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# Dental DATELINE®

A NEWSLETTER FOR MLMIC-INSURED DENTISTS

## *The Expanded Use of Motions for Summary Judgment in Dental Malpractice Cases*

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In their ongoing effort to stay up to date with trends impacting MLMIC policyholders and dental malpractice litigation, the attorneys at Fager Amsler Keller & Schoppmann, LLP, have been monitoring a trend in New York State whereby summary judgment is being more frequently granted to defendants

in dental malpractice cases. This is the result of increased scrutiny by judges of expert affidavits submitted by plaintiffs in opposition to the motions. This article will discuss the use of a motion for summary judgment, the burden of proof on

*continued on page 7*

## *The Latest Development in the Berkshire Hathaway Transaction*

On July 15, 2016, MLMIC and National Indemnity Company (NICO), a Berkshire Hathaway company, entered into a definitive agreement to acquire MLMIC. The acquisition will involve the conversion of MLMIC from a mutual to a stock company. The closing of the transaction is subject to various regulatory approvals (including the NYS Department of Financial Services), customary closing conditions and the approval of the MLMIC policyholders eligible to vote

on the proposed demutualization and sale.

On February 23, 2018, the parties agreed to an acquisition price of approximately \$2.5 billion and signed an amended acquisition agreement to reflect the purchase price and closing procedures. The parties currently expect this acquisition will be completed in the third quarter of 2018.

Please visit our FAQs page at MLMIC.com for the most current information. Should you have any questions, please call 1-888-998-7871. ♦

# Case Study

## *Safety Glasses: An Ounce of Prevention...*

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A 14-year-old girl was seen for a routine check of the wires of her braces. The standard office procedure for this orthodontic group was to have the patient wear safety goggles while the dental assistant untied the wires using clippers. The orthodontist then would adjust the wires and the assistant would re-tie the wires.

This office visit was proceeding smoothly and routinely until the assistant dropped the clippers in the process of retying the wires. The clippers landed on what appeared to be the patient's zygomatic arch just under her right eye. The assistant immediately asked the patient if she was hurt. She offered to have the orthodontist return to see the patient. The patient replied that she was fine and did not need to see the doctor again. The assistant accompanied the girl to the waiting room and advised the girl's mother of the incident. She asked if the mother would like to speak with the orthodontist. When the mother asked the daughter how she felt, the daughter again responded that she was not hurt. The patient and her mother then left without speaking to the orthodontist. And because the patient said she was unhurt, the assistant never informed the orthodontist about the occurrence.

When the patient returned to school that day, her eye began to water and feel irritated. She went to the school nurse, who placed an ice pack on the eye and called her mother. The mother arrived promptly and took her daughter to an ophthalmologist. The ophthalmologist diagnosed a perforated globe and immediately took her to surgery that afternoon. She underwent extensive surgery to repair the injured eye and was discharged home that night with several stitches and an eye patch. She required multiple follow up visits with the ophthalmologist. Eventually, the stitches were removed. However, as a result of the injury, the patient continues to be bothered by the glare of sunlight. Further, she has been advised that she is now more susceptible to developing a cataract in that eye. Unfortunately, she also had to limit her participation in sports and other activities she enjoyed to avoid risking further injury to this eye.

The patient's parents commenced a lawsuit on behalf of their daughter against the orthodontist for this very serious injury. The orthodontist was unaware of this injury until he was served with legal papers.

At her deposition, the patient was a very good witness. She testified that she was not wearing protective

glasses, despite the office protocol to have all patients do so during the wire procedure. Further, the patient's records did not contain any documentation that she was wearing safety glasses. Finally, the assistant testified at her deposition that she could not recall whether the patient was wearing safety glasses.

The lawsuit was brought for review before the District Claim Committee. After reviewing all of the facts, the Committee determined that the dental assistant was clearly negligent, particularly because she failed to follow office protocol/procedure by failing to have the patient wear safety glasses. She also violated office procedure by failing to notify both the orthodontist and the office manager as soon as the incident occurred. As a result of these facts, the Committee strongly recommended that the case be settled. Negotiations began and this case was eventually settled on behalf of the orthodontist for \$175,000.

