MIEC

The Exchange

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INSIDE

MIEC *The Exchange* is published by Medical Insurance Exchange of California, 6250 Claremont Avenue, Oakland CA 94618.

Introducing MIEC'S flagship publication: The Exchange

Welcome to MIEC's newest publication, The Exchange, a newsletter designed to keep policyholders informed and interacting with their professional liability carrier. In the past, we communicated with you through numerous publications to ensure that you have current information about state-specific laws, practice management tips, topics that impact your liability exposure and threaten patient safety, answers to common questions received by our Loss Prevention team, and more.

The Exchange will provide you with the same quality information to which you've become accustomed while allowing MIEC to be a bit "greener." Pieces from Claims, Underwriting, and the Board of Governors will prove to be vital contributions in upcoming issues of The Exchange, all to better serve you, our valued policyholders.

We hope you will find this a welcome revitalization of our communication with you.

Best regards,
Claudia Dobbs
Loss Prevention Manager

From the Chairman of the Board of Governors

DRG, EHR, HCFA, ICD, HIPAA, CMS, HMO… and the list goes on for acronyms that we have all lived with in the health care world for the last several years. I'd like to draw your attention to still another important acronym that I'm certain we've all heard about but with which we need to become more familiar: **PAC** (Political Action Committee).

If you are like most of us, you like to think that we elect politicians to various seats in government and they do the right thing for all of us. Unfortunately, we are finding that politics really doesn't work that way. Politicians are strongly influenced by individuals and the special

interest groups who support them. Support can be given in many ways but it usually means contributing money so they can run their campaigns and get elected. A PAC is usually formed by an organization or group to raise money to contribute to a candidate or incumbent who will support the group's cause or issues.

MIEC started PACs in California and Idaho. Alaska and Hawaii medical societies each have organized political action committees; we encourage Alaska and Hawaii policyholders to contribute to the ALPAC and HMA-PAC, respectively.

Jim Gemmer, MD
Chairman of the Board

The main mission of our PACs is to preserve tort reform: MICRA (Medical Injury Compensation Reform Act) in California and tort reform laws in Idaho that have proven to be quite effective. The major benefits of MICRA are the $250,000 cap on non-economic damages (pain & suffering) and limits on attorneys' contingency fees that ensure patients receive a higher percentage of the settlement or judgment. MICRA has helped to keep insurance rates stable which allows many physicians to continue to practice in California, and enables patient access to healthcare, particularly the underserved. There have been several studies that predict a dramatic increase in malpractice rates if MICRA is changed in any way. We believe these studies. As an organization we also benefit from stable insurance rates: in part, they have allowed us to return generous dividends to our policyholders for many years.

As you might imagine, the trial attorneys have a well-funded, well-organized PAC. The American Association of Justice, a large trial lawyers' organization, has one of the most effective PACs in the country. Attorneys, in general, are much more committed to the political process than physicians.

Since the election of California Governor Jerry Brown, the Plaintiffs Bar has let it be known that it is going to introduce legislation that would at a minimum increase the cap on non-economic damages. To protect MICRA, MIEC is uniting forces with other professional liability carriers, the CMA (California Medical Association), and CAPP (Coalition Allied for Patient Protection), an organization formed with the sole purpose of protecting patient access to care through the preservation of MICRA. CAPP has the support of medical professional liability companies, hospitals, community health centers, and many organizations that are involved in the delivery of health care to the citizens of California. We can't let malpractice rates change significantly and we don't want access to healthcare jeopardized. The redistricting in California has created more uncertainty in Sacramento. This will require more work and money to get the right people elected. A contribution to PAC is an excellent way for you to do your part.

We thank those of you who have contributed to MIEC's Political Action Committees in California and Idaho. I encourage those of you who have not contributed this year to do so. We need your support to carry the message to Sacramento and Boise. We need to have the clout to protect physicians and patients alike against any changes to tort reform!

