DOCTORS

Rx

LESSONS LEARNED:
A RISK-FOCUSED CLOSED-CLAIM STUDY

find out...

- How can documentation contribute to a claim's defensibility?

- How can a Physician reduce risk while working with other health care professionals?

- How can clear communication help prevent misunderstandings and improve patient satisfaction?

PLUS: Microsoft issues emergency patches for SharePoint servers — Key actions to protect PHI in your medical office

A LETTER FROM THE CHAIR OF THE BOARD

Dear Colleague:

Our recent review of closed claims reveals that inadequate documentation, insufficient care coordination, and miscommunication with patients create challenges when defending claims. In this issue of *Doctors RX*, you will learn that timely, clear, and comprehensive documentation can make a significant difference. Let's continue to prioritize communication, collaboration, and transparency to minimize risk.

Sincerely,

George S. Malouf Jr., M.D., FACS

Chair of the Board

MEDICAL MUTUAL Liability Insurance Society of Maryland

Professionals Advocate Insurance Company

ISSUE HIGHLIGHTS

ENSURING COMPREHENSIVE DOCUMENTATION — 2

COLLABORATING WITH OTHER HEALTH CARE PROFESSIONALS — 3

OBTAINING FULL INFORMED CONSENT — 5

DOCTORS RX

Michael Doll, Editor,
Director of Risk Management

Dr. George S. Malouf Jr., M.D., Chair of the Board
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LESSONS LEARNED:
A RISK-FOCUSED CLOSED-CLAIM STUDY
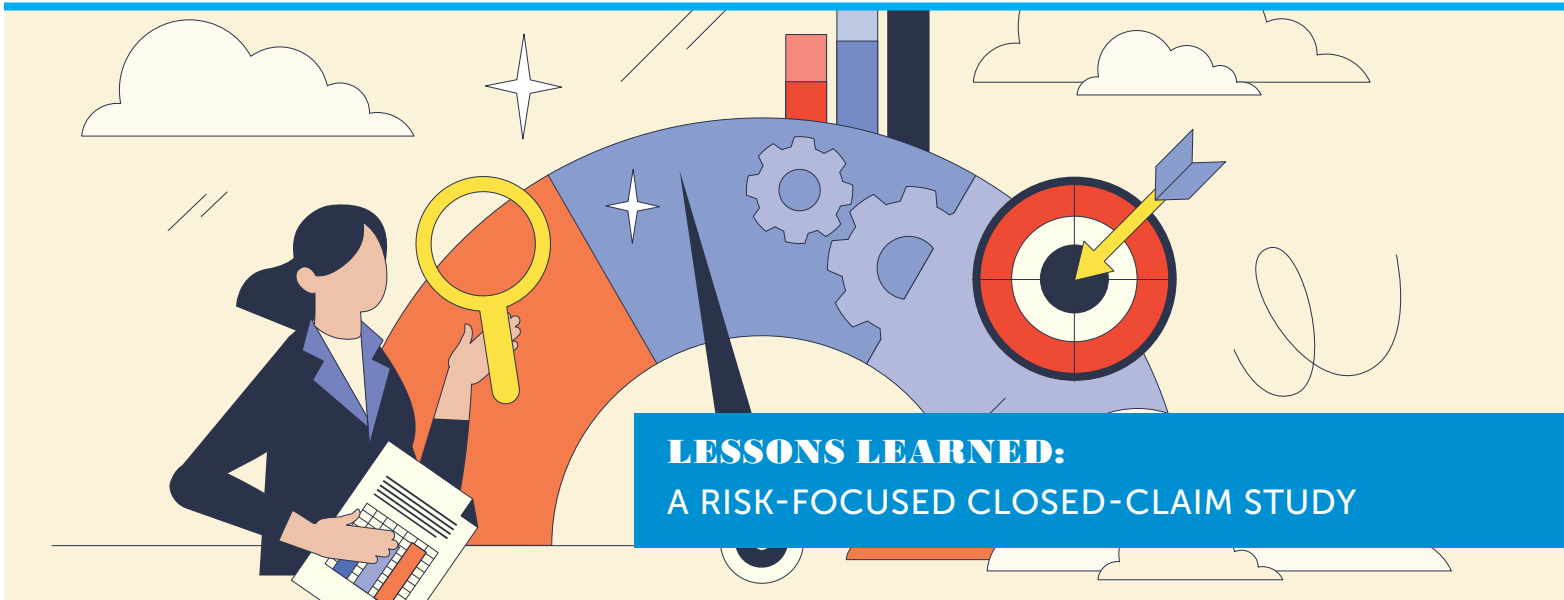
This year, MEDICAL MUTUAL/Professionals Advocate conducted an in-depth study of closed professional liability claims that opened on or after January 1, 2018. The purpose of our study was to identify contributing factors that can lead to claims or make claims more challenging to defend.

