# Nurse Practitioner Malpractice Data Trends: Newly Released Data

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# Today's Speakers

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# Objectives

## List

List the leading allegations made against NPs in malpractice lawsuits.

## Define

Define the average incurred expense for NPs in a malpractice lawsuit.

## Identify

Identify key risk management tools NPs can incorporate into their practice.

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# Professional Liability Data as a Risk Management Resource

- Analyzing incidents that led to adverse outcomes is the foundation for identifying vulnerabilities in our healthcare systems and reducing risk.
- Understanding the underlying human and systemic factors that can lead to patient harm helps nurse practitioners prevent errors through education, training, and practice improvement approaches.
- Professional liability data:
  - Provides insight into the underlying causes in cases: what failed and why?
  - Can reveal specific missteps, clinical errors, patterns of communication, and judgment failures that contribute to adverse events.
  - Helps NPs learn from peers' experiences and proactively identify areas for improvement.

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# Case Study

# Case Study

- The patient was a 35-year-old female with a history of Vitamin D deficiency, iron deficiency anemia,  rosacea, hypothyroidism, gastroesophageal reflux disease (GERD) and attention deficit hyperactivity disorders (ADHD).
- She had been patient of a large internal medicine practice for several years and treated by many of the providers in the practice at one time or another.
- However, her primary care provider (PCP) who was the owner of the practice, a physician, that she would typically see for wellness and chronic disease/medication refill visits.
- During a medication refill visit, the patient was seen by her PCP. The patient reported new problems she was experiencing which included being easily fatigued, vague abdominal pains and bloody stools.
- She also reported a family history (her father and grandfather) of metastatic colon cancer requiring surgical resection, chemotherapy and radiation, so the provider performed a fecal blood test (FBT), which came back positive.

# Case Study

- The test results were sent through the electronic healthcare information (EHR) system to alert the provider to inform the patient of the test results. Due to a system error, this never occurred.
- Three months later, the patient came in for her chronic disease follow-up visit and was treated by our insured Family Nurse Practitioner (FNP).
- The  FNP treated the patient but failed to review the patient's previous healthcare information records related to the fecal blood test results.
- Over the next nine months, the patient was seen by other providers in the practice who also failed to address the positive fecal blood test results.

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# Case Study

- More than a year later, the patient scheduled an appointment with the our FNP.
- The appointment was due to ongoing abdominal pain and low back pain for the past three to four weeks and was worse after eating and disturbed her at night.
- An H. pylori test was performed in the office and negative so the FNP referred the patient to a gastroenterologist.
- Before the patient's initial visit to the gastroenterologist, she was seen at a walk-in clinic for nausea and two episodes of hematochezia with diarrhea.
- The clinic performed lab work and gave the patient an H-2 blocker and docusate. The lab work was normal except for her liver enzymes, which were AST 72, ALT 87, alkaline phosphatase 389, and CRP 2.64.

# Case Study

- Three days later at her initial visit with the gastroenterologist her lab work was repeated and the liver enzymes were higher.
- The patient underwent a colonoscopy, where a large mass was discovered in the patient's transverse colon.
- The patient was diagnosed with Stage IVB colon cancer and referred to an oncologist for treatment.
- The cancer had metastasized to the liver, and she had near complete obstruction in the lungs.
- After several failed attempts to treat the cancer, the 37-year-old patient was placed on hospice care and later passed away leaving behind two minor children and a husband.
- The patient's husband filed a lawsuit against the EHR system, the practice and several employed providers individually, including our FNP.

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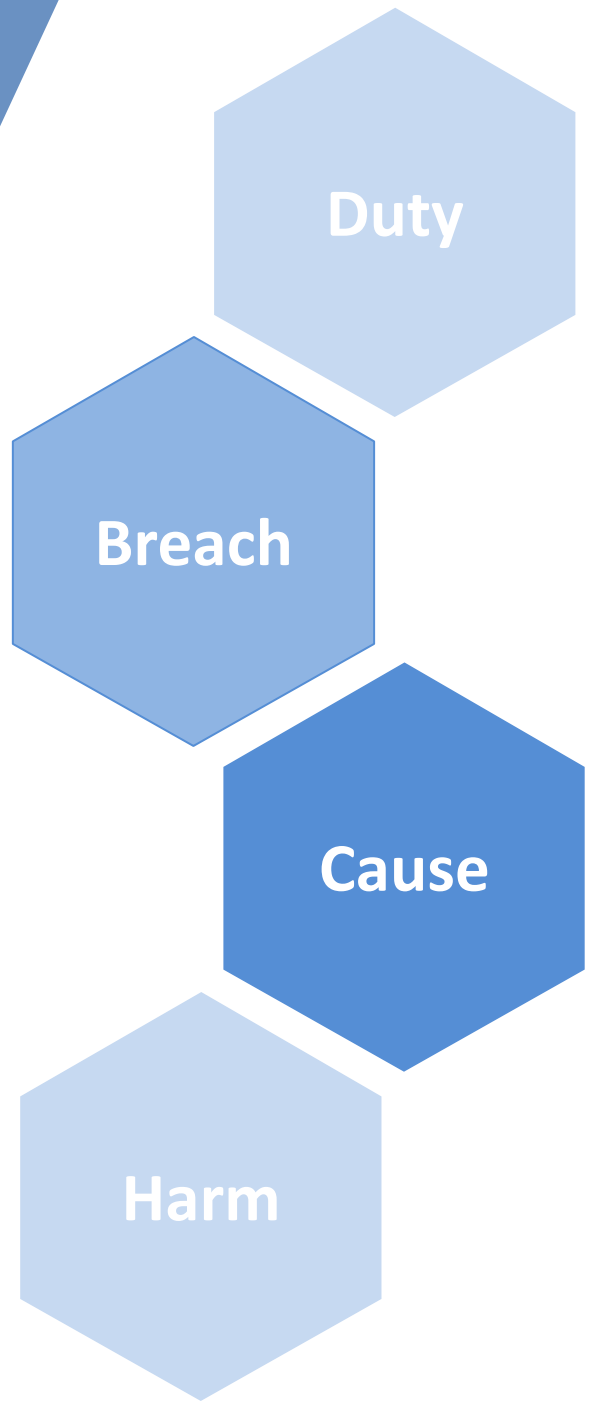
# Do You Believe the NP was Negligent?



# Risk Management Comments

- After the patient's PCP learned of the patient's diagnosis, but prior to the lawsuit being filed, the PCP as her treating provider and owner of the practice, sent a letter to the patient and her husband.
- The letter divulged that a problem with the EMR's alert system was the cause of her FBT result being missed and delaying her cancer treatment.
- The letter was signed by the providers involved in the patient's most recent care, which resulted in the insured being included in the lawsuit.
- Unfortunately, the practice did not fully investigate the root cause of the delay in notification.
- When the EMR company investigated the incident, they were able to prove that the missed lab result was a human error by the practice and not EMR system.
- During his deposition, the PCP was forced to admit the practice's error. However, the situation had already resulted in the our FNP being included in the lawsuit as she signed her name to that letter.  As a result, she and the other signers were all included in the lawsuit.

