

## THE NEW HEALTH CARE

# *To Be Sued Less, Doctors Should Consider Talking to Patients More*

By Aaron E. Carroll

June 1, 2015

Doctors call it defensive medicine. They order extra tests, perform extra procedures or push for more office visits because they think that without them, they're at greater risk of being sued.

But studies don't support the notion that this extra precaution reduces their risk.

What might help physicians avoid being sued is getting along better with their patients. Or at least, they could become better communicators.

Sometimes, when confronted with such assertions, doctors lash out. It's the system's fault. It's the lawyers. It's greedy patients. But these declarations ignore one important fact: Lawsuits aren't random. Some doctors are sued far more than others.

As far back as 1989, a study of obstetricians in Florida found that about 6 percent of obstetricians accounted for more than 70 percent of all malpractice-related expenses over a five-year period. These physicians did not just have a short run of bad luck. A follow-up study found that one of the most significant predictors of being sued was being sued in the past. Doctors who are sued are different in some way from those who aren't.

Now it's possible that these physicians were bad doctors, and that they deserved this. If that's the case, then this is the malpractice system operating efficiently, and no one would have any reason to complain. But this relationship held true for both paid and unpaid claims. Some doctors were more likely to be sued, regardless of whether the cases against them were eventually found to have merit.

**Sign up for The Upshot Newsletter** Analysis that explains politics, policy and everyday life, with an emphasis on data and charts. [Get it sent to your inbox.](#)

To understand why patients file claims, we have to talk to them. Many researchers have. A study in 1992 found that about a quarter of mothers who had sued physicians because of deaths or permanent injuries in their newborn infants "needed money." But there were answers given more frequently that had nothing to do with remuneration. A third of respondents said that their doctor would not talk openly to them, half said their doctor had tried to mislead them, and 70 percent said that they were not warned about long-term neurodevelopmental problems in their children.

Another study, published two years later, looked at the relationship between physicians' history of malpractice suits and their patients' satisfaction. Patients seeing doctors who were sued in the past were significantly more likely to report that their doctor rushed them, did not explain reasons for tests or ignored them. Doctors sued most often were complained about by patients twice as much as those who were not, and poor communication was the most common complaint.

Decades-old studies have shown that primary care physicians sued less often are those more likely to spend time educating patients about their care, more likely to use humor and laugh with their patients and more likely to try to get their patients to talk and express their opinions. It seems that more likable physicians are less likely to have claims filed against them.

Physicians and patients don't communicate well even about malpractice. A study published in 1989 surveyed patients who sued physicians as well as physicians who had or had not been sued. Almost all (97 percent) of the patients reported negligence as the reason for their malpractice action. Fewer, about half, of non-sued physicians thought negligence was the cause of malpractice suits in general. Only 10 percent of sued physicians, however, thought negligence was the reason for claims against them. While only a fifth of patients reported financial compensation as their motive for suing, more than 80 percent of all physicians thought this was the reason patients filed suits.

There was one thing they all agreed on, though. About two-thirds of both groups, doctors and patients, thought that improved communication could reduce future malpractice litigation.

The vast majority of efforts to reduce malpractice risk, however, still focus on trying to make it harder for patients to sue or win large settlements. But not in every instance. At the University of Michigan about 15 years ago, a program was begun to improve communication around medical errors. When errors occurred, the program encouraged physicians to tell patients about them, how they happened, and what would be done to make them less likely to occur in the future. Doctors were also encouraged to apologize, and offer compensation for harm if it occurred.

A study of the program published in 2010 found that in the years after it began claims dropped 36 percent, and lawsuits dropped 65 percent. The monthly cost of total liability and patient compensation dropped 59 percent, and legal costs dropped by 61 percent.

A later study, published last year, looked at how the program affected gastroenterology claims and costs. It found that despite a 72 percent increase in clinical activity, the rate of claims per patient encounters dropped 58 percent. The total mean liability per claim was more than halved to just over \$81,000 from more than \$167,000. The total cost to the health care system of malpractice in gastroenterology decreased by 64 percent.

Too few doctors seem willing to make behavior change the focus of efforts to improve the risk of malpractice suits. Too many still seem fixated on tort reform, even when evidence shows us that it don't seem to do much to reduce the practice of defensive medicine.

And so, poor communication still remains the norm. A short while ago, the *Annals of Emergency Medicine* published a study that examined patient-physician communication in the emergency room on the management of acute coronary syndrome, which is chest pain caused by decreased blood flow to the heart, as with a heart attack or angina. About two-thirds of patients left conversations thinking they were having a heart attack, while physicians believed this to be the case less than half the time. The median estimate of whether a patient might die at home of a heart attack was 80 percent in patients and 10 percent in physicians. Doctors and patients were reasonably close in their estimates of danger only 36 percent of the time. They clearly weren't hearing each other.

No one is minimizing the difficulty of changing doctors' behavior. Learning to be better communicators, and to be better at — in essence — customer service is no small task for physicians. But improving those skills might actually make a difference in whether they are sued. Too many doctors would rather see policy changed than change themselves, even if those policy changes have a much lower chance of succeeding.

Aaron E. Carroll is a professor of pediatrics at Indiana University School of Medicine. He blogs on health research and policy at [The Incidental Economist](#), and you can follow him on Twitter at [@aaronecarroll](#).

The Upshot provides news, analysis and graphics about politics, policy and everyday life. Follow us on [Facebook](#) and [Twitter](#). Sign up for our [newsletter](#).