



# WESTCHESTER PHYSICIAN

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Volume 39, Issue 3



## PRESIDENT'S MESSAGE

### AN OPEN LETTER

**BRUCE MOLINELLI, MD PRESIDENT**

*“So tell me what you want, what you really really want  
I’ll tell you what I want, what I really really want”  
Spice Girls, Wannabe , Spice 1996*

Dear C Suite Administrator:

I hope all is well with you.

I write to you today to bring your attention to an ongoing detrimental movement leading to the inevitable erosion of the medical staff - the disengaged physician. Although still the backbone of any institution, the medical staff has morphed into an army of privates without a general, resulting in a loss of a productive partner in local medical policy. Leading the charge of the destitution of an effective medical staff is the disenfranchisement of independent medical leadership and the fading acknowledgment of a medical staff's bylaws. With this comes the hollow, uninspired worker bee, mindlessly committing to the needs of the queen. Although this works for nature, it does not translate well into medicine. I point your attention to the loss of the effective medical staff, fueled by a dominating employed physician model accelerated by administrative directives put through as mandates placed without the proper engagement of the physician, and further propelled by the demoralized physician's daily tribulations. Now there is no doubt that your institutions are themselves withstanding an onslaught of market forces driving your decision making to remain viable. And without change, dissolution is inevitable. But without an honest feedback from those deeply affected by institutional policy changes, the physicians, productive results to your benefit could be interdicted.

There is no doubt that the sturm and drang of today's physician is clouding a more complex understanding of their predicament. Professional stability has been desecrated as physicians become more inundated with loss of autonomy, diminished professional input, decreasing financial compensation and overworked environments. What once was a perspicacious profession is now unsure. You need not be a polyglot to understand the vernacular of today's physicians displayed in voice and action: unionization, burnout, work-life balance, diminishing physician work force, early retirement, declining access to physicians, declining patient satisfactions with medical delivery systems, EMR woes, truncated

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**BRUCE MOLINELLI, MD**  
*President, WCMS*

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## Upcoming Events:

**WINE TASTING**  
April 4, 2023 6-9pm  
Prospero Winery  
*More info on page 16*

**NETWORKING EVENT**  
May 4, 2023 6-9pm  
Captain Lawrence Brewery  
*More info on page 11*

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**PETER J. ACKER, MD**  
*Editor*

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**FROM THE EDITOR...****MUSIC AND MEDICINE**  
**PETER ACKER, MD**

I recently attended classical music concert on a Sunday afternoon at Sarah Lawrence College. It was performed by the **Westchester Chamber Soloists**. It was a stunning experience. The concert provided a variety of musical configurations: a serenade for strings, music for a brass quintet. A sextet for piano and winds, an elegie for cello and orchestra, and finally Beethoven's 4rth piano concerto.

This group was formed three years ago but quickly went into hiatus because of the pandemic. I learned of this group just recently from one of my pediatric colleagues, Dr. Laura Macbeth who is one of the group's violinists. This group is a nonprofit and is supported by contributions. The group is made of up a variety of musicians, many of whom work full time in other fields. The caliber of this group is top notch, however, and I marveled as I listened at the dedication it must take to work fulltime as a pediatrician or in other fields and perform at this high level.

The performance was in a small venue which afforded the opportunity to watch the musicians quite closely and during intermission they mingled with audience. I was pleasantly surprised to see an old friend, Dr. Lori Adel, a pediatric psychiatrist and violinist, who I had lost touch with. I recalled that I had profiled her in these pages a long time ago – in 2002! Below is a reprint of that profile.

This organization is worthy of our support. Contributions can be made at and tickets purchased at [www.WestchesterChamberSoloists.com](http://www.WestchesterChamberSoloists.com) There next two concerts are on April 2 and June 4 at 3 PM in the Resinger Auditorium at Sarah Lawrence College.

**Musical Profiles: Part One**

A number of years ago I dutifully signed up my then 8 year old daughter for piano lessons and of course felt obligated having gotten her into this ordeal to pitch in and try to help her with her practice sessions. I had briefly taken lessons as child, but not a whit of it had stayed with me. At the time, I was able to quit by successfully proffering violin lessons as a substitute to my parents. After a few screeching weeks of bowing, my parents allowed me to stop without a whimper of protest. Yet as I worked with my daughter, I found myself increasingly captivated by the piano and before long I had embarked on a musical journey that continues to this day some 9 years later. It has not been a particularly smooth journey, but what I lack in youthful talent and dexterity, I partially make up for with the disciplined practice habits of a physician trying to escape the discordant rhythms of his medical day with the sublime cadence of a Mozart sonata.

