



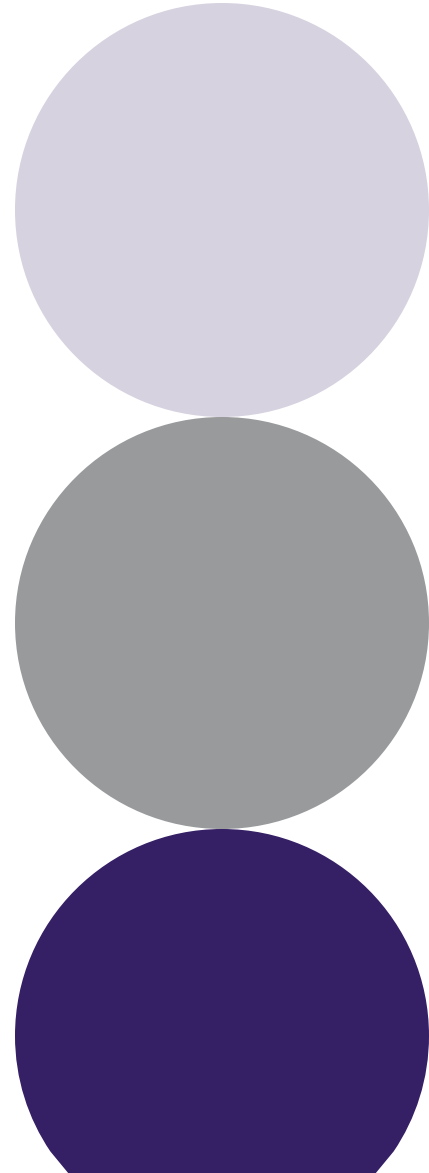
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Why Take The Risk? Effective Patient Education and Informed Consent for Risk Mitigation

American Academy of Ophthalmology (AAO)
Ophthalmic Mutual Insurance Company (OMIC)

April 12, 2023



Why Take the Risk?

- **J. Kevin McKinney, MD, MPH**
 - Glaucoma
 - Eye Health Northwest, Oregon City, OR
 - Chairman, Patient Education Committee, American Academy of Ophthalmology



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Why Take the Risk?

- **Robert S. Gold, MD**
 - Pediatric Ophthalmology
 - Eye Physicians of Central Florida, Orlando, FL
 - OMIC Board Chair
 - President, AAOPOS



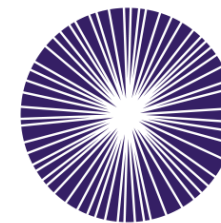
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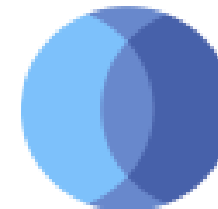
Financial Disclosures

- The planners and faculty for this activity have reported no relevant financial disclosures.

All relevant financial relationships have been mitigated.



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OMIC
**OPHTHALMIC MUTUAL
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A Risk Retention Group

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CME

- The American Academy of Ophthalmology is accredited by the Accreditation Council for Continuing Medical Education (ACCME) to provide continuing medical education for physicians.
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- Physicians should claim only the credit commensurate with the extent of their participation in the activity.

