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NOTE: The following is quoted from The Washington Post (washingtonpost.com). It appeared as an article warning against the sales tactics used by some Lasik surgery centers, their practice of misleading advertising, and the bonus incentives given to employees to convince unwilling patients to have surgery.

REST ASSURED THE LEAR EYE CLINIC DOES NOT PRACTICE NOR CONDONE ANY OF THESE BEHAVIORS. You can be sure that at The Lear Eye Clinic, no one works on commission. No incentives are paid to our professionals. **YOUR** best interest comes first with our healthcare professionals!

Lasik Surgery Sales Tactics Raise Eyebrows... Patient Counselors Earn Bonuses for Each Customer

By Marc Borbely
Special to The Washington Post
Tuesday, September 4, 2001; Page A01

One of the largest national chains of laser eye surgery clinics pays sales commissions to at least some of its "patient counselors," who seek to **collect nonrefundable deposits from customers before they have been briefed on all possible risks of the procedure**, according to former employees, customers and company documents.

The Tysons Corner branch of **Laser Vision Institute (LVI)**, a 19-center chain, requires its counselors to close a deal with 75 percent of possible customers to qualify for bonuses, and the chain **bases commissions on how much the patient pays.**

The counselors -- who screen and brief all prospective customers -- are trained in standard retail sales techniques and encouraged to emphasize the benefits and defer questions about risks to trained medical personnel, whom patients generally see only after committing to the



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surgery.

LVI is not the only firm that rewards employees for closing deals and meeting sales goals for Lasik surgery, the most popular type of laser vision correction. Executives at most area laser eye centers, including the local offices of two other national chains -- **TLC and LasikPlus** -- say they either have offered or are considering employee bonuses linked to the center's financial performance.

LVI Chief Executive Max Musa defends his company's approach, saying patient counselors do not discuss surgical complications and risks in detail because they are not medically trained to do so. Musa also said the counselors do not pressure patients. The incentive system is simply designed to motivate counselors "to be more enthusiastic," Musa said.

In an interview, Musa initially said the company had dropped its commission-based system "sometime in February." When told during a subsequent conversation that The Washington Post had obtained documents showing the commission system was in place in August, he declined to comment further and did not return repeated phone calls.

Higher-pressure sales practices are becoming more common in the laser eye surgery market, which has grown during the past five years from an obscure ophthalmological specialty into a mainstream service. Since Lasik is an elective procedure, consumers must be convinced to have the surgery.

That has created a highly competitive marketplace, with numerous Lasik providers vying for customers with advertisements and other promotions focusing on benefits, price and technology.

But those and similar marketing practices have raised concerns among state and federal regulators and drawn criticism from ethicists and other medical authorities.

Richard Lee, the American Academy of Ophthalmology's secretary for practice management, said he worries that such tactics will undermine patients' trust in physicians. "It's the trust in that doctor to make recommendations that are in the best interest of the patient, not in the best interest of the doctor and his financial needs," he said. "We violate that when we begin to utilize these practices."

"Unfortunately, it's the business types of our world marketing something and using some of the techniques they've learned in sales to enhance sales," Lee said. "Medicine should be very different from that."

Ethicists say aggressive sales practices raise questions about consent, disclosure and a consumer's ability to make a fully informed decision, free from sales pressure, about the surgery's risks and benefits. Requiring a nonrefundable deposit before the full presentation of risks "undermines the whole notion of free, voluntary consent," said George Annas, chairman of the Health Law Department at the Boston University School of Public Health.

Lasik surgery involves slicing the outer layer of the cornea and using a special laser to reshape the middle layer, permitting the eye to focus better. Most Lasik patients have good outcomes and no serious complications. A minority suffer blurred or reduced vision either temporarily or permanently, and a rare few have had corneal perforations or have required corneal transplants.

There is no evidence that the quality of LVI's outcomes differs from the industry norm. The Washington area Better Business Bureau has only one complaint, about scheduling difficulties, against LVI. No cases against the chain have come to the attention of the Fairfax County consumer affairs office or the Virginia attorney general's office.