Jim Gemmer, MD
Chairman of the Board

Feature Article: A physician's guide to social media

The Internet and social media have become a primary source for health information. National Research Corp. recently surveyed more than 22,000 Americans and concluded that 16% use social media sites as a source for health care information. Of those, nearly all respondents named Facebook as their preferred source; YouTube was second with 32% usage followed by Twitter's 18% usage.[1] Similarly, a 2010 telephone study conducted by Pew Research Center concluded that nearly three quarters of adults surveyed have used the Internet to acquire health information. Online ranking or review sites also serve as a source for information about physicians.[2] Physicians, like their patients, also are avid users of social media sites. According to research and consulting firm Frost & Sullivan, physicians' personal use of social media has surpassed that of the general population while their professional use of social media has increased at a much slower pace. Time constraints, concerns over liability and privacy issues are leading reasons why physicians are slower to embrace the professional use of social media. As the use of social media for health information becomes more frequent, it requires close scrutiny and awareness of associated liability exposure. While social media encourages non-clinical communication with patients, the professional boundaries of the physician/patient relationship remain in effect regardless of the method of communication.

1 http://www.nationalresearch.com
2 Pew Research Center Internet & American Life Project August 9- September 12, 2010

Considering a social network page?

With over 500 million Facebook users and 75 million Twitter users, social networking offers an opportunity for physicians to build an online presence and reputation. Although Facebook and Twitter are the dominant sites for social networking, there are other sites that focus on specific services. The following information offers a cursory review of the most popular social networking sites.

- **Facebook:** prohibits businesses from creating profiles (which are intended for people), but allows fan pages as a way for businesses to digitally connect with the public. The differences between the two Facebook pages include, but are not limited to, the number of allowable friends, and fans, accepting fans and friends, privacy settings, email limitations, and access to others' profiles. A Facebook fan page is similar to joining a group; it allows users who share a common interest (i.e., your practice, a medical disease or condition) to connect with you without having access to other fans' profiles and limits the information publicly available.

- **Twitter:** allows dissemination of small doses of information that are posted to the author's profile or blog, sent to other users and indexed for future Internet searches
- **LinkedIn:** focuses on finding, developing and maintaining professional connections.
- **Yelp:** an online guide that helps users find people, places and things of interest through user reviews.■

- **Professional blogs:** an opportunity for physicians to update patients and users about professional growth (e.g., Board-certification designation, sharing a published report or study in which a practice physician has participated); to discuss changes in the standard of care; or to review health advancing studies with colleagues.

If you have, or are considering a social network page for your practice, a social media policy will protect you from the ethical dilemmas and challenges of social networking and their impact on the physician-patient relationship (see *Figure 1)*. The AMA has developed a social media policy to assist physicians in maintaining professionalism when digitally connecting with patients (see *Figure2)*.

Using Social Networks

Benefits

- Provide updated practice information (e.g., summer hours, holiday schedule etc.);
- Provide links to information specialty and practice (e.g., changes in the standard of care, vaccine availability, medication recall);
- Provide patient education information (e.g., disease management workshops, how to take medication properly);
- Encourages personal improvement (practice- sponsored fitness contests or activities, patient and staff recognition contests); and
- Advertising new medical procedures or equipment.

Dangers

- No governing body to regulate content;
- Anonymity of authors;
- Limited recourse to address negative comments;
- Physician/patient relationship boundaries blurred;
- Promotes nonclinical communication between physicians and patients;
- Privacy and security defaults set by site owner;
- Uncontrolled access to personal information; and
- All content is public and retrievable, even when deleted.

When social media sites are not your "friend"

A Pew Research Center study reported, among other things, that younger patients are heavy Facebook and Twitter users[3] and older patients are the fastest growing category of Facebook users.[4] Physicians with social media sites receive "friend" requests from patients daily; however, becoming a patient's online friend increases your liability exposure the possibility of a confidentiality breach of protected health information. Patients' willingness to rely on social media for information on a medical condition, the reputation of a health care provider, and to discuss the medical care of a family member or relative is startling. Regardless of your patient population, the Internet is

3 Pew Research Center Twitter and Status Updating, Fall 2009
4 iStrategyLabs http://www.istrategylabs.com/2009/08/facebook-demographics-and-statistics-august-2009-55-grows-25-in-one-month/

Guidelines for an organizational social media policy

To maintain patients' privacy and online professionalism of physicians and staff

Do not post identifiable information online. Maintain your professional obligation to secure patients' protected health information by not posting any content that can be associated with a specific patient. (e.g., photos of a birthmark, a tattoo, or a piercing; how an injury occurred; their nickname). Likewise, personal identifying information about a colleague or other health care provider should be avoided.

