

# Impact of Litigation on Healthcare Providers

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# ▶ Important risk mitigation strategies

- ◉ Clinical judgment
  - Update and review patient's medical history on a regular basis.
  - Enable prompt access to diagnostic information.
  - Implement and utilize clinical pathways.
- ◉ Communication
  - Explain the diagnosis and educate the patient; offer explanation and rationale as to why the chosen treatment is an appropriate plan.
  - Ask the patient to repeat back the proposed treatment plan.
  - Follow up on outstanding reports from referrals and consults.
- ◉ Behavior-related
  - Recognize that the risk of patient non-compliance and dissatisfaction can be mitigated with a focus on patient education.
- ◉ Documentation
  - Verify that documentation covers all clinically significant information.
- ◉ Clinical systems
  - Focus on closing the loop on test tracking processes, consults and missed appointments, scheduling and performing tests and patient phone/email follow-up systems.



AND SO YOU GET SUED . . .





# IMPORTANT FIRST STEPS:

1. **IMMEDIATELY** NOTIFY YOUR INSURANCE CARRIER
2. SECURE THE CHART
3. COPY EVERYTHING FOR THE CARRIER AND YOUR LAWYER, NOT JUST THE “LEGAL” MEDICAL RECORD OR DESIGNATED RECORD SET
4. DO NOT DISCUSS THE SUBSTANCE OF THE CLAIMS OR YOUR CARE WITH ANYONE OTHER THAN THE CARRIER AND YOUR LAWYER

## CURRENT CLAIMS CLIMATE

ISSUES RELATING TO TREATMENT = 21.1%

ISSUES RELATING TO SURGERY/PROCEDURES = 21.4%

ISSUES RELATING TO DIAGNOSTIC ERRORS = 34.1%

THESE HAVE BEEN THE THREE MOST COMMON CLAIMS REPORTED SINCE 1992!

[WWW.LEVERAGERX.COM/MALPRACTICE-INSURANCE/2019-MEDICAL-MALPRACTICE-REPORT](http://WWW.LEVERAGERX.COM/MALPRACTICE-INSURANCE/2019-MEDICAL-MALPRACTICE-REPORT)



# FAILURE TO DIAGNOSE/MIS-DIAGNOSIS BREAKDOWN

## 1. VASCULAR EVENTS

CVA, MI, VENOUS OR ARTERIAL THROMBOEMBOLISM, AORTIC ANEURYSM

## 2. INFECTIONS

SPINAL ABSCESS (#1 OVERALL), MENINGITIS AND ENCEPHALITIS, SEPSIS, PNEUMONIA

## 3. CANCERS

COLORECTAL, MELANOMA, LUNG, BREAST, PROSTATE

THESE ACCOUNT FOR 61.7% OF ALL DIAGNOSTIC ERROR CLAIMS AND 67.3% OF ALL DIAGNOSTIC ERROR PAYOUTS.

