The rise and fall of malpractice payments in the US

Trends in US malpractice payments in dentistry compared to other health professions – dentistry payments increase, others fall

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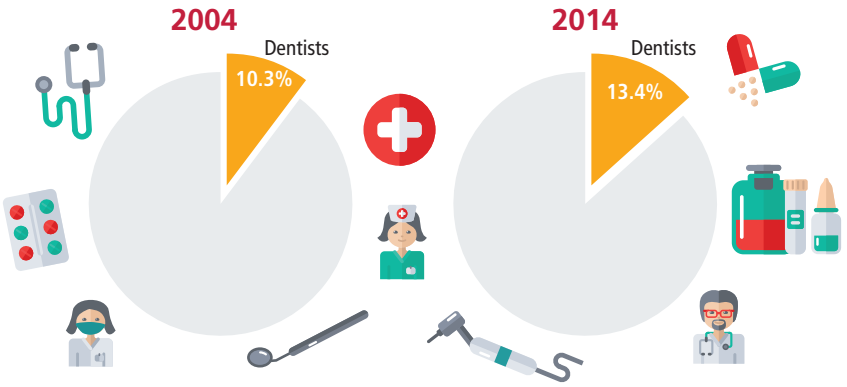
The fear of opportunistic lawyers hanging over the heads of healthcare workers must be an unrelenting burden. Partnerships between hospitals ease this burden by ensuring that doctors and general healthcare workers have significant negotiating power and support when dealing with insurers and malpractice suits. But how does this affect dentists? Are they more vulnerable to malpractive suits because they often work for independent practices?

In this study Nalliah looked at the trends in malpractice payments in dentistry and compared these to other healthcare professions using the National Practitioner Data Bank. The data showed that between 2004 and 2014 malpractice suits against all healthcare professions decreased. There was a significant decrease in payments against physicians (a 38.8% decline). There was also a decrease in malpractice suits against dentists, but not to the same extent.

In 2004 malpractice payments against dentists made up 10.3% of all payments against healthcare professionals. In 2014 this had risen to 13.4%. In fact, between 2012 and 2014 there was a year on year increase – from 1,395 to 1,558. Nalliah suggests that malpractice payments against dentists haven't dropped by a comparable amount to those against physicians because: i) many are still in solo practice; and ii) unlike in medicine, dental insurers have not set out best practice guidelines to prevent malpractice. Instead they have an annual limit of reimbursements. Nalliah also makes the point that the ageing US population could be a cause of many malpractice claims as they are wealthier and more likely to file claims than younger people. This could indicate a future increase in claims due to the ever growing ageing population. Nalliah ultimately suggests that it is time in the US to abandon a reliance on experience-based dentistry and instead use evidence-based dentistry.

By Jonathan Coe

Malpractice payments against US health professionals



Expert view

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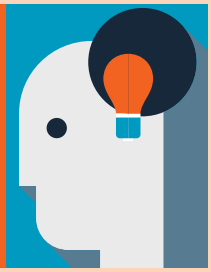

The striking conclusion from this paper is that whilst claims for dentistry have increased in the US, as they have done here in England (and to a lesser extent other UK countries), claims against non-dentist health professionals including physicians have fallen. In contrast, in other parts of the world including the UK, claims have risen year on year against both doctors and dentists by 37% and 48% respectively between 2009 and 2015.[1]

The paper paints an interesting picture about the landscape of the malpractice environment in the US. The stated aim of using litigation there to 'eliminate negligence' is at odds with the purpose of it in the UK where the intention is to try and put the patient who has been harmed by clinical negligence into a position whereby that negligence had not occurred. This is by way of compensation and or costs for remedial treatment.

The paper reflects that the stress and anxiety caused by litigation to clinicians is the same the world over; though in the UK, whilst there may be reputational risk with any publicity of a settled claim against a dentist, there is far more stress associated with a GDC investigation where the ultimate outcome could have a significant impact on your livelihood.

This study suggests that the increase in malpractice claims has not stimulated much evaluation in the US whereas in the UK, the government and other agencies have been acutely focussed on the rising costs of medical litigation since it is often the state, via the NHS, that picks up the tab. The coming into force of LASPO[2] in 2015 which is intended to control some of the excesses of legal fees should start to reduce the cost to defence organisations and the NHS claims budget.

