

# **Defending Obstetric Cases: Managing Medical and Legal Risks for the Best Outcomes**

September 18, 2025



# Speakers



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# Overview

- Introduction and National Verdict Trends
- CRICO/Candello Obstetric Claims Data 2020-2024
- What Makes OB Cases Different From Other Cases
- Why We Lose OB Cases

## How We Win OB Cases

- OB Claims Mitigation Strategies
- Conclusions/Questions

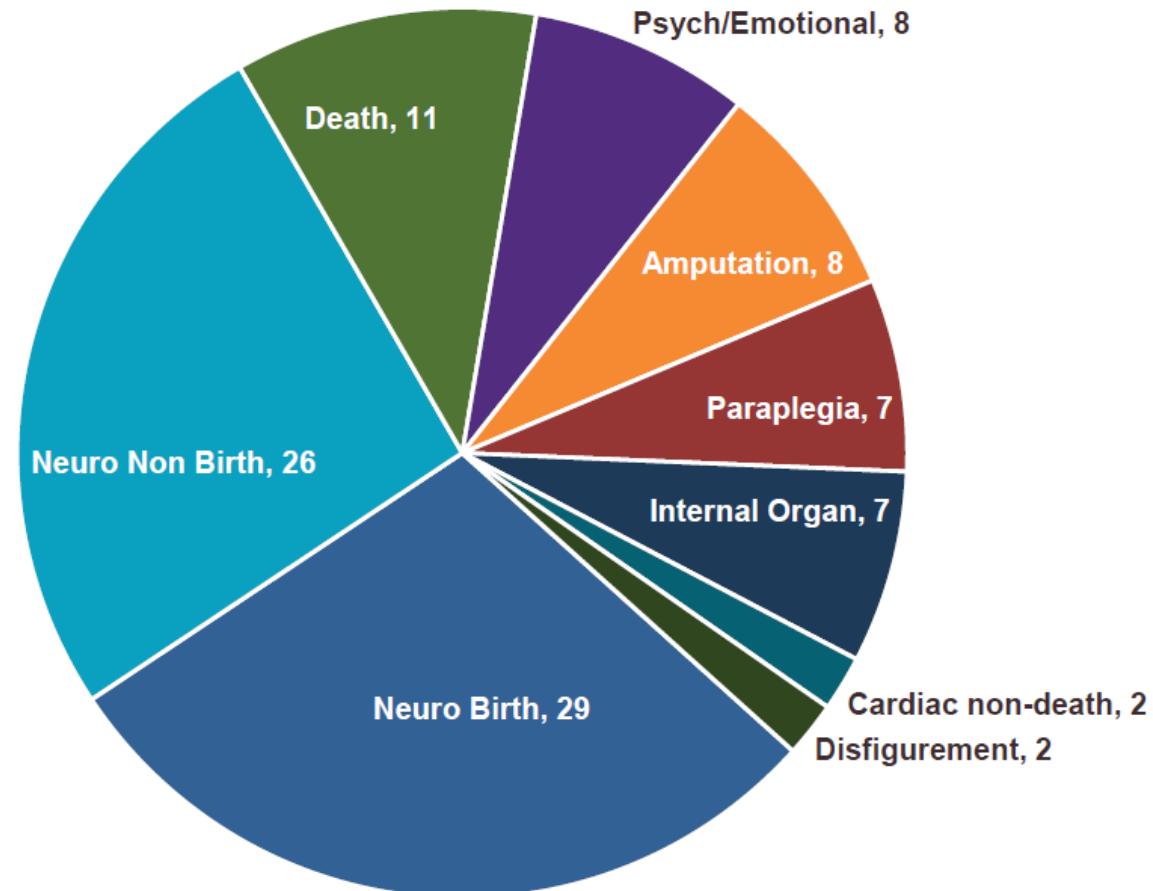
## Learning Objectives

- Understand the impact of large jury verdicts future MPL claims and current trends in obstetrical cases.
- Identify the multiple factors that make obstetrical cases different from other MPL claims.
- Recognize the critical importance of expert witness testimony, medical record documentation, jury selection and other factors that affect the outcome of obstetrical cases.
- Evaluate areas where implicit bias can influence obstetrical care.