*DIAGNOSIS 2019; 6(3): 227 - 240*

# WHAT'S ON THE RISE?

COMMUNICATION PROBLEMS

SYSTEMS CLAIMS

\* BOTH RELATING TO EMR ISSUES, TEST RESULTS, TIMELY FOLLOW UP ON NEW FINDINGS





# NPDB PAYMENT INFO FOR 2018

**Settlement**

**96.5 %**

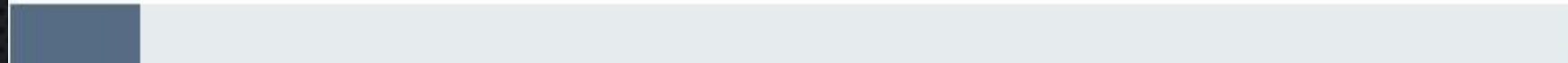
**\$3,889,417,950 in total payments**



**Judgement**

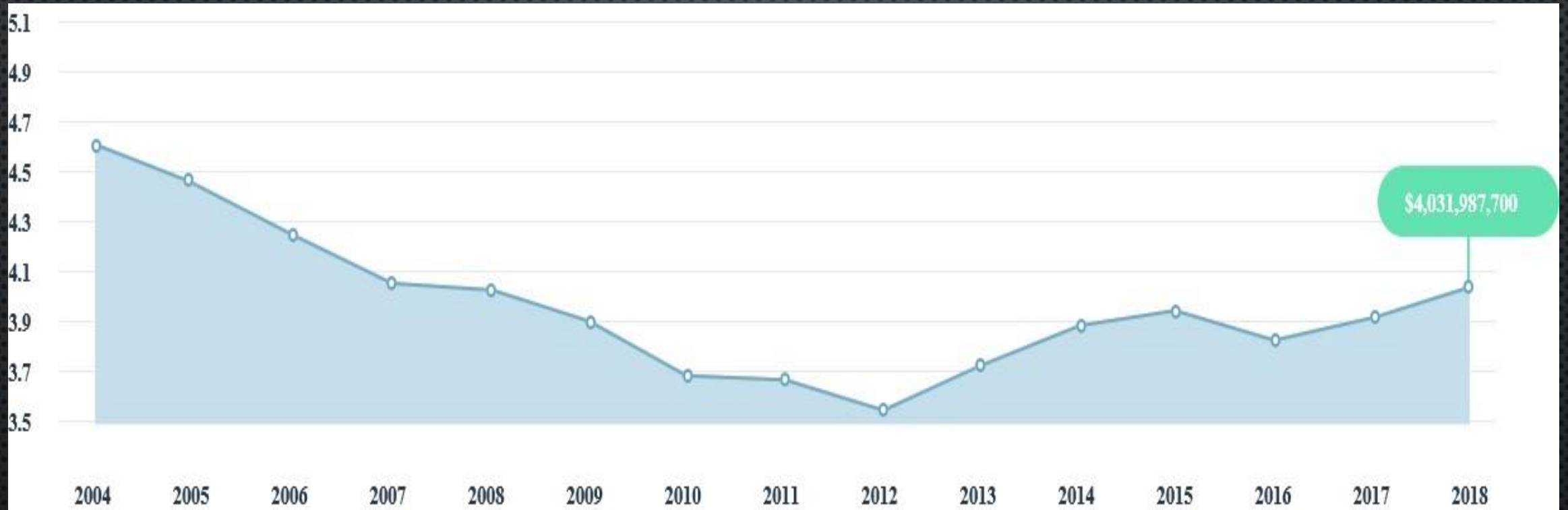
**3.5 %**

**\$142,569,750 in total payments**





# HISTORICAL TOTAL PAYMENTS



# HISTORICAL AVERAGE PAYMENTS





PAYMENTS ARE TYPICALLY RELATED  
TO SEVERITY OF OUTCOME





**Quadriplegic, Brain Damage,  
Lifelong Care**



**Minor Permanent  
Injury**



**Major Temporary  
Injury**



**Minor Temporary  
Injury**



**Major Permanent  
Injury**



**29.7 %  
Death**



**Significant Permanent  
Injury**



**Emotional Injury  
Only**



**Cannot Be Determined from  
Available Records**



