

New Physician Orientation

Professional Liability / Claims Management



Who we are....

OFFICE OF GENERAL COUNSEL PROFESSIONAL LIABILITY DIVISION

■ Malpractice Attorneys

- Joanna L. Harkey, JD
- Kevin L. Williams, JD
- William W. (Billy) Webster II, JD - El Paso

■ Claims Managers

- Suzanne Komarek, RN, MSN, CPHRM – Lubbock & Amarillo
- Veronica Contreras, RN - Odessa

What we do...

- Administer self-insurance program
- Claims Management/Quality Improvement
- Malpractice defense (76 active cases for approx. 1,392 physicians)
 - Legal review and investigation of all medical liability claims
 - Negotiation of settlements for meritorious claims
 - Denial of non-meritorious claims
 - Coordination of potential state liability with the Texas Attorney General's Office
 - Defense of lawsuits
 - Legal advice on patient care issues: DNRs, consent, release of health information, emergency transfers

Insurance Coverage

- Occurrence coverage for medical malpractice
- Begins on date of employment or licensure/institutional permit (whichever occurs latest) – Only covers duties at TTUHSC
 - No moonlighting
 - Does not cover criminal acts, civil rights violations, sexual harassment
- \$100,000 per claim for residents / \$400,000 per claim for faculty *unless lower liability limits are set by law in which case the lower limits set by law apply*

Texas Tort Claims Act

- Legislative changes effective 9/1/03 in the “Tort Claims Act” significantly impacted liability limits for State Employed Physicians

Texas Tort Claims Act

- §108.002(a) CPRC (Texas Tort Claims Act)
 - (a) Except in an action arising under the constitution of laws of the United States, a public servant, ~~other than a provider of health care~~ ..., is not personally liable for damages in excess of \$100,000 arising from personal injury, death ... if damages are the result of an act of omission by the public servant in the course and scope of the public servant's ... employment ...
 - Franka v. Velasquez, 332 SW3d 367 (TEX.2011)

Lawsuits Filed/Claims Received

	<u>Claims</u>	<u>Lawsuits</u>	<u>TMB</u>
▪ FY 2002	74	23	
▪ FY 2003	67	43	
▪ FY 2004	34	11	
▪ FY 2005	28	11	7
▪ FY 2006	21	12	18
▪ FY 2007	14	13	12
▪ FY 2008	16	18	16
▪ FY 2009	16	10	18
▪ FY 2010	36	13	17
▪ FY 2011	30	5	21
▪ FY 2012	18	13	9
▪ FY 2013	24	3	17
▪ FY 2014	26	8	18
▪ FY 2015	27	5	14
▪ FY 2016	30	9	16
▪ FY 2017	7	1	4

