



PEACE OF MIND

EXPERTISE

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THE MEDPRO GROUP EXPERIENCE

Medical Professional Liability


Yesterday, Today, and Tomorrow


Shari Moore, RN, BSN
Vice-President, Risk Management
PLICO/a MedPro Group Berkshire Hathaway company

Objectives

This program will discuss:

- The origins of medical professional liability (MPL)
- The components of the MPL system
- Malpractice claims trends and analysis
- Emerging trends and future challenges
- Strategies for managing risks





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MPL through the ages

A riveting trip from ancient Babylonia to modern times

• “An eye for an eye” — Hammurabi’s Code



The Babylonian code consists of 282 laws and was developed during the reign of Hammurabi (1792-1750 B.C.).

Principle of *Lex Talionis* — the law of retaliation.

One section mentions repercussions for medical mistakes, saying the doctor should be punished if harm is done to the patient.

“

If the doctor has treated a gentleman with a lancet of bronze and has caused the gentleman to die, or has opened an abscess of the eye for a gentleman with a bronze lancet, and has caused the loss of the gentleman's eye, one shall cut off his hands.”

— Hammurabi's Code

Source: Bai, B. S. (2009). An introduction to medical malpractice in the United States. *Clinical orthopaedics and related research*, 467(2), 339-347. doi:10.1007/s11999-008-0630-2

• “. . . one shall cut off his hands.”



• Hippocrates

• The father of western medicine (460-370 B.C.).

• The original Hippocratic Oath was written in Ionic Greek, between the fifth and third centuries B.C.

• Includes ethical concepts of medical confidentiality and non-maleficence

• “I will abstain from all intentional wrong-doing and harm . . .”

• In ancient times, the punishment for breaking the Hippocratic Oath could range from a penalty to losing the right to practice medicine.



“First, do no harm. After that, go nuts.”

• **Stratton v. Swanlond**

The case, which occurred in 1374, is referred to as the "fourteenth-century ancestor" of medical malpractice law.

Chief Justice John Cavendish presided over the case.

Agnes of Stratton and her husband sued surgeon John Swanlond for breach of contract.

Swanlond had guaranteed to repair Agnes of Stratton's severely mangled hand.

The case established law for setting certain standards of medical care.

Cavendish ruled that a physician could be held liable if and when he harmed a patient as a result of negligence. "However, if the physician diligently applied himself, liability would not ensue even if he did not succeed in effectuating a cure."

The case ultimately was dismissed due to an error in the writ of complaint.

Sources: Chapman, C. B. (1982). Stratton vs. Swanlond: The fourteenth-century ancestor of the law of malpractice. *The Phoros of Alpha Omega Alpha-Honor Medical Society*, 42(4), 20-24; Field, R. I. (2011). The malpractice crisis turns 179: What lessons does history hold for reform? *Drexel Law Review*, 4(7), 7-39.

• **The precursor to expert testimony**

Under the reign of Holy Roman Emperor Charles V, a law was passed in 1532 requiring the opinion of medical men to be taken in cases of violent death.

This law helped establish the concept of an expert witness testifying in relation to the standard of care.



Source: Gilman & Bedigian, LLC. (n.d.). A history of malpractice in the United States. Retrieved from www.gilmanbedigian.com/history-of-malpractice

• **Everad v. Hopkins**

The case occurred in 1615, and is one of the earliest documented malpractice cases.

The case took place in the Court of British Common Law.

Sir Edward Coke decided an action against a physician for negligence.

Physician was hired to treat an ill servant whose condition worsened.

The contract was between the employer and the physician.

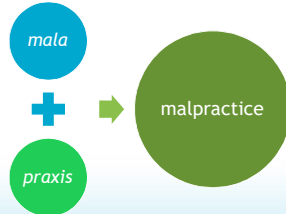
The patient had no contract with the physician.

However the court allowed both the servant and the employer to collect damages against the physician for practicing "unwholesome medicine."

Source: Everad v. Hopkins, 80 English Reports 1164 (1615), as cited in Bal, An Introduction to medical malpractice in the United States.

• Mala praxis

- In 1768, Sir William Blackstone used the Latin term *mala praxis* to describe the concept of professional negligence (i.e., tort).
- Blackstone noted that *mala praxis* "breaks the trust which the party had placed in his physician, and tends to the patient's destruction."



Source: Wallace, R. A. (2017). A Brief History of Medical Liability Litigation and Insurance. *West Virginia Medical Journal*, 113(5), 6. Retrieved from https://www.gutenberg.org/files/59650/59650-h/59650-h.htm#Page_6

• Cross v. Guthery

The first recorded malpractice case in the United States; it occurred in 1794.

The plaintiff claimed a doctor promised to do an operation skillfully and safely.

The plaintiff's wife died as a result of the operation.

The case centered around a breach of contract and not failure to adhere to a standard of care.

The defendant physician made some sort of express promise to skillfully render care and obtain a good result.

Failure to do so was grounds for the suit.

This breach of contract case resulted in a plaintiff verdict and an award of £40.

Source: Flemma R. J. (1985). Medical malpractice: A dilemma in the search for justice. *Marquette Law Review*, 68(2), 237-258. Retrieved from <https://scholarship.law.marquette.edu/marq/vol68/iss2/2>

• Malpractice surge

- Large number of malpractice lawsuits filed against physicians from 1840 through 1860.
- The surge in malpractice claims spread from state to state (Western New York, Pennsylvania, Ohio, Vermont, New Hampshire, and Massachusetts).
- Appellate court decisions increased 950% during the time period.
- Civil War era documents reference instances of surgeons refusing to perform certain procedures because of lawsuit concerns.
- The American Medical Association (AMA) was founded in 1847. AMA set uniform standards for medical education and training, as well as the world's first national code for ethical medical practice.



Source: DeVille K. *Medical Malpractice in Nineteenth-Century America: Origins and Legacy*. New York: New York University Press, 1990.

State medical societies

Injury or death caused by the mistake, inadvertence or error of a physician, is, so far as concerns the patient, an accident, and a policy issued to physicians insuring them against loss from common law or statutory liability for damage on account of bodily injuries, fatal or non-fatal, suffered by any person or persons in consequence of any alleged error or mistake made by the physician to whom such policy is issued, is insurance against loss or damage on account of "bodily injury or death by accident" with the meaning of clause 5 of St. 1894, c. 522, § 29, and therefore is legal.

— Hosea M. Knowlton, Attorney-General of Massachusetts, July 10, 1901

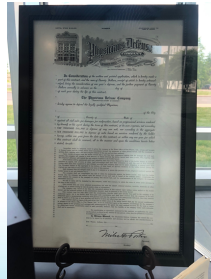
MedPro Group history

Drs. Alpheus Buchman and Miles Porter formed the Physicians' Guarantee Company in 1899, which later becomes the Physicians' Defense Company (PDC).

The company offers prepaid legal defense-only services for medical malpractice lawsuits.