Avoid dispensing online medical advice. Offering patient-specific medical advice online should be avoided. Physicians may give general medical advice, with a disclaimer stating there is no doctor/patient relationship established, and without the benefit of a good faith examination, specific medical questions can not be answered. Suggest patients visit their family physician or other healthcare provider to properly address their concerns.

Use privacy and security settings. The Internet is a public domain whose contacts change frequently. Physicians should enable strict privacy settings on their social network pages to maintain control of what is posted and by whom. Regular monitoring of your name and your practice's name to ensure the social media page and any personal and/or professional information posted about them is appropriate accurate. Regular monitoring should also be conducted to ensure site owners do not change your privacy settings to a public default during an upgrade or improvement to the site. (See Reputation monitoring)

Maintain separate personal and professional social network accounts online. Social media eliminates face-to-face communication; however, a physician's professional responsibility remains just as if the encounter is in person.

Do not encourage patients to "friend" to or "follow" your personal social network page. Likewise, do not "friend" or "follow" your patients. Educate patients to the fact that the physician/patient relationship is most effective when the boundaries remain in tact. It is acceptable to invite patients to become a "fan" of your Facebook page.

Be mindful of what you post. Information on the Internet is rarely permanently deleted; all tweets are immediately indexed and available through Google. Even if deleted, a permanent record of the tweet remains online. Physicians assume all liability for social network content published online. Consider designating the office manager or practice administrator as the point person for approval for social media content before the information is published and made available to the public.

Develop an online compliance policy for staff. Establish guidelines that include confidentiality and privacy expectations, and the consequences of failing to adhere to the social media policy. Staff members who have a personal social network page should be prohibited from posting any content about the physician employer, the practice or other organizational information. If staff members are responsible for maintaining the practice's social network page, specifics regarding acceptable content should be reviewed regularly. Controversial or potentially inflammatory content should be prohibited.

Do not participate in war of words online. The anonymity of Internet posting makes it difficult to effectively respond to negative comments posted about you or your practice. Refrain from responding to harassing, untrue or inflammatory comments written about you.

Do not comment on "sensitive" issues. Religion and politics are can be divisive subjects and are rarely appropriate as part of your social network communications.

Be familiar with state and federal regulations. Physicians who have an Internet presence are best protected by having a social media policy regarding who can add or remove content, what may be posted, and risks associated with disclosure of protected health information Laws that apply in person also govern your online conduct. Some examples include:

Title VII of the Civil Rights Acts-prohibits discrimination based on race, color, sex, national origin or religion.

To maintain patients' privacy and online professionalism of physicians and staff:

i. Title VII of the Civil Rights Acts-prohibits discrimination based on race, color, sex, national origin or religion.
ii. American with Disabilities Act of 1990 (ADA) - prohibits discrimination based on a disability.
iii. Health Insurance and Portability and Accountability Act of 1996 (HIPAA) - protects the security and privacy of protected health information.

Figure 1

According to online & mobile physician community QuantiaMD, 33% of U.S. physicians have received Facebook friend requests from patients; 75% of them declined the invitations.

https://secure.quantiamd.com

becoming a part of patients' daily lives and you should position yourself to take advantage of this trend remaining mindful of the limitations of social media applications.

Social media legislation

Social media sites and personal and professional blogs remain largely unregulated. In 1996 Congress enacted legislation which essentially gave immunity to publishers and speakers of an interactive computer service. With very few limitations, this legislation has no effect on criminal, state or intellectual property laws, leaving limited legal recourse for physicians whose patients post negative or inflammatory comments about them or their practice on social network sites. America Online, Inc. has prevailed in lawsuits involving liability for defamatory statements contained in a user's post[5] and for statements made by an AOL subscriber in a chatroom[6]. It is unlikely those patients' negative comments will be removed or that physicians' rebuttals are published by a site owner.

