

# THE SCOPE

**MEDICAL EDITION**

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## EXECUTIVE MESSAGE

# Dear Policyholders,



As with the delivery of quality healthcare, the service provided by MLMIC Insurance Company to our insureds requires a team of experienced and dedicated professionals who bring their diverse skills and training together to best meet your medical liability insurance needs. From Underwriting and Risk Management to Claims, MLMIC staff experience is often not measured in years but in decades.

Last week, MLMIC held our Upstate Defense Counsel Roundtable in continuation of our Downstate event. Forty attorneys from twenty-two firms attended. These are not people who “dabble” in the complex field of medical liability defense; this is their focus, their specialty, their talent. These lawyers and their firms, without exception, are known to and respected by the courts of their region, the plaintiff’s bar, and each other. For the good of MLMIC insureds, they came together to share their experience and discuss strategy and approaches to issues that are driving cases to the detriment of those who practice medicine.

To pull a quote from this issue’s Supply Chain article, “The importance of relationships cannot be understated...,” and we at MLMIC are privileged to enjoy longstanding relationships with these talented folks and count them as members of our extraordinary team.

This edition of *The Scope* brings you a case study that addresses diagnostic and treatment delays, both major drivers of malpractice claims and lawsuits. As we hope that you find lessons in the medical facts and risk management principles, these studies will continue to share applicable legal issues. In future issues of *The Scope*, you will hear from some of the Roundtable participants as they share their perspective from their position on the team.

Warmest regards,

A handwritten signature in black ink, appearing to read "Tom Gray". The signature is fluid and cursive, with a large, stylized initial "T".

**Tom Gray, Esq.**

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# Challenges to **Medical Supply Chains**

MLMIC Insurance Company's recent issues of *The Scope* have addressed the staffing and medication shortage challenges impacting healthcare. While these supply issues are not new, their relevance and impact were certainly magnified with the onset of Covid and the national pandemic.

In this third and final installment, MLMIC will examine the struggles of, and offer reasons for, the ongoing challenges to the healthcare resource supply chain, which impact practically all aspects of care, directly or indirectly, and highlight strategies that organizations have taken to meet these challenges while keeping patients and healthcare providers safe.

At a meeting last fall of the Association for Healthcare Risk Management of New York, Inc., MLMIC participated in the plenary session entitled *Healthcare Resource Challenges: A Patient Safety Crisis*. A panel of healthcare industry leaders from across New York State discussed their experiences with the various resource challenges encountered in healthcare today, which include staffing, medications, and the resource supply chain. In a 1948 speech to the British House of Commons, Winston Churchill said, “Those that fail to learn from history are doomed to repeat it.”<sup>1</sup> If we have learned anything from the Covid pandemic, it is that we must be prepared if/when the next one happens. We must now look back and critically review our pandemic operations and actions: what worked well, where do opportunities exist to improve operations, and what areas/items need a new approach altogether to meet the goals of our organization.

**If we have learned anything from the Covid pandemic, it is that we must be prepared if/when the next one happens.**

This is not to say that there were not supply chain issues before the pandemic, nor that these situations have now been “normalized.” In fact, several hospitals and pharmaceutical companies are continuing to grapple with disruptions in the resource supply chain that have caused shortages ranging from medical devices to personal protective equipment (PPE) and medications.<sup>2</sup> What has been demonstrated of late is how vital supply chain operations are to all aspects of healthcare delivery.

### Reasons for the Struggle

In the healthcare industry, the issue of supply not meeting demand is not new, and items impacted by supply chain disruptions cover a broad range of

uses and functions that include everything from arterial line catheters and garbage bag liners to X-ray films and Zenker forceps.<sup>3</sup>

Supply chain managers, who are responsible for locating and/or identifying appropriate substitutions for such varied objects, face supply disruptions with causes as varied as the items in short supply. These causes may include shortages of raw materials, internal corporate struggles, or natural disasters.<sup>4</sup>

**We will not soon forget those images of supply barges lined up in wait as engineers from around the world worked to free one that had run aground.**

In their article “‘Supply Chain: A Look Ahead’ Navigating the New Normal” (March 2023), the Health Industry Distributors Association (HIDA) reports that as one set of disruptions eases, other challenges such as threats of railroad strikes, diesel fuel shortages, and new Covid outbreaks in production-rich parts of the world, to name just a few, emerge to take their place.<sup>5</sup> The disruption of the Suez Canal, a major artery in the global supply chain that is the key hub for shipping oil and serves 30% of all international shipping by container, is another example.<sup>6</sup> We will not soon forget those images of supply barges lined up in wait as engineers from around the world worked to free one that had run aground.

