Chapter 20
Refractive Corneal Surgery

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Introduction

Few ophthalmic subspecialties generate as much public enthusiasm and criticism as refractive eye surgery: Tiger Woods' professional success after his refractive surgery may lend a certain glamour to LASIK (laser-assisted in situ keratomileusis), but websites devoted to “LASIK disasters” abound. In this chapter, a refractive surgeon with extensive research and clinical experience and a health care risk manager assess how refractive surgery has fared in the courtroom.

To provide the reader with an overview of the topic of medical malpractice and refractive surgery, we present overall ophthalmic claims experience and compare the incidence of refractive surgery claims to that of other types of eye cases (e.g., cataract surgery). Then each of the three most common refractive surgery procedures—radial keratotomy (RK), photorefractive keratectomy (PRK), and LASIK—are analyzed from a risk management and professional liability perspective, followed by a discussion of recent cases with multimillion dollar awards that have garnered national attention. The chapter concludes with a review of pertinent literature and a discussion of how to minimize the risks of a claim.

Ophthalmic Mutual Insurance Company’s Overall and Subspecialty Claims Statistics

Formed by members of the American Academy of Ophthalmology (AAO) in 1987, Ophthalmic Mutual Insurance Company (OMIC) now insures about 35% of ophthalmologists who can choose their own liability carrier. Through 2005, OMIC had 2008 closed cases, of which 424 (21%) resulted in an indemnity payment. Payments ranged from a low of $500 to a high of $1,800,000, with a median payment of $75,000. Overall, OMIC has paid $55,950,884 in indemnity payments on behalf of its insured ophthalmologists.

OMIC tracks claims by ophthalmic procedure and subspecialty and is thus in a position to respond to those ophthalmologists who
believe that refractive surgeons have more claims and larger indemnity payments than ophthalmologists who do not perform refractive surgery. This impression is reinforced by articles about the large awards in some of the recent LASIK cases, leading nonrefractive surgeons to surmise that they are not as great a risk to an insurance company and should, therefore, be charged lower premiums. A look at the data challenges some of these assumptions.

Figure 20.1 graphs refractive and cataract claims between 1998 and 2004 and shows that cataract consistently and significantly exceeds LASIK in number of claims. Figure 20.2 compares the incidence or frequency of claims filed from 2002