



## Litigations amongst Female Surgeons: The Current Trends

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### Abstract

**Introduction:** Medical malpractice lawsuits place a heavy burden on a surgeon's career and often acquire media attention, potentially ruining ones professional reputation. Avoiding litigations is one goal of many practitioners, especially with the high cost of malpractice insurance. An increasing number of women are choosing a career in Surgery, which places them at increased risk of incurring malpractice claims.

**Objective:** We sought to evaluate the rate of litigation amongst women surgeons in the state of Florida and identify any trends regarding settlement amount, type of claim and subspecialty.

**Results:** Women surgeons and malpractice claims were identified using the American College of Surgeons database as well as the Medical Professional Liability (MPL) Claims Database. Our search yielded 269 practicing women surgeons, 53 of whom had been involved in lawsuits. There were 87 claims overall, of which 60% resulted in an indemnity payment. The average number of claims per surgeon was 0.32, with pediatric subspecialists facing the highest rate, at 0.75 claims per surgeon.

**Conclusion:** Women surgeons are at risk for litigation at some point during their career, particularly those practicing Pediatric Surgery. Further analysis of a male comparison arm will help elucidate the role of gender in malpractice litigation.

**Keywords:** Medical professional liability; Litigation; Claims database

### Introduction

A career in surgery is considered by most to be very rewarding, and increasing numbers of female medical students are choosing to pursue surgical residencies [1]. Reasons for this trend include recent work-hour limitations, expanded maternity leave and increasing numbers of female role models, support organizations as well as an increasing awareness of the gender gap [2]. Off-setting this shift in lifestyle improvement and career satisfaction however is the ever present potential for malpractice litigation, which is an important factor for many physicians-in-training making their final career decision. General Surgery and the surgical subspecialties are among the most highly litigated fields of medicine, and medical students may indeed be deterred from such a prominent field as surgery due to the risk of remedial action if an error were made in the perioperative period [3].

Florida in particular has higher rates of litigation than most states [4]. Furthermore, there is the option to go "bare," or not carry medical malpractice insurance, potentially leaving one bankrupt after a major lawsuit. Our goal with this study was to characterize the rates of malpractice claims against female surgeons in Florida in order to understand the risks faced by practitioners today.

### Methods

Using the American College of Surgeons "Find a Surgeon" database, we identified all female surgeons presently registered and practicing in the state of Florida [5]. We excluded residents and fellows from our analysis because their liability in the event of a malpractice suit varies depending on year of training and particular residency program. We then cross-referenced each surgeon with the Medical Professional Liability Reporting Claims Database [6]. The database includes claims made in the state of Florida from 1994 to the present. Data collected included physician subspecialty, physician DEA, number of litigations, injury severity, the year of occurrence, the year of report and indemnity paid.

### Results

Our search yielded 333 practicing female surgeons, residents and fellows in the state of Florida.

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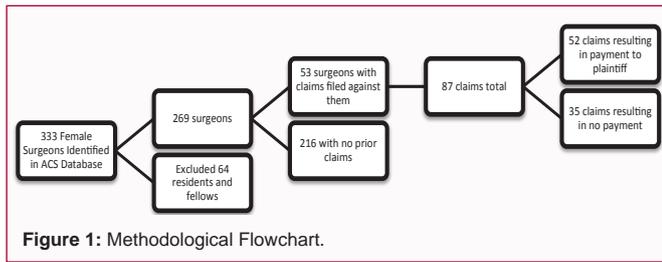


Figure 1: Methodological Flowchart.

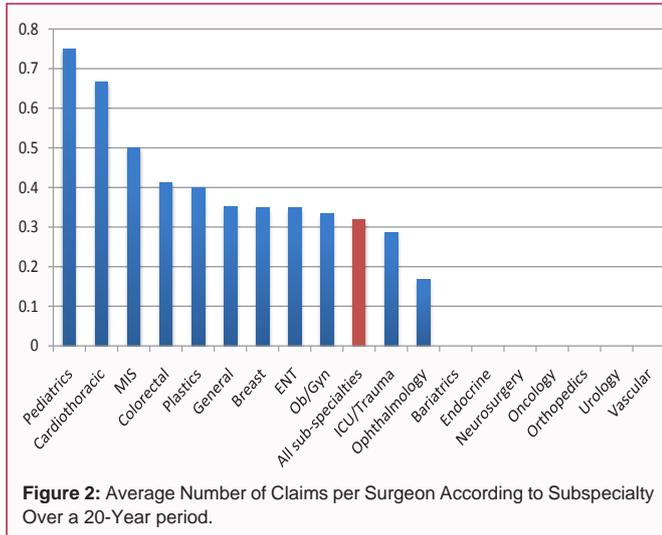


Figure 2: Average Number of Claims per Surgeon According to Subspecialty Over a 20-Year period.

We then excluded 64 surgical residents and fellows. Of the 269 physicians that were analyzed, 53 had been involved in lawsuits, with a total of 87 claims overall. The average number of claims per female surgeon in the state of Florida was 0.32, with 60% of all claims resulting in an indemnity payment to the plaintiff. The surgical subspecialty with the highest number of claims per surgeon was Pediatrics at 0.75 (p=0.02). Cardiothoracic and Minimally Invasive Surgery also had higher claims per surgeon at 0.66 and at 0.5 respectively, however these values weren't statistically significant. The average amount of indemnity paid per claim was \$139,392. Pediatrics and ENT had the highest payments per claim, at an average of \$274,108 and \$248,750, respectively. Among Minimally Invasive Surgery, Ob/Gyn and Trauma subspecialties, 100% of claims resulted in a payment, whereas among plastic surgeons only 20% of claims resulted in payment. The injury severity most likely to lead to litigation was death, followed by temporary minor injuries.

