

Malpractice Makes Perfect; Confessions of a Expert Witness

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Why Do patients Sue Doctors?

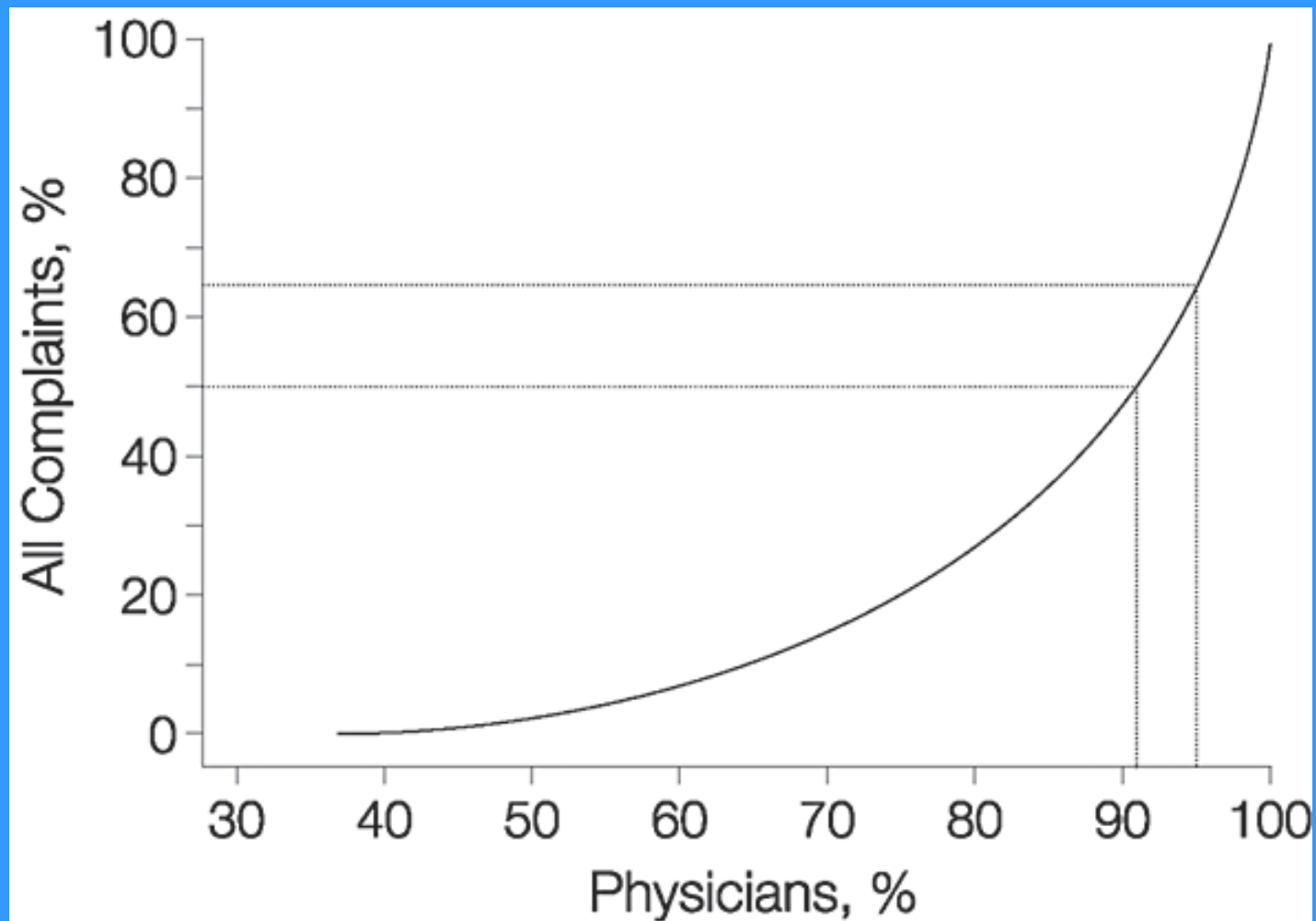


**APPLETON, WI. (UPI '97) -
Nadean Cool, 44, has sued her
psychiatrist for malpractice in
a suit alleging that Dr. Kenneth
Olson convinced her that she
had 120 personalities, then
billed her insurance company
for *group therapy*.**

Patient Complaints and Malpractice Risk

Gerald B. Hickson, MD; Charles F. Federspiel, PhD; James W. Pichert, PhD; Cynthia S. Miller, MSSW; Jean Gauld-Jaeger, MS; Preston Bost, PhD

JAMA. 2002;287:2951-2957.



