ProAssurance
Treated Fairly

provisions

COVID-19
Information Center for Policyholders & Agents

ProAssurance.com/COVID-19

See pages 2&3

*"Our mission of **Protecting Others** matters more today than ever before. Healthcare workers are on the front lines of fighting the COVID-19 virus.*

The last thing they need to worry about is the liability that might arise from the life-saving actions they are taking to save our communities."

Ned Rand
Chief Executive Officer
ProAssurance

ProVisions is ProAssurance's monthly agent magazine. If you or your colleagues do not receive the digital version, email **AskMarketing@ProAssurance.com**. Please include names and email addresses for everyone who would like to subscribe.

A Word from the CMO

Knowledge Sharing

There is an unfortunate irony in producing an entire issue featuring our conferences at a time when we cannot have conferences or similar gatherings because of global health conditions. ProAssurance is following federal, state, and local COVID-19 mandates. We have cancelled all in-person seminars, agency visits, meetings, and travel until further notice.

As we continue to manage this unprecedented situation, we're reminded of the main purpose of our Risk Resource and Claims conferences: to provide educational opportunities to our physician clients and top attorneys so they may, in turn, lead and educate their staff. This is one of the many ways our teams strive to impart value to our clients and partners.

All educational sessions at our Risk Resource conference are recorded. These lectures are the basis of our online seminars which will be developed and released to ProAssurance insureds in the coming months. Healthcare providers who take these seminars may earn CME credit.

ProAssurance educational resources, including our conferences and resulting materials, are part of the same goal: to empower our insureds. This means providing insureds with the resources to spot and mitigate risk, as well as to work with our claims staff to defend their medical care on the witness stand.

In this issue, we will give you an inside look at the sessions shared at each of our conferences. We will also share the online seminars produced from each of the sessions in future issues of *ProVisions*. Please be sure to share these materials with your clients as a way of providing them with extra value.

The educational resources resulting from our conferences will help you stay informed on trending topics in medicine, as well as the state of the claims environment. We're confident that the information presented through this and upcoming issues can help you have more open discussions with your clients regarding advances they hope to add to their practices. If you would like any additional materials to share during your sales conversations, our Risk Resource team is happy to assist.

Thank you!

Jeff Bowlby
Chief Marketing Officer
ProAssurance

Information in the conference summaries was taken directly from the presentations. The views and opinions given are those of the speakers, or participants in the audience, and do not necessarily represent those of ProAssurance.

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Treated Fairly

STAY UP-TO-DATE ON PROASSURANCE CRISIS SUPPORT ProAssurance.com/COVID-19

ProAssurance's Response to COVID-19

The situation regarding COVID-19 continues to change rapidly. Many healthcare professional liability issues that may affect healthcare liability insurance coverage are arising from the pandemic. ProAssurance is working to maintain resources to keep agents and insureds informed of these items at ProAssurance.com/COVID-19.

Professional Liability Issues

Telemedicine

Virtual visits and telehealth are covered under the ProAssurance policy within the scope of your practice and employment with the policyholder (likely your group or employer). If you wish to expand virtual visits and telehealth activities beyond your current employment, you may need additional coverage. Please contact your agent or service representative to confirm coverage when expanding virtual visits beyond your current practice situation.

Telemedicine Considerations

Physicians can do virtual visits and telemedicine, but consider reimbursement options. Staff should check with third party payors regarding reimbursement; with virtual visits, provide symptoms to consider and follow-up options, documenting this communication. Consider privacy and security with any virtual or telemedicine options. Those practicing in a state where a patient must sign their consent for telehealth before continuing treatment, consider ways the patient can return a signed form such as via mail, email, or photograph.

The Department of Health and Human Services (HHS) announced on March 17, 2020, a waiver of HIPAA penalties for good faith use of telemedicine. Read the HHS' Office for Civil Rights (OCR) Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency.

Staffing Flexibility

Physicians returning to practice from retirement on a temporary basis due to COVID-19 will not jeopardize their ProAssurance-issued premium waiver reporting endorsement.

In addition, temporary substitutes (locum tenens) for ProAssurance-insured physicians and insured paramedical employees are covered by the policy. Visit the relevant items within the Professional Liability Coverage Issues section for information.

Cancelling/Postponing Elective Procedures

Physicians should consider delaying elective surgery if the delay will not pose a risk to the patient. If a scheduled surgery is urgent but not emergent, surgeons should proceed at their discretion, taking into account infection risks to patients and staff as well as available physical resources. Even the unlikely event of an admission after outpatient surgery should be considered when allocating hospital resources. Consider making a joint decision with your patient where you explain the risks, benefits, and alternatives of the procedure and then document your thought process and ultimate decision.

We are monitoring state communications regularly. To view state-specific guidelines, visit the Coronavirus (COVID-19) Elective Procedures page.

Patient or Office Staff Exposure at the Practice

A ProAssurance professional liability policy may defend and indemnify insureds against claims by patients who allege they contracted the coronavirus at an office depending on the nature of the allegations. In general, our policies exclude coverage for any claim made by an employee, unless the claim arises from the employee's status as a patient of the practice.

Governmental Resources

We are continually updating sources for the latest guidelines in managing the COVID-19 pandemic from the CDC, OSHA, and CMS. Visit ProAssurance.com/COVID-19 to see these resources.

