THE SCOPE

MLMIC Insurance Company
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MEDICAL EDITION

ISSUE 11
FOURTH QUARTER 2022

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NY

INSIDE

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MSSNY & MLMIC — Stronger Together

The Medical Society of the State of New York (MSSNY) and MLMIC Insurance Company go back a long way.

While MSSNY was created more than 200 years ago, the MSSNY-MLMIC partnership goes back to the mid-1970s when MLMIC was formed in response to the medical malpractice crisis in New York.

At a time when most carriers left the market, MLMIC emerged to support the medical professionals, and we have stood shoulder to shoulder ever since, working together on behalf of the broad healthcare provider community in New York.

Over the course of this long and fruitful relationship, MLMIC and MSSNY have collaborated on numerous fronts, including advocacy and legislative reform efforts in Albany; providing educational support and an array of resources to physicians, hospitals, and county and specialty societies; and offering physician wellness and health programs, to name a few. And, over the years, MLMIC has successfully defended more New York physicians than any other insurer in the state.

Across New York State, almost all of the county medical societies and a number of specialty societies have also chosen to stand with MLMIC. With an A+ financial rating by AM Best, there is no better partner.

We are all stronger together.

That remains true today, perhaps more than ever. Once again, we find ourselves faced with a looming potential medical professional liability insurance crisis. MSSNY and MLMIC are working tirelessly to prevent and mitigate damages, and it is our hope that you have been taking action to express your opposition to the proposed Wrongful Death legislation. We must all make our voices heard.

MSSNY and MLMIC are currently expanding their partnership and will be unveiling a series of new programs, resources, and services to drive patient safety, practice transformation, and risk management across New York State.

It's worth repeating — we are all *stronger together.*

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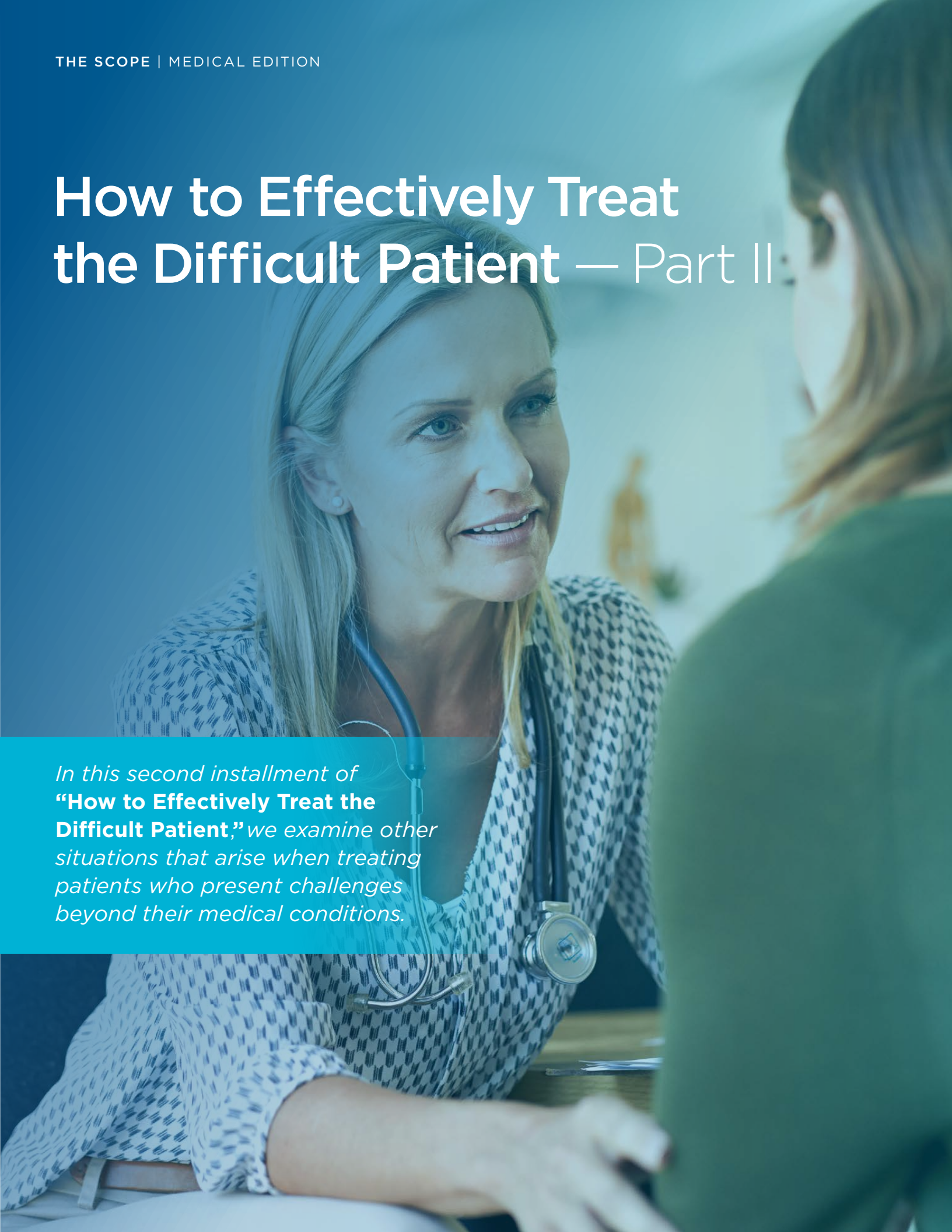
www.mssny.org