I had long known that many physicians are excellent musicians. I suppose the sort of intensity and drive that leads one into medicine may similarly propel one into music. Out of curiosity I decided to explore this association. Where better to start, I thought, than with my friend and colleague, Dr. Lori Adel, a pediatric psychiatrist who also plays the

*(Continued on page 9)*



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**PRESIDENT'S MESSAGE****AN OPEN LETTER****BRUCE MOLINELLI, MD PRESIDENT***(Continued from page 1)*

patient-doctor face time, dominate medical journals. Who feels comfortable standing up to shout “The emperor has no clothes!” on your staff, without fear of retribution? I would submit many physicians are becoming stripped down versions of themselves- you are losing the progressive independent thinkers- those whose creativity is vital to progress and success of your facility, and instead you are creating the robotic “Yes” nodder, delivering little in substance. Perhaps hospital strategies of employing physicians to secure alignment is not the most effective one. It has been noted that 75% to 85% of cost and quality within one’s institution historically has been influenced by physicians. Are you tapping into or stamping out this resource in your institution? I believe that is where physician buy-in, or engagement is the missing ingredient of today.

My recommendation is that you understand how to engage the physicians of your staff and do so earnestly and effectively. A sense of true participation and valued input, regardless of employed status, will be much more effective in engaging the physician than policy mandates or “ownership” of the medical staff.

The key ingredients to cultivate physician engagement includes intellectual involvement in policy change, and demonstrative rationale for such. Perhaps the physician input would actually be additive and not obstructive as you might think. Physician reluctance to some changes as you likely have experienced is predicated on a multitude of factors not least of which is a physician’s daily struggle with increased patient loads, declining income, and an overwhelmingly changing array of regulations and requirements. Honest access to an institution’s viability strategies would promote a sense of understanding by the physicians of the need for change, and possibly a productive recommendation.

The end point of the physician is most likely in alignment with your institution; quality patient care, but the means to achieving this may be counter depending on your point of view. The physician does not know the nuances of the monetary impact associated without necessary changes since they are not privy to your data on the financial health of the institution, nor the driving motivations towards the organizations goal, but they can help you interpret and direct these into measurable and effective processes to an accepting frontline physician.

Let me emphasize that last point about the frontline

physicians. Not all physicians are created equally nor are they experiencing the same aspect of day-to-day encounters. So physician buy-in should not be confused with a physician in the position of administrative leadership who may not have the current experience of the frontline physician. Translation of well-meaning policy, by administration, with physician leadership buy-in, does not equate necessarily with all physician buy-in. Such decisions must include the frontline physician who is experiencing the final product of such policy change. “How does this decision affect the physician-patient encounter?” should be your consideration prior to policy enforcement. So I caution the physician leader, who may no longer be in a clinical setting, or perhaps was, but is now somewhat removed from it, to not just stand in as the figurehead for non-physician administrators. Be wary of fulfilling an ostentatious role denoting physician buy-in but without true substance or inclusion. Listen wholeheartedly to your medical staff, giving them safe freedom to speak up about what they are experiencing. Ineffectively engaging the right physician may potentiate physicians’ resistance, or worse, demoralization. What you really need to achieve is “clinician” buy-in.

Clinician buy-in may take many forms, including a redirection of your strategy, or method, but at least it would have a higher likelihood of successful implementation by those whom you are asking to change. How you obtain this input will be determined not by an environment of polite dismissiveness of their concerns, or even worse, non-inclusion, but by an environment that nurtures physician independence, and freedom of thought with safety in voice.

I hope this letter reaches you in time to remind you of a vital resource that needs protection- the self-governing medical staff. The purpose of my letter is to not only suggest how to engage your medical staff, but to remind you of the importance of one which remains an independent, informed, contemplative partner.

