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Advanced Practice Professionals and *You*: Understanding Medical Liability

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Disclosures

CAP CME Committee Planner, Jeff Shapiro, MD disclosed relevant financial relationships with Otsuka Pharmaceutical and Pfizer/IBM as a speaker.

No other faculty, planner or presenter for this CME activity disclosed any relevant financial relationship with a commercial interest.

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Objectives

1. Describe how physicians can create a collaborative working relationship with APPs.
2. Identify contributing factors involving APPs that jeopardize patient safety and increase liability risk.
3. Discuss risk management and patient safety strategies that will improve patient outcomes when care is shared by an MD/APP.
4. Define the duties and responsibilities of a physician when supervising an APP.
5. Implement three strategies for improving communication with APPs.

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Trends

- Physician shortage, especially in primary care.
- Increasing employment of Nurse Practitioners and Physician Assistants (APPs)

- New team approach to care.

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Benefits: For the Physician

- Allow focus on complex, high risk patients.
- Increases patient satisfaction with medical practice.

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Benefits: For the Patient

- Increased access to care.
- Shorter wait times.
- More time with providers.
- Increased practice satisfaction.
- Efficient patient education.
- Improved patient outcomes.

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Physician Liability

- Increases vulnerability.
- False sense of assurance when APP has own liability coverage.
- Hiring APP based on licensure.
- Uniformed of supervisory role.
- Unaware of APP education, training, and scope of practice.
- No written procedures and protocols.

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CAP 2017 APP Data Study

- Focused review of 42 cases involving member physicians and their APP (n=42)
- 1/1/2011-12/31/2016 closed claims
- Total Indemnity: $11,896,829
- Total Expenses: $2,311,847
- Total Incurred: $14,208,676
- Average Indemnity: $223,149

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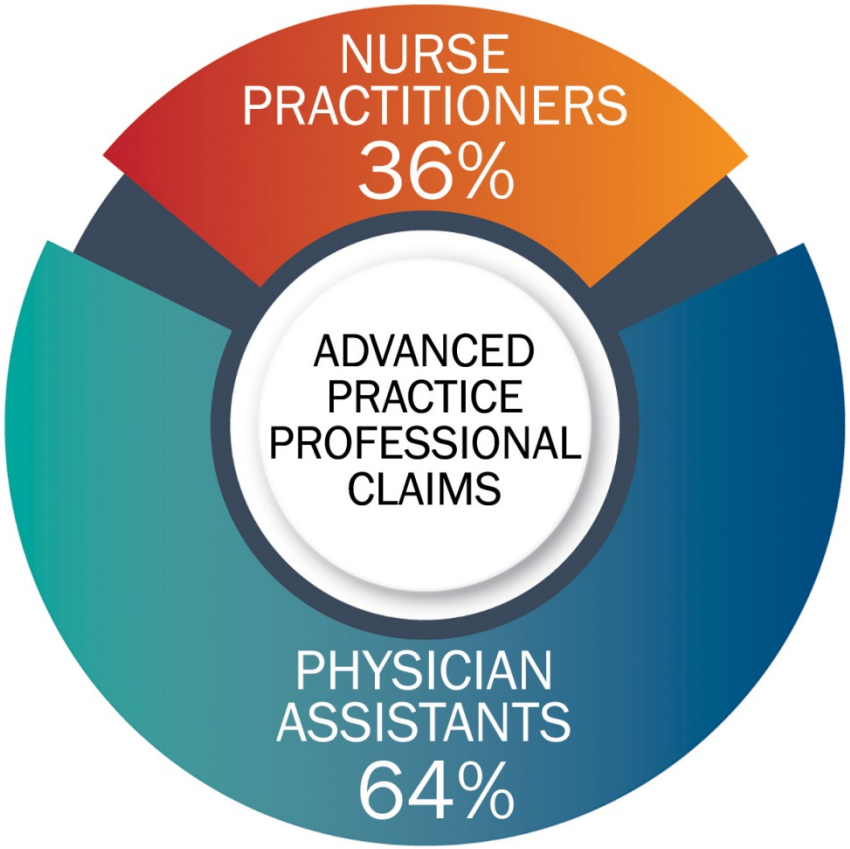
Claims Frequency