# National Verdict Trends

## Top Ten Verdicts

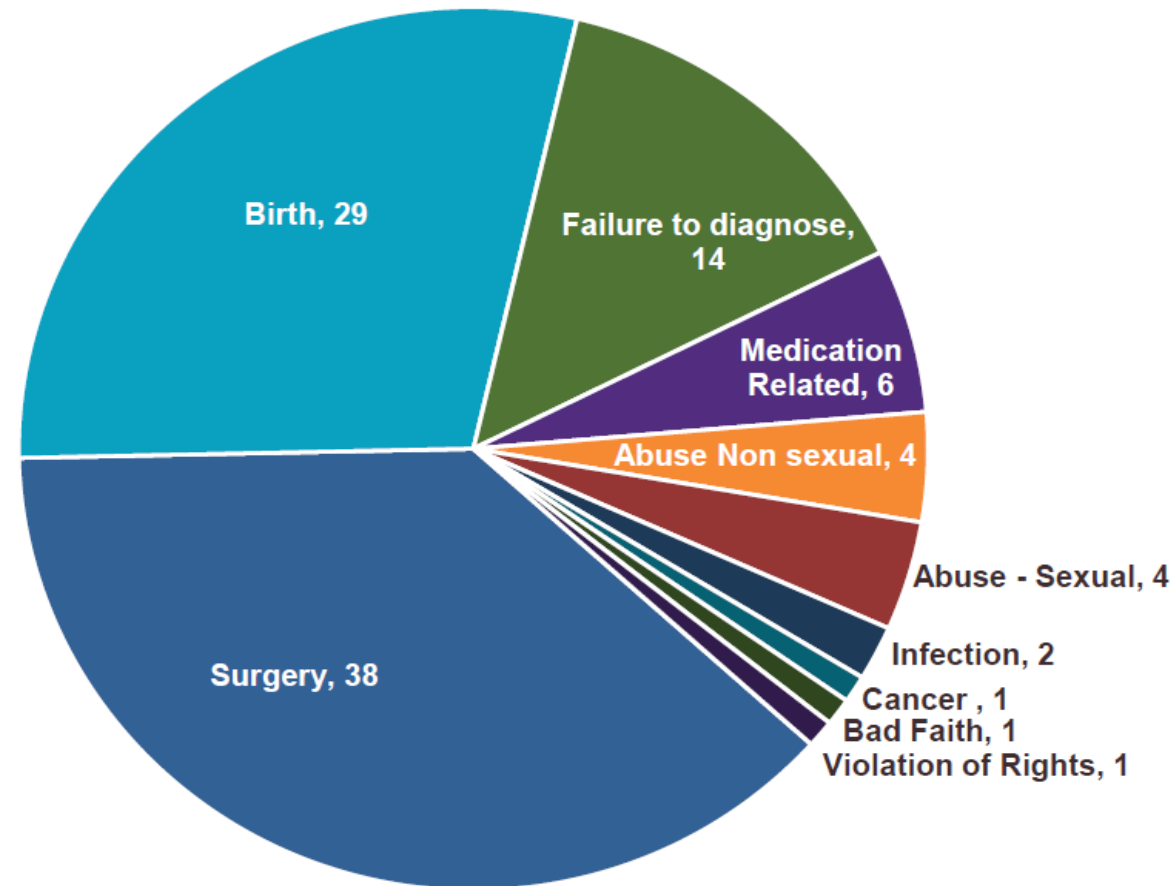
By primary injury, cumulative (2015-2024) = 100 verdicts