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# Resolving the matter…

- Our FNP notified us (NSO/CNA) a few weeks prior to her deposition, which was two years after the claim was filed and four years after the patient's death.
- Her reasoning for the delayed notification was that she believed her employer would work with her to defend her in this claim.
- It wasn't until she learned about the other named providers blaming her during their depositions as she was the first provider at the practice who saw the patient after the FBT results were received.  Based on this, she reported the incident.
- Several of the providers were upset with being included in the claim and this added to the difficulty of defending our FNP.
- The possibility of a jury awarding the plaintiff with an excessive verdict amount due to the emotional aspect of the claim concerned our FNP.
- Despite having defense experts that could defend the actions of our FNP, our insured was very concerned and requested the claim be resolved.

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# Resolution

The claim resolved with a total incurred of greater than $1,000,000.

*Figures represent only the payments made on behalf of our nurse practitioner and do not include any payments that may have been made by the NP's employer on her behalf or payments from any co-defendants. Amounts paid on behalf of the multiple co-defendants named in the case are not available.*

# Risk Control Recommendations

- Immediately contact your personal insurance carrier if you become aware of a filed or potential professional liability claim asserted against you, receive a subpoena to testify in a deposition or trial, or have any reason to believe that there may be a potential threat to your license to practice nursing. Keep in mind that allegations involving failure to diagnose, delays in diagnosis, deaths and infection/abscess/sepsis are most likely to result in litigation.
- If you purchase your own professional liability insurance policy, report possible claims or related actions to your insurance carrier, even if your employer advises you that he or she will provide you with an attorney and/or will cover you for a professional liability settlement or verdict amount.

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# Risk Control Recommendations

- Provide your insurance carrier with as much information as you can when reporting real or potential legal situations, including contact information for the organization's risk manager and for the attorney assigned to the litigation by your employer.
- Never testify in a deposition without first consulting your insurance carrier or, if you do not purchase your own professional liability insurance policy, without first consulting the organization's risk manager or legal counsel. In addition, do not testify in a deposition without having had specific deposition preparation by your attorney.
- Promptly return calls from your defense attorney and the claim professionals assigned by your insurance carrier. Contact your attorney or claim professional before responding to calls, e-mail messages or requests for documents from any other party.

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# Risk Control Recommendations

- Either prior to or during the appointment, review the patient's most recent laboratory and diagnostic testing results and/or visit notes. Assure that test results (e.g., abnormal lab and/or diagnostic tests) and/or outstanding items (e.g., referrals or additional testing) have addressed and/or scheduled.
- Diligently screen for, monitor and/or treat diseases known to have high morbidity and mortality, such as diabetes, heart disease and cancer.
- Document the decision-making process that led to the diagnosis and treatment plan.
- Obtain, review and consider pertinent patient and family medical history, and document all findings.
- Perform a patient clinical assessment and physical examination to evaluate and address the specific clinical issues under consideration.
- Respond to patient questions or concerns prior to obtaining a witnessed, signed consent for the procedure.

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# Risk Control Recommendations

- Notify patients when screening is due and follow up if patients do not respond, documenting all communications.
- Seek timely consultation and advice regarding patients with recurring complaints and/or signs and symptoms that do not respond to the prescribed treatment.
- Utilize available clinical practice guidelines or protocols when establishing a diagnosis and providing treatment, documenting the justification for deviations from guidelines or protocols.
- Establish the patient's diagnosis by obtaining and documenting the results of biopsies and other appropriate diagnostic tests, as well as by initiating consultations and referrals, as indicated.
- Notify the practice as well as the professional liability insurance carrier immediately following the unexpected death of a patient or whenever one's actions may be under scrutiny.

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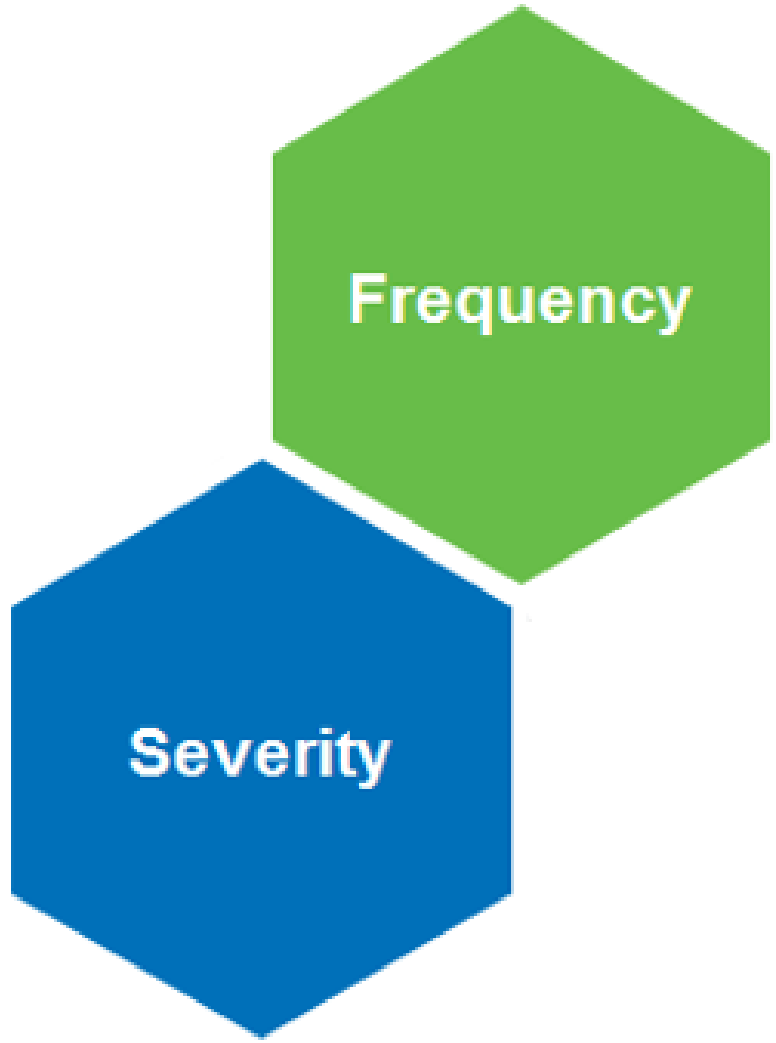
# NP Claim Metrics

# Losses are Measured by…




**Frequency/distribution -**
The percentage of closed claims with a common attribute, such as a specific allegation or injury.

**Severity –**
The average paid indemnity to the injured third party for those nursing claims which closed during the analyzed timeframe.

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# Claims at a Glance

- The average total incurred of professional liability claims in the 2022 dataset ($332,137) increased 10.5% compared to the 2017 dataset ($300,506).
- NPs should be aware of a greater risk of claims settling for higher amounts relative to historic averages. The range of adverse claim outcomes can vary significantly.

