

SPECIAL REPORT



4 TIPS TO HELP LOWER MEDICAL LIABILITY RISK

PIAA, the nation's leading association representing medical professional liability insurance companies, has prepared a study showing comparative payment analysis of medical professional liability claims based on 5 years of loss causation data. This short, informative paper combines the data from PIAA with NORCAL Mutual's proprietary closed-claims data and field research to offer four essential recommendations for minimizing the risk of a claim.

PIAA STUDY 2009-2013¹

This study provides a comparative payment analysis of MPL claims by indemnity payments and ALAE (allocated loss adjustment expense) payments by loss causation data. Loss causation data was reviewed for the 5-year time period (2009-2013).

Chief Medical Factor (formerly known as medical misadventure):

Act or omission by a health care provider that falls below the accepted standards of medical care, triggering a claim for medical and/or legal damages.

Presenting Medical

Condition: The disease, symptom, complaint, or reason for visit of the claimant; significant to the treatment provided at the time of accident or incident.

Procedure: Procedure performed by the insured most relevant to the presenting medical condition of the claimant.

Resulting Medical

Condition: The medical condition that occurred after a medical encounter and led to the chief medical factor named in the claim.

Severity: Nine degrees of injury adopted from the National Association of Insurance Commissioners.

Symptoms involving abdomen and pelvis

was the most prevalent presenting medical condition and resulted in an average indemnity payment of **\$337,375**. Death was the top reported severity of injury (32% closed claims and 40% total indemnity). Back disorders (including lumbago & sciatica) resulted in the highest average indemnity (\$391,535) and ranked second among the top five during this time period.



Diagnostic interview, evaluation, or consultation was the top procedure provided and resulted in an average indemnity payment of **\$322,121**.

Cardiac or cardiorespiratory arrest was the most prevalent resulting medical condition and resulted in an average indemnity payment of **\$344,148**. Death was the top reported severity of injury (92% closed claims and 89% total indemnity).



Improper performance of a procedure was the most prevalent chief medical factor and resulted in an average indemnity payment of **\$316,519**. Minor temporary injury was the top reported severity of injury (23% closed claims and 14% total indemnity). Diagnostic error resulted in the highest average indemnity (\$394,999) and ranked second among the top five during this time period.

1. Reprinted with permission from the PIAA MPL Closed Claim Comparative, Exhibit 3, pg.18, 2014 Edition, "Comparative Payment Summary by Loss Causation", PIAA. Copyright, 2014.

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As presented in the PIAA data, Medical Professional Liability claims can be costly. Review of NORCAL Mutual's proprietary closed-claims data and field research² reveals four main areas in which physicians can help lower risk levels, by implementing effective risk management strategies.

01 MANAGEMENT OF FOLLOW-UP PROCESSES: Follow-up systems are important because physicians have a responsibility to ensure that patients are informed about their conditions and get needed care.

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RM Tip:

Ensure that all clinical findings, test results, and consultant reports are reviewed and acted upon in a timely manner.

02 GENERATION OF DOCUMENTATION: The purpose of the medical record is to communicate internally and externally about a patient's health. In addition, in a medical malpractice lawsuit, the patient's record will be used as evidence.

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RM Tip:

Each patient's chart should be an accurate account of the patient's history and complaints, physical findings, diagnostic tests, diagnoses and medical care and treatment. Whether a record is paper-based or electronic, the documentation in it should show the patient's active problems, data analyzed to understand the problems, and plans for further investigation and handling of the problems.

03 MANAGEMENT OF MEDICATIONS: Two common medication management issues that have been discovered in office assessments have to do with proper prescribing practices and management of patients with chronic pain and opioid prescribing.

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RM Tip:

Create a policy and procedure for prescription refills describing:

- who in the office can a) refill prescriptions b) create a drug order or transmit a refill to the pharmacy
- the refill policy for weekend and evening requests
- the process for writing prescriptions in such a way that quantities cannot be altered, particularly when scheduled drugs are involved; and
- the preferred method of transmitting prescriptions.

Consider use of a therapeutic pain management agreement, if indicated.

04 COMMUNICATION WITH OTHER HEALTH CARE PROVIDERS: Gaps in communication between treating physicians can cause problems that jeopardize a patient's well-being and provide the impetus for litigation.

RM Tip:

If you refer patients to other physicians, have some mechanism in place to see that your referral recommendations are carried out and that the patient was seen by the consultant (or another physician of the patient's choice). Your follow-up mechanism for referrals should also track your receipt and review of the consulting physician's report.

Most of these risk management recommendations are not expensive or hard to put in place; most focus on setting up systems or protocols and then adhering to them. Taking some time to appraise and strengthen vulnerabilities in your practice or facility will help protect patients and may keep you from a malpractice suit or help you defend against one.

2. NORCAL Mutual closed claims study – associated issues in claims from July 2009 through June 2014 and NORCAL Mutual study of policyholder risk assessments from July 2009 through June 2011.

This report is presented as a courtesy by NORCAL Mutual Insurance Company. Our Risk Management Specialists are always ready to help policyholders with risk issues and to support practice changes that lower risk and improve patient safety.

ABOUT NORCAL GROUP

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