First Report from the American Society of Metabolic and Bariatric Surgery Closed-Claims Registry: Prevalence, Causes, and Lessons Learned from Bariatric Surgery Medical Malpractice Claims

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Disclosures

John M. Morton – Ethicon , Olympus, Novo Nordisk- Consultant

Background

- The landmark Institute of Medicine Report *To Err is Human* highlighted the societal need to improve patient safety.
- Medical malpractice claims are often offered as a method of addressing lapses in patient care.

Background

- Bariatric surgery has experienced a tremendous improvement in patient outcomes.
- Despite excellent patient safety profile, malpractice coverage for bariatric surgery malpractice was initially difficult to obtain.

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Original article

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Background

- A bariatric surgery closed claims registry affords the opportunity to review specific episodes of care that may have opportunities for improvement.
- Here, we present the first bariatric surgery closed claims registry designed to examine prevalence and causes of malpractice claims.

Methods

- Four of the nation's major malpractice insurers agreed to participate in the American Society for Metabolic and Bariatric Surgery's Closed Claims Registry.

- The ASMBS Closed Claims Taskforce obtained primary data from direct abstraction on-site of insurance company's closed-claims files.

Methods

Data abstraction included the following variables:

- Age
- Preoperative Body Mass Index
- Female
- Number of Comorbidities
- Surgeon Board Certified
- Surgeon Foreign Medical Graduate
- Hospital Accreditation Status
- Types of Procedures and Complications
- Monetary Awards and Lawsuit Expenses

Methods

Following data abstraction, assessment of the clinical summary was provided on basis of the following categories:

- Diagnosis and treatment events
- Surgeon preoperative, intra-operative, post-operative, global assessment of care
- Care determination
- Communication concerns

Methods

- Complication preventable by surgeon, preoperative, intra-operative, post-operative care
- Role of language, informed consent, fatigue, distraction, workload clinical performance issues, equipment, or teaching hospital/trainee supervision
- Cause determination by provider, system and/or disease

Cause Determination

- NOT PREVENTABLE (CARE APPROPRIATE)
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- HUMAN ERROR (PRACTITIONER IMPROVEMENT OPPORTUNITY-POSSIBLY PREVENTABLE) SIMPLE ERRORS OF DIAGNOSIS, TREATMENT, JUDGEMENT
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- AT RISK BEHAVIOR (PREVENTABLE ERROR) CARE WHICH REQUIRES SIGNIFICANT EDUCATION OR COACHING TO PREVENT REOCCURENCE
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- INAPPROPRIATE SEVERE (PREVENTABLE) CARE SUGGESTS RECKLESS DISREGARD OF SURGEON'S DUTY TO PATIENT THROUGH GROSS NEGLIENCE, INCOMPETENCE OR ACTUAL INTENT TO PROVIDE SUBSTANDARD CARE
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Results

Preoperative Study Population Demographics	
Number of Patients, #	175
Age, n (mean ± SE)	44.4 ± 1.0
BMI, (mean ± SE)	48.0 ± 0.9
BMI >50, %	41.8
Female, %	70.2
Comorbidities, n (mean ± SE)	2.86 ± 0.2
Type of Procedure, %	
LRYGB	45.6
Lap Band	18.1
Open Surgery	13.4
Sleeve Gastrectomy	8.1
Revision Surgery	4.0
Non-Standard Procedures	3.4
Band Removal	2.7
BPD/DS	2.7
Band to BPD/DS	2.0

Results

Surgeon and Hospital Demographics	
Surgeon Board Certified, %	75.9
Surgeon Foreign Medical Graduate, %	27.5
Hospital Accredited, %	43.3

