

Compensation claims and complaints insights

Orthopaedic surgeons



One in 5 Avant orthopaedic surgeon members had a claim for compensation, complaint to a regulator, or an other matter raised about the provision of their care in FY2017-18.

But this doesn't mean the doctor is a 'bad' doctor. 'Good' doctors can also be sued or have a complaint made against them. In half of the cases, experts and/or regulators concluded that the orthopaedic surgeon met the standard expected, despite the allegation.

Our claims and complaints data

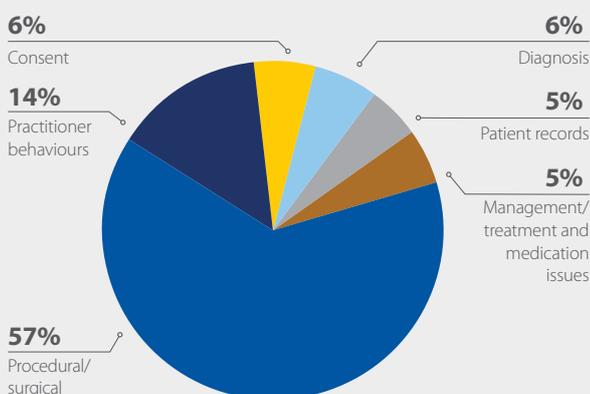
Members asked us for more information about compensation claims and complaints to regulators. In response the following is a retrospective review of routinely collected data. This is based on over 200 matters involving Avant orthopaedic surgeon members from across Australia, finalised over a five year period from July 2013 to June 2018 (data as at October 2018).

The learnings are intended to benefit our members, so they can better understand and manage their medico-legal risks, and help them to optimise the quality and safety of their care.

Types of matters



Common claims and complaints



The majority of compensation claims and complaints to regulators related specifically to surgical procedures. Of these:

1 in 4 were pre-operative (e.g. improper selection of surgical procedure).

2 in 4 were intra-operative (e.g. poor surgical performance).

1 in 4 were post-operative (e.g. delay/failure to diagnose complication).

Issues relating to practitioner behaviours included;

rudeness or aggression towards a patient, arrogance, and being intimidating to patients.

Consent issues included; inadequate or no discussion about risks, failure to obtain consent for a procedure and failure to provide a clear explanation of the procedure.

Diagnosis issues included; inadequate examination, incorrect interpretation of results and failing to refer for appropriate diagnostic testing.

Key insights and implications for practice

Our data highlights that claims and complaints against orthopaedic surgeons are common and it is not surprising the majority are related to the surgical procedures.

However, in our experience, for a large number of matters categorised as procedural or surgical there can be shortcomings in the consent process. If a patient does not understand the treatment limitations, or the potential post-operative issues it is not uncommon for them to be unhappy with the outcome and complain that the surgery was performed poorly.

Optimising care and minimising the risk of a claim or complaint includes:

1. Skilled and attentive care in the peri-operative period-patient selection for the procedure, the consent process and early detection. Also appropriate and timely management of post-operative complications and patient concerns.
2. Informed consent with shared decision-making.
3. Communication strategies that genuinely engage the patient. This involves finding out what matters to the patient and understanding their concerns and priorities. Previous Avant analysis has showed communication is an underlying issue in 32% of all complaints to regulators and compensation claims.

4. Effective communication with colleagues.
5. Good record keeping. This is a vital element of good patient care and a key part of the evidence that is used to evaluate and defend claims.

The consent process

The consent process involves discussing with the patient their needs, priorities and expectations, but also coming together to a shared decision about their treatment. The patient's perspective is important. The risks you need to discuss include those likely to be significant to the patient, so it is essential you ask what is important to them.

In the discussion you should:

- Consider and review the treatment options from the patient's perspective.
- Explore what is most important to them. It can be helpful to know what their day-to-day life involves and what outcomes they hope for. Considering the particular patient's hopes and goals, are there consequences or risks that could mean these will not be achievable? Give the patient context, e.g. what does a two centimetre difference in leg length actually mean?
- Find out what outcomes they are prepared to live with along with any specific fears or worries they have about the procedure.
- Talk with the patient about how they would manage after the procedure. For example, are they able to take time off work to recuperate if necessary?

Resources

If you receive a claim or complaint, contact our Medico-legal Advisory Service on **1800 128 268** for expert advice on how to respond, available 24/7 in emergencies.

Read our articles, factsheets, case studies and other resources on a range of topics available at the Avant Learning Centre avant.org.au/avant-learning-centre

Glossary

- Claims refers to claims for money, compensation and civil claims.
- Complaints relates to formal complaints to regulators.
- Matters include; claims, complaints and other matters such as coronial, employment and Medicare.

For any queries please contact us at research@avant.org.au

Version 2.

IMPORTANT: Avant routinely codes information collected in the course of assisting member doctors in medico-legal matters into a standardised, deidentified dataset. This retrospective analysis was conducted using this dataset. The findings represent the experience of these doctors in the period of time specified, which may not reflect the experience of all doctors in Australia. This publication is not comprehensive and does not constitute legal or medical advice. You should seek legal or other professional advice before relying on any content, and practice proper clinical decision making with regard to the individual circumstances. Persons implementing any recommendations contained in this publication must exercise their own independent skill or judgment or seek appropriate professional advice relevant to their own particular practice. Compliance with any recommendations will not in any way guarantee discharge of the duty of care owed to patients and others coming into contact with the health professional or practice. Avant is not responsible to you or anyone else for any loss suffered in connection with the use of this information. Information is only current at the date initially published. © Avant Mutual Group Limited 2019. 3037 06/19 (1043-1)

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