Closed Claims with Contributing Factors

79% Without contributing factors

21% With contributing factors
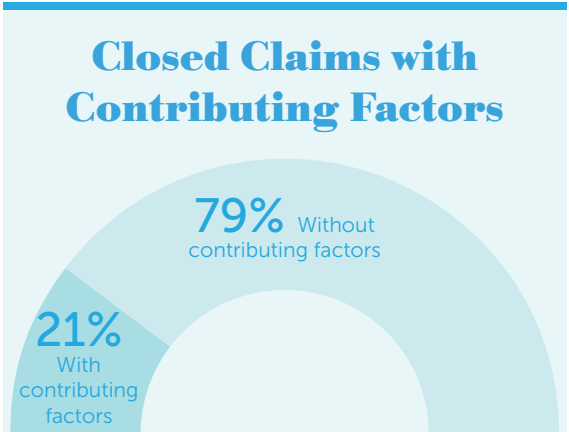
Our study revealed that **21%** of our closed claims involved at least one contributing factor that affected the defensibility of the claim. This statistic should give you pause. *How many of those claims could have been avoided with sound risk mitigation strategies?*

By examining these closed claims, we identified three common contributing factors that are relevant to all Doctors, regardless of their practice specialty:

1. *Incomplete or unclear documentation in the medical record;*
2. *Inadequate coordination and communication among health care professionals; and*
3. *Miscommunication and insufficient informed consent discussions with patients.*

Before we explore these factors, consider some context about the professional liability claims we typically handle. The chart below shows the 10 most common **Primary Injuries** in our closed-claim dataset.

We define "Primary Injury" as the first injury to the claimant that the defendant Insured allegedly caused. Our study disclosed that infections are the most common injury that results in claims, at just over 10% of our closed claims inventory for the time period studied.

10 MOST FREQUENT PRIMARY INJURIES	
1. Infection — not necrotizing fasciitis/sepsis	5.34%
2. Infection — sepsis	4.78%
3. Bowel injury	4.66%
4. Bleeding — hemorrhage (non-stroke)	4.10%
5. Medication reaction	3.43%
6. Cosmetic injury	3.03%
7. Spinal cord/spine injury	2.92%
8. Dental — ill-fitting or defective restoration	2.75%
9. Blood clot/deep vein thrombosis/ pulmonary embolism	2.75%
10. Dislocation/fracture	2.42%

We also analyzed **Final Injuries**, which we define as the claimant's final outcome as a result of the Primary Injury. In our dataset, death is by far the most common Final Injury.

AUTHOR
Michael Doll
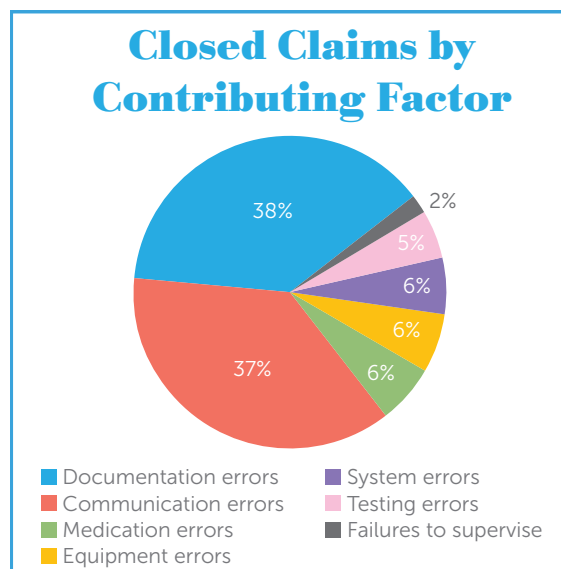*is Director of Risk Management for MEDICAL MUTUAL/ Professionals Advocate.*