**Insignificant Injury**





%

12.3

Quadriplegic, Brain Damage, Lifelong Care

**\$961,185**



%

18.7

Major Permanent Injury

**\$610,393**



%

18.4

Significant Permanent Injury

**\$450,356**



%

29.7

Death

**\$386,317**



%

7.8

Minor Permanent Injury

**\$242,524**

Major Temporary Injury

**\$227,063**



%

7.7

Emotional Injury Only

**\$128,821**



%

0.7

Outcome Unknown

**\$128,489**



%

0.6

Minor Temporary Injury

**\$87,252**



%

3.8

Insignificant Injury

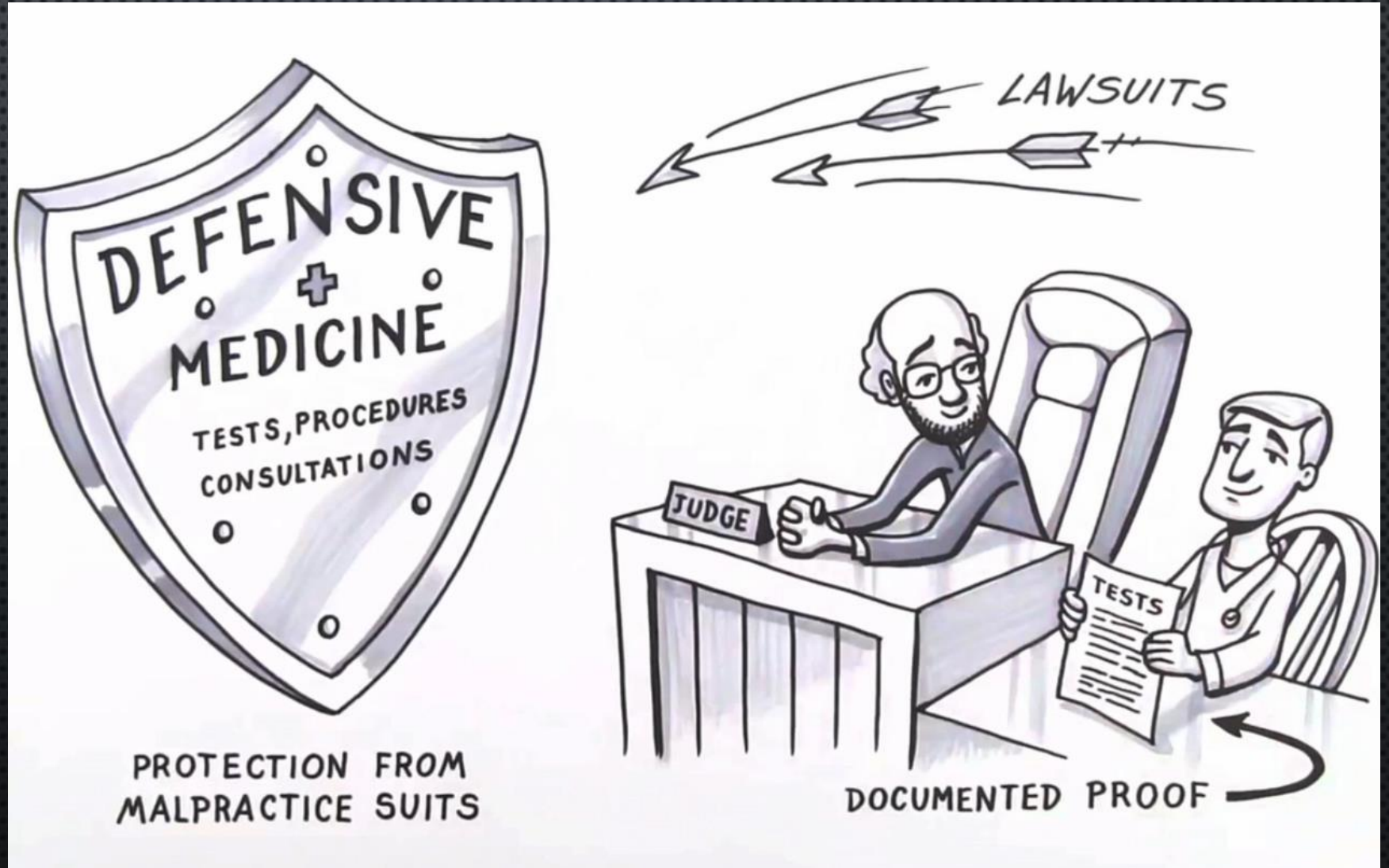
**\$40,030**



%

0.3

# DEFENSIVE MEDICINE





## 1974 LECTURE BY AMA GENERAL COUNSEL

“THE ONLY WAY TO AVOID  
MALPRACTICE LITIGATION IS NOT  
TO PERFORM SURGERY, NOT TO  
PRESCRIBE DRUGS, NOT TO  
TOUCH PATIENTS, AND TO PRAY  
A LOT.”

BUT HE RECOMMENDED THE  
PRACTICE OF DEFENSIVE  
MEDICINE, COMPARING IT TO  
DEFENSIVE DRIVING.