Results

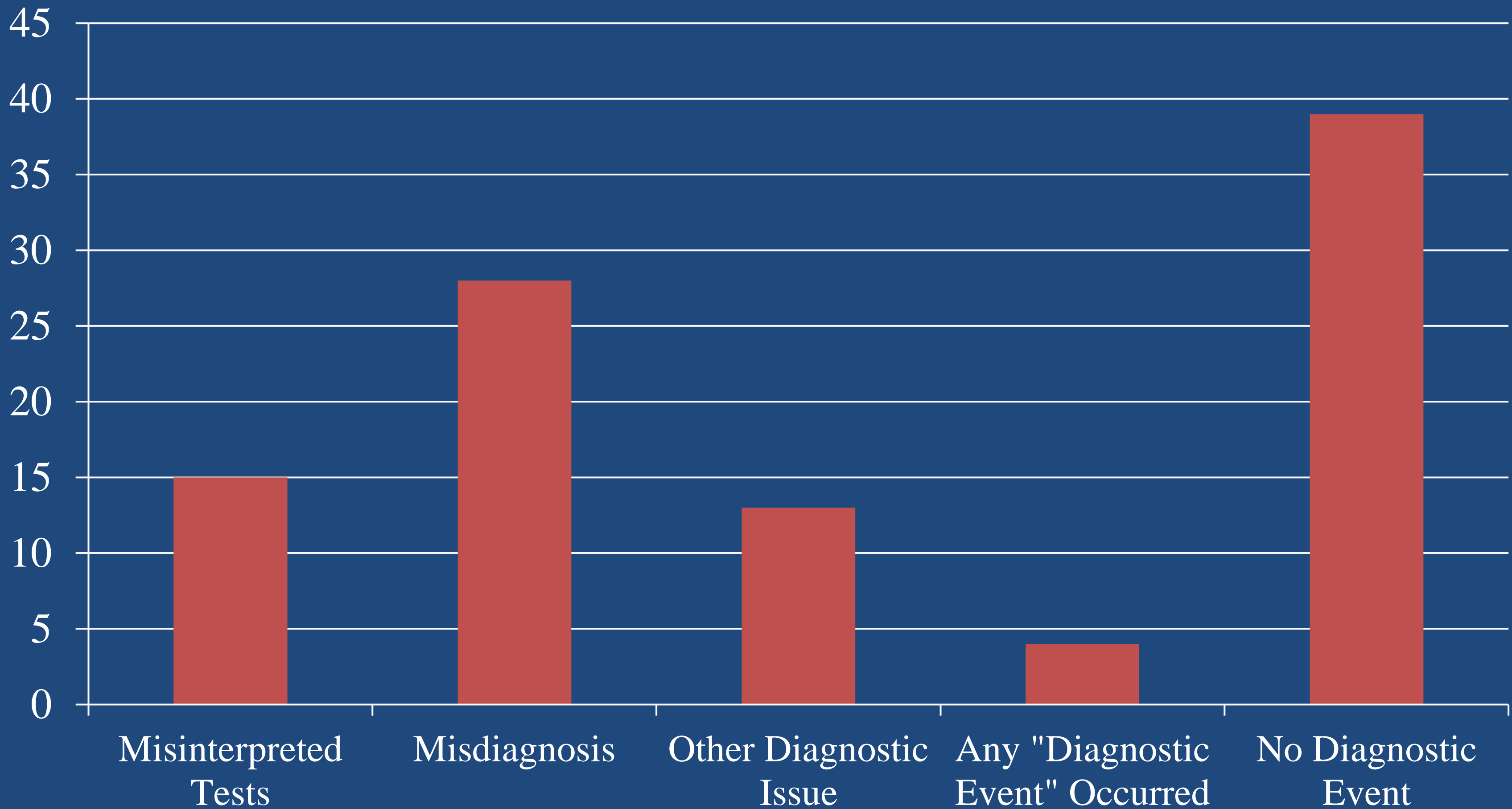
Clinical Complications	
Mortality, %	27.1
Leak, %	16.7
Bowel Obstruction, %	8.3
Surgical Technical Error, %	6.9
Wound Infection/Dehiscence, %	6.9
Bleeding, %	6.3
Perforation, %	6.3
Nutrient Deficiencies, %	4.9
Retained Foreign Body, %	4.2
Intra-Abdominal Abscess, %	3.5
Vascular Injury, %	3.4
Prolonged Nausea/Abdominal Pain, %	2.8
Ulcers/Stricture, %	2.1
Myocardial Infarction, %	0.7

Results

Monetary Awards and Lawsuit Expenses*	
Monetary Awards, $ (Mean ± SE)	293,499.83 ± 100,434.60
Expenses for Lawsuits, $ (Mean ± SE)	91,835.54 ± 12,111.40