**Analysis of Closed Claims by Licensure and Insurance Type**

Closed Claims with Paid Indemnity of ≥ $10,000

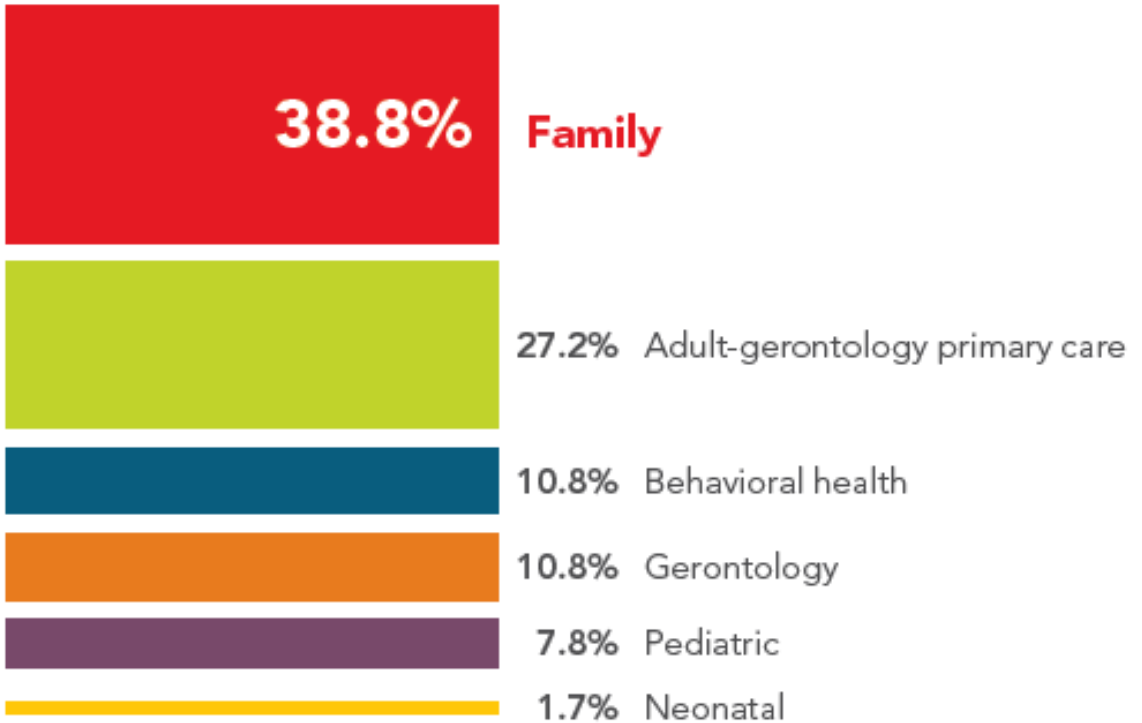
| Licensure and insurance type | Total paid indemnity | Total paid expense | Average total incurred |
|---|---|---|---|
| Nurse Practitioner, individually insured | $58,165,658 | $11,454,873 | $329,955 |
| Nurse practitioner receiving coverage through a CNA-insured healthcare business | $5,575,000 | $857,313 | $402,020 |
| Student nurse practitioner, individually insured | $896,333 | $106,633 | $200,593 |
| Overall average total incurred | $64,636,991 | $12,418,818 | $332,137 |

# NP Specialty

## 5 Distribution of Top Closed Claims by Specialty

Closed Claims with Paid Indemnity of ≥ $10,000

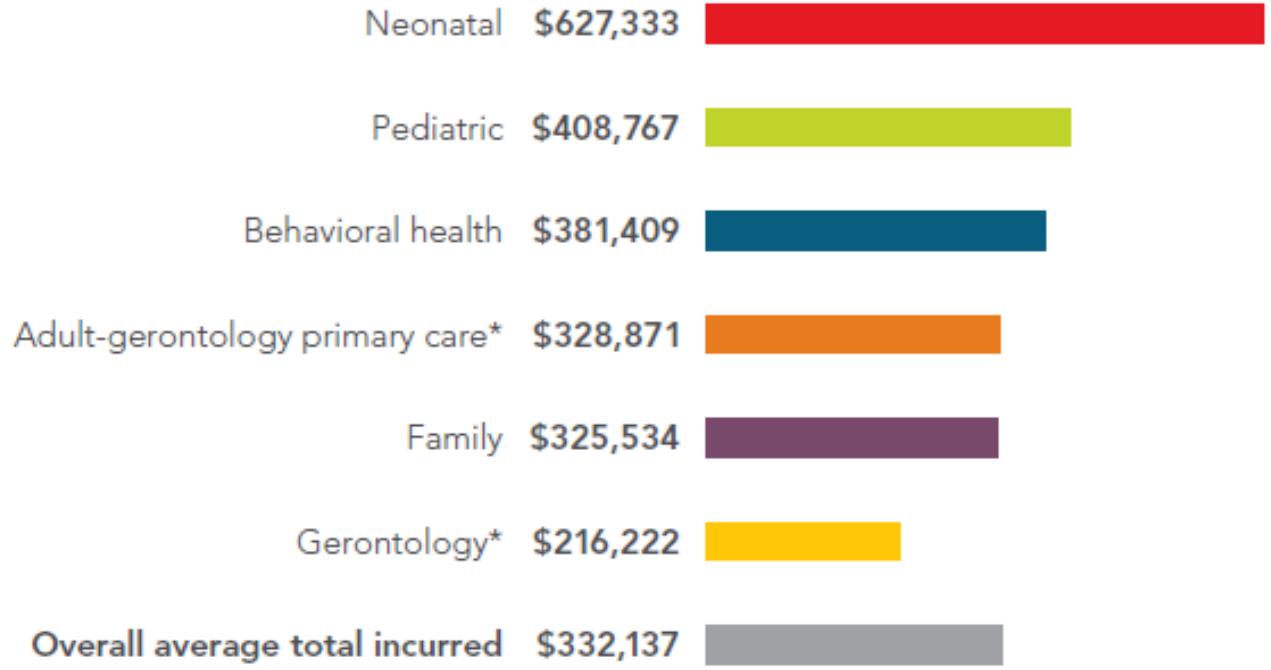
*This figure highlights only those specialties with the highest distribution.*




## 4 Average Total Incurred of Closed Claims by Specialty

Closed Claims with Paid Indemnity of ≥ $10,000

*This figure highlights only those specialties with the highest average total incurred.*




* **Adult-gerontology primary care** refers to an NP who provides healthcare management of acute and chronic health issues for adults across the lifespan, from adolescence to old age. **Gerontology** refers to an NP whose practice is limited to treatment of the patient population from adult to the elderly.

