



PEDIATRICS POTPURRI

“Smells Like Risk Aversion!”

Bill Fiasco

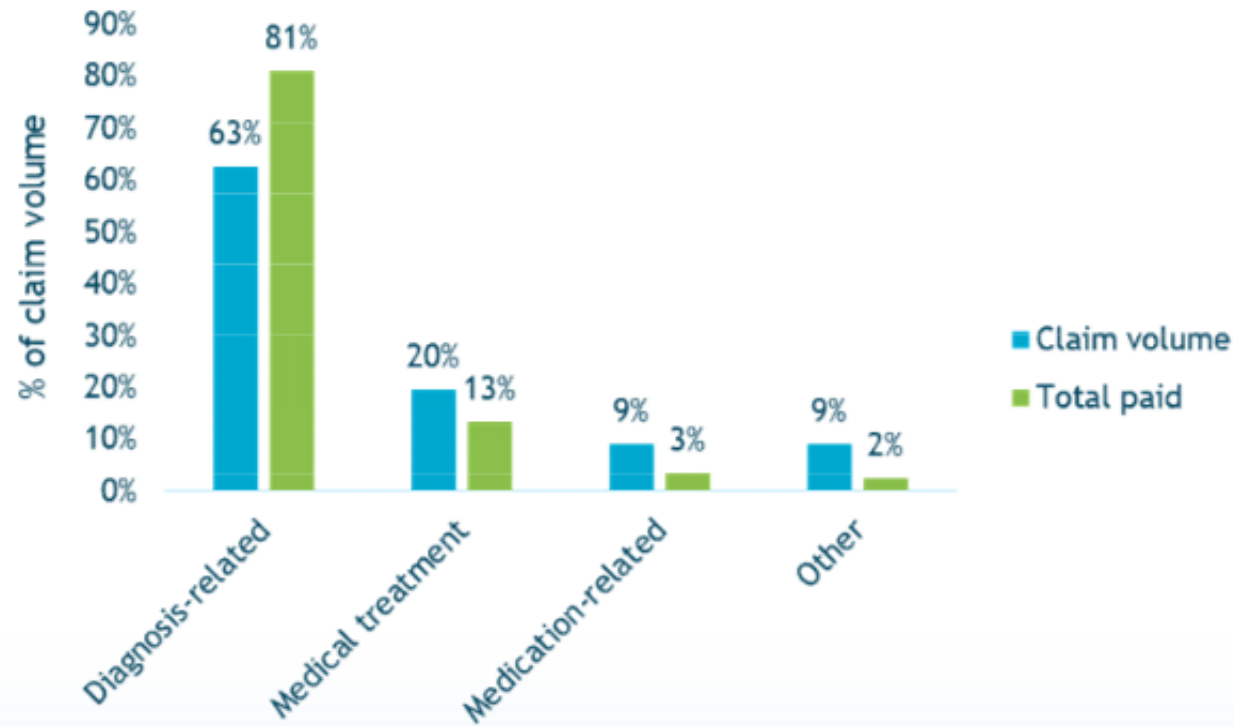
Atkinson, Haskins, Nellis, Brittingham, Gladd and Fiasco

▶ **Claims Data Snapshot**

Pediatrics

Pediatric claims closed between 2007 and 2016. All claims included in this analysis identify a pediatrician as the primary responsible service.

▶ Allegations & financial severity



Top allegation sub-categories/diagnoses/medications:

Diagnosis-related:

- Primarily delays in diagnosing cancers, and infections, including meningitis, appendicitis & pneumonia

Medical treatment:

- Management of a course of treatment, as well as performance of circumcisions

Medication-related:

- Medication regimen management & ordering errors

Three-fourths of all claims against pediatricians originated in the outpatient setting (office/clinic/ED).

▶ A note About MedPro Group data

MedPro Group has entered into a partnership with CRICO Strategies, a division of the Risk Management Foundation of the Harvard Medical Institutions. Using CRICO's sophisticated coding taxonomy to code claims data, MedPro Group is better able to identify clinical areas of risk vulnerability. All data in this report represent a snapshot of MedPro Group's experience with specialty-specific claims, including an analysis of risk factors that drive these claims.

crico | strategies

Disclaimer

This document should not be construed as medical or legal advice. Because the facts applicable to your situation may vary, or the laws applicable in your jurisdiction may differ, please contact your attorney or other professional advisors if you have any questions related to your legal or medical obligations or rights, state or federal laws, contract interpretation, or other legal questions.

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<https://www.medpro.com/documents/10502/5086243/Pediatrics.pdf>

Over an entire career, a
pediatrician's risk of
being sued ranges from...

21% to 28%.

<https://www.healio.com/family-medicine/practice-management/news/online/%7Bd3b682ca-2d69-4eca-bc8f-33064318274d%7D/10-medical-liability-myths-pediatricians-need-to-know>

IT'S THE SYSTEM, STUPID!

The Physician Insurers Association of America's review of closed pediatric malpractice cases in 2012 showed that 36% involved failure to diagnose and 16% were based on a claim of **inadequate communication** between the physician and the patient/family.