Byron Somers and Charles Niezer leave PDC and form The Medical Protective Company in 1907.

Medical Protective expands coverage to include indemnity coverage in 1910, and offers medical professional liability insurance policies with limits of \$5,000/\$15,000 for \$15 a year.



Medical malpractice crises



Sources: Anderson, M. (2017). A brief history of medical malpractice. *Physician News Digest*. Retrieved from <https://www.physiciannewsdigest.com/2017/07/10/brief-history-of-medical-malpractice/>; Thorpe, K. E. (2004). The medical malpractice "crises": Recent trends and the impact of state tort reforms. *Health Affairs*, 23(supplement 1), 1212-1218.



PHASE OF CASE


CAUSATION

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Components of medical malpractice

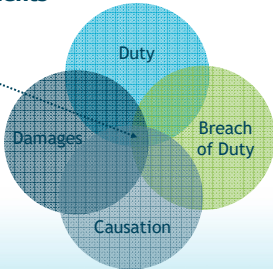
Adversarial System of Justice



"Why don't the lawyers also have to swear to tell the truth?"

The four elements

Professional negligence



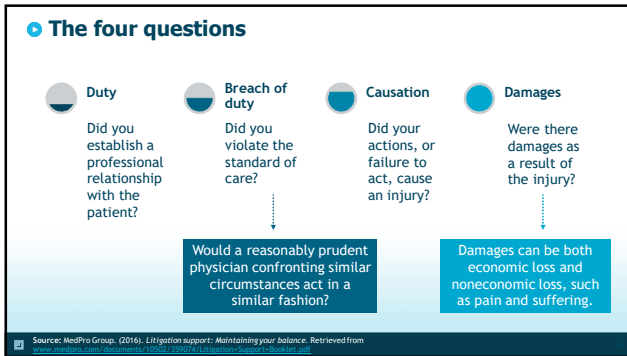
Duty

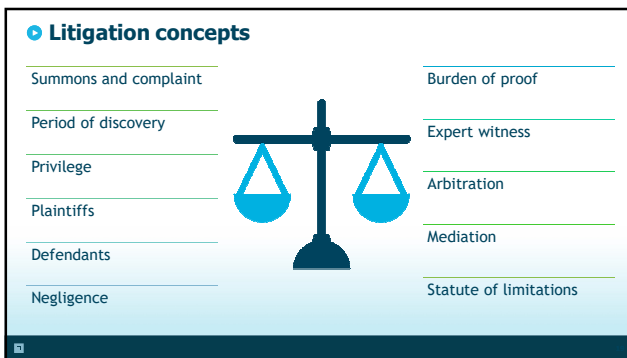
Breach of Duty

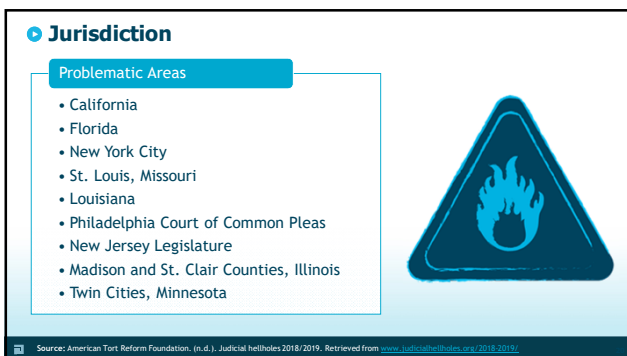
Causation

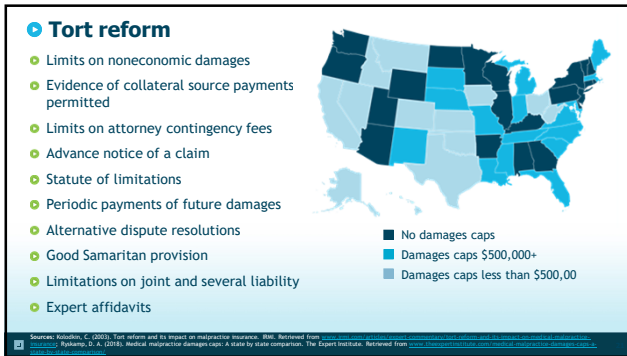
Damages

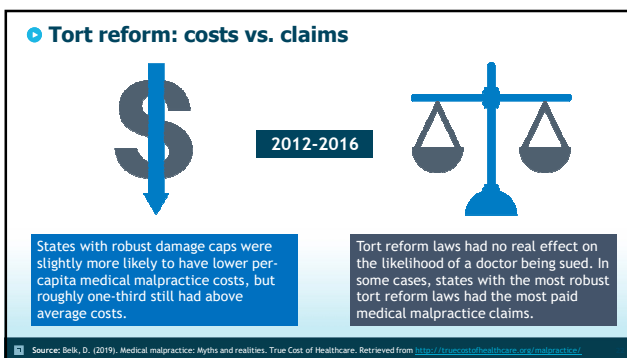
Source: MedPro Group, (2016). Litigation support: Maintaining your balance. Retrieved from <https://medpro.com/documents/2016/7/2016%20Litigation%20Support%20Booklet.pdf>

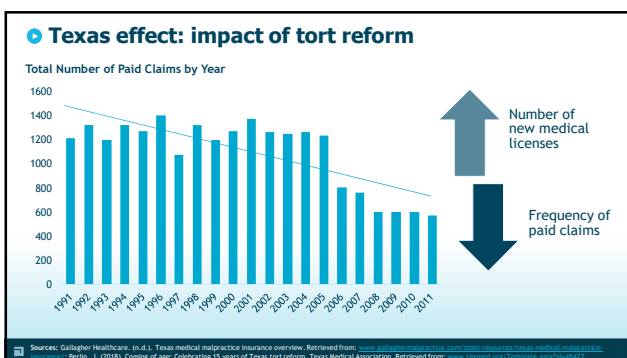


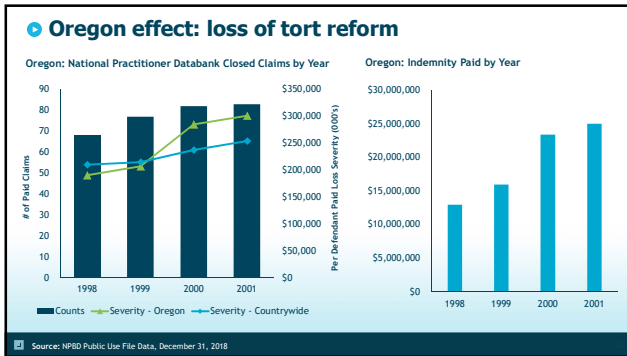














Apology laws vs. communication and resolution programs

Apology Laws

- Legal statutes that encourage healthcare providers to acknowledge and disclose medical errors openly
- Intended to protect certain statements, expressions of sympathy, and other evidence from being admissible in malpractice litigation
- Differ from state to state in the types of information and statements covered

CRPs

- Encourage open communication and transparency with patients and their families
- Facilitate restitution for injured parties when appropriate
- Support physicians in disclosure conversations with patients

Pat Steingard

* Do you have a card that stops short of saying "I'm sorry" yet vaguely hints at some wrongdoing? *

Source: Kass, J. S., & Rose, R. V. (2016). Medical malpractice reform: Historical approaches, alternative models, and communication and resolution programs. *AMA Journal of Ethics*, 18(3):299-310. doi: 10.1001/journalofethics.2017.18.3.pdf#1603

• Apology laws vs. communication and resolution programs

“

Apology laws could lead to either increases or decreases in overall medical malpractice liability risk. Despite apology laws' status as one of the most widespread tort reforms in the country, there is little evidence that they achieve their goal of reducing litigation.”