www.mlmic.com/about/professional-societies-associations

How to Effectively Treat the Difficult Patient — Part II



In this second installment of **"How to Effectively Treat the Difficult Patient,"** *we examine other situations that arise when treating patients who present challenges beyond their medical conditions.*

Patients Who Complain about Treatment

Patients who lodge complaints about their care and treatment with a third party, such as a hospital, insurance company, or governmental agency (e.g., Medicaid or the Office of Professional Medical Conduct [OPMC]), create an awkward situation. The patient may have chosen not to discuss their concerns about treatment with the physician and, instead, decided to write a formal complaint letter. Sometimes, it is not the patient who makes the complaint, but rather a spouse, adult child, or other family member.

No matter where it originates, receipt of a complaint letter places the physician in an uncomfortable and defensive position. It may not be wise to continue to treat the patient if they are dissatisfied. Consciously or unconsciously, the physician may be inclined to order additional, or even unnecessary, testing or procedures merely to satisfy the patient's demands or protect themself from litigation or government investigation.

> It may not be wise to continue to treat the patient if they are dissatisfied.

If a physician does receive a complaint letter that alleges substandard quality of care received and requests compensation for an injury (i.e., a claim letter), the physician should contact MLMIC Insurance Company. MLMIC will investigate the patient's claim and develop an appropriate response and/or resolution to the complaint. If the patient's letter does not ask for monetary compensation but simply raises concerns about the quality of care, attorneys at Mercado May-Skinner Law are available to assist the physician in preparing a written response.

Patients Who Fail to Pay Bills

Physicians often ask whether they may discharge a patient who fails to pay for services rendered. The answer is yes, as long as there is no medical reason that would preclude discharge. These patients may also fail to keep their appointments due to their inability to pay. If the patient misses an appointment and their medical condition warrants follow-up care, appropriate steps must be taken to ensure that the patient is counseled about receiving the required care and the consequences of the failure to obtain it. Warning letters should be sent about missed appointments that describe the patient's condition, the need for continued treatment, and what could happen if treatment is not received.

