



# Navigating the Intersection of the Risk/Claims Relationship

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Sailing Through Uncharted Waters:  
Navigating Risk in a Changing World

# Presenters

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  - Medical malpractice counsel
- Jennifer Pear, JD
  - Claims professional
  - Former Risk Manager

# Disclosure

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- No individual in a position to control or influence the content of this activity has reported relevant financial relationships with commercial interests. No commercial support was provided for this activity.
- This program is being offered for informational and educational purposes only from a Patient Safety Risk Management perspective and does not constitute legal advice.
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- In complex circumstances, which present significant potential for an adverse event or litigation, CSHRM and the presenters recommend you consult directly with your corporate or personal counsel for professional legal guidance

# Session Outline

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- Relationships
  - Claims/Risk
  - Claims/Counsel
- Litigation Whys
  - Evidence Preservation
  - Early Resolution
  - Liens
- Trend Investigations
  - SB235
  - MICRA
  - Corporate Landscape
  - AI

# Claims/Risk Relationship

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- *Trust, Reliability, Confidence*
- *Identify internal trends*
- *Support for early concerns, disclosures, early resolution*
- *Feedback/input re: defense counsel*



# Claims/Counsel Relationship

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- *Insight, Collaboration, Efficacy*
- *Identify litigation trends*
- *Support for claim resolution and early investigations*
  - *Early strategy discussion*
  - *Review for early resolution*
- *Recommendations regarding reducing exposure*
- *Collaborative out-of-the-box thinking*



# Litigation Whys - Preservation

- Device or equipment injury
- Discovery obligations
- Preservation requests



# Litigation Whys – Early Resolution

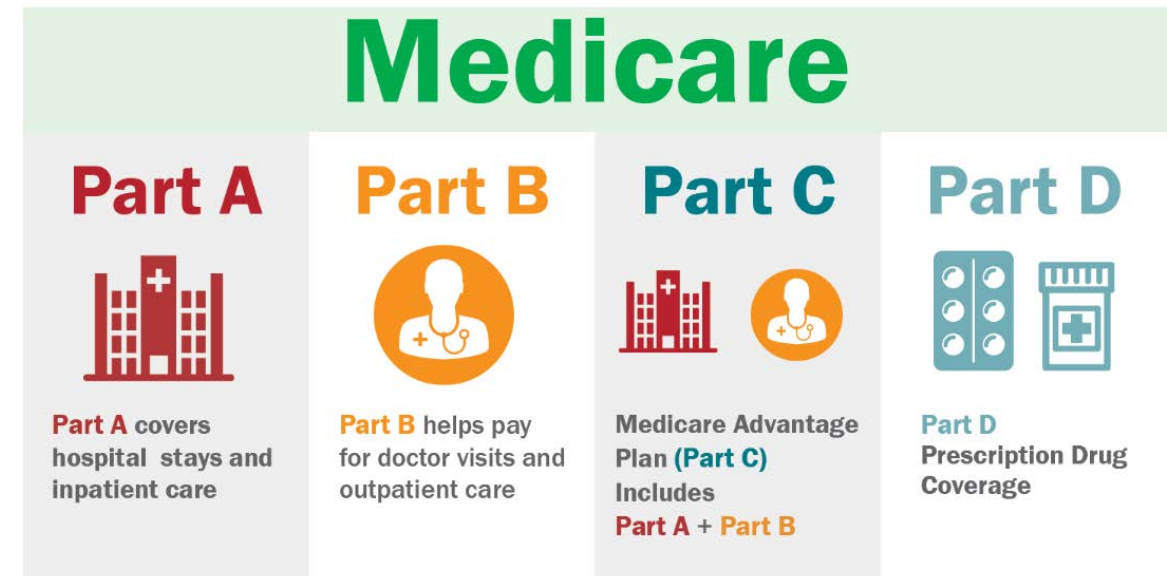


- Resolve potential or actual litigated matters for lower cost
  - Reduced indemnity amounts
  - Reduced litigation (expense) fees
  - Reduced overall (often increased) exposure
  - Reduced burden on defense counsel
- Foster relationships with potential and actual claimants
- Reduce potential media/PR exposure

# Litigation Whys - Liens



- Medicare Section 111
  - Facilitates Medicare's right to recoup from the insurer any amount that Medicare has already paid for treatment for the subject litigation
    - Wrongful death vs. other injuries
    - Avoiding double payment
- Reporting
  - \$750 reporting threshold currently
  - Within 1 year of date of settlement, award, judgment, or other payment
    - (\*\*Specific to non-group health plans (liability, no-fault, worker's comp\*\*))





# Trends

- SB235
  - *Slow increase in requests*
- MICRA
  - *Plaintiffs slowly gravitating toward third bucket*
  - *Remains to be seen how this will impact Ostensible Agency*
  - *Expense vs. Indemnity costs*
- Corporate Landscape
  - *Ostensible Agency*
  - *Corporate Negligence*
- AI
  - *Discovery*
  - *Records review*
  - *Pro Per Litigation*



# Thank you!



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