THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER™

Radiology Malpractice: Meet the Elephant in the Reading Room

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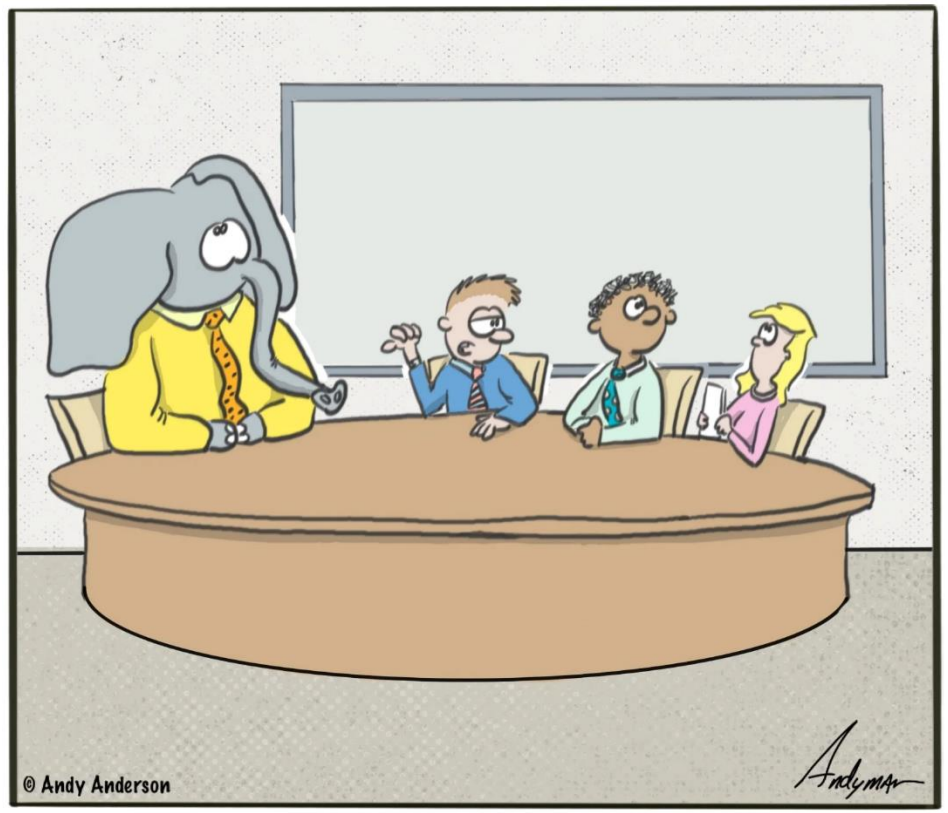
Virginia Radiological Society
2023

Elephant in the Reading Room?

The expression "**the elephant in the room**" (or "**the elephant in the living room**")[2][3] is a metaphorical idiom in English for an important or enormous topic, question, or controversial issue that is obvious or that everyone knows about but no one mentions or wants to discuss because it makes at least some of them uncomfortable and is personally, socially, or politically embarrassing, controversial, inflammatory, or dangerous. The metaphorical elephant represents an obvious problem or difficult situation that people do not want to talk about. [1][4][5]



SO WE'RE NOT GOING TO DISCUSS IT?

Disclosures

Consulting and Other Financial Relationships

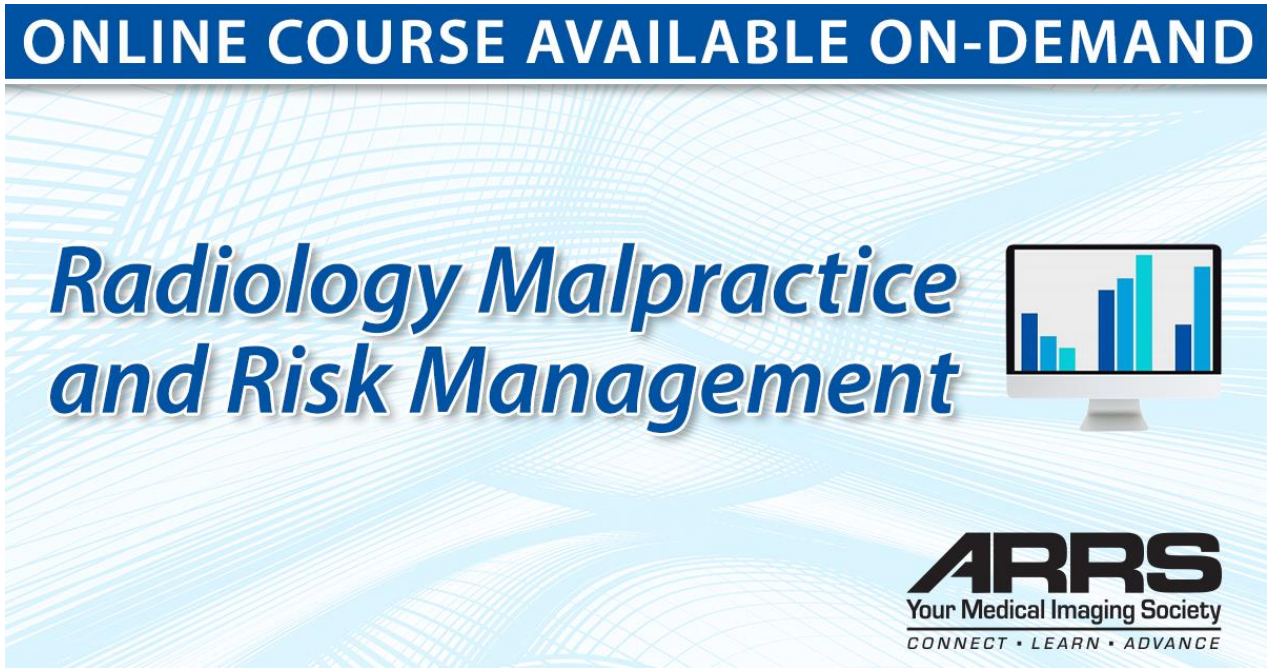
- Ethos Medical, Inc. (Advisor and Shareholder)

Fiduciary Relationships

- Board of Chancellors, American College of Radiology

The opinions expressed herein are my own.

Disclosures



ARRS Leonard Berlin Scholarship

Richard Duszak, MD

Emory University School of Medicine

Dr. Duszak aims to fill gaps in scholarship and teaching by developing a deeper and broader understanding of the contributors to and drivers of malpractice litigation and better disseminating such knowledge to reduce radiologists' collective malpractice exposure and improve the quality and value of radiology services to patients.

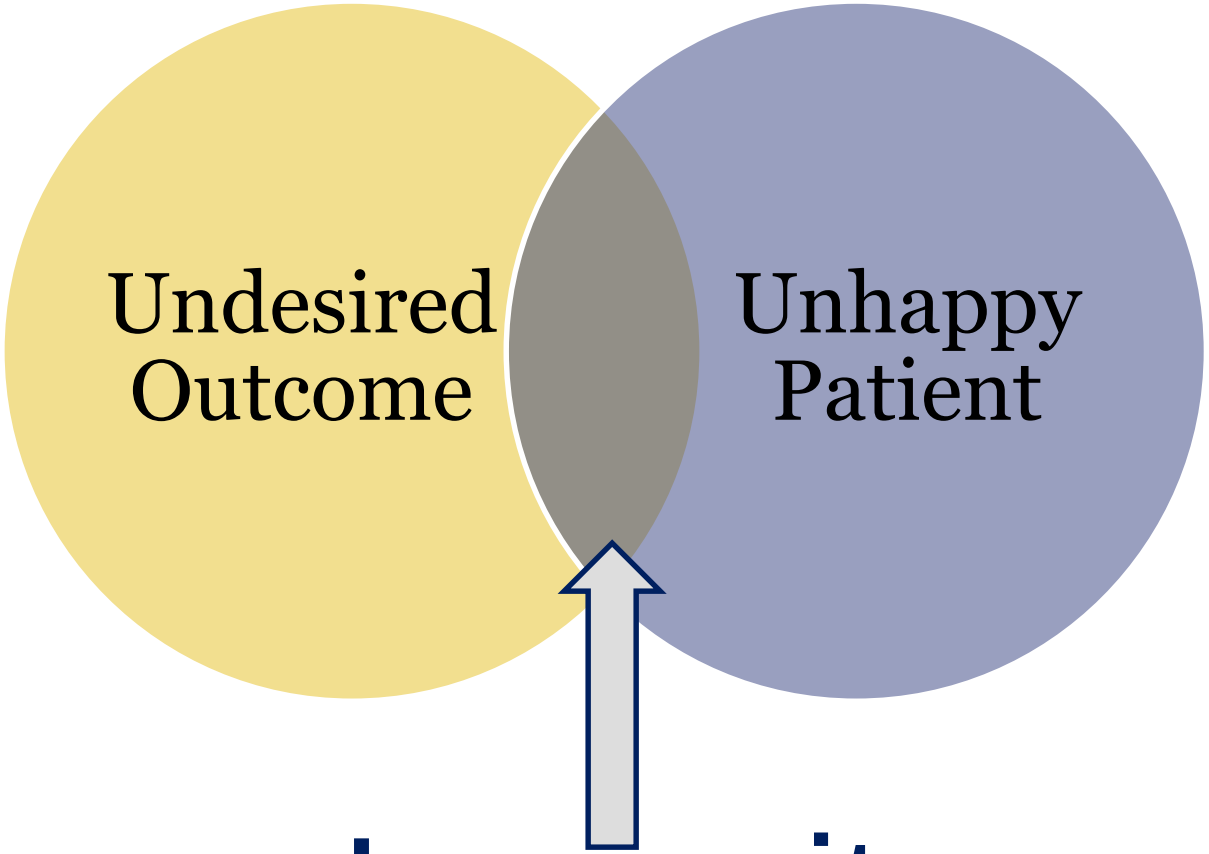
Learn more about the Leonard Berlin Scholarship

Agenda

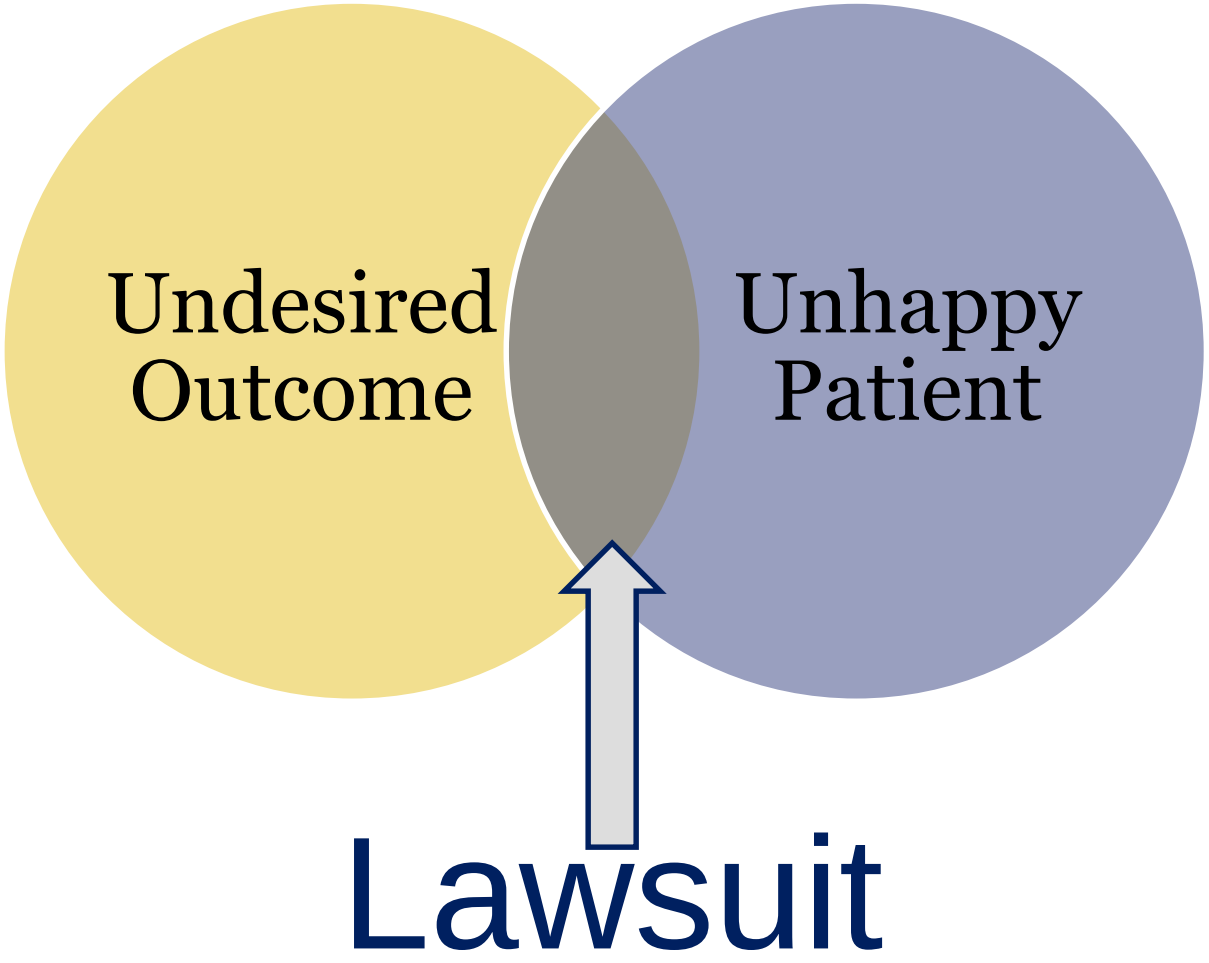
- Risk management
- Facts and figures
- Expert witnesses
- Preventing and defending “the miss”
- Physician wellness

