

# New Issues in Malpractice for Pediatricians

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## Session Goals

1. Understand the current landscape of pediatric malpractice cases
2. Recognize the situations–conditions and processes–which increase the risk of being sued
3. Learn to respond to these situations proactively to reduce risk



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## A moment of zen

The Third Law of The House of God

AT A CARDIAC ARREST, THE FIRST PROCEDURE IS TO TAKE YOUR **OWN** PULSE

Samuel Shem, *The House of God*, 1978



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## *Legal Disclaimer*

*I am not an attorney. The information provided during this session is general in scope and educational in content. It should not be construed as legal advice. Different facts and circumstances may dictate that a different rule or law may apply. Much of the information in this presentation is based on personal opinion and experience. As always, physicians should consult their personal attorneys about legal requirements in their jurisdictions to obtain legal advice on particular matters.*



# New Issues in Malpractice for Pediatricians

## Historical Data

- Pediatricians are 24th out of 25 specialties in likelihood of suit
- 3.1% of pediatricians are sued each year
- 20.5% of suits result in an indemnity payment
- Yet payment amounts are in line with other specialties (mean \$560K, median \$187K)
- Pediatric cases can take longer than average to resolve

Jena AB, Chandra A, Seabury SA. Malpractice risk among US pediatricians. *Pediatrics*. 2013;131(6):1148-1154.  
doi:10.1542/peds.2012-3443



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AAP Periodic Survey of Fellows (1987-2015)

- 25-33% report being sued in a given year (21.4% in 2015)
- Of resolved claims 34% resulted in either settlement or verdict for plaintiff
- Mean indemnity payment \$451K, median \$128K (unchanged over time)
- Male physicians and hospital-based subspecialists had higher rates of claims

Bondi et al; Trends in Pediatric Malpractice Claims 1987–2015: Results From the Periodic Survey of Fellows. Pediatrics April 2020; 145 (4): e20190711. 10.1542/peds.2019-0711



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## Specific Allegations of Negligent Care

### Delayed or missed diagnosis

- Meningitis
- Appendicitis
- Other infections
- Scoliosis
- DDH/hip dysplasia
- CHD
- Retinoblastoma
- Hydrocephalus
- SUDI
- Seriousness of injury
- Developmental issues
- Mental health issues



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## Specific Allegations of Negligent Care (cont'd)

### Improper Treatment

- Injury care
- Medication choice/route
- Medication dose
- Failure to obtain or misinterpreting lab studies/x-rays
- Failure to refer for specialty care when appropriate
- Poor communication/documentation

The Doctors Company,

<https://www.thedoctors.com/articles/study-of-malpractice-claims-involving-children/#2>





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So What is Really New?

- Evolving “standard of care”
- Stupid EHR tricks
- Non-physician providers
- Adding new services
- New office procedures/processes



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## EHR Issues

- Legibility is no longer an issue—now it is intelligibility
- Note bloat
- Templates and boilerplate
- Altering a note (yes, people still try!)
- Timely note completion/signoff
- Consistency



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## Non-physician providers

- Advanced practice nurses
- PAs
- LCSW
- Psychologist
- Non-licensed providers

“Captain of the ship” doctrine—the “last clear chance to avoid an error” is a non-delegatable responsibility



# New Issues in Malpractice for Pediatricians

## Adding New Services

- Mental health services

## New Office Processes

- Telephone
- Telemedicine
- Night call
- Screenings



# New Issues in Malpractice for Pediatricians

## Takeaway Messages

- All is not bleak—numbers of cases and real dollar payouts are lower
- Medical conditions responsible for most suits are mostly consistent
- But new technology introduces new challenges



# New Issues in Malpractice for Pediatricians

## What We All Need to Do

- Practice quality, evidence-based medicine
- Document the above
- Also-understand the pitfalls of new technology, and how that technology works



# What Questions Do You Have?

Questions posted in the Socio will be read aloud by moderator for the presenter to answer. Please post your questions in Socio now.



# Later Viewing

This and all other UC2022 course recordings will be available for later viewing through Socio and [PCC's YouTube Channel](#)

