

THE SCOPE



DENTAL EDITION

ISSUE 09

THIRD QUARTER 2022

INSIDE THIS ISSUE

How to Effectively
Treat the Difficult
Patient — Part II

The Value of
Organized Dentistry

Properly Discontinuing
the Dentist-Patient
Relationship



NY

INSIDE

- 2 How to Effectively Treat the Difficult Patient — Part II
- 6 The Value of Organized Dentistry
- 7 Properly Discontinuing the Dentist-Patient Relationship
- 9 From the Blog

EDITORIAL STAFF

Publisher

John W. Lombardo MD, FACS

Editor

John Scott

Staff

Kevin Francis

Thomas Gray, Esq.

Katherine Lagano

Matthew Lamb, Esq.

Nicole Lombardo

Patricia Mozzillo

Linda Pajonas

Donnaline Richman, Esq.

Marilyn Schatz, Esq.

Keith Vaverchak





EXECUTIVE MESSAGE

Dear Colleagues

This issue of *The Scope* again focuses on a subject that is always with us, namely the difficult patient. Somehow, despite the countless ways we help patients on a daily basis, sometimes with astoundingly good results, it is the difficult patient who stays in our minds, whether we are attending a sporting event, spending time with family or friends, or simply enjoying some well-earned time off.

Difficult patients come in many varieties. They can be noncompliant, paranoid, overly dependent, angry, seductive, and, as we have learned, especially lately, even violent. They are always in our thoughts. (I still remember, vividly, the patient who threw a hatchet at me in a psychiatric emergency room, and it happened 47 years ago.) Learning how to better manage such patients is, of course, better for them, but, just as important, it is better for us. It is hoped that *The Scope* can provide some specific suggestions in this regard.

It is easy, in general, for us to care for the grateful patient who follows our instructions, takes the medicines we prescribe, keeps appointments, and is appreciative of our efforts. In my opinion, it is with the difficult patient that we truly test our mettle, improve our skills, and perhaps succeed where another physician might understandingly fail. Dealing with such patients provides an opportunity to care for those who might otherwise be worse off as a result of their difficult nature.

I hope you find *The Scope's* discussion of this subject helpful. If you have any questions, suggestions, or comments, please don't hesitate to contact me at jlombardo@mlmic.com. It has become an overused expression, but most relevant here. "Keep calm and carry on."

Sincerely,

A handwritten signature in black ink, appearing to read "John". The signature is stylized and fluid, with a long, sweeping underline that extends to the left.

John W. Lombardo, MD, FACS

Chief Medical Officer, MLMIC Insurance Company

jlombardo@mlmic.com



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 dental 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 New York State Office of Professional Discipline [OPD]), create an awkward situation. The patient may have chosen not to discuss their concerns about treatment with the dentist 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 dentist in an uncomfortable and defensive position. It may not be wise to continue to treat the patient if he or she is dissatisfied. Consciously or unconsciously, the dentist may be inclined to order additional, or even unnecessary, testing or procedures merely to satisfy the patient's demands or protect himself/herself from litigation or government investigation.

It may not be wise to continue to treat the patient if he or she is dissatisfied.

If a dentist does receive a complaint letter that alleges sub-standard quality of care received and requests compensation for an injury (i.e., a claim letter), the dentist 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 dentist in preparing a written response.

Patients Who Fail to Pay Bills

Dentists 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 dental 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 his/her dental 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 dentist-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 dentist-patient relationship does not automatically end when a patient's bill is sent to an agency for collection. The dentist'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 dentist/patient relationship has been seriously disrupted. The dentist's first awareness of attorney involvement may occur when he or she receives a request for the patient's dental record. Since it is not always clear why an attorney is requesting the record, many dentists 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 dentist to continue to treat the patient.

Surprisingly, some patients wish to continue seeing a dentist they have sued, but it is not in the best interests of either the patient or the dentist 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 their dental records. They may be noncompliant with treatment recommendations or fail to communicate about dental issues. Dentists may feel

compelled to practice “defensive” dentistry, ordering inappropriate tests and procedures. The dentist may believe that continuing the relationship will help him/her “look better to the jury,” which, generally, is not true.

