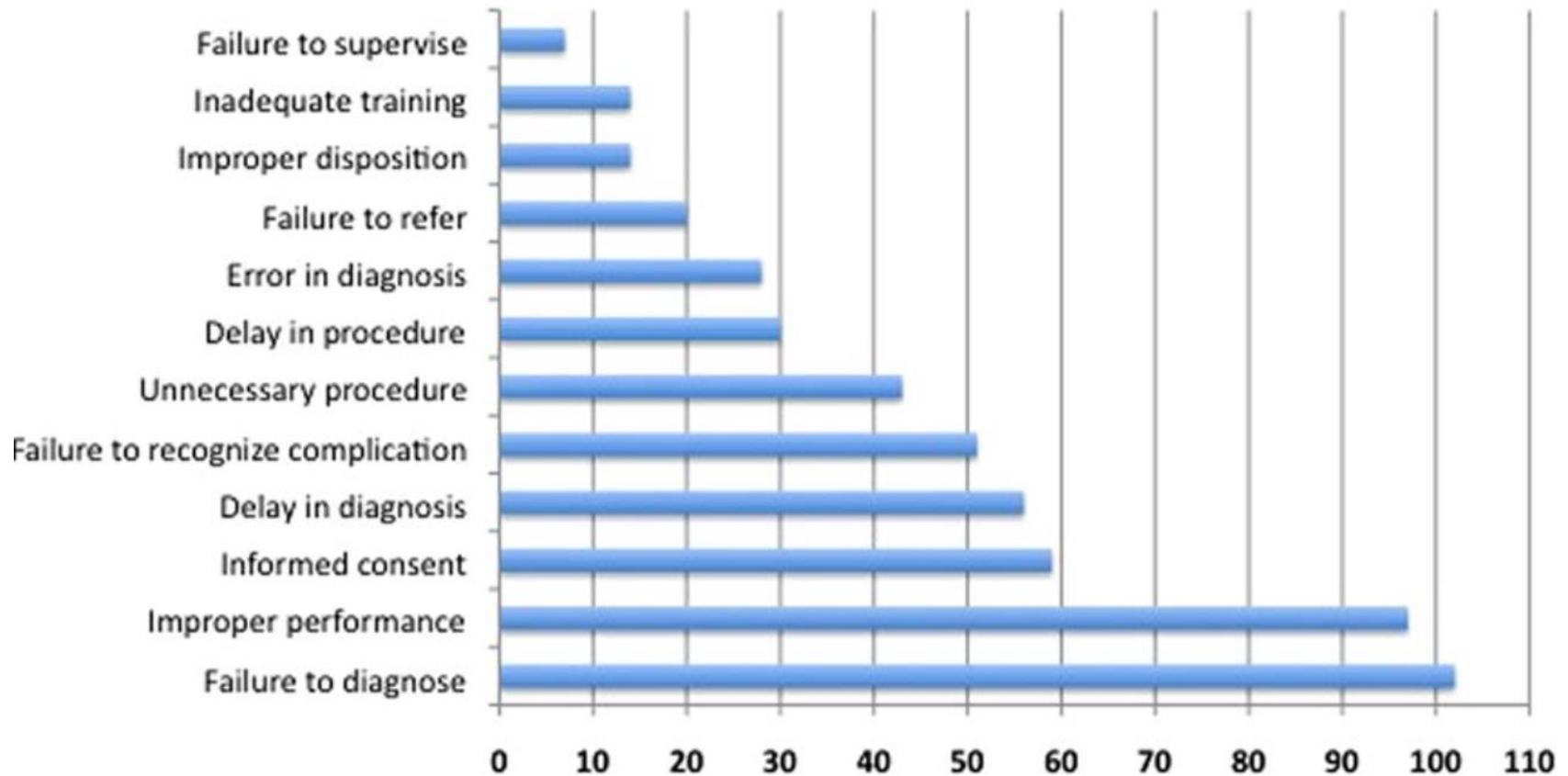
Patient standpoint: reasons for a malpractice claim

- 33% advised by acquaintances
- 24% recognized a cover up
- 23% child perceived as having no future
- 20% received inadequate information
- 19% sought retribution

Hickson GB, Clayton EW, Githens PB, Sloan FA. Factors that prompted families to file medical malpractice claims following perinatal injuries. JAMA 1992 Mar 11;267(10): 1359-63.

Malpractice in Otolaryngology

Legal allegations



Malpractice in Otolaryngology

- Case # 2
- 3 y/o underwent tonsillectomy and adenoidectomy
- Discharged home
- Later that evening patient developed a fever, lethargic, unable to retain fluids, started vomiting blood
- Pt admitted to the hospital; WBC 46,000
- No further bleeding discharged the next day

Malpractice in Otolaryngology

- Pt presented back to the hospital on POD # 3 with hemorrhage and was noted to be in DIC
- Pt was taken to the OR for cauterization and intraoperatively there was an airway fire and the ET tube was on fire and not removed
- Patient was transferred to a regional medical center
- Efforts to resuscitate the child were not successful
- The surgeon did not report the airway fire in the operative report

