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# **Medical Malpractice Web Advertising: A Qualitative, Cross-sectional Analysis of Plaintiff Medical Malpractice Firms in Suffolk County, Massachusetts**

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**ABSTRACT:** Medical malpractice plaintiff firms play a central role in the prosecution of malpractice claims. There have been limited studies on the online advertising practices of plaintiff medical malpractice firms. The Martindale-Hubbell directory was used to identify all plaintiff medical malpractice firms in Suffolk County, Massachusetts. Each firm's website was individually mined for relevant data. Thirty-one unique medical malpractice law firms were identified. Seventy-seven percent of law firms advertised awards with the Martindale-Hubbell AV rating, AVVO, and Super Lawyer being the three most common. The second most common method of advertising was accomplished through descriptions of successful verdicts and settlements (61%). A total of 408 verdicts, settlements, and arbitrations collectively representing \$1.4 billion dollars were advertised by all law

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**firms. Median awarded values for verdicts was advertised as \$4.5 million, while the median awarded values for settlements was \$1.25 million. Defendants most commonly practiced obstetrics (18%), followed by primary care (14%). Law firms report treatment and diagnosis delay as the most common successful claim (50%), followed much further by misdiagnosis (8%), and communication error (4%). Our sample correlates with larger claims-based studies surrounding the most commonly sued specialties, however, median reported settlement and verdict values were significantly higher in our cohort. Considerations should be made to provide advertising guidelines for medical malpractice plaintiff firms.**

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Medical malpractice remains a highly relevant issue in health policy. Even though the overall rate of malpractice claims per physician have fallen in the past 10 years,<sup>1</sup> some experts suggest that current cost-reducing strategies in Accountable Care Organizations may lead to more medical liability claims.<sup>2</sup> One area of medical malpractice that remains understudied is the advertising practices of medical malpractice firms. A study published in 1994 identified the single most important driver of plaintiff contact with medical malpractice law firms as direct advertising to consumers.<sup>3</sup>

In 2016, Congressional leaders and the American Medical Association (AMA) have identified mass-media advertisements by plaintiff medical malpractice law firms seeking clients who have suffered from medical-related adverse events as a threat to public health;<sup>4</sup> in 2015, \$1283 million USDs were spent on 360,000 ads by law firms seeking plaintiffs for lawsuits against medical device and pharmaceutical manufacturers.<sup>5</sup> One common target is the drug rivaroxaban (Xarelto). Rivaroxaban is an oral Factor Xa inhibitor that serves as an anticoagulant; it is FDA-approved in the prevention of thrombosis in patients with atrial fibrillation. Recent reports have directly tied adverse patient events including death from pulmonary embolism to law firm advertising practices scaring patients into stopping rivaroxaban without consulting their physician.<sup>6</sup> The disproportionate emphasis on medication side effects without adequate description of its benefits can lead to patient discontinuation of necessary, and sometimes life-saving medications.<sup>7</sup> In response, the AMA is drafting legislation calling for advertisers to include appropriate and conspicuous warnings against discontinuing medications prematurely.

Contemporary law firm advertising is one area of medical malpractice that is poorly understood. The American Bar Association has published guidelines on ethical legal advertising with an explicit ban against barratry,<sup>8</sup> colloquially known as ambulance chasing. As part of tort reform, Oklahoma and Texas have gone as far as to criminalize barratry. Analogous to medicine, the AMA provides guidelines to physicians in regard to ethical advertising practices.<sup>9</sup> These guidelines lack specificity but advise against physicians stating misleading comments, including the omission of necessary material information. In general, commercial advertising, including legal and medical services,

are regulated by the Federal Trade Commission, which states that only truthful and reasonable claims are allowed.

