



CAP's Latest Data Study: A Focused Review of Radiology Closed Claims

Radiologists make up approximately 3.6 percent of the U.S. physician population. However, a review of national closed claims data reveals that radiologists rank sixth among all specialties as the most frequently named defendant in medical malpractice claims.¹

CAP's latest data study delves into the analytics of claims against CAP radiologists (radiology includes diagnostic radiology, nuclear medicine, and interventional radiology). CAP Risk Management staff evaluated 68 closed claims radiology cases that resulted in an indemnity payment between 2006 and 2015.

Through claims analysis, we have identified areas to improve the medical diagnostic process. Interpretation errors and provider communication failures are two of the largest areas of claims involving radiologists. This data study provides a snapshot of factors contributing to diagnostic errors and offers suggestions on how to improve the practice of radiology with an eye toward improving patient outcomes and avoiding medical malpractice claims.

"By analyzing claims data, we have learned the specific trends and patterns that contribute to diagnostic failures and communication issues," says Ann Whitehead, vice president, Risk Management and Patient Safety. "Since radiology overlaps with so many other specialties, the risk management strategies presented in this study can benefit all practices."



CAP's Risk Management and Patient Safety staff is available to discuss ways to implement the risk strategies listed and to assist with systems process improvement challenges.

To download a free copy of "A Focused Review of Radiology Closed Claims," please visit www.CAPphysicians.com/radiologydata. ➔

¹ PIAA MPL Specialty Specific Series Radiology, 2006-2015



Risk Management — and — Patient Safety News



CAP Cares: Answering the Call for Help

by Amy McLain, BSN, RN

Research shows that communication and early resolution programs, such as Stanford's PEARL Program and COPIC Insurance Company's 3Rs Program, have been successful in helping both patients and providers during the stressful time after an adverse event. Providers get support in communications with patients and their families, as well as assistance with medical/legal issues. Patients get help where they need it: medical, emotional, and financial. As result, these programs report a decrease in frequency of medical liability claims and litigation costs.

The CAP Cares Program

CAP Cares is an early intervention program designed to assist CAP members in response to adverse events arising from patient care. An adverse event can be either a known risk of medical care (a complication) or an injury caused by medical error.

In both instances, CAP's experienced Risk Management team provides support to CAP members whose patients have experienced an unanticipated outcome. Their focus is to encourage early physician-patient communication, manage and maintain the treating relationship, and coach CAP members in their documentation of an adverse event.

Here is how CAP Cares helped one CAP member...

A Surprising Complication

A 33-year-old healthy married male with four children underwent a non-scalpel vasectomy

early one evening in Dr. URO's office. After getting home, the patient observed his left scrotum progressively getting larger and his pain intensifying. The concerned patient alerted Dr. URO about his symptoms and was instructed to go to the emergency room, where he was diagnosed with a large left scrotal hematoma and admitted to the hospital. During exploratory surgery the next morning, Dr. URO noted no active bleeding and removed a 200 ml blood clot. Later that evening, approximately 24 hours after his vasectomy, the patient was discharged in stable condition.

Dr. URO monitored the patient's recovery over the next month. The hematoma and soft tissue swelling slowly improved with ice and elevation, and the patient's pain was managed with oral medications. He did not experience any additional complications from surgery and was released from Dr. URO's care.

Failed Expectations

Even though the medical record reflects that Dr. URO discussed the risks associated with a vasectomy, the patient was still surprised he suffered this known, but rare complication, and was extremely angry that he was hospitalized within hours of his vasectomy. As a business courtesy, Dr. URO assured the patient that he would not be billed for the vasectomy or the hematoma evacuation.

Five months later, the patient contacted Dr. URO's office irate about the bills he received. Dr. URO's staff billed the patient for the procedures, as they were

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not aware that Dr. URO advised the patient he would waive his fees. At the same time, the hospital was sending the patient to collections for \$3,500 for non-payment of his portion of the \$25,800 hospitalization bill. Over the telephone, the patient threatened legal action against Dr. URO for medical negligence. That's when Dr. URO called the CAP Cares Hotline.