## BUT AT WHAT COST?

- WIDE RANGE OF \$56B - \$162B ANNUALLY
- FALSE POSITIVES
- UNNECESSARY SURGERY
- UNWITTINGLY CREATING A NEW LEGAL STANDARD OF CARE





# EMR – FRIEND OR FOE?



## OVERALL AFFECT ON PROVIDERS?

STRESS

FRUSTRATION

ANXIETY

DEPRESSION

BURNOUT

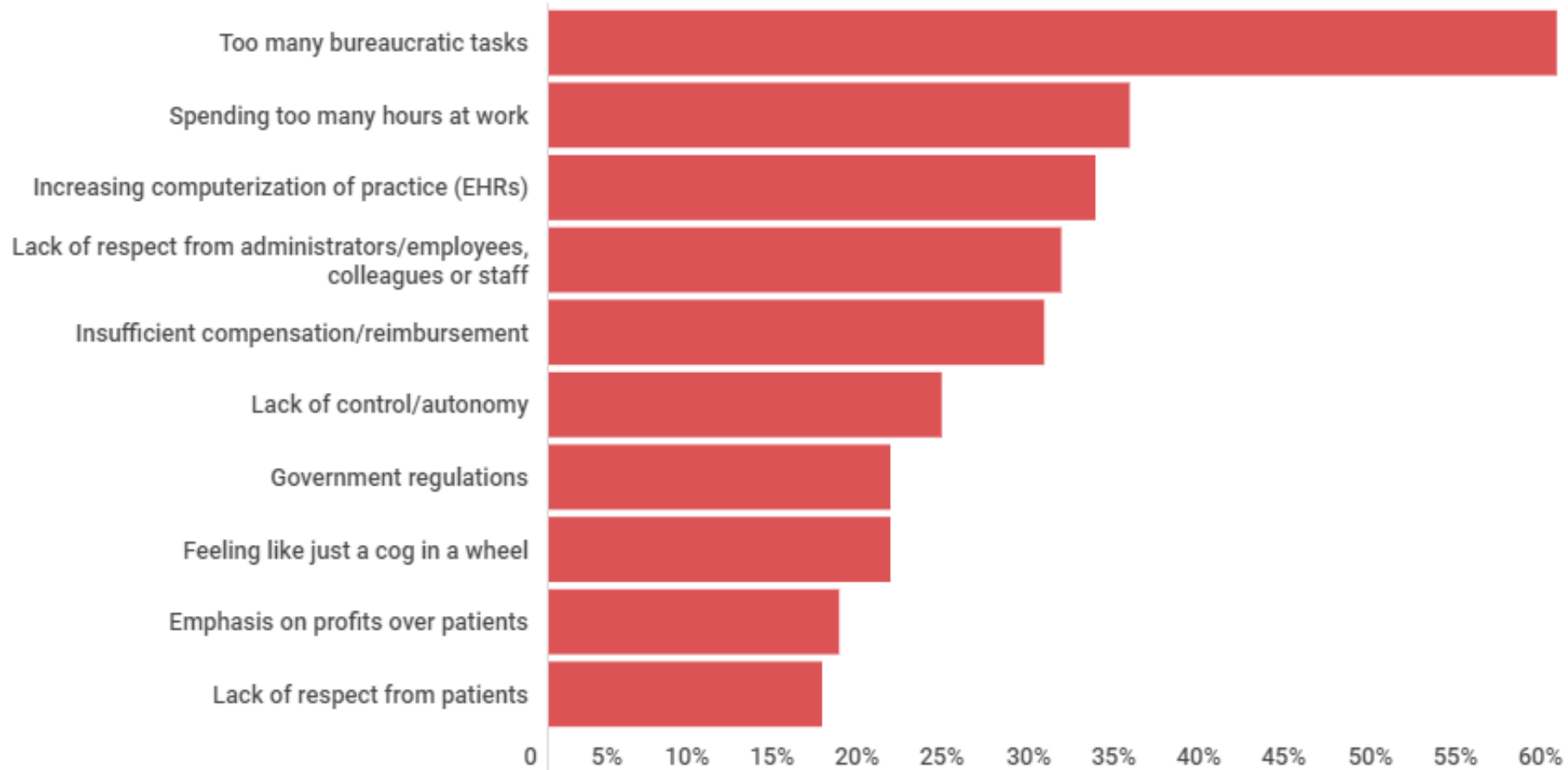




# MOST OFTEN CITED CAUSES

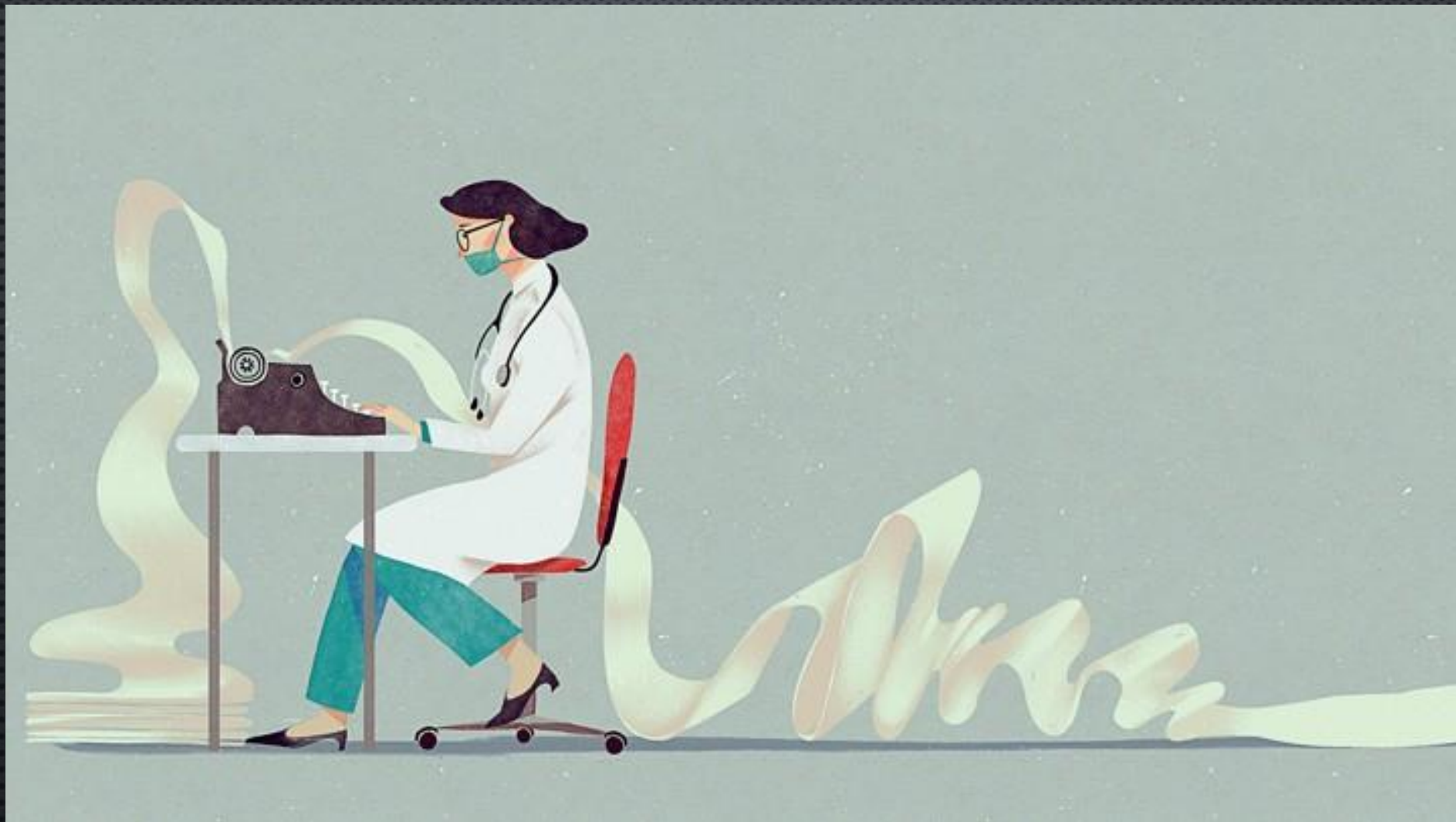


## Biggest contributors to burnout



Source: Medscape National