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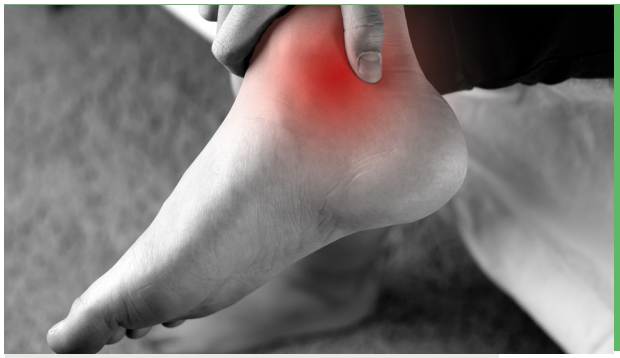

CASE **CLOSED**

SUMMARY: The insured was sued when the patient developed a ruptured Achilles tendon following a left endoscopic gastrocnemius recession and endoscopic plantar fasciotomy with microtenotomy coblation.

The Patient and Condition

The patient was a 66-year-old retired male. He was 6'5" and weighed over 350 pounds. His medical history included hypertension, heart problems, sciatica, obstructive sleep apnea, depression, and diabetes.

The patient presented to the insured with complaints of a 30-year history of bilateral heel pain which he stated had become worse in the previous 30 days. He reported that he had tried icing, stretching, ibuprofen, orthotics, and OTC inserts with only mild short-term relief.

The Treatment

The insured diagnosed plantar fasciitis/bursitis and ankle equinus. Conservative treatment consisting of anti-inflammatory medications, supports, physical therapy, and a steroid injection was initiated. When the patient failed to respond sufficiently to three months of conservative treatment, the insured discussed surgery with the patient. The patient agreed and an endoscopic gastrocnemius recession, endoscopic plantar fasciotomy, and Topaz treatment of the plantar fascia were performed a month later.

The patient did well in the initial post-operative period. At six weeks post-op, the patient reported minimal and greatly improved discomfort to the plantar central heel that was only present with increased activity. The insured referred the patient for physical therapy.

At four months post-op, the patient reported he was doing well and had minimal discomfort which he described as tightness to the gastric region. The patient stated he had been going to physical therapy with good overall improvement. However, he admitted he did not go as often as prescribed. The insured told the patient to return in two months.

At his next scheduled appointment, the patient complained of pain and reported he could not walk a long distance. The insured noted palpation of the Achilles tendon region was pain-free, but there was a palpable dell and lack of tension along the course of the tendon. The patient was instructed to continue with physical therapy and regular shoe wear with orthotics.

The patient returned five weeks later and reported it was difficult to push off with his toes. The insured diagnosed Achilles weakness and a rupture of the gastrocnemius. An MRI was performed which demonstrated a partial rupture of the gastrocnemius without signs of Achilles rupture. The insured recommended the patient obtain a second opinion.

The Injury

The patient sought a second opinion from an orthopedic surgeon who noted the patient had a lack of propulsion in gait and pain with palpation at the midportion of his Achilles. The orthopedic surgeon performed an Achilles repair. The orthopedic surgeon's post-op note did not reflect that the tendon appeared to be cut. However, at a post-op appointment three months later, he noted that the patient had an iatrogenic tear of the Achilles at the insertion of the musculotendinous junction with subsequent degeneration of the Achilles tendon as a result of the time that passed from the initial injury until the time of repair. Post-operatively, the patient underwent an extended period of physical therapy.

The Allegations

The patient sued the insured alleging the insured cut the Achilles tendon while performing left foot procedures and as a result he was not able to walk long distances or stand for long periods of time due to the pain.

Specific allegations against the insured included:

- Failure to provide appropriate care and treatment.
- Failure to provide safe surgical care.
- Failure to properly perform a surgical procedure.
- Failure to appropriately use surgical instruments.
- Failure to provide care and treatment consistent with the applicable standard of care.

The Defense

There were several strengths in the defense of this case. The defense's podiatry expert could support the insured's care. Conservative care was provided unsuccessfully prior to the surgery and the surgery was indicated. Additionally, the Achilles rupture occurred far from the resection site. The radiologist expert for the defense reviewed all radiographic studies and determined that the patient had a degenerative process rather than an iatrogenic injury of cutting the tendon. The medical records of both the insured and physical therapist indicated the patient was progressing well, with no indication that the Achilles was not functioning properly for four months following the insured's surgery. The defense team, including the insured physician, felt this was a defensible case and elected to proceed to trial.

The Outcome

The jury delivered a verdict for the defense.

Risk Management Tips

While there were several strengths in the defense of this case, here are a few key takeaways to learn from this situation:

- **Document a complete and thorough operative report.** Documentation of the specific level/location of the surgery performed may have prevented the allegation that the insured severed the tendon at the time of surgery.
- **Promptly address any changes or unexpected events and document your rationale for treatment decisions.** In this case, the patient reported increased pain and difficulty walking long distances at his visit six months post-op after he had previously been progressing well. However, the insured did not document his rationale for continuing conservative treatment and not obtaining diagnostic studies at that visit. Not including this information could create a question as to whether the insured suspected a ruptured tendon at that visit. Using the Visual Analog Scale (VAS) could have been helpful in this case. Regular and consistent use of the VAS can only enhance the quality of documentation and care.
- **Promptly authenticate medical record entries.** Many of the insured's records were not electronically signed at a time that was contemporaneous with the visit. Some of the entries were not authenticated for two to three months following the actual visit. Delayed authentication opens the physician up to allegations of medical record alteration.

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