ProAssurance Service Updates

Non-Cancellation Policy

ProAssurance will suspend cancellations due to nonpayment of premium for active policies until June 30, 2020 for invoices due after April 1, 2020. Additionally, we will remain in compliance with the Departments of Insurance (DOI) for individual states which have guidance beginning before or ending after our own grace period. **NOTE:** Invoice mailing/automated payment plan debits already established will proceed as normal unless there is specific direction from your state's DOI; this is simply a notice your policy will not be cancelled due to nonpayment during the grace period.

We recognize the potential for financial hardship on medical practices during this crisis. ProAssurance will continue to monitor the situation and be ready to review this and all other accommodations accordingly. For a current list of relevant bulletins, please visit our COVID-19 Department of Insurance Bulletins page.

Loss Prevention Seminar Updates

Loss Prevention Seminar Updates

- **Public Seminar Cancellations**—Physician and practice administration professional public seminars have been cancelled through May 15, 2020. Visit the Risk Management Seminars and Events section for additional information.
- **New 2020 Online Seminar Now Available**—Those who registered for the cancelled live physician seminar—and who qualify for premium credit—may complete ***Hindsight 2020*** online for the same amount of credit. Insured physicians earn CME credit—and depending on their insurance program and state—potential premium credit through the new online seminar. A brief preview can be found on our Risk Resource YouTube site.

Senior Care On-Site Risk Assessments Postponed

On-site risk assessments and any associated staff education seminars are cancelled through May 31, 2020, and through June 30, 2020 for Senior Care facilities.

Claims

If you have any questions about a pending claim or lawsuit, please call your defense counsel or your ProAssurance claims representative. Your defense counsel and claims representative are working and can be reached at the numbers previously provided to you. Other than person-to-person contact, you should experience no difference in our availability and service during this period.

Additionally, if you need to reschedule any pending meeting, hearing, or trial due to your current workload, your own illness, or for any other reason, please contact your defense counsel or claims representative. Our Claims department can be reached at **877-778-2524.**

PRA Workforce Continuity

ProAssurance remains open 8:00 a.m. - 5:00 p.m. local time. Most employees are working remotely, but can still be reached in a timely manner.

Visit **ProAssurance.com/COVID-19** for frequent updates.

Department of Insurance COVID-19 Directives

We're monitoring state Departments of Insurance for directives regarding premium payment, cancellations or nonrenewal notice grace periods, and other bulletins or recommendations. While we have provided summary statements regarding information that may be pertinent to insureds and agents, please read the subject bulletins in their entirety for a full explanation of the scope of the directives, requests, and limitations outlined by each state.

ProAssurance.com/COVID-19-DOIBulletins

"For years we've been encouraging our most valued customers to join us for 2 days of rigorous risk resource presentations and discussions. This year in Las Vegas we were able to get our Claims Conference to follow the annual event. We were very happy with the new networking opportunities that developed."

Hayes Whiteside, MD, FACS
Chief Medical Officer

RISK RESOURCE CONFERENCE • SESSION 1

Crisis Management Briefings: Emergency Management

The speaker, **James Kendig**, discussed the importance of emergency plans for a wide range of situations in this pre-COVID-19 presentation.

All facilities must have a plan in place and run drills to assess it, because there will always be details you never thought of. For example, James shared a story about an active shooter who entered a hospital kitchen, causing the staff to flee—leaving the pizzas from the lunch menu rapidly burning in the oven. Suddenly, there were two emergencies to address instead of one.

Hospitals are also in a unique position because they must prepare to respond to crisis events that happen elsewhere. Often the first notice that an adverse event has happened is injured patients being dropped off at the emergency room. That makes knowing what to do and being able to respond quickly literally a life-or-death matter. James shared valuable resources and considerations to help any facility, regardless of size, be prepared.

Points to Consider

- As weather becomes more unpredictable, facilities that have never had to consider a full evacuation will become crisis sites. Have plans for sheltering in place and evacuation, even if you think it's unlikely you'll use them.
- When practicing your drills, think about vulnerable people (seeing/hearing impaired, limited English, etc.) who might be in the building. Make sure they can also get to safety.
- If a contaminated patient moves through the facility, the entire building can get shut down. Separate entrances for injured and sick patients, as well as a process to track where patients are in the building, can help.
- Designate someone to stay on top of current regulations to make sure you're up to date.
- If local law enforcement declares part of a building a crime scene, it could trap people on the other side of the restricted area. Work with local law enforcement in advance to create a plan so people can move, get lunch, etc., during an investigation.
- Many similar facilities share staff, but don't have standardized codes. That can delay response times or cause undue panic.
- Many people could self-evacuate in an emergency, but most patients in a hospital have no shoes. Include slippers or other inexpensive, protective footwear in your emergency go-bag.

Meet the Speaker

James Kendig, MS, CHSP, CHCM, CHEM, LHRM

James Kendig is the field director for the Life Safety Code Surveyors/Engineers at The Joint Commission. In this role, he oversees half of the surveyor cadre who specialize in surveying The Joint Commission's life safety, environment of care, and emergency management standards. James holds a bachelor's and master's degree from West Chester University, West Chester, Pennsylvania.

Additional Resources

Omnibus Burden Reduction Rule—Passed September 26, 2019, the final rule updates the emergency preparedness requirements for hospitals.