Why apologies might not reduce liability risk, but CRPs could be successful:

- “The answer almost certainly lies in training. When physicians receive training on how and when to apologize, and when that apology happens in the context of other disclosure programs, and in a setting where other services are being provided to injured plaintiffs, it is understandable why that would work better.”

Sources: (Hitchcock, B. J., Van Horn, R. L., & Wiscul, M. K. (2019, February). "Sorry" is never enough: How state apology laws fail to reduce medical malpractice liability risk. *Stanford Law Review*, 71(2), 341. Retrieved from <https://www.stanfordlawreview.org/online/apology-laws-never-enough>; Zborova (2019, May). Doctors, don't forget a polite "sorry" to reduce liability. Retrieved from <https://www.healthcarebusiness.com/2019/05/01/doctors-dont-forget-a-polite-sorry-to-reduce-liability/>

• Defensive medicine is the norm

73% of all physicians practice defensively.

93% of high-risk specialist physicians reported practicing defensive medicine.

Defensive practices (assurance and avoidance behaviors)

- Order more tests
- Admit more frequently
- Refer to consultants
- Perform unneeded procedures
- Prescribe unnecessary medications
- Avoid high-risk patients and procedures
- Restrict practice

Defensive medicine adds about \$45 billion to the cost of U.S. healthcare.



"Well, Bob, it looks like a paper cut, but just to be sure let's do lots of tests."

Source: Studdert, D. M., et al. (2005). Defensive medicine among high-risk specialist physicians in a volatile malpractice environment. *JAMA*, 293(21), 2609-2617. doi:10.1001/jama.293.21.2609; Melio, M. M., et al. (2010). National costs of the medical liability system. *Health Affairs*, 29(9). <https://doi.org/10.1377/hlthaff.2009.27.1>

• Largest malpractice verdict in U.S. history – 2019

The case



“When a pregnant Erica Byrom arrived at Johns Hopkins Bayview Medical Center nearly five years ago, doctors had alarming news. The 16-year-old mother had dangerously high blood pressure from preeclampsia and said doctors told her that her baby would die or suffer brain damage. Facing that prognosis – which Byrom’s attorneys would later call mistaken – the teen decided to forgo a cesarean section, resulting in lasting brain injuries to her daughter.”

Settlement

- \$229.6 million
- State laws to cap malpractice verdicts will likely reduce the amount to just over \$200 million

Source: Prudenite, T. (2019, July 2). Baltimore jury awards record \$229 million for brain injury during child's birth at Johns Hopkins Bayview. *The Baltimore Sun*. Retrieved from <https://www.baltimoresun.com/2019/07/02/baltimore-jury-awards-record-229-million-for-brain-injury-during-childs-birth-at-johns-hopkins-bayview/>

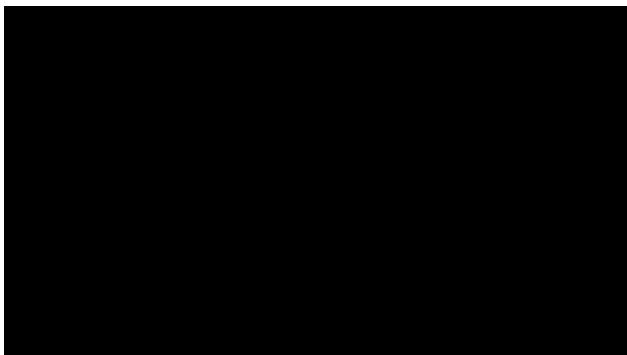
• **Celebrity malpractice in the media**

Michael Jackson	Joan Rivers	Dana Carvey	Tiger Woods	Julie Andrews
Andy Warhol	Ed McMahon	Elvis Presley	Dennis Quaid	Geraldo Rivera
		John Ritter	Hulk Hogan	

Source: Meinhart Smith and Manning PLLC, (n.d.). Famous medical malpractice cases. Retrieved from www.blugrassjustice.com/famous-medical-malpractice-cases/

• **Case study**

- 47 year old female with intermittent right-sided chest pain
- Worse with walking; c/o numbness right arm and palpitations
- Going through a divorce; family history positive for CAD
- Exam - afebrile, P-90, BP 147/86; pain free and otherwise normal
- Chem 23 normal, CXR - WNL, EKG - WNL, CPK - WNL
- "After Mylanta, pain decreased"
- Diagnosis: non-cardiac chest pain and anxiety
- Rx: Mylanta, Diazepam, Motrin for pain
- Discharge: F/U PMD



• The worse things about being sued

- Feeling helpless while being lied to
- Implication of incompetence
- Practice disruption
- Being judged by non-peers
- Jurors ignorant about medicine
- Self-doubt
- Exposure and humiliation
- Loneliness and isolation
- Negative effect on marriage and family
- Don't trust patients anymore
- Higher rates of suicide, burnout, divorce and substance abuse
- "I was mentally prepared for a guilty verdict, but when they said it, it was like someone had sucked the soul out of my heart," Dr. Melton said.
- Surviving a lawsuit is akin to overcoming a death, said Dr. Firestone, the California psychiatrist and attorney. Doctors go through phases of denial, grief and acceptance. "[The impact] varies from individual from individual, but it could last a lifetime," he said.