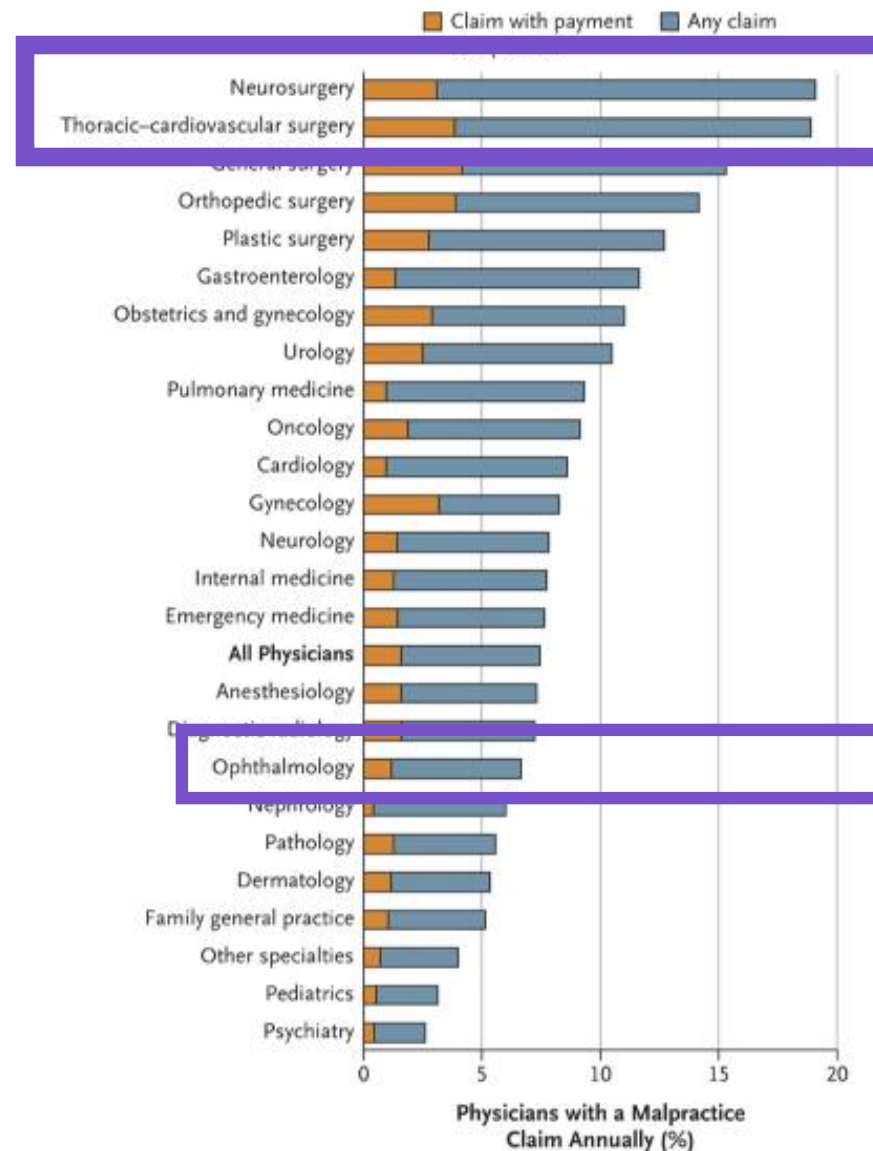


**“It’s not that I have *never*
been sued...
I have *yet* to be sued.”**



Malpractice Claim Odds By Age 65

- High risk specialty: 99%
- Low risk specialty: 75%



Jena AB, Seathbury S, Lakdawalla D, Chandra A. 2011. Malpractice Risk According to Physician Specialty. NEJM 365: 629-636.



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Career Risks of Making An Indemnity Payment

- High risk specialty
 - By age 45: 33%
 - By age 65: 71%
- Low risk specialty
 - By age 45: 5%
 - By age 65: 19%



More Malpractice Data

- Between 1992 and 2014, rate of malpractice claims paid on behalf of U.S. physicians declined substantially.
- Mean compensation amounts and percentage of claims exceeding \$1M increased.

Schaffer AC, Jena AB, Seabury SA. 2017. Rates and characteristics of paid malpractice claims among US physicians by specialty, 1992-2014. JAMA Int Med. 177(5): 710-718.



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~~Why Take The Risk?~~ Minimize Your Risks!

- Medical practice entails a high risk of a claim, but a lower risk of a payment.
- Do all you can to decrease chances of a claim.
- Patient education and informed consent are key!



Why Take The Risk? A Case Study



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Case Study

- Patient seeks LASIK evaluation
- 42 y/o fire department lieutenant
 - actively commanding firefighters and fighting fires
 - nearsighted; glasses for 20 years
 - unable to wear contact lenses due to work environment
 - good general health, no meds