Federal Emergency Management Institute (FEMA)—Free disaster preparedness courses

Center for Domestic Preparedness—Free online training and lists of in-person courses

RISK RESOURCE CONFERENCE • SESSION 2

Caught on Tape: Strategies for Mitigating Damages in the Age of Cellphones and Granny Cams

We have all seen the "dancing doc" and countless stories of professionals making disparaging remarks that were caught on hidden cameras. In a medical setting, "granny cams," cell phones tucked into a bag, or even recording devices hidden on the patient can capture what is being said and done at any time. In some cases, these recordings can also prove medical care or patient checks were not being performed as they should be.

Leslie Smith and **Constance Endelicato** discussed examples of how recordings in a medical setting impacted malpractice cases—and how physicians must address this new concern as part of their regular medical practice. In addition to protecting their own privacy, physicians must consider the privacy of others in their facility. Recordings made without consent could raise HIPAA concerns for those in the background, and could be a violation of federal privacy rights.

While the idea that a patient or a family member recording you at any time raises new concern about privacy and consent, the issues of professionalism and attitude toward your work have not changed. "If you're being disparaging, if your heart is not in it, can you really do the best job? If you are not positively focused, you are not likely to provide quality care," noted Constance during the presentation. This is a strong reminder for all of us that it only takes a few seconds caught on tape to forever change the way the world sees you.

Questions from the Audience

Q: A physician mentioned his concerns with patients taking phone calls during exams, since things could be overheard.

A: The speakers recommended allowing patients to make phone calls or to record instructions in holding areas, but not in the exam room, to maximize other patients' privacy.

Q: Will physicians eventually be required to record every interaction with patients?

A: Probably not, but as these devices continue to be a major part of life, patient consent will continue to be at the front and center of all discussions.

Q: A physician mentioned that while patient consent is important, physicians have often not given their consent to be recorded. He also expressed concerns about a video being edited to look unflattering.

A: Endelicato shared that she kept a video from being used at trial because of this. She and Smith agreed that if it was to be shared, the video should be in the raw form so the concerning clip could be put into context.

Q: Physicians can receive revealing photos from patients asking a question. These may be appropriate in context but if the photos are found, things can get skewed. What do the speakers recommend?

A: Restrict messages like this to the patient portal. Not only does this help keep things in context, but it helps ensure those photos will stay private.

Q: A patient comes to an appointment and the doctor isn't there. Do you send photos of their injury to the physician for review?

A: There are several things to consider here. Has the patient given consent? Has staff been trained to properly take these photos? To prevent these scenarios, have someone on call, or provide a referral instead.

Meet the Speakers

Leslie Smith, JD, MPH

Leslie Smith has a Juris Doctorate from UCLA School of Law and a Master in Public Health from UNLV. Leslie has worked in healthcare claims, risk management, quality improvement, and patient safety for several years. She has handled high exposure claims for hospital systems, small rural hospitals, and physicians. Currently, Leslie works for ProAssurance handling physician professional liability claims.

Constance A. Endelicato, JD, CPHRM

Constance A. Endelicato is an accomplished trial lawyer with over 30 years of litigation experience in defending professional liability claims. She is experienced in handling class actions, mass tort litigation, appellate and federal matters. Constance is admitted to practice in the United States District Court, Central, Northern, and Southern Districts of California.

Additional Resources

Laws on "granny cams"

Federal—No laws or guidance as of yet

Texas, **Washington**, **Illinois**—Required if requested by resident; resident absorbs costs; signage required

Pennsylvania—Resident may install hidden camera without faculty knowledge

New Jersey—"Safe Care Cam Program" allows patients to install micro-cams when abuse/neglect is suspected

Florida—No cameras anywhere in a nursing home

RISK RESOURCE CONFERENCE • SESSION 3

Cannabis: History, Trends, Tensions

Difference Between Hemp and Marijuana

Hemp
Can grow up to 20 feet
.3% or less of THC
No psychoactive properties
Requires little care
Grows easily in most climates
Used to make rope, fabric, soaps, and food

Marijuana
Shorter, bush-like plant
Between 5-35% THC
Psychoactive properties
Requires much care
Susceptible to cross-pollination
Used for medicinal and recreational purposes

The United States is the only country which designates between hemp and marijuana (other countries simply use the term "cannabis"), which adds an additional layer of consideration as products like CBD oil are produced and become more widespread. It also places unique barriers on medical research into the potential therapeutic properties of cannabis.

Federally, hemp is considered an agricultural product, but marijuana is still considered a schedule 1 narcotic. This means that while physicians have a constitutionally protected right to discuss marijuana with patients, they may not legally prescribe or recommend its use. As recreational and medical marijuana use is legalized at the state level, this creates a difficult environment for physicians. How do you respect your patient's state rights without violating your federal obligations?

The answers to how to address these increasingly common scenarios are not clear. Developing and documenting a comprehensive plan will help protect individual physicians and facilities as they continue to navigate this rocky territory.

Federal Regulations

The FDA has approved only one cannabis-derived and three synthetic, cannabis-related drug products, which are only available with a prescription from licensed healthcare providers. There are not other FDA-approved drug products that contain CBD.

CBD, or cannabidiol, products may be sold depending on marketed use, but may not be labeled as a drug, and must meet the definition of hemp in relation to the THC level. CBD products, such as hemp seeds and powder, cannot be added to food that are sold in interstate commerce. Additionally, CBD products cannot be sold as dietary supplements, but rather identified as herbal.

Questions from the Audience

Q: Where will we be in 10-15 years?

A: At some point, marijuana will be reclassified from Schedule 1. The timing will vary based on the next election. Several bills relaxing the restrictions on marijuana have passed in the House but are not moving forward in the Senate. Reclassifying marijuana will likely open the floodgates of medical research.