Physician Burnout, Depression & Suicide Report 2019

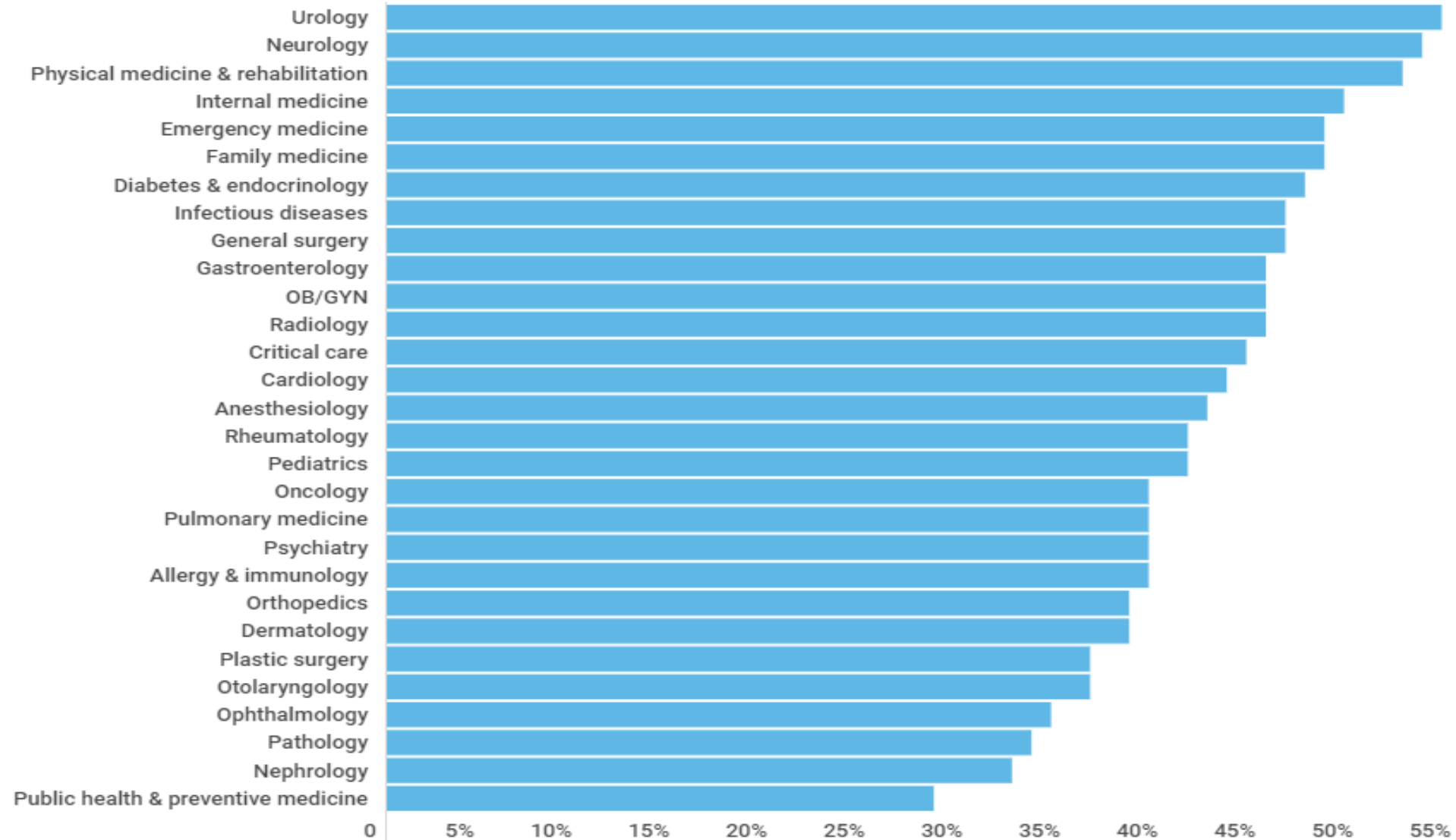




FOR EVERY HOUR OF CLINICAL FACE TIME SPENT WITH PATIENTS, AN ADDITIONAL TWO HOURS ARE CONSUMED BY ADMINISTRATIVE AND CLERICAL WORK.