While such a serious injury to a patient's eye is an infrequent occurrence, MLMIC has seen several claims and lawsuits due to the failure to place safety glasses on a patient. Finally, it is not just orthodontists who should place safety glasses on patients, as clippers, hand pieces, fly-



ing debris and chemical substances can also potentially cause significant injuries to the eyes of dental patients. Such injuries include corneal lacerations, corneal abrasions and even blindness. Therefore, the regular use of safety glasses for all patients is crucial to protect both the patient as well as the dentist.

## *A Legal & Risk Management Perspective*

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**S**afety glasses should be provided on a standard basis to dental patients to protect their eyes from splatter or debris generated during

dental procedures. This case might have had a different outcome if the dental assistant had followed office policies and procedures regarding the use of safety glasses.

A serious omission by the dental assistant was her failure to notify the office manager and the orthodontist of the incident immediately after it occurred, as is required by the office policy. In fact, by permitting the patient to leave the office without notification to the orthodontist or office manager, or having the orthodontist see the patient, the plaintiffs' attorney was able to allege that the delay in assessment and treatment by an ophthalmologist aggravated the patient's condition. The 14-year-old returned to school and her eye began to tear, causing her to rub her eye. This potentially caused further injury, thereby increasing her damages by potentially intensifying the size of the tear or causing the perforation. If the orthodontist had been notified

in a timely manner, he may have recommended that the patient be seen immediately by an ophthalmologist, preventing further injury. If the patient's mother had refused to follow the orthodontist's recommendation, their noncompliance could be used as a defense against the lawsuit.

To ensure that office staff act in accordance with policies in a practice, there needs to be both a policy and procedures manual and education about these policies on an annual basis. Well written, up-to-date policies and procedures reduce practice inconsistency that can result in patient harm. However, a manual will be ineffective if the staff is unfamiliar with what is contained therein. Therefore, for a staff to successfully follow the policies and procedures of the office, they must be adequately educated and their actions monitored. The staff should also be

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# Risk Management Strategies for S6800 – Lavern’s Law

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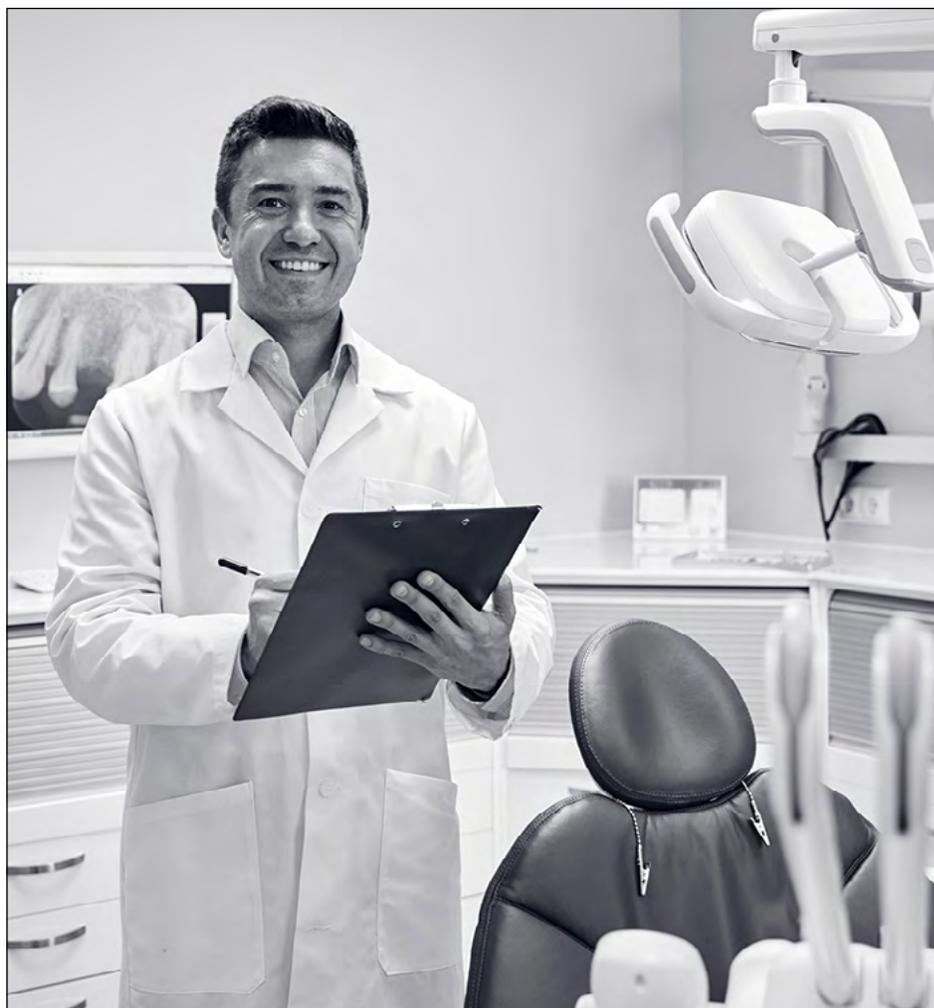
On January 31, 2018, Governor Andrew Cuomo signed S6800, also known as “Lavern’s Law,” a bill that extends the statute of limitations by applying a date of discovery rule to medical and dental malpractice actions where there is an alleged failure to diagnose cancer or a malignant tumor, whether by act or omission. This is a significant issue for MLMIC policyholders because with a longer statute of limitations, memories will fade, witnesses will become unavailable, and the standard of care may change, so thorough documentation is more important than ever.

