Closed Claim Study

Dispute over Informed Consent with Elderly Patient

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ALLEGATION

Failure to provide adequate informed consent resulting in the loss of peripheral vision.

DISPOSITION

The case was tried and a defense verdict was returned.

Case Summary

At the time of this incident, the plaintiff was 80 years old with a significant history of macular degeneration OU with central vision loss OD. The insured's exam, which included a fluorescein angiography and an explanation of advanced macular degeneration, revealed that the patient had developed neovacularization OS causing a sudden drop in visual acuity from 20/70 to 20/200 with a large amount of submacular blood. The insured recommended evacuation of the blood to prevent the development of scar tissue and to preserve central vision. The insured documented in the patient's record that he "Advised vitrectomy with evacuation of subretinal blood and risk of subretinal blood involved." However, no procedure-specific consent form was obtained. Approximately two weeks after this examination, the insured performed a vitrectomy and membrane peeling OS to evacuate subretinal blood, which was a relatively new treatment at the time. Postoperatively, the patient had two retinal detachments OS and eventually lost both central and peripheral vision OS.

Analysis

The main dispute in this case was over informed consent. Both the plaintiff and her daughter, who was present during the insured's examination, claimed the ophthalmologist never told them that a postoperative retinal detachment could lead to peripheral vision loss. The insured adamantly denied the allegation and specifically recalled discussing these risks with the patient; however, his documentation outlining the risks of surgery was cursory. The defense was also compromised because the only consent form signed by the patient was a general surgical consent form in the hospital chart. Furthermore, the plaintiff was a sympathetic witness and her daughter verified her testimony. Defense counsel reported to OMIC that there was a 50% chance for a defense verdict in a somewhat conservative venue. There was little question that the retinal detachment occurred because surgery had been performed. No one disputed that if the insured had not performed the surgery, this patient's retina would not have detached and she would still have peripheral vision OS. However, without the surgery, the patient would have lost the chance to regain any useful central vision OS.

Just prior to trial, the plaintiff attorney, who was married to the plaintiff's daughter, withdrew as counsel. Defense counsel warned OMIC prior to trial that the new plaintiff attorney was more formidable and that if a jury returned a plaintiff verdict, it was likely to be significantly higher. During the trial, plaintiff counsel approached defense counsel to initiate settlement discussions. The insured remained confident in his care and continued to oppose any settlement. A 7–1 defense verdict was returned in favor of the insured. The defense was able to convince the jury that the informed consent process took place even though the insured's consent documentation was minimal. The defense was strengthened by the insured's extremely credible testimony coupled with the fact that surgery was the only hope for saving the patient's central vision. By the time this case went to trial, the plaintiff had some memory problems and was only able to recall the facts that supported her claims, which may have diminished her credibility. Following the jury verdict, OMIC defense counsel commented that it was very likely that this case would not have even been litigated if the OMIC insured had obtained a procedure-specific consent form from the patient.

Risk Management Principles

Informed consent is a process that requires more than simply obtaining the patient's signature on a consent form. Detailed documentation of the indication for the procedure as well as documentation of all of the risks, benefits, and alternatives to the surgery are vital components of the informed consent process. Documentation of the consequences for delaying or refusing treatment is also advisable. In this case, the insured should have discussed and clarified with the patient and her daughter the ultimate goal of surgery—preservation of central vision—and documented in the chart that they were all in agreement with that goal and understood why surgery was being performed. The insured should have required the patient to sign a procedure-specific consent form and documented the patient's understanding that this was a relatively new procedure.