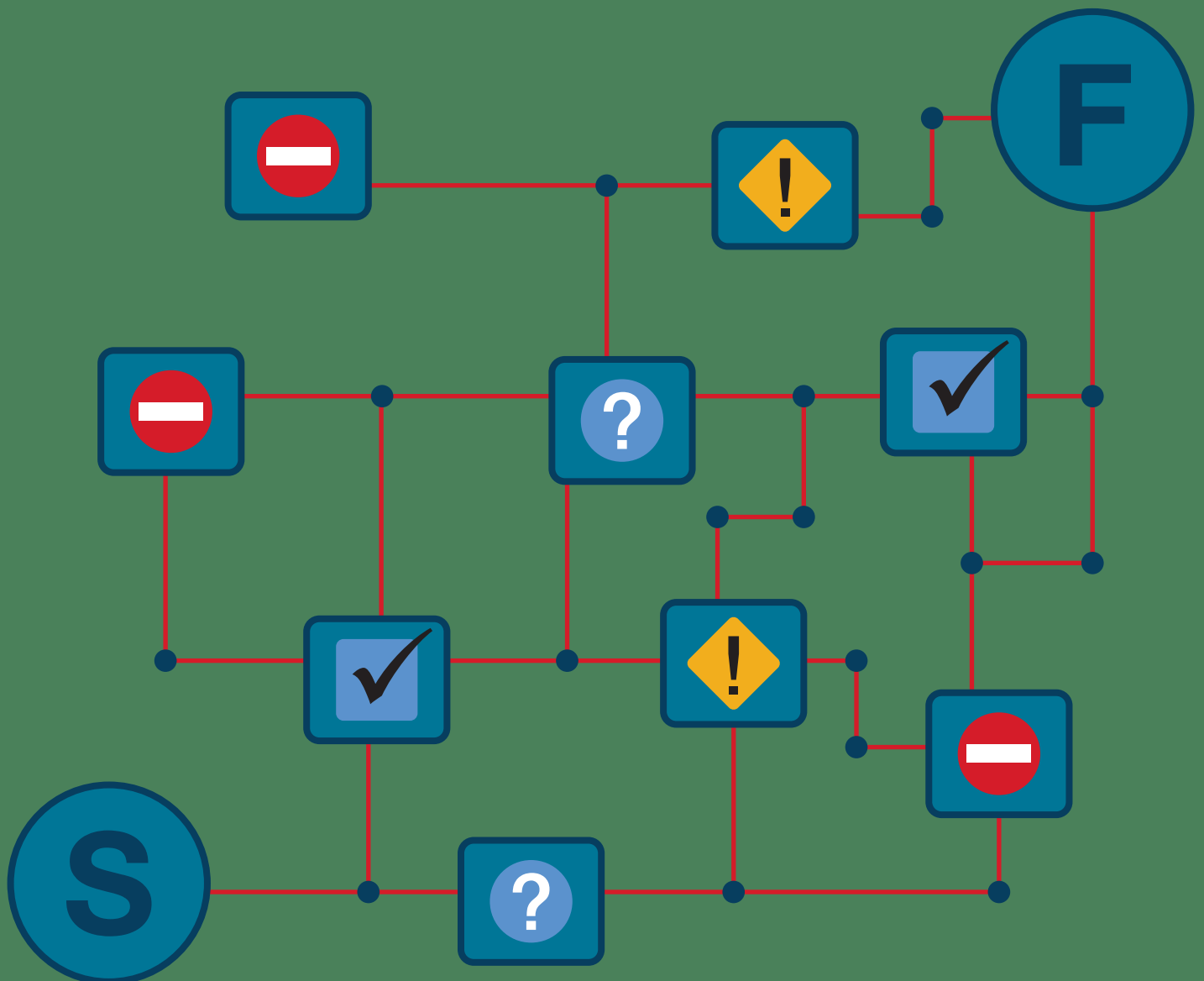


Surviving a Claim

An organization can and must help clinicians rebound from adverse events to promote clinician wellness, safe patients and healthy care teams.

By Lori Atkinson, RN, BSN, CPHRM, CPPS
and D. Michelle Kinneer, PhD, JD, MSN, RN, CPHRM, CHPC, CHC



Burnout is associated with a two-fold increase in unsafe care, unprofessional behaviors and low patient experience.³

When clinicians decide to practice medicine, they may be aware that the profession carries risk—that adverse outcomes can, and do, happen to patients. What they are never quite prepared for is that they themselves may be a witness to, a participant in or the cause of harm. Medical procedures have inherent risks, and some patients have risk factors that increase the likelihood of adverse outcomes.

Intellectually, clinicians know this. But when something goes wrong, the experience is devastating and stressful for the very reason they chose medicine as their calling: Clinicians want to serve patients, and they care deeply about them.