The best defense for dentists who face an extended statute of limitations under Lavern’s Law for the misdiagnosis of cancers/tumors is to maintain complete, detailed, timely and relevant dental record documentation. Thorough documentation is crucial, and in the electronic health record (EHR), all check boxes must be marked positively or negatively to confirm that the physical examination was complete and that certain conditions/types of cancer relevant to the patient’s complaints were considered. If the templates or check boxes on the computer are not appropriate for such documentation, you should discuss with your vendor adapting the program to the needs of your particular specialty and eliminate irrelevant items on the templates.

The following strategies are offered to address the risks inherent with an extended statute of limitations for misdiagnosed cancer cases:

1. Document the patient’s history, which should include the following:
  - a. The patient’s complaint and whether it is a repetitive complaint.
  - b. Relevant information contained in the records of a prior treating dentist.
  - c. A family history of cancer, including the type and age of onset.
  - d. Risk factors for cancer, including, but not limited to:
    - i. diet, exercise and obesity.
    - ii. alcohol consumption.
    - iii. tobacco use (current, past, and present) in terms of packs per day or use of e-cigarettes for “vaping.”
    - iv. chemical and environmental exposures.
2. Document the positive and significant negative findings of the dental examination.
3. Document a differential diagnosis, ruling out more serious diagnoses, if appropriate.
4. Document the diagnostic tests and consultations that are ordered.
5. Review the incoming diagnostic tests and consultation reports in a timely manner and document both the review and the notification of the patient of both positive and negative findings:
  - a. Implement a tickler system to make sure test and consultation reports are received.
  - b. Document all patient follow-up efforts if reports of tests/consultations are not received because the patient failed to comply as recommended.
6. Document the patient’s understanding of positive results and the proposed treatment plan.
  - a. Follow up by telephone, then mail, on missed or cancelled appointments after positive findings/results are disclosed to the patient. The telephone calls should be made by the dentist if the patient has an increased risk of cancer.
  - b. Document attempts to get the patient to comply with the treatment plan.
7. Document patient education, including the patient’s understanding of recommended cancer screening tests and examinations for oral and other related types of cancer (including genetic testing):
  - a. Document the patient’s compliance or informed refusal to undergo such cancer screening tests and examinations.

