The growing threat of a lawsuit is a handy explanation for a range of physician behaviours, including defensive medicine through excessive test ordering and avoiding certain areas of practice, types of patients, or forms of collaboration.

Healthcare professionals and the public perceive that malpractice claims in Canada are increasing dramatically. Their perception is that doctors are making more mistakes and/or that citizens are much more likely to sue than they were in the past. Ironically, this perception may be in part due to a new culture of openness and patient safety in healthcare — hospitals now go public about systemic errors, such as in 2004 when two Calgary patients died after being given potassium chloride rather than sodium chloride.

When the Canadian Health Services Research Foundation first looked at the data in 2004, we saw that malpractice claims against doctors had actually been dropping steadily for some time. A new look at the data confirms that doctors are in fact much less likely to get sued than in the past.

The tale of the tape

In Canada, most doctors receive malpractice protection from the Canadian Medical Protective Association, which tracks the number of legal actions launched and the amounts paid out to successful cases. The numbers are startling.

In the 1990s, the association found an increase in the number of malpractice lawsuits, peaking in 1996 when 1,415 lawsuits were filed, leading both doctors and lawyers to sound the alarm. However, the numbers have dropped steadily since 1996, to 1,083 in 2004, a 23-percent decrease. Moreover, an increasing proportion of lawsuits that go to trial have judgments in favour of doctors — 82 percent in 2004, up from 73 percent in 1994.

It’s also worth noting that patients are making fewer complaints about doctors to regulatory bodies. In the province of Saskatchewan for example, the College of Physicians and Surgeons received 150 formal complaints in 2004, compared to a high of 207 in 2000, even though the number of physicians in the province remained steady. Part of this shift can be attributed to the college’s increasing use of alternative, informal interventions that address patient concerns more quickly than the formal system.

People might think the number of lawsuits is going up because the amounts awarded in court decisions and settlements continue to increase. In 1995, the protective association paid an average of $181,281 per case for lawsuits that were successful or were...
settled out of court. Payments peaked in 2001, when the average was $371,300 (mostly due to a single large class-action suit). For 2004, the last year for which data are available, the association paid an average $300,692 per case — a 66-percent increase over 1995.ii

The international experience

The United States is the country most often thought of as the “land of litigation.” Even there, though, the numbers aren’t skyrocketing as much as people think. The National Practitioner Data Bank reports that from 1992 to 2004, the number of successful malpractice suits against physicians went from 14,826 to 14,396 — a three-percent decrease. As in Canada, however, the average amounts paid out have increased, from $214,332 in 1997 to $298,460 in 2004 — a 39-percent increase.vi

Paying the price

While the number of lawsuits against Canadian doctors is not increasing, the cost of malpractice protection is growing with the size of settlements. The Canadian Medical Protective Association’s fees for 2006 range from $564 a year for missionary, charitable, teaching, and research work abroad to $78,120 for obstetricians working in Ontario.vii (The association charges its fees based on both type and location of practice, with Ontario doctors generally paying the highest fees, Quebec doctors the lowest.) This represents an increase of about 12 percent over the last three and four years, respectively. However, in many provinces doctors are substantially insulated from these increases, as they are partially covered by government in their collective agreements.viii-xi

American trends are harder to track, because of the large number of private insurers offering malpractice protection there. However, fee hikes have been noted, particularly in the states of New York, Texas, and Florida, which saw fees increase 30 to 50 percent from 2001 to 2002. Many high-risk specialists like obstetricians and neurosurgeons now pay annual fees of more than $100,000US, which is leading some of these doctors to leave their practices.xii

People probably believe lawsuits are on the rise because of isolated media reports about high-profile, high-cost cases. And while the data show the number of claims is a shrinking problem, even one multi-million dollar case could be enough to skew not only our perception of the problem, but the dollar figures as well.

Average payments by CMPA*

While the average amount awarded in 2001 is the largest ever, it was strongly affected by a single class-action lawsuit. This class-action suit accounted for 86 percent of the increase over 2000. The average is found by dividing the total amount paid by the CMPA by the number of lawsuits that were successful for the patient plus the number of cases settled out of court. Canadian Medical Protective Association 2002 Annual Report.

References


Average payments by CMPA*