*The winner of the lawsuit was not recorded in the responses

Results



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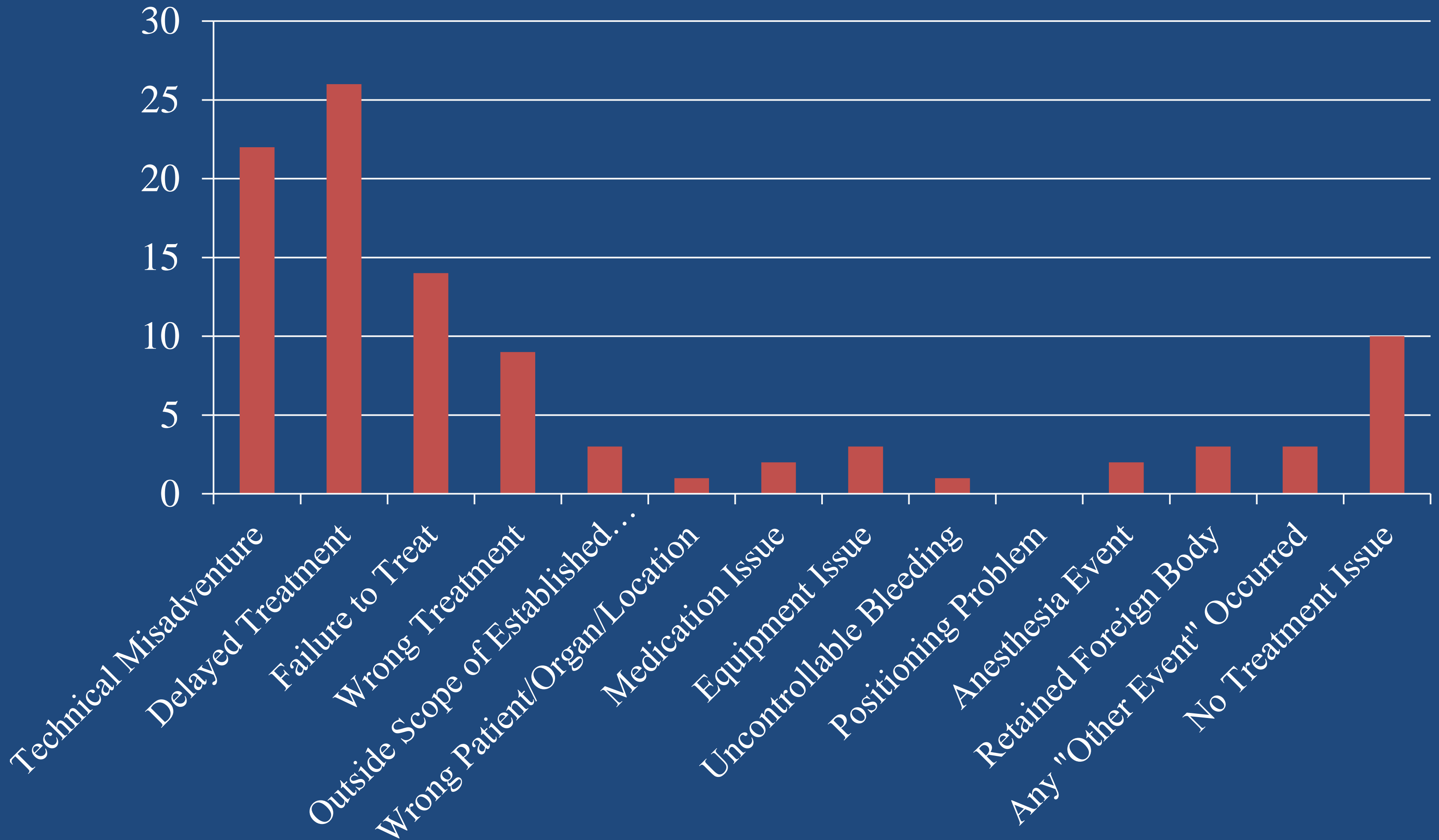

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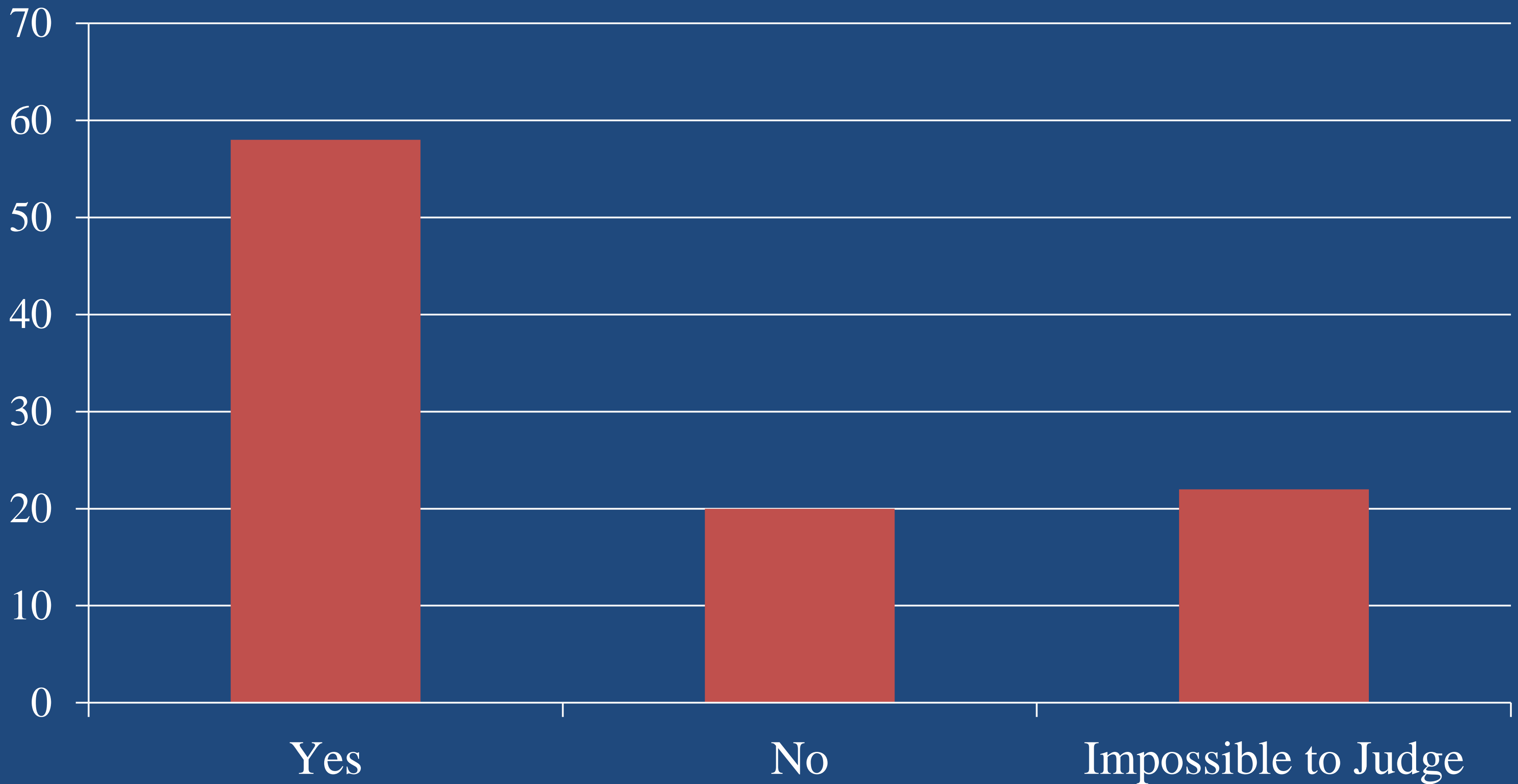