Hickson, JAMA 2002

Table 2. Cohort Member Physicians With Selected Combinations of Risk Management File (RMF) Openings and Unsolicited Patient Complaints*

No. of RMF Openings	Unsolicited Patient Complaints, No. (%)					Total
	0-1	2-6	7-14	15-24	≥25	
0	223 (35)	92 (14)	44 (7)	9 (1)	3 (1)	371 (58)
1	38 (6)	38 (6)	27 (4)	13 (2)	6 (1)	122 (19)
2	9 (1)	17 (3)	13 (2)	14 (2)	11 (2)	64 (10)
≥3	6 (1)	13 (2)	12 (2)	21 (3)	36 (6)	88 (14)
Total	276 (43)	160 (25)	96 (15)	57 (8)	56 (10)	645 (100)

* $\chi^2_2 = 274; P < .001$.

Why Do Attorneys Sue Doctors ?



\$60 Million Dollars !!



Malpractice cases are very expensive

- Expert witnesses
- Virtually all are done on a contingency basis
- If the plaintiff doesn't win the attorney does not get paid
- Contingency can be north of 40% (after costs subtracted)

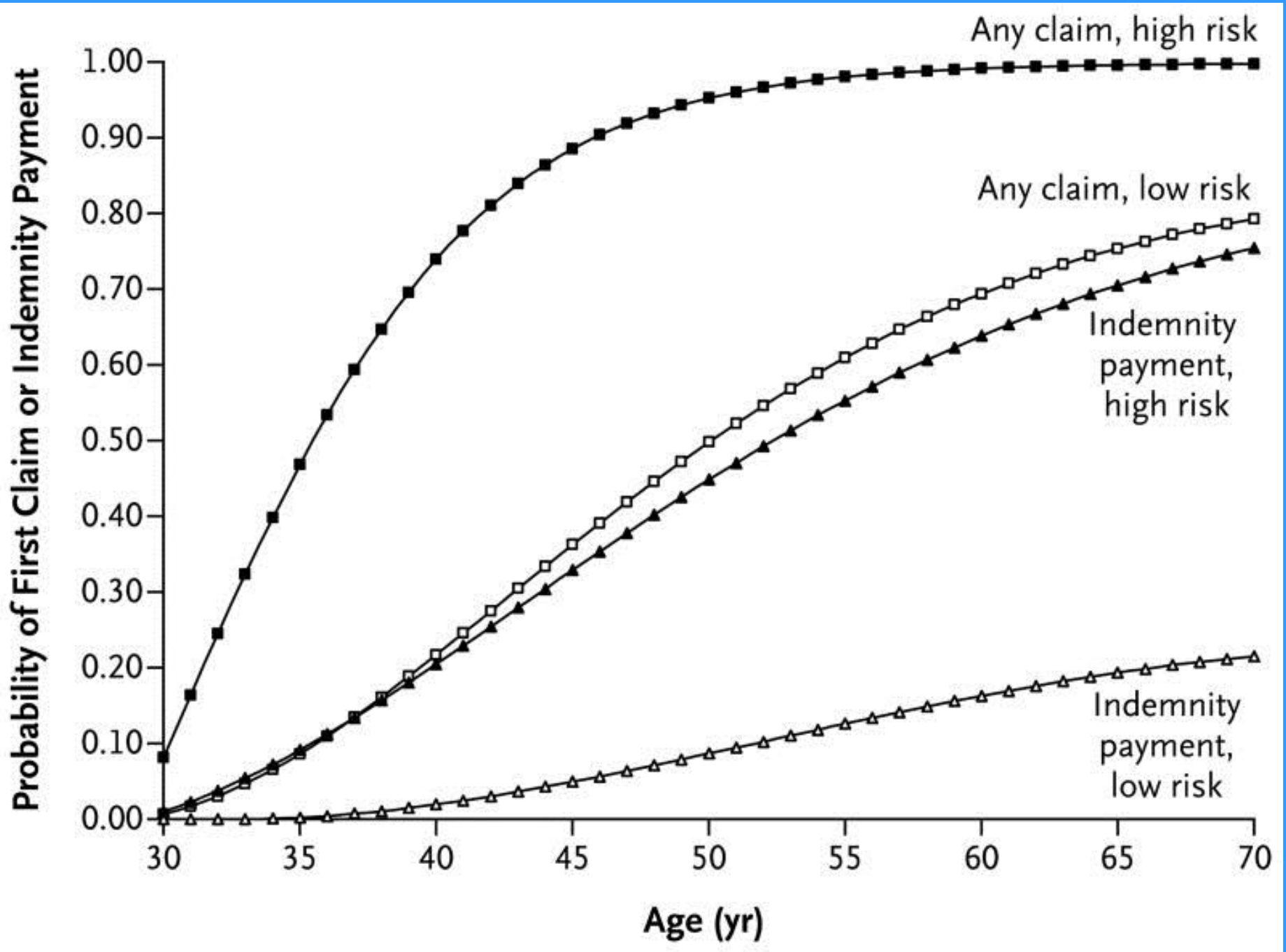
\$ Contingency fees \$

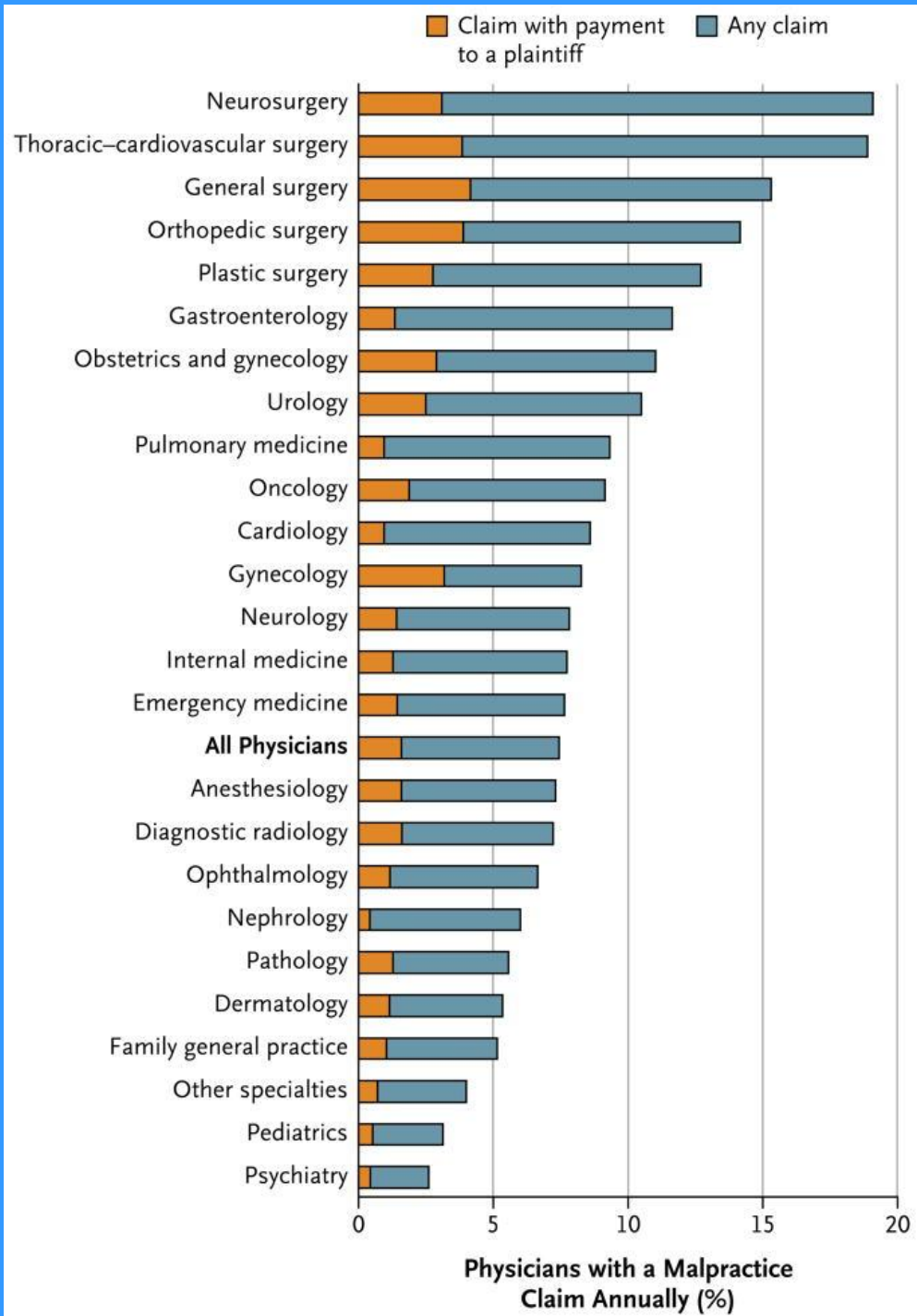


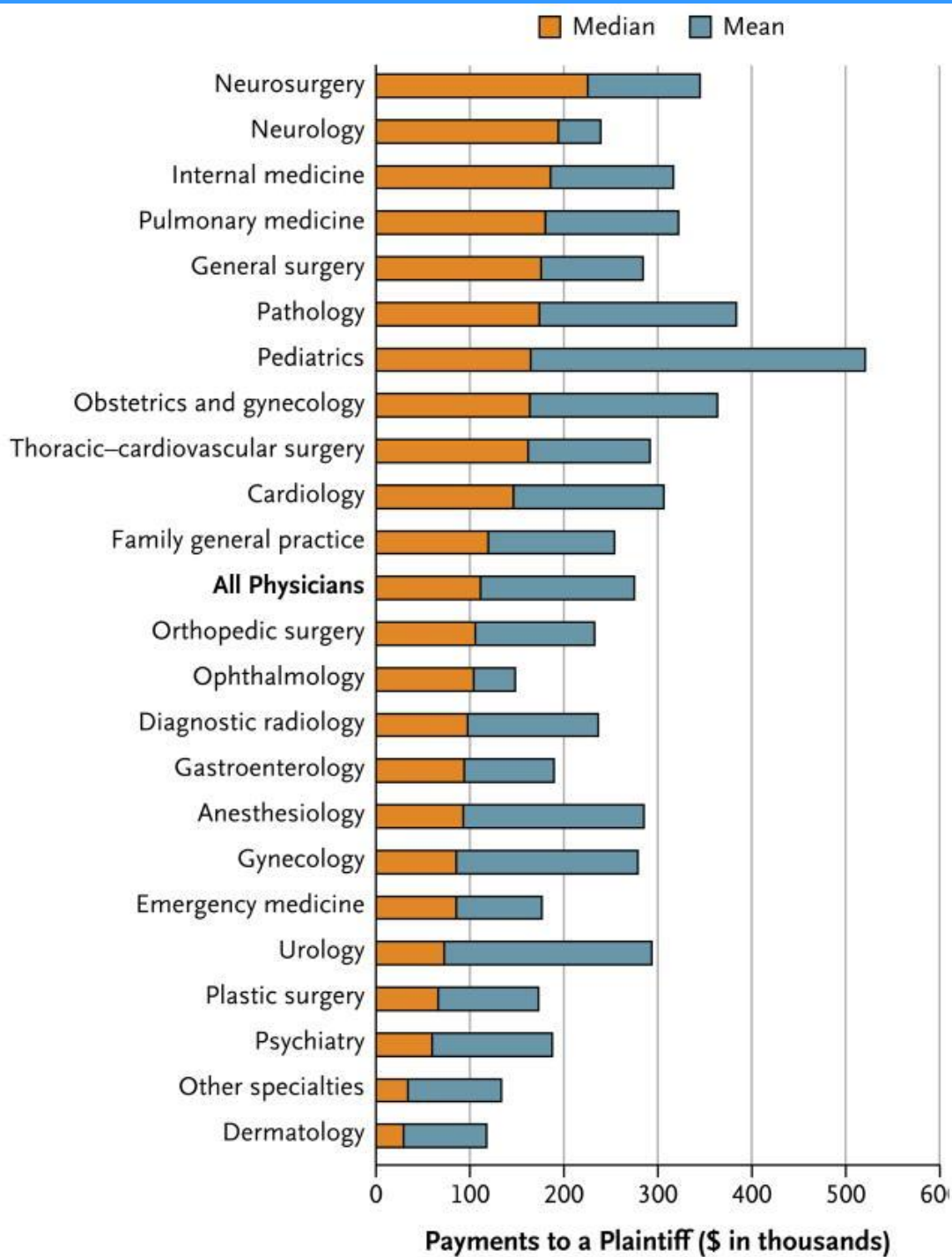
Malpractice Risk According to Physician Specialty

