Burnout and Litigation Against Primary Care Providers: Where Do They Overlap?

Jacqueline Ross, RN, PhD, Coding Director, and Robert Morton, MAS, CPPS, CPHRM, ARM, Assistant Vice President, Department of Patient Safety and Risk Management, The Doctors Company, Part of TDC Group

Primary care providers, with their largest concentrations in family medicine and internal medicine, report experiencing higher workloads, shortened appointment times, more distractions, and less time to establish relationships with their patients. Many patients describe problems accessing their primary care providers. Electronic health records, introduced for many reasons, one of which was to improve healthcare provider workflow, have contributed to work strain and the development of burnout. Many providers have increased their time spent on reading and responding to nonurgent patient portal messages, including time at their homes.

Alongside these experiences reported by practitioners and patients, certain trends within primary care, taken together, suggest an avenue for investigation:

- Workforce projections predict significant shortages of physicians: Primary care could face a shortage of more than 55,000 physicians by 2033.
- Burnout and patient safety concerns have been associated in studies.
- More than a third of the United States' active physicians are female. Nearly forty percent of internal medicine and over 40 percent of family medicine physicians are female.
- Women physicians compose a large percentage of the primary care physician workforce, and they encounter 30 to 60 percent higher odds of burnout, compared to their male physician counterparts.
- Although the frequency of medical malpractice claims has been declining, about 31 percent of physicians will likely experience the stress associated with medical malpractice experience.

The purpose of this analysis is to understand the recent medical malpractice experience of primary care providers, specifically in family medicine, internal medicine, and gastroenterology, from two aspects. First, to identify the underlying clinical characteristics of the claims. Second, to focus on the provider factors of gender, age, and other possible indicators of clinician burnout.

Methods

This study was a descriptive study using data from closed medical malpractice claims. Data was aggregated and deidentified. The cases were coded using an evidence-based clinical coding taxonomy

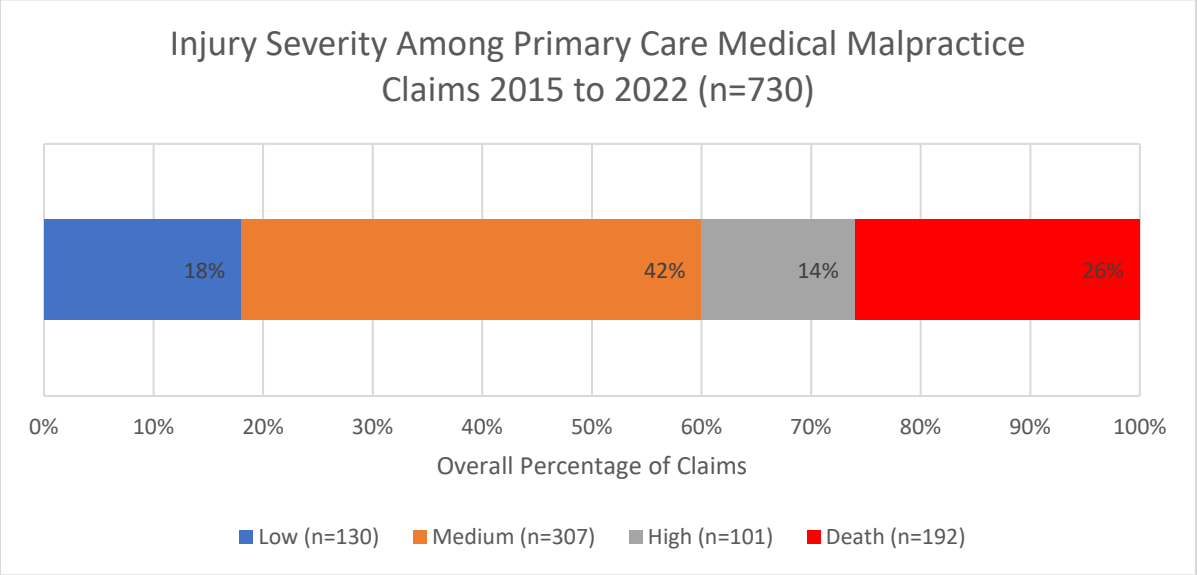
from CRICO.[1] Every case was coded and analyzed by registered nurse patient safety analysts (PSAs). Findings were analyzed using the Explore tool developed by Candello.[2]

Malpractice cases that closed between the loss years of 2015 and 2022 with family medicine, gastroenterology, or internal medicine as the primary responsible service were included (n=730). The variables of injury severity, care location where injury was sustained, major injury/body part, contributing factors, roles, primary drivers, provider age, and provider gender were included. If the provider's age or gender were unavailable, then other databases were used to determine this information. Using this method, we were able to obtain 653 provider ages and 661 provider genders. The Candello Burnout Algorithm[3] was applied to assess claims that may indicate provider burnout. For statistical analysis, a chi-square test of independence was used.