Malpractice in Otolaryngology- Duplicate slide

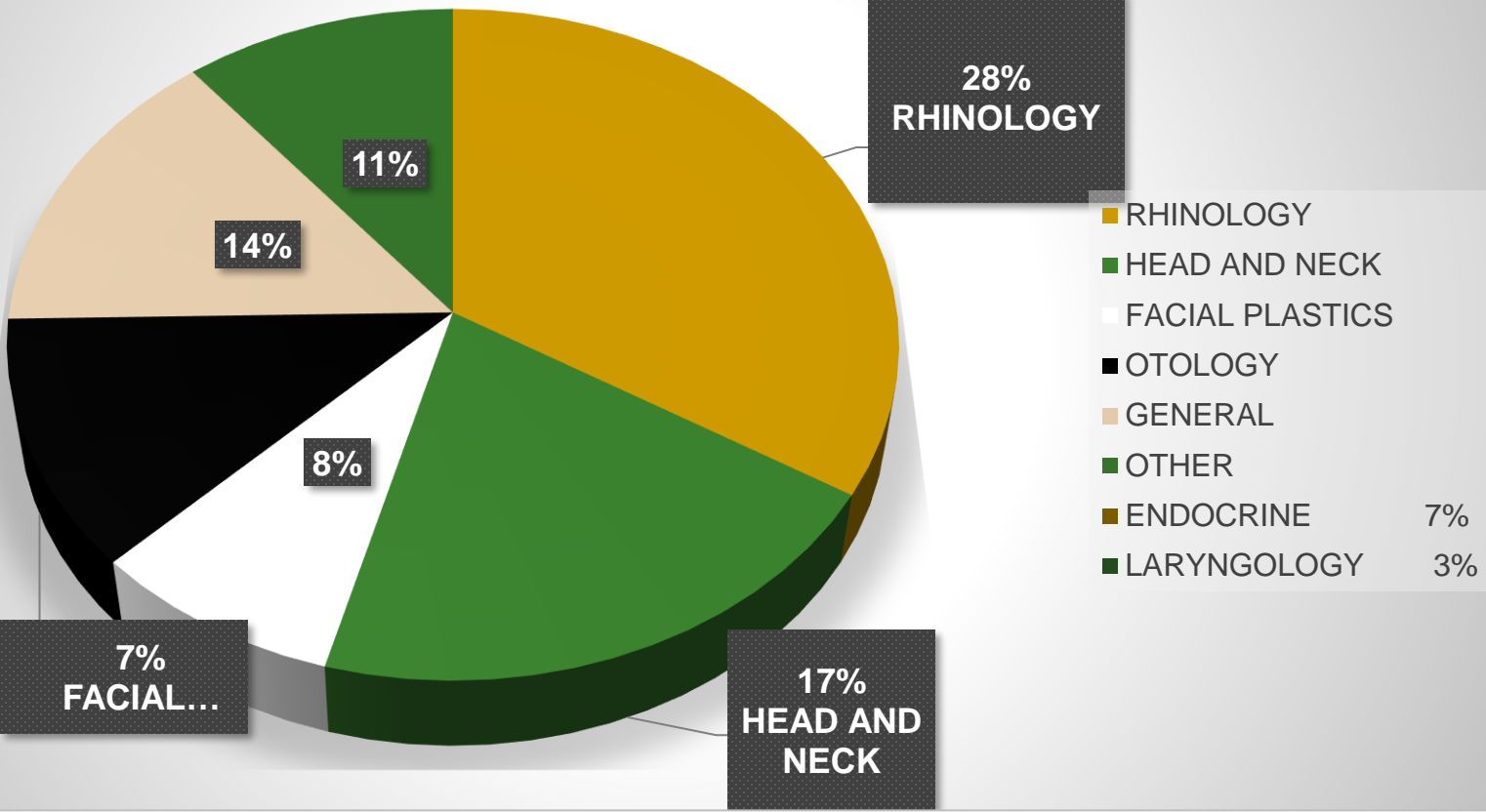
CONCLUSION- MITIGATING RISKS

- Four C rule
- Documentation
- Test ordering, tracking and follow-up
- Avoid medication error
- Informed consent
- Manage patient expectations
- Preparation for an unanticipated outcome
- Identification of complications
- Disclosure and communication with patient

Malpractice in Otolaryngology

- Allegations (Case #3):
- A) physician did not look into patient's mouth prior to discharge on POD#1 from the hospital
- (patient was sleeping)
- B) There was no documentation in the operative report about the airway fire
- C) There was no communication about the bleeding with the primary otolaryngologist until POD#3

Column1



Malpractice in Otolaryngology

➤ Definition

➤ “ A doctor’s failure to exercise the degree of care and skill that a physician or surgeon of the same specialty would use under similar circumstances”

➤ Reference:

➤ Black’s Law Dictionary. Eagan, MN:Thomson Reuters; 2009

Malpractice in Otolaryngology

OBJECTIVES

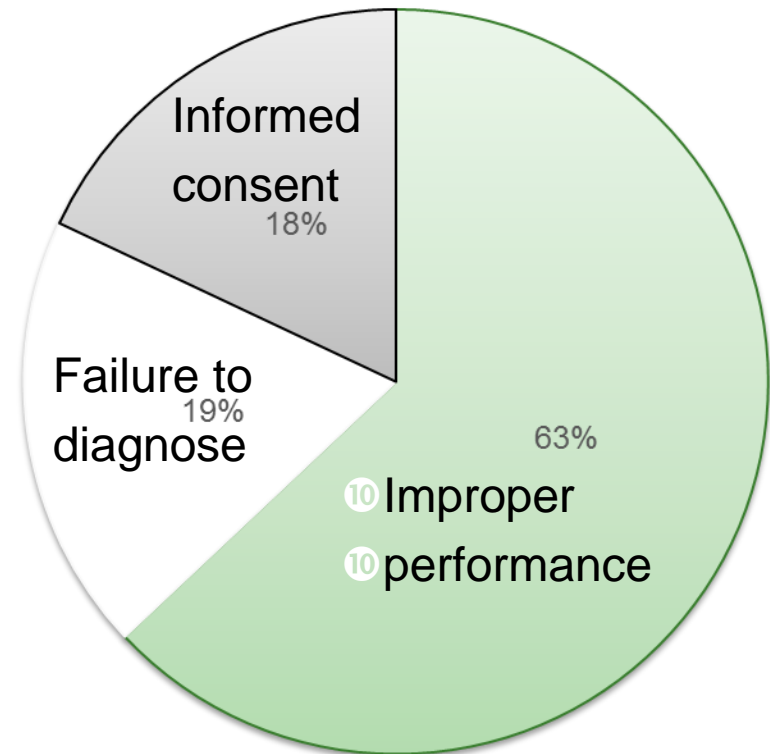
Prevalence

Common Allegation Claims

Unanticipated outcome

Mitigating risks related to Malpractice

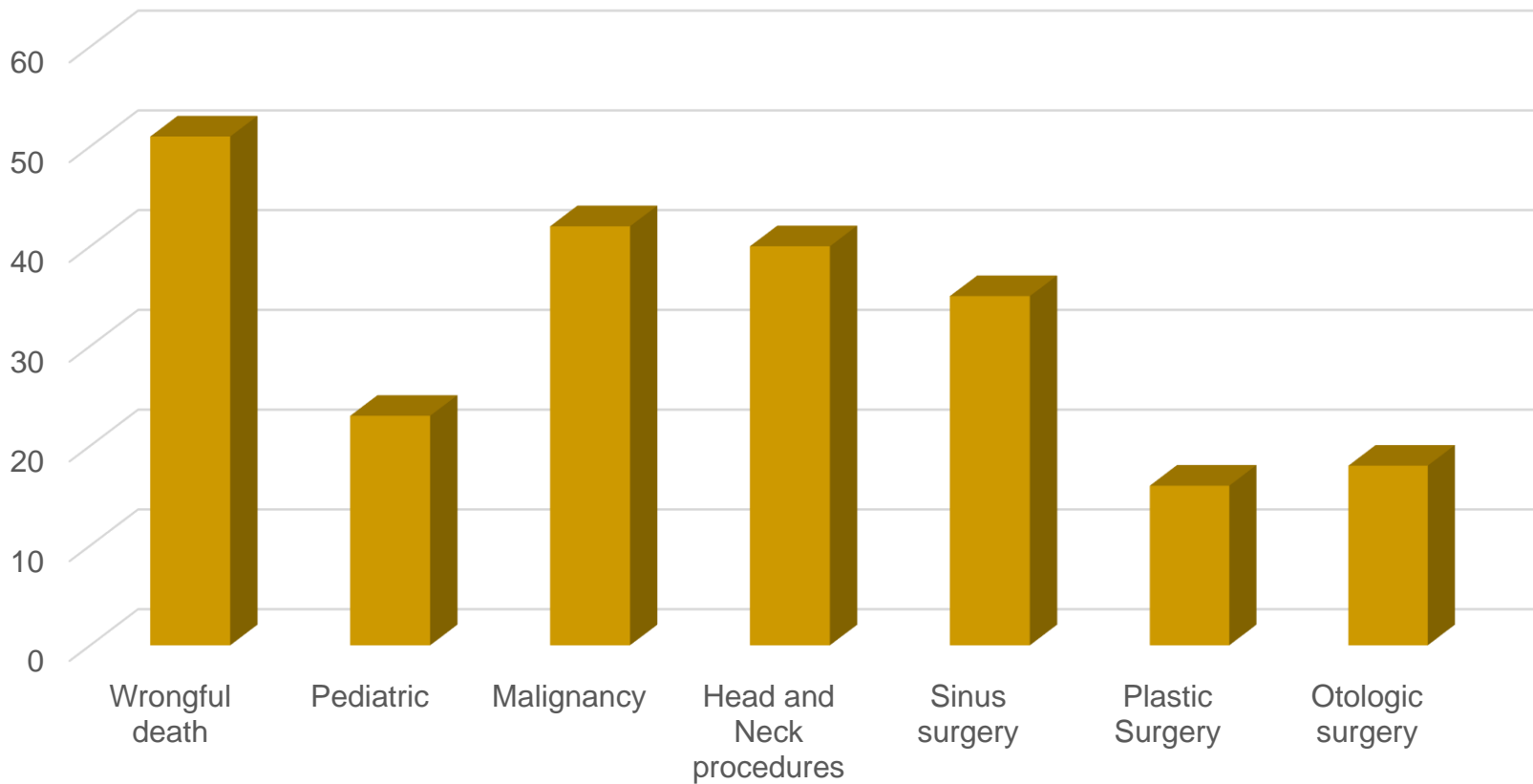
Legal Allegations



Improper performance Failure to diagnose Informed consent

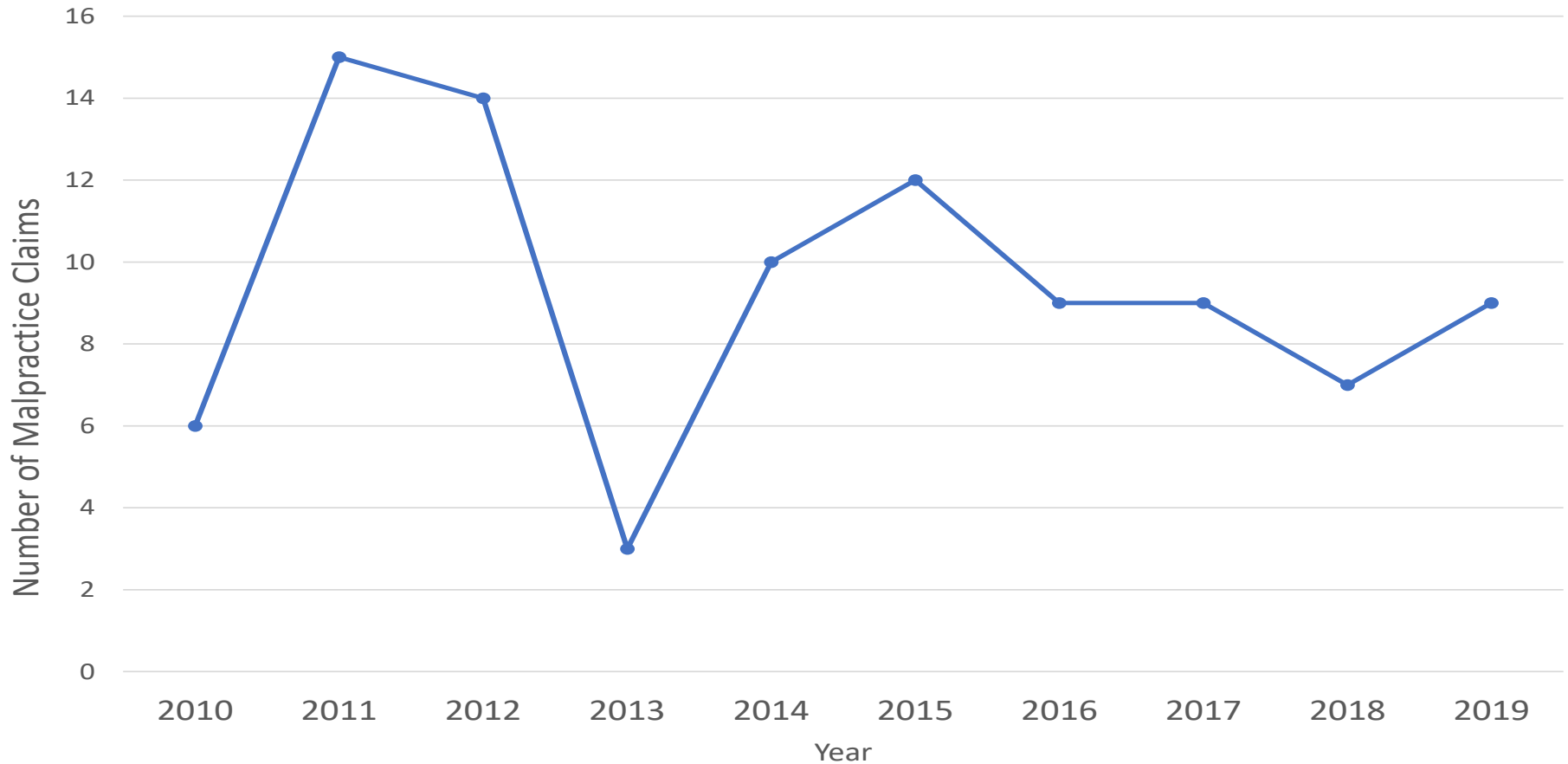
Westlaw Study (2001 to 2011)

198 cases between 2001 to 2011



MALPRACTICE IN OTOLARYNGOLOGY

TREND OF MALPRACTICE CLAIMS IN OTOLARYNGOLOGY



MALPRACTICE IN OTOLARYNGOLOGY

Ceremsak et al 2020

- A review of the past decade (2010-2019)
- 94 cases met inclusion criteria
- LexisNexis and Westlaw databases
- All of the cases went to trial

- Fewer number of cases over the last decade
 - -may reflect a decrease in the number of errors
 - -fewer allegations are being made
 - -increased cases settled out of court
- Average indemnity payment for each case was
\$3.77 M

Malpractice in Rhinology- Winford et al 2015

- 26 cases were reported involving sinonasal disease and otolaryngologists from 2004 to 2013
- Data from two Legal databases (Westlaw;LexisNexis)
- 18 cases were in private practice and 8 involved in academic practice
- Complications: CSF leak, death, meningitis and visual impairment
- Two most common types of malpractice allegations included negligent technique (38%) and lack of informed consent (27%)

MALPRACTICE IN OTOLARYNGOLOGY

**RESPONDING TO AN
UNANTICIPATED OUTCOME**

Malpractice in Otolaryngology -responding to unanticipated outcome

- **Care for the patient (Step 1):**
- Address current health care needs
- Obtain necessary consults
- Assign primary responsibility for care
- PCP's contact information
- Once patient is stable, communicate to patient, family and health care team

Norcal 2018

Malpractice in otolaryngology-responding to unanticipated outcome

- **Preserve the evidence (Step 2)**
- Sequester machinery/equipment
- Inform maintenance department or FDA if indicated

- **Report (Step 3)**
- -inform the risk management team
- -appropriate personnel/department chair

Norcal 2018

Malpractice in Otolaryngology-responding to unanticipated outcome

- **Notify** (Step 4)
- Malpractice Insurance carrier- report any incident that could lead to a claim, settlement, demand or a law suit

- **Complications and treatment errors** (Step 5)
- If there is an adverse outcome, deal with it forthrightly and immediately
- Tell the truth to patient
- Help patient cope with the adverse outcome

