



Reducing medical-legal risk in occupational health

Liisa Honey MD, FRCSC

CMPA

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Teacher seen by occupational MD for IME at request of insurance company



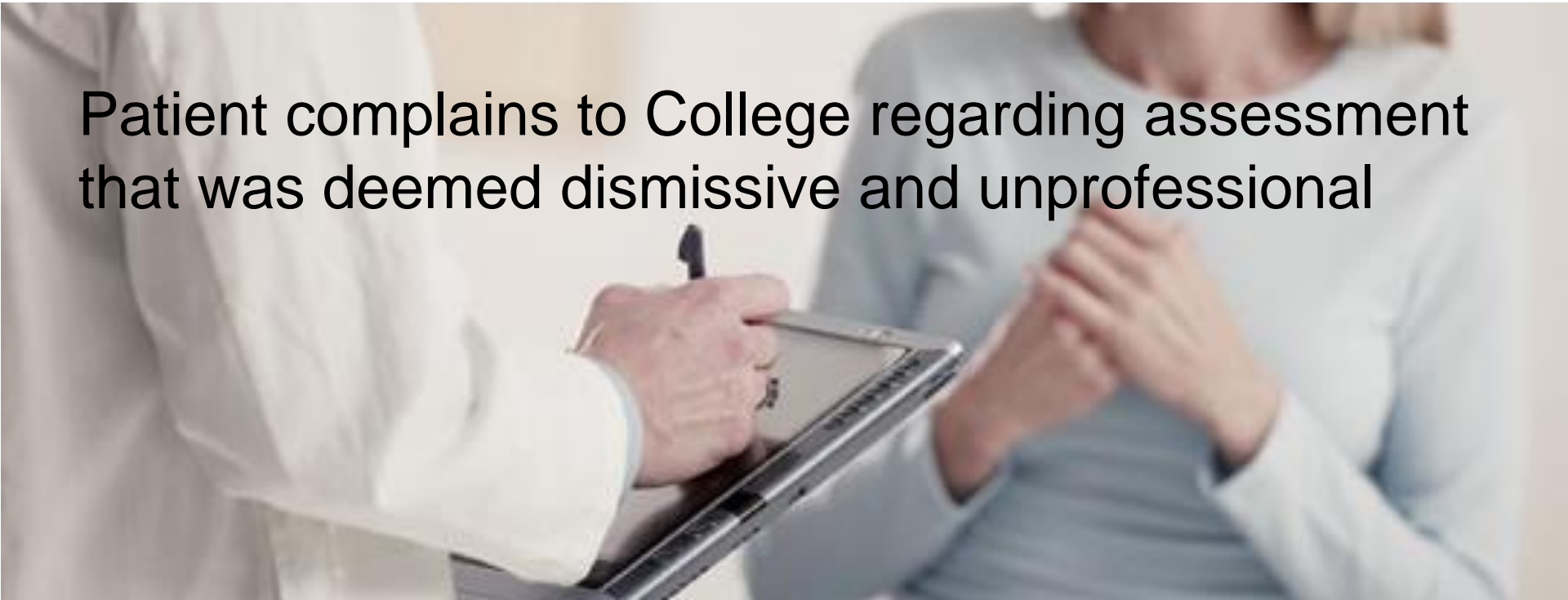
Hit in head by soccer ball: LOC & persistent vertigo and neck pain



Seen in emergency: had imaging
Dx with Concussion and neck sprain

IME report concluded that patient's symptoms were psychological & could return to work

Patient complains to College regarding assessment that was deemed dismissive and unprofessional



College critical of occupational MD

- Did not request ER visit chart, imaging results, physio report
- Multiple deficiencies in physical exam
 - Cranial nerves ‘normal’: admitted didn’t check EOM, visual fields
 - Lacked cognitive assessment
- Rationale for conclusion and reasons for excluding a TBI