Best regards,

Bruce Molinelli MD

President of the Westchester Medical Society

*“...You can’t always get what you want,  
But if you try sometimes, well, you just might find,  
You get what you need...”*

*Rolling Stones , You Can’t Always Get What You  
Want , Let It Bleed, 1969*



## STOP THE TRAIN Elliot Barsh, MD

***“Be somebody who makes everybody feel like somebody”***

*Hi everyone.*

*I hope that our newsletter finds you hopeful and well.*

*We graduate from medical school “**knowing**” how to treat diseases. It takes years of practice to learn how to “**be with**” patients.*

*We are trained to “**command**” and expect “**compliance**” from our patients.*

*We expect them to **listen to what we have to say**.*

*It takes time to understand that it is our “**compassion**” that people come to **trust and believe in**.*

*This gives us a chance to “**understand our patients as people rather than a set of symptoms**.”*

*It turns the tables so that now **we are listening for what our patients have to tell us**.*

*Walking into the exam room and **knowing** what we are going to do is very different from walking into the room and being **curious** about how it will feel, and **interested** in what we are going to learn.*

*We can be transformed, a patient and doctor, into something we could not be without each other.*

*It is magic!*

*Thanks for reading.*

*Be safe.*

*“... I’d come to think of “people” as a principle of care...”*

### **The Assumptions Doctors Make**

*“Just when we think we know enough, our patients teach us even more”*

### **Lessons From a ‘Difficult Patient’**

Sal was the kind of patient that doctors strive to avoid. But for one medical student, he provided an education in compassion.

*“Can we know what it is like for our patients, honor their trust, and cause the least amount of harm?”*

### **My Rosalind Franklin Benchmark**

*“Could we be comfortable to be present, vulnerable, while not knowing what to say?”*

### **My Child Is in an Impossible Place, and I Am There With Her**

Three years into my daughter’s cancer treatments, my family has leaned into talking about hard things.

*“Love is the most important tool in our black bag.”*

### **Accompaniment**



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## MSSNY Podcasts

MSSNY

The Medical Society of the State of New York has created a number of podcasts on topics that are timely and relevant. In addition to weekly MSSNY Updates from the Division of Governmental Affairs, there are myriad timely and relevant podcasts on COVID-19 (both for physicians and patients) as well as a number of others on veterans, adult immunizations and emergency preparedness.

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## MSSNY Announces two NEW Podcasts on COVID-19

### ★ A Discussion on COVID Vaccine for Patients ★

MSSNY President, Dr. Bonnie Litvack, President-elect, Dr. Joseph Sellers and Dr. William Valenti, Chair of MSSNY’s Committee on Infectious Diseases discuss vaccines currently available for COVID-19 and answer many questions patients may have about the vaccines.

### ★ How to Talk to Patients About Vaccine Hesitancy ★

Dr. William Valenti, Chair of MSSNY’s Committee on Infectious Diseases discusses the history of vaccine hesitancy and offers sage advice to listeners on talking to vaccine hesitant patients.

★★The additions of these podcasts marks 100 podcasts published on the MSSNY Podcast website!★★



*FROM THE EDITOR...***MUSIC AND MEDICINE****PETER ACKER, MD***(Continued from page 2)*

violin at a very high level. I had found out at some point that she had attended Oberlin College, my own alma mater (though some years after I was there) partly because of the very fine music conservatory that is there (alas, among many of the missed opportunities during my college years, was not availing myself of the rich musical environment except for listening to some really loud rock music). I contacted Lori and in a recent e-mail from her I learned that she took up the violin at age 7 entirely at the behest of her parents, but quickly became quite serious about it. After studying with various teachers, she found Gabriel Banat, a violinist for the New York Philharmonic who taught her until the end of high school. "Some of my most memorable musical experiences," she writes, "took place at the Adirondack summer of my best childhood friend. She hailed from a very musical extended family.....There was a lot of laughter, a lot of clunkers, some rather pretty music making at times and an indescribable feeling of belonging and connectedness that resonated between us."

After high school, Lori went to Brazil as an exchange student and there literally bumped into another musical opportunity in the form of an older gentleman with a violin at a bus stop. With a command of Portuguese which was more enthusiastic than proficient, Dr. Adel succeeded only in making him fear for his violin. Eventually, her true intent became clear and in short order she had a teacher and a position in the San Paolo State Symphony Orchestra. Lori continued to play and study while at Oberlin and for a while seriously contemplated a career as a musician. Eventually, for various reasons, Lori steered away from music and toward medicine. Interestingly enough, her years of medical school proved to be a fruitful time for her music in that an internist named Dr. Stephen Moshman was starting up an orchestra of physicians. (This orchestra, is still going strong today – this year's season starts on November 22 with a 3 PM performance of among other things Schumann's Second Symphony). She not only soloed in this group, but played with other semi-professional orchestras in the Bronx and Manhattan.