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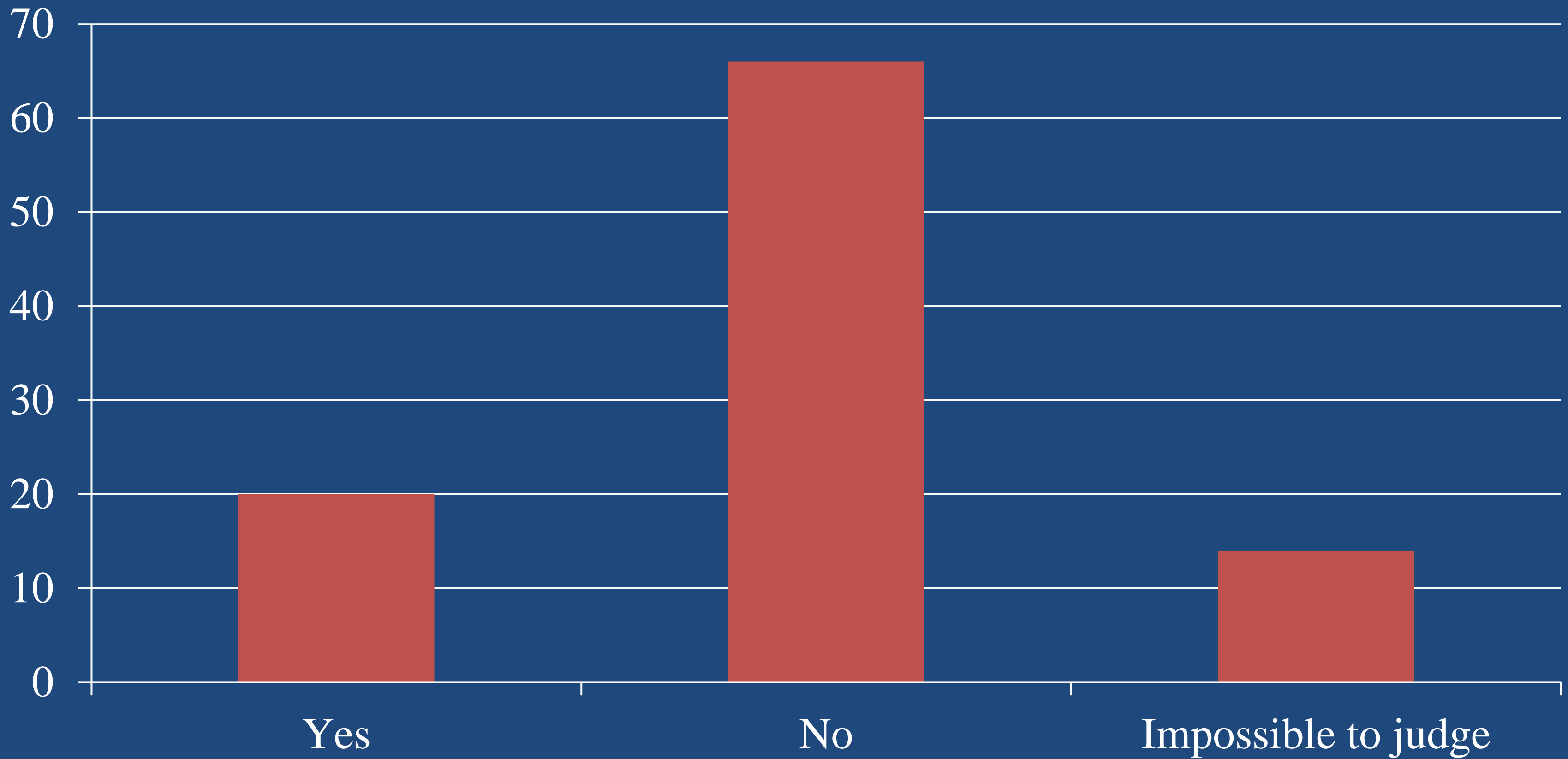

