



**OGDEN SURICAL-MEDICAL SOCIETY**

# **Conference FOR THE Curious Clinician**

May 18, 2022

# Navigating the Crossroads - Diagnostic Error and Telemedicine

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- Identify potential breakdowns in the telediagnostic process
- Implement at least one risk strategy to improve the telediagnostic process
- Recognize an opportunity to manage patient expectations for telemedicine

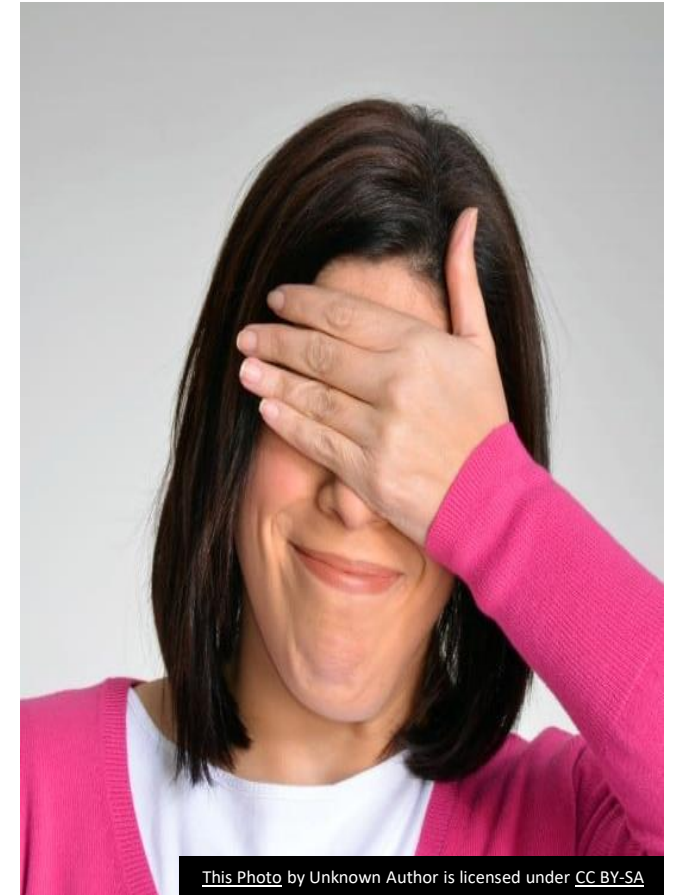


# Objectives

# Diagnostic Error Now

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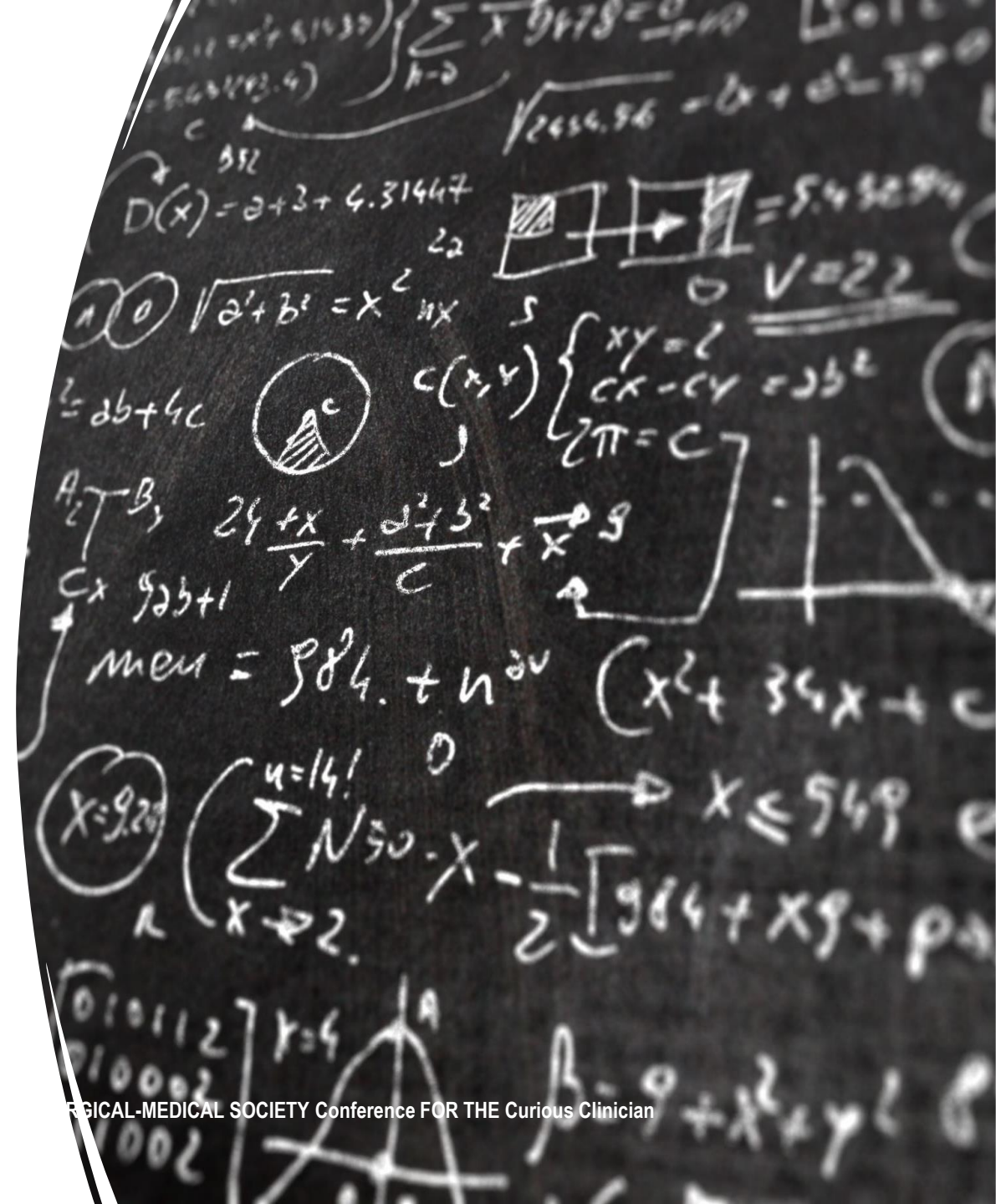
- Difficult to pinpoint frequency
- Primary allegation in 32% of over 21,000 closed claims all medical professional liability (“MPL”) claims
- Most common chief medical factor in 41% of pediatric closed claims originating in EDs and urgent care centers
- Top allegation/leading cause of claim-related death and disability in study spanning 25 years of “traditional” patient care
- Only 2% of closed MPL claims involved telehealth
- Exponential growth in telemedicine, majority of physicians “adapting” because not trained in telediagnosis



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# Defining the Problem

- Graber and Gordon say an erroneous diagnosis can be . . .
- National Academy of Medicine says diagnostic error is . . .
- MICA says diagnostic errors include . . .



# It's a Moving Target

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- No-fault Factors
- System Factors
- Cognitive Factors



# Who's at Risk



## Top 10 Presenting Medical Conditions

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Abdominal and pelvic pain

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Dorsalgia

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Pain in throat and chest

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Unspecified lump in breast

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Malignant neoplasm screening

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Breathing abnormality

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Other joint disorder

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Headache

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General examination encounter without complaint

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Other soft tissue disorder

## Top 5 Specialties

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Radiology

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Internal medicine

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Family medicine

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Ob-gyn Surgery

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Emergency Medicine





## Cancers

11.1%

- Lung
- Melanoma
- Colorectal
- Breast
- Prostate

## Infections

10.2%

- Spinal abscess
- Meningitis & encephalitis
- Endocarditis
- Sepsis
- Pneumonia

## Vascular Events

8.7%

- Aortic aneurysm & dissection
- Arterial thromboembolism
- Venous thromboembolism
- Stroke
- Myocardial infarction

