

Administrative Risk and Audits: This Could End Your Career



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Underwritten by a ProAssurance Company

Disclosures

- I am a full-time employee of PICA/ProAssurance
- I am a shareholder of ProAssurance (NYSE:PRA)

Objectives

- Understand the regulatory and disciplinary risks facing today's podiatric physicians
- Understand strategies to deal with those risks

Malpractice Risk

- ▶ Media exposure/loss of reputation
- ▶ Time out of office/lost revenue
- ▶ Stress
- ▶ Automatic state claim reporting requirements
 - ▶ State Board
 - ▶ DOI
- ▶ Out-of-pocket payment for verdicts/settlements above policy limits or payment of punitive damages
 - ▶ Although rare this is a concern and limits of liability you select are important!
 - ▶ Punitive damages

Regulatory Risk

Out-of-pocket costs

- Defense costs above ADC limits
- Repayment of overpayment(s)

Collection actions

- Negative impact on credit rating

Time commitment

- Months to years
- Appeals

Implementation of corrective action

- Hiring a billing and coding expert
- Written compliance program

Additional audits

- Pre-payment review
- Follow-up reviews

Civil and Criminal Investigations

- Fines and penalties
- Prison

Business interruption

- On-site visits
- Law enforcement raids
- Staff time

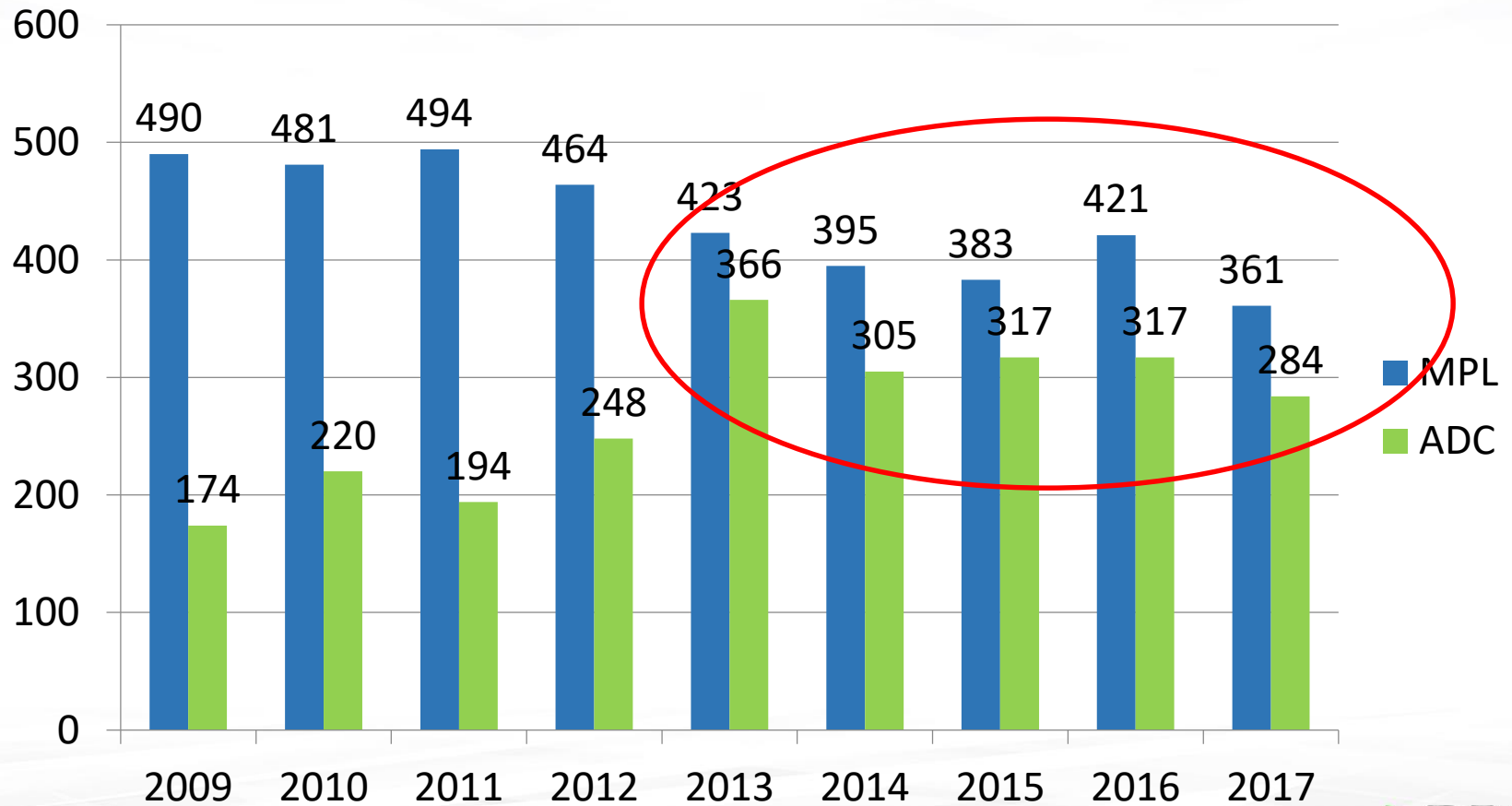
Media exposure & loss of reputation

Exclusion from participation

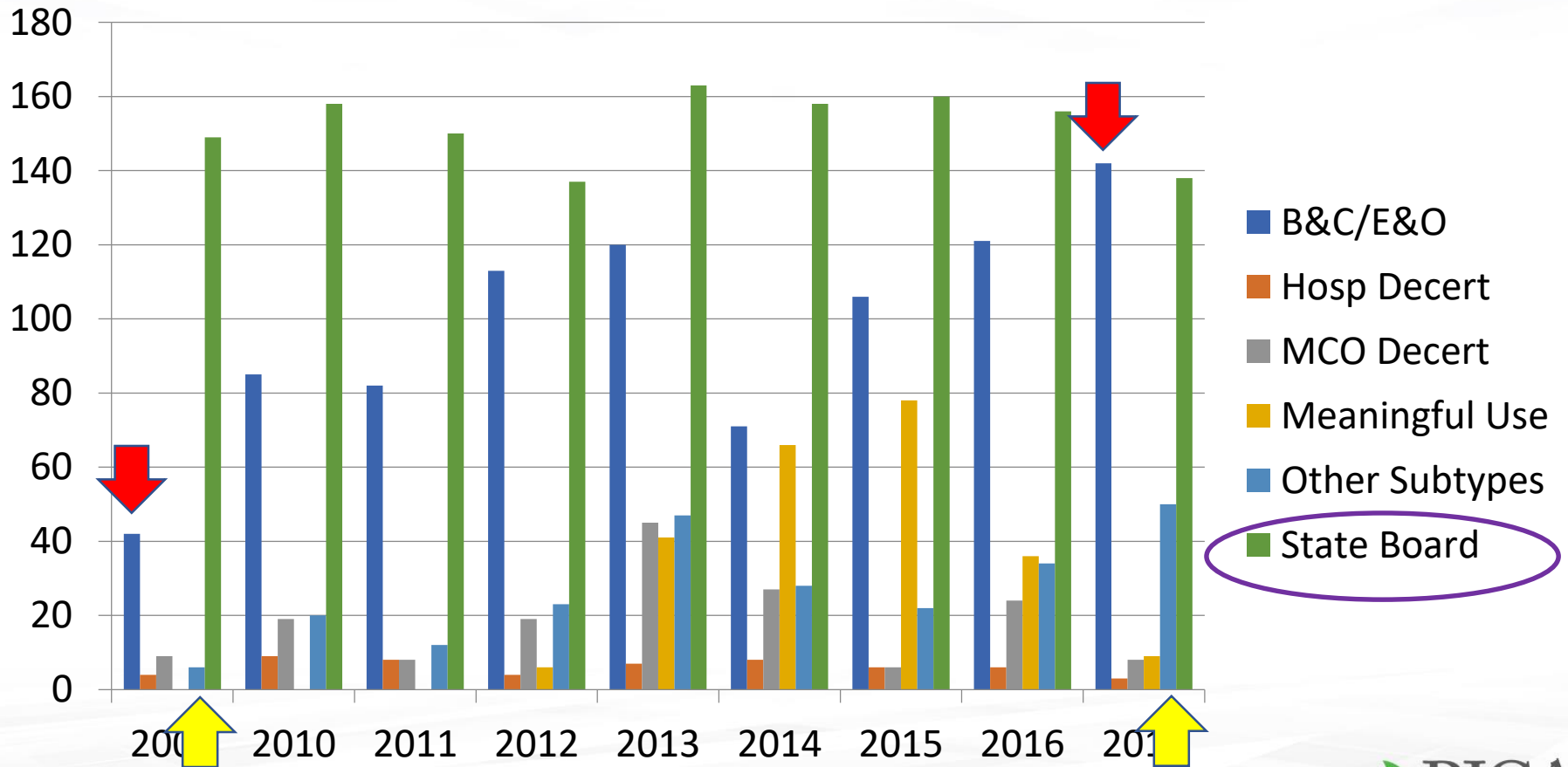
Reality

- Podiatry has been and continues to be a highly audited medical specialty
- PICA has seen a 67% increase in audits the past five years
- Adverse outcomes can affect your livelihood!