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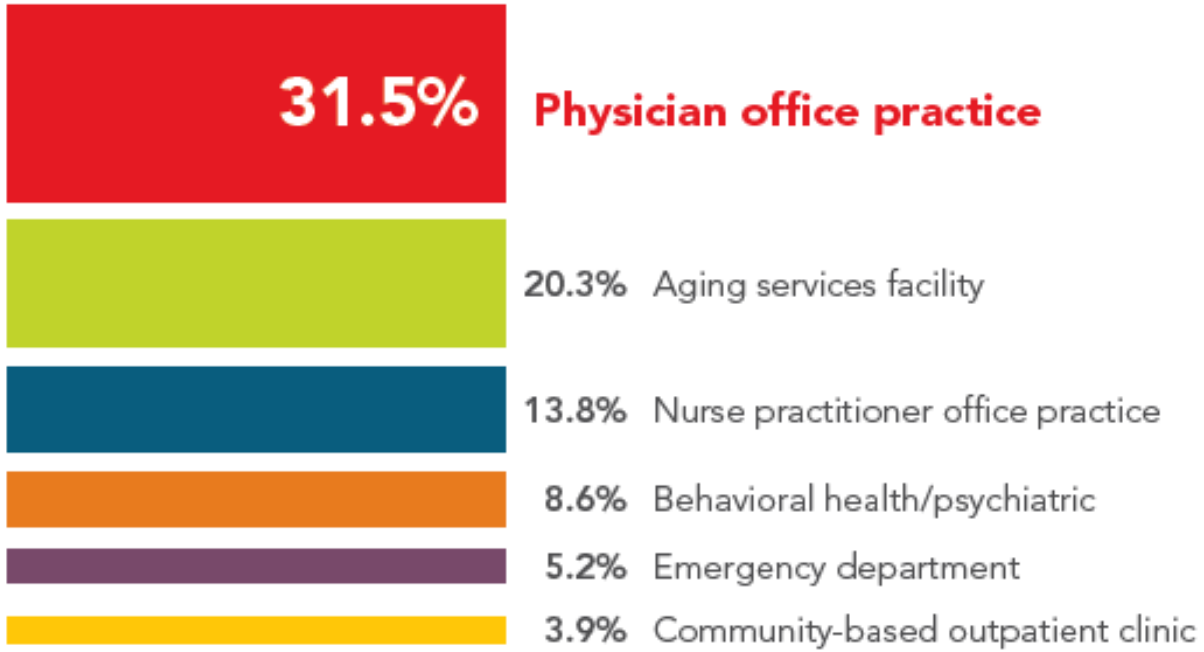
# Location

## 8 Distribution of Closed Claims by Location

Closed Claims with Paid Indemnity of ≥ $10,000

*This figure highlights only those locations with the highest distribution.*




## 7 Average Total Incurred of Closed Claims by Location

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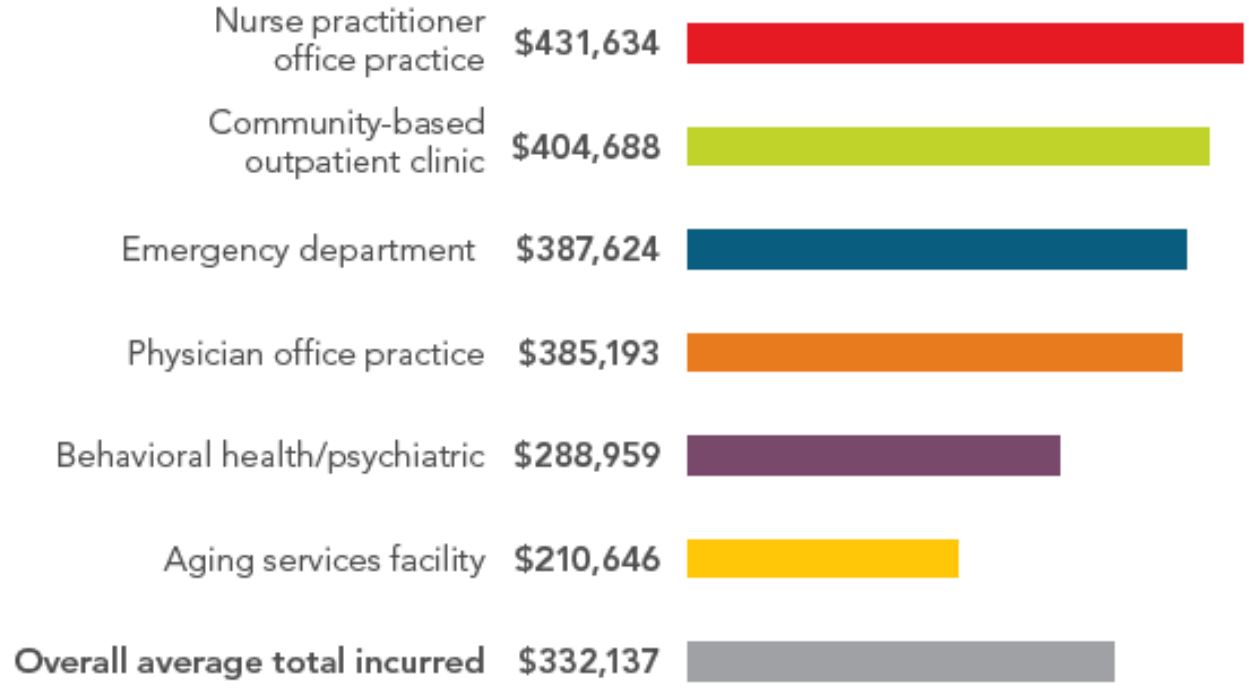
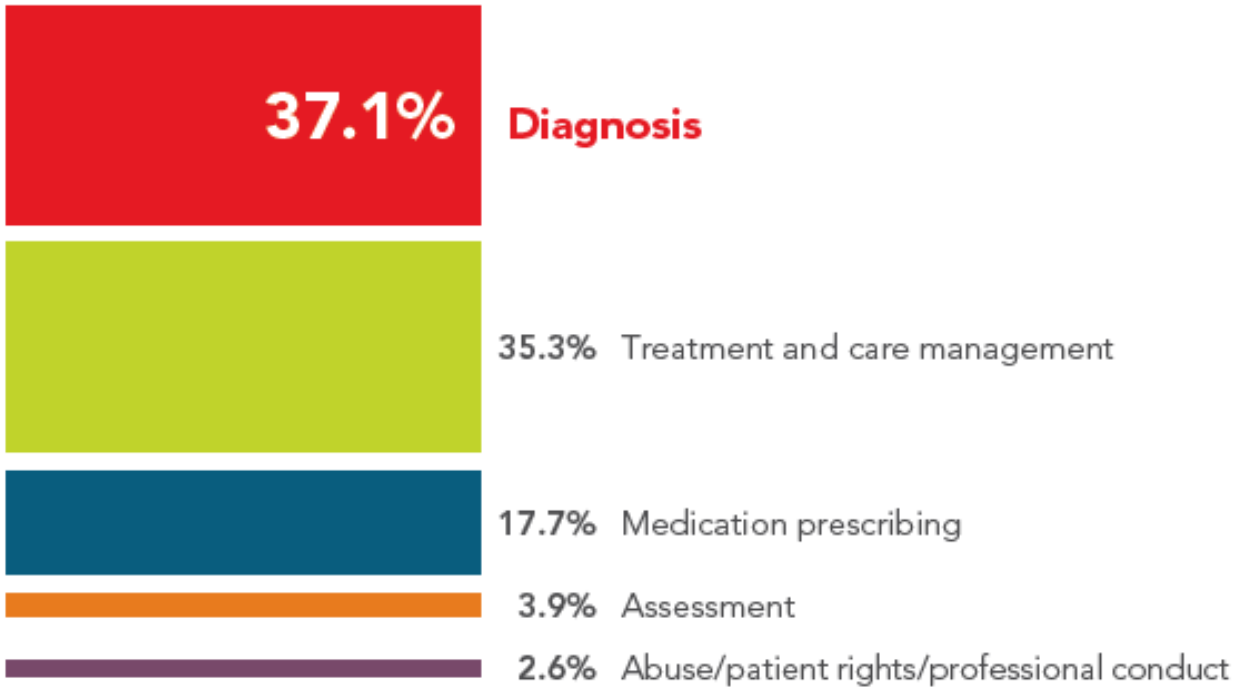