10 MOST FREQUENT FINAL INJURIES	
1. Death — not pregnancy related	26.35%
2. Paralysis/paraplegia/weakness	6.14%
3. Numbness/pain/paresthesia	5.58%
4. Cognitive deficit	5.36%
5. Emotional/psychological injury	4.69%
6. Cosmetic injury	4.69%
7. Vision loss	3.46%
8. Dental — restoration	2.90%
9. Dental — numbness/pain/paresthesia	2.85%
10. Amputation	2.51%

Throughout this newsletter, we will share statistics from our closed-claim study and suggest risk mitigation strategies. By incorporating these strategies into your clinical practice, we hope you can minimize the risk of adverse events and position yourself for a strong defense if you are named in a lawsuit.
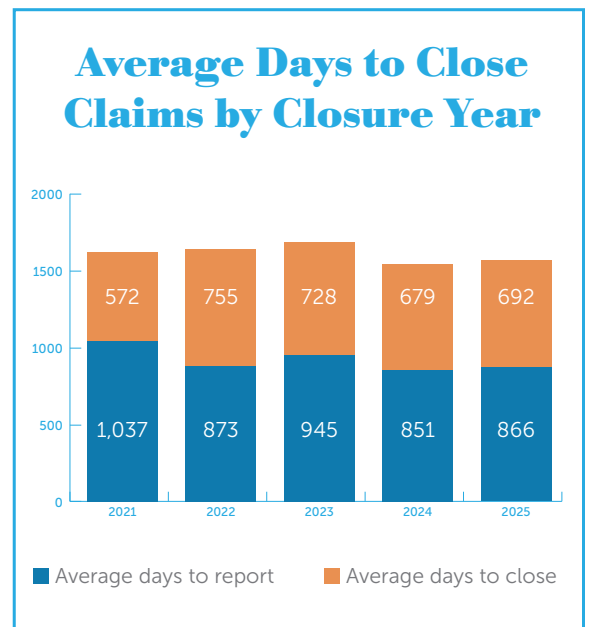
TIMELY, CLEAR, AND COMPREHENSIVE DOCUMENTATION

Timely, clear, and comprehensive documentation can go a long way in both preventing bad outcomes and defending your care during litigation. Our closed-claim study showed that, for claims with contributing factors, documentation errors were most frequent at 38%, followed closely by communication errors at 37%.

Closed Claims by Contributing Factor

- Documentation errors
- Communication errors
- Medication errors
- Equipment errors
- System errors
- Testing errors
- Failures to supervise

Our study also highlighted that medical professional liability claims often take a long time to arise and resolve. That fact has not changed over the years. For all our claims closed from January through October 2025, the average time between the date of loss (i.e., when the patient allegedly was injured) and the date the defendant received notice of the claim was **866** days. For those same claims, the average time until closure was **692** days. So, on average, a claim currently takes about **four years and three months** from the date of loss to resolve.

Average Days to Close Claims by Closure Year

	2021	2022	2023	2024	2025
Average days to close	572	755	728	679	692
Average days to report	1,037	873	945	851	866

When it comes to defending a claim, time is rarely on the Doctor's side. The care at issue may have occurred years prior to the litigation. Memories of what transpired may be hazy or nonexistent, especially if the care at issue was routine. If you happen to remember your care but did not document it, you will likely hear the plaintiff's attorney say at trial: "If it's not in the chart, it didn't happen." For these reasons – among many others – timely, clear, and comprehensive documentation is essential.

As you make entries in electronic health records (EHRs), remember that "Open Notes" regulations[1] permit your patients to review those entries in near-real time.

Also, be aware that your records may one day be subject to an investigative inquiry, perhaps by a regulatory body like the Board of Physicians, in response to a patient complaint. Since 2018, we have handled more than **1,200 investigations** for our Insureds through our MedGuard program ("MedGuard Claims"). **Fifty-four percent** of
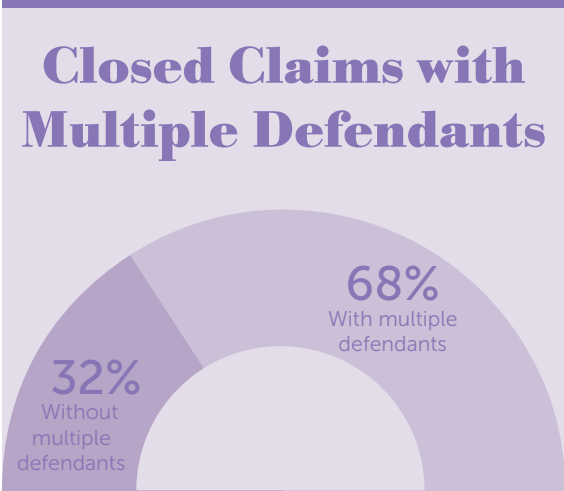
those investigations were initiated by licensing boards, and **92%** did not have an associated professional liability claim. Regardless of the reason for the investigation, a Doctor can respond effectively if they have taken a proactive, transparent, and well-documented approach to patient care and communication.