2017 CAP
Data Study
N=42

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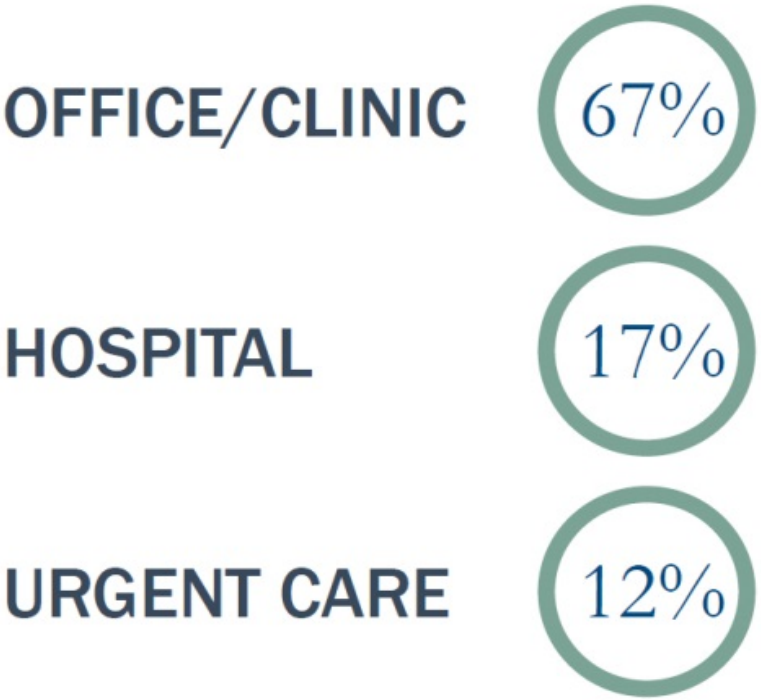
Location

Claims Based on Location



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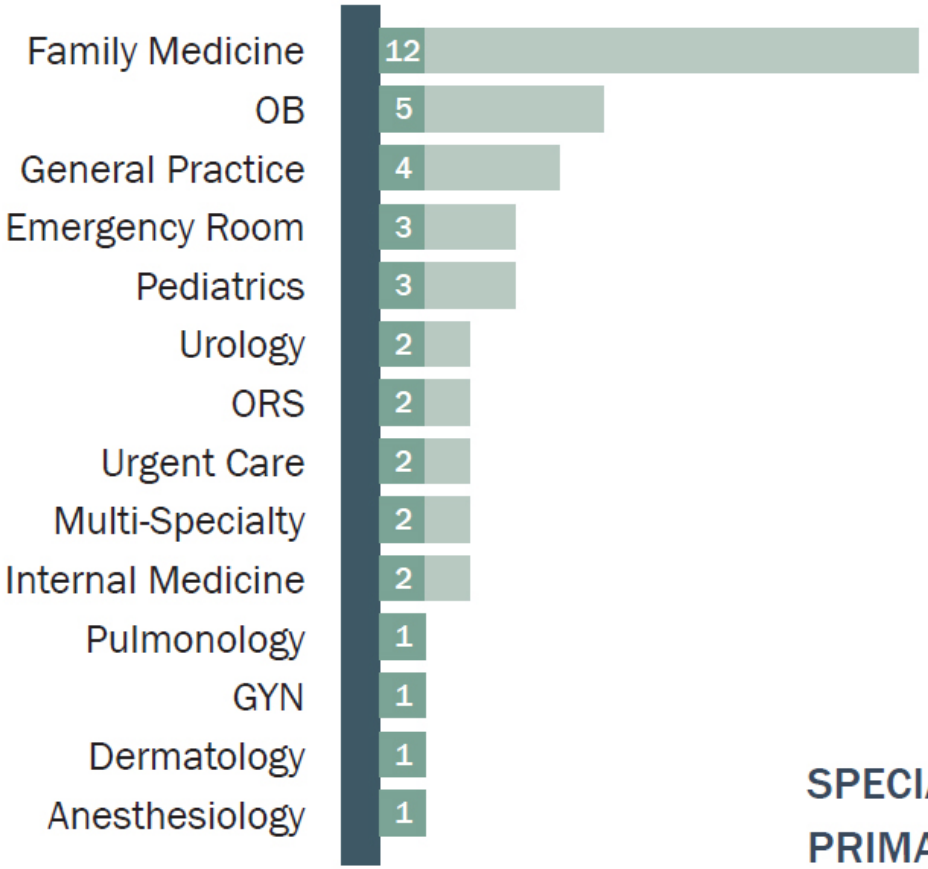
Specialty