Results

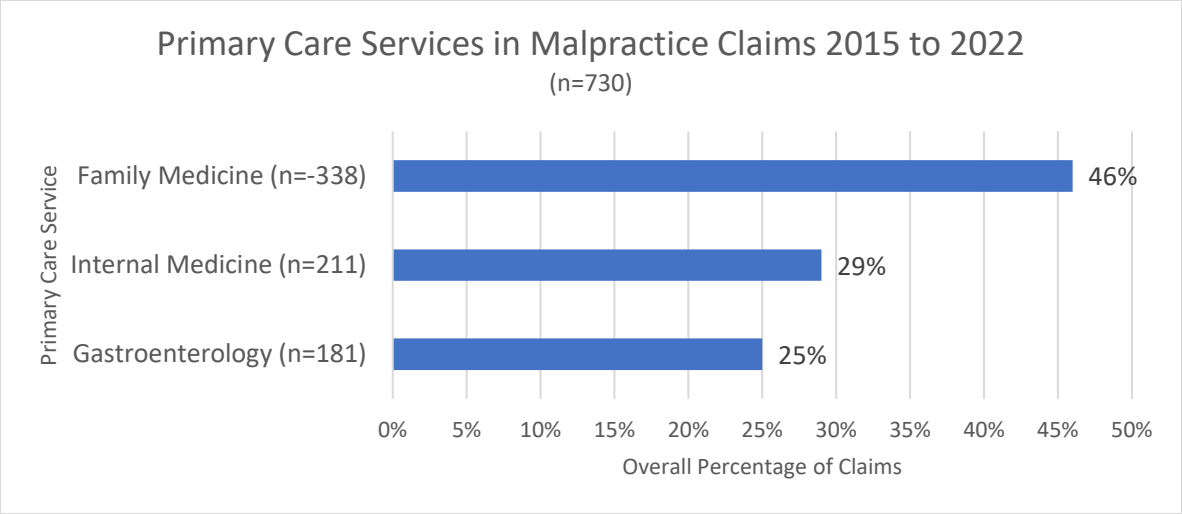
Clinical Aspects of Primary Care Providers' Claims

Figure 1. Injury Severity Among Primary Care Medical Malpractice Claims 2015 to 2022



The family medicine service had the largest number of claims (n=338), as well as the greatest proportion of advanced practice clinicians (APCs) involved in the claims (n=88; 26 percent). The internal medicine service had 211 claims, including twenty-four claims involving APCs (11 percent). Gastroenterologists had five APCs (3 percent) involved in their overall claims (n=181).

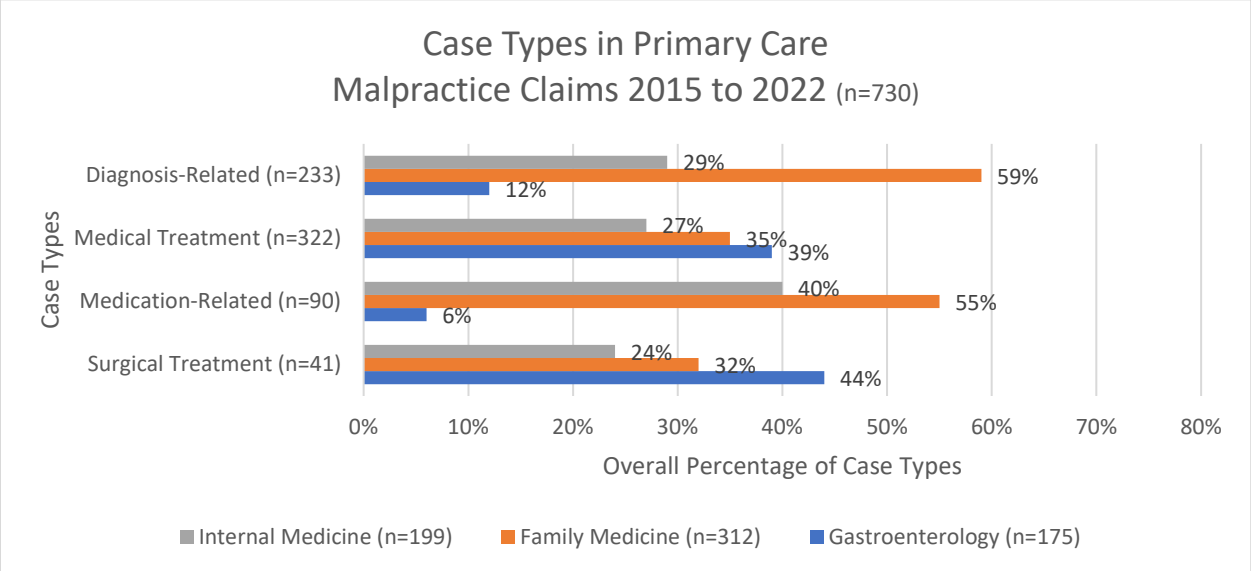
Figure 2. Primary Care Services in Malpractice Claims 2015 to 2022