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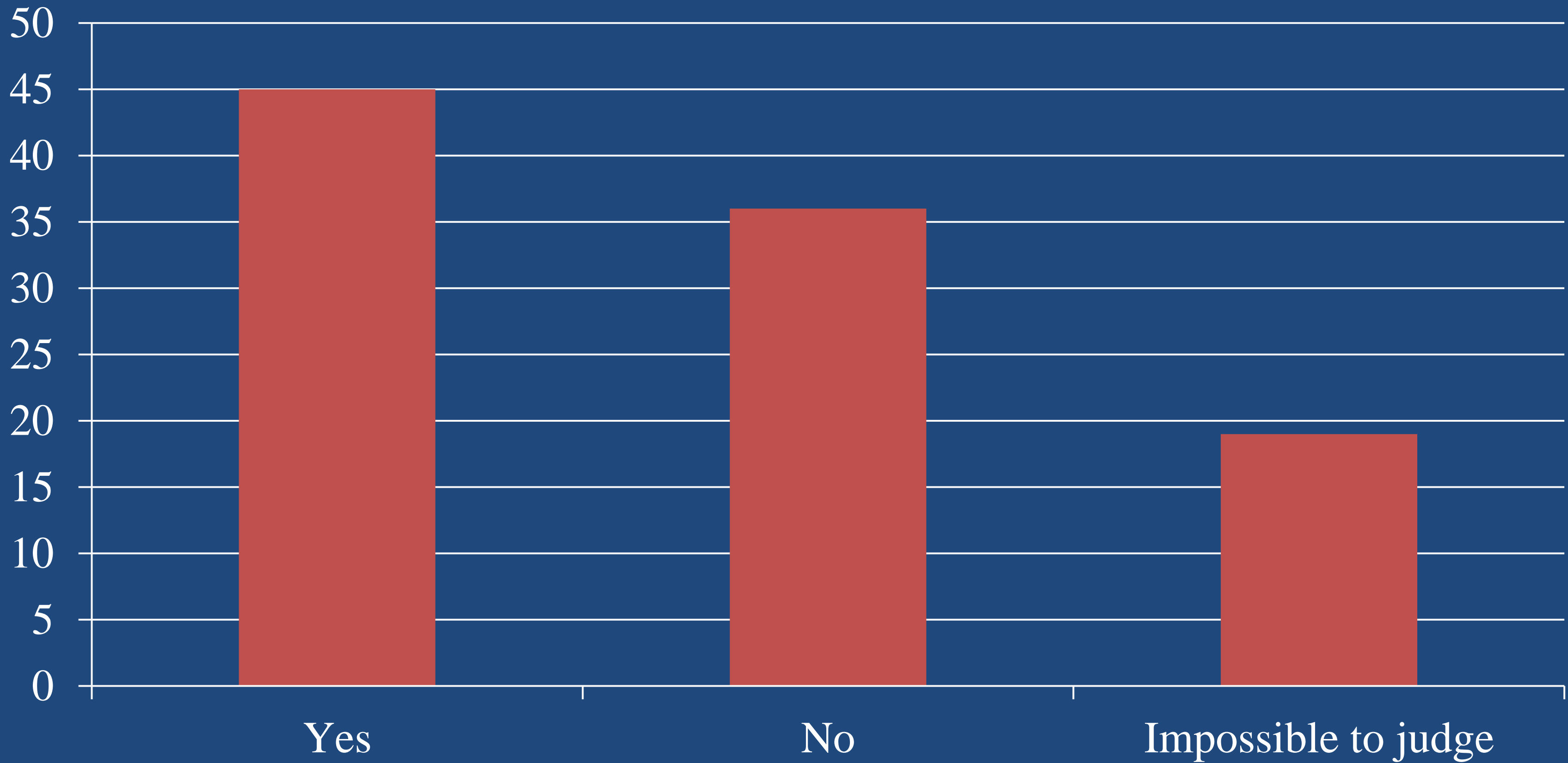

