Most Doctors Face a Malpractice Claim by Age 65

VITALS

Major Finding: Among the 7.4% of physicians who face medical malpractice claims every year, only 1.6% result in compensation paid to the plaintiff.

Data Source: An analysis of the malpractice claims of 40,916 physicians from 25 different specialties, from 1991 to 2005.

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Although physicians in high-risk specialties face a near certainty of a malpractice claim at some point in their careers, only a small minority will end up making an indemnity payment to a patient.

The probability of facing a malpractice claim increases with length of time in practice, based on data from 1991 through 2005 from a large national malpractice carrier insuring more than 40,000 physicians in all 50 states and the District of Columbia.

Among physicians in high-risk specialties such as neurosurgery, general surgery, and obstetrics/gynecology, an estimated 88% were projected to face their first claim by age 45 and an estimated 99% by age 65. In low-risk specialties such as family medicine, pediatrics, and psychiatry, 36% of physicians were projected to face their first claim by age 45 years and 75% by age 65 years, Dr. Anupam Jena of Harvard Medical School and his colleagues wrote.

In contrast, the projected rates of indemnity claims paid to plaintiffs were lower. By age 45, 33% of physicians in high-risk specialties were projected to have had a claim paid, rising to 71% by age 65 years. For physicians in low-risk specialties, 5% were projected to have had a claim paid by age 45 years, rising to 19% by age 65 years (N. Engl. J. Med. 2011;365:629-36).

"If you've hit 65 and you haven't had a claim, that's rare; that's almost impossible in our data," Dr. Jena said in an interview, adding that high-risk specialties often come with higher salaries, which could be what balances out the risk factor for physicians.

Overall, 7.4% of physicians were sued for malpractice each year of the study, with 1.6% having an indemnity payment made each year. Specialties in which physicians were more likely to face a malpractice claim were not the ones where indemnity payments were most prevalent, Dr. Jena and his coauthors wrote.

For example, 19.1% of neurosurgeons faced a claim each year, according to the analysis, compared to 3.1% of pediatricians. However, the average indemnity payment for neurosurgeons was $344,811, lower than the average of $520,924 for pediatricians.

While few claims resulted in payment, researchers said they were surprised by how many physicians face malpractice claims every year.

"A lot of those claims do not resolve in a payment to the patient, but they still involve significant monetary costs to both the physician and the insurer," Dr. Jena said. "The physician has loss of productivity because they're not able to see patients as they defend cases … and then there are all sorts of nonmonetary costs that we simply cannot measure," Dr. Jena said in an interview.

Among all specialties, neurosurgery had the yearly highest risk of being sued (19.1%), followed by thoracic-cardiovascular surgery (18.9%), and general surgery (15.3%). Specialties with the lowest yearly risk of facing being sued included psychiatry (2.6%), pediatrics (3.1%), and family medicine (5.2%). The average payment for all specialties was $273,887.

Some lawmakers and health care organizations have advocated for national medical malpractice reform, or tort reform, as a means of lowering health care costs; California and Texas already have $250,000 caps noneconomic damages. However, there's little evidence that proves these measures are lowering health care costs. Even without tort reform, Dr. Jena said that he believes the best solution is one that roots out frivolous claims. ■