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#### Now You See It, Now You Don't

by Michael J. Sacopolos, JD

##### Dealing with the rising trend of credit card disputes

A 67-year-old female artist walked in to see her Los Angeles-area plastic surgeon for a facelift. This line could be the start of a joke, but the punch line isn't funny. It is a very serious matter that is part of a growing trend nationwide. Hundreds, if not thousands, of physicians are being scammed by their own patients.

Michael A. Persky, MD, FACS, a well-known plastic surgeon in Southern California, has treated many celebrities and is frequently interviewed by national media outlets about plastic surgery. With Persky's reputation, who would think of him as an easy mark? The 67-year-old female artist did.

"When I consulted with her, we decided to do a face and neck lift and also do a fat transfer from her abdomen to her face," Persky says.

A procedure at this level does not come cheap, so the woman tried to barter with Persky by offering some of her artwork. "Repeatedly, I said I don't do bartering. The cost is the cost," he adds. The charge was going to be \$8,000 for the facelift, not including operating room and anesthesia fees.

"The day of the preop is the day we normally collect payment in full," Persky continues. "She gave my office manager a credit card and said, 'Put \$4,000 on this, and Dr Persky said he would take the other \$4,000 in barter.' My office manager said we don't do that and there was a bit of conversation, and finally she took out a different credit card and said, 'OK, put the other \$4,000 on this credit card.' "

According to Persky, the woman's procedure went as planned and with no complications. After the first couple of days she started complaining of pain in her jaw and tightness in her neck, stating it was difficult for her to eat. Her complaining went on for about 2 to 3 weeks. One night she called him when he was on his way to a conference.

"I registered, went into the conference, and sat down," he recalls. "Much to my surprise, my patient was a row in front of me with a girlfriend watching the latest in plastic surgery procedures that my colleague was presenting and chowing down some dinner. I was pretty shocked and amazed."

Fast forward 6 months. Persky was looking over his bank statements and spotted a debit for \$4,000. The woman had filed a chargeback. When Persky contacted his merchant bank, he was told an appeal letter had been faxed to him months earlier, but Persky never received the fax. "I asked for the paperwork to be sent to me," he says. "When they sent it to me, the fax number that the patient had given to the merchant bank was erroneous; it was off by a few numbers. So, I never received the fax."

Meanwhile, Persky's bank put a freeze on his account, creating a \$25,000 cash flow problem for his practice. "After about a week of spending lots of time, they finally reinstated my banking," he says, but the chargeback was not reversed. He filed a small claim action against his former patient to recover the \$4,000. She filed a counter claim.

The case went to trial. The judge looked at the before-and-after photographs, and things became more graphic. The 67-year-old woman lifted her shirt and showed the judge her stomach, explaining she should not have to pay because she could not wear a bikini when she goes to the beach. The judge ruled in Persky's favor, and the woman was ordered to pay him the \$4,000 dollars. It would be the better part of another year before Persky recovered the full amount.

#### MEANWHILE, ACROSS THE COUNTRY

On the Upper East Side of Manhattan, a similar drama played out for board-certified dermatologist Debra Jaliman, MD. "There are actually some people who come in, and their intent is to defraud you," she says. "Some people come in, have a procedure done, and then they will leave and charge it back immediately. It was like a scam. Then I will speak to other colleagues, and we will find out that they do this to other practices—the same person with the same name. They just go around Manhattan, and that is what they do to get free fillers and free Botox."

From dermatologists to dentists, the problem is spreading. Just ask Stacy Makenvich, DDS, of Brooklyn, NY, who recalls that in late 2010 a



#### PREVENTING CHARGEBACKS

If a patient uses a credit card, have her sign the receipt according to the vendor's guidelines—amount, date, credit card number masked by a collection of X's except for the last four or five digits;

If the DBA is not easily recognizable to a patient on their statement, she may not recognize the charge and decide to issue a chargeback.

Include a phone number on cardholder statements, so that patients can easily contact you with questions regarding a charge.

patient on whom she did significant work filed a chargeback for the full amount of all treatments around 4 months later. "When we called her up, she said that her insurance didn't cover all the treatments, and that's why she doesn't want to pay for them," Makenvich says.

Patients have to be reminded that funding medical procedures by credit card is for the patient's convenience, so they don't have to carry around a lot of cash, Makenvich notes. If a patient pays with a credit card, it can become easy for them to say they have buyer's remorse and decide to not pay the bill, she adds.

## THE CHARGEBACK BRIGADE

It is difficult to overstate the magnitude of this problem. Customer chargebacks cost retailers \$11.8 billion in the United States last year, according to BadCustomer.com. This figure includes charges for bank fees, credit card fees, loss of merchandise, and loss of customer service agent time.

If you have never had a chargeback occur in your office, count yourself lucky. But when, not if, it happens, here is what you can expect:

According to Brian Manning, a district manager at Allied Bancard LLC in Indianapolis, the merchant is notified by mail when there is a chargeback/dispute. The merchant then has 30 days to respond to the notice. If you are not at fault, then you are responsible only for the bank's regular processing fees.

"If the chargeback goes in favor of the cardholder," he says, "then the merchant is charged a chargeback fee, which [varies] from company to company. Typically, there is a charge between \$15 and \$35 per occurrence. Most companies will only charge those if the merchant has a history of excessive chargebacks, and they are getting chargebacks every month."