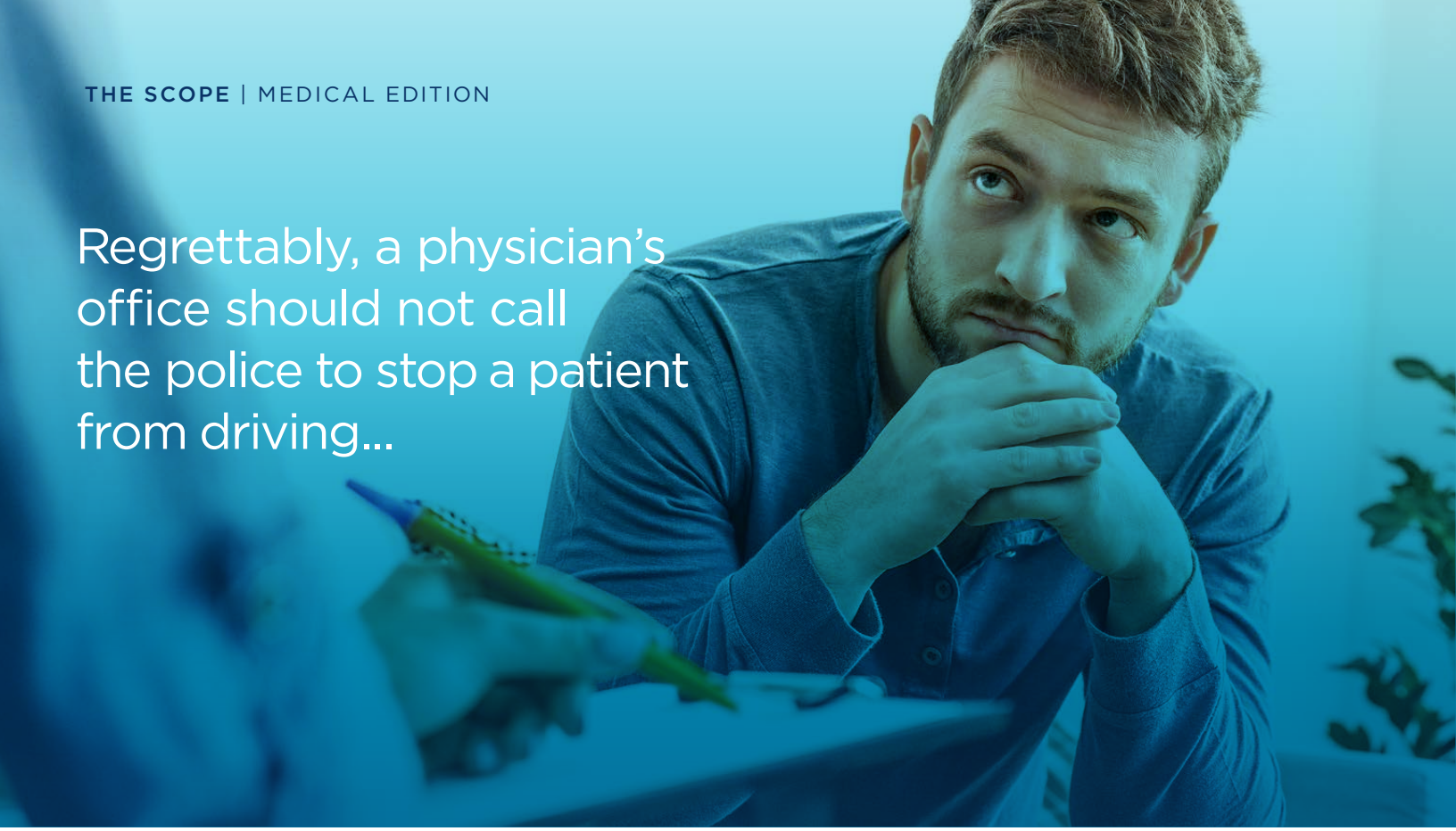
> Note that the physician-patient relationship does not automatically end when a patient's bill is sent to an agency for collection.

Only after such steps have been taken may the patient be discharged from the practice. Note that the physician-patient relationship does not automatically end when a patient's bill is sent to an agency for collection. The physician's responsibility for the patient's care only ends when the patient has been formally discharged.

Patients Who Threaten to Sue or Consult an Attorney

If the patient not only complains about treatment but threatens to bring a lawsuit, or if the patient has consulted an attorney, clearly, the physician-patient relationship has been seriously disrupted. The physician's first awareness of attorney involvement may occur when they receive a request for a copy of the patient's medical record. Since it is not always clear why an attorney is requesting a copy of the record, many physicians rely upon instinct to alert them to a potential liability issue. If there is any inkling that the patient is contemplating a malpractice lawsuit, it may make it uncomfortable for the physician to continue to treat the patient.

Surprisingly, some patients wish to continue seeing a physician they have sued, but it is not in the best interests of either the patient or the physician to continue the relationship. Patients who have sued, or who have consulted an attorney with the intention of commencing a lawsuit, often cancel or fail to keep scheduled appointments, particularly after their attorneys have requested a copy of their medical



Regrettably, a physician's office should not call the police to stop a patient from driving...

records. They may be noncompliant with treatment recommendations or fail to communicate about medical issues. Physicians may feel compelled to practice "defensive" medicine, ordering inappropriate tests and procedures. The physician may believe that continuing the relationship will help them "look better to the jury," which, generally, is not true.

