

Claims Trends and Risk Management in an Increasingly Litigious World

Presenters: Krista Mayes, David Gagliardi

Agenda

01.

Who we are, what we do,
why we're here

- Krista and Dave
- NSM Insurance Group
- Addiction Treatment Providers Program

02.

Claims Trends

- Claims statistics for OTPs
- Claims examples and scenarios
- How plaintiffs' attorneys are affecting trends

03.

Risk Management

- An insurance underwriter's perspective
- The importance of having a good insurance agent/advisor

Who We Are



Krista Mayes

Program Director, Addiction Treatment Providers Program

- 19 Years commercial insurance experience
- 3 Years experience underwriting behavioral health risks



David Gagliardi

Director of Claims, NSM Insurance Group

- 26 Years Legal and Claims Experience
- Started on insurance defense side
- Spent some time on the dark side - Plaintiff personal injury
- Now inside the insurance industry - 5 years with NSM

What We Do



NSM Insurance Group, est. 1990

- Program Administrator specializing in the development, marketing, distribution and underwriting of industry-specific, niche, commercial insurance programs



Addiction Treatment Providers Program (ATP), est. 2005

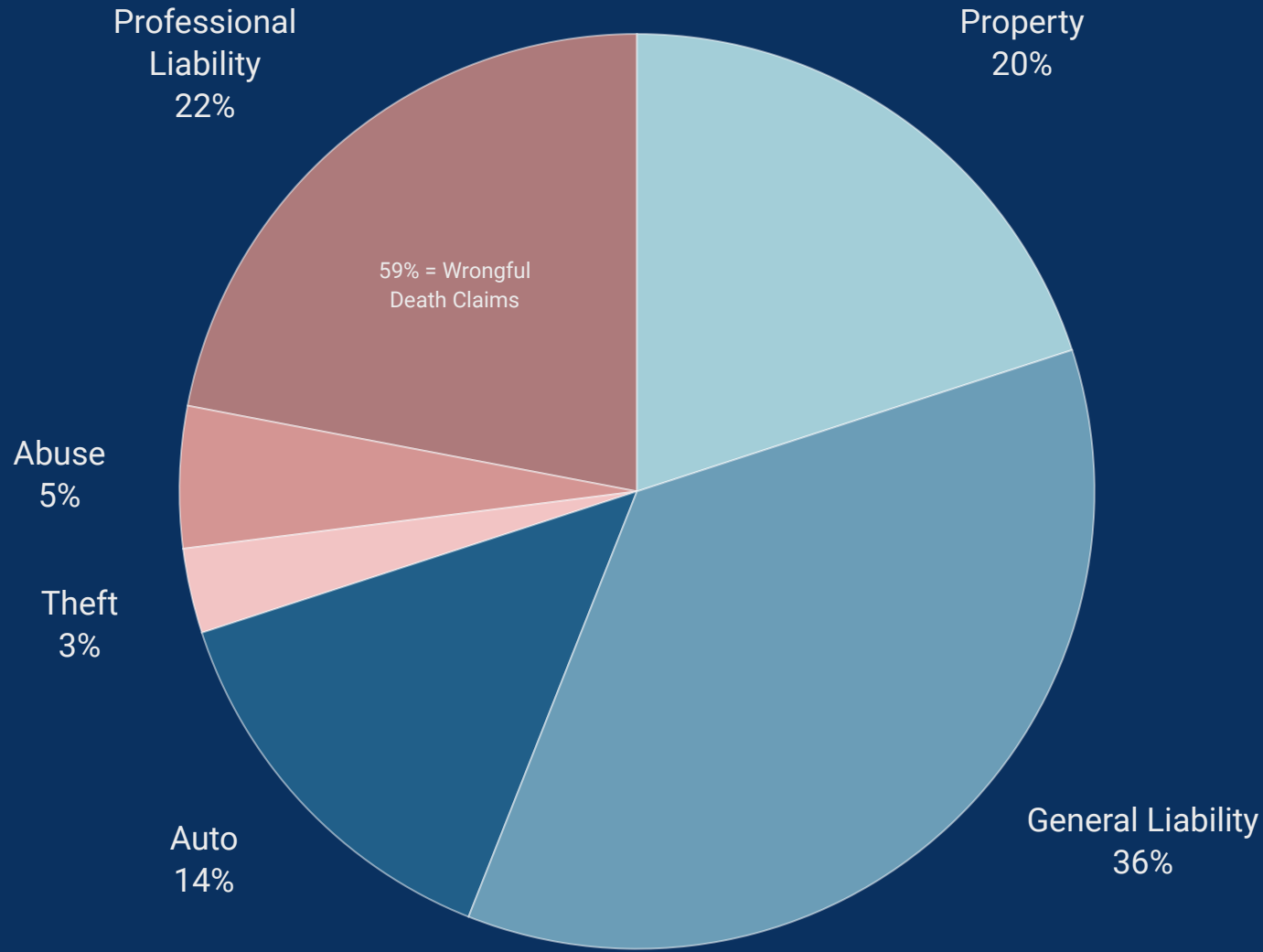
- A niche, commercial insurance program within the NSM family specializing in underwriting and providing business insurance to the Behavioral Health Sector including Opioid Treatment Providers.
 - ATP currently insures approximately 200 OTPs