Source: Jena AB, Chandra A, Lakdawalla D, Seabury S. Outcomes of Medical Malpractice Litigation Against US Physicians. Arch Intern Med. 2012;172(11):992-994. Received and American medical News

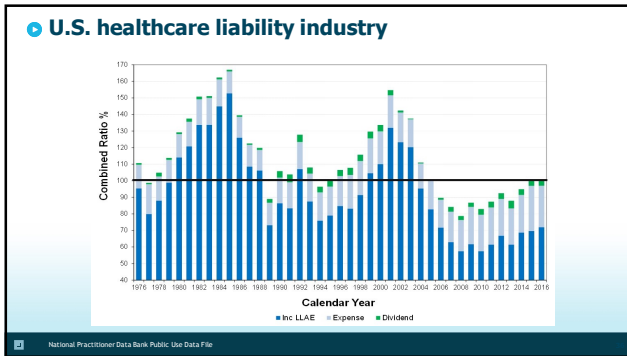


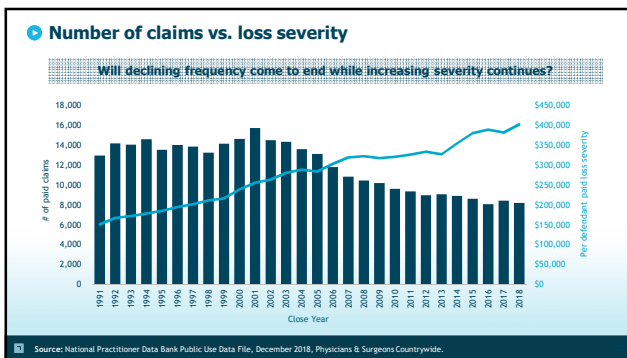
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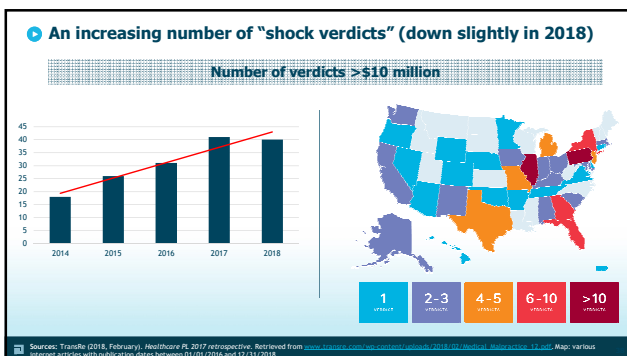
• Malpractice trends

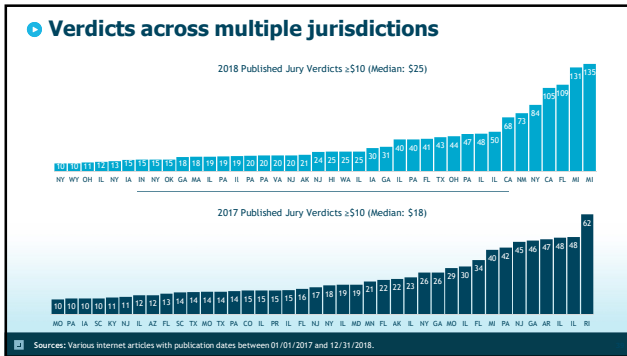
• In the classifieds: buy a poodle and find an attorney

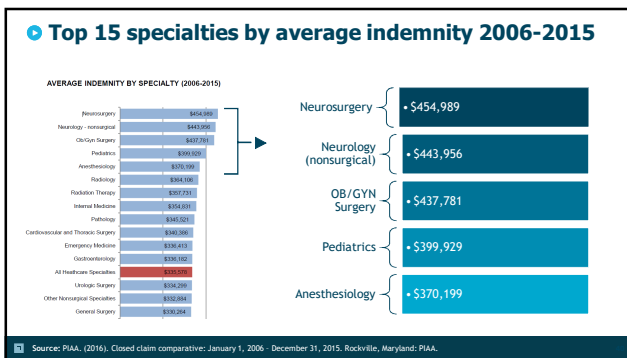
<p>Pets For Sale 6160</p>  <p>Bulldog puppies, champ bloodline, ckc, big & wrinkly, 5 males, 2 fem. - ready to go 888/2007-8800 530-852-2076 or 530-265-6257</p>	<p>Pets For Sale 6160</p>  <p>Mini Rat Terriers 5 girls, first shots, papered, mom in home. \$400 530-292-3065</p> <p>POODLES Toy puppies, black females, real cute. \$500. 530-589-9743</p> <p>Queensland Healers Blue & Red. \$250 530-268-2786 eveninor</p>	<p>THE UNION D5</p> <p>Merchandise</p> <p>Misc. Wanted 7000</p> <p>BUYING COINS & Currency Collections. Gold-Silver Dollars. Rare Coins. Appraisals: Beryl Robinson - Nevada City 530-477-2255</p> <p>WANTED Aggressive attorney to take a case on a contingency basis against a local health care provider for excessive pain & suffering due to negligent treatment. 263-1615</p>
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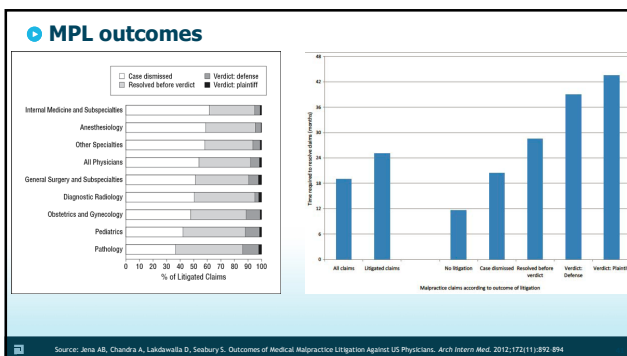












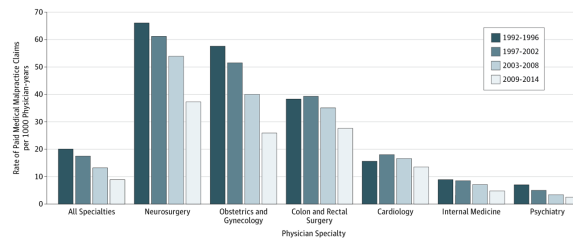
2019 Medical Malpractice Payout Report

- Payouts increased by 2.91%
- Total: \$4,031,987,700
- Total amount of payouts decreased from 16,500 to 11,584 (2004-18)
- Ave. payout \$348,065
- Oklahoma ranked 29th
 - Total 148
 - \$33,137,750 paid out
 - Decreased 1%
 - Ave payout \$223,904
 - \$8.04 per capita
- 96.5% settled; 3.5% verdict
- Cause: 34% diagnosis, 21% surgery, 21% treatment, 10% OB
- Outcome: 30% death, 19% major permanent, 18% significant permanent
- Location: 40% outpatient, 44% inpt.
- Gender: 56% female, 46% male
- Age: peak 50-59

Source: <https://www.leveragex.com/malpractice-insurance/2019-medical-malpractice-report>

Specialty-specific frequency

Rates of Paid Malpractice Claims Among U.S. Physicians by Specialty, 1992-2014



Source: Schaffer, A. C., Jena, A. B., Seabury, S. A., Singh, H., Chalasani, V., Kachalia, A. (2017, May). Rates and characteristics of paid malpractice claims among US physicians by specialty, 1992-2014. *JAMA Internal Medicine* 177 (5), 710-718. doi:10.1001/jamainternmed.2017.0311

The new math

The rate of paid claims for all physicians decreased by 55.7% (lowest decrease = cardiology; highest decrease = pediatrics).