Malpractice in Otolaryngology-responding to unanticipated outcome

- **Document in the medical record (Step 6)**
- What to document-
- Known facts, care given in response, disclosure discussion and names of witnesses, treatment and follow-up plan
- What NOT to document- subjective feelings, blame, legally confidential information (generated by medical staff when performing an internal analysis of an event)

Malpractice in Otolaryngology-responding to unanticipated outcome

- **Disclosure**
- Who will inform the patient- health care providers involved in tx
- When to inform pt- immediately after health care needs are addressed
- What to communicate

Norcal 2018

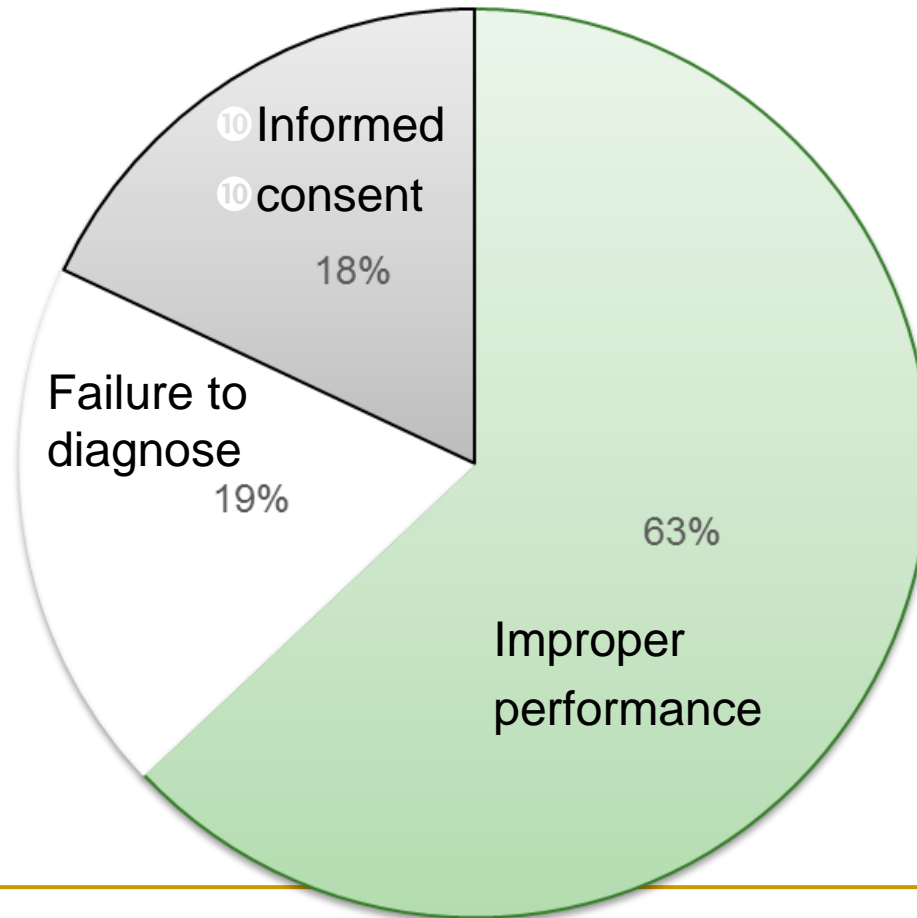
Malpractice in Otolaryngology- Apology law

- 36 states have apology laws
- Apology law prohibits certain statements, expression or other evidence related to disclosure from being admissible in a lawsuit
- Few states go further and protect admission of fault

Malpractice in Otolaryngology

-LEGAL ALLEGATIONS

Legal Allegations



Malpractice in Otolaryngology/Rhinology

Sinus Surgery and Informed consent

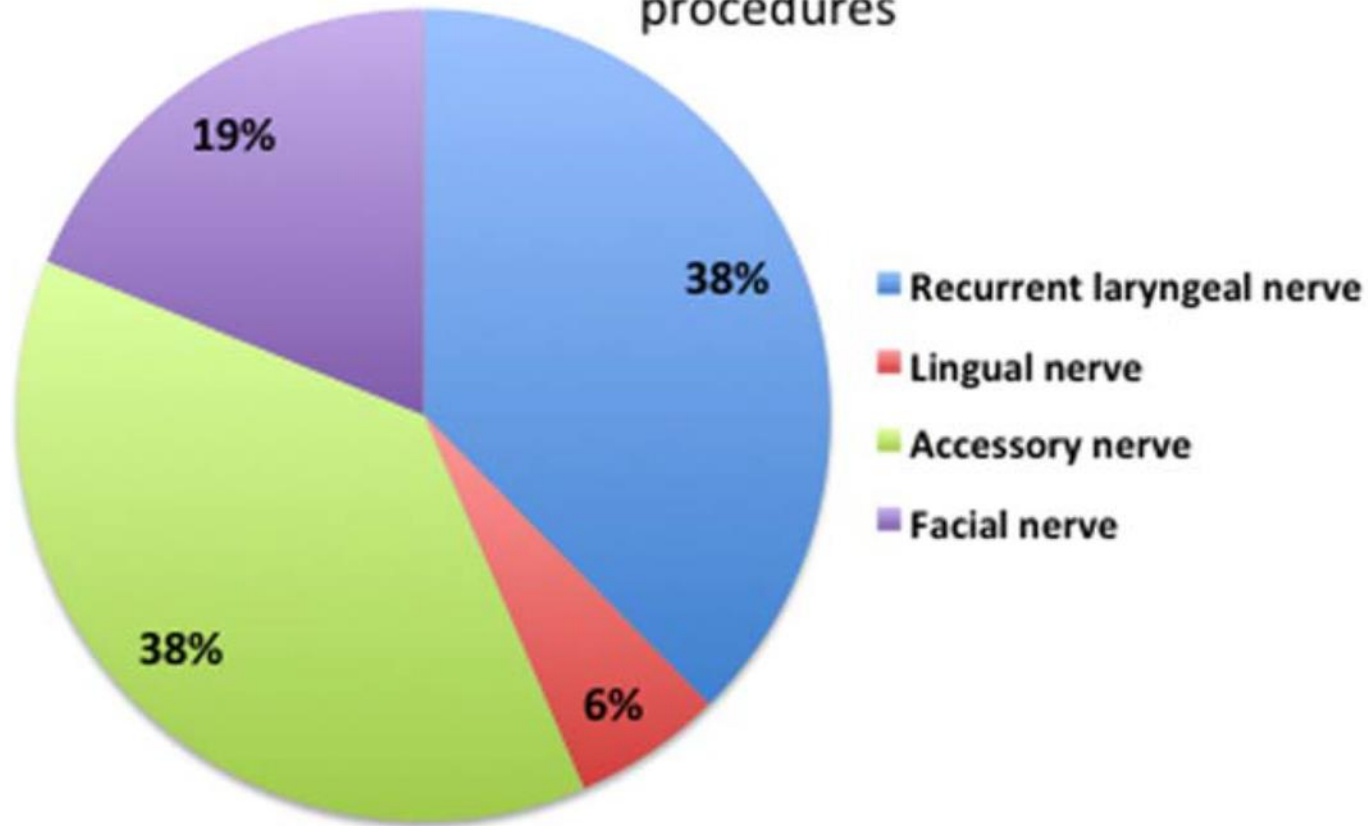
- Nearly all otolaryngologists discussed Wolf et al 2005
- CSF leak (99.1%)
- Bleeding (96.7%)
- Orbital injury (96.7%)

