University of Michigan Health System

When There's Harm in the Hospital: Can Transparency Replace "Deny and Defend"?

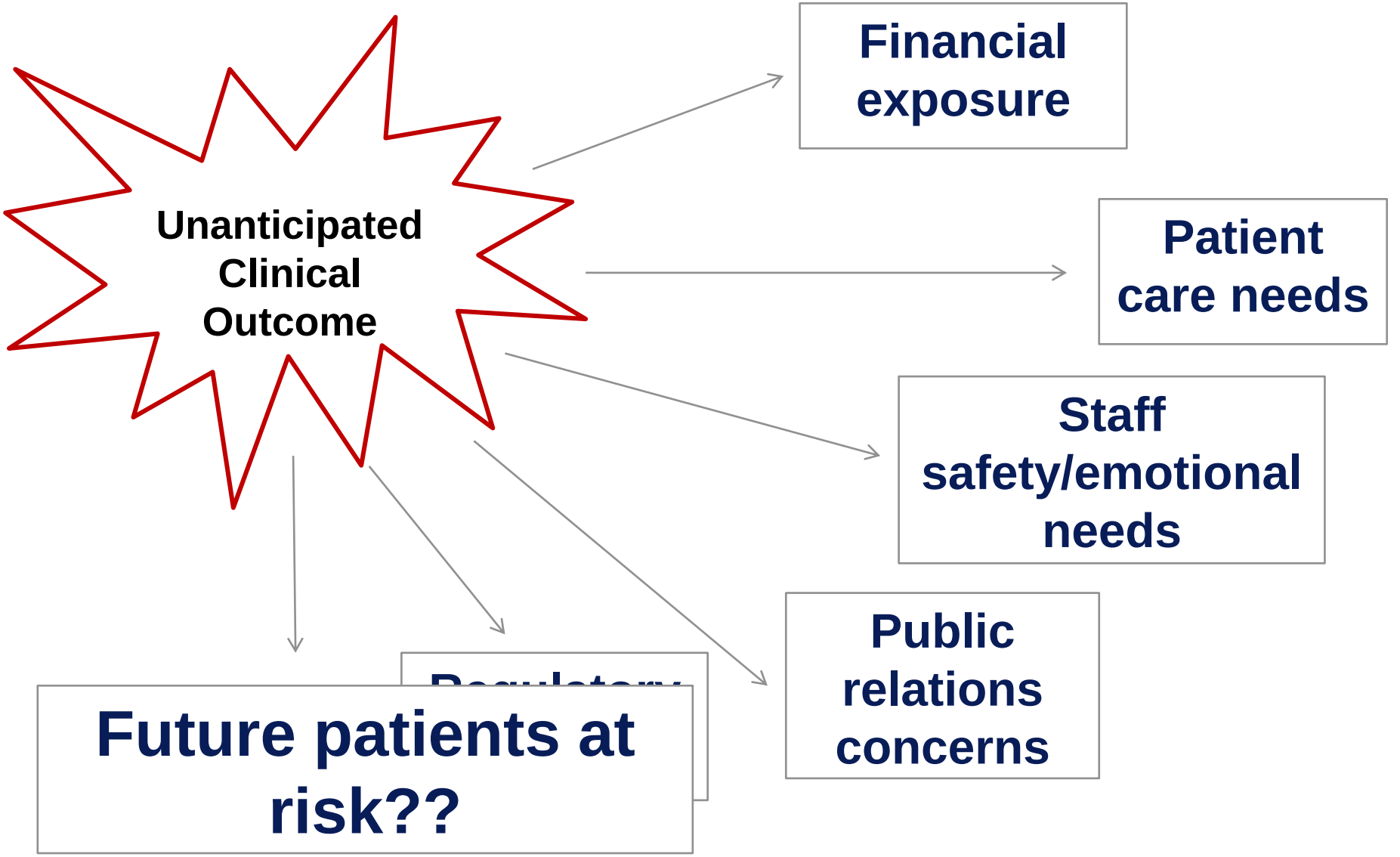
Richard C. Boothman
Chief Risk Officer, University of Michigan Health System

National Health Policy Forum
March 11, 2016
Washington, DC

University of Michigan Health System

The problem

When there's harm . . . there are multiple concerns



When an adverse event occurs, we are changed.

We are on notice that patients can be unintentionally harmed.

The most important person in an adverse event is the patient we have not hurt *yet*.

The best risk management is not to hurt our patients in avoidable or preventable ways.

The second-best is not to do it again.