# Top Malpractice Allegation Categories

## 11 Distribution of Top Closed Claims by Allegation

Closed Claims with Paid Indemnity of ≥ $10,000

*This figure highlights only those allegations with the highest distribution.*




## 10 Average Total Incurred of Closed Claims by Allegation

Closed Claims with Paid Indemnity of ≥ $10,000

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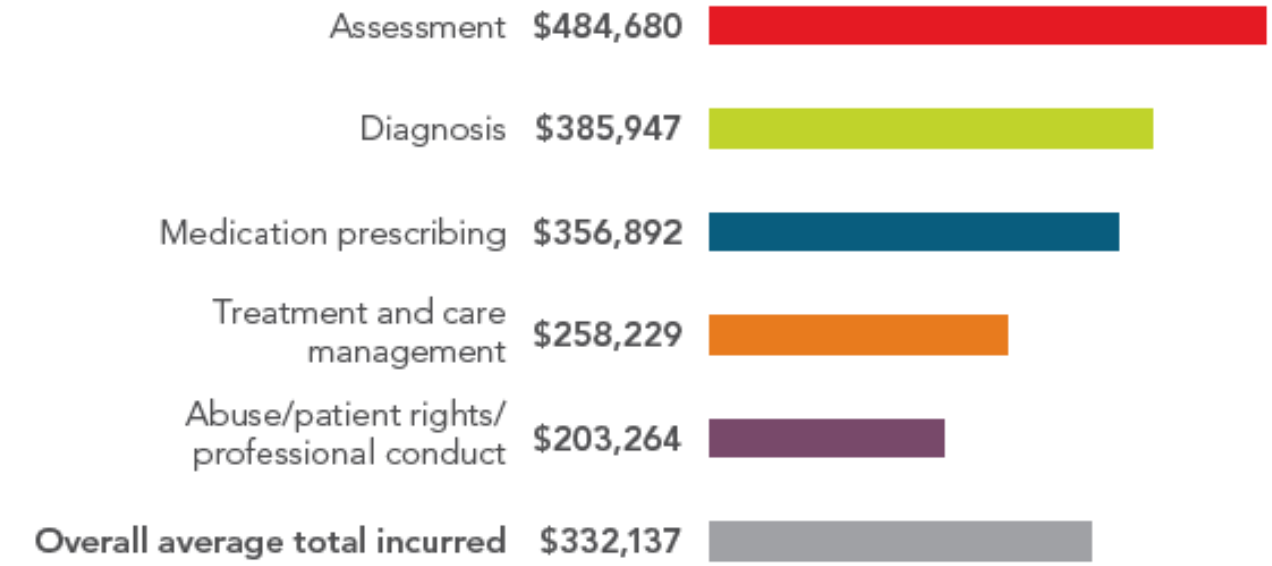


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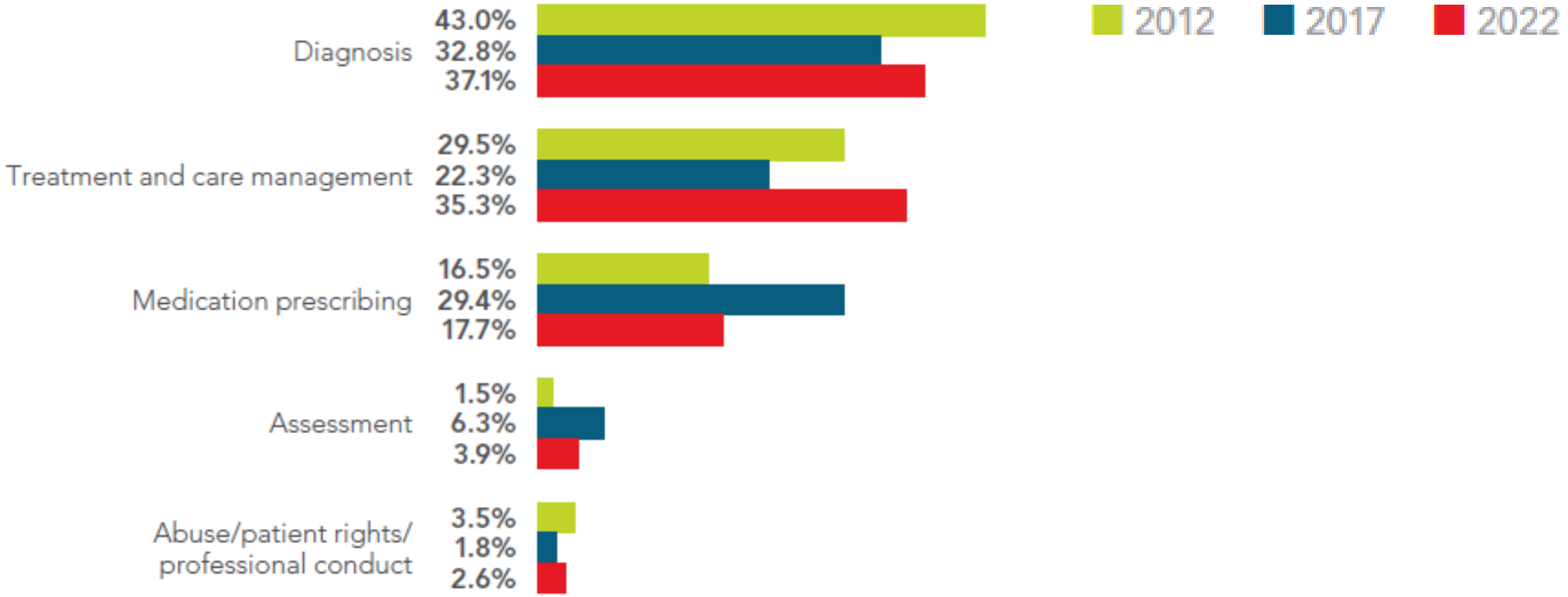
# Comparison of Allegation Categories

