PROFESSIONAL LIABILITY INSURANCE OVERVIEW
AND
HOSPITALIST CLAIMS DATA

8-18-17

Thomas L. Claire
Administrator for Risk Management
UT-HSC Office of Legal Affairs

OBJECTIVES

- Understand the basic elements of a professional liability insurance policy and how they may apply to your future practice.

- Understand PLI coverage provided during UT residency.

- Appreciate Hospitalists' claims experience and contributing factors.

ELEMENTS OF A PROFESSIONAL LIABILITY INSURANCE POLICY

NAMED INSURED ON POLICY

- Named insured is the policy owner who has certain policy responsibilities (i.e. pay premium, manage policy, renew or terminate policy, etc)

- On a personal policy, named insured would be the physician.

- On a group policy, named insured would be the employer or group practice.
  - Individual insured physicians may be listed on endorsements, or
  - Mentioned only by a generic term such as "employed physicians."

ACORD® CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 05/31/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).
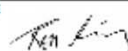
PRODUCER 1-419-383-4570	CONTACT NAME: Thomas L. Claire		
The University of Toledo Medical Assurance Company LLC	PHONE (A/C, No, Ext): 419-383-4570		FAX (A/C, No):
159 Bank Street	E-MAIL ADDRESS:		
Fourth Floor			
Burlington, VT 05401	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: The University of Toledo Medical Assurance		
INSURED	INSURER B:		
The University of Toledo	INSURER C:		
c/o University Medical Center			
3000 Arlington Ave.	INSURER D:		
	INSURER E:		
Toledo, OH 43614	INSURER F:		

COVERAGES CERTIFICATE NUMBER: 50005057 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	CLAIMS-MADE ☐ OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$
	POLICY ☐ PRO-JECT ☐ LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATU-TORY LIMITS OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Medical Professional Liab			SPUTMAC000100-12	07/01/17	07/01/18	Per Claim	1,000,000
							Aggregate	3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Evidence of professional liability insurance for The University of Toledo, The University of Toledo Medical Center and its employees, students, residents and fellows.

CERTIFICATE HOLDER	CANCELLATION
The University of Toledo Risk Management Department	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
Attn: Risk Manager 3000 Arlington Avenue, MS 1057	AUTHORIZED REPRESENTATIVE
Toledo, OH 43614 USA	*Ken King*

ACORD 25 (2010/05)
Anne.Chang@integrogroup.com_TOL
50005057

COVERED DAMAGES

- Alleged negligence in treating a condition or failing to treat an undiagnosed condition that leads to:
    - Economic damage:
        - Medical expenses
        - Lost wages/lost earning capacity
    - Non-economic damage:
        - Pain and suffering
        - Emotional distress
        - Loss of consortium

- Criminal injury (sexual misconduct, intentional harm, etc.) is not covered.

- Punitive damages generally are not covered.

EXCLUSIONS

- Exclusions vary, so it is important to thoroughly understand what is specifically not being covered.

- Typical exclusions include:
  - Scope of employment: i.e. moonlighting outside of employment (i.e. outside of residency program).
  - Specialized medical procedures: These would be itemized (i.e. obstetrical care).
  - Exposures generally considered uninsurable (i.e. intentional/criminal acts, pollution, punitive damages, sexual abuse).

DEFENSE COSTS

- Costs for investigation, defending and settling claims generally are included in the limits of insurance.

- So, keep in mind that these costs decrease the dollars available for settlement.

TERRITORY

- Is there restricted coverage territory?

- This is important if the practice extends to other states or outside the US territory, such as doing foreign medical missions.
  - Also possible that mission work may be considered moonlighting, therefore not covered.

CLAIM SETTLEMENT PROVISIONS

+ Generally....the Insured has the right to approve claim settlement, but if the Insured refuses to accept the figure recommended by the Insurer, the Insurer will not be liable for any additional settlement or defense costs that accrue from that point forward. The Insured will have to make up the difference.

+ But, some in some policies, the Insurer can settle any claim solely at their own discretion and without requesting approval of the Insured.