> **Physicians may feel compelled to practice "defensive" medicine, ordering inappropriate tests and procedures.**

Once a patient has commenced a malpractice suit, the physician-patient relationship, based upon mutual trust, has been seriously compromised. The patient should be discharged from care, or, if their condition requires it, the patient may be transferred to another practice. If the patient's physician is in a group practice, the patient should be discharged from the care of all medical providers in the group.

Intoxicated/Impaired Patients

When a patient or family member comes to the office drunk or otherwise intoxicated, they may be uncooperative and disruptive and can be asked to leave the premises. The physician may be concerned about the patient's ability to drive and may question whether they should call the police to prevent an accident. These same questions arise when a patient who has received an anesthetic or sedative in the office insists on driving home, despite clear warnings not to do so. Regrettably, a physician's office should not call the police to stop a patient from driving, since this would be a breach of the patient's right of confidentiality.

> **If the physician feels the patient is unable to drive safely, the physician should attempt to persuade the patient to remain...**

Handling these situations involves skillful persuasion. First, the patient should be assessed to determine whether there is another cause for the behavior that can be treated, or if the patient has recovered sufficiently to drive safely. If the physician feels the patient is unable to drive safely, the physician should attempt to persuade the patient to remain until they are safe to drive, offer to send the patient home in a taxi or car service, or call a family member of the patient to provide transportation. The counseling

efforts and actions taken must be documented in the patient's medical record. If clinically appropriate, the patient may be discharged from the practice.

Patients Who Lack Capacity

Patients with decreased cognition, dementia, or those who reside in an Office of Mental Retardation and Developmental Disability (OMRDD) facility can be difficult to treat. Concerns may include cooperation, safety, and informed consent. When dealing with patients who lack capacity, proper staffing and allocating adequate time are important so that these patients may be treated safely. It can also be difficult to discern if such patients have a legal guardian or other person who has the right to provide consent. A patient may have multiple family members who disagree about the patient's care but do not have the legal authority to make healthcare decisions. Individuals entitled to make healthcare decisions, such as providing consent for treatment, include healthcare proxy agents, legal guardians, or, for a patient from an OMRDD-regulated facility, an involved family member.

Patients who lack capacity pose special legal issues involving appropriate delegation and documentation of decision-making authority. If you have a situation that requires evaluation of such authority, you should contact legal counsel.

Patients Who Act in a Seductive Manner

Some patients send love letters, exhibit unusual or flirtatious behavior, or use sexual innuendos when speaking to their physician. In some instances, the patient may not even be aware that this behavior is inappropriate.

> **The presence of the chaperone must be documented in the patient's medical record.**

A physician should have a chaperone present in the room when it is appropriate. The presence of the chaperone must be documented in the patient's medical record. (Mercado May-Skinner Law can provide sample language that can be used to document the presence of a chaperone.) This is particularly important for patients who act in a seductive manner.

A patient who acts inappropriately toward their physician may have underlying emotional or psychological issues. There is a very real risk that the patient may make allegations of sexual misconduct when their advances are rebuffed by the physician. Such allegations can destroy a physician's career and result in disciplinary action by the OPMC. The use of a chaperone can help a physician avoid such allegations. If a patient alleges that sexual misconduct has occurred, the patient must be discharged immediately, if appropriate, to protect the physician's license and reputation.

Discharging a Patient from Care

As pointed out in this discussion, a physician is not required to continue caring for a patient whose behavior makes the physician uncomfortable. A patient may be discharged from care if they do not have an urgent or emergent medical condition or do not require continuous care without a gap.

In some situations, the physician may find that the patient cannot be discharged, or that the physician must first arrange for a seamless transition to another provider. The physician must consider the patient's ability to obtain the same type of care in a timely manner within a reasonable geographic distance. In some specialties, 30 days' notice may be insufficient.

> **The physician must then promptly send a certified letter to the patient stating that they are discharged from the entire practice.**

If the patient can be discharged, any existing appointments must first be canceled. The physician must then promptly send a certified letter to the patient stating that they are discharged from the entire practice. Once the discharge letter has been sent, all office staff must be made aware of that fact so that the patient is not inadvertently given a new appointment.