"People often asked how I managed to stay so active musically in the face of all the pressures from my medical training. I always explained that without the

music, the pressure would have been more difficult to bear. It provided a balance that my life desperately needed at the time."

What the distractions of youth, foreign travel, or rigors of medical training could not do, that is to deter Lori from her passionate pursuit of music, was accomplished by the birth of her first child. Now ten years later, I am happy to report that her musical hiatus is ending and she recently hooked up with a pianist, with a coached chamber quartet at the JCC in Tarrytown and with another chamber group in Mamaroneck called the St Thomas Orchestra.

I think I can best end this profile with these words from Dr. Adel: "Music has provided a balance, a haven, an entrée into every new community I've ever lived in.... tonight I accompanied my younger daughter as she worked her little fingers through a piece in one of my old Suzuki books. She pointed proudly as she discovered from the faded pencil marks of one of my earliest teachers that she's younger than I was when I learned that piece. I only hope as we play that she is feeling that same resonance between us, and that she will continue to seek out that feeling for the rest of her life."



## WESTCHESTER SCIENT AND ENGINEERING FAIR AWARDS MARCH 23, 2023—SOMERS HIGH SCHOOL

Joseph Tartaglia, MD—Past President Westchester Academy of Medicine



Once again it is March and I find my-self at the Westchester Science and Engineering Fair awards ceremony held at Somers High School on March 23, 2023. High schools send many of their brightest students from Westchester and Putnam counties to participate in the Fair. It's a fun event where I get to meet many of the 500 brightest minds from 30 schools to announce 10 individual students and 3 science teams to go to Dallas Texas to compete with 1500 top students from 50 countries around the world in the Regeneron ISEF (International Science and Engineering Fair).

I was there along with other scientists, doctors, nurses, researchers from academia and industry who volunteer their time to judge and award the students. We are all there to volunteer our time because we are interested in promoting our young minds to do more science research and ultimately develop world class leadership in science and engineering.

This year I came as Past President of the Westchester Academy of Medicine to represent the medical society doctors of Westchester and Putnam. It's my pleasure to present awards to the students that received the Future of Medicine award. The students who won this honor this year are: Nicole Giandomenico from Harrison High School in the category of Cellular & Molecular Biology; Abby Eickelback from Byram Hills High School in the category of Neuroscience; and Christina Kelly from Westlake High School in the category of Neuroscience. The selected students will nr invited to our annual meeting on June 8, 2023 to present their posters and research to the physicians of the Medical Society where they will be recognized and awarded at the dinner as guests of the Medical Society.

Our prizes are possible through the memberships generous donations at our holiday event and annual golf tournament at the Westchester Country Club, and we are happy to accept any contribution throughout the year. If you are interested in donating to our scholarship fund, please contact our office for details.

Congratulations to all of the winners from this year, and good luck to those who will be competing in Dallas this May!



## MSSNY PHYSICIAN LOBBY DAY RECAP

On Tuesday, March 14, 2023 MSSNY held its annual Legislative Day event. The Westchester County Medical Society represented the physician membership with a group from Westchester. MSSNY held an informational session for the morning program that included a legislative update by Morris, Auster, Esq., Senior Vice President and Chief Legislative Counsel MSSNY. Other speakers included Parag Mehta, MD, President MSSNY; Paul Pipia, MD, President-elect MSSNY; Jerome Cohen, MD, MSSNY Vice President; Mark Adams MD, Chair Leg & Physician Advocacy Committee MSSNY; William Latreille, MD Speaker, MSSNY House of Delegates & Troy Oechsner, MSSNY EVP. The group was joined by James McDonald, MD Acting Commissioner of Health; Senate Minority Leader Robert Ortt; and Assembly Minority Leader Will Barclay who all addressed the attendees. There were two panels that also took place: Specialty Society Leaders Panel and the Health and Insurance Panel.