# National Verdict Trends

## Top Ten Verdicts

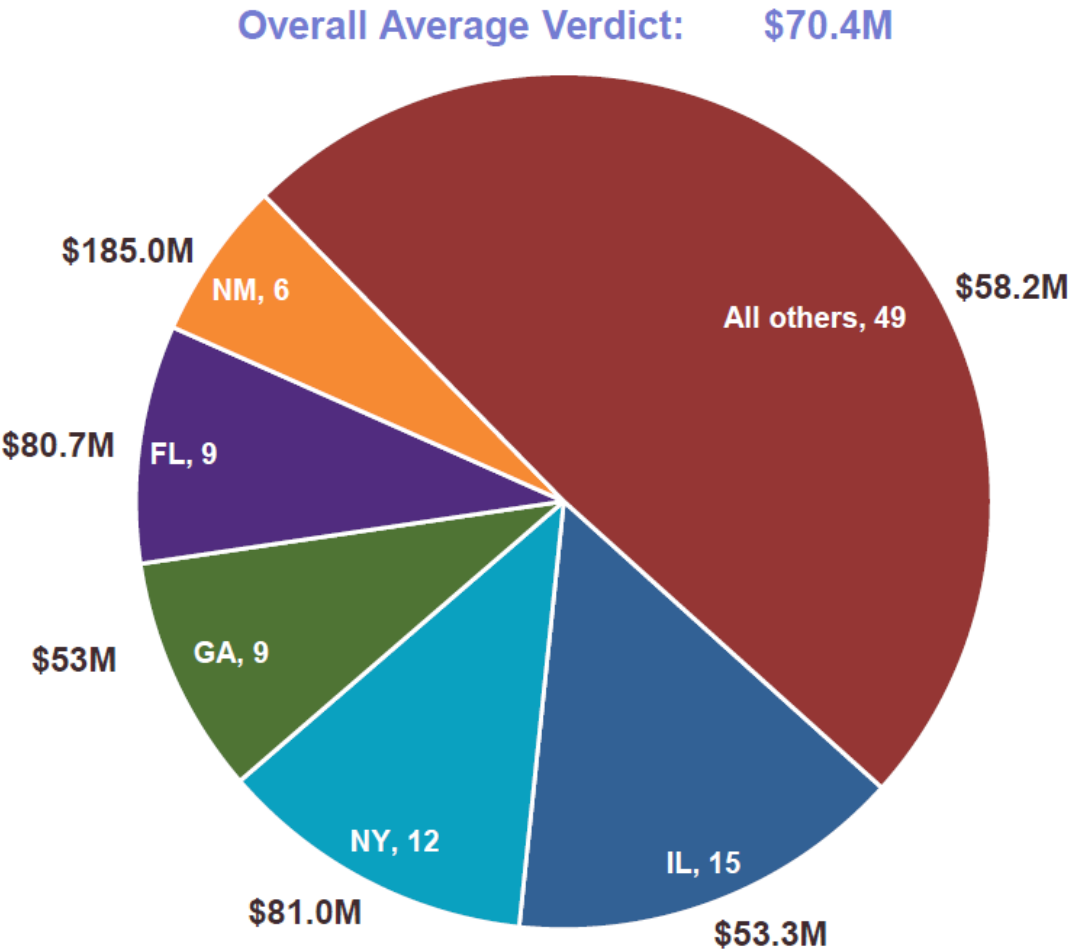
By nature of claim, cumulative (2015-2024) = 100 verdicts



# National Verdict Trends

## Top Ten Verdicts

By State, cumulative (2015-2024)



# National Trends: Obstetric Claims - Large Verdicts

## TransRe Large Verdict Data 2024 - 2025 (as of 6/30/25) – All Verdicts

- 2024 – 5 verdicts over \$100M (up from 4 in 2023)
- 2025 – 2 verdicts over \$50M
- 2025 – 15 verdicts over \$25M
- 2025 – 29 verdicts over \$10M

## TransRe Large Verdict Data 2025 (as of 6/30/25) – OB verdicts

- 11 OB-related verdicts above \$3M
  - \$3- \$10M = 4
  - \$10-\$25M = 5
  - \$25-\$50M = 2
- All 11 verdicts spread across five states



# National Trends: Obstetric Claims – 2025 Large Verdicts

## 11 of the top 46 verdicts were OB-related



# National Trends: Obstetric Claims - Large Verdicts

## Appellate Wins

- \$229M Johns Hopkins 2019 verdict (\$0 paid)
- \$111M Minnesota 2022 verdict (successful appeal, ultimate confidential settlement for a fraction of the verdict)
- 97M Iowa 2022 verdict (\$7M paid by hospital, other defendant had a successful appeal)

## Appellate Loss

- \$182M UPenn 2023 birth verdict
  - July 2025 - Unanimously upheld on appeal
  - State Supreme Court even if reduced still over \$100M

## Pending Appellate 2023

\$261M Maya claim from Florida. Decision soon, but then to Supreme court

## *What is Candello?*

- A national database of medical professional liability (MPL) claims
- A division of CRICO, the MPL insurer of the Harvard medical institutions
- Identify trends in medical error and patient harm