Jena et al NEJM 2011

- Forty thousand physicians 1991-2005
- Each year during the study period, 7.4% of all physicians had a malpractice claim
- 78% of all claims did not result in payments to claimants
- By the age of 65 years, 75% of physicians in low-risk specialties had faced a malpractice claim, as compared with 99% of physicians in high-risk specialties.







**An epidemiologic study of closed emergency department malpractice claims
in a national database of physician malpractice insurers.**

ACAD EMER MED 2010 Brown et al.

- 1985 - 2007 18 years of age or older
- 11,529 claims \$664 million liability
- Emergency physicians were the primary defendants in 19% of ED claims
- The largest sources of error, as identified by the individual malpractice insurer, included errors in diagnosis (37%), followed by improper performance of a procedure (17%). In 18% of claims, no error could be identified by the insurer.

ED Malpractice

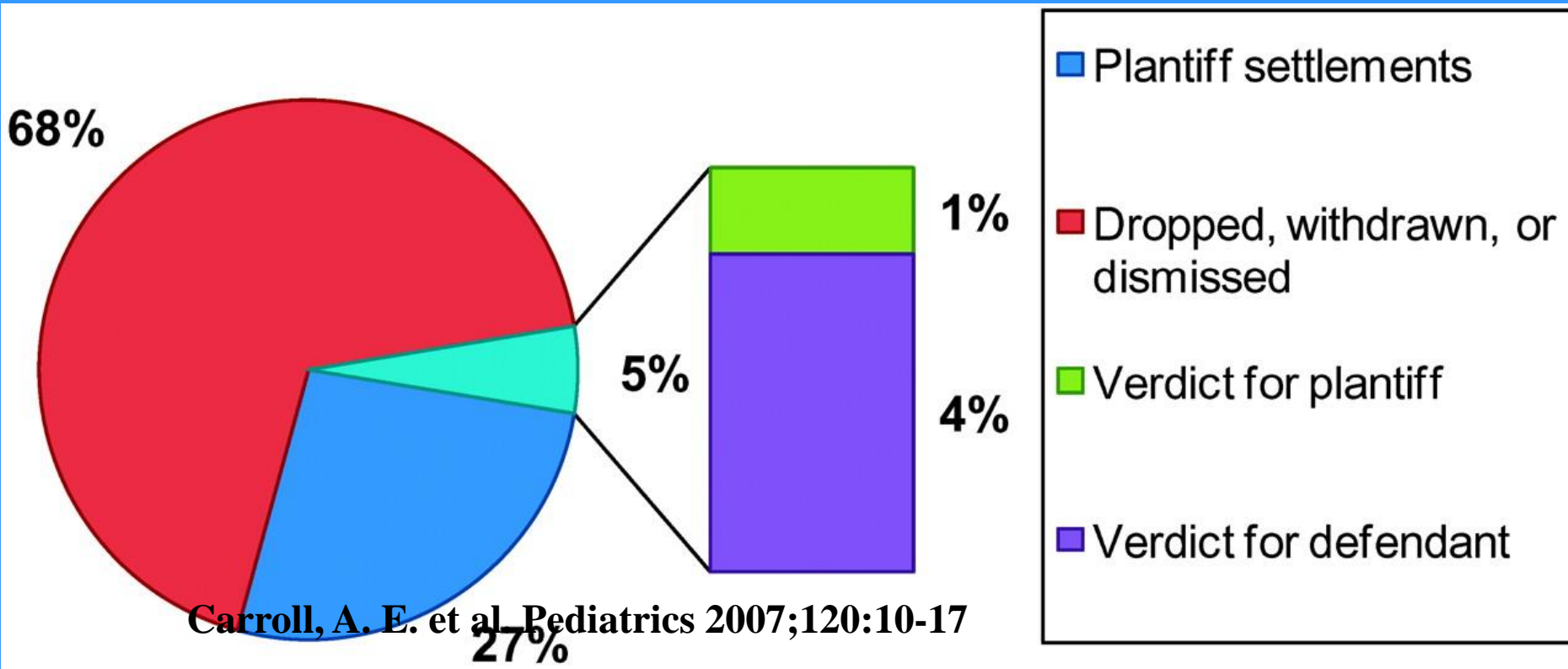
- Acute myocardial infarction (AMI; 5%), fractures (6%), and appendicitis (2%) were the health conditions associated with the highest number of claims.
- Over two-thirds of claims (70%) closed without payment to the claimant.
- Most claims that paid out did so through settlement (29%).
- Only 7% of claims were resolved by verdict, and 85% of those were in favor of the clinician.