The two leading case types for primary care providers were medical treatment (n=322; 44 percent) and diagnosis related (n=233; 32 percent). The gastroenterology service experienced the highest percentage of claims of the medical treatment case type. (See Figure 4 for the contributing factors related to medical treatment by service). However, of the diagnosis-related case type and medication-related case type, the family medicine service received the highest percentage of claims. (See Figure 5 for the contributing factors related to diagnosis-related case type by service).

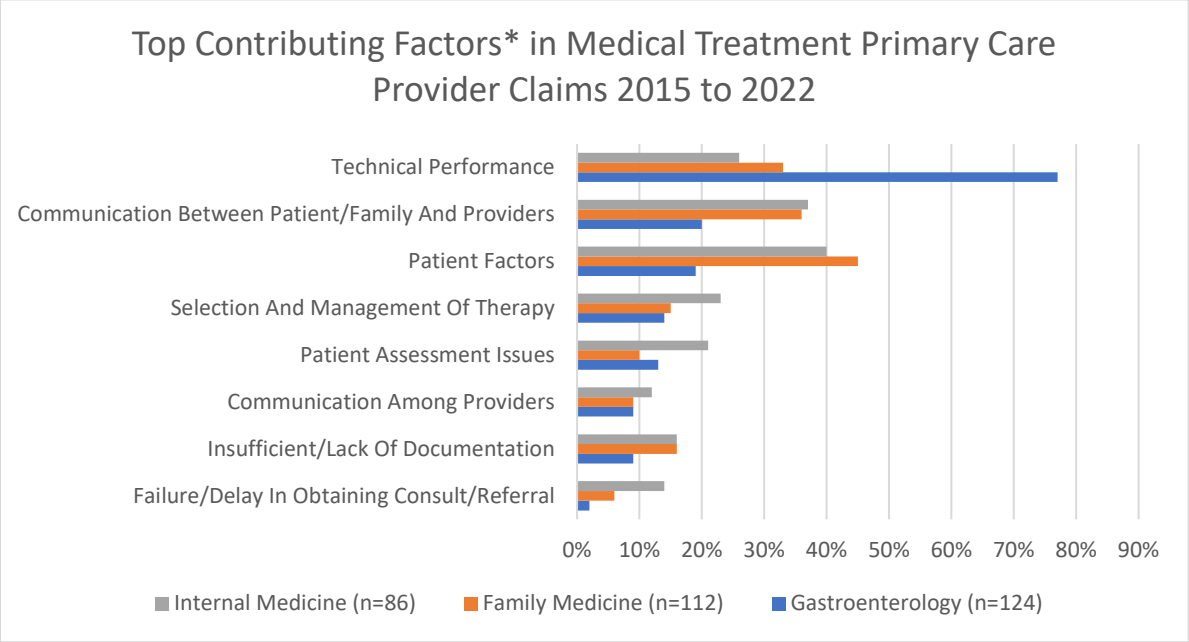
Malignancies (n=77; 33 percent) were most frequently seen in diagnosis-related (missed, delayed, or wrong) claims for all services. Prostate (n=12), lung (n=8), colon (n=7), rectum (n=6), and breast (n=5) were the most common areas for cancer diagnoses.

