



When Compensation Becomes Unsustainable: Rethinking Medical Liability in ENT

Commentary



Taner Kemal Erdağ

Private Practice, Otorhinolaryngology, İzmir, Türkiye

Keywords: Tonsillectomy, postoperative complications, malpractice, liability/legal, defensive medicine, otolaryngology, Türkiye

Recently, a compensation case filed on behalf of a child patient who developed cerebral palsy following a tonsillectomy operation in Gaziantep caused deep outrage and concern not only within the Turkish Otorhinolaryngology and Head and Neck Surgery [ear, nose, and throat (ENT)] community but also among other surgical branches. The court's decision to order the doctor to pay compensation exceeding 109 million TL (approximately USD 2.62 million) once again brought to the fore the risks and legal liabilities encountered in the practice of medicine. This incident not only affected the life of an ENT physician but also points to systemic problems that threaten the future of all surgical specialties. This commentary will address the concerns raised by the case, the existing legal and structural problems, and concrete proposals for resolving the situation.

1. Compensation Limits for Medical Malpractice and the Burden of Unlimited Liability

Medicine is a science that undertakes the sacred mission of protecting and improving

human health, but it is also inherently risky. It is well known that even simple medical procedures, such as intramuscular injections or urinary catheterisation, can rarely cause unexpected problems, let alone operations performed under local or general anaesthesia.

Tonsillectomy is one of the most commonly performed surgeries worldwide. While 49,500 tonsillectomies were performed in the United Kingdom between 2009 and 2010, this figure exceeds 700,000 in the United States. On the other hand, tonsillectomy is also one of the most frequently litigated surgical procedures in the ENT field, with bleeding being the most common cause of litigation (1). Bleeding is the most common complication encountered after tonsillectomy, and the incidence rate reported in the literature varies between 0.006% and 29.1%. Death is a very rare occurrence, but most of these cases develop secondary to bleeding complication, with an incidence reported between 1/7,132 and 1/170,000 (2).

ORCID IDs of the authors:

T.K.E. 0000-0001-5636-3343

Cite this article as: Erdağ TK. When compensation becomes unsustainable: rethinking medical liability in ENT. *Türk Arch Otorhinolaryngol.* 2025; 63(3): 110-112

Corresponding Author:

Taner Kemal Erdağ, Prof.;
taner.erdag@deu.edu.tr

Received Date: 21.09.2025

Accepted Date: 25.09.2025

Epub: 25.09.2025

Publication Date: 26.09.2025

DOI: 10.4274/tao.2025.2025-9-8



A tragic situation such as cerebral palsy following a tonsillectomy may be the result of very rare, unpredictable, or uncontrollable circumstances arising during the surgical process. Of course, the pain experienced by the patient and their family who are victims of such a situation cannot be compensated for by any amount of money. However, the court's punishing this tragedy with compensation that would ruin the doctor's life calls into question the balance of rights and justice. Material and moral compensation following medical malpractice is an important tool for redressing the victim's suffering (3). However, compensation amounts that are beyond the physician's ability to pay over their lifetime impair the sense of justice. Decisions that could provoke to the physician's financial and moral ruin and instill similar fear in all colleagues may become a deterrent to practising medicine.

In the United Kingdom, between 1995 and 2010, 34 cases involving tonsillectomy resulted in payments totalling £2.65 million (approximately 147,6 million TL), including compensation and court costs (1). The astronomical compensation of 109 million TL mentioned above far exceeds the total income a physician in Türkiye could earn throughout his/her professional career. This situation, when considered in conjunction with the fact that medical malpractice should not go unpunished, necessitates the search for a fair balance.

2. Defensive Medicine and Its Impact on Public Health

The most dangerous aspect of such decisions is the potential to set a precedent for similar cases in the future. The precedent-setting nature of court decisions may lead families facing similar situations to demand higher compensation. This will push physicians towards defensive medicine practices, discouraging them from accepting risky cases, avoiding surgical interventions even when necessary, or referring patients to other institutions. This, in turn, may result in patients not receiving timely treatment, an increase in complications, and rising costs in the healthcare system (4).

Even in surgical procedures such as tonsillectomy, which is frequently performed in childhood and generally considered a simple operation, the existence of astronomical compensation risks may discourage physicians from practising. Young physicians' motivation to choose surgical specialties may decrease. Examples of this have been clearly observed in our country over the past 10 years (5,6).

3. Expert Witness System

In our legal system, expert witness reports play the most critical role in medical malpractice cases. Expert witnesses must be specialists with the highest level of knowledge and experience on the subject, who are objective and impartial, and who are familiar with evidence-based and current

guidelines (3,4,7). There should be no suspicion among the parties to the case that the expert reports could have been prepared by individuals who are not experts in the field or who do not have sufficient knowledge on the subject.

