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Landmines in the Compliance and Reimbursement Worlds



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CEO, Practice Compliance Solutions

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Financial Disclosures – Joe DeLoach, OD, FAAO

I Have Received Honoraria From or Served as a Consultant for:
(Partial Listing)

- Vision Source
- Alcon Laboratories
- Carl Zeiss Meditec
- Optos
- Diopsys
- Kowa
- PCS
- AllDocs
- OfficeMate
- Marco
- TSO
- NVision
- Cleinman Partners
- Vision Trends
- Konan
- Essilor of America
- Pearle Vision / SNAPP
- Vision West
- EyeMart Express
- UHCO, RSO, UAB, Berkley, and other optometry schools

Over half the state optometric associations

There are no conflicts or disclosures related to any of these groups

Practice Compliance Solutions, LLC – President and CEO

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Compliance, Billing & Healthcare Landmines

This presentation is based on the most common problems encountered in Federal healthcare compliance programs involving:

- PCS clients *(or wish they would have been)*
- Optometry audit failures/issues
- “Expert” advice on optometry blogs

Names and sometimes a few details have been changed to protect doctor identity or respect privacy issues.

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HOLD ON TO YOUR SEATS – I’M GOING REAL FAST

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Here Is The Biggest Landmine

Most doctors think compliance is just about HIPAA




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Here is the real list!

- ✓ HIPAA
- ✓ Hazard (OSHA, CDC, CLIA)
- ✓ Human Resources
- ✓ Fraud and Abuse
- ✓ General Compliance
 - ✓ DME regulations
 - ✓ Patient discrimination issues
 - ✓ State optometry law
 - ✓ Federal healthcare laws
 - ✓ Comanagement Issues
 - ✓ No Surprise Act

Can't we just take care of patients?
NO...



Can't we just be happy?
ABSOLUTELY!



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ABSOLUTELY?

- ✓ None of this stuff is really scary – *unless you are breaking the law*
- ✓ None of this has to be all that complicated – *unless you are using no consultant or the wrong consultant to help you*



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AND WHEN THAT DOESN'T HAPPEN...



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HIPAA Landmine #1

HIPAA Medical Records Issue

Patient unhappy - denied request for contact lens prescription stating patient owed balance on glasses dispensed three months ago. Patient asks for medical record and denied for same reason. Patient files a *qui tam* complaint with HHS alleging practice is not in compliance with HIPAA rules. Resultant investigation not only finds patient is right but office out of date - had an old "policy manual" from 2006 but nothing else.



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HIPAA Landmine #1

What was wrong?

HIPAA establishes the rules for release of medical records – NOT you or state law. HIPAA says:

- Patient owns the record
- Patient gets record, free (essentially), with only very few exceptions...**patient owing money NOT one of them**
- Check Federal and State law on the CL release but unless expired or patient did not pay for the service **patient usually gets Rx**



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HIPAA Landmine #1

What was the result

- ⊗ HIPAA found doctor NOT in compliance (not updated) **AND** had violated patient's access to medical record
- ⊗ Doctor fined \$62,500 and had to demonstrate full HIPAA compliance plan within 60 days
- ⊗ **The WORST...Patient BLASTED doctor on social media**

2021 UPDATE: Administration proposes sweeping changes to HIPAA privacy rule to significantly increase patient access to medical records



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HIPAA Landmine #2

Non-Secured Patient Communications **BUT MUCH WORSE!**

Patient calls office requesting balance on glasses ordered. Employee says she will pass request on to optical. Optical sends information to patient's Hotmail email on file. Patient's husband opens email and gripes out wife for spending so much money on glasses. Patient files complaint with HHS for HIPAA privacy violation.



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HIPAA Landmine #2

What was wrong?

HIPAA has specific rules on patient communication

- Must communicate with patient through secured email/text or obtain **waiver authorization** from patient
- Must communicate to EVERYONE ELSE through secured email/text – **no waiver allowed**
- Best advice is encrypted domain office email!!

joe@pcscopy.com



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HIPAA Landmine #2

What was the result?

Investigation still underway. Doctor DEFINITELY:

- ⊗ Violated patient privacy
- ⊗ And as it turned out, had no HIPAA privacy and security program in place
- ⊗ Doctor faces charge of “**reckless indifference**” with potential fine up to **\$250K**



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HIPAA Landmine #3

No Business Associate Agreement

Two doctor group in NC is visited by HIPAA officers based on patient complaint that practice released PHI improperly (*they provided patient information to marketing company without consent or a BAA*). Investigators asked to see the practice BAAs which were non-existent. When brought to the owner's attention, the owner argued the investigators were being picky and should be happy the practice had any kind of compliance since HIPAA was a huge “*pain in the a..*”



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HIPAA Landmine #3

What was wrong

! HIPAA has been amended fourteen times since it was implemented in 2004 – **biggest one coming in 2022/3**

! BAAs are mandatory

- ⊗ OCR considers **not up to date, not in compliance**
- ⊗ HIPAA has very specific rules about marketing and use of patient information
- ⊗ **NEVER, EVER, EVER argue and disrespect officers of the Office of Inspector General (federal police!)...geez**

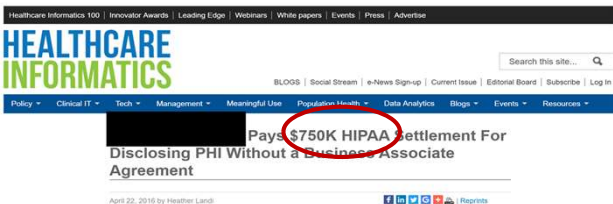


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HIPAA Landmine #3

What was the result



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HIPAA Landmine #4

Incomplete Security Risk Assessment

HIPAA complaint filed against doctor by a former employee

NOTE: 77% of compliance complaints are filed by unhappy patients or unhappy employees!