Why Lawsuits Occur

Why Lawsuits Occur



How to Mitigate Risk



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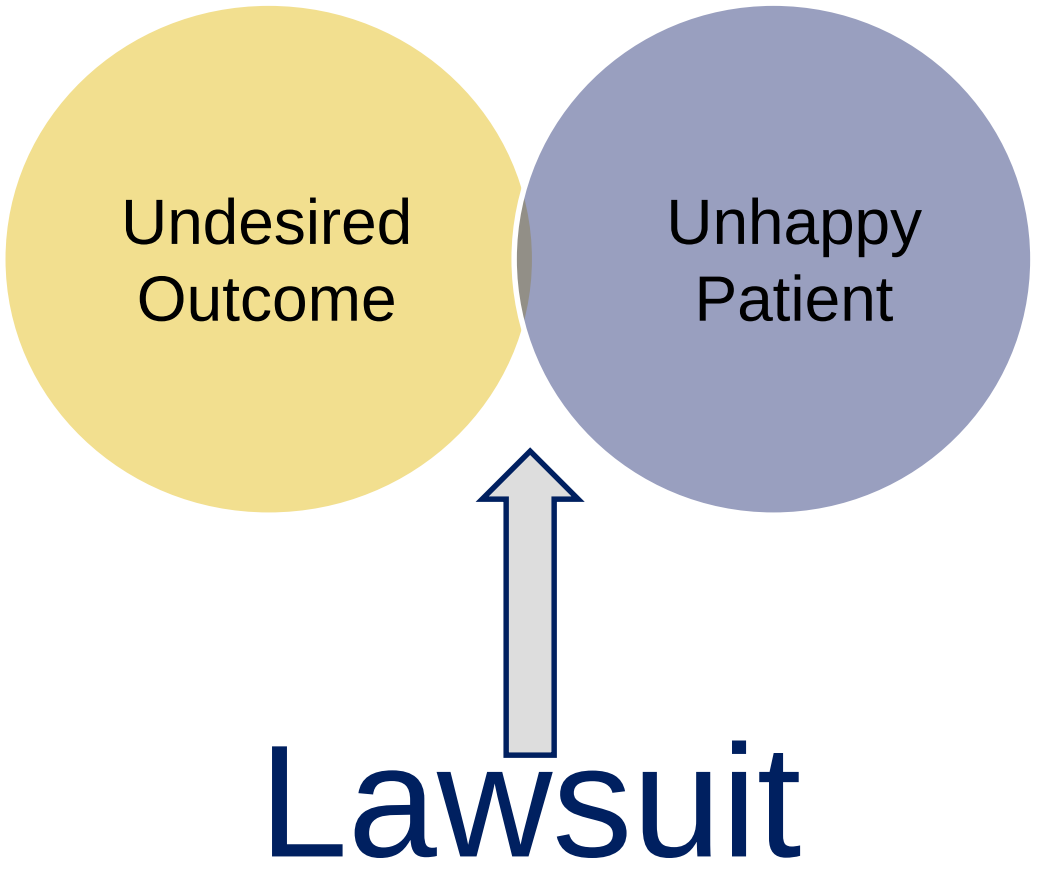

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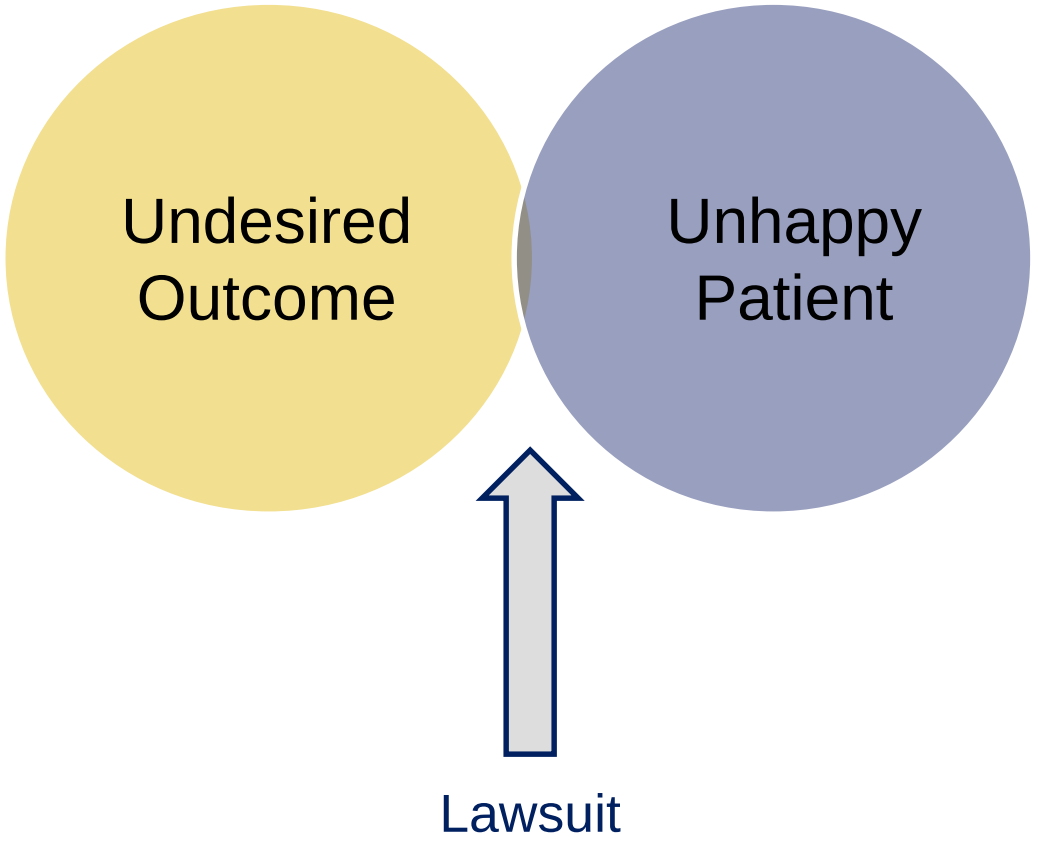

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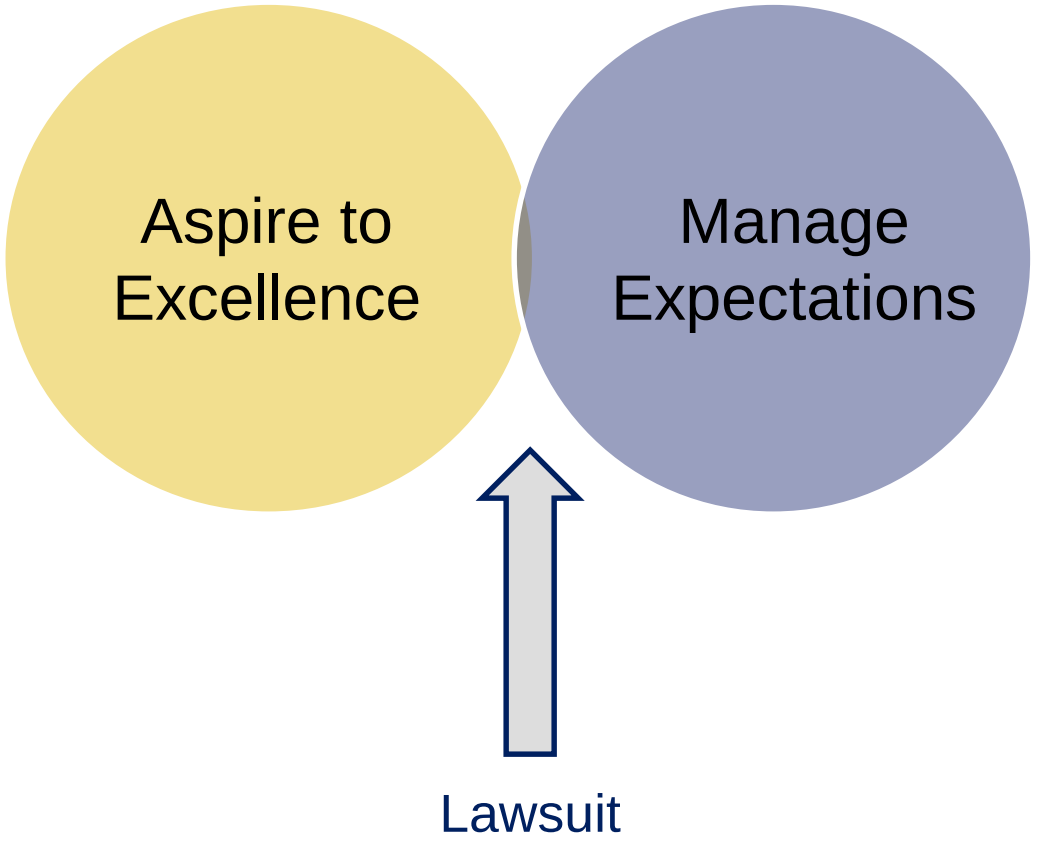

Public Scrutiny is High

TO ERR IS HUMAN:
BUILDING A SAFER HEALTH SYSTEM

Health care in the United States is not as safe as it should be--and can be. At least 44,000 people, and perhaps as many as 98,000 people, die in hospitals each year as a result of medical errors that could have been prevented, according to estimates from two major studies. Even using the lower estimate, preventable medical errors in hospitals exceed attributable deaths to such feared threats as motor-vehicle wrecks, breast cancer, and AIDS.

Institute of Medicine, November 1999.

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Institute of Medicine, November 1999.

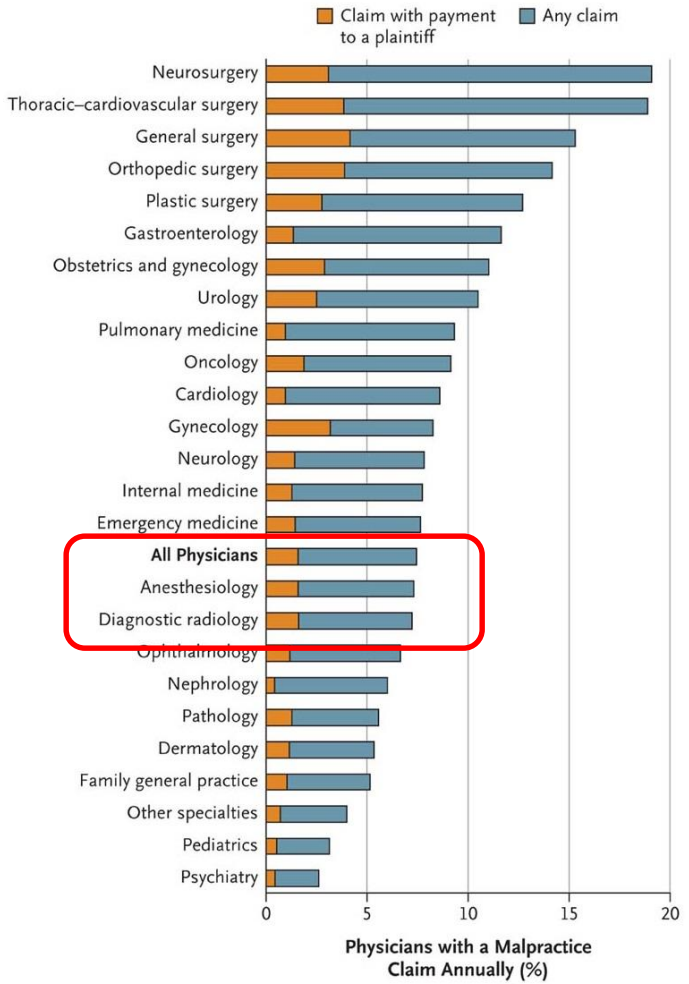
Sensationalism Sells

“The equivalent of three jumbo jets crashing every single day.”

What Does this Mean for You?

Will You Be Sued?

Proportion of physicians facing a malpractice claim annually, according to specialty.



Jena AB, et al. N Engl J Med 2011;365:629-636.