Claims Based on Specialty



SPECIALIST 50%

PRIMARY CARE 50%

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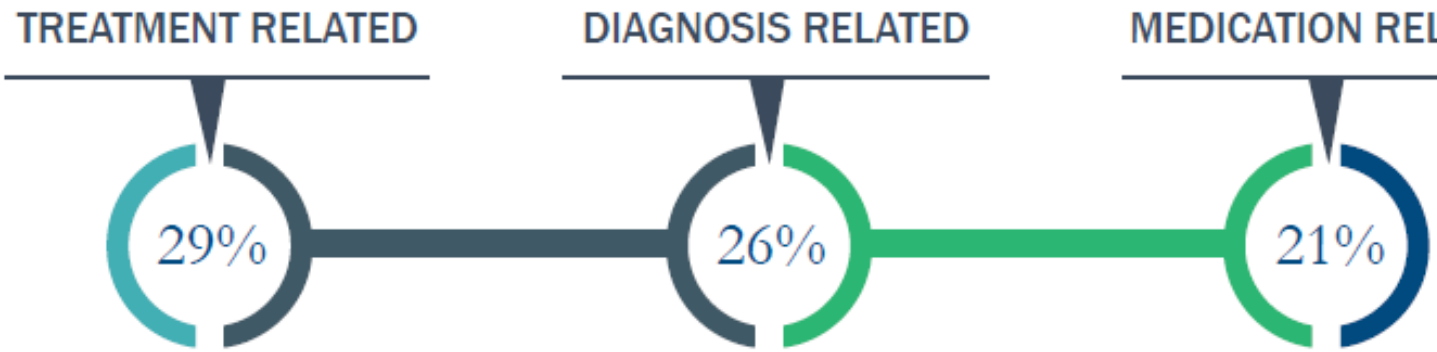
Top 3 Allegation Categories



- Most common patient allegations:
  - Improper Management of Course of Treatment
  - Failure to Refer/Seek Consultation
  - Failure to Manage Pregnancy
- Most common patient allegation:
  - Failure to Diagnose
- Most common patient allegation:
  - Improper Management of Medication Regime

Of the 42 cases reviewed, the top 5 patient allegations (listed above) made up nearly half (47%) of the claims. Except for Failure to Manage Pregnancy, these patient allegations appeared most often in cases where patients were later diagnosed or treated for infections or fractures.