The paper ponders on the reason for the increase in claims for dentists and suggests that the lack of guidelines in the US has contributed to errors and claims. In contrast guidelines in the UK have influenced behaviour dramatically. You only have to look at the impact of the NICE guidelines on antibiotic prophylaxis[3] and third molar surgery;[4] though arguably adherence to guidelines and protocols are not necessarily the panacea for malpractice claims. ■

1 By your side through change. Medical Protection Society Annual Report 2015.
2 LASPO Legal Aid, Sentencing and Punishment of Offenders Act 2012.
3. Thornhill M, Dayer M , Forde J *et al.* Impact of the NICE guideline recommending cessation of antibiotic prophylaxis for prevention of infective endocarditis: before and after study. *BMJ* 2011; **342:** d2392.
4. McArdle L, Renton T. The effects of NICE guidelines on the management of third molar teeth. *Br Dent J* 2012; **213:** E8.

Author Q&A
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Why did you choose to study this topic?

My expertise is in patient outcomes and my interest in malpractice comes in a round-about way. Many dentists live by the mantra '*it works well in my hands*'. When you consider there are about 200,000 dentists in the United States it becomes clear that there is a need for best practice guidelines for everything we do. For example, some (but not all) dentists use a three-step bond-primer-etch for composite; some dentists disinfect cavities with chlorhexidine; and some dentists use rubber dam routinely. All of the individualised approaches are not achieving the same outcomes – some dentists are having better outcomes and some are having worse ones. Best practice guidelines will enable every clinician to move closer towards the best outcomes. Without these guidelines things can go wrong and litigation can occur. My passion is to move dentistry toward high quality, patient-centric, accountable care.

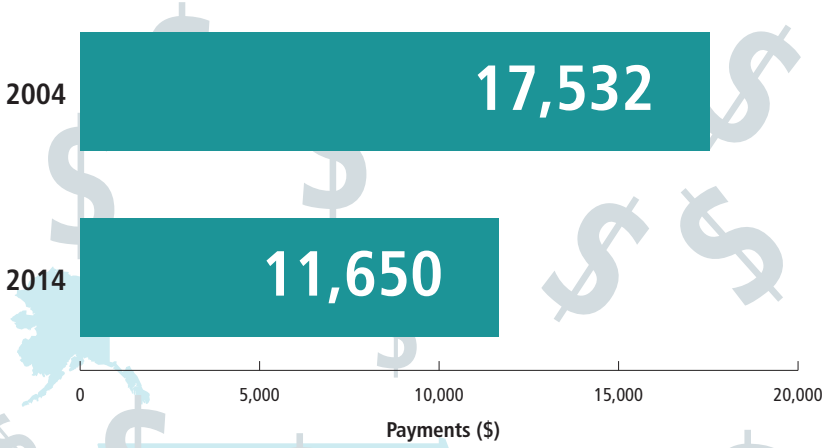
Did anything surprise you in your findings?

I did not expect to discover that most other health professions in the US are experiencing rapid and unequivocal reductions in number of malpractice payments compared to dentists. Moreover, in this climate I did not expect to find that dentistry has had three consecutive years of increasing numbers of malpractice payments.

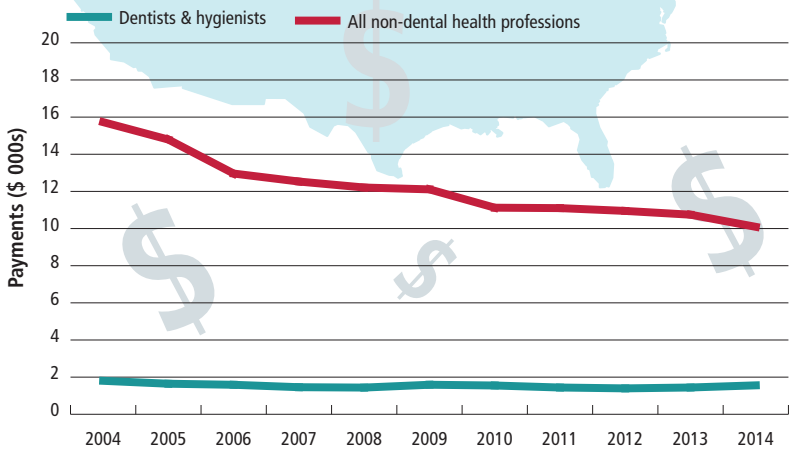
Why do you think there is an increase in malpractice payments in dentistry in the US?

The problem is multifactorial; however, I believe the most important reason is that there is no strong governing body taking responsibility to develop nationally accepted best practice guidelines. The American Dental Association has not been successful in popularising evidence-based dentistry and there is no organisation like the National Health Service in the US which can influence dental practice. A related factor may be that dentists remain in small health delivery sites (like solo practice) while many of our medical counterparts move into larger and larger organisations – these organisations provide a framework for adopting best practice, evidence-based, guidelines. ■

US, malpractice payments for all health professionals



US, number of malpractice payments



UK claims, 2009 - 2015