PART II: When an OD Needs Legal Counsel
When an O.D. Needs Legal Counsel

LEARNING OBJECTIVES

Upon completion of Part II of this course, participants will have the following:

1) An understanding of the types of claims filed against Optometric Physicians;
2) An understanding of past claims of the damages awarded to the Patient; and
3) An understanding of some key pearls in preventing a malpractice claim.
# STATISTICS—Study of over 150 Claims

*Compliments of Dr. Classe, OD, JD*

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Failure to Diagnose or Manage Diseases of Posterior Segment</td>
<td>57%</td>
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<tr>
<td>Injuries Related to Spectacles and Contact Lenses</td>
<td>18%</td>
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<tr>
<td>Failure to Diagnose or Manage Diseases of the Anterior Segment</td>
<td>11%</td>
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<tr>
<td>Other Claims: Co-Management</td>
<td>8%</td>
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<tr>
<td>Drug Related (DPAs)</td>
<td>5%</td>
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<tr>
<td>Failure to Treat Amblyopia</td>
<td>1%</td>
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NEARLY 90% OF POSTERIOR SEGMENT CLAIMS ARE DUE TO 3 CONDITIONS:

1. GLAUCOMA
2. RETINAL DETACHMENT; and
3. TUMORS AFFECTING THE VISION
GLAUCOMA IS THE #1 CAUSE OF LARGE CLAIMS:

* Failure to Diagnose Open Angle Glaucoma — 80%
* Failure to Diagnose Angle Closure Glaucoma — 10%
* Failure to Diagnose Secondary Glaucoma (pigmentary glaucoma) — 10%
Glaucoma—con’t

The 3 most common failures:
1. FAILURE TO CHECK IOP
2. FAILURE TO DETECT INDICATIONS OF DISEASE
3. FAILURE TO FOLLOW UP ON SUSPECT CASES
Elderly black male diagnosed by an OD with open-angle glaucoma is treated with a topical agent, but IOPs are not well controlled, compliance is poor and the Patient is lost to follow up. The Patient is seen by an Ophthalmologist more than a year later with elevated IOPs and significant field loss in both eyes:
Management of Glaucoma Patients

1. Beware of the “fall through the cracks” cases—they can become problematic because comparative negligence laws allows Patients to receive a liability award even if they are at fault.

2. It is important to contact “no show” Patients that have been diagnosed and/or treated and reschedule them; and such efforts must be documented.
Retinal Detachment—the #2 cause of large claims:

1. 1/2 of the Cases are related to Posterior Vitreous Detachment (PVD)

2. 1/3 of the Cases are failure to dilate the pupil and examine the retina periphery

3. 20% of the Cases are the failure to schedule a same-day examination
DILATE THE PUPIL!!!

COMMON CLINICAL ERROR IS THE FAILURE TO DILATE THE PUPIL
CASE PRESENTATION #2

Posterior Vitreous Detachment Case:

60 plus year old patient complaining of sudden appearance of spots in one eye is given a dilated exam by an optometrist, who tells the patient the cause is PVD, but fails to inform him of the symptoms of detachment or to schedule the patient for follow-up in 2-4 weeks. The optometrist also fails to record that the PVD is not fully separated. A detachment occurs a month later, with delayed diagnosis and loss of vision.
To prevent management mistakes involving PVD--

1. Recognize whether the vitreous separation is incomplete; and thus, still capable of causing detachment;
2. Educate/warn the patient of the symptoms of detachment, if incomplete
3. Schedule the patient for follow up in 2-4 weeks
4. Document the steps taken
ANTERIOR SEGMENT CLAIMS:

THE #1 CLAIM INVOLVING ANTERIOR SEGMENT INFECTIONS IS THE FAILURE TO PROPERLY DIAGNOSE OR TREAT AN EYE INFECTION. Common examples:

1. CONTACT LENS RELATED ABRASIONS THAT BECOME CORNEA ULCERS
2. CORNEAL INFECTIONS FROM HERPES SIMPLEX
3. FUNGAL INFECTIONS FOLLOWING CORNEA ABRASION WITH EMBEDDED ORGANIC MATERIAL
4. OCULAR FOREIGN BODIES
A contact lens patient complaining of unilateral redness and pain is examined by an OD, and corneal “stippling” is found. Lens wear is discontinued and antibiotic therapy is instituted, but after 2 weeks of follow up there is unresolved cornea staining and worsening of acuity. The patient consults another practitioner, who takes a culture and finds herpes simplex.
Contact Lens Management

CONTACT LENS RELATED CORNEAL ABRASIONS THAT ARE NOT APPROPRIATELY MANAGED AND BECOME CORNEAL ULCERS MOST FREQUENTLY CAUSE LITIGATION; HISTORICALLY, MOST CASES INVOLVE PATIENTS WHO WEAR LENSES OVERNIGHT.

THE INJURY IS DUE TO: FAILURE TO TIMELY DIAGNOSE THE ULCER; OR THE USE OF AN IMPROPER OR INEFFECTIVE ANTIBIOTIC REGIMEN.
DRUG RELATED CLAIMS

--THE MOST FREQUENT SOURCE OF DRUG-RELATED CLAIMS IS A “SLIP AND FALL” INJURY DUE TO PUPILLARY DILATION.

--ANGLE CLOSURE IS A RARE CAUSE OF CLAIMS.

--THERAPEUTIC DRUGS ARE NOT A SIGNIFICANT CAUSE OF LIABILITY CLAIMS FOR ODs.
CASE PRESENTATION #4

An elderly patient is given dilating drops by an OD’s staff assistant. After the exam, the patient is allowed to leave the office unattended and without mydriatic sunglasses. The bright light outside strikes his eyes as he starts down the office steps. He falls and breaks his hip, with ensuing medical complications from the fall.
The Legal Cause of Action—Premises Liability

* Premises need to be inspected periodically to ensure that they are safe

* An OD is responsible for patent defects, and for latent defects that are discoverable by reasonable inspection

* Elderly patients or patients with infirmities may require assistance while on the office premises
TAKEAWAY PEARLS:

*DISPOSABLE SUNGLASSES should be provided, and patients must be warned to use caution while walking, driving or working after pupils have been dilated.

*DOCUMENTATION of the warning is essential!
A SAMPLE DILATION WARNING may read as follows:

Advised Patient about side effects of dilation (light sensitivity, glare and decreased vision). Patient has been offered sunglasses. Patient states an understanding of these issues and agrees with the current plan.