Q: Discuss some of the adverse effects of heavy marijuana use at a young age.

A: Evidence suggests marijuana can impact cognitive development; when that becomes detrimental has not been studied. Right now, this relies on kids admitting they use it, how much, and seeing if they have behavioral issues.

Q: Patients ask about using CBD oil. How do I answer?

A: We don't have much research on CBD oil in the United States, but a literary review for research from other countries might be helpful. CBD is not regulated by the FDA, so unless it's labeled well and from a reliable manufacturer, there may be issues. We need more regulation, testing, and research into this issue.

Meet the Speaker

Michelle Hackley, RN, Esq., CPHRM

Michelle Hackley is the associate director of risk management at Cedars-Sinai Medical Center in Los Angeles, California. She has been a licensed attorney for over 15 years. Prior to joining Cedars-Sinai in 2015, she worked as both a risk manager and registered nurse in the University of California health system. Michelle has been a registered nurse for over 22 years.

Additional Resources

House votes in favor of protecting state marijuana laws from federal interference

The Farm Bill, hemp legalization and the status of CBD: An explainer

Scientific Data and Information about Products Containing Cannabis or Cannabis-Derived Compounds; Public Hearing and Request for Comments

Conant v. Walters—Confirmed barring physicians from discussing marijuana with patients is a violation of first amendment rights. However, prescribing or dispensing these products violates federal law.

RISK RESOURCE CONFERENCE • SESSION 4

LGBTQIA+ Healthcare in Action

The terminology and awareness surrounding the LGBTQIA+ community has changed significantly in the past few years, leaving some physicians unsure about the "correct" way to manage things during appointments. Physicians do not need to change their personal views on LGBTQIA+ topics, but do need to approach these patients from a place of service. The ultimate goal of every medical encounter should be a positive medical outcome.

Taking preventative steps to ensure patients have a positive experience is always preferable than taking corrective measures after the fact.

Having training in place can help staff get on the same page about what is expected of them and where they can turn to get assistance. Those with the least amount of training tend to be the personnel that have the greatest difficulty—think dietary, security, and similar support roles. People in these roles tend to have a great deal of face time with patients, which opens the door for negative interactions to occur.

Working together to create an atmosphere of respect and consideration will help ensure that members of the LGBTQIA+ community have a positive experience when they need medical care.

Questions from the Audience

Q: An ob-gyn received a call from a transgender female looking for an appointment. Are they qualified to meet with this person?

A: Yes. If that person has had gender affirming surgery they will need gynecological follow-up care.

Q: Do you think certain specialties or people who have practiced longer are more likely to change their minds about these issues?

A: We're all capable of change.

Q: Why is body integrity disorder considered a mental disorder, but gender dysphoria isn't?

A: There was a time when both were considered mental disorders, but there has been more research which has helped to change the definitions. Research indicates that gender dysphoria has been around for centuries.

Gender dysphoria is still carefully managed, regardless of its classification. Treatment is recommended after persistent concerns have been documented. You don't recommend surgery after you meet a patient for the first time.

Q: Help distinguish between gender identity disorder and cross-dressing.

A: Gender expression may not match someone's gender identity. Someone may present male but still consider themselves female. Gender identity disorder is when someone feels their physical self does not match their sense of self. Cross-dressing is when someone, for whatever reason, chooses to wear items commonly associated with the opposite of their biological gender.

Q: How do you handle room assignments for transgender or intersex people?

A: Try to put them in a solo room. If that's not available, ask the patient where they would feel more comfortable. If, after you place the patient, their roommate becomes uncomfortable, offer to move the roommate to a new room.

Meet the Speaker

Dr. Kristie Overstreet, MA, PhD

Dr. Kristie Overstreet is a clinical sexologist, psychotherapist, and consultant who specializes in LGBTQIA+ healthcare. Dr. Kristie holds a Ph.D. in Clinical Sexology, a Master of Arts in Professional Counseling, and a Bachelor of Science in Biology. She also works as a speaker and trainer who educates healthcare providers on how to care for transgender clients with dignity. She created the Transgender Healthcare Dignity Model training and certification program for medical and behavioral health providers.

Additional Resources

Free Toolkit—Text Dr. Kristie Overstreet at 33777. Enter PRO2020

LGBT Health Disparities

Wellness with Dignity

Trans Student Educational Resources—The Gender Unicorn

REMINDER

Download Your Clients' Seminar Participation

Seminar Activity Reporting is a service inside the secure services portal (SSP) where agents can see the risk management seminars your clients are taking. This includes live and online seminars for physicians and practice administration professionals. Data also includes seminars insureds have registered for, but have not yet taken.

To see reports for your client, sign in and select "Seminar Activity Reporting" from the "Seminars" menu. Filtering options are available so you can view different types of seminars, or a specific program. You can also export these reports as an Excel file.

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RISK RESOURCE CONFERENCE • SESSION 5

The Value of Artificial Intelligence in Healthcare

What happens when Silicon Valley's "move fast and break things" meets healthcare's "do no harm"?

Artificial intelligence (AI), is becoming an increasingly popular tool to help physicians reach a diagnosis more quickly. However, those interested in embracing this new technology have a few things to consider. Healthcare AI programs do not undergo clinical testing, and apps are not regulated by the FDA. These factors put more responsibility on the shoulders of healthcare providers to evaluate which tools they can and should incorporate into their practice.