- Fewer otolaryngologists discuss
- Anosmia/changes in smell (40.2%)
- CVA (17.9%)
- Death (28%)

- Anosmia formed the basis for a medical malpractice claim in nearly 20% of cases
- ~~Having an informed consent and a complication listed on it does not~~
exclude the complication from a malpractice claim

MALPRACTICE IN OTOLARYNGOLOGY

Distribution of cranial nerve injuries in head and neck procedures



Malpractice in Rhinology- Informed Consent

- Document both common as well as rare risks and complications
- Postoperative bleeding with return to the operative room for control of bleeding
- Sinus infection
- Synechiae
- Atrophic rhinitis
- Skull base or intracranial injury: CSF leak, intracranial hemorrhage, brain damage, pneumocephalus, meningitis/abscess

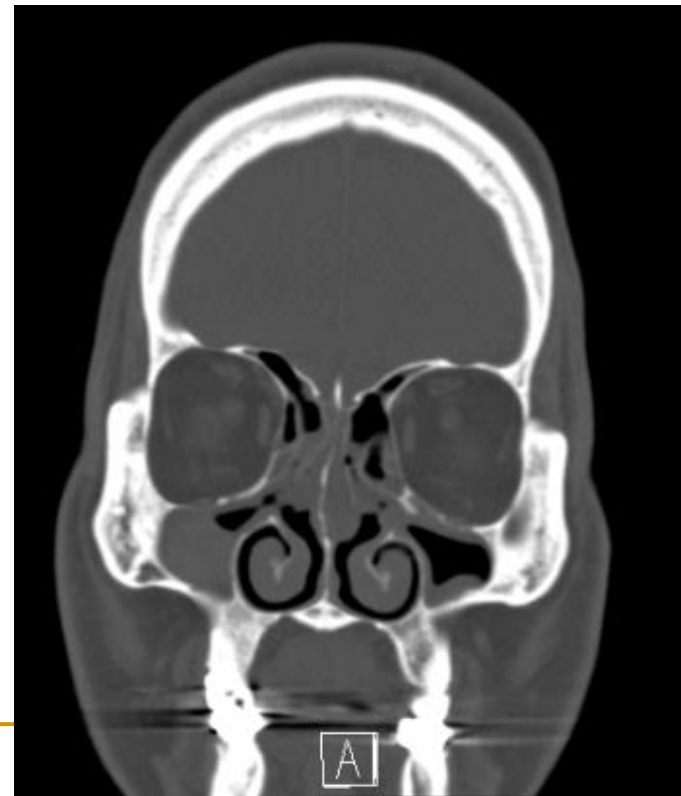
Malpractice in Rhinology- Informed consent

- Orbital injury: blindness, diplopia, orbital hematoma, subcutaneous emphysema
- Anosmia or hyposmia
- Death, stroke, heart attack, or unexpected complications related to anesthesia
- Need for postoperative nasal endoscopy and debridements
- Possible need for additional or revision surgery