Reputation management

A 2009 article published in the New England Journal of Medicine's *Practicing Medicine in the Age of Facebook* notes that the potential size of the online community and the still-evolving rules of etiquette differs greatly from how physicians and patients interacted in the past. At the end of the day, physicians have no control over what is written about them online. This lack of control makes it easy for physicians' online reputations to become impugned without advance notice. Physicians are encouraged to periodically monitor online conversations about them and their practices by searching (in at least three search engines) the physician and practice names, specialty-specific key words, geographic locations and more.

When a physician's professional acumen is questioned, it is not unusual for the physician to become defensive and attempt to elucidate negative comments. A recent Google search for "physician rating websites" revealed an alarming number of patient-friendly resources in less than 10 seconds, of which, more than 20 sites are dedicated exclusively to rating physicians. There are companies that specialize in assisting physicians to monitor and control their digital reputations. An online search for "reputation management service" or a similar phrase provides links to free and paid online assistance to monitor your online reputation (see *Figure 3*).

Make the connection

As social media continues to evolve, it is unlikely that patients will accept telephone or face-to-face communication as the sole method of communicating with their health care providers. How your patients respond to your online presence is completely within your control. Social media should not be feared, but respected. With the proper policies and procedures in place you can use the Internet and social media to connect with patients in ways that improve the professional relationships and communication between physicians/patients and physicians/physicians without increasing your liability exposure.

5 Zeran v. America Online, Inc.
6 Doe v. America Online, Inc.

The AMA's Professionalism in the Use of Social Media policy

(a) Be cognizant of standards of patient privacy and confidentiality that must be maintained in all environments, including online, and must refrain from posting identifiable patient information online.

(b) Use privacy settings to safeguard personal information and content to the extent possible, but should realize that privacy settings are not absolute and that once on the Internet, content is likely there permanently. Thus, physicians should routinely monitor their own Internet presence to ensure that the personal and professional information on their own sites and, to the extent possible, content posted about them by others, is accurate and appropriate.

(c) Maintain appropriate boundaries of the patient-physician relationship in accordance with professional ethical guidelines just, as they would in any other context.

(d) Maintain appropriate professional boundaries by separating personal and professional content online.

(e) Address online content posted by colleagues that appears unprofessional. All physicians have a responsibility to bring inappropriate content to the attention of the author, so that he or she can remove it and/or take other appropriate actions. If the behavior significantly violates professional norms and the individual does not take appropriate action to resolve the situation, the physician should report the matter to appropriate authorities.

(f) Recognize that actions online and content posted may negatively affect their reputations among patients and colleagues, may have consequences for their medical careers (particularly for physicians-in-training and medical students), and can undermine public trust in the medical profession.

Figure 2

Social Media Policy Resources

(Not endorsed by or affiliated with MIEC)

Mayo Clinic Center for Social Media – an interactive site with links to articles, videos and other social media information.
http://socialmedia.mayoclinic.org

Social Media Governance – provides examples of social media policies
http://socialmediagovernance.com/policies.php

The American Medical Association
Social Networking Policy
http://www.ama-assn.org/ama/pub/meeting/professionalism-social-media.shtml

Use of Health Related Websites
http://www.ama-assn.org/meetings/public/a04/cejareporta04.pdf

American Medical News
10 Tips on using LinkedIn **http://www.ama-assn.org/amednews/2011/07/25/bisa0725.htm**

Social Media tips **http://www.ama-assn.org/amednews/2011/05/23/bica0523.htm**

Twitter content is automatically indexed and publically accessible in Bing, Google and other search engines. (No user password or Twitter account is required to retrieve Tweets from a search engine.)

