



## Doctors Face High Risk of Malpractice Claims

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Almost every physician in the U.S. will face a [malpractice](#) claim during his or her career, according to a new study published in the New England Journal of Medicine.

Researchers led by Dr. Anupam Jena, a physician at Massachusetts General Hospital and Harvard Medical School, analyzed malpractice data over a 14-year period for all physicians covered by a large malpractice insurance provider. They estimated more than 75 percent of doctors in specialties with a low risk of malpractice and 99 percent of doctors in high-risk practices will be sued.

"If you consider a doctor who is 30 years old and just starting a career and in a high-risk specialty, there is about a 100 percent chance that by the age of 65 he will have faced a claim," said Jena. "We find that across all specialties, the annual risk of a claim is substantial -- 7.4 percent of all physicians had a malpractice claim every year during the study period."

The study also found that while the risk of a malpractice claim is high, about 80 percent of claims never result in any payment to plaintiffs. Average payments ranged from \$117,832 for dermatologists to \$520,923 for pediatrics.

Neurosurgeons, thoracic/cardiovascular surgeons and general surgeons face the highest risk of a malpractice claim, while general practitioners, [pediatricians](#) and psychiatrists face the lowest risk.

### Emotional Cost Higher Than Monetary Cost

While the monetary costs of claims are low compared to risks, Jena said doctors pay an extremely high price in other ways.

"There are substantial costs associated with those claims," Jena said. "There are the costs of defending the claim [and] the losses in productivity while doctors spend time with their defense. Patients may suffer by not being able to see their doctors, and there also [are] the effects of stress and potential

damage to reputations.

Dr. Jeffrey Segal, who is a neurosurgeon and an attorney, said he was sued once in his career for what he believes was a frivolous reason. Even though the suit was dropped, Segal spent two long years defending himself and paying a big emotional price.

"I never felt as if I won anything. It felt as if I lost," he said.

Segal later founded Medical Justice, a company that provides services to help doctors fight frivolous lawsuits.

"Once a doctor has been sued, we all vow implicitly we never want to go through that again," he said.

One surgeon, who asked for anonymity, said while he hasn't been sued, he's faced the threat of a malpractice claim, which can be just as stressful. He's received a letter from an attorney requesting medical information, often a preliminary step before a claim.

"I was always thinking, 'What did I do wrong?'" he said.

The looming specter of malpractice claims is something most doctors can't ignore.



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"It's not crippling, but it's always in the back of our minds," the surgeon said.

"It's a tremendous problem in terms of the psychology of physicians and medical practice," said Marshall Kapp, director of the Center for Innovative Collaboration in Medicine and Law at Florida State University College of Medicine in Tallahassee, Fla. "It's also an enormous burden in terms of the impact of how doctors relate to patients. It makes doctors more wary and less willing to engage patients as friends than as potential adversaries."

One of the outcomes of the high risk of malpractice claims is the practice of defensive medicine, or the use of tests and other medical measures as protection against lawsuits. Experts disagree on how rampant defensive medicine is.

"There's always been a concern among doctors, policymakers and researchers about defensive medicine, but the evidence it exists has been quite modest," Jena said.

"I think there's pretty good evidence that doctors will recommend things to patients based largely on legal anxieties rather than solely on what the doctor feels is in the best interest of the patients," said Kapp.

Segal mentioned one doctor who was sued who said he would practice as much defensive medicine as necessary to avoid facing legal action.

"He said he will scan patients until they glow to make sure he doesn't miss anything," Segal said.

### Not an Easy Fix, Say Experts

Experts say the malpractice system sorely needs reform to be fair to doctors as well as [patients who have been harmed](#) and deserve compensation.

"One thought I have that's been offered up by others is the notion of alternative dispute resolution mechanisms," said Jena. "The point is to identify malpractice [claims](#) that have merit and distinguish them from those that aren't meritorious, but do it quickly."

"What I would advocate would be a move toward a health court system to take it out of the traditional court system -- almost like a no-fault system," said Segal.

But the American Association for Justice, a group that says it fights for justice for people harmed by negligence or misconduct, believes the traditional court system is the best way for injured patients to get justly compensated.

"A strong civil justice system offers injured patients the ability to hold negligent providers accountable and increases patient safety to help prevent negligence before it occurs," the group's president, Gary M. Paul, said in a statement. "Instead of allowing insurance companies and tort reform groups to perpetuate these myths, we should focus on patient safety as a proven way of reducing claims and saving lives."

Segal, however, believes fixing the malpractice system can also help reign in health care costs.

"The real challenge is trying to wrap our heads around defensive medicine," he said. "If we spend less on that, a lot of money could be left over for other things."