**12 Comparison of 2012, 2017 and 2022 Closed Claim Count Distributions by Allegation**

Closed Claims with Paid Indemnity of ≥ $10,000

*This figure highlights only those allegations with the highest distribution.*

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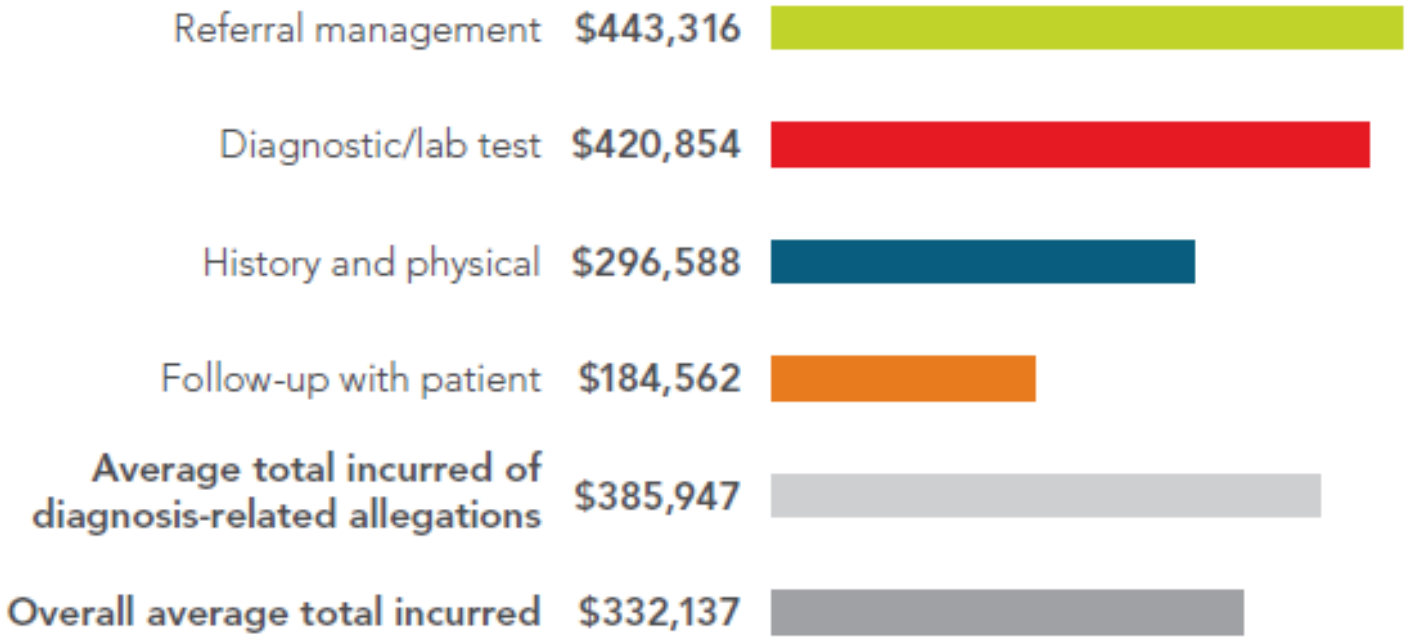
# Diagnosis-Related Claims

## 13 Severity of Diagnosis-related Allegations

Closed Claims with Paid Indemnity of ≥ $10,000

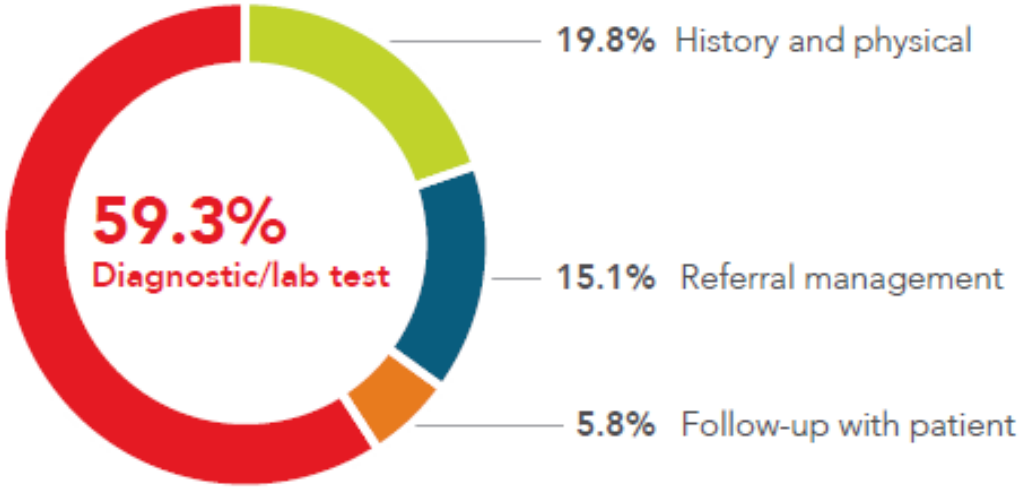
*This figure highlights only those causes of death with the highest distribution.*




## 14 Frequency of Diagnosis-related Allegations

Closed Claims with Paid Indemnity of ≥ $10,000

*This figure highlights only diagnosis-related allegations.*

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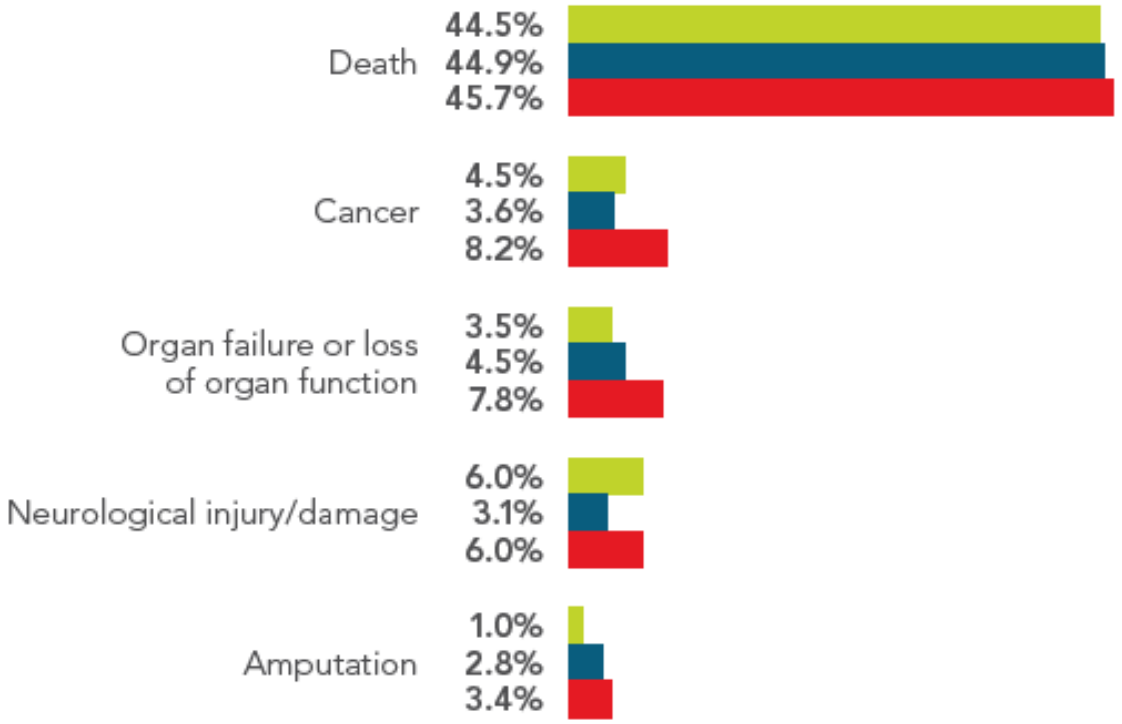
# Injuries

