

Study: Only 1 in 5 medical malpractice cases pay

August 17 2011, By MIKE STOBBE , AP Medical Writer

(AP) -- Only 1 in 5 malpractice claims against doctors leads to a settlement or other payout, according to the most comprehensive study of these claims in two decades.

But while [doctors](#) and their insurers may be winning most of these challenges, that's still a lot of fighting. Each year about 1 in 14 doctors gets sued, and most physicians and virtually every surgeon will face at least one malpractice lawsuit in their careers, the study found.

That represents a significant emotional cost for doctors, said study co-author Amitabh Chandra, an economist and professor of public policy at the Harvard Kennedy School of Government

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

The study might seem to support a common opinion among doctors that most [malpractice lawsuits](#) are baseless, but the authors said the truth is more complicated than that.

They noted influential earlier research in New York state concluding that just a tiny fraction of the patients harmed by [medical mistakes](#) actually file claims.

Trial lawyers say it's tough to take a malpractice case to court. Suits tend to be filed on contingency, meaning lawyers collect only if they win.

There are very high up-front costs for hiring expert witnesses and preparing a case. Doctors, hospitals and their insurers often have significant money and legal firepower. Some states also have caps on malpractice awards. So, usually, only very strong cases with high expected payouts are pursued.

Given the expense and other difficulties involved in winning, it's doubtful most claims are filed on a greedy whim, the researchers said.

"A lawyer would have to be an idiot to take a frivolous case to court," Chandra said.

The study was published online Wednesday by the [New England Journal of Medicine](#).

The research team turned to one of the nation's largest national malpractice insurers, analyzing data for about 41,000 physicians who bought coverage from 1991-2005. The researchers could only get the data by signing an agreement not to identify the insurer, so they wouldn't disclose the name of the company.

The insurer represents only about 3 percent of the nation's doctors, but it operates in all 50 states. The average payouts were about the same as seen in the government-created National Practitioner Data Bank, which records payouts but doesn't record all claims filed.

The study found:

-About 7.5 percent 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 percent of doctors said they had dealt with a malpractice claim in the previous year.

-Fewer than 2 percent 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 percent 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 3 percent 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.

"Jurors' hearts cry out for injured patients, especially when kids are involved," Chandra said. The amount attached to a pediatric case also rises because many more years of suffering are involved than if the victim is middle-aged or elderly, experts said.

The study was funded by the RAND Institute for Civil Justice. Chandra also received funding from the National Institute on Aging, which has been interested in [malpractice](#) as a possible driver of health-care costs.

The study echoes earlier research on which specialists get sued most often, said Dr. Sidney Wolfe, director of Public Citizen's Health Research Group, a Washington, D.C.-based consumer advocacy group.

"The thing that's disappointing about their study is they don't focus on what can be done to prevent people from being injured," said Wolfe, who has pushed for more aggressive policing of doctors by state medical licensing boards.

More information: New England Journal: <http://www.nejm.org>

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