The Westchester physicians along with Janine Miller,

Executive Director were able to meet with many of our local legislators and their staff people including Senators Shelly Mayer; Pete Harckham; Bill Weber; Jamaal Bailey and Senate Majority Leader Andrea Stewart-Cousins; along with members of the Assembly that included Matt Slater; Gary Pretlow; Chris Burdick; Steve Otis; Mary Jane Shimsky; and Chair of the Assembly Health Committee Amy Paulin. Our group spoke about the importance of some of the items in the Governor’s budget along with some of the items on MSSNY’s Legislative Agenda including

- Preserving scope of practice for physicians
- Extension of the Excess Liability Program
- Gold Card Bill—prior authorization
- Telemedicine Licensure Compacts
- Changes to the Empire Plan

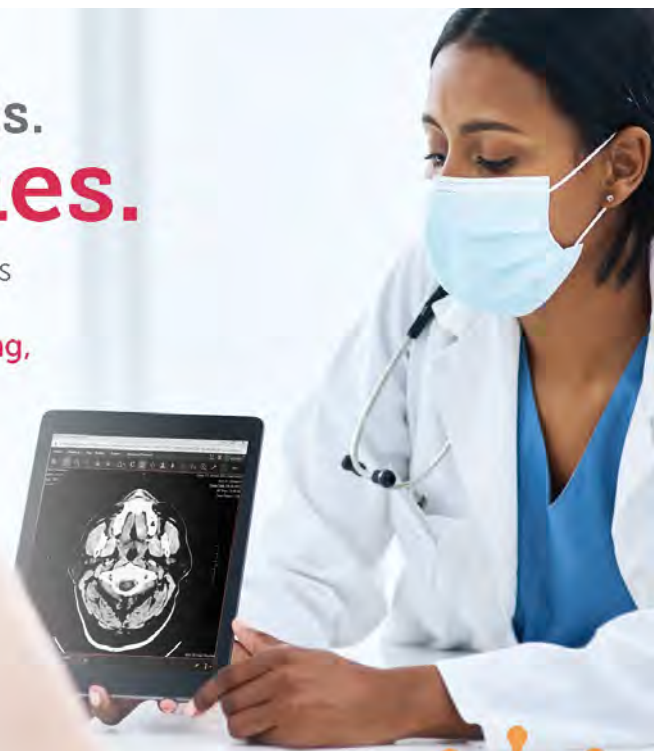
We appreciate all of those physicians who took time away from their patients to join us on Zoom. The work that they do on behalf of all the members of WCMS and New York State physicians is invaluable.

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## **THE POTENTIAL IMPACT OF NEGATIVE ONLINE REVIEWS ON MEDICAL MALPRACTICE LITIGATION AND THE IMPORTANT ROLE A REPUTATION MANAGEMENT SERVICE CAN PLAY**

By: Kenneth R. Larywon, Esq., Thomas A. Mobilia, Esq., Barbara D. Goldberg, Esq. and Gregory A. Cascino, Esq. of Martin Clearwater & Bell LLP

Practitioners have few legal avenues available to directly address negative online reviews by patients. Such reviews are shielded from liability under most scenarios, and it is typically next to impossible to have a negative review taken down, unless it can be established that it was completely false. Moreover, a mid-level New York State Appellate Court recently held that a patient's critical online comments about treatment by her plastic surgeon are in the "public interest."<sup>1</sup> Thus, under New York's Anti-Strategic Lawsuits Against Public Participation ("SLAPP") statute,<sup>2</sup> the patient was able to seek attorney's fees and damages resulting from the surgeon's unsuccessful defamation action.

Further complicating matters, there are numerous ways in which negative online postings can increase a physician's medical malpractice exposure, both as it relates to the likelihood that a dissatisfied patient will commence a medical malpractice action following a perceived unfavorable result, and the difficulty that a physician will have in defending the action at trial. Therefore, the manner in which a physician responds to a patient who has posted a negative review can be crucial in helping to avert malpractice litigation.

Much has been written about the fact that patients who feel that their physician did not treat them with respect or listen to their concerns are more likely to sue following negative outcomes. In fact, a study highlighted by the New York Times<sup>3</sup> found that doctors who had never been sued were perceived by patients as being accessible, concerned, and willing to communicate. On the other hand, patients reported that the most frequently sued doctors failed to treat them with respect or listen to their concerns, and that these doctors made them wait a long time to be seen but spent little time with them.