Reputation Monitoring Resources

(Not endorsed by or affiliated with MIEC)

Ceila Company – a paid reputation monitoring service **http://www.ceilacompany.com/PhysiciansReputationDefender.htm**

The Positive Search results – offer a free analysis and paid service **http://www.positivesearchresults.com/free.html?gclid=CKbql9HB7akCFQhzgwodxCBSYg**

Reputation.com – offers online reputation management tips for physicians **http://www.reputation.com/how_to/online-reputation-management-tips-for-doctors**

The following sites provide free alerts when user defined keywords are identified in a search:

Google - http://www.google.com/alerts,

Social mention - http://www.socialmention.com/

Twitter - http://twitter.com/#!/search-advanced

Figure 3

The following fan pages provide examples of how practices can safely integrate Facebook into its communication with patients:

NorthBay Healthcare's Center for Women's Health maintains an active Fan page with frequently updated practice information, fan comments, photos, discussions event posting, and links to educational information. http://www.facebook.com/profile.php?id=100001862478647&ref=ts#!/pages/NorthBay-Healthcares-Center-for Womens-Health/274205134114?sk=wall

Contour Dermatology and Cosmetic Surgery Center updates its page several times a day to provide patients information on cosmetic procedures, testimonials, promotional activities, contests, and access to community events. http://www.facebook.com/ContourDermatology#!/ContourDermatology?sk=wall

Contemporary OB/GYN of Western Kentucky maintains an active fan page that allows patients to post pictures of their children delivered by the group's providers, provides links to new mommy information, includes patient and provider posted links to educational information specifically for women. http://www.facebook.com/pages/Contemporary-OBGYN-of-Western-Kentucky/94552958087

The Children's Clinic offers information on medication recalls, staffing changes, and road closures that affect access to the office. http://www.facebook.com/?ref=logo#!/pages/The-Childrens-Clinic/149025410886?sk=wall

MD Imaging updates its page regularly to include staffing information, community events, educational information, interventional and diagnostic procedures, physician/staff employment changes, and responses to patients' nonclinical questions. http://www.facebook.com/MDImaging#!/MDImaging?sk=info

From the Claims Department

Medical Director for a Skilled Nursing Facility? Some points to consider….

It is common for physicians to act as medical directors for skilled nursing facilities (SNF), particularly when physicians have a large number of patients in residence at a facility. Physicians may erroneously believe that their liability exposure as medical director will be low if a claim for substandard care is brought against the SNF.

Recently, MIEC has seen an increase in the number of lawsuits in which a physician is named as a defendant being sued in his/her capacity as a treating physician *and* as medical director of a SNF. In addition to causes of action for direct patient care, causes of action for responsibilities of the medical director are pled. Allegations often include negligent supervision of the nursing staff, failure to set standards for quality of treatment, and negligent participation in the formation of policies and procedures. Medical directors have been blamed for failing to act if they were aware that a facility received citations for problems with staffing or patient care. Elder abuse allegations are also part of these lawsuits. Many physicians are unaware that if elder abuse is found by a jury, a plaintiff is entitled to "enhanced damages" including attorneys' fees, and statutory caps on non-economic damages (e.g., California's MICRA cap of $250,000 for pain and suffering) do not apply. Punitive damages, which are not covered by the physicians' professional liability coverage, also may be claimed.

Physicians may feel protected by a contract with a skilled nursing facility which purports to indemnify the health care providers for any acts or omissions as medical director. Unfortunately, a recent MIEC case proved this is not always true. The physician was sued in his capacity as treating physician and medical director of a SNF. The nursing home's insurance company denied coverage to the physician citing an extra contractual exclusion. Despite the physician's understanding that he was covered in his medical directorship role, he was not. It is important to note that MIEC's policy specifically *excludes* coverage for liability imposed as a medical director. As a result, physicians may face personal financial exposure if found negligent in their role *solely* as medical director, despite their good faith understanding that they are insured by the SNF.

Too often the SNF's insurance policy has gaps or critical limitations in insurance coverage. A physician may be unaware that the policy limits for a facility are $1 million. In claims where elder abuse, egregious neglect and failure to meet nursing standards are alleged, this $1 million limit may be insufficient for the damages claimed. Plaintiffs will sometimes include allegations against an individual physician in his/her capacity as a treating physician to expand the amount of insurance coverage available for the claim. If that physician is also the medical director of the defendant facility, thereby having dual roles, it may be difficult for MIEC to extricate the physician from the lawsuit even if the primary allegation in the claim relates to SNF's substandard nursing care and not the physician's direct patient care.