On Inspector General asks for practice's standard set of required HIPAA documents – Privacy policies, security policies, business associate agreements, notice of privacy practice and evidence of staff training.



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HIPAA Landmine #4

What was wrong

- X Complaint was TOTALLY bogus – act of a disgruntled, now former employee, **But...**
- X Doctor's security risk assessment contained ONLY an evaluation of his computer network performed by a HIPAA consultant. **This is only ONE of the THREE required components of a SRA and a common issue with some "HIPAA companies".**



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HIPAA Landmine #4

What was the result

- ☹ Doctor received the minimum HIPAA fine of \$10,000 and was required to produce a compliant SRA within 60 days
- ☹ Doctor asked his HIPAA company to pay the fine and they refused. Unknown outcome from that dispute.
- ☹ Doctor changed HIPAA compliance company



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HIPAA Landmine #5

Undocumented Staff Training

During random inspection, HIPAA investigator asks for standard material including documentation of staff training. The doctor reports all the staff are trained and shows them the training program they use. Investigators comment on the nice training program but again ask for documentation the staff completed the training. The doctor had no documentation logs.



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HIPAA Landmine #5

What was wrong

- ✓ There is an extensive list of things you must do and keep current to remain in compliance with this complex program. DOCUMENTED evidence of staff training is one of them
- ✓ Staff training must be completed within 60 days of hire and staff must be retrained if practice or Federal policies substantially change. **BUT recommendation is...**



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HIPAA Landmine #5

What was the result

Despite being 99% compliant with all HIPAA regulations, doctor was issued the \$10,000 minimum HIPAA fine and required to produce documentation of staff training within 30 days.



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HIPAA Landmine #6

Failure to disclose ransom attack



network on Monday morning
THIS IS WHAT THE OM
SAW THAT MONDAY
MORNING. THIS IS A
VERY BAD WAY TO START
THE WEEK!
against the doctor.



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HIPAA Landmine #6

Ransom

How prevalent? One ransom attack every **14 seconds**

How to protect?

1. Doctor and staff training on recognizing **spam email attachments**
2. **Staff access to internet limited** to only sites necessary to do their job
3. Consider **cyber insurance**
4. **Encrypted EMR** and ALL other data (scan and shred!)
5. Encrypted, preferably **cloud back up**

**Have 4 & 5 in place – do NOT negotiate with cyber criminals.
If not, you have a HUGE problem on your hands!**



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HIPAA Landmine #6

What was wrong – besides EVERYTHING

- X HIPAA requires “reasonable attempts” to protect privacy but says anything **less than encryption** of data is not considered reasonable
- X HHS states that anything less than **encrypted CLOUD backups** would likely be considered less than reasonable. Back ups to local drives taken out of the office are specifically cited as a common cause of privacy breach.
- X Whoever is in charge of HIPAA compliance in this office (turns out was OM!) TOTALLY dropped the ball on backup



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HIPAA Landmine #6

What was the result

- ⊗ Practice paid \$15K to the cybercriminals only to get a database back that was 100% corrupt – **all data lost**
- ⊗ All backup data from the **past six months lost**
- ⊗ Ongoing OIG investigation – Similar 2017 UNREPORTED breach situation in a four-doctor pediatric office resulted in a fine in excess of **\$1 MILLION.....cash, check or credit card**. On appeal.
- ⊗ **HUGE ISSUE – doctor failed to properly report the breach to HHS**



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HIPAA Landmine – The Worst

Father has his hot new girlfriend bring kids in for eye exams to doctor in small rural community. The girlfriend signs all new patient forms including ANPP – tells office the ex-wife has VSP and is responsible for payment. Doctor sees the kids who both need new glasses. Office processes VSP and sends mother bill for balance.

Mother calls office in a rage.



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HIPAA Landmine – The Worst

What was wrong

Girlfriend had no rights regarding health care decisions for the children



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HIPAA Landmine – The Worst

What was the result

- ⊗ Mother filed HIPAA privacy breach against the doctor – still pending
- ⊗ **Mother filed child molestation charges against the doctor** – charges eventually dropped
- ⊗ Local newspaper publishes the small town doctor’s unfortunate story - **ouch**

COULD THIS HAVE BEEN AVOIDED?



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HR: Let's start with this...

Biden Time: Not much for employers to cheer about

[Constangy Brooks Smith & Prophete LLP](#)

USA January 29 2021

Under the Biden Administration, Turbulence Awaits Employers

[Shawe Rosenthal LLP](#)

USA January 29 2021



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HR Landmine #1

Reliance / belief in "at will"

Mary, a single, Latino, 48 year old mother of four children has worked at an office for six months. Business is slow so doctor decides to terminate Mary. When asked why she is fired, she is told no reason is required because of at-will doctrine. Mary files for unemployment but the employer protests stating Mary was late to work all the time and overall wasn't doing a good job. When asked for documentation, the employer said they didn't keep a paper trail of this because it could hurt Mary's likelihood of getting another job.



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HR Landmine #1

What was wrong (what WASN'T?)

- At will does **NOT** mean you can fire someone indiscriminately
- At will does **NOT** mean you can discriminate
- At will does **NOT** mean you can ignore disabilities
- At will does **NOT** mean employee cannot sue you for wrongful termination
- At will does **NOT** mean you can violate your HR policies
- At will does **NOT** mean the patient will not be eligible for unemployment benefits – ESPECIALLY IN THE PANDEMIC
- **UNHAPPY FORMER EMPLOYEES BECOME WHISTLEBLOWERS!!!**



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HR Landmine #1

What was the result

In progress...