Similarly, a study by Massachusetts General Hospital found a correlation between medical malpractice claims and patient satisfaction.<sup>4</sup> For every 1-point decrease in patient satisfaction scores there was a 6 percentage increase in complaints and a 5 percentage increase in risk management events. Conversely, as patient satisfaction increased, patient complaints and litigation decreased. Further, a study conducted by Baylor University Medical Center found that while seeking compensation for actual losses and future medical care was one motivation for

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<sup>1</sup> See *Aristocrat Plastic Surgery, P.C., v. Silva*, 2022 N.Y. Slip Op. 03311 (1<sup>st</sup> Dep't May 19, 2022)

<sup>2</sup> See New York Civil Rights Law §§ 70-a and 76-a.

<sup>3</sup> *Bad Bedside Manner or Medical Malpractice*, The National Law Journal, March 25, 2021, found at <https://www.natlawreview.com/article/bad-bedside-manner-or-medical-malpractice>

<sup>4</sup> *Patient Satisfaction: Your Best Defense Against Litigation*, The Physicians Report, found at <https://www.phyins.com/magazine/patient-satisfaction-your-best-defense-against-litigation#:~:text=Research%20conducted%20at%20Massachusetts%20General,percent%20increase%20in%20risk%20management%20events>

commencing a lawsuit, the most commonly given reasons were the desire to make sure that a similar incident does not happen to future patients, and a patient's need to understand how and why a negative outcome occurred.<sup>5</sup>

Thus, when a patient experiences an unfavorable outcome and posts about it online, the physician's online response can be a part of the patient's calculus in determining whether to bring a malpractice lawsuit. Such a patient likely has transferred their care to another physician by this time, and may feel more comfortable posting to an online forum than directly confronting their physician personally.

As such, the physician's response to a negative online review may be his or her last and/or only opportunity to show the compassion and concern the patient previously perceived to be lacking. Alternatively, a patient may post about their experience simply to "get something off their chest" or to "warn others;" however, an uncaring or defensive online response by their physician might convince an otherwise litigation-adverse patient to bring a malpractice claim.

Accordingly, it is critically important to respond to a patient's online complaints timely, respectfully and caringly. One possible approach that has been suggested is to contact the patient by telephone, and offer to meet with him or her to discuss the outcome that led to the negative review. This will enable the physician to discuss the basis for a particular treatment decision with which the patient is dissatisfied, review applicable standards of "best practices," and/or explain the reason(s) why a particular drug was prescribed or not prescribed. Anecdotal evidence suggests that sometimes even a sincere apology (assuming no admission of malpractice is made!) can avert a lawsuit. Ideally, an expression of genuine concern and empathy by the physician may induce the patient who left the negative review to post further, favorable comments on the particular online site.

### ***Online Reputation Management Services***

If attempts to discuss the basis for a negative review with a patient are unsuccessful, utilizing an online reputation management service can be another component of a physician's risk management strategy. Such services have developed algorithms that will promptly alert the physician to online complaints and negative reviews that might otherwise have gone unnoticed and, as far as the patient was concerned, ignored.

Moreover, these services can help the physician craft thoughtful responses which may reduce the patient's feeling of being disrespected and ignored, and potentially avoid escalation to litigation. While the physician's precise response will vary depending on the nature of the patient's complaints, typically responses should involve an expression of remorse that the patient is not happy with the outcome, a genuine desire either to help address the situation or help the patient or their family understand why the negative outcome occurred, and, as noted above, an invitation to contact the physician directly to discuss their concerns offline.

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<sup>5</sup> *Communication gaffes; a root cause of malpractice claims*; Proc Bayl. Univ. Med. Cent, 2003 Apr; 16(2), found at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1201002/>

A physician's response cannot appear canned, insincere, or defensive. Furthermore, a physician cannot, under any circumstances, discuss issues related to liability, or disclose private health information as this can be a HIPAA violation (even if the patient has already disclosed this same information).<sup>6</sup> And while well-intentioned physicians may be tempted to craft their own responses, the feeling of being personally attacked by a negative posting may cloud their better judgment and result in an impulsive and unproductive reaction. An online reputation management service can serve as a valuable intermediary in this instance, and provide the measured, professional response which can potentially head off a malpractice lawsuit.