Resulting malpractice claims and lawsuits only add to this stress and can drain the passion, compassion and confidence from the most confident clinicians and teams. Clinicians involved in litigation may see fewer patients, disrupt care team cohesion or even leave the practice—actions that lower productivity, raise costs and detract from team and patient satisfaction.

The impact doesn't end there. When clinicians and their teams struggle, the health care organization also feels the pain in the form of losses in care team productivity and engagement, as well as negative business results.

99%
of general surgeons
will likely experience
a malpractice claim
by age 65.¹

Clinician, team and business impacts

A frightening result of experiencing a malpractice claim is that the probability of another claim increases. A general surgeon has a 99% chance of a malpractice claim by age 65. A clinician with six or more claims is 12 times more likely to have a subsequent claim.¹ In one study, physicians under age 35 were one-third as likely as older physicians to have repeat claims, and males were 38% more likely than females to have repeat paid claims.²

Malpractice claims have several additional impacts:

- ✓ **Emotional toll:** Clinicians and care team members involved in the patient's care may feel guilt, shame and remorse, lose confidence in their abilities and worry about their job.
- ✓ **Decreased productivity:** Teams under stress may lose focus due to distraction and team unity issues resulting from a blame and shame culture.
- ✓ **Patient safety and patient experience:** Stress due to adverse events or claims may contribute to burnout. Burnout is associated with a two-fold increase in unsafe care, unprofessional behaviors and low patient experience.³
- ✓ **Turnover:** Clinicians or team members suffering after an adverse event or claim may choose to leave the organization. The cost of turnover has a tremendous effect on employee morale and the health care organization's bottom line.
 - ✓ **Nurses:** The turnover cost for a bedside RN averages \$52,100 (ranging from \$40,300 to \$64,000), resulting in the average hospital losing \$5.7 million (the cost can run from \$4.4 million to \$6.9 million). Additionally, each percentage point change in RN turnover will cost or save the average hospital an additional \$328,400 due to the aforementioned impacts.⁴
 - ✓ **Physicians:** Turnover cost for a physician can range from \$500,000 to over \$1 million per doctor, or two to three times the annual salary. This includes recruitment, sign-on bonuses, lost billings and onboarding costs.⁵

The business case for supporting clinicians and care teams

The benefits of supporting clinicians and care teams during malpractice claims is undeniable and makes sense, including from a business perspective. Such support can have the following results:

- ✓ Focused, healthy clinicians and team members
- ✓ Improved productivity and teamwork
- ✓ Increased team satisfaction and engagement
- ✓ Greater retention of top talent
- ✓ Enhanced patient experiences
- ✓ Fewer preventable adverse events, patient injuries and malpractice claims
- ✓ Better business performance

Adverse events and claims

The immediate focus after an adverse event should always be on the patient, their family and the involved clinicians and care team. Communicating after an adverse event is never easy. Discussions with patients and families are challenging (see Resources). If an error has occurred, an apology of regret may be appropriate. Each situation provides unique nuances, and collaboration with your trusted Constellation medical professional liability (MPL) insurance partner will help.

When it comes to cases of liability, our philosophy is to proactively seek early resolution. We conduct a thorough and timely investigation and can:

- ✓ Provide emotional support for involved clinicians and team members

A clinician with six or more claims is **12x** more likely to have another claim.¹

- ✓ Help you communicate with the patient and family members
- ✓ Provide compensation on your behalf if medical negligence was determined

Medical malpractice is defined as professional negligence or the failure to meet the standard of care. Whether an adverse event is unexpected or due to a known complication, the patient or family may allege negligence and file a malpractice claim or lawsuit against the organization, clinicians or both. A malpractice claim is a demand for money or services resulting from an adverse event.

Sometimes, lawsuits are filed without prior notice of a claim. When this happens, a claim consultant and potentially a defense attorney will assist insured Constellation customers through the claim and/or litigation process.

Claim investigation begins with the claim consultant interviewing involved clinicians and team members. The consultant

\$52K
Average cost to replace a bedside RN⁴

requests and reviews medical records and may contact experts in pertinent fields of medicine and nursing for peer review on the standard of care. When a determination is made about negligence and liability, the claim or lawsuit may be denied, or settlement discussions may begin.

Each claim or lawsuit is always unknown, scary territory. Arming your organization and care teams with advance knowledge and procedures can ease clinician and team stress.

The legal process step by step

A lawsuit begins when the Summons and Complaint is properly served. These legal documents outline the allegations against the clinician, care team and/or the organization. Emotions at this stage are often raw and varied. We hear many times the first thought after reading the Complaint is, "No, it didn't happen that way," so clinicians or team members should not unduly focus on how the Complaint was worded. There are time-sensitive responses due upon receipt of these documents, so notify your MPL carrier immediately. Legal counsel appointed to represent the clinician or organization will respond.

The next stage is discovery, which is an exchange of documents and depositions. Your defense counsel will assist with the exchange and prepare the involved clinician or team member for a deposition.