Figure 3. Case Types in Primary Care Malpractice Claims 2015 to 2022



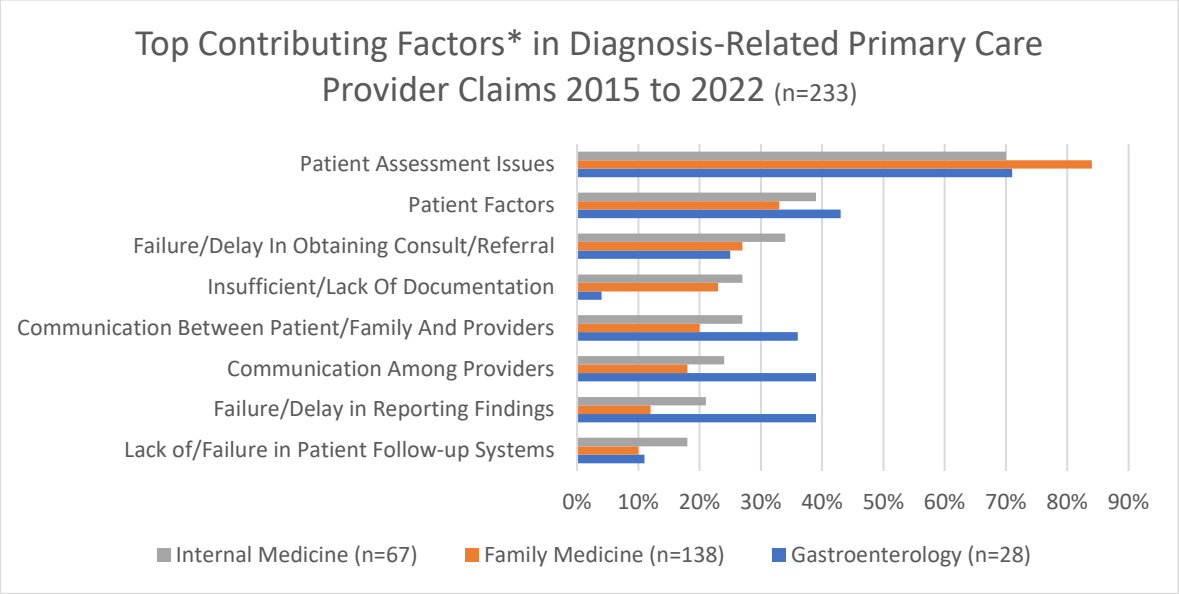
In examining the differences between contributing factors to medical treatment claims and contributing factors to diagnosis-related claims, the contrast is obvious. (Refer to Figure 4 and Figure 5). Among medical treatment case types, patient assessment issues contributed to roughly 10 to 20 percent of the studied claims. Yet among diagnosis-related case types, in every studied primary care specialty, patient assessment contributing factors were present in at least 70 percent of the claims.

Figure 4. Top Contributing Factors in Medical Treatment Primary Care Provider Claims 2015 to 2022



*Claims can have multiple contributing factors

Figure 5. Top Contributing Factors in Diagnosis-Related Primary Care Provider Claims 2015 to 2022



*Claims can have multiple contributing factors

Provider Factors in Primary Care Providers' Claims

Age

The largest age group was 55 years old and older. There was no statistical difference in burnout features between the age groups. However, the 55-plus age group was distinct in being the farthest away from gender parity, with roughly 15 percent female clinicians, in contrast to around 30 percent female clinicians for each of the other age groups.

Table 1. Age Comparisons Among Providers in Primary Care Malpractice Claims 2015 to 2022

Age Group	n	Mean	% Female*	% With Burnout Features
25–39 years old	87	35.6	33.3%	10.3%
40–54 years old	250	47.4	29.2%	8.4%
55–85 years old	316	63.7	14.9%	11.1%

*Statistically significant at $p < 0.001$

Gender

There was a statistically significant gender difference in gastroenterology claims (p=0.001). Across studied specialties, no gender differences emerged among claims with high severity, but female providers had a statistically higher percentage of indemnity-paid claims than male providers (p=0.04).

