Closed Claim Study

Preoperative, Intraoperative, and Postoperative Deficiencies in Care of LASIK Patient

By Ryan Bucsi, OMIC Senior Litigation Analyst

ALLEGATION

Failure to examine patient prior to surgery, lack of adequate informed consent, poor surgical technique, and lack of follow-up postoperatively.

DISPOSITION

Case settled for $450,000.

Case Summary

This patient was examined at a laser center by two technicians who informed him that he was a good candidate for LASIK. On the day of surgery, the patient declared that he was too anxious to have the procedure, but he was reassured by an optometrist and decided to proceed. The OMIC insured, whose first contact with this patient was just prior to surgery, claimed that the patient moved his head during surgery causing a thin flap with a central hole OD. The following day, the patient was evaluated but not by the insured. Two days postoperatively, the insured had his second and last contact with this patient when he performed a "refloat" procedure. The patient then sought care at another facility where he was diagnosed with decreased vision due to irregular astigmatism, corneal scarring, and some missing flap OD. The patient corrected to 20/20 OD with a contact lens, but he was unable to tolerate the contact lens. A corneal specialist was consulted and a corneal transplant was recommended, however the patient was unwilling to have the transplant and was left with extreme loss of vision, double vision, and blurriness OD.

Analysis

It was the plaintiff expert's opinion that the insured was not qualified to perform LASIK as he had only been doing so for two months prior to this incident. This expert testified that the patient should have had PRK due to a corneal thickness of less than 500 microns in both eyes. From the operative note, the plaintiff expert testified that the LASIK surgery was negligently performed because the insured pulled up on the microkeratome, therefore losing suction resulting in a buttonhole complication. Furthermore, the expert said it was inappropriate to remove any part of the flap as the insured did during the refloat procedure.

In addition to these criticisms, several key facts became evident during discovery that led to a decision to settle. There was no documentation in the surgery center records regarding who diagnosed the patient as a LASIK candidate, and the insured did not actually see the patient until the day of surgery. The insured claimed that he wrote a very detailed chart note about the patient jerking his head during the surgery when he examined the patient on postoperative day two. However, this note was never located and members of the surgery center maintained that no such note was written. Furthermore, the patient's wife had observed the original surgery and testified that her husband did not move his head suddenly during the procedure, which was consistent with the patient's testimony. The patient and his wife also testified that the insured told them postoperatively that he had pulled up on the microkeratome, lost suction, and a thin flap was created.

The insured was subsequently interviewed on local television where he expressed his displeasure with the microkeratome that was being used and claimed he was promised a different device, but the surgery center never delivered on this promise. The plaintiff used this interview to argue that the insured knew the surgery center was providing substandard care and should have protected the patient by fully informing him of known problems at the center. This interview and the lack of documentation essentially "sealed the deal" as far as settlement was concerned.

Risk Management Principles

Incomplete or missing documentation compromises the defense of any medical malpractice case, but there were other problems with this patient's care. First, the surgery center employees overrepresented the patient as a suitable candidate for LASIK. Technicians cannot determine a patient's surgical candidacy, only the surgeon can. If a patient will not be examined by the surgeon until the day of surgery, other steps should be taken to determine if the planned procedure is appropriate for the patient.

Second, the patient's concerns about surgery were never relayed to the insured by the optometrist. OMIC expects the surgeon to personally obtain informed consent and to personally address any concerns the patient has. If the surgeon is meeting a patient for the first time on the day of surgery, the consent document must be mailed to the patient beforehand (see OMIC's refractive surgery guidelines at www.omic.com).

Finally, during the course of active litigation, it is never a good idea to talk with anyone, especially the media, about an open and pending medical malpractice lawsuit.