\$500K–1M

Cost to replace a physician⁵

Mediation and settlement come next. Approximately 69% of Constellation MPL claims and lawsuits are dropped, denied or dismissed. However, based upon the standard of care reviews and in conjunction with the claim consultant and defense counsel, the claim or lawsuit may move toward mediation and early resolution. During attempts to resolve a claim or lawsuit, participation with counsel is invaluable. If attempts at resolution fail, the lawsuit proceeds to trial.

On average, only 4.5% of Constellation's lawsuits go to trial. Of those, we obtain defense verdicts 90% of the time. Going through a trial is stressful. We provide peer support throughout trial and encourage colleagues' attendance at trial to support the clinician and care team.

Documentation and notification

After an adverse event the focus is on providing patient and family support, clinician and care team support, event investigation and proper notification.

- ✓ **Organization**
 - ✓ **Administration:** Your organization may have notification requirements, including notifying senior team members, higher levels of administration or the board.
 - ✓ **Team:** Ensure team members are aware of the need to document and retain or preserve equipment or materials that could have contributed to an event.
- ✓ **Insurance carrier:** Notify your MPL carrier with a notice of a claim or potential claim. We encourage early reporting so we can help guide you through this process, provide resources and move toward resolution.
- ✓ **FDA:** If a product or medication was involved in the event, a report may need to be filed.

What leaders can do

Actively engaged leaders are visible in the organization. They learn about and witness poor processes, negativity and communication challenges that can lead to patient injuries and malpractice claims and lawsuits. Processes can and should be improved to minimize potential harm to patients. Optimal electronic health record practices are especially important to improve safety and reduce risk.

Effective leaders also know that awareness, knowledge and support are necessary at the care team level. Even in the most proactive environments, negative outcomes—whether caused by error or not—still occur. Leaders can sponsor initiatives that support clinicians and team members through the claim or litigation process. They can provide resources for and support a culture that allows teams and individuals to manage their journey through adverse outcomes by learning from mistakes, maintaining their wellness and enabling them to focus on patient care.

References

1. Thiels CA, Choudhry AJ, Ray-Zack MD, et al. **Medical malpractice lawsuits involving surgical residents.** *JAMA Surg.* 2018;153(1):8-13.
2. Studdert DM, Bismark MM, Mello MM, Singh H, Spittal MJ. **Prevalence and characteristics of physicians prone to malpractice claims.** *N Engl J Med.* 2016; 374:354-62.
3. Panagioti, M, Geraghty K, Johnson J, et al. **Association between physician burnout and patient safety, professionalism, and patient satisfaction: a systematic review and meta-analysis.** *JAMA Intern Med.* 2018;178(10):1317-31.
4. Nursing Solutions, Inc. **2019 National healthcare retention & RN staffing report.** bit.ly/2Jm1vFx Published 2019. Accessed July 1, 2019.
5. American Medical Association. **How much physician burnout is costing your organization.** bit.ly/2CNBRXJ Published October 11, 2018. Accessed July 1, 2019.

Resources

Visit MMICgroup.com or UMIA.com, Login > Risk Resources > Bundled Solutions to find resources for:

- ✓ Apology and Communication
- ✓ Preventing Diagnostic Error
- ✓ Hospital Risk

Visit the Wellbeing Center at MMICgroup.com or UMIA.com, Login > Risk Resources > Tools & Resources > Wellbeing Center



LORI ATKINSON, RN, BSN, CPHRM, CPPS
Content Manager and Patient Safety Expert
Constellation
Lori.Atkinson@ConstellationMutual.com



D. MICHELLE KINNEER,
PhD, JD, MSN, RN, CPHRM, CHPC, CHC
Risk and Patient Safety Education Manager
Constellation
Michelle.Kinneer@ConstellationMutual.com

Ten steps senior leaders can take to help prevent adverse events and claims

The best way to reduce the negative emotional and productivity effects of adverse events is to prevent them with a proactive patient safety and risk management program. Senior leaders can take these 10 steps to help prevent adverse events and malpractice claims:

1. Conduct baseline assessments of your risks and patient safety culture.
2. Perform Failure Modes and Effects Analysis (FMEA) on high-risk processes, and reengineer those processes.
3. Create an action plan with ranked priorities.
4. Educate and involve clinicians and care team members in patient safety efforts.
5. Help team members develop critical thinking skills.
6. Boost teamwork skills and communication among the team.
7. Optimize communication with patients and families.
8. Implement clinician and team emotional support services.
9. Make clinicians and team members aware of Constellation's clinician peer support program.
10. Track your organization's patient safety, clinician and team experience, and patient experience performance over time.

For more *Common Factors*[™] and *Brink*[®] articles, providing health care leaders and professionals with the latest thinking and best practices, plus malpractice claims analysis, opinions and more on cutting-edge topics, visit [ConstellationMutual.com](https://www.constellationmutual.com)