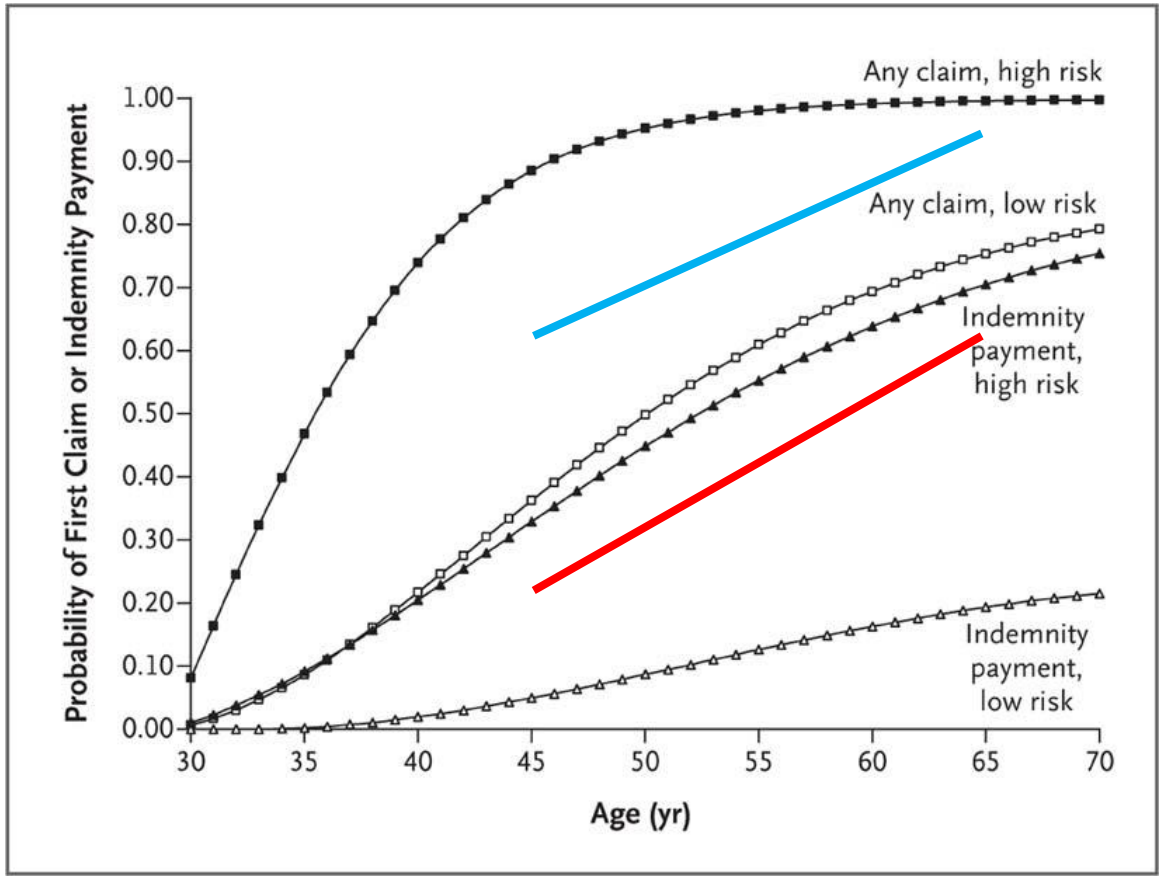
But That's Just One Year…

Cumulative Career Probability

Radiology Estimates
- Age 45-65

Any claim:
- 57%-90%

Payment
- 17%-53%



Jena AB, et al. N Engl J Med 2011;365:629-636.

How Long Will It Last?

Mean time to resolution (per claim):

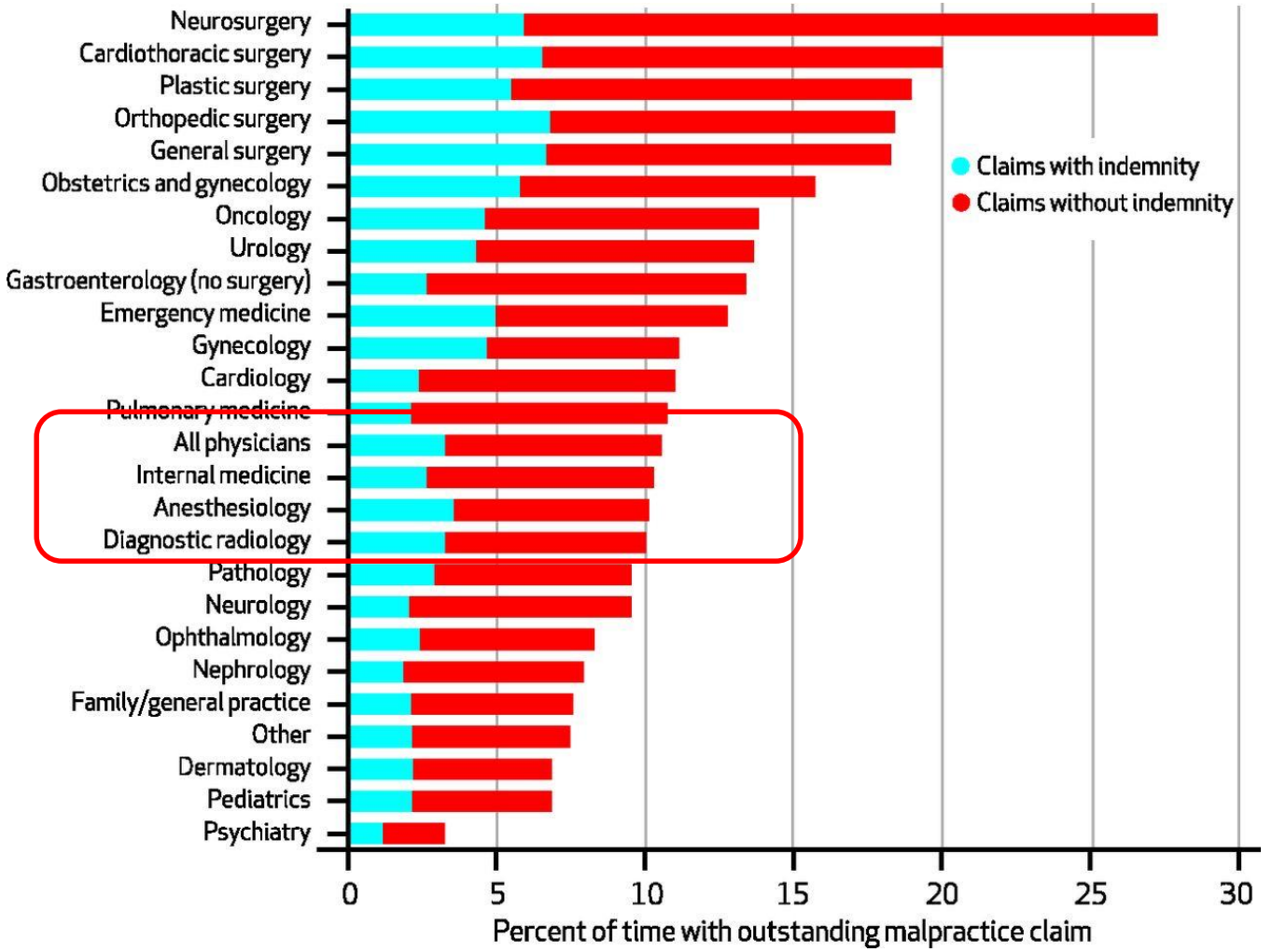
20.3 months

Mean Time To Resolution Of Malpractice Claims, By Claim Characteristics

Characteristic	Mean time to resolution, months	
	Unadjusted	Adjusted
PHYSICIAN AGE (YEARS)		
30–39 (ref)	15.0	16.4
40–49	19.5	20.4****
50 or older	21.8	21.1****
SPECIALTY		
Anesthesiology (ref)	16.5	19.5
Cardiology	19.9	21.1
Dermatology	12.6	18.4
Diagnostic radiology	16.6	19.1
Emergency medicine	16.7	15.4
Family/general practice	18.0	20.6
General surgery	18.1	20.1
Gynecology	18.4	21.2
Internal medicine	21.8	22.1**
Nephrology	11.6	13.5****
Neurology	15.7	17.9
Neurosurgery	22.3	19.4
Obstetrics	21.2	22.7***
Oncology	17.3	15.1
Ophthalmology	17.0	20.1
Pathology	25.3	20.6
Pediatrics	24.1	24.5**
Plastic surgery	20.4	21.0
Psychiatry	18.7	19.0
Pulmonary medicine	16.5	16.3**
Cardiothoracic surgery	16.9	17.2**
Urology	19.4	22.1**
Gastroenterology	19.1	20.1
Orthopedic surgery	21.1	21.9**
Other specialties	14.9	16.1****

Seabury SA et al. Health Affairs 2013;32:111-119.

How Long Will It Last?



Seabury SA et al. Health Affairs 2013;32:111-119.

Getting Better?

Table 2. Annual Rates of Paid Medical Malpractice Claims per 1000 Physician-years

Specialty	Rate of Paid Medical Malpractice Claims					Difference in Mean Rate From Period 1 to Period 4	Percentage Change[a]
	1992-2014 (All Periods)	1992-1996 (Period 1)	1997-2002 (Period 2)	2003-2008 (Period 3)	2009-2014 (Period 4)		
All specialties	14.1	20.1	17.5	13.2	8.9	−11.2	−55.7
Anesthesiology	11.7	15.4	13.7	10.8	8.6	−6.8	−44.2
Cardiology	15.9	15.6	18.0	16.6	13.5	−2.1	−13.5
Colon and rectal surgery	34.1	38.3	39.3	35.1	27.6	−10.7	−27.9
Dermatology	11.6	17.3	15.2	10.6	6.2	−11.1	−64.2
Emergency medicine	18.8	24.3	24.4	18.6	13.0	−11.3	−46.5
Family medicine	14.3	22.3	18.4	13.0	8.2	−14.1	−63.2
Gastroenterology	15.8	18.5	18.0	16.5	12.1	−6.4	−34.6
General practice	21.9	29.0	23.2	16.7	12.6	−16.4	−56.6
General surgery	30.0	34.4	34.3	29.9	22.2	−12.2	−35.5
Internal medicine	7.1	8.9	8.5	7.1	4.8	−4.1	−46.1
Neurology	9.5	13.1	12.0	9.4	5.8	−7.3	−55.7
Neurosurgery	53.1	66.0	61.2	53.9	37.3	−28.7	−43.5
Obstetrics and gynecology	42.5	57.6	51.5	40.0	25.9	−31.7	−55.0
Ophthalmology	15.5	18.9	18.1	15.7	10.2	−8.7	−46.0
Orthopedics	40.9	56.5	51.1	36.7	25.0	−31.5	−55.8
Otolaryngology	24.4	33.0	29.3	21.9	16.4	−16.6	−50.3
Pathology	6.9	9.1	8.4	6.1	4.5	−4.6	−50.5
Pediatrics	4.9	9.9	5.9	4.0	2.4	−7.5	−75.8
Plastic surgery	48.5	64.8	71.3	43.1	26.0	−38.8	−59.9
Psychiatry	4.3	7.0	5.0	3.4	2.5	−4.5	−64.3
Pulmonology	10.5	14.0	13.5	10.0	7.2	−6.8	−48.6
Radiology	18.9	22.3	22.7	18.7	13.7	−8.6	−38.6
Thoracic surgery	46.7	90.6	72.5	37.2	24.0	−66.6	−73.5
Urology	25.6	30.3	32.3	23.7	17.8	−12.5	−41.3
Other	7.1	11.3	8.6	6.7	4.6	−6.7	−59.3

[a] The percentage change was statistically significant for all specialties except cardiology ($P = .15$ for cardiology; $P = .001$ for colon and rectal surgery, and $P < .001$ for all other specialties).

Schaffer AC et al. JAMA Internal Medicine, 2017.

Or Worse?

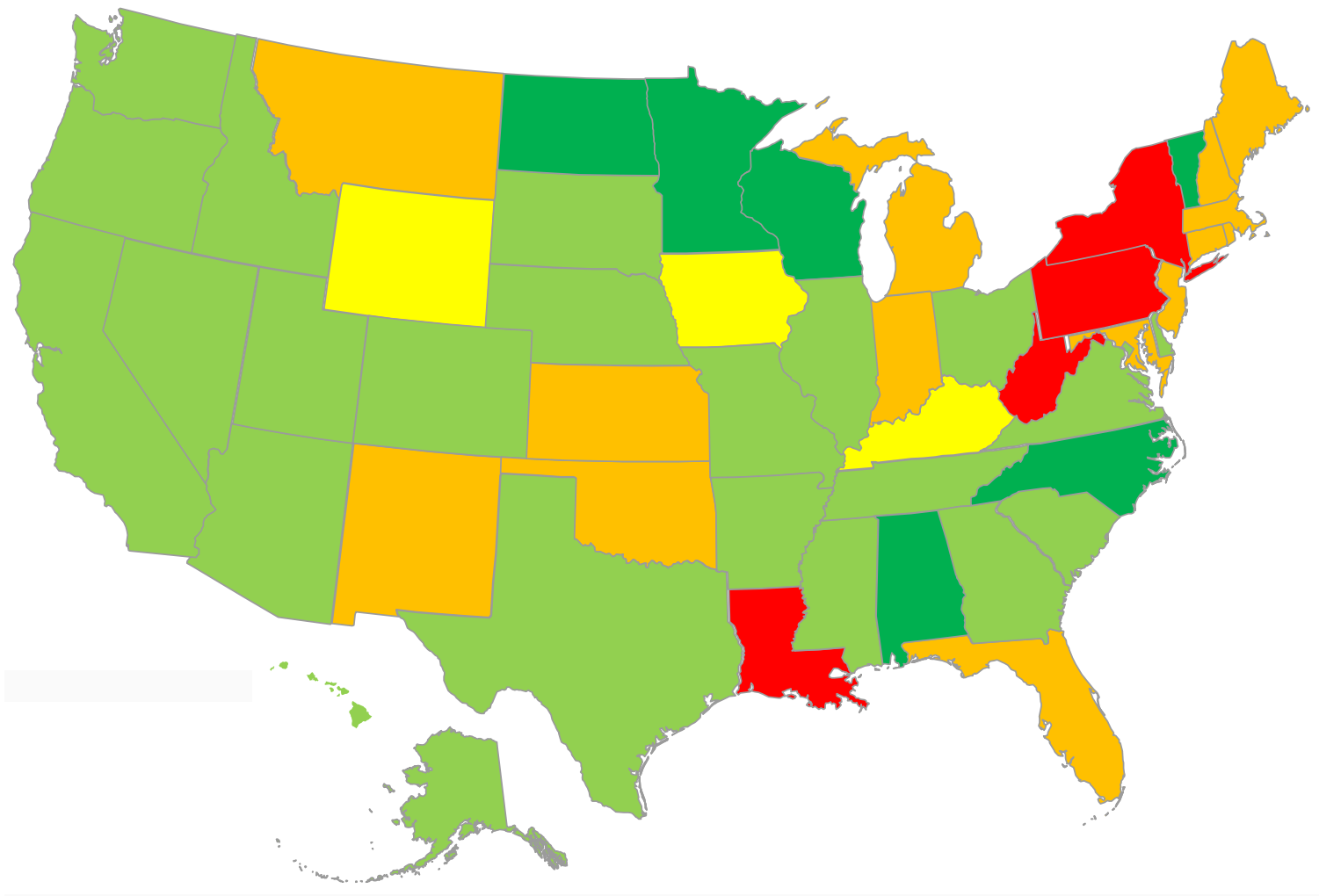
Table 3. Medical Malpractice Payment Amounts for 280 368 Paid Claims[a]