LIMITS AND DEDUCTIBLES

- Per incident limit covers a medical occurrence, so if the patient and wife are both suing, this is covered under one incident limit. It is not considered two incidents.

- Annual aggregate limit is the total limit for a one year period.

- $1 million/$3 million is the typical minimum coverage required by local hospitals for medical staff membership.

- Deductibles generally apply to both indemnity payments and claims expenses. But there are some policies that do cover first dollar defense, which would be ideal.

NOTICE OF CLAIM

Policy provisions will require the Insured to notify the Insurer promptly in the event of a claim (written or verbal demand, notice of intent to sue, summons, etc.) or a situation that may lead to a claim.

TYPICAL REPORTABLE SITUATIONS

+ Unexpected deaths or unexpected outcomes of a serious nature;

+ Unanticipated neurological, sensory or systemic deficits: including but not limited to brain damage, spinal cord injury, paralysis or nerve injury, organ failure or sepsis;

+ Potential or actual birth related injuries including but not limited to maternal or fetal death;

+ Severe internal injuries, lacerations, infectious process, foreign body retention, or sensory or reproductive organ injury;

+ Substantial disability, including fractures, amputations or disfigurement.

INSURANCE POLICY PERIOD

+ Insurance is sold by policy year. Each renewal is a new policy year.

+ Claims are assigned to specific policy years, based on the type of policy. This is done for actuarial/accounting purposes.

+A retro date is the first date your coverage started with a particular company.

TYPE OF POLICY –

Claims Made Policy

The date the claim is made to the Insurer triggers coverage under the policy in effect at the time of the notice, <u>provided</u> the event happened while the policy was in effect.

Occurrence Based Policy

The date of the event triggers coverage under the policy that was in effect at the time of the event, regardless of when it was reported.

COVERAGE GAP

A new insurance company does not cover claims or events (prior acts) that happened prior to the purchase of that new policy. So, if the old policy is………

+ occurrence type: **no problem** with prior acts; the old company covers, regardless of when claim is reported.

+ claims made type: **big problem** with prior acts because you no longer have the old insurance company to file a claim and the new company will not cover because the event happened before you went with the new company. There is a **GAP IN COVERAGE.**

SOLUTION TO COVERAGE GAP

Changing companies when you have

a claims made policy

+ Be aggressive in reporting potential claims to the old company before the policy expires. Notice of a potential claim locks in protection under old policy.

+ Purchase coverage options:
  × Tail/extended reporting coverage (purchased on the old policy-this option is usually available); or
  × Nose/prior acts coverage (purchased in the new policy-the new Insurer may be reluctant to provide)

PROFESSIONAL LIABILITY INSURANCE FOR UT RESIDENTS

PLI FOR UT RESIDENTS

* Named Insured on Policy: The University of Toledo
* Also Insureds: UT/UTP employees, residents/fellows, students, UTP physicians
* Insurance Company: The University of Toledo Medical Assurance Insurance Company
* Type of Insurance: Claims made policy – tail coverage
* Scope of Coverage: Duties within residency training program, no moonlighting.
* Defense: Ohio Attorney General's Office
* Primary Limit: $1 million per occurrence/$3 million aggregate
* Excess Limits: $26 million