RESOLUTION is inevitable

Every dispute finds an end

Disputes can follow different paths to their end

And each path has a consequence

We can allow others to control it

and we can complain

Or we can bend it to its best use

It's our call

Origin of Deny and Defend

Medicine abdicated its responsibility to respond to patient injuries to lawyers and insurance claims people; predictably, these events were treated as legal/insurance issues

"Deny and defend" may have served their interests, but not Medicine's ethical, moral and practical imperatives

Worse, it has been counterproductive

The consequence of that choice?

We've prioritized the short-term concern for financial exposure at the expense of the longer-term and far more-important concern for patient safety

University of Michigan Health System

Deny and Defend causes harm and frustrates Medicine's mission

- Creates and feeds defensive culture
- Short term: Patients, family and staff are cruelly isolated
- Short term: Disconnects financial accountability for preventable injuries and consigns every event to the legal process with delays, expense, personal hardship
- Long term: Disconnects clinical accountability for adverse outcomes
- Long term: Replaces accountability for preventable injuries with a sense of inevitability and resignation that injuries and liability for them is a cost of doing business
- The greatest cost of "deny and defend" is the chilling impact it has on accountability *and* consequently improvement

University of Michigan Health System

Accountability→ Responsibility → Improvement

University of Michigan Health System

Marie and Christine

University of Michigan Health System

The Michigan Model

The Michigan Model is NOT primarily a claims management strategy designed to minimize financial exposure posed by an individual injured patient

The Michigan Model is intended to serve our core mission: to deliver the highest quality health care experience for our patients

Predictably, it also saves money

University of Michigan Health System

Core Elements

1. Immediate reporting of an adverse event
2. Ensuring immediate safety
3. Meeting the immediate needs of patient/family/staff
4. Promising full and honest explanation
5. Conducting rigorous/immediate event investigation
6. On-going communication with patient/family/lawyer
7. Offering full explanation always; fair compensation when warranted
8. Hardwired to peer review/process improvement with measurement

