PICA PODIATRIC MALPRACTICE INSURANCE

SUMMER 2024
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# CASE **CLOSED**

**SUMMARY:** In this case, the insured improperly performed the surgical removal of a suspected cancerous calf mass resulting in a severed tibial nerve. The mass ended up being benign making this surgery unnecessary and the patient sued the insured.

## The Patient and Condition

The patient was a 54-year-old male. He presented to the insured complaining of a painful lump in his right calf. He said it had been present for a year and was increasing in size. The insured estimated the size of the mass to be 5 to 8 centimeters.

## The Treatment

The insured ordered an MRI. The MRI was performed, and the interpreting radiologist measured the mass to be 3.3 x 3.5 x 4.3 centimeters and described the mass as being solid and in the deep tissues of the right calf. The radiologist noted, "This is a sarcoma until proven otherwise."

The insured recommended surgical removal of the mass. The patient was cleared for surgical removal of the mass by his primary care provider who also recorded a medical history significant for removal of a schwannoma in 1995. The insured's consent discussion with the patient included the risk of nerve damage, in addition to other specifically identified significant risks.

## The Injury

The insured performed surgery to excise the mass, during which he noted complications stemming from the mass enveloping the tibial nerve, which was severed and could not be reconnected due to retraction of the nerve ends.

Six days post-op, the insured referred the patient to a neurologist for nerve conduction studies. The pathology report was returned and indicated the mass was not a sarcoma, but that it was another schwannoma – not a cancerous tumor, but a benign tumor that forms in and around nerves.

Per pathology, the final diagnosis was schwannoma, completely excised, no malignancy identified. The gross specimen was 4.2 x 4.1 x 3.1 cm. Morphologic and immunohistochemical staining results were diagnostic of a schwannoma.

During the surgery to excise the mass, the insured severed the tibial nerve. It could not be reconnected due to retraction of the nerve ends. Following this surgery, the patient claimed he now has an abnormal gait, nerve damage, and suffers from complex regional pain syndrome (CRPS).

## The Allegations

The allegations against the insured included:

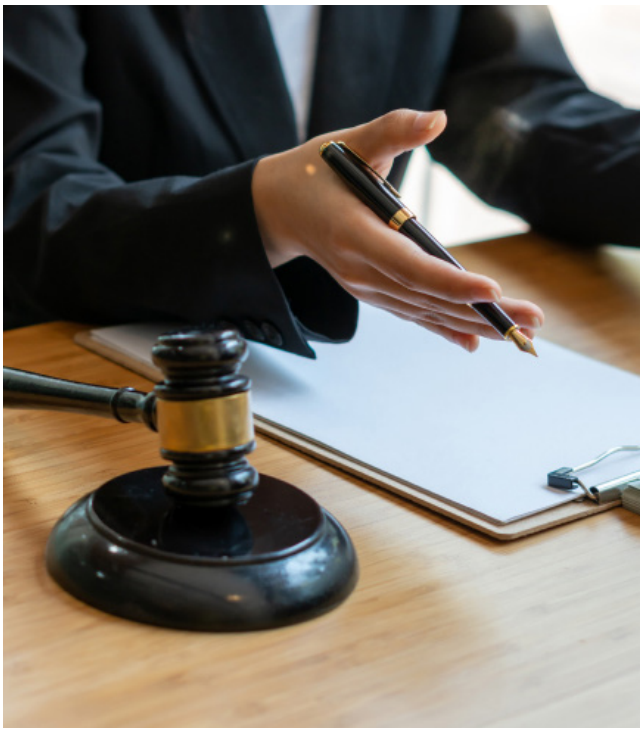
- Unnecessary and improperly performed surgical excision of mass.
- Failure to appreciate the patient's history of schwannoma.
- Failure to refer to oncology, orthopedic surgery, and/or peripheral nerve surgery.
- Failure to order fine needle biopsy by interventional radiology prior to proceeding to surgical removal of the mass.
- Failure to perform a biopsy prior to proceeding to surgical removal or to have pathology in the OR to allow for a frozen section to be obtained prior to removal of the mass.
- Failure to order microvascular consult immediately upon severing the nerve to allow for same day repair.

## The Defense

The defense case was weak due to the patient's treating neurosurgeon supporting the patient's claim that he was suspicious the mass was another schwannoma, but that the insured insisted it was a sarcoma. External experts were consulted and offered little support for the insured's position. The informed consent discussion regarding nerve damage, and documentation of that discussion, in this case was not enough to defend the case because the surgery was unnecessary and could have been avoided if a biopsy had been completed prior to surgery.

## The Outcome

The claim was settled prior to trial.



## Risk Management Tips

- **A patient's past medical history is critically important to obtain and document.** If treatment is provided prior to obtaining a thorough history, you run the risk of providing treatment that is inappropriate or could make the patient's condition worse. By documenting the patient's history prior to initiating treatment, documenting your thought process for additional testing or referrals and your treatment decisions, documenting your conversations with the patient regarding the plan of care, and obtaining and documenting the patient's informed consent for treatment, you can reduce both the risk of a poor patient outcome and the risk of a lawsuit.

- **Refer to oncology if cancer is suspected and confirm diagnosis via biopsy before proceeding to excision of a mass.** When a doctor does not refer a patient to a specialist for additional care, further diagnostics, or for treatment that only another physician can provide, they may be considered liable for negative consequences if the patient suffers as a result. Biopsy should be considered as soon as there is any clinical suspicion of cancer or there is no resolution or change in the wound within three to four months. Obtain a copy of the biopsy report prior to performing an excision or other surgical intervention.

- **Immediately consult with subspecialist if a complication occurs.** When there is a complication during the course of a surgery being performed it is important to take action quickly and get help from a subspecialist if needed. This can help mitigate risk and improve the surgical outcome.



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