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
Why Take the Risk?

• Robert S. Gold, MD
  o Pediatric Ophthalmology
  o Eye Physicians of Central Florida, Orlando, FL
  o OMIC Board Chair
  o President, AAPOS
Financial Disclosures

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

All relevant financial relationships have been mitigated.
CME

• The American Academy of Ophthalmology is accredited by the Accreditation Council for Continuing Medical Education (ACCME) to provide continuing medical education for physicians.

• The American Academy of Ophthalmology designates this internet-live activity for a maximum of 1 *AMA PRA Category 1 Credit™*. 

• 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%

Career Risks of Making An Indemnity Payment

• High risk specialty
  o By age 45: 33%
  o By age 65: 71%

• Low risk specialty
  o By age 45: 5%
  o 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.

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
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
Case Study

• Evaluation by technician, who informed patient he’d be “a good candidate” for LASIK

• Chart reviewed by staff optometrist

• Patient recalls:
  o being told “you are an ideal candidate for LASIK surgery”
  o 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:
  o “halos and blurry vision”
  o “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:
  o “You are a great candidate for LASIK”
  o “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…
Case Study

• Pre-printed OR report template states:
  o “fixation steady”
  o “patient tolerated procedure well”

• Handwritten comments indicate:
  o flap was very thin with a central hole
  o patient had pain that led to possible loss of suction
  o flap replaced (no laser) & BSCL placed
Case Study

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

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

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

• Two weeks postop
  o patient sees the staff optometrist again
  o complains of blurry ghost images in right eye and is unable to work
  o UCVA 20/100   BCVA 20/50
  o Contact lens fitting is offered

• Patient seeks second opinion from cornea specialist
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
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
OMIC Review

• Informed consent issues:
  o incomplete and inadequately documented
  o performed by non-surgeon
  o downplayed risks and concerns

• No patient education material referenced in chart

• Abandonment

• Recommendation: Settle
Defense Expert Opinions

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

- Plaintiff demanded $1M
- Case settled for $450,000
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
  o Patient’s diagnosis
  o Nature and purpose of proposed procedure
  o Risks, benefits, and alternatives
  o Risks and benefits of not receiving treatment
  o 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
  o Document discussion in the medical record
    ▪ include discussion of any heightened risk factors
    ▪ patient concerns and resolution
    ▪ educational materials provided
  o Use a procedure-specific consent form
    ▪ Keep in medical record; give copy to patient
Risk Management: informed consent process

• Managing changes to consent
  o Surgical goals
  o Devices to be used

• Discuss with patient
  o Allow ample time for discussion and questions
  o Document the changes in medical record
  o Obtain signature on new consent

• Communicate changes to ASC/hospital as needed
Risk Management: informed consent process

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

• Be sure to make **eye contact**!

• Patients say these are **most important** when receiving health news:
  
  o Doctor takes time to answer all questions
  o Doctor is honest about the severity of condition
  o Doctor gives enough time to ask all questions
  o 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
  o Peer-reviewed annually
  o Unbiased with regard to products/treatment options
  o Meet **health literacy guidelines** to improve understanding
Patient education materials

• Health literacy
  o This refers to a person’s ability to read, understand and act on health information
  o As many as 9 out of 10 U.S. adults have limited health literacy skills!
  o Articulate people can have low health literacy
  o 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 education video.

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
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.aoa.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:
  o verbal descriptions and instructions
  o handouts
  o videos
  o website
  o Marketing materials
Informed consent

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

<table>
<thead>
<tr>
<th>Consent Forms</th>
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<tbody>
<tr>
<td>Welcome to OMIC’s Consent Form library, a collection of loss prevention and patient practices. Sample Letters and Office Forms are included under the Patient or Practitioner tab. Contact us: <a href="mailto:riskmanagement@omic.com">riskmanagement@omic.com</a>.</td>
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<td>Neuro (2)</td>
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<td>Oculofacial Plastic Surgery (20)</td>
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Patient engagement resources

- Academy Patient Education Materials
- OMIC Consent Forms
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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