- Mary has a "team" of attorneys who have filed wrongful termination lawsuit against employer
- In the past six months doctor has run up \$45,000 in legal fees
- Wrongful termination suits general reward in six figures
- Mary is on unemployment because doctor had no documentation to justify a termination with cause (may not have mattered in the era of pandemics!)



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The insidious deception that is "employment at will"
Employment and Labor Insider
Constangy Brooks Smith & Prophete LLP



HR Landmine #2

Paying employees on a salary basis

Mary is a "supervisor" for 10 years at a San Antonio optometry clinic (she was in charge of **all three** staff). She is paid a salary of \$49K a year. She is made to clock in and out like the other twelve employees but takes work home which she is led to believe is "part of her job". Mary talks to a friend who tells her she should talk to an attorney because she saw a billboard saying people shouldn't be paid a salary.



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HR Landmine #2

What was wrong

- ✓ Must pass salary test (>\$38K a year)
- X Must pass duties test
 - ? Can they buy equipment **without your approval**?
 - ? Can they borrow money **without your approval**?
 - ? Can they hire/fire **without your approval**?
 - ? Can they **come and go** pretty much whenever they want to?
 - ? Minimum **50%** of day spent on **EMPLOYEE MANAGEMENT**?
- **STATED NATIONAL FOCUS OF PRESIDENT BIDEN – "wage thieves"**



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HR Landmine #2

What was the result

- ⊗ EEOC determined Mary definitely not an exempt employee
- ⊗ Mary ask to submit unpaid overtime hours worked (**NO proof required - practice must prove she is lying**)
- ⊗ \$166K settlement – **attorneys got \$64K and Mary took home \$102K**

STRONG ADVICE: It is **EXCEPTIONALLY rare** for **ANY** employee of a small healthcare practice to qualify as an exempt / salaried employee.



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HR Landmine #3

Use of contract labor

In CA, four associate doctors are each paid \$500 per diem under a contract labor agreement. They have set schedules, set fees, set office protocols and all their services are billed by and collected by the practice. One of associate doctors attends a CE program where this is stated to be illegal. This doctor talks to the other four and they ask owner to change the way they are paid.



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HR Landmine #3

What was wrong

- Contract labor has VERY limited application - Only very short term fill-in work for professionals
- Otherwise, your contract labor employee must be able to
 - Set their own fees
 - Set their own schedule
 - Use their own "tools of the trade"
 - Independently bill and collect for their services
- Another "**wage thieves**" issue under Biden administration



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HR Landmine #3

What COULD THIS HAVE BEEN AVOIDED?

Washington is proposing the CA "ABC" rules be the NATIONAL standard

ABC

1. Free from ANY control by company
2. Work performed outside company's normal business
3. Contractor works in/for an established business



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HR Landmine #4

NEVER Trust Social Media

Mary applies for administrative position for Austin, Tx firm ABC. They tell her she is the person for them and they will get back on Monday with details of offer. Over the weekend the HR Manager trolls Facebook and finds recent pictures of Mary on the beach with friends spouting a tiny bikini. On Monday, ABC contacts Mary to tell her they will not be hiring her and evidence supports she may not represent the image they are looking for.



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HR Landmine #4

What was wrong

- X Flatly stated as illegal by EEOC – you cannot make employee decisions (hiring, advancement, firing) based on social media posts
- X **Social media posts NOT considered proof of anything – even if posted by the individual**



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HR Landmine #4

What was the result

- ⊗ Mary files discrimination lawsuit against ABC – ABC fights all the way to the courts
- ⊗ Court rules in favor of Mary – to the tune of \$712,000 plus all attorney fees. Mary doesn't have to worry about any job for a while.
- ⊗ ABC appeals – ABC loses appeal

If you are still silly enough to do this at least use your brain and don't reveal why you made a decision!!!



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HR Landmine #5

Harassment

Mary tells Jane (OM) Ted the optician keeps asking her out, tells her she's sexy, he can't keep his mind off her. Mary says she is in a happy relationship but Ted says something "on the side" fine with him. Jane tells the doctor who tells Ted to "shape up". Ted stops talking to Mary but starts leaving sticky notes cut into the shape of a heart (or "other" drawings) on her monitor. Jane tells the doctor Ted is still acting up but the doctor blows it off saying Ted's flirting is now harmless and the practice "needs" Ted – he sells A LOT of glasses. Jane files a sexual harassment claim against the doctor.



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HR Landmine #5

What was wrong

- It is NOT the same world – this issue is on steroids!
 - There is almost **NO** tolerance - No touching, hugging, invading personal space, making off-color jokes, dating / attempting to date employees, overly complimenting employee appearance, staring – **no nothin!**
 - Anyone can blow the whistle – not just the one harassed
- NOTE: Turns out this isn't Ted's first rodeo!**



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HR Landmine #5

What was the result

EEOC took little time finding the doctor guilty of discrimination against Mary based on sexual harassment

- Compensatory damages
- Punitive damages
- Mary's legal fees
- Amount undisclosed but doctor closed office (these cases usually settle for multiple six figures. **What about insurance?**)

What should have happened?



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HR Landmine #6

My staff loves me, they would never hurt me

Jane has been OM at a rural, lucrative practice for many years. The doctor lets Jane run everything, including the money. Jane prepares the bank statement, makes deposits, reconciles the bank statement and handles all account payables. The doctor's accountant questions a steady decrease in **net** revenue over several years. A forensic analysis shows Jane set up a separate bank account under the doctor's name and has embezzled over \$290,000 over three years.