REQUESTING INSURANCE/CLAIMS HISTORY
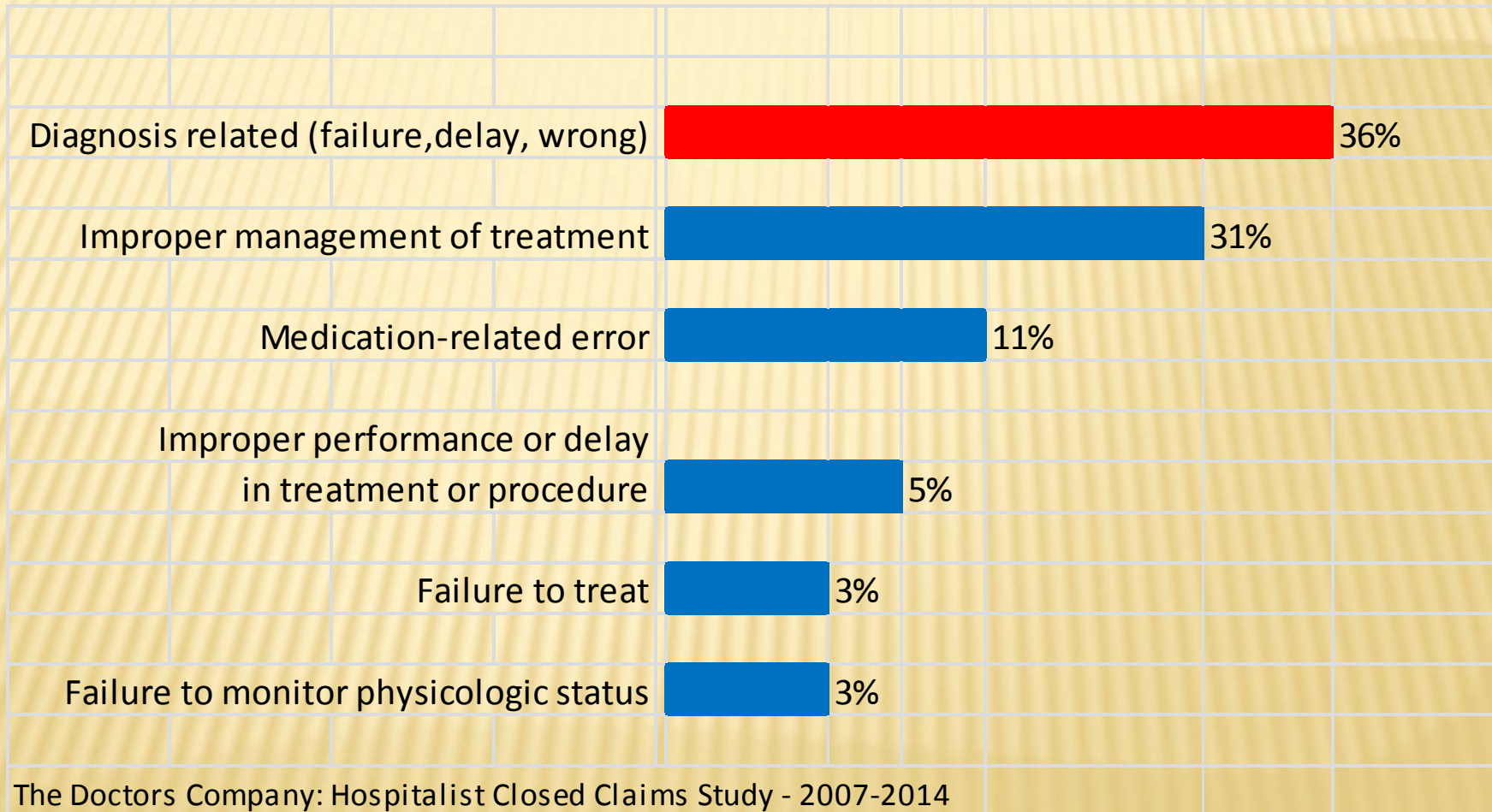
- Credentialing process of hospitals require confirmation of past insurance and claims history.