Why We're Here

- To share some of our experience working with OTPs from a risk and claims perspective

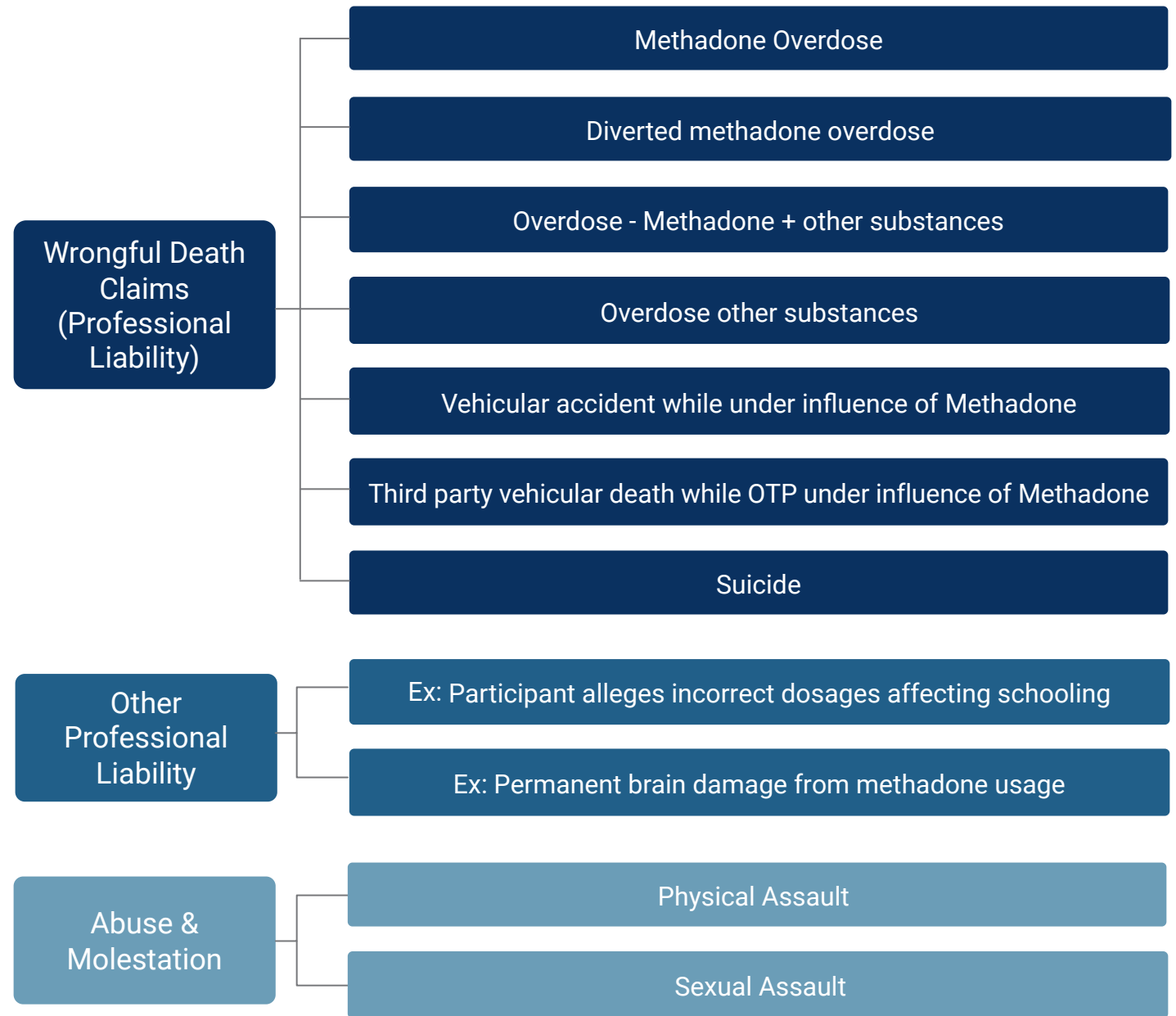
- To support AATOD and the important work they do on behalf of the MAT and OTP Community