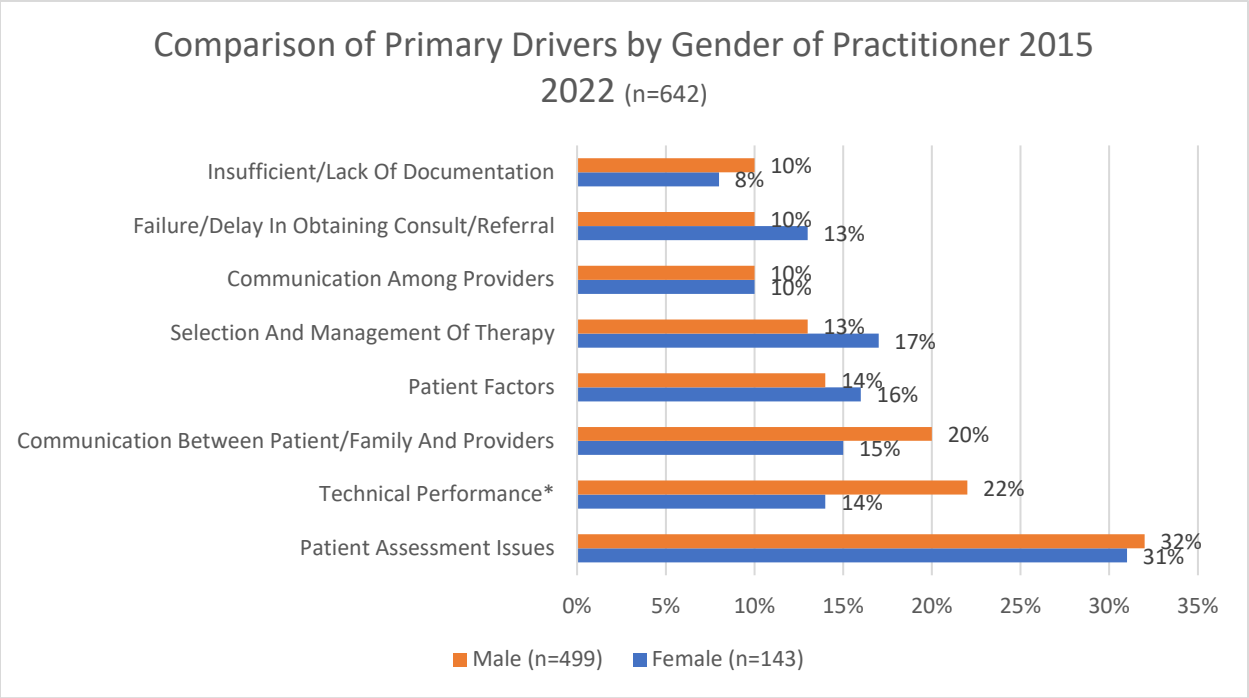
Table 2. Breakdown by Specialty and Gender of Providers in Primary Care Malpractice Claims 2015 to 2022

Area	Male (n=511)	Female (n=150)
Specialty		
Family Medicine	203 (70.1%)	84 (29.3%)
Internal Medicine	149 (74.9%)	50 (25.1%)
Gastroenterology*	159 (90.1%)	16 (10.7%)
% Claims With High Severity	214 (42%)	50 (38%)
% Claims With Indemnity Paid**	136 (26.6%)	53 (35.3%)

*Statistically significant at $p < 0.001$ **Statistically significant at $p < 0.05$

Primary drivers are a recent addition to the taxonomy. Primary drivers are contributing factors identified by PSAs as the main catalysts to the events that caused the major injury or negligence in the medical malpractice claims. Most claims in this study (98 percent male providers; 95 percent female providers) had primary drivers included in the coding. (See Figure 6.) Technical performance stood out as a primary driver for which incidence among male clinicians was higher than incidence among female clinicians to a degree that was statistically significant (p=0.04).

Figure 6. Comparison of Primary Drivers by Gender of Practitioner 2015 to 2022



*Statistically significant at $p < 0.05$

Clinician Burnout

Using the Candello Burnout Algorithm (refer to Figure 7), we examined a cluster of contributing factors, Effect on Clinician, that may influence the development of burnout for a provider. These factors can include:

- Administrative issues: Credentialling and human resources issues causing stress.
- Provider behavior: Inappropriate behavior, such as crossing boundaries with patients, which can connect to the depersonalization aspect of burnout.
- Circumstances affecting the provider: Physical/mental impairment or fatigue.
- Communication: Poor relationship with other providers or with patient/family, or communication issues related to chain of command.
- Documentation: Inappropriate documentation.