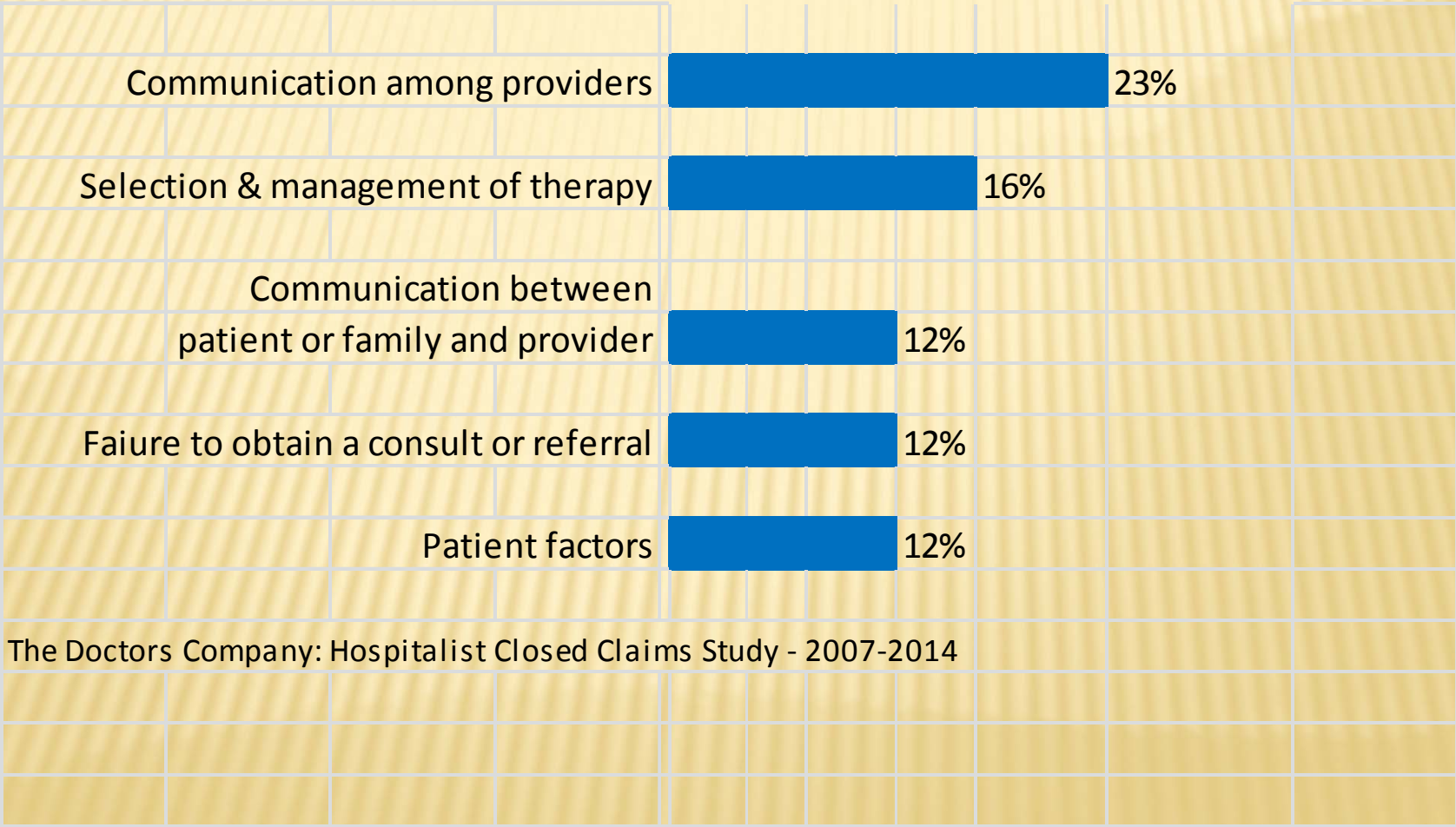- The request can be faxed to UT Risk Management at 419-383-3896.

HOSPITALIST CLAIMS EXPERIENCE

HOSPITALIST CLAIMS BY ALLEGATION

Diagnosis related (failure, delay, wrong) — 36%

Improper management of treatment — 31%

Medication-related error — 11%

Improper performance or delay in treatment or procedure — 5%

Failure to treat — 3%

Failure to monitor physicologic status — 3%

The Doctors Company: Hospitalist Closed Claims Study - 2007-2014

FACTORS CONTRIBUTING TO PATIENT INJURY

Communication among providers	23%
Selection & management of therapy	16%
Communication between patient or family and provider	12%
Faiure to obtain a consult or referral	12%
Patient factors	12%