Dentists may feel compelled to practice “defensive” dentistry, ordering inappropriate tests and procedures.

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

Intoxicated/Impaired Patients

When a patient or family member comes to the office drunk or otherwise intoxicated, he/she may be uncooperative and disruptive and can be asked to leave the premises. The dentist may be concerned about the patient’s ability to drive and may question whether he/she 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 dentist’s office cannot call the police to stop the patient from driving without a patient’s consent, since this would be a breach of the patient’s right of confidentiality.

The counseling efforts and actions taken must be documented in the patient’s dental record.

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 he/she has recovered sufficiently to drive safely. If the dentist feels the patient is unable to drive safely, the dentist should attempt to persuade the patient to remain until he/she is 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 dental 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 dentist. In some instances, the patient may not even be aware that this behavior is inappropriate.

A dentist should have a chaperone present in the room when it is appropriate. The presence of the chaperone must be documented in the patient’s dental 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 his or her dentist 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 dentist. Such allegations can destroy a dentist's career and result in disciplinary action by the OPD. The use of a chaperone can help a dentist avoid such allegations. If a patient alleges that sexual misconduct has occurred, the patient must be discharged immediately, if appropriate, to protect the dentist's license and reputation.

The presence of the chaperone must be documented in the patient's dental record.

Discharging a Patient From Care

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

In some situations, the dentist may find that the patient cannot be discharged, or that the dentist must first arrange for a seamless transition to another provider. The dentist 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.

If the patient can be discharged, any existing appointments must first be cancelled. The dentist must then promptly send a letter to the patient stating that he/she is 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 dentist must then promptly send a letter to the patient stating that he/she is discharged from the entire practice.

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 dentist, the discharge letter may be more general and may state simply that there has been a disruption in the dentist-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 and state the consequences for failing to obtain it. *continued on page 8 ›*

Stay Connected

Get the latest updates and industry news from New York's #1 dental professional liability insurer. No one knows New York better than MLMIC.

LinkedIn

Follow us for important industry updates and risk management resources.

[linkedin.com/showcase/MLMIC-dental](https://www.linkedin.com/showcase/MLMIC-dental)

Twitter @MLMIC

Get headlines and alerts that impact patient care in New York.

twitter.com/MLMIC4Dentists

MLMIC Dental Impressions

Stay current with MLMIC's Dental Impressions monthly newsletter. Sign up at:

[MLMIC.com/dentists/blog](https://www.mlmic.com/dentists/blog)



The Value of Organized Dentistry



Dear Colleagues,

Membership connects you to your dental community — across the country, throughout New York State and with your local dental societies. With over 163,000 members nationally, over 12,000 members in New York State, and 13 local dental societies, organized dentistry provides its members with many benefits and countless ways to get involved.

Member-exclusive resources include:

Trusted Source of Information: NYSDA is your trusted source of information for monthly news, practice resources, breaking news, and more. nysdental.org

Advocacy: NYSDA works hard to represent you in the halls of government, and this year we will continue to keep you up to date on our political advocacy efforts. We will work to influence public policies affecting the practice of dentistry in New York and the oral health of the American public. nysdental.org/advocacy

Connect and Network: Follow us across social media and check out the NYSDA Events Calendar to connect with your dental community.

Membership Concierge: Your one-on-one experience awaits. The NYSDA Membership Concierge is available to answer your questions and assist with all of your membership needs.

Legal Protection Plan: The Legal Protection Plan is designed to protect the legal and financial interests of dentists facing public and private administrative proceedings. nysdental.org/legal

Practice Resources: Start sleeping better with our entire suite of ready-to-use dental insurance solutions at ADA.org/dentalinsurance.

We look to all our members to become active in volunteer opportunities at every level of the tripartite. We appreciate your support, look forward to continuing to provide a valuable experience, and remain committed to helping members succeed today, tomorrow, and into the future.