Several multi-million dollar verdicts levied against SNFs have recently been reported

which may have prompted the increase in elder abuse and skilled nursing facility claims: a $29 million dollar verdict in May 2010 against a Rocklin, California, nursing home (Tanner, et al. vs. Horizon West Healthcare Inc, et al.) in which a jury held the SNF liable for elder abuse as well as understaffing; and a $677 million verdict in July 2010 against a skilled nursing company (Lavender vs. Skilled Healthcare Group) that owned 22 facilities in California and was found liable for improperly staffing all these facilities. While neither of these cases involved individual physicians when the verdicts were ultimately rendered against the facilities, they do provide insight to the current jury view of skilled nursing facilities where neglect of a patient is found. Defense of a physician attached to one of these facilities as a medical director would have been difficult under the best of circumstances.

Protection of our policyholders remains MIEC's primary goal. If you are presently a medical director for a skilled nursing facility, review your contract keeping these points in mind:

- Does the contract specifically have an indemnification clause?
- Do you have a copy of a Declaration page with your name as an additional insured for the facility?
- Do you clearly understand your duties as the medical director?
- Has the facility ever been cited by state regulators?
- What were the cited violations and were they remedied?

If you have questions about your contract or relationship with a skilled nursing facility, contact Underwriting or Claims at MIEC for further assistance.

Claims Q & A Corner

An attorney subpoenaed my deposition testimony in a medical malpractice case. I'm not a named defendant and don't believe it's a big deal. Do I need representation? What's my liability risk?

MIEC recommends against a physician testifying in a medical malpractice case without personal representation. Depositions are adversarial and the primary objective is to gain information regarding the care provided. Plaintiffs' attorneys, as well as the attorneys of other physician defendants, are not your friends during this process and they will not protect an unrepresented physician's interests. Their obligation is to their own client and identifying additional defendants is a risk of this process.

MIEC's experience has clearly illustrated danger in these scenarios. On numerous occasions, physicians have testified in depositions without representation and were subsequently named as defendants in the cases because of their testimony. They did not have counsel there to intercede for them when their testimony proved to be incriminating.

We remind policyholders to ***call MIEC*** when approached by an attorney to testify in any type of medical malpractice case. Our claims representatives are here to help you. We will research the situation and, if necessary, assign an attorney to protect you.

From the Underwriting and Accounting Departments

VISIT OUR WEBSITE @ www.miec.com

An online experience designed to enhance customer service, not replace it.

Log on at www.miec.com and manage your account with MIEC…

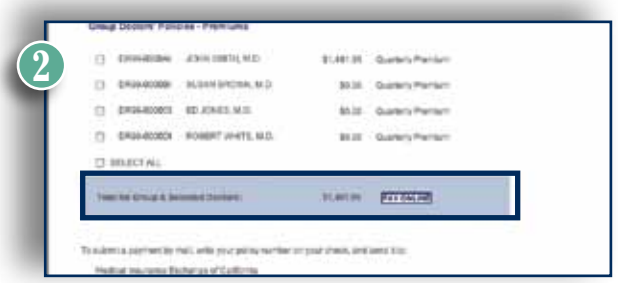
1. View up-to-date account balances
Get an up-to-date account balance online. Go to the Policyholder Services tab, click on Account Balance under the Accounting subhead, and login. You can also see your quarterly premium amount due including any additional charges for that time frame.

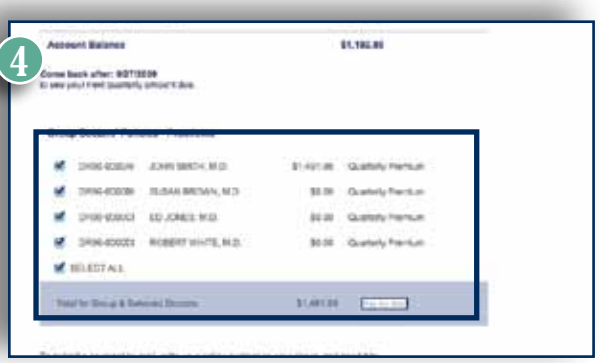
2. Policyholders who pay annually by credit card can pay online for any additional changes in their policies
Now policyholders who pay their premiums annually online by credit card can pay any incremental charges to their account online throughout the year with their credit card.