If you think you're losing big money to credit card chargebacks, the banking industry is cutting their losses left and right just to avoid the hassle of finding out who is truly responsible. Manning says for every \$1,000 that is being spent on credit cards, \$100 of it is subject to chargeback disputes. "For something that is small—a \$50, \$25, or \$100 transaction—a merchant is not going to put a whole lot of effort in going after it, disputing it, and paying legal fees. If it is a charge exceeding a couple thousand dollars, then they are going to start to pay some attention to it, especially because there is a possibility that that merchant could have additional chargebacks."

Those who abuse the system need to be aware that the credit card companies are watching, Manning says. Financial institutions track abusers, and once they are known, it can be nearly impossible for them to obtain another credit card.

In addition, physicians can do a few things to protect their practices from improper chargebacks. For example, Makenvich has her patients sign a financial agreement in advance of any treatment, stating that should they file a chargeback they will also be responsible for a \$200 chargeback fee.

The company Medical Justice has designed a binding financial agreement form. While the form is proprietary, it includes the following important tips and tricks:

- If a patient uses a credit card, have her sign the receipt according to the vendor's guidelines—amount, date, credit card number masked by a collection of X's except for the last four or five digits;
- If you have a proposed treatment plan, then write it up, print it, and have the patient sign it, making certain the document contains the agreed-to cost; and,
- If you have a policy on refunds or deposits, then put it in writing and have the patient sign it.

"So many of our members experienced this problem, we developed a form to address it," says Jeffrey Segal, MD, JD, FACS, CEO and founder of Medical Justice. "This document has worked repeatedly in preventing chargebacks against our members."

Likewise, Jaliman suggests that practices acquire plenty of signatures, especially if patients are paying with an American Express credit card. "The patient will say, 'I am in a rush; I have to go.' If you don't have the signature on the Amex, Amex is not going to side with you" in a dispute, she explains. "People who are scammers are going to try not to sign the Amex. They will give you their Amex, but then they will try and run out the door. They will say, 'I am running out of time; I am late for a meeting,' and they won't sign the Amex. That is a problem. Amex is big about signatures."

Christine Elliott, vice-president of corporate affairs and communications at American Express, had this to say: "Our customers are both merchants and card members. We work very hard to ensure fair outcomes for both sets of customers. It's also important to point out that merchants—in this case, physicians—who follow basic card acceptance procedures (obtain a signature, receive an authorization code, etc) are not charged back."

Manning says it is also helpful to make the patient aware of how the charge will show up on their credit card statement. Sometimes, when patients receive their billing statement, it will say the payment was made to ABC Company rather than the "doing business as" name on your shingle. "They will just call and chargeback because they don't recognize the vendor," he says.

## WHERE TO GO FOR HELP

If you get stuck in the middle of a chargeback dispute, you may have the option of hiring a third party for help. That is where someone like Robert Livingstone, the president and founder of idealcost.com, comes in. "As the economy has gone down, customers have been a little strapped for money and try to find better ways possible to scam a lot of physicians and medical offices—especially on elective procedures like plastic surgery," he says.

Practices may also consider forming a partnership with payment plan companies, such as CareCredit (GE Money), Wells Fargo Health Advantage, and ChaseHealthAdvance. Typical is the patient payment plan proffered by CareCredit, which is a credit card that can be used as a payment option for certain expenses not covered by insurance. For example, Persky offers CareCredit as an option to his patients. This approach eliminates the possibility of your practice getting a chargeback.

"We have probably been with CareCredit for the last 5 years," Persky says. "I personally never wanted to put the patient in a position of going into debt for having something elective done to their face. I just felt that if they can afford it, then I am not going to be the name they are looking at or the thought they are having when they are paying that check for years to come."

At the end of the day, Persky, Jaliman, and Makenvich all felt that fighting patient abuse was about more than money. "It was worth about \$4,000, but it was mainly worth it for what is right and the principle of the matter," Persky adds. "If I let it happen once it would happen again, which is wrong."

"For me, it is not even the money," Jaliman says. "It is so disgusting. Yes, sometimes maybe it wouldn't be worth the money, but I get so angry that people take me for a fool."

If you have a proposed treatment plan, then write it up, print it, and have the patient sign it, making certain the document contains the agreed-to cost.

Discourage chargebacks by including a "chargeback processing fee" in the payment agreement. Between \$100 and \$250 is common.

Keep communication lines open. If you don't communicate with your patient to resolve issues, you're making it easier for him to resort to a chargeback to solve problems.

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I think it kind of makes you disappointed with people overall," Makenvich says. "Especially for the doctors. I mean, you have treated this patient, you care about your patients when you treat them. Then, for somebody to go and do something like that, you feel almost blindsided."

See also "Overcoming the Patient Financing Blues" by Catherine Maley, MBA, in the January 2011 issue of PSP.



Being defrauded by credit card chargebacks will continue to harm physicians. With care and proper procedures, physicians can avoid being used by some unscrupulous patients.

*Michael J. Sacopulos, JD, is a partner with Sacopulos, Johnson & Sacopulos, based in Terre Haute, Ind. His core expertise is in medical malpractice defense and third-party payment disputes. He is also the general counsel for Medical Justice. He may be reached at .*

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