Forbes anticipates the healthcare AI market will hit $6.6 billion by 2026. Healthcare facilities are adopting this technology at an incredible rate. But, if physicians don't know how AI works, or what data is being used to fuel the algorithms, they will have trouble recommending programs and apps to patients. And, if doctors do not know what data was used to set up an AI program, they cannot determine if the program's diagnoses make are accurate and reliable.

The role of the patient is another important step to consider when moving toward the widespread use of AI in healthcare. What does the patient want? Would adopting this technology better serve their needs? Understanding what AI programs are capable of, and where limitations still exist, is essential to having an honest dialogue regarding their impact on the medical industry.

Questions from the Audience

Q: A physician noted much of the coverage around healthcare AI is unfair. People are quick to point out when an AI program fails, but are not so quick to point out when the fundamentals of medicine fail. Physicians use mental algorithms to make diagnoses every day. AI does the same thing, just faster.

A: *Humans make mistakes. We know that. But AI isn't perfect either. This presentation is not for or against healthcare AI; rather it's designed to present the issues and encourage physicians to think about how implementing this technology can impact how you practice and the risks.*

Q: The main problem is not failure to diagnose. Artificial intelligence can improve diagnosis, but diagnosis means different things to different people. You need a human to determine a course of treatment. The main issue is getting people to eat better, move more, and worry less. How does AI help?

A: *Artificial intelligence can monitor vitals in real time and take action or recommend preventative action. It can also be used to monitor a patient and alert caregivers when assistance is needed—not just in a hospital setting but in the patient's home. An AI program or app can tell patients when they need to see a physician.*

Meet the Speaker

Mario Giannettino, Esq.

Mario is a partner at Kaufman Borgeest & Ryan LLP in the firm's medical malpractice, general litigation, and nursing home and long-term care practice groups. He represents a range of healthcare professionals and providers including residential healthcare and assisted living facilities, physicians, physician's assistants, hospitals, and home health agencies.

Additional Resources

Artificial Intelligence in Healthcare Market by Offering

UnitedHealth Algorithm Accused of Racial Bias Gets Scrutiny from NY Regulators

Malicious Tampering of 3D Medical Imagery using Deep Learning

Underwriting Process Reminders

Please make note of the following underwriting policies to ensure efficient processing of all renewals and new business submissions.

Decide where to send renewals. Currently, ProAssurance's renewal process is to directly mail renewal applications to our insureds, unless the agency elects otherwise. While this helps eliminate the burden of the agency to collect this information, it can cause communication gaps with our agents. If this is an issue for your agency, you can update the process so you receive all renewal applications, rather than your clients. However, it will be your responsibility to ensure all applications are returned in time to process the renewal—including any part-time credits associated with that account.

- **Send updated practice information.** When an underwriter renews an account, it is imperative they obtain additional practice information as well as updated loss runs. For accounts with open claim activity at the time coverage is written, or when writing occurrence coverage, we require an updated loss run at each renewal review to evaluate the status of open activity or for newly reported activity on the prior occurrence policy. Failure to provide updated information can result in a non-renewal.
- **Use the submissions cover sheet.** The new submissions coversheet helps ensure timely responses on submissions and eliminate back-and-forth requests on documents necessary for an underwriter to accurately assess the risk's exposure. While many agencies have made great strides toward the use of the coversheet, its adoption is below our anticipated level. We would like to urge our partners to use this form to help provide superior customer service.

If you have any questions, please contact your market manager. Thank you!

RISK RESOURCE CONFERENCE • SESSION 6

A Comprehensive Approach to Improving Physician Wellness

Well-being is defined as you or your environment having the resources to address your needs. Adverse events in life can push you out of this state and into a state of disruption. When that happens, it's important to get help to make your way back to a calm, productive, healthy state.

One hundred years ago, most of our immediate threats were still environmental, so the human stress response, often referred to as "fight or flight," is still set up to respond to more physically threatening concerns. Unfortunately, the most common threats today are emotional and psychological, so in many cases, our stress responses are compounding our levels of stress. When your work is what is causing those emotional or psychological triggers, it can lead to feelings of burnout—a condition which looks and functions much like depression. Since we can't pop out our "work brain" when we get home, that stress can cause issues in other parts of our lives as well.

While everyone is at risk of burnout, physicians and other healthcare providers are seeing particularly high levels throughout their profession. The work of this session's speaker is directed toward understanding what coping mechanisms and interventions can help once a physician starts exhibiting signs of burnout.

The key to addressing burnout is making people more resilient by teaching them how to reduce stress as much as possible so they may be effective in their work. As a society, and within healthcare in particular, people need to become more sophisticated in understanding how changes can impact the whole team. Sometimes, efforts to reduce stress for one group can create inadvertent stresses for another. For example, altering check-in procedures to provide the physician with more information can cause increased stress for front desk staff.

Open communication and regular check-ins are essential tools that will help address the physician burnout crisis.

Questions from the Audience

Q: Pamela Wible provides similar guidance with her ideal clinic approach, and runs a crisis hotline for physicians. She notes that having autonomy instead of working for a corporation can help with burnout, and that this approach is most effective with younger physicians.