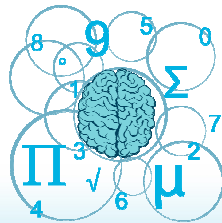
The mean compensation payment was \$329,565.

The mean payment increased by 23.3%.

7.6% of paid claims exceeded \$1 million.

32.1% of paid claims involved a patient death.

Diagnostic error was the most common type of allegation, present in 31.8% of paid claims. This allegation was lowest in anesthesiology claims (3.5%) and highest in pathology claims (87.0%).



Source: Schaffer, A. C., Jena, A. B., Seabury, S. A., Singh, H., Chalasani, V., Kachalia, A. (2017, May). Rates and characteristics of paid malpractice claims among US physicians by specialty, 1992-2014. *JAMA Internal Medicine* 177 (5), 710-718. doi:10.1001/jamainternmed.2017.0311

CRICO 2019 benchmarking report: key findings

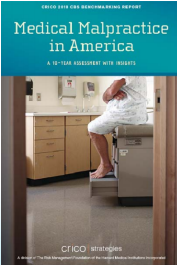
A 27% drop in the frequency of malpractice claims.

For OB/GYN, the risk of a claim or suit has dropped 44%.

Average expenses increased 3.5% annually to \$46,000 per case by 2016, outpacing both consumer and legal inflation indices.

The volume of high-indemnity payments of (\$3M-11M) increased 7% annually.

A medical malpractice case challenging a clinician's judgment is 2.8 times more likely to close with payment than a case without clinical judgment issues.



Source: CRICO Strategies, (2018). Medical malpractice in America: A 10-year assessment with insights. Retrieved from www.cmf.harvard.edu/malpractice.
<https://annualbenchmarkreport.org/medical-malpractice-in-america>

CRICO 2019 benchmarking report: key findings

Surgical cases are most prevalent.

Diagnosis cases are most costly.

Medical treatment allegations are becoming more common.

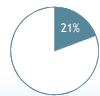
Clinical judgment is the key risk factor during patient assessment and follow-up.



Surgical



Medical



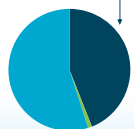
Diagnosis

73% of all allegations

Source: CRICO Strategies, (2018). Medical malpractice in America: A 10-year assessment with insights. Retrieved from www.cmf.harvard.edu/malpractice.
<https://annualbenchmarkreport.org/medical-malpractice-in-america>

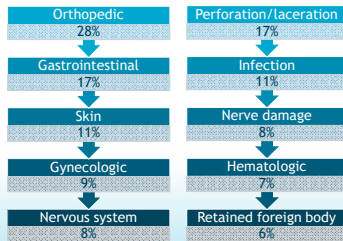
CRICO 2019 benchmarking report: surgical cases

44% of surgical cases involve ambulatory care patients.

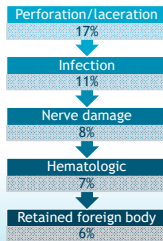


■ Ambulatory
 ■ ED
 ■ Inpatient

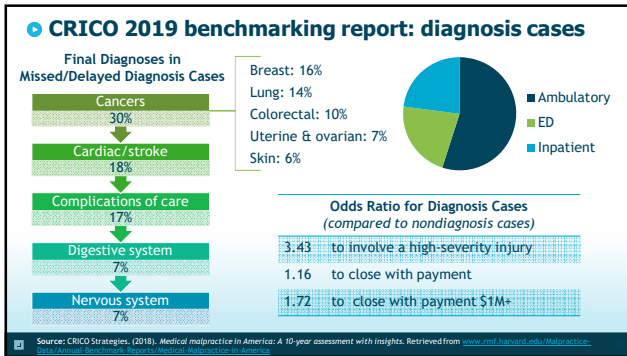
Top Procedures

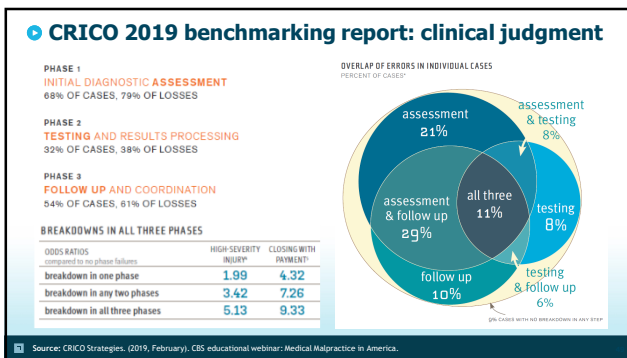


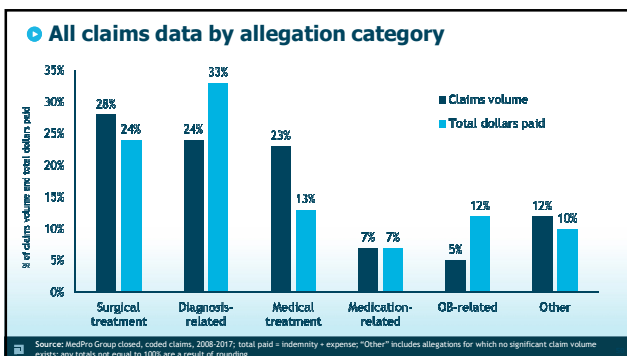
Top Injuries

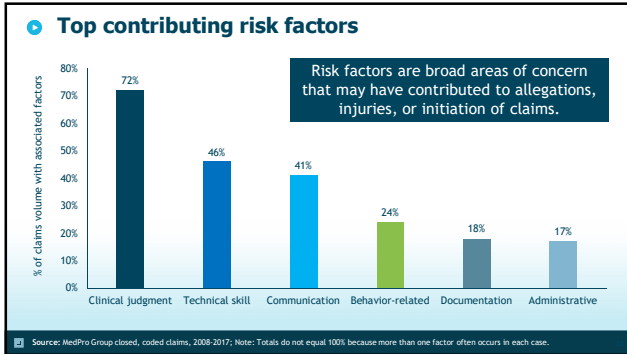


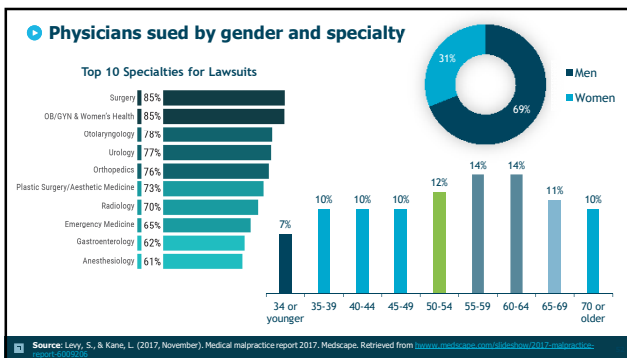
Source: CRICO Strategies, (2018). Medical malpractice in America: A 10-year assessment with insights. Retrieved from www.cmf.harvard.edu/malpractice.
<https://annualbenchmarkreport.org/medical-malpractice-in-america>