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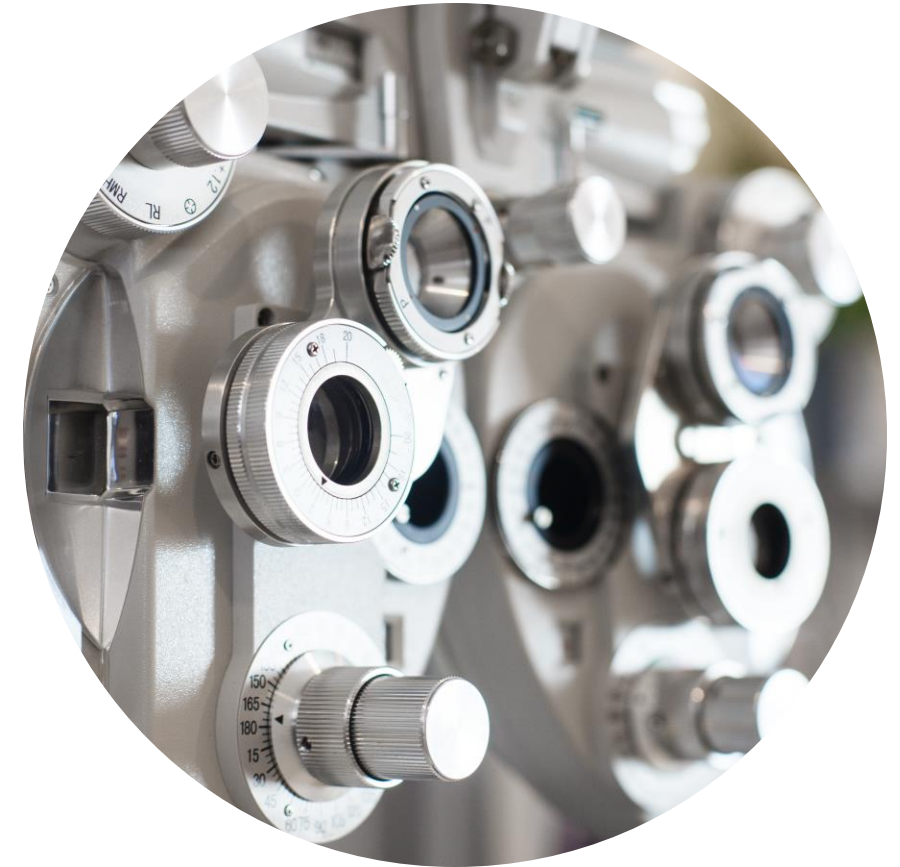
Case Study

- Evaluation by technician, who informed patient he'd be “a good candidate” for LASIK
- Chart reviewed by staff optometrist
- Patient recalls:
 - being told “you are an ideal candidate for LASIK surgery”
 - no mention of PRK as alternative to LASIK



Case Study

- MRx
 - OD -2.00 -0.50 x 009 = 20/20
 - OS -2.00 -1.00 x 171 = 20/20
- Pachymetry
 - OD 477
 - OS 478



Case Study

- Day of surgery, patient arrived at the LASIK facility
- Given Valium for anxiety
- Given consent form, asked to sign and told he'd be called when it was time for surgery



Case Study

- Patient had extreme concern about these stated risks:
 - “halos and blurry vision”
 - “permanent injury and blindness”
- He declined to have surgery



Case Study

- OD took the patient to a private room and advised patient:
 - had never seen those complications
 - none of them were likely since patient was “ideal candidate” for LASIK



Case Study

- Surgeon came in, reviewed the chart and advised patient:
 - “You are a great candidate for LASIK”
 - “Your surgery will be a piece of cake”
- This was patient’s only interaction with surgeon prior to procedure



Case Study

- Patient agreed to proceed with surgery
- Surgery did not go as planned...



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Case Study

- Pre-printed OR report template states:
 - “fixation steady”
 - “patient tolerated procedure well”
- Handwritten comments indicate:
 - flap was very thin with a central hole
 - patient had pain that led to possible loss of suction
 - flap replaced (no laser) & BSCL placed



Case Study

- Surgeon told patient and wife after surgery:
 - Pulled up on microkeratome due to patient discomfort
 - lost suction and created thin flap
 - no mention of hole in flap



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Case Study

- POD #1
 - staff optometrist sees the patient
 - no mention of complication in note
 - drawing labeled as “abrasion”
 - steroid drops & glasses Rx given



Case Study

- POD #2
 - surgeon examines patient
 - surgeon recalls informing patient that he could repeat the LASIK or do PRK in 3-6 months
 - surgeon did not see patient again after POD #2



Case Study

- Two weeks postop
 - patient sees the staff optometrist again
 - complains of blurry ghost images in right eye and is unable to work
 - UCVA 20/100 BCVA 20/50
 - Contact lens fitting is offered
- Patient seeks second opinion from cornea specialist



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Case Study

- Cornea specialist evaluation:
 - Complaint: double vision and blurriness
 - Exam:
 - corneal scarring & irregular astigmatism
 - some of LASIK flap appears to be missing
 - Patient unable to tolerate CL
 - Corneal transplant recommended as best means to correct vision
- Patient engages legal counsel



