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Small share of doctors account for bulk of malpractice payouts

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January 27, 2016

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Most doctors are rarely if ever accused of malpractice. But of those who are, there are a small number of serial offenders.

According to a [paper](#) published Wednesday in the New England Journal of Medicine, just 1 percent of American doctors can take credit for a whopping 32 percent of legal claims successfully brought against medical practitioners.

Partially that's because some specialties are riskier than others. A neurosurgeon is more likely to cause damage while operating on someone's brain than a family doctor is while performing a routine check-up.

But the study shows that there's more to the story. Even within high-risk specialties, there is still a handful of frequent fliers who get sued more than once, and who are responsible for a disproportionate number of malpractice claims.

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The idea of the mistake-prone physician is hardly new. In ancient Babylon, a doctor who accidentally killed a patient — or even just took out an eye — had his hands cut off as punishment.

Now, doctors might have to pay hundreds of thousands of dollars in damages. But many keep practicing after a legal case. And there hasn't been much research about the characteristics of those doctors who do get sued, and whether they tend to be the same doctors over and over again.

"The policy-relevant question is: Can we identify these guys?" said David Studdert, a medical law expert at Stanford Law School and the lead author of the study.

Studdert and his team used a [database](#) set up by Congress that tracks all malpractice claims in which the patient ended up being paid. They looked at more than 66,000 cases against some 54,000 physicians from 2005 to 2014, and found that each time a doctor got sued, the likelihood that he or she would be sued again went up.

It doesn't necessarily mean that those are worse doctors, though.

"Maybe people who get sued are doing something wrong and continue to do something wrong," said Marshall Kapp, director of the Center for Innovative Collaboration in Medicine and Law at Florida State University. "But another explanation is that certain doctors are willing to take on riskier patients and do riskier interventions to their patients."

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Studdert conceded the point, but said it still doesn't explain the whole phenomenon. "The obvious candidate is that they deliver substandard care."

Studdert's team also found that male doctors were more likely to be sued than their female counterparts — as were more experienced physicians, and those with osteopathic medicine degrees (as opposed to MDs).

For Dr. Anupam Jena, a health care economist at Harvard who studies malpractice, this is the most up-to-date and comprehensive study on this topic. "It's an important first step." But, he noted, there are still a lot of unanswered questions.

"Is there any evidence of other disciplinary action? Can we link these data to other measures of quality, such as patient outcomes?"

With that information, health care economists hope that they can develop interventions that mitigate the risks posed by claim-prone physicians — but that's still a long way off. "What this study does," said Studdert, "is shine a light on the problem."

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