Abandonment or Noncompliance?

Ryan Bucsi, OMIC Senior Litigation Analyst

Allegation

Failure to follow up with patient after a negligent injection of Kenalog.

Disposition

Defense verdict.

Case summary

A 56-year-old male patient with type II diabetes began to complain of decreased vision OD one month following uncomplicated cataract surgery OD. He was referred to an OMIC-insured retinal specialist, who diagnosed diabetic macular edema and proliferative diabetic retinopathy OD. The insured recommended an intravitreal injection of preservative-free triamcinolone acetate (Kenalog), which was performed without complication. The following day, the patient returned to the retinal specialist with hand motion vision, pain, pressure, and photophobia. The insured diagnosed pseudoendophthalmitis and prescribed antibiotics. Three days later, the patient returned to the insured with hand motion vision. The insured diagnosed pseudo versus infectious endophthalmitis and the patient elected to continue with antibiotics and steroid drops versus injection. Ten days later, the patient’s visual acuity improved to 20/100 OD; however, two weeks later, the patient called to report pain and redness OD. The insured asked the patient to come into a satellite office, but the patient declined due to the increased driving distance. The patient was advised of the risk of not being seen and an appointment was scheduled for two days later. On the following day, the patient telephoned the retinal specialist to report pain and increased blurring. The patient was advised to come into the satellite office, but once again refused citing the increased distance. When the patient finally did return to the office, visual acuity was hand motion OD and intraocular pressure was 66. The insured tapped the right eye on two occasions, which only temporarily decreased the pressure. When the patient declined a third tap, the insured referred the patient for a trabeculectomy, but this was delayed as the patient was admitted to the hospital for dehydration. Following this hospitalization, a trabeculectomy was performed which eventually resolved the increased pressure. A second retinal consultation by a non-OMIC insured was performed, which revealed hand motion vision, no detachment, vitreous opacity, and controlled pressure OD. A pars plana vitrectomy and lens removal were eventually performed which resolved the endophthalmitis, but the vision remained at hand motion.

Analysis

Plaintiff alleged that the Kenalog injection caused glaucoma and endophthalmitis resulting in hand motion vision OD. He also alleged that he was not aware of the off-label use of Kenalog and that the insured “abandoned” him. Plaintiff’s expert testified that the insured had a duty to travel to see the patient. The defense argued that the insured met the standard of care for informed consent by advising the patient of the risks and alternatives and that the patient signed a consent form for the Kenalog injection. The defense refuted the abandonment allegation and argued contributory negligence by the patient when he declined to drive to a satellite office, even though it was no more than 27 additional miles from where he was regularly seen. The defense expert testified at trial that the patient’s noncompliance played a definite role in his outcome. The defense also noted that post-injection, steroid-induced glaucoma and endophthalmitis are known side effects of intravitreal Kenalog injections. Although the discussion about the off-label use of Kenalog was not documented in the patient’s chart, during deposition the office technician explained that the insured “always” explained to patients when drugs were used off-label. The plaintiff demanded $750,000 to settle, but the insured and OMIC agreed that the case was defensible. After a three-day trial and 90 minutes of deliberation, the jury returned with a defense verdict.

Risk management principles

To prove abandonment, the plaintiff must show that there was an established physician-patient relationship and that care was withdrawn without adequate warning. OMIC is not aware of any legal duty during this relationship for a physician to go to a patient’s home, nursing home, or, as in this case, another office. Patients have a legal right to refuse care. On the other hand, physicians have a legal duty to explain the consequences of refused care, which the insured did. OMIC recommends that physicians inform patients of off-label use, especially if the treatment consists primarily of an off-label medication, as in this case (see sample consent form at http://www.omic.com/informed-consent-for-off-label-use-of-a-drug-or-device/).