# Candello National Landscape Cases Asserted 2020-2024

## All MPL Cases

34K Cases Asserted  
\$9B Total Incurred

## OB Related Treatment Cases

2k Cases Asserted  
\$1B Total Incurred

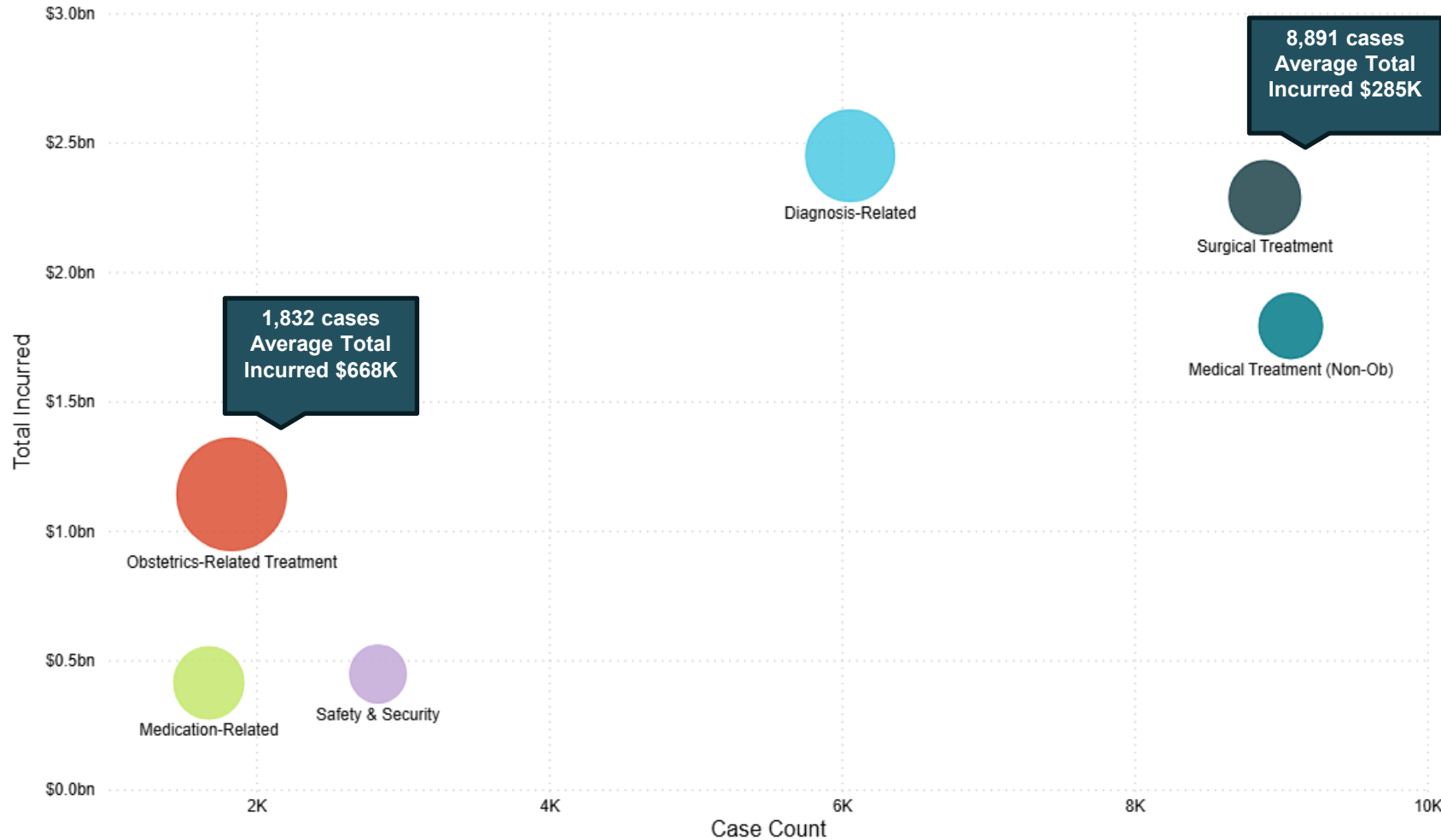


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Candello and CRICO Strategies are a division of  
The Risk Management Foundation of the Harvard Medical  
Institutions Incorporated (RMF), a CRICO company