Above all else, in healthcare, we are working with the human body. When a particular supply is needed to treat a specific ailment, an adequate substitute may be challenging to identify, locate, and implement due to a substitute not being available, a care provider’s lack of experience with the substitute, and a treatment’s questionable efficacy. Any such situations can lead to patient harm.

1 <https://streamline.business/quality-quote-those-who-do-not-learn-history-are-doomed-to-repeat-it/>

2 <https://www.beckershospitalreview.com/supply-chain/aha-supply-chain-wont-return-to-normal-anytime-soon-but-heres-what-you-can-do/>

3 <https://www.aha.org/aha-center-health-innovation-market-scan/2023-04-25-returning-normalcy-anything-health-care-supply-chain/>

4 <https://www.aha.org/aha-center-health-innovation-market-scan/2023-04-25-returning-normalcy-anything-health-care-supply-chain/>

5 [https://www.hida.org/distribution/news/healthcare-distribution-supply-chain-magazine/2023/Supply\\_Chain\\_\\_A\\_Look\\_Ahead.aspx](https://www.hida.org/distribution/news/healthcare-distribution-supply-chain-magazine/2023/Supply_Chain__A_Look_Ahead.aspx)

6 <https://news.liverpool.ac.uk/2024/01/16/suez-canal-is-not-the-only-choke-point-that-threatens-to-disrupt-global-supply-chains/>

## Costs of the Struggle

In April 2023, the American Hospital Association released a “Cost of Caring” report. This report was analyzed by the consulting firm Syntellis Performance Solutions, which looked specifically at the costs of providing care to patients, including the millions of patients hospitalized during the Covid pandemic. For many hospitals and health systems, 2022 was a financial low point.<sup>7</sup> The report stated that the “increase in expenses for drugs, supplies, and labor, as well as the costs associated with administrative burdens, have been met with continued underpayments from government payers.”<sup>8</sup>

**Overall hospital expenses increased by 17.5%. In this same period, Medicare reimbursement only increased by 7.5%.**

Prior to the pandemic, the top priorities for supply chain leaders were efficiency and cost control. Fast forward to March 2020, and with the surge of Covid and its impact on supply and demand, supply chain leaders refocused their efforts for resiliency over all else.<sup>9</sup> Sometimes, that meant increased costs so that healthcare delivery was not disrupted. Avoiding disruptions in patient safety and care delivery will always be the goal of any healthcare organization and is factored into every supply chain decision made.

This Cost of Caring report also included suggestions to help hospitals and health systems address these challenges.

For perspective, here is some financial data from 2019 to 2022:

- Overall hospital expenses increased by 17.5%. In this same period, Medicare reimbursement only increased by 7.5%.

- Hospital supply expenses per patient increased by 18.5%. Specialty areas such as emergency departments, which saw visits increase exponentially, particularly in the early days of the pandemic, realized a 33% increase in operational costs.<sup>10</sup>

Given these increased costs, coupled with the meteoric rise in patient volumes, particularly in times of a surge, it would not be unexpected that insufficient reimbursements could lead many organizations to the brink of bankruptcy.

In any industry where supply must meet demand, organizations must be resilient and innovative when challenges to their supply chain prevent that from happening. It is not hyperbole to posit that, as lives are often at stake in the healthcare industry, ensuring supply meets demand is critical.

Connections and communications between suppliers, manufacturers, and distributors must facilitate the movement of goods, services, and information.<sup>11</sup> Budgets, costs, and space must also be considered to eliminate waste and unnecessary spending. In an ideal world, this happens seamlessly, without error or delay, and at the lowest cost possible.