### Discussion

In this study we described characteristics of malpractice claims among female surgeons based on a state-wide, Medical Professional Liability Reporting Claims Database. From these data we observe that in Florida, pediatric surgery is a highly litigious surgical subspecialty, whereas other subspecialties such as neurosurgery and vascular surgery have no reported claims. This is somewhat unexpected, given past observations of malpractice claims by specialty. In a review of malpractice claims from a nationwide liability insurance database, Jena et al. [3] found that neurosurgery had the highest percentage of physicians facing malpractice suits annually. The study did not distinguish, however, between male and female surgeons.

Furthermore, our data show that indemnity payments in pediatric surgery are almost twice as high as the average amount across all subspecialties. A high percentage of injuries among pediatric patients

Table 1: Summary Statistics of Female Surgeons in Florida based on the American College of Surgeons Database.

Sub-specialty	Number of Surgeons
Bariatrics	2 (0.7%)
Breast	23 (8.6%)
Colorectal	17 (6.3%)
Cardiothoracic	3 (1.1%)
Endocrine	2 (0.7%)
ENT	23 (8.6%)
General	74 (27.5%)
ICU/Trauma	21 (7.8%)
MIS	6 (2.2%)
Neurosurgery	6 (2.2%)
Obstetrics/Gynecology	6 (2.2%)
Oncology	10 (3.7%)
Ophthalmology	18 (6.7%)
Orthopedics	3 (1.1%)
Pediatrics	16 (5.9%)
Plastics	25 (9.3%)
Urology	5 (1.9%)
Vascular	9 (3.3%)
<b>Total</b>	<b>269 (100%)</b>

resulted in permanent disability (83%), and the higher indemnity payments likely reflect the accumulated medical expenses over the course of the child's life. This correlates with known data regarding claims in pediatric medicine; however no studies to date have examined pediatric surgery specifically [7].

Lastly, we observed a relatively high percentage overall of indemnity payments made per total number of claims (60%). A previous analysis of malpractice claims across all medical and surgical specialties found that only 22% of claims resulted in a payment [3]. This discrepancy may be explained by the fact that we only considered the surgical subspecialties, which are by definition high-risk and therefore more likely to result in indemnity payments. It could also be explained by the fact that we confined our analysis to female surgeons. For reasons unclear, female surgeons may be more likely to incur claims resulting in indemnity payments. Regarding the role of gender in Florida surgery malpractice claims, the authors' analysis of a male comparison arm is currently underway and will shed light on the trends observed here.

Our study had several limitations. Firstly, we were unable to adjust for a particular surgeon's amount of time in practice, mainly because it was not consistently reported in the ACS database. One would expect subspecialties with a greater proportion of older physicians to have accrued more malpractice suits over the years, which would falsely elevate the rate of claims per surgeon. Conversely, a subspecialty with mostly young surgeons would appear to have a low rate of claims. Secondly, with such a small dataset, it is difficult to prove statistical significance. For example, there are only three female cardiothoracic surgeons in the state of Florida. Any trends observed among such a small cohort of practitioners could be due to sampling error.

### Conclusion

Female surgeons are at risk for litigation at some point during

**Table 2:** Characteristics of Malpractice Claims by Subspecialty.

Specialty	Number of claims	Average number of claims per surgeon	Average claim amount (USD)	Claims resulting in payment to plaintiff	Permanent claims	Claims following deaths
Bariatrics	0					
Breast	8	0.348	37,488	4 (50%)	3 (38%)	0 (0)
Colorectal	7	0.412	177,571	5 (71%)	4 (57%)	2 (29%)
Cardiothoracic	2	0.666	137,500	1 (50%)	2 (100%)	2 (100%)
Endocrine	0					
ENT	8	0.348	248,750	5 (63%)	7 (88%)	2 (25%)
General	26	0.351	127,852	15 (57%)	14 (54%)	7 (27%)
ICU/Trauma	6	0.286	117,194	6 (100%)	5 (83%)	4 (67%)
MIS	3	0.5	135,000	3 (100%)	2 (67%)	0 (0)
Neurosurgery	0					
Obstetrics/Gynecology	2	0.333	205,000	2 (100%)	1 (50%)	0 (0)
Oncology	0					
Ophthalmology	3	0.167	83,333	1 (33%)	2 (67%)	0 (0)
Orthopedics	0					
Pediatrics	12	0.75	274,108	8 (67%)	10 (83%)	3 (25%)
Plastics	10	0.4	7,700	2 (20%)	1 (10%)	0 (0)
Urology	0					
Vascular	0					
<b>Total</b>	<b>87</b>	<b>0.32</b>	<b>139,392.42</b>	<b>52 (60%)</b>	<b>51 (59%)</b>	<b>20 (23%)</b>

their career. In the state of Florida, female pediatric surgeons had the highest rates of litigation and the highest indemnity payments. Surgical subspecialties with the lowest rates of malpractice claims include neurosurgery and vascular surgery, among others. Methods to prevent litigations are a heavily debated topic, which requires further investigation as well as psychological analysis. The rate of litigations in females compared to males is also being studied, and a comparative analysis by the same authors is forthcoming. A career as a surgeon, no matter how highly sought after in the court of law, remains highly rewarding, and should not be negatively impacted by the potential for lawsuit.

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