Why Take The Risk? Medico-Legal Discussion



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Plaintiff's Allegations Against the Surgeon

- Failed to provide adequate informed consent
 - particularly in light of pre-op concerns
 - no mention of thin corneas and option of PRK
- Negligently performed the procedure and follow up
- Abandoned patient post-op



Alleged Damages

- Loss of “dream job”
- Lower salary
- Loss of promotion potential
- **Plaintiff sues for \$1M**



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OMIC Review

- Informed consent issues:
 - incomplete and inadequately documented
 - performed by non-surgeon
 - downplayed risks and concerns
- No patient education material referenced in chart
- Abandonment
- Recommendation: **Settle**



Defense Expert Opinions

- No surgical negligence
 - Testimonies consistent → patient felt pain, may have moved
 - Corneas were not abnormally thin
 - Suction was released and reapplied
 - Flap cut was irregular so case was aborted without completing flap



Resolution

- Plaintiff demanded \$1M
- Case settled for **\$450,000**



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Risk Management: informed consent concepts

- Based on a patient's right to determine what happens to his or her own body
- More than the patient's signature on a consent form
- A process of **communication** between physician and patient that results in patient's agreement and authorization to undergo a specific medical intervention
- Discuss consent and obtain patient's signature **prior** to giving sedatives



Risk Management: informed consent concepts

- Assess patient's competence to decide
- Assess patient's comprehension
- Communication/Education
 - Patient's diagnosis
 - Nature and purpose of proposed procedure
 - Risks, benefits, and alternatives
 - Risks and benefits of not receiving treatment
 - Informed refusal



Risk Management: informed consent concepts

- **Negligence:** failure to disclose information that patient needed in order to make an informed and voluntary decision.
- **Battery:** no consent given, or treatment rendered is substantially different from what was agreed upon.



Risk Management: informed consent process

- Documentation
 - Document discussion in the medical record
 - include discussion of any heightened risk factors
 - patient concerns and resolution
 - educational materials provided
 - Use a procedure-specific consent form
 - Keep in medical record; give copy to patient



Risk Management: informed consent process

- Managing changes to consent
 - Surgical goals
 - Devices to be used
- Discuss with patient
 - Allow ample time for discussion and questions
 - Document the changes in medical record
 - Obtain signature on new consent
- Communicate changes to ASC/hospital as needed



Risk Management: informed consent process

- Documentation: operative report templates
 - Review template to insure that it reflects what was actually done
 - Complications, and how they were handled, should be noted
 - Accurate reporting assists with coding and reimbursement
 - Improves credibility/defensibility if a claim is filed

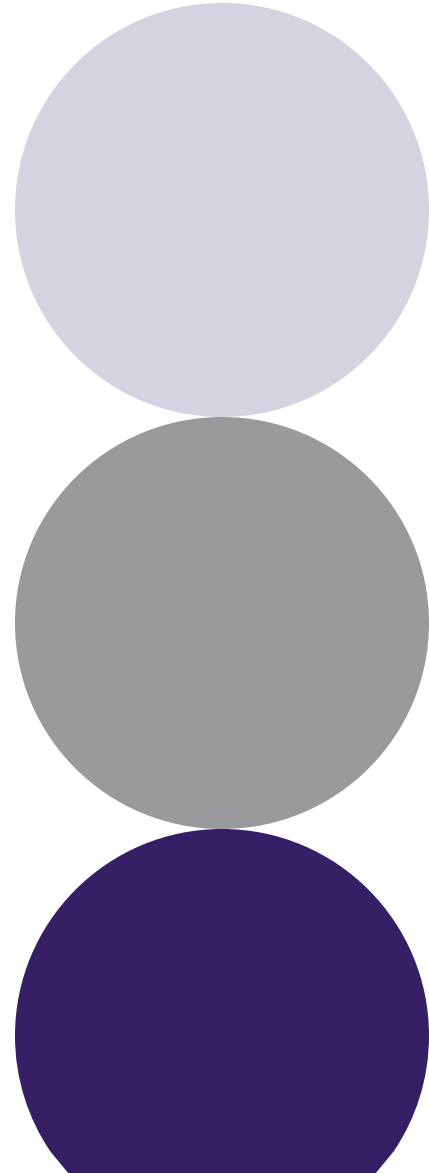




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Patient Engagement Strategy for Your Practice



Patient engagement: key to quality care

- Engaging the patient is a vital aspect of our job, but one we often take for granted.
- Multiple studies have shown that patients quickly forget **40-80%** of what doctors tell them.
- We must take patient education and informed consent as seriously as we take our clinical responsibilities.