A: *This is a strong approach, and idealizing your workflow can certainly help with burnout. Working autonomously also helps, but this option may not be available to many as healthcare continues to consolidate. Finding ways to manage within your current work situation is essential to treating burnout more immediately.*

Q: A physician noted he had read approximately that 60 percent of physicians are burned out, which is an epidemic. He believes information overload is a major contributor to the problem. Medicine has become big business. We need to get providers back to the bedside to improve patient safety and get them back to their calling.

A: *We're pushing people into work they weren't meant to be doing and tasks that are hard to get excited about. Senior leaders need to think about how to take advantage of this highly skilled workforce. Letting them plug into the tasks they were trained to do helps with focus.*

There are a wide variety of things which can cause burnout, but once a physician has become burned out, you need to change their surroundings to see improvement.

Meet the Speaker

David A. Rogers, MD, MHPE, FACS, FAAP

Dr. David A. Rogers is a professor in the Department of Surgery at the University of Alabama at Birmingham (UAB) School of Medicine, with secondary appointments in the Departments of Medical Education and Pediatrics and an adjunct appointment in the Collat School of Business. He has served as the senior associate dean of faculty affairs and professional development at the School of Medicine since 2013, and in this role, as the co-director of the UAB Healthcare Leadership Academy. He was named the UAB Medicine Chief Wellness Officer and was appointed to the ProAssurance Chair of Physician Wellness in 2018.

Additional Resources

Executive leadership and physician well-being: Nine organizational strategies to promote engagement and reduce burnout

Physician burnout and well-being: A systematic review and framework for action

A multifaceted systems approach to addressing stress within health professions education and beyond

CLAIMS CONFERENCE • SESSION 1

Buckle Up for the Bumpy Ride

Tips from Jury Consultants to Navigate "Social Inflation" Turbulence

"Social inflation" is being used to describe the recent uptick in severe malpractice verdicts. Juries are behaving in unprecedented ways, resulting in unpredictable and often exaggerated courtroom results. So what is defense counsel seeing, and how are they responding to this rapid shift? Three speakers responded.

Ted Prosise

Claim severity has been increasing for some time, but there has been an explosion lately. The increasing role of younger people on juries is changing the dynamics. They are articulate, motivated, tend to speak rapidly and from the point of view of the plaintiff, and control the rest of the jury with a high degree of credibility. They see their "vote" on a jury as a way to do what is right. Perceived conduct of the defendant has a huge impact on these individuals.

Preparing a witness correctly for deposition is very important in this increasingly aggressive environment. This will help to control the testimony up front. Physicians that can show the difference between medical care and "medical caring" will fare better. These are the physicians who show concern for the patient and their families, and who are able to explain the medicine in their own words.

Mark deTurck

We are living in an information revolution; people who grew up with three TV channels are now online. Jurors want to "get it right" so they are going online to look up information, which makes them feel empowered. They are more versed in the legal system, and will consider items like attorney fees during deliberation.

Social turbulence and a mistrust of traditional systems makes jurors feel as though the system is polarized. In general Americans are more anxious and fearful, with one of the top fears being government corruption. They want to "get it right" and prioritize protecting public safety.

Prepare jurors and help them understand that a large verdict is not the only way to send a powerful message—a not guilty verdict can too. It is rare to flip a plaintiff's juror, but the defense can provide counterarguments for jurors that are receptive to the defendant's position.

Michael Gross

The most important event in a lawsuit used to be the trial; now it's the deposition. The old defense goal was to "get through" the deposition and then "fix it at trial." Now, because the deposition is video taped, plaintiffs will use the worst clips over and over. The new goal should be practicing for the deposition, and helping the defendant put their story in their own words, rather than having them memorize what their attorney wants them to say.

Emotions should not drive the testimony. Authentic witnesses who speak from the heart and work to explain why they performed the medical acts they did, and why those acts were reasonable, will prevail. It's no longer "say as little as possible" but working to take the time to explain things and use the defendant's authentic voice. Ultimately, it's the physician's case.

Defendant physicians are more invested than we could ever be. Educate them on their rights, give them the tools, and give them the opportunity to defend themselves on the witness stand.

Meet the Speakers

Ted Prosise, PhD
Tsongas

As a senior consultant for Tsongas, Ted Prosise works closely with clients to build trial strategy, develop case stories and themes, prepare witnesses for deposition and trial, formulate jury selection strategy, enhance opening statement and closing argument, develop graphics and visual advocacy, conduct shadow juries, and design and implement mock trials and focus group exercises.

Mark deTurck, PhD
R&D Strategic Solutions

Mark deTurck is a former professor of communication at Cornell University where he researched jury decision-making, attitude-change theory, and social cognition (how people process information, make decisions, and act on information. He has published dozens of articles and chapters on these topics. His research on jury decision-making has won national awards.

Michael Gross, Esq.
CogentEdge

Michael Gross is an AV® Martindale-Hubbell Rated Attorney and Southwest Super Lawyer (2009 to 2015) and has litigated high profile defense and plaintiff cases for 34 years. He is now the founder and managing director of CogentEdge, the national leader in strategic witness preparation. CogentEdge's affiliated attorneys utilize a highly structured, disciplined process to prepare witnesses for litigation testimony.

Additional Resource

The emotional impact of being a defendant

CLAIMS CONFERENCE • SESSION 2

What's Up with MPL?

Willis Towers Watson (Willis) collects data from over 30 companies which specialize in medical professional liability insurance and uses it to determine ongoing trends within the industry. Overall, the data reveals a shift in the market, though this is just starting to emerge. MPL is a long-tail business, and since premiums are held by insurers for such a long length of time, investments have a large impact on company profitability. Much of what is keeping companies profitable is investment income, not underwriting profit.