High Risk Diagnoses

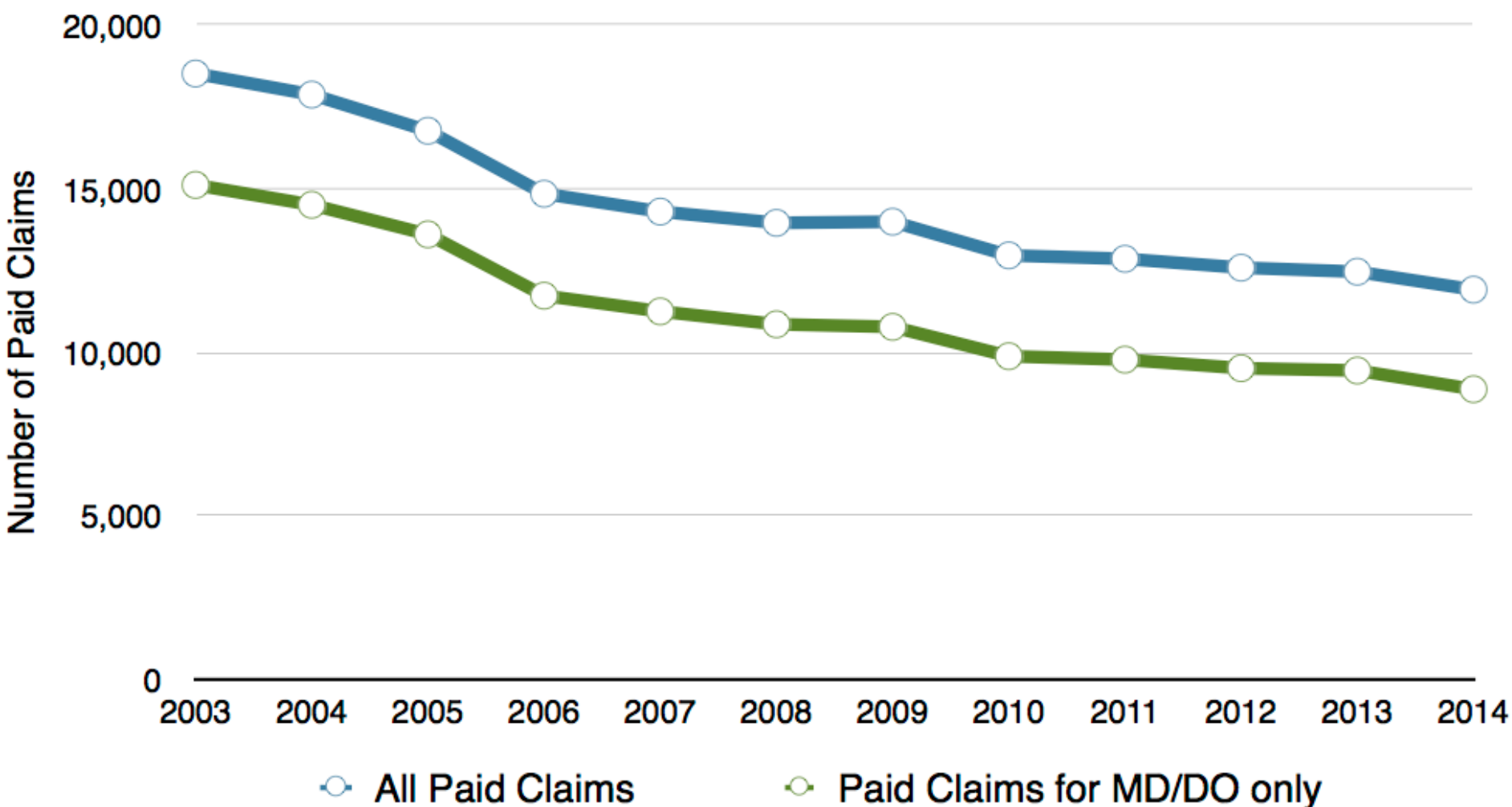
- Chest Pain
- Wounds
- Fractures
- CNS bleeds
- Pediatric Fever/ Meningitis