The wording of the discharge letter may be important. In cases where the patient has failed to pay for treatment, it is usual for the letter to state nonpayment as the reason for discharge. In other cases, especially when the discharge is due to the patient's disruptive behavior, or if there is a potential lawsuit against the physician, the discharge letter may be more general and may state simply that there has been a disruption in the physician-patient relationship. This general, noncommittal statement may help avoid or minimize an unpleasant confrontation. If further evaluation, care, and treatment are indicated, the discharge letter must emphasize the importance of seeking such care from another provider and state the consequences for failing to obtain it.

Conclusion

Interactions between medical practitioners and patients can sometimes present challenging dilemmas. Angry, rude, unhappy, and anxious patients can be disruptive to the office. The ability to positively address patients' concerns is an essential component of a successful medical practice.

It is strongly recommended that physicians implement appropriate strategies to manage difficult patient encounters in order to reach amicable resolutions. Successful communication and listening skills are required to avoid and defuse strained relations. Anxieties can be reduced by empathizing with patients in a calm and understanding manner. Physicians should acknowledge grievances, frustrations, and concerns by demonstrating understanding without being dismissive or disrespectful, know when to compromise, and always maintain professionalism.

Effective skills are essential to address stressful relations between physicians and patients. MLMIC professionals have the experience and requisite expertise to assist in the management of these uncomfortable circumstances. Please do not hesitate to contact MLMIC should the need arise. By properly managing these situations, physicians can maintain good relationships with their patients, provide effective care, and protect their reputation.

CASE STUDY: Treating a Patient with Body Dysmorphia

The physician in this case did all the things MLMIC recommends from a risk management perspective, including photo taking, providing and documenting proper informed consent, and following up in response to the patient's complaints. But when a patient has body dysmorphia, it can be difficult to make the patient happy. Proper screening for this condition is essential.

Initial Treatment

A 49-year-old married female with a history of multiple cosmetic procedures, including rhinoplasty, blepharoplasties, Kenalog injections, liposuction, and facelift, presented to our insured plastic surgeon for correction of midfacial ptosis, which the patient felt was not corrected by a prior facelift. An endoscopic rhytidectomy with transtemporal approach was discussed along with the risk factors, including bleeding, scarring, infection, skin loss, and nerve injury. The patient was provided with multiple documents describing the pre- and postoperative instructions as well as a patient information sheet describing the benefits and risks of the procedure. The physician took preoperative photos documenting the patient's appearance, the patient signed a preoperative informed consent form, and the surgery was scheduled.

The patient was medically cleared for surgery, and the plastic surgeon performed the intended surgery

under local anesthesia with sedation. Post-op, the patient did well and was discharged home. The op report made no mention of any contact with the patient's nose or mouth, and there were no complications during the surgery. The patient returned to the office the following day for a bandage change and was healing and felt well. She returned in one week, at which time her sutures were removed, and the patient was noted to be healing well with no sign of infection.

During a follow-up appointment two weeks later, the patient appeared to be happy with the results. The doctor noted that swelling had decreased (although there were no prior notes in the chart regarding swelling). Facial massages were discussed. The patient did not return for her next scheduled visit, but returned the following month, at which time she continued healing and good facial symmetry was achieved, although some facial edema was noted. Kenalog was injected into three areas of both cheeks. The physician took photos at each visit to document the improvement.

Surgical Results Questioned

The patient canceled her next appointment but returned six weeks later, at which time she complained of facial swelling. The incision lines were well healed, and there was good midfacial lift and symmetry. Kenalog was again injected into the cheeks, and the physician noted a slight buccal branch weakness on the left, with aggressive simile, which he advised the patient would not be permanent.

The patient canceled her next appointment but returned the following month, complaining of left temple atrophy and a change in the shape of her nose, along with a left nasal sidewall blue vein. The physician suggested that the left buccal branch weakness was mild and improved, with no appreciable difference. He attributed the temple atrophy to age, advising that this was present prior to surgery. He offered Juvederm injections as a temporary solution, along with Botox to improve the appearance of the mouth, which the patient agreed to, though she was quite unreasonable during this visit.

Patient Confronts Physician

The patient returned one month later, at which time there was no change in the nose from pre-op. There was slight laxity along the jawline and good midface correction. The buccal branch weakness was improving on the left side and was slight. The left nasal bridge vein remained as prior to surgery. The surgeon explained that the surgery was not in this area, and the patient began yelling and screaming. The doctor discussed using AC current stimulation in the area and the possibility of a touch-up facelift in one year, though by this time, the surgeon was concerned about the patient's body dysmorphism.