Patient Assistance Services

The CAP Cares specialist coached Dr. URO on how to handle the complaint and address his patient's financial issues. Dr. URO apologized to the patient for the billing mishap and reassured him that the outstanding ledger balance would be waived. Dr. URO and the CAP Cares specialist worked with the patient to resolve the hospital billing issue through CAP's Patient Assistance Services (PAS) program. As a result, the patient never filed a medical malpractice lawsuit against Dr. URO.

The PAS program allows for the consideration of payment of medical expenses, and associated costs, related to a medical error or a complication of care that remains after insurance benefits have been applied. Offering such a service to a patient, if eligible, does not constitute and shall not be construed as an admission of liability. PAS matters are not considered a medical liability claim, but rather a benevolent early intervention gesture. Eligibility is evaluated on a case-by-case basis and certain restrictions apply.

Take Action

We encourage CAP members to call CAP's Hotline at 800-252-0555 the moment an adverse event is recognized. Please have the following important information available for the CAP Cares specialist:

- Patient's name and date of birth
- Date of the incident and location
- Names of other physicians or healthcare providers involved
- Description of possible injuries

Initially, there will be a discussion of appropriate immediate interventions and documentation. During future conversations, other interventions will be discussed, including apology, disclosure, and, if needed, arrangements for additional services the patient might need as a result of the adverse event. We assure you that any written and oral communications with you are confidential. We also remind you that any contact with CAP should never be written in the patient's records.

We know that experiencing an adverse event can be very difficult and it is our intent to assist you during this very stressful time. Please call the CAP Cares Hotline at 800-252-0555 for help. ➦

Amy McLain is a Senior Risk Management and Patient Safety Specialist for CAP. Questions or comments related to this article should be directed to amclain@CAPphysicians.com.



New Drug-Related Laws Recently Signed

by Gabriela Villanueva

Governor Jerry Brown was busy in September completing his review of bills that made their way to his desk after the Legislature concluded its 2018 session on August 31.

With the opioid crisis still very much on legislators' radars, the end of the 2018 session generated a slew of bills on the issue, with a number of them tied to the Controlled Substance Utilization Review and Evaluation System (CURES).

Following are CURES-related bills that have now been fully approved and chaptered:

- **AB 1751** by Assemblyman Evan Low (D- San Jose). This bill requires the California Department of Justice to adopt regulations regarding the access and use of the information within CURES to enter into an agreement with any entity operating an interstate data sharing hub, or any agency operating a prescription drug monitoring program in another state, for purposes of interstate data sharing of prescription drug monitoring program information, no later than July 1, 2020.
- **AB 1753** by Assemblyman Evan Low (D- San Jose). Current law requires prescription forms for controlled substance prescriptions to be obtained from printers specifically approved by the California Department of Justice. This bill authorizes the department to reduce or limit the number of approved printers to three. The bill would require forms for controlled substance prescriptions to have a uniquely serialized number, in a manner prescribed by the department, and would require a printer to submit specified information to the department for all prescription forms delivered. The law takes effective on or before January 1, 2019.
- **AB 2086** by Assemblyman James Gallagher (R-Yuba City). Current law requires the Department of Justice to maintain the CURES database for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by an authorized healthcare practitioner. This bill will allow prescribers to access the CURES

database for a list of patients for whom that prescriber is listed as a prescriber in the CURES database. The law becomes effective on or before January 1, 2019.

Other upcoming laws in this area include:

- **AB 2760** by Assemblyman Jim Wood (D-Santa Rosa). This bill requires a prescriber to offer a prescription for naloxone hydrochloride or another drug federally approved for the complete or partial reversal of opioid depression for patients when certain conditions are present and to provide specified education to those patients about how these drugs may be used to prevent an overdose. As specified, a prescriber who fails to offer a prescription, as required, or fails to provide the education and use information shall be referred to the appropriate licensing board solely for the imposition of administrative sanctions deemed appropriate by that board. This law becomes effective on or before January 1, 2019.
- **AB 2487** by Assemblyman Kevin McCarty (D-Sacramento). This bill authorizes a physician and surgeon to complete a one-time continuing education course on opiate-dependent patient treatment and management, as specified, as an alternative to the mandatory continuing education course on pain management and the treatment of terminally ill and dying patients. The law becomes effective on or before January 1, 2019.