# It's Like . . .



Infrastructure  
to enable it



Specialized  
training



Physical  
examinations



New  
language for  
patients



Keen  
appreciation  
for its limits



Evidence is  
limited and  
mixed





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“Perhaps the single most burning question going in to this project—and coming out of it—is when must a patient be seen in-person and when may they be seen virtually.”

Graber, M.L., Schrandt, S. (2021). Improving telediagnosis: A call to action. Society to Improve Diagnosis in Medicine. [TeleDx-Final-Report-Update.pdf \(improvediagnosis.org\)](#)

# Telediagnostic Strategies

Continuing medical education



Referral for 2<sup>nd</sup> opinion or consult

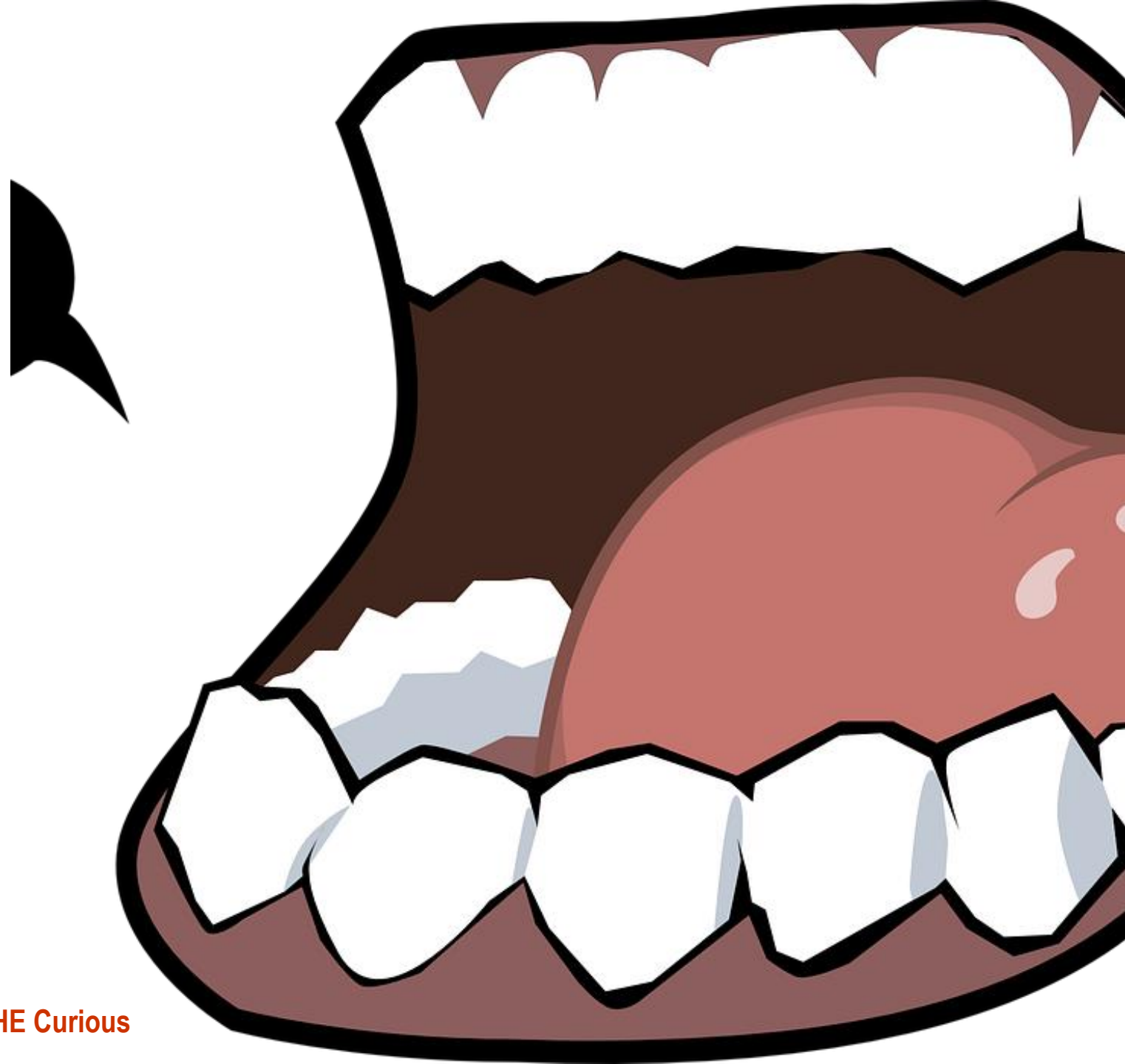


Checklist or “diagnostic time-out”



# “...but My Doctor Never Told Me That!”

- Potential allegations of negligence
- Potential areas of noncompliance with Utah or federal law



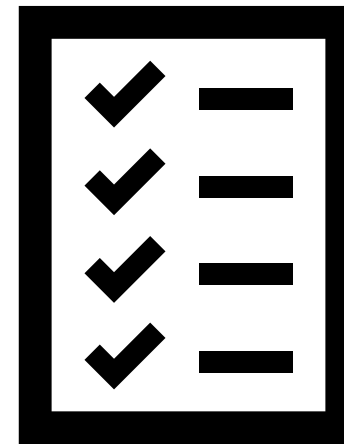
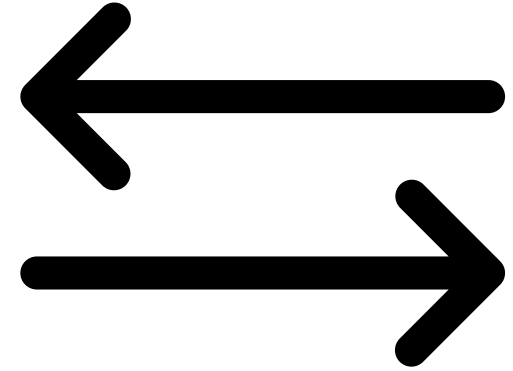
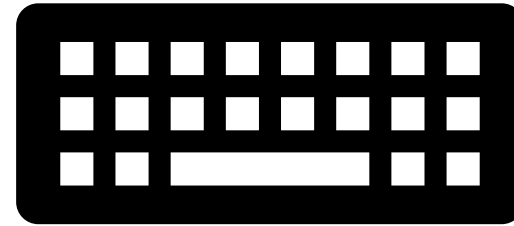
# Informed Consent Strategies

Obtain and document

Template, checklist, or form with required elements

Revise process when policies, procedures, law, or technology changes

Diagnostic uncertainty



# In-person or Online

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Potential allegation of negligence