4. Legislation and Compulsory Insurance

In Türkiye, there are annual compensation payment limits under the mandatory financial liability insurance for doctors. However, these limits are often unrealistic and are not sufficiently updated to keep pace with inflation. The fact that the insurance system provides more of a symbolic guarantee than protection against the risks doctors may encounter while practising their profession does not create a fair situation for either doctors or patients. Compensating patients and their families for damages is one of the fundamental aims of the law (3). However, placing the entire financial burden of this compensation solely on the shoulders of the physician necessitates a reassessment of the system as a whole. It is clear that the relevant legislation needs to be revised for this purpose. Solutions such as updating the mandatory financial liability insurance limits, the state assuming the burden of compensation above a certain ceiling, and the establishment of an independent "medical malpractice fund" could be considered (8,9).

5. Ethical and Social Dimension

In this case, the tragedy experienced by the victim's family should not be overlooked. Cerebral palsy is a condition that requires lifelong care and is not only emotionally devastating for families but also places a significant financial burden on them. However, the sense of justice requires that the decision be proportionate. Even if there was a mistake, the punishment should be corrective and balanced, not driving the doctor into financial and emotional ruin. Maintaining public trust in doctors is critical to ensuring that doctors can practise their profession with scientific autonomy, not fear.

Proposed Solutions

This incident reflects systemic deficiencies beyond an individual physician's error. The recommendations can be summarised as follows:

Improvement of the Expert Witness System: In medical malpractice cases, expert witnesses must be selected from among specialists who are directly familiar with the subject matter of the case and who are recommended by relevant branch associations or professional chambers.

Legal Reform: Compensation should be regulated within reasonable limits, and insurance coverage should be expanded.

Risk Sharing: Public authorities and professional organisations could establish funds to protect physicians in high-risk situations.

Education and Prevention: Standard protocols aimed at reducing complication rates should be established in medical school and postgraduate specialisation training. Educational institutions and professional organisations should take a leading role in the transparent and methodologically sound development and updating of evidence-based clinical guidelines and ensure their effective dissemination (10).

Database: Malpractice cases could be collected in a national database for analysis and studies could be conducted on the systematic reduction of risks.

Footnotes

Acknowledgment: The author used DeepL (DeepL SE, Cologne, Germany) for translation from Turkish to English and QuillBot (QuillBot Inc., Chicago, USA) for grammar and language editing to enhance readability. These tools were used solely for linguistic improvement, without generating scientific content.

Financial Disclosure: The author declare that this study has received no financial support.

References

1. Mathew R, Asimacopoulos E, Walker D, Gutierrez T, Valentine P, Pitkin L. Analysis of clinical negligence claims following tonsillectomy in England 1995 to 2010. *Ann Otol Rhinol Laryngol*. 2012; 121: 337-40. [Crossref]
2. Windfuhr JP. Serious complications following tonsillectomy: how frequent are they really? *ORL J Otorhinolaryngol Relat Spec*. 2013; 75: 166-73. [Crossref]
3. Hızal A, Çınarlı S. The scope of the compensation in the full damage cases that arising from medical practice. *İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi*. 2015; 2: 143-85. [Crossref]
4. Toker A, Shvarts S, Perry ZH, Doron Y, Reuveni H. Clinical guidelines, defensive medicine, and the physician between the two. *Am J Otolaryngol*. 2004; 25: 245-50. [Crossref]
5. Küçük M. Defensive medicine among obstetricians and gynaecologists in Turkey. *J Obstet Gynaecol*. 2018; 38: 200-5. [Crossref]
6. Yıldız MS, Khan MM. Factors affecting the choice of medical specialties in Türkiye: an analysis based on cross-sectional survey of medical graduates. *BMC Med Educ*. 2024; 24: 373. [Crossref]
7. Eloy JA, Svider PF, Patel D, Setzen M, Baredes S. Comparison of plaintiff and defendant expert witness qualification in malpractice litigation in otolaryngology. *Otolaryngol Head Neck Surg*. 2013; 148: 764-9. [Crossref]
8. Kachalia AB, Mello MM, Brennan TA, Studdert DM. Beyond negligence: avoidability and medical injury compensation. *Soc Sci Med*. 2008; 66: 387-402. [Crossref]
9. Mello MM, Kachalia A, Studdert DM. Administrative compensation for medical injuries: lessons from three foreign systems. *Issue Brief (Commonw Fund)*. 2011; 14: 1-18. [Crossref]
10. Sharma S, McKenna MK, Brenner MJ. The evolving legal standard for medical malpractice: implications for otolaryngology-head and neck surgery. *Otolaryngol Head Neck Surg*. 2025; 173: 1028-30. [Crossref]