- Karcz, J. Emerg Med 1996

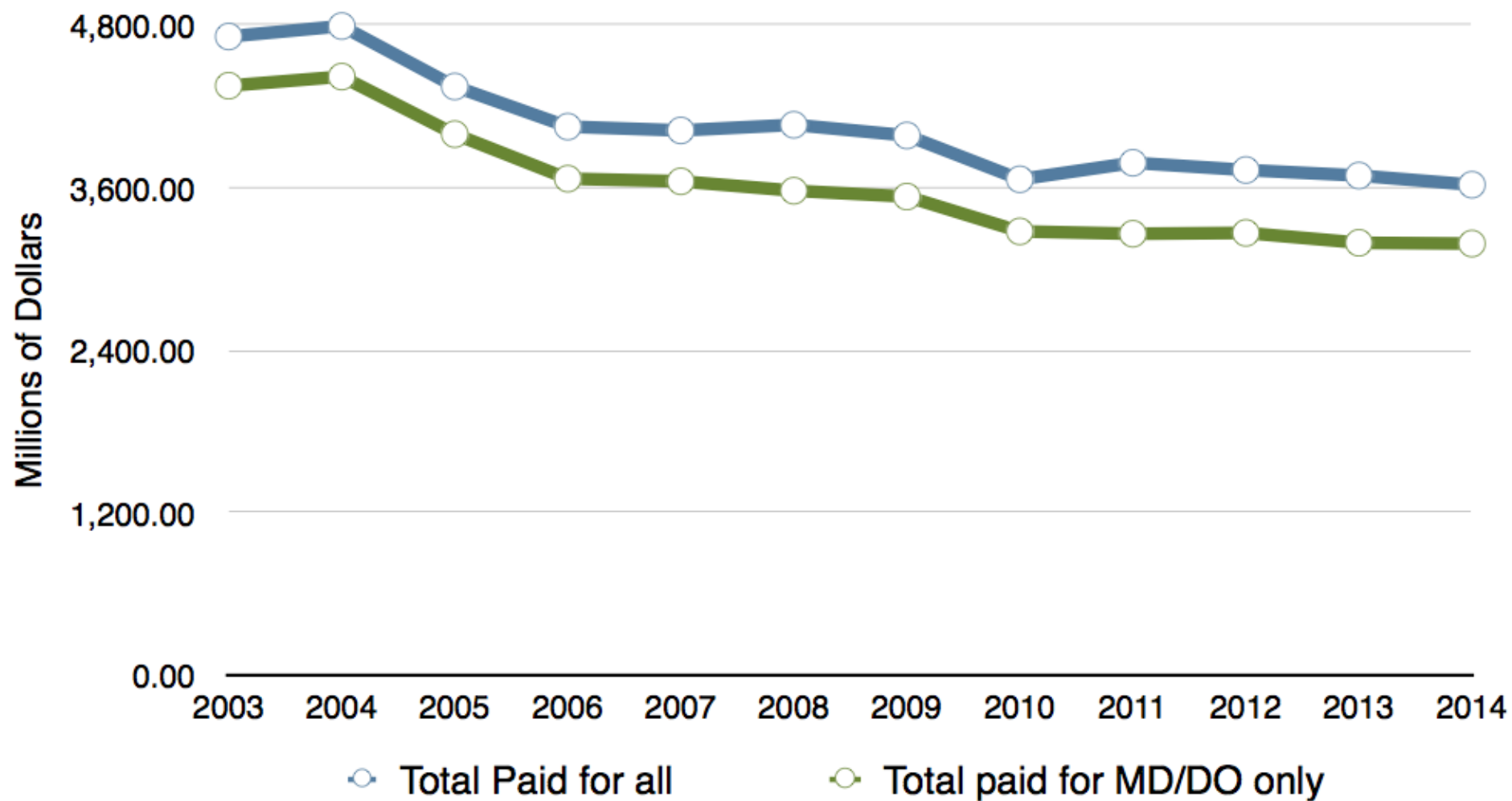
FIGURE 6 Percentage of pediatric claims according to adjudication status