MALPRACTICE IN OTOLARYNGOLOGY

Case # 1

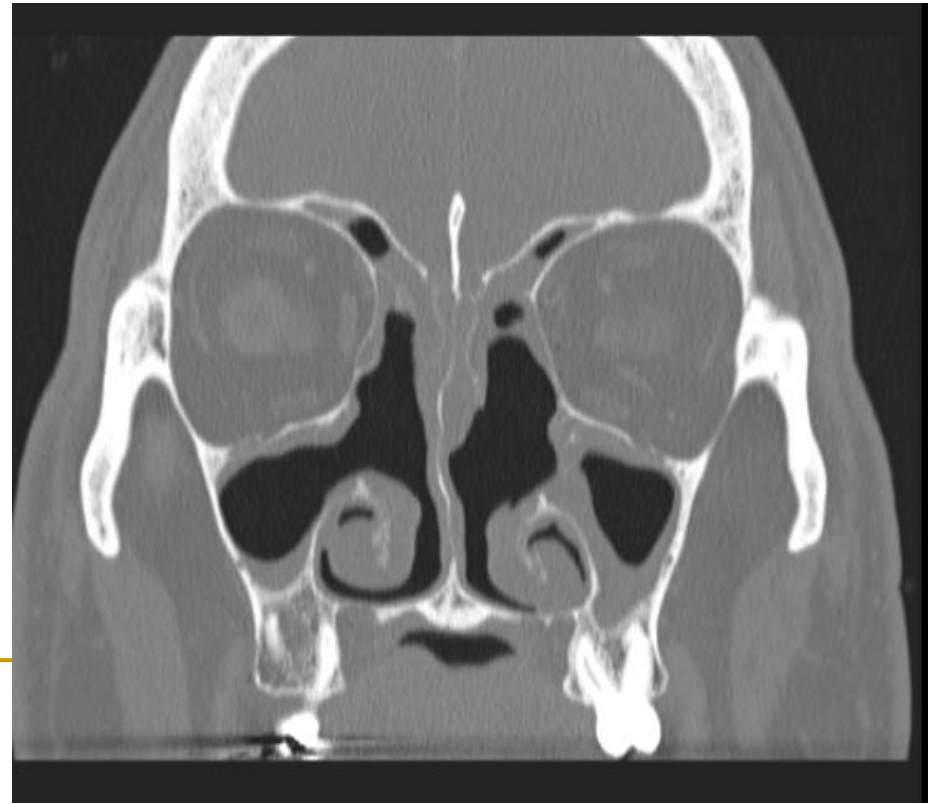
- 56 y/o male with decreased sense of smell, nasal congestion and a chronic cough
- Nasal endoscopy:
- NASAL POLYPS
- Treatment:
- Nasal sprays, oral steroids
- Antihistamines, antibiotics



MALPRACTICE IN OTOLARYNGOLOGY

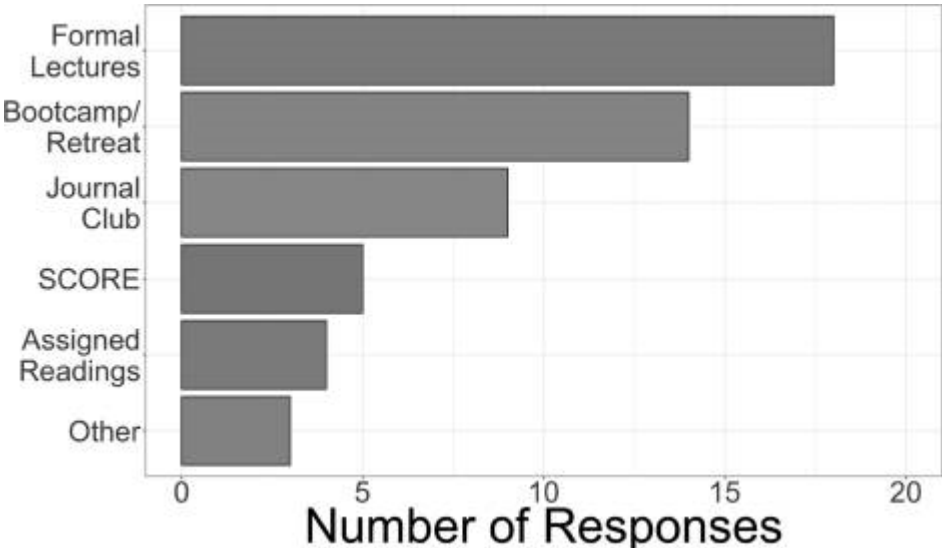
Case # 1

- Patient underwent Septoplasty/Endoscopic sinus surgery with image guidance
- and discharged home from the same day.
- While at home patient noted sx of double vision
- presented to the ER