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HR Landmine #6

What was wrong

- X 75% of employees have stolen at least once from their employer*
- X Most theft is between \$10-499K*
- X 37% of theft committed by management personnel*
- X Most common thief is most important person in practice*
- X **Embezzlement most common when things are going great**
- X NO ONE should have end to end control of finances

*Association of Certified Fraud Examiners



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HR Landmine #6

What the doctor did NOT know

Jane had gone through an ugly divorce four years ago and started dating a man who turned out to be a crackhead gambler. She was stealing money to support her rebound love life.

**EMPLOYEES TYPICALLY DO LOVE US....
THEN LIFE CAN HAPPEN**



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HR Landmine #6

What was the result

Jane was charged with first-degree felony (*under \$300K is second degree but she stole Federal money – Medicare checks*). She got off light at 5 years in prison (*maximum is 99 years*) and ordered restitution to doctor set at \$50 a month once her prison sentence over (*good luck*).

Doctor essentially waived bye-bye to \$290K



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Hazard Landmine #1

More “reckless indifference”

Employee slips on step-stool putting up supplies. Continues work in pain but ends up at emergency care center later that night. Nurse starts discussing how they see a lot of ladder injuries from offices without OSHA ladder policies. Employee asks what OSHA is – nurse advises employee to contact OSHA and let them know she was hurt on the job. Employee talks to HR Manager the next morning who tells her that small offices like theirs are exempt from OSHA regulation.



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Hazard Landmine #1

What was wrong

- ✓ NO business of any kind in the US is exempt from OSHA
- ✓ OSHA compliance is a requirement of medical payers **AND VSP and EyeMed**
- ✓ OSHA requires extensive WRITTEN policies designed to protect employees and patrons of businesses

NOTE: OSHA is likely the most powerful regulatory agency in the US government



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Hazard Landmine #1

What was the result

Doctor got off easy!!!

- ☹ Fined \$12,500 for failure to have formal OSHA compliance
- ☹ Additional fine of \$10,000 for failure to provide OSHA staff training
- ☹ Required to provide evidence of OSHA compliance within 30 days or face business closure



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Hazard Landmine #1

SPECIAL NOTE

Under the new Administration, President Biden has taken the following actions:

- ☹ New term for those not in compliance with OSHA – **“Bad Actors”**
- ☹ New reckless indifference fines up to **\$500K**
- ☹ Public internet **shaming site** for violators



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Hazard Landmine #4

OSHA applies to protecting patients – so my employees don't count

Mary is billing person for large rural practice that has overgrown the facility. With no more room, the doctor elects to store cleaning products in Mary's office. Mary is concerned about the toxins from these chemicals but the doctor tells her this is nonsense. Mary persists and the doctor recommends she consider working from home – Mary has a list of reasons this could not work. Doctor again states the chemicals are not dangerous and the office is OSHA compliant. Mary disagrees.



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Hazard Landmine #4

What was wrong

- OSHA's #1 stated purpose is employee protection...not patient
- OSHA considers almost all chemicals are dangerous – even Windex
- The doctor did not have chemical lists or SDSs on file – he was NOT close to OSHA compliant
- The “proposed accommodation” was not possible as Mary's husband already works from home and there is no where for her to work



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Hazard Landmine #4

What was the result

- ⊗ Mary called the OSHA Hotline she found on Google and inquired about the situation – a OSHA inspector arrived within 30 days
- ⊗ First person interviewed was Mary...the employee that counted!
- ⊗ Doctor found out of compliance on 13 OSHA policies
- ⊗ Doctor fined \$128,412 and had to demonstrate complete OSHA compliance within 30 days
- ⊗ Mary got a new office!!

FYI: Mary is COMPLETELY protected against retaliation of any kind from the doctor. Violating this can be a felony offense.



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Coding Landmine #1

“I'm getting paid”

Large group practice does a ton of vision therapy. They pre-certify all claim submissions to the medical payer and are “getting paid” for over three years – despite the fact the provider manual does not list vision therapy as a covered expense. Life is good...



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Coding Landmine #1

What was wrong

- X Payers issue a list of covered services and fees associated with those services – **THAT** is what they cover
- X Unless you have a letter from the Medical Director stating something not specifically cited as covered IS a covered expense, bill the patient
- X Not on list and no letter, payer can ask for every dime back – despite ANY confirmed pre-certification – WHY?

“Pre-certification” does **NOT** mean you are being guaranteed payment for the service. It simply means they will review the claim submission for consideration. **Sorry....**



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Coding Landmine #1

What was the result

- ⊗ Payer asked for return of **\$667K** for “non-medically necessary” services
- ⊗ When asked to explain why they were being paid after precertification on every claim, payer stated **upon review**:
 - ⊗ Service was not in approved list in provider manual
 - ⊗ Patient brochure stated vision therapy services were not covered
- ⊗ Practice hired coding expert to fight decision – ultimate repayment reduced to undisclosed amount + fees for expert help



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Coding Landmine #2

More "I'm getting paid"

Dr. Joe is told by a colleague he can bill additional fees on Medicaid glasses for polycarbonate lenses. "I'm getting paid" despite the fact no Medicaid policy in his state exists on this. Dr. Joe does this and tells all his friends "I'm getting paid". They tell their friends. Everyone is "getting paid" for eight years. Life is good!!