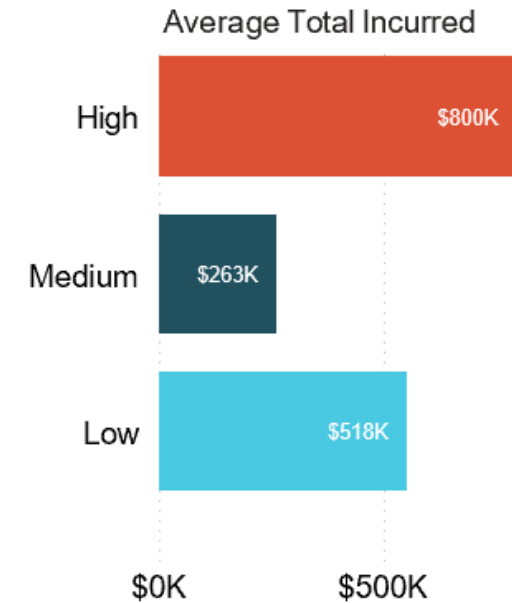
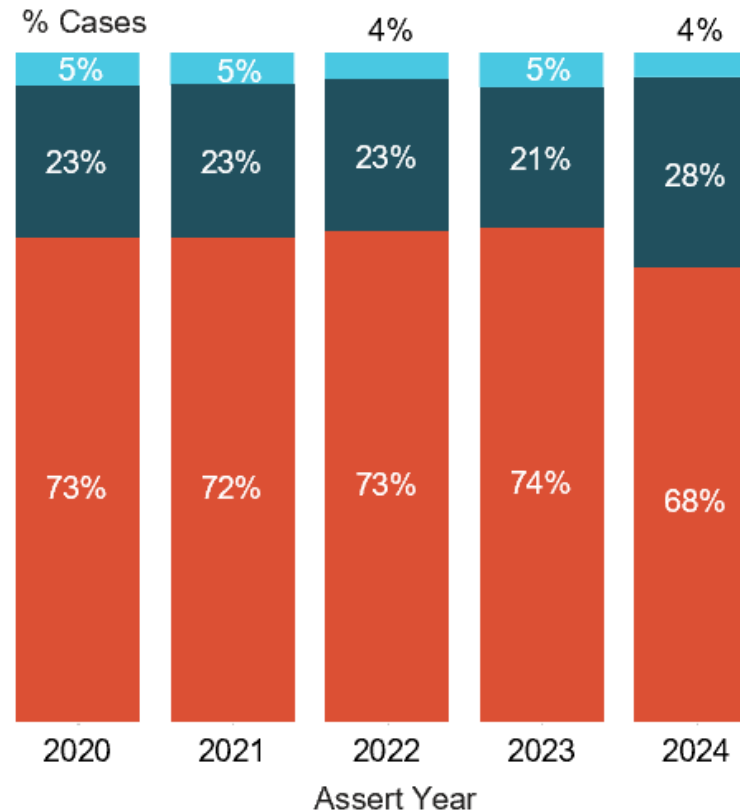
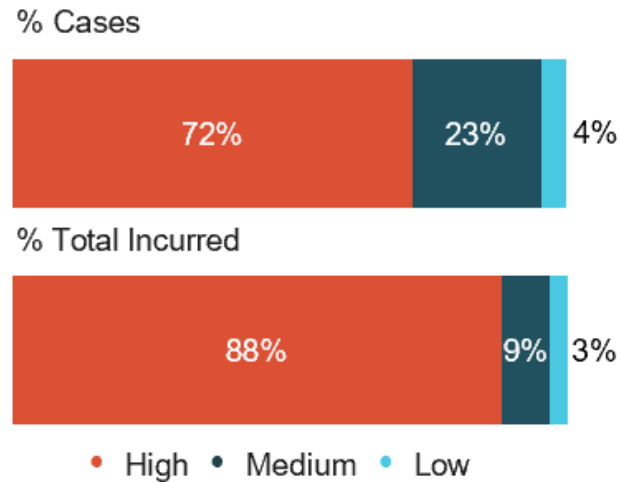
# OB Cases Are Less Frequent, But More Expensive On Average

## National Landscape Top Allegations



# 72% Of OB Cases Result In High Severity Injuries, Driving 88% Of Associated MPL Costs

## Clinical Severity



2K

cases

\$1.14bn

total incurred losses

MPL cases asserted 2020–2024 with OB major allegation N=1,832

NAIC Severity Scale: High = death, permanent grave, permanent major, or permanent significant