3. View documents online (e.g., 2012 Renewal Invoice, quarterly invoices)
After logging on to the website, go to the Policyholder Services tab, click on the Documents navigation link. Enter you policyholder number including the dash and ending with the letters i or g, and view listed pdf documents.

4. Group managers can pay their group and doctors' annual premium online
Medical group policyholders can view their Account Balance page under the Policyholder Services tab. They can see all the doctors associated with their group policy (that have individual MIEC policies, not employed physicians) and can select which physicians to include with the premium payments. As they click each physician's name, the page will automatically recalculate the premium.

Group managers can view their group and doctors' quarterly premium online and print out a statement to mail to MIEC with a check If a group chooses to pay quarterly, the manager can review online quarterly premiums due for all of the group's physicians (that have individual MIEC policies, not employed physicians). Select which doctors to include with the quarterly payment and the page will calculate the amount due. Print the quarterly statement and send it to MIEC with a check.





5. Group managers can verify online if payments have been received and posted to their group's account and their doctors' individual accounts
When group managers login to miec.com and go to the Account Balance page under the Policyholder Services tab, they can see which checks have been received and posted to their group policy, as well as for each doctor's individual policy.

Managing Your Practice

Patient complaints: How to stop them before they start

Studies show that the leading reasons for patient complaints include: delayed receipt of test results; excessive wait when scheduling an appointment or waiting to see the doctor; staff rudeness or a doctor's poor "bedside manner;" and billing errors. Anticipating problems and responding promptly to complaints can prevent an unhappy patient from threatening to sue or hiring an attorney.

How to avoid patient complaints: The best way to avoid patient complaints is to establish a positive physician-patient relationship and nurture the health of the relationship over time.

- ☑ **Make a good first impression.** Telephone triage, scheduling and front office staff should communicate a message of "welcome" to your practice. A positive first encounter (whether in person or over the phone) will set the tone of the relationship.
- ☑ **Treat patients with respect.** Ensure that your staff answers the phone promptly and courteously. Actively listen to patients' concerns and respond appropriately. Protect their privacy and the confidentiality of their healthcare information. If long waits in the reception room are common, re-evaluate scheduling policies. Apologize for delays.
- ☑ **Communicate effectively.** Studies have shown that patient satisfaction and clinical outcome are positively impacted by verbal communication that is empathetic, reassuring, patient-centered, includes some laughter or joking, positive reinforcement, and more. Nonverbal communication, such as appropriate eye contact, head nodding, and forward-leaning posture, is likewise associated with patient satisfaction and positive clinical outcome.
- ☑ **Educate patients about their medical conditions.** Obtain and document informed consent or refusal. Report diagnostic test results to patients in a timely manner. Note: Only a physician should inform patients of significant or abnormal test results, and explain if follow-up is needed. The doctor can delegate to staff members resposibility of informing patients about normal test results. Advise patients about office policies (e.g., limitations on medication refills after hours, fees charged for missed or late appointments, etc.) State these policies in an attractive, inexpensive patient information brochure that is given to new patients and also displayed in the reception area. (Sample patient information brochures are available on MIEC's website at www.miec.com in the publications section under the Managing Your Risk tab.)

What should you do when patients complain?

- Seriously consider the complaint no matter how trivial it may appear. Much may be learned from unsolicited complaints (see **What can you learn from patient complaints?**).
- Develop clear policies about responding to complaints. Staff should be advised to whom various complaints are to be addressed. Only physicians and other licensed providers should respond to complaints about medical care. The

office manager or practice administrator should address complaints about staff and other non-clinical complaints while the medical director should respond to concerns about group physicians or mid-level providers. All billing staff should be properly trained to respond to patients' questions about their outstanding balances.

- Train staff members to handle patient complaints professionally, courteously, and respectfully. Communication courses from various professional sources are available for staff. MIEC's Loss Prevention team also is available to provide some effective communication training. Education should include advice to: calmly and professionally discuss the complaint; do not allow a patient's anger to trigger your own; be patient and considerate; and, end the discussion if the patient becomes abusive.
- Track complaints. What types of patterns appear? Do they denote systems failures? Are there communication issues with staff or physicians? Provide feedback to staff or clinicians individually (when appropriate) or during a staff/office meeting.