- To be a resource for you



Claims Breakdown

ATP Claims Trends for OTP's



01. Claim Scenario

Motor Vehicle Death – Third Party Non-Patient

Non-patient sustained fatal injuries when she was involved in an MVA with a tractor trailer driven by our insured's patient. During course of litigation between the deceased's estate and the trucking company, it was established that the driver was a patient of our insured.

01. Claim Scenario

Two allegations:

1. Trucking company says our insured had a duty to notify them that the driver/patient was treating with our insured for substance abuse – a direct violation of his employment contract.
2. Insured failed to institute and follow a policy and procedure for patient management and failed to perform proper patient screening.

Outcome:

- Trucking company's insurance policy ended up paying \$5MM
- Our insured's policy paid \$45,000
- *The points to be made with this example are:*
 - *Demand was for policy limits (just not against our insured)*
 - *Our insured's liability was determined to be low because they were able to demonstrate adherence to protocol, policies and procedures*

02. Claim Scenario

Motor vehicle death – Patient

60-year-old married male with children and grandchildren. On the date of patient's death, he received his methadone dosage and was permitted to drive, allegedly despite obvious impairment.

02.

Claim Scenario

- Allegations included negligence, carelessness, recklessness, and substandard medical care.
- Treated with insured for one and a half years.
- The plaintiff's attorney based the case on:
 - 15 urinalysis screenings testing positive for opiates and in some cases cocaine. These findings were not commented on or addressed within the patient's records and treatment plan
 - Policies/procedures for the OTP stated required monthly individual plus weekly group counseling sessions for continued participation in treatment. The patient attended a total of 1 individual session and never attended group counselling; however, treatment was never suspended and patient had take home privileges.

02.

Claim Scenario

Outcome:

Case was ultimately dismissed. Toxicology results indicated presence of heroin in urine but not the blood stream. Impairment due to opiates could not be established and cause of accident was undetermined.

- *The point of this example is that the plaintiff's attorney knew to investigate whether protocol was followed and documented by the insured.*

03. Claim Scenario

Accidental Overdose and Death – Mixed Drug Toxicity

- 29-year old unmarried male was receiving Methadone from insured OTP.
- Weekly take home privileges.
- Also getting methadone from brother and the street.
- Year leading to overdose, 9 drug screenings tested positive for THC.
- Plaintiff's attorney based case upon expert opinion that take home methadone was not appropriate given the patient's behaviors and toxicology screenings.

