

COMMUNICATION AND RESOLUTION PROGRAM ATTORNEY CERTIFICATION

APRIL 2023



Collaborative
FOR ACCOUNTABILITY
AND IMPROVEMENT

Reaching resolution after patient harm

CRP Attorney Alliance

TODAY'S AGENDA:

- Historical Background and CRP Fundamentals
- The Patient and Family Perspective
- The Physician Perspective
- The Medical Professional Liability Carrier Perspective
- The Attorney Role in CRPs
- Plaintiff Attorneys and CRPs
- Defense Attorneys and CRPs
- Panel Discussion

SPEAKER INTRODUCTIONS



Leilani Schweitzer
Collaborative Board President-Elect
PEARL Patient Liaison, Stanford Health Care



Caitlin Harrington, MD, JD
Clinical Instructor, University of Washington
Of Counsel, Sweet Dewberry Hubbard Law

SPEAKER INTRODUCTIONS



Kyle Sweet, JD
Collaborative Board Member
Partner, Sweet Dewberry Hubbard Law



Jeffrey Catalano, JD
Collaborative Board Member
Partner, Keches Law Group, P.C.

HISTORICAL BACKGROUND

- The CRP movement arose out of an understanding that the deny and defend culture was failing patients and families, providers, and healthcare systems.
- The Agency for Healthcare Research and Quality's Candor Toolkit evolved out of early work in this field.
- During the same time period, the Collaborative for Accountability and Improvement, one of the drivers of this movement, officially launched.
 - Board members represented patient advocates, healthcare providers and administrators, medical malpractice liability insurance representatives, defense and plaintiff attorneys, and risk and claims professionals
- CRPs have now been adopted by healthcare systems around the country.

CRP FUNDAMENTALS

- “Principled, comprehensive, and systematic approach to responding to patients who have been harmed by their healthcare”
- Core Commitments:
 - Transparency with patients about adverse events – what happened, why it happened, prevention of future similar events
 - Analysis to prevent future similar adverse events
 - Emotion support of patient, family, and care team
 - Proactive offers of resolution (financial and non-financial) when appropriate
 - Use metrics to assess CRP effectiveness – highly reliable CRP