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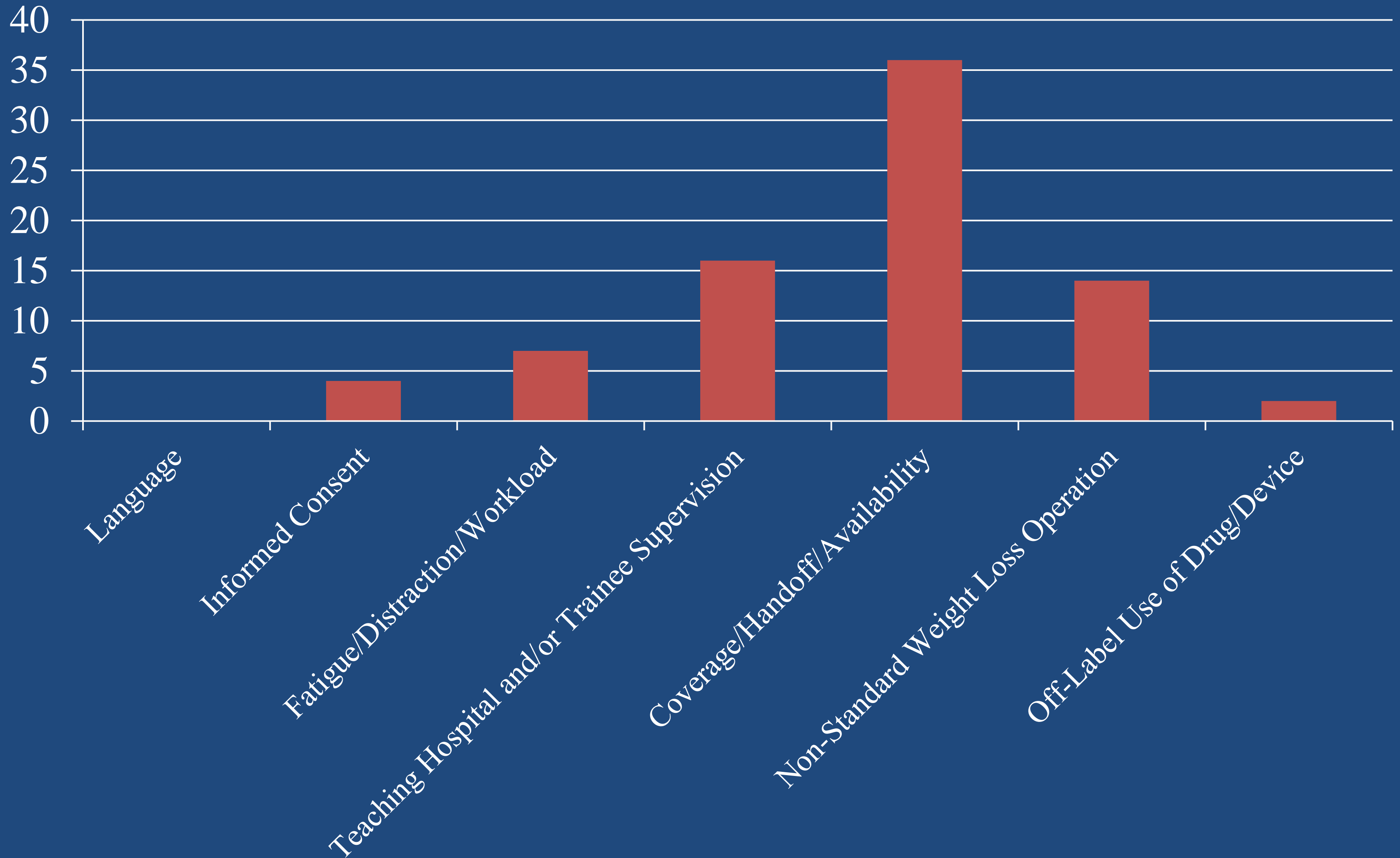

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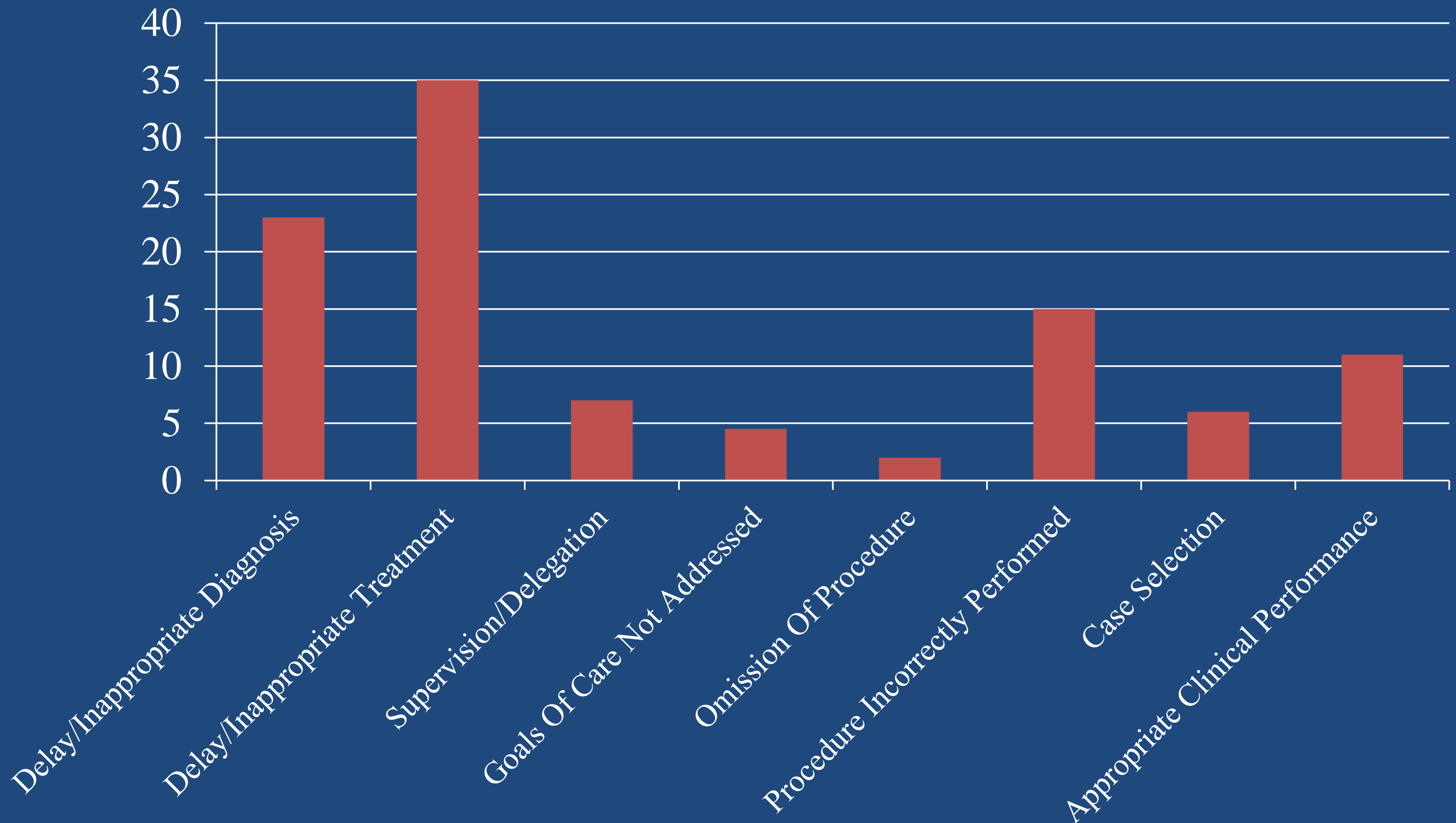