Number of MPL & ADC Claims Reported by Year



ADC Claims by Sub-type



Medicare Suspension and Revocation Audits

- ▶ Failure to post and observe operating hours
- ▶ Service to dead beneficiaries
- ▶ Aberrant providers (e.g. repeat offenders who do not respond to Medicare’s “educational” efforts
- ▶ Medicare Revalidation Issues
 - ▶ Hold on Medicare payment
 - ▶ Deactivation of Medicare billing privileges

Medicare or Private Insurance Coding and Billing Audits

- ▶ Can be Pre or post payment
- ▶ The ACA requires self-reporting of billing errors within 60 days of discovery or face fines/penalties
- ▶ Failure to sign/date progress notes
- ▶ Use of medical assistants to perform nail care
- ▶ Cloning of notes
- ▶ DME Documentation

Most Commonly Audited Codes

- 11720/11721 (nail debridement)
 - Mycotic nail coverage rules
 - Covered routine foot care
- E/M Codes with -25 modifier
 - Significant, separately identifiable E/M service = subjectivity
- Wound Care Codes
- Injection codes
- 11060/11061 (I&D Abscess)
- 11050 series (corns/calluses)
- 59 Modifier
- Orthotic Codes

WARNING



The mere fact that you billed for a code for many years (and have been paid) does **not** mean you are billing correctly

Most Common Reasons You are Audited

- ▶ You stand out statistically
- ▶ Your patient complained
- ▶ Someone else reported you
 - ▶ Former employee
 - ▶ Former spouse
 - ▶ A competitor

Hospital/MCO Decertification

- ▶ Time Commitment
- ▶ Loss of Revenue
- ▶ Loss of Reputation

Meaningful Use Audits (now part of MACRA)

- ▶ Pre or post payment
- ▶ Can occur for any attestation years
- ▶ If audited, you must prove/document each item to which you attested
- ▶ Due process and appeal rights are limited
- ▶ Outcomes
 - ▶ Repayment of incentive money
 - ▶ Time commitment
 - ▶ Additional audits in future years

Other Subtypes: HIPAA Audits, Medicare Revalidation Issues, OIG Investigations, Etc.


▶ OCR/HIPAA Audits

- ▶ Out-of-pocket expense
 - ▶ Pt. notification of lost/stolen records or other HIPAA breach
 - ▶ Corrective action
 - ▶ Fines and penalties (could be millions of dollars)
- ▶ Loss of reputation
 - ▶ News media

▶ Durable Medical Equipment Audits

▶ OIG Investigations (fraud)

- ▶ Potential Criminal Matter (not covered)
- ▶ Prison
- ▶ Loss of reputation
- ▶ Loss of license



Don't forget
about
cyber!

Observations

- Government auditors and investigators often DO NOT understand podiatry or podiatry codes
- Doctors without good counsel are sitting ducks
- Fraud by DPMs is uncommon
- Poor recordkeeping is common

Yet,

- The % of doctors participating in Medicare is at an all time high: >90%
- % of doctors opting out of Medicare is <2%

The HIPAA Privacy Rule (2004)

Patient PHI may only be used

- As permitted by HIPAA rules
- OR
- With patient authorization.

The HIPAA Security Rule (2007)

- Passwords and authentication (“access controls”)
- Transmission of ePHI and encryption
- Physical security
- Integrity of ePHI
- Loss of data

The HiTech Rule (2010)

- Governs Obligations for Data Breaches

 - Reporting Requirements

 - Credit Monitoring

- Ransomware

- PCI Compliance

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Medicare Appeal Process

Level	Type of Appeal	Time Limit
1 st	Redetermination	120 days
2 nd	Reconsideration (QIC)	180 days
3 rd	Administrative Law Judge	60 days
4 th	Medicare Appeals Council	60 days
5 th	Federal District Court	60 days

State Board Investigations

- Fines/penalties
- Payment for education
- Time away from office
- Loss of reputation
- Decree of Censure
- Probation
- Suspension of license
- **Revocation of license**

What Does Your Carrier Cover?

- Medicare Revocation and Suspension Audits?
- Medicare/Medicaid Billing and Coding Audits (all levels)?
- Private Insurance Billing and Coding Audits?
- DME Audits?
- HIPAA Privacy, HIPAA Security and Data Breaches (HiTech)?
- Hospital Staff Decertification and Reduction of Privileges?
- Private Insurance Plan/HMO Decertification?
- State Board Actions of Any Kind?

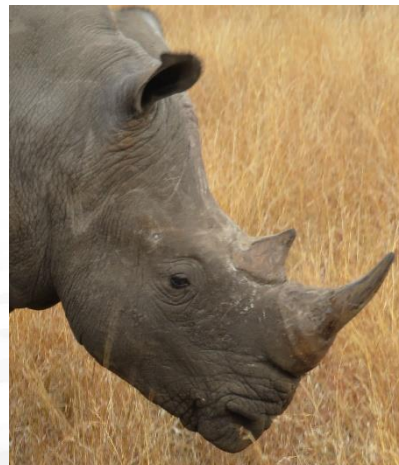
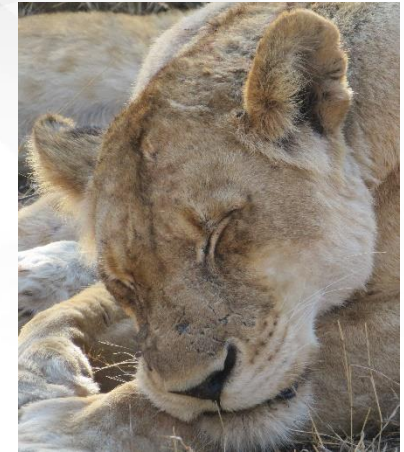
Questions?



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