University of Michigan Health System

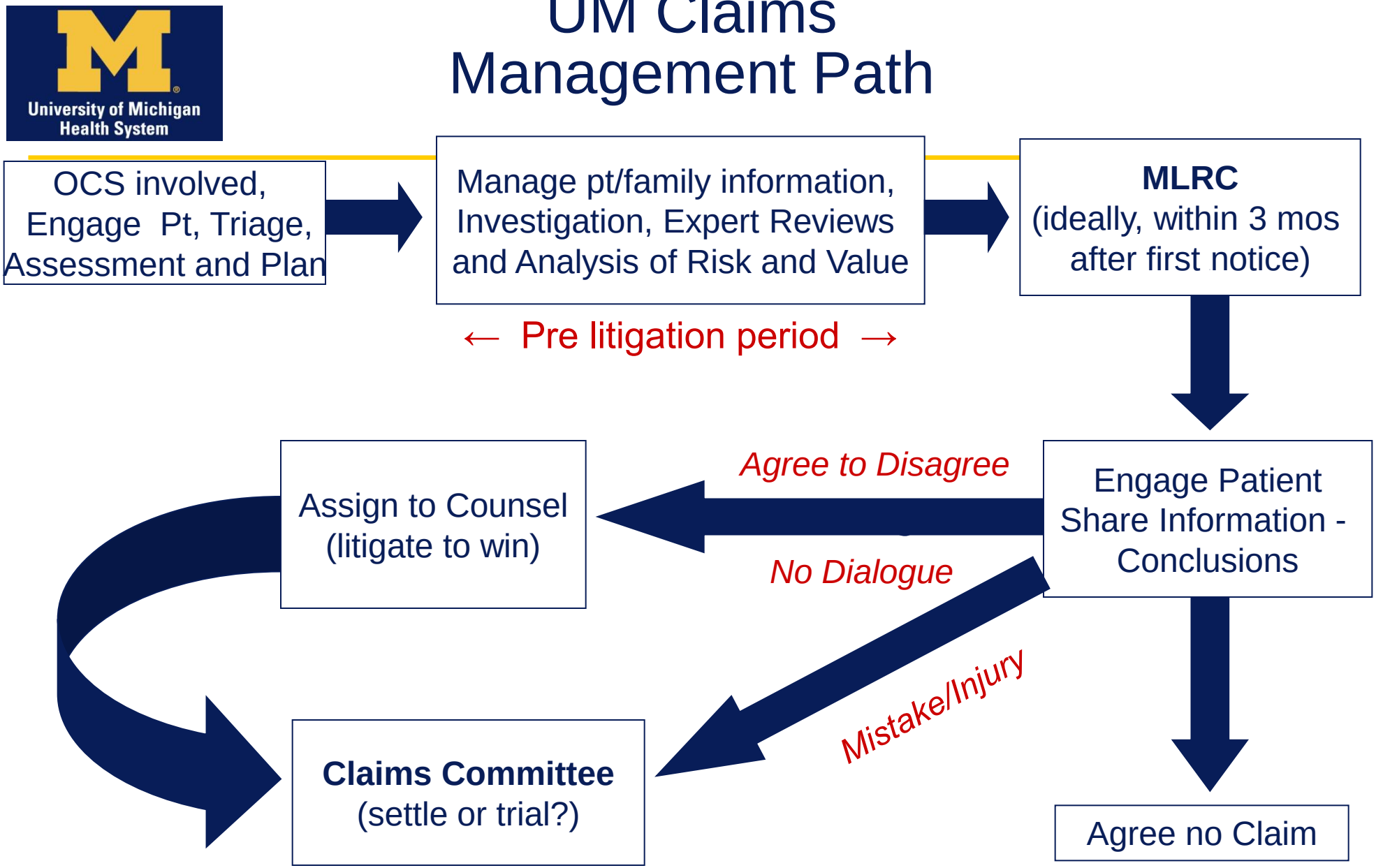
Short-term: Bedrock Claims Principles

We will compensate quickly and fairly when inappropriate medical care causes injury.

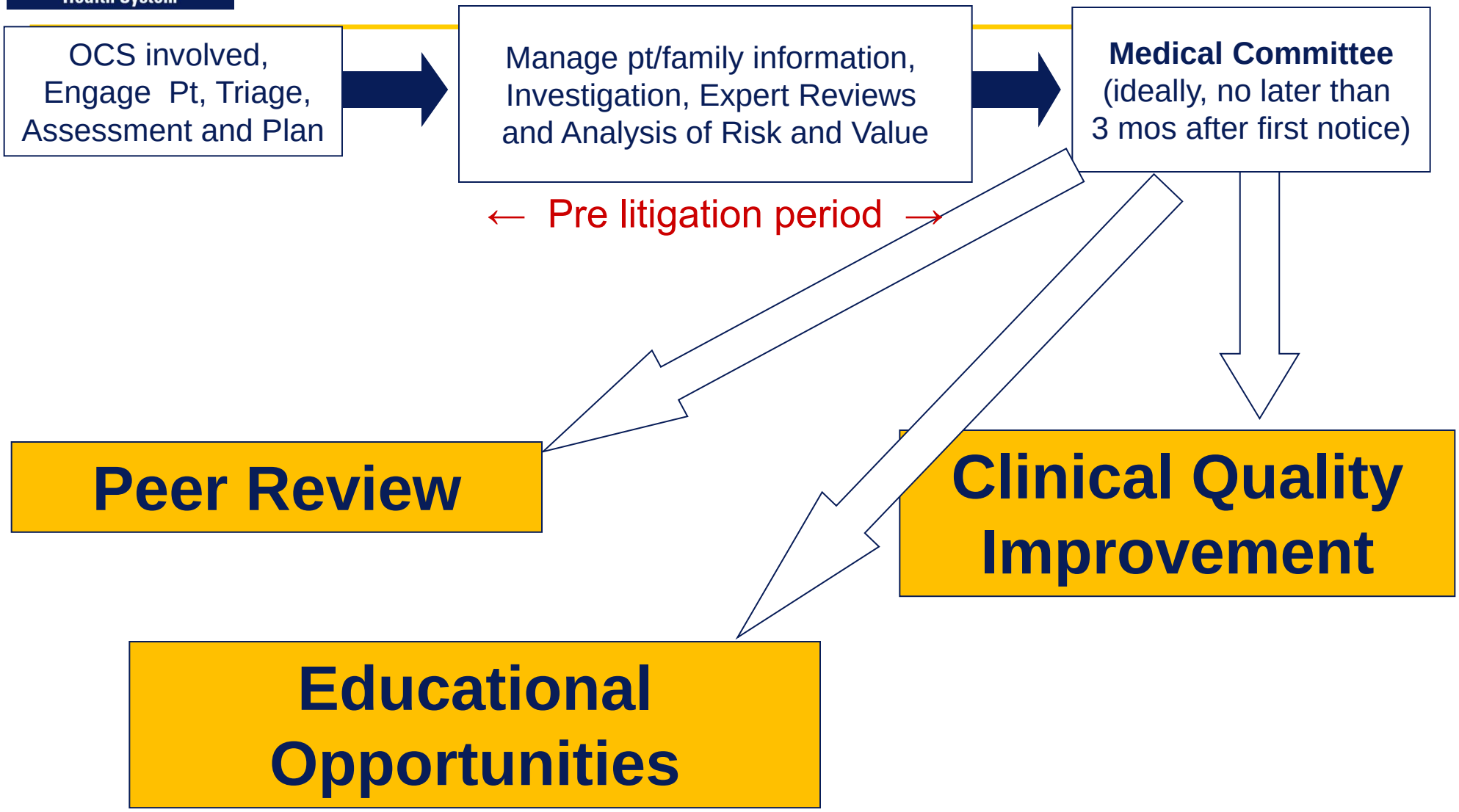
We will support our staff vigorously when the healthcare involved was reasonable.

