



Closed Claim Study

Outgoing Answering Machine Message Wins Case for Ophthalmologist

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ALLEGATION

Failure to give appropriate medical advice and proper emergency contact information post blepharoplasty.

DISPOSITION

Defense verdict.

Case Summary

An OMIC insured performed a bilateral lower lid blepharoplasty on a 57-year-old male patient on a Friday afternoon. Immediately following the procedure, the patient and his wife drove two hours from the insured's office to their vacation home. Per his normal routine, the insured telephoned the patient that evening. The insured documented in the chart that the patient had no complaints of pain or vision loss, however he did report some mild bleeding from the stitches around his right eye. The insured advised the patient to apply pressure and ice to stop the bleeding and to telephone him if the bleeding did not stop or if he experienced visual changes. The patient did not contact the insured on Saturday or Sunday. On the following Monday, the patient returned for his first postoperative appointment. He reported a recurrence of the bleed on Saturday night for which he had applied direct pressure and ice. There was no pain or swelling on Saturday, but by Sunday, the patient reported that his vision had become darker. At the time of his visit on Monday, the patient reported seeing several dark spots in the right visual field with light perception vision in the right eye. The insured suspected a branch artery retinal occlusion. He ordered a carotid Doppler, an echocardiogram, CBC, sedimentation rate, ANA, C-reactive protein, and a fasting lipid profile as well as referring the patient to a second ophthalmologist. Upon consultation, the diagnosis was a transient retinal artery occlusion with a somewhat enlarged branch retinal vein inferiorly. The patient received a complete vascular work-up and was followed by his primary care physician. The patient's visual acuity did not recover past 20/200 with a 50% visual field loss in the right eye.

Analysis

No claim was made challenging the medical necessity of the procedure or the insured's surgical technique. The claim centered solely

on the post-surgical care. Contrary to the insured's documentation of the Friday evening phone call, the patient and his wife testified that they informed the insured of significant pain, blurry vision, and excessive bleeding from the stitches around the right eye. The patient and his wife also testified that the symptoms were so severe that they were about to proceed to an emergency room on Friday evening before the insured called them and told them to apply direct pressure and ice to control the bleeding. Furthermore, the patient testified that they called the insured's office on Saturday and Sunday to report increased bleeding, pain, and visual loss, but that the insured's outgoing answering machine message did not give an emergency contact number.

There was no mention in the insured's documentation of the Friday night phone call of any significant pain, vision loss, or bleeding. Furthermore, the defense was able to produce the recorded outgoing phone message from that weekend, which did indeed give an emergency contact number. Although the patient and his wife remained adamant that, at the time of the incident nearly two years prior, this was not the case, the defense was able to successfully refute this allegation as the insured had saved his notes from a staff meeting prior to this incident, which included documentation that an emergency contact number was recorded on the outgoing phone message.

Risk Management Principles

When it's the patient's word versus the physician's word, prevailing at trial comes down to who the jury believes is the more credible witness. The likelihood of a defense verdict is greatly improved when there is solid documentation to back up the insured's story, no matter how insignificant such documentation might seem at the time. In this case, the Friday night phone conversation was well documented, which greatly helped the defense refute the patient's claims of severe and emergent symptoms. However, it was the notes taken during a staff meeting establishing the presence of an emergency contact number on an outgoing answering machine message that won the case. This documentation was essential to the defense as it discredited the patient's recollection of postoperative events.