2017 CAP
Data Study
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Contributing Factors

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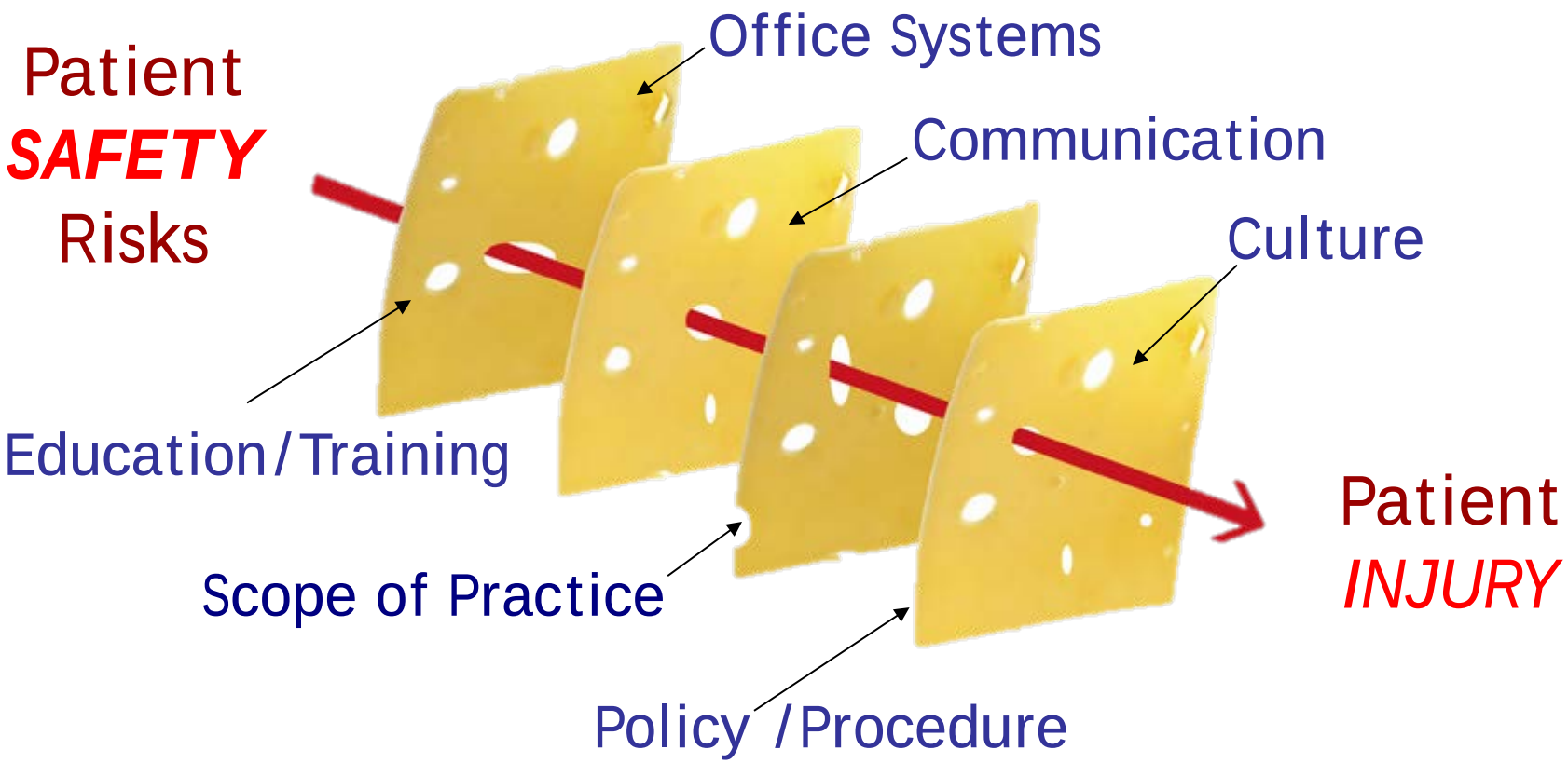
Understanding Error



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Communication Failures

"The single biggest problem in communication is the illusion that it has taken place."

- George Bernard Shaw

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Case 1: Summary

- 22 year old Spanish speaking male presented to the FM/WC clinic with work-related back, left knee and thigh pain and egg-sized mid-thigh lump.
- X-ray “normal”.
- Treated with Ibuprofen, Vicodin, PT, and activity/work restrictions.
- Over 4 months, patient saw 3 PAs and 5 MDs, including physician locum tenens.
- Patient transferred care to another physician after no relief.

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Case 1: Patient Injury

- Ewing's Sarcoma.
- Progression of disease.
- Died one year later.

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Case 1: Allegations

- ***Failure to Diagnose*** Ewing's Sarcoma.

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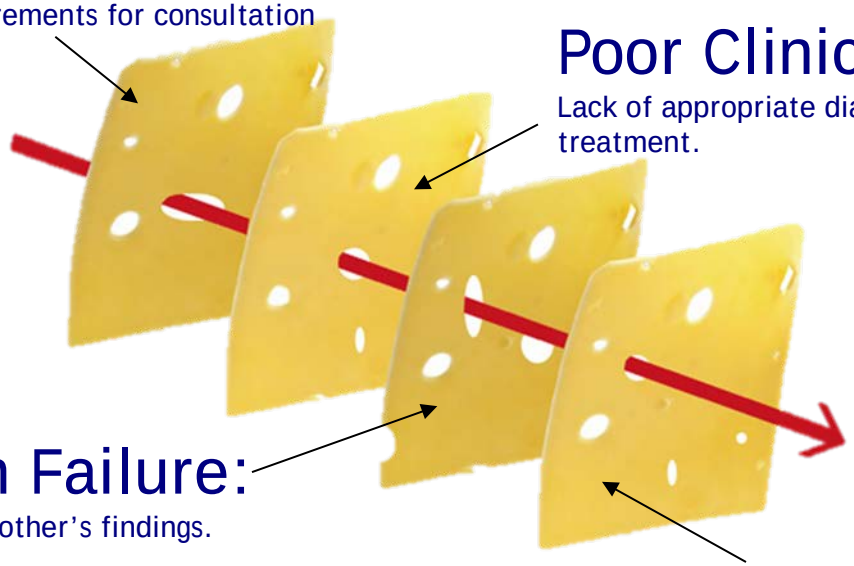
Case 1: What went wrong?