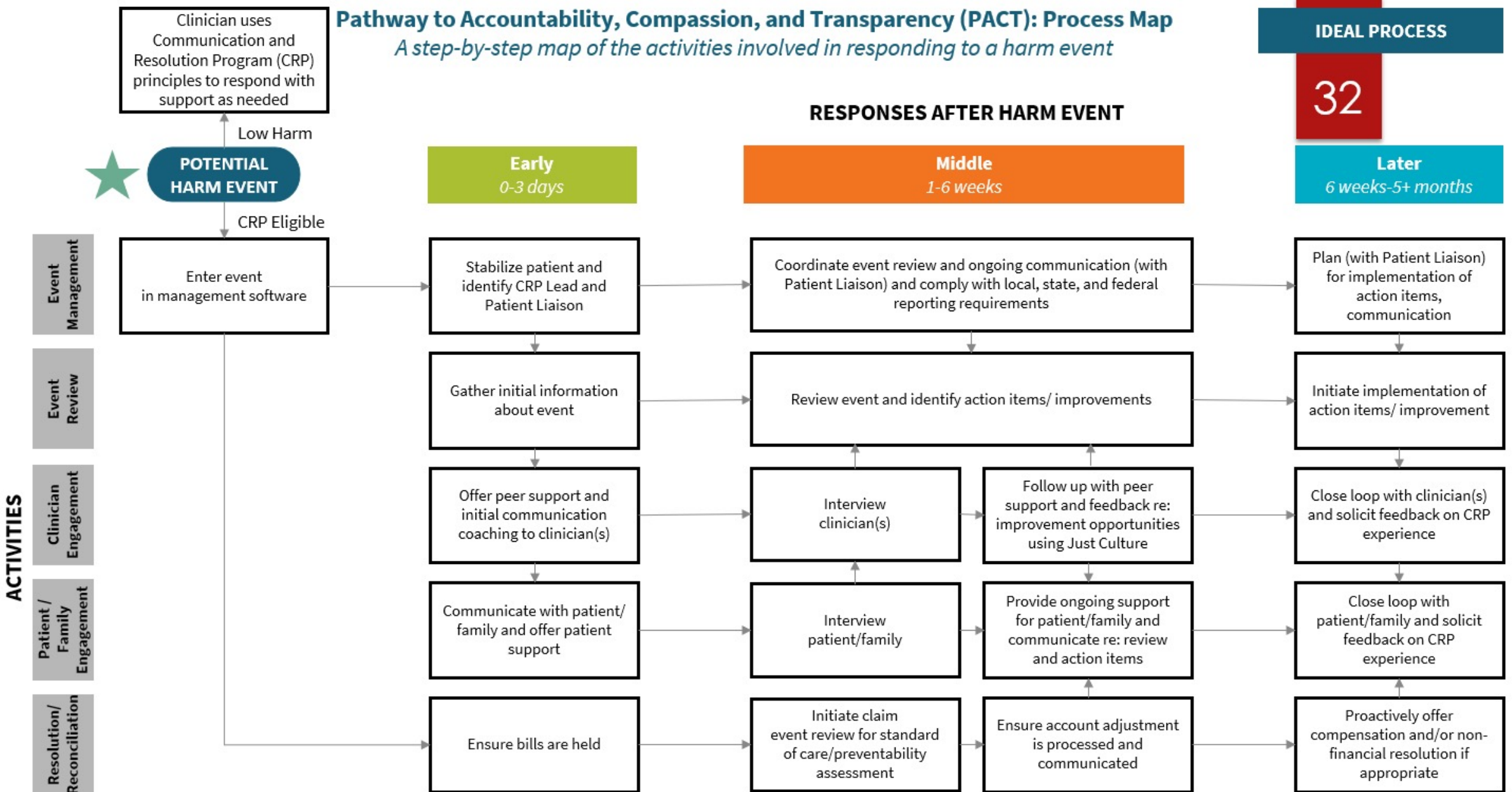
Pathway to Accountability, Compassion, and Transparency (PACT): Process Map