Today's Learning Objectives

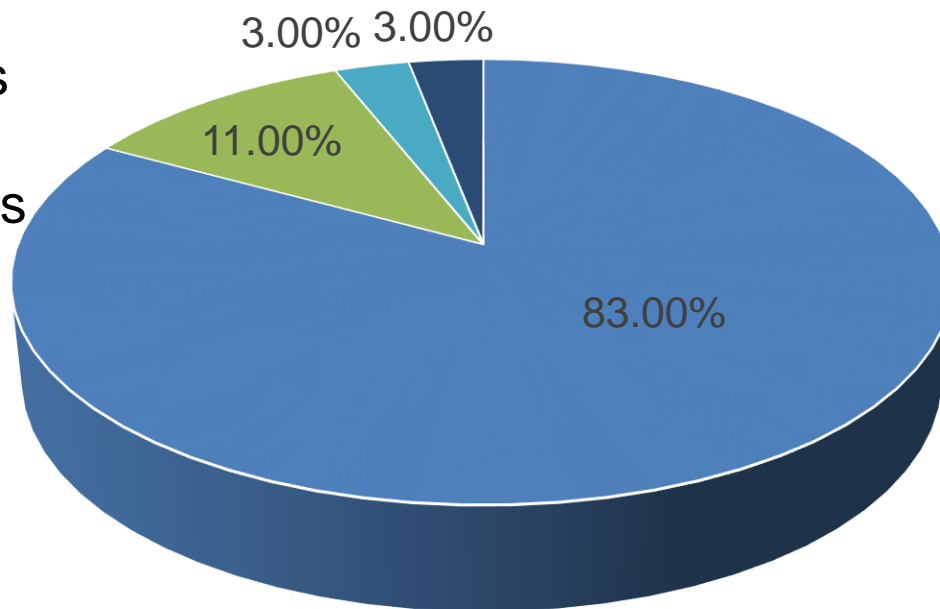
1. Recognize the most common medical legal issues in OEM.
2. Analyze the key contributing factors to medical legal risk.
3. Identify 2 actions that may decrease risk in your own practice.



CMPA data for OEM

129 closed cases 2006-2016

Peer experts
Critical of
35% of cases
(45/129)

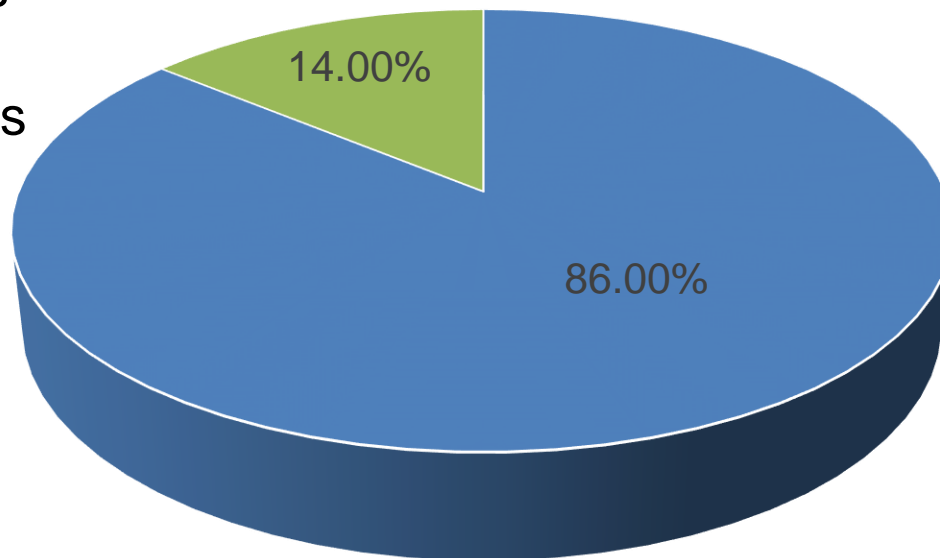


- College
- Legal
- Threat
- Other

2016-2018 CMPA data for OEM

43 closed cases

Peer experts
Critical of
49% of cases
(21/43)