[WWW.NCBI.NLM.NIH.GOV](http://WWW.NCBI.NLM.NIH.GOV)

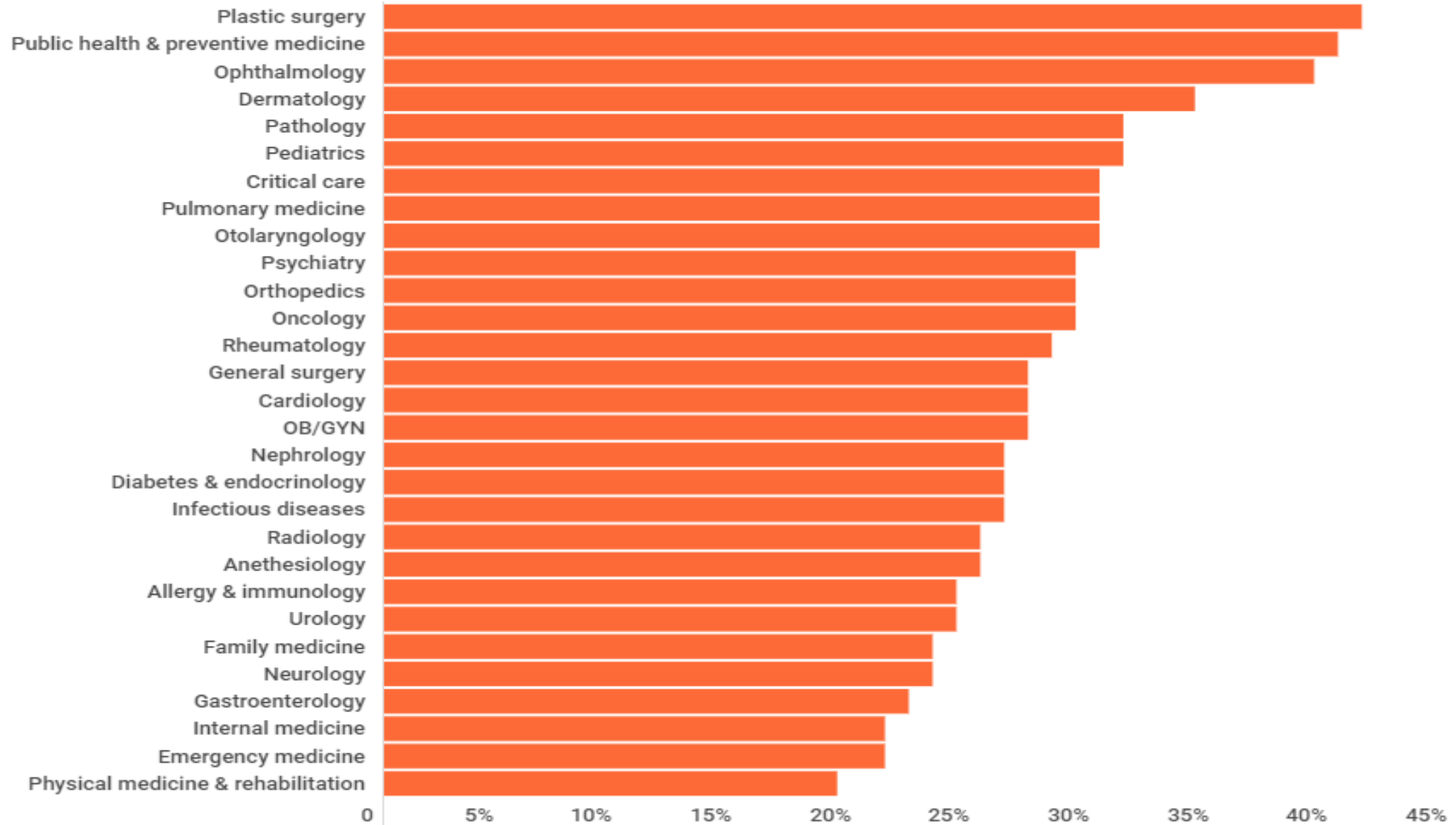
## Physician burnout by specialty



Source: Medscape National Physician Burnout, Depression & Suicide Report 2019



## Overall work happiness by specialty



Source: Medscape National Physician Burnout, Depression & Suicide Report 2019





QUESTIONS?

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