A step-by-step map of the activities involved in responding to a harm event

IDEAL PROCESS

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RESPONSES AFTER HARM EVENT



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PACT COLLABORATIVE TOOLS

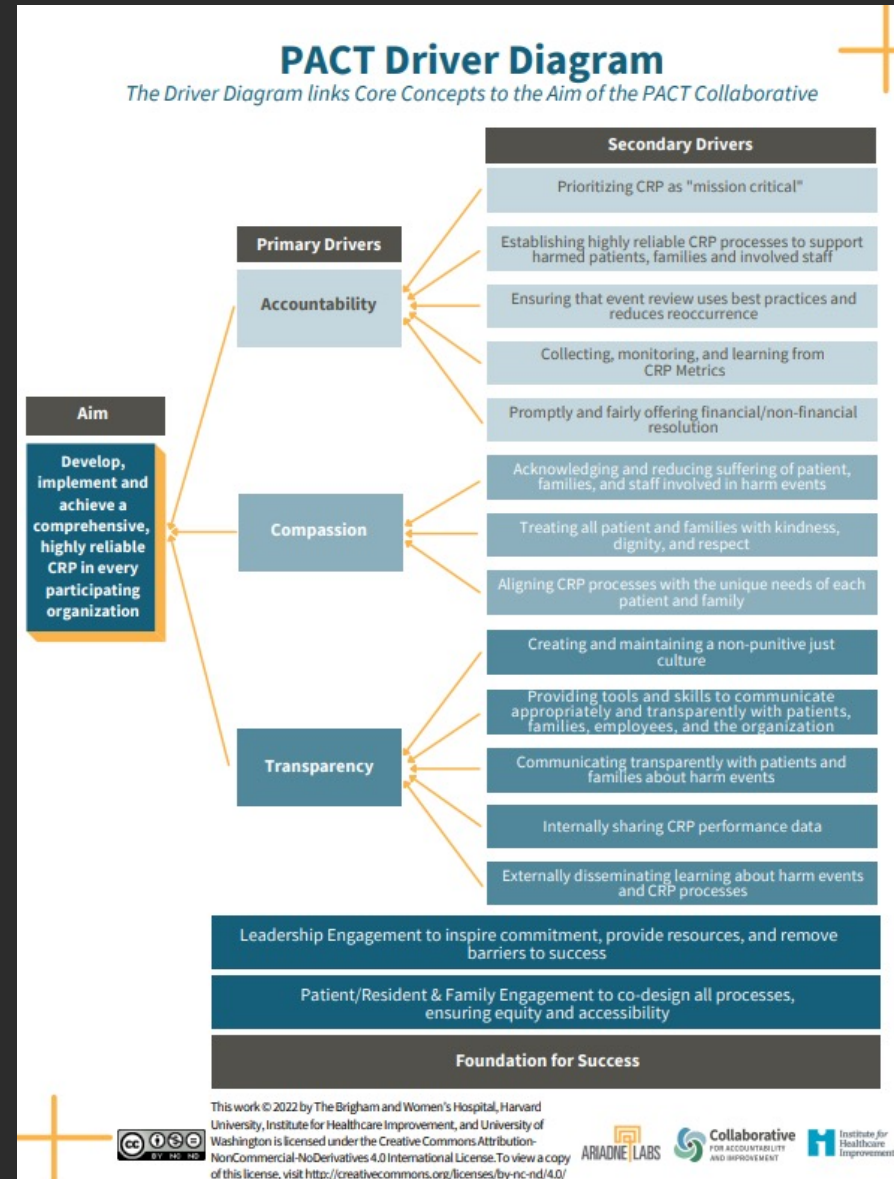
CRP Process Map, individualized to each healthcare institution

PACT Driver Diagram – a foundation of success built around the three core principles of compassion, transparency, and accountability

Communication coaching tools

Patient and family resource guides

Guide to measurement and analysis of CRP programs



The CRP Roadmap

Initial Conversations

After a harm event, our CRP team will communicate with you and your family about next steps. During this period, you can expect us to talk with you about medical care, the process our team will follow for the event review, and our plan for communicating with you. You will have a CRP Patient Liaison who will reach out to you with information and be available to you for any questions that come up.

During this time, you may feel intense emotions, or you may feel none at all. We encourage you and your loved ones to review the next page for more information and resources.

Ongoing Conversations

At this stage, our CRP team will review the harm event. This team includes clinical team members, risk managers, claims specialists, attorneys, and a patient liaison. They will review facts, develop case information, and prepare to talk with you. The team looks at medical records and policies, and holds interviews with clinicians and staff who were involved in the harm event.

Our team will also want to talk to and hear from you and/or your family to understand your experience of the harm event.

The event review may take weeks, or even months, and may include multiple conversations. This period may or may not come with intense emotions and possibly physical symptoms. On the next page, you will find language that may help you to name those experiences in case you want to reach out for help. Your CRP Patient Liaison can help you and your family if you have any questions and can also connect you with supportive resources.

Closing Conversations

During this period, our CRP team completes their review of the harm event. Your CRP Patient Liaison will invite you to a meeting where you will meet with representatives from our facility who will explain everything that was learned during the event review and answer all of your questions. Because every case is different, every outcome is different. You can expect to receive full explanations of what happened, and may receive an offer of compensation.

These closing conversations can be a very difficult time for you and your family. You can continue these conversations and ask more questions for as long as needed. Your CRP Patient Liaison can answer your questions or arrange for more meetings and conversations with our team. The next page has language that you may find helpful to describe your experiences if you want to reach out for help.

PATIENT AND FAMILY ENGAGEMENT

Commitments to focus on the patient and family, to transparent communication, to prevention of harms in the future, and to apologize.

Provision of a CRP Roadmap so that patients and families can anticipate what to expect.

