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800.251.5727

CASE **CLOSED**

SUMMARY: The insured was sued when his patient suffered an adverse outcome following a surgical repair of the patient's Achilles tendon.

The Patient and Condition

The patient, a 58-year-old, married, employed, mother and grandmother, was initially referred to the insured by her primary care physician for a possible tendon rupture of the L ankle tibialis posterior. She was treated conservatively, and her symptoms resolved.

Approximately a year later, she returned to the insured with complaints of bilateral pain in her Achilles tendons that had been present for six weeks. Upon physical examination, the insured noted that the patient's left Achilles tendon insertion was swollen and exhibited tenderness on palpation at the Achilles tendon insertion. X-rays revealed bony proliferation at the Achilles tendon insertion on the calcaneus. The insured diagnosed a possible rupture of the left Achilles tendon, and tendonitis of the right and left Achilles tendons. An MRI of the left foot and ultrasound of the left Achilles tendon insertion were highly suggestive of a partial rupture of the Achilles tendon.

The Treatment

The insured discussed treatment options and the risks and benefits of each option with the patient and her husband who was present for all her appointments. Treatment options included conservative treatment with use of a removable walking cast and physical therapy or surgical repair of the Achilles tendon. The patient opted to have her left Achilles tendon surgically repaired.

The patient returned for a pre-operative visit during which the insured went over the informed consent form and again discussed possible complications to include infection, re-rupturing of the tendon, chronic swelling, pain, numbness, stiffness in the ankle, recurrence of the problem, blood clots, and the need for prolonged immobilization following surgery.

The patient signed the informed consent form and was scheduled for a pre-operative screening appointment at the hospital.

The pre-operative screening was unremarkable. She was noted to be 5 feet 6 inches tall and weighed 238 pounds. The following day, the patient returned to the hospital for surgery. The insured performed a surgical repair of the left Achilles tendon. The patient was transferred to the recovery room with stable vital signs and left lower extremity vascular status intact.

The patient was discharged home with a removable walking cast to allow for movement and instructions to keep the dressing clean, dry, and intact, to remain non-weight-bearing on the left foot, to perform range of motion exercises, to contact the insured's office should any problems arise, and to call and/or report any shortness of breath.

The patient returned to the insured for her one-week post-operative appointment. She was noted to be healing as expected. The insured instructed her to begin partial weight bearing in the removable walking cast, continue the range of motion exercises, and to notify him of any problems. The patient was scheduled to return in one week for suture removal.

A week later, the sutures were removed. The patient had no complaints of pain, and the incision was well-healed. The patient was instructed to continue with the removable walking cast, to be non-weight-bearing when showering, to notify him of any problems and return in two weeks.

The Injury

The insured's assistant called the patient to confirm her next appointment. Her husband answered and stated his wife died the previous week from a blood clot. The assistant notified the insured who immediately called the husband and offered his condolences. The husband stated the patient had some shortness of breath two days prior to her death. However, he stated she did not have any leg pain or problems from surgery.

An autopsy was performed which revealed bilateral pulmonary thromboemboli and residual thrombi in the left popliteal and distal venous system.

The Allegations

The patient's husband filed a lawsuit against the insured. Allegations included:

- Failure to order adequate pre- and post-operative prophylactic anticoagulation therapy to a patient who was at high risk for development of a deep vein thrombosis (DVT).
- Failure to include the risk of DVT and potential resultant pulmonary embolus in a high-risk surgical patient in the informed consent.

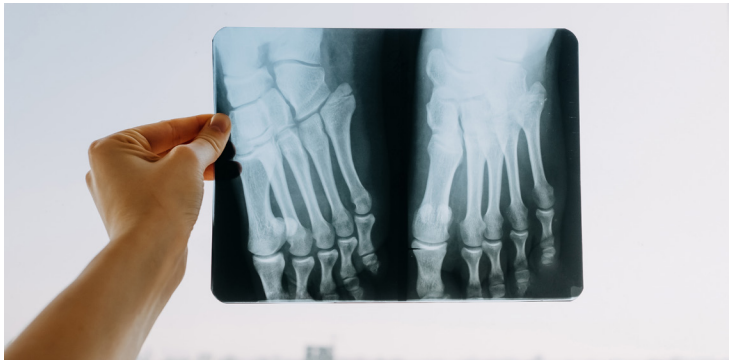
- Failure to recognize that the patient was at high risk for developing DVT and consequent pulmonary embolus, because of her body mass index, age, and the fact she was to undergo surgery to the lower extremities.
- Inappropriately determined that the patient was an appropriate candidate for surgery.
- Failure to order pre- and post-operative referrals to appropriate medical specialists to obtain the necessary medical management regarding prophylactic anticoagulation to a patient who was at high risk for the development of DVT and pulmonary emboli.
- Failure to exhaust conservative treatment options for the conditions suffered by the patient, especially considering that she was at high risk for DVT and pulmonary emboli.
- As a direct and proximate result of the death of the patient, her husband suffered the loss of his long-time wife and companion and has incurred and will continue to suffer the loss of her care, companionship, consortium, comfort, and society, as well as loss of her care and services.

The Defense

The defense felt this case was defensible but knew it would be challenging in several ways: 1) it involved a patient's death which would create a sympathy factor for the jury, 2) there was not a clear standard of care regarding prophylactic anti-coagulation, and 3) there was the potential for a high verdict. However, the insured was an experienced podiatric physician with an excellent reputation. He presented as a credible and knowledgeable witness in his deposition, and he came across as a sincerely compassionate provider. After careful review of this case, the defense team, including the insured physician, made the decision to take this case to trial.

The Outcome

The trial lasted two weeks and when it ended, the jury deliberated a short time before reaching a defense verdict in favor of our insured.



Risk Management Tips

- **Obtain and document a thorough informed consent discussion and utilize a detailed informed consent form.** While the insured discussed the risks and benefits of surgery, including the risk of DVT, with the patient and her husband, neither his documentation nor his informed consent form specifically included the risk of DVT. The risk of developing DVT/PE should be specifically included on the informed consent form regardless of whether prophylaxis is instituted since it is possible for a patient who is at low risk for developing DVT/PE or for a patient who receives prophylaxis to develop a DVT/PE.
- **Assess and document the patient's risk for developing DVT/PE prior to surgery or immobilization.** Once an assessment is completed, make a determination based upon your medical judgment whether the patient should receive mechanical and/or chemical prophylaxis and for how long.
- **Document your rationale for treatment decisions.** There are risks and benefits for all treatments, including DVT prophylaxis. It is important to document your discussion with your patients about the risks and benefits of treatment and your rationale for your ultimate decision. This is especially beneficial when your treatment decisions are being challenged and there is no clear standard of care.
- **Educate the patient/family on signs and symptoms of DVT/PE.** Also provide education on what to do if they should develop signs and symptoms. It is a good idea to provide the patient with a written handout with the signs and symptoms of DVT/PE so they can review it at home.
- **Be compassionate.** Unexpected outcomes happen even with the provision of quality care. In this case, the insured immediately called the husband and offered condolences when he found out about the patient's death. Juries react favorably to physicians who demonstrate compassion for their patients. Many states have enacted "I'm Sorry Laws" which generally protect statements of sympathy or benevolent gestures and are not considered admissions of fault or negligence. You are encouraged to become familiar with your individual state's laws.