■ College

■ Legal

Common themes

- Clinical decision making
- Situational awareness
- Communication
- Documentation

Clinical decision making



Clinical decision making

- Incomplete assessment
 - Ensure all records/opinions reviewed
- Failure to perform diagnostic tests or evaluations
- Failure to f/u diagnostic tests resulting in diagnostic delay

Situational awareness

CMPA.
Empowering
better healthcare



Situational awareness

- Overprescribing of narcotics/sedatives
- Failure or delay to refer to a specialist
- Failure to provide FP/employer with a written report in a timely manner

Communication issues



Communication issues

- Intimidating demeanor
- Inadequate explanations during examinations
- Discharge instructions
 - Not clear
 - Not well communicated

70% of College
complaints
involve
communication
issues



6 communication behaviours that improve patient satisfaction

1. Friendly
2. Personal interest in patient
3. Emotionally supportive
4. Provide explanations
5. Communicate clearly
6. Confirm understanding



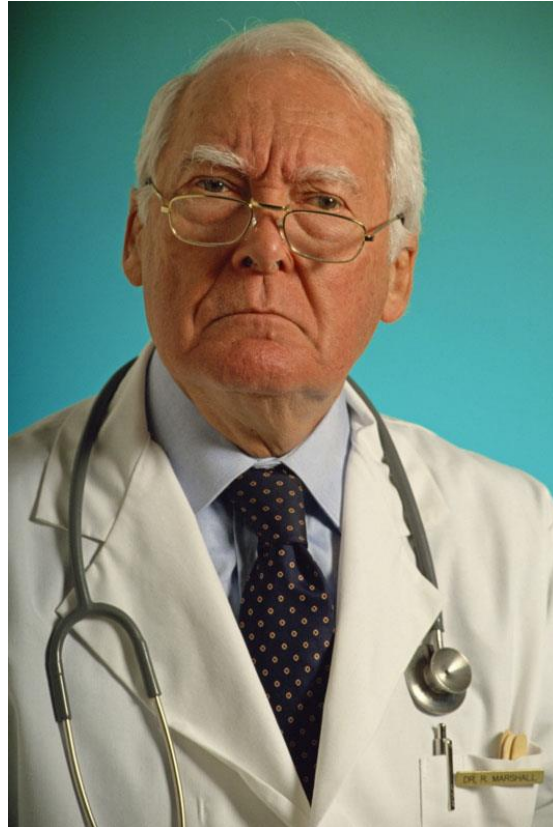
- Moore et al. West J Med 2000;173:244-50

*Avery, JK. Lawyers Tell What Turns Some Patients Litigious
Med Malpractice Rev 1985;2:35-7*

Your demeanor matters

He criticized others
involved in my care

She wasn't honest
with me about
what happened



I never want this
to happen to
anyone else

She didn't
listen to my
concerns

He didn't seem
to care

Documentation



Documentation

- Incomplete or inadequate documentation
- Failure or delay to complete reports (CPSO recommends 60 days)
- Documentation lacked detail making it difficult to interpret info given to patient

What is Often Missing?

- Complete history and/or physical
- Vital signs
- Reassessments/ condition on discharge
- Discussion
 - Informed consent and discharge
 - Informed refusal
 - Telephone advice
 - Advice from consultants

What Courts Use To Determine the Facts

The Medical Record



What The Patient/ Family Remembers



What The Physician Remembers

51 yo ♂
vague chest pain
stressed +
anxiety attack
Plan: Home on ATIVAN



Documentation

What do the courts say?

“The medical record is like a witness whose memory never fades”

“An exemplary medical record makes me believe that the medical care must have been the same”



Independent medical exams

- Explain the purpose of the exam clearly
- Explain the purpose is to determine health and functional status and NOT to provide treatment
- Explain the scope of the exam and what will be examined and why
- Explain that the report goes to a third party and they will determine whether a copy of the report will be provided to patient or family doctor

Physician is sometimes perceived as adversary

- ALWAYS:
 - Have written consent for release of info to third party AND consent to perform the assessment and exam
 - Have a chaperone present for exam
 - Have an interpreter if needed
 - STOP if patient withdraws consent for any part of exam (and document it)
 - Inform patient on the need for f/u if you become aware of another medical condition

What about observers or video/ audio recording by the patient?