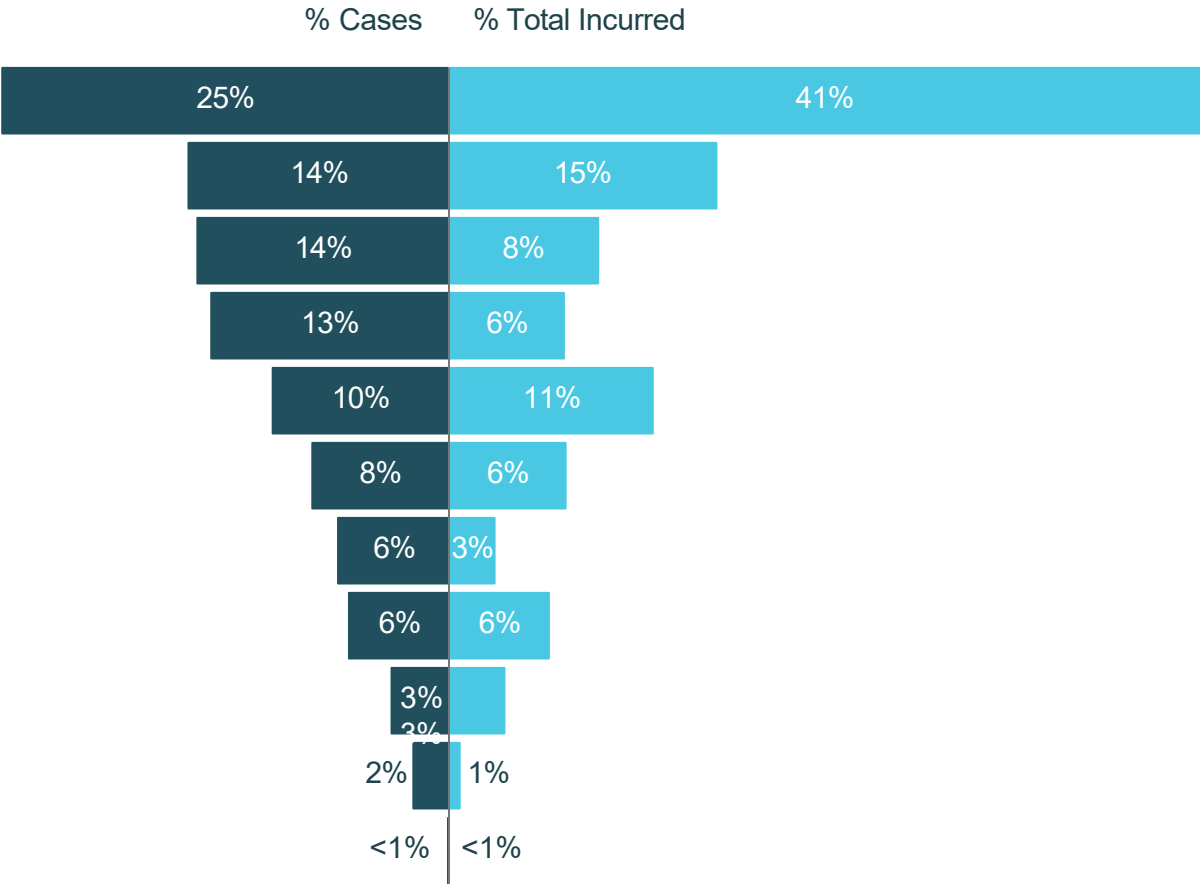
Medium = permanent minor, temporary major, or temporary minor

Low = temporary insignificant, emotional only, or legal issue only

# Delay In Treatment Of Fetal Distress Most Frequent And Costly Allegation

## Allegations

- Delay In Treatment Of Fetal Distress
- Improper Management Of Pregnancy
- Improper Performance Of Vaginal Delivery
- Obstetric-Related Treatment - Other
- Improperly Managed Labor/Delivery- Other
- Improper Management Of Post-Partum Patient
- Improper Performance Of Operative Delivery
- Delay In Delivery (Induction/Surgery)
- Improper Choice Of Delivery Method
- Retained Foreign Body - Ob Related Tx/Procedure
- Failure To Manage Pregnancy