MedGuard Claims by Investigator

54%
Licensing boards

46%
Other investigators
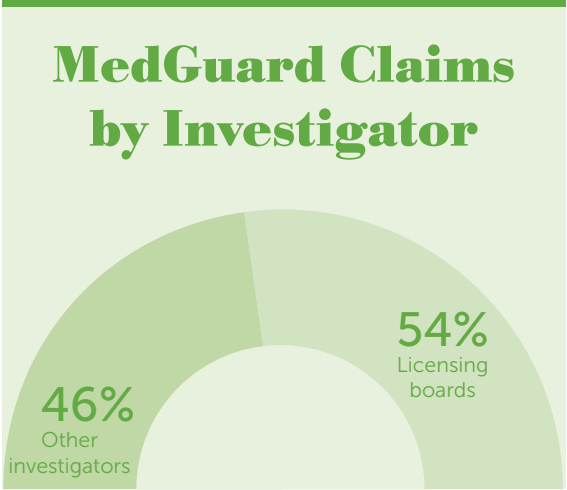
To ensure that your documentation is sufficient, we recommend the following risk mitigation strategies:

1. *Document the patient encounter while it is still fresh in your mind.*
2. *Use objective and professional language that is not prone to misinterpretation.*
3. *Document all issues discussed during the patient encounter.*
4. *Document all calls and messages with your patient that occur outside the patient encounter.*
5. *Document all consultations with other members of your patient's care team.*
6. *Document a differential diagnosis, including your rationale, for context and transparency.*
7. *Document a plan of care for your patient by outlining your proposed treatment and goals of treatment, along with any alternatives and expected outcomes.*
8. *Assume the record will be read by other members of your patient's care team and, potentially, critiqued by lawyers or licensing boards.*
9. *Never alter the original record; add a dated addendum when needed.*

EFFECTIVE COORDINATION AND COMMUNICATION AMONG HEALTH CARE PROFESSIONALS

Closed Claims with Multiple Defendants

68%
With multiple defendants

32%
Without multiple defendants

In our experience, health care professionals sued for malpractice will, more likely than not, have a codefendant by their side during litigation. For instance, a Radiologist may be sued alongside an emergency room Physician; a primary care Physician may be sued alongside a Gastroenterologist; or a General Surgeon may be sued alongside a hospital for the acts of its employed nurses. The possibilities are endless.

Sixty-eight percent of our closed claims involved more than one defendant. These multidefendant cases can be challenging to defend when the defendants have conflicting or unclear documentation or recollections about the patient's treatment.

Incidents Closed with Indemnity Payment
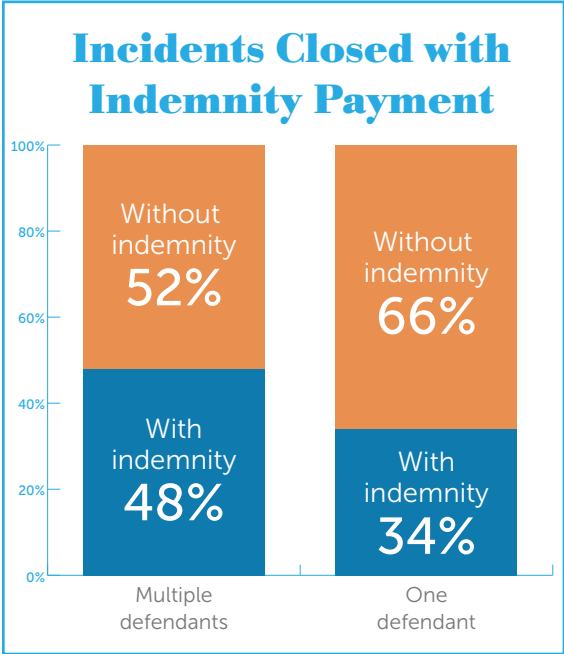
	Multiple defendants	One defendant
Without indemnity	52%	66%
With indemnity	48%	34%

Note

Multidefendant cases can be challenging to defend when the defendants have conflicting or unclear documentation or recollections about the patient's treatment.

