Reviewer's report

Title: A comparison of medical litigation filed against obstetrics and gynecology, internal medicine, and surgery departments

Version: 2 Date: 10 December 2014

Reviewer: Atsushi Asai

Reviewer's report:

The research question the authors posed is well defined, but it is uncertain about the appropriateness of the methods employed and the soundness of the outcomes. Ethical arguments are lacking and their conclusions might not be justified from the medical ethics standpoint.

Major Compulsory Revisions (which the author must respond to before a decision on publication can be reached)

1 General comment

The main objective (research question), description, analysis, and discussion of this paper concerns lawsuit cases, and I am afraid that the paper doesn't relate directly to medical ethics issues. No sufficient and comprehensive ethical arguments exist. The authors should develop ethical discussions in both Introduction and Discussion.

2 Methods

The authors statistically compare three departments in order to obtain outcomes to support their hypothesis. However, it is doubtful that this comparison really makes it possible for them to tell us that OB-GYN doctors should be more careful about the duty to explain in the clinical setting than those in other specialties. They need to explain why. Can the differences among some specialties automatically lead to the conclusion that a specific specialty should or should not do a certain act.

Medical litigation case reports dealt with in this paper are rather old. I cannot understand why the authors did not include newer cases (2009-present). Explanation is needed.

Specialties such as internal medicine and surgery have many and diverse subspecialties and ethical and legal problems in them could be very different. The authors seem to disregard these differences and treat them as a homogeneous group. The authors should justify their decision and method in this regard. For examples, surgery could have more than 5 subspecialties and internal medicine could have much more.

The authors conducted multiple 3-group comparisons. Because of complicity in required statistical methods and difficulties in the interpretation of the outcomes
in analysis concerning more than 3 groups, it would be necessary that a statistician check the validity of the outcomes and judge the necessity of multivariate analysis.

3 Results

It would be preferable for the authors to present some details of relevant lawsuit cases they analyzed, as examples, to help the readers understand the results. What are most needed are some details showing what information OB-GYN doctors failed to present and what explanation the plaintiffs claimed in the court.

More detail explanation regarding what are really included in “Others” category is essential. For instance, even if the patients survived, the court decisions would significantly differ between serious injury and mild one, or between persistent disability and transient impairment.

4 Discussion

The reviewer thinks that from the medical ethical standpoint, the importance of the duty to explain to obtain patient’s informed consent has already and firmly been established. It would be difficult to accept the authors’ arguments that OB-GYN doctors should be more careful about the duty to explain in the clinical setting than those in other specialties because they are likely to be sued by their patients and defeated at the trial. From the viewpoint of medical ethics, the consequences of the trial are irrelevant and their claims are problematic. They must revise their arguments and conclusions.

The authors argue that in the OB-GYN lawsuit cases patients fail to accept the serious injury that had occurred and feel that they were not fully informed of the possibility of such an outcome. However, they did not present any other information that could support their inference. Relevant research outcomes and representative lawsuits cases should be added if possible.

The authors refer to differences in communication in patient-physicians relationships among medical specialties and suggest that the difference may cause various tendencies in lawsuits. They need to describe more about the difference of communication style depending on medical specialties, which is ethically important.

Level of interest: An article of limited interest

Quality of written English: Needs some language corrections before being published

Statistical review: Yes, but I do not feel adequately qualified to assess the statistics.

Declaration of competing interests:
I declare that I have no competing interests