When responding to complaints about a patient's medical care and treatment:

- Get advice from MIEC's Claims Department before responding to significant complaints about medical care. In some instances, the Claims representative may obtain legal advice on your behalf, or retain legal counsel to assist. For **general** questions about responding to complaints, contact MIEC's Loss Prevention Department.
- In complex situations, invite the patient or family members to an office conference, or ask for a letter that states their concerns. Get advice from an MIEC Claims representative on how to handle the discussion or coplaint letter response. Listen to the complaint and ask what the patient thinks is an appropriate solution to the problem.
- Establish a policy for reducing or waiving fees in response to a complaint. Waiving a fee may be seen as admitting liability. It may be prudent for the doctor to first discuss the reasons for a fee waiver with an MIEC Claims representative. Staff members should not adjust fees without physician approval.
- Reduce fee complaints by introducing new patients to the billing manager, who can explain billing policies and your obligation to collect insurance co-payments. In your patient information brochure explain your policies and procedures (P&P) and the patients' responsibilities as they relate to the P&P.
- Defense attorneys advise physicians not to admit liability or negligence when discussing a complaint. It is appropriate to express empathy or apologize for the patient's concern, but not to accept or infer blame. Bad outcomes or adverse incidents are not necessarily measures of the quality of care. Do not promise the patient or the patient's family compensation, including a fee reduction, for an injury or adverse reaction to treatment or medication before consulting with an MIEC Claims representative. MIEC is not obligated to honor reimbursements negotiated without prior approval. For more information, review "How to say I'm sorry? Let me count the ways," *Special Report MIEC Claims Alert,* Number 38, at MIEC's website at **www.miec.com** >Managing Your Risk>Publications>Newsletters.
- Do not discuss medical complaints or respond to letters from patients'

attorneys without advice from an MIEC Claims representative. Conversations and correspondence with patients' attorneys are not privileged. That is, anything you say or write can be used against you in litigation.

- Document all medical complaints and details of discussions with the patient or an authorized family member, even if the problem appears to have been resolved. The documentation establishes a date on which the patient was aware of an alleged injury that could later be a cause of action for a lawsuit. The statute of limitations for filing a malpractice suit begins to run either from the date of injury or the date of discovery. The date a patient first complains may determine the discovery date used in litigation.

What can you learn from patient complaints?

Gerald B. Hickson, MD, and his colleague James W. Pichert, PhD, from the Center for Patient and Professional Advocacy (CPPA) at Vanderbilt University in Nashville, Tennessee, have learned much from unsolicited patient complaints. In their contribution to the AHRQ 2008 compendium Advances in Patient Safety: New Directions and Alternative Approaches, Drs. Hickson and Pichert reasoned that patients can promote safety and help reduce risk,

"One [way] is to make known their concerns about their health care experiences because complaints might suggest unsafe systems and providers . . . Good teams make for optimal outcomes and patients are integral members of the health care team. When patients are forgotten or not integrated into ongoing decision making, outcomes suffer. Therefore, we believe patient complaints are often markers of dysfunctional teams, and addressing those physicians who are associated with the greatest expressions of patient dissatisfaction might create better teamwork and greater safety." ("Using Patient Complaints to Promote Patient Safety," pages 1-2)

Since the 1990s, Drs. Hickson and Pichert, together with the CPPA team, have researched why patients sue their doctors and why certain physicians attract more lawsuits. Their researched led them to develop the Patient Advocacy Reporting System (PARS®), a process for identifying and intervening with high-risk providers. Among their most significant conclusions: there is a link between malpractice suits and frequent patient complaints about providers who display disruptive behavior. For more information about this vital patient safety research and resource, visit **www.mc.vanderbilt.edu/centers/cppa**.

How to Reach MIEC

PHONE:

Oakland Office: 510/428-9411

Honolulu Office: 808/545-7231

Boise Office: 208/344-6378

Outside: 800/227-4527

FAX:

Main Oakland Fax: 510/654-4634

Honolulu Fax: 808/531-5224

Boise Fax: 208/344-7903

E-MAIL:

Lossprevention@miec.com

Underwriting@miec.com

Claims@miec.com