Medical Malpractice

Recent trends and predictions for the future

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The ongoing debate over medical malpractice litigation in the US

• Physicians routinely identify malpractice as a first-order problem in US healthcare
  – Argue the system can’t distinguish true negligence from bad outcomes
  – Drives up spending by creating incentives for defensive medicine

• Others claim the issue is overstated
  – Point out that malpractice costs are small compared to aggregate healthcare costs
Today’s talk

• Review of research on malpractice
  – Frequency of suits by specialty
  – Recent trends
  – Spending and lawsuit risk

• Tort reform
  – What does it do?
  – Future prospects
Malpractice risk by physician specialty


The NEW ENGLAND JOURNAL of MEDICINE
The lifetime risk of a claim is high even for low-risk specialties

Claims take an extraordinarily long time to resolve

Time To Resolution Of Malpractice Claims, By Severity Of Alleged Patient Injury

- Fatality or permanent injury
- Temporary injury
- Emotional injury only

Seth A. Seabury et al. Health Aff 2013;32:111-119
The average physician spends a significant portion of their career with an open malpractice claim

Proportion Of A Physician’s Career Spent With An Open Malpractice Claim, By Physician Specialty.

Seth A. Seabury et al. Health Aff 2013;32:111-119
Higher spending is associated with lower lawsuit risk

Physicians who spend more face fewer suits, on average

Malpractice from a physician’s perspective

• While the risk of payment is low, the risk of a suit is high

• Most physicians experience a claim at some point in their career
  – Tend to take years to resolve

• Cost of the system is high
  – Overhead of $1-$3 per every dollar of compensation

• Argues in favor of reform
Tort reform

• Active at the state level
  – Federal prospects have been dim for the past 10 years
  – New activity under new administration

• Most physician groups push for noneconomic damage caps
  – What are the implications for physicians?
  – What are the implications for patients?
States have been aggressive passing damage caps


Noneconomic caps reduce paid claims by around 15% on average

Estimated Impact Of Noneconomic Damages Caps On Average Medical Malpractice Payments, By Physician Specialty

**Estimated Impact Of Noneconomic Damages Caps On Average Medical Malpractice Payments, By Cap Size And Physician Specialty**

<table>
<thead>
<tr>
<th>Specialty</th>
<th>Average payment ($)</th>
<th>Effect on average indemnity payment of:</th>
<th></th>
<th></th>
<th></th>
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<th></th>
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<th>pvalue</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>$500,000 cap</td>
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<td>$250,000 cap</td>
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<tr>
<td></td>
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<td>Effect</td>
<td>Dollars</td>
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<td>Dollars</td>
<td>Percent</td>
<td>pvalue</td>
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<tr>
<td>All specialties</td>
<td>293,645</td>
<td>−17,866</td>
<td>−6.1</td>
<td>0.18</td>
<td>−59,331</td>
<td>−20.2</td>
<td>&lt;0.01</td>
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<tr>
<td>General surgery</td>
<td>267,007</td>
<td>−27,052</td>
<td>−10.1</td>
<td>0.09</td>
<td>−38,135</td>
<td>−14.3</td>
<td>0.01</td>
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<td>Internal medicine</td>
<td>268,900</td>
<td>−40,232</td>
<td>−15.0</td>
<td>0.03</td>
<td>−51,225</td>
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<td>Obstetrics and gynecology</td>
<td>376,845</td>
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<td>−17.3</td>
<td>0.06</td>
<td>−124,005</td>
<td>−32.9</td>
<td>&lt;0.01</td>
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<tr>
<td>Radiology</td>
<td>271,760</td>
<td>−4,705</td>
<td>−1.7</td>
<td>0.86</td>
<td>−37,810</td>
<td>−13.9</td>
<td>0.09</td>
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<tr>
<td>Surgical subspecialties</td>
<td>259,228</td>
<td>2,542</td>
<td>1.0</td>
<td>0.90</td>
<td>−35,717</td>
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<td>&lt;0.01</td>
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There are reasons to be concerned about the fairness of noneconomic damage caps


**EXHIBIT 4**
Reductions in Noneconomic Damages Under MICRA Cap, By Severity of Injury, 1985–2002

<table>
<thead>
<tr>
<th>Severity of injury</th>
<th>Mean reduction</th>
<th>Median reduction</th>
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<tbody>
<tr>
<td>Temporary</td>
<td></td>
<td></td>
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<tr>
<td>Permanent minor</td>
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<tr>
<td>Significant</td>
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<tr>
<td>Major</td>
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<tr>
<td>Grave</td>
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<tr>
<td>Death</td>
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</tbody>
</table>

**SOURCE:** Authors’ analysis of data published by California Jury Verdicts Weekly.
**NOTE:** MICRA is Medical Injury Compensation Reform Act.

David M. Studdert et al. Health Aff 2004;23:54-67
In summary

• Malpractice claims are relatively common but payments are rare

• Suits are time consuming and impose significant burden on physicians

• States have been aggressive in pursuing malpractice reforms
  – Tend to benefit some specialties more than others

• Prospects for federal reform have gone up
  – But probably still unlikely
  – Physicians may be better off pushing for alternative reform proposals
    ♦ Safe harbors