Specialty	Mean Malpractice Payment, $					Difference in Mean From Period 1 to Period 4, $ (%)	P Value for Difference (Period 1 vs Period 4)
	1992-2014 (All Periods)	1992-1996 (Period 1)	1997-2002 (Period 2)	2003-2008 (Period 3)	2009-2014 (Period 4)		
All specialties	329 565	286 751	323 263	360 260	353 473	66 722 (23.3)	<.001
Anesthesiology	377 499	313 201	392 702	439 839	354 038	40 837 (13.0)	.02
Cardiology	365 029	337 605	367 949	376 668	368 350	30 745 (9.1)	.21
Colon and rectal surgery	337 976	283 112	357 682	348 264	345 438	62 326 (22.0)	.12
Dermatology	189 065	161 512	187 426	194 672	228 966	67 454 (41.8)	.007
Emergency medicine	309 411	249 107	313 948	340 495	314 052	64 945 (26.1)	<.001
Family medicine	290 698	237 669	293 272	319 030	319 382	81 713 (34.4)	<.001
Gastroenterology	349 013	276 128	338 441	374 369	390 538	114 410 (41.4)	<.001
General practice	231 622	218 350	239 537	246 261	235 781	17 431 (8.0)	.36
General surgery	298 625	266 715	282 220	325 521	329 437	62 722 (23.5)	<.001
Internal medicine	318 071	280 725	313 128	340 505	333 540	52 815 (18.8)	<.001
Neurology	431 049	405 348	419 079	445 823	459 857	54 509 (13.4)	.19
Neurosurgery	469 222	445 182	457 919	488 756	487 043	41 861 (9.4)	.14
Obstetrics and gynecology	432 959	387 186	421 171	485 590	447 034	59 848 (15.5)	<.001
Ophthalmology	244 039	208 766	239 441	256 043	283 275	74 509 (35.7)	<.001
Orthopedics	258 763	227 154	255 000	281 487	283 979	56 825 (25.0)	<.001
Otolaryngology	282 822	239 823	282 124	313 848	304 347	64 524 (26.9)	<.001
Pathology	411 529	335 249	427 356	432 229	473 957	138 708 (41.4)	.005
Pediatrics	413 974	370 817	445 167	434 960	413 324	42 507 (11.5)	.25
Plastic surgery	189 219	169 614	171 337	219 955	210 062	40 448 (23.8)	.05
Psychiatry	238 909	234 220	215 446	257 020	269 870	35 650 (15.2)	.001
Pulmonology	348 066	328 593	345 025	354 323	363 177	34 584 (10.5)	<.001
Radiology	333 422	268 429	335 087	357 770	366 009	97 580 (36.4)	.26
Thoracic surgery	380 402	322 493	381 230	407 339	423 929	101 436 (31.5)	<.001
Urology	273 290	234 757	234 503	318 484	330 114	95 357 (40.6)	.001
Other	331 709	281 417	324 508	354 585	367 363	85 946 (30.5)	<.001

[a] All payment amounts were adjusted to 2014 dollars based on the Consumer Price Index.

Schaffer AC et al. JAMA Internal Medicine. 2017;177(5):710-718.

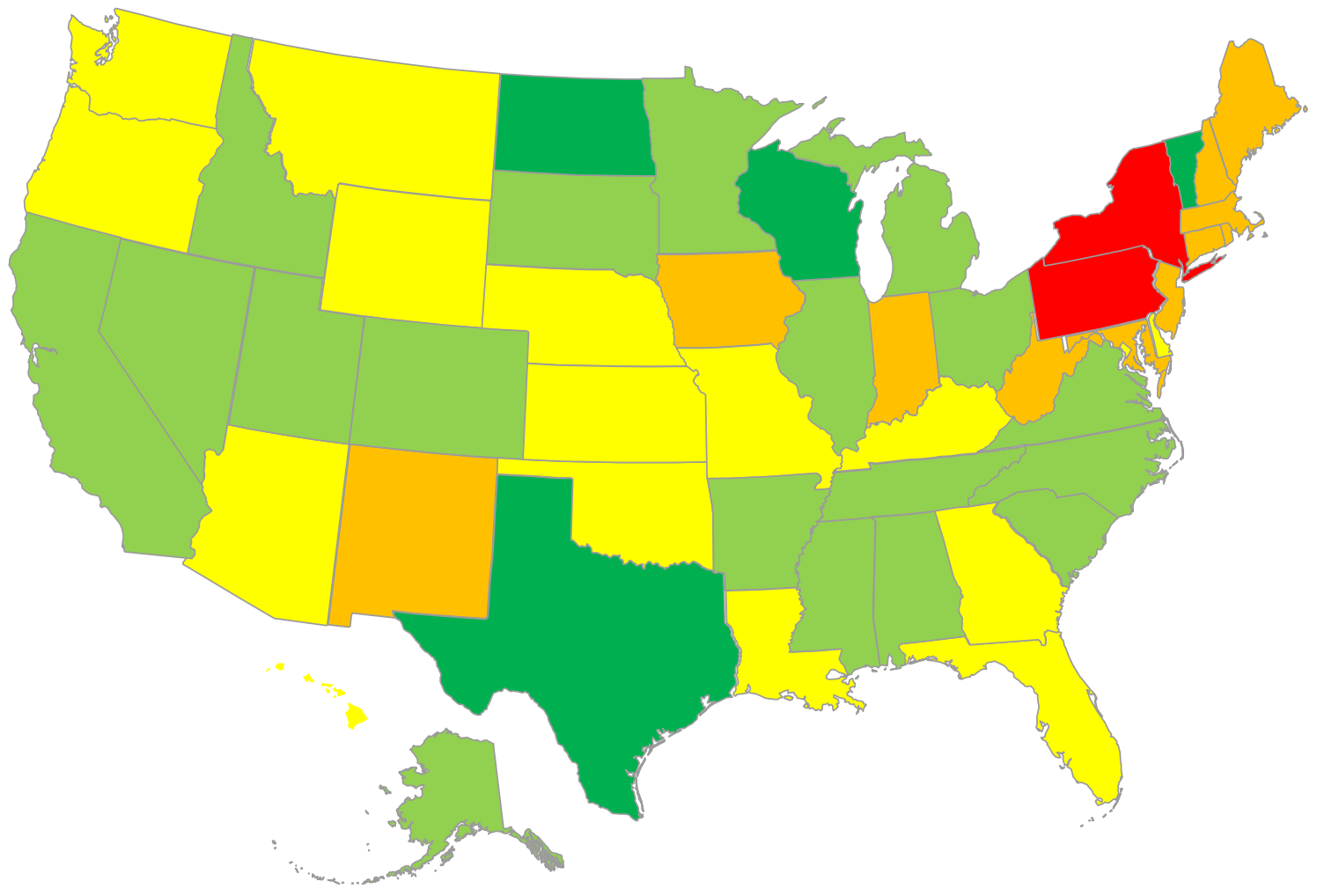
Location, Location, Location



Counts per 100,000 population		
	0.00	1.25
	1.25	2.50
	2.50	3.00
	3.00	5.00
	5.00	7.00

Based on Villalobos A et al. JACR 2021; 18: 34-41.

Location, Location, Location



Dollars per 100,000 population		
	0	374,999
	375,000	749,999
	750,000	1,249,999
	1,250,000	2,499,999
	2,500,000	4,000,000

Based on Villalobos A et al. JACR 2021; 18: 34-41.

Key Exceptions

Is Defensive Medicine Protective?

Table 3 | Estimated effect of increased physician spending on subsequent malpractice risk, within physician analysis

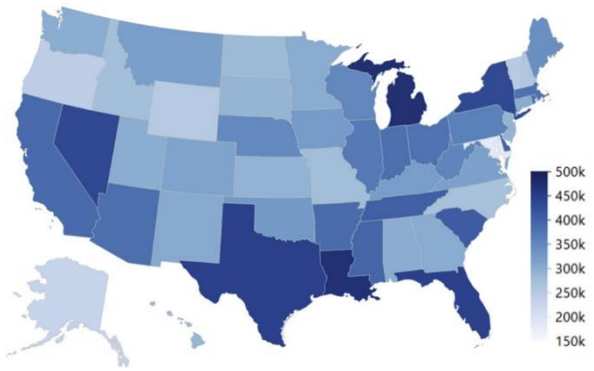
Specialty	Absolute % change in malpractice claim rate* (95% CI)	P value†
Internal medicine	−2.1 (−3.4 to −0.8)	0.001
Internal medicine subspecialty	−2.4 (−4.7 to −0.1)	0.04
Family medicine	−1.2 (−3.0 to 0.6)	0.18
Pediatrics	−1.3 (−2.1 to −0.4)	0.003
General surgery	−3.4 (−4.6 to −2.1)	<0.001
Surgical subspecialty	−1.9 (−3.0 to −0.9)	<0.001
Obstetrics and gynecology	−1.3 (−2.3 to −0.4)	0.01

Table reports effect of increasing physician hospital spending from bottom fifth to top fifth on the probability a physician experiences an event that leads to a subsequent malpractice claim. The model was estimated with physician fixed effects (that is, a within physician analysis) and therefore accounted for the possibility that within a specialty and even after adjustment for patient case mix and diagnosis related group, unobserved patient characteristics may be associated with both higher use of healthcare resources by physicians and risk of malpractice claims. The model estimated the effect of physician spending on subsequent malpractice claims by studying changes in spending and malpractice claims within physicians over time.
*Associated with increase in physician spending from bottom to top fifth.
†Two sided *t* tests.

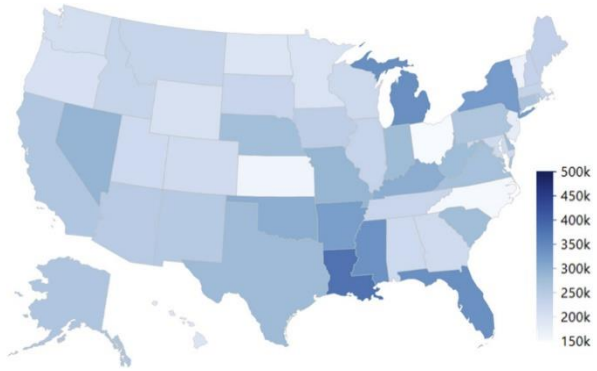
Jena AB, et al. BMJ 2015; 351: h5516.

Do Malpractice Claims Drive Imaging Utilization?

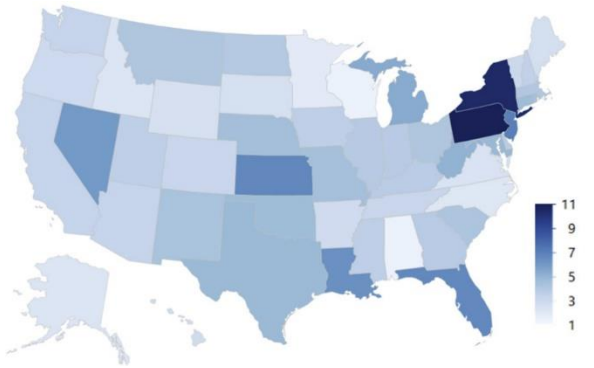
2004

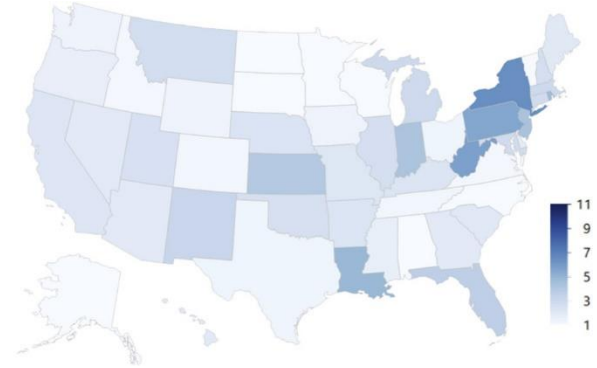


2016



Imaging utilization rates per 100,000 beneficiaries.