The year 2018 was the first time in the Willis data period that the industry combined ratio went over 100 percent. Up to this point, premium has been declining, and calendar year loss ratios have been on the rise. Expenses are also increasing, but not significantly. Despite this scenario, many companies are carrying a significant surplus. That surplus is slowing the overall hardening of the market.

Data indicates we are seeing pressure on the market, but that the most significant changes are yet to come.

Reliances and Limitations of Facts

- Most of the information obtained is from annual statements of selected companies over time.
- The material summarizes the experience of companies writing primarily medical professional liability experience; however, no separate line of business analysis is included.
- Although many of the summaries of data are standard industry statistics, some of the data may require background and context.

Meet the Speaker

James D. Hurley, ACAS, MAAA

James D. Hurley is a consulting actuary with Willis Towers Watson. He is an associate of the Casualty Actuarial Society and a member of the American Academy of Actuaries. He holds a bachelor of science in actuarial science from The College of Insurance in New York City. James' approximately 30 years of consulting experience in the insurance industry has been primarily focused on medical professional liability issues.

Additional Resource

https://www.willistowerswatson.com/en-US/Insights/2019/11/insurance-marketplace-realities-2019-fall-update-executive-summary

CLAIMS CONFERENCE • SESSION 3

Cardiovascular Risk Factors, Comorbidities, and Outcomes

"Comorbidity" refers specifically to patients with multiple risk factors—or those less likely to see the benefits of and more likely to experience complications during treatment. Cardiovascular risks play heavily into the current risk environment, and are things physicians must consider when prescribing any type of treatment. Comorbidities tend to cluster in people, making it more difficult to determine their level of risk. Very high-risk patients may also have already had an adverse event, but are at risk for experiencing another, which creates treatment and tracking complications.

Risk is measured on a continuum, rather than specific events. For example, if someone with clogged arteries experiences a heart attack, this is not a great jump in risk as this patient was already more likely to experience an adverse event. When medical professionals talk about the risk reduction ratio, they are referring to the number of people they would need to treat to statistically prevent an adverse event. If a patient has a high comorbidity rate, it will take significantly more treatment to improve that statistic.

Meet the Speaker

Vera A. Bittner, MD, MSPH, University of Alabama at Birmingham (UAB)

Vera A. Bittner, professor of medicine and section head of General Cardiology, Prevention, and Imaging, has been on faculty at UAB since 1987. She currently serves as quality officer for UAB Hospital, is a member of the Provider Integration Network, and serves as medical director of the Coronary Care Unit and the Cardiopulmonary Rehabilitation Program. Vera has been listed in Best Doctors of America since 2009.

Additional Resources

Centers for Disease Control and Prevention: Heart Disease

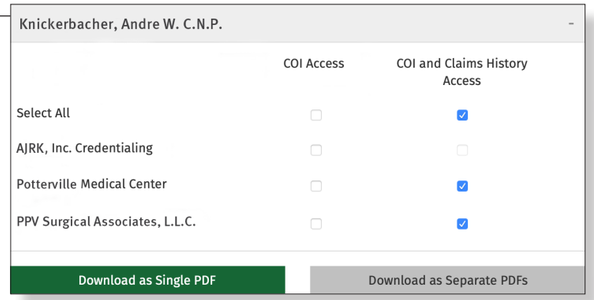
Use of Risk Assessment Tools to Guide Decision-Making in the Primary Prevention of Atherosclerotic Cardiovascular Disease

Guideline on the Management of Blood Cholesterol

THE HOMEPAGE

Request Claims History Report Authorizations Online

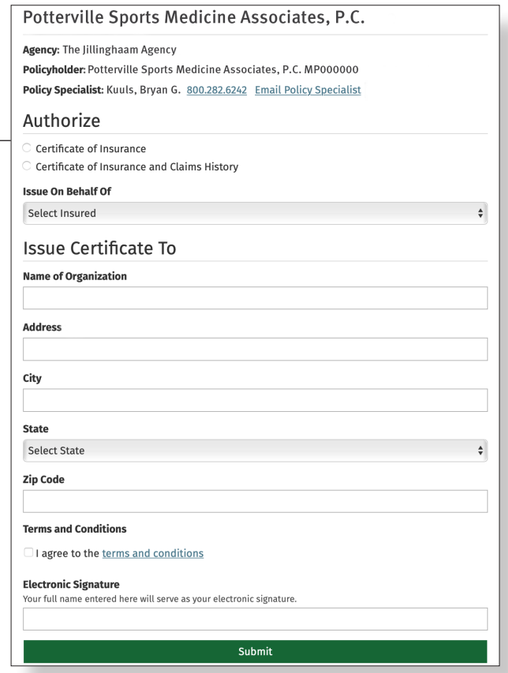
Download Claims History Reports Online



As a reminder, October 2019's Homepage column announced a new feature in our secure services portal (SSP): agents, policyholders, and other SSP users can now download simple claims history reports online. Here are the basics:

- The claims history report download was added to the certificate of insurance (COI) download screen. You get there by signing into the SSP, then selecting "Certificates of Insurance and Claims History" under the "Credentialing" menu.
- Previously there was one checkbox for COIs; now there is a box for both COIs and claims history reports. You can download just the COI, or the COI and claims history report together, but you cannot download the claims history report by itself.
- NOTE: This is a simple claims history report for the purposes of credentialing; it is not a loss run. Please continue to contact your policy specialist or email Credentialing@ProAssurance.com if you need a loss run.
- If the box is grayed out, it means we do not have an authorization to release the claims history to the selected COI holder. "How to Request Authorization" is the new option.

