

Medicolegal Issues in Screening for Retinopathy of Prematurity

Misconceptions and realities about legal liability:
How do we ensure that everyone is treated fairly?

BY FRANCO M. RECCHIA, MD

Retinopathy of prematurity (ROP) is a leading cause of irreversible visual impairment in the United States, affecting nearly 16,000 premature infants each year.¹ Although the screening guidelines for ROP have been expanded to include an even larger number of infants, the professional workforce available to perform the screenings and treat the infants is decreasing. It is believed that roughly half the number of ophthalmologists are performing ROP screenings today as compared with 10 to 15 years ago.

Legal liability is often cited as the primary reason that doctors would prefer not to perform ROP screening. In fact, some retina specialists maintain a policy of not seeing any patients below a certain age due to medicolegal concerns. The reasons for this practice are several. First, the statute of limitations of liability for a child can be nearly 20 years in certain states. This exposes the physician and the practice to a large liability for a long period of time. Additionally, jury awards for ROP malpractice have been some of the largest granted in medicine; doctors feel incompletely covered with malpractice insurance, and their affiliated hospitals may or may not indemnify them or augment their insurance coverage.

In addition to the legal implications, many ophthalmologists stay away from ROP screening and treatment due to the hardships often involved in these cases. They frequently require extensive travel to hospitals and clinics in underserved areas, and reimbursements for these services have declined. The fact that many premature infants often are born into a lower socioeconomic group presents its own set of challenges. Lack of understanding from parents or guardians, frequent relocations, and changes in guardianship of the child all may make it difficult to ensure compliance with treatment and follow-up. The legal implications, coupled with the physical, emotional, and social challenges of dealing with the comorbidities associated with prematurity, have caused many specialists to rethink their desire to perform ROP screening.

The risks involved with performing ROP screenings are a mix of reality and exaggerated fears. Although, as stated above, there are challenges in ensuring proper follow-up, a degree of risk is present in everything a physician does, and ROP screenings are necessary and valuable. ROP detected and treated early is one of the most cost-effective preventions in all of medicine.

While an initial glance at a jury award for ROP malpractice can be alarming, more thorough examination can alleviate some of the fear. When a jury awards a large sum in favor of a patient, the burden of payment is generally divided among the hospital, the retina specialist, and the pediatrician, reducing the liability to any one entity.

MANAGING LEGAL LIABILITY ISSUES

In our institution, we have been successful in establishing procedures and systems that significantly reduce our exposure to risk. First, we have developed multiple layers to check and confirm that patients receive examinations and follow-up treatment when required. We follow a protocol of notifying parents, guardians, hospitals, pediatricians, and



Figure 1. Image taken with the RetCam.

if needed, social services when a patient fails to show for an appointment. When phone calls alone are not sufficient, we send certified letters to both patients and pediatricians. These steps not only ensure the continuity of care but also can be provided as evidence in the case of legal investigation. While no system is foolproof, we have found this to work well for us.

RETCAM IN THE NICU

In addition, we use the RetCam Digital Imaging System (Clarity Medical Systems, Pleasanton, CA; Figure 1) for a number of reasons. First and foremost, using the RetCam improves patient care by providing objective documentation of a specific condition at a specific point in time. This allows confirmation of diagnosis, comparison of disease progression or response to treatment, and consultation with colleagues. The objective documentation provided by digital images is invaluable in cases of rare or complicated diseases. Comparison of images from the RetCam taken prior to treatment with those taken after treatment provide a way to evaluate treatment success or the need for additional treatment and follow-up. This creates a record to show that the lesion warrants treatment, and images taken afterward demonstrate that treatment was performed appropriately.

Most valuable when discussing the medicolegal issue is the permanent documentation provided by the RetCam images. No longer is it necessary to rely on physician notes and drawings or evaluations made in charts. The stored images allow the retina specialist to share with others the state of a pathology at a certain point in time, as well as its progression. This evidence can support the decision for a chosen treatment, as well as a decision not to treat in some cases.

CONCLUSION

The combination of multi-layered protocol for maintaining contact with patients and the objective documentation provided by the RetCam help mitigate the risks involved with screening and treatment of ROP. While some risk will always exist, it must be balanced against the enormous service being performed for these patients. ■

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1. 1.Facts about Retinopathy of Prematurity (ROP). National Institutes of Health Web site. <http://www.nei.nih.gov/health/rop/rop.asp>. Accessed March 2, 2010.

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