"I think basically the bottom line is the patient gets great patient care, excellent outcomes, and they get everything and more that they would get at a higher-priced facility," Musa said.

As a medical procedure heavily marketed to consumers, aspects of Lasik surgery fall within the jurisdiction of various national and local regulators and private medical groups. But no one agency addresses the practice as a whole.

The U.S. Food and Drug Administration has authority over medical devices, including the lasers used in Lasik surgery. But because the agency does not regulate medical practice, it has no authority over what doctors tell patients privately.

Medical advertising and marketing is overseen by the Federal Trade Commission and the FDA. The agencies require truthful disclosure about risks and uses of medical devices, and prohibit deceptive advertising.

American Medical Association ethical guidelines, which shape some states' medical board rules, address the actions of individual physicians rather than the companies employing them. Those guidelines say, among other things, that doctors may not place their financial interests ahead of patients' welfare, and must provide patients with accurate information about treatments so they can make their own choices.

Regulators have taken no action against LVI for its commission-based sales practices.

In March, the FDA sent two letters to LVI President Marco Musa questioning the company's claim on its Web site that "Nidek offers the only laser with the 'tri-arc' focusing system, which allows the surgeon to track eye movement during the procedure." The FDA said it was unaware such a focusing system was part of the laser and did not accept Musa's response that the "tri-arc" refers to the doctor, the laser beam and the laser pedal all linked together.

The FDA also cited the LVI Web site for failing to disclose risks and complications, as required whenever a particular laser's benefits are mentioned in marketing materials. Each statement questioned by the FDA was still on the company's Web site last week.

Agency spokeswoman Sharon Snyder said that if LVI does not make the changes, the company will receive another letter.

About 1,000 laser centers in the United States performed Lasik on 1.6 million eyes during the year that ended in March, with an annual revenue of more than \$2 billion, according to David Harmon, a laser eye surgery market analyst. Nine centers operate in the Washington metropolitan area. LVI, the fifth highest volume Lasik chain in the country, performed 3,484 procedures in its Tysons Corner office during the first seven months of the year, according to a company memo.

LVI's sales practices were described to The Post by former employees and substantiated by company documents, including a training manual, employee evaluation forms and corporate memos. The ex-employees spoke only on condition of anonymity, saying they had signed agreements not to discuss internal company matters. At least one of the former employees had been fired, while the others left for a range of reasons, including taking other jobs or dissatisfaction with LVI.

Laser Vision Institute is owned by three Musa brothers -- Max, the chief executive; Marco, the president; and Marc Andrea, the vice president. The Musas also own a national chain of optical centers called Eyeglass World.

Patient counselors in LVI's Virginia office are paid salaries of about \$40,000 a year, Max Musa said. **The incentives and bonuses generally add \$100 to \$200 a week and, according to one former counselor's records, sometimes more than \$300 a week.**

LVI advertises surgery for \$499 per eye, but the counselors receive higher commissions if patients do not qualify for the lowest fee or if they elect a more costly option. According to a memo detailing the company's "Patient Counselor Bonus Plan Effective 8/1/01," LVI counselors receive per-eye bonuses of \$1 for patients who pay \$499 an eye, \$2 for those who pay \$599, \$6 for those paying \$799, \$16 for \$999 and so on, up to \$40 for those who pay \$1,599. To be eligible for the bonuses, the memo states, counselors must "close," or collect deposits from, at least 75 percent of their patients.

An asterisk attached to the \$499 advertised price leads to small type saying "price may vary according to RX and astigmatism." Bonus sheets covering two months earlier this year show that 88 percent of one counselor's patients paid more than \$499 an eye. Most paid at least \$750 an eye.

Max Musa said that **even customers who qualify for the \$499 price pay more, because the low price requires patients to pay \$250 each for any necessary enhancements, or follow-up surgeries.**

Musa said the ad lists a single price to prevent consumer confusion.