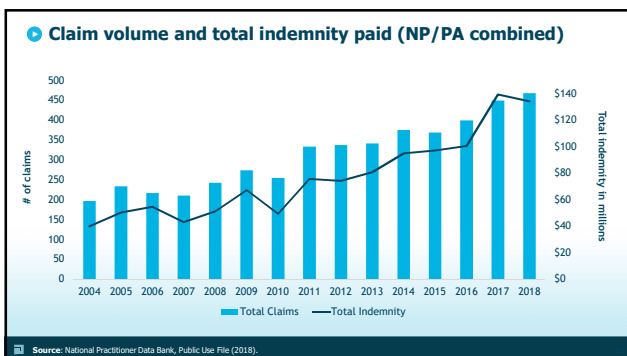




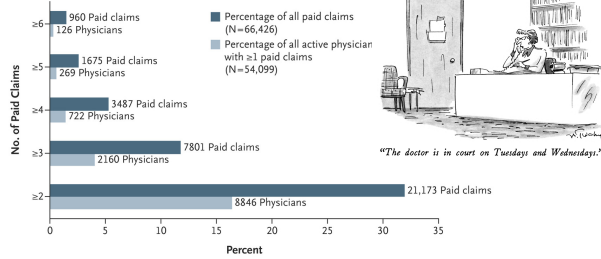








1% of physicians account for 32% of paid claims



Source: Studdert, D. M., et al. (2016, January). Prevalence and characteristics of physicians prone to malpractice claims. *New England Journal of Medicine*, 374, 324-332. DOI: 10.1056/NEJma1506137

Coverage and carrier issues

Vicarious liability	Traditional physician business is changing.
Tail coverage issues	Diversification of products and services.
Different limits	New captives, RRGs, affiliated programs.
Different retentions	Ability to provide different layers of coverage.
NPDB reporting	U/W – credentialing, new technologies, new risks.
Separate counsel	Claims – metadata, class action, manufacturing, advanced practice providers.
Consent to settle	Risk – shifts to enterprise risk management.
Product liability	Reinsurance – very soft, lots of capital.
Employed vs. nonemployed	Must have flexibility but be selective.
	There is a cost to sitting still.

Healthcare liability industry shifts

Carrier Insolvencies/Run-Offs/Rehabilitation

- Capson Physicians Ins Co; CareConcepts RRG; Doctors and Surgeons National RRG; Fairway Physicians RRG; Galen Ins Co; HPIX; Lancet RRG; MO Professionals Mutual; Mountain States RRG; Oceanus RRG

A.M Best Rating/Outlook Downgrades

- CT Medical Ins Co; MedMal Direct Inc Co; GuideOne Ins Co; KaMMCO; Mountain States RRG; Triple-S Propiedad; WV Mutual Ins Co

Market Exits/Pullbacks

- At least 15 carriers have announced they have withdrawn from HCL or restricted their appetite for certain HCL segment

Sources: State Insurance Departments, Risk Retention Reporter, S&P Global Market Intelligence, and Internet searches (2016-Feb-2019).



PLACE OF WORK


EDUCATION

CHOICE


THE MEDPRO GROUP EXPERIENCE

The future


Challenges facing healthcare




Changing delivery platform




Changing reimbursement




Changing workforce




Continued advances in technology, genetics, etc.



Greater focus on consumerism




Continued consolidation



Sitting in a 38-metre sea kayak and watching a four-metre great white approach you is a fairly tense experience


Emerging risks

Artificial intelligence	Telemedicine
Quadruple aim	Cyber liability
Opioids	Robotic surgery
Virtual care	Human factors
Nano-technology	Big data
Aging physicians	Precision medicine
Remote monitoring	Retail medicine
Genomics	Disclosure
Aging population	Burnout



New plaintiff focus

Late career practitioners	Forensic audits
Credentialing	Reptile theory
Allied health professionals	Opiates
Product liability	
Batch/class action	
Institutional risk	
Large claims	
Technology	
Cyber liability	
Telemedicine	




Funding malpractice lawsuits

- Lawyers are not required to tell clients that they have borrowed money.
- Interest rates on lawsuit loans generally exceed 15-18% a year.
- Law Finance Group: "Since 1994 we have provided over \$450 million to attorneys and plaintiffs immersed in litigation . . . We do what banks won't."
- Counsel Financial: "We are the most established lender in the industry—providing financing for 19 years with more than \$1.5 billion loaned exclusively to plaintiffs' firms nationwide."
- LawCash: "LawCash provides the best lawsuit funding services and lowest rates for the injured."

Presettlement loan companies

Large banks

Hedge funds



Sources: www.lawfinance.com/about-us/law-finance-group/; www.counselfinancial.com/pages/7/reserve/; www.lawcash.net/

• Ode to the death of the physical exam

here ye here ye
on this day we take the time to remember
the loss of a fond friend,
the physical exam

gone are the days
of the bedside JVP
absent a waves, dominant v waves,
now we just lasix them all

There is no-one to appreciate
the subtle art of trousseau sign
or even the grade 1 diastolic murmur
(that probably doesn't exist)

What need are there for speculums
When you can just consult gyne
Or the need for reflex hammer
When you can give neuro a call?

I look fondly on the days as a young med scholar
doing a full respiratory exam
does anyone ever do anymore
the whispered pectoriloquy?

here we lay to rest,
the art of touching the patient
now we fast track
and roll them through the CT scanner



Source: GomerBlog Team. (n.d.). Ode to the death of the physical exam. Retrieved from <https://gomerblog.com/2018/07/ode-to-the-death-of-the-physical-exam/>

• Technology

Be aware that patients might be recording appointments.

Print a few high-risk charts every quarter for review.

Get an outside documentation audit once a year.

Get a security audit done for your practice.

Have a bring-your-own-device (BYOD) office policy.

Centralize office administrative permissions.



"You can't list your iPhone as your primary-care physician."

• Technology

Develop a social media policy.

Practice disaster recovery.

Remember you are leaving a digital signature.

You will likely change EHRs several times.

Remember the "duty to preserve" documents.

Technology workarounds can be dangerous.

Manage patient expectations about electronic communication and secure appropriate consent.



"I have to tell you, I got a totally different diagnosis from someone named PookyPoo on medi-answer.com."

IBM Watson

Healthcare data will double every 73 days by 2020.



Source: IBM. (2015, April 13). Datagram: Medical data. Retrieved from www.ibm.com/press/us/en/pressphoto/66588.wss

Human factors engineering

Wrong Dose, Wrong Medication



Human factors engineering

Design Flaws and Remedy



• EHRs in malpractice allegations


More than half (53%) of the MPL insurance companies that participated in a PIAA survey on EHRs had seen EHR-related claims by 2012.