Recent scholarship has argued for more regulation of health professional advertising beyond the basic consumer protection laws outlined by the Federal Trade Commission, due to inherent information asymmetry among specialized professions and the potential for patient harm.<sup>10</sup> Analogously, law is another specialized profession with significant information asymmetry. In particular, medical malpractice incorporates specialized knowledge of both fields, which makes consideration of advertising practices unique. In order to better understand online advertising practices of plaintiff medical malpractice firms, we conducted an analysis of firms in Suffolk County, which is the most populous county in Massachusetts. Massachusetts has had near universal health insurance coverage since 2008 and serves as a model state reflective of nationwide reforms to expand health coverage.<sup>11</sup>

## Methods

The Martindale-Hubbell directory of law firms was accessed on April 17, 2015 for law firms listed under “medical malpractice” in Suffolk County, Massachusetts. Fifty-six unique results were returned, and further analysis determined 53 unique firms. Out of 53 firms, 31 met inclusion criteria as firms offering plaintiff malpractice services. Website content for these 31 firms was downloaded on the same day for further analysis. A qualitative coding scheme (available in the supplemental table) was developed and reconciled by all authors. Ten percent of firms were analyzed by two authors to ensure internal consistency.

## Results

A total of 56 firms were returned from the Martindale-Hubbell directory. Manual analysis eliminated 25 law firms that were either duplicates or medical malpractice defense firms. A total of 31 unique medical malpractice law firms were identified, which are further described in Table 1. No law firm in this cohort offered services for both medical malpractice plaintiff and medical malpractice defense. Plaintiff law firms had a median number of five lawyers. Medical malpractice certification was limited to a minority of firms.

The main strategies of firm advertising were either by externally branded awards (77%) or descriptions of successful verdicts and settlements (61%). In regards to awards, the Martindale-Hubbell AV rating (55%) and the Super Lawyer Designations (55%) were most commonly reported. Regarding self-reported characteristics, “experienced” was most commonly cited, followed by “successful,” “aggressive,” and “professional.”

Successful verdict and settlement descriptions were the second most common advertising strategy employed by plaintiff law firms. A total of 408 verdicts, settlements, and arbitrations were identified. For 34 settlements and verdicts, no specific monetary award was listed. Only one law firm described an arbitration award. Median awarded values for verdicts was advertised as \$4.5 million, ranging from \$100,000 to \$63 million

**Table 1: Descriptive Characteristics of Plaintiff Medical Malpractice Law Firms in Suffolk County, Massachusetts**

<b>Law Firm Characteristics</b>	
Plaintiff Law Firms Identified	31
Median Lawyers Per Law Firm	5
Total Lawyers	266
Medical Personnel on Staff	6%
Medical Malpractice Certified	13%
Advertises Verdicts and Settlements	61%
Total Verdicts and Settlements Advertised	408
Offers Free Consultation	68%
Offers Live Chat	23%
<b>Externally Branded Awards</b>	
Externally Branded Awards	77%
Martindale-Hubbard AV Rating	55%
Super Lawyer Designation	55%
AVVO 10.0 Rating	29%
Best Lawyers Designation	26%
USNews & World Report Best Law Firms	23%
Who's Who Designation	10%
<b>Self Reported Descriptive Characteristics</b>	
Experienced	74%
Successful	48%
Aggressive	32%
Professional	26%
Skillful	19%

USDs. For settlements, the median advertised value was \$1.25 million USDs. In total, verdicts, settlements, and arbitrations reported by plaintiff law firms in Suffolk County totaled over \$1.4 billion USDs. See Table 2 for details.

**Table 2: Advertised Awards for Settlements and Verdicts**

	<b>Cases Mentioned (#)</b>	<b>Minimum (millions USD)</b>	<b>Maximum (millions USD)</b>	<b>Median (millions USD)</b>	<b>Total \$ Awarded (millions USD)</b>
Verdicts	72	0.1	63	4.5	532
Settlements	218	0.0	190*	1.3	624
Unspecified Verdict or Settlement	82	0.1	12	1.6	232
Arbitration	1			0.5	0
Verdict or Settlement with Monetary Award Unspecified	34**				

\*Includes one class action lawsuit.

\*\*34 verdicts and settlements were reported as won, but without a monetary award specified.