WHY MORE? Because the issue of coding mis-information, most distributed on blogs, is so prevalent it is likely one of the primary reasons for audit repayment and resultant fines



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Coding Landmine #2

What was wrong

- X See prior landmine
- X Unless the service is stated to be a covered service, consider it is NOT COVERED
- X We see this with
 - X Modifier mis-information (covered later)
 - X Billing medical plans for screening services under medical codes
 - X Creative billing practices (also can be referred to as "fraud")



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Coding Landmine #2

What was the result

- ⊗ Medicaid conducts a focused audit of over 240 offices and asks for **\$1.62 MILLION** back...some offices forced to pay back six figures
- ⊗ Every appeal was found to be without merit



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Coding Landmine #3

Reliance on "Experts"

Dr. Joe attends a CE conference on billing and coding "*the right way*" presented by a coding "expert". Part of the presentation stated that Medicare software is not very sophisticated and you can attach a -25 modifier to any line item on the claim form and it will override any payment policy or edit. Dr. Joe implements this creative information for the next 18 months amassing an increase in Medicare fees of 310%. Life is good...



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Coding Landmine #3

What was wrong

- X "Experts"
 - X Because I'm entertaining
 - X Because I am Medical Director for an instrument company
 - X Because I do it and "I'm getting paid"
 - X *Because everyone on a blog is an EXPERT*
- X **This is outright fraud with intent – a potential felony conviction**



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Coding Landmine #3

What was the result

- ⊗ Focused audit resulted in payback of **\$73,246**
- ⊗ Dr. Joe appealed but was denied. Consulting attorney told Dr. Joe to pay the money and quietly go away as he got off without what could have been felony charges for fraud with intent
- ⊗ Coding consultant advised Dr. Joe to ask the "coding expert" who gave him the great advice to pay the money back for him



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Coding Landmine #4

Mis-Use of Comprehensive Ophthalmologic code

Dr. Joe considers every patient visit requires a full examination, despite the reason for the visit. That's the way he learned it in optometry school. Every eye examination is billed 92004 or 92014. Dr. Joe starts doing more medical care and considers all these visits are comprehensive as well despite the reason the patient comes in. Dr. Joe gets paid on all his claims. Life is good.



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Coding Landmine #4

What was wrong

- X Use of 92004/14 requires every service in the code description be medically necessary based on the chief complaint (reason for visit) – explained next slide
- X Violated one of the basic tenets of reimbursement – **THE LEVEL OF MEDICALLY NECESSARY CARE PROVIDED IS BASED ON THE REASON FOR THE VISIT, NOT WHAT KIND OF EXAM THE DOCTOR WANTS TO DO**



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LET'S COMPARE

Potential complications from DM

Requires?

- General evaluation of the complete visual system **Y**
- A medical history **Y**
- General medical observation **Y**
- Examination of external eye and adnexa **Y**
- Ophthalmoscopic examination (usually includes dilation) **Y**
- Gross visual fields **Y**
- Basic sensorimotor exam **Y**
- Always includes initiation of diagnostic and treatment programs **Y**

My eyes feel dry

Requires?

- General evaluation of the complete visual system **N**
- A medical history **Y**
- General medical observation **Y**
- Examination of external eye and adnexa **Y**
- Ophthalmoscopic examination (usually includes dilation) **N**
- Gross visual fields **N**
- Basic sensorimotor exam **N**
- Always includes initiation of diagnostic and treatment programs **Y**



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Coding Landmine #4

What was the result

- ⊗ This was/is a “warning shot” – some of you may have received something like this
- ⊗ Despite the “warning” doctor persisted
- ⊗ Ten months later received result of 100 chart focused audit with a 55% denial rate asking for return of **\$7,095**
- ⊗ Two weeks ago received notification of a 100 encounter general audit

RELI Group
7123 Ashboulder Drive, Suite 100
Winchester Mill, MD 21154

March 31, 2021



Dear Medicare Provider:

The Centers for Medicare & Medicaid Services (CMS) strives to protect the Medicare Trust Fund and effectively manage Medicare resources. To support these goals, CMS has contracted with the RELI Group to develop the Comprehensive Billing Report (CBBR) and to report providers with its use.

Table 3: Percentage of Comprehensive Eye Examinations

Numerator	Denominator	Year (Range)	Year State Percent	Comparison with Year State	National Percent	Comparison with National
344	401	81.50%	88.80%	Higher	69.4%	Higher

Table 4: Average Allowed Amount per Visit

Numerator	Denominator	Year Average	Year State Average	Comparison with Year State	National Average	Comparison with National
\$55,923	401	\$139.46	\$114.40	Significantly Higher	\$113.79	Significantly Higher



CBBR # CBBR2101

Comprehensive Eye Examination

NPI #:

Fac #:

Email:



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ADDITIONAL NOTE

Mis-use of the comprehensive ophthalmologic codes is a major concern of CMS with a contract audit group specifically hired to investigate optometry billing

Its use is also pretty silly...

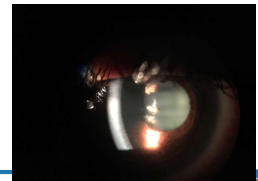
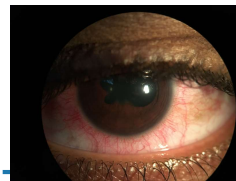
The new EM coding system is pretty easy to use. PCS (and others) evaluations conclude use of EM codes instead of ophthalmologic codes can result in increase revenues of **\$35-55,000** for a practice seeing 1000 medical encounters a year



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Example from insanity site (aka blog)

New, female patient presents with red eyes – OU progressive (10 days) mild pain, light sensitivity, decreased vision (20/80). Examination reveals injection, cells with elevated IOP 24mmHg (????). **Dx: Acute iritis.** Administers two drops **Lumigan** and asks patient to return in the afternoon to see if pressure has gone down so further treatment can be initiated.