- If patient requests – it is up to you if you wish to proceed (CPSO says you are not obliged to proceed)
- If IME is court ordered – observers shall not be present

- **AVOID:**
 - Doing an IME on a former patient
 - Becoming a treating physician



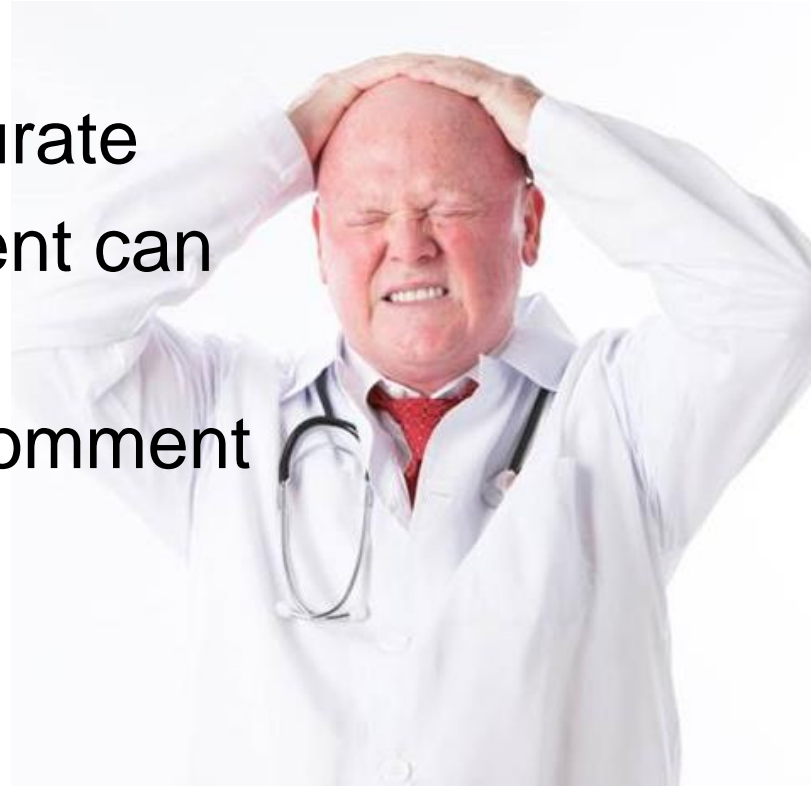
Reports

- Treating physician reports
 - Professional obligation to prepare
 - Need request in writing specifying purpose
 - Need written authorization to release the report to a third party
- IME and medical expert reports
 - Not obliged, need appropriate expertise

Avoiding pitfalls with forms

- Ensure statements are accurate
- Be specific about what patient can and cannot do
- Need knowledge of job to comment on fitness to work
- OK to say “I don’t know”

#



Case example

- Occ doc asked to review employment file of 50 yr old male and determine fitness to work as a teacher
- No P/E, obtained medical record from FP
- Diabetes, deteriorating eye condition, anxiety and anger issues
- Doc felt pt not able to fulfill role as teacher but still able to work

College complaint

- “patient lost his job due to his fraudulently exaggerated condition, the doc did not personally examine him or discuss his medical condition with any of his medical specialists who stated that he could work with appropriate accommodations”

College decision

- supportive of doc's opinion as he provided support for this in his report
- critical of narrative style of report:
 - suggested that documents reviewed are itemized at the beginning of the report and document reviews are clearly identified so they are not confused with an in-person assessment

Summary



Summary



■ **CMPA Safe Medical Care**

www.cmpa-acpm.ca

■ **CMPA Good Practices Guide**

www.cmpa-acpm.ca/gpg

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