The Standard of Care

- STANDARD OF CARE --- SPECIALIST
- In [(diagnosing the condition of)/treating/(operating upon)] a patient, a specialist must use [his/her] best judgment and apply with **ordinary care** and diligence the knowledge and skill that is possessed and used by other specialists in good standing engaged in the same special field of practice at that time. This is a higher degree of knowledge and skill than that of a general practitioner. A specialist does not guarantee a cure and is not responsible for the lack of success unless that lack results from [his/her] failure to exercise ordinary care or from [his/her] lack of knowledge and skill possessed by other specialists in good standing in the same field.
- Oklahoma Uniform Jury Instruction 14.2

The deposition definition for our doctors:

What would a reasonable pediatrician do in the same set of circumstances?

SOURCES:

- Med School
- Residency
- Peer Reviewed Literature (incl. guidelines)
- Meetings
- Experience

RECIPE FOR A LAWSUIT

- DIAGNOSIS
- REFERRAL TO SPECIALISTS
- COMMUNICATION WITH FAMILY
- COMMUNICATION WITH OTHER PHYSICIANS/HCPs
- DOCUMENTATION
(COMMUNICATION WITH THE JURY)



DIAGNOSIS

“It’s your
differential.”



REFERRAL

- Pediatric Cardiology
- Pediatric Neurology
- Pediatric Surgery
- Pediatric Neurosurgery
- Pediatric Hematology/Oncology
- Pediatric Infectious Diseases

COMMUNICATIONS

- Family
- Other Providers (Within and without the context of the EMR)

DOCUMENTATION

DOCUMENTATION

- AUTO-POPULATION
- COPY AND PASTE
- WARNING BOXES AND WARNING FATIGUE
- DROP-DOWN MENUS
- METADATA



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- SHOWN EXTENSIVELY AT TRIAL, BEGINNING IN OPENING STATEMENT
- GENERATION CONTEMPORANEOUS WITH CARE INCREASES CREDIBILITY
- STRONG EVIDENCE OF INFORMED CONSENT
- STRONG EVIDENCE OF STATEMENTS MADE BY PROVIDERS/FAMILY
- STRONG EVIDENCE OF RECOMMENDATIONS AND INSTRUCTIONS
- NEVER 100% COMPLETE OR ACCURATE

CONSENT BY PROXY FOR NONURGENT PEDIATRIC CARE

<https://pediatrics.aappublications.org/content/139/2/e20163911>

Except as otherwise provided by law, no **person**, corporation, association, organization, state-supported institution, or individual employed by any of these entities may procure, solicit to perform, arrange for the performance of, perform surgical procedures, or perform a physical examination upon a minor or prescribe any prescription drugs to a minor without first obtaining a **written consent of a parent or legal guardian of the minor...**

...Except as otherwise provided by law, no hospital as defined in [Section 1-701 of Title 63](#) of the Oklahoma Statutes may permit surgical procedures to be performed upon a minor in its facilities without first having received a written consent from a parent or legal guardian of the minor...

...The provisions of this section shall not apply when it has been determined by a physician that an emergency exists and that it is necessary to perform such surgical procedures for the treatment of an injury, illness or drug abuse, or to save the life of the patient, or when such parent or other adult authorized by law to consent on behalf of a minor cannot be located or contacted after a **reasonably diligent effort**.

25 O.S. § 2004 (2017)

The easy fix.

PREAUTHORIZATION TO TREAT MINORS CONSENT FORM

For families who are ongoing patients of _____.
(pediatrician or health care facility)

It may be more convenient to have prior authorization in place so that medical care may be delivered directly to minors if a parent or legal guardian cannot be present prior to treatment. Please review the following authorization for treatment and complete the information if you want to authorize such treatment for your minor child(ren) in advance. Be advised that protected patient health information may be shared with the proxy to whom the right to consent has been delegated to facilitate informed decision making.

AUTHORIZATION

I (we) have the legal right to preauthorize this facility to deliver medical treatment to my (our) child(ren). I (we) request and authorize _____
(pediatrician or health care facility)

and its personnel to deliver medical care to my (our) child(ren) listed below:

Name: _____	DOB: _____
Name: _____	DOB: _____
Name: _____	DOB: _____
Name: _____	DOB: _____

LIMITATIONS

Identify any limitations on the kinds of medical services for which this authorization is given. If none, state "none."

Identify any limitations on the time frame for which this authorization is given. If none, state "none."

CONTACT INFORMATION

If the nature of the medical care is not routine, please try to contact me (us) regarding the health care of my (our) children at the following telephone number(s). If you are unable for any reason to contact me (us), you may rely on the proxy decision maker for consent.

Parent's Name: _____	Parent's Name: _____
Daytime Phone: _____	Daytime Phone: _____
Evening Phone: _____	Evening Phone: _____
Cell Phone: _____	Cell Phone: _____

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the ____ day of _____, 2____.

Parent or Legal Guardian

Parent or Legal Guardian

[If required by applicable law
NOTARIZATION

I, the undersigned, a Notary Public, do hereby certify that the persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the foregoing instrument as their free and voluntary act for the purposes set forth therein.

Given under my hand and seal this ____ day of _____, 2____.]



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