Top trends:

- Cut-and-paste practices
- Failure to review additional electronic records
- Failure to interface with other systems
- Allegations of HIPAA violations

Other issues:

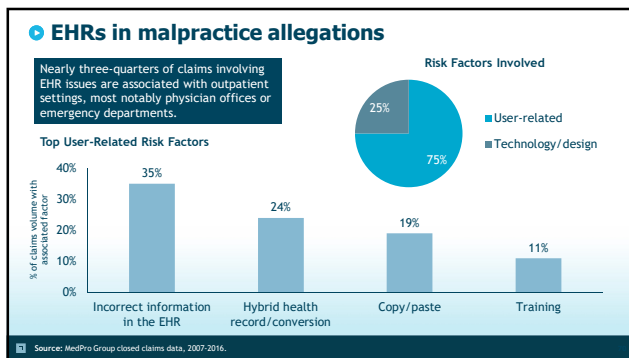
- Spoilation of evidence
- Breach of the system
- Insufficient provider training
- Failure to adhere to guidelines
- EHRs as the "standard of care"



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"Somehow our new EMR system accidentally sent your test results to a veterinarian. He recommends a chewable de-wormer."

Source: PIAA, (2013, January), Part 1 of 2: Electronic health records and a summary analysis on the 2012 PIAA EHR Survey. Research Notes, 1(1), 3. PIAA, (2016, April), Special feature: Part 2 of 2: Electronic health records in MPL. Research Notes, Retrieved from <https://www.researchnotes.org/2016/04/02/special-feature-part-2-of-2-electronic-health-records-in-mpl/>



• Telemedicine has been a surprise


Of the 94,228 total claims in the PIAA data sharing project (DSP) during the period from 2004-2013, a total of only 196 claims were linked with telephone treatment.

Of those 196 reported claims, 56 resulted in some form of claim payment.

The total indemnity loss related to telephone treatment was \$17M compared with \$8B for the total of all MPL losses in the DSP.

Telephone treatment claims thus represented only about 0.21% of all MPL losses.

The average indemnity loss was also lower for telephone treatment – \$303,691 compared with \$328,815 for all MPL claims within the DSP.



Source: Murphy, D. (2015, July). Telemedicine and MPL: The story so far. Inside Medical Liability Online. Retrieved from <http://www.insidemli.com/2015/07/06/telemedicine-and-mpl-the-story-so-far/>

• The Interstate Medical Licensure Compact

Voluntary agreement between states

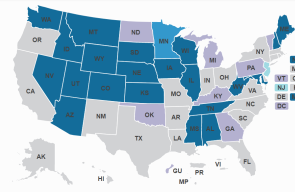
To promote access to healthcare and telemedicine in underserved and rural areas

29 states, the District of Columbia, and the Territory of Guam

43 different medical and osteopathic boards

80% of physicians meet the criteria for licensure

Uses the state of principal licensure (SPL) for verification



Source: Interstate Medical Licensure Compact. (2019). The IMLC. Retrieved from <https://imlc.org/>

• Distractions in the operating room

Pennsylvania Patient Safety Authority Report System, January 2010 to March 2013

• 304 operating room (OR) adverse events with distractions/interruptions as contributing factors

Intrinsic distractions

- alarms, noise from surgical devices, shift changes, and necessary communications

Extrinsic distractions

- cellphones, beepers, computers and personal electronic devices, calls from outside the OR, nonrelevant communication, and traffic in the OR

DALLAS ANESTHESIOLOGIST BEING SUED OVER DEADLY SURGERY ADMITS TO TEXTING, READING IPAD DURING PROCEDURES

"One of the claims the jury will decide is whether the patient was a victim of "distracted doctoring."

Dallas Observer, April 1, 2014


Source: Pennsylvania Patient Safety Authority. (2014, June). Distractions in the operating room. Retrieved from <http://www.ppsa.org/Portals/0/PDFs/20140601-Distractions%20in%20the%20OR.pdf>. American College of Surgeons (ACS) Committee on Perioperative Care. (2016, October). Statement on distractions in the operating room. Retrieved from <http://www.facs.org/Portals/0/Assets/Document%20Library/Perioperative%20Care/20161020-Statement%20on%20Distractions%20in%20the%20OR.pdf>

• Surgical black box

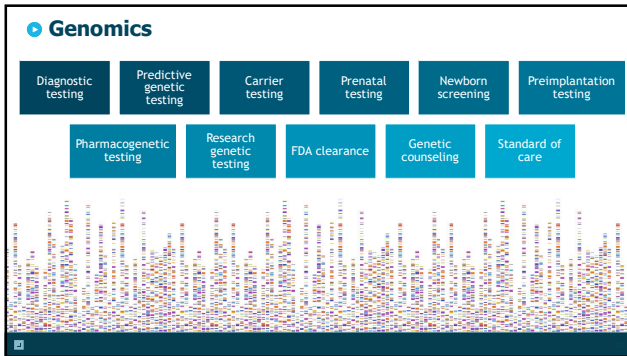
During elective laparoscopic operations, frequent intraoperative errors and events, variation in surgeons' technical skills, and a high amount of environmental distractions were identified using the OR Black Box." — *Annals of Surgery*

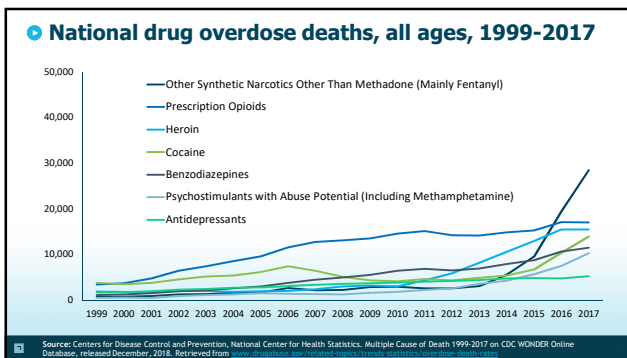
The black box will eventually assess everything from how surgeons stitch to how delicately they handle organs and communicate with nurses during high-stress situations." — *CNN*

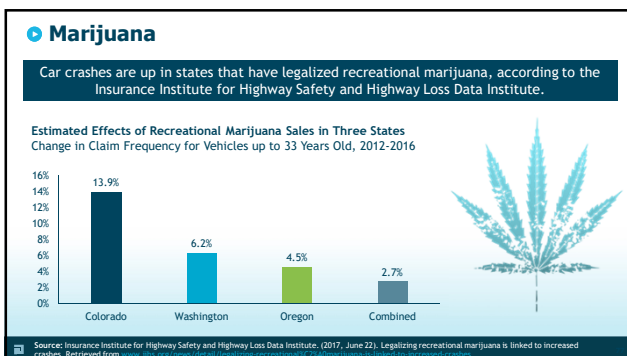
The data in an operating room black box could be used as evidence in medical malpractice suits unless precluded by legislation." — *Canadian Medical Association Journal*



