



CASE CLOSED

SUMMARY: In this case, the improper performance of a left 1st metatarsal ostectomy and cheilectomy and improper placement of hemi implant resulted in a shortened 1st metatarsal head and the need for further surgery.

The Patient and Condition

The patient was a 54-year-old female with left hallux valgus deformity, moderate degenerative changes at the 1st MPJ, and increased intermetatarsal angle.

The Treatment

The patient presented to the insured with complaints of right heel pain and painful left great toe joint. A plantar fasciitis injection was provided for the right foot. An X-ray further revealed hallux valgus deformity with moderate degenerative changes at the 1st MPJ and increase in the 1st IM angle. The patient returned for pain and swelling of left 1st MPJ (and right foot plantar fasciitis injection).

For the next three months, the patient underwent six MLS laser treatments to the 1st MPJ; however, she continued to complain, so the insured performed a left 1st metatarsal ostectomy and cheilectomy.

The Injury

During surgery, it was discovered that the patient had a large bone cyst, which was removed, but the bone cyst defect collapsed and the only available option during surgery was placing an implant because bone cement, bone graft, or a plate with screws were not available at the surgery center. This resulted in loss of bone beyond what was anticipated and a 16mm implant being placed but shortening occurred.

Post operatively, the insured discussed the cyst encountered with the patient and discussed surgical correction with a bone graft for lengthening as well as distraction with an external fixator. The second procedure would require additional prolonged non-weight-bearing recovery period, inability to wear high-heeled shoes, and lifelong pain and discomfort. The patient elected not to have the second surgery before getting a second opinion. The patient continued to follow up with the insured, and they were only offered conservative treatment from the second physician. The patient never returned to the insured nor underwent any additional care.

The Allegations

Allegations included:

- Failing to select proper treatment for the patient's complaints.
- Negligently removing too much bone from the metatarsus during surgery.
- Failing to obtain informed consent to harvest bone directly from the patient in event bone graft became necessary.
- Failing to properly seat the hemi implant into the bone during the surgery.
- Negligently proceeding with the surgery and placing the hemi implant after issues (bone cyst) were encountered, which was beyond the skill and experience of the insured.

The Defense

This case went to jury trial 7 years after care was provided. The key in this case was the defense counsel's attack on the patient's one sole expert. There was very strong expert support for the insured.

The Outcome

The 9-day trial ended with a brief hour and a half jury deliberation, and a defense verdict was received in favor of our insured.



Risk Management Tips

- **Unexpected situations can occur and how you handle those scenarios is critical.** This is an example of a rare situation where a decision on how best to treat the patient is made during the actual surgical procedure. The cystic first metatarsal head was an unknown prior to surgery. The podiatric surgeon made the right decision during surgery given the options available and discussed the complications and additional surgery options with the patient.
- **Claims can be brought against you years later.** It's important to remember that allegations can be made even years after you provide care. This is why documentation is so important – your memory of what happened might not be too reliable.
- **Even when there is an appropriate diagnosis and appropriate procedure, things can still go wrong.** The patient in this case was appropriately diagnosed and the decision to perform a metatarsal osteotomy and cheilectomy with implant procedure was appropriate. Even when things go right, you can still find yourself in the middle of a lawsuit.

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