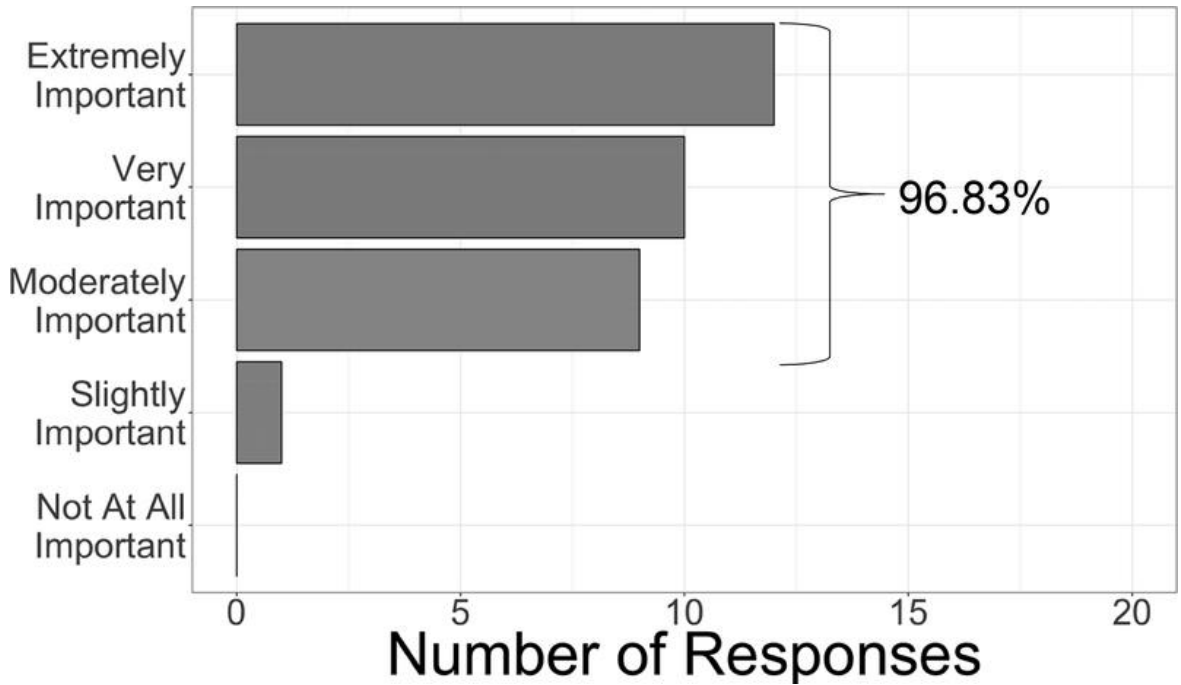


MALPRACTICE IN OTOLARYNGOLOGY -CORTICOSTEROID USE (Case #2)

- 50 y/o male with a history of cough, asthma and allergies
- Treated by his otolaryngologist with tapering course of prednisone for the allergic cough for a period of 3 weeks
- Patient died of a pulmonary hemorrhage (and also noted to have TB)
- Allegation: Wrongful Death
- In favor of plaintiff, awarded \$2,000,000



Survey Results – What is the Best Way to Establish a Medico-Legal Curriculum?



Survey Results – How Important is a Medico-Legal Curriculum?

MALPRACTICE IN OTOLARYNGOLOGY

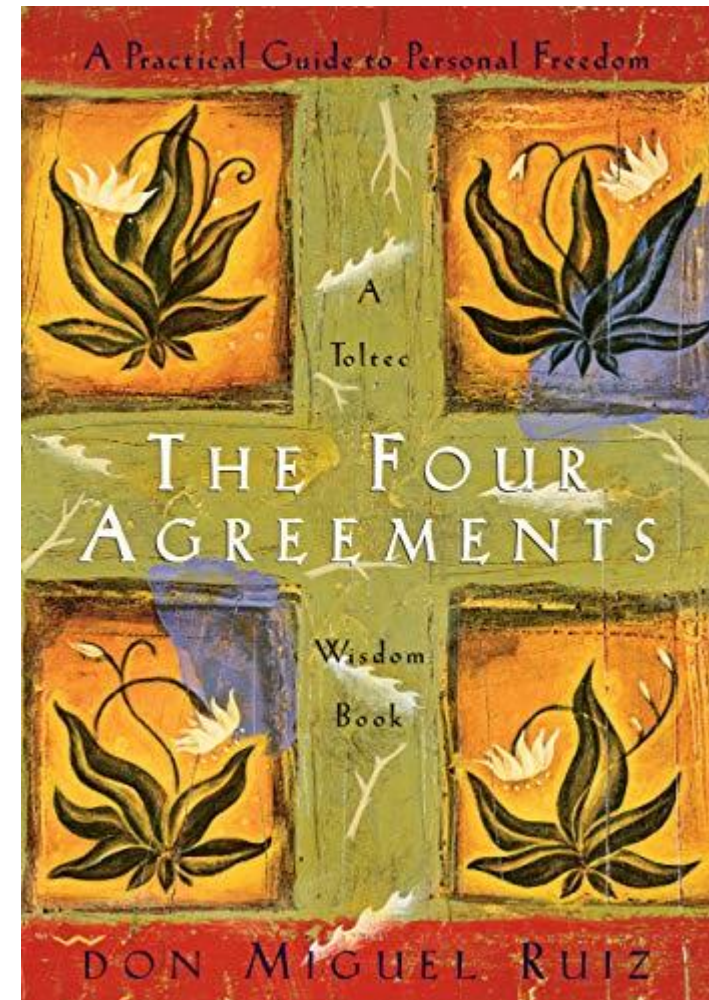
-involving residents/fellows

- 30 year review
- 247 malpractice cases (1990-2020)
- 20 cases involved otolaryngology trainees

- Allegations
- Procedural error
- Incorrect diagnosis
- Lack of informed consent for residents being involved in the operation
- Trainee inexperience and failure to supervise the resident during the operation

MALPRACTICE IN OTOLARYNGOLOGY

- **The Four Agreements**
- **Be impeccable with your word**
 - -speak with integrity and truth
- **Don't take anything personally**
- **Don't make assumptions**
 - -communicate with others
- **Always do your best.**



Malpractice in LARYNGOLOGY

Thirty Year Review (Song et al 2016):

➤ Laser surgery and risk of airway fire

7 cases of laser injury: all resulted against the otolaryngologist; Average settlement: \$3.2 M to \$18 million

REASONS CITED: Improper implementation of airway precautions

➤ INCLUDE MEASURES IN YOUR PRACTICE DURING TIMEOUT:

Cuff leak pressure/ FiO₂

Identification of individual responsible for extinguishing flames/Water bath and wet towels

-
- 250, 000 people die each year as a result of medical malpractice
 - About 10% deaths in the US are due to preventable medical malpractice (this does not include injuries due to malpractice)
 - **Successful malpractice claim**
 - Duty to the patient
 - Breach of the duty (failure to meet standard of care)
 - Adverse event