8. Document all referrals to specialists to rule out potential risks or conditions, and document all communication with these specialists:
  - a. If no referral is made to a specialist, the record must contain the rationale for not referring, including whether this resulted from the patient's informed refusal.
  - b. Document the notification to the patient of a positive result, even when the specialist or consultant has also received that positive result.
9. Failed efforts to bring about compliance in a noncompliant patient should be handled with a discharge from practice letter containing a warning of the potential risks to life and health due to the patient's noncompliance.
10. Retain medical records of adults (18 years or older) for at least ten years from last payment or date of last service, whichever is longer.
11. If a patient declines a recommended test to rule out a potential cancer due to a lack of, or denial of, insurance coverage, the dentist must: explain to the patient the importance of the test and the risks of not undergoing it; assist the patient to appeal the decision with the



insurance company; offer the patient the option to self-pay; and document this discussion in full. A copy of the denial for testing to rule out cancer must also be scanned into the patient's dental record.

There are many risk management strategies that healthcare providers and practices can implement to decrease the potential risk of liability and improve patient safety. Adopting these recommendations into a well-rounded risk management program will help reduce the risk of patient injury. In the event that there is litigation, detailed documentation will contribute to a strong defense.

The Risk Management Department of MLMIC Services, together with the attorneys at Fager Amsler Keller & Schoppmann, LLP, offer educational programs and presentations that specifically address Lavern's Law. These programs are provided to MLMIC policyholders throughout New York State and offer guidance designed to manage the risks and reduce the exposures presented by this law, all at no additional cost to our policyholders.

For additional resources, please contact the Risk Management Department at MLMIC Services and/or the attorneys at Fager Amsler Keller & Schoppmann, LLP. ♦

# *FAKS Legal Services – Working for You*

The law firm of Fager Amsler Keller and Schoppmann, LLP (FAKS), is counsel to MLMIC and provides legal services at no cost to all MLMIC insureds as a benefit of their policies.

The firm's attorneys provide representation and opinions to a variety of dentists and other healthcare providers in the areas of healthcare and litigation, including appeals, regulatory issues, legislative matters and risk management advice.

FAKS has a variety of memoranda and template forms which can be used to aid decisions on many topics, including the discharge of a patient, the release of dental records, the treatment of minors, and dealing with unusual situations. The firm also can provide or assist in the development of consent documents for a variety of dental procedures.

For dental emergencies involving patients that occur outside of normal

business hours, FAKS attorneys are on call 24/7 via the Legal Hotline at (855) FAKS-LAW or by emailing [hotline@FAKSLAW.com](mailto:hotline@FAKSLAW.com).

FAKS has five offices located in Manhattan, Latham, Syracuse, Long Island and Buffalo. For the contact information of individual attorneys, please go to <https://www.fakslaw.com/attorneys> or call toll-free (877) 426-9555. ♦

## *The Risks in Criticizing Prior Care to Patients*

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A common precipitating factor in dental claims and lawsuits is derogatory remarks made by subsequent dentists about the work performed by a prior dentist. This is an unfortunate occurrence and one which may violate the Principles of Ethics and Professional Code of Conduct of the New York State Dental Association (NYSDA). The code provides that “a dentist should exercise care that comments about a prior dentist are truthful, informed and justified.” The code further recommends that the dentist consult with the prior dentist and discuss the circumstances and conditions under which the patient's treatment was performed.

This advice is very important. The consulting dentist may be unaware that the patient had not sought dental care for years or was otherwise non-compliant with the treatment plan and recommendations of the prior dentist.

Further, the patient may have named the wrong dentist. Therefore, the work being criticized had in fact not been performed by the prior dentist, but by another dentist years ago. It is not uncommon for patients who do not have dental insurance or do not properly care for their teeth to complain when their teeth require a great deal of repair. Clarifying and confirming the information provided by the patient with the former dentist, and reviewing the patient's prior dental records and films, might reveal that criticism of the prior dentist is unjustified.

If you do not open the lines of communication and review the prior records, you may open yourself up to criticism for your comments. Once you criticize another dentist in front of a patient, or, even worse, document that in the patient's dental record, you may well become a witness if a lawsuit is brought against the prior dentist.