Potential areas of noncompliance with Utah and federal laws



# Effective Encounter Type



Good faith  
determination  
of

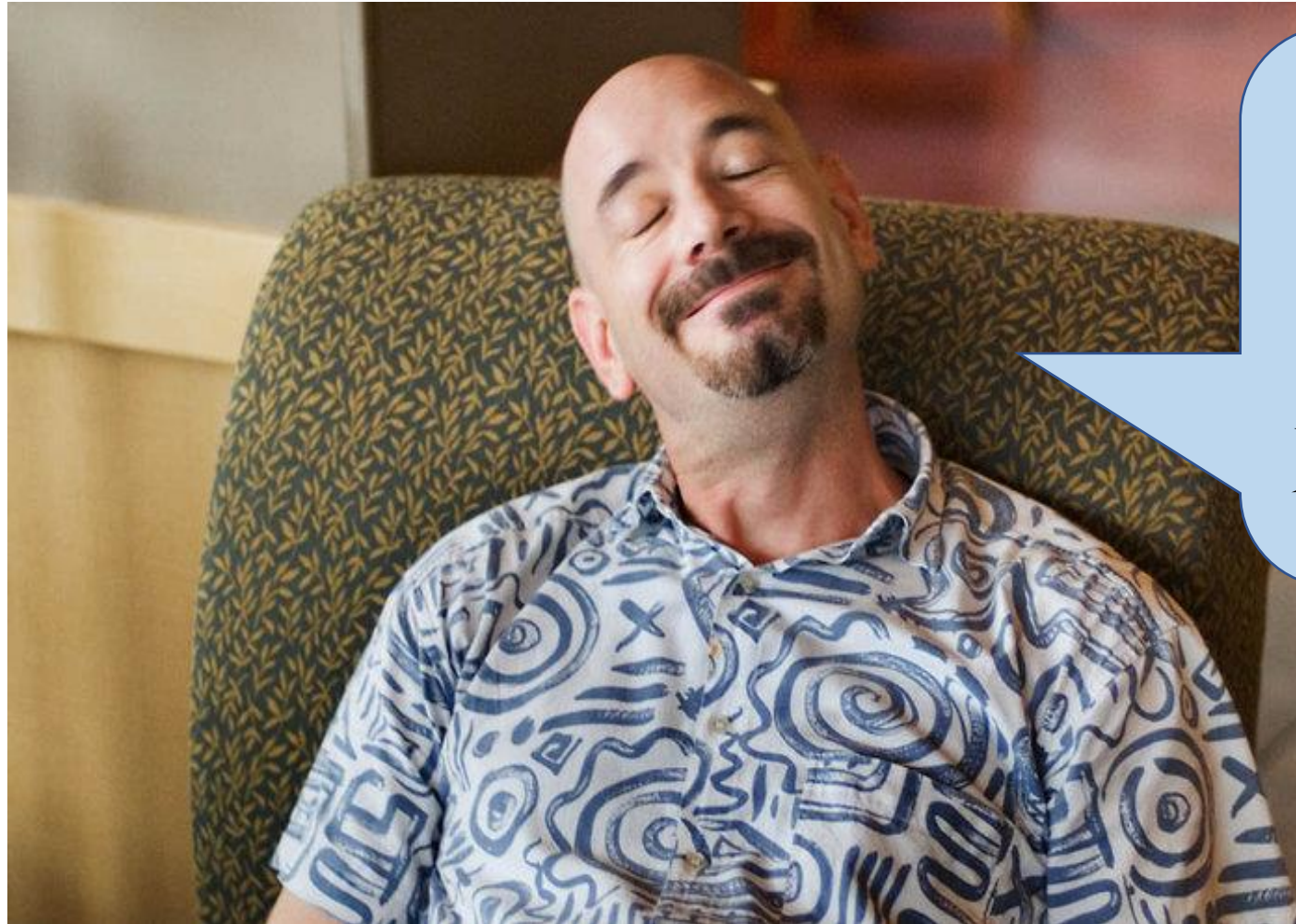
- Need for and effectiveness of telehealth vs in-person encounter and
- Appropriateness of telehealth medium

Documentation  
of legislative  
criteria

- Template, checklist, or form with criteria



# The Patient Experience

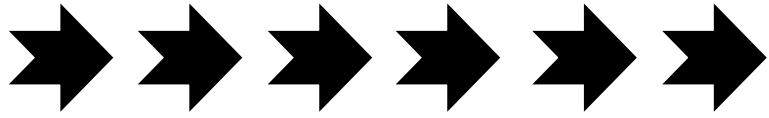


**My doctor  
can see me  
in 3 weeks.**

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**YOU CAN'T  
SEE ME FOR  
3 WEEKS?**