Patient engagement: key to quality care

- Recent survey found nearly 1/3 of patients are not given any patient education material, yet 94% of patients say they would find them useful.
- Without educational materials, patients report using unvetted information sources
 - random website articles
 - peer recommendations
 - social media



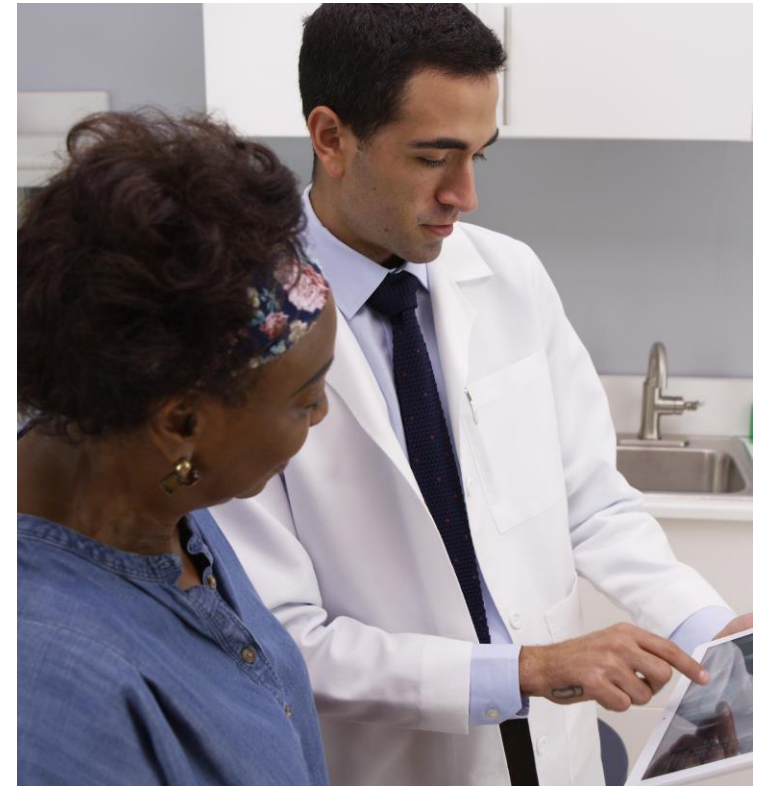
Effective patient engagement

- Four critical elements:
 - Face-to-face discussion
 - Written materials
 - Audiovisual aids (videos, animations)
 - Referral to respected community resources when appropriate (vetted websites, support groups)



Effective patient engagement strategy

- Studies show that educating patients with **combination** of methods is generally more effective than using a single method.
 - This can be done without taking up more of your time.
- Improved communication leads to:
 - Better doctor-patient relationship
 - Improved outcomes
 - Less medicolegal risk



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Face-to-face discussion

- Be sure to make **eye contact!**
- Patients say these are **most important** when receiving health news:
 - Doctor takes time to answer all questions
 - Doctor is honest about the severity of condition
 - Doctor gives enough time to ask all questions
 - Doctor gives his/her full attention