03. Claim Scenario

Outcome/settlement

- Demand \$375,000
- Settled for \$115,000 - venue was 51% comparative negligence
- *In this case, policies and procedures were not followed - leading to liability on the part of the insured.*

04. Claim Scenario

Negligent Medical Care

33-year-old father of two minor children suffered cardiac arrest and permanent brain damage.

Patient treated with insured facility for a duration of two years for heroin addiction beginning with 45 mg methadone per day. Methadone dosage 200mg at time of heart attack.

- Plaintiff's case centered around no follow up for EKG results on the part of the insured, even though the Medical Director at the OTP noted within the patient's chart that an EKG needed to be performed due to methadone dosage over 100 mg per day. Patient also had positive urine tox screen for cocaine.
- Medical records from hospital ER on day of the heart attack indicated prolonged QT Interval on EKG.

04.

Claim Scenario

Outcome/settlement

- Demand for policy limits - \$1MM primary and \$2MM excess
- Settlement - \$1.8MM (total was \$2.5MM – liability shared by two carriers)
- Treating Medical Director was singled out and held responsible for the OTP's liability
- *Are there checks and balances regarding treatment plans that can/should be addressed within a Risk Management Policy?*

05. Claim Scenario

Abuse - Insured Employee to Patient

30-year-old methadone maintenance patient alleged inappropriate relationship (18 months in duration) with his counselor contributed to break up of his engagement and hindered his progress in overcoming his polysubstance abuse and anxiety.

Accused counselor was uncooperative in the investigation and was subsequently terminated. Interviews with management indicated the counselor was well respected and valued by the facility. The situation came as a surprise.

05. Claim Scenario

No record of background check or reference checks in counselor's personnel file.

Investigation revealed other employees of the OTP were aware of the inappropriate relationship through the counselor and patient. No one reported the situation to management.

Outcome/settlement

- Demand \$400,000 for mental anguish and intensive treatment for substance abuse and mental health diagnoses.
- Settlement through mediation \$150,000

What are some of the risk management lessons to learn from this example?

Evolving Litigious Environment

"Winter is Coming"