For successful settlements and verdicts, the most common claims were related to delay in diagnosis or treatment (50%). Less commonly, misdiagnosis and medication errors accounted for 8% and 7% of claims, respectively. See Table 3 for details. A minority of claims (4% or less) were attributed to communication errors, direct sexual abuse from a practitioner, errors in monitoring, medical device errors, or laboratory errors. Of these claims, 33% led to death and 39% led to permanent injury.

**Table 3: Claim Characteristics\***

Claim Characteristics	
Claim Type	
Diagnosis or Treatment Delay	203 (50%)
Misdiagnosis	31 (8%)
Medication Error	28 (7%)
Communication Error	16 (4%)
Sexual Abuse	18 (4%)
Monitoring Error	12 (3%)
Medical Device Malfunction	3 (1%)
Laboratory Error	3 (1%)

\* In assessing all claims, 33% were explicitly linked to patient death and 39% were linked to permanent injury. The remainder were unspecified based on available data.

Our results also showed a wide range of medical specialties identified as defendants of successful medical malpractice verdicts and settlements (Table 4). Obstetricians (18%) were most commonly identified, followed by primary care physicians (14%). A subgroup analysis of 75 obstetrics verdicts and settlements with sufficient detail revealed that the majority of cases involved fetal complications (37%), followed by labor management (11%). Only 2% of obstetrics claims and verdicts were attributed to maternal complications. Ultimately, 34 separate specialties represented 6% or less of all verdicts or settlements described. In terms of defendants, physicians (65%) were the most likely to be sued, but cases involving nurses, residents, and other allied health professionals were also identified. Only a minority of advertised successful verdicts was against pharmaceutical (3 cases) or medical device manufacturers (1 case).

**Table 4: Advertised Defendant Type by Speciality\***

Physician Practice Area	Mentioned	Defendant Type	Mentioned
Obstetrics	75 (18%)	Physicians	285 (65%)
Unspecified Primary Care Physician	59 (14%)	Nurse	33 (7.6%)
Emergency Medicine	25 (6.0%)	Medical Staff, unspecified	29 (6.7%)
Psychology	24 (5.7%)	Residents and Fellows	17 (3.9%)
Diagnostic Radiologist	24 (5.7%)	Hospital	16 (3.7%)
General Surgery	19 (4.5%)	Therapist	12 (2.8%)
Psychiatry	18 (4.3%)	Nurse Practitioner	8 (1.8%)

Pediatrics	16 (3.8%)	Multi-group Physician Practice	7 (1.6%)
Anesthesiology	14 (3.3%)	Midwives	7 (1.6%)
Orthopaedic Surgery	13 (3.1%)	Paramedics	3 (0.7%)
Neonatology	12 (2.9%)	Physical Therapist	3 (0.7%)
Surgery Subspecialty Unspecified	12 (2.9%)	Pharmaceutical Manufacturer	3 (0.7%)
Neurosurgery	11 (2.6%)	Nursing Home	2 (0.5%)
Gynecology	11 (2.6%)	Rehabilitation Center	2 (0.5%)
Internal Medicine	10 (2.4%)	Pharmacist	2 (0.5%)
Medical Oncology	9 (2.2%)	IVF Clinic	2 (0.5%)
Pathology	7 (1.7%)	Physician Assistant	1 (0.2%)
Dermatology	5 (1.2%)	Other	1 (0.2%)
Plastic Surgery	5 (1.2%)	Behavioral Center	1 (0.2%)
ENT	5 (1.2%)	Chiropractor	1 (0.2%)
Gastroenterology	4 (1%)	Medical Device Manufacturer	1 (0.2%)
Ophthalmology	4 (1%)		
Neurology	4 (1%)		
Urology	4 (1%)		
Family Medicine	3 (0.7%)		
Infectious Disease	3 (0.7%)		
Vascular Surgery	3 (0.7%)		
Urgent Care	3 (0.7%)		
Cardiology	2 (0.5%)		
Hematology	2 (0.5%)		
Pulmonary Disease	2 (0.5%)		
Nuclear Medicine	2 (0.5%)		
Gynecologic Oncology	2 (0.5%)		
Reproductive Endocrinology	2 (0.5%)		
Physical Medicine and Rehabilitation	2 (0.5%)		
Cardiothoracic Surgery	2 (0.5%)		

\*In terms of obstetrics, the majority of claims pertained to fetal complications (37%), followed by labor management (11%). Only 2% were coded as maternal complications. For surgical complications, pre-operative complication claims (71%) were most common, compared to delay in surgery (28%), intraoperative complications (18%), and postoperative complications (2%).

