

# Malpractice trends involving active surveillance across cancers

March 28 2024

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Active surveillance is an established practice for managing certain low-risk cancers that are unlikely to cause harm. It is an increasingly common and effective way to manage certain early-stage cancers,

including those in the prostate, thyroid and kidney.

However, adoption of [active surveillance](#) in practice has been hit-and-miss for several reasons. Among them, according to multiple studies, is a perceived increased risk of [malpractice](#) among physicians, stemming from unease that the window for a cure may unexpectedly close.

In a new study, Cedars-Sinai Cancer investigators explored malpractice trends related to active surveillance as a treatment strategy across cancers. They found that to date, there has been no successful litigation related to active surveillance. Their research was recently [published](#) in the *Annals of Surgery*.

Cancer clinical practice guidelines from the National Comprehensive Cancer Network (NCCN) consider active surveillance an effective strategy for managing low-risk prostate, kidney and thyroid cancers. Active surveillance is also considered standard of care for certain lymphomas and an emerging option for managing stage 0 breast cancer. This less-invasive approach reserves surgery for cases in which the cancer progresses. In doing so, it avoids the adverse side effects of treatment when the benefit of that treatment (surgery, chemotherapy) is unclear.

Because some cases do progress, physicians have indicated a reluctance to use active surveillance for fear of malpractice lawsuits. However, data on malpractice trends across cancers had previously been lacking.

Cedars-Sinai Cancer investigators analyzed comprehensive data from Westlaw Edge and LexisNexis Advance databases between 1990 and 2022 and examined federal and civil medical malpractice cases in all 50 states involving active surveillance for lymphoma and thyroid, prostate, kidney and [breast cancer](#).

They found five prostate cancer cases related to active surveillance; no pertinent cases were found regarding active surveillance in any other cancers.

In two of the five prostate cancer cases, the court defended the practice of active surveillance, determining that it was in accordance with national standards of "sound clinical judgment" and "accepted medical practices." The other cases involved alleged physician negligence for not having recommended active surveillance as a [treatment option](#), after the patients had complications from surgery.

All cases were ruled in favor for the physicians, who had documented informed consent for active surveillance.

The authors concluded that given the legal precedent detailed in the identified cases—and increasing support across national guidelines—active surveillance is a sound management option in appropriate low-risk cancers and appears to present no increased risk of malpractice litigation.

"Our team previously published [research](#) showing that active surveillance is an effective treatment for many low-risk thyroid cancer patients," said Allen Ho, MD, lead author of the study and co-director of the Thyroid Cancer Program at Cedars-Sinai Cancer.

"These latest findings show no increased risk of medical malpractice with active surveillance across multiple cancer types."

"This data should bolster physicians' confidence in recommending active surveillance for their patients when it is an appropriate option," said Timothy Daskivich, MD, co-author of the study and assistant professor of Surgery at Cedars-Sinai.

"Active surveillance maximizes quality of life and avoids unnecessary overtreatment, and it does not increase medicolegal liability to physicians, as detailed in the case dismissals identified in this study. In fact, in some cases, physicians were sued because they didn't offer active surveillance."

The authors added that failure to discuss an NCCN-recommended approach as a treatment option with patients could be considered just as prone to litigation.

Their recommendations to strengthen patient communication and guard against malpractice include thoroughly explaining active surveillance to patients, engaging with the institution's compliance officers or legal counsel to develop standardized consent templates, and integrating patient preferences and personal values when proposing the treatment option.

**More information:** Samuel Chang et al, Malpractice Trends Involving Active Surveillance Across Cancers, *Annals of Surgery* (2023). [DOI: 10.1097/SLA.0000000000006101](https://doi.org/10.1097/SLA.0000000000006101)

Provided by Cedars-Sinai Medical Center

Citation: Malpractice trends involving active surveillance across cancers (2024, March 28) retrieved 27 April 2024 from <https://medicalxpress.com/news/2024-03-malpractice-trends-involving-surveillance-cancers.html>

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