In our experience, incidents with multiple defendants are more likely to conclude with an indemnity payment.

Definitions

An indemnity payment is a payment made by MEDICAL MUTUAL/Professionals Advocate on behalf of its defendant Insured to settle a claim or to satisfy a judgment.

For the purposes of this discussion, an incident refers to all related claims resulting in an injury to a patient, whether against one or multiple health care providers.

That said, we believe many of the communication challenges posed by multidefendant cases are avoidable. We recommend the following risk mitigation strategies when working with multidisciplinary care teams:

1. *Adhere to defined roles. Be sure team members, such as Advanced Practice Providers (APPs), understand their roles and responsibilities. Conduct meetings with team members to ensure alignment regarding treatment plans and procedures.*

Read More in the 2025 Summer Issue of *Doctors RX*

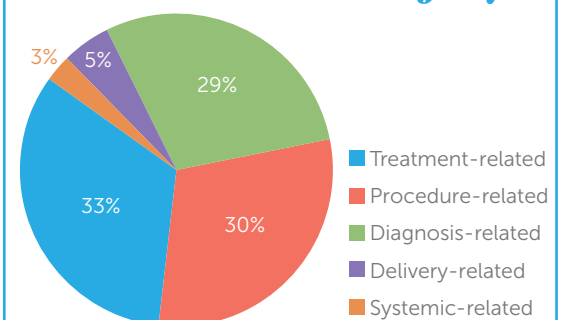"Bridging the Gap: Managing Liability Risks when Working with Advanced Practice Providers"

2. *Promote accountability. While working with team members, be sure to encourage escalation of care, hold structured collaboration meetings, and document your involvement in the patient's chart. You should also promptly review the records of patients who have been seen by APPs and limit your supervisory load in compliance with local regulations.*
3. *Collaborate. Maintain an open line of communication when working with health care professionals outside of your practice and relay all necessary information during patient*

handoffs. If you are communicating with colleagues through text messaging, portals, or other forms of asynchronous communication, use secure platforms to safely protect patient data. Be sure to avoid ambiguity and implement policies that require "in-person" conversations for critical patient issues. Do not assume other health care professionals can easily interpret your notes. Clarity in note-taking is essential in the patient record. Often, it is best to pick up the phone and call your colleagues when discussing complex patient care issues. As always, document these discussions.

CLEAR COMMUNICATION AND THOROUGH INFORMED CONSENT WITH PATIENTS

Our closed-claim study showed that **33%** of our claims against individual health care professionals arose due to medical treatment, while **30%** arose due to medical procedures. Moreover, our closed-claim study revealed that **37%** of our closed claims with contributing factors had some factor related to miscommunication (refer to "Closed Claims by Contributing Factor," page 2). Clear communication is central to informed consent discussions, and these statistics underscore the importance of obtaining full informed consent from patients for every proposed treatment or procedure. A thorough and clear informed consent process ensures that a patient is aware of the proposed treatment or procedure's risks, benefits, expected outcome, and alternatives.

Closed Claims by Mechanism of Injury

- 3%
- 5%
- 29%
- 33%
- 30%

- Treatment-related
- Procedure-related
- Diagnosis-related
- Delivery-related
- Systemic-related

To obtain full informed consent and avoid potential challenges during litigation, we recommend the following strategies:

1. *Do not assign the informed consent discussion to staff. Conduct the discussion personally with the patient.*
2. *Provide the patient with the five elements of informed consent[2]:*
   a. *The nature of the ailment;*
   b. *The nature of the proposed treatment;*
   c. *The probability of therapeutic success;*
   d. *Any reasonable alternatives (including no treatment); and*
   e. *The material risks of the recommended procedure.*
3. *Use visual aids like pamphlets and diagrams to explain the treatment or procedure.*
4. *Give your patient time to reflect on the information discussed. Consent discussions can take place over several visits.*
5. *Disclose information about the treatment or procedure that a reasonable person in the patient's position would want to know.*
6. *Tailor your communication to your patient's specific needs to ensure clarity and understanding. For example, use interpreters for non-English speaking patients.*
7. *Confirm that the patient has the mental capacity to make an informed decision. A surrogate decision maker might be necessary if the patient lacks capacity.*
8. *Ensure the patient gives informed consent without coercion, influence, or manipulation from anyone.*
9. *Thoroughly document your informed consent discussion in the medical record.*

Clear communication with patients extends beyond informed consent. Open, respectful dialogue with your patients can make a meaningful difference in their care. Bedside manner matters. By addressing a patient's concerns early, you may prevent small misunderstandings from escalating. Patient dissatisfaction is often an undercurrent in medical malpractice claims.