Supply chain management needs to be able to track inventory to monitor supplies and quickly identify any shortages or possible disruptions to operations and patient care.

## The Supply Chain Executive’s Perspective

When asked, supply chain executives will almost unanimously agree that navigating service disruptions, item shortages, and delays in deliveries has always been a part of their industry. For the end user, the timing, supply in question, and type of industry will dictate the outcome of severity to operations.<sup>12</sup> These same supply chain executives will also each have their own “war story” of how

7 <https://www.beckershospitalreview.com/finance/hospital-costs-then-and-now-14-numbers-to-know/>

8 <https://www.aha.org/system/files/media/file/2023/04/Cost-of-Caring-2023-The-Financial-Stability-of-Americas-Hospitals-and-Health-Systems-Is-at-Risk-One-Pager.pdf>

9 [https://www.hida.org/distribution/news/healthcare-distribution-supply-chain-magazine/2023/Supply\\_Chain\\_\\_A\\_Look\\_Ahead/](https://www.hida.org/distribution/news/healthcare-distribution-supply-chain-magazine/2023/Supply_Chain__A_Look_Ahead/)

10 <https://www.beckershospitalreview.com/finance/hospital-costs-then-and-now-14-numbers-to-know/>

11 <https://www.apu.apus.edu/area-of-study/nursing-and-health-sciences/resources/the-importance-of-supply-chain-management-in-healthcare/>

12 <https://www.beckershospitalreview.com/supply-chain/post-covid-challenges-linger-for-supply-chain-leaders/>



they were able to locate “X” even though they were not successful using their standard operating procedures. It is a huge win for all involved and a lesson for all who happen to be within earshot of the telling.

The pandemic years and the recent catastrophic collapse of the Francis Scott Key Bridge in Baltimore have moved supply chain operations front and center. However, today there are mounting pressures to not only get supplies back on track but also identify cost savings and use technology and other means that are a good fit to improve operations and processes.<sup>13</sup> The impact of a disruption to supply will always be dependent on the demand and industry involved. Challenges to supply and demand can happen at any given time, and when it comes to meeting patient needs, timing can mean everything.

### The pandemic and collapse of the Francis Scott Key Bridge moved supply chain operations front and center.

In the early days of the national health emergency, as the medical world was working to learn how to treat the people presenting to emergency

departments with this unknown malady, we can all remember the call for PPE, ventilators, and medication. The need for PPE was not only in the facilities but also in the community, as PPE would be needed for all, not only for those working in the healthcare field.

For many at the bedside, it may have been one of the few times they needed to consider what and for how long they could use particular supplies. This was also the first of many moments for supply chain departments to demonstrate their ingenuity and reach. Out-of-the-box thinking took over, and ways to meet demand were being shared in small circles and sometimes even on local and national news programs.

#### Lessons Learned

The Covid pandemic profoundly changed the role of the supply chain manager with regard to the centrality of their role to hospital operations as well as the expectation of the role.<sup>14</sup>

During MLMIC’s panel discussion on the resource supply chain, the panelists noted that the most frequently used tactic overall was to leverage relationships with suppliers, with manufacturers, and within the community. The importance of

<sup>13</sup> <https://www.beckershospitalreview.com/supply-chain/post-covid-challenges-linger-for-supply-chain-leaders/>

<sup>14</sup> [https://www.hida.org/distribution/news/healthcare-distribution-supply-chain-magazine/2023/Supply\\_Chain\\_\\_A\\_Look\\_Ahead](https://www.hida.org/distribution/news/healthcare-distribution-supply-chain-magazine/2023/Supply_Chain__A_Look_Ahead)



**The importance of relationships cannot be understated, the quality of which can make the difference between being advised by your supplier about a product that may be scarce in a few weeks' time to one that is already nowhere to be found.**

relationships cannot be understated, as the quality of which can make the difference between being advised by your supplier about a product that may be scarce a few weeks' time to one that is already nowhere to be found. Suppliers and manufacturers can be your best intel for a proactive approach to managing supply and demand in healthcare.