2K

cases

\$1.14bn

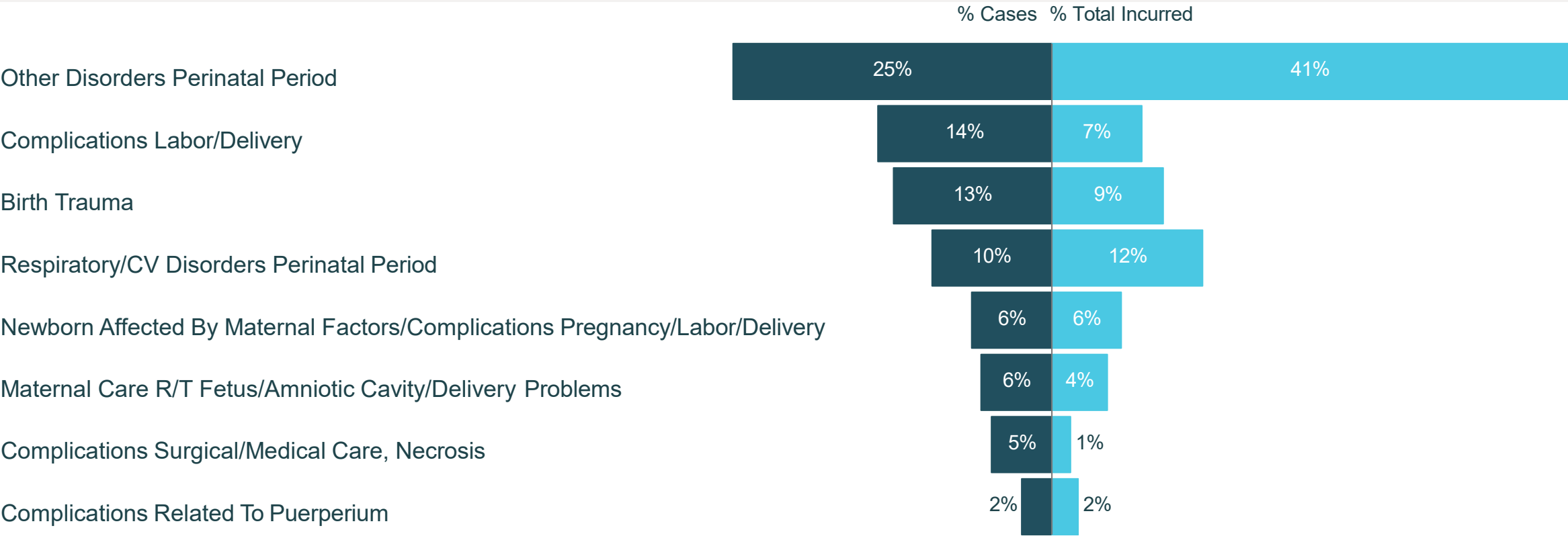
total incurred losses

MPL cases asserted 2020–2024 with OB major allegation  
N= 1,832

# Other Disorders During The Perinatal Period Most Frequent And Costly Final Diagnosis

## Most Common Of These Being Hypoxic Ischemic Encephalopathy

### Final Diagnoses

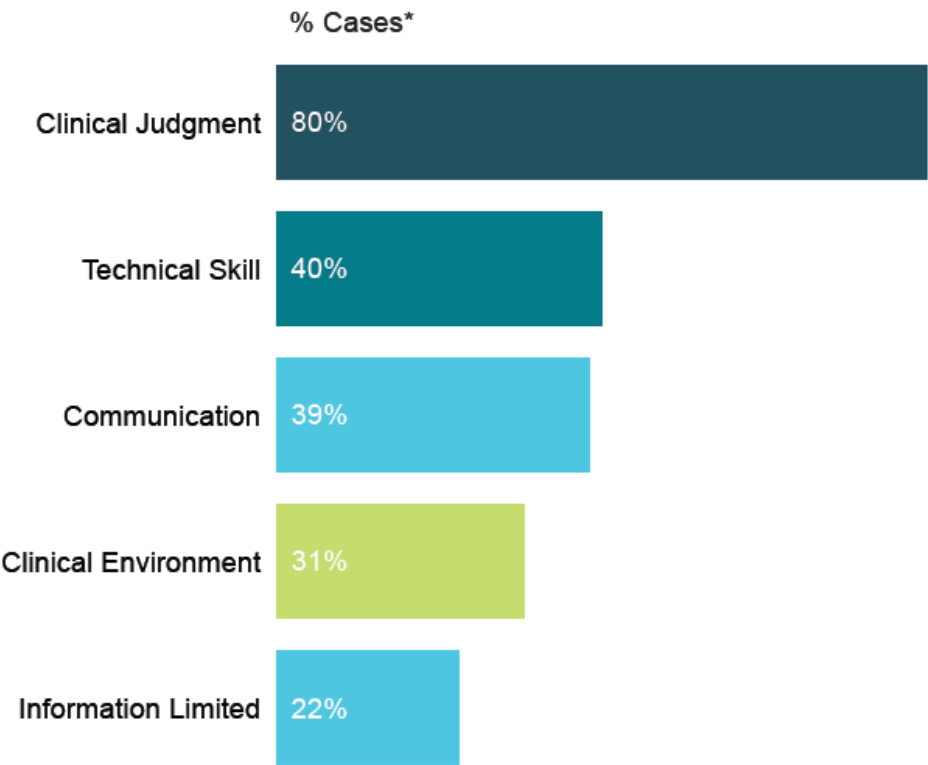




# Majority Involve Clinical Judgment-related Challenges

## Contributing Factors

Top Contributing Factor Categories



Top Contributing Factor Details

Top Clinical Judgment Factors	% Cases
Selection/Management Therapy—labor And Delivery	65%
Failure To Appreciate And Reconcile Relevant Sign/Symptom/Test Result	44%
Pt Assess—misinterpretation Of Dx Studies (Xrays, Slides, Fms)	17%
Selection/Management Therapy—pregnancy	17%
Pt Monitoring—physiological Status (Other Than Med/Biol Response)	15%

Top Technical Skill Factors	% Cases
Technical Performance - Possible Technical Problem, Known Complication	58%
Technical Performance—poor Technique, Other	21%
Technical Performance-Improper Use Of Traction During A Procedure	12%
Improperly Utilized Equipment (Includes User Error)	6%
Technical Performance-Poor Technique, Resuscitation	6%

Top Communication Factors	% Cases
Communication Among Providers—regarding Patient’s Condition.	43%
Communication Among Providers-Failure To Escalate Concerns	15%
Communication Between Patient/Family/Provider - Expectations	10%
Communication Among Providers—failure To Read Medical Record	8%
Poor Rapport (Includes Unsympathetic Response To Patient)	6%