The patient was seen the following month. Photographs taken at that visit depicted the patient's marked facial asymmetry with lifting of the right side of her mouth. The patient did not return to the office after this visit and refused to reschedule her

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UNDERWRITING UPDATE

Optional Professional Entity Coverage under MLMIC's Physicians and Surgeons Professional Liability Insurance Policy

As indicated in the Underwriting Update from the previous edition of The Scope — Medical Edition *that focused on Limited Coverage for a "Qualified Professional Entity" under the MLMIC Physicians and Surgeons Professional Liability insurance policy, MLMIC also offers optional Professional Entity coverage.*

This Underwriting Update will explain this optional layer of coverage and the added benefits afforded to professional entities when purchased by MLMIC Insured physician owners.

How does the optional Professional Entity coverage differ from the Qualified Professional Entity (QPE) coverage that is included in the MLMIC Physicians and Surgeons Professional Liability insurance policy ("Policy")?

Both options for coverage offer protection to a MLMIC Insured's professional service corporation, professional limited liability company, partnership, or limited liability partnership ("Professional Entity") when such Professional Entity is named in a professional liability claim. However, a key benefit of optional Professional Entity coverage is the separate, additional limit of liability of $1,000,000 Each Person/$3,000,000 Total that is provided to the Professional Entity. Also, unlike the Policy provision of Limited Coverage for your QPE, which only applies (in part) if the alleged action(s) result from Professional Services that "were provided by you or another MLMIC insured for whose actions you are legally responsible" (such as a healthcare practitioner whom you are

supervising), optional Professional Entity coverage is not dependent on such person having to be a MLMIC Insured. Your Policy would provide the specified coverage under its terms and conditions.

Can my solo professional corporation ("PC") also purchase Optional Professional Entity coverage under my individual Policy with MLMIC?

A solo PC (where you are its sole shareholder and it has no more than five employed healthcare practitioners) is afforded vicarious liability coverage under a MLMIC Insured's individual Policy limits for the acts of its employees. However, a MLMIC Insured's solo PC can also apply for optional Professional Entity coverage in order to secure the same benefits described above.

What other benefits are there to purchasing Optional Professional Entity coverage?

Not only would the Professional Entity be afforded a separate limit of liability as described earlier, but its "Employees" would share in such limit for their direct liability while acting within the scope of their employment by such entity. It is important to note that Employees, in this respect, do not include physicians or midlevel providers.

Is it necessary to purchase optional professional entity coverage?

Such determination is a business decision for the individual and/or their group based on the coverage needs of their practice. Outlining an insurance program as a whole and identifying any voids or areas of concern where coverage may be enhanced by available insurance products would drive a decision that is right for the individual or their group.

What if I have more questions?

MLMIC Underwriters or your Agent (if so assigned) are available to address any questions that you may have on this or any other matter concerning your policy. Please refer to the Policy Producer section of your Declarations page for your Agent's contact information or, if not applicable, call (800) ASK-MLMIC and ask to speak to your assigned Underwriter.

*This article is intended to point out certain policy provisions that provide coverage for professional entities owned by a MLMIC policyholder. It is **not** a substitute for any of the terms and conditions of any MLMIC medical professional liability policy. The insurance coverage afforded by your Policy is subject to all of the terms, conditions, limits, and exclusions contained within the Policy. It is essential that you read your entire Policy. If there are any conflicts between this article and your Policy, the terms and conditions of your Policy control and prevail.*

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MLMIC Insurance Company Introduces a New Preferred Savings Program

MLMIC Insurance Company is expanding its Preferred Savings Program (PSP) discount options with the introduction of the New York Medical Group Management Association (NYMGMA) Risk Purchasing Group (RPG).

Developed in collaboration with Risk Strategies and NYMGMA, this new PSP will provide a **10% discount to qualifying physicians** whose Practice Managers or Office Managers are NYMGMA members. Risk Strategies is the Program Administrator, and the NYMGMA RPG Preferred Savings Program is open to all MLMIC Brokers.

New MLMIC policies issued with an effective date of 1/1/2023 or after will be eligible to apply for this discount. Existing policies will be eligible to have this discount applied on their renewal date occurring on or after 1/1/2023.