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Let's look at the Dx and Tx

Dx

Stated Dx: H20.0 Acute and subacute iridocyclitis

Correct Dx: H44.113 Panuveitis, bilateral

Tx

Acute iritis: Aggressive steroids, cycloplegia, monitor IOP

Panuveitis:

- **FAR MORE** aggressive steroids – common addition of oral (1mg QD with taper- often 3 months) or **intravitreal**
- Common topical (sometimes surgical) IOP control
- Address systemic issue

NEW TRUTH!

FYI: https://www.medpagetoday.com/rheumatology/backpain/94336?xid=nl_mpt_DHE_2021-09-03&eun=g1403037d0r&utm_source=Salithru&utm_medium=email&utm_campaign=Daily%20Headlines%20Top%20Cat%20HeC%20%202021-09-03&utm_term=NL_Daily_DHE_dual-gmail-definition



79

Forget all that..the question on “expert” site was:

“Do I bill a 92004 for the visit in the morning and a 92014 for the afternoon visit?”

REALLY???

15 “EXPERTS” ALL RESPONDED THIS WOULD BE THE CORRECT WAY TO BILL THE ENCOUNTERS



80



Coding Landmine #5

-59 Modifier

Dr. Joe asks blog ways to bill fundus photos and OCTs on the same visit. He was told in a lecture you cannot. The “experts” on the blog advised **“sure, just use different diagnoses” “do it every time – you’ll get paid”** and **“stop listening to people trying to say you can’t make money”**. Dr. Joe starts billing both using the -59 modifier. One year later he receives notification of a focused audit.



81



Coding Landmine #5

What was wrong

- ✗ There is a NCCI edit prohibiting billing photos and OCT together unless the information is **“vital to the care of the patient as demonstrated in the medical record”**. The edit clearly states attempts to break the edit with modifiers **will result in probable medical review** (audit)
- ✗ **WHY WHY WHY????** This is not grey AT ALL and is not even necessary!!!



82



Coding Landmine #5

What was the result

Just happened – but here is what we know

- ☹ Every use of the -59 modifier to break this edit will be denied in the audit
- ☹ Most auditors will end up denying the photo AND OCT and some deny the whole claim
- ☹ Everything denied will be paid back
- ☹ All appeal attempts will not overturn audit



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Coding Landmine #6

“Panel” Testing

Dr. Joe reads in a blog post – set up a list of tests his tech is delegated to perform whenever a patient comes in with certain complaints – like flashes/floaters, Hx AMD, patient has glaucoma, etc. The experts recommend bill everything on the list and let the payer decide what they will pay for then write off the rest. Dr. Joe implements these new protocols and is getting paid...very well. Life is good...



84

**Coding Landmine #6****What was wrong**

- X Can you delegate care in your state?
- X Joe violated the CMS Confirmatory Testing Rule
- X **Joe has not established medical necessity violating the False Claims Act**
- X Joe has violated rules of the Anti-Kickback Statute REQUIRING payment

85

**Coding Landmine #6****What was the result****Under current investigation – what all could happen?**

- ⊗ LOTS of money paid back under Confirmatory Testing
- ⊗ Anything left paid back by not establishing medical necessity
- ⊗ Fines for not charging patients for tests that were determined to be medically necessary
- ⊗ Fines under AKS for potential inducement

86

**Coding Landmine #7****Billing services for non-credentialed providers**

Dr. Joe has two associate doctors that have worked with him for three years. The two associate doctors are not credentialed under Medicaid but the practice sees a lot of Medicaid patients so Dr. Joe files all services the other doctors provide under Dr. Joe's NPI. He has researched this on numerous blogs and finds *everyone does things this way*.

87

**Coding Landmine #7****What was wrong**

Payers require that all doctors providing services under the plan be credentialed – including VSP and EyeMed. **PERIOD!**

Are there ways around this?

- ✓ Locum tenens – **only** Medicare, **only** if credentialed provider not available and **only** for 30 days
- ✓ Just do it for very short periods of time for a new doc – MAYBE
- ✓ Have your state association pass a law allowing it (*caveat...*)

88

**Coding Landmine #7****OTHERWISE...What was the result**

- ⊗ Dr. Joe has to pay back \$186,211 (three year back penalty rule) – he is appealing and may get that cut to one year....maybe
- ⊗ Dr. Joe has now received notification for two other general audits – a 100 chart audit from Medicare and a 200 chart audit from BCBS

89

**Coding Landmine #8**

♫ *Money for nothing* ♫ aka ♫ *Smugglers Blues* ♫
Added attraction...Who goes to jail here?

Dr Kim, Dr Joe's associate doctor, works hard and codes what he thinks is ethical and legally correct. Dr. Joe has testing "protocols" based on diagnoses. The billing person augments Dr. Kim's insurance submissions based on Dr. Joe's protocols. Dr. Kim has no idea this is happening until he is audited and receives a letter from Medicare asking for **over \$253K** in overpayments and references an ongoing investigation of fraud charges.