This could require your participation in depositions and trial, which also entails facing the dentist whom you criticized. If your criticism is unjustified, you may be subject to intense cross-examination by defense counsel.

It is important to remember that a difference of opinion about preferred treatment does not necessarily indicate poor treatment. If you gain a reputation as someone who always criticizes the work of your patients' prior dentists, you may find yourself more likely to have your own care criticized in the future, with the same consequences. To avoid these pitfalls, we recommend that you merely factually advise the patient of your recommendations for treatment based upon the specific problems noted, without criticizing the prior dentist. It is important to remember that your criticism may come back to “bite you” at some point. ♦

## *The Expanded Use of Motions* continued from page 1

each party, and the recent trend of the awarding of summary judgment to defendants more frequently.

The motion for summary judgment is an effective litigation tool which is available by statute to defendants to obtain early resolution of a dental malpractice case, sometimes without going to trial. A review of recently decided appellate cases confirms a trend in granting summary judgment to defendants in dental malpractice cases based upon careful review by the judge of the defendant's motion papers and greater scrutiny of the plaintiff's papers in opposition to the motion, especially the affidavits of plaintiff's experts.

### **Historic Origins of Summary Judgment**

Summary judgment originated in England in 1885 as a means to grant a judgment without a trial in situations where there was no basis for the plaintiff's claims or the defendant's defense. It proved so successful in England that it was heralded as the "most beneficent inventions of modern procedure."

Summary judgment was enacted into law in New York State in 1921 as a means for granting judgment without trial in certain contract cases where there was no defense. Based upon the success of the summary judgment motion procedure in contract cases, its use was expanded in 1933 to all types of cases. Finally, in 1962, the existing summary judgment procedure was made into law as Section 3212 of the New York State Civil Practice Law & Rules.

### **The Defendant Must Initially Show Entitlement to Summary Judgment**

A court can grant summary judgment to a defendant in a dental malpractice case when it determines that there are no material issues of fact requiring a trial of the essential elements of dental malpractice which are: (1) a departure from the accepted standards of care in the community; and/or (2) evidence that the alleged departure from care was a proximate cause of the patient's injury or damage.

The defendant dental practitioner must be able to show that either there was no departure from accepted dental practices or that any departure was not a proximate cause of the patient's injuries. In order to make this showing, the defendant must be able to produce admissible proof such as certified dental records, deposition testimony, and an expert affidavit that addresses the specific malpractice allegations raised in the case.

If a defendant fails to meet this burden of proof in the motion papers, the motion will be denied without the court reaching a review of the plaintiff's papers in opposition. However, when a defendant meets its burden in the motion papers, the burden then shifts to the plaintiff to rebut the motion, using admissible evidence and a sufficiently detailed expert affidavit.

### **The Recent Trend Toward Increased Judicial Scrutiny of Plaintiff's Expert Affidavits in Opposition**

As previously noted, once the defendant has shown entitlement to sum-

mary judgment, the burden shifts to the plaintiff to provide a detailed expert affidavit that shows that there are questions of fact to be decided that require a trial. Several recent New York appellate decisions illustrate that there is a judicial trend in granting summary judgment to a defendant dental practitioner when the plaintiff has failed to produce a sufficiently detailed expert affidavit or other admissible proof that rebuts the defendant's entitlement to summary judgment.

In *Hartt v. Kramer*<sup>1</sup>, the defendant was awarded summary judgment on both the dental malpractice and lack of informed consent causes of action. The plaintiff in this case alleged that the defendant dentist deviated from accepted standards of care in electing to pursue a conservative treatment plan involving replacement bridges and cosmetics as opposed to recommending implant surgery. The defendant produced evidence including a detailed expert affidavit showing that there was no departure from accepted dental practices and that he fully informed the plaintiff of the risks and benefits of both his conservative treatment plan and the option of implant surgery. The court recognized that the defendant had established entitlement to judgment and had shifted the burden to the plaintiff to rebut this. However, the plaintiff's expert affidavit failed to refute that the defendant's treatment plan did not

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1. 155 A.D.3d 560, 64 N.Y.S.3d 549 (1st Dep't 2017).