The Doctors Company: Hospitalist Closed Claims Study - 2007-2014

PATIENT INJURY SEVERITY

All Physicians

Low
13%

High
34%

Medium
53%

Hospitalists

Low
6%

Medium
22%

High
72%
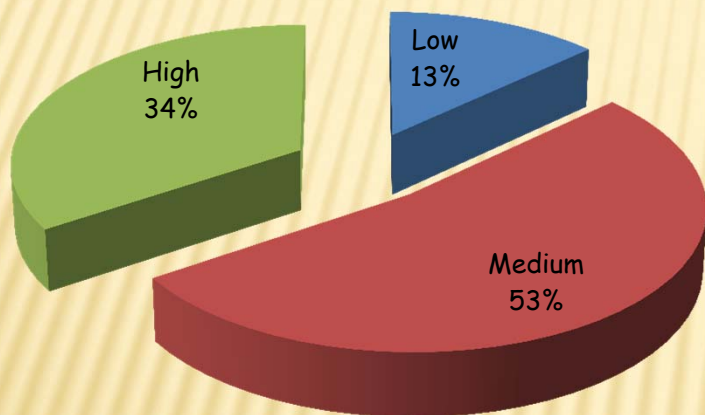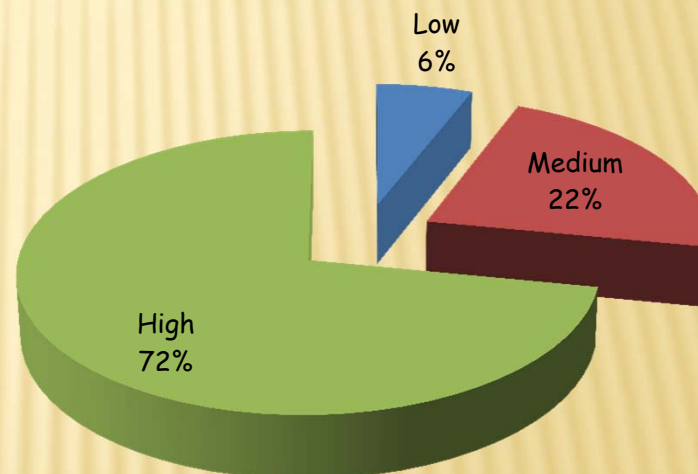
RISK MITIGATION STRATEGIES*

- Timely diagnosis depends of quick diagnostic studies and their interpretation.
- Be accessible and responsive to nurses.
- Communicate concerns regarding patients during hand off to fellow hospitalists.
- Build rapport with physician specialists and stay engaged after they joined the case.
- Document patient noncompliance.
- Take time to introduce yourself to the patient.
- Review all documentation.

*The Doctors Company: Hospitalist Closed Claims Study - 2007-2014

ODI CLOSED CLAIMS REPORT: 11/16

Specialty	# Claims	% With Indemnity	Ave. Indemnity	Ave. ALAE
All Physicians	15,466	13.7%	$334,852	$30,615
Surgery - Pediatric	20	15.0%	$866,667	$12,469
PMR	85	10.6%	$732,778	$29,592
Neonatal/Perinatal Med.	34	23.5%	$627,083	$61,128
Pathology	131	20.6%	$624,361	$24,912
Oncology	53	13.2%	$560,429	$26,254
Neurology	489	9.8%	$532,973	$34,689
Infectious Diseases	81	10.6%	$510,000	$16,804
Anethesiology	649	14.0%	$509,283	$23,059
Rheumatology	40	17.5%	$487,143	$23,600
Cardiovascular Disease	540	10.6%	$465,783	$29,654
Surgery - Traumatic	38	11.4%	$459,375	$21,848
Hospitalist	174	6.3%	$458,282	$18,964
Gastroenterology	346	9.2%	$450,023	$23,510
Surgery - Colon/Rectal	53	7.5%	$445,500	$34,551
Obstetrics/Gynecology	1,214	22.7%	$441,941	$57,840
Hematology	99	13.1%	$434,102	$34,505
Surgery - Cardiac	257	6.6%	$433,353	$28,343
Pediatrics	325	12.3%	$428,250	$27,680

IF YOU HAVE A CONCERN OR NEED TO REPORT A PATIENT INCIDENT

Discuss with Program Directors, Faculty and call the Risk Management Department of UTMC or TTH if you are worried that an incident may become a claim.

Risk Management - UTMC

Tom Claire (419-383-4570)

Datix Incident Reporting System

Risk Management – TTH

Molly Brixey (419-291-5446)

ORL Incident Reporting System