Lack of Policy/Procedures:

Inadequate examinations; requirements for consultation



Poor Clinical Judgement:

Lack of appropriate diagnostic testing; limited-focus treatment.

Communication Failure:

No interpreter; over-reliance on other's findings.

Deficient Documentation:

Records silent on mid-thigh mass; no complete history.

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Case 1: Risk Management and Patient Safety Strategies

- ✓ Develop and implement policies and procedures:
  - Complete clinical history and physical exam at each visit.
  - Order diagnostic tests/procedures to confirm/eliminate diagnoses.
  - APP to consult with MD.
- ✓ Obtain certified medical interpreter.
- ✓ Explore *all* complaints.

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Common Areas of Breakdown

- Poor documentation.
- Miscommunicating patient's condition.
- Failure to read the medical record.
- Lack of education about medications, follow-up, test results language barriers.
- Unsympathetic response to patient complaint.
- Inadequate informed consent.

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Strategies to Improve Communication

- ✓ Timely, accurate, complete, legible documentation.
- ✓ Handoff between providers regarding patient condition.
- ✓ Invite questions and verify understanding.
- ✓ Recognize when critical information has not been conveyed or confirmed.
- ✓ Escalate patient safety concerns.

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Scope of Practice

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Case 2: Summary

- 52 year old active female presented to ORS complaining of right knee pain.
- Right knee arthroscopy performed, including microfracture, meniscectomies, lysis of adhesions, removal of loose body.
- Developed fabella syndrome.

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Case 2: Patient Injury

- Persistent knee pain.
- Additional surgeries.

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Case 2: Allegations

- ***Improper performance of surgery*** (knee arthroplasty).
- ***Lack of informed consent.***

INFORMED CONSENT TO SURGERY

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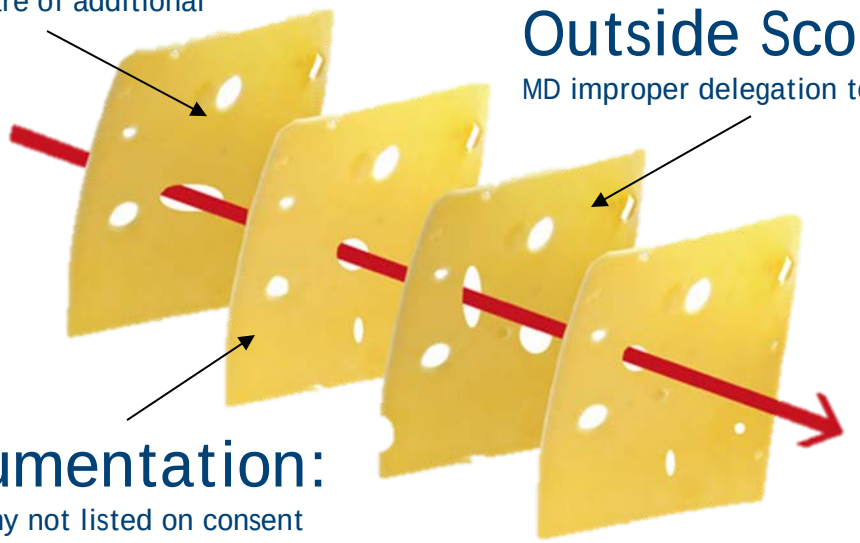
Case 2: What Went Wrong?

Communication Failure:

MD assumed patient had greater ortho knowledge and no informed consent discussion; PA not aware of additional planned procedures.



Outside Scope of Practice:

MD improper delegation to PA.

Deficient Documentation:

Microfracture and Meniscectomy not listed on consent form; no documentation in record of Microfracture and Meniscectomy discussion with the patient.

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Case 2: Risk Management and Patient Safety Strategies

- ✓ Clinician performing procedure conducts informed consent discussion.
- ✓ Document discussion and memorialize with procedure and patient-specific consent form.
- ✓ Don’t assume health literacy--provide patient with written educational materials, videos, diagrams.