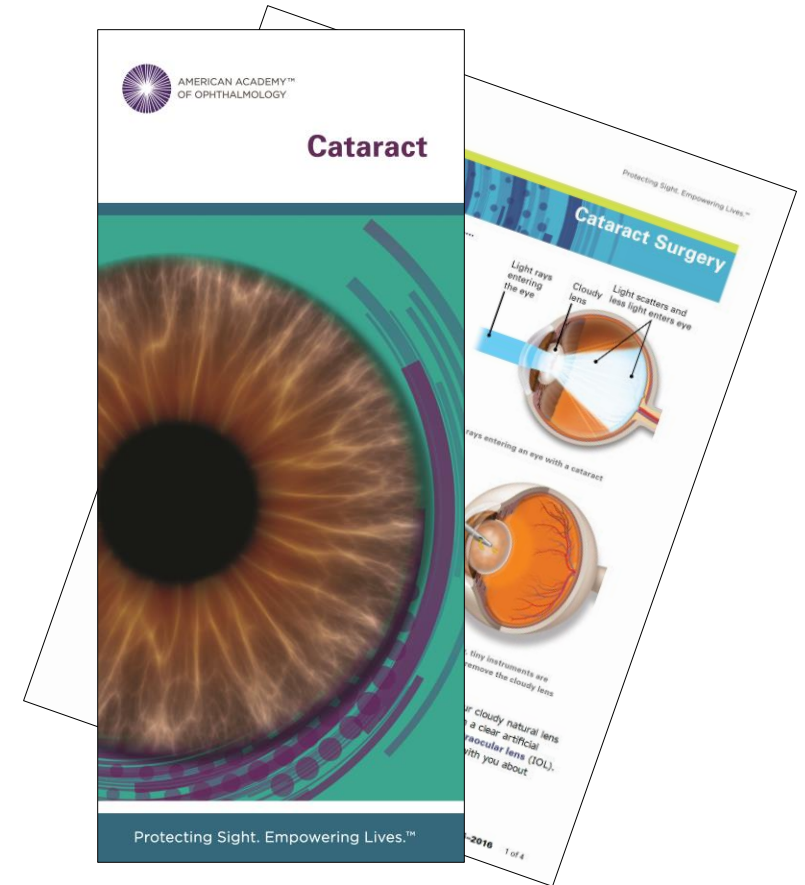
Face-to-face discussion

- **Poor doctor/patient communication** is at the root of about 75 percent of malpractice cases.
- Good physician-patient relationship may deter patients from suing, even when medical error causes a problem.



Patient education materials

- Always give professional, printed educational material.
- Patients **expect** to leave with accurate, relevant material from their doctor.
- Academy brochures/downloadable handouts
 - Peer-reviewed annually
 - Unbiased with regard to products/treatment options
 - Meet **health literacy guidelines** to improve understanding



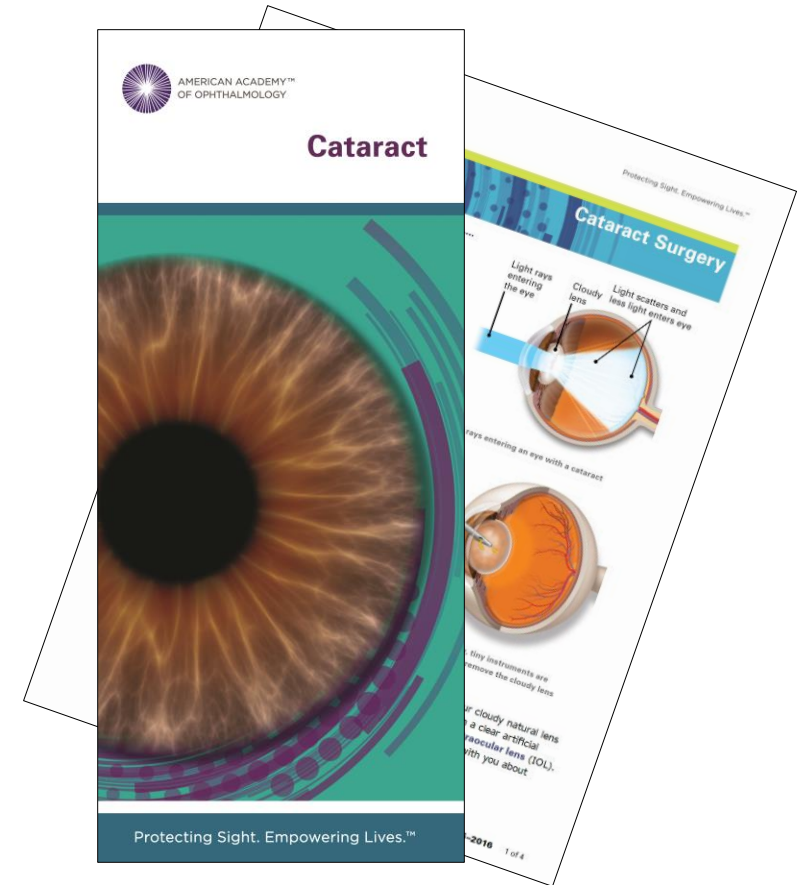
Patient education materials

- Health literacy
 - This refers to a person's ability to read, understand and act on health information
 - As many as **9 out of 10** U.S. adults have limited health literacy skills!
 - Articulate people can have low health literacy
 - Focuses on using plain language, eliminating jargon, shorter sentences, active vs. passive writing, clear design



Patient education materials

- Patient education that meets health literacy guidelines has been shown to:
 - Increase use of preventive health care
 - Lower dosing errors
 - Get patients to better manage chronic conditions (i.e. diabetes, high cholesterol, hypertension)
 - Improve health outcomes
 - Increase patient satisfaction



Video education

- Supplement printed materials with **video** to help patients understand complex treatment options.
- It's a “YouTube” and “TikTok” world! Video is pervasive. All ages benefit from this medium.
- Especially helpful for people with vision issues or difficulty processing written information (auditory learners).