As a reminder, starting October 2, 2018, all authorized prescribers of Schedule II, III, and IV drugs are mandated to use the CURES database when prescribing these substances. ➦

Gabriela Villanueva is CAP's Public Affairs Analyst. Questions or comments related to this article should be directed to gvillanueva@CAPphysicians.com.

Want to Improve Your Cyber Fitness?

Free Online Courses Will Show You How!



These days, it is not a matter of *if* but *when* a security breach will happen to you. Healthcare continues to be a target because of the personal and medical information available. Highly regulated industries such as healthcare and financial organizations continue to pay substantially more than other industries when data are compromised.

As a CAP member, you automatically receive CyberRisk protection through NAS Insurance Services to help protect you against information data breaches, including HIPAA.

We are happy to report that NAS now provides an online tool, called CyberNET, which offers CAP members and their staff free access to a number of training courses to help keep you HIPAA compliant and reduce the likelihood that you'll fall victim to a cyber attack.

These courses include:

- Introduction to Breaches
- Data Security Basics
- Social Engineering

- HIPAA Training Series (with printable certificate)
- Safeguarding Information
- Payment Card Industry — Identifying Fraudulent Payment Cards

This site also enables you to directly report a breach to NAS, as well take the CyberRisk Fitness test to find out just how vulnerable you may be. ***Remember a breach must be reported within 60 days of when you become aware of the potential breach.***

To access CyberNET, visit the CAP website at **CAPphysicians.com**, go to the **Risk Management** page, and then click on **CyberNET HIPAA Training**. First-time users will need to register using their CAP member number as their sign-up code.

Also be sure to call CAP Agency at 800-819-0061 or email CAPAgency@CAPphysicians.com to learn about your current CyberRisk coverage and how you can increase your limits so you're well protected in the event of a breach. ➦



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CAPADVANTAGE PROGRAMS CAN MAKE RUNNING YOUR PRACTICE A LITTLE LESS SCARY



Ghosts can be scary.

Black cats too.

And candy corn? . . . Well, that seasonal confection has been known to give many of us the shivers!

But running a successful medical practice shouldn't have to be a frightful endeavor.

Through our extensive range of practice management benefits, CAP is committed to helping our members tackle some of the scarier aspects of running a business. The following are some scary practice scenarios you might be facing, and solutions to address them.

Scary Situation #1: Noncompliant Patients

"Effective communication between doctor and patient is as important as any medication we prescribe to help patients achieve a desired health outcome. And in some cases, even more important."

— Randall Porter, MD
Founder, Medical Memory

Patients don't follow treatment plans for myriad reasons, but lack of understanding should never be one of them.

Through Medical Memory's **video patient engagement solution**, you can easily record patient consultations or create your own video library and save time with pre-recorded videos for informed consents, discharge instructions, conflicts of interest, and more.

Both product offerings enable patients and their family members to view their video recording from

home, post-consult, to gain a clearer understanding of their medical condition and treatment plan.

This first-of-its-kind healthcare video recording platform can also help increase patient satisfaction, reduce readmissions, and be your first line of defense in a lawsuit to prove that you communicated the appropriate information.

Medical Memory offers CAP members a **free 60-day trial**, along with exclusive discounted monthly rates.

Scary Situation #2: A Noncompliant Practice

We know that regulatory requirements are probably the last thing you want to worry about. But the reality is regulatory issues, such as HIPAA or labor law violations, can cost you dearly in terms of money and time spent. CAP offers two special programs to help you take a proactive approach to practice compliance to reduce the likelihood of a regulatory breach.