# Why It Matters Angry Customers Sued

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Starbucks for underfilling lattes

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23andMe for misleading customer about the company's ability to predict health risks

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McDonald's for selling cheese-less fried mozzarella sticks

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Facebook, now Meta, for tracking online activity even when users were not signed in

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Philip Morris, R.J. Reynolds, Brown & Williamson, and Lorillard after smokers died from lung cancer

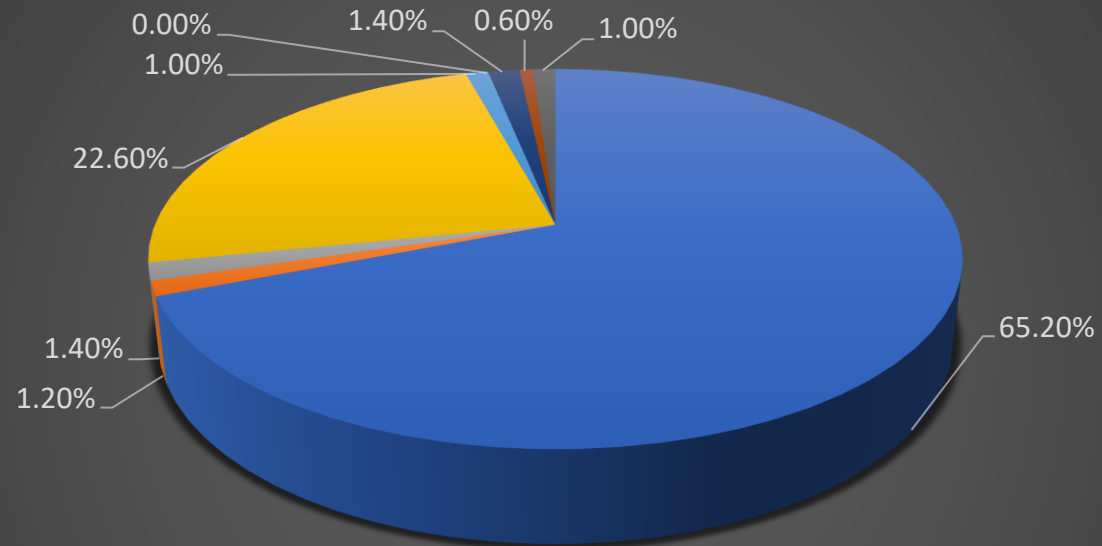
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Kellogg's because strawberry Pop-Tarts contain pears and apples