We will reduce patient injuries (and claims) by learning from our patients' experiences.

UM Claims Management Path



Long-term: Improvement



University of Michigan Health System

It serves patients' and families' needs

University of Michigan Health System

What drives patients to sue their care givers?

Four common themes:

1) the need for an explanation;

2) a desire to ensure the safety of others;

3) sense of accountability;

4) compensation.

Vincent, C, Young, M, Phillips, A
Why do people sue doctors? A study of patients and relatives taking legal action.
Lancet 1994; 343:1609-13

University of Michigan Health System

One plaintiff's lawyer's experience

"Instead of adversarial, it was conversational. It was instead of trying to figure out what claims and defenses needed to be, I found myself trying to figure out some higher calling, what's the right thing to do here? What's the best thing to do here? ***My role changed from advocate to warrior to counselor is the best way that I can describe it.*** We are attorneys *and* counselors and the counselor part got emphasized, in fact, became the dominant, the ascendant part just as soon as it became clear the University Hospital was gonna take a different approach to this case."

University of Michigan Health System

Plaintiffs' Bar's Response (51 surveyed Jan, 2006)

- 100% rated UMHS "the best" and "among the best" health systems for transparency
- 90% recognized a change since 2001
- 81% said they changed their approach to meet our change
- 81% said their costs were less
- 71% settled cases for less than had they litigated
- 86% said transparency allowed them to make better decisions about claims to pursue
- 57% admitted that they turned cases down they otherwise would have pursued

University of Michigan Health System

It serves caregivers' needs

University of Michigan Health System

Dear Mr. Boothman,

Wanted to let you know there is a great article in today's NY Times that paints your work here at Michigan in very favorable light. Also, I thought I'd mention that Michigan's medical error policy was a big part of my choosing to come to residency here.

I'm sure I'm not alone. Keep up the good work!

With deep appreciation,

Melissa _____

University of Michigan Health System

Hi Rick,

I just returned from a week long leadership course at the Harvard School of Public Health. One of the presentations was regarding the legal and ethical issue of medical error. He highlighted your medical error disclosure program as the exemplary model of how to reduce the litigations. There were some skeptics in the crowd, but I shared that this program has really facilitated the improvement of provider-patient relationship at Michigan, which ultimately is the what we want to preserve as the driver of improving quality and safety.

I felt so proud to hear of your work and just wanted to drop you a note!