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Allegation Categories

TREATMENT RELATED

- Most common patient allegations:
  - Improper Management of Course of Treatment
  - Failure to Refer/Seek Consultation
  - Failure to Manage Pregnancy

DIAGNOSIS RELATED

- Most common patient allegation:
  - Failure to Diagnose

2017 CAP Data Study N=42

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Case 3: Summary

- 57-year old diabetic male presented to an urgent care clinic with complaints of right foot pain, tenderness, swelling, and inability to bear weight.
- Treated with NSAIDs, Vicodin, cold pack, crutches, open-toed shoe.
- Instructed to elevate leg and return in 2 days.
- 2 days later, MD diagnosed severe cellulitis with lymphangitis.

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Case 3: Patient Injury

- Extended hospital stay, several debridement and skin-grafting surgeries.
- Wears a foot brace and orthotic shoes.
- Uses a cane to walk.
- Disabled and unable to work.

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Case 3: Allegation

- ***Delay in Diagnosis and Treatment***

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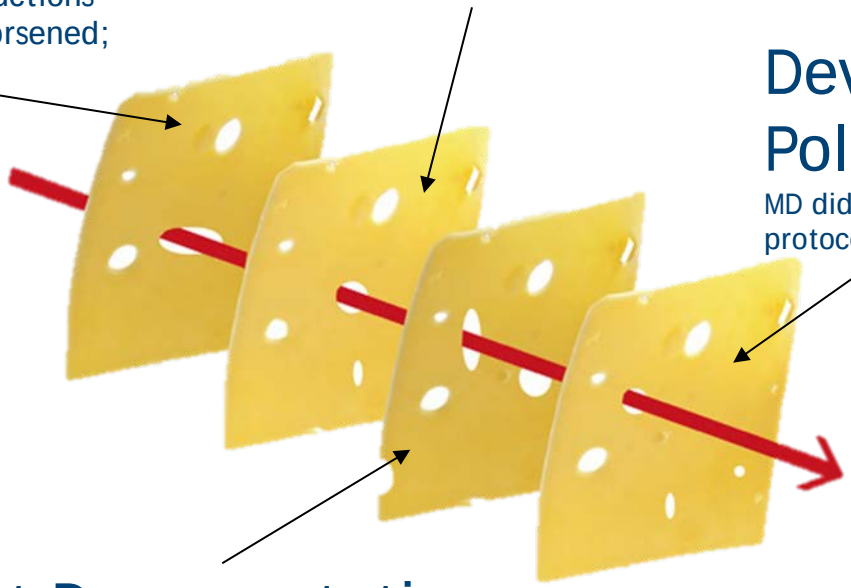
Case 3: What Went Wrong?

Poor Clinical Judgement:

Exam limited to related injury, did not address skin appearance or integrity; no test for peripheral neuropathy; didn't appreciate DM's increased risk for cellulitis and vasculopathy; did not prescribe prophylactic antibiotics.

Communication Failure:

APP did not read H&P, nor inquire about DM complications; no written follow-up instructions given to patient to return if symptoms worsened; APP did not consult with MD.



Deviation from Policy/Procedure:

MD did not examine patient first per protocol.

Deficient Documentation:

No mention of diabetes in visit progress note; no temp recorded; EHR auto-filled MD diagnosis into APP note.

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Case 3: Risk Management and Patient Safety Strategies

- ✓ Review H&P and address abnormal.
- ✓ Take full set of vital signs, document.
- ✓ Order necessary diagnostic tests to confirm or eliminate diagnoses.
- ✓ Discuss proposed treatment and provide patient with written educational materials and follow-up instructions.
- ✓ Adhere to protocols and collaborate with supervising physician.
- ✓ Contemporaneously document clinical findings, provider actions, and patient discussions/responses to care.
- ✓ Never leave blanks or unfilled data spaces in the EHR/medical record.

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Deficient Documentation

- Inadequate communication of critical information.
- Implies that “what wasn’t documented, wasn’t done.”
- Jeopardizes defense in medical liability lawsuits.