Video education

- Video education can be adapted to your practice flow, not the other way around.
- Send via patient portal, put on your practice website, use tablets in office, etc.
- Video viewing at home helps patients absorb important info when they are ready to learn; can share with family.
- Delivers a consistent message every time.



Video education

- STUDY: showing patients video of what to expect from cataract surgery leads to significant increase in patient understanding of and satisfaction with cataract surgery and decrease in anxiety.
- The video used in this study was the Academy's Cataract Surgery patient ed video.

Pager, C K. "Randomised Controlled Trial of Preoperative Information to Improve Satisfaction with Cataract Surgery." *The British Journal of Ophthalmology* 89.1 (2005): 10–13. *PMC*. Web. 31 Oct. 2017.



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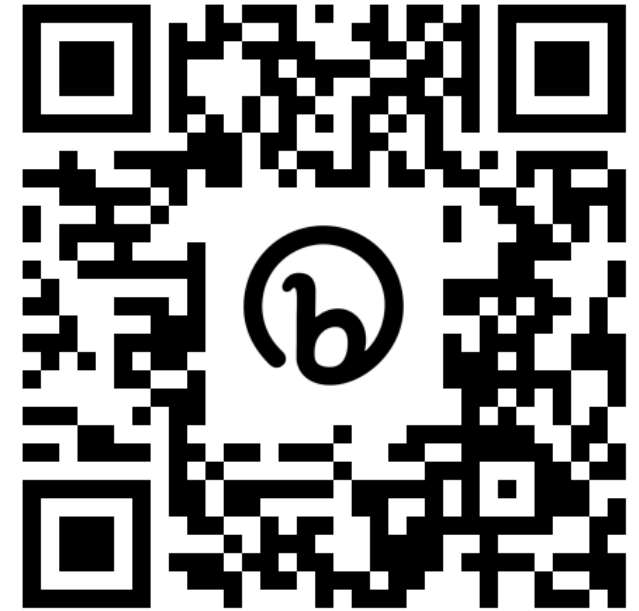
Video education

- Academy Patient Education Video Collections: most common treatment options in all subspecialties
- Short (< 5 minutes) informed consent messaging
- Supplement but do not replace informed consent discussion
- OMIC-reviewed and recommended



Video education

- Scan this QR code for a **free** download of the Academy's Posterior Capsulotomy video (from the Cataract and Refractive Video Collection)
- Ways to use video:
 - Send to patient via patient portal or email link
 - Put on your practice website
 - Use on tablet in waiting room/exam room
 - Hand out on USB drives, DVDs



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Non-English language education

- Meet needs of your non-English speaking patients
- May speak English, but not read it well, especially if information is new/complex
- Use translated materials, translated videos and/or native language counseling
- All Academy patient education tools are available in Spanish
- AAO.org's public-facing website in Spanish