1K

cases

\$916.85M

total incurred losses

MPL deeply-coded cases asserted 2020–2024 with OB major allegation  
N= 1,203

\*a case may have more than one contributing factor

## **What Makes OB cases Different From Other MPL Cases?**



# What Makes These Cases Different?



## Number of Plaintiffs

Every case has  
at least 2 patients



## High Expectations

Every plaintiff expects  
a healthy and perfect  
outcome



## Sympathy

Child involved

# What Makes These Cases Different



## High Costs

Life care plan numbers  
universally enormous  
for brain injury cases



## Political Awareness

Discussing fetus in utero



# Why We Lose

- **Poor case selection =**
  - Bad venue x
  - Severe lifelong injuries x
  - Normal life expectancy x
  - Unsympathetic/uncontrollable defendant
- **Sympathy factor**
- **Unlikeable defendant**



# Why We Lose

- **No physical evidence to support expert opinion**
  - Medical records documentation
  - Imaging Studies
  - Labs
- **Wrong defense counsel selection**
  - Doesn't know the medicine as well if not better than experts
  - Bullying in the courtroom

# How We Win

## The Case

- Good attending oversight of resident (communication)
- Good contemporaneous documentation
- Likeable and well-prepared defendant
- Alternative theory of causation
- Pictures - imaging studies to support insult older than time of delivery







# How We Win The Counsel

- Select the right defense counsel
  - Experienced in OB claims litigation
  - Emotional intelligence on how far they can push
  - Able to translate medical speak into layman terms
- Top notch experts (preferably better than plaintiff's experts)
- Prepare for the sympathy factor



# How We Win

## The Courtroom

- Impartial judge
- Jury Selection
- Venue
- Observers in the courtroom
  - Jury reactions
  - Expert testimony on point
  - Daily transcripts to keep experts advised of prior testimony





**More than 62% of OB/GYNs will be sued**  
at some point in their career



## What's On The Horizon?

- Private equity buying private practices
- Large systems hiring their own OBGYN providers
- Dissatisfaction with profession is at an all time high
  - More physicians are retiring earlier
  - Stopping obstetric part of practice
  - Decreases call hours
  - Lowers malpractice costs
- Estimated shortage of over 5,000 OBGYNs by 2030



# OB Claims Mitigation

# Virtual Simulation Training



- TJC January 2021
  - Perinatal patient safety standards
- ACOG August 2024
  - Virtual simulation training in low to moderate volume hospitals in the US:
    - Feasible
    - Acceptable
    - Effective

A person is shown from the chest up, wearing a fetal monitoring device. A white strip of paper with a fetal heart rate graph is held in front of them. The graph shows a fluctuating line representing the heart rate. The background is a light blue gradient.

# EFM Strip Interpretations

- No standardizations in education regarding EFM interpretations
  - In-facility test vs. NCC Fetal Monitoring Certification
  - Monthly vs. annually
- Should require:
  - Certification
  - Monthly case studies with all team members present
    - Physicians
    - Nurses
    - Leadership



A person is lying in a hospital bed, wearing a white gown. Several white ECG electrodes are attached to their chest. A hand is holding a long, white EFM strip that shows a fetal heart rate tracing. The background is a soft, out-of-focus blue.

# EFM Strip Interpretations

- Nurse Fellowships
  - Proven to improve nurse education for new graduates
  - Expensive – many hospitals do not want to undertake



# Team Training

- Mutual respect through teamwork
- Everyone should be included
  - Physicians
  - Nurses
  - Pharmacy  
Respiratory
  - Anesthesia
  - House officers, etc.



# Team Training



## Communication of Negative Outcomes

Noted in prior case reviews



## Outcome-Based Data Utilization

Trace back to the root of the issue

The background of the slide features a light blue, semi-transparent image of a medical setting. A stethoscope is prominently displayed in the lower-left foreground, resting on a surface. Behind it, there are blurred images of medical charts, including a circular diagram and a bar chart. The overall aesthetic is clean and professional, typical of a healthcare presentation.

# Chain of Command

- Many large systems switching to laborist model to decrease costs
- Hiring midwives and mid level providers as first line
- OB triages going to emergency room billing model, staffing with mid-levels

# Graduation Requirements



## Midwives

- 40 deliveries



## OBGYN Physicians

- 200 vaginal deliveries
- 15 operative deliveries
- Most residencies achieve many more

**Liability increases as there are more layers to the care**

## Final Thoughts

- Large jury verdicts in obstetrical cases will likely continue in the future.
- There are multiple factors that make obstetrical cases different from other MPL claims.
- The critical importance of expert witness testimony, medical record documentation, jury selection and other factors can impact the outcome of obstetrical cases.
- Risk mitigation strategies should be strongly considered for any organization providing obstetrical services

**Thank You**