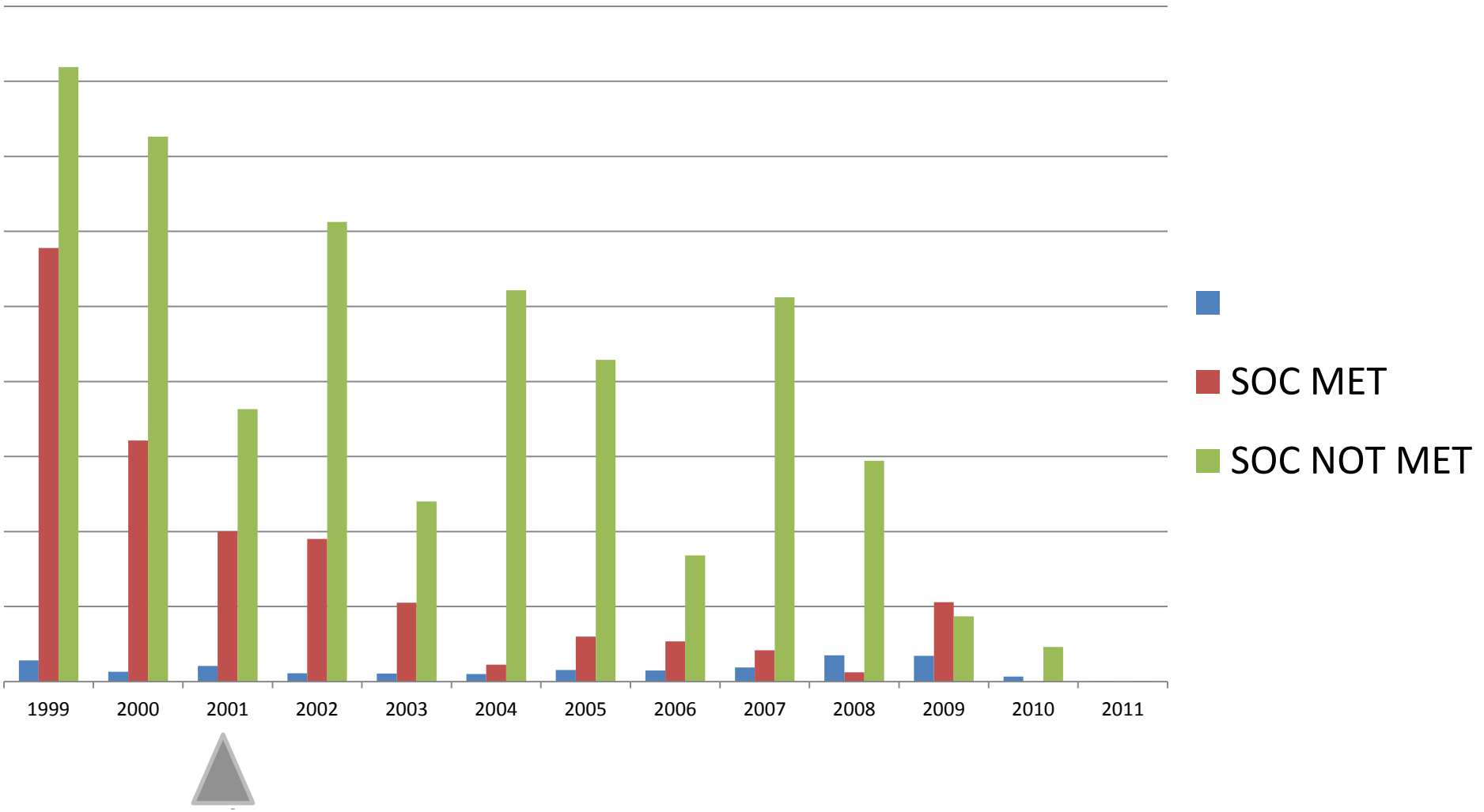
Thanks!!

John _____, MD, PhD

University of Michigan Health System

Most importantly, it serves Medicine's core mission

UMHS RISK MANAGEMENT CLAIMS BY INCIDENT DATE Money Paid per UMHS's Standard of Care Assessment



University of Michigan Health System

What to make of this?

- We have a clarity few other health systems have
- We've weeded out most of the bogus claims
- We've avoided litigation and its costs (financial, emotional, lost productivity)
- We can't blame greedy lawyers, opportunistic patients, or a broken court system
- We continue to cause avoidable injuries and put ourselves at risk
- But we have a clear view of our problems and a clear path to improvement

Claims Improvements

- New claims per month have dropped
- Total liability costs have dropped
- We are closing potential claims and claims faster
- We are increasingly avoiding litigation in both claims without merit and claims with merit
- Total claims have dropped

Published Results

Claims analysis: Kachalia, Allen, Kaufman, Samuel, R, Boothman, Richard C., et al *Liability Claims and Costs Before and After Implementation of a Medical Error Disclosure Program. Ann Intern Med. 2010; 153: 213 – 221 (2010)*

Description of the program and reasons for it: Boothman, RC, Blackwell, AC, et al *A Better Approach to Medical Malpractice Claims? The University of Michigan experience. J Health Life Sci Law. 2009; 2:125-59*

Practical guides to operationalizing the model: Boothman, Richard C., Imhoff, Sarah J., Campbell, Jr., Darrell A., *Nurturing a Culture of Patient Safety and Achieving Lower Malpractice Risk Through Disclosure: Lessons Learned and Future Directions*. *Frontiers of Health Services Management 28:3 (2012)*

Michelle M. Mello, Richard C. Boothman, et al, *Communication-And-Resolution Programs: The Challenges And Lessons Learned From Six Early Adopters Health Affairs, 33, no.1 (2014):20-29 (2014)*

University of Michigan
Health System

Marie and Christine

University of Michigan
Health System

University of Michigan Health System

"Why in hell would we do THIS? We're already paying out a king's ransom! You must be insane."

Executive for a captive insurance program
reacting to the Michigan Model
2009

University of Michigan Health System

More to the point:

When There's Harm in the Hospital: Can the Hospital Afford NOT to Replace "Deny and Defend" with Transparency?