Emergency Medicine: Medical-Legal Risk Overview

May, 2019

CMPA
Empowering better healthcare

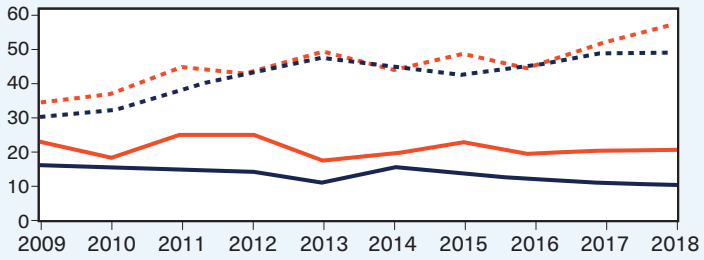
The Canadian Medical Protective Association (CMPA) represents over 99,000 physicians and maintains medical-legal records of over 500,000 cases. These cases include civil legal actions and complaints to regulatory authorities (Colleges).

As of the end of 2018, **5,025** CMPA members were emergency medicine specialists. The graphs below compare the 10-year trends of emergency medicine specialists' medical-legal experience with that of the general CMPA membership.

In addition to emergency medicine specialists, some family physicians also provide care in emergency departments (ED). Since medical-legal cases involving these physicians are not all related to care provided in ED, their relative risk in providing emergency care cannot be determined.

What are the relative risks of a medical-legal case for emergency medicine specialists?

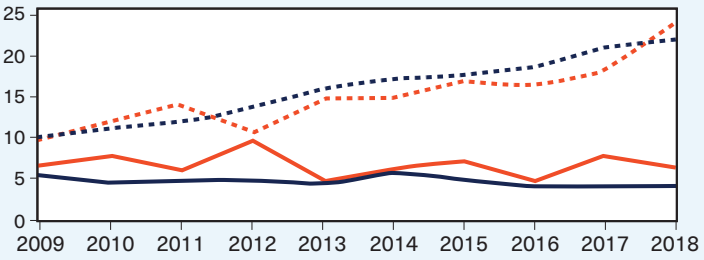
Number of members involved (per 1000 members)



Closed Cases

CMPA, all, College (n=37,600) — CMPA, all, Legal (n=11,712)
CMPA, EM, College (n=1,907) — CMPA, EM, Legal (n=862)

Number of unfavourable outcomes (per 1000 members)



Closed Cases

CMPA, all, College (n=14,226) — CMPA, all, Legal (n=4,066)
CMPA, EM, College (n=640) — CMPA, EM, Legal (n=273)

- Over the past 10 years, emergency medicine specialists have been named in legal cases at a consistently higher rate than the general CMPA membership.
- Compared to the general CMPA membership, emergency medicine specialists have generally had a higher rate of unfavourable medical-legal outcomes over the past 10 years.
- Emergency medicine specialists have had similar outcomes with College cases compared with the general CMPA membership.

The following sections examine the 1,446 cases closed between 2012 and 2016 involving care provided in the ED.

Of these cases, 41% (598 cases) involved a diagnostic error.

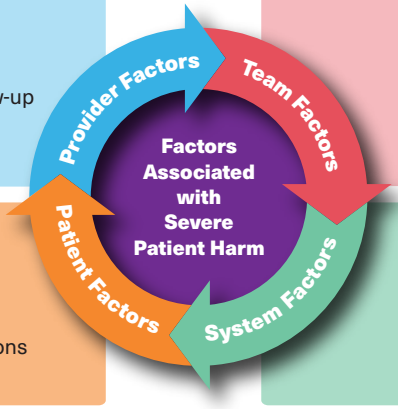
What are the top factors associated with severe patient harm? (N=1,446)

Provider Factors

- Premature discharge
- Inadequate patient monitoring or follow-up
- Failure to perform test or intervention
- Deficient clinical assessment

Team Factors

- Inadequate communication with non-physician providers



Patient Factors

- Age 65+
- Presenting with infections
- Presenting with cardiovascular conditions
- Presenting with metabolic diseases

System Factors

- Insufficient or unavailable resources

Note: Severe patient harm includes death, catastrophic injuries and major disabilities.

The Canadian Medical Protective Association
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What are the themes in patient complaints?* (N=1,446)

- **Deficient assessment (77%)**
- **Failure to perform test or intervention (26%)**
- **Failure to refer (13%)**
- **Communication breakdown with patient (12%)**
- **Inadequate discharge process (2%)**
- **Inadequate documentation (2%)**

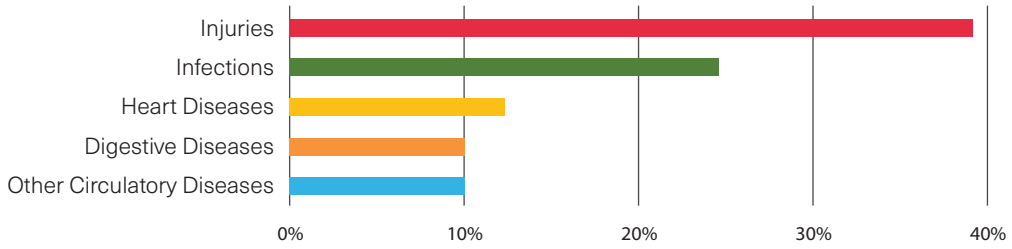
Complaints are a reflection of the patient's perception that a problem occurred during care. They are not always supported by peer expert opinion. Peer experts** were not always critical of the care provided, and could also have criticisms that were not part of the patient allegation.

The complaints for physicians practicing emergency medicine included allegations of deficient assessment, failure to perform tests or interventions.

* May be more than one complaint per case.
** Peer experts refer to physicians who interpret and provide their opinion on clinical, scientific, or technical issues surrounding the care provided. They are typically of similar training and experience as the physicians whose care they are reviewing.

What are the most frequent patient presenting conditions? (N=1,446)

The frequency of the conditions is consistent with the practice patterns of emergency medicine and does not necessarily reflect high risk areas.



Risk reduction reminders

Based on the top contributing factors for medical-legal cases involving physicians practicing emergency medicine, the following risk management considerations have been identified:

- Consider clinical care pathways, clinical practice guidelines, and decision tools, and pause and reflect on the differential diagnosis, being careful to consider life-threatening possibilities. Obtain a second opinion if unsure of your diagnosis.
- Ensure that your documentation reflects your assessment of the patient's condition and supports the diagnosis and the rationale for the treatment plan.
- Provide patients and their family with appropriate follow-up and clear instructions, including symptoms and signs of when to return.

Limitations

The numbers provided in this report are based on CMPA medical-legal data with the following limitations:

- The CMPA provides medical-legal support to physicians, and therefore focuses on physician-related issues in our data capture. The system issues may be under-represented.
- Members voluntarily report College complaints to the CMPA, therefore these cases do not represent a complete picture of all such cases in Canada. Furthermore, the clinical information associated with these cases may be limited.

Other Resources

- CMPA Perspective article, December 2018: Avoiding pitfalls in the emergency department: Recognizing and managing risks of diagnostic error.
- Campbell SG, Croskerry P, Bond WF, Profiles in Patient Safety: A "Perfect Storm" in the Emergency Department, Journal of Academic Emergency Medicine. 2007.04.011. doi:10.1197.
- Medford-Davis LN, Singh H, Mahajan P, Diagnostic Decision-Making in the Emergency Department, Pediatr Clin North Am. 2018 Dec;65(6):1097-1105. doi: 10.1016/j.pcl.2018.07.003.

Questions? Please contact datarequests@cmpa.org.