Under LVI policy described in a company memo and by the former employees, **counselors tell patients they must make \$300 deposits to book an appointment with a doctor.** The deposit is not refundable, unless the patient is medically disqualified from having the surgery (in which case they get \$200 back). An April 27, 2001, memo stated: "There are no refunds for any other reasons (i.e., changed mind, fear, financial, etc.)."

Max Musa said the no-refund policy is justified because the patient has received an eye exam and has reserved valuable time on a surgeon's

busy schedule.

To ensure that patient counselors are performing adequately, LVI sends undercover evaluators acting as prospective patients. One question on the evaluation form, worth 35 of a possible 58 points, asks, "After giving the counselor a reason why you were not committed to leaving a deposit today, did they make a **STRONG ATTEMPT** to get you to change your mind? How many attempts did the counselor make to have you leave a deposit?"

Some former LVI counselors said they sometimes used a technique common in the selling of cars and appliances but nearly unheard of in the selling of medical services: the **faked meeting with the manager**.

"You go into consultation and you try to hit a high [price] mark, because of course your commission is going to be bigger," a former counselor said. "If they look like they're going to leave or they begin to get up . . . you're supposed to say, 'LVI doesn't want money to be a barrier for you.'"

"I'd walk out the door supposedly talking to the manager or calling the corporate office to see what I could do for them," she said. Then she would step outside, walk down the hall to chat with a friend or go to the restroom and return to the customer saying she had been authorized to offer a lower price, or a package including a longer period of free enhancements, because of the patient's special circumstances.

Max Musa said the flexibility to lower prices allows the company to be competitive. "We try and be competitive with other centers. So if a patient says they can get the same prescription done for a different price at another center, then the manager has the ability to lower the price if need be."

But faked meetings with managers are not permitted, Musa said.

Bonnie Paladino, 38, a homemaker from Alexandria, made an appointment with LVI after seeing a newspaper ad promoting the \$499 price. During her consultation, she learned she did not qualify for that price. She was told her prescription would require a special type of surgical equipment, and she would have to pay about \$1,000 an eye.

"I just thought that was a big swindling game," Paladino said, and she

was ready to walk out. But her counselor said she would check with her manager to see whether she could lower the price. She came back a minute or two later, Paladino said, and asked what price would be acceptable. Paladino said \$700 an eye. The counselor left, came back and said that would be fine.

"I didn't really feel swindled by the time I got my price down so far," Paladino said. Paladino went through with the surgery and said her results were excellent. She is recommending the center to her mother.

The company and its president have a history with regulators.

The Musa brothers' Eyeglass World last year settled allegations by the state of Florida charging the firm with unlawful marketing practices, including bait-and-switch advertising, intentionally misquoting prices over the telephone, inadequately alerting customers to its no-refund policy and selling outdated, used and nonsterile contact lenses. Eyeglass World, while admitting no wrongdoing, agreed to pay \$500,000 to cover the cost of the state's investigations, pay consumers restitution and implement a corporate ethics program.

The national Council of Better Business Bureaus currently gives an "unsatisfactory" rating to 16 Eyeglass World offices for not responding to customer complaints and a "satisfactory" rating to six offices.

Marco Musa, LVI's president, gave up his apprentice optician's license in 1989, after being accused by the Florida state optometry board of several charges, including dispensing contact lenses without a prescription and leading customers to believe he was a full-fledged optician.

When Elizabeth Goldsby, who is an experienced saleswoman and has trained cable TV salespeople, visited the LVI center at Tysons Corner for her free consultation, she got an uncomfortable feeling that the patient counselor was doing to Goldsby what Goldsby had spent much of her career doing to others. The counselor seemed over-eager to get Goldsby to sign up, suggesting a commission hung in the balance.

"A medical procedure with my eyes is not a product that should be commissioned," said Goldsby, 41.

"I got a general feeling that I didn't quite trust it, and that really was the

bottom line."

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[emphasis added]

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