*continued on page 8*

constitute malpractice as it was one of several acceptable treatment alternatives. The plaintiff's expert affidavit also did not support the claim that the defendant misrepresented the risks of implant surgery or that such a misrepresentation proximately caused an alleged injury. The defendant was granted summary judgment and the case dismissed.

Similarly, in the recently decided dental malpractice cases of *Biondi v. Behrman*,<sup>2</sup> *Garcia v. Richer*<sup>3</sup> and *Czereszko v. Procopio*,<sup>4</sup> the appellate courts carefully reviewed the expert affidavits submitted by the plaintiffs in opposition to the defendants' motions for summary judgment. In all three cases, the appellate courts found that the expert affidavits submitted by the plaintiffs were speculative, conclusory and insufficient to rebut the admissible proof offered by the defendants. More specifically, the expert affidavits were insufficient because each of the experts failed to set forth the standard of care, explain how the alleged departure from that standard proximately caused the plaintiff's injury, or relate their opinions to the specific facts of the case. Summary judgment was awarded to the defendants in all three cases.

### Recent Judicial Trends

Since its inception, summary judgment has been an effective legal tool used to bring an early resolution to cases without the necessity of a

2. 149 A.D.3d 562, 53 N.Y.S.3d 265 (1st Dep't 2017).
3. 132 A.D.3d 809, 18 N.Y.S.3d 401 (2d Dep't 2015).
4. 149 A.D.3d 1531, 53 N.Y.S.3d 770 (4th Dep't 2017).



trial. Summary judgment is also an effective legal tool to narrow issues and test the plaintiff's proof. Based upon the recent judicial trend toward increased scrutiny of the expert affidavit of a plaintiff in opposition to the motion, the use of a summary judgment motion should be considered when early resolution of a lawsuit is possible, either to limit the issues at trial or to test the strength of the plaintiff's case. Therefore, the use of a motion for summary judgment should be considered from the very beginning of the defense and throughout the life of the case.

Medical Liability Mutual Insurance Company and defense panel firms intend to vigorously scrutinize every lawsuit from inception to determine whether a motion for summary judgment is appropriate to dispose of the case without

a trial, to limit issues at trial, or to put a plaintiff's case to the test. Any questions concerning the motion for summary judgment or the trend discussed in this article can be directed to the attorneys at Fager Amsler Keller & Schoppmann, LLP. ♦



# EVENT Calendar 2018

*In 2018, MLMIC will be participating in the following events throughout New York State.\* For more information on MLMIC's involvement in these events and others, please contact Pastor Jorge, Manager, Marketing Services, at 212-576-9680.*