Patient engagement in event analysis.

Patient and family support programs

Includes an ally for the patient and family.

Provides much needed resources to the patient and family.

THE PATIENT AND FAMILY PERSPECTIVE:



THE PHYSICIAN PERSPECTIVE:

- Significant emotional impact on clinicians following harm events.
- Desire to apologize, to be transparent with patients.
- Desire to prevent future harm.
- Importance of peer support.

MEDICAL MALPRACTICE: CLINICIAN PERSPECTIVES FOR LITIGATORS

Join our panel discussion on January 20th at 11AM Pacific Time



Jason Lees, MD, FACS Lydia Nightingale, MD, FACOG Jo Shapiro, MD, FACS

Moderated by Caitlin Harrington, MD, JD



Webinar available for viewing on the CAI YouTube channel

PHYSICIAN ENGAGEMENT

Importance of Communication Coaching:

- Intentional communication is vital – communication coaching and role playing to provide much needed practice

Importance of Peer Support Programs:

- Removes the stigma, the feeling of being alone, following an unanticipated outcome
- Optimized to reduce clinician distress and potential burnout
- Allows providers to continue to provide high quality care to their patients

UW MEDICINE PEER TO PEER PROGRAM

 **Brigham and Women's Hospital**
Founding Member, Mass General Brigham

THE MEDICAL PROFESSIONAL LIABILITY CARRIER PERSPECTIVE



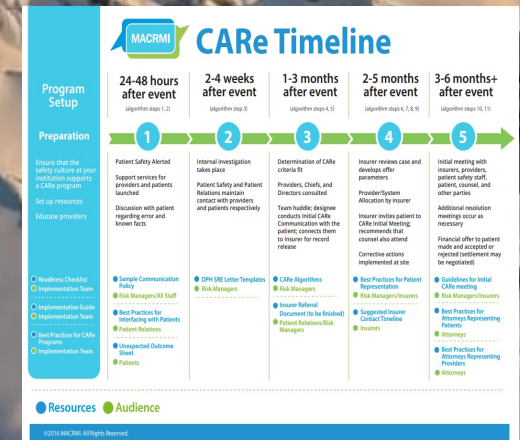
THE ATTORNEY ROLE IN CRPS – ATTORNEY ALLIANCE

- The Attorney Alliance – through the Collaborative for Accountability and Improvement
 - Purpose: a community of attorneys who support CPRs
 - *"a resource for attorneys who counsel and represent healthcare systems, healthcare providers, insurers, and patients and families regarding communication and resolution programs"*
- Attorneys are vital to the success of CRPs
 - Provides a way to truly help clients – both patients and the providers who serve them
 - Roles include coaching, support, facilitation, review, and translation throughout the process

THE ATTORNEY ROLE IN CRPS - MACRMI

MACRMI: Massachusetts Alliance for Communication and Resolution following Medical Injury – as a case example

- CARE – Communication, Apology, and Resolution Model - description
- Representation of patients – encourage patient representation by an attorney educated in CARE during meetings focused on resolution.
 - Approach through a collaborative lens, help with accessing and interpreting information, facilitate medical record exchange, review of resolution.
- Representation of providers
 - Approach through a collaborative lens, support during event review, support with statement of apology/empathy, support for the healthcare provider.
- MACRMI attorney list – available on website for patients and families entering the CARE process and looking for an attorney.
 - Vetting process includes an interview, written confirmation of watching the CARE educational video, a commitment to flexible fees if the case resolves quickly.



Learn more at www.macrmi.info

STATE CANDOR LEGISLATION

States that have adopted Candor Legislation:

- Colorado
- Iowa
- Massachusetts
- Oregon
- Utah
- Soon to be Minnesota?