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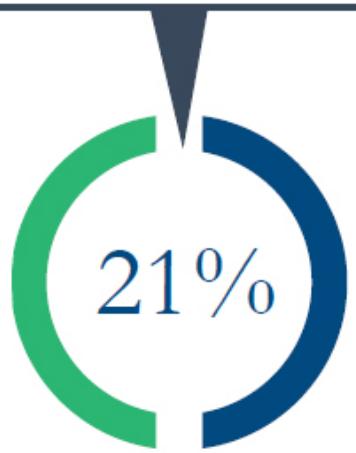
Allegation Categories

MEDICATION RELATED



- Most common patient allegation:
  - Improper Management of Medication Regime

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Case 4: Summary

- 28 year old male presents to APP at FM office complaining of psychological symptoms.
- Worsening symptoms of muscle and joint pain, migraines, “brain fog” over the last year.
- Western Blot test positive. Babesia test borderline. Patient diagnosed with Lyme Disease and Babesia.
- Treated with antibiotics (amoxicillin, Flagyl, Rifampin, doxycycline), antifungals (Nystatin, Malarone), anti-parasitics (Artemisinin, Malarone) and lumbrokinase.
- Larium (anti-parasitic) added.

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Case 4: Patient Injury

- Psychosis
- Assaulted girlfriend and was incarcerated for 3 years.
- Treated for mental issues.
- Register as a sex-offender.

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Case 4: Allegations

- ***Improper medication management: Wrong dosage*** of Malarone and Larium administered.
- ***Lack of informed consent*** regarding psychological side effects.

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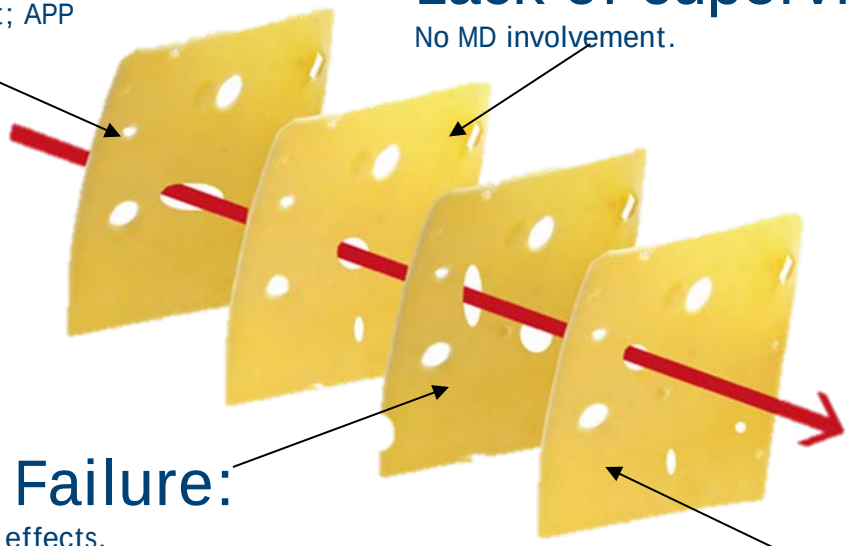
Case 4: What Went Wrong?

Poor Clinical Judgement:

No definitive clinical presentation; marginal tests results; high doses of Malarone & Larium prescribed in off-label manner; unconventional treatment; APP unaware of increased risk for psych.

Lack of Supervision:

No MD involvement.



Communication Failure:

No consent about medication side effects.

Failure to Consult/Refer:

No formal referral to psychiatrist.

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Case 4: Risk Management and Patient Safety Strategies

- ✓ Determine appropriate patient assignments for APP.
- ✓ List authorized prescribing formularies in SPP/DSA.
- ✓ Maintain current drug reference materials and resources.
- ✓ Consult with supervising physician and pharmacist.
- ✓ Supervise APP patient care and prescribing practices.
- ✓ Refer to specialists.
- ✓ Provide verbal and written patient education about all medications, side effects, follow-up requirements.
- ✓ Develop tracking and recall procedures for referrals, follow-up care, no-shows.

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Supervision

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Case 5: Summary

- 39 year old G1 female with diabetes.
- Followed by APP during prenatal period.
- Vaginal delivery with forceps and vacuum of 11 lb. 2 oz. infant.

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Case 5: Patient Injury

- Shoulder Dystocia.
- Severe nerve damage to the right arm of the infant.