So do angry patients

# Juries Rarely Decide Cases

Disposition of Closed MPL Claims 2017-2019



■ Dropped, withdrawn, dismissed

■ Alternative dispute resolution

■ Contract liability agreement

■ Settled

■ Early offer

■ Communication and resolution program

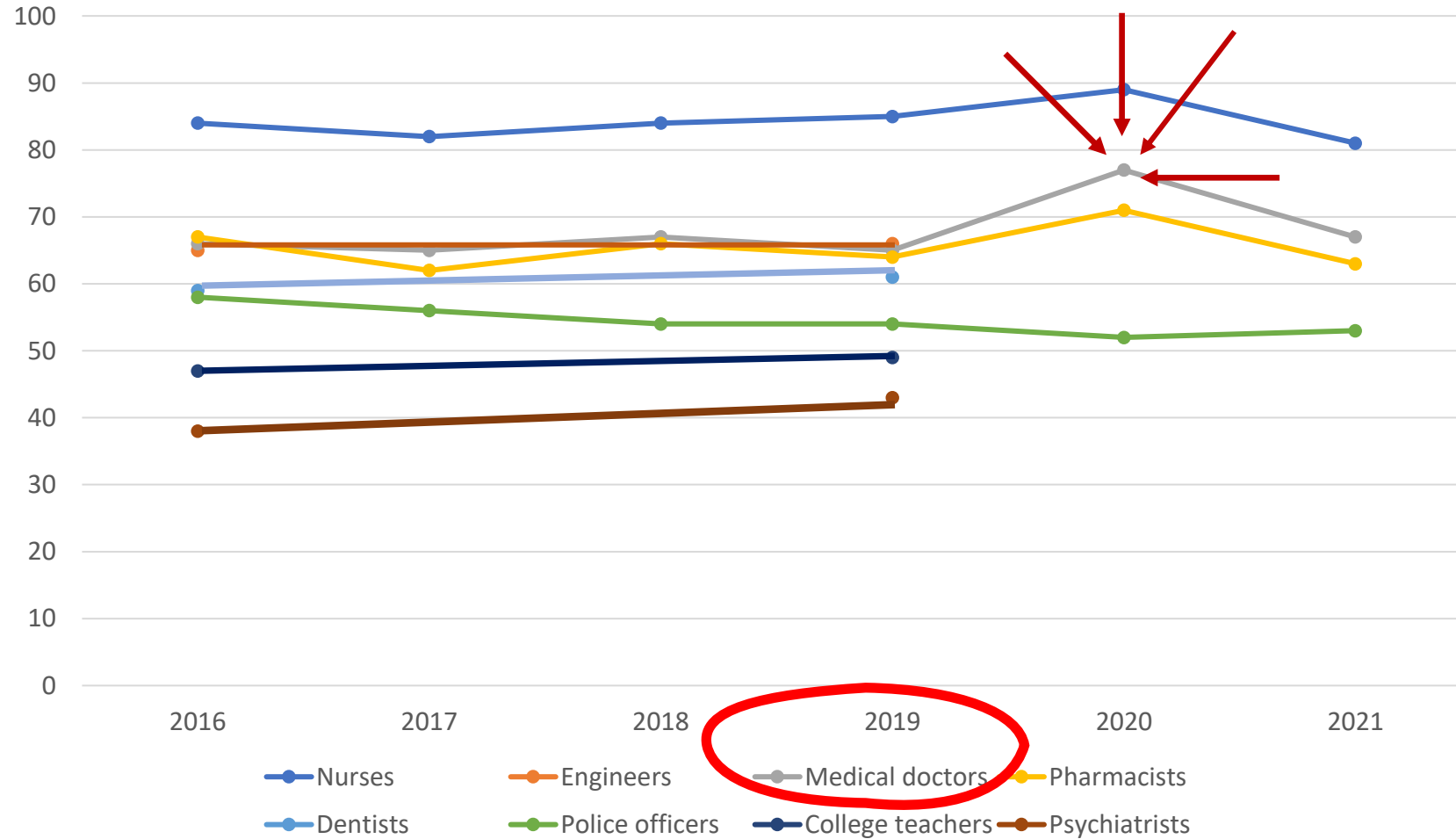
■ Verdict for defendant

■ Verdict for plaintiff

■ Unknown

# “You Like Me. You Really Like Me.”

% Americans Rating Professionals with High-Very High Honesty & Ethical Standards





## but When You Don't Like Me

- Jury awards of \$1 million have been gradually increasing
- 50 largest verdicts between 2001 and 2015 were \$15-\$20 million
- Average verdict severity rose 50% between 2016 and 2019
- Annual average of the 50 largest verdicts was \$22.9 million between 2016 and 2019
- 2019 Baltimore jury awarded the plaintiff \$230 million – one of the largest MPL awards in US history

# PX Strategies

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Spine patients prefer . . .

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Established headache patients like . . .

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Initial surgical consultation patients want . . .

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Physicians in multiple specialties unable to physically examine the patient or test muscle strength . . .