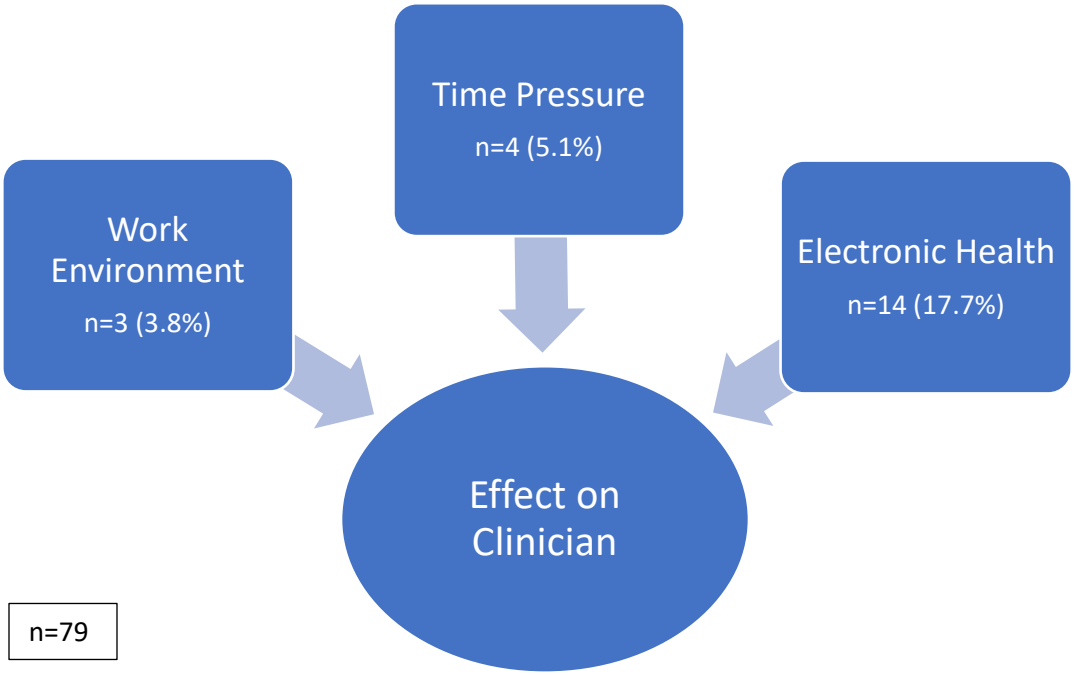
No statistical difference was observed with gender or age of the provider in claims with and without burnout indicators. Internal medicine providers had the largest percentage of claims with burnout indicators, while gastroenterologists had the lowest percentage of claims with burnout indicators; however, no statistical differences were observed (p=0.07).

Table 3. Statistics on Burnout Among Clinicians in Primary Care Malpractice Claims 2015 to 2022

	No Burnout Indicators (n=651)	Burnout Indicators (n=79)
Age		
Range (years old)	29–85	26–79
Mean (Median)	53.62 (54)	54.4 (55)
Gender	(n=640)	(n=79)
Female (n=150)	136 (90.7%)	14 (9.3%)
Male (n=511)	460 (90%)	51 (10.0%)
Unknown (n=58)	44 (75.9%)	14 (24.1%)
Specialty	(n=651)	(n=79)
Family Medicine (n=338)	300 (88.8%)	38 (11.2%)
Internal Medicine (n=211)	182 (86.3%)	29 (13.7%)
Gastroenterology (n=181)	169 (93.4%)	12 (6.6%)

We then examined the other algorithmically upstream contributors to burnout (time pressure, work environment, electronic health) in the 79 claims with burnout indicators. Regarding time pressure, four of those 79 claims (5.1 percent) showed issues such as distractions, multitasking, interruptions, rushed decision making, or access/waiting issues. In the work environment, three of those 79 claims (3.8 percent) showed issues such as physician coverage issues or busyness. Electronic health was evaluated. Fourteen of the 79 claims (17.7 percent) had at least one factor identified, including electronic systems failure, telephone-related issues, staff training and education, or electronic health records issues—fatigue, internet/social media, patient portals, fax-related issues, and other issues with electronic communication exchange tools.

Figure 7. Candello Burnout Algorithm



Discussion and Risk Mitigation Tips

The preponderance of studied claims against primary care providers, 46 percent, brought allegations against the family medicine service. Among case types, medical treatment and diagnosis related were the most common. Among common diagnostic failures (missed, delayed, or wrong), malignancies were the most common. PSAs can assign multiple contributing factors to claims, but it is notable that 37 percent of the claims had a clinical judgment issue.