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Case 5: Allegations

- ***Failure to Manage Pregnancy***
- ***Negligent Supervision***

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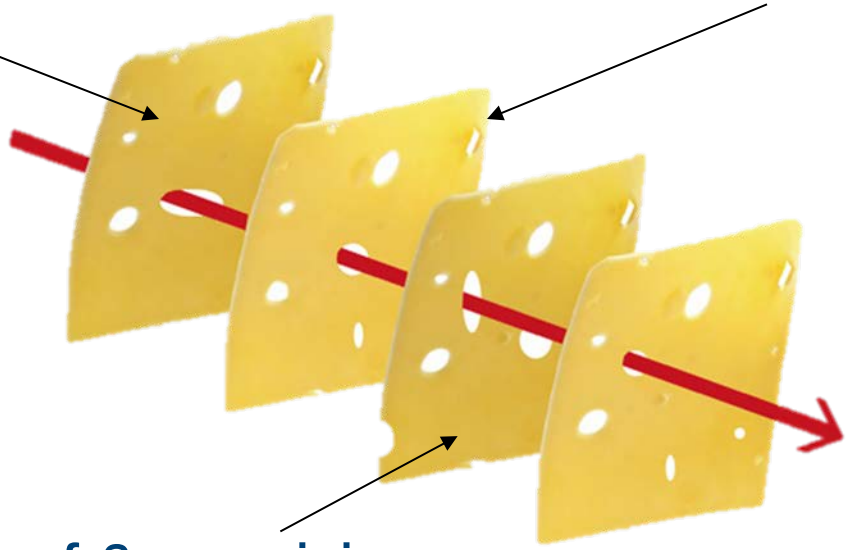
Case 5: What Went Wrong?

No Policy and Procedures:

No "Standardized Procedure" defining NP's Scope of Practice.

Poor Clinical Judgement:

Infant at increased risk for Macrosomia; no late term ultrasound or scheduled C-section



Lack of Supervision:

No MD involvement in prenatal course.

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Case 5: Risk Management and Patient Safety Strategies

- ✓ Maintain effective collaborative agreement (SPP/DSA) defining APP scope of practice, establishing clinical protocols, guidelines, treatment standards, and clinical pathways.
- ✓ Review SPP/DSA annually (minimum).
- ✓ Obtain appropriate diagnostic testing.

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APPs in Your Medical Practice

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Employment

- Evaluate credentials.
- Perform background checks, including criminal and professional board actions.
- Verify professional liability coverage.
- Investigate malpractice claims.
- Contact all references.

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Education and Training

- Determine areas of competency and deficiencies.
- Provide on-the-job training.
- Support professional growth and need for continuing education.

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Comprehensive Written Protocols

- Standardized Procedures and Protocols (NP) and Delegation of Services (PA).
- Define role in written job description.
- Define scope of practice.
- Requirements for consultation with a physician and referral to a specialist.

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APP Supervision

- Understand state laws and regulations.
- Conduct frequent meetings.
- Maintain records.
- Document all consultations.

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California Laws and Regulations

Nurse Practitioners

- MD can supervise no more than 4 *total*, if they furnish drugs.
- Be available by phone.
- Must have SPP.
- No requirement of MD to countersign charts.

CA Business and Professions Code 2835, 2836

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California Laws and Regulations

Physician Assistants

- MD can supervise no more than 4 *total* if they furnish drugs.
- Be available in person, phone.
- Must have DSA.
- 3 ways to supervise:
  - Select, review, and date 5% of patient medical records per month
  - Examine patient same day as PA
  - Countersign and date ALL medical records within 30days

CA Business and Professions Code 3500 et. seq.

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Collaborative Relationships

- Create a “culture of safety.”
- Prioritize provider well-being and participation in quality improvement and workplace changes.

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Your patients' lives depend on teamwork!

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Resources

- Cooperative of American Physicians: www.capphysicians.com
- CA Board of Registered Nursing: www.rn.ca.gov
- CA Physician Assistant Board: *www.pac.ca.gov*
- CA Medical Board: *www.mbc.ca.gov*
- National Practitioner Data Bank: *www.npdb.hrsa.gov*

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Open Q&A Session

- Any Questions??
- Additional questions/comments, email:
  - AMcLain@CAPPhysicians.com
  - RiskManagement@CAPPhysicians.com

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References

- Cooperative of American Physicians Medical Board of CA
- CA Board of Registered Nursing
- CA Physician Assistant Board
- California Medical Association
- ECRI Institute
- PIAA
- CRICO-Harvard Medical Institutions Inc.
- Outcome Engineering: *The Just Culture Algorithm*
- The Doctors Company
- CSHRM
- California Health Report
- American Association of Nurse Practitioners (AANP)
- American Association of Physician Assistants (AAPA)