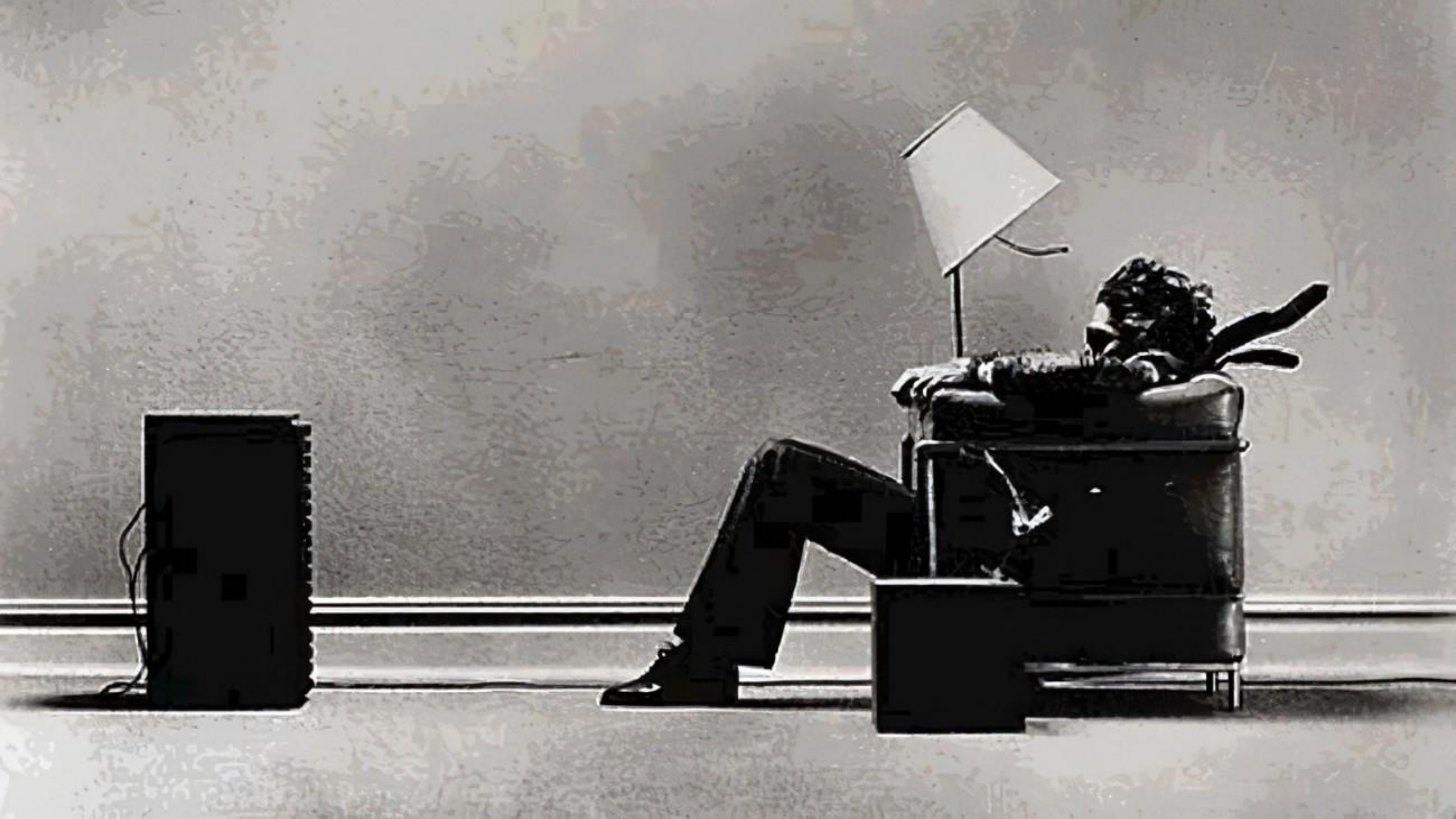
# More PX Strategies

In 2020, 84% of Medicare beneficiaries . . .

They used telehealth for . . .

Millennials want . . .

Generation X is willing . . .





# It's Hammer Time

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