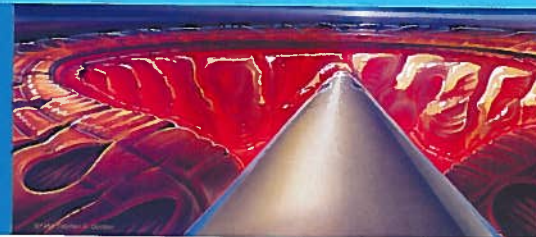


# Risk Management Hotline



## Refunds, Fee Waivers, and Indemnity Payments

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**A**s the case example in the **Closed Claim Study** illustrates, patients who are not satisfied with their care outcome may refuse to pay their bill, request a refund, or ask for money for subsequent care. OMIC policyholders have many questions about the consequences of saying yes to these requests. Similarly, there are times when a physician would like to offer monetary support. This column gives a general overview of providing financial support to patients out of a physician's corporate or personal funds. Prior to taking any action in this regard, please call OMIC's Risk Management Hotline at (800) 562-6642, option 4, for individual assistance. Physicians who have received a written request for money or are notified of a lawsuit should call the Claims Department at ext. 629.

**Q** When I'm not able to help my patient understand and accept an outcome, I would like to have the option of refunding or waiving my own fees, or paying for a second opinion or care from another ophthalmologist. If I do any of these, am I admitting liability?

**A** Merely refunding or waiving fees or offering to pay for subsequent care is not an admission of liability *unless* you tell the patient that your care caused the outcome. If you feel you are responsible and would like to discuss this with the patient, please consult with OMIC first, both to comply with the cooperation clause of your policy and so that we can assist you in preparing for the discussion. Those providing support for

other reasons are also encouraged to call us. After a thorough discussion of surrounding facts and circumstances, we may suggest using neutral language to explain the offer; for example, "I want all of my patients to be happy with their experience here. Since I haven't met your expectations, I would like to offer to waive/reduce/refund fees, pay for a second opinion, etc."

**Q** Will offering monetary support dissuade my patient from suing me?

**A** Not necessarily. Some patients accept such offers with gratitude, and continue to seek care from you. Others may conclude—regardless of what you say or do—that your generosity is "proof" that you did something wrong and proceed to consult with a medical malpractice attorney. You know your patients and are in the best position to decide how they might respond, and whether you would like to make such an offer.

**Q** Can I waive the patient's co-payment or deductible?

**A** Contracts with third-party payers (including Medicare) usually require that you collect co-pays and deductibles at the time of service, and they may limit your ability to waive or refund fees. Some plans allow a physician to waive a co-pay or deductible only after a patient has demonstrated financial need and to refund such payments only if the physician also refunds any fees paid by the third-party payer. It is important to review contracts and follow their provisions since you may be subject to allegations of insurance fraud or abuse if you violate them.

**Q** What types of monetary support do I have to report?

**A** Some reporting requirements differentiate monetary support given on the physician's own initiative or in response to an oral demand from money paid in response to a written request, claim, or lawsuit. Reporting to the National Practitioner Data Bank, for example, is only required if (1) there is "a written complaint or claim based on a physician's ... provision of or failure to provide health care services" and (2) the payment is made by a business or corporate entity, including a business entity comprised of a solo practitioner (45 C.F.R. § 60.3). Payments in response to oral requests, fee waivers (when no money has changed hands), or those paid for out of personal funds are not reportable. State laws vary, so it is important to check what is required by speaking with OMIC and contacting your state medical board.

**Q** Should I ask the patient to sign an indemnity release in exchange for a fee waiver, refund, or payment?

**A** The answer will depend upon the particular patient and situation. Some patients readily agree, while others may become angry or feel you wouldn't ask if you hadn't been negligent. You should contact OMIC's Claims Department if you want the patient to sign a release, as these must comply with state law and require the assistance of an attorney. For additional information, please download the document "Responding to Unanticipated Outcomes" from the Risk Management Recommendations section of our web site, order the CD of the same name, or take this course online.

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