



Runaway juries aren't to blame for soaring malpractice premiums, found health economist Amitabh Chandra.

Study debunks medical malpractice myth

For many months, the American Medical Association and government officials have been blaming multi-million-dollar jury awards and frivolous lawsuits for ballooning malpractice insurance premiums. But that blame is wildly misplaced, according to a recent study by Dartmouth health economist Amitabh Chandra, Ph.D.

Jury: "This focus on jury awards, or judgments at trial, is very misleading," says Chandra, an adjunct assistant professor of community and family medicine at DMS. "You routinely hear statements about, 'Oh, this jury awarded this person \$20 million, or \$5 million, or something like that.'" But in reality, only a small proportion of malpractice cases make it to trial; the rest are settled out of court. In fact, awards by a judge or jury account for only about 5% of all medical malpractice dollars. Furthermore, the average size of such payments grew only 3.4% from 1991 to 2003, according to Chandra's findings, published in the journal *Health Affairs*. In other words, large jury awards are not driving the explosion of malpractice premiums.

The even more surprising finding—given the national rhetoric—is that medical mal-

practice payments have grown at about the same rate as health-care costs overall.

"The amount of money that we spend on malpractice payments in the United States has grown substantially. There's no disputing that," Chandra explains. "But, as a fraction of all the amount of money we spend on health care, it hasn't grown much." Of every \$1,000 spent on physician and clinical services in 1991, malpractice payments accounted for only about \$10. In 2002, after adjusting for inflation, malpractice payments accounted for about \$11 out of every \$1,000.

And as a portion of total health-care spending, malpractice payments made up an even smaller amount, between \$2 and \$3 per \$1,000 from 1991 through 2002. This suggests that rising medical costs, not excessive jury awards, is driving the growth in malpractice payments.

Premium growth: "A third, more minor, take-away point," says Chandra, "is that the distribution of what payments [are for] has not really changed over time." Also of interest, he and his coauthors noted, is that "states where payments grew dramatically between the early 1990s and the early 2000s were not

the states where premiums grew radically."

Since Chandra's findings conflict so dramatically with the positions of the American Medical Association (AMA) and the White House, the major news media—including the *Los Angeles Times* and National Public Radio—were quick to cover his paper. Critics emerged, too, including the AMA, which charged that the study was based on a flawed registry, the National Practitioner Data Bank (NPDB), which catalogues every payment made on behalf of licensed health-care providers in the U.S. While Chandra admits that the NPDB has many flaws, he says that most of them didn't affect this study because "we didn't use those fields."

The key limitation of this paper, and the databank, Chandra says, "is a loophole called the 'corporate shield,' which allows the name of an individual physician to be dropped from a lawsuit." When that happens, the payment doesn't appear in the NPDB. To see just how disruptive this loophole was to their analysis, Chandra and his coauthors compared NPDB data with data from two state registries that include payments made on behalf of hospitals, as well as on behalf of individual physicians. They found their analysis held true with and without the hospital data.

Link: In their conclusion, Chandra and his coauthors suggested that lower-than-expected returns from investments might be one reason that insurance companies are raising premiums. They did not study that link, however, so it remains only a conjecture.

Next, Chandra plans to investigate the practice of "defensive medicine"—the ordering of unnecessary tests by doctors because they fear being sued. Although he recently left Dartmouth to join Harvard's Kennedy School of Government, Chandra will retain his appointment at DMS and will continue to collaborate with researchers at DMS's Center for the Evaluative Clinical Sciences. "Dartmouth," he says, "is the place to do research that is at the intersection of economics and medicine. It's really the best place in the world to do that." JENNIFER DURGIN