90



Coding Landmine #8

What was wrong

- X Panel testing is considered fraud...already discussed
- X Under the False Claims Act, the attending physician is responsible for the accuracy of claims submitted - in this case Dr. Kim
- X Others (Dr Joe AND the billing agent) can be held responsible if they materially participate in filing fraudulent claims



91



Coding Landmine #8

What was the result

- ⊗ Dr. Kim appealed stating he was unaware the claims were being changed. OIG response – “the attending physician is responsible for the accuracy of the claim”
- ⊗ Dr. Kim is awaiting decision on fraud charges
- ⊗ Dr. Joe is under investigation by the OIG
- ⊗ The billing agent is under investigation by the OIG (let’s talk about the Yates Decision)
- ⊗ Dr. Kim advised by counsel to take legal action against Dr. Joe



92

LET’S LEAVE CODING
WITH THE BEST EVER
FROM A WELL
KNOWN BLOG SITE

93

New patient came in for comprehensive medical examination. (?) She had no complaints (?). Stated in history she had occasional seizures and told technician she felt one coming on but wanted to continue with examination (?). Pre-test took a long time - patient wouldn’t focus and was having trouble understanding directions (?). Refraction took 20 minutes - patient said she just couldn’t concentrate. (?) We asked if she wanted to stop but she said she wanted to continue. Her words were slurring (?) but she said she had called her husband to come pick her up after exam. Went ahead and put dilating drops in (?) and when I came back to do internal patient was lying unconscious in husband’s lap on the floor. Husband said he had already called 911.



94

Get ready.....

The question:

Since I couldn’t complete the examination elements, how do I bill this?

From the insanity site: Expert opinions:

Bill 92004 – you can complete the examination when patient feels better

Bill 99203 today and 92014 when patient comes back in

Bill 99204 with diagnosis of seizures

Bill 92004 and complete on return but I don’t think I would have dilated a patient who was having a seizure

They went on and on and on.....



95



DME Landmine #1

Where is your Medicare glasses complaint form?

Dr. Joe is interrupted by the OM – she says a representative from CMS is at the front desk asking for information on the practice’s compliance with CMS policy on durable medical equipment. The OM has no idea what the person is talking about...neither does the doctor.

FYI...Dr Joe practices in small West Texas town - population 12,223



96



DME Landmine #1

What was wrong

- Non-compliance with rules that have been on the books for over 25 years!
- DME dispensers must have a file containing numerous documents that qualify them for participation
- DME suppliers must abide by numerous protocols and utilize several forms in DME dispensing
- **In 2019 optometry was listed as #1 most improperly paid DME supplier in Medicare. CMS has contracted with an outside company to audit optometry.**



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DME Landmine #1

What was the result?

Doctor has not received report from contract auditor yet. Stated fines for non-compliance start at \$2900 but additional statement that ***"evidence of non-compliance can result in removal as a Medicare/Medicaid provider"***.



98



Patient Disability Landmine

But I only speak Vietnamese

Mr. Nguyen's daughter schedules an appointment for him. She tells the receptionist Mary her father does not speak English and will require an interpreter. Mary states they can bring their own interpreter but Dr. Joe does not provide that. The daughter informs Mary Dr. Joe by law has to provide the interpreter but Mary says they should look for another doctor to see who may do that for them.



99



Patient Disability Landmine

What was wrong

Section 1557 of the Affordable Care Act mandates healthcare providers not discriminate against patients in almost EVERY way but specifically requires doctors provide accommodation (interpreters), ***at doctor's expense***, for "limited English proficiency – LEP"). Qualifications of the interpreter are **TOTALLY** at the discretion of the patient.



100



Patient Disability Landmine

What was the result

Mr. Nguyen seeks legal counsel for a discrimination claim against Dr. Joe. It's a short case...Mr. Nguyen is awarded \$47,450 (attorney took 40%). Dr. Joe thinks this is all stupid and not worried because his insurance will pay for this. The insurance does assist in legal proceedings (no assistance for the fine) but ultimately reminds Dr. Joe – as we said before - ***you cannot take out insurance against breaking the law.***



101

**Last...the
BIG ONE**



102

A future that is already here


The future is calling –
are you answering?



103

Let's start with some TRUTH!
(rare commodity these days – check out social media!)

If ODs don't stop thinking like doctors and start thinking like patients and businesspeople, the next decade is going to be very rough on their pocketbook!



104

Everyone has to stop thinking change is all doom and gloom and start realizing this is simply change –



NOTHING NEW!!!



105

Forces that will drive change?


- Doctors
- Pharmaceutical industry
- Healthcare payer system
- Government

106

Forces that WILL drive change

- Global disruption
- Consumer
 - *“Patient centric medicine”* – medicine will become more *“marketing mindful”*
- Technology



107


Will this work??? – Dr. Edlow's Manpower Study

By 2025, 700 total NEW optometric providers to see:

- 3.4 million more wellness exams
- 16.3 million more medical exams

That is about 3100 per OD
Current US average is 2100 per OD

Obviously **IMPOSSIBLE** – *unless every licensed optometrist ALSO increases their capacity by 1000 patients/year – that's about 5-6 EXTRA patients every day based on every OD working full 5 days a week*



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BOTTOM LINE...

If Dr. Edlow is anywhere close to accurate – every person in this room needs to find a way to see around 1000 more patients a year.

If that doesn't happen, *THE MARKET, THROUGH CHANGE*, will find a way to supply the need.



109

Will the “traditional eye exam” be viable in 2025?

Do you know your customer's wants or do you insist on providing what you want?

110

Let's get this over with first...

- When you ask AOA about online eye exams you get stories of inaccuracy, disfigurement and blindness
- When you ask the Academy of Ophthalmology, WebMD or other similar non-optometry sources of information [you get recommendations on the best online eye examinations](#)

WHY IS THAT?



111

Why Is Optometry In Trouble?