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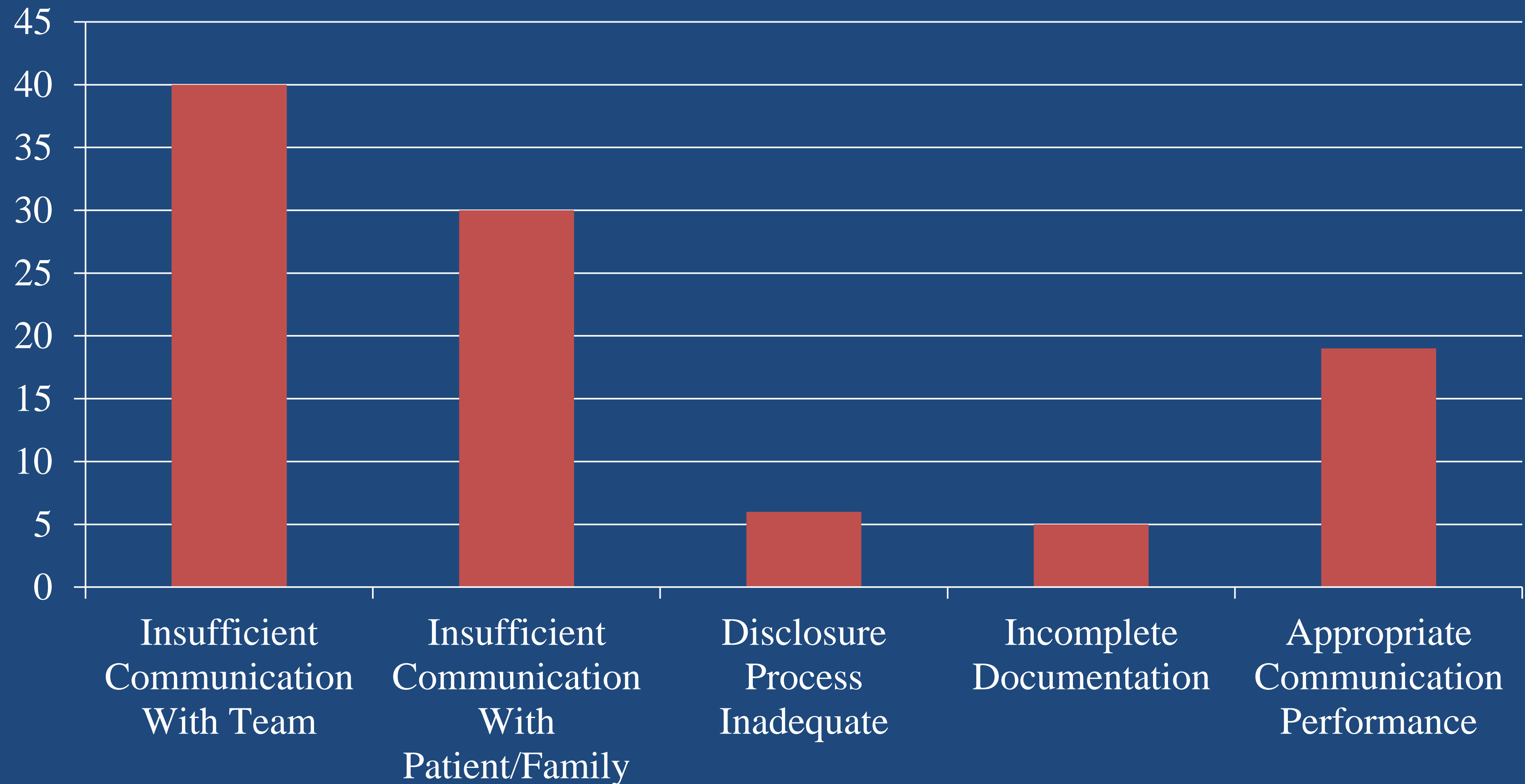