- April 24** New York County Dental Society - Young Professionals Event Series *New York, NY*
- May 1** Nassau County Dental Society - New Dentist Event - Taco Tuesday *K-Pacho, New Hyde Park, NY*
- May 2** Suffolk County Dental Society - General Meeting *Radisson Hotel, Hauppauge, NY*
- May 2** Stony Brook School of Dental Medicine - Stony Brook ASDA's Vendor's Fair  
*Leo & Mickey Sreebny Symposium Student Research Day, Stony Brook, NY*
- May 3** Queens County Dental Society - Resident/New Dentist CE Program & Casino Night *Jamaica, NY*
- May 4** Third District Dental Society - CE Seminar Series *The Century House, Latham, NY*
- May 4** Fifth District Dental Society - Spring Seminar *Hampton Inn & Suites Cazenovia, NY*
- May 4** Sixth District Dental Society - 150th Semi-Annual Meeting  
*Owego Treadway Inn & Conference Center, Owego, NY*
- May 5** Suffolk County Dental Society - Shreading Event *Hauppauge, NY*
- May 7** Nassau County Dental Society - General Membership Meeting *Jericho Terrace, NY*
- May 9** Ninth District Dental Association - General Meeting *Villa Borghese, Wappingers Falls, NY*
- May 10 - May 11** Fourth District Dental Society - Saratoga Dental Congress *Saratoga Springs City Center, Saratoga Springs, NY*
- May 16** Ninth District Dental Association - Frills & Drills - Celebrating Women in Dentistry  
*The Manor, Briarcliff, NY*
- May 31** Third District Dental Society - Third District Golf @ NYSDA House of Delegates *Saratoga National, Saratoga, NY*
- June 1 - June 3** NYSDA House of Delegates *Saratoga City Center, Saratoga, NY*
- June 13** Suffolk County Dental Society - 19th Annual Golf Outing *Mill Pond Golf Course - Medford, NY*
- Sep. 12** Ninth District Dental Association - General Meeting *Westchester Marriott, Tarrytown, NY*
- Sep. 13 - Sep. 14** Fifth District Dental Society's - Central New York Dental Conference *OnCenter, Syracuse, NY*
- Sep. 21** Fourth District Dental Society - Annual CE & GOLF *Hiland Park Golf Club, Queensbury, NY*
- Sep. 28** Sixth District Dental Society - 150th Semi-Annual Meeting  
*Owego Treadway Inn & Conference Center, Owego, NY*
- Sep. 29 - Sep. 30** Queens County Dental Society - World's Fair of Dentistry *Terrace on the Park, NY*
- Sep. 25** Ninth District Dental Association - New Dentist Reception *TBD*
- Sep. 26 - Sep. 28** Buffalo Niagara Dental Meeting - New Dental Residents Buffalo *Niagara Convention Center, Buffalo, NY*
- Sep. 27 - Sep. 28** Third District Dental Society's - Greater Capital District Dental Symposium *Albany Marriott, Albany, NY*
- Oct. 9** Queens County Dental Society - General Meeting *Jamaica, NY*
- Oct. 10** Nassau County Dental Society - General Meeting *Jericho Terrace, NY*
- Oct. 10** Suffolk County Dental Society - General Membership Meeting *Radisson Hotel - Hauppauge, NY*
- Oct. TBD** Fourth District Dental Society - Women's Dentist Meeting - Fall 2018 *TBD*
- Oct. TBD** Fourth District Dental Society - New Dentist Meeting - Fall 2018 *TBD*
- Nov. 2** Fifth District Dental Society Winter Seminar - Let's Grow Tooth *Marriott Syracuse Downtown, Syracuse, NY*
- Nov. 5** Nassau County Dental Society - General Membership Meeting *TBD*
- Nov. 8** Second District Dental Society - General Membership Meeting *Dyker Beach Golf Course - Brooklyn, NY*
- Nov. 14** Ninth District Dental Association - General Meeting *Westchester Country Club, Rye, NY*
- Nov. 14** Suffolk County Dental Society - General Meeting *Radisson Hotel - Hauppauge, NY*
- Nov. 23 - Nov. 28** Greater New York Dental Meeting

*\* Dates subject to change*

## *Maintaining Patient Confidentiality*



### **The Risk:**

#### **Inadvertent Breach of Patient Confidentiality and HIPAA**

Office staff must be aware that discussing a patient's protected health information (PHI) within earshot of others, or leaving computer screens that display PHI open where patients can see them, can result in a breach of patient confidentiality. Further, office staff discussing in public a patient's PHI, or even his/her presence at the office, may result in a serious breach of confidentiality. Such breaches of confidentiality must be prevented.

### **Recommendations:**

1. Educate staff at least annually (or more often, as necessary) about the need to maintain patient confidentiality inside and outside the office. Documentation of participation in such educational sessions should be maintained in the staff personnel files.
2. Require staff members to sign new confidentiality agreements, which include the ramifications and consequences of a breach of confidentiality, up to and including suspension or even loss of employment, every year.
3. Assess the office premises to determine whether patient flow enhances confidentiality or may cause an inadvertent breach of confidentiality, and take appropriate corrective actions.
4. Establish private areas away from the waiting room and common areas for discussions with staff and patients. Avoid discussing PHI in a loud voice that can be overheard outside the examination room.
5. Face computers away from patient common areas and reception areas. Use a screensaver or screen lock when away from the computer.
6. Obtain written consent from patients to permit minimal information, such as appointment reminders and/or test results, to be left on telephone answering machines or with a designated person. ♦

# Case Study

*continued from page 3*



educated to identify problem areas or trends that might result in claims, especially where corrections can be made before a potential problem occurs. One individual should be designated to receive reports of problems and manage risk management issues. Incidents should be investigated to find out their cause, and appropriate changes should be made to prevent similar incidents in the future. The staff must be re-educated on a yearly basis and proof of this documented in the staff personnel files.