Finally, when communicating with patients by asynchronous means (text messages, patient portals, etc.), avoid providing treatment through text. If a patient messages you about an acute situation, speak with them to evaluate their situation and implement a plan. Be sure to have a clear policy in place that guides patients on how to use messaging portals effectively.

KEY TAKEAWAYS

Our closed-claim study underscores the importance of proactive risk management in clinical practice. Take note of the chart on page 6. Claims associated with the contributing
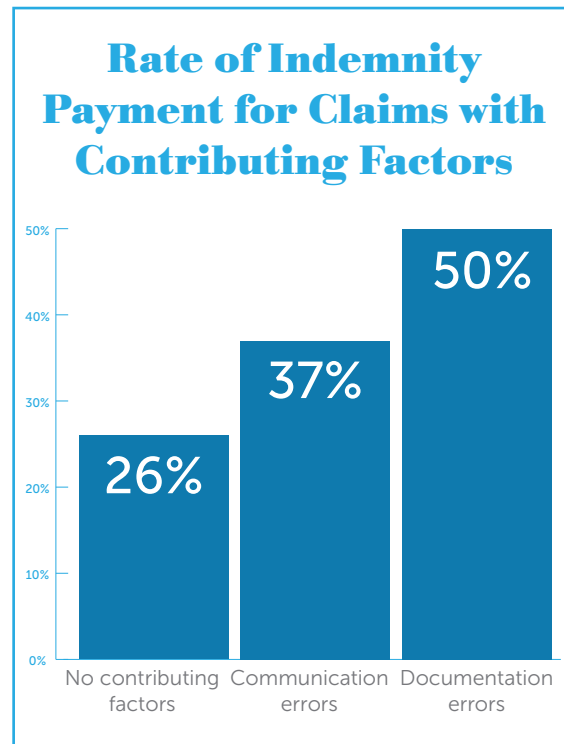
Note

Be sure to have a clear policy in place that guides patients on how to use messaging portals effectively.

factors discussed in this article are substantially more likely to conclude with an indemnity payment than those without such factors.

Rate of Indemnity Payment for Claims with Contributing Factors

No contributing factors	26%
Communication errors	37%
Documentation errors	50%

As you reflect on the statistics we have shared throughout this article, remember these key concepts:

1. *Timely, clear, and comprehensive documentation: Following best practices — documenting all discussions, diagnoses, and care plans promptly — leads to better care and ensures transparency for both patients and providers. Thorough and accurate record-keeping of all patient interactions supports a strong defense, especially when claims arise years after the care in question was delivered.*

2. *Effective coordination and communication among health care professionals: Malpractice litigation frequently involves multiple health care professionals, and unclear or conflicting documentation often complicates defense strategies. Effective risk mitigation strategies include clearly defining team roles, promoting accountability through structured collaboration and thorough documentation, and fostering open, secure communication — especially during patient handoffs.*

3. *Clear communication and thorough informed consent with patients: Doctors should personally conduct informed consent discussions and document the conversations carefully, ensuring that patients understand the risks, benefits, and alternatives of the recommended course of action. Open, respectful dialogue and clear policies for asynchronous communication also help prevent misunderstandings and improve patient satisfaction.*

After completing our closed-claim study, we can confidently say that the core principles of effective risk management remain as important today as they were when we began insuring Doctors 50 years ago. We encourage you to apply the concepts discussed to your practice to help enhance patient safety, optimize patient outcomes, reduce the likelihood of adverse events, and, if litigation arises, help minimize challenges for your defense.

references

[1] https://www.law.cornell.edu/uscode/text/42/300jj-52

[2] *Sard v. Hardy*, 281 Md. 432 (1977)

1. Twenty-one percent of closed professional liability claims studied involved at least one contributing factor that affected the defensibility of the claim.

    A. True   B. False

2. Infection was the most common primary injury within the closed-claim dataset.

    A. True   B. False

3. Death was the most common final injury among the claims analyzed.

    A. True   B. False

4. Documentation errors were the most frequent contributing factor in claims with defensibility issues, occurring more often than communication errors.