- These factors together suggest that healthcare providers need to be aware of potential cognitive biases. Practitioners may wish to implement strategies for countering cognitive bias, such as those described by The Joint Commission.

More than a quarter of the studied cases, 28 percent, involved technical skill factors, including known complications from procedures. Gastroenterologists had the highest percentage of technical contributing factors.

- Simulation training can be helpful in decreasing technical complications.
- The Doctors Company has developed a procedural patient safety resource specifically for gastroenterologists.

Also found in more than a quarter of the studied cases, again 28 percent, were communication issues, whether among providers, with the patient, and/or with the patient's family. Issues around health literacy can be involved if the patient does not understand instructions. Clear communication with the

patient and family regarding realistic expectations, including educating them about the known complications of procedures, can assist in mitigating the risk of claims.

- To this end, practitioners may wish to incorporate patient education methods such as the Institute for Healthcare Improvement's Ask Me 3.
- Also, the Toolkit for Engaging Patients to Improve Diagnostic Safety from the Agency for Healthcare Research and Quality (AHRQ) includes two strategies that enhance patient-provider communication and improve diagnostic safety.

In examining the characteristics of practitioners involved in primary care provider malpractice claims, some significant differences emerged when practitioner groups were contrasted by age and gender. The age group 55-plus had significantly fewer female clinicians. Across age groups, female providers overall had a statistically significant higher percentage of indemnity-paid claims than male providers (35.3 percent vs. 26.6 percent, p=0.04). This finding raises some questions to consider: Are there some provider gender differences in empathy or sympathy toward claimants in settlement discussions? Are there possible gender biases from medical experts influencing decisions to defend or settle? That said, this finding is based on a small sample size and based on medical malpractice data, so further focused research on this topic is needed.

The option to examine a claim's primary driver(s) is a newer addition to the coding taxonomy. A primary driver is a contributing factor identified by PSAs as the main catalyst to the events that caused the major injury or negligence in the medical malpractice claim. Over 95 percent of the claims in this study contained primary drivers. The primary drivers for males were statistically higher in the area of technical performance (p=0.04). This finding can be explained by the prevalence of male clinicians among the gastroenterologists (90 percent male) in the studied claims and the nature of gastroenterology (with its focus on technical skills). More research is needed in other surgical specialties to understand if they also show gender differences related to the primary drivers of claims.

We used the Candello Burnout Algorithm, which was developed to evaluate signals from malpractice claims as factors for burnout, and 11 percent of the claims contained these factors. However, determining burnout from malpractice claims needs to be attempted with caution, as we are considering data in a vacuum. For example, the PSAs cannot discern from the available malpractice claim information if, for example, there was a misalignment of values between the clinician and the system in which they practice—one of several drivers of burnout—impacting their ability to deliver care. In any case, no significant differences in age or gender were seen with the burnout factors. The influence of electronic health was found in 17.7 percent of the claims with burnout factors. Evidence has shown that electronic health records have been causing stress and burnout for providers.

- The American Medical Association (AMA) offers "Taming the Electronic Health Record Playbook," which providers and their teams can use to decrease their EHR burden.
- The AHRQ offers "Burnout in Primary Care: Assessing and Addressing It in Your Practice" a resource with information, tools, and strategies to reduce burnout and enhance professional well-being.

Conclusion

In light of the shortage of primary care clinicians, which is expected to intensify, it is essential to develop a better appreciation of what may lead to errors in primary care. We hope these insights will assist clinicians and healthcare systems to improve understanding of where to place attention, training, and resources when seeking to improve patient outcomes and mitigate liability risks.

Primary care clinicians manage a range of responsibilities—and are called upon to diagnose a wide array of conditions. In this analysis of allegations against primary care clinicians, certain prominent themes have surfaced, including clinical judgment, technical skill, and communication.

Clinician burnout is a conspicuous systemic issue throughout U.S. healthcare, but primary care clinicians have been especially hard hit. Our examination of claims against primary care practitioners does suggest that clinician burnout may be contributing to safety risks for patients, as well as liability risks for clinicians and organizations. However, due to the nature of medical malpractice closed claims data, our observations are inevitably partial. Further research could assist in uncovering more about this issue.

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