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CASE **CLOSED**

SUMMARY: The insured was sued after treating a patient for acute left foot pain.

The Patient and Condition

The patient was a 39-year-old nurse when she initially sought treatment with the insured. She was treated over the course of nine years for multiple podiatric conditions including plantar fasciitis, numerous stress fractures, heel pain, and ulcerations for which she was successfully treated with conservative measures.

The patient had a history of multiple medical problems including lupus, DVT/PE, severe spinal stenosis, diabetes, fibromyalgia, neuropathy, and hypertension. At the time of the insured's treatment at issue in this case, the patient was recovering from lumbar surgery and receiving treatment for a left DVT. She was receiving treatment from a wound care center for delayed healing of multiple ulcers on her left leg and treatment from the insured for an ulcer on her left great toe.
Back in November 2011, the patient presented to the insured complaining of an acute onset of pain and swelling in her left foot.

The Treatment

The insured noted the patient did not recall any immediate foot injury. The patient had extreme discomfort at the talonavicular area as well as erythema and heat. The insured obtained an X-ray which was negative for fracture. The insured felt it was possible that the patient's lupus was affecting her joints.

She placed the patient in a CAM walker. The insured planned to consider an MRI if the patient's symptoms did not improve in three weeks.

The patient returned two weeks later for follow-up. She continued to complain of severe left foot pain. The insured documented an evaluation of the patient's toe ulcers, but did not document an assessment of the left foot pain. The insured instructed the patient to remain in her CAM walker for another two weeks.

The patient returned two weeks later complaining of increasing pain in her left foot and ankle. The insured noted her foot was collapsing consistent with Charcot and ordered an MRI.

The patient returned two weeks later. The insured felt the patient's presentation was consistent with Charcot foot. She reviewed the MRI which showed changes in the cuneiform bones, base of 2-4 metatarsals, and a non-displaced cuboid fracture, consistent with Charcot. The insured ordered a CT scan to further evaluate the midtarsal joint to determine if fixation of the cuboid fracture would be necessary. The patient was placed in a new CAM and instructed to be limited weight-bearing and to use a roll-about. A bone stimulator was also recommended.

The CT scan revealed a navicular-cuneiform comminuted fracture-dislocation, mildly displaced intra-articular cuboid fracture and minimally displaced anterior calcaneal process fracture, extensive soft tissue edema, small plantar calcaneal spur, and mild plantar fasciitis. The radiologist concluded the findings did not suggest superimposed Charcot joint.

The patient did not return to the insured and transferred her care to an orthopedic surgeon.

The Injury

The orthopedic surgeon diagnosed Charcot of the left foot. He treated the patient conservatively with a left lower leg cast and instructed her to be non-weightbearing. Two months later, the orthopedic surgeon noted the patient's left Charcot foot had resolved with her left foot in plantigrade position and symptoms relieved with a CAM boot/fracture brace.

Fast forward to March 2021, and the patient's significant medical comorbidities, unrelated to her Charcot foot, caused her to develop end-stage respiratory failure, renal failure, pneumonia, and sepsis. The patient elected to receive hospice and passed away a month later at the age of 56.

The Allegations

Just under two years after her treatment with the insured, the patient filed a lawsuit against the insured.

Allegations against the insured included:

- Failure to timely diagnosis Charcot foot.
- Inappropriate treatment with a CAM walker as opposed to a below knee cast.
- Failure to properly treat a Charcot deformity causing permanent disability.

The patient's estate continued the lawsuit on behalf of the patient after her death.

The Defense

The defense obtained expert reviews from two podiatric physicians and an orthopedic surgeon. All defense experts felt that the insured's treatment of the patient was within the standard of care, and that there was no evidence of delay in diagnosing or in treating the left foot Charcot.

The Outcome

The jury delivered a verdict in favor of the defense.

Risk Management Tips

While this case ended well with a defense verdict, the insured had to endure years of stress as a result of being involved in a lawsuit. Could the insured have done anything to have prevented the filing of a lawsuit? While lawsuits cannot always be prevented, physicians can take measures to reduce the likelihood that a lawsuit will be filed. Here are some tips:

- **Recognize and remain aware of any past medical history and systemic disease.** Consider how it may contribute as a pre-existing issue in the development of subsequent lower extremity pathology.
- **Document your rationale for treatment decisions.** For example, if you are considering Charcot as a diagnosis carefully document the choice of the CAM walker boot vs a below knee cast and your recommendation for non-weight-bearing.
- **Provide the patient with precise instructions and document in their record.** During her deposition, the insured stated that she told the patient to be non-weight bearing. However, that instruction was not documented in the medical record. During the patient's deposition, she testified that the insured instructed her to be "limited weightbearing," which the insured denied. Had the instructions been clearly documented in the patient's medical record, it would have prevented a "he said/she said" situation. Additionally, document the recommendation for assistive aids such as the roll-about walker in this case.
- **Obtain and document the patient's social history.** Determine if there are any social or daily living factors or family dynamics that may affect a patient's ability to comply with your recommendations.
- **Assess and document the patient's adherence to instructions.** There was no documentation by the insured in the patient's medical record of whether the patient was adhering to non-weight-bearing instructions. Documentation of a patient's nonadherence with instructions can be used to show a patient contributed to a poor outcome.
- **Document all reassessments of the patient's condition and your plan to continue or revise your plan of treatment.** When the patient returned for her first follow-up appointment after the initial onset of acute left foot pain, the insured addressed the patient's toe ulcers, but did not address the left foot pain. It is important to reassess and document the reassessment of a patient's condition and plan of care at each visit. Seek to confirm your provisional diagnosis promptly or at the first sign of any changes.