    A. True   B. False

5. On average, it takes fewer than two years to resolve a professional liability claim from the date of loss to closure.

    A. True   B. False

6. Timely, clear, and comprehensive documentation is essential both for preventing adverse outcomes and defending care during litigation.

    A. True   B. False

7. Most closed claims involved only one defendant; multidefendant cases were rare.

    A. True   B. False

8. Effective coordination and communication among health care professionals can help prevent challenges in defending multidefendant cases.

    A. True   B. False

9. Doctors should personally conduct informed consent discussions with patients and thoroughly document these conversations.

    A. True   B. False

10. Claims associated with contributing factors, such as poor documentation or miscommunication, were more likely to result in indemnity payments than those without such factors.

    A. True   B. False

CME EVALUATION FORM

Statement of Educational Purpose

Doctors RX is a newsletter sent twice each year to the insured Physicians of MEDICAL MUTUAL/Professionals Advocate.®
Its mission and educational purpose is to identify current health care-related risk management issues and provide Physicians
with educational information that will enable them to reduce their malpractice liability risk.

Readers of the newsletter should be able to meet the following educational objectives:
1) Gain information on topics of particular importance to them as Physicians.
2) Assess the newsletter's value to them as practicing Physicians.
3) Assess how this information may influence their own practices.

CME Objectives for "Lessons Learned: A Risk-Focused Closed-Claim Study"

This newsletter summarizes key findings from a study of closed malpractice claims, highlighting common risk factors and offering
practical strategies to reduce liability and improve patient safety. Upon completion of this enduring material, participants will be better
able to:
1) Identify common risk factors that increase malpractice exposure.
2) Apply best practices for timely, clear, and contemporaneous documentation.
3) Improve communication with care teams and patients, including techniques for obtaining informed consent.

	Strongly Agree				Strongly Disagree
Part 1. Educational Value:	5	4	3	2	1
I learned something new that was important.	❑	❑	❑	❑	❑
I verified some important information.	❑	❑	❑	❑	❑
I plan to seek more information on this topic.	❑	❑	❑	❑	❑
This information is likely to have an impact on my practice.	❑	❑	❑	❑	❑

Part 2. Commitment to Change: What change(s), if any, do you plan to make in your practice as a result of
reading this newsletter?
_____
_____
_____

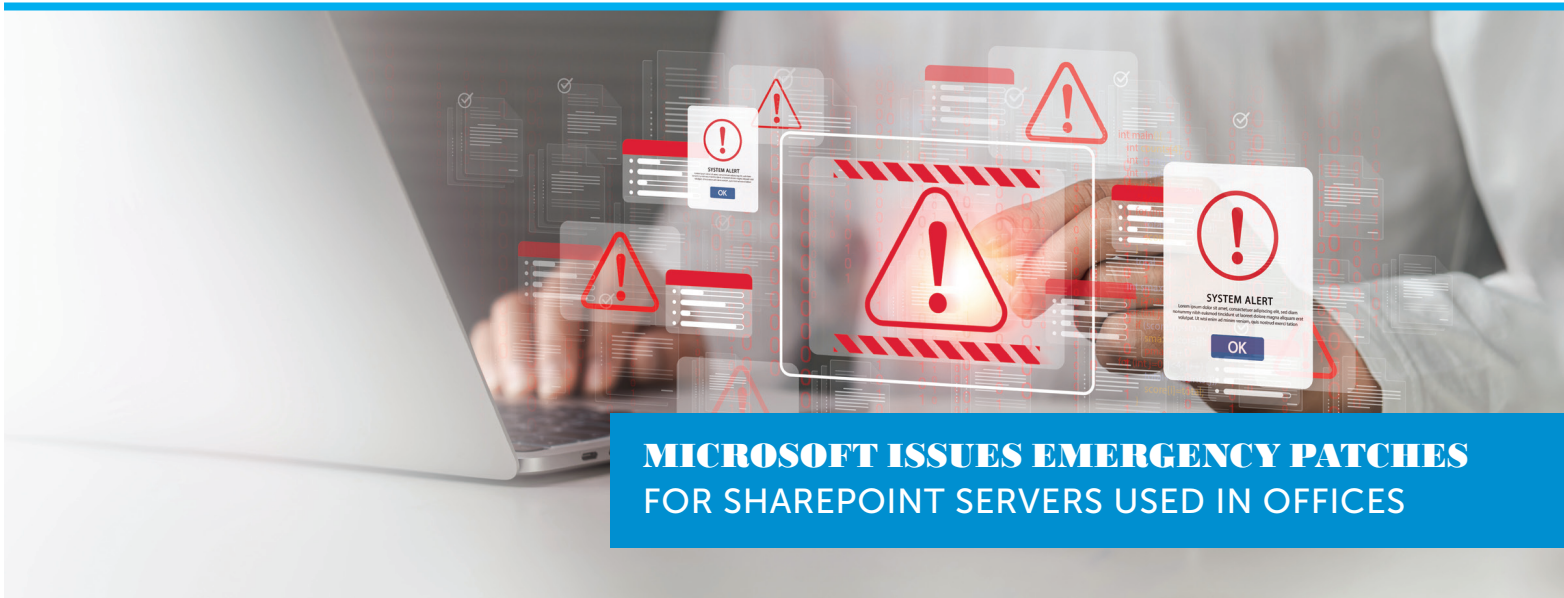*Part 3. Statement of Completion:* I attest to having completed the CME activity.