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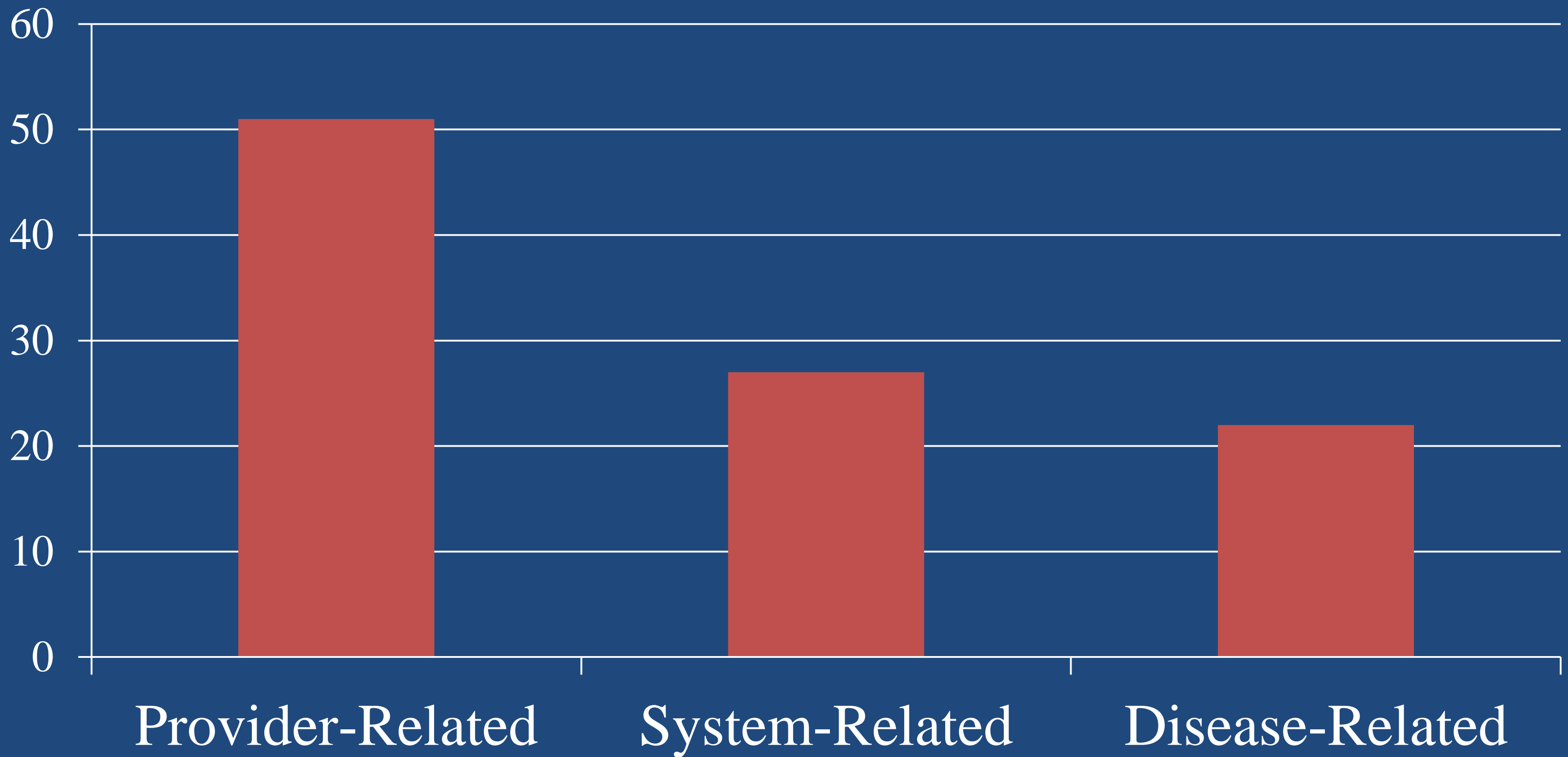

Results

Summary and Conclusion

- Prevalence of malpractice claims regarding bariatric surgery is low.
- Compared to national norms, malpractice claim patients were heavier and more often male.

Summary and Conclusion

- Surgeons who were involved with malpractice claims were less often board-certified
- Hospitals involved with malpractice suits had a much lower accreditation rate in comparison to national norms.

Summary and Conclusion

- Malabsorptive and non-standard procedures were over-represented in malpractice claims in comparison to MBSAQIP procedure rates.

- While mortality was the most common cause for malpractice suits, Bleeding, Retained foreign body, and Vascular injury occurred at higher rates than national averages.

Summary and Conclusion

- Failure to diagnose, Delay in Treatment, Postoperative Care and Communication domain responses indicate future opportunities for improvement

Future Steps

- Technical
  - Leaks
  - Vascular Access
  - NGT
  - Hernia Mngt
- Communication
  - Standardized Hand-Offs
  - Home Monitoring
- Non-Standard Procedures
- Update Closed Claims Registry