State legislation summary documents available at:

<https://communicationandresolution.org/tools-and-resources/policy/>

THE EVOLVING DEFENSE ATTORNEY ROLE IN CRPS, A REJECTION OF THE DENY AND DEFEND

Historical Role of Defense Attorneys

- Dr. NO! Prevent any communications, prevent transparency, value privilege over ethics of client, promote culture of hiding mistakes, incompatible with current practice of medicine.
- Scare clients into not participating. Claim liability concerns. Shut down any attempt at an ethical exploration of potential care causing harm event.
- Begin the deny and defend process. Deny negligence and defend all care, even bad care.
- “We already have a disclosure policy” – NOT the same as a process that meets ethical obligations.

ROLE OF DEFENSE ATTORNEYS IN CRPS:

- A key role to play in CRPs
- Expertise in law, policy, and communication – educator role to prepare healthcare leadership and clinicians prior to a patient harm event.
- Guide client following harm event - both the initial communication and the ongoing.
- Where appropriate, communication and documentation of proactive offers of compensation.

ETHICAL CONSIDERATIONS FOR DEFENSE ATTORNEYS – WHAT ARE OUR REAL OBLIGATIONS?

- Model Rules Restatement of the Law Governing Lawyers – Rule 1.4 – Reasonably consult with the client about the means by which the client’s objectives are to be accomplished (knowing what is important to them allows you to achieve their goals).
- Model Rules – (b) explain matter to extent necessary for client to make informed decisions regarding the representation.....
- Conflict of Interest Rule 1.7 – Risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

ETHICAL CONSIDERATIONS FOR DEFENSE ATTORNEYS:

- For attorneys within the defense bar, CRPs are a system through which they can best fulfill their ethical duty to the strongest representation of their client while also best supporting them through the emotional turmoil that follows an unintended patient harm event.
- A physician (your client) has an ethical obligation to “do no harm” and to continue to provide high quality care as an advocate for the health and well-being of their patient. “Do no harm” means continue to do no harm.

ROLE OF PLAINTIFF ATTORNEYS IN CRPS:

- Following harm events, their representation of patients and families allows for them to act as advocates and translators during both the initial communication and ongoing conversations.
- Patients and families often describe a feeling a vulnerability following a harm event. Effective and compassionate representation helps to counteract the power differential that can occur between clinicians and patients and families within the healthcare system.
- Plaintiff attorneys can guide their clients on what questions they might wish to ask and advise them on the systematic steps involved in a CRP process.
- Finally, in those cases where it is found that the care did not meet the standard of care and where there are proactive offers of compensation, plaintiff attorneys are essential in the resulting communications and documentation.

ETHICAL CONSIDERATIONS FOR PLAINTIFF ATTORNEYS:

- For attorneys within the plaintiff bar, CRPs are a system through which they can best fulfill their ethical duty to the strongest representation of their client while also best supporting them through the emotional turmoil that follows an unintended patient harm event.

PANEL DISCUSSION AND QUESTIONS



THE PACT COLLABORATIVE, PROMOTION OF HIGHLY RELIABLE CRPS

- What is the PACT Collaborative?
 - A learning pathway and community for healthcare organizations to pursue highly reliable CRPs.
 - Three guiding principles: compassion, transparency, and accountability.
 - Ongoing support and guidance from mentors with significant experience with CRPs.
 - Over 30 participating healthcare organizations, including University of Washington, from around the country have joined the PACT Collaborative and embraced the CRP model.



The PACT Collaborative

ADDITIONAL CRP RESOURCES:

[Collaborative for Accountability and Improvement | Reaching resolution after patient harm \(communicationandresolution.org\)](#)

[PACT: Pathway to Accountability, Compassion and Transparency - Ariadne Labs](#)

[Home :: MACRMI - Massachusetts Alliance for Communication and Resolution following Medical Injury](#)

PLEASE GET INVOLVED!

CRP Attorney Alliance

We welcome new members to the Attorney Alliance

thecai@uw.edu

<https://communicationandresolution.org/sharedlearning/crp-attorney-alliance/>

AN IMPORTANT THANK YOU:



Thomas Gallagher, MD
Professor of Medicine
Professor of Bioethics
University of Washington

Executive Director
Collaborative for Accountability and Improvement

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THANK YOU FOR JOINING US