Paid malpractice claims per 100,000 population.

Villalobos A et al. JACR 2021; 18: 34-41.

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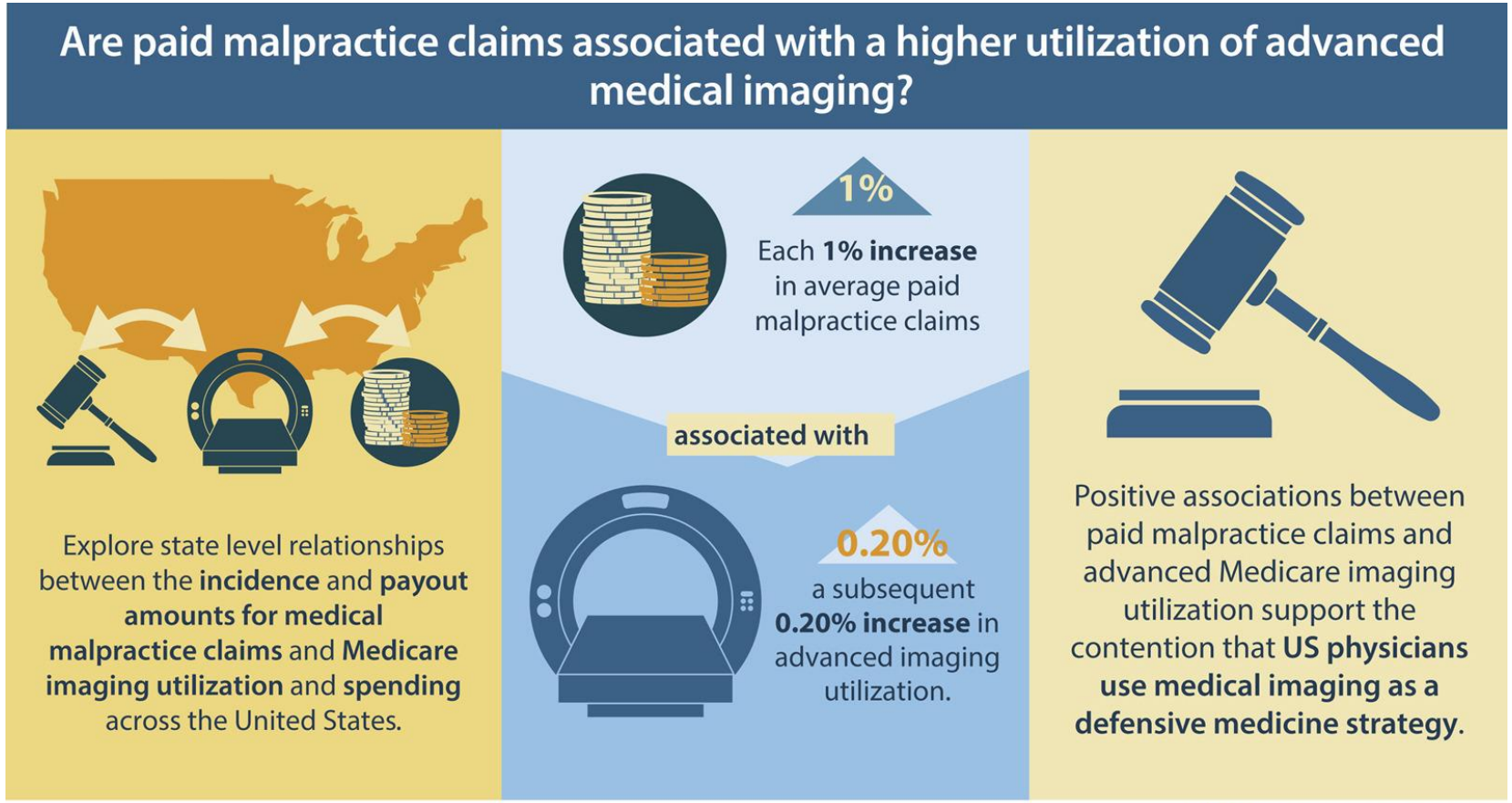

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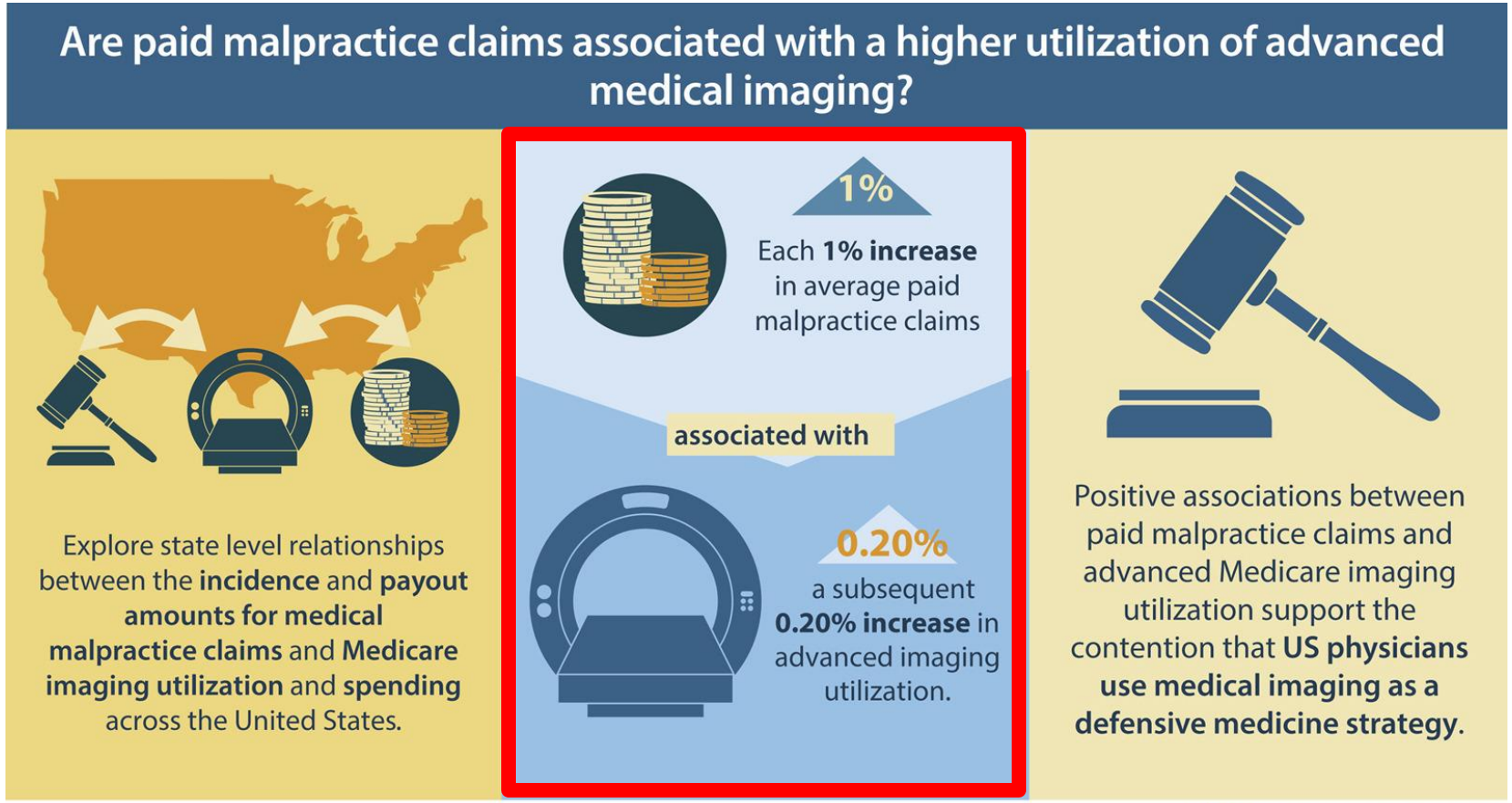

Villalobos A et al. JACR 2021; 18: 34-41.

Criteria for Malpractice Claim

- Duty
- Breach
- Causation
- Damages

- A meritorious claim should require all four

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  - Exists when a health care entity or provider undertakes care or treatment of a patient

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- Causation
  - That breach was a proximate cause of the injury
- Damages
  - Without damages, there is no basis for judgment, regardless of negligence

The Standard of Care

- Definition varies by jurisdiction, but typically relate to behavior of an “ordinary,” “reasonable,” or “prudent” physician
- “…that course of action which a reasonably prudent [professional] in the defendant’s specialty would have taken under the same or similar circumstances”

Berlin L. AJR 1997; 170: 275-278.
Washington v Washington Hospital Center, 579 A2d (DC App 1990)

Who Determines the Standard of Care?

- The jury does

Berlin L. AJR 2003; 181: 29-35.

Juries are Unpredictable

- Worried about a brain tumor, Plaintiff Judith Richardson Haimes underwent a brain CT examination at Temple University Hospital
- The jury rendered a verdict of $988,000 against radiologist Dr. Judith Hart and Temple University Hospital

Court of Common Pleas of Pennsylvania, Philadelphia County.

Judith HAIMES, Plaintiff,

v.

TEMPLE UNIVERSITY HOSPITAL, Defendant,

No. 4408.

Decided Aug. 7, 1986.

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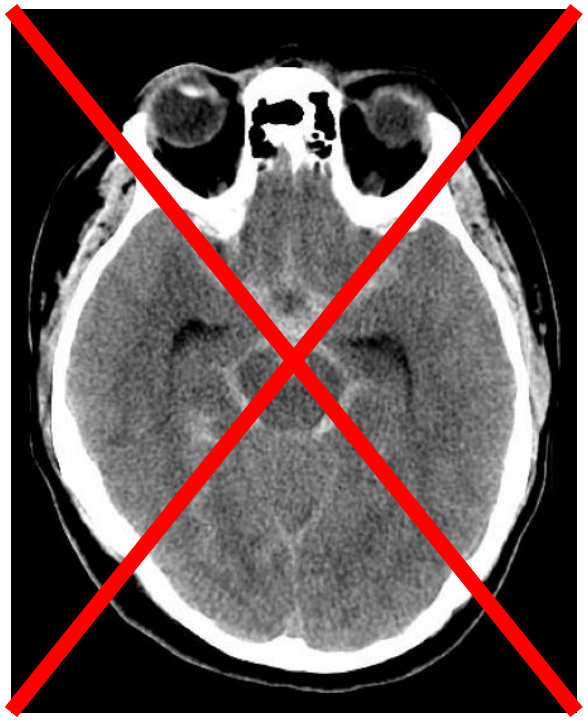


Los Angeles Times

Says Her Powers Vanished : 'Psychic' Awarded $988,000 in Hospital CAT-Scan Lawsuit

March 30, 1986 | Associated Press

PHILADELPHIA — A woman who claimed a CAT scan she received at a hospital in 1976 made her unable to use her psychic powers was awarded $988,000 by a jury last week.

The eight-member Common Pleas Court jury deliberated about 45 minutes before awarding Judith Richardson Haimes $600,000 plus $388,000 in interest on her malpractice claim against Temple University Hospital.

Who Determines the Standard of Care?

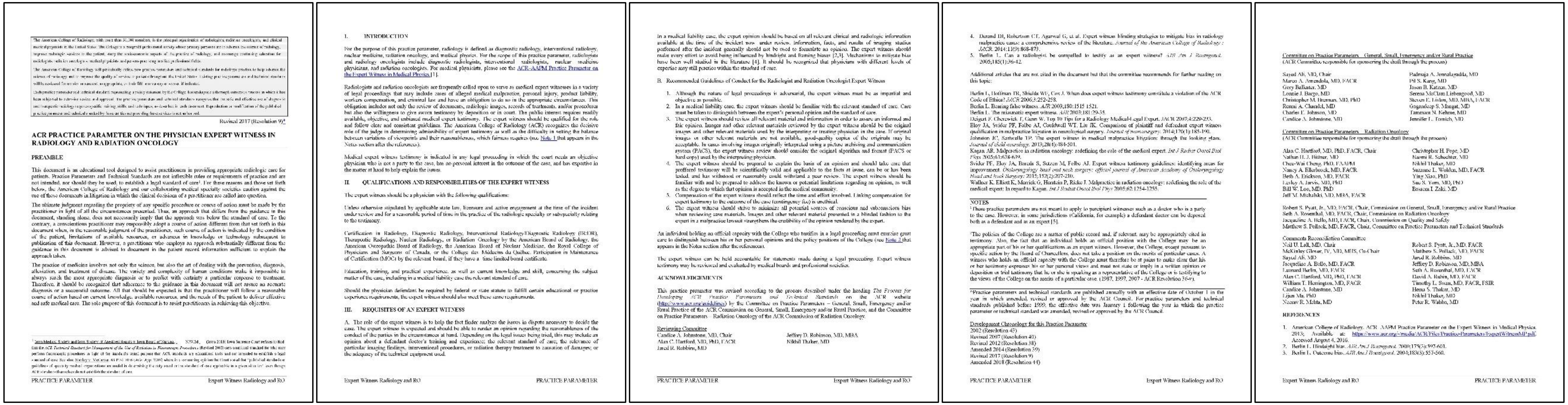
- The jury does
- Based on the opinions of dueling experts

> *A*: Are you saying, Doctor, that every time a radiologist misses a diagnosis on an X ray, he or she is guilty of malpractice?
>
> *W*: Yes.