Request Claims History Report Authorizations Online



The "Add a COI Holder" page now enables you to request claims history access for existing COI holders.

When we initially rolled out the ability to download claims histories in October, we were working on, but did not yet have, an online authorization option. Your main option was to contact the Credentialing department by emailing Credentialing@ProAssurance.com for assistance.

You can still email or call the Service Center, but using the modified "Add a COI Holder" screen will be faster and more convenient for most users. Under "Authorize," select "Certificate of Insurance and Claims History" and then fill out the form as you normally would for COI access.

Don't worry. If you forget where to go to request authorization, the hover-help over the grayed-out box on the download screen will remind you.

How to Get Help

Our Web Support team can help you and your clients through any SSP questions for the credentialing screen and beyond. You can contact them at WebSupport@ProAssurance.com or **205-439-7956**.

How to Suggest SSP Enhancements

We hope these changes make it easier for you to service your clients. If you have suggestions about how to further improve this or any other feature in the SSP, email AskMarketing@ProAssurance.com.

Steve Dapkus, *Vice President, Marketing*

Please note: *The Homepage is not an advice column. The purpose of The Homepage is marketing, communications, and business operations insights in the digital age.*

WHAT'S THE BIG QUESTION?

A place to share your thoughts and expertise regarding industry issues.

Each month, The Big Question asks the ProAssurance community for input on timely medical professional liability topics. Our goal is to provide our agents, insureds, colleagues, and professional connections with a place to share anecdotes and resources that make it easier to discuss the complexities of MPL market dynamics and insurance solutions.

We're interested in your answers and comments to each monthly question and would like to know what questions you would like to see asked. Submit both at ProAssurance.com/BigQuestion.

The Big Question

March 2020 Conferences

What life hacks do you have for attending conferences?

While conference and seminar activity has been temporarily suspended due to the COVID-19 outbreak, we're providing tips for the time when these events will be a part of our lives once again.

Prepare ahead if possible by choosing sessions to attend so you know your schedule.

I like to write down the top ideas I want to take away from a class. So much information is shared it can be overwhelming. If I can retain key points I am more likely to be able to use the learnings later and also share with colleagues who might not have been able to attend.

Lisa Hallman, Senior Risk Resource Advisor

It's simple. I sit up front to not get distracted, and always take notes.

Network as much as possible.

Tina Reynolds, Senior Risk Resource Advisor

Bring a sweater in case rooms are cold, and some kind of tote bag to carry materials back and forth.

Stake out how far you will have to walk and how much you will have to stand in advance. Your feet will appreciate this.

Brandy Boone, Director, Client Education & Guidance, Risk Resource

Wear comfortable shoes and have different options—I always underestimate the amount of walking at large conferences!

Enjoy your time and remember to bring back the information you learned for your colleagues who were not able to attend.

Mallory Earley, Senior Risk Resource Advisor

Listen, drink plenty of water, and take notes. Something will click and give you inspiration.

Dress in layers, go early to the room to get your optimal seat. Make new friends and don't fear visiting with someone new. You might just learn something very interesting.

Kathy Dolan, Senior Risk Resource Advisor

Make sure your Uber app is updated, including current payment method.

Anonymous

The Next Big Question

April 2020 COVID-19

Predict the impact COVID-19 will have on claims frequency and severity.

Will the total number of MPL incidents/allegations increase, decrease, or remain flat?

1. Significantly decrease
2. Decrease
3. No effect
4. Increase
5. Significantly increase

Will verdict/settlement costs to resolve MPL incidents/allegations increase, decrease, or remain flat?

1. Significantly decrease
2. Decrease
3. No effect
4. Increase
5. Significantly increase

To submit your answers, or suggestions for new questions, visit ProAssurance.com/BigQuestion.

ProAssurance
Treated Fairly

provisions

To subscribe or see previous issues, visit ProAssurance.com/ProVisions.

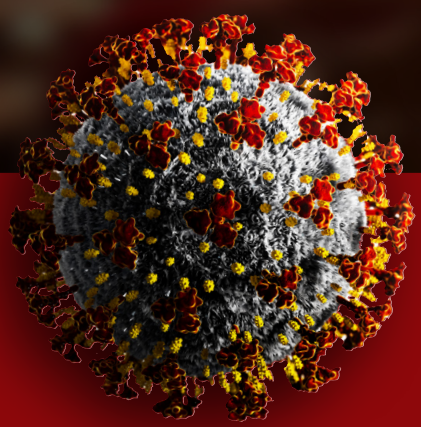
Public Loss Prevention Seminars Cancelled through May 15, 2020

Due to COVID-19, ProAssurance is cancelling all public loss prevention seminars through May 15, 2020.

See page 3 for refund, premium credit, and online seminar details.

We appreciate your understanding and will keep you updated as more information is available.

Your Risk Resource team is here to assist you at RiskAdvisor@ProAssurance.com or 844-223-9648.



COVID-19 Updates

U.S. healthcare providers are now on the front lines of the current pandemic. The situation also raises medical professional liability concerns for agents and insureds.

ProAssurance will keep all information related to the impact COVID-19 has on our business operations for your convenience at: **ProAssurance.com/COVID-19**