Similarly, your internal relationships must be tended to. An organization that is informed will work with supply chain leaders and collaborate to arrive at solutions. In the healthcare industry especially, providers and departments cannot operate in a vacuum.

#### **Where Do We Go From Here?**

While supply chain challenges may not always present as dramatically without the onset of a national health emergency, there have been times when distribution centers and factories for healthcare resources are unable to deliver goods for various reasons, challenging healthcare supply chain departments, and substitutions used in the



past may not always be effective or available. Successful supply chain leaders recognize this and will work the relationships they have developed over time to see if there is another source available to meet a particular need.

Before Covid, the top three supply chain priorities for providers were engaging clinicians in product purchasing and use, standardizing product use across systems, and collecting data. Now, the field has had a shift in priorities. Mitigating supply chain risks has become the most important area of focus.<sup>15</sup> The ability to pivot and find alternative means to meet supply and demand must always be explored to maintain operations and deliver quality patient care.

### Best Practices and Solutions

The healthcare industry has learned many things since Covid emerged, and many of the discussions and processes developed during that time of crisis have informed operations today.

From the HIDA report, the best practices and solutions for supply chain managers are to:

**Engage strategically:** Providers and administrators are under enormous financial pressures, and supply chains can be a budgetary disruptor. Engage with appropriate and varied administrators so that surprises are minimized and tough times can be anticipated as much as possible.

**Plan proactively:** Try to maintain a proactive approach to supply chain management. Work your relationships with your staff, providers, and suppliers to operate on a proactive and not reactive focus.

**Integrate inventory management:** Adopt a holistic approach to inventory management, as traditional inventory management methods tend to isolate and focus on single departments or service lines, which has been shown to increase costs in the long term.

**Redefine visibility and transparency:** It can be difficult to maintain real-time data on supply availability and use, which can lead to expired products or a redundancy in purchasing. Engage in processes and measures to improve visibility, thereby reducing waste and improving accuracy in purchasing. Visibility is the concept of knowing what you have on hand, what you need, and what is on tap to expire soon — and having this info for all, not just supply chain personnel.

**Collaborate freely:** Build on trust and communication with your providers to help eliminate the hoarding of supplies and establishment of secret stashes. Integrate product demand planning with clinical planning to optimize purchasing and usage.<sup>16</sup>

### In Closing

Supply chain operations must be transparent and accountable to the audience they serve — customers both within (providers and staff) and outside (patients and their families) of the organization. Keeping internal customers abreast of supply chain challenges will help the organization pivot operations as needed and gain equity for future working relations. Meeting regularly will help build trust and serve to keep operations moving forward when challenges arise later down the road.<sup>17</sup>

A proactive approach, with a focus on identifying supply issues sooner than later, should be the goal of the facility supply chain team. Just as a patient needs to be at the right level of care to be treated, healthcare providers are looking to have the right product at the right place for their patients.



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<sup>15</sup> [https://www.hida.org/distribution/news/healthcare-distribution-supply-chain-magazine/2023/Supply\\_Chain\\_\\_A\\_Look\\_Ahead/](https://www.hida.org/distribution/news/healthcare-distribution-supply-chain-magazine/2023/Supply_Chain__A_Look_Ahead/)

<sup>16</sup> [https://www.hida.org/distribution/news/healthcare-distribution-supply-chain-magazine/2023/Supply\\_Chain\\_\\_A\\_Look\\_Ahead/](https://www.hida.org/distribution/news/healthcare-distribution-supply-chain-magazine/2023/Supply_Chain__A_Look_Ahead/)

<sup>17</sup> <https://www.beckershospitalreview.com/supply-chain/post-covid-challenges-linger-for-supply-chain-leaders/>

**CASE STUDY:**

# Delay in Diagnosis and Treatment of a Retroperitoneal Sarcoma



**The patient in this case was initially seen for persistent abdominal pain.**

## **Medical History and Treatment**

A 65-year-old female patient had been under the care of several physicians, including a gastroenterologist and general surgeon, since 2009. She had a history of various medical conditions, including breast cancer, GERD, hyperglycemia, colon polyps, irritable bowel syndrome, and Schatzki's ring (tissue that forms inside the esophagus). Among the prior surgeries she had undergone were cholecystectomy, lysis of adhesions, hysterectomy, lumpectomy, and a resection of the small bowel due to an obstruction.