## 18 Comparison of 2012, 2017 and 2022 Closed Claim Distribution by Injury

Closed Claims with Paid Indemnity of ≥ $10,000

*This figure highlights only those injuries with the highest distribution.*




## 17 Distribution of Top Closed Claims by Injury

Closed Claims with Paid Indemnity of ≥ $10,000

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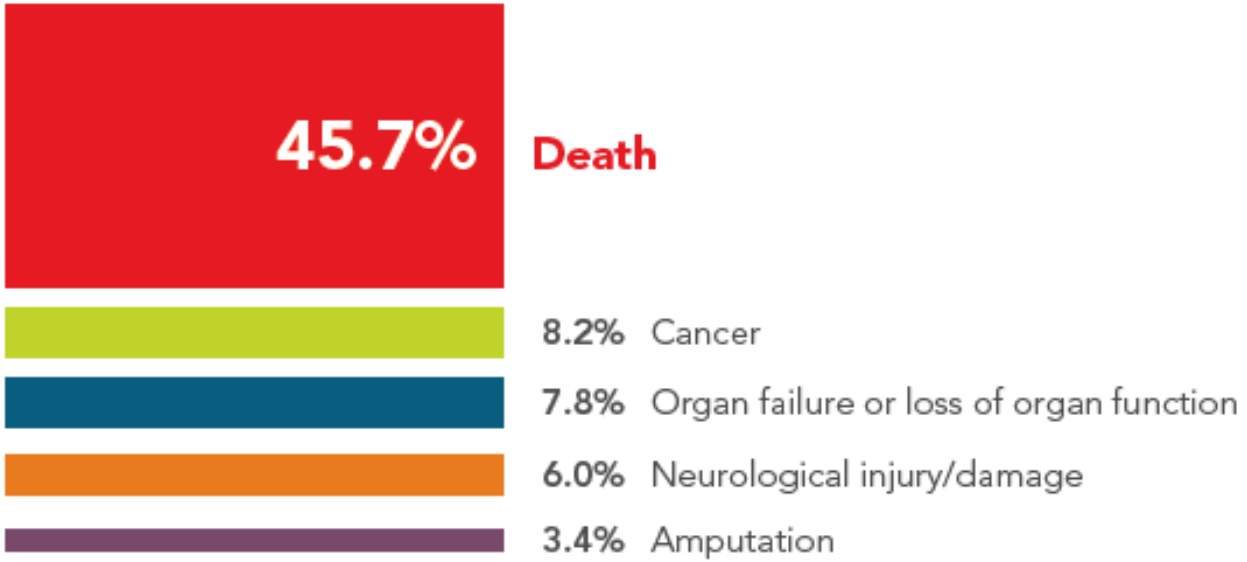

# Case Study

# Case Study

- A 46-year-old male established care with the insured family nurse practitioner (FNP).
- Patient recently broke his wrist and while in the emergency department (ED), he was informed that “his blood sugar was really high and he needed to find a primary care provider to get it under control”.
- A finger stick Hemoglobin A1C was performed and the patient’s level was 11.5 percent.
- The patient did not have medical insurance, so the FNP made the decision to start him on insulin as the medication and supplies would be free.
- The following was documented in the patient’s healthcare information record:
  - Monitor blood sugar levels and keep a blood sugar log.
  - Prevention and treatment for hypoglycemia.
  - Education on how to administer the insulin, carbohydrate dietary measures and the importance exercise.
  - Follow up with ophthalmology on a comprehensive eye examination.
  - Perform daily examinations of his feet and proper foot care and wear.

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# Case Study

- Over the next three to four months, despite missing a few appointments and not being adherent to his insulin regimen, the patient's blood sugars were in better control.
- Nine months after his initial appointment with the insured FNP, the patient presented with complaints of pain to the top and side of the left foot.
- The patient reported he was uncertain if he had twisted it and went to an urgent care facility and had an x-ray which was reportedly negative for any fractures.
- A small bruise was documented to the top of the foot. He reported that he may have done something to it over the weekend while at a jump park with his children.
- Additionally he broke a toenail and may have cut it too short. He was having a difficult time walking with any type of shoe.
- The patient's non-fasting blood sugar was 194, pulse was 128 bpm and his other vital signs were unremarkable.

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# Case Study

- The FNP documented the following:
  - “The patient’s toenail (big toe) is cut short with skin exposed, red and purplish in color at the lateral border. The left foot revealed no swelling or deformity with intact range of motion though movement was painful. Tenderness is noted over the tarsal tunnel.”
- The FNP ordered lab work (CBC, CMP, and CPK level) and a left lower extremity arterial Doppler color flow studies for a “left foot painful.”
- His was given an antibiotic and instructed to use NSAIDs for musculoskeletal pain.
- An ace wrap was applied to the ankle and he was told to apply ice to his ankle to reduce the swelling.
- The patient declined all testing due to costs.
- The FNP instructed if the patient did not want the testing then he should go to the ED as she thought he could have a blood clot.
- The patient reported that he would only go to the ED, if his condition worsened.

# Case Study

- Three days later the patient was evaluated in the ED with a complaint of pain to the left thigh followed by left foot pain with a cold sensation in his foot.
- He reported he had seen his primary care provider and placed on antibiotics, but since that time the pain was getting worse. Physical evaluation revealed a completely cold left foot without dorsalis pedis pulse.
- His serum Creatine Kinase was 1608 IU/L and white blood cell count was 16.7 K/uL.
- A CT angiogram revealed an occlusion of the anterior tibial artery, posterior tibial and peroneal arteries and reconstituted peroneal artery identified at the level of the ankle joint.
- He was admitted for a possible thrombophilic disorder or idiopathic thrombophilic disorder and surgical intervention.
- The patient ultimately underwent a left below-the-knee amputation due to irreversible ischemia to the left lower extremity.
- Patient filed a malpractice claim against the FNP, the FNP's employer, the medical center and the surgeon that performed the initial surgical intervention.

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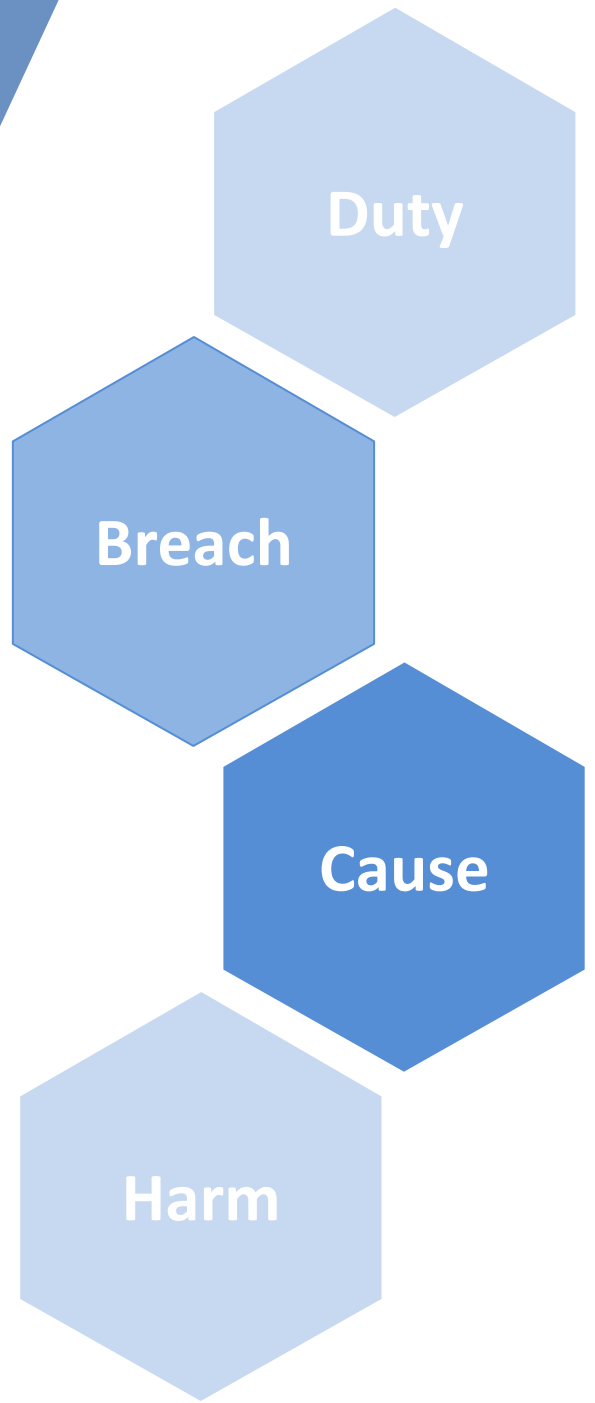
# Do You Believe the NP was Negligent?