Finally, the dental assistant failed to document whether the patient was wearing safety glasses. Accurate, legible, and complete documentation can be the best defense against a malpractice claim. A well-documented chart is one that is

made contemporaneously with treatments and/or events and, therefore, does not rely on anyone's memory. It can't be deemed as self-serving if it is timely. Poor documentation makes a case more difficult to defend. Plaintiff attorneys will argue that "if it is not documented, it was not done." In this situation, if the dental assistant no longer worked for that practice and could not be located, the practice would have no defense in this matter whatsoever. But, they were not only unaware of the incident, there was no documentation of whether the patient was wearing safety glasses at the time of treatment. Therefore, the lack of documentation was also a detriment in the defense of this case. ♦

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*The attorneys at Fager Amsler Keller & Schoppmann, LLP are available during normal business hours to assist MLMIC insureds with a wide range of legal services, including, but not limited to, advisory opinions concerning healthcare liability issues, liability litigation activities, lecture programs, and consulting services.*

*Healthcare law, regulations, and practices are continually evolving. The information presented in Dental Dateline® is accurate when published. Before relying upon the content of a Dental Dateline® article, you should always verify that it reflects the most up-to-date information available.*

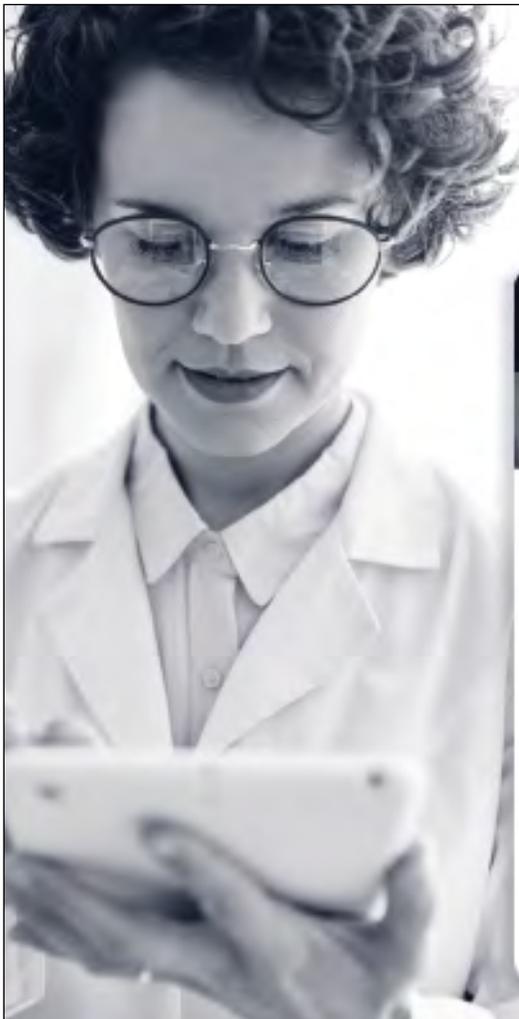


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**FEB 26** **MLMIC Shares Latest Development in Berkshire Hathaway Transaction**

On February 23, 2018, MLMIC and Berkshire Hathaway agreed to an acquisition price. Completion of the acquisition is expected in the third quarter of 2018.

**FEB 13** **New Albany Report: Significant Expansion of Medical Malpractice Statute of Limitations**

A new edition of The Albany Report helps policyholders understand the impact of the recent expansion of the medical malpractice statute of limitations in New York State.

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