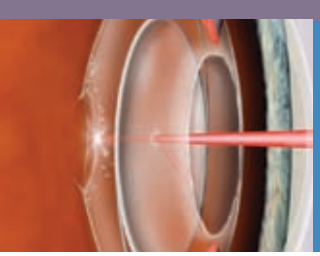

Closed Claim Study

Conflicting Consent Forms Force A Settlement In Case of Hypopigmentation

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ALLEGATION

Facial laser resurfacing performed too soon after Accutane use, lack of informed consent, and alteration of consent forms.

DISPOSITION

The case settled for $800,000.

Case Summary

An OMIC policyholder recommended full facial laser resurfacing on a 45-year-old female patient for treatment of sun damage and facial rhytids. The patient had stopped using Accutane nine months earlier and was counseled during a preoperative visit about the risk of redness and scarring. Since the patient managed the building where the ophthalmologist's office was located, some discussions regarding the procedure took place informally in passing. The patient signed a consent form in the insured's office prior to the procedure; she also signed a consent form at the surgery center on the day of the procedure.

Postoperatively, the patient demonstrated early reepithelialization; however, she was anxious about what she felt was prolonged healing. The patient self-referred to a plastic surgeon, who diagnosed a deep partial-thickness burn over her entire face where the laser surfacing was performed and instructed her to scrub her face and then apply Bacitracin. During a follow-up exam, the ophthalmologist suspected a toxic reaction to the Bacitracin since the patient's skin was sloughing off. He debrided the skin, encouraged the patient to follow his instructions only, and informed her that she was now at a higher risk for scarring, delayed healing, and retraction. Poor epithelialization continued. Despite the ophthalmologist's warning, the patient continued to consult with dermatologists and plastic surgeons, one of whom opined that the patient's use of Accutane nine months prior to facial laser resurfacing had resulted in fewer sebaceous glands and contributed to slower wound healing. At this point, the patient stopped treatment with the OMIC insured and filed a lawsuit, during which she produced evidence of severe, irreversible hypopigmentation.

Analysis

The plaintiff alleged that the ophthalmologist should have waited longer post-Accutane use to perform the facial laser resurfacing. If this had been the only allegation, it is quite possible that the insured's care could have been successfully defended at trial. Unfortunately, the primary issue in this case shifted to informed consent upon the plaintiff attorney's discovery of two separate consent forms on which different risks had been circled from the same list of complications and different additional risks had been handwritten in by the ophthalmologist. The insured's explanation of how this occurred seemed plausible: he took his office chart copy of the form with the patient's name, procedure, signature, and date to the surgery center and used it during the discussion he had again with the patient that day. Following the procedure, the surgery center approached him and asked him to fill out the center's copy of the consent form, which he did without consulting the copy that was in his records. The plaintiff attorney alleged that the insured wrote in the risk of severe hypopigmentation after the patient's difficulties began in postoperative recovery and then falsely entered the date. These allegations of fraudulent alteration would have been difficult to defend and could have exposed the insured to a verdict exceeding his policy limits. For these reasons, the insured requested that OMIC settle the case on his behalf.

Risk Management Principles

Whether treating employees, business acquaintances, or friends, physicians should follow normal office protocols for conducting preoperative assessments, obtaining informed consent, and monitoring the patient postoperatively. Document all discussions with a patient, even if they occur outside the office setting or by telephone. It is not sufficient to simply document that a consent discussion took place. The specific risks and complications discussed with the patient should be noted, dated, and signed. Particular attention should be paid to documenting complications for which the patient is at increased risk (e.g., your prior use of Accutane puts you at higher risk for delayed healing). Ideally, the patient should sign a procedure-specific consent form in the physician's office and be given a copy to review at home. Rather than fill out two forms, physicians should provide the hospital or surgery center with a copy of their signed office consent form as proof that the legal duty of obtaining informed consent has been fulfilled.