Signature:_____ Date:_____

Part 4. Identifying Information: Please PRINT legibly or type the following:

Name:_____ Telephone Number:_____

Address: _____

_____

_____

MICROSOFT ISSUES EMERGENCY PATCHES
FOR SHAREPOINT SERVERS USED IN OFFICES

In September, Microsoft discovered two serious security vulnerabilities in on-premises versions of SharePoint servers. These vulnerabilities could allow hackers to break into systems, run unauthorized code, take control of servers, and steal internal authentication keys. The attack method, known as "ToolShell," is already being used in real-world hacks. Microsoft has released emergency (out-of-cycle) patches for supported versions of SharePoint Server to fix the problem (Subscription Edition, 2019, and 2016). SharePoint that is part of Microsoft 365 (cloud/online) is not affected by these vulnerabilities.

WHY THIS MATTERS TO MEDICAL OFFICES

Unpatched systems can put your patient data and office operations at serious risk. Once inside SharePoint, hackers may gain access to other connected systems, allowing them to view, alter, or download sensitive health records, employee data, and billing information. They could also use the vulnerability to install ransomware that locks your files until a payment is made. Another risk is the potential for hackers to create hidden "back doors" that allow ongoing access even after the initial breach. Because the vulnerability allows hackers to run their own code undetected, attacks may not be discovered right away. A breach involving protected health information (PHI) can trigger HIPAA reporting requirements, financial penalties, reputational harm, and loss of patient trust.

KEY ACTIONS TO TAKE

- *Check whether your office uses its own SharePoint server (installed locally, not the cloud version).*
- *Work with your internal or external IT expert to confirm that all SharePoint servers are fully patched with Microsoft's latest emergency*

updates and that systems are clean. (A link to the patches is provided in the first item in the Sources at the end of this article.)
- *After patching, rotate "MachineKey" or cryptographic keys used by SharePoint. If attackers had access before the patches, they might have copied these keys and could still use them to issue valid requests.*
- *Enable security features such as the Anti-Malware Scan Interface (AMSI) and ensure antivirus or endpoint protection tools are active and updated.*
- *Review server logs for any unusual activity, such as unexpected file changes, new scripts (web shells), or other suspicious behavior.*

BOTTOM LINE

It's critical to make sure your office's SharePoint server is patched and secured. These vulnerabilities are being actively exploited, and unprotected systems could expose patient data, disrupt operations, and create lasting damage to your practice's reputation.

Sources:

Microsoft. "Customer Guidance for SharePoint Vulnerability" CVE-2025-53770. July 19, 2025. (includes links to the patches). https://www.microsoft.com/en-us/msrc/blog/2025/07/customer-guidance-for-sharepoint-vulnerability-cve-2025-53770

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Publication of MEDICAL MUTUAL / Professionals Advocate®

YOUR HEALTH IS OUR PRIORITY

Who We Are

The Maryland Physician Health Program (MPHP) assists Physicians and other health care professionals in a confidential, private setting to address issues that may impact their ability to practice medicine.

Community

MPHP also provides education, outreach, and CME lectures to the medical community regarding Physician impairment, health, and available services.

What We Do

MPHP assesses and refers participants to clinically appropriate treatment, helps the participant develop an individualized plan, provides case management to facilitate progress with the plan, and provides support on behalf of the participant as needed.

MPHP helps with:

- Alcohol/drug misuse
- DUI/DWI
- Mental or emotional health
- Stress/burnout
- Physical or cognitive impairment
- Disruptive behavior

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