# What the Experts Determined…

- The patient claimed that the FNP:
  - Failed to perform an adequate diabetic foot exam;
  - Failed to document the temperature on the left foot;
  - Negligently diagnosing cellulitis/abscess; and
  - Negligently ordering compression and ice for a cold foot.
- Defense experts were supportive of the FNP's care and testified that her documentation of the patient's care was thorough.
- Defense counsel felt the case was defensible, but the other defendants in the case were doing a lot of finger-pointing, making defense difficult.

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# Resolution

The FNP was ultimately dismissed from the case on summary judgment. The claim lasted seven years and expense costs to defend the insured FNP exceeded $140,000.

*Figures represent only the payments made on behalf of our nurse practitioner and do not include any payments that may have been made by the NP's employer on her behalf or payments from any co-defendants. Amounts paid on behalf of the multiple co-defendants named in the case are not available.*

# Risk Control Recommendations

- Compile a comprehensive patient clinical history, as well as relevant social and family history.
- Document all patient-related discussions, consultations, clinical information and actions taken, including any treatment orders that are provided.
- Perform a physical examination to determine the patient's health status and evaluate the patient's current symptoms/complaints.
- Record all patient non-adherence with ordered testing and treatment, as well as all counseling given and other efforts made to encourage compliance.
- If non-adherence is related to a lack of health insurance or financial resources, refer the patient to appropriate social agencies and/or free or low-cost clinics or related programs and follow up to ensure compliance.

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# Risk Control Recommendations

- If the patient is uninsured or unable to afford necessary diagnostic and consultative procedures, refer him or her for financial assistance, payment counseling, and/or free or low-cost alternatives, and document these actions.
- Discuss clinical findings, diagnostic test/procedure results, consultant findings, diagnosis, the proposed treatment plan and reasonable expectations for the desired outcome with patients, in order to ensure their understanding of their care or treatment responsibilities. Document this process, noting the patient's response.

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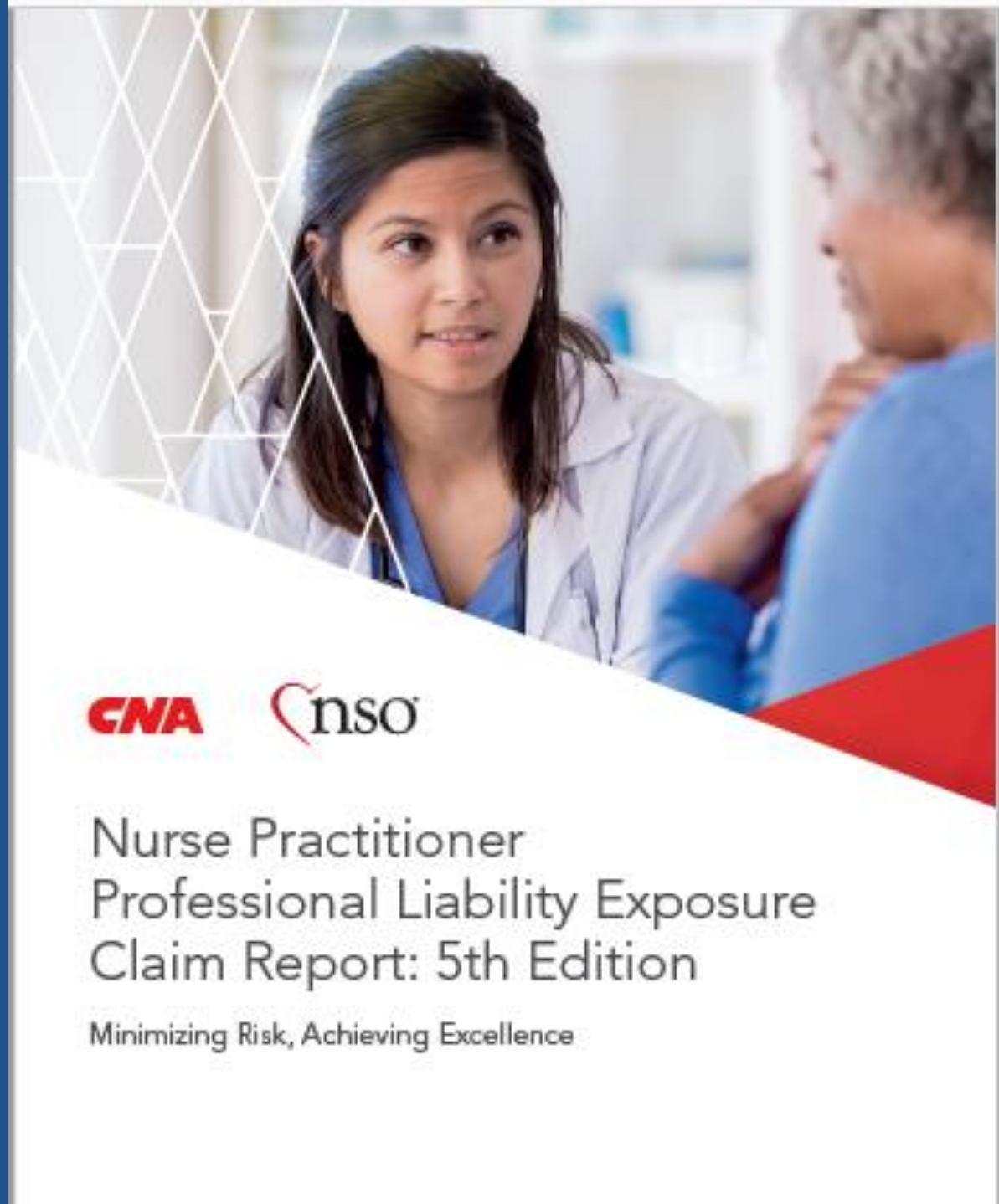
# Questions?

# Thank you!

Nurse Practitioner Professional Liability Exposure Claim Report: 5th Edition: *Minimizing Risk, Achieving Excellence*

Visit nso.com/NPClaimReport to download your free copy of the report and additional risk control resources.



# References


- CNA and Nurses Service Organization. (2022). Nurse Practitioner Professional Liability Exposure Claim Report: 5th Edition: Minimizing Risk, Achieving Excellence. Retrieved from www.nso.com/npclaimreport

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