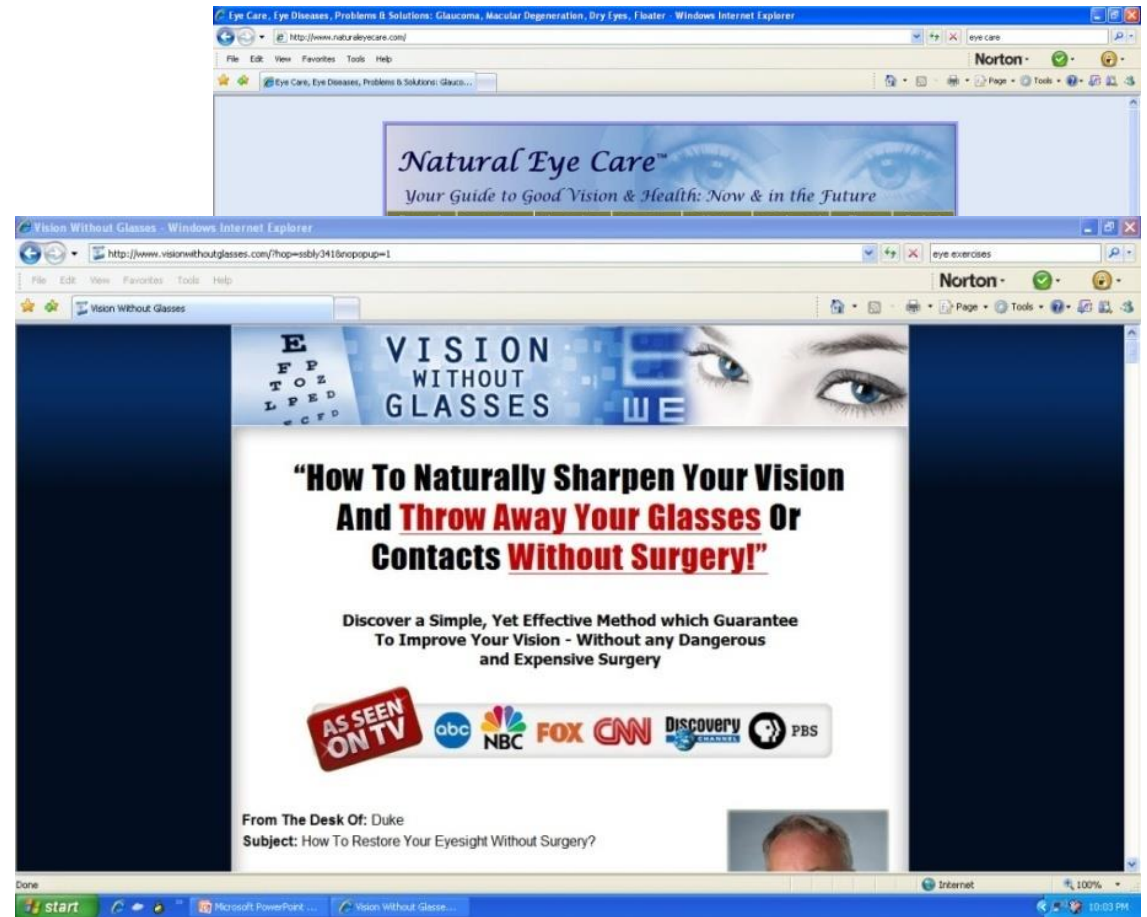
Patient Support

- When possible, **always** refer your patients with low vision and/or chronic issues to local support resources
- Peer-based support for people living with chronic health conditions can:
 - improve health outcomes
 - increase care access
 - improve healthcare efficiency



Website-based education

- More than 60% of U.S. adults report accessing the Internet for health-related questions.
- Recent study shows popular blogger YouTube health videos garner more views than expert videos, but have less reliable information.
- Offer reliable web-based information on your practice website.



Website-based education

- Link directly to Academy's EyeSmart website (www.aao.org/eye-health)
- Trusted, peer-reviewed information
- No need to update your website's patient education information when linked to EyeSmart



Informed consent

- Must be consistent message every time
- Informed consent includes every conversation and piece of educational material your patient gets from your practice:
 - verbal descriptions and instructions
 - handouts
 - videos
 - website
 - Marketing materials



Informed consent

- Use free downloadable informed consent forms (found on OMIC.com)



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Patient engagement resources

- Academy Patient Education Materials
- OMIC Consent Forms



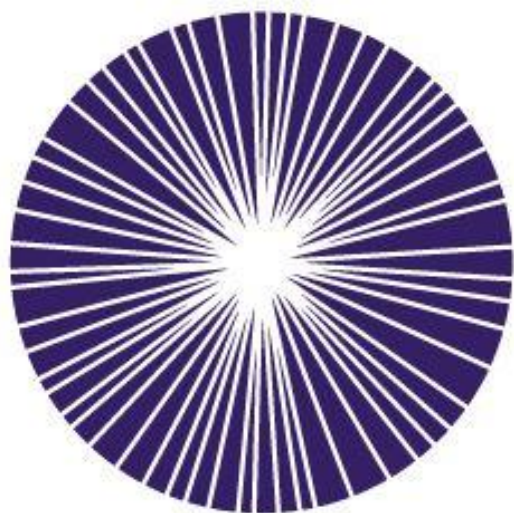
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For OMIC Insureds:

- OMIC insureds will earn a 5% Risk Management discount, applied to their premium upon renewal.
- Click on the QR code and fill in your name, state, and email.





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