MGMA® Medical Group Management Association New York

For a physician to be eligible for the NYMGMA RPG, one requirement is that their Practice Administrator must be an NYMGMA member. Any qualifying physician in an NYMGMA member's practice can apply; the physician does not need to be a member of NYMGMA. Qualifying physicians are those who have a better than average loss experience and whose Office Manager or Practice Manager is an NYMGMA member.

The NYMGMA RPG Preferred Savings Program discount can be included along with the following MLMIC discounts: Claims Free, Risk Management, Part-Time, Waiver of Consent, and Annual Prepay. It cannot be combined with another PSP discount.

For additional information, you can contact **Jenn Negley** at Risk Strategies, (267) 251-2233, your MLMIC Underwriter, or your MLMIC Broker.

Please visit **www.mlmic.com/nymgma** for details.

Additional information on how to join NYMGMA can be found at **www.newyorkmgma.com/join**.

FROM **THE INSIDER**

The MLMIC Insider provides ongoing and up-to-date news and guidance on important events and announcements that affect the practices of our insured physicians and other healthcare providers.

If you are interested in receiving informational posts such as the following, please be sure to sign up to receive MLMIC's *Healthcare Weekly*, the latest MLMIC Insurance Company news and links to relevant and valuable industry articles.

NOV 9, 2022

How Physicians Can Encourage STI Screenings Amid Rising Infection Rates

MLMIC examines how physicians can address patients' sexual health through STI screening, which has decreased because of the pandemic.

> READ MORE

OCT 31, 2022

Webinar: Value-Based Care and How to Make It Work for You

This presentation will discuss the benefits and components of value-based care, plus its impact on health systems.

> READ MORE

OCT 28, 2022

Why and How to Incorporate Shared Decision-Making in Clinical Practice

This model of care, which requires physicians and patients to collaborate on care plans, can improve health outcomes, strengthen relationships, and boost satisfaction.

> READ MORE

CASE STUDY: Treating a Patient with Body Dysmorphia

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appointment. She called the office four to five times per day during this period and was abusive to the staff. As a result, the physician opted to discharge her from his care, and she was sent a letter of termination.

Lawsuit Filed

The patient subsequently filed a lawsuit against the plastic surgeon and his professional corporation alleging lack of informed consent, failure to properly perform the endoscopic facelift surgery, and failing to diagnose and treat a nerve injury. In addition, she claimed battery by suggesting that the plastic surgeon altered the patient's nose through intrabuccal incisions required for the facelift without her knowledge or consent.

Multiple consultants in various disciplines reviewed this case. Neurology opined that the plaintiff likely suffered a buccal nerve injury, which was a minor concern, and it would be impossible to determine when it occurred. Plastic surgery found no departures from the standard of care and no indication of any alteration to the patient's nose, which was confirmed by the post-op photographs. In addition, he noted that the transient buccal nerve injury is a recognized and documented low risk of the procedure. Her claims of lack of informed consent were unfounded, as the informed consent was well documented in the chart.

Medical opined that any surgical error would occur immediately, and if the patient were subject to a pinprick examination, she would fail. Psychiatry opined that the patient had a body dysmorphic disorder and that a jury would likely view her as a woman who has a pleasing facial appearance and decide her problems were psychiatric rather than inflicted by our insured. In addition, he questioned why the insured would treat a patient who apparently had this disorder.

A decision was made to proceed to trial, which resulted in a defense verdict. Unfortunately, the plaintiff filed a Notice of Appeal and continued to request extensions to perfect her appeal, which were granted by the court. The plaintiff proceeded pro se and again failed to perfect the appeal in a timely fashion but was successful in filing a Request for Appellate Division Intervention. Although the plaintiff failed to provide the supporting documents, she was granted additional leeway to proceed to oral argument.

A motion to dismiss the appeal was made, to which the plaintiff served a reply brief. While awaiting oral argument, a Civil Appeals Management Program conference was held in which the mediator suggested the plaintiff withdraw her appeal. It became apparent that the plaintiff had a vendetta against the plastic surgeon and would not give up. However, MLMIC eventually prevailed when the appellate division found in favor of the surgeon by upholding the original defense verdict.

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Medical Society of the State of New York

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- **Discounted legal services**
- **Discounted financial services**
- **Weekly newsletter**

For more information or to become a member, visit mssny.org/join or contact MemberResources@mssny.org.

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