Evolve e-Learning provides an interactive online training system that allows physicians to deliver **compliance training to employees** at a fraction of the cost of classroom training. Web-based, on-demand courses cover such topics as HIPAA privacy and security, Medicare fraud and abuse, human resources and EEOC laws, and more. CAP members can take advantage of a **10 percent discount** on all courses offered.

And to help ensure that your technical infrastructure, including EHR, achieves and maintains HIPAA compliance, Acentec's **HIPAA Security Suite** is your one-stop solution. Acentec is offering CAP members

a **25 percent discount** on this simple automated system that can save you a lot of aggravation and money in the long run.

Scary Situation #3: Unfavorable Patient Reviews

No doctor wants to hear that a patient wasn't satisfied with the care or service he or she received, regardless of whether that review was delivered in a private survey or in an online review site, such as Yelp. Unhappy patients can affect your reputation and your bottom line, and they may even file a malpractice claim for a real or perceived grievance.

To better manage your reputation, PatientPop's online marketing platform automatically follows up with your patients, encouraging them to post online reviews and testimonials, so you're able to see what they're saying about you and to make

improvements in a timely matter. PatientPop can also help your practice grow via their integrated online scheduling tool, as well as website development and optimization capabilities.

To enhance these CAPAdvantage programs, CAP just published *The Physician's Action Guide to an Outstanding Patient Experience*, which provides concrete steps you and your staff can take to ensure that your patients would confidently recommend you to friends, and you are building a reputation you and your team can be proud of. For a free copy of this new guide, contact Membership Services at 800-610-6642 or ms@CAPphysicians.com.

For more information about these or any of our CAPAdvantage programs, contact Sean O'Brien, CAP Vice President, Member Programs, at 888-645-7237 or capadvantage@CAPphysicians.com. ➦

Is Your Worker an Independent Contractor or an Employee?

by Margaret Lee Covey

On April 30, 2018, the California Supreme Court issued a decision entitled *Dynamex Operations West, Inc. v. The Superior Court of Los Angeles County (Charles Lee)*, which evaluated whether workers in California should be classified as employees or as independent contractors for purposes of California wage orders. The California Supreme Court decided that all such workers are employees unless:

1. The worker is free from the control and direction of the hiring entity in the performance of the work, both pursuant to contract and in fact; and
2. The worker performs work that is outside the usual course of the hiring entity's business; and
3. The worker is customarily engaged in an independently established trade, occupation, or business. The California Supreme Court concluded the failure to prove any one of the foregoing prerequisites was sufficient to establish that the worker is an included employee rather than an excluded independent contractor. **Members employing independent contractors who don't**

meet these criteria may face legal and financial risk when such workers should more properly be classified as employees.

CAP can help. Do you need:

- Help obtaining affordable workers' compensation? Contact CAP Physicians Insurance Agency at 800-819-0061.
- Help with your Human Resource questions? Call Nancy Brusegaard Johnson, CAP's Senior Vice President of Human Resources and Operations, at 213-473-8664 during business hours, 8:30 a.m. to 5:30 p.m.
- Coverage for your potential liability for the acts, errors, or omissions of your worker? Contact CAP's Membership Services Department at 213-473-8647. ➦

Margaret Lee Covey is Senior Counsel for CAP. Questions or comments related to this article should be directed to mcovey@CAPphysicians.com.

Case of the Month

by Gordon Ownby



High Court Puts Alleged Utilization Review Injury Back into Workers' Comp

The California Supreme Court has wrested back into the workers' compensation system a claim of medical malpractice by a worker who alleged injury from a utilization review decision. The case overrules a lower court decision handed down in 2016.

In 2008, plaintiff Kirk King sustained a back injury at work. Three years later, Mr. King suffered anxiety and depression from the chronic pain from his back injury and received a prescription for Klonopin. The Klonopin was provided to Mr. King through workers' compensation, which in 2013 conducted a utilization review to determine whether the drug was medically necessary. Dr. Naresh Sharma, an anesthesiologist, conducted the utilization review and determined that the drug was unnecessary and decertified it. A psychiatrist who conducted another review reached the same conclusion.