For several years, the patient complained of left-sided abdominal pain and underwent evaluations by a gastroenterologist that included endoscopies,

ultrasounds, and imaging studies, with no cause suggested for her symptoms.

In 2016, the patient underwent a CT scan of the abdomen and pelvis without contrast. The results were interpreted by a MLMIC-insured radiologist, who found no significant findings. The patient continued to endure worsening pain with abdominal distention, and, in 2019, she underwent an abdominal ultrasound that revealed a large mass in the hemi-abdomen. This was later confirmed by MRI as a large fat-containing mass anterior to the left kidney and crossing the midline that was suspicious of retroperitoneal liposarcoma. Retrospective examination of prior films from 2013 and 2016 revealed that the mass had tripled in size.

## Retrospective examination of prior films from 2013 and 2016 revealed that the mass had tripled in size.

The patient was referred to a well-known cancer institute, where she underwent a wide resection of a left retroperitoneal well-differentiated liposarcoma with pancreatectomy, splenectomy, and resection of portions of the left mesocolon and a portion of the omentum. The patient tolerated the procedure well, and no metastases were found. In addition, subsequent chemotherapy and radiation were not recommended.

The patient has continued to be followed closely with no recurrence to date, though this is a possibility in the future. In addition, she is at risk for infection due to the removal of her spleen. Finally, the patient developed diabetes, likely due to the partial pancreatic resection.

## The Lawsuit

The patient brought a lawsuit naming multiple parties that included the MLMIC-insured radiologist as well as his radiology group. The plaintiff claimed that the radiologist was negligent in failing to note a suspicious mass, with the resultant cancer diagnosis not made until 3.5 years later, by which time the lesion had tripled in size. As a result, the patient claimed pain and suffering, loss of enjoyment of life, the need for more extensive surgery, and the possibility of impending recurrence.

## The plaintiff claimed that the radiologist was negligent in failing to note a suspicious mass...

## Expert Reviews

The defense counsel obtained an Arons authorization, which allowed them to discuss this matter with the plaintiff's surgeon, who felt that while the patient would still have required wide resection had the tumor been diagnosed in 2016, there may have been a chance to save the spleen and pancreas had the surgery been performed at that time.

A review was undertaken by an expert in radiology, who concluded that the standard of care was not met by the radiologist, as he clearly missed this tumor in the earlier study. In retrospect, the 2016 films had demonstrated a large retroperitoneal mass of fat density, displacing the spleen and pancreatic tail, as well as the bowel. Though smaller, it was visible on CT scans as far back as 2013. The later sonograms and MRI performed at the time of diagnosis showed significant growth of the mass since 2016. Although the fatty content makes these tumors difficult to identify, the 2016 study showed more fat on the left side of the abdomen in contrast to the right, which should have been an indication that a tumor could be present.

## An expert in radiology concluded that the standard of care was not met by the radiologist.

In addition, a review was obtained by an expert in oncology, who confirmed that the tumor had no differentiation, which provided the plaintiff with a better prognosis. He opined that retroperitoneal liposarcoma is a rare malignancy that is usually asymptomatic until it becomes large and compresses the surrounding organs. It is generally misdiagnosed due to the lack of symptoms. However, in this case, the patient had experienced

symptoms for several years, with the delay caused by the failure to properly interpret the films in 2016. In this instance, the tumor had no dedifferentiation, which increased the patient's chance of a good prognosis. The oncology expert opined that, due to the misinterpretation of the films by our insured radiologist, the patient required more extensive surgery and, thus, the standard of care was not met.

## Conclusion

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Based on expert opinion, a decision was made to settle this matter, and the insured provided consent to settle.