The physician's response can also impact a patient's decision whether to bring a lawsuit in other important ways. As noted above, there seems to be a direct correlation between the number of prior lawsuits and online complaints about a particular physician, and the likelihood that a dissatisfied patient will commence their own lawsuit. Such a patient may be more likely to file a lawsuit because they feel that the shared common experiences and beliefs of other patients validate their opinion that their physician committed malpractice. Whether or not it is true, they may feel that because their physician treated other patients poorly he or she must be incompetent and their own unfavorable result must be the result of malpractice.

Such patients may also feel that by bringing a lawsuit they are performing a public service by "exposing" their physician's shortcomings, and taking steps to prevent what happened to them from happening to other patients. These feelings of "seeking justice" may be exacerbated where a patient sees that their physician has responded poorly to other patients' online complaints; likely because the physician took it upon himself/herself to respond directly and did so in an emotional manner.

For most physicians, their patients overwhelmingly have a positive view of their interactions. The silent content majority, however, is much less likely to take the time to post an online review, thereby allowing the few negative reviews to skew the overall results. Reputation management services prompt all patients to review their treatment. This makes the review process much simpler, which greatly increases participation by the satisfied patients, thereby diluting any negative reviews.

Online forums and complaint boards may also serve as a means for malpractice lawyers to try and solicit clients. While the rules of professional responsibility prohibit direct solicitation, malpractice attorneys may use indirect methods to sign up new clients, especially where an attorney has already sued the same physician. For example, another client who is suing or successfully sued a physician may recommend their malpractice attorney for current and former patients who feel that they were treated improperly. We have seen this situation play out numerous times, especially for physicians who practice in high risk fields and who treat patients who have been unable to obtain relief for complex medical conditions from several other doctors.

If a patient does discover these forums but sees that other patients have overwhelmingly left positive reviews and that the physician has responded in a sincere and non-defensive manner to other complaints, the patient may view the physician more favorably and therefore be less likely

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<sup>6</sup> See 42 U.S.C. §1320d-6(a)(3)

to commence a lawsuit. Therefore, an appropriate response has the double benefit of reducing both the exposure and the potential impact of prior complaints.

### ***Potential Impact on Physician at Trial***

An online reputation management service can also help a physician's defense at trial. As a general rule, patients cannot introduce evidence regarding unrelated lawsuits involving other patients. A physician's written response to a patient's online complaint, however, might be admissible at that patient's malpractice trial as a party statement. Thus, while it is important that physicians avoid any mention of liability issues in their responses, it is just as important that their responses not come off as defensive or uncaring. A proper response portrays the physician in the most positive light possible, and needless to say a patient's malpractice attorney would never want to read such a response to a jury.

Moreover, while trial judges will instruct jurors that they cannot perform their own research or conduct online searches regarding any of the parties, these instructions are, unfortunately, not always followed.<sup>7</sup> Utilizing a reputation management service reduces the likelihood that jurors will find negative reviews and complaints about a physician, and will blunt the impact that any such reviews can have on their opinion regarding the physician.

### ***Conclusion***

Online reputation management services can have several important benefits for physicians in both avoiding and defending malpractice actions, and should be considered an important risk management tool.

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<sup>7</sup> Similarly, it is not uncommon for jurors to conduct internet searches on the attorneys representing the parties.

**The Westchester Academy of Medicine  
&  
The Medical Student Section of New York Medical College  
Invite you to join them for a**

## *Wine Tasting*

**Tuesday, April 4, 2023  
Prospero Winery  
123 Castleton Street  
Pleasantville, NY 10570  
7:00 – 9:00 p.m.**

Come and listen to our own WCMS Members talk about their wine making experience and sample some of their award winning wines.



If you would like to attend please RSVP to Janine Miller at 914-967-9100 or [jmiller@wcms.org](mailto:jmiller@wcms.org). There is no cost to attend this event

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Annual Meeting

All Members are welcome!  
There is no cost to attend this event  
Vendors, Awards, Student Presentations  
Election of Officers



**Thursday June 8, 2023**

Cocktails/Vendors—6:00pm  
Dinner Program 7:00pm

Westchester Country Club  
99 Biltmore Avenue  
Rye, NY