Mr. King claims that the denial required him to immediately stop taking Klonopin and that the sudden cessation caused him to suffer four seizures, resulting in additional injury. Mr. King sued CompPartners, Inc., and Dr. Sharma for both professional medical negligence and general negligence.

The events described in the Supreme Court's decision are based on the allegations of Mr. King and his wife. The defendants did not yet have the need to contest the truth of any allegations.

At the trial court level, the defendants instead successfully argued that the allegations of medical

malpractice and general negligence should be barred outright because the state workers' compensation system is the exclusive remedy for any injuries suffered by Mr. King. The Court of Appeal agreed that the decertification decision by Dr. Sharma fell within the workers' compensation system, but held that insofar as the Kings challenged Dr. Sharma's failure to warn Mr. King of the risks of Klonopin withdrawal, the plaintiffs would be afforded another effort to plead their case in the civil court system.

In reversing the Court of Appeal, the Supreme Court reviewed the history of the workers' compensation system, describing the "basic tradeoff" of the legislative scheme: "The employee is afforded swift and certain payments for medical treatment without having to prove fault, but, in exchange, gives up the right to sue in tort for those injuries that result from risks encompassed by the employment relationship."

In *King v. CompPartners*, the state high court cited precedent for limiting an employee to the workers' compensation system when a work injury contributes to a subsequent non-industrial injury, such as a new or aggravated injury resulting from medical or surgical treatment for the industrial injury.

"Because the Kings allege injuries that are derivative of a compensable workplace injury, their claims fall within the scope of the workers' compensation bargain and are therefore compensable within the workers' compensation system," the Supreme Court said.

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In its unanimous decision, the high court distinguished the industrial origins of Mr. King's seizures from an earlier California case that allowed an injured hospital worker to proceed outside workers' compensation after she slipped and fell at the same hospital where she had chosen to have her original injuries treated. That earlier decision reasoned that the slip and fall injury was entirely independent of the hospital worker's employment relationship with the hospital and that the hospital's duty to her in that instance was as a landowner, not as an employer.

Utilization review in workers' compensation is required by statute and is done on behalf of an employer. The Supreme Court warned that permitting

plaintiffs to bring tort suits against such reviewers in the same manner as they might bring tort suits against treating physicians would subject utilization reviewers to a second – "and perhaps competing" – set of obligations rooted in tort rather than statute.

"That result does not sit easily with the Legislature's overarching purpose of replacing a dispute resolution process that was cumbersome, lengthy, and potentially costly with one that instead balances the dual interests of speed and accuracy." ➦

Gordon Ownby is CAP's General Counsel. Questions or comments related to "Case of the Month" should be directed to gownby@CAPphysicians.com.



Update Your Membership Information to Help with Your Year-End Planning

If you are contemplating a change in your practice, please notify CAP as soon as possible so our Membership Services Department can review your options with you and make your coverage transition a smooth one. Changes include, but are not limited to:

- Retirement from practice at age 55+
- Part-time practice
- Reduction or change in the scope of your practice
- Employment with a government agency or non-private practice setting
- Employment with an HMO or other self-insured organization
- Joining a practice insured by another carrier
- Moving out of state
- Termination of membership

The Board of Trustees of the Mutual Protection Trust will levy an assessment in November 2018. To allow ample processing time, we recommend that members advise us in writing no later than October 31, 2018, of any of the above changes to be considered eligible for waiver or proration of the next assessment.

To make an update, please log in to the Member's Area of the CAP website at <https://member.CAPphysicians.com>. Upon logging in, you will be prompted to **Update/Verify Your Information Now**. Our new online Membership Information Update Form takes less than five minutes.

If you have not yet registered for the Member's Area, please register for an account at <https://member.CAPphysicians.com/register>. You will need your member number and last four digits of your Social Security number. ➦



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We welcome your comments! Please submit to communications@CAPphysicians.com.

The information in this publication should not be considered legal or medical advice applicable to a specific situation.

Legal guidance for individual matters should be obtained from a retained attorney.