- Not adopting full force of technology
- Not MANAGING medical care instead of detecting and/or running tests and referring
- Continuing to play games with optical prescriptions (PD – really????)
- Still doing the same ole eye exam
- Abusive/fraudulent billing and coding
- Still wanting to argue about things like “diabetic eye exams”
- **NOT FOCUSING ON CHANGES IN HEALTHCARE SYSTEM AND CHANGING DEMANDS OF THE PUBLIC**



112



Until optometry starts to believe the public thinks these are ALL the same thing, the future is not so bright!



113

What will technology and change bring that NO ONE is going to stop?

114

The Future – NO ONE WILL STOP

- Increase in rules – massive compliance issues
- Significant increase in telehealth – INCLUDING TELE –EYE EXAMS!
- Technology – AI
- Easier access to and options for ophthalmic products
- Significant oversight if not the elimination of abusive billing
- WAY LESS “diabetic eye exams”



115

Fundus AI on steroids

Pegasus by Visulytix

ANOMALY	SENSITIVITY	SPECIFICITY
Grading DR (normal, mild, moderate, severe)	94%	94%
Performance by OMD/OD	86-89%	79-80%
Diabetic macular edema	94%	94%
Glaucoma	84%	95%
Performance of OMD/OD	81%	94%
Dry AMD	97%	85%
Wet AMD	96%	79%



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Virtual Capabilities

Available NOW

- Fundus AI – diabetes, glaucoma, AMD
- Binocular evaluation
- PD (really???)
- Visual fields
- Amsler grid
- Color vision

**WHAT IS YOUR
RESPONSE TO THIS?**

Available Very Soon

- Accurate acuity
- Photography – inside and out WITH AI analysis
- Refraction (sorry non-believers)
- OCT



117

Met the humanoids?



Meet Grace

Grace can

- Speak four languages
- Take temperature and a host of other bio readings
- Analyze diagnostic data and make recommendations for treatment
- Discuss therapy and treatment with patients
- Prescribe and conduct physical therapy
- Teach meditation
- Emotionally comfort patients
- Specifically designed to care for infectious disease patients

Grace:
The World's First Human-like Medical Nurse Assistant

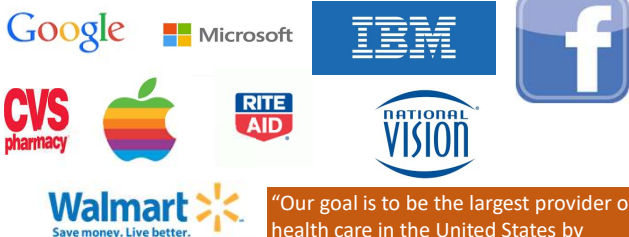
Grace: The World's First Human-like Medical Nurse Assistant



118

And AOA, AMA will stop this?

Don't underestimate WHO the army is and the SIZE of the army you are going up against – just a few of them

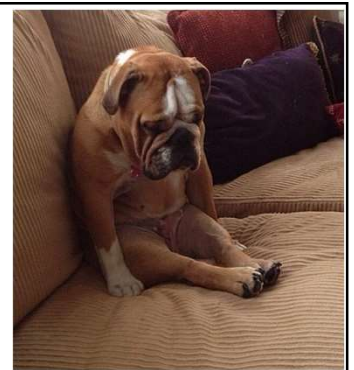


“Our goal is to be the largest provider of health care in the United States by 2025”

119

Did I just make you sad about the future of eye and health care?

**THEN YOU ARE STILL
THINKING LIKE AN
OPTOMETRIST!**



120

OPTOMETRY'S OPPORTUNITIES

BUT THEY WONT BE LOOKING FOR A TRADITIONAL EYE EXAM EXPERIENCE THAT LASTS HALF AN HOUR OR MORE FLIPPING DIALS THEN DISCUSSING LITTLE JIMMY'S MIRACULOUS SOCCER GOAL LAST SATURDAY

-OR-

AN OPTICIAN SITTING THEM IN A CHAIR AND SHOWING THEM TWO FRAMES AT A TIME TRYING TO CONVINCE THEM THEIR PROGRESSIVES ARE BETTER THAN EVERYONE ELSE AND THEIR FRAMES HOLD UP BETTER AND MAKE THEM LOOK YOUNGER THAN EVERYONE ELSE

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OPTOMETRY'S OPPORTUNITIES

AND - There Is More **MEDICAL** Care Than You Can Even Imagine!

- 70 million Boomers by 2030 – **BUT...**
- 2020 – 17% of US population diabetic – 36% PRE-diabetic (*Obesity sits at 43% - expected to hit 70% by 2025 – www.cdc.gov*)
- 21% increase in glaucoma
- 70% increase in legal blindness by 2025
- Prevalence of AMD through the roof
- *Bottom line – bad lifestyles combined with the toxification of our world will dramatically increase demand for care of chronic disease*

122

Profile of those likely to win

EMBRACE and USE change to their benefit
Understand their market
Understand their customer's needs and DESIRES
Incorporate new technology into their business
EXPAND their product offering

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IS IT TIME TO REDEFINE **WHAT OPTOMETRY DOES?**

IS IT TIME TO REDEFINE **WHAT AN EYE EXAM IS?**

IS IT TIME TO DEVELOP **"PATIENT CENTRIC"**
 MENTALITIES IN YOUR DISPENSARY?

IS TIME SLIPPING AWAY???

124

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**LET'S DO
Q/A!!**

**You can only get in
trouble for breaking the
law – and ignoring the
inevitability of change**

**Don't be
skeered...
Succeed and
sleep peacefully
with PCS!**

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