

Study: 4 in 10 medical malpractice cases groundless

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About 40% of the medical malpractice cases filed in the United States are groundless, according to a Harvard analysis of the hotly debated issue that pits trial lawyers against doctors, with lawmakers in the middle. Many of the lawsuits analyzed contained no evidence that a medical error was committed or that the patient suffered any injury, the researchers reported.

The vast majority of those dubious cases were dismissed with no payout to the patient. However, groundless lawsuits still accounted for 15% of the money paid out in settlements or verdicts.

The study's lead researcher, David Studdert of the Harvard School of Public Health, said the findings challenge the view among tort reform supporters that the legal system is riddled with frivolous claims that lead to exorbitant payouts.

"We found the system did reasonably well in sorting the good claims from the bad ones, but there were problems," he said.

However, the American Medical Association, which favors caps on malpractice awards, called the study proof that a substantial number of meritless claims continue to slip through the cracks, "clogging the courts" and forcing doctors to waste time defending them, association board member Dr. Cecil Wilson said in a statement.

The findings were published in Thursday's New England Journal of Medicine.

The study found 3% of claims analyzed were filed by patients who had no injury. Of the claims that involved injuries, two-thirds were caused by medical error. But the remaining injury claims, or 37%, lacked evidence of a medical mistake, and most of those — 72% — were thrown out or otherwise resolved without a payout to the patient.

Altogether, the Harvard researchers reviewed 1,452 malpractice claims randomly selected from five insurance companies. The cases were resolved — meaning they ended in a verdict, a settlement or a dismissal — between 1984 and 2004. The claims resulted in a combined \$449 million in verdicts and settlements.

The researchers examined medical records, depositions and court transcripts to determine if the patients were injured and whether the injury was due to a medical error.

In one instance, a young woman with no family history of breast cancer underwent routine breast exams for four years and came back with a clean bill of health. But doctors later found she had breast cancer that had spread to other parts of the body.

The researchers determined the case did not involve medical error because proper procedures were followed. The woman filed a malpractice claim and received an undisclosed settlement.

The study also confirmed that defending a claim is expensive and long, taking an average of five years to resolve. It also found that for every dollar awarded to patients, about half went to cover lawyers' fees and other expenses.

Chris Mather, a spokeswoman for the Association of Trial Lawyers for America, said the study was biased because data was taken from insurers, which sometimes are the defendants in malpractice suits.

The debate over malpractice litigation simmered in Congress this week when Senate Democrats defeated a pair of Republican-backed bills aimed at limiting how much pain-and-suffering damages juries can award in malpractice cases. Similar legislation already passed the House.

George Annas, a Boston University bioethicist who had no role in the study, said he was not surprised by the findings. Many personal injury attorneys receive a contingency fee — meaning they get paid only if they win — and will not go to court with a baseless lawsuit, Annas said.

“There’s really no motivation to bring a frivolous lawsuit,” he said. “It’s not worth their time and effort.”

Among the findings:

- An overwhelming number of malpractice claims (97 percent) involved a severe disability or death. Seventy-three percent of all of the injury claims that were due to medical error were settled with a payment.
- In about a quarter of cases where a groundless claim was settled, the average payout was lower than that given to a legitimate claim (\$313,000 vs. \$521,000).