## Discussion

There were 31 plaintiff law firms in Suffolk County, Massachusetts. Collectively, these firms boasted 408 successful verdicts, settlements, and arbitrations totaling \$1.4 billion USDs. Compared to a larger 350,000 claims analysis, notable similarities and disparities were identified. In regards to similarities, permanent injury or death

accounted for 72% of claims in our cohort compared to 81% in a study by Tehrani et al. In addition, both cohorts identified obstetrics represents one of the most litigious medical specialties.<sup>12,13</sup>

Diagnosis delays and treatment delays together represented over 50% of all claim types.<sup>13</sup> This has implications in regards to the prevalence of defensive medicine, a practice that costs the U.S. health care system up to \$850 billion dollars per year.<sup>14</sup> More than 90% of physicians cite practicing defensive medicine, with medical liability identified as a primary driver.<sup>14</sup> Our results show that the majority of law firms that advertise successful verdicts and settlements identify diagnosis and treatment delay as the most successful claims.

Our data also shows that law firms in Suffolk County report median verdicts and settlements that far exceed median awards from larger studies.<sup>13</sup> In the study by Tehrani et al., the median award was \$213,250 USDs (13), compared to \$1.25 million USDs per settlement or \$4.5 million USDs per verdict in this cohort. This reflects a difference of more than 400%. Although disproportionate advertising of large settlements and verdicts does not imply all cases will have similar outcomes, law firms have a clear incentive to advertise large settlements and verdicts to prospective clients.

There are several important limitations in this study. First, Suffolk County represents only a small subset of medical malpractice plaintiff firms in the country, making generalizability of our results difficult. However, comparisons with larger studies show similarities in respect to specialties sued and claim types, providing some evidence of validity. Second, not all firms in Suffolk County may be listed in the Martindale-Hubbell directory or may operate a website. Third, website data accuracy is unregulated, and descriptions are completely self-reported. Thus, external validation of accuracy is difficult. Lastly, our methodology only focused on advertising within one area of law. Future work should investigate how plaintiff medical malpractice advertising practices online compared with other areas of law (e.g. divorce law or criminal law).

Medicine and law represent two largely self-regulated professions due to a combination of specialized knowledge and societal trust. As physicians and healthcare institutions expand advertising practices, ethical pitfalls arise, such as focusing on salient success cases without providing background probabilities of success.<sup>14</sup> Indeed, medical practitioners should be held to higher standards as well. The proposed Health Care Practitioner Transparency Act (Senate Bill 191 - 2017) would require all healthcare providers clearly present their credentials and licensure to patients, and prohibits advertisements including websites from offering deceptive or misleading information regarding healthcare services. Medical specialty boards are analogous to state bar associations in granting licensure based on a set competency. Further delineation of either legal or medical competency is not provided. Our results show similar pitfalls within the medical malpractice law advertising. For instance, high success rates are likely promoted by plaintiff medical malpractice firms despite the fact that the vast majority of these cases are unprosecuted. None of the websites analyzed in this cohort describe case success rate or probability

of success. Meritless medical malpractice lawsuits still account for 37% of all claims.<sup>12</sup> There is no evidence connecting plaintiff medical malpractice advertising practices to the overall prosecution of medical malpractice lawsuits, broader healthcare costs, or patient harm. However, we must consider the role medical malpractice advertising plays in driving a portion of costs in the U.S. healthcare system.<sup>15</sup>

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