Total number of Paid Medical Malpractice Claims in the United States Each Year



Total Amount Paid For Malpractice Claims in the United States Each Year



Types of Malpractice Insurance

- 1) Claims made - “tail coverage” (ERP)
- Claims made and reported - (incident or written report)
- 2) Occurrence
- 3) Claims paid (?assessable)

Theory of Malpractice- Torts

- Not a pastry



- A negligent or intentional civil wrong not arising out of a contract or statute

4 Elements of Torts

- Duty
- Breach
- Injury
- Causation

Standard of Care

- *“Medical malpractice is a legal fault by a physician or surgeon. It arises from the failure of a physician to provide the quality of care required by law. When a physician undertakes to treat a patient, he takes on an obligation enforceable at law to use minimally sound medical judgment and render minimally competent care in the course of services he provides. A physician does not guarantee recovery... A competent physician is not liable per se for a mere error of judgment, mistaken diagnosis or the occurrence of an undesirable result.”*

Burden of Proof

- Beyond a reasonable doubt
- Preponderance of the evidence;
More likely than not (51%)

Malpractice Makes Perfect,
Anatomy of a Lawsuit

“Rob, do you know what gastroenteritis means to me when I see it on one of my charts ?”

“No Tim, what ?”

“I’m gonna get sued”

Tim Evans to Rob Reiser, 1990

Lessons ?

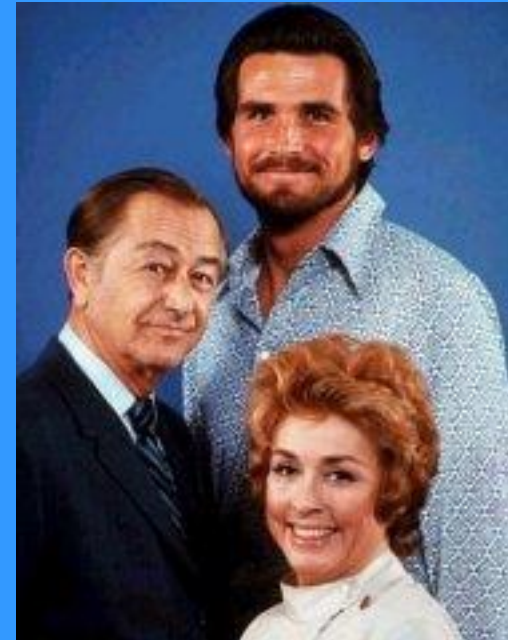
- Know where your risks are
- Final diagnosis should reflect the chief complaint
- Checking boxes is of little value (except to the billers)
- FOLLOW UP, FOLLOW UP, FOLLOW UP
- Dictation is the way to go

Other Lessons

- Read the nurses notes
(or read them in court)
- No Snarky comments
“says she passed out last night”
- Visual Acuity on **all** eye complaints

Managing Your Risk

- Stop seeing patients
- Be lucky
- Always be right
- Never be wrong
- Work for TEAMHEALTH
- Enlist



On the other hand, in evaluating your defendants, be on guard for the Marcus Welby type of personality. Some doctors, and even some hospital administrators, have such a forthright and wholesome appearance that jurors will not believe that they can be capable of wrongdoing.

Medical Malpractice, Third Edition, § 25 by David M. Harney Copyright

1993,

High Risk Diagnoses

- Chest Pain
- Wounds
- Fractures
- CNS bleeds
- Pediatric Fever/ Meningitis

Before signing the death certificate had you taken the man's pulse? -- A: No.

Q: Did you listen for a heart beat? -- A: No.

Q: Did you check for breathing? -- A: No.

Q: So when you signed the death certificate you hadn't taken any steps to make sure the man was dead, had you?

A: Well, let me put it this way. The man's brain was sitting in a jar on my desk, but for all I know he could be out there practicing law somewhere.

Coroner responding to Defense Attny.