

Facial trauma malpractice lawsuits favor physicians, study finds

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Southern courts favor physicians in malpractice lawsuits over facial trauma treatment, while courts in the Midwest favor patients, according to a Rutgers study.

The study, which was published in the *Journal of Oral and Maxillofacial Surgery*, is the first to explore facial trauma litigation. It also found that outcomes in facial trauma lawsuits generally favor physicians, with nearly three-fourths of cases being dismissed before trial.

In 2016, nearly 43,000 cases totaling \$3.8 billion in payouts were awarded for allegations surrounding diagnosis, treatment and surgery, with the top five defendant specialties being surgical. About 15 percent of plastic surgeons face at least one [malpractice](#) lawsuit annually.

The researchers studied defendant data from facial trauma malpractice cases in the Westlaw federal litigations database. They reviewed 69 cases from 1913 to 2016. Most decisions occurred between 1965 to 2013, with half processed through legal systems in the South, 29 percent in the Midwest, 11 percent in the West and less than 9 percent in the Northeast.

About 75 percent of the plaintiffs were males with injuries to the jaw or with multiple facial fractures. A complaint of delay or failure to diagnose accounted for 50 percent of the lawsuits, which were significantly more likely to be brought against an emergency physician who failed to diagnose a fracture.

The researchers found that patients who had an initial X-ray that was followed by imaging with a computed tomography (CT) scan or other, more sensitive scan were more likely to be diagnosed with a fracture. "This tells us that emergency medicine physicians may be able to reduce their risk of malpractice by using sensitive radiography, like CT scans, while evaluating potential facial fractures," said corresponding author Boris Paskhover, assistant professor, department of otolaryngology, facial plastic and reconstructive surgery at Rutgers New Jersey Medical School.

Of the cases that went to court, 58 percent were tried by a judge and 38 percent by a jury. Three-quarters of the examined cases were decided on behalf of the defendants, 19 percent on behalf of the plaintiff, 3 percent were settled and 3 percent had an unknown outcome. Awards ranged from \$14,437 to more than \$1.8 million.

"An overwhelming majority of cases decided in the favor of the plaintiff were jury trials," said Paskhover. "This finding is understandable given the overall litigation structure of the United States court system, where it is a constitutional right for persons to be initially tried by a jury of their peers and not experts within the field."

The Midwest upheld 40 percent of the malpractice suits, while the South dismissed more than 90 percent. The researchers considered four possible scenarios that could account for this finding: a tendency for juries of Midwesterners to side with the plaintiff, an increased rate of legitimate malpractice cases occurring in the Midwest, a preponderance for frivolous suits in the South or a proclivity for Southern judges to dismiss claims.

"It may behoove Midwestern physicians to consider settlements over a trial, while Southern healthcare professionals may be more comfortable allowing malpractice decisions to be decided through litigation," Paskhover said.

More information: Alexander M. Mozeika et al, Sociological and Medical Factors Influence Outcomes in Facial Trauma Malpractice, *Journal of Oral and Maxillofacial Surgery* (2019). [DOI: 10.1016/j.joms.2019.01.005](https://doi.org/10.1016/j.joms.2019.01.005)

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