Sincerely,

Dr. James Galati

President, New York State Dental Association

THE DENTIST-PATIENT RELATIONSHIP

CHECKLIST #1

PROPERLY DISCONTINUING THE DENTIST-PATIENT RELATIONSHIP

Once the dentist-patient relationship is established, dentists have a legal and ethical obligation to provide patients with care. However, there may be circumstances when it is no longer appropriate to continue the professional relationship. A dentist may choose to discharge a patient for a variety of reasons, such as noncompliance with treatment, failing to keep appointments, or inappropriate behavior. Properly discharging a patient from care can be a complex issue. In order to avoid allegations of abandonment, providers should consider establishing a formal process for discharge.

YES NO

	YES	NO
1. A formal patient discharge is made in writing. The patient is given at least 30 days from the date of the letter to receive emergency care in order to avoid allegations of abandonment. This time period may be longer depending on the patient's condition and the availability of alternative care.	<input type="checkbox"/>	<input type="checkbox"/>
2. The discharge is effective the date of the letter.	<input type="checkbox"/>	<input type="checkbox"/>
3. The patient is referred to the local county dental society, their dental insurer, or another referral source to obtain the names of other dentists.	<input type="checkbox"/>	<input type="checkbox"/>
4. The patient is provided with prescriptions for an adequate supply of medication or other treatment during the 30-day emergency period.	<input type="checkbox"/>	<input type="checkbox"/>
5. The discharge letter is sent using the USPS certificate of mailing procedure, not certified mail, so it cannot be refused/unclaimed by the patient, and it can be forwarded if the patient has moved.	<input type="checkbox"/>	<input type="checkbox"/>
6. When the patient to be discharged is in need of urgent or emergent care or continuous care without a gap, or has a disability protected by state and federal discrimination laws, the question of whether the patient can be discharged is first discussed with counsel since discharge may not always be possible.	<input type="checkbox"/>	<input type="checkbox"/>
7. The requirements regarding any restrictions on discharge imposed by the third-party payors with whom we participate are known.	<input type="checkbox"/>	<input type="checkbox"/>
8. The patient's records are promptly sent to the patient's new dentist upon receipt of a proper authorization.	<input type="checkbox"/>	<input type="checkbox"/>
9. The office computer or other appointment system is flagged to avoid giving the patient a new appointment after discharge.	<input type="checkbox"/>	<input type="checkbox"/>
10. The issues that have led to the discharge are documented in the patient's record.	<input type="checkbox"/>	<input type="checkbox"/>

The discharge of each patient is determined by the dentist on an individual basis and based on record documentation of patient noncompliance or disruption. Mercado May-Skiner should be contacted for specific advice on the discharge of a noncompliant or disruptive patient. Form letters and a memorandum on the discharge of patients are also available. Contact Mercado May-Skiner in Syracuse at **(315) 428-1380**, Colonie at **(518) 786-2880**, Long Island at **(516) 794-7340**, or call **(877) 426-9555** toll-free.

Actual Calls Received by MLMIC

MLMIC receives a significant number of calls from policyholders and their office staff who are dealing with difficult patients. These calls can involve patients who are simply noncompliant, unruly patients, and even family members who cause disruption in the office and threaten office staff. In every situation, MLMIC offered advice and was able to assist with resolving the situation appropriately. Some examples are as follows:

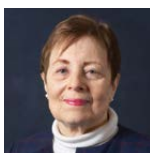
- An elderly patient was accompanied by his spouse, and both had memory issues. The patient did not recall being treated the week prior, and the insured dentist had concerns about the patient not following through with pre-op medicine or post-op care instructions. As the patient's HIPAA form included his daughter, she was contacted to alert her to the situation.
- A confrontational and noncompliant patient was offered a refund but never returned a general release. After 18 months without contact, the patient emailed the dentist seeking to complete treatment. MLMIC subsequently assisted with the release and discharge paperwork for this patient.
- A patient's daughter wrote our insured a "strongly worded" and demanding letter. She was unhappy with her mother's full mouth restoration, claiming significant emotional distress as well as pain and suffering. Because the daughter's name was not on the HIPAA form, no information on the patient's care and treatment could be discussed until the proper authorization was provided. Eventually, the appropriate authorization was provided, and the insured was able to resolve the situation to the satisfaction of the daughter and the patient.
- A disgruntled patient posed as a police officer and called the insured dentist on their private cellphone stating that there had been a break-in at the dentist's office. When the dentist investigated to see what damage had been done, she realized that there had been no break-in, and that she was being harassed by a patient. After the dentist looked up the phone number used in the call and identified the patient, MLMIC assisted with advice and discharge paperwork.
- A patient's sister came to the dentist's office to confront him, as her brother had had teeth removed "unexpectedly" and had been threatening physical harm to the dentist. When advised that the dentist could not discuss her brother's care with her, the sister caused a scene and started cursing and kicking the dentist, and the police were called. When the sister was being escorted out of the office, she claimed assault. Additional family members then arrived at the same time police arrived on site to defuse the situation.

Conclusion

Interactions between dental 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 dental practice.

It is strongly recommended that dentists implement appropriate strategies to manage difficult patient encounters in order to reach amicable resolutions. Successful communication and listening skills are required to avoid and diffuse strained relations. Anxieties can be reduced by empathizing with patients in a calm and understanding manner. Dentists 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 dentists 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 us should the need arise. By properly managing these situations, dentists can maintain good relationships with their patients, provide effective care, and protect their reputation.



Donnaline Richman, Esq. is an attorney with Mercado May-Skinner.

drichman@mmslawny.com



Marilyn Schatz, Esq. is an attorney with Mercado May-Skinner.

mschatz@mmslawny.com



Keith Vaverchak is a Claims Unit Manager with MLMIC Insurance Company.

kvaverchak@mlmic.com

FROM THE BLOG

MLMIC's dental blog provides ongoing and up-to-date news and guidance on important events and announcements that affect the practices of our dentist and oral surgeon policyholders. You can also sign up to receive MLMIC's Dental Impressions — featuring the latest MLMIC Insurance Company news, and links to relevant and valuable industry articles.

JUNE 13, 2022

Four Foolproof Ways to Network in Dentistry

For dentists, networking provides opportunities to learn, grow your practice, and develop relationships, so it's important to know how to do so in a professional setting. Here are four ways to start networking ASAP!

[READ MORE](#)

JUNE 3, 2022

Meet Dr. Gregory Dodd, the Longtime MLMIC Policyholder Gifting \$10K to Future Dentists

Dr. Gregory Dodd, a dentist at Saratoga Springs Family Dentistry and a MLMIC policyholder since 2003, recently announced that his practice will give \$10,500 in scholarships to high school students interested in pursuing a career in dentistry. Learn more about Dr. Dodd and his passion for cosmetic, reconstructive, and rehabilitative dentistry in the following Q&A.

[READ MORE](#)

MLMIC's Rapid Application for Professional Liability Coverage

Have a new dentist coming to your practice who needs professional liability insurance? Now, new dentists can **apply for coverage online** in just five minutes. That's right — less than the amount of time it takes to fill a cavity. Here's what you need to know.

There are six sections to the rapid app:

- **General**
- **Education**
- **Practice**
- **Underwriting**
- **Claims**
- **Authorization**

Once completed, a MLMIC Insurance Company Underwriter will contact you with further details on coverage.

At MLMIC, we pride ourselves on providing service like no other. If you have any questions throughout the application process, please contact us at **(800) 416-1241** or **dental@mlmic.com**. Our dental underwriting specialists are happy to help!

After you submit your application, dentists can use some of the time they saved to visit the **MLMIC Dental blog** for industry news, risk management tips, and more, and follow us on **Twitter** and **LinkedIn** for frequent updates on the dental industry and professional liability.



P.O. Box 1287
Latham, New York 12110

New York City | Long Island | Colonie | Syracuse | Buffalo

(800) ASK-MLMIC