The plaintiff's counsel made a demand of \$1,400,000. Negotiations ensued, and the case ultimately settled for \$690,000 on behalf of the radiologist. Stipulations of discontinuance were provided for the other named insureds, and this matter was then concluded.

## A Legal and Risk Management Analysis

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### Lavern's Law

When looking at medical professional liability (MPL) claims involving a delayed diagnosis of cancer, it is important to understand the effect of Lavern's Law, which extends the statute of limitations, i.e., the maximum time limit for cancer patients who receive a misdiagnosis to bring a lawsuit. In general, the statute of limitations to file an MPL lawsuit in New York is 2.5 years from either the date of the alleged malpractice or the last date of continuous treatment for the injury.

### Lavern's Law extends the statute of limitations and starts the clock later.

Lavern's Law extends the statute of limitations and starts the clock later. Under Lavern's Law, the time limit for MPL claims based on the misdiagnosis of cancer is 7 years from the date of misdiagnosis or 2.5 years from either the last date of continuous treatment or the date a patient knew or should have known that the misdiagnosis caused health complications.

In this case, the plaintiff claimed that the cancer should have been detected 3.5 years before the eventual diagnosis. This period is 1 year beyond the standard 2.5 year statute of limitations for MPL claims. Prior to Lavern's Law, this case would have been dismissed for failure to file within the statute of limitations. Applying Lavern's Law, the case was timely because it was filed within 7 years of the misdiagnosis and within 2.5 years of the discovery of the misdiagnosis.



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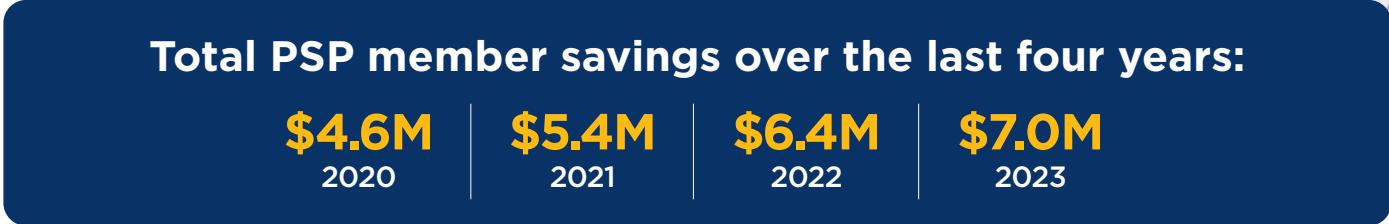
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## FROM THE BLOG

MLMIC's  
**NEW**  
Podcast

**May 30, 2024**

### **A Conversation with Dr. Jerome Cohen, President of MSSNY**

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During this podcast, Host Tammie Smeltz chats with Dr. Jerome Cohen, President of the Medical Society of the State of New York (MSSNY). Dr. Cohen shares stories about his history as a practicing gastroenterologist in New York and his passion for organized medicine and tort reform.

Dr. Cohen also talks about the MLMIC/MSSNY discount program and what this partnership means to him.

[LISTEN TO THE PODCAST >](#)

**April 17, 2024**

### **MLMIC Podcast Explores a Case Involving Treatment of a Hand Injury**

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MLMIC Insurance Company is excited to share our first episode of **The Verdict**, a new feature of MLMIC.com that will examine medical professional liability lawsuits.

During this podcast, Kathleen Harth, Assistant Vice President, Claims, talks about an interesting case that went to trial involving a failure to properly treat fractured fingers that resulted in permanent disability.

[LISTEN TO THE PODCAST >](#)

April 9, 2024

## MLMIC's Cardiology Claims Data Snapshot

MLMIC, in collaboration with **MedPro Group** and **Candello**, is pleased to introduce our **Cardiology Claims Data Snapshot**.

This publication provides insights into the clinical and financial severity of cases in which cardiology and interventional cardiology are identified as the primary responsible services. Data for the analysis was collected from cases initiated between 2012 and 2021.

This analysis examines allegations and contributing factors, including human factors and healthcare system flaws that result in patient harm.

[READ MORE >](#)

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