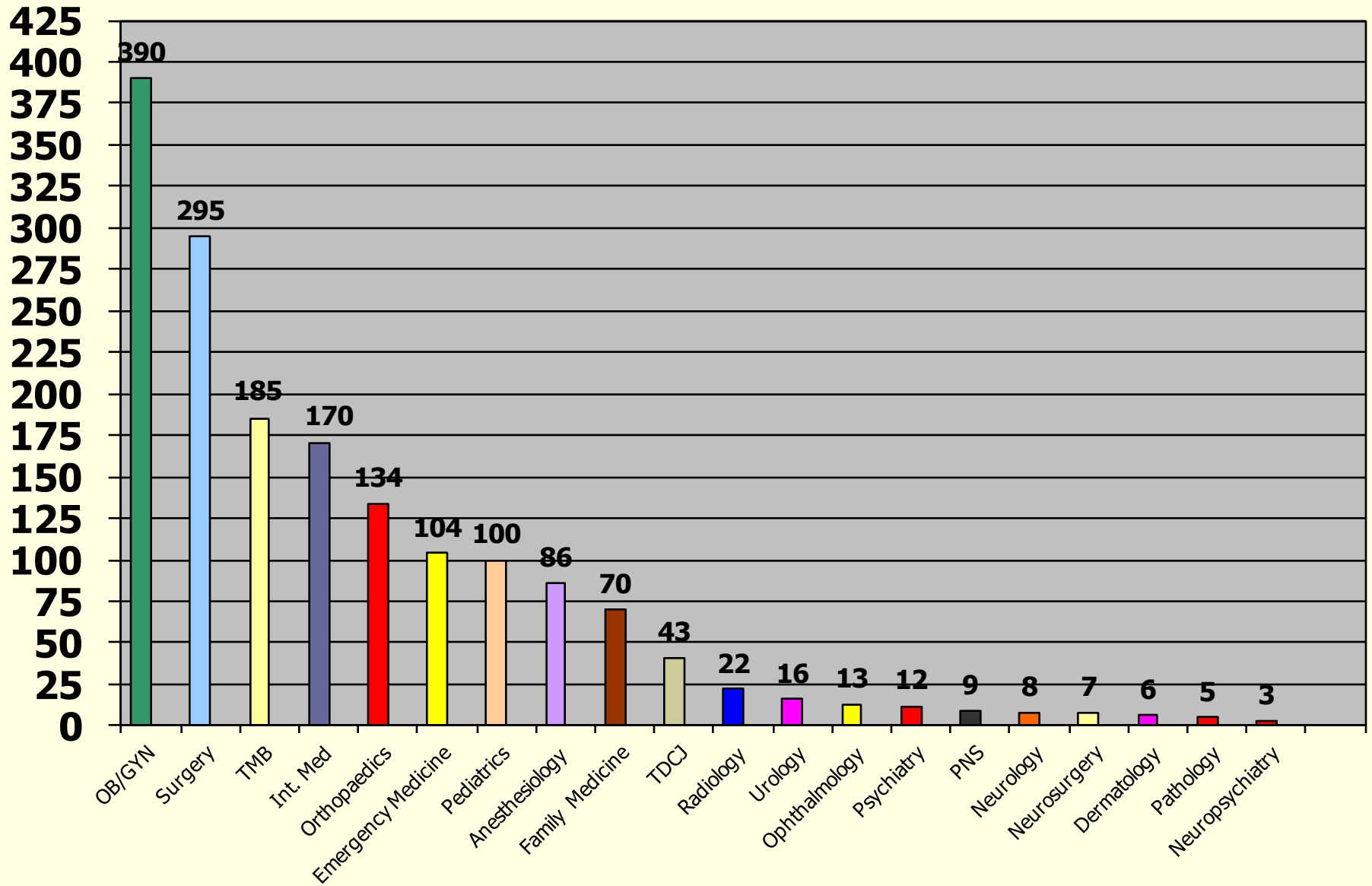
**As of 02/08/17*

TMB Coverage

- \$25,000 for costs and expenses with the investigation and defense of a disciplinary and licensing action brought against the participant by the Texas Medical Board for actions that arise from rendering of professional services
- Excludes action arising from illegal, fraudulent acts; federal or state anti-trust, fraud and abuse claims; allegations of sexual misconduct; or actions caused or alleged to be a result of drug or alcohol use
- Does not cover fines or penalties

Claims/Lawsuits Filed Since Inception of Plan

1985 – 2017 (as of 02/08/2017)



What to do if you are involved in an incident...

- Report as soon as possible to the Claims Management Office or the Office of General Counsel/Professional Liability Division.
- Discuss only with attorney or Claims Manager present or in limited peer review context (otherwise information will be discoverable, i.e. not protected as confidential).

What to do if you are involved in an incident...

- If required by hospital policy to complete an incident report, be factual only – do not include opinions or criticisms.
- If patient or family contact you....listen, be courteous, do not admit any wrongdoing, contact faculty attending physician and our office regarding how to handle.
- Do NOT speak to ANY attorney -- refer them to our office.

Notice Letters / Lawsuits

- Generally, before a lawsuit is filed you will receive a notice letter (Ch. 74.051, intent to sue, request for records). Personally sign for Certified Mail.
- If a lawsuit is filed, you will be served with a petition. Take immediately to the Risk Manager or call our office. (Even after you leave TTUHSC, notify us immediately.) This is important to prevent default judgment. Accept service.
- Either an attorney from our office or an outside attorney that we hire will represent you.

Claims/Lawsuits

- Claims
 - Receipt of notice letters are no longer required to be reported to TMB.

- Lawsuits must be reported.
 - Our office reports to TMB when lawsuit filed and closed.
 - Only report to NPDB if money is paid on your behalf.

How to prevent malpractice lawsuits

- Good communication/rapport with the patient
- Consent
- Good documentation—dates, times, procedure, consent
- Don't make promises/guarantees
- Supervision



July Hospitalizations: Inexperienced Doctors Make Them Riskier, Analysis Says

...medical trainee turnover makes July a more perilous time for hospital patients, with more deaths, longer surgeries and longer hospital stays--not to mention higher hospital charges.

http://abcnews.go.com/Health/Health_Care/july-effect/story?id=14047211



Headed to the Hospital? Beware the ‘July Effect’

“The July Effect is a well-known phenomenon in the medical world. Recent medical school graduates step foot in teaching hospitals as residents for the first time... ‘If you talk to anyone who works in a hospital...unequivocally they will tell you care is worse in July’”

<http://health.usnews.com/health-news/patient-advice/articles/2014/07/21/headed-to-the-hospital-beware-the-july-effect>



What is the “July Effect” – And Can it Really Kill You?

The July influx brings with it a **10 percent surge in fatal medication errors.**

<http://www.forbes.com/sites/melaniehaiken/2011/07/26/what-is-the-july-effect-and-can-it-kill-you/>

Nurse Confessions: Don't Get Sick in July

- The National Bureau of Economic Research reported, “On day one, new interns may have the same responsibilities that the now-second-year residents had at the end of June (i.e., after they had a full year of experience).”
- In July, U.S. death rates in these hospitals surge between 8 and 34 percent—a total of between 1,500 and 2,750 deaths. UC-San Diego researchers found that fatal medication errors “spike by 10 percent in July and in no other month.”
- Too many residents, enamored of their M.D., won't ask for help.

<http://www.politico.com/magazine/story/2015/05/dont-get-sick-in-july-and-other-advice-from-from-americas-nurses-117876.html#.VV35FE94rRZ>

*If any concern or question regarding a
“legal” problem such as:*

- Withholding/withdrawal of treatment (advance directives, DNR, etc.)
- Informed consent (minors, HIV, Jehovah's Witness)
- Confidentiality/release of information
- Emergency transfers
- Or any other matter involving legal concerns

Call our office:

(806) 743-9921 – Lubbock

(915) 215-4435 – El Paso