Less Social Stigma

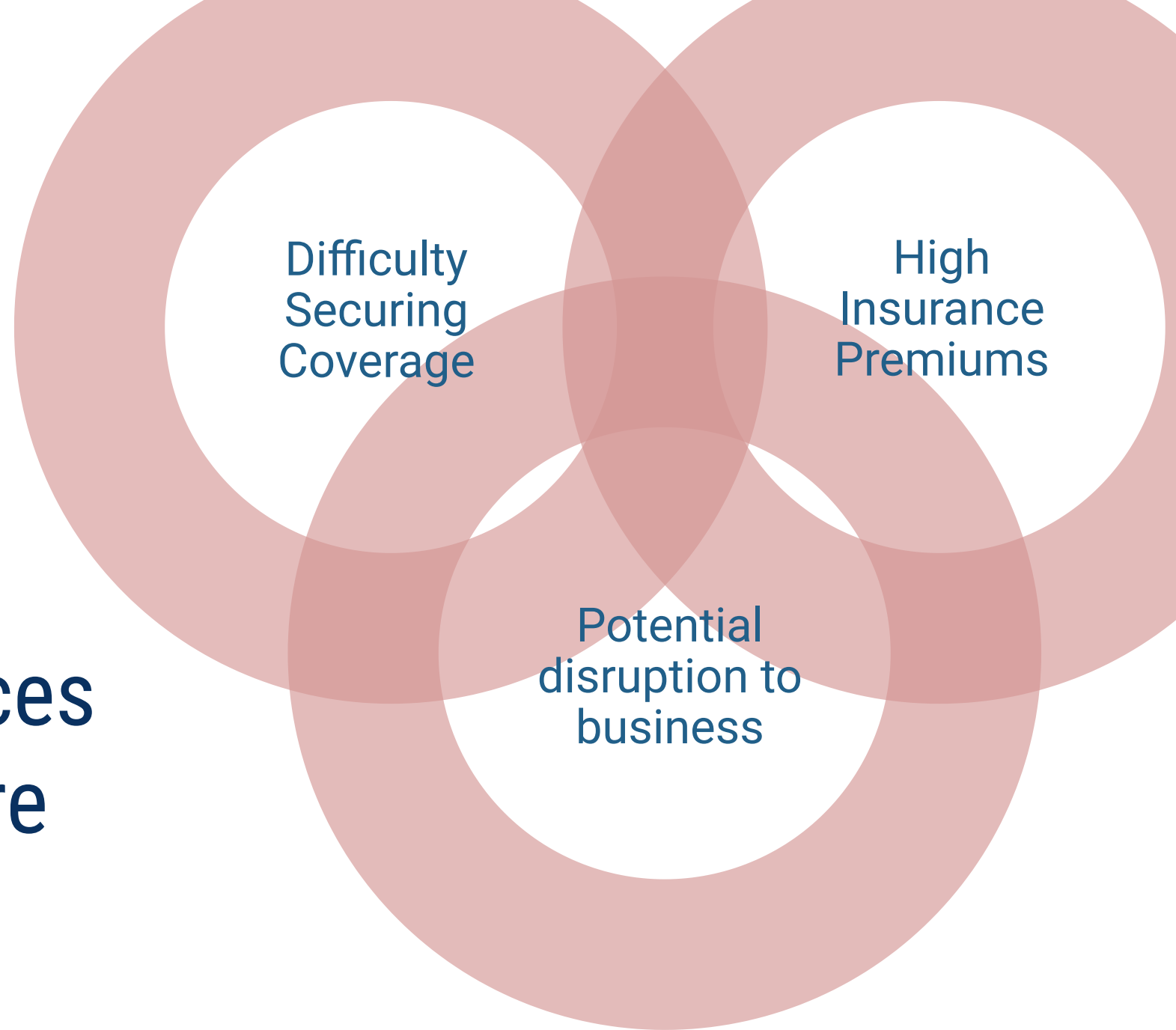
- Abuse
- Addiction

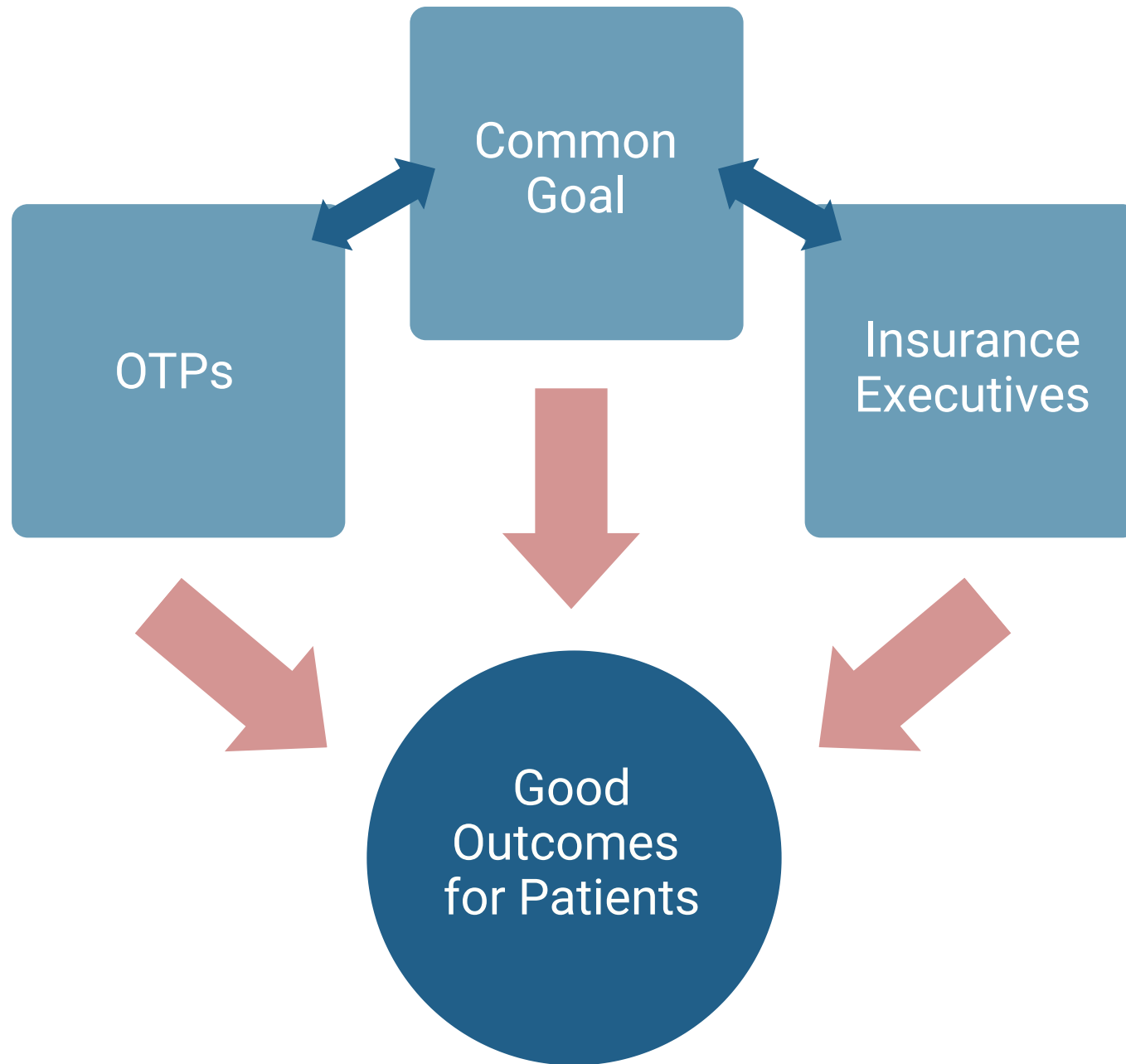


Plaintiff Attorneys

- Highly organized and educate each other on how best to get at available dollars
- Focus on high insurance limits
- More frequently customizing their cases to insurance policy limits

Possible Consequences For Frequent or Severe Claims Record





**Risk
Management**

Plan For The Worst

Good risk management will help mitigate claims occurrences

Solid, written policies & procedures for implementing risk management

Proactive training and communication to staff is essential

Follow and Enforce

Document that you *Follow and Enforce*

- This is the difference-maker in providing valuable grounds for defense in a litigious situation

Assessing Risk: Perspective of an Insurance Underwriter

Low staff turnover rate

- Studies have shown – one specifically cited from an article by Dr. John C. Bell published in the 1988 Journal of Health and Social behavior found “the more effective programs have high patient retention rates, (especially long-term retention rates), *high rates of scheduled attendance, a close, consistent and enduring relationship between staff and patients, and year-to-year stability of treatment staff*”
- Consistent Executive Management and Administration is also important

Physical Exams and Bio-psycho-social evaluations

Toxicology screenings

Adherence to SAMHSA’s Criteria for OTP Standards of Care including Unsupervised Approved Use (Take-Home) of Medication

Written Incident Reporting Procedures

Criminal background and reference checks of all employees and volunteers

A good risk management culture starts at the top

- Consider putting a key employee in charge of risk management for your OTP
- Provide top level support for this person
- Continuous training and reinforcement of the rules and guidelines of your organization are critical for all staff, both clinical and administrative
- Document that policies and procedures are clearly communicated, monitored, and implemented

Make sure you have a good insurance agent who is knowledgeable about your business and all of the exposures

Risk is
Unavoidable,
But You Can
Manage It

Thank you for your time!

Questions?