Berlin L. AJR 2003; 181: 29-35.

Radiology Expert Witness Considerations

ACR Practice Parameter on the Physician Expert Witness
in Radiology and Radiation Oncology, 2017



ACR Practice Parameter on the Physician Expert Witness in Radiology and Radiation Oncology, 2017.

Radiology Experts Should Avoid Bias

- “In a medical liability case, the expert opinion should be based on all relevant clinical and radiologic information available at the time of the incident now under review.”
- “Information, facts, and results of imaging studies performed after the incident generally should not be used to formulate an opinion.”

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This is Not Science!

- Scientists ideally focus solely on the evidence without the influence of the parties' goals.
- Attorneys work in an adversarial system and look to sway the trier of fact with the most articulate, understandable, presentable, and persuasive expert, rather than the best scientist.

Murphy JP. Georgetown Journal of Legal Ethics 2000; 14: 217-240.

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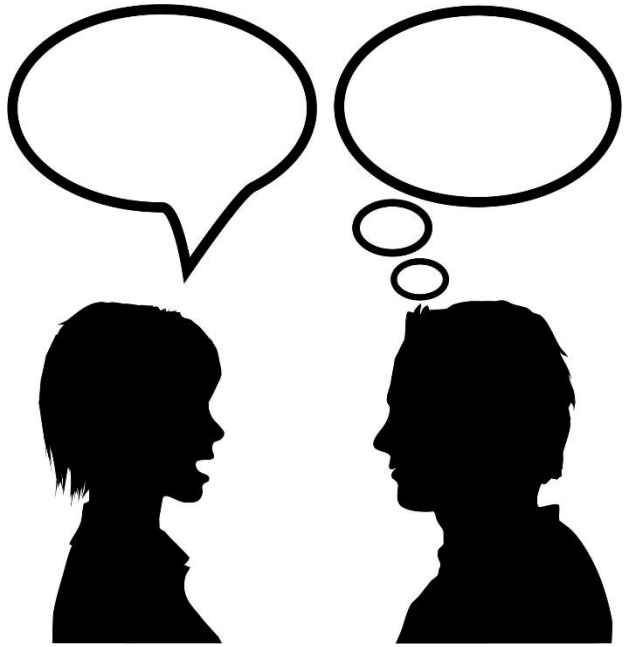
This is Not Science!

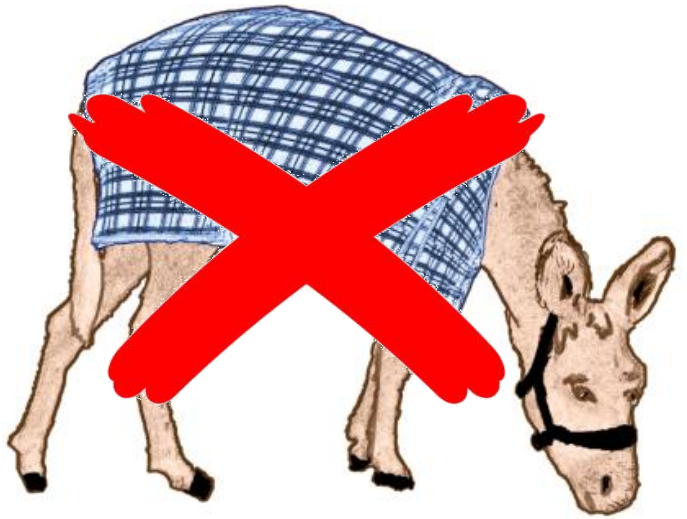
- Scientists ideally focus solely on the evidence without the influence of the parties' goals.
- Attorneys work in an adversarial system and look to sway the trier of fact with the most articulate, understandable, presentable, and persuasive expert, rather than the best scientist.



Murphy JP. Georgetown Journal of Legal Ethics 2000; 14: 217-240.

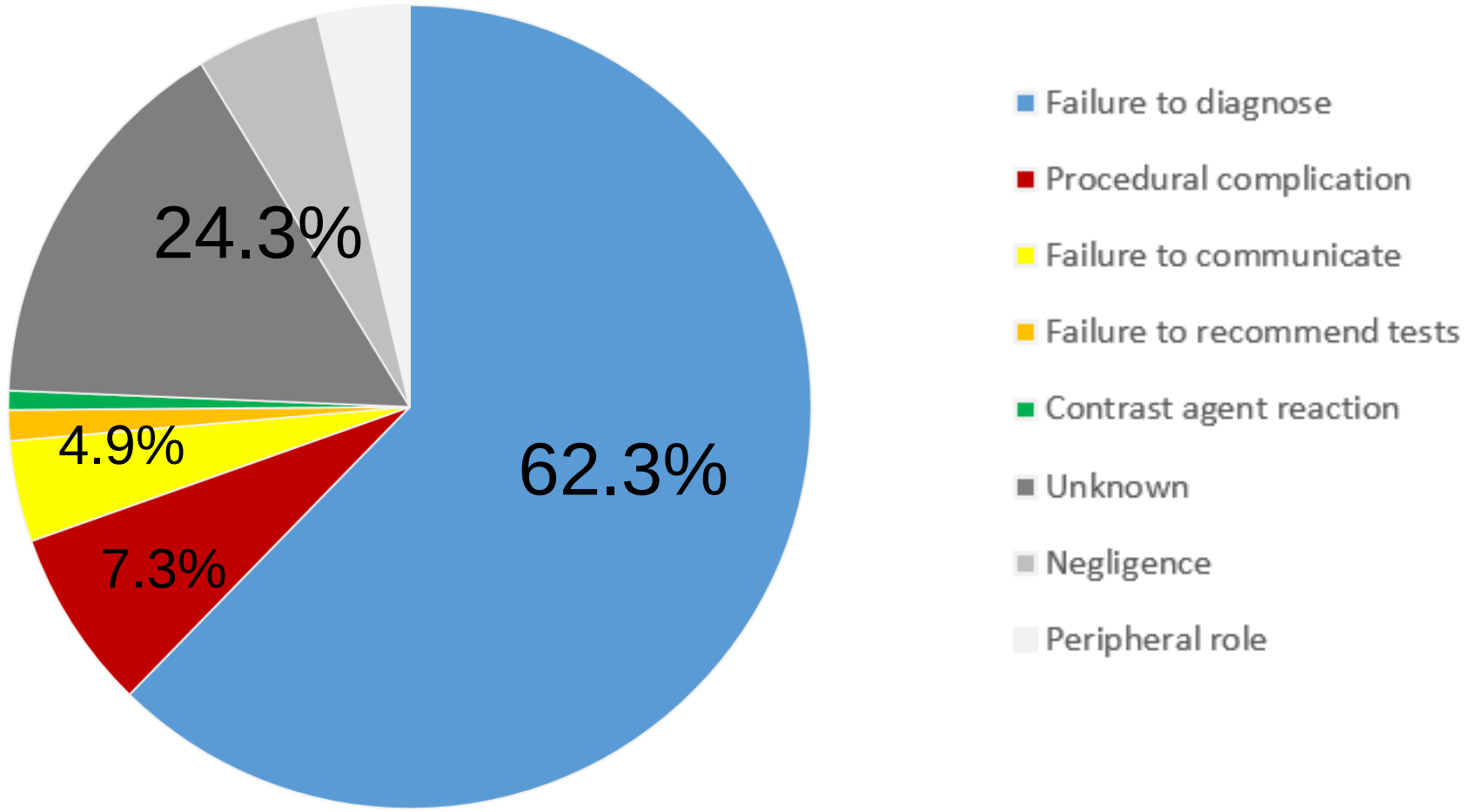
If You Ever Have to Testify…

CYA



Where to Watch Out

Allegations Against 8,401 Radiologists



Distribution of malpractice claims
against radiologists, by allegation (n=4,793)

Whang JS, et al. Radiology 2013; 266: 548-554.

For More Information…

Radiology Malpractice and Risk Management

This course discusses the current medical malpractice environment, focusing on issues facing both diagnostic and interventional radiologists and also highlights risk management opportunities for all within radiology. Course preparation and production was funded by the ARRS Berlin Scholarship.

Earn credit at your own pace through June 4, 2023 and **continue to access your videos until June 5, 2030**. See below for learning outcomes and a list of modules.

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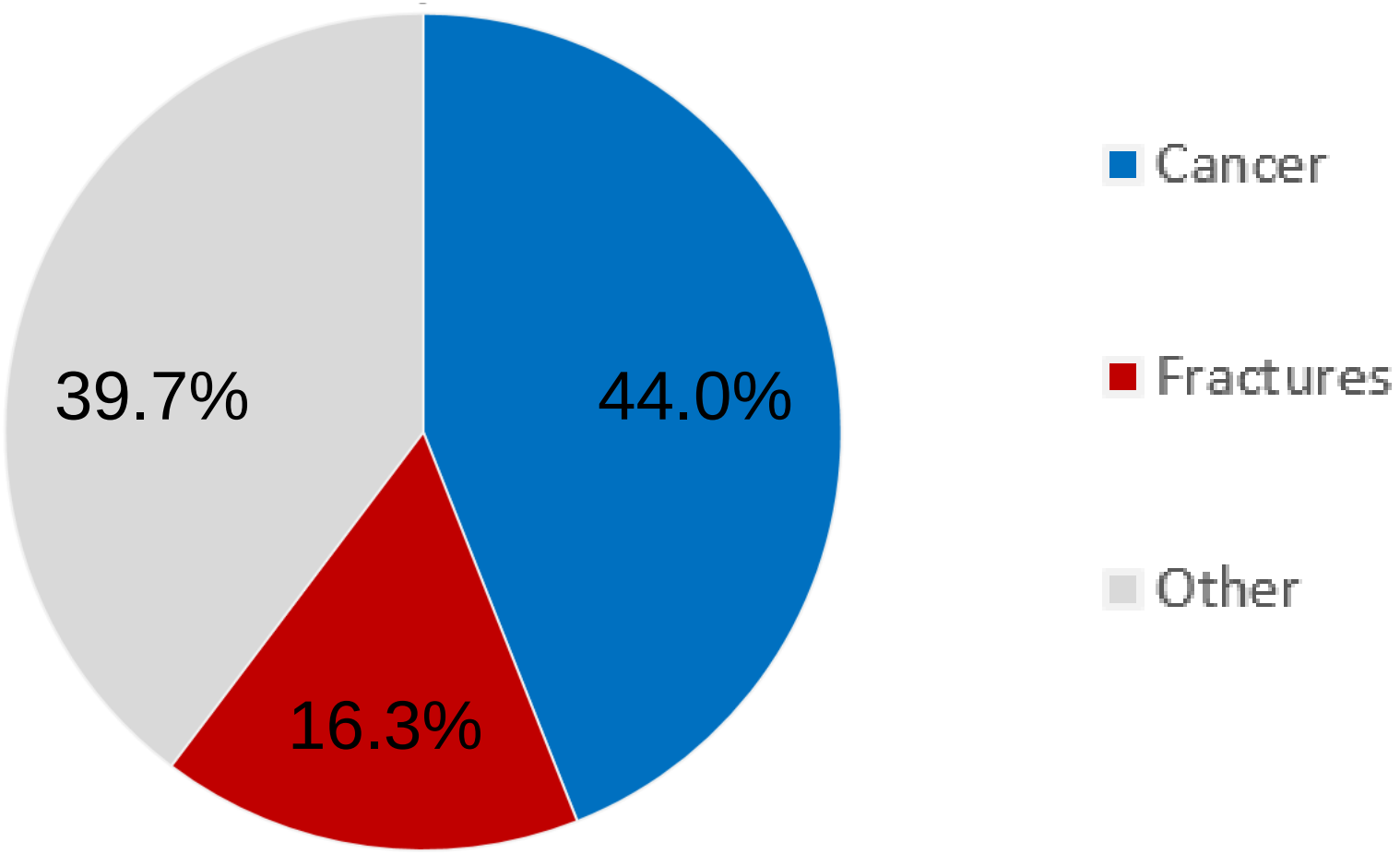
Module 5

•The Expert Witness: Friend, Foe, or You?

