CASE **CLOSED**

FALL 2022

IN THIS CASE: The insured treated the patient for a wound beneath the right second metatarsal head. Subsequently, after being diagnosed with malignant melanoma, the patient filed a malpractice suit against the insured.

THE PATIENT AND CONDITION

The patient is a 77-year-old active female and retired flight attendant. The patient's primary care physician referred her to the insured for an evaluation of a wound on the bottom of her right foot. The patient received treatment seven months prior to the referral for removal of a wart present for more than a year and was concerned that it had not yet healed. The patient relayed to the insured a history of basal cell carcinoma and warts. The patient complained of dull pain, burning, and soreness aggravated by weight bearing as she preferred to wear high healed dress shoes. The patient self-treated the wound by applying a cream prescribed by her dermatologist and sanding the hard ring of skin around the wound with a pumice stone.

Physical examination revealed a lesion plantarly beneath the right second metatarsal head with an open wound measuring 0.8 x 1.2 x 0.1 cm. The patient had a plantarflexed right second metatarsal, hammertoes, and fat pad atrophy. A mild hallux valgus was also noted. The insured diagnosed pressure ulceration vs. post-surgical wound, complicated by prior treatments and excessive standing in high heels.

THE TREATMENT

The insured debrided the wound and instructed the patient to stop using the cream prescribed by the dermatologist, to stop sanding the skin around the wound, and to wear shoes with more cushion and mild arch support. The insured referred her to a pedorthist for appropriate shoe gear. The insured advised the patient to use a felt or foam aperture pad daily and prescribed Silver Hydrogel to apply to the wound once a day. The patient was given an appointment to return in two weeks.

The patient returned as scheduled. The wound remained open with slight serosanguineous drainage and minimal discomfort. She had changed the style of shoes she wore to a lower heel with good footbed padding, but the wound was slow to heal. The insured debrided the wound to 0.8 x 1.2 x 0.1 cm. No signs or symptoms of infection were noted. The insured instructed the patient to stop wearing high heeled footwear until the wound was fully resolved and to wear tennis shoes with a dancer's pad.

The patient returned three weeks later stating she had been applying the silver gel as prescribed and had been wearing her tennis shoes. She stated she was pain-free. The wound measured 1.8 x 1.2 x 0.1 cm. Newly epithelialized skin was noted in the center of the wound with brown dried exudate/callus circumferentially around the wound, but there was a 20% area of residual brown exudate. The patient was instructed to continue wearing her tennis shoes with a dancer's pad until her wound was fully healed.

The patient returned three months later. She stated that the wound had fully healed but became problematic ten days previously when she stopped wearing the dancer's pad in her shoes. She had also been taking long walks. The wound measured 2.7 x 2 x 0.1 cm. The insured debrided the macerated and devitalized tissue, and the wound was dressed and padded for offloading. The patient was provided with instructions on dressing changes. The insured saw the patient two additional times over the next month for treatment of the open wound. At the last visit, the wound measured 0.8 x 0.6 x <0.1 cm. The insured discussed good shoes, possible hammertoe surgery, plantar plate repair, or fat pad replacement with the patient.

THE INJURY

The patient sought treatment with another physician who biopsied the wound. The patient was diagnosed with and treated for a Stage III malignant melanoma.

CASE **CLOSED**

FALL 2022

RISK MANAGEMENT TIPS

- **Make sure your medical records are accurate.** Review each entry into the medical record to ensure it only contains information pertinent to the current visit. There were several inaccuracies in the insured's medical record which could cause a jury to discount insured's overall credibility. On some occasions, the left foot is referenced when the right foot was involved. Billing entries noted an initial visit took place when the visit was actually a subsequent visit. There were references in the notes to the wound being closed when it was clearly still open. The notes were difficult to read as notes from the initial visit were carried over to the next visit, making it hard to ascertain new and current information.
- **Consider performing a biopsy on non-healing wounds.** A chronic wound that fails to heal despite appropriate treatment could be a sign of some types of skin cancer. While not necessarily the standard of care in this situation, it could be argued that the insured should have demonstrated a sufficient awareness of other potential causes for the non-healing wound.

THE ALLEGATIONS

The patient alleged that the insured failed to provide her with appropriate treatment, failed to order any diagnostic testing, failed to diagnose her condition, and failed to refer her to a specialist resulting in the need for more aggressive treatment and diminished life expectancy.

THE DEFENSE

The case was reviewed for the defense by a podiatric physician, a surgeon, and an oncologist. The podiatric expert felt the insured's treatment was within the standard of care. He felt the biomechanics of the patient's foot, location of the lesion, and the patient's penchant for high heeled shoes pointed to the reasonableness of the insured's assessment and care.

The surgeon stated that a malignant melanoma on the plantar surface of the foot is extremely rare but can happen. The patient's lesion was non-pigmented and ulcerated, making it seem more like a pressure ulcer rather than a melanoma. He felt that a biopsy should have been performed, but he could not say to a reasonable degree of medical certainty that had the insured performed a biopsy, the patient's outcome or treatment course would have been different.

The oncologist stated that the patient's history of basal cell carcinoma did not increase her risk of developing melanoma. At the time of the patient's initial presentation to the insured, the lesion, both in appearance and location, did not appear like a typical melanoma. However, he felt the melanoma had been present long before her treatment with the insured. He opined that it was initially reasonable for the insured to assess the lesion as a pressure ulceration, although after a period of non-healing, one should consider alternate causes. He could not say with a reasonable degree of medical certainty that the patient's outcome would have been different had she been diagnosed with melanoma at the time of her initial treatment with the insured.

THE OUTCOME

There were some concerns with the defense of this case. There were several inaccuracies in the insured's medical records which could cause a jury to discount the insured's overall credibility. While there was expert support for the insured's treatment, the defense team felt this would be a sympathetic case from the patient's perspective. Therefore, the case was settled prior to trial.