Source: Jung, J. J., et al. (2018). First-year analysis of the operating room black box study. *Annals of Surgery* (Epub ahead of print). doi: 10.1097/SLA.0000000000002863; Sethiya, C. (2016, August 23). Surgical black box could reduce errors. *CNN*. Retrieved from <http://www.cnn.com/2016/08/23/health/surgical-black-box/index.html>; Houston, S. (2015, August). Surgical black box may solve malpractice issues. *Canadian Medical Association Journal*. 187(11): 794. doi: 10.1503/cmaj.120601







• Cyber liability claims

Healthcare Sector (2014-2016)

- Many of the claims occurred in small or mid-sized healthcare organizations.
- The average number of records exposed in a healthcare breach was 6M.
- The average breach cost in healthcare was \$555K.
- Breaches that exposed protected health information (PHI) were substantially smaller than breaches that exposed personally identifiable information (PII).
- Total average breach cost: PHI - \$475K, PII - \$1.85M.
- 63% of healthcare breaches were caused by criminal or malicious activity.
- Hacking was the most common cause of loss (20% of cases), with an average cost of \$2.4M.



Source: Netelligence. (2018). 2017 cyber claims study: 2018 spotlight on healthcare. Retrieved from <https://netelligence.com/2018/04/09/netelligence-research-2017-cyber-claims-study/>

• Cyber breaches: preparing for the inevitable

Educate employees about cybersecurity risks.

Patch operating systems, software, and firmware on digital devices in a timely manner.

Ensure antivirus and antimalware solutions are set to automatically update and conduct regular scans.

Manage the use of privileged accounts.

Configure access controls, including file, directory, and network share permissions appropriately.

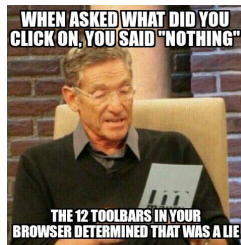
Implement software restriction policies.

Conduct business continuity efforts.

Back up data regularly.

Secure your backups.

Test your system.



Source: Sniecki, B. (2016, April 6). Tips for protecting hospitals from ransomware as cyberattacks surge. Healthcare IT News. Retrieved from www.healthcareitnews.com/news/tips-for-protecting-hospitals-from-ransomware-as-cyberattacks-surge-20160406

• Millennial jurors

- Favor plaintiff from the outset.
- Will ignore law/judge's instructions.
- Will decide based on sympathy:
 - 45% would decide based on fairness rather than law.
 - 31% would do internet research even if judge forbids it.
- Wants to reward underdogs and punish deep pockets
 - 44% would award more money if defendant is a large corporation.
 - 69% would pay medical bills even if no fault.
 - Would give largest awards to single parent or baby plaintiffs.
- Surprisingly benevolent views about healthcare.



"Has the jury tweeted a verdict?"

Source: Deane, R. P., Uizer, G., & Luns, C. (2016, May). Millennials: Can't we all get along. 2016 PMA Medical Liability Conference, Washington, DC.



PHASE OF PLAN

EDUCATION

CHOICE

THE MEDPRO GROUP EXPERIENCE

▶ **Managing risk**

Solutions vs. countermeasures

• **Positive outlook**

Malpractice is predictable, repetitive, and preventable.

A mindset of prevention is critical.


A suboptimal outcome is not synonymous with malpractice.

Operational risks can be mitigated.

You have more leverage than you think.


Be proactive: develop policies and procedures, education providers and staff, audit processes, identify opportunities for improvement.

Preparing for potential disasters (e.g., cyberattacks) can increase resiliency.



• **Litigation lunacy**

Lawyer	"Doctor, before you performed the autopsy, did you check for a pulse?"
Witness	"No."
Lawyer	"Did you check for blood pressure?"
Witness	"No."
Lawyer	"Did you check for breathing?"
Witness	"No."
Lawyer	"So, then, it is possible that the patient was alive when you began the autopsy?"
Witness	"No."
Lawyer	"How can you be so sure, Doctor?"
Witness	"Because his brain was sitting on my desk in a jar."
Lawyer	"I see, but could the patient have still been alive, nevertheless?"
Witness	"Yes, it is possible that he could have been alive and practicing law."



Source: Catcher, J. (n.d.). Funny court reports: 15 ridiculous things people have actually said during trial. Little Things. Retrieved from: www.littlethings.com/funny-court-reports

• High-level risk tips

- 1 Address abnormal vital signs.
- 2 Provide specific, clear discharge instructions.
- 3 Reduce the number of handoffs between providers.
- 4 Follow up on critical lab results, X-rays, and cultures.
- 5 Understand that informed consent is a process, not a piece of paper.
- 6 Be aware of common cognitive biases that lead to errors.
- 7 Don't delay consultations, studies, or procedures.

• High-level risk tips

- 1 Don't talk yourself out of doing what is right.
- 2 Ensure adequate and timely documentation.
- 3 Be careful of transfers, holding, and observation patients.
- 4 Be mindful of psychiatric diagnoses and behavioral health issues.
- 5 Regard complaints as learning opportunities and not nuisances.
- 6 Consider special issues related to geriatric and pediatric patients.

• Communication strategies

- Knock before entering exam rooms.
- Greet patients and introduce yourself (if needed).
- Sit when you can, and maintain eye contact when talking to the patient.
- Be aware of nonverbal communication and cues.
- Ask patients about their goals for the visit.
- Don't interrupt while patients are talking.
- Ask open-ended questions.



I've got a patient who needs to chat to someone...Have you got anyone who's completed the 'verbal communication with patients in a personal, supportive but not disempowering' course?

• Communication strategies

Use layman's language and visual aids to ensure comprehension.

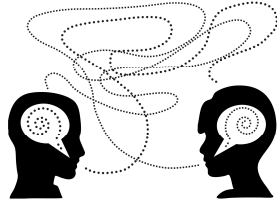
Provide plain-language follow-up instructions and educational materials.

Use the teach-back technique to ensure comprehension.

Encourage patients to voice questions and concerns.

Consider patients' personal and cultural preferences and values.

Use satisfaction surveys to gauge patient perceptions.



• Solutions for the future

Emphasize team training and simulation.

Improve communication for everyone.

Standardize care transitions among providers.

Address physician and nurse burnout.


Focus risk prevention on:

- Common risks: e.g., communication, handoffs, documentation
- Specialty-specific risks: e.g., robotic and bariatric surgery
- Emerging risks: e.g., genomics and drug resistance
- Human factors design and engineering
- High-risk complaints and high-risk clinicians

• Hope

- If your only concern is the welfare of the patient, it is unlikely you will be sued
- and if you are sued, it is unlikely that you will lose
- Plaintiffs only win 3% of trials
- If you are sued, go and talk to someone, you are not alone
- If you know someone who has been sued, go and talk to them
- Understand the risk, don't fear it.





PEACE OF MIND

EXPERTISE

CHOICE

THE MEDPRO GROUP DIFFERENCE

▶ **Thank You**