Module 6

•You’ve Been Named in a Lawsuit: What to Expect

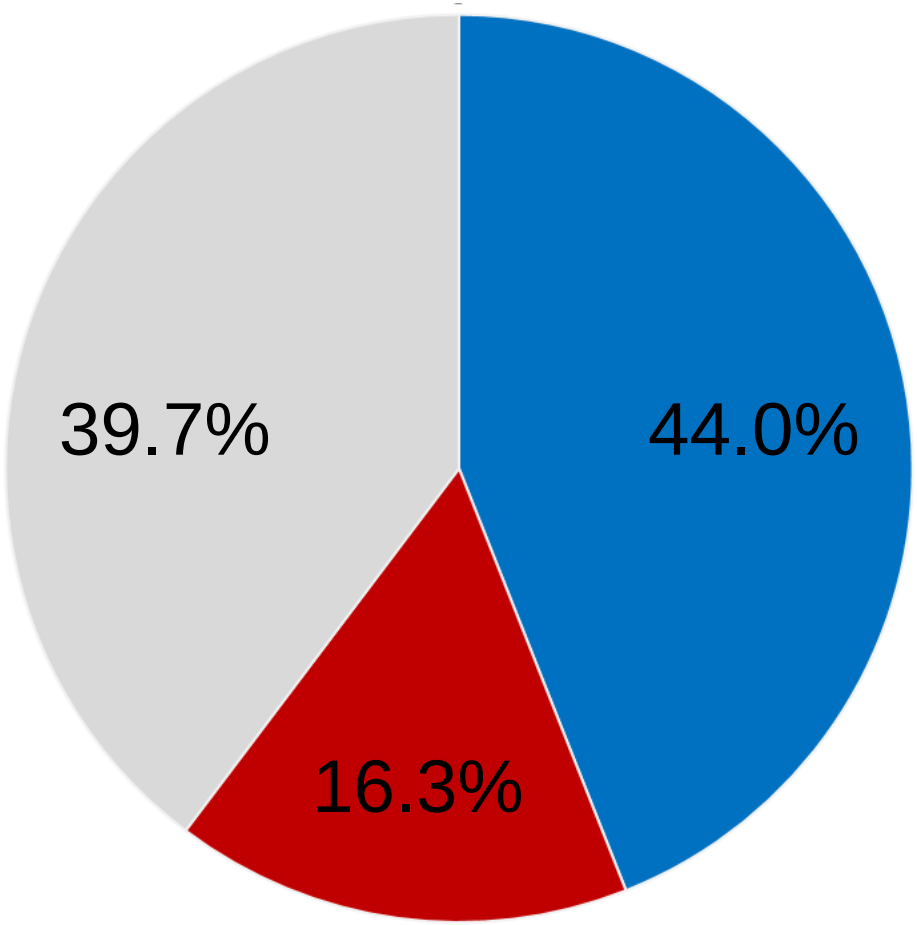
Primary Diagnosis-Related Allegations



Primary diagnosis in radiology malpractice claims involving diagnosis-related allegations (n=504)

Harvey HB et al. JACR 2016; 13: 124-130.

Primary Diagnosis-Related Allegations



Primary diagnosis in radiology malpractice claims involving diagnosis-related allegations (n=504)

“Missed cancers”

- 47.8% Breast
- 23.4% Lung
- 4.8% Brain
- 4.3% Colon
- 3.3% Renal
- 3.3% Lymphoma

Harvey HB et al. JACR 2016; 13: 124-130.

“Misses” are Actually Pretty Common

Of 2,145 radiographic examinations each interpreted by two radiologists, diagnostic error rates varied by body region and ranged from 15.9% to 38.0%.

Table I: Error Rates by Type of Examination

	Original	Copy	Difference	No. of Cases
Chest	33.2	37.1	−3.9	536
Skull	35.0	38.7	−3.7	137
Body surveys	26.2	29.8	−3.6	84
Hips and pelvis	35.7	38.5	−2.8	70
Extremities	31.0	33.6	−2.6	375
Vascular	37.5	39.3	−1.8	112
Gastrointestinal	25.5	26.2	−0.7	145
Abdomen	33.1	33.1	0.0	130
Biliary	15.9	15.9	0.0	69
Excretory urography–genitourinary	28.8	27.7	1.1	94
Other	38.0	34.6	3.4	29

Lehr JL et al. Radiology 1976; 118: 257-263.

These Cases are Tough to Defend

Malpractice Issues in Radiology

Defending the "Missed" Radiographic Diagnosis

Leonard Berlin[1]

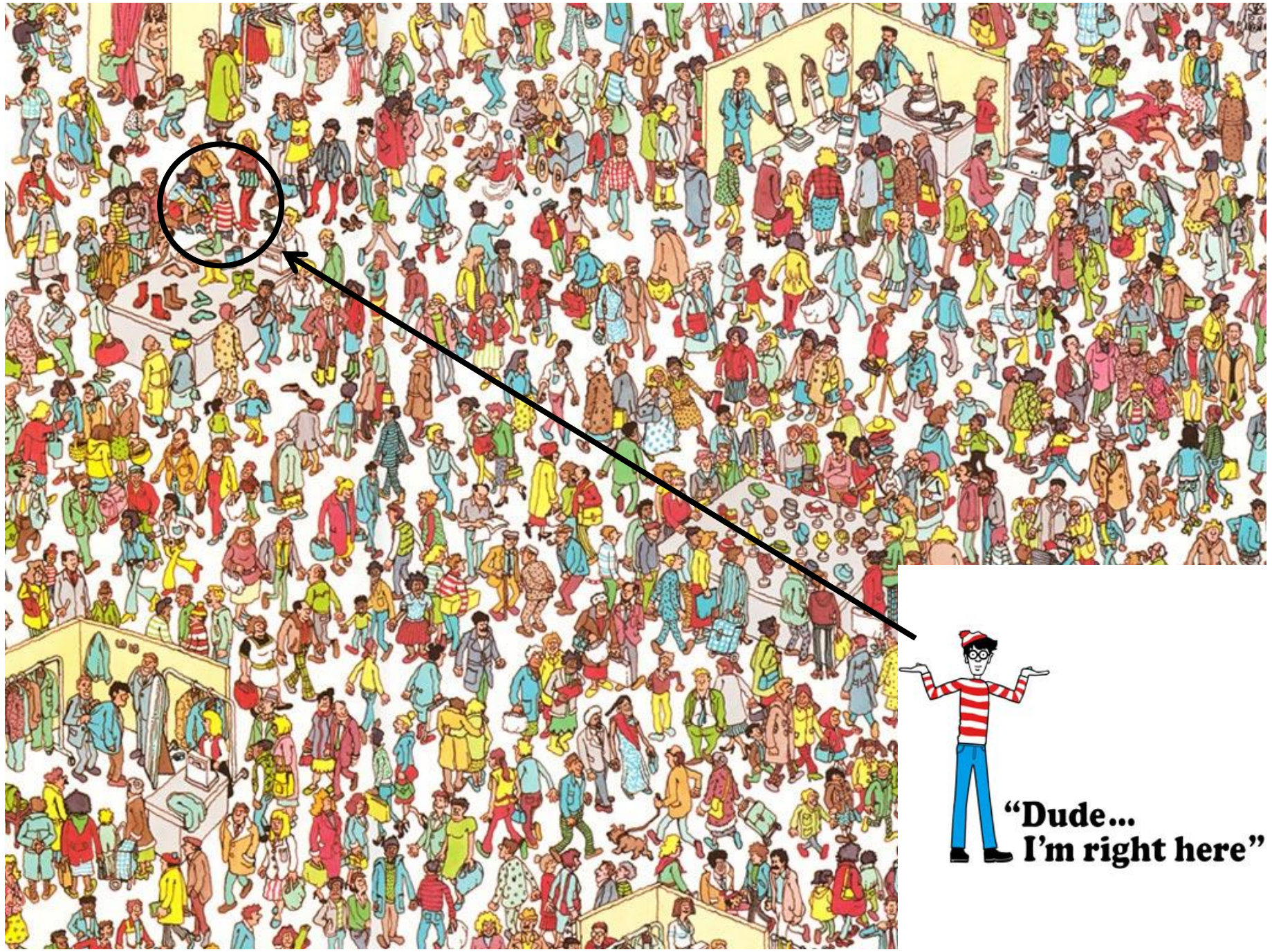
Berlin L. AJR 2001; 176: 317-322.

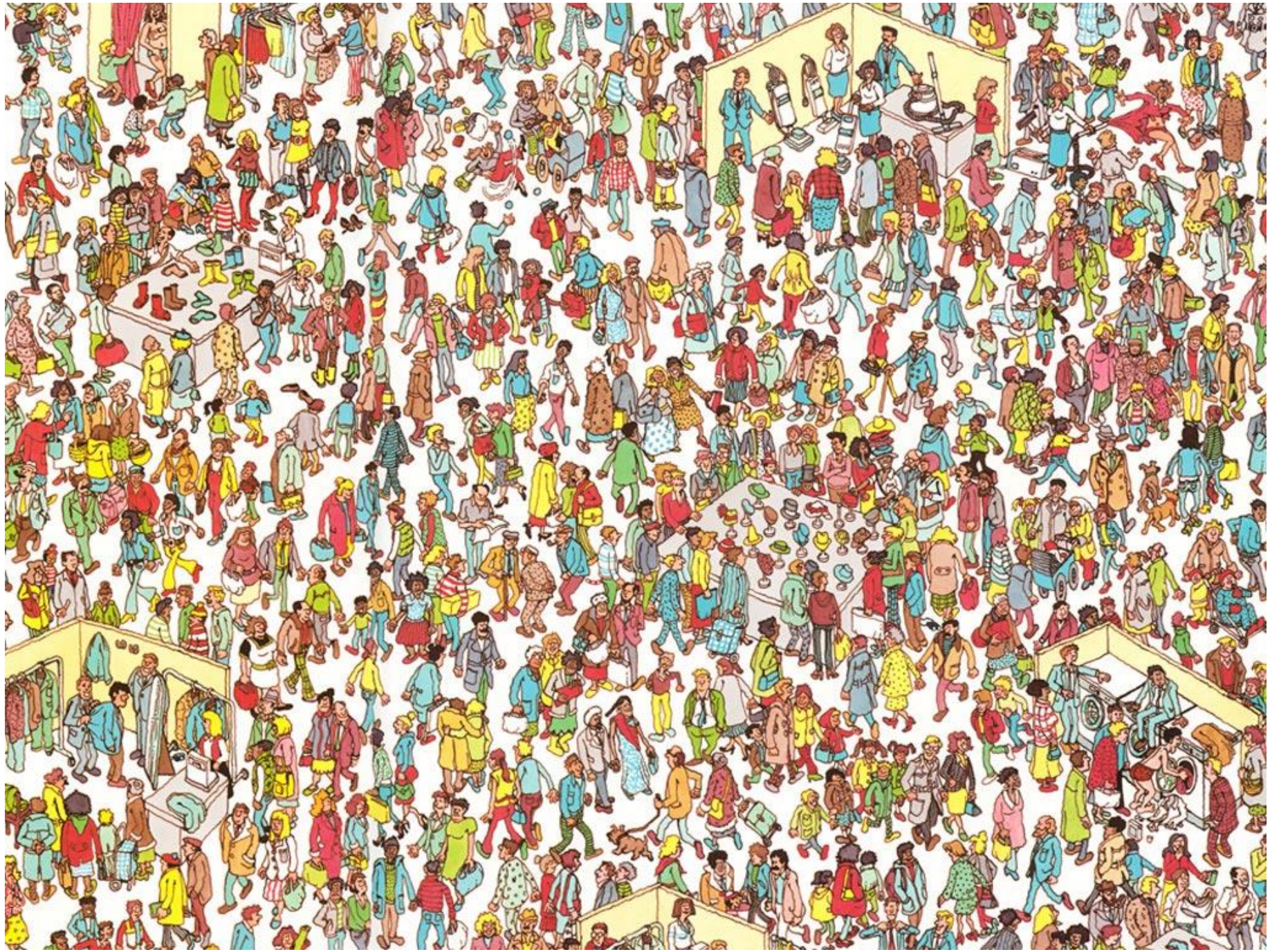
The Answer is On the Film

Hindsight Bias

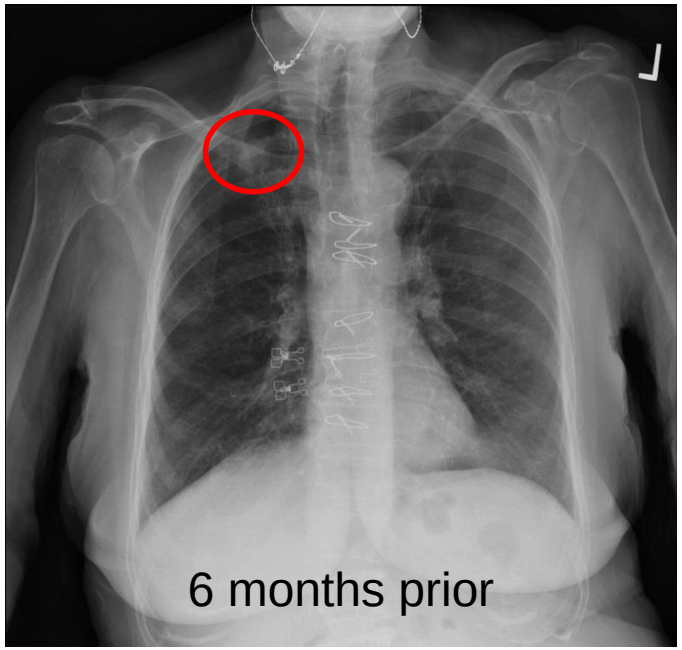
"…the tendency for people with knowledge of the actual outcome of a case to believe falsely that they would have predicted the outcome."

