

Under a system of no-fault compensation for medical injury, is fear as a driver of over-diagnosis diminished?

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Background

Fear of malpractice litigation is thought to be one of the drivers of over-diagnosis.^{1,2} Medical malpractice systems punish under-diagnosis but not over-diagnosis, providing an incentive for doctors to order more tests and treatments to reduce the risk of being sued. It might be possible to reduce the ordering of unnecessary tests and treatments by altering the legal incentives that instil fear and drive over-diagnosis.

In New Zealand there is no medical malpractice system but rather a publicly funded accident compensation scheme that bars suing for compensatory damages, and separate medical professional accountability processes. Compensation and deterrence are now decoupled under New Zealand's medical regulatory system, but this has not always been the case. Prior to 2005, patients could obtain compensation for medical injury under the scheme by proving 'medical error'. Medical error in effect amounted to negligence and, as all findings of error were reported to the Medical Council, could result in punishment for doctors. Fear of being labelled negligent and punished made some doctors reluctant to participate in the compensation claims process, and also possibly drove defensive practice and over-diagnosis.

In 2005 the so-called 'no-fault' compensation reforms rectified this situation: the medical error eligibility criterion was waived and eligibility was extended to 'all injuries caused by treatment'. These changes freed doctors to participate in the compensation claims process without fear of punishment, and shifted the focus of the scheme away from identifying error (proving negligence) to providing assistance with treatment and rehabilitation. Doctors in New Zealand may still be held to account (and punished), but through separate accountability processes.

It is not known what effect the no-fault compensation reforms have had.

Aims

To discover the effect of New Zealand's 2005 no-fault compensation reforms on punitive outcomes for doctors.

Methods

Data for the five years before and after the 2005 reforms were compared, including claims for medical / treatment injury compensation, referrals from the compensation scheme to the Medical Council, patient complaints, and performance reviews and disciplinary proceedings for doctors.

Results

Following the 2005 reforms claims for medical / treatment injury compensation increased, although claims were increasing anyway, and fewer doctors were referred from the compensation scheme to the Medical Council, as intended. Patient complaints increased, but there was no corresponding increase in Medical Council performance reviews or disciplinary proceedings for doctors.

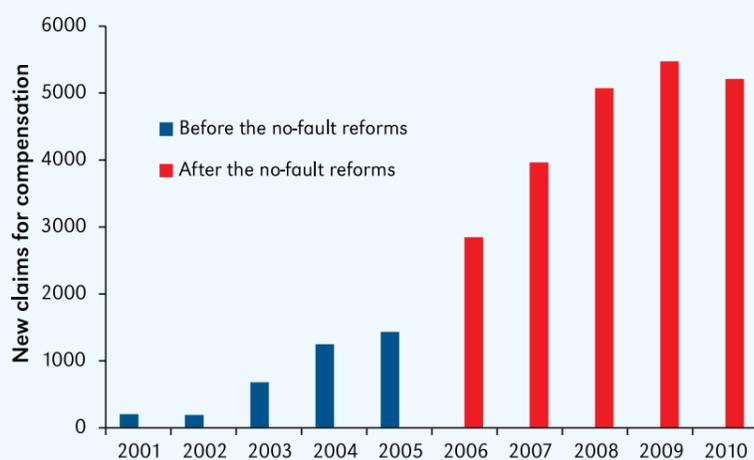


Figure 1: Claims for medical / treatment injury compensation increased following the 2005 no-fault compensation reforms

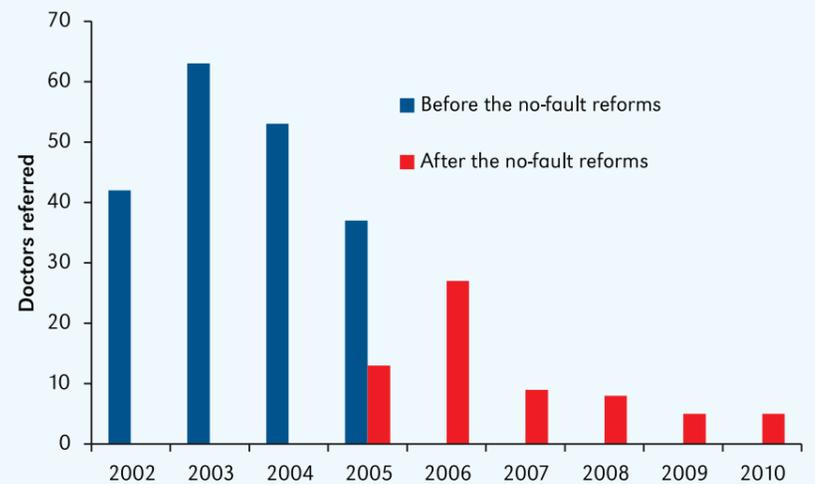


Figure 2: Fewer doctors were referred from the compensation scheme to the Medical Council following the 2005 no-fault compensation reforms

Discussion

New Zealand's medical regulatory system, comprising the compensation scheme and separate medical professional accountability processes, is designed to be less punitive than most. Following the no-fault compensation reforms the system became less punitive still: the compensation claims process no longer results in doctors being labelled negligent, and seldom results in doctors being referred to the Medical Council.

Doctors have responded to the decreased risk-of-punishment by assisting more patients to lodge claims for treatment injury compensation. But while doctors have less to fear from the compensation claims process, fear as a determinant of doctor behaviour likely persists undiminished. This is because both the patient complaints system, and the sense of shame that ensues when a patient is harmed by medical care, endure to instil fear and drive defensive practice and over-diagnosis.³

Further work is needed to better understand fear as a driver of doctor behaviour and the role that risk-of-punishment plays. If doctors are fearful regardless of risk-of-punishment, then malpractice reform to create a less-punitive medical regulatory environment will not reduce fear as a driver of over-diagnosis.



Conclusions

Punitive outcomes for doctors decreased following New Zealand's 2005 no-fault compensation reforms, but fear as a driver of over-diagnosis likely persists undiminished. The reforms created a less-punitive medical regulatory environment, but a less punitive environment, in itself, is not likely to reduce fear. The main benefit of a system of no-fault compensation remains the ability to provide timely and efficient access to compensation for injured patients.

References

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