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## Negligent Care and Malpractice Claiming Behavior in Utah and Colorado

Studdert, David M. LLB, ScD, MPH; Thomas, Eric J. MD, MPH; Burstin, Helen R. MD, MPH; Zbar, Brett I.W. BA; Orav, E. John PhD; Brennan, Troyen A. MD, JD, MPH

### Abstract

#### Background:

Previous studies relating the incidence of negligent medical care to malpractice lawsuits in the United States may not be generalizable. These studies are based on data from 2 of the most populous states (California and New York), collected more than a decade ago, during volatile periods in the history of malpractice litigation.

#### Objectives:

The study objectives were (1) to calculate how frequently negligent and non-negligent management of patients in Utah and Colorado in 1992 led to malpractice claims and (2) to understand the characteristics of victims of negligent care who do not or cannot obtain compensation for their injuries from the medical malpractice system.

#### Design:

We linked medical malpractice claims data from Utah and Colorado with clinical data from a review of 14,700 medical records. We then analyzed characteristics of claimants and nonclaimants using evidence from their medical records about whether they had experienced a negligent adverse event. Measures. The study measures were negligent adverse events and medical malpractice claims.

#### Results:

Eighteen patients from our study sample filed claims: 14 were made in the absence of discernible negligence and 10 were made in the absence of any adverse event. Of the patients who suffered negligent injury in our study sample, 97% did not sue. Compared with patients who did sue for negligence occurring in 1992, these nonclaimants were more likely to be Medicare recipients (odds ratio [OR], 3.5; 95% CI [CI], 1.3 to 9.6), Medicaid recipients (OR, 3.6; 95% CI, 1.4 to 9.0),  $\geq 75$  years of age (OR, 7.0; 95% CI, 1.7 to 29.6), and low income earners (OR, 1.9; 95% CI, 0.9 to 4.2) and to have suffered minor disability as a result of their injury (OR, 6.3; 95% CI, 2.7 to 14.9).

Conclusions. The poor correlation between medical negligence and malpractice claims that was present in New York in 1984 is also present in Utah and Colorado in 1992. Paradoxically, the incidence of negligent adverse events exceeds the

incidence of malpractice claims but when a physician is sued, there is a high probability that it will be for rendering nonnegligent care. The elderly and the poor are particularly likely to be among those who suffer negligence and do not sue, perhaps because their socioeconomic status inhibits opportunities to secure legal representation.

[http://journals.lww.com/lww-medicalcare/Abstract/2000/03000/Negligent\\_Care\\_and\\_Malpractice\\_Claiming\\_Behavior.2.aspx](http://journals.lww.com/lww-medicalcare/Abstract/2000/03000/Negligent_Care_and_Malpractice_Claiming_Behavior.2.aspx)

In a multivariate analysis, the degree of disability was the only predictor of payment. In other words, the patient's degree of disability determined how likely he was to receive money. Nothing else mattered (3).

The data suggests that the medical malpractice system is, by traditional measures of justice, dysfunctional. And, the problem is so far-reaching that it even undermines many of our risk management efforts. For example:

If we eliminate every medical error, 80% of lawsuits will remain (with the mean payment unchanged);

Our efforts at better communication in the wake of an adverse event are attenuated by the fact that more than half of lawsuits are filed by persons who did not suffer an adverse event; and,

Our efforts at persuading patients, who have been injured by medical negligence, to forgive us rather than sue us, are compromised by the fact that 98% of these persons are not going to sue in the first place. And, even if they all forgive us, 80% of lawsuits will remain.