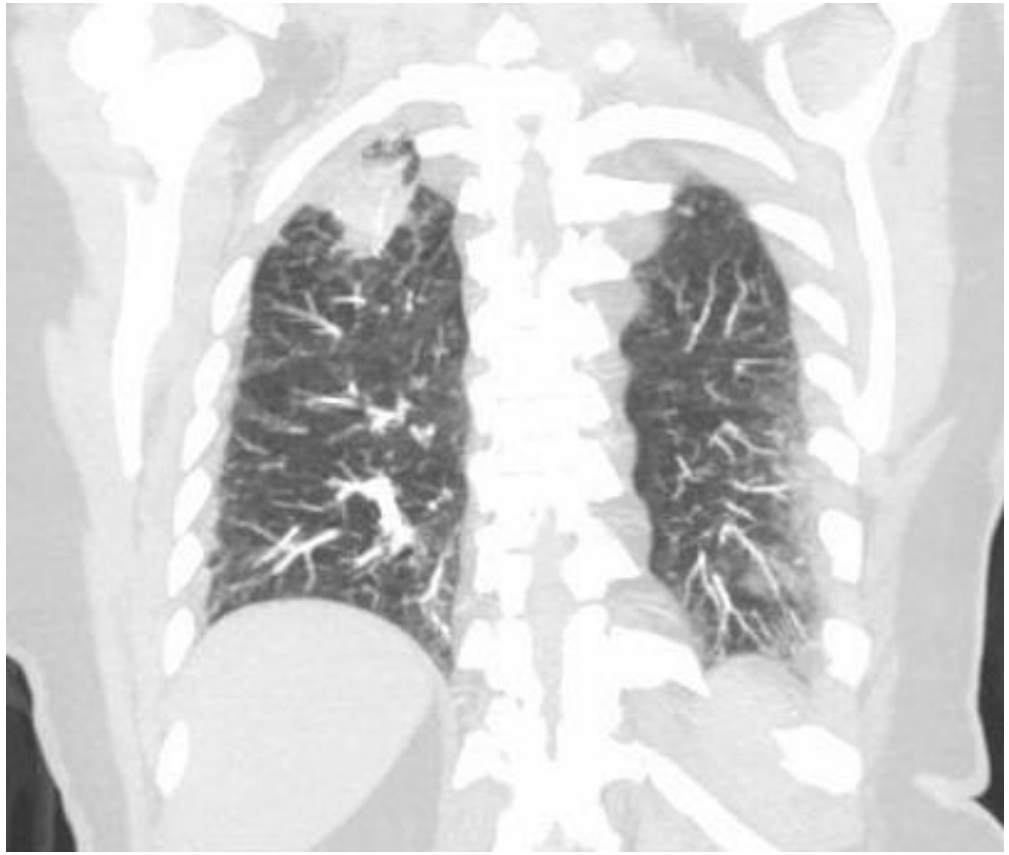
Berlin L. AJR 2000; 175: 597-601.


"Dude...
I'm right here"



Where’s Waldo?





Hindsight Bias in Lung Cancer Detection

- Cooperative Early Lung Cancer Group (NCI)
- 4,618 high risk patients underwent chest radiography at 4-month intervals over 6 years
- Interpreted by academic thoracic radiologists as lung cancer screening studies
- 92 lung cancers identified
- 85 “had their cancer detected only by chest radiography”

Muhm JR, et al. Radiology 1983; 148: 609-614.

Hindsight Bias in Lung Cancer Detection

- Once a cancer was diagnosed, old studies were reviewed
- Most neoplasms were now—in retrospect—identifiable
  - Peripheral tumors: 90%
  - Perihilar tumors: 75%

Muhm JR, et al. Radiology 1983; 148: 609-614.

Satisfaction of Search

- The detection of one abnormality interferes with that of others

Can you find 17 differences?

Missing Flag, Princess Crown, Princess Hands in Pockets, Princess Missing Ball, Turtle with Ball, Castle Wall Missing Windows, Bird with Stick, Rabbit with Sunglasses, Pool missing Ripples, Beaver's Hammer Upside Down, Duck with Hat, Beach Ball Missing Stripes, Prince's Bathing Suit, Pool Tent with Extra Stripes, Pool Tent Doors Open, Scuba Mask Missing, Beaver Cape Tied Differently

Satisfaction of Search

- Skeletal radiography
- 15 cases with one abnormality and 15 cases with two or more abnormalities
- Single abnormality case average detection:
  - 11.25

75%

- Multiple abnormality case average detection:
  - 11.72 for 1st finding
  - 6.12 for 2nd and 3rd findings

78% → 41%

Ashman CJ, et al. AJR 2000; 175: 541-544.

Satisfaction of Search

Don’t get blinded by pathology!

Errors are More Likely When Rushed

Average rate of “major misses”:

- 10.0% at “normal speed”
- 26.6% at “fast speed”

Table 2. Results data

Radiologist	Normal Reporting Time (min: sec)	Fast Reporting Time (min: sec)	Major Miss at Normal Speed (%)	Major Miss at Fast Speed (%)
1	9: 00	4: 30	8.3	33
2	9: 36	4: 48	8.3	25
3	5: 00	2: 30	25	16.6
4	15: 20	7: 40	8.3	41.6
5	11: 52	5: 56	0	16.6
Mean or average	**10: 9**	**5: 5**	**10**	**26.6**

Sokolavskaya E, et al. JACR 2015; 12: 683-688.

Volume Carries Risk

Malpractice Issues in Radiology

Liability of Interpreting Too Many Radiographs

Once discovery proceedings commenced, the court approved a demand by the plaintiff's attorney that the defendant radiologist disclose the number of cases interpreted by the defendant radiologist on the day during which the radiologist had interpreted the plaintiff's mammography. The number was 162.

An expert radiologist retained by the plaintiff testified in deposition that the "national average" number of radiologic procedures interpreted by a radiologist in 1 day was 50 and that any radiologist whose daily workload exceeded 100 procedures a day was breaching the standard of care. The expert then asserted that by interpreting 162 cases in 1 day, a radiologist would be exceeding the "national average by three times" and would therefore be conducting himself in a "reckless and wanton" manner.

Berlin L. AJR 2000; 175: 17-22.

This is Not Just Hypothetical

$2M settlement after subpoena of radiologist's keystrokes finds lax CT reading

Marty Stempniak | *January 20, 2020* | *Care Delivery*

Lawyers recently extracted a $2 million settlement from one Dallas-based hospital chain after a subpoena proved that radiologist Steven Fuhr spent less than a second interpreting CT images.

"If we were to assume that he did nothing but open them up and immediately start reading them, he spent half a second looking at each image. That's two images per second, and that is insanity."

https://www.radiologybusiness.com/topics/care-delivery/settlement-subpoena-radiologist-ct-reading

Physician Wellness

"Although patients are the first and obvious victims of medical mistakes, doctors are wounded by the same errors: they are the second victims."

Wu A. BMJ. 2000 Mar 18;320(7237):726-7.

Second Victim Effect

- Malpractice litigation contributes to physician self-doubt, burnout, and depression.

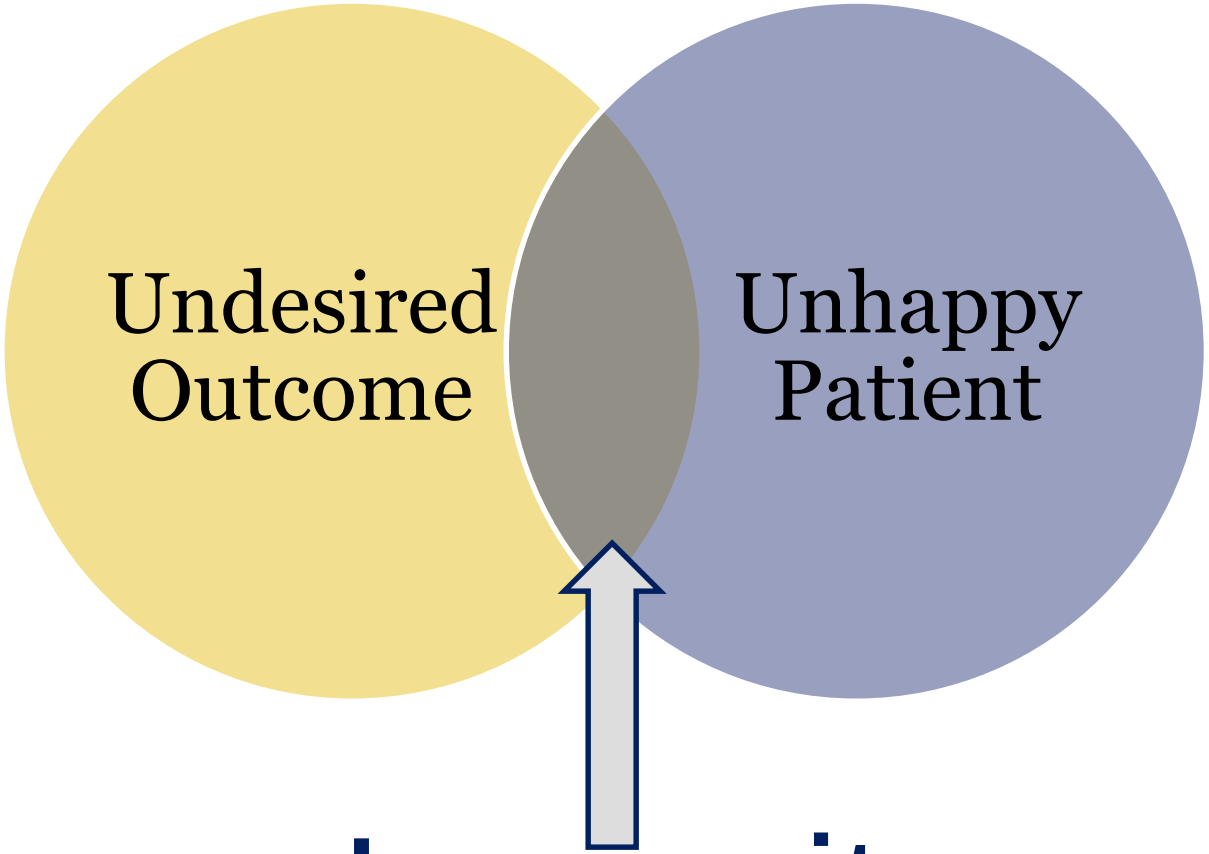
Balch CM, et al. *J Am Coll Surg* 2011; 213:657-667
Martin CA, et al. *South Med J* 1991; 84:1300-1304
Rodriguez RM, et al. *Acad Emerg Med* 2007; 14:569-573
https://www.physicianleaders.org/news/doctors-deal-with-high-suicide-rate-ranks

Second Victim Effect by Proxy

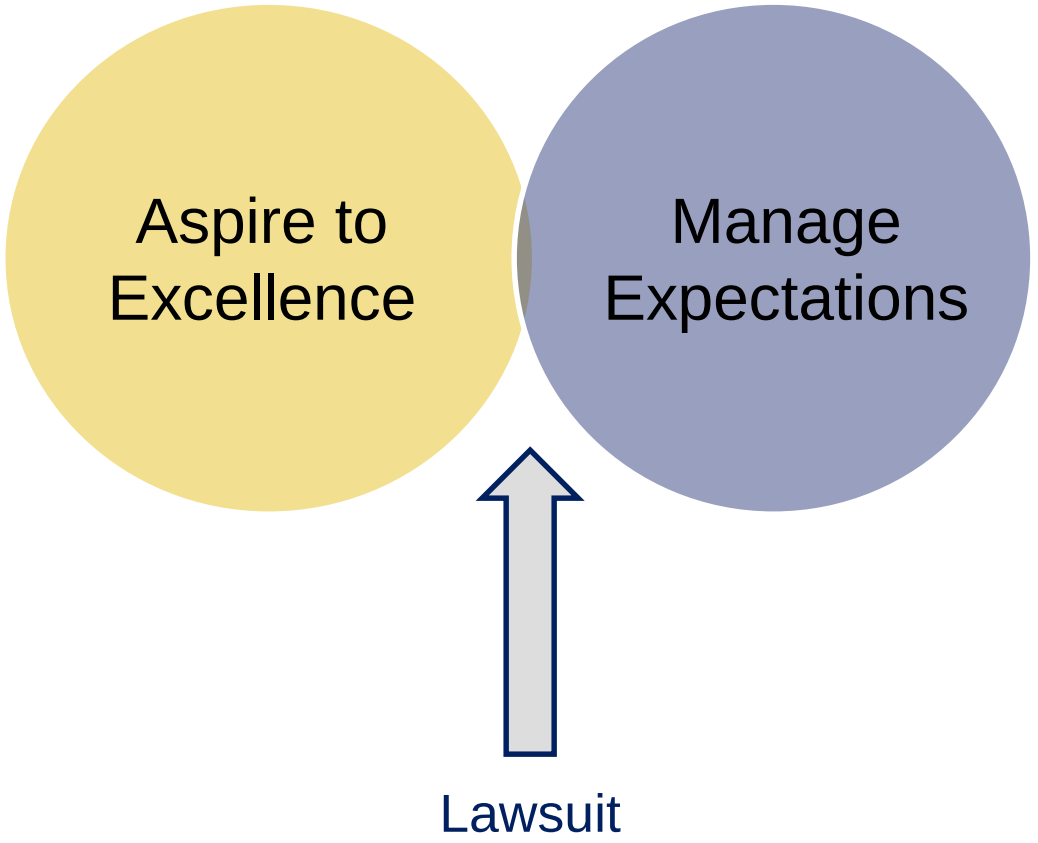
- The specter of malpractice litigation influences physicians' emotions, thinking, and behavior.

Charles SC, et al. *West J Med* 1988; 148:358-360
Balch CM, et al. *J Am Coll Surg* 2011; 213:657-667
vectorstock.com

Take Home



Take Home



Thank You!

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