



Study: Just 1 in 5 Medical Malpractice Cases End in Settlements for Patients

By Julie Kent | August 19, 2011

Only one in five malpractice claims against doctors leads to a settlement or other payout. This is according to the results of the most comprehensive study of these claims in twenty years.

Each year, about one in 14 doctors gets sued. The study also found that most physicians and nearly all surgeons will face at least one malpractice lawsuit in their careers.

While doctors and insurers are winning most of the lawsuits, it is still a lot of fighting to endure, and study co-author Amaitabh Chandra, an economist and professor of public policy at Harvard Kennedy School of Government, says that it represents a significant emotional cost for doctors. He said:

"They hate having their name dragged through the local newspaper and having to go to court."

While it might appear that the study supports a common opinion among doctors that most malpractice lawsuits are baseless, the study's authors say that the truth is more complicated. The researchers noted influential research out of New York state that concluded that just a small fraction of patients harmed by medical mistakes actually file claims.

Trial lawyers say that it is difficult to take a malpractice case to court. The lawsuits tend to be filed on contingency, which means that the lawyers only get paid if they win the case. The upfront costs are high for hiring expert witnesses and preparing a case. On the other hand, doctors, hospitals and their insurers tend to have significant money and legal firepower. In addition, some states have caps on malpractice awards. Taking this into consideration, it's no wonder that usually only the very strong cases with expected high payouts are ever even pursued.

The researchers also said that given the cost and difficulties of winning, it's not likely that the cases are filed on a greedy whim.

The study was published in the New England Journal of Medicine online on Wednesday. The research team went to one of the country's largest malpractice insurers and then looked at data on 41,000 physicians that bought coverage between 1991 and 2005. They were only able to obtain the data by agreeing not to disclose the name of the insurer, which represents only 3 percent of the U.S.'s doctors, but operates in all 50 states.

The study also found:

- About 7.5 per cent of doctors have a claim filed against them each year. That finding is a little higher than a recent American Medical Association survey, in which 5 per cent of doctors said they had dealt with a malpractice claim in the previous year.
- Fewer than two per cent of doctors each year were the subject of a successful claim, in which the insurer had to pay a settlement or court judgment.
- Some types of doctors were sued more than others. About 19 per cent of neurosurgeons and heart surgeons were sued every year, making them the most targeted specialties. Pediatricians and psychiatrists were sued the least, with only about three per cent of them facing a claim each year.
- When pediatricians did pay a claim, it was much more than other doctors. The average pediatric claim was more than \$520,000, while the average was about \$275,000.